

(2014) 01 GAU CK 0004
In the Gauhati High Court
Case No : Crl. Appeal No. 181 of 2009

Dhiraj Burman

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 120A, 120B, 511
Prevention of Corruption Act, 1988 — Section 13, 13(1)(b), 13(1)(c), 13(1)(d), 13(1)(d)(ii)

Citation : (2014) 1 GLD 583 : (2014) 5 GLT 220

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : K. Agarwal, P. Kataki, M. Haloi and K. Pareek, Advocate for the Appellant; P.N. Choudhury and Sr. S.C., C.B.I, Advocate for the Respondent

Final Decision : Dismissed

Judgement

B.D. Agarwal, J.—The appellant herein was working as Lower Division Assistant in the Office of the District Judge, Kamrup, Guwahati at the relevant time. In the year 2004 few posts of junior Administrative Assistants were notified to be filled up. The written test for the said vacant posts was held in the month of July and the oral interview was held on 11.09.2004. Thereafter the Gauhati High Court Registry came to know that a few candidates were being approached by someone to engage him as a middle man to get the job. Accordingly, an administrative enquiry was held and thereafter a formal FIR was registered; on the basis of a judicial order passed in W.P. (C) 87 of 2005 on 10.1.2005, by the CBI being Case No. RC 2(A)/2005-GWH under Sections 120-B/511 of the Indian Penal Code and Section 7 of the Prevention of Corrupt Act, 1988. After the investigation, charge-sheet u/s 120B, IPC and Sections 7 and 15 of the PC act were filed against the appellant Dhiraj Barman and one Bhusan Kalita on 24.3.2006. The co-accused Bhusan Kalita subsequently became an approver and examined as PW 25. After the trial, the appellant herein has been convicted u/s 120B, IPC and Sections 7 and 15 of the PC Act and varied sentences have been awarded, maximum being

R1 for two years with fine vide impugned judgment dated 29.9.2009 passed by the learned Special Judge, CBI, Assam, Guwahati in Special Case No. 14 of 2005. Being aggrieved with his conviction and sentences the sole accused has preferred this appeal. I have heard oral arguments of Sri K. Agarwal, learned counsel for the appellant and that of Sri P.N. Choudhury, learned Senior Standing counsel for the C.B.I. Sri Agarwal has also furnished comprehensive written argument and during the course of hearing the learned counsel also took me to the oral evidence of the witnesses in detail

2. On the basis of the evidence collected by the Investigating Officer the following charges were framed against the appellant before the commencement of the trial.

During 2004, while working as LDA in the office of the Court of District & Sessions Judge, Kamrup at Guwahati you entered into criminal conspiracy with Sh. Bhusan Kr. Kalita and others and in pursuant to such conspiracy, you agreed to do some illegal acts, to wit, (1) cheat the Hon''ble Gauhati High Court as well as candidates, such as Sh. Rituparna Das, Sh. Rajib Deka and Sh. Suprotive Lal Baruah; (2) demand illegal gratification ranging from 1.20 lacs to 1.50 lacs, from some candidates, namely, Sh. Rituparna Das, Sh. Rajib Deka and Sh. Suprotive Lal Baruah on giving false assurance of selecting them as LDA in the Hon''ble Gauhati High Court and (3) collect aforesaid sum in installment-first part as advance and second part after the declaration of result/and after their joining in service and thereby committed an offence punishable u/s 120B, IPC and within the cognizance of this Court.

During the same time and place, you being the LDA a public servant, attempted to obtain illegal gratification from Sh. Rituparna Das, Sh. Rajib Deka and Sh. Suprotive Lal Baruah, which you were not legally entitled to, for showing them some favour from some public servants, working in the High Court and the District & Sessions Judge establishment in discharge of their official duties and thereby committed offence punishable u/s 7 of the PC Act, 1988 and within the cognizance of this Court.

During the above time and place, you being public servant, attempted to obtain illegal gratification by corrupt and illegal means and thereby committed an offence punishable u/s 15 of the PC Act, 1988.

And I hereby, direct, that you be tried by this Court on the said charge.

