

GAHC010162072008



2026:GAU-AS:2799

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./125/2008

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KABIR NAG
S/O LT. KUMUD NAG
R/O MALIGAON RLY. GATE NO.1 UNDER BHARALUMUKH P.S.
DIST. KAMRUP
ASSAM

VERSUS

C B I

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Advocate for : K SAIKIA
Advocate for : SC
CBI appearing for C B I

B E F O R E

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Appellants : Mr. B.M. Choudhury

For the Respondent : Ms. M Kumari

Date of Hearing : 20.11.2025

Date of Judgment : 19.02.2026

Judgment and Order (CAV)

Heard Mr. B.M. Choudhury, learned counsel appearing for the appellant, Kabir Nag and Ms. M Kumari, learned Retainer counsel for the respondent CBI.

2. The present appeal filed under Section 374 of the Code of Criminal Procedure, 1973 assails the judgment dated 15.07.2008 passed by the Court of learned Special Judge, CBI, Guwahati in Special Case No. 48/2004, convicting the accused appellant under Sections 120B/420/468 of the IPC read with Section 13(2) and 13(1)(d) of the Prevention of Corruption Act and sentencing the accused appellant to undergo Rigorous Imprisonment for 3 (three) years with fine of Rs. 10,000/-, in default, of payment of fine to undergo further Rigorous Imprisonment for 1 (one) year, separately for the offence under Sections 420/120(B) IPC. The accused appellant was also sentenced to undergo Rigorous Imprisonment for 3 (three) years with fine of Rs. 10,000/-, in default, of payment of fine to undergo further Rigorous Imprisonment for 1 (one) year for the offence under Section 468 IPC.

The accused appellant was further sentenced to undergo Rigorous Imprisonment for 5 (five) years with fine of Rs.50,000/-, in default, to undergo Rigorous Imprisonment for 1 (one) year for the offence under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act.

The above sentences of imprisonment was observed to run concurrently, while the term of the jail to be served out, in default, of payment of fine was to run consecutively with that of the substantive period of the imprisonment.

3. The case of the prosecution is that the accused appellant along with his wife Anita Nag, Gaur Kanta Das and Prashanta Kumar Das had entered into a criminal conspiracy for misappropriating funds maintained at the New Guwahati Branch of the State Bank of India, wherein, the accused appellant at the relevant point of time was serving as a Deputy Manager, Accounts and in-Charge Accountant.

On 01.12.1994, the First Information Report came to be lodged by one Sri Dilip Kumar Basu (P.W.6), General Manager (Operations), SBI, Local Head Office (LHO), Guwahati against the accused appellant and others, regarding embezzlement of the bank's fund to the extent of Rs. 45,72,000/-. For ready reference, the contents of the said complaint is extracted hereunder:

"NEW GUWAHATI BRANCH

FRAUD IN TELEGRAPHIC TRANSFERS

With reference to the captioned subject, we have to advise that a fraud has been detected at our New Guwahati Branch in connection with the telegraphic transfer of ASEB funds from their various offices all over the State to their principal account maintained at our above-mentioned branch.

2. Shri Kabir Nag, an officer in the middle management grade scale-II, who was posted as Accountant from 3-7-89 till the date of his suspension, on 15/10/94, was in-charge of receiving the funds received in secret code through telegrams, having them deciphered and credited to the respective ASEB A/C.

3. A fictitious current account (No C&I/5/615) was opened by Shri Kabir Nag on 15/02/90 under the style "Colour Printers" in the name of Shri G.K. Dass as sole proprietor and remittance by way of Telegraphic Transfers coming from different branches of the Bank for credit to ASEB Rev. A/c were straight away credited to the aforesaid fictitious A/c instead of the actual beneficiary (ASEB), from where the funds were subsequently withdrawn by him.

4. The total amount of funds involved in the embezzlement through the aforesaid fictitious account by Shri Nag and the consequent loss to the Bank is Rs.45,72,000/- approximately.

5. Considering the gravity of the case, and the fact that outsiders may also be involved, we are of the view that the matter should be investigated, in depth, by your department.

6. We shall, therefore, be glad if you will register a case and have the Investigation report forwarded to us at the earliest.

Yours faithfully,

General Manager (Operations)"

On receipt of the said complaint, the CBI finding the same to have disclosed commission of offences against the accused appellant and others, registered the same as case no. RC:33(A)/94-SHG under Sections 120B/409/467/471 IPC and Sections 13(2) read with 13(1)(c) & (d) PC Act and the case was endorsed to one Sri R.P. Bose, Inspector of Police, CBI, ACB, Shillong for investigation. Accordingly, investigation was initiated and after completion of the investigation, a charge sheet under Section 173 Code of Criminal Procedure, 1973 (the CrPC, for short) came to be laid before the Court of learned Special Judge, Assam, Guwahati, against the accused appellant and others. The learned Trial Court vide order dated 13.08.1999 proceeded to frame

charges against all the accused persons, involved. All accused-appellants, involved were charged under Sections 120B/420 IPC. The present accused-appellant was additionally also charged under Section 468 IPC and under Sections 13(1)(c) & (d) of the PC Act. On the charges being read over and explained to the accused appellant, he pleaded not guilty and claimed to be tried.

