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MEET SINGH

v.

STATE OF PUNJAB

February 27, 1980

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[D. A. DESAI AND A. D. KOSHIAL, JJ.]

"Special Reasons" in ordinary and in the context of sentencing process—Meaning of—Prevention of Corruption Act, Section 5(2) and proviso thereto scope of—Duty of the Court while exercising its discretion under the proviso, explained.

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Section 5(2) of the Prevention of Corruption Act, 1947 prescribes a minimum sentence of one year, in all cases of conviction under the Act, with a proviso that the Court may for any special reasons recorded in writing impose a sentence of imprisonment of less than one year.

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The petitioner was convicted for having committed offences under section 161 I.P.C. and Section 5(2) of POCA and was sentenced to suffer R.I. for one year on each count and on the second count, also to pay a fine of Rs. 400/- or in default to suffer further R.I. for three months by the learned Special Judge. Both the substantive sentences of imprisonment were directed to run concurrently.

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In appeal the High Court, while maintaining the conviction, reduced the substantive sentence of rigorous imprisonment for one year to the sentence undergone till the date of the Judgment of the High Court and increased the fine to Rs. 4,000/- (Rupees four thousand) or in default to suffer further R.I. for one year. The High Court, while so altering the sentence, took into consideration two facts, namely, (i) that the petitioner was dismissed from service and (ii) that he is a family man.

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Dismissing the special leave petition of the convict against his conviction, there being no appeal by State, the Court

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HELD : 1. The language of the proviso to Section 5(2) of the Prevention of Corruption Act makes it abundantly clear that court is under an obligation to impose a minimum punishment once the conviction is recorded under Section 5(2) and the minimum punishment of imprisonment is for a term not less than one year. Undoubtedly the proviso confers power on the Court to award less than the minimum punishment if the Court convicting and sentencing the accused, is of the opinion that for any special reasons which the Court is under an obligation to record in writing, sentence of imprisonment for a term less than the minimum is called for. Conceding that the quantum of sentence is in the discretion of the trial Court, where the Legislature stepped in and circumscribed and fettered the discretion by directing imposing of a minimum sentence, the court can exercise its discretion within the limited spheres left open by legislature. The Legislature circumscribed the discretion by requiring the

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Court to impose minimum sentence but left it open to award less than the minimum statutorily prescribed for special reasons. The reasons have to be special reasons. The words 'special reasons' in the context in which they are

used could only mean special to the accused on whom sentence is being imposed. The Court has to weigh reasons advanced in respect of each individual accused whose case is taken up for awarding sentence. [1155C-G]

In the instant case, there was no justification much less special reasons statutorily required, for awarding less than the minimum sentence. *Stricto sensu* court exceeded its jurisdiction while interfering with the quantum of sentence. [1157E]

Jagdish Prasad v. West Bengal, [1972] 2 S.C.R. p. 845 @ 851, relied on.

2. The word "special" has to be understood in contradistinction to word "general" or "ordinary". "Special" means distinguished by some unusual quality, out of the ordinary. Again "special" means 'particular'; peculiar; different from others; designed for a particular purpose, occasion, or person; limited in range; confined to a definite field of action. Thus, anything which is common to a large class governed by the same statute cannot be said to be special to each of them. And, "special reasons" in the context of sentencing process must be special to the accused in the case or special to the facts and circumstances of the case in which the sentence is being awarded. [1155G-H, 1156A]

3. In the instant case, the only two reasons special according to the High Court for awarding less than the minimum sentence are (i) appellant before it has lost his job and (ii) and he is a married man with children. These two reasons would be common to ninety nine percent of cases tried under Prevention of Corruption Act and if they can be styled as "special reasons" for awarding less than the minimum sentence the proviso would be rendered wholly nugatory. [1156G-H, 1157A]

Observation :

The Court should not be oblivious to the fact that while conferring discretion in the matter of awarding adequate sentence within limits prescribed by the statute, the Legislature finding cases of misplaced sympathy in sentencing process fettered the Court's discretion by prescribing a minimum sentence and making it obligatory to record special reasons for awarding less than the minimum. If still the notice of encroachments on court's discretion is not taken, time may not be far when the Legislature out of exasperation may resort to what it has done in Section 16 of Prevention of Food Adulteration Act where minimum sentence is prescribed and Court's discretion to award less in any case is wholly taken away. [1157A-C]

CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (Crl.) No. 405 of 1980.

