(2014) 06 MEG CK 0007

In the Meghalaya High Court

Case No : Crl. Appeal No. 9 of 2010

L.R. Mithran — APPELLANT

Vs

Central Bureau of Investigation — RESPONDENT

Date of Decision : 13-06-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Income Tax Act, 1961 — Section 80G
Prevention of Corruption Act, 1988 — Section 11, 13, 20, 27, 7

Citation : (2014) 305 ELT 295 : (2015) 1 GLD 340 : (2014) 3 GLT 195

Hon'ble Judges : Prafulla C. Pant, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, C.J.—This appeal, preferred u/s 374 of Code of Criminal Procedure, 1973 read with Section 27 of Prevention of Corruption Act, 1988, is directed against the judgment and order dated 4-10-2010 passed by Special Judge, CBI, Shillong in Special Case (CBI) No. 1/2002 whereby accused/ appellant, Smti. L.R. Mithran is convicted u/s 11 of the Prevention of Corruption Act, 1988, and sentenced to imprisonment for a period of four years and directed to pay fine of Rs. 20,000/- (Rupees twenty thousand) in default of payment of which she is further directed to undergo imprisonment for a period of 2(two) months.

2. Heard learned counsel for the parties and perused the lower court record.

3. Prosecution story, in brief, is that accused/appellant, Smti. L.R. Mithran was posted as Commissioner of Central Excise, Shillong in the year 1996-1997. Office of the Directorate General Anti-Evasion, Kolkata detected a case of excise evasion against assessee, namely, M/s. Kitply Industries Ltd., 119, Park Street, Kolkata of which co-accused Shri. S.P. Goenka (since died) was the Chairman. In February 1996, said assessee was served with a show cause notice alleging that it has evaded central excise duty amounting to Rs. 35,79,07,804/- (Rupees thirty

five crores, seventy nine lakhs, seven thousand, eight hundred and four). Smti. L.R. Mithran (accused/appellant) who was the then Commissioner of Central Excise, Shillong had to adjudicate the matter. She heard the matter in September, 1996 and finally adjudicated in December, 1996 vide her adjudication order dated 5-12-1996. Accused/appellant sliced down the central excise duty payable by the aforesaid assessee M/s. Kitply Industries Ltd. from Rs. 35,79,07,804/- (Rupees thirty five crores, seventy nine lakhs, seven thousand, eight hundred and four) to Rs. 9,14,40,448/- (Rupees nine crores, fourteen lakhs, forty thousand, four hundred and forty eight) in her order dated 5-12-1996.

4. It is alleged that while the aforesaid adjudication was pending before the accused/appellant, Smti. L.R. Mithran, Commissioner of Excise, Shillong, floated Zami Memorial Charitable Trust, a Society, in the name of her mother for which a Tata Mobile vehicle bearing registration No. ML 05-D-2648 was donated by co-accused, Shri. Shanti Prakash Goenka (since died), Chairman of M/s. Kitply Industries Ltd. Not only this, Rs. 5,00,000/- through demand draft No. 483425, dated 23-12-1996 was also got donated by above mentioned assessee through one M/s. Warren Tea Ltd., Kolkata of which Shri. Vijay Kumar Goenka (son of co-accused, Shri. SP Goenka) was Managing Director. Apart from this, accused/ appellant''s son, Shri. AR Mithran was also got employed in a coal business with the help of co-accused, Shri. SP Goenka.

5. A First Information Report was registered by Central Bureau of Investigation (for short CBI) on 7-1-1999 as crime No. RC. 2(A) 1999-SHG relating to offence punishable under Prevention of Corruption Act, 1988 against accused, Smti. L.R. Mithran, the then Commissioner Central Excise, Shillong which was investigated by PW 30, Shri. Raghupati Bose, Deputy Superintendent of Police, CBI. After investigation, the Investigating Officer submitted charge sheet against both the accused, Smti. L.R. Mithran and co-accused, Shri Shanti Prakash Goenka for their trial in respect of offence punishable u/s 11 of Prevention of Corruption Act, 1988, on 31-12-2001 alongwith sanction order dated 20-12-2001 obtained against accused/appellant, Smti. L.R. Mithran.

