Biswajit Das vs Central Bureau Of Investigation on 16 January, 2025

Author: Dipankar Datta

Bench: Dipankar Datta

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2025 INSC 85

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2052/2014

BISWAJIT DAS App

VERSUS

CENTRAL BUREAU OF INVESTIGATION Res

JUDGMENT

1 The appellant was convicted for commission of offences punishable under Section 468 r/w Section 120(B), Section 271 and 465 r/w Section 120(B) and Section 420 r/w Section 120(B) of the Indian Penal Code, 1860 1 as well as Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 19882.

2. For all but one of the offences punishable under the IPC, sentence of two years' rigorous imprisonment3 was imposed on the appellant. For the offence under Section 271 and 465 r/w Section 120(B), sentence of R.I. for a year was imposed. Insofar as the offence punishable under sub-section (1)(d) read with sub-section (2) of Section 13 of the PC Act is concerned, the appellant was sentenced to three years' R.I. Reason:

1 IPC 2 PC Act 3 RI

3. The conviction and sentence dated 31st July, 2009 having been carried by the appellant to the High Court of Gauhati in an appeal under Section 374 (2) of the Code of Criminal Procedure, the impugned judgment and order dated 27 th September, 2013 of a learned single Judge affirmed the same.

4. The appellant thereafter approached this Court with a special leave petition out of which this criminal appeal, by special leave, arises.

5. On 3rd January, 2014, a coordinate Bench of this Court passed the following order:

> "Issue notice confined to the question as to whether the petitioner could have been convicted under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and on the quantum of sentence for the other offences."

6. Service effected, this Court heard the parties and granted leave on 12 th September, 2014 whereafter the appellant was enlarged on bail on 12th October, 2015.

7. Mr. Hrishikesh Baruah, learned counsel appearing for the appellant, having commenced his argument assailing the findings returned by the trial court in respect of the offences under the IPC, which were found to be proved, Mr. Vikramjeet Banerjee, learned Additional Solicitor General appearing for the respondent, invited our attention to the order issuing limited notice.

8. We then called upon Mr. Baruah to overcome the objection raised that having regard to the limited scope of the notice to show cause, it is not open to us to expand the scope of the appeal, hear him on all the points and record an order acquitting the appellant, if satisfied. He referred to the decisions of this Court in Taherakhatoon (D) by Lrs. vs. Salambin Mohammad 4 to support his contention that this Court having granted leave without any restriction, it is 4 (1999) 2 SCC 635 a fit and proper case where we ought to hear him on the merits of all the points that are available to be taken on behalf of the appellant for obtaining a clear acquittal.

9. In Taherakhatoon (supra), this Court held that:

> "15. It is now well settled that though special leave is granted, the discretionary power which vested in the Court at the stage of the special leave petition continues to remain with the Court even at the stage when the appeal comes up for hearing and when both sides are heard on merits in the appeal. This principle is applicable to all kinds of appeals admitted by special leave under Article 136, irrespective of the nature of the subject- matter. ..." xxx "20. In view of the above decisions, even though we are now dealing with the appeal after grant of special leave, we are not bound to go into merits and even if we do so and declare the law or point out the error — still we may not interfere if the justice of the case on facts does not require interference or if we feel that the relief could be moulded in a different fashion. ... "

10. Next, Mr. Baruah placed the decision of this Court in Yomeshbhai Pranshankar Bhatt vs. State of Gujarat5 in support of his contention that notwithstanding limited notice having been issued, the scope of the appeal could be expanded by this Court. The opinion of the coordinate Bench expressed in the said decision reads thus:

> "4. The learned counsel for the appellant urged that though at the time of issuing notice, this Court limited its rights to raise points only within the confines of Section 304 of the Penal Code, the Court is not bound at the time of final hearing with that direction given while issuing notice and the appellant is entitled to urge all the questions including his right to urge that he should have been acquitted in the facts and circumstances of the case." xxx
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> 8. The provisions of Article 142 of the Constitution have been construed by this Court in several judgments. However, one thing is clear that under Article 142 of the Constitution, this Court in exercise of its jurisdiction may pass such decrees and may make such orders as is necessary for doing complete justice in any case or matters pending before it. It is, therefore, clear that the Court while hearing the matter finally and considering the justice of the case may pass such orders which the justice of the case demands and in doing so, no fetter is imposed on the Court's jurisdiction except of course any express provision of the law to the contrary, and normally this Court cannot ignore the same while exercising its power under Article 142. An order which was passed by the Court at the time of admitting a petition does not have the status of an express provision of law.

