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S. Sreesanth Vs. The Board of Control for Cricket in India

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Court : Supreme Court of India

Decided On : Mar-15-2019

Judge : Hon'Ble Mr. Justice Ashok Bhushan, Hon'Ble Mr. Justice K.M. Joseph

Appeal No. : 42358 / 2017

Appellant : S. Sreesanth

Respondent : The Board of Control for Cricket in India

Advocate for Pet/Ap. : Krishnamohan K.

Judgement :

1 REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO.2424 OF2019(arising out of SLP(C) No.3551 of 2018) S. SREESANTH VERSUS .... APPELLANT(S) THE BOARD OF CONTROL FOR CRICKET IN INDIA & ORS .... RESPONDENT(S)

JUDGMENT

ASHOK BHUSHAN, J.

The sports occupy a prominent place in life of a man/woman and also in the life of a nation. It not only gives physical or moral strength to a personality but spread the message of goodwill and friendship. In the 21st Century the countries have come closer and nearer to each other and sports have become a medium of bonds.

United Nations Educational and Cultural Organisation adopted in the General Conference at the twentieth session, Paris, 21st November, 1978 an International Charter of physical education and sports. The Charter contains following:

2. . Convinced that to preserve and develop the physical. intellectual and moral powers of the human being improves the quality of life at the national and the international levels, Believing that physical education and sport should make a more effective contribution to the inculcation of fundamental human values underlying the full development of peoples, Stressing accordingly that physical education and sport should seek to promote closer communion between peoples and between individuals. together with disinterested emulation, solidarity and fraternity, mutual respect and understanding, and full respect for the integrity and dignity of human beings, 2. Article 10 of the Charter recognizes the importance of National institutions in sports. Article 10 states: Article 10. National institutions play a major role in physical education and sport 10.1. It is essential that public authorities at all levels and specialized non- governmental bodies encourage those physical education and sport activities whose educational value is most evident. Their action shall consist in enforcing legislation and regulations, providing material assistance and adopting all other measures of encouragement. stimulation and control. The public authorities will also ensure that such fiscal measures are adopted as may encourage these activities. 10.2. It is incumbent on all institutions responsible for physical education .and sport to promote a consistent, overall and decentralized plan of action in the framework of lifelong education so as to allow for continuity and co- ordination between compulsory physical activities and those practised freely and spontaneously. 3. Cricket, it is said, is a synonym for gentlemanliness which means discipline, fair play, modest and high standard of morality. The ever increasing interest in the game of Cricket in our 3 country has raised issues of its regulation, control and management. In our country the Board of Control for Cricket in India (BCCI), a registered Society under the Societies Registration Act, 1860, exercises sufficient control on all aspects of game of Cricket and has framed various Code of Conduct for all who are associated with it. Highlighting the importance of BCCI, Justice T.S. Thakur, as he then was, in Board of Control for Cricket in India vs. Cricket Association of Bihar and others, (2015) 3 SCC251 stated following: 103. BCCI is a very important

institution that discharges important public functions. Demands of institutional integrity are, therefore, heavy and need to be met suitably in larger public interest. Individuals are birds of passage while institutions are forever. The expectations of the millions of cricket lovers in particular and public at large in general, have lowered considerably the threshold of tolerance for any mischief, wrongdoing or corrupt practices which ought to be weeded out of the system. 4. The present is an appeal filed by an acclaimed cricketer of India against whom proceedings were drawn by BCCI and a life ban was imposed on the appellant by the BCCI which was unsuccessfully challenged before the Kerala High Court and aggrieved by the Division 4 Bench judgment of the High Court the appellant has filed this appeal.

5. Background facts giving rise to this appeal need to be noted now: The appellant, a registered player with Kerala Cricket Association affiliated to BCCI participated in an IPL match held at Mohali, Punjab on 09.05.2013. The appellant represented Rajasthan Royals against Kings XI Punjab. The case Crime No.20 of 2013 dated 09.05.2013 was registered in the Special Cell of Delhi Police on a suo moto information provided by an Inspector of Special Cell. Information was received by the Police regarding involvement of various persons in some sort of fixing in the on going Cricket matches of IPL with active participation of un-identified conduits based in Delhi. The appellant was arrested by Delhi Police on allegation of spot fixing on 16.05.2013. By order dated 17.05.2013 BCCI suspended the appellant. In the Writ Petition (C) No.318 of 2013 Sulaxsha Awasthi vs. Union of India, this Court directed the oneman Commission constituted by the BCCI to submit its report to the Board within a period of submitted Report 5 Preliminary 15 days indicated about the irregularities that is noticed during the IPL matches. Oneman inquiry Commission dated 05.06.2013 on the basis of video clipping and recordings of telephone conversation opining that there are sufficient evidence against the appellant to prove him guilty of various articles of Anti-corruption Code. Preliminary Report further stated that the Commissioner had no access to the appellant who was in police custody. It opined that there are sufficient evidence available to proceed with the disciplinary proceedings against the suspended players. The appellant after being released from the custody appeared before oneman Commission and gave his statement dated 24.06.2013. He denied any spot fixing done by his friend Jiju, if at all, and he reiterated that he

did not under perform the game. In his statement he further stated that he confessed certain things before the Delhi Police which was due to continuous torture and pressure. After receiving the statement dated 24.06.2013, Supplementary Report dated 08.07.2013 was submitted by oneman Commission. The 6 Supplementary Report relied on the audio conversations between Sreesanth and Jiju Janardhan recorded on 06.05.2013 at 1740 hrs. and 2032 hrs. and on the basis of audio tapes and transcripts oneman Commission concluded that the appellant was part of the spot fixing and earlier findings given by the Preliminary Report are confirmed. After receipt of the report disciplinary proceedings were initiated by the disciplinary committee of BCCI against the appellant. Show-cause notice dated 04.09.2013 was given to the appellant. Following allegations in show-cause notice were made against the appellant in paragraphs 3, 4 and 5: 3. On the morning of 16th May, 2013, it came to be widely reported in the media that the Delhi Police, Special Cell had arrested you along with other fellow players on suspicion of having indulged in spot fixing during certain matches of Rajasthan Royals with whom you are contracted to play for in the IPL. Reportedly at the time of your arrest, you were allegedly in the company of one Mr. Jiju Janardhan who according to Delhi Police is ad bookie.

4. It also came to be reported that the Delhi Police had also arrested a number of bookies on the same day, who were allegedly involved in conspiring with you and the other players to fix spots for 7 personal financial gain.

5. Acting on the information that was provided by the police authorities to the media which was in turn reported across the country, the BCCI on 17th May, 2013, suspended you from all cricketing activities pending an inquiry into your actions by the BCCI. The BCCI appointed a Commissioner, Mr. Ravi Sawani, the head of the BCCI Anti-Corruption Unit, to conduct a preliminary inquiry and submit a report to the BCCI as to his findings. 6. The appellant was accused of offences under Articles 2.1.1, 2.1.2 and 2.1.3, 2.2.3, 2.4.1. and 2.4.2 of Anti-Corruption Code of BCCI. The appellant was asked to show-cause as to why action should not be taken against him under the Rules. Date, 13.09.2013 was fixed for hearing and appellant was asked to submit his written statement within a week. Reply to show-cause notice was submitted by the appellant on 11.09.2013. In his reply the

appellant denied his involvement in spot fixing. In his reply apart from stating other facts following was stated: i) Fixing - There is absolutely no reliable material even to find out a charge of fixing against me. What is relied upon is the alleged conversation between my friend Shri Jiju Janardhan a follow cricketer and some others. Shri Jiju Janardhan is very much familiar with my 8 mannerism and habit in the cricket field as he knows me from the age of 18. It is not uncommon to use a towel in afternoon matches particularly in a place like Mohali in the month of April-May. Enough photographs are there to show that in many of the earlier matches I played, white colour towel had been used by me. In fact even other well known cricketers use white towel as a matter of habit. Even in the very same match towels were used by other players. Apart from a sheer coincidence nothing culpable can be attributed to me by reason of using a towel. The allegation that in the first over no towel was used cannot be correct. ii) What is alleged as warming up against me is not really warming up but a manner of play which I did in other plays also. iii) As regards conceding of 14 runs I may respectfully point out there was no guarantee that the Captain will ask me to bowl in a particular over and if so, depending on the field, the pitch, batsman etc. the bowler will have to bowl. It may be stated here that my bowling is considered pace bowling estimated at an average of 135 kms. per hour and there is no guarantee for a bowler regarding the runs he is likely to concede unless deliberately either a no ball or wide is bowled. Conceding runs therefore, cannot be manipulated as alleged. There is no allegation that in the concerned second over any wide or no ball was bowled. iv) As regards seeking, accepting, offering or agreeing to accept any bribe there is no trace of evidence pointing out to any such incident at all. 9 v) There had been no failure or refusal on my part to perform my abilities in the Matches as all the balls bowled by me will show that I have done my best in bowling on that day also. 7. The appellant appeared on 13.09.2013 and was heard, the disciplinary committee communicated its dated decision 03.10.2013, with regard to appellant in paragraph 9 to 14 following was held:

13. 09.2013 letter dated vide 9. We have considered the inquiry Report of the Commissioner, his written statement before the Inquiry Commissioner, his written reply to the Show Cause Notice and his oral defence before us.