6. After giving necessary copies and hearing the parties, Special Judge, CBI, Shillong framed charge of offence punishable u/s 11 of Prevention of Corruption Act, 1988 against accused, Smti. L.R. Mithran on 20-8-2006 who pleaded not guilty and claimed to be tried. Separate charge appears to have been framed against co-accused Shri SP Goenka who also pleaded not guilty and claimed to be tried. (It appears that both the accused challenged framing of the charge but their criminal revisions were dismissed by the High Court).

7. On behalf of the prosecution, PW-1, Samu Raj Bongshi proved seizure memo Ext. 1 made by C.B.I. after search of house of accused, Smti. L.R. Mithran. PW-2, Smti. Lumlanglin Kharkongor, the then Incharge Registrar of Societies proved registration of Zami Memorial Charitable Trust. PW-3, Sukanta Das, the then Inspector Central Excise, Shillong, proved show cause notice Ext. 4 dated

28-2-1995 issued by the accused to the assessee. PW-4, Mohit Kumar Chakravarty, the then employee of District Transport Office, Shillong proved that the vehicle No. ML 05-D-2648 was registered in the name of Zami Memorial Charitable Trust. PW-5 Amal Kanti Das, the then Deputy Director in the office of Directorate General of Anti-Evasion, Kolkata stated that he made initial inquiries regarding alleged tax evasion by the assessee M/s. Kitply Industries Ltd. PW-6 Omprakash Prajapati was Accountant in the office of M/s. Kitply Industries Ltd., Guwahati who has proved slip pad Ext. 7 of M/s. Kitply Industries Ltd. which pertains to P.I. Zami Memorial Charitable Trust. PW-7 Lalchangliani Sailo, the then Superintendent of Central Excise and Customs has stated that he worked as Financial Secretary of Zami Memorial Charitable Trust i.e. trust created in the name of mother of accused, Smti. L.R. Mithran. PW-8 Swapan Kr Roy, the then Manager of Himatsingka Auto Enterprise, Guwahati from where the vehicle was purchased for the Trust proved seizure memo Ext. 9. PW-9 Debashish Ghosh, an employee of Bharat Sanchar Nigam Ltd. stated that he witnessed the search operations conducted by the CBI at the residence of accused, Smti. L.R. Mithran. PW-10 Paresh Ch. Sarma, the then Deputy Manager of United Bank of India stated that he prepared the draft Ext 17 of donation of Rs. 1,00,000/- in favour of the Trust. PW-11 Pipin Ch. Bordoloi, the then Assistant Manager, State Bank of India has proved seizure memo Ext 19 relating to Demand Draft of Rs. 3,01,955/-. PW-12 Subrata Kannangoe, the then Manager of United Bank of India proved the application Ext 16 of Demand Draft of Rs. 1,00,000/- prepared in favour of the Trust. PW-13 Sanjay Sen, the then Manager Accounts of Warren Tea Ltd., apart from proving voucher of cheque of Rs. 3,01,955/-, also stated that the Demand Draft of Rs. 5,00,000/- was sent to co-accused, Shri SP Goenka for payment to the Trust. PW-14 Haridasan Nair, the then Office Assistant (Legal) of M/s. Kitply Industries Ltd. has proved his presence with co-accused, Shri SP Goenka when adjudication matter was heard by accused/appellant, Smti. L.R. Mithran. PW-15 Subhajit Kumar Ghosh, the then Manager Finance of M/s. Warren Tea Ltd. proved slip Ext. 21 issued by co-accused Shri SP Goenka (since died) to get prepared Demand Draft of Rs. 5,00,000/- in favour of Zami Memorial Charitable Trust. PW-16 Bidhu Bhusan Khatua, is a retired employee of M/s. Kitply Industries Ltd. who proved letter Ext 10 regarding payment for purchase of vehicle donated to the Trust. PW-17 Rajiv Rai is the then Deputy Secretary, Govt. of India who proved sanction Ext 32 for prosecution of accused, Smti. L.R. Mithran. PW-18 Sunil Kumar Biswas, the then Chief Manager Accounts of State Bank of India, Park Street, Kolkata has proved production memo Ext. 33 collected by C.B.I. PW-19 Prabhat Kumar Bose issued cheque on behalf of M/s. Warren Tea Ltd., of Rs. 3,01,955/- Ext 11 for purchase of the vehicle for the Trust. PW-20 Ramanatar Shah, the then employee with M/s. Mahadevlal Nathlal, Kolkata through whom the cheque of Rs. 3,01,955/- was routed for payment for purchase of vehicle donated to the Trust and who got prepared Demand Draft Ext 37 has proved said fact. PW-21 Partha Roy Choudhury, the then Manager Cash Credit, State Bank of India, Commercial Branch, Kolkata has stated that under the instructions of M/s. Warren Tea Ltd. he debited an amount of Rs. 5,00,000/-