Any observation which is made by the Court at the time of entertaining a petition by way of issuing notice are tentative observations. Those observations or orders cannot limit this Court's jurisdiction under Article 142.

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11. In view of this position under the Rules and having regard to the constitutional provision under Article 142, we do not think that this Court at the time of final hearing is 5 (2011) 6 SCC 312 precluded from considering the controversy in its entire perspective and in doing so, this Court is not inhibited by any observation in an order made at the time of issuing the notice.

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15. We are, therefore, entitled to consider the plea of the appellant for acquittal despite the fact that at the time of issuing notice, it was limited in terms of the order dated 27-7- 2009. We, however, make it clear that this cannot be a universal practice in all cases. The question whether the Court will enlarge the scope of its inquiry at the time of final hearing depends on the facts and circumstances of the case. Since in the facts of this case, we find that the appellant should be heard on all points, we have come to the aforesaid conclusion."

11. Reference was also made to a decision of this Court of recent origin in Kutchi Lal Raeshwar Ashram Trust Evam Anna Kshetra Trust v. Collector, Haridwar6 where, upon noticing the decision in Indian Bank v. Godhara Nagrik Coop. Credit Society Ltd.7, it has been held by another coordinate Bench as follows:

> "18. In Indian Bank v. Godhara Nagrik Coop. Credit Society Ltd., a Bench of two Judges of this Court held that (SCC p. 548, para 9) though a limited notice was issued initially, leave having been granted thereafter, 'all the contentions of the parties are now open'.
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> 19. We respectfully reiterate and adopt this view which is based on a sagacious approach to the constitutional powers that are conferred upon the Court. Article 142 embodies the fundamental principle that the jurisdiction of the Court is to render complete justice and as an incident of it, the Court may pass such decrees or orders as it considers fit. When the Court initially issues a limited notice but subsequently grants leave, the scope of the appeal does not raise a matter of jurisdiction but of judicial discretion. Since it constitutes a matter of discretion and not of jurisdiction, the guiding principle has to be the advancement of substantial justice."

12. We are also not oblivious of the decision in Spring Meadows Hospital v. Harjol Ahluwalia8, relied on by Mr. Banerjee, where this Court refused to examine a contention in view of limited notice by recording as follows:

> "6. ... But we are not in a position to examine this contention advanced on behalf of the learned counsel appearing for the insurer in view of the limited notice issued by this Court. It would not be open for us to entertain this question for consideration as the notice issued by this Court indicates that only the award of compensation to the parents of the minor child and the legality of the same can only be considered. We are, therefore, unable to examine the contention raised by the learned counsel appearing for the insurer." 6 (2017) 16 SCC 418 7 (2008) 12 SCC 541 8 (1998) 4 SCC 39

13. Shifting views of this Court, to an extent striking discordant notes, are discernible on bare reading of the aforesaid decisions. A water-tight approach in Spring Meadows Hospital (supra) is followed by a guarded approach in Yomeshbhai Pranshankar Bhatt (supra), bearing in mind Article 142 of the Constitution; and, ultimately, we find the liberal approach adopted in Kutchi Lal Rameshwar Ashram Trust Evam Anna Kshetra Trust (supra), where this Court had the guiding principle of rendering substantial justice foremost in its mind.

