

M.C. GUPTA

A

v.

CENTRAL BUREAU OF INVESTIGATION, DEHRADUN
(Criminal Appeal No. 1332 of 2012 etc.)

AUGUST 31, 2012

B

[AFTAB ALAM AND RANJANA PRAKASH DESAI, JJ.]

PREVENTION OF CORRUPTION ACT, 1988:

s. 30(2) of 1988 Act read with s.6 of General Clauses Act, 1897 - Saving of investigation under the repealed Act - Offence committed while 1947 Act was in force - FIR registered for offences punishable under the 1947 Act, after coming into force of the 1988 Act - Conviction and sentence upheld by High Court - Held: By virtue of s.30(2) of the 1988 Act, read with ss.6(c) and 6(e) of the General Clauses Act, 1897, the right of C.B.I. to investigate the crime, institute the proceedings and prosecute the accused is saved and not affected by the repeal of the 1947 Act. - Thus, the right to investigate and the corresponding liability incurred are saved - Prevention of Corruption Act, 1947 - ss.5(1) and 5(2) - Penal Code, 1860 - ss.120-B and 409-Constitution of India, 1950-Art.20.

C

D

E

PREVENTION OF CORRUPTION ACT, 1947:

ss.5(2) read with 5(1)(e) of 1947 Act and ss.120-B and 409 IPC - Conviction and sentence - Held: The guilt of the accused is clearly established and, therefore, no interference with the order of conviction is necessary - However, keeping in view the old age and ailments A-1 is suffering from, his sentence of 2 years' RI u/s 409 IPC is reduced to one year's RI - Rest of the sentences awarded to him and the other accused are maintained-Sentence/sentencing.

F

G

A The appellant in Crl. Appeal No. 1332 of 2012 (A-1), while working as Assistant Divisional Manager, New India Assurance Company Ltd., got a bank draft of Rs.1,00,000/- prepared on 9.7.1988 from the Company's account in favour of a Dal Mill owned by his relative, namely, the

B appellant in Crl. Appeal No. 1333 of 2012(A-2). A-1 then collected the said bank draft and sent it to A-2 who deposited the same in the account of his Dal Mill on 14.7.1988. An FIR for offence u/s 5(2) read with s.5(1)(c) of the Prevention of Corrupt Act, 1947 was registered on

C 19.2.1990 against both the accused. The trial court convicted and sentenced A-1 to 2 years RI u/s 409 IPC and to pay a fine of Rs.2,000/-. He was further convicted u/s 120-B, IPC as also u/s 5(2) read with s. 5(1)(c) of the 1947 Act and sentenced to one year's RI and a fine of

D Rs.1,000/- under each of the two counts. A-2 was convicted u/s 120-B IPC, s. 409 IPC and s. 5(2) read with s.5(1)(c) of the 1947 Act and s. 120-B IPC and was sentenced to one year's RI and a fine of Rs.1,000/- under each of the three counts.

E In the instant appeal filed by the accused, it was primarily contended for the appellants that the 1947 Act stood repealed by the Prevention of Corruption Act, 1988 and, therefore, the FIR under the 1947 Act could not have been lodged on 19.2.1990.

F Disposing of the appeals, the Court

G HELD: 1.1. Sub-s. (2) of s. 30 of the Prevention of Corruption Act, 1988 (New Act) says that anything done or any action taken or purported to have been done or taken under or in pursuance of the repealed Acts in so far as it is not inconsistent with the New Act, shall be deemed to have been done or taken in pursuance of the New Act. Thus, a deeming fiction is introduced so far as

H action taken under the repealed Act is concerned. [para 9] [464-A-B]

M.C. GUPTA v. CENTRAL BUREAU OF INVESTIGATION, 457
DEHRADUN

Bansidhar & Ors. V. State of Rajasthan & Ors. 1989 (2) A
SCR 152 = (1989) 2 SCC 557; and *I.T. Commissioner v.*
Shah Sadiq & Sons 1987 (2) SCR 942 = (1987) 3 SCC 516
- relied on

1.2 Sub-s. (2) of s.30, further, keeps the application B
of s.6 of the GC Act intact and if a situation is not covered
by s.30, resort to s.6 of the GC Act is open. Assuming that
the proceedings under the Act of 1947 initiated against
the appellants cannot be saved by s.30(2) of the New Act
because no action was taken pursuant to the Act of 1947, C
prior to coming into force of the New Act, saving clause
contained in s.30 is not exhaustive. Section 6 of the GC
Act can still save the proceedings. Therefore, clauses (c)
and (e) of s.6 of the GC Act become relevant for the
instant case. [para 10, 12-13] [464-C; 466-B-C] D

