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SHYAM LAL VERMA

v.

CENTRAL BUREAU OF INVESTIGATION
(Criminal Appeal No. 171 of 2013)

B

JANUARY 21, 2013

[P. SATHASIVAM AND JAGDISH SINGH KHEHAR, JJ.]

Prevention of Corruption Act, 1988 – Offences under – Applicability of the Probation of Offenders Act – Appellant, a retired employee of Post Office – Allegation that he misappropriated money – Trial court convicted appellant u/ s.477A IPC r/w s.13(1)(c) and 13(2) of the Prevention of Corruption Act – However, instead of awarding sentence, the trial court released the appellant under the Probation of Offenders Act – High Court allowed appeal of the CBI and sentenced appellant to one year under ss.477A IPC and u/ s.13(1)(c) read with s.13(2) of the Prevention of Corruption Act for a further period of one year – Both sentences directed to run concurrently – Whether the Probation of Offenders Act is applicable to offences under the Prevention of Corruption Act – Held: Since s.7 as well as s.13 of the Prevention of Corruption Act provide for a minimum sentence of six months and one year respectively in addition to the maximum sentences as well as imposition of fine, claim for grant of relief under the Probation of Offenders Act is not permissible – In cases where a specific provision prescribes a minimum sentence, the provisions of the Probation Act cannot be invoked – No valid ground to interfere with the impugned order of the High Court – Appellant to surrender and to undergo remaining period of sentence – Probation of Offenders Act, 1958 – Penal Code, 1860 – s.477A.

State Through SP, New Delhi v. Ratan Lal Arora **2004 (4) SCC 590: 2004 (1) Suppl. SCR 631** and *State Represented*

H

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by *Inspector of Police, Pudukottai T.N. v. A. Parthiban* 2006 (11) SCC 473: 2006 (7) Suppl. SCR 35 – relied on. A

Case Law Reference:

2004 (1) Suppl. SCR 631 relied on Para 8

2006 (7) Suppl. SCR 35 relied on Para 8 B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 171 of 2013.

From the Judgment & Order dated 13.03.2012 of the High Court of Uttarakhand at Nainital in Criminal Appeal No. 291 of 2004. C

Fakhruddin, Raj Kishor Choudhary Sheeba Fakhruddin Adil, Surya Kamal Mishra Ashok Mathur for the Appellant. D

Prakriti Purnima, T.A. Khan, B.V. Balram Das, Arvind Kumar Sharma for the Respondent.

The following Order of the Court was delivered

O R D E R E

1. Leave granted.

2. The appellant is a retired employee of Post Office. The incident occurred in 1993-94. The allegation against him is that he misappropriated to the extent of Rs.1,35,240/- (Rupees one lakh thirty five thousand and two hundred forty). The employees of various departments deposited their amount, but the appellant did not remit the amount and failed to make entry in the ledger. He was charged under Section 477-A IPC read with Section 3(1)(c) and 13(2) of the Prevention of Corruption Act 1988. F G

3. After fullfleged trial, the Trial Court convicted him under the above mentioned Sections. However, instead of awarding H

A sentence, the Trial Court released the appellant under the Probation of Offenders Act, 1958 on executing a personal bond in the sum of Rs.50,000/- and furnishing two sureties each of the like amount for a period of one year. He was also directed to maintain peace and good behaviour during this period.

B 4. Aggrieved by the above decision of the Trial Court, the CBI filed an appeal before the High Court. Admittedly, the accused did not file any appeal challenging the order of conviction. By the impugned order, the High Court allowed the appeal of the CBI and sentenced him for a period of one year under Sections 477-A IPC and under Section 13(1)(c) read with C Section 13(2) for a further period of one year. Both the sentences were directed to run concurrently.

D 5. Questioning the order of the High Court sentencing him, as stated above, the accused preferred the present appeal by way of special leave.

E 6. Heard learned senior counsel appearing on behalf of the appellant and learned counsel appearing on behalf of the respondent-CBI.

F 7. The only point for consideration in this appeal is, whether the Probation of Offenders Act is applicable to offences under the Prevention of Corruption Act? The Trial Court applied Probation of Offenders Act and sentenced him accordingly. This was reversed by the High Court and ultimately imposed substantive sentence of one year.

G 8. It is not in dispute that the issue raised in this appeal has been considered by this Court in 2004 (4) SCC 590 – *State Through SP, New Delhi Versus Ratan Lal Arora* wherein in similar circumstances, this Court held that since Section 7 as well as Section 13 of the Prevention of Corruption Act provide for a minimum sentence of six months and one year respectively in addition to the maximum sentences as well as imposition of fine, in such circumstances claim for granting relief under the H

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Probation of Offenders Act is not permissible. In other words, in cases where a specific provision prescribed a minimum sentence, the provisions of the Probation Act cannot be invoked. Similar view has been expressed in 2006 (11) SCC 473 – *State Represented by Inspector of Police, Pudukottai, T.N. Vs. A. Parthiban*.

9. In view of the settled legal position, we find no valid ground to interfere with the impugned order of the High Court. Consequently, the appeal is dismissed.

10. In view of the dismissal of the appeal, the appellant shall surrender and has to undergo remaining period of sentence. His bail bonds executed pursuant to our order dated 05.07.2012 shall stand cancelled.

B.B.B.

Appeal dismissed.