14. Taherakhatoon (supra) is not on limited notice; hence, it is distinguishable. Having perused the decision in Yomeshbhai Pranshankar Bhatt (supra), we find the same to bear close resemblance with the point under consideration. Much water has flown since Spring Meadows Hospital (supra) was rendered. It may not be good law having regard to the line of decisions delivered by this Court later. We are conscious that the said decision has neither been overruled nor distinguished by any

later decision; hence, being a coordinate Bench decision, we are not competent to rule that the said decision did not lay down good law. However, one distinguishing feature is noticeable. Spring Meadows Hospital (supra) arose out of a statutory appeal under the Consumer Protection Act, 1986 and was not a case where jurisdiction under Article 136 was invoked. In a matter such as the present, this distinction enables us not to be guided by Spring Meadows Hospital (supra). In any event, whatever be the precedential value of the said decision, we are inclined to the opinion that the views expressed in Yomeshbhai Pranshankar Bhatt (supra) and Kutchi Lal Rameshwar Ashram Trust Evam Anna Kshetra Trust (supra) are in consonance with the rapidly changing times of liberty being given the primordial consideration and, therefore, commend acceptance.

15. Also, tracing the development of jurisprudence in criminal matters by this Court through recent decisions would reveal a novel approach of sorts. Even after a convict's challenge to his conviction and sentence failing, such a convict's case may still be reopened upon a co-convict's appeal, directed against the self-same judgment, succeeding and similar relief granted to the co- convict being extended to the convict by even recording an order of acquittal. One may in this connection profitably refer to the decision in Javed Shaukat Ali Qureshi v. State of Gujarat9. There, a special leave petition filed by the petitioner, Accused 2, challenging his conviction was dismissed by this Court. While considering a criminal appeal carried by the co-accused - Accused 1, 5 and 13 - from the common judgment of conviction and order on sentence, this Court while acquitting Accused 1, 5 and 13 found Accused 2 to stand on similar footing and, hence, recalled the order of dismissal of Accused 2's SLP, granted leave and acquitted him. The pro-liberal and justice-oriented approach of this Court to secure the liberty of citizens cannot, therefore, go unnoticed.

16. We may now summarize the principles in view of the precedents noticed above. When a limited notice is issued by a bench on an appeal/petition, more often than not, the view taken is tentative. There could be occasions when the claim of the party succeeding before the court below is demonstrated to be untenable because of a patent infirmity in the findings recorded in the impugned judgment, or a glaring error in the procedure followed having the effect of vitiating the proceedings is shown to exist, at any subsequent stage of the proceedings, which might have been overlooked by the Bench when it issued limited notice. Justice could be a real casualty if the same or the subsequent Bench, in all situations of limited notice having been issued initially, 9 (2023) 9 SCC 164 is held to be denuded of its jurisdiction to rule on the merits of the contentions relatable to points not referred to in the notice issuing order. As it is, since exercise of jurisdiction under Article 136 is discretionary, notices on appeals/petitions are not frequently issued by this Court. Nonetheless, if in a given case, notice is issued which is limited on terms but the party approaching the Court is otherwise persuasive in pointing out that the case does involve a substantial question of law deserving consideration and the Bench is so satisfied, we see no reason why the case may not be heard on such or other points. In such a case, the jurisdiction to decide all legal and valid points, as raised, does always exist and would not get diminished or curtailed by a limited notice issuing order. However, whether or not to exercise the power of enlarging the scope of the petition/appeal is essentially a matter in the realm of discretion of the Bench and the discretion is available to be exercised when a satisfaction is reached that the justice of the case so demands. If this position is not accepted, Order LV Rule 6 of the Supreme Court Rules, 2013 read with Article 142 of the Constitution will lose much of its significance.

17. Based on our aforesaid understanding of the legal position, we have heard Mr. Baruah on the merits of the appeal without allowing any technicality to stand in the way to satisfy our conscience that the limited notice issued by the coordinate Bench does not result in any injustice being caused to the appellant.

18. The prosecution version need not be noticed in detail. Suffice it to note that the appellant – a Development Officer of Life Insurance Corporation of India10 - was found guilty of being instrumental, together with a co-convict, in obtaining settlement of two insurance claims by projecting the insured 11 as dead although he was, in fact, alive. The evidence of the insured, inter alia, to the 10 LICI 11 (PW - 22) effect that the appellant and the co-convict took the policies from him on the assurance of the same being upgraded was not dislodged even after thorough cross-examination. That the insured and the appellant were friendly is further borne out from the records. Significantly, the appellant could not satisfactorily explain why he filled up the six blank cheques (Exhibits 4-9) for different amounts totaling to Rs. 1,67,583, i.e., the amount for satisfaction of the insurance claim. There is other evidence on record which, read together with the evidence of the insured and in the light of the appellant having filled up the blank cheques, would unmistakably lead us to the conclusion that the prosecution was successful in driving home the charges against him. Therefore, even after hearing Mr. Baruah in extenso, we do not find any good reason or ground to hold that conviction of the appellant for offences punishable under the IPC was erroneously recorded by the trial court and was affirmed by the High Court, also erroneously.