3. For easy appreciation of the legal issues raised by the learned counsel for the appellant and also for better appreciation of the evidence it would be proper to extract the relevant provisions of Sections 120A and 120B of the IPC and Sections 7, 13 and 15 of the PC Act, 1988:

Sections 120A and 120B of IPC.

120-A. Definition of criminal conspiracy.--When two or more persons agree to do, or cause to be done,--

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

120-B. Punishment of criminal conspiracy.--(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]

Sections 7, 13 and 15 of the PC Act, 1988.

7. Public servant taking gratification other than legal remuneration in respect of an official act.--Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature, of any State or with any local authority, corporation or Government company referred to in Clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Explanations.--

(a) "Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) "Gratification." The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) "Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) "A motive or reward for doing" A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

13. Criminal misconduct by a public servant.--(1) A public servant is said to commit the offence of criminal misconduct,--

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,--

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.--For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

15. Punishment for attempt.--Whoever attempts to commit an offence referred to in Clause (c) or Clause (d) of sub-section (1) of Section 13 shall be punishable with imprisonment for a term which may extend to three years and with fine.

4. Altogether 26 witnesses were examined by the prosecution to establish the aforesaid charges. The witnesses include as many as five candidates, seeking job in the High Court, viz.; PWs 8, 12, 14, 15 and 16. The defence case was of total denial and no counter story was projected as to why he might have been falsely framed in the case and as to why the approver also implicated him in the aforesaid offence. On the basis of the prosecution evidence the appellant was accordingly convicted.

5. Sri Agarwal, learned counsel for the appellant contended that to convict a person u/s 120B, IPC there has to be involvement of more than one person for forging a conspiracy. Referring to various authorities the learned counsel argued that without there being any evidence that there was meeting of minds between the appellant and the approver it was not proper for the trial Court to convict the appellant for the offence of conspiracy. With regard to the conviction of the appellant both under Sections 7 and 15 of the PC Act the learned counsel contended that such recourse is not permissible. According to the learned counsel the ingredients of both Sections 7 and 15 are identical and, as such, conviction on both the counts is not justified. The learned counsel also submitted that since the appellant was not an employee in the High Court it cannot be held that he was discharging any duty in the establishment of the High Court. According to the learned counsel since the appellant was not an employee of the High Court there was no question to obtain gratification for doing or forbearing any official act in the High Court. The learned counsel also submitted that there is also no evidence to obtain gratification for rendering any service or disservice to any person with the Central Govt. or State Govt. etc. as referred to Section 7 of the Act. The learned counsel also contended that for convicting a person u/s 15 the ingredients of criminal misconduct, laid down u/s 13 of the Act, should be fulfilled. According to the learned counsel there is no evidence to hold that the appellant had abused his position as a public servant in the office of the District Judge facilitating some candidates to get job in the High Court. The learned counsel also submitted that there are material discrepancies with regard to search and seizure, identification of the accused and in granting "sanction" for prosecution of the appellant. Besides this the learned counsel has also assailed the validity and legality of tendering pardon to the co-accused, Bhusan Kalita (PW 25).

6. In order to establish the aforesaid offences the prosecution examined altogether 26 witnesses. Out of them PWs 8, 12, 14, 15 and 16 are the candidates for the posts of L.D. Assistants (JAA) in the High Court who were

approached by the appellant seeking bribe for their selection. Hence, I would first discuss the oral evidence of the candidates to know as to how they have implicated the appellant in the offences.

7. Rajib Deka (PW 8)

This witness came to know about his selection for the post of LD Asstt. (JAA) in the 1st week of December, 2004. Prior to that two persons from High Court visited his residence. Those two persons were met by the brother of PW 8 namely Sri Chandan Deka and one Pradip Das. PW 8 was reported by his brother that the two persons from the High Court can arrange the job provided they are compensated in terms of money. However, both PW 8 and his brother refused to pay any amount of bribe. In the cross-examination PW 8 has admitted that he had no occasion to meet two persons, who came for taking bribe. As a whole, from the evidence of PW 8 it is gathered that two persons were contacting the candidates with a promise to arrange a job in the High Court in lieu of money.

