REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 650 OF 2008

A.B. Bhaskara Rao .... Appellant(s)

Versus

Inspector of Police, CBI Visakhapatnam .... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

1) This appeal is directed against the final judgment and order dated 03.10.2007 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Appeal No. 436 of 2001 whereby the High Court dismissed the appeal filed by the appellant herein and confirmed the judgment dated 19.03.2001 passed by the Special Judge, C.B.I. Cases, Visakhapatnam in C.C. No.2 of 1998.

2) **Brief facts:**

(a) The appellant-accused was working as a Head Clerk in the Traffic Cadre Section in the Office of the Senior Divisional Personnel Officer, South Central Railway, Vijayawada during the period from April, 1992 to November, 1997. The nature of duties of the appellant-accused included dealing with and processing of the matters like promotions, transfers, seniority list, roster list, pay fixation on promotions, retirements, resignations etc. of the personnel.

b) One K. Rama Rao-the Complainant, who was examined as PW-1, was posted as Yard Points Man, Grade 'A' under Station Superintendent, South Central Railway, Tanuku from December, 1995 to June, 1997. In June, 1997, due to excess staff at Tanuku, he was instructed to report at Head Quarters, Vijayawada and accordingly, when he reported there, he was asked to go back to Tanuku. Thereafter, he went back to Tanuku from where he was subsequently transferred to Rajahmundry. Thereafter, PW-1 made a representation to his senior officer requesting him for posting at Vijayawada,

Cheerala, Vetapalam or Tenali. Later, PW-1 was transferred to Vijayawada.

(c) As the appellant-accused was dealing with the transfers, the complainant (PW-1) met him on 05.11.1997 at his office to pursue about the issuance of the said transfer order. The appellant-accused asked him to come on 10.11.1997. When he met him on 10.11.1997, the appellant asked him to come on the next day as he was busy in pay-fixation work. On 11.11.1997, again he went to the office of the appellant but he could not find him on his seat. Again a day after i.e. on 13.11.1997, when he met the appellant-accused, he informed him that his request for transfer has been processed and the order is ready and the same has been placed before the A.P.O. for signature and asked him to come on the next day, i.e., on 14.11.1997, and demanded Rs.200/- for releasing the said office order.

(d) On the same day, (PW-1) reported the matter in writing to the Inspector of Police, Central Bureau of Investigation (in short 'the CBI), Vijayawada. On 14.11.1997, a trap was laid by the CBI officials along with panchas and when the accused

demanded and accepted a sum of Rs.200/- as illegal gratification, he was caught red handed along with the money which was recovered from the right hand side pocket of his pant.

(e) On 15.11.1997, at 7.30 a.m., an FIR was registered by the Inspector, CBI, Visakhapatnam Branch in Crime No. RC 20(A)/97-VSP. After recording the statements of the witnesses, Inspector of Police, CBI, Visakhapatnam filed charge sheet being No. 2/98-YTR dated 29.04.1998 against the appellant-accused for an offence punishable under Sections 7, 13(1)(d)(ii) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act") in the Court of Special Judge for CBI Cases at Visakhapatnam.

(f) The Special Judge, CBI, by order dated 19.03.2001, convicted the appellant and sentenced him to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- and, in default, to suffer simple imprisonment for one month for the offence punishable under Section 7 of the Act and one year rigorous imprisonment with a fine of Rs.500/- and, in default, to suffer simple imprisonment for

one month for the offence punishable under Sections 13(1)(d) (ii) read with Section 13(2) of the Act.

(g) Against the said order, the appellant-accused filed Criminal Appeal No. 436 of 2001 before the High Court of Andhra Pradesh. The High Court, by impugned judgment dated 03.10.2007 dismissed the appeal filed by the appellant-accused and confirmed the conviction passed by the trial Court. Hence, the appellant-accused has preferred this appeal by way of special leave petition before this Court.

3) Heard Mr. ATM Rangaramanujam, learned senior counsel for the appellant and Mr. Harish Chandra, learned senior counsel for the respondent.

