

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.NAVANITI PRASAD SINGH  
&  
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 17TH DAY OF OCTOBER 2017/25TH ASWINA, 1939

WA.No. 1909 of 2017 () IN WP(C).6925/2017

-----  
AGAINST THE JUDGMENT IN WP(C) 6925/2017 of HIGH COURT OF KERALA DATED  
07-08-2017

APPELLANT/RESPONDENT NO.1:

-----  
THE BOARD OF CONTROL FOR CRICKET IN INDIA  
4TH FLOOR, CRICKET CENTRE BUILDING, D.ROAD,  
CHURCH GATE, MUMBAI- 400 020,  
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER,  
SRI. RAHUL JOHRI.

BY ADVS.SRI.K.N.SIVASANKARAN  
SRI.SUNIL SHANKER  
SRI.S.UNNIKRISHNAN (VARKALA)  
SRI. RAFIQUE DADA (SR.)

RESPONDENTS/PETITIONER AND RESPONDENT NOS. 2 TO 8:

- 
- 1.S.SREESANTH  
AGED 34 YEARS, S/O. SHRI. V.SANTHAKUMARAN NAIR,  
HARI SHREE, MOTHER TERESA ROAD,  
NEAR ANJUMANA TEMPLE, OPP. OBERON MALL,  
EDAPPALLY  
COCHIN - 652 024.
  - 2.THE KERALA CRICKET ASSOCIATION,  
REPRESENTED BY ITS SECRETARY,  
JAWAHAR LAL NEHRU INTERNATIONAL STADIUM,  
KALoor,  
ERNAKULAM - 682 017.
  - 3.UNION OF INDIA,  
REPRESENTED BY ITS SECRETARY,  
MINISTRY OF CULTURE, YOUTH AFFAIRS AND SPORTS,  
NEW DELHI - 110 001.
  - 4.SRI. VINOD RAI,  
3, PALAM MARG, 3/F VASANT VIHAR,  
NEW DELHI - 110 057.

WA 1909/2017

\*5.SRI. VIKRAM LIMAYE,  
18, SREENIVAS, 5TH FLOOR, SHIVAJI PARK,  
D.V. DESHPANDA MARG, DADAR (WEST),  
MUMBAI - 400 028.[DELETED]

\*6.DR. RAMACHANDRA GUHA,  
22A, BRUNTON ROAD, BENGALURU - 560 010.[DELETED]

7.SMT. DIANA EDULJI,  
CUFFE PARADE,  
MUMBAI - 400 005.

\*8.THE CHAIRMAN,  
BOARD OF CONTROL FOR CRICKET IN INDIA,  
4TH FLOOR, CRICKET CENTRE BUILDING, D ROAD,  
CHURCHGARE, MUMBAI - 400 020.[DELETED]

\*[RESPONDENTS 5,6 AND 8 ARE DELETED AS PER ORDER  
DATED 22.09.2017 IN WA.1909/2017.]

R3 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL  
R4,R7 BY ADV. SRI.P.RAHUL  
R BY SRI.K.N.ABHILASH  
R BY SRI.SIVAN MADATHIL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 17-10-  
2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VPS

**“C.R.”**

**NAVANITI PRASAD SINGH, C.J. &  
RAJA VIJAYARAGHAVAN V., J.**

-----  
**W.A. No.1909 OF 2017**  
-----

**Dated this the 17<sup>th</sup> day of October, 2017**

**JUDGMENT**  
-----

**Navaniti Prasad Singh, C.J.**

- 1.The present intra court appeal has been filed by the Board of Control for Cricket in India (“the BCCI” for short), being aggrieved by the judgment and order of the learned single Judge dated 7.8.2017 in W.P.(C) No.6925 of 2017.
- 2.The matter arises out of a disciplinary proceeding initiated against the 1<sup>st</sup> respondent, Sri.S.Sreesanth. In the disciplinary proceeding, the BCCI, considering the conduct of the 1<sup>st</sup> respondent, imposed a life ban on charges of alleged involvement in spot fixing. The writ petition was not exactly against the said decision in as much as the said decision of the BCCI was issued on 13.9.2013 and this writ petition was filed before this Court only on 28.2.2017. It so happened that having suffered the order of life ban, the 1<sup>st</sup> respondent did not take up any other proceedings. At that time, criminal