8. Manoj Kumar Goswami (PW 12).

This witness was also selected for the post of LI) Asstt. (JAA) in the High Court. According to PW 12 during "Puja Vacation, 2004" i.e., prior to publication of the select list one person visited his house and met his mother. According to PW 12 since he was not at home the person supplied a chit containing the name of one "D. Barman" and his mobile number. PW 12 has further deposed that later on he contacted the person at his mobile number. Then the said person assured a job on payment of Rs. 1,00,000/- (Rupees one lac). On the second occasion the witness bargained about the bribe money and on further enquiry the contact told PW 12 that he would arrange the job through an officer in the High Court itself. Having found some substance in the offer PW 12 discussed the issue with his friends and sister and telephoned the contact again after a week and offered him first instalment of Rs. 10,000/- (Rupees ten thousand) only. However, the contact declined the offer and the deal did not materialize. Subsequently, PW 12 came to know that the person, who was demanding the money, was one Dhiraj Barman and he was an employee in a Court near the High Court building. It may be mentioned herein that the appellant was an employee in the office of the District Judge, which is situated at a stone's throw distance from the High Court. PW 12 further came to know that brother of the appellant was working as a Deputy Registrar in the High Court. Strangely, PW 12 has admitted in the cross-examination that Dhiraj Barman did not demand any money for himself but he had told the witness that he could arrange the job on payment of Rs. 1,00,000/- (Rupees one lac) only. Be that as it may, soliciting money on behalf of others and that too for arranging a job is an offence under Sections 7 & 15 of the PC Act. u/s 7 of the PC Act if a public servant accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or any other person, any gratification is an offence. Similarly, the definition of criminal misconduct by a public servant u/s 13 also includes accepting or attempting to obtain from any person for himself or for any other person any gratification. In the cross-

examination the witness failed to furnish the source wherefrom he came to know that the person who was demanding money was one Dhiraj Barman. However, in the chief- examination PW 12 has already made it clear that on the first day itself the accused had identified himself as "D. Barman" while giving a chit to his mother with mobile number. At the same time, there is no suggestion to this witness that he has falsely implicated one D. Barman with any ulterior motive. Except little deficiency in the identification of the accused the witness has thoroughly corroborated the prosecution case.

9. Supratiplal Baruah (PW 14).

This witness has deposed that before the publication of the select list one Diganta Burahogain visited his house in his absence and supplied one mobile number to his brother, requesting the witness to contact him. According to PW-14 when he met the person at a particular place he introduced himself as one Hitesh Deka who gave him the mobile number of one Rituraj Barman. On being enquired the person told this witness that he should meet Rituraj for his selection in the High Court. Thereafter, PW 14 contacted so called Rituraj Barman over telephone and subsequently also met him physically at the earlier place, where he had met one Hitesh Deka. Then Rituraj told PW 14 that he would have to spend Rs. 2.00 to 2.50 lacs for getting the job in the High Court but assured that he would arrange the job only at Rs. 1,50,000/- (Rupees one lac fifty thousand) only. Thereafter, the said Rituraj again contacted him but the witness delayed the process and subsequently did not contact Rituraj. When PW 14 was eventually selected and he visited the High Court he came to know that the offender was not Rituraj Barman but he was Dhiraj Barman. This witness identified the accused in the dock, while giving his oral testimony.

9.1. In the cross-examination PW 14 has admitted that during the interrogation period C.B.I. personnel had taken him to the Court of District Judge, Kamrup and showed him the appellant, who was standing in the Court campus. This witness has further admitted that he was also shown a photograph of Dhiraj Barman before his identification in the Court. At the same time, PW 14 has furthered deposed that he was able to identify the accused on the basis of a group photograph of Dhiraj Barman. Hence, it is difficult to believe that the PW 14 had identified the accused either at the instance of the CBI or on being shown by the I.O. In other words, the identification of the accused by the witness from a group photograph appears to be natural process of investigation. There was no other way for the I.O. to narrow down his investigation upon a particular suspect.

10. Nabakumar Sharma (PW 15).

He is another selected candidate for the post of LD Asstt. in the High Court. On 28.9.2004 one person visited his house when he was out of home. According to PW 15 the visitor enquired from his mother as to whether he had applied for a job in the High Court. Subsequently, on the same evening PW 15 received a telephone call from the person who had earlier visited in the morning and offered

his help in getting the job. On being asked the person told him that he has some influence in the High Court. On the next day the witness received another phone call and demanded a sum of Rs. 1.20 lacs but PW 15 refused to pay the money. In this way PW 15 has supported the prosecution story partially and to the extent that someone was trying to contact few selected candidates in order to make money. This was possible for the appellant since his brother was working as a Deputy Registrar in the High Court and this was an additional advantage to him.