In the course of trial, the prosecution examined as many as 47 (forty-seven) witnesses to bring home the charges against the accused persons, apart from exhibiting a large nos. of documents. After closure of the prosecution evidence, the accused appellant was examined under Section 313 Cr.P.C. In defence, the accused persons had adduced evidence of 4 (four) witnesses. After conclusion of the trial, the learned Special Judge upon appreciating the evidences coming on record, vide judgment 15.07.2008 proceeded to convict the accused appellant and on his such conviction, the accused appellant was sentenced, as noticed, hereinabove, which has been assailed in the present appeal by the accused appellant.

4. Mr. B M Choudhury, learned counsel for the accused appellant, at the outset, has submitted that he would be restricting his submissions to the reduction of the quantum of sentence and the same was also duly recorded by this Court in the order dated 16.09.2025. He submits that the offence alleged against the accused appellant was so committed during the period 03.07.1989 to 15.10.1994 and more than 31 years have lapsed since the date of commission of the said offence. He submits that the special case was registered against the accused appellant and the other accused persons in the year 2004 and the learned Trial Court had passed the judgment convicting the accused

appellant on 15.07.2008. Thereafter, the accused appellant has been perusing the present appeal before this Court for the last around 17 years. He submits that the accused appellant is presently aged above 80 years and is suffering from various old age related ailments. He submits that the appellant was also placed under detention and was subsequently, enlarged on bail.

4.1 Mr. Choudhury, learned counsel for the accused appellant, further submits that the appellant had participated in the trial and had not caused any delay or disruption, thereof. He submits that in the event, the appellant is required to be incarcerated at this stage, he would suffer undue hardship.

4.2 Mr. B M Choudhury, learned counsel for the accused appellant further submits that the delay occasioning in conclusion of the proceedings, not being attributable to the appellant, the same has violated his fundamental right towards speedy trial under Article 21 of the Constitution of India. Accordingly, it is submitted that considering the appellant's advanced age of over 80 years and his extremely fragile health, the sentence already undergone by him, may be considered appropriate by this Court in the present appeal, as any further incarceration would gravely impact and cause grave loss to the accused appellant.

5. Per contra, Ms. M Kumari, learned Retainer counsel for the respondent CBI submits that the accused appellant, herein, is charged of commission of an economic offence and the charges leveled against him, having been established during the trial before the learned Trial Court, the appellant is not entitled to any leniency from this Court and he would be required to undergo the sentence of imprisonment as imposed by the learned Trial Court. She, accordingly, submits that the present appeal would be called to be dismissed.

6. I have heard the learned counsels for the parties and also perused the materials available on record.

7. At the outset, it is to be noted that the accused appellant in the present proceeding is not challenging his conviction, by the learned Trial Court. The submissions of the learned counsel for the appellant is only towards seeking a reduction of the sentence to the period already undergone, considering the appellant's advanced age, deteriorating health condition and other mitigating circumstances.

8. In view of the submissions of the learned counsels for the parties, the issue before this Court is whether the sentence of the appellant, as imposed by the learned Trial Court, warrants interference in light of the mitigating circumstances placed on record such as the advanced age of the appellant, his deteriorating health condition and prolonged delay in the conclusion of proceedings.

9. In criminal jurisprudence, sentencing is not merely a mechanical exercise, but involves a careful balancing of aggravating and mitigating factors. While aggravating circumstances highlight the gravity and impact of the offence, mitigating factors provide insight into the personal circumstances of the offender which may require a lesser punishment.

10. Mitigating factors may include the age of the accused, absence of prior criminal record, mental or physical health conditions, socio-economic background, duration of trial, and good conduct during incarceration. In this regard, the Hon'ble Supreme Court in ***Mohammad Giasuddin Vs State of Andhra Pradesh***, reported in ***(1977) 3 SCC 287***, inter-alia, held as under:

"9. *It is thus plain that crime is a pathological aberration, that the criminal can ordinarily be redeemed, that the State has to rehabilitate rather than avenge. The sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by re-culturation. Therefore, the focus of interest in penology is the individual, and the goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today views sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of social defense. We, therefore, consider a therapeutic, rather than an "in terrorem" outlook, should prevail in our Criminal Courts, since brutal incarceration of the person merely produces laceration of his mind. In the words of George Bernard Shaw: "If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries." We may permit ourselves the liberty to quote from Judge Sir Geoffrey Streatfield: "If you are going to have anything to do with the Criminal courts, you should see for yourself the conditions under which prisoners serve their sentences". In the same strain a British Buddhist-Christian Judge, speaking to a BBC reporter underscored the role of compassion: "Circuit Judge Christmas Humphreys told the BBC reporter recently that a Judge looks 'at the man in the dock in a different way, not just a criminal to be punished, but a fellow human being, another form of life who is also a form of the same one life as oneself. In the context of karuna and punishment for karma the same Judge said: 'The two things are not incompatible. You do punish him for what he did, but you bring in*

a quality of what is sometimes called mercy, rather than an emotional hate against the man for doing something harmful. You feel with him, that is what compassion means."

