PETITIONER:
A. WATI AO

Vs.

RESPONDENT:
THE STATE OF MANIPUR

DATE OF JUDGMENT13/10/1995

BENCH:
HANSARIA B.L. (J)
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HANSARIA B.L. (J)
AHMADI A.M. (CJ)

CITATION:
1996 AIR 361 1995 SCC (6) 488
JT 1995 (7) 587 1995 SCALE (5)700

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

HANSARIA, J.

The appellant was convicted under s.120-B of the Penal Code read with s.5(1) (d) of the Prevention of Corruption Act, 1947, by Special Judge, Manipur. He was sentenced to a fine of Rs.10,000/- and to imprisonment till the rising of the court. On appeal being preferred, the Imphal Bench of the Gauhati High Court dismissed the same. The learned Judge deciding the appeal, however, granted, on oral prayer being made, leave, under Article 134(c) of the Constitution to prefer an appeal to this Court, albeit without specifying the question of law involved.

2. While issuing notice in the appeal, the appellant was also asked to show-cause as to why the punishment should not be enhanced.

3. Dr. Dhavan, appearing for the appellant, has first contended that the conviction of the appellant itself is not tenable inasmuch as the onus of proof, which lies in a case where quilt is based on circumstantial evidence, as in this case, has not been fully discharged by prosecution. To sustain this submission, we have been referred to S.P. Bhatnagar vs. State of Maharashtra, 1979(2) SCR 875. As Dr. Dhavan strenuously contented that the test regarding proof laid down in Bhatnagar's case has not been satisfied, it would be apposite to find out what was held in that case. A reference to the judgement shows that this Court mentioned about the fundamental rule relating to the proof of guilt based on circumstantial evidence, which is that there is always danger that conjecture or suspicion might take the place of legal proof inasmuch as in cases based on circumstantial evidence mind is apt to take a pleasure in adapting circumstances to one another and even in straining them a little, if need be to force them to form parts of one connected whole. It was then stated that in cases where the evidence is of circumstancial nature, the circumstances from

which the conclusion of guilt is drawn should, in the first instance, be fully established and then all the facts so established should be consistent only with the hypothesis of the guilt of the accused.

4. The aforesaid shows that this Court had really reiterated the well known tests to be satisfied when the evidence in support of the prosecution case is circumstantial in nature. It was, of course, added that precaution has to be taken to see that conjecture or surmises do not take the place of legal proof.

5. In the present case, however, the involvement of the appellant in the conspiracy is so apparent that it cannot be said that there was any straining of the circumstance to connect the appellant with the crime. We have said so because the prosecution case is that the appellant was a party to the conspiracy in giving the contract in question to A. Sarat Chandra Sharma, (whose earlier firm had been black listed) and that too at an extremely exorbitant rate. Though the appellant sought to deny his knowledge about the fact of black-listing of the earlier firm of Sarat Chandra, this plea has no less to stand, because the decision of the Government of Manipur regarding the black listing of the firm had been communicated by the appellant himself to the Chief Engineer by his letter of even number dated 23rd June, 1978, whereas the present contract had been given to another firm of Sarat Chandra in January, 1979, after the processing had begun in November, 1978. As to the rates being exorbitant, there is a clear finding of the trial court, which was endorsed by the High Court. Though, Dr. Dhavan contended in this regard that the rates were those at which supplies had been made earlier, this plea has been discarded by the two courts below. This being a question of fact based on material on record we see no reason to doubt its correctness.

6. The aforesaid shows that there were clinching materials to hold the appellant guilty under s.5(1) (d) of the Prevention of Corruption Act read with s.120-B of the Penal Code. We, therefore, uphold the conviction.

7. This takes us to the question of the sentence. A perusal of the trial court's judgment shows that the sentence of imprisonment till rising of the court was awarded because of : (1) the appellant being a senior IAS Officer and holding of different high posts, which showed that he is a very respectable person; (2) the appellant having a number of dependents; (3) the certainty of appellant's losing his job and requiring him to earn a living for himself and his family members; (4) the present being first offence committed by him; and (5) the spectre of the incident hanging on his head for about half a decade. According to us, none of these factors (except the last, to some extent) make out a case for awarding sentence less than the minimum prescribed by the aforesaid Act - the same being imprisonment for one year. The fact that the appellant is a senior IAS Officer really requires a serious view of the matter to be taken, instead of soft dealing. The fact that he has a number of dependents and is going to lose his job are irrelevant considerations inasmuch as in almost every case a person found guilty would have dependents and if he be a public servant, he would lose his job. The present being the first offence is also an irrelevant consideration. Though the delay has some relevance, but as in cases of the present nature, investigation itself takes time and then the trial is prolonged, because of the type of evidence to be adduced and number of the witnesses to be examined, we do not think that the fact of delay of about five years could

have been a ground to award the sentence of imprisonment till rising of the court, which really makes a mockery of the whole exercise. We, however, think that the delay does require some reduction from the minimum prescribed; and on the facts of this case, ends of justice would be met, according to us, if at this length of time, pursuant to notice of enhancement issued by this Court, a sentence of imprisonment for six months is awarded.

8. In the result, while dismissing the appeal, the sentence is enhanced to imprisonment for six months. The appellant shall surrender to serve out the sentence; if he would not do so, appropriate steps would be taken as permitted by law to incarcerate him.