10. The evidence against Sreesanth in relation to the charge comprises to two audio recordings which are recorded by the Delhi Police. The first of these audio recordings is a conversation between Jiju Janardhan, his close friend, and a bookie called CP (Chandresh Patel). Both have been arrested by the Delhi Police. In the said conversation Jiju Janardhan is said to be promising that in the second over to be bowled by Sreesanth 14 or more runs would The conceded consideration to be paid for such fixing would be Rs.10 Lacs.

11. In his written reply before us Sreesanth has admitted the factum of the alleged conversation with Jiju Janardhan. The Delhi Police along with the charge sheet has given him a copy of the recorded transcripts. He states that he is a him. by be 10 superstitious person and the use of the towel is due to the same. He, however, could not officer and explanation with regard to the content of the conversation which deals with conceding of 14 runs for a consideration. On the contrary, he argues that how many runs would be conceded would depend upon a large number of variable factors and not merely on the desire or the will of the bowler. of mobile 12. Even if Sreesanth wants to distance himself from the said audio recording which he was not privy, there is a cross reference to this conversation on record at 17.40 hours on 6.5.2013 between Jiju Janardhan and Sreesanth. In the said conversation, Jiju Janardhan admits being in possession of Sreesanths money Jiju Janardhan is head referring to receipt of Rs. 10 Lacs of which he would give 7 lacs to Sreesanth and retain 3 lacs for himself. Jiju Janardhan further proposes to use some money of Sreesanth for purchase The circumstantial evidence clearly indicates that this Rs. 10 Lacs is part of the amount deposited with Jiju Janardhan for influencing Sreesanth for underperforming in the second over of the match.

13. The third piece of evidence is the actual conduct during the match itself where Sreesanth conceded 13 runs. The two tape recordings reveal facts which reasonably match with the actual developments in the second over on the field. The number of runs conceded is only one less than promised. The sum of Rs.10 Lacs being promised as a part of the transaction fixed by Jiju Janardhan is confirmed in the second audio recording. On being asked to explain about this Rs.10 Lacs lying with Jiju Janardhan as mentioned in phones. 11 the second

audio recording, Sreesanth gave a vague explanation stating that this may be reference by way of a charity to an orphanage which he intended to be visiting. We are not inclined to accept the said explanation.

14. In view of the above, we are of the opinion that Sreesanth is guilty of corruption under Article 2.1.1, 2.1.2 and 2.1.3 of the Code. We also find him guilty under Article 2.2.3 for betting and Article 2.3.1 and Article 2.4.2 of the Code for bringing disrepute to the game of Cricket and failure to disclose to the ACU BCCI full details of any approaches or invitations to engage in conduct that would amount to breach of the Code. We also hold him guilty of misconduct under Article 32, of the BCCI Memorandum Rules and Regulations. 8. On quantum of punishment following was directed: Sh. Shreesanth - In view of the allegations of match fixing and non-reporting of the offences, he is banned from playing or representing for life. He shall during this period not be entitled to be associated with any activities of the BCCI or its affiliates. 9. In the criminal case chargesheet against the appellant and the other accused was submitted. The appellant filed an application for discharge. The application for discharge was heard and by order dated 25.07.2015, the appellant was discharged from the 12 offences. Against the order of discharge an appeal has been filed which is pending, at present, before the Delhi High Court. After passing of the order of discharge, appellant made a request before the disciplinary committee of BCCI to review its order. On 18.10.2015 disciplinary committee refused to review its earlier decision. The appellant through Kerala Cricket Association addressed an e-mail to BCCI requesting to issue No Objection Certificate to him to enable him to participate in the Scotland Premier League. The BCCI by the communication dated 12.01.2017 refused to issue No Object Certificate. Another e-mail was sent by the appellant on 11.02.2017 praying to revoke the ban imposed on him and issue No Objection Certificate to him to participate in the Scotland Premier League. The BCCI reiterated its earlier stand.

10. An Advocates notice was given by the appellant on 16.02.2017 to BCCI and thereafter a Writ Petition No.6925 of 2017 was filed before the Kerala High Court. In the writ petition, the petitioner has prayed for quashing the proceedings of the disciplinary committee communicated by letter dated 03.10.2013 and 13 also

prayed for a mandamus or other writ or order commanding the BCCI and its Chairman to lift the ban imposed by the BCCI Committee by order dated 03.10.2013 so as to enable the appellant to participate in the Cricket matches both in national and international level. The appellant has also sought declaration that reports are illegal and they were prepared without due compliance of law.

11. The BCCI filed a counter-affidavit in the writ petition. The writ petition was heard and the learned Single Judge by order dated 07.08.2017 allowed the writ petition quashing the life ban and other punishment imposed on the appellant pursuant to the disciplinary committee proceedings. Learned Single Judge had observed that the appellant has suffered ban almost for four years and nothing more is required in the matter. Aggrieved by the judgment of the learned Single Judge a writ appeal was filed before the Division Bench by the BCCI. The Division Bench of the High Court vide judgment dated 17.10.2017 allowed the writ appeal of the BCCI. The Division Bench held that the High Court under Article 226 exercises the 14 with the jurisdiction of judicial review and does not sit in appellate jurisdiction. It is held that there cannot be reappraisal of the evidence. Learned Single Judge being of the opinion that the appellant was guilty, the appellant cannot escape the punishment and it is not open for the High Court to substitute its own notion of justice. Aggrieved by the Division Bench judgment the appellant has filed this appeal in this Court.

12. We have heard Shri Salman Khurshid, learned senior counsel, appearing for the appellant. Shri Parag P. Tripathi, learned senior counsel has appeared for the BCCI.

13. Shri Salman Khurshid submits that in the disciplinary enquiry held against the appellant principles of natural justice have been breached. It is submitted that the disciplinary committee never confronted telephone conversation relied by it for proving the charge. The appellant never agreed and was not part of spot fixing nor ever received amount of Rs.10 lakh as alleged. In the match played on 09.05.2013, the appellant played appellant the 15 his normal game. There were no loose bowls which is clear from cricket commentary broadcasted on that day. It was alleged against the appellant that he fixed for conceding 14 runs in the

second over, which never happened. There are no evidence to prove against the appellant something which never happened. In the event any money was received by the appellant there has to be some evidence of asking to return the money. The Preliminary Report was prepared ex parte which ought not to have been relied. Copies of the transcripts relied in the Supplementary Report as well as by the disciplinary committee were never made available to the appellant nor he at any stage was confronted with the aforesaid transcripts so as to give his version. The burden of proof was wrongly placed on the appellant where as per Article 3.1. of the Anti-Corruption Code, the burden of proof shall be on the designated Anti-Corruption Official and for serious offences proof beyond reasonable doubt was required. The allegation that the appellant conceded 14 runs in the second over having not been proved the entire charge has to fall. The bowler cannot always control the runs which can be 16 taken by a batsman more so when batsman of a calibre, Gilchrist was playing. The telephone conversation of 06.05.2013 at 1740 hrs. and 2032 hrs with Jiju does not indicate that the appellant was part of any spot fixing. Shri Khurshid has also challenged the constitution of disciplinary committee. It is submitted that Shri Srinivasan had stepped down as the President of the BCCI on 13.06.2013 and thereafter Shri Jagmohan Dalmia took as the President. The disciplinary committee not being properly constituted, the entire proceeding is vitiated.

