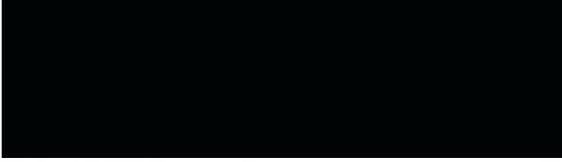


**BEFORE JUSTICE D. K. JAIN, FORMER JUDGE, SUPREME COURT OF INDIA
OMBUDSMAN, THE BOARD OF CONTROL FOR CRICKET IN INDIA**

REFERENCE 3/2019

[Arising out of final judgment and order dated 15.03.2019 (as clarified by subsequent Order dated 05.04.2019), passed in Civil Appeal No. 2424/2019 titled as S. Sreesanth Vs. The Board of Control for Cricket in India & Ors., by the Hon'ble Supreme Court of India]

**In the matter of:
Mr. S. Sreesanth**



ORDER

1. This matter has been referred to the Ombudsman by the Hon'ble Supreme Court of India vide final judgment and order dated 15.03.2019 (as clarified by subsequent Order dated 05.04.2019), passed in Civil Appeal No. 2424 of 2019, titled as "Mr. S. Sreesanth Vs. The Board of Control for Cricket in India & Ors." By the said decision, the Hon'ble Supreme Court of India has partly allowed the Appeal filed by Mr. S. Sreesanth against the order dated 17.10.2017, passed by a Division Bench of the Kerala High Court, reversing the order dated 07.08.2017 passed by a Single Judge of the said High Court. The Ld. Single Judge had allowed the Writ Petition filed by Mr. Sreesanth, seeking revocation of the order passed by the Disciplinary Committee of the Board of Control for Cricket in India (for short "the BCCI") on 13.09.2013, imposing ban for life on him from playing or representing or associating with any activities of the BCCI or its affiliates. The Division Bench restored the punishment imposed on Mr. S. Sreesanth by the BCCI.

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2. The Supreme Court, while holding that the Disciplinary Proceedings held against Mr. Sreesanth under the Anti-Corruption Code of the BCCI (for short “the Code”), the principles of natural justice were not violated and that the conclusions drawn by the Disciplinary Committee of the BCCI on the basis of the materials referred to, in its order does not suffer from any infirmity, which may warrant judicial review, came to a conclusion that the Disciplinary Committee’s sanction order dated 13.09.2013 imposing life ban on Mr. Sreesanth, stands vitiated for the reason that it does not advert to the aggravating and mitigating factors as enumerated in Articles 6.1.1 and 6.1.2 of the Code. The Hon’ble Court has concluded that since the Disciplinary Committee has imposed the life ban on Mr. Sreesanth, without considering the relevant provisions of the Code, the sanction is not in accordance with the Code itself. Accordingly, the Supreme Court has set aside the life ban imposed on Mr. Sreesanth, with a direction to the Disciplinary Committee of the BCCI to re-visit the quantum of punishment/ sanction to be imposed on Mr. Sreesanth, “also due to the subsequent events”. The final directions by the Hon'ble Court, as contained in the final judgment and order dated 15.03.2019 read as follows:

“(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 the quantum of punishment/sanction which may be imposed on the appellant as per Article 6 of the Anti-Corruption Code. The appellant may be given one

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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."

3. Subsequently, on an application moved by the BCCI before the Supreme Court, the Hon'ble Supreme Court vide Order dated 05.04.2019, was pleased to pass the following order:

"Learned counsel for the applicant submits that some of the functions of the Disciplinary Committee are now exercised by the learned Ombudsman. The word 'Ombudsman' be read in place of the 'disciplinary committee' in the operative portion of the judgment dated March 15, 2019. The period as indicated in the order be taken from the date of this order.

The miscellaneous application stands disposed of."

4. Pursuant to the afore noted directions of the Hon'ble Supreme Court of India, the matter was referred to the Ombudsman.

