

(2007) 11 GAU CK 0028

Gauhati High Court

Case No: Criminal Appeal No. 27 of 2001

Barindra Ram Khaund

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision: Nov. 29, 2007

Acts Referred:

- Prevention of Corruption Act, 1988 - Section 13(2), 13(2)

Citation: (2008) 2 GLR 505

Hon'ble Judges: H.Baruah, J

Bench: Single Bench

Advocate: B.S.Sinha, D.Talukdar , J.M.Choudhury, Advocates appearing for Parties

Judgement

1. Heard Mr. J.M. Choudhury, learned senior counsel for the appellant and Mr. B.S. Sinha, for the State of Assam, the respondent.
2. The appellant Sri Barindra Ram Khaund, feeling aggrieved as to the legality and correctness of the Judgment and Order dated 24.1.2001 passed by the learned Special Judge, Assam convicting him under section 13(2) read with section 13(1)(c) and (d) of the Prevention of Corruption Act and sentencing him to undergo RI for l(one) year and, to pay a fine of Rs. 5,000 in default to RI for another 1 (one) year under section 13(2) read with section 13(1)(c) of the RC. Act and to undergo RI for l(one) year and to pay a fine of Rs. 5,000 in default, to RI for l(one) under section 13(2) read with section 13(1)(d) of the RC. Act, filed this instant appeal praying this court to set aside and quash the Judgment and Order of conviction and sentence so rendered by the learned Special Judge.
3. The prosecution case in a short campus is that the appellant Barindra Ram Khaund was an employee of the National Textile Corporation and in the year 1994 and was serving as Factory Manager and Unit Head of National Textile Corporation (West Bengal, Assam, Bihar and Orissa) Ltd. at Chandrapur District, Kamrup, Assam. In the said capacity the appellant was in over all charge of the Unit Head and used to

look after and supervise all the administrative, production and accounts works of the Unit. In the month of April to October 1994, the appellant in the said capacity received a total sum of money amounting to Rs. 1,92,487 on his application to his department towards advances to meet the official expenses on different heads. Out of the said amount a so taken the appellant could adjust an amount of Rs. 16,020 only against 5 vouchers but failed to adjust the balance amount, amounting to Rs. 1,76,467. It is stated that the appellant Barindra Ram Khaund misappropriated the said amount and thereby misconducted himself by misappropriating the same. ,

4. Narrating these facts, an FIR was drawn by the Superintendent of Police/CBI/ACB/Guwahati and a case RC Case No. 26(A)/96 was registered. After due investigation of the case a charge sheet was laid against the appellant under section 409, IPC and also under section 13(2) read with section 13(1)(c) of the Prevention of Corruption Act, 1988.

5. The learned Special Judge framed charge against this appellant under section 409, IPC and under section 13(2) read with section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988. The appellant claimed his trial. Altogether 9 witnesses were examined. No defence evidence was adduced either oral or documentary by the appellant in support of his case. His specific case is that he adjusted the entire amount which he had taken as advance.

6. There is no dispute as to the fact that the appellant Barindra Ram Khaund was not an employee of National Textile Corporation and in the year 1994 and was not over all incharge of the said Unit being in the capacity of Factory Manager and Head of the Unit. There is also no dispute that this appellant did not receive an advance of Rs. 1,92,487 from the Office as advances to meet the official expense on different heads. The only conflict that cropped up is in regard to the adjustment of the amount so taken as an advance. The appellant by his statement recorded under section 313 of Cr.PC claimed that he had adjusted the entire amount against vouchers and, therefore, he is innocent. On the contrary, prosecution claimed that only 16,020, had been adjusted against 5 vouchers by the appellant, the rest amount amounting to Rs. 1,76,467 had been misappropriated by the appellant.

7. The evidence of the witnesses available in the record and the documents proved in this case cumulatively go to show that except Rs. 16,020 the remaining amount had remained to be adjusted by the appellant. It is found from the evidence on record that the appellant received advances under different heads such as salary, travelling expenses etc., vide cash vouchers exhibit 1 to 79 and 81 to 85 the appellant acknowledged the receipt of the amount with the signatures exhibit 1(1) to 79(1) and 81(1) to 85(1). The signatures appearing in the exhibits 1(1) to 79(1) and 81(1) to 85(1) are all proved by PW1, PW2, PW3, PW4 and PW5. PW8, Binod Kumar, the Govt. examiner of questioned documents after examining the cash vouchers, specimen writings and admitted writings of the appellant offered an opinion that the enclosed portion stamped and marked Q1 to Q8, Si to S30 and A3 to A7 were all

written by one and the same person. Therefore, there cannot be any dispute that appellant Barindra Ram Khaund did not receive the amount and adjust on Rs. 16,020 only against vouchers.