prosecution under section 406 of the IPC, charges under the Maharashtra Control of Organized Crimes Act, 1999 and the Public Gambling Act, 1867 were pending. It is on 25.7.2015 that the criminal court discharged the 1<sup>st</sup> respondent. Thereafter, the 1<sup>st</sup> respondent moved the BCCI for reconsideration of their decision based on the plea that he had now been discharged by the criminal court. But, the BCCI did not agree with the same and in its meeting held on 18.10.2015, refused to review its earlier decision.

3. In January 2017, the 1<sup>st</sup> respondent applied to the BCCI to be granted permission to play for the Glenrothes Cricket Club, Fife, Scotland and as no order was forthcoming, the writ petition was filed on or about 28.2.2017. It would appear that the 1<sup>st</sup> respondent had reconciled himself with the order of the BCCI banning him for life, which was about four years back. However, we have just noticed this fact to show that all the grievances that he is now trying to agitate before this Court, were very much there four years back. But, he had not chosen to agitate them.

4. We have heard Sri.Rafiq Dada, learned Senior Counsel appearing on behalf of the BCCI and Sri.Sivan Madathil, learned counsel appearing for the 1<sup>st</sup> respondent and with their consent, are disposing of this appeal at this stage itself.
5. The 1<sup>st</sup> respondent was a member of the Indian Premier League Cricket Team, Rajasthan Royals. On 9.5.2013, they had a league match with Kings XI Punjab at Mohali. Certain incidents took place. On 16.5.2013, the 1<sup>st</sup> respondent was arrested by the Delhi Police and he was remanded to police custody. On 17.5.2013, the BCCI suspended the 1<sup>st</sup> respondent. The matter received a lot of publicity and on 21.5.2013 directions were issued by the Supreme Court of India to constitute a committee to enquire into the matter. The Supreme Court directed that the BCCI Anti-Corruption Commissioner ("the Commissioner" for short) should enquire into the matter. On 5.6.2013, the Commissioner submitted a preliminary report. He clearly opined that in view of the materials that were placed before him, which included the video clippings, the recordings of telephone conversations and other materials, he was convinced

that the 1<sup>st</sup> respondent was involved in spot fixing. But, at the same time, he noted that as the 1<sup>st</sup> respondent was in custody, he was not able to hear his explanation to the allegations.

6. After his release from custody, on 24.6.2013, the Commissioner heard the 1<sup>st</sup> respondent and on this day took his statement as well. On 8.7.2013, a supplementary report was filed by the Commissioner to the BCCI. Having studied the same, on 4.9.2013, a show cause was issued to the 1<sup>st</sup> respondent by the Disciplinary committee of the BCCI. Immediately on 11.9.2013, the 1<sup>st</sup> respondent filed a detailed reply. Thereafter, the 1<sup>st</sup> respondent was called for a personal hearing by the disciplinary committee of the BCCI. On 13.9.2013, the Disciplinary Committee passed the final order banning the 1<sup>st</sup> respondent from playing competitive cricket for life.

7. It may be relevant that consequent to the arrest of the 1<sup>st</sup> respondent, a case had been registered and after investigation, charges were filed under section 406 of the IPC, under the Maharashtra Control of Organized Crimes Act, 1999 and the