Appeal by special leave from the judgment and Order dated 31-10-1979 of the Punjab & Haryana High Court in Crl. Appeal No. 986/77.

N. C. Talukdar, Shrinath Singh and M. S. Dhillon for the Petitioner.

The Judgment of the Court was delivered by

DESAI, J.—While we decline to grant special leave in this case, an unsavoury feature of the judgment which rather stares into our

- A** face, and surfaces at regular intervals, makes it obligatory to make a few observations.

Petitioner was convicted for having committed offences under Section 161 of the I.P.C. and Section 5(2) of the Prevention of Corruption Act and was sentenced to suffer R.I. for one year on each count and on the second count, also to pay a fine of Rs. 400/- or in default to suffer further R.I. for three months by the learned Special Judge. Both the substantive sentences of imprisonment were directed to run concurrently.

- C** Petitioner preferred Criminal Appeal No. 989 of 1977 against his conviction and sentence to the High Court of Punjab and Haryana at Chandigarh.

This appeal came up for final hearing before a learned single judge of the High Court on 31st October, 1979. When the appeal was taken up for hearing, learned counsel for the petitioner appearing in the High Court did not question either the correctness or the legality of the conviction. This is unquestionable as the High Court has observed while disposing of the appeal that "no arguments on merits are advanced". The High Court then proceeded to consider adequacy or otherwise of sentence imposed on the appellant before it. The High Court then proceeded to reduce the substantive sentence of the appellant of rigorous imprisonment for one year to the sentence undergone till the date of the judgment of the High Court. While so reducing the substantive sentence the High Court noticed the following circumstances which in the opinion of the High Court were sufficient to enable it to interfere with the sentences imposed upon the present petitioner. It would be advantageous to extract the relevant observations :—

"The learned counsel for the appellant has only submitted that the appellant has already been dismissed from service; that he is a family man, and that his sentence may be reduced to that already undergone. In my view no useful purpose will be served by sending him again to jail to serve his unexpired period of sentence. He has already lost his job. The ends of justice will be amply met if his sentence of imprisonment is reduced to that already undergone and instead sentence of fine is enhanced from Rs. 400 to Rs. 4000 (four thousand) or in default to suffer further R.I. for one year. I order accordingly."

H The judgment of the High Court throws no light on the question as to how much sentence the appellant had undergone by the time the

High Court released him on bail while admitting his appeal. But it cannot be more than a few days only.

Petitioner as pointed out earlier is convicted for committing offences under Section 161 IPC and 5(2) of the Prevention of Corruption Act. Section 5(2) of the Prevention of Corruption Act reads as under :—

“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.” (underlining ours)

The language of the proviso makes it abundantly clear that court is under an obligation to impose a minimum punishment once the conviction is recorded under Section 5(2) and the minimum punishment of imprisonment is for a term not less than one year. Undoubtedly the proviso confers power on the Court to award less than the minimum punishment, if the Court convicting and sentencing the accused, is of the opinion that for any special reasons which the court is under an obligation to record in writing, sentence of imprisonment for a term less than the minimum is called for. Conceding that the quantum of sentence is in the discretion of the trial court, where the Legislature stepped in and circumscribed and fettered the discretion by directing imposition of a minimum sentence, the court can exercise its discretion within the limited sphere left open by legislature. The Legislature circumscribed the discretion by requiring the court to impose minimum sentence but left it open to award less than the minimum statutorily prescribed for special reasons. The reasons have to be special reasons. The words ‘special reasons’ in the context in which they are used could only mean special to the accused on whom sentence is being imposed. The court has to weigh reasons advanced in respect of each individual accused whose case is taken up for awarding sentence. The word ‘special’ has to be understood in contradistinction to word ‘general’ or ‘ordinary’. Now what does term ‘special’ connote? “Special” means distinguished by some unusual quality; out of the ordinary. (See Words and Phrases, Permanent Edition, Volume 39A p. 82.) Webster defines “special” as particular; peculiar; different from others; designed for a particular purpose, occasion, or person; limited in range; confined to a definite field of action. Thus anything which is common to a large class