11. Rituparna Dns (PW16).

This witness was also qualified for interview and subsequently got a job in the High Court as a Junior Assistant. From the deposition of PW 16 it appears that the appellant tried to contact this witness directly as well as through another channel. According to PW 16 in the month of September, 2004 one Upen Sarma (PW 11) came to their house and met his parents for his appointment in the High Court. The said Upen Sarma told his parents that he knew some persons who can arrange the job on payment of Rs. 1.5 lacs. When Upen Sarma was told that the money would be paid only after selection he did not turn up.

11.1. PW 16 has further deposed that in the month of November, 2004 one Bhusan Kalita (approver) sent a chit through one Anima Rabha (PW 4) and the chit contained the name of one Bhusan Kalita and the witness was directed to contact him. Initially, the uncle of PW 16 namely, Jyotish Kalita (PW 9) met Bhusan Kalita, who told him that there was a person in the Court of District Judge who can arrange a job of LD Asstt. in the High Court on payment of Rs. 1.5 lacs. The said Bhusan Kalita also told to PW 9 that the brother of employee of District Judge was also working in the High Court and this declaration indicated substance in the offer. PW 16 has further deposed that, on the next day, he accompanied by his friend Dwipen Das (PW 6) and his uncle (PW 9) came to the Court of District Judge, Kamrup and met Bhusan Kalita (PW 25). The said Bhusan Kalita introduced Dhiraj Barman who told the witness that he could arrange the job of LD Asstt. in the High Court on payment of Rs. 1.5 lacs. The witness also identified the appellant as Dhiraj Barman in the High Court. In view of his testimony the controversy regarding doubtful identification by PW 14 and other witnesses stands resolved. PW 16 has further deposed that they were ready to pay the gratification through Bhusan Kalita but Bhusan Kalita refused to accept the money and told them that the money should instead be paid directly to Dhiraj Barman. In this regard there were various telephonic talks between Dhiraj Barman and PW 16 but the deal did not materialize since PW 16 declined to pay the bribe money to the appellant directly.

11.2. In the cross-examination PW 16 has clarified that Upen Sharma (PW 11) was the first person to visit their house in this regard. PW 16 has further deposed that initially the discussion regarding his job was confined between his uncle, the approver and PW 11. The witness declined the defence suggestion that he was told by the CBI as to what to be stated in the Court. The witness has further admitted in the cross-examination that one day the appellant Dhiraj

Barman was also shown to him by the CBI during investigation. However, PW 16 emphatically refused the defence suggestion that he never saw or met Dhiraj Barman prior to that, meaning thereby that he came in contact with Dhiraj Barman prior to giving his statement to the CBI. In this way, there is no difficulty for me to believe that the person who was contacting PW 16, his uncle and other person was none else than Dhiraj Barman.

12. Bhusan Kalita (PW 25)---Approver.

PW 25 had acquaintance with the appellant Dhiraj Barman since both of them were employees in the Court of District Judge, Kamrup at Guwahati. This is the person with whom the accused had allegedly conspired to cheat PW 16 and other candidates. However, except PW 16 other candidates have not implicated the approver for demanding money on behalf of the accused/appellant. PW 25 has deposed that he knew PW 16 being a resident of the same village. PW 25 has deposed that during Puja Vacation (some time in the month of September) the appellant contacted him and enquired as to whether he knew one Rituparna Das (PW 16) and on being confirmed the appellant told him that he had sent one Upen Sharma(PW 11) but the same person did not report him back. The witness has further deposed that the appellant had requested him to convey the message to PW 16 that he can help him in getting the job in the High Court. On being informed, Rituparna's uncle Jyotish Kalita {PW 9) visited the house of this witness and enquired as to how Dhiraj Barman could help Rituparna Das in getting the job. Thereafter, PW 25 advised Jyotish Kalita to talk to the appellant and he could be a mediator in this regard. Accordingly, a meeting was arranged with Dhiraj Barman. According to PW 25 the appellant Dhiraj barman had a talk with Jyotish Kalita (PW 9) and Rituparna Das (PW 16) and the appellant assured them to arrange a job provided they can arrange a sum of Rs. 1.5 lacs. According to PW 25, some how the appellant was persuaded to accept half of the demanded money and PW 16 was ready to pay the money through him. However, PW 25 refused to be a party to the monetary transaction. This was not tolerated by the appellant and he had rebuked the approver for not taking money on his behalf.