Public Gambling Act, 1867. The 1<sup>st</sup> respondent filed an application for discharge before the jurisdictional court. After hearing the parties, the criminal court discharged the 1<sup>st</sup> respondent inter alia by order dated 25.7.2015. As noted above, it is thereafter that the 1<sup>st</sup> respondent again approached the BCCI for a review based on the discharge by the criminal court, which was rejected by the BCCI by order dated 18.10.2015. It may be noted here that against the order of discharge by the criminal court, the Police took up the matter to the Delhi High Court, where the same is pending. Till this stage, the 1<sup>st</sup> respondent had not challenged his punishment order dated 13.9.2013 before any court or authority nor had he challenged the decision of the BCCI in not dropping the life ban after his discharge by the criminal court, which was refused by the BCCI on 18.10.2015. It is for the first time in January, 2017 that the 1<sup>st</sup> respondent writes to the BCCI for permission to play, as he had an offer from a county in Scotland. There being no response, on 28.2.2017, the writ petition was filed and the same was heard and allowed by a learned single Judge on 7.8.2017. Hence the appeal by the BCCI.

8. The learned single Judge has in substance held that a cricketer like the 1<sup>st</sup> respondent, having suffered the ban for almost four years, nothing further is required to be done in the matter. Accordingly, the writ petition was allowed and the order of the Disciplinary Committee were quashed and set aside. Put in another word, the learned single Judge was of the view that even if the 1<sup>st</sup> respondent was guilty, he had suffered enough punishment and humiliation and therefore the extreme punishment of life ban, was not justified.

9. The learned Senior Counsel for the BCCI submits that the sequence of events noted above would show that in fact the 1<sup>st</sup> respondent had already reconciled to the fact and the fate. It is only much later that he had ventured to challenge the same in judicial review before this Court. In exercise of powers under Article 226 of the Constitution of India, this Court is not to sit as an appellate authority as it is not an appeal. This Court would look into the decision making process and not the decision itself. It cannot or it ought not to reappraise the evidence. Reliance was placed on a recent judgment of the



Apex Court in **Central Industrial Security Force and Others v. Abrar Ali** (2017) 4 SCC 507). It was then submitted that in so far as dis-proportionality of sentence is concerned, considering that the matter was related to spot fixing of an event in an IPL match, there has to be zero tolerance to this sort of corruption. If the responsible officers of the BCCI have come to a conclusion, then the quantum of punishment also ought not to have been interfered with and if any interference was necessary, then the matter ought to have been remanded to the BCCI, for the court itself does not substitute punishment.

10. On the other hand, the learned counsel for the 1<sup>st</sup> respondent submits that there was a fundamental fatal error in the proceedings conducted by the BCCI. There was gross violation of the principles of natural justice in as much as in the preliminary report that was given on 5.6.2013, there was a finding of guilt as against the 1<sup>st</sup> respondent without even giving an opportunity to the 1<sup>st</sup> respondent to explain his conduct or put in his defence. That renders everything void, being in violation of the principles of natural justice. He

submitted that all the materials were not disclosed to the 1<sup>st</sup> respondent, which itself vitiated the entire proceedings. He then submits that as the criminal court had looked into all the evidence that were available and had discharged the 1<sup>st</sup> respondent, meaning thereby, no grounds were found to proceed, the proceedings as before the BCCI should be set aside. Lastly, he submitted that even otherwise, the punishment was an extreme punishment given to a young cricketer who had a brilliant future and therefore, supported the order of the learned single Judge.

11. In reply, the learned Senior Counsel appearing for the BCCI submitted that there has been no denial of principles of natural justice to the 1<sup>st</sup> respondent in any manner. This plea was not even taken before the learned single Judge, for the learned single Judge has noted that there was no violation of principles of natural justice. In paragraph 3 of the said judgment, the learned single Judge noted as follows:

“The decision of the BCCI was rendered after affording an opportunity of hearing to Sreesanth by a disciplinary committee constituted to enter into the allegations.”

In paragraph 24 of the said judgment, the learned single Judge has noted as under:

“However, Sreesanth cannot pretend ignorance to the contents of the telephonic conversation, as the contents of it have been exhaustively considered in a discharge application filed by him before the Patiala House Courts, New Delhi (MCOCO court).

