$~J

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 19.05.2025

Judgment pronounced on:08.07.2025

\+ **CRL.A. 869/2002**

SURENDRA KUMAR .....Petitioner

Through: Mr. Shri Singh, Ms. Sowjhanya Shankaran, Advs.

versus

C.B.I. .....Respondent

Through: Mr. Atul Guleria, SPP with Mr. Aryan Rakesh, Mr. Prashant Upadhyay, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: JASMEET SINGH, J

1. This is an appeal filed under section 374 of the Code of Criminal Procedure, 1973 ("***the Act***") read with section 27 of the Prevention of Corruption Act, 1947 ("***PC Act***"), seeking to challenge the judgment of conviction dated 21.10.2002 passed in CC No. 66/1994 titled *CBI v. Surendra Kumar*, whereby the Appellant has been convicted for the commission of offences punishable under Section 5(l)(d) read with Section 5(2) of the PC Act, and Section 161 of the Indian Penal Code, 1860 ("***IPC***") and Order on Sentence dated 24.10.2002, whereby the appellant was sentenced for a period of 02 years (two) rigorous imprisonment (RI) for the offences committed under section 161 IPC along with a fine of Rs 7,500/-, in case of default, further RI

for 6 months and 03 (three) years RI for the offences committed under Section 5(l)(d) read with Section 5(2) of the PC Act, along with a fine of Rs. 7500/-, in case of default further RI for 6 months. All the sentences were directed to be run concurrently.

FACTUAL BACKGROUND

2. The facts are as under:

2.1. The appellant was employed as the Chief Marketing Manager of the State Trading Corporation of India (STC). In 1983, STC issued an invitation for quotations from suppliers for the supply of 140 tonnes of dried fish to STC. In response, M/s Abdul Hamid and Co., a firm based in Bombay, submitted its quotation through its partner, Shri Abdul Karim Hamid (complainant).

2.2. On 03.01.1984, the Complainant, visited the office of the appellant after finding out that the order for the supply of dried fish had been placed with other suppliers and not with the appellant's firm despite the complainant's firm offering the same price. During this meeting, the appellant assured the complainant that the STC would place an order for 140 tonnes of dried fish on his firm, but demanded a bribe of Rs. 15,000/- in return. As the Complainant did not have the said amount at that time, the appellant instructed him to bring Rs. 7,500/- the next day, i.e., on 04.01.1984, to Hotel Kanishka at 2 p.m., and to pay the remaining amount after the order was placed in favour of his firm. The appellant also told the complainant to come alone.

2.3. The Complainant, unwilling to pay the bribe, approached the Central Bureau of Investigation (CBI)/respondent on the morning of 04.01.1984 and lodged a formal complaint (Exhibit PW2/A). Based on this complaint, a case was registered vide RC No. 1/1984 under

Section 5(l)(d) read with Section 5(2) of the PC Act, Thereafter, the CBI initiated trap proceedings to apprehend the appellant.

2.4. A raiding team was constituted. The complainant produced 75 government currency notes of Rs. 100 each. The serial numbers of the notes were recorded in a report. Two independent witnesses, namely, P.C. Sehgal (PW – 4) and CM Kapoor (PW – 11), were called as panch witnesses. Deputy Superintendent of Police, Mr. Darshan Singh then briefed the complainant and the panch witnesses on the procedure for trapping the accused. The 75 currency notes were treated with phenolphthalein powder, and a solution of sodium carbonate was also prepared. It was explained to the complainant and the panch witnesses, that if anyone touched the phenolphthalein-treated notes and then dipped their fingers into the sodium carbonate solution, it would turn pink indicating contact with the treated notes. The treated currency notes were then returned to the complainant, who kept the same in his briefcase in an envelope. The complainant was also given a tape recorder and the complainant's son, namely, Shakeel was asked to accompany his father.

2.5. The raiding team comprising of the complainant, his son (PW-2), panch witnesses and the CBI officials reached Hotel Kanshika at around 1 p.m. on 04.01.1984. Pursuant thereto, the appellant took the complainant and his son to Room No. 1230 of Hotel Ashok Yatri Niwas where the exchange of Rs. 7,500/- took place.

2.6. Once the exchange was done, the appellant gave the pre-arranged signal to the members of the raiding team. Consequently, the appellant was apprehended with the briefcase, in which the 75 phenolphthalein-treated government currency notes were kept in an envelope. Thereafter, the appellant's hands were washed in separate sodium

carbonate solutions, prepared at the spot, which turned pink, indicating contact with phenolphthalein-treated currency notes. The sealed envelope containing the tainted notes was also dipped into a fresh sodium carbonate solution, which similarly turned pink.

