SENTENCING IN CRIMINAL CASES WITH SPECIAL REFERENCE TO THE PREVENTION OF CORRUPTION ACT

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Sentencing is a complex process. Most of us have an impression that sentencing is different from the trial of a Criminal case. But sentencing is an integral part of Criminal trial. Hon'ble Apex Court has strongly emphasized that sentencing is a complex process which calls for adjustment of competitive theories of punishment.

2. In his book ***"Sentencing By Courts in India"*** First Edition published in 1975, Late Justice G.N. Sabhahit, former judge of the High Court of Karnataka, has observed as follows:-

> *"In India, however, little attention is bestowed on the aspect of sentence by Courts. It is a matter of common experience that Courts take a long time for a first stage of the Criminal Trial viz., to find out whether the accused is guilty. Having done so the Courts lose no time in pronouncing sentence, needless to say, without bestowing the necessary attention and consideration required in discharging this difficult task. Little assistance is given to the courts in the matter of awarding the sentence by Counsel-the prosecutor or the defence advocate. Normally they leave the matter to the courts without addressing arguments in the matter of passing the appropriate sentence, in case the accused is found guilty. The result has been that there is much disparity in the sentence passed by the same court and by different courts with regard to offences in similar circumstances."*

3. In deciding on the question of sentence the judge is expected to take all relevant facts and circumstances of the case. All care should be taken to ensure that sentence imposed is not out of proportion to the nature and gravity of the time. In the case of **RAJIV vs. STATE OF RAJASTHAN (AIR 1996 SC 787)**, it has been held that it is the nature and gravity of the Crime but not the Criminal, which are germane for consideration to impose appropriate sentence in a Criminal Trial. S. 235(2) of Cr.P.C. mandates that before imposing sentence accused is to be heard. This necessarily means that the complainant/prosecution should also be heard regarding the sentence to be imposed. Section 235(2) of Cr.P.C. is equivalent to Section 248(2) of Cr.P.C. which mandates that after hearing the accused on the question of sentence pass appropriate sentence upon him according to law. Hon'ble apex Court has held that while imposing sentence the society's cry for justice should also be kept in mind. This assumes greater significance when the accused is convicted for serious socio-economic offences like, offences against women and children, members belonging to SC/ST, offences under NDPS Act, prevention of Corruption Act, Food Security Act, etc.

4. With the above background, we will have to see as to what are the relevant factors to be kept in mind while imposing sentence on an accused found guilty in cases arising out of prevention of Corruption Act-1988. Minimum sentence is provided for offences punishable Under Sections 7, 8, 9, 10, 11, 12 and 13 of P.C. Act, 1988.

5. Whether the courts have power to award sentence of imprisonment lesser than the minimum sentence prescribed for offences punishable under the Prevention of Corruption Act, the Hon'ble apex court, in the case of **NARENDRA CHAMPAKLAL TRIVEDI .v. STATE OF GUJARAT ([2012] 7 SCC 80)** has held in the negative emphatically. It is further held in the said decision that even the power vested under Article 142 cannot be made use of to reduce the sentence below the statutory minimum. It is further made clear that even if the amount of bribe received is meager, corruption deserves no sympathy or leniency. Mitigating factors according to the Hon'ble apex court, are misplaced in view of statutory prescription of minimum sentence.

6. Following are some of the extenuating and mitigating and aggravating circumstances:

Extenuating/mitigating circumstances:

a) antecedents of offender;

b) nature of the offence;

c) circumstances of the offence;

d) prior criminal record of the offender;

e) age-tender or old;

f) background with reference to education, home life, sobriety, social background and economic condition;

g) emotional and mental condition;

h) prospect of rehabilitation;

i) provocation-sudden fight;

j) absence of *mens rea*;

k) influence or instigation of some other person;

l) self preservation;

m) exceeding self defense;

n) state of health;

o) delay in disposal of case;

p) drunkenness.

