
(2013) 01 SC CK 0028

In the Supreme Court Of India

Case No : Criminal Appeal No. 171 of 2013 (Arising out of Special Leave Petition (Criminal) No. 4378 of 2012)

Shyam Lal Verma

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 477A

Prevention of Corruption Act, 1988 — Section 13, 13(1), 13(2), 3(1), 7

Citation : (2013) 81 ALLCC 470 : (2013) 3 ALT(Cri) 9 : (2013) 1 Crimes 317 : (2013) 135 DRJ 305 : (2013) 2 JT 229 : (2013) 1 LW(Cri) 413 : (2013) 2 RCR(Criminal) 951

Hon'ble Judges : P. Sathasivam, J; J.S. Khehar, J

Bench : Division Bench

Advocate : Fakhruddin, Raj Kishor Choudhary, Sheeba Fakhruddin Adil, Surya Kamal Mishra and Ashok Mathur, for the Appellant; Prakriti Purnima, T.A. Khan, B.V. Balram Das and Arvind Kumar Sharma, for the Respondent

Final Decision : Allowed

Judgement

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 u/s 477A Indian Penal Code read with Section 3(1)(c) and 13(2) of the Prevention of Corruption Act 1988.

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

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 477A Indian Penal Code and u/s 13(1)(c) read with Section 13(2) for a further period of one year. Both the sentences were directed to run concurrently.

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

6. Heard learned senior counsel appearing on behalf of the Appellant and Learned Counsel appearing on behalf of the Respondent-CBI.

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.

8. It is not in dispute that the issue raised in this appeal has been considered by this Court in State through S.P., New Delhi Vs. 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 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 The State rep. by Inspector of Police, Pudukottai, Tamil Nadu 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.