2.7. The appellant was then arrested.

3. On completion of the investigation, the CBI filed the chargesheet against the appellant for commission of offences under Section 5(l)(d) read with Section 5(2) of the PC Act, and Section 161 of the IPC. After taking cognizance, charges were framed against the appellant, to which he pleaded not guilty and claimed trial.

4. During trial, the prosecution examined 13 witnesses in total, being PW1 PC Luther (sanctioning authority, STC), PW 2 Shakeel Machhiwala (Complainant's son), PW 3 Complainant (examined only partly in chief and died before cross examination), PW 4 PC Sehgal (Panch Witness), PW 5 Om Prakash Batra (Hotel Ashok Yatri Niwas), PW 6 Sanwar Sharma (Hotel Ashok Yatri Niwas), PW 7 SAS Bindra (Dy. Marketing Manager, STC), PW 8 NS Bisaria (CFSL), PW 9 Purushottam Lal (Inspector, CBI), PW 10 Rajiv Makin (Hotel Ashok Yatri Niwas), PW 11 CM Kapoor (Panch Witness), PW 12 T. Sukumaran (Hotel Ashok Yatri Niwas), PW 13 RK Joshi (Investigating Officer).

5. Thereafter, the statement of the accused was recorded under Section 313 of the Act, under which he denied the allegations made against him that he had demanded bribe against the complainant. After pleadings and arguments made on behalf of the parties, the impugned judgment came to be passed on 21.10.2002, whereby the appellant was found guilty of offences punishable under Section 5(l)(d) read with Section 5(2) of the PC Act, and Section 161 of the IPC.

6. Vide order of sentence dated 24.10.2002, the appellant was sentenced for a period of 02 years (two) RI for the offences committed under section 161 IPC along with a fine of Rs 7,500/-, in case of default, further RI for 6 months and 03 (three) years RI for the offences committed under Section 5(l)(d) read with Section 5(2) of the PC Act, along with a fine of Rs. 7500/-, in case of default further RI for 6 months. All the sentences were directed to be run concurrently.

SUBMISSIONS ON BEHALF OF THE APPELLANT

7. The appellant had initially advanced some arguments on the merits of the matter but subsequently gave up his challenge to his conviction and restricted his arguments to the reduction of quantum of sentence and the same has been duly recorded in the order dated 02.07.2025, when the matter was listed for clarification.

8. Learned counsel for the appellant states that the learned Special Court ought to have exercised its discretion under the proviso to Section 5(2) of the PC Act, particularly considering that the alleged offence was committed on 03.01.1984, and the Appellant remained under trial for over eighteen and a half years before conviction. The Appellant was arrested on 04.01.1984 and was released on bail shortly thereafter. He has diligently participated in the trial without causing any delay or disruption. It is not in dispute that the Appellant was in custody for one day and was released on execution of a bond of Rs.10,000/-.

9. It is further stated that that over 42 years have passed since the incident and more than 22 years since the filing of the present appeal. The Appellant, now over 90 years of age and virtually bedridden due to multiple age-related ailments, would suffer undue hardship if incarcerated at this stage. The inordinate delay, not attributable to the appellant, has violated his

fundamental right to a speedy trial under Article 21 of the Constitution of India. Additionally, it is stated that the appellant has already deposited the fine amount of Rs.15000/-.

10. As regards, the sentences awarded under section 161 IPC and Section 5(2) read with Section 5(l)(d) of the PC Act is concerned, learned counsel relies on the judgment passed by the Hon'ble Supreme Court in ***V.K. Verma v. Central Bureau of Investigation*** (2014) 3 SCC 485 (paras 6, 7, 8, 12 and 13).

11. Further, reliance is placed on the judgment passed by the Hon'ble Supreme Court in ***Ketan V Parekh v. Central Bureau of Investigation*** 2024 SCC OnLine SC 2435 (para 8 and 9) to state that considering the appellant's advanced age of over 90 years and his extremely fragile health, a sentence of one day (already undergone) may kindly be considered appropriate in the present case, as any further incarceration would gravely impact and cause irreparable loss to the appellant.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

12. It is fairly submitted by the counsel for the respondent that the appellant was taken into custody on 04.01.1984 and subsequently released on bail, the Court is vested with discretion under the proviso to Section 5(2) of the PC Act to impose a sentence of less than one year. In the event the conviction is upheld, the appellant's plea for reduction of sentence may be considered in light of settled principles of law, his advanced age and deteriorating health, and other mitigating factors such as loss of employment and family obligations.