16. *A proper sentence is the amalgam of many factors such as the nature of the offence, the circumstances extenuating or aggravating of the offence, the prior criminal record, if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental conditions of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender to normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in respect to the particular type of offence. These factors have to be taken into account by the Court in deciding upon the appropriate sentence.*

17. *It will thus be seen that there is a great discretion vested in the Judge, especially when pluralistic factors enter his calculations. Even so, the Judge must exercise this discretionary power, drawing his inspiration from the humanitarian spirit of the law, and living down the traditional precedents which have winked at the personality of the crime-doer and been swept away by the features of the crime. What is dated has to be discarded. What is current has to be incorporated. Therefore innovation in all conscience, is in the field of judicial discretion."*

11. Similarly, in *Pramod Kumar Mishra v. State of Uttar Pradesh 2023 SCC*

OnLine SC 1104, the Hon'ble Supreme Court while relying on the judgment of Mohammad Giasuddin (supra) reiterated the importance of considering mitigating factors while awarding sentence, particularly in cases involving long-pending prosecutions. The Court observed that the incident in question, therein, had occurred nearly four decades ago and that the appellant had no prior criminal record. Therefore, the sentence of the appellant, therein, was reduced from 5 (five) years to 3 (three) years, considering the mitigating circumstances. The Hon'ble Supreme Court laid down that a Court while imposing sentence, aggravating and mitigating circumstances of a case are to be taken into consideration.

12. From the aforesaid judgment(s), it is clear that the objective of sentencing has to be a combination of deterrence and rehabilitation. Both have to coexist and in the absence of one, the purpose of the other cannot be achieved. No hard and fast formula or mechanism for combining deterrence with rehabilitation can be laid down, but the same has to be worked out in relation to the individual concerned and on case to case basis.

13. The Hon'ble Supreme Court in its decision in the case of Ketan B. Parekh Vs. Central Bureau of Investigation, reported in 2024 SCC OnLine SC 2435 had also reiterated the above position.

14. Coming to the facts of the present case, this Court finds that the alleged incident, forming on the basis of the FIR dated 26.11.1994, had occasioned between 03.07.1989 to 15.10.1994 and the CBI authorities had submitted a charge-sheet in the matter, thereafter. The charges in the case were framed against the accused appellant and other accused persons on 13.08.1999 by the learned Trial Court.

15. The learned Trial Court had vide its judgment dated 15.07.2008 convicted the accused appellant, herein, and sentenced him, as noticed, hereinabove. Thereafter, the accused appellant had instituted the present appeal on 23.07.2008. The appeal has remained pending disposal before this Court for the last around 17 years. The delay occasioning in the conclusion of the proceedings involved is at odd with the constitutional mandate of a speedy trial envisaged under Article 21 of the Constitution of India.

16. The accused appellant has been in an uncertain stage since the registration of the case by the CBI, way back in the year 1994. The vital mitigating factors coming to the notice of this Court in considering the sentencing of the appellant is his advanced age. The appellant is above 80 years and is contended to be suffering from various old aged ailments.

17. At this stage, this Court considers the appellant to be highly vulnerable to physical and psychological impact of incarceration. This Court considers that any such imprisonment would risk causing irresistible harm and would defeat the very objective of such imprisonment. The accused appellant has not challenged his conviction and the conviction would remain with the appellant for his entire life. This Court has not been apprised of the appellant being involved in any other criminal matter.

18. In view of the above position, considering the appellant being in the evening of his life and to be suffering from old aged ailments, this Court considers it to be a fit case for reducing the sentencing of imprisonment imposed upon the appellant, by considering the mitigating circumstances, noticed hereinabove. The sentencing of imprisonment of the appellant is accordingly modified to the period he had already undergone imprisonment.

However, this Court does not interfere with the fine imposed upon the appellant and the appellant would be required to deposit the same.¹

19. Accordingly, while upholding the conviction of the appellant, the sentencing of imprisonment of the appellant stands modified to that of the period of imprisonment already undergone by him. The appellant would be required to approach the learned Trial Court within a period of 3 (three) months from today and deposit the fine amounts in terms of the directions passed in this connection by the learned Trial Court vide judgment dated 15.07.2008. In the event, the appellant does not deposit the fine amount within a period of 3 (three) months from today, the appellant would be required to undergo Simple Imprisonment for 1 (one) year.

20. With the above observations and directions, the present criminal appeal stands disposed of.

JUDGE

Comparing Assistant