A governed by the same statute cannot be said to be special to each of them. It would thus unquestionably appear that "special reasons" in the context of sentencing process must be special to the accused in the case or special to the facts and the circumstances of the case in which the sentence is being awarded.

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The High Court then was under an obligation to award minimum sentence unless the accused advanced special reasons, *i.e.* special to him in the facts and circumstances of the case and successfully invoked the discretion vested in the Court to award less than the minimum sentence prescribed by law. The Court observes that this appellant-

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corrupt officer whose corruption was proved to its satisfaction because the High Court declined to interfere with the conviction of the appellant for corruption and who must consequently or of necessity be dismissed from service, considered his dismissal from service as a special reason. Frankly speaking the High Court honestly did not expect any corrupt officer to be retained in service. Ordinarily a corrupt official whose corruption is proved to the hilt is liable to be dismissed, and therefore, this aspect is not special to the appellant. Accordingly if an officer proved to be corrupt to the satisfaction of the court is liable to be dismissed it cannot influence the question of sentence. Also because it would be true of all public servants dealt

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with under Section 5(2) of the Prevention of Corruption Act. Another special reason that appealed to the High Court is that appellant is a 'family man'. Possibly the High Court considered marriage and children of the appellant as special to him. An unusually large number of the Government officers from amongst those charged with corruption and convicted for the same would be married men with family, unless they joined service before marriage and became corrupt

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very soon at the inception of the career. And ordinarily speaking a family of corrupt officer in some cases if not all benefits by the corrupt activity unless shown to the contrary which is not the case. If large number of public servants from those convicted under section

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5(2) of the Prevention of Corruption Act are married men with children it passes comprehension how this fact can be styled as special to the appellant influencing his sentence. It may be mentioned without fear of contradiction that the only two reasons, special according to the High Court for awarding less than the minimum sentence are (i) appellant has lost his job and (ii) he is a married

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man with children. These two reasons would be common to ninety nine per cent of cases tried under Prevention of Corruption Act and if they can be styled as special reasons for awarding less than the

minimum sentence the proviso would be rendered wholly nugatory. The Court should not be oblivious to the fact that while conferring discretion in the matter of awarding adequate sentence within limits prescribed by the statute, the Legislature finding cases of misplaced sympathy in sentencing process fettered the Court's discretion by prescribing a minimum sentence and making it obligatory to record special reasons for awarding less than the minimum. If still the notice of encroachments on court's discretion is not taken, time may not be far when the Legislature out of exasperation may resort to what it has done in Section 16 of Prevention of Food Adulteration Act where minimum sentence is prescribed and Courts' discretion to award less in any case is wholly taken away. In this context it would be timely to recall the warning uttered by this Court in *Jagdish Prasad v. West Bengal*⁽¹⁾ This Court said :

"Offences under the Act being anti-social crimes affecting the health and well-being of our people, the Legislature having regard to the trend of courts to impose in most cases only fines or where a sentence of imprisonment was passed a light sentence was awarded even in cases where a severe sentence was called for, a more drastic step was taken by it in prescribing a minimum sentence and a minimum fine to be imposed even for a first offence."

In this case, there was no justification, much less special reasons statutorily required, for awarding less than the minimum sentence. *stricto sensu* Court exceeded its jurisdiction while interfering with the quantum of sentence. And with this observation we dismiss the special leave petition.

S.R.

Petition dismissed.

(1) [1972] 2 S.C.R. p. 845 et 851.