1.3 Clause (c) of s.6 of the GC Act says that if any
Central Act repeals any enactment, the repeal shall not
affect any right, privilege, obligation or liability acquired,
accrued or incurred under any enactment so repealed. In E
the instant case, the right which had accrued to the
investigating agency to investigate the crime which took
place prior to the coming into force of the New Act and
which was covered by the Act of 1947, remained
unaffected by reason of clause (c) of s. 6. Clause (e) says F
that the repeal shall not affect any investigation, legal
proceeding or remedy in respect of any such right,
privilege, obligation, liability, penalty, forfeiture or
punishment and s. 6 further states that any such G
investigation, legal proceeding or remedy may be
instituted, continued or enforced and such penalty,
forfeiture or punishment may be imposed as if the
repealing Act had not been passed. Therefore, the right
of C.B.I. to investigate the crime, institute proceedings
and prosecute the appellants is saved and not affected H

A by the repeal of Act of 1947. Thus, the right to investigate and the corresponding liability incurred are saved. [para 13] [466-C-G]

B 1.4 Further, s. 6 of the GC Act qualifies the effect of repeal stated in sub-clauses (a) to (e) by the words 'unless a different intention appears'. No different intention is disclosed in the provisions of the New Act to hold that repeal of the Act of 1947 affects the right of the investigating agency to investigate offences which are covered by the Act of 1947 or that it prevents the investigating agency from proceeding with the investigation and prosecuting the accused for offences under the Act of 1947. Therefore, the repeal of the Act of 1947 does not vitiate or invalidate the criminal case instituted against the appellants and the consequent conviction of the appellants for offences under the provisions of the Act of 1947. [para 13] [466-G-H; 467-A-B]

E 1.5 It cannot be said that the appellants could not have been charged under the provisions of the Act of 1947 after its repeal. The offence is alleged to have been committed prior to the coming into force of the New Act. When the offence was committed, the Act of 1947 was in force. It is elementary that no person shall be convicted of any offence except for violation of a law in force at the time of commission of the act charged as an offence nor can he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. Art. 20(1) of the Constitution of India is clear on this point. The appellants were, therefore, rightly charged, tried and convicted under the provisions of the Act of 1947. [para 14] [467-C-E]

H 2.1 So far as the merits of the case are concerned,

the guilt of the appellants is clearly established and, therefore, no interference is necessary with the impugned judgment of the High Court which has confirmed the conviction and sentence of the appellants. [para 15] [467-F-G] A

2.2 As regards the quantum of sentence, so far as appellant A-1 is concerned, he is about 70 years old and is stated to be suffering from various ailments. The crime in question took place about 24 years ago. In the circumstances, his sentence of two years' RI u/s 409 IPC is reduced to one year's RI. Rest of the sentences awarded to him and the other appellant, who was the beneficiary of the dishonest and fraudulent misappropriation of the company's money, shall remain intact. [para 16 and 18] [467-G; 468-D-E] B C D

Satpal Kapoor etc. v. State of Punjab etc. 1996 (11) SCC 769; and *Shiv Nandan Dixit v. State of U.P.* 2003 (12) SCC 636 - referred to.

Case Law Reference:

1996 (11) SCC 769	referred to	para 8	
2003 (12) SCC 636	referred to	para 8	
1989 (2) SCR 152	relied on	para 11	F
1987 (2) SCR 942	relied on	para 11	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1332 of 2012.

From the Judgment & Order dated 27.03.2012 of the High Court of Uttarakhand at Nainital in Criminal Appeal No. 133/2006 (old No. CRLA. No. 2770/1999) G

WITH

SLP (Crl.) No. 5908 of 2012. H

A Amarendra Sharan, S.K. Agrawal, S.K. Dubey, Apoorva
Agrawal, Mushtaq Ahmad, Abhay Gupta, Yogesh Tiwari, Rahul
Kaushik for the Appellant.

B A.S. Chandhiok, ASG, Rajiv Nanda, Baldev Atreya, Arvind
Kumar Sharma for the Respondent.

The Judgment of the Court was delivered by

(SMT.) **RANJANA PRAKASH DESAI, J.** 1. Leave
granted.

C 2. These appeals, by special leave, are directed against
the judgment and order dated 27/03/2012 delivered by the
Uttarakhand High Court confirming the judgment and order of
conviction and sentence dated 08/10/1999 / 25/10/1999
D passed by the Special Judge, Anti Corruption, U.P. (East),
Dehradun in C.B.I. Case No.3/90, whereby the Special Judge
convicted the appellants, inter alia, under the provisions of the
Prevention of Corruption Act, 1947 (for short, "Act of 1947").

