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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on : September 26, 2013*
Judgment Pronounced on : October 21, 2013

+ **CRL.A. 539/2005**

ABHILASH SINGH Appellant

Through: Mr.M.L. Yadav, Advocate

versus

C.B.I. Respondent

Through: Mr.R.V. Sinha and Mr.A.S.Singh, Advs

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J.

1. The case of the prosecution in brief is that during the house search of Baldev Raj in Case No.RC 63(A)/96-DLI dated 24.7.96, reliable information was received that Abhilash Singh (Accused), Mate, working in Enforcement Branch of DDA, had worked under Shri Baldev Raj and was having some incriminating documents of the case. On house search U/s 165 Cr.P.C. of the house of accused conducted on 25.7.96 it was revealed that during the period from May 1996 to July 1996 accused had kept Rs.1.80 lakhs with his friend Shri Vijay Kumar, Junior Engineer. Thereafter on the complaint of Shri H.C.Bist, DSP, CBI, ACB, New Delhi the instant case was registered on 25.7.96 on the allegations that accused was in possession of assets in his name or in the name of his family

members disproportionate to his known sources of income during the check period 1.5.85 to 25.7.96.

2. Investigation further disclosed that accused was working in the regular pay scale of Rs.950-1400/- (old scale). He was married with Mrs.Kalpana Singh on 9.10.84. His family consisted of his wife Mrs.Kalpana Singh, Km.Shweta Singh and Km.Toohina Singh, daughters and Master Arjun Singh, son.
3. Investigation further disclosed that accused had received pay and allowances w.e.f. 1.5.85 to 25.7.96 amounting to Rs.254754/-. The assets and liabilities of accused during the check period w.e.f. 1.5.85 to 25.7.96 including his movable and immovable assets total receipts and expenditure were summarized in the following paragraphs:-

Income/Receipts during check period from 1.5.85 to 25.7.96:-

1.	Salary income of Sh.Abhilash Singh	Rs.2,54,754/-
2.	Interest on Recurring Deposit A/c No.607 dt.17/1/92 @100 p.m. for 36 months (paid on 25.5.95). Principal 3,600 + Intt. 612 = Rs.4,212/- Km.Toohina Singh, SBI, Ghazipur.	Rs.612/-
3.	Interest on RD A/c No.608 dt. 17/1/92 @100 p.m. for 36 months (paid on 25.5.95) Km.Shweta Singh, SBI Ghazipur. Principal 3,600 + Intt. 612 = Rs.4,212/-.	Rs.612/-
4.	Interest on RD A/c No.781 dt.3.9.93 for 12 months @ Rs.200/- p.m. in the name of Arjun Singh in SBI, Ghazipur, Principal Rs.2400/- + interest Rs.332/- Total Rs.2732/- matured on 20.9.94	Rs.332/-

5.	Interest on RD A/c o.755 dt. 2/1/87 for 60 months @100 p.m., Mrs.Kalpna Singh in SBI Kalyanpuri. Principal Rs.6000/-, Intt. Rs.6000/-, Intt. Rs.2003/- Rs.8003/- paid on 3.1.92.	Rs.2003/-
6.	Loan of Mrs. Kalpana Singh in M/s. Chetak Sahkari Samiti loan of Rs.2000/- on 13.3.89. Repaid from Apr' 89 to Aug' 90 @ 100 r.p.m. (Rs.1100) outstanding Rs.900	Rs.900/-
7.	Loan of Shri Abhilash Singh in M/s.Chetak Sahkari Samiti. Loan of Rs.2,000/- on 13.3.89. Repaid from Apr' 89 to Aug' 90 @100 p.m. (Rs.1100/-) Outstanding loan	Rs.900/-
	Total Income/Receipts	Rs.2,6,113/- (sic)

Expenditure incurred during the check period by Sh.Abhilash Singh:-

1.	Probable kitchen Expenses (30% of salary i.e. Rs.2,54,754/-)	Rs.76,426/-
2.	Probable Expenses on petrol and maintenance of Bajaj Chetak scooter for 12 months @Rs.100 pm w.e.f. 1.7.95 to July 96.	Rs.1,200/-
3.	Payments made to M/s.Peerless General Finance & Investment Co. Ltd. Sanjay Palace, Agra.	Rs.3,900/-
4.	Payments made to MTNL Delhi for residence Telephone No.2475536 w.e.f. 1.1.96 to 31.7.96 (Rs.4581, 682, 572, 552, 312)	Rs.6704/-
5.	Education expenses of Km.Sweta w.e.f. 1991 to 1.7.96 (62 months @Rs.15 per month)	Rs.930/-
6.	Education expenses of Km.Toohina w.e.f. 1994 to 1.7.96 (26 months) @Rs.15 per month.	Rs.390/-

	Total	Rs.89,550/-
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Assets and liabilities of Sh.Abhilash Singh, Mate, DDA, SWD-5, Vasant Kunj, New Delhi, during the check period w.e.f. 01.05.1985