Notice only on quantum of sentence-hearing on all aspects-Permissibility:

4) On 28.01.2008, this Court consisting of three Hon'ble Judges issued notice in this matter confining to the quantum of sentence only. In pursuance of the same, we permitted Mr. Rangaramanujam, learned senior counsel for the appellant to address his arguments confining to quantum of sentence imposed on the appellant-accused. As stated in the narration

of facts, the appellant was convicted under Section 7 of the Act for which he was sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 500/-, in default, simple imprisonment for one month. He was also convicted for the offence under Section 13(1)(d)(ii) read with Section 13(2) of the Act and sentenced to undergo rigorous imprisonment for one year and fine of Rs.500/-, in default, simple imprisonment for one month. The trial Court ordered that both the sentences of imprisonment shall run concurrently. The said conviction and sentence was affirmed by the High Court. If we confine ourselves to the limited extent of notice dated 28.01.2008, we have to hear both sides only on the quantum of sentence. However, Mr. Rangaramanujam, learned senior counsel for the appellant by drawing our attention to the recent judgment of this Court in ***Yomeshbhai Pranshankar Bhatt*** vs. ***State of Gujarat***, (2011) 6 SCC 312, submitted that in spite of limited notice, this Court, while exercising jurisdiction under Article 142 of the Constitution, in order to do complete justice while hearing the matter finally can go into the merits of the orders passed

by the trial Court and the High Court. In the reported case, the appeal was against the concurrent finding of both the courts convicting the appellant under Section 302 IPC and sentencing him to suffer imprisonment for life. At the SLP stage, this Court, by order dated 27.07.2009, issued notice confined only to the question as to whether the petitioner was guilty of commission of an offence under any of the parts of Section 304 Indian Penal Code, 1860 (in short 'IPC') and not under Section 302 IPC. Similar request was made before the Bench that the appellant was entitled to urge all the questions including his right to urge that he should have been acquitted in the facts and circumstances of the case. This Court, referred to the Supreme Court Rules, 1966 which have been framed under Article 145 of the Constitution and also considered scope of its power under Article 142 as well as Order 47 Rule 6 of the Code of Civil Procedure, 1908 (in short 'the Code). While deciding the said question, the Bench has also considered the scope of Section 100 of the Code for entertaining the second appeal. It further shows that the Court considered the plea of the appellant therein for acquittal

despite the fact that the notice was limited in terms of the order dated 27.07.2009. It is relevant to point out that the Bench in para 15, clarified the position and reopened the case in its entirety even though notice was issued confining to a particular aspect. After permitting the appellant therein to argue the case for acquittal on merits, it observed:

> "15. ... . We, however, make it clear that this cannot be a universal practice in all cases. The question whether the Court will enlarge the scope of its inquiry at the time of final hearing depends on the facts and circumstances of the case. Since in the facts of this case, we find that the appellant should be heard on all points, we have come to the aforesaid conclusion."
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> **(Emphasis supplied)**

It is clear that the Bench itself has clarified that they are not laying down the law that in spite of issuing notice confining to a particular aspect (in the case on hand – "quantum of sentence") the parties are entitled to urge all points and re-open the case as if they are free to do the same without any restriction. As a matter of fact, the last sentence in para 15 makes it clear that in the facts and circumstances of that case, they permitted the appellants to urge all points on merits.

5) In the case on hand, it is to be noted that on appreciation of oral and documentary evidence led in by the prosecution and the defence and on appreciation of entire materials, the court of first instance i.e. the trial Court convicted the appellant and sentenced him as mentioned above. The High Court, as an appellate Court, once again analysed all the material, discussed the oral and documentary evidence and finding that the prosecution had proved the guilt of the accused beyond reasonable doubt concurred with the conclusion arrived at by the trial Court and dismissed the appeal of the appellant. Inasmuch as both the courts have thoroughly discussed the oral and documentary evidence with reference to the charges leveled against the appellant and in view of the limited order dated 28.01.2008 by this Court issuing notice confining to quantum of sentence only and even applying the analogy enunciated in ***Yomeshbhai (supra),*** we feel that it is not a case of such nature that the appellant should be heard on all points, consequently, we reject the request of the learned senior counsel appearing for the appellant.

