

N.M. PARTHASARATHY

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v.

STATE BY S.P.E.

JANUARY 21, 1992

[KULDIP SINGH AND R.M. SAHAI, JJ.]

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Indian Penal Code, 1860 : Section 420, 120-B and 109.

Criminal conspiracy—Small Scale Industries Registration Certificate, Essentiality Certificate and Import Licence obtained by false representations—Prosecution—Conviction by Trial Court—High Court re-appreciating evidence and finding that the only conclusion possible was guilt of the accused which was proved beyond reasonable doubt—Reversal of acquittal and conviction of accused by High court—Held High Court was justified in its conclusion.

C

Code of Criminal Procedure, 1973—Section 360—Probation.

D

Accused—Conviction under sections 420 and 120-B, IPC—Several achievements in the industrial field made by accused—Held in the circumstances benefit of probation should be extended.

The appellant, (first accused), a former Inspector of Industries, alongwith an Inspector of Industries, (second accused), was prosecuted under section 120-B read with section 420 IPC, sections 5(1) (b) and 5(2) of the Prevention of Corruption Act, 1947 on the ground that both the accused entered into a criminal conspiracy and acting in concert, the first accused obtained the Small Scale Industries Registration Certificate for additional lines of manufacture, Essentiality Certificate and Import Licences on false representations while the second accused enabled him to obtain the same by his false recommendations. The Trial Court acquitted both of them on all the charges. The State filed an appeal before the High Court which on re-appreciation of evidence held that the prosecution has established conspiracy beyond doubt and that only one conclusion was possible on the evidence that the accused are guilty of all the charges. Accordingly it set aside the acquittal and convicted both the accused on all the counts and sentenced the appellant to imprisonment for two years under section 120-B, and for two years under section 420 IPC.

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In appeal to this Court it was contended on behalf of the

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A appellant-accused that: (i) the High Court erred in reversing the judgment of acquittal passed by the High Court; and (ii) the benefit of probation under section 360 of the Code of Criminal Procedure should be extended to the appellant.

Disposing the appeal, this Court,

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HELD: The High Court was right in coming to the conclusion that the guilt against the appellant was established beyond doubt. Accordingly, the conviction and the sentence awarded by the High Court is upheld. [251 G 253 B]

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The occurrence relates to the period between February, 1967 and February, 1969. The Trial Court acquitted the appellant while High Court reversed the acquittal and convicted them. This Court granted bail to the appellant in 1980. Since then the appellant has several achievements to his credit in the industrial field. Therefore, this is a fit case where benefit of probation under section 360 of the Code of Criminal Procedure, 1973 should be extended to the appellant. [253 C-E]

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 330 of 1980.

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From the Judgment and Order dated 3.4.1980 of the Madras High Court in CrI. Appeal No. 360 of 1974.

Hardev Singh and Ms. Madhu Moolchandani for the Appellants.

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V.C. Mahajan, B. Parthasarthi and Ms. A. Subhashini for the Respondents.

The Judgment of the Court was delivered by

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KULDIP SINGH, J. The appellant N.M. Parthasarathy is the sole proprietor of a firm called "Elector-technik". He was formerly working as Inspector of Industries. He along with an Inspector of Industries, was prosecuted on the allegations that between February, 1967 and February, 1969 they entered into a criminal conspiracy to obtain Small Scale Industries Registration Certificate for additional lines of manufacture, Essentiality Certificate and import licences on false representations made to the Director of Industries, Assistant Director of Industries, Joint Chief Controller of Imports/Exports and the Iron and Steel Controller. The first

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charge framed against both of them was for an offence of conspiracy punishable under section 120-B read with section 420 IPC and section 5(1) (b) read with section 5(2) of the Prevention of Corruption Act, 1947. Charges 2, 4 and 6 framed against him were for offence of cheating punishable under section 420 IPC. Charges 3, 5 and 7 were framed against the second accused for abetment of cheating punishable under section 420 read with section 109 IPC. The 8th charge was also against the second accused under section 5 (1) (b) read with section 5 (2) of the Prevention of Corruption Act, 1947. The trial court acquitted both of them on all the charges. The State went in appeal against the judgment of acquittal and the High Court on re-appreciation of evidence set aside the acquittal and convicted both of them on all the counts. The appellant was sentenced to undergo rigorous imprisonment for two years under section 120-B IPC and rigorous imprisonment for two years for each of the three counts of cheating under section 420 IPC. The sentences were to run concurrently.