E 3. It is necessary to narrate the facts of the case. Appellant
M.C. Gupta was posted as Assistant Divisional Manager, New
India Assurance Company Limited (for short, "the Company").
He was authorized by the Company to operate its Account
No.314 held with the Punjab National Bank, Civil Lines,
Moradabad. Appellant Mohan Lal Gupta was the proprietor of
F M/s. Mohan Dal Mill. Account No.SSI/53 was held in the name
of M/s. Mohan Dal Mill with State Bank of India, Orai, District
Jalaun, Uttar Pradesh.

G 4. On 09/07/1988, appellant M.C. Gupta issued cheque
No.QDE-800186 in the sum of Rs.1,00,200/- from the account
of the Company and asked the bank to prepare a draft of
Rs.1,00,000/- in favour of M/s. Mohan Dal Mill. Appellant M.C.
Gupta himself prepared the draft application dated 09/07/1988.
The bank, accordingly, prepared a draft of Rs.1,00,000/- on the
H same date and debited the amount of cheque from the account

M.C. GUPTA v. CENTRAL BUREAU OF INVESTIGATION, 461
DEHRADUN [RANJANA PRAKASH DESAI, J.]

of the Company. Appellant M.C. Gupta himself collected the said draft from the bank and sent it to his relative appellant - Mohan Lal Gupta at Orai, who deposited the same on 14/07/1988 in the aforementioned account of M/s. Mohan Dal Mill vide pay-in-slip dated 14/07/1988. Thus, appellant M.C. Gupta, in collusion with appellant Mohan Lal Gupta, dishonestly and fraudulently misappropriated the Company's money, which is public money, for wrongful gain to appellant Mohan Lal Gupta, thereby causing corresponding losses to the Company.

5. When the siphoning off of money came to light, a FIR was lodged on 19/02/1990 under Section 5(2) read with Section 5(1)(c) of the Act of 1947. After investigation, C.B.I. submitted charge-sheet against both the appellants before the Special Judge. After perusing the evidence, the Special Judge convicted and sentenced appellant M.C. Gupta to RI for one year and a fine of Rs.1,000/- for offence under Section 120-B of the IPC. He was also sentenced to RI for two years and a fine of Rs.2,000/- for offence under Section 409 of the IPC. In addition, he was sentenced to RI for one year and a fine of Rs.1,000/- under Section 5(2) read with Section 5(1)(c) of the Act of 1947. Appellant Mohan Lal Gupta was sentenced to RI for one year and a fine of Rs.1,000/- for offence under Section 120-B of the IPC. He was also sentenced to RI for one year and a fine of Rs.1,000/- for offence under Section 409 of the IPC. He was also sentenced to RI for one year and a fine of Rs.1,000/- for offence under Section 5(2) read with Section 5(1)(c) of the Act of 1947 read with Section 120-B of the IPC. All sentences were to run concurrently. In default of payment of fine, the appellants were to undergo imprisonment for six months.

6. Being aggrieved by the order of conviction and sentence, both the appellants filed separate appeals to the High Court. As we have already noted, by the impugned order, the appeals were dismissed by the High Court and, hence, the present appeals.

7. The basic submission of Mr. Amarendra Sharan and Mr.

- A S.K. Dubey, learned senior counsel for the appellants is based on the fact that the Act of 1947 stood repealed by the Prevention of Corruption Act, 1988 (for short, "the New Act"). The alleged crime took place between 9/7/1988 and 14/07/1988 and FIR was lodged in respect of the same on 19/02/1990 alleging offences under the Act of 1947. Counsel submitted that FIR could not have been lodged for the offences punishable under the Act of 1947, which stood repealed by the New Act. It was urged that in fact, by reason of repeal, proceedings under the Act of 1947 stand obliterated. In this connection, our attention was drawn to Section 30 of the New Act. Sub-section 1 of Section 2 thereof provides for repeal and saving. It states that the Act of 1947 stands repealed. It was pointed out that Sub-section 2 of Section 30 of the New Act states that notwithstanding such repeal, but without prejudice to the application of Section 6 of the General Clauses Act, 1897 (for short, "the GC Act"), anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, in so far as it is not inconsistent with the provisions of the New Act be deemed to have been done or taken under or in pursuance of the corresponding provisions of the New Act.