14. Shri Parag P. Tripathi, learned senior counsel appearing for the BCCI submits that the appellant was given full opportunity by disciplinary committee. Show-cause notice contained the detail of charges and the appellant was asked to reply. The allegations which were made against the appellant that he was part of the spot fixing, that in second over, the appellant was to concede 14 runs and under the deal he shall tuck white towel in his visible pocket which actually he did in his second over is ample proof of his complicity. The conversation dated 06.05.2013 which is 17 brought by the appellant between Jiju Janardhan and Chandresh Patel @ Chand clearly proves that deal was made for spot fixing which was fixed. The appellant in his reply to show-cause has not explained the amount of Rs. 10 lakh as referred to conversation dated 06.05.2013 at 1740 hrs between himself and Jiju Janardhan.

15. When the specific allegation was made against the appellant it was his duty to speak and he having not satisfactorily explained the allegations, disciplinary authority was fully entitled to confirm the proceedings. No proper answer has been given with regard to the tucking of towel in the second over. His answer that he is superstitious was not there in original reply. Answer relating to amount of Rs.10 lakh to charity is not a complete answer to dispel the charge. The disciplinary proceedings are in the nature of departmental inquiry against a public servant. The decision of disciplinary authority on proof of charge is not to be interfered in exercise of judicial review by the constitutional courts. The judicial review of the disciplinary proceedings is not an appellate 18 jurisdiction so as to enable the Court to substitute its opinion. The para meters of judicial review are well settled. The interference with the disciplinary proceedings by the High Court under Article 226 and this Court under Article 32 cannot be on the basis of reappreciation of evidence. The Court cannot go on the sufficiency and reliability of the evidence. The Court shall not interfere if there are some legal findings.

16. Shri Parag Tripathi further submitted that the Discharge Order has no bearing on the disciplinary proceedings which are subject matter of the present petition. It is trite law that proceedings by a disciplinary committee must be treated differently from a trial in a criminal case. It is submitted that there is vast distinction in the scope of inquiry between a criminal proceeding and a departmental inquiry. The question before the Sessions Court was whether appellant is guilty of offences under the aforementioned criminal statutes. On appreciation of the evidence, it may have been open for the Sessions Court to discharge the appellant under those specific 19 statutes. The Sessions Court, however, did not deal with the question whether the appellant is guilty of violating the BCCI Code. In contrast, the scope of inquiry in the disciplinary proceedings initiated by respondent No.1 against the petitioner was entirely different as it was restricted to an examination of whether the appellant had breached the BCCI Code. The clauses which the appellant breached under the BCCI Code are entirely different from the offences under which the appellant had been charged before the Sessions Court. The ingredients required to establish a breach of the BCCI Code are also distinct and separate from the ingredients required to prove offences under the aforementioned penal statutes. Furthermore, in a criminal case, a defendant has a

right to remain silent. However, on issuance of the SCN, the appellant had a duty to appear before the disciplinary committee and answer all relevant questions, to the satisfaction of the disciplinary committee.

17. Respondent No.1 further submits that the standard of proof in recording a finding of conviction in a 20 criminal proceeding is distinct and different from a departmental proceeding.

18. It is submitted that the appellant has raised the issue of jurisdiction of the disciplinary committee alleging that Shri Srinivasan could not be a member of the disciplinary committee at the relevant time. AT the outset, it is submitted that this argument a being raised for the very first time before this Court at the stage of the appellant filing a rejoinder to respondent No.1s counter affidavit and the same ought not be allowed by this Court. The appellant had the option of challenging the constitution of the disciplinary committee before the disciplinary committee itself, or at the least at the stage of filing the writ petition/writ appeal or even at the stage of filing SLP. However, the fact that the said argument is being raised for the first time at such a belated stage of the proceedings only goes to prove that the argument is a mere afterthought.

19. Without prejudice to the aforesaid, it is submitted that the minutes of the Emergent Working 21 Committee meeting held on July 28, 2013 clearly record that the probe committee had submitted its report and Shri Srinivasan could resume charge as the President of respondent No.1. Further, the minutes of the Emergent Working Committee meeting held September 01, 2013 prove that Shri Srinivasan attended the said meeting as the President of respondent No.1.

20. It is submitted that even the orders dated September 27, 2013 and October 8, 2013 placed on record and relied upon by the appellant do not suggest that this Court removed Shri Srinivasan from the post of President of respondent No.1. By the order dated September 27, 2013, this Court only ordered that the AGM of respondent No.1 scheduled on September 29, 2013 and the scheduled election can proceed. With respect to Shri Srinivasan, this Court held that if he is elected as President (in the election to be conducted) he will not take charge until further orders. The same was reiterated in the order dated October 8, 2013 passed by

this Court. Both these orders were admittedly passed after the disciplinary committee passed its 22 order on September 13, 2013 and, therefore, contrary to the appellants submissions the composition of the disciplinary committee was in accordance with the BCCI Code.

21. Shri Salman Khurshid, learned senior counsel for the appellant in his rejoinder submits that till 29.09.2013, Shri Srinivasan was not the President and he could not function as President. Replying the submission of Shri Tripathi that charge has been proved against the appellant it is submitted that BCCI placed wrong burden of proof on the appellant. The appellant has answered the allegations and burden was on the BCCI to prove the charges. In any view of the matter, at best, the appellant could have been charged with not disclosing to the BCCI of any information. Shri Khurshid submits that punishment of life ban was excessive and maximum, the punishment which could have been imposed on the appellant was upto five years. The appellant has always given due respect and regard to the BCCI and always obeyed its instructions and commands. The appellant has been acclaimed cricket player, whose bright career has been cut short. The 23 present is not the case where life ban ought to have been imposed. This Court may exercise its equitable jurisdiction in interfering with the punishment awarded to the appellant.

22. From the submissions made by the learned counsel for the parties and the materials on records following issues arise for consideration in this appeal: (1) Whether the disciplinary committee of the BCCI in passing the order dated 13.09.2013 violated the principles of natural justice in not providing the transcripts of telephone conversation relied by it and further in not confronting the appellant with transcript of the telephone conversations relied on by it?. (2) Whether the disciplinary committee was right in its conclusion that there are sufficient materials on the record to hold the appellant guilty of offences of corruption under Articles 2.1.1, 2.1.2, 2.1.3 of betting, under Article 2.2.3 and Article 2.4.1, 2.4.2 of the 24 Anti-Corruption Code for bringing disrepute to the game and failure to disclose to the ACU BCCI full details of any approaches and invitations to engage in conduct that would amount to breach of the Code?. (3) Whether there were sufficient grounds for the High Court while exercising judicial review jurisdiction under Article

