SUPREME COURT OF INDIA

State

Vs

A. Parthiban

Appeal (Crl.) 842 of 2003

(Arijit Pasayat and R.V. Raveendran, JJ)

09.10.2006

JUDGMENT

ARIJIT PASAYAT, J.

The State of Tamil Nadu is in appeal questioning correctness of the decision rendered by a learned Single Judge of the Madras High Court holding that the trial Court was not justified in convicting the respondent in terms of Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (in short 'the Act').

A brief reference to the factual aspects would suffice: The respondent was convicted for offence punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the Act. He was sentenced to undergo RI for six months and to pay a fine of Rs.500/- with default stipulation for the earlier offence and RI for one year and to pay a fine of Rs.1, 000/- with default stipulation for the latter offence. The conviction was recorded and sentenced imposed by learned Chief Judicial Magistrate and Special Judge Pudukottai. The said judgment in Special Case No.4 of 1991 was challenged before the Madras High Court which by the judgment dated 28.3.2002 in Criminal Appeal No.659 of 1994 held that the conviction under Section 13(2) read with Section 13(1)(d) of the Act was not maintainable and was accordingly set aside. However, the conviction for offence under Section 7 of the Act was confirmed. The High Court held that for a single act it would not be proper to convict the accused under both the sections. Accordingly, the sentence and conviction in terms of Section 13(2) read with Section 13(1)(d) of the Act was set aside. Provisions of Section 360 of the Code of

Criminal Procedure, 1973 (in short 'Cr.P.C.') were applied and the respondent was directed to be released on probation.

Learned counsel for the appellant submitted that the approach of the High Court is clearly erroneous. Section 7 and Section 13(2) read with Section 13(1)(d) of the Act operate separately and, therefore, it cannot be said that the Trial Court was not justified to convict both under Sections 7 and 13(2) read with Section 13(1)(d) of the Act. Additionally, provisions of Section 360 Cr.P.C. are not applicable to offences under the Act. Learned counsel for the appellant further submitted that 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 v. Vinay Nand 05. The severity of the offence and the chain reaction of any offence under the Act generated clearly make Section 360 inapplicable. By operation of Section 8 of the General Clauses Act, 1897 (in short the 'General Clauses Act'), the bar contained with reference to Section 5(2) of the Prevention of Corruption Act, 1947 (in short 'Old Act') clearly applies with respect to Section 13(2) of the Act also. It was, therefore, submitted that the High Court's order is clearly vulnerable.

Learned counsel for the respondent submitted that though Section 7 and Section 13(2) read with Section 13(1)(d) of the Act operate in different fields, in a given case where there is a single offence, the conviction cannot be both under Section 7 and Section 13(2) read with Section 13(1)(d) of the Act. It was further submitted that Section 18 of Probation of Offenders Act, 1958 (in short 'Probation Act') made the provisions of that inapplicable to only Section 5(2) of the Act and corresponding to Section 13(2) of the Act; and Section 18 of the Probation Act did not bar the application of the provisions of that Act to Section 7 of the Act which is analogous to Section 161 of Indian Penal Code, 1860 (in short 'I.P.C.') and, therefore, where the conviction is only under Section 7 of the Act, Section 360 Cr.P.C. was clearly applicable. 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').

The stand that respondent could not have been simultaneously convicted for offences relatable to Section 7 and Section 13(2) read with Section 13(1)(d) of the Act, as held by the High Court is clearly unacceptable. Section 71 IPC provides the complete answer. The same reads as follows:

"71. Limit of punishment of offence made up of several offences. - Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the court which tries him could award for any one of such offences."

The position is further crystalised in Section 220 of the Cr.P.C. Same reads as follows:

"220. Trial for more than one offence.(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of properly as provided in sub-section (2) of section 212 or in sub-section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, or such acts.

(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860)."

The crucial question is whether the alleged act is an offence and if the answer is in the affirmative, whether it is capable of being construed as offence under one or more provisions. That is the essence of Section 71 IPC, in the back drop of Section 220 Cr.P.C.

Every acceptance of illegal gratification whether preceded by a demand or not, would be covered by Section 7 of the Act. But if the acceptance of an illegal gratification is in pursuance of a demand by the public servant, then it would also fall under section 13(1)(d) of the Act. The act alleged against the respondent, of demanding and receiving illegal gratification constitutes an offence both under Section 7 and under Section 13(1)(d) of the Act. The offence being a single transaction, but falling under two different Sections, the offender cannot be liable for double penalty. But the High Court committed an error in holding that a single act of receiving an illegal gratification, where there was demand and acceptance, cannot be an offence both under Section 7 and under Section 13(1)(d) of the Act. As the offence is one which falls under two different sections providing different punishments, the offender should not be punished with a more severe punishment than the court could award to the person for any one of the two offences. In this case, minimum punishment under Section 7 is six months and the minimum punishment under Section 13(1)(d) is one year. If an offence falls under both Sections 7 and 13(1)(d) and the court wants to award only the minimum punishment, then the punishment would be one year. It was next contended by the respondent that 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 punishable under Section 5(2) of 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. 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 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 be notification in the official gazette appoint. In State of Tamil Nadu it came into force in the entire State in the year 1964. Section 19 of that 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 , this Court ruled that Section 360 of the Code i.e. enacts in substance Section 562 of the Old Code. That apart, Section 18 of the Probation Act inter-alia stipulates that nothing in the said Act shall affect the provisions of Sub-section (2) of Section 5 of the Old Act. This Court in the decisions reported in Isher Das v. The State of Punjab and Som Nath Puri v. State of Rajasthan , 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(2) of the re-enacted Act is the corresponding provision to Section 5(2) of the Old Act. The import 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- 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.

(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. v. The Astt. Collector of Central Excise, Allahabad and Ors. , 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 v. S.K. Roy 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 Madras 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.

In the case of Superintendent Central Excise, Bangalore v. Bahubali , 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. These aspects were highlighted in State through SP, New Delhi v. Ratan Lal Arora . Consequently, the learned Single Judge in the High Court committed a grave error in law in extending the benefit of probation even under the Code. The sentences of imprisonment shall be six months under Section 7 and 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 counts are concerned, they shall remain unaffected and are hereby confirmed.

The appeal is accordingly allowed.