5. Succinctly put, the facts relevant for disposal of this reference are as follows:

5.1 Mr. S. Sreesanth is a registered player with Kerala Cricket Association, which, in turn, is affiliated to the BCCI. He participated in an Indian Premier League (IPL) match held at



Mohali, Punjab on 09.05.2013, representing Rajasthan Royals against Kings XI Punjab. On 09.05.2013, a criminal case was registered in the Special Cell of Delhi Police on the basis of a *suo motu* information provided by an Inspector of Special Cell regarding involvement of various persons in some sort of fixing in the ongoing Cricket matches of the IPL with the active participation of unidentified conduits based in Delhi. On 16.05.2013, Mr. Sreesanth along with two other IPL players, was arrested by the Delhi Police on the allegation of spot fixing. Consequently, by order dated 17.05.2013, the BCCI suspended him and appointed a "Commissioner of Inquiry" (for short "the Commissioner") to look into the matter.

5.2 In a Writ Petition [being Writ Petition(c) No. 318 of 2013], filed in public interest, the Hon'ble Supreme Court, directed the Commissioner to look into the irregularities during the IPL matches, and the individual aberrations or the errant behavior of the players and submit its report to the BCCI within 15 days.

5.3 The Commissioner submitted interim report on 05.06.2013. In so far as Mr. Sreesanth is concerned, the Commissioner opined that there was sufficient evidence against Mr. Sreesanth to prove that he was guilty of the offences under Articles 2.1.1, 2.1.2, 2.1.3, 2.2.3, 2.4.1 and 2.4.2 of the Code. Accordingly, the Commissioner recommended initiation of disciplinary proceedings against all the suspended players.

5.4 In the report, the Commissioner had observed that he did not have access to the players & hence the Report could not be termed as the final conclusion of the matter. On his release from judicial custody, Mr. Sreesanth appeared before the Commissioner. His statement was recorded by the Commissioner on 24.06.2013. He denied all the allegations against him. He retracted from his confessions before the Delhi Police, stating that these were recorded by subjecting him to continuous torture, pressure, threats of arrest of his relatives, etc. The Commissioner submitted Supplementary Report, on 08.07.2013, maintaining his earlier conclusions.

5.5 Consequently, disciplinary proceedings were initiated against Mr. Sreesanth. In the show cause notice, dated 04.09.2013, it was alleged that he had committed offences under Articles 2.1.1, 2.1.2, 2.1.3, 2.4.1 and 2.4.2 of the Code. Mr. Sreesanth denied his involvement in the spot fixing. Upon consideration of his written reply dated 11.09.2013, the Disciplinary Committee, vide its order dated 13.09.2013, found Mr. Sreesanth to be guilty under:

- (i) Articles 2.1.1, 2.1.2 and 2.1.3 of the Code for corruption;
- (ii) Articles 2.2.3 of the Code for betting and;
- (iii) Articles 2.3.1 and 2.4.2 of the Code for bringing disrepute to the game of Cricket and failure to disclose to the Anti Corruption Unit (ACU), BCCI, the full details of having been approached or being invited to engage in a conduct that would amount to breach of the Code.

- 5.6 Accepting the said Report of the Commissioner, the Disciplinary Committee vide its order dated 13.09.2013 banned Mr. Sreesanth from playing or representing for life. It was also ordered that during this period, he would not be entitled to be associated with any activities of the BCCI or its affiliates.
- 5.7 A Charge Sheet was also filed against Mr. Sreesanth and others, accusing them of betting and spot fixing. Mr. Sreesanth filed an application before the Trial Court for discharge. Vide order dated 25.07.2015, the Trial Court discharged him from all the offences alleged against him.
- 5.8 Against the said order of discharge, an Appeal was preferred by the BCCI, which is stated to be pending before the Hon'ble High Court of Delhi.
- 5.9 After his discharge in the Criminal Case, Mr. Sreesanth requested the BCCI to review its Order dated 13.09.2013. Vide its Order dated 18.10.2015, the Disciplinary Committee rejected his request. Mr. Sreesanth again made a request to the BCCI to issue 'No Objection Certificate' to enable him to participate in the Scotland Premier League. The request was declined by the BCCI vide its communication dated 12.01.2017. Yet again, on 11.02.2017, Mr. Sreesanth made a request to the BCCI to revoke the ban and issue 'No Objection Certificate', but again in vain.
- 5.10 Feeling aggrieved by the decision of the BCCI in not revoking the life ban imposed on him, Mr. Sreesanth filed a Writ Petition before the High Court of Kerala, *inter alia*, praying for the quashing of the

Order dated 13.09.2013, and for issue of a mandamus to the BCCI to lift the ban imposed by the Disciplinary Committee, so as to enable him to participate in the Cricket matches both at the National and International level.