Quantum of sentence/Whether requires any reduction:

6) Mr. Rangaramanujam, learned senior counsel for the appellant submitted that inasmuch as the alleged incident took place on 14.11.1997 and 14 years have elapsed since then, the amount of Rs. 200/- said to have been received by the appellant is trivial in nature and also of the fact that due to the said conviction and sentence he lost his job, leniency may be shown and sentence be reduced to the period already undergone. He fairly admitted that out of the maximum period of one year, the appellant had served only 52 days in prison. With this factual position, let us consider whether the request of the learned senior counsel for the appellant is to be accepted and sentence be reduced to the period already undergone.

7) It is not in dispute that the provisions of the Prevention of Corruption Act, 1988 alone are applicable since the incident occurred on 14.11.1997 i.e. subsequent to the Act. Section 7 of the Act relates to public servant taking gratification other than legal remuneration in respect of an official act. If the said offence/charge is proved, the court has no other option

but to impose sentence of imprisonment which shall be not less than six months but which may extend to five years and also liable to fine. The said section reads as under:-

> "**7. Public servant taking gratification other than legal remuneration in respect of an official act.-** Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavor to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in Clause (c) of Section 2, or with any public servant, whether named or otherwise shall, be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine. ... ."
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> **(Emphasis supplied)**

8) Section 13 deals with criminal misconduct by a public servant. As per sub-section (2) if any public servant commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine. For clarity, we reproduce the said section hereunder:

> "**13. Criminal misconduct by a public servant.-** (1) A public servant is said to commit the offence of criminal misconduct,

(a) If he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Section 7; or

(b) If he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to he concerned in any proceeding or business transacted or about to be transacted by him or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any, person whom he knows to be interests in or related to the person so concerned; or
(c) If he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) If he, -

(i) By corrupt or illegal means, obtains for himself or for any other person any valuable thing or Pecuniary advantage; or

(ii) By abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) While holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) If he or any person on his behalf, is in possession or has, at any time during the Period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation. -For the purposes of this section "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance, with the provisions of any law, rules or orders for the time being applicable to public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine."

(Emphasis supplied)

9) It is useful to refer that in the Prevention of Corruption Act, 1947 the same "criminal misconduct" which is available in Section 13 of the 1988 Act had been dealt with in Section 5 of the 1947 Act. Section 5(2) of the 1947 Act mandates that any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine. However, proviso to sub-section (2) of Section 5 gives power to the court that for any special reasons to be recorded in writing, impose a sentence of imprisonment of less than one year. Such relaxation in the form of a proviso has been done away with in the 1988 Act. To put it clear, in the 1988 Act, if an offence under Section 7 is proved, the same is punishable with imprisonment which shall be not less than six months and in the case of Section 13, it shall not be less than one year. No other interpretation is permissible.

Other circumstances pleaded for reduction of sentence:

10) In order to substantiate the claim with the regard to the above, learned senior counsel for the appellant has relied on the decision of this Court in ***Bechaarbhai S. Prajapati*** vs. ***State of Gujarat***, (2008) 11 SCC 163 and based on the same requested this Court to modify the sentence to the extent of period already undergone. We have gone through the facts in that case. It is true that even in the cited decision, the appellant accused demanded only Rs. 250/- and it was paid and accepted. Finally, the Special Judge framed charges for offence punishable under Sections 7, 12, 13(1)(d) read with Section 13(2) of the Act. The appellant therein was convicted for offence under Section 7(2) of the Act and appeal before the High Court was also dismissed. Thereafter, the same was challenged before this Court. This Court, after holding that the conclusion of the trial Court and High Court does not suffer from any infirmity considered the alternative submission which related to harshness of sentence. In that case, taking note of the fact that the occurrence took place nearly seven years back and also of the fact that the appellant

had suffered custody for more than six months, considering all these aspects, while maintaining the conviction, this Court reduced the sentence to the period already undergone. Since the appellant therein was convicted only under Section 7 and Section 161 Cr.PC., the minimum sentence being six months and of the fact that he had suffered custody for more than six months, the course adopted by this Court is perfectly in order and the same cannot be applied to the case on hand, wherein the appellant had undergone only 52 days when the minimum sentence was six months under Section 7 and one year under Section 13.