226 to hold that charges against the appellant were established and proved on the basis of materials on record?. (4) Whether the disciplinary committee has rightly placed burden of proof on the appellant whereas according to Anti-Corruption Code under Article 3.1. the burden of proof was on the designated Anti-Corruption Official and by wrongly placing the burden of proof the disciplinary committee has erred in recording its conclusion?. (5) Whether the discharge order dated 25.07.2015 has any effect on the disciplinary proceeding 25 of BCCI under Anti-Corruption Code culminating in order dated 13.09.2013?. (6) Whether the constitution of disciplinary committee was vitiated by including Shri Srinivasan as President who had already stepped down on 02.06.2013 resulting in vitiation of entire proceedings?. (7) Whether disciplinary committee while imposing sanction under Article 6 has considered the relevant para meters as laid down in paragraphs 6.1.1. and 6.1.2?. (8) Whether the disciplinary committee erred in imposing maximum sanction of life time ban on charges under Article 2.1.1 to 2.1.4 of the Anti-Corruption Code?. (9) The relief to which, if any, the appellant may be entitled. ISSUE NO.1 23. The 08.07.2013 submitted by Commissioner of Inquiry, BCCI refers to Supplementary Report dated 26 two audio conversations between Sreesanth and Jiju Janardhan recorded on 06.05.2017 at 1740 hrs. and 2032 hrs. The Commissioner in his Report has referred to transcripts of two audio conversations received from Delhi Police copy of which was annexed to the Report. along with the show-cause notice both Preliminary as well as Supplementary Reports were enclosed. As noted above, the Supplementary Report has referred to two conversations between Sreesanth and Jiju Janardhan dated 06.05.2013. Reference of telephonic conversation between Jiju and Chandresh Patel was also made in paragraph 8(1) of the show-cause notice. Reply to the said show-cause notice was submitted by the appellant on 11.09.2013. It is relevant to note that in the reply appellant did not complaint of not providing copy of transcripts of telephone conversations. Violation of principles of natural justice by the Commissioner while submitting the Preliminary Report was alleged on behalf of the appellant. The Commissioner in the Preliminary Inquiry Report has clearly mentioned that he has not been able to question the appellant since he was in the Police Custody and when the appellant was released from 27 the Police Custody his statement was taken by the Commissioner on 24.06.2013

and after considering the statement of the appellant, Supplementary Report was submitted by the Commissioner on 08.07.2013. Before us additional documents have been filed by the appellant as Annexure A1 by which the transcripts of telephone conversation between Sreesanth and Jiju dated 06.05.2013 at 1740 hrs. and 2032 hrs. has been brought on the record. Another conversation dated 09.05.2013 at 12.30 p.m. with Jiju Janardhan and Chandresh Patel has also been taken on the record. The appellant does not deny that the above transcripts of the telephone conversations were given to the appellant by the Police when chargesheet was submitted in the criminal case in FIR No.20 of 2013. The present is not a case where telephone conversations have been referred without they not being available to the appellant. The transcripts of telephone conversations were received by the appellant from the Police much before issuance of the show-cause notice issued by the disciplinary committee. The appellant in his reply has not made any complaint of non-receipt of transcripts.

24. Learned Single Judge in paragraphs 3 and 24 of his judgment has made following observations:

28. 3. The decision of BCCI was rendered after affording an opportunity of hearing to Sreesanth by a disciplinary committee constituted to enter into the allegations 24However, 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) 25. The submission of Preliminary Report without taking statement of the appellant was in the circumstances that the appellant was in the Police custody and under the order of this Court the Commissioner had to submit report within 15 days. The Commissioner himself has noted that he has not confronted the appellant because of the above fact. When the appellant was released from the custody, his statement was taken and after considering his statement further Supplementary Report was submitted. In the show-cause notice with respect to the material relied by the disciplinary committee, the appellant was given full opportunity to have his say. We are not in 29 agreement with the submission of the appellant that there was any violation of principles of natural justice by the disciplinary committee of the BCCI. ISSUE NOS. 2 AND326. Both

the issues being inter-related, are taken together.

27. In the show-cause notice the charge which was levelled on the appellant of spot fixing and other allegations have been noticed. The allegations made against the appellant as contained in paragraph 8 has already been extracted above. In the substance, the allegation was that in the match played on 09.05.2013 between Rajasthan Royals and Kings XI Punjab at Mohali in exchange of sum of Rs.10 lakh, the appellant agreed to concede 14 or more runs in the second over of bowling spell and in order to confirm the fix, appellant was required to place a hand towel in his visible pocket while ensuring there was no such towel during the first over. In support of this, audio conversation between Jiju Janardhan and Chandresh Patel was referred to in the Preliminary and Supplementary Reports. It is on the 30 basis of the conversations between Jiju Janardhan and Sreesanth dated 06.05.2013 at 1740 hrs. and 2032 hrs., the allegation of charge of receipt of Rs. 10 lakh was sought to be proved. The conversation between Sreesanth and Jiju which took place on 06.05.2013 where Jiju on telephone informed that Rs.10 lakh was available out of which Rs.7 lakh will be given to the appellant, has not been satisfactorily explained by the appellant before the disciplinary committee. The disciplinary committee in its order has relied on the telephone conversation between Jiju Janardhan and Sreesanth dated 06.05.2013. It was also noted that Delhi Police along with the charges had given copy of the transcripts to the appellant. In paragraph 12 of the order the disciplinary committee has come to the following conclusion: 12. Even if Sreesanth wants to distance himself from the said audio recording which he was not privy, there is a cross reference to this conversation on record at 17.40 hours on 6.5.2013 between Jiju Janardhan and Sreesanth. In the said conversation, Jiju Janardhan admits being in possession of Sreesanths money Jiju Janardhan is head referring to receipt of Rs. 10 Lacs of which he would give 7 lacs to Sreesanth and retain 3 lacs for himself. Jiju Janardhan further 31 proposes to use some money of Sreesanth for purchase of mobile phones. The circumstantial clearly indicates that this Rs. 10 Lacs is part of the amount deposited with Jiju Janardhan for influencing Sreesanth for underperforming in the second over of the match. evidence 28. The explanation given by the appellant with regard to Rs. 10 lakh laying with Jiju Janardhan was found to be vague and was not acceptable. The disciplinary committee on the

basis of the evidence available before it was entitled to draw its own conclusion.

29. The disciplinary committee, under the relevant Anti-Corruption Code, is primarily entrusted with the duty, after considering the reply of show-cause notice and hearing the appellant was entitled to give a decision on various allegations made against the appellant.

30. The disciplinary inquiry conducted by disciplinary committee of BCCI is akin to disciplinary inquiry conducted against a public servant under the relevant statutory rules except few distinctions which we shall 32 notice later. This Court has time and again considered the scope of judicial review in reference to departmental inquiry conducted against the public servant. This Court in State of Andhra Pradesh vs. Chitra Venkata Rao, (1975) 2 SCC557 had laid down the para meters of judicial review. In paragraph 21 following has been laid down: 21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is 33 the have authorities guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of

natural justice or in violation of the statutory rules prescribing the mode of enquiry or where disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226. 31. This Court further held that jurisdiction of the High Court under Article 226 is a supervisory jurisdiction and the High Court does not exercise a jurisdiction of an appellate court. The findings of the fact reached by a tribunal as result of the appreciation of the evidence cannot be questioned in the writ proceedings. In paragraph 23 of the judgment following has been laid down:

34. 23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K.S. Radhakrishnan. 32. This Court again in Union of India and others vs. P. Gunasekaran, (2015) 2 SCC610 reiterated the same principles regarding judicial

review of disciplinary proceedings. In paragraphs 12 and 13 following has been laid down:

35. 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 Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether: (a) the enquiry is held by a competent authority; (b) the enquiry is held according to the procedure prescribed in that behalf; (c) there is violation of the principles of natural justice in conducting the proceedings; disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case; authorities (d) the have (e) the authorities allowed themselves to be influenced by irrelevant extraneous considerations; have or (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; (h) the admitted authority disciplinary had inadmissible erroneously evidence which influenced the finding; (i) the finding of fact is based on no 13. the Constitution of India, the High Court shall not: evidence. Under Articles 226/227 of (i) reappreciate the evidence; (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law; 36 (g) the disciplinary had erroneously failed to admit the admissible and material evidence; authority evidence; evidence; (iii) go into the adequacy of the (iv) go into the reliability of the (v) interfere, if there be some legal evidence on which findings can be based. grave it may appear to be; (vi) correct the error of fact however (vii) go into the proportionality of punishment unless it shocks its conscience. 33. To the same effect is the decision of this Court reported in Central Industrial Security Force and others vs. Abrar Ali, (2017) 4 SCC507 In paragraphs 13 and 14 following has been laid down:

37. 13. Contrary to findings of the disciplinary authority, the High Court accepted the version of the respondent that he fell ill and was being treated by a local doctor

without assigning any reasons. It was held by the disciplinary authority that the unit had better medical facilities which could have been availed by the respondent if he was really suffering from illness. It was further held that the delinquent did not produce any evidence of treatment by a local doctor. The High Court should not have entered into the arena of facts which tantamounts to reappreciation of evidence. It is settled law that reappreciation of evidence is not permissible in the exercise of jurisdiction under Article 226 of the Constitution of India.