Aggravating circumstances:

a) gravity of offence;

b) deliberate and well planned crime;

c) habitual offender;

d) causing hurt for extortion;

e) securing aid of accomplices;

f) breach of trust and misappropriation especially public money;

g) perjury and fabricating false evidence (Sec.193);

h) offence perpetrated by fraudulent means;

i) socio-economic offences with planned profit making;

j) menace to public health, eg. Adulteration of food articles;

k) degradation of conduct, eg. Infanticide, daring assault on women;

l) personal gain at the expense of innocent;

m) housebreaking and theft, Sec. 454 or 457 and 380;

n) Assault on public servant to deter from doing his duty;

o) Deliberate fire mischief;

p) Offences relating to currency and coins-destruction of State economy;

q) Deliberate violation of Essential Commodities Act to take advantage of scarcity to make huge profit.

7. While dealing with the aspect of suspending the order of conviction passed in a case arising out of Prevention of Corruption act, 1958, Hon'ble apex court, in the case of **STATE OF MAHARASHTRA**

THROUGH CBI, ANTI CORRUPTION BRANCH, MUMBAI .v. BALAKRISHNA DATTATRYA KUMBAR ([2012] 12 SCC 384) has held that 'corruption violates human rights and undermines human rights and indirectly violates them.' It is further held that 'systematic corruption is violation of human rights as it leads to economic crisis.

8. Relying upon many earlier decisions of the apex court, it is further observed in .*KUMBAR's* case (supra) that an accused convicted of offence(s) under the P.C.Act, 1988, is presumed to be corrupt till he is exonerated by the appellate court. This gives us a good background as to how to deal with corruption cases while imposing sentence.

9. In the case of **STATE OF MADHYA PRADESH v. BABULAL (2008(1) SCC Crl. 188),** while discussing about the aspect of sentencing an accused found guilty of committing serious offence against women, has held as follows:

> *"28. Pursuant to the Law Commission's Report, Parliament amended Sections 375 and 376, IPC by the Criminal Law (Amendment) Act, 1983. (ACT 43 of 1983). Sub-section (1) of Section 376 now prescribes minimum sentence of rigorous imprisonment of seven years on the person convicted under*

Section 376(1) unless the case is covered by proviso. Sub-section (1) read with proviso is material which reads thus:

376. Punishment for rape (1) Whoever, except in the cases provided for by subsection (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than seven years.

(emphasis supplied)

29. The proviso to sub-section (1) of Section 376, IPC thus enjoins the Court if it imposes less than the minimum sentence of seven years rigorous imprisonment on an offender of rape to record 'adequate and special reasons' in the judgment. Recording of reasons is, therefore, sine qua non or condition precedent for imposing sentence less than the minimum required by law. Moreover, such reasons must be both (i) 'adequate' and (ii) 'special'. What is 'adequate'

and 'special' would depend upon several factors and no strait-jacket formula can be laid down as a rule of law of universal application.

10. What is clearly observed in *BABULAL's* case in paragraph 29 is as follows:

'Recording of reasons is, therefore, sine qua non or condition precedent for imposing sentence lesser than the minimum required in law. Moreover, such reasons must be both (i) adequate and (ii) special. What is adequate and special would depend upon several factors and no straight-jacket formula can be laid as a rule of law of universal application.'

11. In the case of **STATE OF RAJASTHAN .v. VINODKUMAR (AIR 2012 SC 2301),** the proviso found in the main section relating to the punishment to be imposed for offence punishable under Section 376, I.P.C. has been dealt at length as follows:

19. Awarding punishment lesser than the minimum prescribed under Section 376 IPC, is an exception to the general rule. Exception clause is to be invoked only in exceptional circumstances where the conditions incorporated in the exception clause itself exist. It is a settled legal proposition that exception clause is always required to be strictly interpreted even if there is a hardship to any individual.

Exception is provided with the object of taking it out of the scope of the basic law and what is included in it and what legislature desired to be excluded. The natural presumption in law is that but for the proviso, the enacting part of the Section would have included the subject matter of the proviso, the enacting part should be generally given such a construction which would make the exceptions carved out by the proviso necessary and a construction which would make the exceptions unnecessary and redundant should be avoided. Proviso is used to remove special cases from the general enactment and provide for them separately. Proviso may change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable. (Vide: S. Sundaram Pillai, etc. v. V.R. Pattabiraman, AIR 1985 SC 582; Union of India & Ors. v. M/s. Wood Papers Ltd. & Anr., AIR 1991 SC 2049; Grasim Industries Ltd. & Anr. v. State of Madhya Pradesh & Anr., AIR 2000 SC 66; Laxminarayan R. Bhattad & Ors. v. State of Maharashtra & Anr., AIR 2003 SC 3502; Project Officer, ITDP & Ors. v. P.D. Chacko, AIR 2010 SC 2626; and Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal & Ors., (2011) 1 SCC 236).