from its account for issuance of Demand Draft in favour of Zami Memorial Charitable Trust. PW-22 Shambu Nath Jajodia, the then Vice President Commercial of M/s. Kitply Industries Ltd. gave evidence relating to issuance of appointment letter to Shri. Allen R. Mithran, son of accused, Smti. L.R. Mithran. PW-23 P. Ramakrishna Rao, the then Manager of Vijaya Bank, Laitumkhrah Branch, Shillong corroborated the fact relating to deposit of Rs. 1,00,000/- in the account of the Trust. PW-24 Rikman Momin @ Ricky, a coal business man stated that he made arrangement for accommodation of Shri. AR Mithran, son of accused, Smti. L.R. Mithran after he was employed in coal business. PW-25 Anil Kumar, the then Director of M/s. Kitply Industries Ltd. corroborated the fact that Vinay Kumar Goenka, Managing Director of Warren Tea Ltd. is son of co-accused Shri SP Goenka who was Chairman of M/s. Kitply Industries Ltd. (Assessee). PW-26 Danjendra Kr. Thakuria has stated that he assisted in delivery of the vehicle donated to the Trust. PW-27 Pawan Kumar Goenka, son of co-accused, Shri SP Goenka has also corroborated the fact that Vinay Kumar Goenka, Managing Director of Warren Tea Ltd. is son of Shri SP Goenka, Chairman of M/s. Kitply Industries Ltd. PW-28 Anuradha Mookherjee, the then Commissioner Income Tax, Kolkata stated that M/s. Warren Tea Ltd. claimed deduction u/s 80G of Income Tax Act in respect of total sum of Rs. 8,01,955/- paid to Zami Memorial Charitable Trust. PW-29 Nirupam Kar, the then Officer posted in Directorate of Vigilance Customs and Central Excise, Kolkata verified the authenticity of the complaint received against accused, Smti. L.R. Mithran on which initial inquiry started. And PW-30 Raghupati Bose, the then Deputy Superintendent of CBI who investigated the crime has stated that during investigation how he made searches and collected the documentary and oral evidence. Nothing has come out in the cross examination of witnesses which creates doubt in their testimony. Rather their statements got corroborated from the documentary evidence proved by them.

8. Oral and documentary evidence was put to the accused/appellant, Smti. L.R. Mithran on 26-11-2009 u/s 313 of Code of Criminal Procedure, 1973. In her replies, she has admitted that the search was made by CBI in her house as stated by PW-1 Samu Raj Bongshi who proved the seizure memo Ext 1. She has admitted that said document was prepared. In reply to another question relating to PW-2, she admitted that as stated by PW-2, Smti. Lumlanglin Kharkongor, Zami Memorial Charitable Trust was registered as a Society for which treasury challan of Rs. 250/-(Rupees two hundred and fifty) was got deposited by her through one of her Officers. In reply to the statement of PW-3 Sukanta Das, she admitted that show cause notice Ext 4 was issued to the assessee, M/s. Kitply Industries Ltd. and she also admitted her signatures on Ext 5/1 relating to personal hearing in the matter arisen out of show cause notice against the assessee, M/s. Kitply Industries Ltd. She also admitted her signatures in adjudication order dated 5-12-1996 Ext 6 passed by her (whereby the duty allegedly payable by assessee was reduced from Rs. 35,79,07,804/-(Rupees thirty five crores, seventy nine lakhs, seven thousand, eight hundred and four) to