19. Moving on to consider the points limited by the notice issuing order dated 3rd January, 2014 as to whether the provisions of the PC Act would be applicable to the appellant or not, we have considered the submissions advanced by Mr. Baruah and perused the decision relied on by him in State of Gujarat v. Manshankar Prabhashankar Dwivedi12.

20. Having regard to the provisions of Section 2(c)(iii) of the PC Act read with Section 13, as it then stood, the appellant serving as a Development Officer in the LICI, which has been established by a Central statute, namely, the Life Insurance Corporation of India Act, 1956, had committed the offences and the contention that the PC Act does not apply to him has no substance. The decision in Manshankar Prabhashankar Dwivedi (supra) was rendered in the case of 12 (1972) 2 SCC 392 a public servant who had not committed any offence while discharging his official duty as a lecturer but had indulged in corrupt practices while being required to perform the duty of an examiner which, this Court held, was not his official duty. The decision is, therefore, clearly distinguishable.

21. We, thus, hold that on the basis of the materials on record, the trial court as well as the High Court was justified in returning a finding that the appellant was guilty of the offences for which he was charged, both under the IPC and the PC Act.

22. Now, we turn to the sentence imposed on the appellant. We have noticed previously that while issuing notice, this Court by the order dated January 3, 2014 had also called upon the respondents to show cause on the question of sentence imposed upon the appellant, meaning thereby that prima facie a case for alteration/modification of the sentence had been set up.

23. Perusal of the Record of Proceedings reveal that the appellant was released on bail after he had served 22 (twenty-two) of the 36 (thirty-six) months' prison term imposed by the trial court.

24. Mr. Banerjee, in his usual fairness, has brought to our notice that at the relevant time, the minimum sentence for the offence under Section 13(1)(d) read with Section 13(2) of the PC Act was one year.

25. Since the date of the incident relates back to 2004 and the appellant has spent a little less than 2/3rd of the prison term of 36 (thirty-six) months in custody, we are of the considered opinion that interest of justice would be sufficiently served if the sentence is altered to the period of imprisonment already undergone. It is ordered accordingly.

26. While maintaining the conviction, we partially allow the appeal by directing that the appellant shall not be required to serve the remainder of the prison term. The bail bond shall stand discharged.

27. Pending application(s), if any, stand disposed of.

.....J. [DIPANKAR DATTA] .....J. [MANMOHAN] New Delhi;

January 16, 2025.

ITEM NO.101 COURT NO.15 SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 2052/2014

BISWAJIT DAS Appellant(s)

VERSUS

CENTRAL BUREAU OF INVESTIGATION Respondent(s)

Date : 16-01-2025 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPANKAR DATTA
HON'BLE MR. JUSTICE MANMOHAN

For Appellant(s) : Mr. Hrishikesh Baruah, AOR
Mr. Anurag Mishra, Adv.
Mr. Utkarsh Dwivedi, Adv.

For Respondent(s) :Mr. Vikramjeet Banerjee, A.S.G. Mr. Mukesh Kumar Maroria, AOR Mr. Adit Khorana, Adv.

Mr. Sridhar Potaraju, Adv.

Mr. Shantnu Sharma, Adv.

Mr. P V Yogeswaran, Adv.

Mrs. Ranjana Narayan, Adv.

Mr. Kartik Dey, Adv.

UPON hearing the counsel the Court made the following O R D E R

1. The appeal is partially allowed in terms of the signed reportable judgment.

2. Pending application(s), if any, shall stand disposed of.

(JATINDER KAUR)
P.S. to REGISTRAR

(SUDHIR KUMAR SHARMA)
COURT MASTER (NSH)

[Signed reportable judgment is placed on the file]