

STATE THROUGH S.P., NEW DELHI

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v

RATAN LAL ARORA

APRIL 26, 2004

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

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Probation of Offenders Act, 1958—Section 18—Prevention of Corruption Act, 1988/1947—Sections 13/5(2)—General Clauses Act, 1897—Section 8—Code of Criminal Procedure, 1973—Section 360—Act of 1947 prohibiting release of convict on probation—Old Act repealed by Act of 1988—Conviction and sentence under Act of 1988—Grant of release on probation under section 360 Cr.P.C.—Justification of—Held: In view of Section 8 of 1897 Act when an Act is repealed and re-enacted unless different intention is expressed by the legislature, reference to the repealed Act would be considered as reference to the provisions of re-enacted Act—On and from date of extension and enforcement of the provisions of Probation Act to Delhi, powers under section 562 of old Code repealed and replaced by Section 360, as such Section 360 cannot be invoked or applied—Further, in view of Section 18 of 1958 Act making the Probation Act inapplicable to Section 5(2) of 1947 Act which corresponds to Section 13 of 1988 Act, the principles enunciated under the Probation Act cannot be applied to conviction under Section 13(2) of 1988 Act—Interpretation of Statutes.

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Code of Criminal Procedure, 1973—Section 360—Prevention of Corruption Act, 1988—Sections 7 and 13(2)—Offence—Sentence under the sections—Sections providing for minimum sentence—Release on probation—Permissibility of—Held: Since the statute prescribes minimum sentence in addition to maximum sentence, the Court cannot show any leniency below the minimum sentence stipulated in such cases—Thus, grant of benefit of probation not permissible.

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Respondent-employee of Vidyut Board demanded and accepted bribe from a consumer. Trial Court convicted the respondent under Section 7 of the Prevention of Corruption Act, 1988 and passed a sentence of 20 months rigorous imprisonment and fine of Rs. 2000 with default stipulation; and also convicted under Section 13(2) and passed a sentence of 40 months rigorous imprisonment and fine of Rs. 2000 with default stipulation. Single Judge of

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A High Court upheld the convictions but extended him the benefit of release on probation under Section 360 of Cr.P.C., 1973 on the ground that the bar relating to the applicability of Probation of Offenders Act, 1958 was not operative in respect of offence under the 1988 Act though the old Act of 1947 prohibited release of the convict on probation, and other extenuating circumstances. Hence the present appeal.

B Appellant-State contended that the approach of High Court is clearly erroneous; that by operation of Section 8 of the General Clauses Act, 1897 the bar to probation as contained in the Act of 1947 clearly applies to the Act of 1988; and that the statutory object cannot be diluted by indirectly reducing the minimum sentence.

C Respondent-accused contended that in the absence of any bar in the Act, 1988 for extending the benefits provisions of the said Act could have been applied; that Section 18 of the Probation Act stipulated that the Act was inapplicable to Section 5(2) of the old Act of 1947 which corresponds to Section 13 of the Act of 1988 but no change was made in the Probation Act after the Act was enacted and brought into force in 1988, the provisions of the said Act cannot be applied to the cases under the 1988 Act; that the High Court rightly applied Section 360 of the Code by taking note of the extenuating circumstances; and that after long passage of time, it would not be proper to send the accused back to jail.

E Allowing the appeal, the Court

F HELD: 1.1. The object of section 8 of the General Clauses Act, 1897, 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. [637-E-F]

G 1.2. The references to Section 562 of Cr.P.C., 1898 in Section 19 of the Probation Act, 1958 and to Section 5(2) of Prevention of Corruption Act, 1947 in Section 18 of 1958 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 Prevention of Corruption Act, 1988 the principles enunciated under the Probation Act cannot be extended at all in view of Section 18 of the said Act making the Act inapplicable to Section 5(2) of the old Act of 1947 which corresponds to Section 13 of the Act of 1988. With regard to Section 360 of Cr.P.C., 1973,

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on and from the date of extension and enforcement of the provisions of the Probation Act to Delhi, in view of Section 19 of the Probation Act that subject to the provisions of section 18, Section 562 of Cr.P.C., 1898 shall cease to apply to the States or part in which the Probation Act is brought into force which came to be repealed and replaced by Section 360 of Cr.P.C., 1973, Section 360 cannot be invoked or applied at all. The view taken to the contra is not legally sustainable and cannot be approved. [637-H; 638-A-C]

Bishnu Deo Shaw v. State of West Bengal, AIR (1979) SC 964; *Isher Das v. The State of Punjab*, AIR (1972) SC 1295; *Som Nath Puri v. State of Rajasthan*, AIR (1972) SC 1490; *New Central Jute Mills Co. Ltd. v. The Asstt. Collector of Central Excise, Allahabad and Ors.*, AIR (1971) SC 454 and *State of Bihar v. S.K. Roy*, AIR (1966) SC 1995, referred to.

1.3. Unlike the provisions contained in Section 5(2) proviso of the Old Act of 1947 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 of 1988 did not carry any such power to enable the Court concerned to show any leniency below the minimum sentence stipulated. Single Judge of High Court erred in extending the benefit of probation even under the Code. Though the reasons assigned by 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, it is taken 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. The levy of fine with default clause by trial court is confirmed. [638-F-H; 639-A]

N.M. Parthasarathy v. State by S.P.E., [1992] 2 SCC 198 and *Balaram Swain v. State of Orissa*, [1991] Suppl. 1 SCC 510, held *per incuriam*.

Superintendent Central Excise, Bangalore v. Bahubali, AIR (1979) SC 1271, relied on.

State of J & K v. Vinay Nanda [2001] 2 SCC 504, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 532 of 2004.

From the Judgment and Order dated 29.10.2002 of the Delhi High Court in Crl. A. No. 471 of 1999.

A L.N. Rao, Additional Solicitor General, Amit Mahajan, Uday Lalit and P. Parmeswaran for the Appellant.

M.N. Krishnamani and Ajay Sharma for the Respondent.

The Judgment of the Court was delivered by

B **ARIJIT PASAYAT, J.** Leave granted.

C 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 :

D 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 and 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

E 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

F 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

G 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.

H 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 v. 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 v. State of Mysore*, [1979] 4 SCC 542, in *N.M. Parthasarathy v. State by S.P.E.*, [1992] 2 SCC 198 and in *Balaram Swain v. 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

A without reference to statutory bars and shall have to be treated as having been rendered per incuriam.

B 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 rigorous imprisonment 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 rigorous imprisonment, 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, and (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.

E 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 F 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, G. this Court ruled that Section 360 of the Code reenacts 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 v. The State of Punjab* AIR H (1972) SC 1295 and *Som Nath Puri v. State of Rajasthan*, AIR (1972) SC 1490

has held specifically advertng 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. A

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: B

“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. C

[(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.]” D

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 Asst. Collector of Central Excise, Allahabad and Ors.*, 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 v. 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 E F G H

- A 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 v. 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. A

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. B

N.J.

Appeal allowed.