12.1. In the cross-examination PW 25 had reiterated that the appellant was his colleague and friend. The witness also admitted that the entire family members of PW 16 were known to him from before. PW 25 has further clarified that his first meeting with PW 16 and his uncle along with appellant took place in his office in the month of November, 2004. PW 25 has given exculpatory statement in the cross- examination deposing that he was not interested in procuring a job and monetary transaction and his role was limited to introduce the appellant with PW 16 and his uncle. The witness further negated the defence suggestion that he became the approver at the instance of the CBI and not voluntarily. Except these flimsy suggestions I do not see any material suggestion in the cross-examination to take a view that PW 25 has falsely implicated his colleague/appellant in this case. In his 313, Cr PC statement the accused replied that PW 25 has given false

testimony to hide his own mischief and the appellant has been made an escape got. However, the accused failed to examine any witness from the office of the District Judge that the approver was the actual culprit and not the appellant.

13. Now I shall discuss testimony of some other material witnesses.

PWs 4, 5, 6, 7, 9 and 11 are the witnesses who have corroborated the testimony given by the candidate Rituparna Das (PW 16) and the approver (PW 25). PW 9 Jyotish Chandra Kalita is the uncle of PW 16 whose testimony has already been discussed earlier. PW 4 is a tenant of the sister of PW 16. He has spoken about supplying a chit by one Darpan Kalita in the name of Rituparna Das. However, this witness has not corroborated further as to what were the contents of the chit nor Darpan Kalita has been examined by the prosecution. Hence, PW 4 has been declared hostile. Similarly, PW 5 was also declared hostile since he was found to be a friend of the accused and resiled from his earlier statement.

13.1. PW 6 is the colleague of Rituparna Das, being college friend. This witness has deposed that in the month of November, 2004 he had accompanied PW 16 and his uncle to the Sessions Court at Guwahati to meet some one to secure a job for Rituparna Das. The testimony of PW 6 is not of much importance since he did not take part in the talk between the accused and PW 16 with his uncle.

13.2. PW 7 is the Branch Manager of a bank. He has been examined to prove that mother of Rituparna Das had withdrawn a sum of Rs. 80,000/- on 16.11.2004 and exactly the same amount was re-deposited in the bank on 29th November, 2004. [have already discussed the evidence of Rituparna Das (PW 16) and the approver (PW 25) where from it is gathered that though an attempt was made to pay half of the bribe money to the appellant through the approver the operation did not materialise since the approver declined to accept the money on behalf of the appellant. Hence, the withdrawal of Rs. 80,000/- and re-deposit the same in the bank within a gap of 13 days corroborates the testimony of PWs 16 and 25 that there was an attempt to pay the part amount of the gratification to the appellant.

13.3. PW 11 was first engaged by the appellant to establish his contact with Rituparna Das because being a co-villager. This witness has deposed that once at the relevant time the appellant Dhiraj Barman visited his house along with PW 5 and enquired about Rituparna Das. PW 11 has further deposed that the appellant told him that he could arrange a job for Rituparna Das provided a sum of Rs. 1.5 lacs is arranged for that purpose. Thereafter, PW 11 contacted the father of Rituparna Das (PW 16) and told him about the proposal given by the accused. PW 11 has further deposed that in this regard the accused had visited the house of PW 16 on few occasions but the father of PW 16 declined to pay any money and then negotiations came to a halt. In the cross-examination PW 11 has admitted that it is his habit to help voting boys in getting job. From his conduct PW 11 was the soft target for accused to involve him for his nefarious plan to cheat some of the candidates for getting job in the High Court. PW 11 has further

clarified in the cross-examination that the accused visited his house along with his nephew of the witness. Since Dhiraj Barman was not known to him he introduced himself. In this way, PW 11 is corroborating the prosecution case that it was Dhiraj Barman who was moving around from one candidate to another soliciting gratification for securing job in the High Court and there is no doubt regarding the identity of the offender.