12.The learned Senior Counsel further submitted that merely because a person is discharged in a criminal case is no ground for setting aside a civil proceeding, may be based on the same facts. The consistent decisions of the courts is the other way around. A criminal court proceeds on the basis of proof beyond reasonable doubt whereas in civil proceedings, which are quasi judicial proceedings, the authorities have to proceed on the basis of preponderance of probabilities. The two are different. On the same evidence, there can be different results. He has referred to a recent judgment of the Apex Court in **Videocon Industries Limited and Another v. State of Maharashtra and Others** (2016) 12 SCC 315). The learned Senior Counsel then points out that in so far as the punishment aspect is concerned, the learned single Judge nowhere noted that the

punishment as imposed against the 1<sup>st</sup> respondent was shocking to the conscience of the Judge, which is a precondition for exercising the jurisdiction of interference in questions of proportionality. Instead what the Judge noted is that the 1<sup>st</sup> respondent has already suffered enough. This would mean as if the sentence be reduced to the period undergone. But it is conviction nevertheless. It is submitted that if that be so, when it comes to charges of corruption, there has to be zero tolerance. If the conviction has to be sustained and only punishment to be reduced, then there cannot be or ought not to be any mercy. It is not in dispute that the learned single Judge does not exonerate the 1<sup>st</sup> respondent.

13. We have considered the matter. In our view, the submission made on behalf of the 1<sup>st</sup> respondent with regard to the violation of principles of natural justice is totally unfounded. Firstly, the preliminary report and the supplementary report are only preliminary enquiry reports pursuant to which the BCCI assumed jurisdiction to take action and issue notice. They are not reports regarding any finding, for it is based on

those reports that a formal show cause was issued by the BCCI to which the 1<sup>st</sup> respondent replied. Then if we refer to the first preliminary report, the Commissioner himself noted that he had no opportunity to interact with the 1<sup>st</sup> respondent. But on other materials i.e., the video clippings and the phone conversation recordings, he was convinced of the involvement of the 1<sup>st</sup> respondent. It is because of this, that after the 1<sup>st</sup> respondent was released from custody, the Commissioner summoned him and questioned him. The 1<sup>st</sup> respondent gave a return show cause also. Having received his explanation, the supplementary report was filed before the BCCI. Thus seen, there was no violation of the principles of natural justice at this stage. Then we come to the stage where pursuant to the show cause as issued by the BCCI, the 1<sup>st</sup> respondent appeared and filed his pre-prepared return show cause. He does not make a grievance of any information which was not supplied to him. Rather, as noted above, the learned single Judge has also noted that the 1<sup>st</sup> respondent was fully aware of the materials that were against him, as he has used those materials to file his discharge application in the criminal court.

14. We have gone through the show cause as filed. As to the telephonic conversation, there is only an oblique denial. If we refer to the final order of the BCCI, we would find that they had confronted the 1<sup>st</sup> respondent with the said telephonic conversation when he appeared in person before the Disciplinary Committee and he was unable to give any cogent reply or explanation as to what money transaction was being talked about between himself and Jiju Janardhanan. At no point of time did the 1<sup>st</sup> respondent deny that the said recording was not his conversation with his friend who was the go between the bookie and the 1<sup>st</sup> respondent. Then there were other call recordings as between his friend Jiju Janardhanan and the bookie who was to arrange the bet. The allegation was that he had agreed that in an over he would bowl in such a manner as Kings XI Punjab batsman would score 14 runs and that he would give an indication before bowling that over. In fact in the second over, as per the video recordings, a clear indication was given and in that over he conceded 13 runs. The conversations disclose that there was an attempted no ball which the umpire did not take notice.