ANALYSIS AND CONCLUSION

13. Before proceeding further, it is pertinent to mention that the appellant is not challenging the judgment of conviction dated 21.10.2002. The arguments of

the appellant are only towards seeking a reduction of the sentence to the period already undergone, (one day), considering the appellant's advanced age, deteriorating health condition, and other mitigating circumstances.

14. Section 5(1) (d) and section 5(2) of the PC Act reads as under:

> *"5. Criminal misconduct in discharge of official duty.*
>
> *(1) A public servant is said to commit the offence of criminal misconduct: -*
>
> *...*
>
> *(d) if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage, or*
>
> *...*
>
> *(2) Any public servant, who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine:*
>
> *Provided that the court may, for any special reasons recorded in writing impose a sentence of imprisonment of less than one year."*

15. As regards, Section 161 of the IPC is concerned, the same has been repealed by the Prevention of Corruption Act, 1988. The provision earlier dealt with public servants taking illegal gratification other than legal remuneration with respect to any official act. The pre amended provision reads as under:

> *"161. Public servant taking gratification other than legal remuneration in respect of an official act."*

16. Section 5(1)(d) of the PC Act deals with the offence of a public servant abusing his position to obtain for himself or for any other person any valuable thing or pecuniary advantage dishonestly or fraudulently.

Meanwhile, section 5(2) of the PC Act prescribes the punishment for offences committed under Section 5(1). Any person guilty of the offences committed under Section 5(1) shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years, along with a fine.

17. The proviso to Section 5(2) of the PC Act empowers the court to award a sentence of less than one year for special reasons recorded in writing.

18. The issue before me is whether the sentence of the appellant, as imposed by the learned trial court, warrants interference in light of the mitigating circumstances placed on record — such as clean antecedents, the advanced age of the appellant, his deteriorating health condition and prolonged delay in the conclusion of proceedings.

19. In criminal jurisprudence, sentencing is not merely a mechanical exercise but involves a careful balancing of aggravating and mitigating factors. While aggravating circumstances highlight the gravity and impact of the offence, mitigating factors provide insight into the personal circumstances of the offender which may require a lesser punishment.

20. Mitigating factors may include the age of the accused, absence of prior criminal record, mental or physical health conditions, socio-economic background, duration of trial, and good conduct during incarceration. In this regard, the Hon'ble Supreme Court in ***Mohammad Giasuddin vs State of Andhra Pradesh*** (1977) 3 SCC 287 inter alia held as under:

> "*9. ... It is thus plain that crime is a pathological aberration, that the criminal can ordinarily be redeemed, that the State has to rehabilitate rather than avenge. The sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by re-culturisation. Therefore, the focus of interest in penology is the individual, and the goal is salvaging him for*

society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today views sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of social defence. We, therefore, consider a therapeutic, rather than an "in terrorem" outlook, should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind.

...

*16. ... '**A proper sentence is the amalgam of many factors such as the nature of the offence, the circumstances — extenuating or aggravating — of the offence, the prior criminal record, if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental conditions of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender to normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in respect to the particular type of offence**. These factors have to be taken into account by the Court in deciding upon the appropriate sentence. [As observed in Santa Singh v. State of Punjab, (1976) 4 SCC 190 at p. 191: 1976 SCC (Cri) 546] '*

17. It will thus be seen that there is a great discretion vested in the Judge, especially when pluralistic factors enter his calculations. ... innovation, in all conscience, is in the field of judicial discretion."

(Emphasis supplied)

21. Similarly, in ***Pramod Kumar Mishra v. State of Uttar Pradesh*** 2023 SCC OnLine SC 1104, the Hon'ble Supreme Court while relying on the judgment of ***Mohammad Giasuddin*** (supra) reiterated the importance of considering mitigating factors while awarding sentence, particularly in cases involving long-pending prosecutions. The Court observed that the incident in question therein had occurred nearly four decades ago and that the appellant had no prior criminal record. Therefore, the sentence of the appellant therein was reduced from 5 years to 3 years considering the mitigating circumstances. The operative portion reads as under:

"10. It is a well-established principle that while imposing sentence, aggravating and mitigating circumstances of a case are to be taken into consideration.

...

13. Similarly, in Narinder Singh v. State of Punjab [Narinder Singh v. State of Punjab, (2014) 6 SCC 466 : (2014) 3 SCC (Cri) 54] (two-Judge Bench), while considering the settlement between the parties concerning an offence under Section 307IPC, observed:

13.1. The goal of sentencing can be a combination of incapacitation, specific deterrence, general deterrence, rehabilitation, or restoration.