14. Since I have decided to affirm the conviction of the appellant primarily on the basis of testimony of PWs 16 and 25, who are again corroborated by PWs 7, 8 and 11, I refrain from discussing the deposition of other witnesses.

15. Now the question is as to whether the conviction of the appellant u/s 120B of the IPC should be affirmed. A bare reading of the definition of "conspiracy" defined u/s 120A would indicate that there should be meeting of minds between two or more persons to do or caused to be done an illegal act. In the case before me though the approver (PW 25) has deposed that he got himself involved in the negotiations, but, it was at the request of the appellant being a co-employee. In other words, PW 25 has not admitted that before approaching PW 16 he had agreed with the appellant in principle to extort money from PW 16 or from any other candidates. One of the candidates (PW 16) has also admitted that though he was prepared to handover 50% of the negotiated amount through the approver but the approver Bhusan Kalita declined to accept the money on behalf of the appellant. No other witness has implicated the approver in demanding money along with the appellant. Hence, I hold that there are not much strong evidence to hold that the appellant had committed the offence of attempt to take bribe from PW 16 and other persons in conspiracy with PW 25. Hence, conviction of the appellant from u/s 120B of the IPC is hereby set aside.

16. Sri Agarwal learned counsel for the appellant argued that the charges under Sections 7 and 15 of the PC Act, 1988 could not have been framed simultaneously. The record reveals that separate charges were framed under Sections 7 and 15. Even otherwise offences under Sections 7 and 15 are distinct and stand and operate in different fields. Section 7 takes into account taking gratification other than legal remuneration in respect of an official act. Section 15 prescribes punishment for attempted misconduct referred u/s 13(1)(c) and (d). Clause (c) of Section 13 relates to misappropriating public property, which is not covered u/s 7. Clause (d) encompasses three situations. Clause d(i) is *pari materia* to the offence prescribed u/s 7. However, offences described u/s 13(1)(d) (ii) and (iii) stand on different footing. Under Clause (d)(ii) there must be an element of abuse of position as a public servant and under Clause (iii) pecuniary advantage is provided to any person without any public interest and these criteria are missing from Section 7. Hence, the trial Court did not commit any infirmity in framing charges both for Section 7 and 15 separately.

17. With regard to the conviction of the appellant u/s 7, Sri Agarwal learned counsel for the appellant submitted that since the appellant was not an employee in the High Court there was no question for doing or forbearing to do any official

act in exercise of his official functions to favour the candidates in securing job. After going through Section 7 it appears to me that the panel provision has been divided in two parts. In the first part the offender may himself be in the position to do or forbear from doing any official act in his own office and in the second part he/she may promise for rendering any service with other Government departments. In the present case though the appellant was an employee in the Court of District Judge he attempted to take gratification for favouring a few candidates in getting job in the High Court. Hence, the offence is squarely covered in the second part.

18. With reference to the conviction of the appellant u/s 15 of the PC Act Sri Agarwal submitted that the conviction is unsustainable in law inasmuch as there is no evidence that the appellant had attempted to obtain for himself or any other person a pecuniary advantage by abusing his position as public servant as required u/s 13(1)(d) of the Act. Other provisions regarding misconduct are not applicable in the present case. The learned counsel has also referred two decisions of the Hon''ble Supreme Court rendered in the case of State of Madhya Pradesh Vs. Sheetla Sahai and Others, and also the case of R. Venkatakrisnan Vs. Central Bureau of Investigation, . According to the learned counsel the vacancies of few posts of junior Administrative Assistants were to be filled up in the High Court, whereas the appellant was an employee in the Court of District Judge and, as such, there was no scope to abuse his position in the High Court.

19. The admitted fact is that the appellant was a public servant being permanent employee in the Court of District Judge at Guwahati. The evidence on record also discloses that the appellant's elder brother was holding a high position in the High Court Registry and the result of the written test was in his possession. Hence, it cannot be said that the appellant had no basis to claim that he can help the candidates in getting job in the High Court.