Rs. 9,14,40,448/-(Rupees nine crores, fourteen lakhs, forty thousand, four hundred and forty eight). Accused/appellant, Smti. L.R. Mithran in her statement u/s 313 of Cr PC has also admitted her signatures in the documents Ext 3/1 i.e. application for registration of the Trust as a Society, Ext 3/2 i.e. treasury challan for depositing a sum of Rs. 250/- (Rupees two fifty) for registration, and Ext 3/3 i.e. Memorandum of Association of Zami Memorial Charitable Trust (Society registered). Relating to the statement of PW-4 Mohit Kumar Chakravarty regarding registration certificate paper marked 6 with regard to the ambulance bearing registration No. ML05-D-2648 (donated to Zami Memorial Charitable Trust), she (accused/appellant) has admitted the documents of registration shows that said vehicle was registered in the name of Zami Memorial Charitable Trust. In reply to the evidence adduced by PW-7 Smti. Lalchangliani Sailo that "ZAMI" is the name of mother of Smti. L.R. Mithran in whose name Trust was created in October, 1996, She has admitted the evidence given by PW-7 as correct. She also stated in this connection that she was one of the trustees of the aforesaid Trust alongwith her son Shri. Allen R. Mithran. In reply to question No. 14 put by the trial court relating to evidence given by PW-7 Lalchangliani Sailo told that Rs. 5,00,000/- was donated to the Trust apart from the Tata Mobile vehicle (Ambulance). The accused/appellant, Smti. L.R. Mithran has replied in affirmative that it was donated by M/s. Kitply Industries Ltd. She has also admitted that Ext 8 account opening form of the Trust was signed by her as introducer. She also admitted that receipt Ext. 14 of the amount of Rs. 3,01,955/- (price value of the vehicle donated) was issued by Zami Memorial Charitable Trust, Shillong in favour of M/s. Warren Tea Ltd. Regarding the statement of PW-9 Debashish Ghosh, accused/appellant, Smti. L.R. Mithran has stated that on 9-4-1999 CBI officials did search her house and recovered paper marked 1, 2 and 4. She also admitted that Ext 17 is the correct document which relates to payment of Rs. 1,00,000/- donated in favour of Zami Memorial Charitable Trust through demand draft No. 535617, as such she accepted what PW-10 Paresh Ch. Sarma and PW-12 S. Kannangoe have stated in their evidence. With regard to the statement of PW-23 P. Ramakrishna Rao that Zami Memorial Charitable Trust has savings account No. 10308 Ext 8, the accused (appellant) Smti. L.R. Mithran stated that the said fact is correct. She also stated that she along with other 3(three) family members was trustee as stated by PW-23 P. Ramakrishna Rao. She admitted in reply to question No. 28 put u/s 313 of Cr. P.C. by the trial court that PW-24 Rikman Momin @ Ricky has correctly deposed that she (Smti. L.R. Mithran) is the mother of Shri. AR Mithran. Lastly, she admitted that Zami Memorial Charitable Trust did receive a donation of Rs. 5,00,000/- after the adjudication was over against M/s. Kitply Industries Ltd. (At, the, stage, of 313, Cr. PC, co-accused SP Goenka, died, before his statement could be recorded, and, his, case stood abated against him).