- 5.11 Vide order dated 07.08.2017, a Ld. Single Judge of the High Court allowed the Writ Petition and quashed the order of the BCCI imposing life ban and other punishments on Mr. Sreesanth. The Ld. Judge observed that Mr. Sreesanth had suffered ban for almost four years and nothing more was required to be done in the matter.
- 5.12 Being dissatisfied with the order of the Ld. Single Judge, the BCCI carried the matter in Appeal before the Division Bench. Vide order dated 17.10.2017, the Division Bench reversed the order passed by the Single Judge and thus, restored the Order dated 13.09.2013, passed by the BCCI.
- 5.13 Feeling aggrieved, Mr. Sreesanth approached the Hon'ble Supreme Court of India by way of a Special Leave Petition [SLP (C) No. 3551 of 2018], which got converted into Civil Appeal No. 2424 of 2019. As noted above, the Appeal has been partly allowed, with the afore extracted directions.
6. Upon receipt of the certified copy of the final Judgment and Order dated 15.03.2019 and subsequent order dated 05.04.2019, notice was issued to Mr. S. Sreesanth and the BCCI to appear before the Ombudsman for preliminary hearing. Pursuant thereto, Mr. Sreesanth appeared before the Ombudsman along with his Counsel. The BCCI was represented by

its Chief Executive Officer and its Counsel. Both the Counsel made oral submissions. Mr. Sreesanth prayed for and was granted time to file Written submissions along with documents, to substantiate his stand that mitigating factors, as enumerated in Articles 6.1.1 and 6.1.2 of the Code do exist in his favour, warranting lifting of the life ban imposed by the BCCI on him. Accordingly, next sitting in the matter was fixed for 20.05.2019. On the said date, Ld. Counsel for Mr. Sreesanth and the BCCI were again heard at length. Both the parties have filed Written Submissions and supplementary submissions in support of their respective stands.

7. It was submitted by Mr. Krishna Mohan K. Menon, Ld. Counsel appearing for Mr. Sreesanth that the essence of the findings by the Hon'ble Supreme Court in the Remand Order is that while the sentence awarded by the BCCI to Mr. Sreesanth is to be re-visited, in these proceedings, a life ban cannot be awarded. According to the Ld. Counsel, an interpretation of the Remand Order to the contrary would render the present reference, an exercise in futility, inasmuch as, if the Hon'ble Supreme Court was of the opinion that even after taking into consideration the aggravating/ mitigating factors a life ban could be imposed, then such an exercise would have been carried out by the Hon'ble Court itself instead of referring the matter to the Ombudsman. Relying on the observations in Para 58 of the order of the Hon'ble Supreme Court, Ld. Counsel was at pains to explain that these observations by themselves constitute a mitigating factor in favour of his

plea that the present case is not a fit case for imposition of life ban on Mr. Sreesanth. It was also argued that the judgment of the Hon'ble Supreme Court cannot be strictly construed as a Statute and the letter and spirit of its final order must be given due regard while considering the question of award of punishment to Mr. Sreesanth. It was asserted that the scope of the present proceedings before the Ombudsman is not restricted to a mere mechanical assessment of the aggravating and mitigating factors under Article 6 of the Code, but are complete sentencing proceedings, which would require a proper application of the principles of sentencing laid down by the Hon'ble Supreme Court.

8. In support of his submission that the order by the Disciplinary Committee imposing life ban on Mr. Sreesanth is unsustainable. Ld. Counsel highlighted the following mitigating factors:

- i. Although specifically contested as being coerced by the police to admit the guilt, Mr. Sreesanth did not contest the offences alleged against him in disciplinary proceedings;
- ii. There were no disciplinary proceedings against Mr. Sreesanth in the past although he had been part of the World Cup and the Champions Trophy Winning Squads and a holder of category B/C contract with the BCCI;
- iii. At the time of the alleged incident, Mr. Sreesanth was 30 years of age and had no idea of the Bookie nexus operating behind the scene;