20. The case of Sheetla Sahai (supra) stands on a different footing. In that case the accused persons had allegedly permitted/facilitated the contractors to procure stones and leads from outside the specified quarry in the contract agreement resulting into additional gain of Rs. 102.46 lacs to the contractors. In the cited case various issues were involved, including the genuineness of the decision taken by the accused persons in that regard. In the backdrop of the nature of allegation the Apex Court has held that the decision of the officers cannot be brought within the purview of misconduct by abusing their position as public servants.

21. The case of R. Venkatkrishnan (supra) is arising out of diversion of funds from National Housing Bank to the account of accused Harshad Mehta ostensibly under a call money transaction. In other words, the bank official had favoured Harshad Mehta by way of conducting inter-banking transactions in such a manner that public money amounting to Rs. 40 crores was illegally made available to a private person for carrying out transactions in securities. In this way, the bank officials were held guilty u/s 13(1)(d)(iii). However, in the case

before me only Clauses (i) and (ii) are attracted. Even for a moment it is presumed that the appellant was not in a position to abuse his position in the High Court being an employee of the District Judge at least he had attempted to take bribe and gratification through corrupt and illegal means for himself and the case is covered by Clause (i) to Section 13(1)(b) of the PC Act.

22. The learned counsel for the appellant also assailed the validity and legality of tender pardoned to PW 25 on the ground that the applications filed by the co-accused did not disclose any role played by him in the conspiracy to cheat few candidates. The learned counsel has also argued that the order of the Special Judge dated 24.3.2006 was also not exhibited during the evidence of the I.O. While discussing evidence of PWs 16 and 25 I have already held that though there was no conspiracy in between the appellant and the approver for cheating PW 16 and other candidates the approver had played certain role in facilitating the appellant to collect bribe from PW 16. Hence, it cannot be said that PW 25 was not a co-accused, who could have been granted pardon. Even if this argument of the appellant is accepted PW 25 can be considered as a best witness of the prosecution. Similarly, non-marking of the order dated 24.3.2006 cannot be said to fatal for the prosecution.

23. The learned counsel for the appellant also assailed "sanction" of prosecution against the accused Dhiraj Barman on the ground that the learned District Judge, Kamrup failed to apply his judicial mind inasmuch as the accused was not an employee of the High Court where certain posts of LD Asstts. (JAA) were to be filled up. In other words, it is the submission of the learned counsel that he sanctioning authority should not have given sanction for an offence that was allegedly committed in the establishment of High Court and not in his own establishment. In my considered opinion the submission is totally misplaced inasmuch as u/s 7 of the PC Act, 1988 a public servant can also commit offence by way of accepting or attempt to obtain some gratification for rendering or attempted to render any service in other Government departments as well. Hence, I do not find any infirmity in sanctioning prosecution against the appellant.

24. In the result the appeal stands dismissed, albeit, setting aside the conviction of the appellant u/s 120-B of the IPC and modification of the sentence as herein below. However, the conviction of the appellant both under Sections 7 and 15 of the Prevention and Corruption Act, 1988 are hereby upheld.

25. With regard to the quantum of sentence it appears that the trial Court has awarded concurrent sentence of 2 (two) years Rigorous Imprisonment for the offences under Sections 7 and 15 of the PC Act. In addition to that a sum of Rs. 2,000/- and 1,000/- have been imposed for the respective offences and in default the accused/appellant is to undergo one year RI for the offence u/s 7 and six months R] u/s 15 of the PC Act. Having regard to the lower status of the appellant in the office of the District Judge I am of the view that default sentences are on the higher side. Hence, while maintaining the substantive

sentences and the amount of fine the default sentences are reduced to 3(three) months each for Section 7 and 15 of the PC Act. Resultantly, the appellant has to undergo RI for 2(two) years u/s 7 and 15 of the PC Act, 1988 and also to pay fine of Rs. 3,000/- and for non-payment of fine he shall have to undergo further RI for 6(six) months in total.

26. The appellant is directed to surrender in the Court of learned Special Judge, (CBI) Assam, Guwahati immediately to serve out the remaining period of sentences. The Registry is directed to return the LCRs. with a copy of this judgment.