

PETITIONER:
SHRI R.V. LYNGDOH

Vs.

RESPONDENT:
STATE (DELHI) SPL. ESTABLISHMENT

DATE OF JUDGMENT: 04/02/1999

BENCH:
G.T. NANAVALI, & N. SANTOSH HEGDE

JUDGMENT:

NANAVALI.J

This appeal arises out of the judgment and order passed by the High Court of Gauhati in Criminal Appeal No. 32 of 1982. The High Court confirmed the conviction of the appellant under Section 409 IPC and Section 5(2) read with Section 5 (1) (C) of the Prevention of Corruption Act, 1947 and dismissed the appeal.

During the period between 6.10.67 and 9.3.70 the appellant was functioning as a Managing Director of the Assam Agro Industries Development Corporation Ltd.. It was alleged that between 26.10.67 and 8.4.68 he misappropriated Rs. 52,465.37 belonging to the Government as that much cash was found less when he had handed over charge to the succeeding Managing Director. A complaint in that behalf was filed on 2.8.71. The appellant had not denied that he was entrusted with the said amount but his defence was that it was a newly set up corporation and the staff working under him was inadequate, new and inexperienced. The deficit in the cash balance was because of that reason. He accepted moral responsibility for the deficiency in cash and paid up that amount on 27.8.71.

The Trial Court did not accept the defence that this was a case of negligence "in performance of duty and held that there was unlawful retention of Government money by the appellant. Taking this view the Trial Court held him liable under Section 409 IPC and Section 5 (2) read with Section 5 (1) (C) of the Prevention of Corruption Act.

After reappreciating the evidence the High Court also held that the appellant had retained Rs. 52,465.37 as alleged. The High Court further held :

"All these circumstances show that appellant improperly set apart the amount for his own use to the exclusion of the Corporation or dealt with the money of the Corporation without right as if it was his own money; and that the appellant dishonestly misappropriated the amount of Rs. 52,465.37, may be, for a time. "

Shri U.R. Lalit, learned senior counsel appearing for the appellant stated that as the default committed by the appellant would technically amount to criminal misappropriation and also misconduct as contemplated by

Section 5 (1) (C) of the Prevention of Corruption Act, he does not want to challenge the conviction of the appellant for those offences. But he submitted that there was no evidence to show that the said amount was actually taken away by the appellant and was utilised by him for his own purpose. He also submitted that from the material on record it appears that the office of the Assam Agro Industries Corporation Ltd was newly set up and the staff employed was new and inexperienced. He also submitted that over and above his duties as Managing Director of the Assam Agro Development Corporation the appellant was also required to perform other duties. He also submitted that the evidence does not disclose that it was the duty of the appellant to keep cash with him though he was required to sign the cash register and varify correctness of the entries made therein. On the contrary the evidence discloses that cash used to remain with clerks and other officers also. He submitted that in view of these special circumstances lenient view as regards sentence deserves to be taken.

We have also heard learned counsel for the State. We find considerable substance in what Mr. Lalit has submitted. In the above referred facts and circumstances and the old age of the appellant and his health we are of the opinion that it would be just and proper if less than the minimum sentence is imposed upon the appellant. We are also of the view that the ends of justice would be met if the sentence of one year imposed upon the appellant is reduced to the period already undergone. With this modification in the order of sentence this appeal is partly allowed.