We have heard Mr. Hardev Singh, learned counsel for the appellant and Mr. V.C. Mahajan, Senior Advocate for the respondents. Mr. Hardev Singh has taken us through the judgments of the trial court and that of the High Court. Mr. Hardev Singh has primarily argued that the High Court has grossly erred in reversing the judgment of acquittal rendered by the trial court. According to him even if two views were possible the High Court was not justified in taking a different view than the trial court and reversing the acquittal. This precise argument was raised before the High Court on behalf of the appellant. The High Court rejected the same as under:-

"In the circumstances, I am of the opinion that this is not a case where, on the evidence available on record, two conclusions are possible and therefore this Court could not interfere with the acquittal of the accused by the learned Special Judge. I am of the opinion that only one conclusion is possible on the evidence on record and that it is that the accused are guilty of all the charges framed against them and that interference with the acquittal of the accused by the learned Special Judge is called for in this case."

We are of the view that the High Court was justified in reaching the above conclusion. The High Court examined the evidence on the record in detail and rightly came to the conclusion that the guilt against the appellant was established beyond reasonable doubt.

The High Court on re-appreciation of the evidence, independently reached the following findings:-

A “Thus it is established by Exhibit D-36 as well as the
evidence of P.Ws 3 and 6 that the first accused had only a
single-phase domestic supply of electricity at his premises in
Katpadi Extension even in August, 1969, that he could not
have used that supply of electricity validly for any non-domes-
tic purposes and that it would not have been possible to pro-
duce any industrial machinery with that single phase power.”

B “The evidence of P.W.s 6, 13, 15 and 19 shows that the ma-
chinery found in the premises of Electro-technic during their
inspections were worth only about Rs. 9,200 or Rs. 10,000 and
not of the value of Rs. 94,000 as represented by the first ac-
cused in the list submitted by him along with his application,
Exhibit P-18.”

C “It has already been found that with the 230-volts domestic
supply he could not have produced any of the new end-
products. The additional machinery required for producing
these new end-products had not been installed in the first ac-
cused’s factory. It is hardly likely that all the alleged addi-
tional machinery could have been installed in the factory whose
dimensions are only 18 feet by 12 feet”.

D “It is made clear by the evidence that the second accused had
made false statements in Exhibit P-96 about the alleged instal-
lation of the additional items of machinery in the first ac-
cused’s factory. For the reasons stated above I find that the
prosecution has proved charges 2 and 3 satisfactorily, beyond
all reasonable doubt.”

E “The first accused has succeeded in obtaining the Essentiality
Certificate, Exhibit P.5, by making these false representations
and the 2nd accused has induced P.W.5 to recommend in Ex-
hibit P.24 the issue of the Essentiality Certificate and P.W.12
to issue the Essentiality Certificate and Exhibit P-14 by mak-
ing the false representations Exhibit P-22 and P-23, as in Ex-
hibit P-19, which have been found to be false in the earlier
part of this judgment. Therefore, I find that the prosecution
has proved these two charges 4 and 5 against the accused
satisfactorily and beyond all reasonable doubt.”

F “In the present case both the accused have acted in concert in
the first accused obtaining the S.S.I. registration certificate,
Exhibit P-20 as amended by Exhibit P-21, the Essentiality
Certificate, Exhibit P-5 and the import licenses, Exhibits P-6
and P-7, and the second accused enabling him to obtain the

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same by his recommendations, Exhibits P-19, P-22 and P-23 which contain false particulars. This would show that both the accused have acted in concert for committing these offences and that they would not have done so if there had been no conspiracy. In these circumstances I find that the prosecution has established the charge of conspiracy framed against both the accused satisfactorily and beyond reasonable doubt."

We agree with the above quoted reasoning and the conclusions reached by the High Court. We, therefore, uphold the conviction and sentence awarded by the High Court.

While upholding the judgment of the High Court, we are inclined to agree with the learned counsel for the appellant that this is fit case where benefit of section 360, Criminal Procedure Code be extended to the appellant. The occurrence in this case relates to the period between February, 1967 and February, 1969. The Special Judge, Madras by his judgment dated July 23, 1973 acquitted the appellant. The High Court on April 3, 1980 reversed the trial court and convicted the appellant. This Court granted bail to the appellant on April 29, 1980. Mr. Hardev Singh has placed before us documents showing several achievements of the appellant in the industrial field since then. The appellant's industry has manufactured the largest Hot-Air Kiln in India for Ministry of Railways, largest Degreasing plant for Nuclear Fuel complex, Sintering Furnace for anti-tank missiles and various other items for the Ministry of Defence and other Departments of the Government of India. The appellant claims that he has set up 100 per cent export unit with Rs. 75 crores export per annum. For all these reasons we are of the view that it is expedient that the appellant be released on probation. We, therefore, direct that he be released on his entering into a bond to the satisfaction of the Special Court, Madras. The Special Court shall pass an order in terms of Section 360, Criminal Procedure Code, 1973 to its satisfaction. A copy of this order be sent to the Special Court, Madras immediately. The appellant is directed to appear before the Special Court, Madras within two months from today to enable the Special Court, Madras to pass an order as directed by us. In the event of appellant's failure to present himself before the Special Court as directed he shall undergo the original sentence awarded by the High Court.

The appeal is disposed of in the above terms.