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K. RADHAI

v.

C.B.I., COCHIN UNIT

SEPTEMBER 28, 2007

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[C.K. THAKKER AND ALTAMAS KABIR, JJ.]

Service Law:

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Prevention of Corruption Act, 1988; S. 13(1)(d) r/w S. 13(2)/Penal Code, 1860; Ss. 420, 465, 468 and 471:

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Corruption—Bank employee allegedly withdrawn certain amount from bank account fraudulently—Trial Court found accused-employee guilty of committing offences u/ss. 420 and 468 IPC and u/s. 13(2) r/w s.13(1)(d) of 1988 Act and sentenced her accordingly—On appeal, High Court affirmed conviction reducing sentence from 2 years to 1 year for offences punishable u/ss. 420 IPC and s.13(2) r/w S.13(1)(d) of the 1988 Act, but no reduction in sentence was ordered for offence punishable u/s. 468 IPC—On appeal, Held: On the facts and in the circumstances of the case, ends of justice would be met if conviction of the accused is maintained but substantive sentence imposed on her u/s. 468 IPC is reduced from two years to one year—Directions issued accordingly—Sentencing.

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Appellant was employed as a Clerk in a Bank. According to the Prosecution, the appellant got opened a false bank account in the bank and fraudulently withdrawn an amount of Rs.42,000/-. After investigation, charges were framed against the accused-appellant for committing offences punishable under Sections 465, 471 and 420 of the Indian Penal Code as also under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The Trial Court held the charge proved against the appellant, convicted and ordered her to undergo rigorous imprisonment for two years each for offences punishable under Sections 420 and 468 IPC; rigorous imprisonment for

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six months each under Sections 465 and 471 IPC and rigorous imprisonment for two years for an offence punishable under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and also imposed fine. Aggrieved, the appellant preferred an appeal before the High Court. The High Court confirmed the conviction reducing the sentence to one year for offences punishable u/s.13(2) r/w s.13(1)(d) of the Prevention of Corruption Act and also u/s.420 IPC. However, no reduction in sentence was ordered by the High Court for offence punishable u/s.468 IPC. Hence the present appeal. A B

Accused-appellant contended that though the High Court had reduced substantive sentence from two years to one year for certain offences, however, sentence of two years imposed on her has remained as it is, in view of the fact that no reduction in sentence for the offence punishable u/s.468 IPC was ordered and the sentence of two years as imposed by the trial Court continued to remain as it was. C D

Partly allowing the appeal, the Court

HELD:1.1. It appears that the High Court was of the view that an order of conviction recorded by the trial Court did not call for interference and, hence, it confirmed the conviction of the appellant. It, however, exercised discretion by reducing the sentence imposed on the appellant. Precisely, because of that the High Court reduced the sentence from two years to one year for the offences punishable under the Prevention of Corruption Act, 1988 as also for an offence punishable under Section 420 IPC. Since there was no mention of Section 468 IPC, the sentence of two years imposed on the appellant has remained as it was. [Para 8] [384-C-D] E F

1.2. On the facts and in the circumstances of the case, ends of justice would be met if conviction of the appellant-accused for an offence punishable under Section 468 IPC is maintained but the substantive sentence imposed on her for the said offence is reduced from two years to one year. [Para 9] [384-E] G

1.3. The appellant-accused who is convicted for offences punishable H

A under the Indian Penal Code and under the Prevention of Corruption Act, 1988 is ordered to undergo rigorous imprisonment for one year.

[Para 10] [384-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1303 of 2007.

B From the Judgment and Order dated 12.10.2006 of the High Court of Kerala at Ernakulam in Criminal Appeal No. 9 of 1997.

Romy Chacko for the Appellant.

C P. Parmeswaran for the Respondent.

The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. Leave granted.

D 2. This appeal is filed against the judgment and final order passed by the High Court of Kerala on October 12, 2006 in Criminal Appeal No. 9 of 1997. By the said appeal, the High Court confirmed the conviction of the appellant recorded by the Court of the Special Judge (CBI), Ernakulam on December 27, 1996 but reduced the sentence.