8. The learned trial court while scrutinizing the evidence on record and the documents proved and marked as exhibits gave a serious thought regarding the involvement of the appellant in the misappropriation of the amount so taken by him as an advance. This court after careful scrutiny of the evidence and documents and the expert opinion rendered by PW8 does not find any scope to take a different view than the views adopted by the learned trial court. The facts and circumstances of the case, evidence on record and the documents make it abundantly clear that appellant Barindra Ram Khaund misappropriated the amount amounting to Rs. 1,76,467 and thus misconducted himself being a public servant.

9. Sri J.M. Choudhury, learned senior counsel while arguing this appeal has not put much emphasis in respect of legality and correctness of the Judgment so rendered by the learned Special Judge. Sri Choudhury, however, has made a prayer to adopt a lenient view in favour of the appellant in context of punishment so awarded by the learned Special Judge. In support of his contention it is submitted that due to misappropriation of the amount and other amounts of his department/appellant was dismissed from service and that apart the appellant is at present running 65 years of age. It has been submitted by Sri Choudhury at the juncture a lenient view can be taken in favour of the appellant in respect of the punishment so awarded. Sri Choudhury further argues that in Special Case Nos. 48c/92, 49c/92, 50c/92, the learned Special Judge having considered these two aspects awarded punishment for 6 months RI and fine of Rs.1,000 in default 3 months RI in each of the cases under the charges so framed against him in each case. Sri Choudhury, therefore, prays this court to apply the same ratio in this case too.

10. Sri Choudhury in support of his contention relied in the case of D. Srinivasan and Others v. Delhi Special Police Establishment and Others 1993 SCO (Cri) 792 in para 6 of the said judgment hon"ble Supreme Court has held as under :

"The occurrence is said to have taken place in the year 1969. Now nearly twentythree years have elapsed. All the appellants must have become very old and the learned counsel says that some of them may have died but not able to give the names as such but lie is definite that Al has died. The appellants have undergone the ordeal of trial for a number of years and convictions have been hanging on their head for all these years and they have also lost their jobs and they have large families dependent upon them. In such circumstances the court can award lesser sentence than one year which is the maximum sentence under section 5(2) of the Prevention of Corruption Act. The section as it stood in the year 1961 lays down that the court for any special reason recorded can impose a sentence of imprisonment of less than one year. The circumstances pointed, out above do warrant that a lesser sentence should be imposed. From the records we find that the appellants were in

jail for some time and in these circumstances we confirm their convictions and reduce the sentence under each charge to the period already undergone. The sentences of fine in respect of A1 in Criminal Appeal No. 748 of 1980 D. Srinivasan, A4 in Criminal Appeal No. 617 of 1980 Sandanaswamy and A7 in Criminal Appeal No. 592 of 1980 A.R.M. Perumal Chettiar are confirmed with default clause."

11. Subsection (2) of section 13 of the Prevention of Corruption Act, 1988 provides that the punishment should not be less than 1 year which may, extend to 7 years and shall also be liable to fine. Therefore, law provides that no punishment less than 1 year can be awarded. This subsection (2) of section 13, however, does not contain any provision for leniency which could have been taken into consideration.

12. Having considered the facts of dismissal of the appellant from service and the age, this court finds it appropriate to reduce the sentence as imposed upon the appellant by the learned trial court though not provided in the Act from 1 year to 6 months under the charge under section 13(2) read with section 13(1)(c) under section 13(2), read with r 13(1)(d) of the Prevention of Corruption Act, 1988. The amount of fine and the default provision shall remain unchanged. Both the sentences will run concurrently.

13. In the result the appeal is partly allowed.

14. The appellant shall surrender before the court of Special Judge, CBI, Assam, Guwahati to receive his sentence. Bail bond stands cancelled.