Had it been so, it would have been 14 conceded runs in that over. These are all too much of a coincidence. More over, we have to keep in mind that this Court is exercising judicial review and not sitting as an appellate authority. It is not a jurisdiction of extending untoward compassion. There cannot be reappraisal of evidence. The Apex Court in **Central Industrial Security Force and Others v. Abrar Ali**(Supra) has noted in paragraph 15 as follows:

"In Union of India and Others v. P. Gunasekaran reported in 2015 (2) SCC 610, this Court held as follows:

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Art.226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the inquiry is held by a competent authority;
- (b) the inquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from

reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappraise the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

15. We do not find that the present case falls in either of the



categories mentioned therein. We are also in agreement with the submission of the learned Senior Counsel for the BCCI that the learned single Judge does not find the 1<sup>st</sup> respondent not guilty nor does find that the proceedings stood vitiated, but virtually finds that the 1<sup>st</sup> respondent has suffered enough. This in our view clearly indicates that the learned single Judge was also of the opinion that the 1<sup>st</sup> respondent was guilty but not of an offence to attract such a grave punishment. Once we come to this conclusion that the 1<sup>st</sup> respondent was guilty, then in such matters, there has to be zero tolerance. This is specially so when we refer to the relevant portion of Ext.P5 show cause notice, which is as follows:

"9. The Commissioner has come to the conclusion that you have committed offences under Articles 2.1.1, 2.1.2, 2.1.3, 2.2.3, 2.4.1 & Article 2.4.2 of the Code. The relevant provisions of the Code are reproduced herein below for ease of reference:

(A) The Offences which you are accused to have committed under the Code are as follows:

**Article 2.1:Corruption**

- (i) **Article 2.1.1** *Fixing or contriving in any way or otherwise influencing improperly or being a party to any effort to fix or contrive in any way or otherwise influence improperly, the result, progress, conduct or any other aspect of any Match or Event.*

- (ii) **Article 2.1.2** *Seeking, accepting, offering or agreeing to accept any bribe or other Reward to fix or to contrive in any way or otherwise to influence improperly the result progress conduct or any other aspect of any Match or Event*
- (iii) **Article 2.1.3** *Failing or refusing for reward to perform to ones abilities in a Match*

#### **Article 2.2: Betting**

- (iv) **Article 2.2.3** *Ensuring the occurrence of a particular incident in a Match or Event which occurrence is to the Participant's knowledge the subject at a Bet and for which he she expects to receive or has received any Reward*

#### **Article 2.4: General**

- (v) **Article 2.4.1:** *Providing or receiving any gift payment or other benefit (whether of a monetary value or otherwise) in circumstances that the Participant might reasonably have expected could bring him her or the sport of Cricket into disrepute*
- (vi) **Article 2.4.2:** *Failing or refusing to disclose to the ACC BCCI (without undue delay) full details of any approaches or invitations received by the Participant to engage in conduct that would amount to a breach of this Anti-Corruption Code.*

(B) As per Article 6 of the BCCI Anti-Corruption Code, the sanctions that may be imposed by the Disciplinary Committee are:

- (i) Offences described in Article 2.1.1, 2.1.2, 2.1.3 are punishable by imposition of a Period Of Ineligibility (as defined in the Code) for a period of minimum 5 years and a maximum of a lifetime.
- (ii) An offence described in Article 2.2.3 is punishable by period of ineligibility for a minimum of 2 years and a maximum of 5 years.

- (iii) Offences under Articles 2.4.1 and 2.4.2 are punishable by a period of ineligibility of a minimum of one year and a maximum of 5 years.
- (iv) AND (in all cases) the Disciplinary Committee shall have the discretion to impose a fine up to a maximum of the value of any Reward received by directly or indirectly, out of, or in relation to the offence committed under the Code.”

16.If we look to the Anti-Corruption court of the BCCI to which the 1<sup>st</sup> respondent has sworn, we may have a different perspective. This clearly envisages zero tolerance to corruption. If our understanding of the approach of the learned single Judge is correct, then the 1<sup>st</sup> respondent being guilty cannot escape the punishment and it is not open for this Court to substitute its own notion of justice.

We thus find merit in this appeal. It is accordingly allowed. The judgment of the learned single Judge is set aside and the order of the BCCI stands restored.

**Sd/- NAVANITI PRASAD SINGH,  
CHIEF JUSTICE**

**Sd/- RAJA VIJAYARAGHAVAN V.,  
JUDGE**