State Through S.P., New Delhi vs Ratan Lal Arora on 26 April, 2004

Author: Arijit Pasayat

Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Appeal (crl.)  532 of 2004

PETITIONER:
State through S.P., New Delhi

RESPONDENT:
Ratan Lal Arora

DATE OF JUDGMENT: 26/04/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
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J U D G M E N T (Arising out of SLP (Crl.) NO. 4693/2003) ARIJIT PASAYAT, J.

Leave granted.

By the impugned judgment a learned Single Judge of the Delhi High Court while upholding that the respondent- accused's conviction under the Prevention of Corruption Act, 1988 (in short the 'Act'), was in order, further held him to be entitled to the benefits available under Section 360 of the Code of Criminal Procedure, 1973 (in short the 'Code'). The State has questioned legality of latter view.

Factual background in short is as follows :

> Respondent-accused was serving as Commercial Superintendent of the erstwhile DESU office. Proceedings under the Act were initiated against him for alleged commission of offence punishable under Sections 7, 13(2) read with Section 13(1)(d) of the Act for demanding and accepting bribe of Rs.1,500/- from a consumer Mahabir Prasad (hereinafter referred to as the 'complainant'). After trial by the Special Judge, Delhi, he was found guilty and sentenced to undergo rigorous imprisonment for 20 months and a fine of Rs.2,000/- with default stipulation for offence under Section 7 and 40 months and a fine of Rs.2,000/- with default stipulation for the offence punishable under section 13(2) of the Act. An appeal bearing Criminal Appeal No. 471 of 1999 was filed before Delhi High Court. By the impugned judgment the High Court held that the offences were clearly made out, and upheld convictions, but extended

benefits of Section 360 of the Code taking note of the fact that the respondent-accused has remained in custody for about 22 days. It was held that bar relating to the applicability of Probation of Offenders Act, 1958(in short the `Probation Act') was not operative in respect of offences under the Act though there was a prohibition under the Prevention of Corruption Act, 1947 (in short the ' old Act'). It was noted that the minimum sentence prescribed was one year. Purportedly taking into account the age, character, behaviour and the situation in which the offence was found committed, the respondent-accused was directed to be released on probation of good conduct instead of suffering sentence.

Learned counsel for the appellant submitted that the approach of the High Court is clearly erroneous. This Court has clearly held that where a statute prescribed a minimum sentence the Court cannot reduce the sentence any further. Reference was made to a decision of this Court in State of J & K vs. Vinay Nanda [2001(2) SCC 504]. The severity of the offence and the chain reaction of any offence under the Act generated clearly makes Section 360 inapplicable. The statutory object cannot be diluted by indirectly reducing the minimum sentence. By operation of Section 8 of the General Clauses Act, 1897 (in short the 'General Clauses Act'), the bar as contained in the old Act clearly applies to the Act also.

In response, learned counsel for the respondent-accused submitted that the High Court having invoked powers under a beneficial provision i.e. Section 360 of the Code no interference is called for while exercising jurisdiction under Article 136 of the Constitution of India, 1950 (In short the 'Constitution'). In the absence of any bar in the Act for extending the benefits under the provisions of Probation Act provisions of the said Act could have also been applied, as has been noted by the High Court. In any event Section 360 of the Code has been rightly applied by the High Court by taking note of the extenuating circumstances. Section 18 of the Probation Act stipulated that the Act was inapplicable to offences under the Old Act. Specific reference was made to Section 5(2) of the old Act which corresponds to Section 13 of the Act. But no change was made in the Probation Act after the Act was enacted and brought into force in 1988. Reference has been made to decisions of this Court in S. Natarajan vs. State of Mysore [1979 (4) SCC 542], in N.M. Parthasarathy vs. State by S.P.E. [1992 (2) SCC 198] and in Balaram Swain vs. State of Orissa [1991 suppl. (1) SCC 510] to contend that after long passage of time it would not be proper to send the accused back to jail.

Much stress was laid on the non-amendment of the Probation Act which referred to the old Act and not the present Act. It was submitted that since there has been no corresponding change in the Probation Act, therefore, the provisions of said Act cannot be applied to cases under the Act. The argument overlooks the principles underlying Section 8 of the General Clauses Act. When an Act is repealed and re-enacted unless a different intention is expressed by the legislature, the reference to the repealed Act would be considered as reference to the provisions so re-enacted.

The decisions referred to by learned counsel for the respondent to show that this Court had on account of delay extended benefits under Probation Act or Section 360 of the Code cannot have any precedent value being without reference to statutory bars and shall have to be treated as having been rendered per incuriam.

The commission of the offending Act was on 20.1.95 by the respondent who was an employee of the Delhi Vidyut Board and by a judgment dated 8.9.99 in C.C.No.59/99, the Special Judge Delhi convicted the respondent under Section 7 of the Act and passed a sentence of 20 months RI in addition to the payment of a fine of Rs. 2,000/- with a default stipulation. Further under Section 13(2) of the Act he was also convicted and sentenced to 40 months RI, in addition to the payment of a fine of Rs.2,000/- with a default stipulation. The claim of the respondent for extending the benefit of Section 360 of the Code, which found favour of acceptance with the learned Single Judge in the High Court seems to have been for the reasons that unlike the provisions of the old Act, which prohibited release of the convict on probation, the Act did not contain any such embargo and taking into certain extenuating circumstances noticed, (a) that the demand and acceptance was of a paltry sum of Rs. 1500/-, (b) that the respondent retired during trial itself from service, (c) that he had turned 64 years of age, (d) that his family circumstances were unhappy and he remained in custody for 22 days. The above facts were in the opinion of the learned Single Judge sufficient for extending the benefit of probation. It is this approach and the conclusions that are under challenge in this appeal.