12. While dealing with the aspect of imposing sentence of fine in cases arising from owning assets disproportionate to known sources of

income, the punishment under Section 13(2)(e) of the Prevention of Corruption Act, the special judge will have to see as to whether the investigating agency has got attached the cash or property/properties acquired by the accused and any order of confiscation has been passed. If the order of attachment and confiscation has been passed, the quantum of fine to be imposed will be normally lesser than the one to be imposed if no order of confiscation of such cash or property is made.

13. It is useful to refer to Section 3 of the Criminal Law Amendment Act, 1946, which speaks about the special provisions regarding punishment. The same is reproduced below:

> **3. Special provisions regarding punishment.**
> (1) Notwithstanding anything to the contrary contained in the Indian Penal Code or the Code of Criminal Procedure 1898(1), relating to sentences and the powers of Courts to impose sentences, where any person is found guilty of an offence specified in the Schedule the Court convicting him, whether or not it imposes a sentence of imprisonment, shall impose, in addition to such sentence of fine, in any, as it would otherwise have imposed, a further sentence of fine which shall be equivalent to the amount of money or value of other property found by the Court to have been procured by the convicted person by means of the offence.

(2) Except where the offence of which the person is found guilty is an offence specified in item 1 or item 5 of the Schedule, when it appears that the offence has caused loss to more than the Government referred to in the Schedule or local authority, the Court shall in its order of conviction record a finding indicating the amount of loss sustained by each such Government or local authority.

(3) When a person is found guilty at the same trial or in the same proceedings of one or more offences specified in Item 1 or Item 5 of the Schedule and of one of more offences specified in any of the other items of the Schedule, the Court shall in its order of conviction record a finding indicating separately the amounts procured by means of the two classes of offences.

(4) Where an additional fine is imposed under sub-section(1) for an offence, it shall, after deduction of the costs of recovery as determined by the Court, be credited to the Government(being a Government referred to in the Schedule) or local authority to which the offence has caused loss, or where there is more than one such Governments or local authority, be disturbed among them in proportion to the loss sustained by each;

Provided that the provisions of this sub-section shall not apply in respect of any additional fine imposed for an specified in item 1 or item 5 of the Schedule, or in a case of the nature referred to in sub-section (3), in respect of such portion of the additional fine as is equivalent to the amount found under that sub-section to have been procured by means of offences specified in those items.

> (5) Nothing in this section shall apply to case to which the provisions of Section 12 of the Criminal Law Amendment Ordinance, 1944 apply.

14. What exactly is the procedure to be adopted on an application filed by the State Government or Central Government seeking attachment of the cash or property relating to ***'scheduled offence'*** has been well dealt by the High Court of Karnataka in the case of **JAYARAM .v. STATE OF KARNATAKA IN CRIMINAL APPEAL NO.2538/2010** and connected appeals **disposed of 17.6.2010**.

15. Normally the delay in conducting trial and disposing of cases arising out of P.C. Act, 1988 and dismissal or removal of the public servant from the office after finding him or her guilty in a departmental enquiry would normally be not an extenuating or mitigating circumstance.

16. But in the case of **B.G.GOWSWAMI v. DELHI ADMINISTRATION [1973 (3) SCC 85]** the accused had to attend the court for more than 7 years and in the meantime he had been removed from the services. Therefore, the sentence already undergone by him was considered as sufficient sentence and fine of Rs.200/- imposed was

enhanced to Rs.400/- by the Hon'ble Apex Court. As per the facts of the case, accused had demanded and received a bribe of Rs.50/- and had been sentenced to 1¼ years. Taking into consideration the peculiar facts and circumstances of the said case, the Hon'ble Apex Court chose to reduce the sentence. The broad guidelines laid down in regard to the sentence to be imposed in the said case is a binding precedent under Article 141 of the Constitution of India.