8. Counsel pointed out that nothing was done or no action was taken in pursuance of the Act of 1947 and, therefore, there was no question of coming to a conclusion that any action taken could be deemed to have been taken under the provisions of the New Act. Since no action was taken under the Act of 1947, there was no question of saving it. Counsel also drew our attention to Section 6 of the GC Act which speaks about the effect of repeal. Counsel submitted that the instant case is not covered by any of the sub-clauses of Section 6 of the GC Act so as to come to a conclusion that any investigation, legal proceeding or remedy may be instituted, continued or enforced or any penalty or punishment may be imposed as if the repealing Act had not been passed. Counsel submitted that, in the circumstances, the entire prosecution is vitiated and,

hence, it is necessary for this Court to quash the proceedings and set the appellants free. Alternatively, counsel submitted that since the amount of Rs.1,00,000/- was repaid by the appellants before 19/02/1990 i.e. even before the FIR was lodged, this Court should reduce the sentence of the appellants to the sentence already undergone by them. In support of this submission, counsel relied on *Satpal Kapoor etc. v. State of Punjab etc.*¹ and *Shiv Nandan Dixit v. State of U.P.*². Mr. Chandhiok, learned Additional Solicitor General, for the C.B.I. supported the impugned judgment.

9. We are unable to accept the submissions of learned counsel for the appellants. It is true that according to the prosecution, the alleged offence took place between 9/7/1988 and 14/7/1988. The New Act came into force on 9/9/1988. The FIR was registered against the appellants, inter alia, for offences punishable under the Act of 1947. Charges were framed against the appellants, inter alia, under the provisions of the Act of 1947 and the appellants were tried and convicted as aforesaid. Since the repeal of Act of 1947 is the major plank of the appellants' submissions, it is necessary to quote Section 30 of the New Act which repealed the Act of 1947. It reads thus:

"30. Repeal and saving:- (1) The Prevention of Corruption Act, 1947 (2 of 1947) and the Criminal Law Amendment Act, 1952 (46 of 1952) are hereby repealed.

(2) Notwithstanding such repeal, but without prejudice to the application of section 6 of the General Clauses Act, 1897 (10 of 1897), anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provision of this Act."

1. (1996) 11 SCC 769.

2. (2003) 12 SCC 636.

- A Sub-section 1 of Section 30 makes it clear that the Act of 1947 has been repealed. Sub-section 2 of Section 30 of the New Act says that anything done or any action taken or purported to have been done or taken under or in pursuance of the repealed Acts in so far as it is not inconsistent with the
- B New Act, shall be deemed to have been done or taken in pursuance of the New Act. Thus, a deeming fiction is introduced so far as action taken under the repealed Act is concerned.

- C 10. Sub-section 2 of Section 30 keeps the application of Section 6 of the GC Act intact and if a situation is not covered by Section 30, resort to Section 6 of the GC Act is open. Section 6 of the GC Act reads thus:

- D "*6. Effect of repeal:-* Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -

- E (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- F (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- G (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as
- H aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed." A

11. In this connection, we may usefully refer to the decision of this court in *Bansidhar & Ors. V. State of Rajasthan & Ors.*³ where this court was dealing with the question whether the proceedings for fixation of ceiling area with reference to the appointed date i.e. 1/4/1966 under Chapter III-B of the Rajasthan Tenancy Act, 1955 could be initiated and continued after coming into force of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act which with effect from 1/1/1973 repealed Section 5(6-A) and Chapter III-B of the Rajasthan Tenancy Act, 1955. While dealing with this question, this court observed that when there is a repeal of a statute accompanied by re-enactment of a law on the same subject, the provisions of the new enactment would have to be looked into not for the purpose of ascertaining whether the consequences envisaged by Section 6 of the GC Act ensued or not - but only for the purpose of determining whether the provisions in the new statute indicate a different intention. This court further observed that a saving provision in a repealing statute is not exhaustive of the rights and obligations so saved or the rights that survive the repeal. This court quoted a paragraph from its judgment in *I.T. Commissioner v. Shah Sadiq & Sons*⁴: (SCC p.524, para 15). It reads thus: B
C
D
E
F

"... In other words whatever rights are expressly saved by the 'savings' provision stand saved. But, that does not mean that rights which are not saved by the 'savings' provision are extinguished or stand ipso facto terminated by the mere fact that a new statute repealing the old statute is enacted. Rights which have accrued are saved unless they are taken away expressly. This is the principle behind G

3. (1989) 2 SCC 557.

4. (1987) 3 SCC 516.

A Section 6(c), General Clauses Act, 1897. ..."