9. On behalf of the appellant, Smti. L.R. Mithran, it is vehemently argued that the adjudication order dated 5-12-1996 passed by accused/appellant, Smti. L.R. Mithran by which the duty was reduced was found correct by the Appellate

Authority. It is pointed out that the appeals were filed by the assessee as well as by the revenue against the aforesaid adjudication order passed by the accused/ appellant and both the appeals i.e. Appeals E/V-137, 138 of 1997 were disposed of by the Customs Excise and Gold Control Appellate Tribunal (CEGAT), Kolkata Bench which disposed of the same vide order dated 15-6-1999 (Ext. A). Operative portion of said order reads as under:

(i) Demand of duty of Rs. 7,05,95,368/-(rupees seven crores, five lakhs, ninety five thousand, three hundred and sixty eight) only is set aside.

(ii) Demand of duty of Rs. 48,48,500/-(Rupees forty eight lakhs, forty eight thousand, five hundred) only is set aside.

(iii) Demand of duty of Rs. 58,96,580/-(Rupees fifty eight lakhs, ninety six thousand, five hundred and eighty) only is confirmed.

(iv) Penalty on M/s. Kitply Industries Ltd. is reduced to Rs. 10,00,000.00 (Rupees ten lakhs) only.

(v) Penalty of Rs. 1,00,000/- (Rupees one lakh) only imposed to Shri PK Goenka is set aside.

10. Referring to above order, it is argued that not only the duty reduced by the accused/appellant as Commissioner Central Excise, was affirmed but penalty imposed by her against the assessee and its Managing Director was reduced. It is also pointed out that when said orders were challenged by the Revenue (Commissioner Central Excise) before the Apex Court, the same was dismissed vide order dated 13-1-2000. This Court has considered the above fact that the adjudication order relating to reduction of duty, passed by the accused/appellant as Commissioner Central Excise was correct and it was upheld not only by the Appellate Authority but also by the Apex Court. However, the question before this Court is not the correctness of the order but whether in lieu of passing such order the accused/appellant has received any valuable consideration in the name of the Trust created by her in the name of her mother. It is further argued that the appellant has not received anything for herself. It is also contended that the donation of Rs. 5,00,000/- was given to Zami Memorial Charitable Trust after the adjudication order was passed by the accused/appellant as Commissioner Central Excise, as such there was no favour shown to assessee as the order had already been passed.

11. Section 11 of the Prevention of Corruption Act, 1988 reads as under:

11. Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant,-Whoever, being a public servant, 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 such public

servant, 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, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

12. From the Section 11 quoted above, it is clear that a public servant is liable to punishment if he has received any valuable thing without consideration even in the name of another person, even after the business is transacted. As such, this Court does not find force in the argument advanced on behalf of the accused/ appellant that there is no mens rea on the part of the accused/appellant.

13. Mr. K. Paul, learned counsel for the appellant submitted that had the accused/ appellant been in collusion with the assessee, she would not have imposed penalty of Rs. 1,00,000/- on Shri PK Goenka, the Managing Director of M/s. Kitply Industries Ltd. (assessee). Attention of this Court is also drawn to the fact that penalty of Rs. 1,00,00,000/- imposed by the accused/appellant against the assessee, M/s. Kitply Industries Ltd. was reduced to Rs. 10,00,000/- by the CEGAT. It is also submitted that the donations allegedly made to Zami Memorial Charitable Trust were exempted u/s 80G of the Income Tax Act which was claimed by the assessee, as such the transaction was bonafide.

14. However, Sub-Section (1) of Section 20 of Prevention of Corruption Act, 1988 reads as under:

20. Presumption where public servant accepts gratification other than legal remuneration.-(1) Where, in any trial of an offence punishable u/s 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case maybe, without consideration or for a consideration which he knows to be inadequate.