14. In State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya, this Court held as follows: (SCC p. 587, para

7) 7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based findings in 38 on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India, G. Ganayutham, Bank of India v. Degala Suryanarayana and High Court of Judicature at Bombay v. Shashikant S. Patil.) regulations India have Union of v.

34. There being specific allegations made against the appellant in the show-cause notice as noticed above it was incumbent on the appellant to have explained the evidence and circumstances which were sought to be relied against the appellant. In the disciplinary proceedings a delinquent has to explain circumstances and evidence relied against him. It is true that the charges have to be proved by the BCCI for taking any action under the Anti-Corruption Code. The disciplinary

committee of the BCCI had jurisdiction to form its own opinion after considering the evidence on record including the telephone conversation between Sreesanth 39 and Jiju Janardhan and other evidence on the record. The conclusion drawn by the disciplinary committee on the basis of the material which is recorded in paragraphs 12 and 13 as noted above cannot be said to be suffering from any infirmity which may warrant judicial review by the constitutional courts. The learned Single Judge held that If the evidence as a whole is appreciated, it can easily be concluded that Sreesanth had no direct link in spot fixing or betting. Further, learned Single Judge held that Assuming that Sreesanth had knowledge of such betting, this Court is of the view that the punishment already suffered by him of 4 years of the ban from all format of the cricket, nationally and internationally, is sufficient to meet ends of justice. As noted above constitutional court in exercise of jurisdiction of judicial review of disciplinary proceedings conducted under the Code of Conduct framed by the BCCI will interfere only when conclusions of the disciplinary committee are perverse or based on no evidence. On appreciation of evidence, it is not open for the High Court or this Court to substitute its own opinion based 40 on the appreciation of material on record on the charges proved.

35. We, thus, are of the opinion that for the decision of the disciplinary committee holding charges under Articles 2.1.1., 2.1.2, 2.1.3 and 2.2.3 and Article 2.4.1. and 2.4.2 proved, there are no grounds for this Court to take a different view. Issue Nos. 2 and 3 are answered accordingly. ISSUE No.4 36. One of the submissions which has been made by the learned counsel for the appellant is that the disciplinary committee has wrongly placed the burden of proof on the appellant. Learned counsel for the appellant has relied on Article 3.1 in this context. Article 3.1 is as follows: Anti-Corruption STANDARD OF PROOF AND EVIDENCE31 Unless otherwise described herein the Designated Official(or his/her designee) and the standard of proof in all cases brought under this Anti- corruption Code shall be whether the BCCI Disciplinary comfortably satisfied, bearing in mind the seriousness of the allegation that is being made, that the alleged offence has been committed. This Committee is 41 standard of proof in all cases shall be determined on a sliding scale from, at a minimum, a mere balance of probability (for the least serious offences) up to proof beyond a reasonable doubt (for the most serious offences). 37. Article 3.1 deals with burden of proof and standard of

proof. The initial burden of proof shall be on the Designated Anti-Corruption Official i.e. disciplinary committee which has to form its opinion about the commission of Designated Offences by the delinquent. Before taking the decision when show-cause notice is served on the appellant making allegations and referring to relevant materials in support of the said allegation, it was incumbent on the appellant to have satisfactorily explained each and every circumstances or evidence referred to and relied. When the explanation submitted by the appellant was not found satisfactory, he having not been able to satisfactorily explain the allegations which were noticed from the telephone conversation between the appellant and Jiju Janardhan, it cannot be said that the burden of proof has wrongly been placed on the appellant. Initial burden as referred to in Article 3.1 shall stand 42 discharged when the allegation referring to materials and evidence are communicated to delinquent. Standard of proof as referred to in Article 3.1 is that the BCCI disciplinary committee is to be comfortably satisfied, bearing in mind the seriousness of the allegation that is being made, that the alleged offence has been committed. Of course, on mere doubt the disciplinary committee cannot hold offences proved there has to be a positive evidence and finding regarding the proof of offences. We are, thus, not persuaded to accept the submission of the learned counsel for the appellant that burden of proof was wrongly placed on the appellant. ISSUE NO.5 38. There is a vast distinction in the scope of inquiry between a criminal trial on one hand and disciplinary inquiry against a public servant or disciplinary inquiry under Anti-Corruption Code of BCCI on other hand. We find substance in the submission of Shri Parag P. Tripathi that question before the Sessions Court was whether the appellant is guilty of offences under the criminal statutes and on appreciation of evidence, it 43 may have been open for the Sessions Court to discharge the appellant under the specific statutes. The Sessions Court had not to deal with the question whether the appellant is guilty of violating Anti-Corruption Code of BCCI. The clauses which the appellant breached under the Anti-Corruption Code of BCCI are entirely different from the offences under which the appellant had been charged before the Sessions Court. The ingredients required to establish a breach of the BCCI Code are also distinct and separate from the ingredients required to prove offences under the penal statutes in question. We record our agreement to the abovenoted submissions.

39. The standard of proof in a disciplinary inquiry and in a trial of a criminal case are entirely different. In a criminal case it is essential to prove a charge beyond all reasonable doubt wherein in departmental inquiry preponderance of probability is to serve the purpose. This Court in Commissioner of Police, New Delhi vs. Narender Singh, (2006) 4 SCC265 following has been stated in paragraph 12:

44. in a 12. It is not in dispute that the standard of proof required in recording a finding of conviction in a criminal case and in a departmental proceeding are distinct and different. Whereas in a criminal case, it is essential to prove a charge beyond all reasonable departmental proceeding preponderance of probability would serve the purpose. (See Kamaladevi Agarwal v. State of W.B., 2002 (1) SCC555) doubt, 40. A caveat needs to be put to whatever has been said above. We have upheld the decision of disciplinary committee of the BCCI on proof of charges which upholding of the decision of the disciplinary committee shall have no effect in the criminal appeal which is pending against the appellant against the discharge order. The conclusions and observations as recorded in the disciplinary proceedings under Anti-Corruption Code are entirely different from proof of criminal charges which are on higher yardstick to prove. It is a well settled principle that criminal charge must be proved beyond reasonable doubt which is not applicable in disciplinary proceedings initiated by the disciplinary committee of the BCCI. We, thus, clarify that any observation in this judgment shall have no effect on the criminal appeal which is pending against 45 the appellant pertaining to discharge order. ISSUE No.6 41. The argument pertaining to proper constitution of disciplinary committee was not raised before the High Court by the appellant at any stage neither in his reply to show-cause nor before the High Court any ground was taken that disciplinary committee was illegally constituted. In this context, we, however, have noted submission made by the appellant regarding Constitution of the disciplinary committee and reply given by the learned counsel for the BCCI regarding constitution The appellants case is that on 02.06.2013, Shri Srinivasan stepped down from the office of President, BCCI and one Shri Jag Mohan Dalmia took over as the Acting President. Shri Parag Tripathi replying his submission submitted that although Shri Srinivasan stepped down on 02.06.2013 but the working committee meeting held on 28.07.2013 clearly record that the probe committee has submitted its report that Shri Srinivasan could resume charge as

the President of BCCI, Shri Srinivasan disciplinary of committee. 46 was again re-elected on 29.09.2013 as President. We are satisfied that there was no legal impediment in Shri Srinivasan participating in the disciplinary committee in the meeting of 13.09.2013 as President. The appellant having not taken this ground even in the grounds of this appeal, he cannot be allowed to question the constitution of disciplinary committee at this stage. Issue No.5 is answered accordingly. ISSUE NOS.7,8 AND942. All these issues are being taken together. Article 2(Offences Under this Anti-Corruption Code), of the Anti-Corruption Code provides for different offences which are as follows:- ARTICLE2OFFENCES UNDER THIS ANTI-CORRUPTION CODE The conduct described in Articles 2.1 - 2.4, if committed by a Participant, shall amount to an offence by such Participant under this Anti-Corruption Code:

2. 1 CORRUPTION:

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. 47 2.1.2 Seeking, offering accepting, or agreeing to accept any bribe or other Reward to fix or to contrive in any way influence improperly the result, progress, conduct or any other aspect of any Match or Event. otherwise or to 2.1.3 Failing or refusing, for Reward, to perform to ones abilities in a Match. enticing, 2.1.4 Soliciting, instructing, persuading, encouraging or facilitating (a) any Participant to commit an offence under any of the foregoing provisions of this Article 2.1 and/or (b) any other person to do any act that would be an offence if that person were a Participant. inducing, 2.2 BETTING:

2. 2.1 Placing, 2.2.2 Soliciting, laying accepting, or otherwise entering into any Bet with any other party (whether individual, company or otherwise) in relation to the result, progress, conduct or any other aspect of any Match or Event. inducing, enticing, instructing, persuading, encouraging, facilitating or authorising any other party to enter into a Bet for the direct or indirect benefit of the Participant in relation to the result, progress, conduct or any other aspect of any Match or Event. the occurrence a particular incident in a Match or Event, which occurrence is to the

Participants knowledge the subject of a Bet and for which he/she expects to of 2.2.3 Ensuring might reasonably Inside Information. 2.3 MISUSE OF INSIDE INFORMATION:

2. 3.1 Using, for Betting purposes, any 2.3.2 Disclosing Inside Information to any person (with or without Reward) before or during any Match or Event where the Participant be expected to know that disclosure of such information in such circumstances could be used in relation to Betting. NOTE: Any potential offence under this Article will be considered on its own set of facts and the particular circumstances any relevant disclosure. For Example, it may be an offence under this clause to disclose inside information. (a) to journalists or other members of the media; and/or (b) on social networking websites where the Participant might reasonably be expected to know that disclosure of such information in such circumstances could be used in relation to Betting. However, nothing in this Article is intended to prohibit any such disclosure made within a personal relationship (such as a member of the Participants family) where it is reasonable for the Participant to expect that such information can be disclosed in confidence without being subsequently used for Betting. surrounding 48 receive or has received any Reward. enticing, 2.3.3 Soliciting, persuading, or facilitating (a) any Participant to commit an offence under any of the foregoing provisions of this Article encouraging inducing, 49 2.3 and/or (b) any other person to do any act that would be an offence if that person were a Participant. 2.4 GENERAL:

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. NOTE: This Article is only intended to catch disrepute that when considered in all relevant circumstances, relates (directly or indirectly) to any of the underlying imperatives of and conduct prohibited by this Anti-Corruption Code (including as described in Article 1.1) Where any substantial gift payment or other benefit is received by any Participant from an unknown person or organization and/or for no apparent reason, such Participant is advised to report such receipt to the Designated Anti-Corruption Official (or his/her designee). Where such Participant does not make such a report, then it is likely to constitute strong

evidence of the commission of this offence. 2.4.2 Failing or refusing to disclose to the ACU BCCI (without undue delay) full or details of invitations the Participant to engage in conduct that would amount to a breach of this Anti- Corruption Code. 2.4.3 Failing or refusing to disclose to the by any received approaches 50 ACU BCCI (without undue delay) full details of any incident, fact, or matter that comes to the attention of a Participant that may evidence an offence under this Anti-Corruption Code by a third party, including (without limitation) approaches or invitations that have been received by any other party to engage in conduct that would amount to a breach of this Anti-Corruption Code. have shall Participants a continuing obligation to report any new incident fact, or matter that may evidence an offence under this Anti- Corruption Code to the ACU BCCI even if the Participants prior knowledge has already been reported. NOTE: All 2.4.4 Failing or any with refusing, justification, without to compelling cooperate reasonable investigation carried out by the Designated Anti-Corruption Official (or his/her designee) in relation to possible offences under this Anti- Corruption Code, including failure to provide and/or any documentation the Designated Anti-Corruption Official (or his/her designee) (whether as part of a formal Demand pursuant to Article 4.3 or otherwise) that may be relevant to such investigation. information requested by 43. The Anti-Corruption Code uses the word offences and offences are enumerated under the Code for which sanction is provided in Article 6. Sanction under Article 6 is nothing but punishment on commission of 51 the offences and akin to sentencing in the criminal jurisprudence. The principles of sentencing as applicable in offence under Indian Penal Code may not be strictly applicable to one of punishment/sanction under the Anti-Corruption Code but principles of sentencing as applicable in the criminal jurisprudence may be relevant for imposing sanction in Anti- Corruption Code. In the Criminal Procedure Code, 1973, there are no structured sentencing guidelines. In March, 2003, the Committee on Reforms of Criminal Justice System (the Malimath Committee), a body established by the Ministry of Home Affairs, issued a report that emphasized the need to introduce sentencing guidelines in order to minimise uncertainty in awarding sentences. The Indian Penal Code prescribe offences and punishments for the same. For many offences only the maximum punishment is prescribed and for some offences the minimum punishment is also prescribed. Various jurists and

writers have tried to enumerate circumstances which may mitigate the gravity of offences. The Constitution Bench of this Court in Jagmohan Singh vs. The State of U.P., (1973) 1 SCC20held that law gives very wide discretion in the matter of punishment to the Judge. In paragraph 24 following has been laid down:

52. 24. The policy of the law in giving a very wide discretion in the matter of punishment to the Judge has its origin in the impossibility of laying down standards. Take, for example, the offence of Criminal Breach of Trust punishable under Section 409 of the Indian Penal Code. The maximum punishment prescribed for the offence is imprisonment for life. The minimum could be as low as one days imprisonment and fine. It is obvious that if any standards were to be laid down with regard to several kinds of breaches of trust by the persons referred in that section, that would be an impossible task. All that could be reasonably done by the Legislature is to tell the Judges that between the maximum and minimum prescribed for an offence, they should, on balancing the aggravating and mitigating circumstances as disclosed in the case, judicially decide what would be the appropriate sentence. Take the other case of the offence of causing hurt. Broadly, that offence is divided into two categories-simple hurt and grievous hurt. Simple hurt is again sub-divided-simple hurt caused by a lethal weapon is made punishable by a higher maximum sentence-Section 324. Where grievous hurt is caused by a lethal weapon, it is punishable under Section 326 and is a more aggravating form of causing grievous hurt than the one punishable under Section 325. Under Section 326 the maximum punishment is imprisonment for life and the minimum can be one days imprisonment and fine. Where a person by a lethal weapon causes a slight fracture of one of the un- important bones of the human body, he would be as much punishable under Section 326 of 53 the Indian Penal Code as a person who with a knife scoops out the eyes of his victim. It will be absurd to say that both of them, because they are liable under the same section same punishment should the be given 44. On principles of sentencing Constitution Bench judgment of this Court in Bachan Singh vs. State of Punjab, (1980) 2 SCC684 is a locus classicus. The Constitution Bench speaking through Sarkaria, J.

in paragraph 163 laid down following: present legislative 163The policy discernible from Section 235(2) read with Section 354(3) is that in fixing the degree of punishment or making the choice of sentence for various offences, including one under Section 302 of the Penal Code, the court should not confine its consideration principally or merely to the circumstances connected with the particular crime, but also give due consideration to the circumstances of the criminal. 45. Further the Constitution Bench in Bachan Singh has emphasized that the sentencing principle may not only confine to the nature of the crime but may also focus on the criminal. In paragraph 201 following was laid down: 201As we read Sections 354(3) and 235(2) and other related provisions of the Code of 54 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of special reasons in that context, the court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because style is the man 46. Before the Constitution Bench various mitigating factors were suggested. After noticing the various mitigating factors suggested by the counsel the Constitution Bench laid down following in paragraphs 207 and 209: 207. We will do no more than to say that these are undoubtedly relevant circumstances and must be given great weight in the determination of sentence. Some of these factors like extreme youth can instead be of compelling importance. In several States of India, there are in force special enactments, according to which a child, that is, a person who at the date of murder was less than 16 years of age, cannot be tried, convicted and sentenced to death or imprisonment for life for murder, nor dealt with according to the same criminal procedure as an adult. The special Acts provide for a reformatory procedure for such juvenile offenders or children.