11) Learned senior counsel for the appellant further submitted that inasmuch as the incident had occurred on 14.11.1997 and the trial Court has convicted him on 19.03.2001 which was affirmed by the High Court on 03.10.2007, at this juncture, i.e., after a gap of 14 years, there is no need to retain the same sentence and the Court is not justified in directing the appellant to serve the remaining period after such a long time. There is no dispute as regards the date of occurrence and the date of conviction passed by

the trial court and affirmed by the High Court. Inasmuch as the conviction on both counts have been confirmed by this Court and we are confined to sentence part alone and in view of the minimum sentence prescribed under Sections 7 and 13 of the Act, we are of the view that though long delay may be a ground for reduction of sentence in other cases, the same may not be applicable to the case on hand when the statute prescribes minimum sentence. Accordingly, we reject the said contention.

12) It was further contended that the amount alleged to have been received by the appellant accused is only Rs.200/- and he also lost his job after conviction by the trial court. Though, these grounds may be attractive in respect of other offences where minimum sentence is not prescribed, in view of our reasonings in the earlier paras, the same cannot be applied to the case on hand.

13) About the request based on delay that the appellant has lost his job, undergone the ordeal all along etc. a lenient view be taken in this case, it is useful to refer decision of this Court

in ***State of M.P.*** vs. ***Shambhu Dayal Nagar***, (2006) 8 SCC 693 wherein it was held that:

> **"32.** It is difficult to accept the prayer of the respondent that a lenient view be taken in this case. The corruption by public servants has become a gigantic problem. It has spread everywhere. No facet of public activity has been left unaffected by the stink of corruption. It has deep and pervasive impact on the functioning of the entire country. Large-scale corruption retards the nation-building activities and everyone has to suffer on that count. As has been aptly observed in *Swatantar Singh* v. *State of Haryana,* (1997) 4 SCC 14, corruption is corroding, like cancerous lymph nodes, the vital veins of the body politics, social fabric of efficiency in the public service and demoralising the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of corrupt would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke.

Article 142 and its applicability

14) By drawing our attention to Article 142 of the Constitution of India, learned senior counsel for the appellant vehemently submitted that in order to do complete justice, this Court has ample power to reduce the sentence even to the extent of period already undergone or any other order which would be beneficial to the parties approaching this Court. Similar claim based on Article 142 has been negatived in

several decisions by this Court, we need to refer only the latest decision of this Court in ***Manish Goel*** vs. ***Rohini Goel***, (2010) 4 SCC 393. The facts in that case are that the parties by persuasion of the family members and friends, entered into a compromise and prepared a memorandum of understanding dated 13.11.2009, in the proceedings pending before the Mediation Centre, Delhi, by which they agreed on terms and conditions incorporated therein, to settle all their disputes and also for dissolution of their marriage. The parties filed an application under Section 13-B(1) of the Hindu Marriage Act, 1955 before the Family Court, Delhi seeking divorce by mutual consent. The said HMA No. 456 of 2009 came before the court and it recorded the statement of parties on 16.11.2009. The parties moved another HMA No. 457 of 2009 to waive the statutory period of six months in filing the second petition. However, the court rejected the said application vide order dated 01.12.2009 observing that the court was not competent to waive the required statutory period of six months under the Act and such a waiver was permissible only under the directions of the Supreme Court as held by this Court in ***Anil***

Kumar Jain vs. ***Maya Jain***, (2009) 10 SCC 415. Hence the parties have approached this Court for appropriate relief. Speaking for the Bench one of us - (Dr. Justice B.S. Chauhan) referred to more than fifty decisions including the Constitution Bench judgments. The relevant paras, which are useful, may be quoted:

