

CASE NO.:
Writ Petition (crl.) 1303 of 2007

PETITIONER:
K. RADHAI

RESPONDENT:
C.B.I. COCHIN UNIT

DATE OF JUDGMENT: 28/09/2007

BENCH:
C.K. THAKKER & ALTAMAS KABIR

JUDGMENT:
J U D G M E N T
(arising out of SPECIAL LEAVE PETITION (CRL.) NO. 1290 OF 2007)

C.K. THAKKER, J.

1. Leave granted.
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.
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a false bank account got opened with Account No. 15799 in the said Branch and an amount of Rs.42,000/- was fraudulently withdrawn by the accused.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.
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) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. 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:

\023Last 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\024.

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, 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.

7. We have heard learned counsel for the parties.

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.

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.

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.