E 3. The facts in nutshell are that the appellant was employed as a Clerk in Syndicate Bank at Fort Branch, Trivendrum. It was the case of the prosecution that a false bank account got opened with Account No. 15799 in the said Branch and an amount of Rs.42,000/- was fraudulently withdrawn by the accused. After investigation, charge was framed against the accused-appellant in the Court of the Special Judge, Central Bureau of Investigation (CBI), Ernakulam for offences punishable under Sections 465, 468, 471 and 420 of the Indian Penal Code (IPC) as also under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

G 4. The Special Judge, after appreciating the evidence of prosecution witnesses, held the charge proved, convicted the appellant and ordered her to undergo rigorous imprisonment for two years each for offences punishable under Sections 420 and 468, IPC, rigorous imprisonment for six months each under Sections 465 and 471, IPC and rigorous imprisonment for two years for an offence punishable under Section 13(2)

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read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. A
Fine was also imposed by the Court.

5. Being aggrieved by the order passed by the trial Court, the
appellant preferred an appeal. The High Court held that no illegality was
committed by the trial Court in finding the appellant-accused guilty and in
convicting her. With regard to sentence, however, the High Court observed
that on the facts and in the circumstances of the case, liberal view was
required to be taken. The High Court, therefore, in the operative part of
the judgment, observed: B

“Last question is regarding the punishment. Counsel for the
appellant argued that the alleged offence was in 1993 and the
money was taken during a catastrophic situation as mentioned in
Ext.P19. It is further submitted that her husband has deserted her,
that she has to maintain her children, that she lost the job also
because of the misconduct she has committed and that a lenient
view may be taken. Taking into account all these circumstances
together, the sentence of imprisonment for two years each imposed
for the offence punishable under Section 13(2) read with Section
13(1)(d) of the Prevention of Corruption Act and 420 IPC is
reduced to an imprisonment for one year each. No interference is
required with regard to the imposition of fine or punishment imposed
for other offences. The sentence of imprisonment shall run
concurrently”. C
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6. The appellant approached this Court against the order passed by
the High Court. On March 9, 2007, when the matter was called out for
admission hearing, it was submitted by the learned counsel that though
the sentence of imprisonment for two years imposed by the trial Court
for an offence punishable under Section 13(2) read with Section 13(1)(d)
of the Prevention of Corruption Act, 1988 was reduced from two years
to one year as also sentence of imprisonment for two years for an offence
punishable under Section 420, IPC was reduced from two years to one
year, no order of reduction of sentence was passed so far as the offence
punishable under Section 468, IPC was concerned. The resultant effect
was that though the High Court had reduced substantive sentence of the
appellant-accused from two years to one year for certain offences, F
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A sentence of two years imposed on the appellant-accused has remained as it is in view of the fact that for an offence punishable under Section 468, IPC, no reduction was ordered and the sentence imposed by the trial Court continued to remain as it was. Notice was, therefore, issued by the Court only on question of reduction of sentence.

B 7. We have heard learned counsel for the parties.

C 8. On the facts and in the circumstances of the case, in our opinion, the submission of the learned counsel for the appellant is well founded and must be accepted. It appears that the High Court was of the view that an order of conviction recorded by the trial Court did not call for interference and, hence, it confirmed the conviction of the appellant. It, however, exercised discretion by reducing the sentence imposed on the appellant. Precisely, because of that the High Court reduced the sentence from two years to one year for the offences punishable under the Prevention of Corruption Act, 1988 as also for an offence punishable under Section 420, IPC. Since there was no mention of Section 468, IPC, the sentence of two years imposed on the appellant has remained as it was.

D 9. On the facts and in the circumstances of the case, in our opinion, ends of justice would be met if conviction of the appellant-accused for an offence punishable under Section 468, IPC is maintained but the substantive sentence imposed on her for the said offence is reduced from two years to one year.

E 10. For the foregoing reasons, in our opinion, the appeal deserves to be partly allowed and is accordingly allowed to the extent that the conviction of the appellant for an offence punishable under Section 468, IPC is confirmed but the substantive sentence imposed by the trial Court and confirmed by the High Court is reduced from two years to one year. In other words, the appellant-accused who is convicted for offences punishable under the Indian Penal Code and under the Prevention of Corruption Act, 1988 is ordered to undergo rigorous imprisonment for one year. The appeal is allowed to the extent indicated above.

S.K.S.

Appeal partly allowed.