- iv. Mr. Sreesanth had fully cooperated with the investigations initiated by the BCCI;
- v. Mr. Sreesanth was not a part of the betting syndicate and at best could be alleged to have the knowledge of the attempted fixing of the subject match;
- vi. The alleged act by Mr. Sreesanth had no material bearing on the public interest or commercial value of the sport, more so, when it is in public domain that the revenue of IPL matches during that season had not dipped despite the betting scam;
- vii. The alleged incident had no effect on the result of the match and the team Rajasthan Royals won the game comfortably;
- viii. Mr. Sreesanth's career average of run per over in IPL was approximately 8.5 and in the subject match only 9 runs had been scored in the contentious over;
- ix. Mr. Sreesanth had already suffered incarceration during the period 16.05.2013 to 10.06.2013;
- x. Mr. Sreesanth had maintained good conduct in 8 years of International Cricket and 6 years of IPL, during and after the contentious match day;
- xi. Mr. Sreesanth is a known philanthropist and had contributed a lot to the society, particularly, in moulding the future of young cricketers with humble backgrounds;
- xii. He is a family man with two kids and a youth icon and therefore, there is no potential for his repeating the alleged offence; and



- xiii. Mr. Sreesanth is already 36 years of age and being a fast bowler, having undergone multiple surgeries, is left with only 3 years of active sporting life.
- xiv. It was also argued by the Ld. Counsel that for the purpose of determination of appropriate sanction(s), as stipulated in Article 6.2 of the Code, what has to be borne in mind is the 'Sport life' of the player and not his 'Biological life'. It was thus, pleaded by the Ld. Counsel that having regard to all these factors, Mr. Sreesanth has already suffered sufficient punishment for the alleged offences and therefore, he does not deserve further sanctions.
9. *Per contra*, while contesting the stand of Mr. Sreesanth to the effect that in the light of the observations by the Hon'ble Supreme Court in the remand order, life ban cannot be imposed on him, it was asserted by the BCCI that since there is no ambiguity on the facts and circumstances of the present case, a strict and literal interpretation of the judgment must be adopted. It was argued that if upon consideration of the mitigating and aggravating circumstances in terms of Article 6 of the Code, the Ombudsman comes to the conclusion that a case for imposition of life ban on Mr. Sreesanth is made out, there is no embargo on imposition of life ban on Mr. Sreesanth, even at this stage.
10. In support of the submissions that a case for life ban is made out, the BCCI has highlighted the following aggravating circumstances:

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- i. Mr. Sreesanth has not shown any remorse for his conduct at any point of time, be it during the investigations; before the Investigating Authority; the Disciplinary Committee or even the High Court and the Supreme Court;
- ii. There is a clear evidence of Mr. Sreesanth having received a sum of ₹10,00,000/- in lieu of the offence committed;
- iii. The offence committed by Mr. Sreesanth clearly had the potential to affect public interest in the relevant match and the relevant provisions of the Code do not stipulate requirement of an actual damage on account of an offence;
- iv. It was evident from the evidence on record, particularly the transcripts of the audio recording that various other persons, including Jiju Janardhan, Chandresh Patel, etc. were involved in the offence; and
- v. The award of sentence, less than a life ban in a clear case of match fixing, can clearly impact public confidence in the game of Cricket.

11. Insofar as the afore stated mitigating factors, pressed into service on behalf of Mr. Sreesanth are concerned, the stand of the BCCI is that prior to the subject spot fixing case, Mr. Sreesanth had been infamous for his uncontrolled presentation of negative temperament in the form of anger, frustration and scuffles on field with other players; his age cannot be a mitigating factor as he was 30 years of age at the time of the incident and was thus, matured enough to understand the implications of the alleged

offences; Mr. Sreesanth had not made any effort in providing substantial assistance to the designated anti-corruption official to discover or establish an offence under the Code by other participants bound by the Rules and Regulations of the BCCI. It is pleaded that under Article 6.1 of the Code, the Disciplinary Committee is not required to ensure that the offence committed by an offender attracts each of the aggravating factors. It is merely required to determine, after taking on record all the relevant factors, whether the relevant factors aggravate or mitigate the offence, and that the quantum of punishment is a matter of discretion and must be decided on a case to case basis.