> **"11.** We are fully alive of the fact that this Court has been exercising the power under Article 142 of the Constitution for dissolution of marriage where the Court finds that marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if the facts of the case do not provide a ground in law on which the divorce could be granted. Decree of divorce has been granted to put quietus to all litigations between the parties and to save them from further agony, as it is evident from the judgments in *Romesh Chander* v. *Savitri (1995) 2 SCC 7*, *Kanchan Devi* v. *Promod Kumar Mittal (1996) 8 SCC 90*, *Anita Sabharwal* v. *Anil Sabharwal (1997) 11 SCC 490*, *Ashok Hurra* v. *Rupa Bipin Zaveri (1997) 4 SCC 226*, *Kiran* v. *Sharad Dutt (2000) 10 SCC 243*, *Swati Verma* v. *Rajan Verma (2004) 1 SCC 123*, *Harpit Singh Anand* v. *State of W.B. (2004) 10 SCC 505*, *Jimmy Sudarshan Purohit* v. *Sudarshan Sharad Purohit (2005) 13 SCC 410*, *Durga Prasanna Tripathy* v. *Arundhati Tripathy (2005) 7 SCC 353*, *Naveen Kohli* v. *Neelu Kohli (2006) 4 SCC 558*, *Sanghamitra Ghosh* v. *Kajal Kumar Ghosh (2007) 2 SCC 220*, *Rishikesh Sharma* v. *Saroj Sharma (2007) 2 SCC 263*, *Samar Ghosh* v. *Jaya Ghosh (2007) 4 SCC 511* and *Satish Sitole* v. *Ganga (2008) 7 SCC 734*. However, these are the cases, where this Court came to rescue the parties on the ground for divorce not provided for by the legislature in the statute.
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> **12.** In *Anjana Kishore* v. *Puneet Kishore (2002) 10 SCC 194*, this Court while allowing a transfer petition directed the court concerned to decide the case of divorce by mutual consent, ignoring the statutory requirement of moving the

motion after expiry of the period of six months under Section 13-B(2) of the Act. In *Anil Kumar Jain*, this Court held that an order of waiving the statutory requirements can be passed only by this Court in exercise of its powers under Article 142 of the Constitution. The said power is not vested with any other court.

13. However, we have also noticed various judgments of this Court taking a contrary view to the effect that in case the legal ground for grant of divorce is missing, exercising such power tantamounts to legislation and thus transgression of the powers of the legislature, which is not permissible in law (vide *Chetan Dass* v. *Kamla Devi (2001) 4 SCC 250* and *Vishnu Dutt Sharma* v. *Manju Sharma (2009) 6 SCC 379*).

14. Generally, no court has competence to issue a direction contrary to law nor can the court direct an authority to act in contravention of the statutory provisions. The courts are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been injected by law. (Vide *State of Punjab* v. *Renuka Singla (1996) 8 SCC 90*, *State of U.P.* v. *Harish Chandra (1996) 9 SCC 309*, *Union of India* v. *Kirloskar Pneumatic Co. Ltd (1996) 4 SCC 453.*, *University of Allahabad* v. *Dr. Anand Prakash Mishra (1997) 10 SCC 264* and *Karnataka SRTC* v. *Ashrafulla Khan (2002) 2 SCC 560*.)

15. A Constitution Bench of this Court in *Prem Chand Garg* v. *Excise Commr.* AIR 1963 SC 996 held as under: (AIR p. 1002, para 12)

"*12.* … An order which this Court can make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but *it cannot even be inconsistent with the substantive provisions of the relevant statutory laws*."

(emphasis supplied)

The Constitution Benches of this Court in *Supreme Court Bar Assn.* v. *Union of India (1998) 4 SCC 409* and *E.S.P. Rajaram* v. *Union of India (2001) 2 SCC 186* held that under Article 142 of the Constitution, this Court cannot altogether ignore the substantive provisions of a statute and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. It is not

to be exercised in a case where there is no basis in law which can form an edifice for building up a superstructure.