15. From the Sub-section (1) of Section 20 quoted above, it is clear that once it is proved in trial relating to offence punishable u/s 11 that the accused has accepted any valuable thing, it shall be presumed that such person has accepted it as a motive or reward, unless contrary is proved. In the opinion of this Court, the mere fact that the Appellate Authority has upheld the correctness of the order cannot justify the acceptance of valuable thing or money during the proceeding of adjudication or subsequent thereto, particularly when such consideration is accepted not long after the adjudication. In the present case, the vehicle was donated by the assessee to Zami Memorial Charitable Trust made in the name of mother of the accused/appellant, Smti. L.R. Mithran during the

proceedings of the adjudication by getting made payment through M/s. Warren Tea Ltd., of which Vinay Kumar Goenka (son of Shri. SP Goenka, Chairman of M/s. Kitply Industries Ltd., i.e. Assessee) was the Managing Director. There is sufficient evidence on record establishing the fact as to how Shri SP Goenka, Chairman of M/s. Kitply Industries Ltd. (assessee) got made Demand Draft through M/s. Warren Tea Ltd., of which he was the Financial Adviser. There is ample oral and documentary evidence on record proving as to how Shri. SP Goenka, Chairman of M/s. Kitply Industries Ltd. (assessee) got the Demand Draft of Rs. 5,00,000/- made through M/s. Warren Tea Ltd. of which his son was the Managing Director in December 1996 after the adjudication order was passed in the same month.

16. Attention of this Court is drawn on behalf of the appellant to the case of Subash Parbat Sonvane Vs. State of Gujarat, and it is submitted that a public servant can be held guilty only if he has obtained valuable thing or pecuniary advantage by abusing his position as public servant. In this connection, it is further submitted that before the donation of Rs. 5,00,000/- was made to Zami Memorial Charitable Trust, the case had already been adjudicated by accused/appellant, Smti. L.R. Mithran. I have carefully gone through the above case and do not find that the same is of any help to the present accused/appellant in view of the presumption required to be drawn u/s 20 of Prevention of Corruption Act, 1988.

17. Another case relied on behalf of the appellant is R. Balakrishna Pillai Vs. State of Kerala, in which the Apex Court has held in paragraph 43 that the accused must have the mental state or degree of fault at the relevant time. It is also observed in said para that mere intention is not punishable except when it is accompanied by an act or conduct of commission or omission on the part of the accused. Having carefully gone through said case law, this Court is of the view that in the present case from the evidence on record, merely for the reason that the case had been decided on 5-12-1996 by the accused, and the donation was accepted thereafter in the name of Charitable Trust, (in the same month) it cannot be said that there is no conduct of commission or omission on the part of the accused

18. As against the cases referred above, reliance is placed in the case of M. Narsinga Rao Vs. State of Andhra Pradesh, on behalf of CBI, in which three Hon''ble Judges of the Apex Court have held that where receipt of gratification was proved, the Court is under a legal obligation to presume that such gratification was accepted as a reward for conduct of public duty. This Court has already discussed the prosecution evidence by which the charge stood proved.

19. For the reasons as discussed above and after going through the evidence on record, this Court is in agreement with the trial court that the prosecution has successfully proved charge of offence punishable u/s 11 of Prevention of Corruption Act, 1988 against accused/appellant, Smti. L.R. Mithran. As such, the conviction recorded against her does not require any interference. But as far as

sentence awarded by the trial court is concerned, in the facts and circumstances of the case, particularly when the order passed by the accused/appellant, Smti. L.R. Mithran, Commissioner of Central Excise was not only upheld by the CEGAT (Appellate Authority) but also penalty awarded against the assessee was reduced, this Court is of the view that awarding of sentence of 6(six) months which is the minimum sentence prescribed u/s 11 of Prevention of Corruption Act, 1988 would have met the ends of justice.

20. Accordingly, this appeal is dismissed on the point of conviction recorded u/s 11 of Prevention of Corruption Act, 1988. However, on the point of sentence, the appeal stands partly allowed and sentence of imprisonment of four years is reduced to sentence of imprisonment of six months without interfering with the sentence of fine awarded by the trial court. It is clarified that the period already undergone by the accused/appellant, Smti. L.R. Mithran during the pendency of the trial and the appeal shall be set off from the period of six months imprisonment. Registry is directed to send the lower court record back to the trial court for making the accused/appellant, Smti. L.R. Mithran to serve out the remaining part of the sentence as modified by this Court.