The Parliament has enacted the Probation Act and Section 1(3) thereof stipulated that it shall come into force in a State on such date as the State Government may by notification in the official gazette appoint. By a notification in the Gazette of India dated 23.12.1961 this Act was made to apply and enforceable in the whole State of Delhi w.e.f. 29.12.1960. Section 19 of this Act lays down that, subject to the provisions of Section 18, Section 562 of the Criminal Procedure Code, 1898 (hereinafter referred to as `Old Code') shall cease to apply to the States or parts in which the Probation Act is brought into force. Old Code came to be repealed and replaced by the Code and Section 360 of the Code is the corresponding provision to Section 562 in the Old Code. In Bishnu Deo Shaw v. State of West Bengal (AIR 1979 SC 964), this Court ruled that Section 360 of the Code re enacts in substance Section 562 of the Old Code. That apart Section 18 of the Probation Act stipulates that nothing in the said Act shall affect the provisions of Section 31 of the Reformatory Schools Act, 1897 or sub-Section (2) of Section 5 of the Old Act. This Court in the decisions reported in Isher Das vs. The State of Punjab (AIR 1972 SC 1295) and Som Nath Puri vs. State of Rajasthan (AIR 1972 SC 1490) has held specifically adverting to Section 18 that the said provision renders the Probation Act inapplicable to an offence under sub-Section (2) of Section 5 of the Old Act, by expressly excluding its operation. Section 13 of the re-enacted Act is the corresponding provision to Section 5(2) of the Old Act.

The impact of the above provisions, in view of the new enactment of the Code and the Act requires and has to be considered in the light of Section 8 of the General Clauses Act which reads as under:

> "8. Construction of references to repealed enactments. [(1) Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals and re-
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> enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.
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> [(2) [Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted], with or without modification, any provision of a former enactment, then references in any [Central Act] or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.]"

The object of the said provision, obvious and patently made known is that where any Act or Regulation is repealed and re-enacted, references in any other enactment to provisions of the repealed former enactment must be read and construed as references to the re-enacted new provisions, unless a different intention appears. In similar situations this Court had placed reliance upon Section 8 of the General Clauses Act to tide over the situation. In New Central Jute Mills Co. Ltd. vs. The Astt. Collector of Central Excise, Allahabad and others (AIR 1971 SC 454), this Court held it to be possible to read the provisions of the Customs Act, 1962 in the place of Sea Customs Act, 1878 found mentioned in Section 12 of the Central Excise and Salt Act, 1944. In State of Bihar vs S.K. Roy (AIR 1966 SC 1995), this Court held that by virtue of Section 8 of the General Clauses Act, references to the definition of the word 'employer' in Clause (e) of Section 2 of the Indian Mines Act, 1923 made in Coal Mines Provident Fund and Bonus Schemes Act, 1948 should be construed as references to the definition of 'owner' in Clause (1) of Section 2 of the Mines Act, 1952, which repealed and re-enacted 1923 Act. Consequently, the references to Section 562 of Old Code in Section 19 of the Probation Act and to Section 5(2) of the Old Act in Section 18 of the Probation Act, respectively have to be inevitably read as references to their corresponding provisions in the newly enacted Code and the Act. Consequently, for the conviction under Section 13(2) of the Act the principles enunciated under the Probation Act cannot be extended at all in view of the mandate contained in Section 18 of the said Act. So far as Section 360 of the Code is concerned, on and from the date of extension and enforcement of the provisions of the Probation Act to Delhi powers under Section 562 of the Old Code and after its repeal and replacement powers under Section 360 of the Code, cannot be invoked or applied at all, as has been done in the case on hand. The view taken to the contra is not legally sustainable and cannot have our approval.

That apart Section 7 as well as Section 13 of the 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. Section 28 further stipulates that the provisions of the Act shall be in addition to and not in

derogation of any other law for the time being in force. In the case of Superintendent Central Excise, Bangalore vs Bahubali, (AIR 1979 SC 1271), while dealing with Rule 126-P (2) (ii) of the Defence of India Rules which prescribed a minimum sentence and Section 43 of the Defence of India Act, 1962 almost similar to the purport enshrined in Section 28 of the Act in the context of a claim for granting relief under the Probation Act, this Court observed that in cases where a specific enactment, enacted after the Probation Act prescribes a minimum sentence of imprisonment, the provisions of Probation Act cannot be invoked if the special Act contains any provision to enforce the same without reference to any other Act containing a provision, in derogation of the special enactment, there is no scope for extending the benefit of the Probation Act to the accused. Unlike, the provisions contained in Section 5(2) proviso of the Old Act providing for imposition of a sentence lesser than the minimum sentence of one year therein for any "special reasons" to be recorded in writing, the Act did not carry any such power to enable the Court concerned to show any leniency below the minimum sentence stipulated. Consequently, the learned Single Judge in the High Court committed a grave error of law in extending the benefit of probation even under the Code. At the same time we may observe that though the reasons assigned by the High Court to extend the benefits of probation may not be relevant, proper or special reasons for going below the minimum sentence prescribed which in any event is wholly impermissible, as held supra, we take them into account to confine the sentence of imprisonment to the minimum of six months under Section 7 and minimum of one year under Section 13(2) of the Act, both the sentences to run concurrently. So far as the levy of fine in addition made by the learned Trial Judge with a default clause on two separate courts are concerned, they shall remain unaffected and are hereby confirmed.

The appeal shall stand allowed, but with due modification of the sentences of imprisonment alone, as indicated supra. The respondent shall surrender to custody to undergo the remaining period of sentence.