13.2. In India we do not have any such sentencing policy till date. The prevalence of such guidelines may

not only aim at achieving consistency in awarding sentences in different cases, such guidelines normally prescribe the sentencing policy as well, namely, whether the purpose of awarding punishment in a particular case is more of a deterrence or retribution or rehabilitation, etc*. In the absence of such guidelines in India, the courts go by their own perception about the philosophy behind the prescription of certain specified penal consequences for particular nature of crime.*

13.3. For some deterrence and/or vengeance becomes more important whereas another Judge may be more influenced by rehabilitation or restoration as the goal of sentencing. Sometimes, it would be a combination of both which would weigh in the mind of the court in awarding a particular sentence. However, that may be a question of quantum.

…

16. More recently, in Jasbir Singh v. Tara Singh [Jasbir Singh v. Tara Singh, (2016) 16 SCC 441 : (2017) 4 SCC (Cri) 514] (two-Judge Bench), this Court observed that it is not possible to have strict principles on sentencing in absence of a sentencing policy for the State, however certain mitigating factors like the gravity of the offence, motive for commission of the crime, the manner in which it was committed need to be borne in mind and thereafter sentence be imposed.

…

20. Having regard to the submissions made by the counsel appearing for the parties and findings of the courts below, it

can be seen that 39 years have passed since the date of offence and both the other accused persons have come to be acquitted. From a reading of the impugned order [Pramod Kumar Mishra v. State of U.P., 2019 SCC OnLine All 7212] , it is a matter of record that there was old enmity between the complainant and A-1 relating to the piece of land where the offence came to be committed, while pertinently, the appellant (A-2) is the nephew of A-1.

21. There are no criminal antecedents of the appellant that have been brought on record. Further, from the record, it cannot be said that the appellant acted in a premeditated manner, whatsoever.

22. Therefore, in the interest of justice and in consideration of the abovementioned mitigating factors, this Court reduces the sentence imposed on the appellant-accused from 5 years rigorous imprisonment to 3 years of rigorous imprisonment. The appellant shall pay a fine amount of Rs 50,000 (Rupees fifty thousand) within a period of 6 weeks from today. In default of payment of fine, the appellant shall undergo rigorous imprisonment for 3 months. The fine to be paid to the complainant by way of compensation."

(Emphasis supplied)

22. From the aforesaid judgment(s) it is clear that the objective of sentencing has to be a combination of deterrence and rehabilitation. Both have to coexist and in the absence of one, the purpose of the other cannot be achieved. The list of mitigating factors has been enumerated above and the same are only illustrative and not exhaustive. No hard and fast formula or

mechanism for combining deterrence with rehabilitation can be laid down, but the same has to be worked out on individual and case to case basis.

23. Coming to the facts of the present case, the incident took place on 04.01.1984, and since then the proceedings have been continuing for over four decades — with the trial itself taking nearly 19 years to conclude, and the present appeal remaining pending for more than 22 years. Such inordinate delay is plainly at odds with the constitutional mandate of a speedy trial envisaged under Article 21 of the Constitution of India. The 'Sword of Damocles' and uncertainty qua the fate of the case of the appellant have been uncertain for a period of nearly 40 years and that by itself is a mitigating factor.

24. A vital mitigating factor in considering the sentence is the appellant's advanced age. At 90 years old, suffering from serious health ailments, he is highly vulnerable to the physical and psychological impact of incarceration. Any such imprisonment would risk causing irreversible harm and would defeat the very objective of mitigating the sentence. The appellant was a senior officer with STC and has already suffered incarceration for one day. The appellant has not challenged his conviction and the fact that the appellant was found guilty for offences under Sections 5(l)(d) read with Section 5(2) of the PC Act and section 161 IPC shall remain with the appellant for his entire life. The appellant has duly prosecuted his appeal till today i.e. for more than 40 years there has been no other FIR or criminal case of any kind registered against the appellant. Even prior to 04.01.1984 (the date of the offence), the appellant did not have any criminal antecedents and the incident in question was his first and only offence. Additionally, the record shows that the appellant has already deposited the fine of Rs. 15,000/- imposed by the learned Special Judge on 24.10.2002.

25. Considering the above circumstances, I am of the view that this is a fit case for reducing the quantum of sentence of the appellant considering the mitigating circumstances. Hence, the sentence of the appellant is reduced to the time already served.

26. The appeal is partly allowed in the above terms, and the bail bond and surety bond stands discharged.

JASMEET SINGH, J

JULY 08, 2025 / *priyesh*

Click here to check corrigendum, if any