SURENDER KUMAR GARG

v.

STATE OF UTTAR PRADESH

MAY 14, 1993

[DR. A.S. ANAND AND N.P. SINGH, JJ.]

Indian Penal Code—Sections 419, 420, 468 and 471—Offence under—Reduction of sentence upon repayment of amount.

The appellant was charged with cheating the U.P. Industrial Corporation of Rs. 39,352.50 by registering a take concern, and taking in its name. Three courts concurrently found the charges against him established.

On the question of sentence, it was contended that more than 20 years had elapsed; the amount involved was not excessive and other mitigating circumstances were placed on the record.

Partly allowing the appeal, this Court

HELD : 1. The appellant had deposited Rs. 40,000/- (the loan amount) as directed. (901-G)

2. In the peculiar facts and circumstances of the case, conviction maintained but sentence of imprisonment reduced to the period already undergone, and a fine of Rs. 2,000/-, or one month R.I. in lieu thereof. (902-B)

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 830 of 1985.

From the Judgment and Order dated 30.7.85 of the Allahabad High Court in Crl. Revision No. 1937 of 1983.

M.S. Gujral, A.K. Srivastava and Serva Mitter for the Appellant.

R.C. Verma and A.S. Pundit for the Respondent.

The Judgment of the Court was delivered by

N.P. SINGH. J. The appellant, was convicted under Sections 120-B, 419, 420, 468, and 471 of the Penal Code. He was sentenced to undergo rigorous imprisonments for different periods under the aforesaid Sections. The appeal filed on behalf of the appellant was dismissed by the learned Additional Sessions Judge, Ghaziabad. The High Court, on revision application being filed on behalf of the appellant set-aside his conviction under Section 120-B, but the conviction and sentence under other Sections mentioned above passed by the Trial Court were affirmed.

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According to the prosecution case, the appellant, established a firm by the name of Seemak Industrial Corporation , at Ghaziabad. The account in the bank was opened in the name of one Vijai Kumar and the aforesaid Industrial Corporation was registered in the Sales Tax Department. The appellant applied for loan before the U.P. Small Industries Corporation and got a sum of Rs. 39,352.50, in the name of Seemak Industrial Corporation. Later it was discovered that the aforesaid Seemak Industrial Corporation, was a fake concern and the appellant had cheated, even the U.P. Small Industries Corporation, in respect of the amount advanced by them. The Trial Court, the Appellate Court as well as the High Court have gone into details of the materials on record for purpose of holding that the charges framed against the appellant had been established and as such there was no occasion to interfere with the conviction and sentence passed against him.

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So far the present appeal is concerned, leave was granted as early as in the year 1985 by this Court, but it has been listed for hearing after about 8 years. The learned Counsel, appearing for the appellant, after some arguments on merit confined his submissions to the question of sentence only. He pointed out that offences aforesaid had been committed by the appellant, as early as in the year 1973, more than 20 years from now and as such a compassionate view should be taken of the whole matter especially when the amount in respect of which the offences are alleged to have been committed is not excessive. He pointed out that the appellant has remained in jail for some time, in pursuance of the order of conviction and sentence and as such he need not be sent to jail again. An affidavit detailing the mitigating circumstances has also been filed by the appellant before us. Taking all facts and circumstances into consideration, by our Order dated 26th April, 1993 we directed the appellant to first deposit an amount of Rs. 40,000 (the loan amount) with the U.P. Small Industries Corporation Ltd. Pursuant to that Order Rs. 40,000 has been deposited with the U.P. Small Industries Corporation Ltd., on 4-5-1993 and original receipt granted by the Manager of the said Corporation was produced before us. The zerox copy of the said original receipt has been kept on record and the original returned to the learned counsel for the appellant. An affidavit has also been filed on behalf of the appellant stating about

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A the aforesaid deposit.

In the peculiar facts and circumstances of the case while maintaining the conviction of the appellant, we reduce the sentence of imprisonment under different Sections mentioned above to the period already undergone by him. The appellant, shall however, pay a fine of Rs. 2,000 and in default of payment thereof, B he shall undergo rigorous imprisonment for a period of one month. The appeal is allowed in part.

The deposit of Rs. 40,000 made by the appellant with the U.P. Small Industries Corporation Ltd., shall be adjusted towards the amount advanced by the said Corporation to the appellant. The Corporation shall of course be at liberty to C take steps for realisation of any further sum, which may be due, against the appellant.

U.R. Appeal partly allowed.