209. There are numerous other circumstances justifying the passing of the lighter 55 sentence; as there are countervailing circumstances of aggravation. We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society. Nonetheless, it cannot be over- emphasised that the scope and concept of mitigating factors in the

area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3) 47. Justice Arijit Pasayat speaking for this Court in Shailesh Jasvantbhai and another vs. State of Gujarat and others, (2006) 2 SCC359 held that the practice of punishing all serious crimes with equal severity is now unknown in civilized societies. This Court further held that disproportionate punishment has some very undesirable practical consequences. In paragraph 10 following has been laid down: 10. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilised societies, but such a radical departure of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction, drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration principle from the 56 that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences. 48. This Court in Gopal Singh vs. State of Uttarakhand, (2013) 7 SCC545 laid down that principle of just punishment is the bedrock of sentencing in respect of a criminal offence. In paragraph 18 following was laid down: allows a the principle 18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect - propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine 57 of bringing the

convict to the value-based social mainstream may be the guiding factors. Needless to emphasise, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment. 49. A three-Judge Bench in Mukesh and another vs. State (NCT of Delhi)and others, (2017) 6 SCC1 to which one of us, (Ashok Bhushan, J.) was also a member, has reviewed the principle of sentencing as was noticed and elaborated in different judgments of this Court. Justice Dipak Misra, as he then was, speaking for the Bench referred to the aggravating circumstances and mitigating circumstances as noted by the Constitution Bench in Bachan Singh (supra). Referring to Bachan Singh following was held in paragraph 343:

58. 343. In Bachan Singh case, the Court has also held thus: (SCC p. 751, para

209) 209. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3) viz. that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through laws instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option unquestionably foreclosed. is 50. Justice R. Banumathi delivering her concurring opinion in paragraph 486 has laid down following: 486. Question of awarding sentence is a matter of discretion and has to

be exercised on circumstances aggravating or mitigating in the individual cases. The courts are consistently faced with the situation where they are required to answer the new challenges and mould the sentence to meet those challenges. Protection of society and deterring the criminal is the avowed object of law. It is expected of the courts to operate the sentencing system as consideration of 59 to impose such sentence which reflects the social conscience of the society. While determining sentence in heinous crimes, Judges ought to weigh its impact on the society and impose adequate sentence considering the collective conscience or societys cry for justice. While considering the imposition of appropriate punishment, courts should not only keep in view the rights of the criminal but also the rights of the victim and the society at large. 51. In the above noted cases this Court has laid down that awarding sentence is a matter of discretion of the Judge which has to be exercised on consideration of circumstances aggravating or mitigating in the individual cases. As observed above, the principle of sentencing as applicable in the criminal cases may not be strictly applicable for considering the issue of punishment/sanction under the Anti-Corruption Code but the principles noticed pertaining to sentencing serve a safe guideline for exercise on jurisdiction under Article 6 of the Anti-Corruption Code.

52. We may notice that this Court in Board of Control for Cricket in India(BCCI) (supra) has held that a zero tolerance towards any wrong-doing alone can satisfy the 60 cry of clinching the Cricket. The Division Bench of the Kerala High Court while allowing the writ petition filed by the BCCI has also observed that Anti-Corruption Code of BCCI clearly envisaged zero tolerance to corruption. There cannot be any quarrel to the proposition as laid down by this Court as noted above. What was meant by the zero tolerance is that any offence committed within the meaning of Anti-Corruption Code cannot be ignored or to be leniently dealt with. Zero tolerance emphasis taking cognizance of such offences and awarding suitable punishment. However, zero tolerance approach cannot dilute consideration of relevant factors while imposing sanction under Article 6. In Board of Control for Cricket in India(BCCI) (supra) this Court has laid down that the quantum of sanction/punishment can vary depending upon the gravity of the misconduct of the persons committing the same. In paragraph 116 following has been laid down: 116We have also while answering those questions held that the

misconduct against these two individuals is actionable as per the relevant rules to which we have referred in detail. Not only that, we have held that action under the Rules can also be taken 61 against the franchisees concerned. We have noticed of sanction/punishment can vary depending upon the gravity of the misconduct of the persons committing the same. quantum that the 53. Further, in paragraph 63 this Court has clearly laid down that disciplinary committee of the BCCI is empowered to impose an appropriate sanction in terms of Article 6 of the Code upon consideration of relevant factors. Paragraph 63 of the judgment is as follows: 63. In terms of Article 6 of the Code, upon consideration of relevant factors the Disciplinary Committee of BCCI is empowered to impose an appropriate sanction upon the delinquent having regard to the provisions of Article 6.2 and the Table appearing thereunder. There is, therefore, no manner of doubt that even under the Anti-Corruption Code for Participants, any act like betting can attract sanctions not only for the person who indulges in such conduct but also for all those who authorise, cause, knowingly assist, encourage, aid, abet, cover up or are otherwise complicit in any act of omission or commission relating to such activity. 54. We, thus, have to look into Article 6 to find out the imposing punishment/sanction by disciplinary committee of the BCCI. We have noticed that various mitigating and procedure manner for and 62 aggravating circumstances have been noticed by this Court in different judgments while considering the sentencing policy under criminal jurisprudence. If we look into Article 6, Article itself enumerates aggravating and mitigating circumstances. Article 6 contains a heading Sanctions. Para 6.1 provides that in order to determine the appropriate sanction that is to be imposed in each case, the disciplinary committee must first determine the relative seriousness of the offence, including identifying all relevant factors that it deems to. Article 6.1 is as follows: 6.1 Where it is determined that an offence under this Anti-Corruption Code has been committed, the BCCI Disciplinary Committee will be required to impose an appropriate sanction upon the participant from the range of permissible sanctions described in Article 6.2. In order to determine the appropriate sanction that is to be imposed in each case, the BCCI Disciplinary Committee must first determine the relative seriousness of the offence, including identifying all relevant factors that it deems to:

6. 1.1 aggravate the nature of the offence under this Anti-Corruption Code, namely 6.1.1.1 a lack of remorse on the part of the Participant; 6.1.1.2 has whether previously been found guilty of any similar offence under this Anti-Corruption Code Participant the 63 and/or any predecessor regulations of the BCCI and/or the ICC Anti-Corruption Code and/or anti-corruption rules of other National Cricket Federation; 6.1.1.3 where the amount of any profits, winnings or other Reward, directly or indirectly received by the Participant as a result of the offence(s), is substantial and/or where the sums of money otherwise involved in the offence(s) are substantial; 6.1.1.4 where the offence substantially damaged (or had the potential to damage substantially) the commercial value and/or the public interest in the relevant match(es) or event(s); 6.1.1.5 where the offence affected (or had the potential to affect) the result of the relevant match(es) or event(s); 6.1.1.6 where the welfare of a participant or any other person has been endangered as a result of the offence; 6.1.1.7 where the offence involved more than one participant or other persons; and/or 6.1.1.8 any other aggravating factor(s) that the BCCI Disciplinary Committee considers relevant and appropriate. 55. Further, Article 6.1.2 enumerates the mitigating circumstances. Articles 6.1.2, 6.1.2.1 to 6.1.2.9 are as follows: 6.1.2 mitigate the nature of the offence under the Anti-Corruption Code, namely:

6. 1.2.1 any admission guilt (the of 64 where the did offence mitigating value of which may depend upon its timing); 6.1.2.2 the participants good previous disciplinary record; 6.1.2.3 the young age and/or lack of experience of the participant; 6.1.2.4 where the participant has cooperated with the Designated Anti-Corruption Official (or his/her designee) and any investigation or demand carried out by him/her; 6.1.2.5 not substantially damage (or have the potential to substantially damage) the commercial value and/or the public interest in the relevant match(es) or event(s); 6.1.2.6 where the offence did not affect (or have the potential to affect) the result of the relevant match(es) or event(s); 6.1.2.7 where the Participant provides Substantial Assistance to the Designated Anti-Corruption his/her designee), that result in the Designated Anti-Corruption his/her designee) discovering or establishing an offence under this Anti-Corruption Code by another Participant or another cricket Participant bound by such regulations or that results in a criminal or disciplinary body discovering or establishing a criminal

offence or the breach of professional rules by another Participant or other third party; 6.1.2.8 where the participant has already suffered penalties under other laws and/or regulations for the same offence; and/or 6.1.2.9 any other mitigating factor(s) that the BCCI Disciplinary Committee considers Official Official (or (or 65 relevant and appropriate. 56. The Anti-Corruption Code which has articles containing mitigating and aggravating circumstances are necessarily to be taken into consideration while imposing punishment/sanction under Article 6. Article 6.2 contains table in three columns, (i) Anti- Corruption Code of Offence; (ii) Range of permissible period or ineligibility and (iii) additional discretion to impose a fine. It is useful to extract entire Article 6.2 to the following effect:

6. 2 Having considered all of the factors described in Articles 6.1.1 and 6.1.2, the BCCI Disciplinary Committee shall then determine, in accordance with the following table, what the appropriate sanction(s) should be: OF RANGE PERMISSIBLE PERIOD OF INELIGIBILITY A minimum of (5) five years and maximum of a life time A minimum of two (2) years and a maximum of five (5) years A minimum of two(2) years and a maximum ADDITIONAL DISCRETION TO IMPOSE A FINE AND, IN ALL CASES: the BCCI Disciplinary Committee shall have the discretion to a Impose fine on the OF ANTI- CORRUPTION CODE OFFENCE Articles 2.1.1, 2.1.2, 2.1.3 and 2.1.4 (Corruption) Articles 2.2.1, and (Betting) Articles 2.3.1 and 2.3.3 (as it relates to 2.2.2 2.2.3 an offence under Article 2.3.1) Misuse of inside information) Articles 2.3.2 and 2.3.3 (as it relates to an offence under Article 2.3.2) (Misuse of inside information) Articles 2.4.1 and 2.4.2 (General) Articles 2.4.3 and 2.4.4 (General) 66 Participant upto a maximum of the value of any Reward Received by the Participant directly or indirectly, out of or in relation to the offence committed under this Anti- Corruption Code. of years five(5) A minimum of six (6) months and a maximum of five (5) years A minimum of one (1) year and a maximum of five (5) years A minimum of (6) six months and a maximum of two (2) years 57. In the present case life ban has been imposed on the appellant on offences under Article 2.1.1., 2.1.2, 2.1.3 and 2.14(corruption), for which as per second column a minimum of five years and maximum of life time ineligibility is provided for. Whether in case where offence under Article 2.1.1, 2.1.2, 2.1.3 and 2.1.4 is proved, the disciplinary committee is obliged to award a life time ban. The answer has to be that life ban cannot be imposed in all cases

where such offences are committees order 67 disciplinary proved. When range of ineligibility which is minimum five years, maximum life ban is provided for, the discretion to choose either minimum or maximum or in between has to be exercised on relevant factors and circumstances.

58. The dated 13.09.2013 does not advert to the aggravating and mitigating factors as enumerated in Article 6.1.1. and 6.1.2. Without considering the relevant provisions of Anti-Corruption Code the disciplinary committee has imposed life time ban which sanction cannot be held to be in accordance with the Anti-Corruption Code itself. The disciplinary committee had not even adverted to Article 6.1.1 and 6.1.2 which enumerates the aggravating and mitigating circumstances. When the Anti-Corruption Code itself mandates consideration of relevant factors and this Court in Board of Control for Cricket in India (supra) had laid down that the disciplinary committee of the BCCI is empowered to impose appropriate sanction in terms of Article 6 of the Code upon consideration of relevant factors, 68 without considering the relevant factors imposition of maximum punishment cannot be sustained. Apart from factors as noted above the subsequent conduct of the appellant also shows obedience to BCCI. Initially when the life time ban was imposed on 13.09.2013, appellant has not even challenged the said order, it was only after the appellant was discharged from the criminal case on 25.07.2015 and when the appellant got opportunity to play and participate in the Scotland Premier League on e-mail was sent through Kerala Cricket Association on 11.01.2017. It was only thereafter when No Objection Certificate was not granted to the appellant and the BCCI refused to modify the ban, writ petition was filed in February 28, 2017 in the Kerala High Court.

59. In so far as charges proved under Article 2.2.3, 2.4.1 and 2.4.2 the maximum sanction is of 5 years, the award of punishment of five years shall also satisfy the requirement under Code, which need no separate consideration for the purposes of this case. As per Article 6.3.2 all sanction imposed on appellant shall 69 run concurrently. As on date the period of 5 years sanction has come to an end.

60. In view of the foregoing discussion we arrive on the following conclusions: (1) In the disciplinary proceedings held against the appellant under the Anti-

Corruption Code of BCCI the principles of natural justice were not violated. (2) The conclusions drawn by the disciplinary committee of the BCCI on the basis of materials as referred to in paragraphs 12 and 13 of the order cannot be said to be suffering from any infirmity which may warrant the constitutional courts. The constitutional courts in exercise of jurisdiction of judicial review will interfere only when conclusions of the disciplinary committee are perverse or based on no evidence. It is judicial review by 70 not open for the High Court or this Court to substitute its own opinion based on the materials on record on the proof of charges. (3) The standard of proof in a disciplinary inquiry and in a trial of a criminal case are entirely different. In a criminal case it is essential to prove a charge beyond all reasonable doubt wherein in disciplinary inquiry under Anti-Corruption Code of BCCI the preponderance of probability is to serve the purpose. (4) We although have upheld the decision of the disciplinary committee of the BCCI on proof of charges, which upholding of the decision of the disciplinary committee shall have no effect on the criminal appeal which is pending against the appellant against the discharge order. The conclusions and observations as recorded in the disciplinary committee under Anti-Corruption Code are 71 entirely different from proof of criminal charges which require higher yardstick to prove. (5) There was no legal impediment in Shri Srinivasan participating in the disciplinary committee proceedings dated 13.09.2013 as not President. questioned the constitution of disciplinary committee even in the grounds of this appeal he cannot be allowed to challenge the constitution of disciplinary committee at this stage. appellant having The (6) Sanction under Article 6 of Anti-Corruption Code of BCCI is nothing but punishment on commission of the offences and akin to sentencing in criminal jurisprudence. The principles of sentencing as applicable in offence under the Indian Penal Code may not be of Anti- punishment/sanction Corruption Code but principles of sentencing applicable under strictly one to the 72 as applicable in the criminal jurisprudence may be relevant for imposing sanction under the Anti-Corruption Code. (7) In cases where offences under Article 2.1.1, 2.1.2, 2.1.3 and 2.1.4 are proved, the disciplinary committee is not obliged to award a life time ban in all cases where such offences are proved. When range of ineligibility which is minimum five years, maximum life time ban is provided for, the discretion to which, either minimum or maximum or in between has to be exercised on relevant facts

and circumstances. (8) The disciplinary committee order dated 13.09.2013 does not advert to the aggravating and mitigating factors as enumerated in Without Articles considering the relevant provisions of Anti- Corruption Code, the disciplinary committee has imposed a life time ban on the appellant 6.1.2. 6.1.1 and 73 which sanction cannot be held to be in accordance with the Anti-Corruption Code itself. (9) Due to subsequent events also, we are of the view that the disciplinary committee of BCCI should of punishment/sanction to be imposed on the appellant. quantum revisit the 61. In view of the foregoing discussion, we partly allow the appeal in the following manner: (i) The order dated 13.09.2013 of the disciplinary committee only to the extent of imposing sanction of life time ban is set aside. (ii) The disciplinary committee of the BCCI may reconsider of punishment/sanction which may be imposed on the appellant as per Article 6 of the Anti- quantum the 74 Corruption Code. The appellant may be given one opportunity to have his say on the question of quantum of punishment/sanction. (iii) The disciplinary committee may take decision as indicated above on the quantum of punishment/sanction at an early date preferably within a period of three months from today. (iv) Appellant shall await the decision of the disciplinary committee and future course of action shall be in accordance with the decision of the disciplinary committee so taken. Parties shall bear their own costs. NEW DELHI, MARCH15 2019. ....J.

(ASHOK BHUSHAN) ....J.

(K.M.JOSEPH)

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