12. In the additional written submissions filed on behalf of Mr. Sreesanth, it is pleaded that additional mitigating factors are available in Article 2.6 of the Code itself, in as much as it provides that the nature or outcome of the match may be a mitigating factor to the issue of the sanction to be imposed under Article 6 of the Code. It is thus, urged that since in the instant case the alleged offending act had no effect on the result of the match, the factum of actual result of the match can be taken as an independent mitigating factor. It is also pleaded that the findings of the guilt against Mr. Sreesanth are also vitiated because no Cricketing Expert was ever appointed to look into the aspect of a good or bad over by Mr. Sreesanth.

13. In the supplementary submissions filed on behalf of the BCCI, the stand of Mr. Sreesanth on the interpretation of Article 2.6.2 of the Code to the



effect that the outcome of a “bet” is a relevant factor for determining the quantum of sanction is refuted. According to the BCCI, the said Clause points to the relevance of outcome of the “bet” on other players, team, etc. and not, whether or not, it is carried out successfully.

14. The principles of sentencing have been explained in a catena of decisions of the Hon'ble Supreme Court. However, for the purpose of disposal of this reference, I do not propose to burden this order by referring to these judgments in extenso. It would suffice to refer to the decision of the Constitution Bench of the Hon'ble Supreme Court in Bachan Singh Vs. State of Punjab (1980) 2 SCC 684, a locus classicus on the principles of sentencing. While emphasizing that the sentencing principle may not only be confined to the nature of the crime, but may also focus on the Criminal, the Hon'ble Supreme Court observed as follows:

“201.....As we read Sections 354(3) and 235(2) and other related provisions of the Code of 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’....”

(Emphasis supplied)

15. In Mukesh & Anr. Vs. State (NCT of Delhi & Ors. (2017) 6 SCC 1, a three Judge Bench of the Hon'ble Supreme Court has also observed that awarding sentence is a matter of discretion of the Judge, which has to be

exercised on consideration of the circumstances aggravating or mitigating in the individual cases. It needs little emphasis that the principles of proportionality, deterrence and rehabilitation are to be kept in view while exercising discretion in sentencing. Further, as a part of proportionality analysis, mitigating and aggravating facts are to be taken into consideration. [See: Soman Vs. State of Kerala (2013) 11 SCC 382]. Moreover, the decision of the Hon'ble Supreme Court in the instant case has also ruled that sanctions under Article 6 of the Code are akin to sentencing in the criminal jurisprudence.

16. As noted above, the Hon'ble Supreme Court has affirmed the initiation of disciplinary proceedings, and the conclusions drawn by the disciplinary committee against Mr. Sreesanth. The question referred for the consideration of the Ombudsman is whether any aggravating and mitigating factors, as enumerated in Articles 6.1.1 and 6.1.2 of the Code exist in the present case, not warranting life ban on Mr. Sreesanth for committing offences under Articles 2.1.1, 2.1.2, 2.1.3, 2.1.4 of the Code, when range of permissible period of ineligibility for the said offences is minimum of five years and maximum of life time.
17. Before adverting to the issue at hand, it will be profitable to refer to the following observations in the judgment of the Hon'ble Supreme Court in the present case, while pithily explaining the scope and purport of the relevant provisions of the Code:



“54. We, thus, have to look into Article 6 to find out the manner and procedure for imposing punishment/ sanction by disciplinary committee of the BCCI. We have noticed that various mitigating and 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 whether the Participant has previously been found guilty of any similar offence under this Anti-Corruption Code and/or any predecessor regulations of the BCCI and/or the ICC Anti-Corruption Code and/or

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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:

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6.1.2.1 any admission of guilt (the mitigating value of which may depend upon its timing);

6.1.2.2 the participant's 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 where the offence did 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 Official (or his/her designee), that result in the Designated Anti-Corruption Official (or 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 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:

ANTI CORRUPTION CODE OF OFFENCE	RANGE OF PERMISSIBLE PERIOD OF INELIGIBILITY	ADDITIONAL DISCRETION TO IMPOSE A FINE
Articles 2.1.1, 2.1.2, 2.1.3 and 2.1.4 (Corruption)	A minimum of five (5) years and maximum of a life time	AND, IN ALL CASES: the BCCI Disciplinary Committee shall have
Articles 2.2.1, 2.2.2 and 2.2.3 (Betting)	A minimum of two (2) years and a maximum of five (5) years	the discretion to Impose a fine on the participant upto a maximum of
Articles 2.3.1	A minimum of	the value of