16. Similar view has been reiterated in *A.R. Antulay* v. *R.S. Nayak (1988) 2 SCC 602*, *Bonkya* v. *State of Maharashtra (1995) 6 SCC 447*, *Common Cause* v. *Union of India (1999) 6 SCC 667*, *M.S. Ahlawat* v. *State of Haryana (2000) 1 SCC 278*, *M.C. Mehta* v. *Kamal Nath (2000) 6 SCC 213*, *State of Punjab* v. *Rajesh Syal (2002) 8 SCC 158*, *Govt. of W.B.* v. *Tarun K. Roy (2004) 1 SCC 347*, *Textile Labour Assn.* v. *Official Liquidator (2004) 9 SCC 741*, *State of Karnataka* v. *Ameerbi (2007) 11 SCC 681*, *Union of India* v. *Shardindu (2007) 6 SCC 276* and *Bharat Sewa Sansthan* v. *U.P. Electronics Corpn. Ltd. (2007) 7 SCC 737.*

17. In *Teri Oat Estates (P) Ltd.* v. *UT, Chandigarh (2004) 2 SCC 130* this Court held as under: (SCC p. 144, para 36)

"*36.* … sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. … despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be in contravention of a statutory provision."

18. In *Laxmidas Morarji* v. *Behrose Darab Madan (2009) 10 SCC 425*, while dealing with the provisions of Article 142 of the Constitution, this Court has held as under: (SCC p. 433, para 25)

"*25.* … The power under Article 142 of the Constitution is a constitutional power and hence, not restricted by statutory enactments. Though the Supreme Court would not pass any order under Article 142 of the Constitution which would amount to supplanting substantive law applicable or ignoring express statutory provisions dealing with the subject, at the same time these constitutional powers cannot in any way, be controlled by any statutory provisions. However, it is to be made clear that this power cannot be used to supplant the law applicable to the case. This means that *acting under Article 142, the Supreme Court cannot pass an order or grant relief which is totally inconsistent or goes against the substantive or statutory enactments pertaining to the case*. The power is to be used sparingly in cases which cannot be effectively and appropriately tackled by the

> existing provisions of law or when the existing provisions of law cannot bring about complete justice between the parties."
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> (**Emphasis added**)

After elaborately discussing almost all the case laws on this subject about jurisdiction of this Court under Article 142, in para 19, summarised the same in the following words:

> **19.** Therefore, the law in this regard can be summarised to the effect that in exercise of the power under Article 142 of the Constitution, this Court generally does not pass an order in contravention of or ignoring the statutory provisions nor is the power exercised merely on sympathy.

After saying so, the Court rejected the request of the parties to waive the statutory period of six months under the Act.

15) In ***Mota Ram*** vs. ***State of Haryana***, (2009) 12 SCC 727, this Court, while reiterating the above principles has concluded that Article 142 cannot be exercised to negate the statutory provisions.

16) In ***Academy of Nutrition Improvement and Others*** vs. ***Union of India***, JT 2011 (8) SC 16, the following conclusion about the applicability of Article 142 is relevant:

> 28. The question is having held that Rule 44I to be invalid, whether we can permit the continuation of the ban on sale of non-iodised salt for human consumption for any period. Article 142 of the Constitution vests unfettered independent

jurisdiction to pass any order in public interest to do complete justice, if exercise of such jurisdiction is not be contrary to any express provision of law. In *Supreme Court Bar Association v. Union of India*: 1998 (4) SCC 409, this Court observed:

The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is *necessary for doing complete justice* "between the parties in any cause or matter pending before it". The very nature of the power must lead the court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by "ironing out the creases" in a cause or matter before it. Indeed this Court is not a court of restricted jurisdiction of only dispute settling. It is well recognised and established that this Court has always been a law maker and its role travels beyond merely dispute settling. It is a "problem solver in the nebulous areas". (See. *K. Veeraswami v. Union of India* : 1991 (3) SCC 655, but the substantive statutory provisions dealing with the subject matter of a given case, cannot be altogether ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers can not, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise *may come directly in conflict* with what has been expressly provided for in statute dealing expressly with the subject.