12. Thus assuming the proceedings under the Act of 1947 initiated against the appellants cannot be saved by Section 30(2) of the New Act because no action was taken pursuant to the Act of 1947, prior to coming into force of the New Act, saving clause contained in Section 30 is not exhaustive. Section 6 of the GC Act can still save the proceedings.

13. Viewed from this angle, clauses (c) and (e) of Section 6 of the GC Act become relevant for the present case. Sub-clause (c) says that if any Central Act repeals any enactment, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. In this case, the right which had accrued to the investigating agency to investigate the crime which took place prior to the coming into force of the New Act and which was covered by the Act of 1947 remained, unaffected by reason of clause (c) of Section 6. Clause (e) says that the repeal shall not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment and Section 6 further states that any such investigation, legal proceeding or remedy may be instituted, continued or enforced and such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed. Therefore, the right of C.B.I. to investigate the crime, institute proceedings and prosecute the appellants is saved and not affected by the repeal of Act of 1947. That is to say, the right to investigate and the corresponding liability incurred are saved. Section 6 of the GC Act qualifies the effect of repeal stated in sub-clauses (a) to (e) by the words 'unless a different intention appears'. Different intention must appear in the repealing Act (See Bansidhar). If the repealing Act discloses a different intention, the repeal shall not result in situations stated in sub-clauses (a) to (e). No different intention is disclosed in the provisions of the New Act to hold that repeal of the Act of 1947 affects the right of the investigating agency

H

M.C. GUPTA v. CENTRAL BUREAU OF INVESTIGATION, 467
DEHRADUN [RANJANA PRAKASH DESAI, J.]

to investigate offences which are covered by the Act of 1947 A
or that it prevents the investigating agency from proceeding with
the investigation and prosecuting the accused for offences
under the Act of 1947. In our opinion, therefore, the repeal of
the Act of 1947 does not vitiate or invalidate the criminal case
instituted against the appellants and the consequent conviction B
of the appellants for offences under the provisions of the Act
of 1947.

14. There is no substance in the contention that the
appellants could not have been charged under the provisions C
of the Act of 1947 after its repeal. As we have already noted,
the offence is alleged to have been committed prior to the
coming into force of the New Act. When the offence was
committed, the Act of 1947 was in force. It is elementary that
no person shall be convicted of any offence except for violation D
of a law in force at the time of commission of the act charged
as an offence nor can he be subjected to a penalty greater than
that which might have been inflicted under the law in force at
the time of the commission of the offence. Article 20(1) of the
Constitution of India is clear on this point. The appellants were,
therefore, rightly charged, tried and convicted under the E
provisions of the Act of 1947. We may also note that the
provisions of the New Act are more stringent than the provisions
of the Act of 1947. The appellants cannot, therefore, be said
to have been prejudiced.

15. So far as the merits of the case are concerned, in our F
opinion, the guilt of the appellants is clearly established and,
hence, no interference is necessary with the impugned
judgment of the High Court which has confirmed the conviction
and sentence of the appellants.

16. That takes us to the arguments on quantum of
sentence. In *Satpal Kapoor*, the appellant therein was charged,
inter alia, under Section 5(2) of the Act of 1947. He was an
angina patient, suffering from coronary diseases requiring
medical attention. He was 60 years of age. Considering these H

A facts, his sentence was reduced to four months' simple imprisonment.

B 17. In *Shiv Nandan Dixit*, the appellants therein were charged, inter alia, under Section 5(1)(c) read with Section 5(2) of the Act of 1947. While considering the quantum of sentence, this court took into account the fact that the incident had taken place nearly 23 years ago. Considering the fact that the appellants therein had lost their jobs and retiral benefits; that the prolonged litigation had caused considerable loss to them and that they had crossed 60 years of age, this court reduced
C the sentence of one year RI to a period of six months' RI.

18. In this case, so far as appellant M.C. Gupta is concerned, he is about 70 years' old and is stated to be suffering from various ailments. The crime in question took
D place about 24 years ago. In the circumstances, we are of the opinion that his sentence of two years' RI for offence under Section 409 of the IPC should be reduced to one year's RI and is accordingly reduced. Rest of the sentences awarded to him shall remain intact. So far as appellant Mohan Lal Gupta is
E concerned, he has been sentenced to one year's RI for offence under Section 5(2) read with Section 5(1)(c) of the Act of 1947. Considering the fact that he was the beneficiary of the dishonest and fraudulent misappropriation of the Company's money, we are not inclined to reduce his sentence. We clarify that the
F sentence of fine imposed on both the appellants is confirmed. The appeals are disposed of in the aforestated terms.

R.P.

Appeals disposed of.