<i>and 2.3.3 (as it relates to an offence under Article 2.3.1) Misuse of inside information)</i>	<i>two (2) years and a maximum of five (5) years</i>	<i>any Reward received by the Participant directly or indirectly, out of or in relation to the offence committed under this Anti Corruption Code.</i>
<i>Articles 2.3.2 and 2.3.3 (as it relates to an offence under Article 2.3.2) (Misuse of inside information)</i>	<i>A minimum of six (6) months and a maximum of five (5) years</i>	
<i>Articles 2.4.1 and 2.4.2 (General)</i>	<i>A minimum of one (1) year and a maximum of five (5) years</i>	
<i>Articles 2.4.3 and 2.4.4 (General)</i>	<i>A minimum of six (6) months and a maximum of two (2) years</i>	

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,*

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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 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 disciplinary committee's order 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, 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.”

(Emphasis supplied)

18. There is no denying the fact that in this Country the game of Cricket is revered, and the Cricketers are idolized. The Cricketers wield immense influence in the society at large and among the youths in particular, who look upon them as role-models. Therefore, a Cricketer, particularly of international standing needs to bear in mind that he is shouldering a massive responsibility towards the society all the time, be it on or off the field, in motivating and inspiring right conduct amongst those young minds who look upon such prodigies as role models. Besides, it cannot also be disputed that spot fixing is a serious offence that can have material impact on the outcome of a match, especially for shorter duration matches like T-20, etc. Such an offence, has the potential of impacting the very faith of the public in the game of cricket, considered as a “gentleman’s game” and thus, cannot be considered to be less heinous than match fixing. As such, it requires to be dealt with firmly. The sentence for committing such act should also serve as a deterrent for others. Therefore, I am in complete agreement with the stand of the BCCI that the Code envisages a zero tolerance to corruption and any offence committed within the meaning of the Code cannot be ignored or is to be dealt with leniently. Nevertheless, as observed by the Hon'ble Supreme Court in the Remand Order, zero tolerance approach cannot dilute consideration of the relevant factors while imposing sanction under

Article 6 of the Code. It has also been emphasized that the quantum of sanction/ punishment can vary, depending upon the gravity of the misconduct of the person(s) committing the same.

19. Having bestowed my anxious consideration to the facts at hand and also bearing in mind the afore extracted observations in the Remand Order, I am of the view that Mr. Sreesanth has been able to establish, at least, a few mitigating circumstances, as enumerated in Article 6.1.2 of the Code. Although the BCCI has referred to his erratic behaviour, both on and off the field, with fellow players, but nothing has been brought on record by the BCCI to show that any sanction was imposed on him in the past. On the contrary, he was regularly participating in the national and international matches. In the report of the Commissioner there is no allegation that Mr. Sreesanth did not co-operate in the Inquiry. Additionally, the BCCI has not been able to controvert the specific plea of Mr. Sreesanth that the offences allegedly committed by him did not substantially damage the commercial value of the IPL matches, or even the final result of the subject match. I am, therefore, convinced that mitigating circumstances, as enumerated in Articles 6.1.2.2, 6.1.2.4, 6.1.2.5, and 6.1.2.6, respectively, are attracted in the instant case. I hold accordingly.

20. Having arrived at the said conclusion, the next question for consideration is as to what sanction/punishment should be imposed on Mr. Sreesanth for the offences alleged against him?



21. Mr. Sreesanth is already facing a ban for almost a period of six years now, which bars him from playing Cricket or participating in any event, with which the BCCI is, directly or indirectly, associated. Even other wise, for Mr. Sreesanth, who is now in his late thirties, his prime years as a Cricketer, particularly as a fast bowler may already be over. Bearing in mind, all these factors, I am of the view that banning Mr. Sreesanth from participating in any kind of commercial Cricket or from associating with any activities of the BCCI or its affiliates, for a period of seven years with effect from 13.09.2013, i.e. the date from which, the period of ban imposed by the Disciplinary Committee had commenced, will meet the ends of justice.

22. It is ordered accordingly.

7th August 2019


JUSTICE D.K. JAIN
OMBUDSMAN, BCCI