In *Kalyan Chandra Sarkar v. Rajesh Ranjan* : 2005 (3) SCC 284, this Court after reiterating that this Court in exercise of its jurisdiction under Article 142 of the Constitution would not pass any order which would amount to supplanting substantive law applicable to the case or ignoring express statutory provisions dealing with the subject, observed as follows:

It may therefore be understood that the plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are *complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes*. These powers also exist independent of the statutes with a view to do complete

> justice between the parties...and are in the nature of supplementary powers...[and] may be put on a different and perhaps even wider footing than ordinary inherent powers of a court to prevent injustice. The advantage that is derived from a constitutional provision couched in such a wide compass is that it prevents 'clogging or obstruction of the stream of justice. *See: Supreme Court Bar Association* (supra)

17) Though the jurisdiction of this Court, under Article 142 of the Constitution of India is not in dispute, we make it clear that exercise of such power would, however, depend on the facts and circumstances of each case. The High Court, in exercise of its jurisdiction, under Section 482 of the Criminal Procedure Code and this Court, under Article 142 of the Constitution, would not ordinarily direct quashing of a case involving crime against the society particularly, when both the trial Court as also the High Court have found that the charge leveled against the appellant under the Act has been made out and proved by the prosecution by placing acceptable evidence.

18) Finally, learned senior counsel for the appellant has cited certain orders of this Court wherein this Court has reduced the period of sentence already undergone while upholding the conviction. We have perused those orders. The orders do not disclose any factual details and the relevant provisions under

which the accused was charged/convicted and minimum sentence, if any, as available in the Act as well as the period already undergone. In the absence of such details, we are unable to rely on those orders.

19) From the analysis of the above decisions and the concerned provisions with which we are concerned, the following principles emerge:

a) When the Court issues notice confining to particular aspect/sentence, arguments will be heard only to that extent unless some extraordinary circumstance/material is shown to the Court for arguing the matter on all aspects.

b) Long delay in disposal of appeal or any other factor may not be a ground for reduction of sentence, particularly, when the statute prescribes minimum sentence. In other cases where no such minimum sentence is prescribed, it is open to the Court to consider the delay and its effect and the ultimate decision.

c) In a case of corruption by public servant, quantum of amount is immaterial. Ultimately it depends upon the conduct of the delinquent and the proof regarding demand and acceptance established by the prosecution.

d) Merely because the delinquent lost his job due to conviction under the Act may not be a mitigating circumstance for reduction of sentence, particularly, when the Statute prescribes minimum sentence.

e) Though Article 142 of the Constitution gives wider power to this Court, waiver of certain period as prescribed in the Statute imposing lesser sentence than the minimum prescribed is not permissible.

f) An order, which this Court can make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but also it cannot even be inconsistent with the substantive provisions of the relevant Statute. In other words, this Court cannot altogether ignore the substantive provisions of a Statute.

g) In exercise of the power under Article 142 of the Constitution, this Court generally does not pass an order in contravention of or ignoring the statutory provisions nor is the power exercised merely on sympathy.

h) The power under Article 142 of the Constitution is a constitutional power and not restricted by statutory enactments. However, this Court would not pass any order under Article 142 which would amount to supplant the substantive law applicable or ignoring statutory provisions dealing with the subject. In other words, acting under Article 142, this Court cannot pass an order or grant relief which is totally inconsistent or goes against the substantive or statutory enactments pertaining to the case.

i) The powers under Article 142 are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in statute dealing expressly with the subject.

20) In the light of the above discussion, we are unable to accept any of the contentions raised by the learned senior counsel for the appellant, on the other hand, we are in entire agreement with the conclusion arrived at by the trial Judge as affirmed by the High Court. Consequently, the appeal fails and the same is dismissed. Since the appellant is on bail, the bail bonds executed by him stand cancelled. The trial Judge is directed to secure his presence for serving the remaining period of sentence.

.....J.
(P. SATHASIVAM)

.....J.
(DR. B.S. CHAUHAN)

NEW DELHI;
SEPTEMBER 23, 2011