I. Assets at the beginning of check period Nil

II Moveable Assets found during check period w.e.f. 1.5.85 to 25.7.96

1.	Cash available in the house of Shri Abhilash Singh as on 25.7.96 (as per observation memo)	Rs.5,350/-
2.	Assets as per observation memo dt. 25.7.96 (After deduction of Rs.7000/- the amount before check period vide item No.10 on page No.1 and item No.11 on page No.2) Total inventory valued Rs.133015/- less Rs.7000/- = Net	Rs.1,26,015/-
3.	Bajaj Chetak Scooter No.DL-3S-C-8087 (1991 Model)	Rs.8,000/-
4.	Balance in SB A/c No.4246 of Mrs.Kalpana Singh, W/o Sh.Abhilash Singh (As on 25.7.96) in SBI Ghazipur, Delhi.	Rs.50,977/-
5.	TDR No.532873 dt. 6.6.96 in the name of Mrs.Kalpana Singh (Wife) and Arjun Singh in SBI, Ghazipur, Delhi	Rs.20,000/-
6.	TDR No.532874 dt.6.6.96 in the name of Mrs.Kalpana Singh (Wife) and Km.Toohina in SBI, Ghazipur, Delhi	Rs.20,000/-
7.	TDR No.532875 dt.6.6.96 in the name of Mrs.Kalpana Singh (Wife) and Km.Toohina in SBI, Ghazipur, Delhi	Rs.20,000/-
8.	FDR No.4338823 dt. 8.7.96 in UBI, Shastri Nagar, Meerut	Rs.60,000/-
9.	FDR No.4338824 dt. 8.7.96 in UBI, Shashtri Nagar, Meerut.	Rs.15,000/-
10.	FDR No.051941 dt.8.7.96 in UBI, Hasanpur Kalan, Meerut	Rs.15,000/-

11.	FDR No.051942 dt.8.7.96 in UBI, Hasanpur Kalan, Meerut	Rs.15,000/-
12.	FDR No.051943 dt.8.7.96 in UBI, Hasanpur Kalan, Meerut	Rs.15,000/-
13.	FDR No.051944 dt.6.7.96 in UBI, Hasanpur Kalan, Meerut	Rs.50,000/-
14.	FDR No.051945 dt.8.7.96 in UBI, Hasanpur Kalan, Meerut	Rs.3,500/-
15.	Amount deposited in loan A/c of Sh.Harinder Tyagi on 8.7.96	Rs.6,497/-
16.	Amount kept by Sh.Harinder Tyagi	<u>Rs.03/-</u>
	Total	<u>Rs.4,30,342/-</u>

Immovable Assets of Sh.Abhilash Singh found during the check period w.e.f 1.5.85 to 25.7.96

(A) LIG Flat No.51-C/Pocket, A-2, Kondli Gharoli
Type II Group 5 Mayur Vihar, Phase-III, Delhi

i.	Amount paid on 21.7.95 (at the time of purchase of Flat)	Rs.75,000/-
ii.	Amount deposited in DDA, Delhi on 31.3.95	Rs.75,575/-
iii.	Amount deposited in DDA on 24.5.95	Rs.32,000/-
iv.	---do----- 26.2.96	Rs.1,473/-
v.	----do----- 29.3.96	Rs.1,473/-
vi.	----do----- 30.4.96	Rs.1,473/-
vii.	---do----- 30.5.96	<u>Rs.1,473/-</u>
	Total	<u>Rs.1,88,467/-</u>

Total probable savings of Sh.Abhilash Singh, Mate are as under:-

Total income	Rs.2,60,113/-
Total expenses	Rs.89,550/-
<u>Net Total assets of Sh.Abhilash Singh</u> <u>Mate are as under:-</u>	
Movable assets	Rs.4,30,342/-
Immoveable assets	Rs.1,88,467/-
Total	<u>Rs.6,18,809/-</u>

Disproportionate Assets of Sh.Abhilash Singh:-

Total Assets	Rs.6,18,809/-
Total Savings	<u>Rs.1,70,563/-</u>
Net	<u>Rs.4,48,246/-</u>

4. Thus against likely savings of Rs.1,70,563/- Abhilash Singh has amassed assets worth Rs.6,18,809/- which is disproportionate to his known sources of income to the tune of Rs.4,48,246/- for which Abhilash Singh could not give any satisfactory explanation.
5. These facts disclosed the commission of offence punishable u/S 13(2) read with 13(1)(e) of Prevention of Corruption Act 1988. Charges were framed against the accused accordingly.
6. Counsel for the appellant submits that the judgment of conviction and the order on sentence are contrary to law and facts established on record. There is no legal evidence against the appellant justifying his conviction. It is contended that the evidence adduced by the prosecution did not conclusively prove that the appellant was in possession of assets beyond the known sources of his income.
7. Mr.Yadav, has strongly urged before this court that the testimony of Tapan Kumar Bapuli, PW-6 clearly proves that the appellant had paid only a sum of Rs.75,000/- as price of the flat No.51-C, Pocket A-2, Kondli Gharouli, Mayur Vihar Phase-III, Delhi and thus, there was no justifiable reason for the court to conclude that the appellant had paid a sum of Rs.1.80 lac as the price of the aforesaid flat.
8. Counsel further submits that the conclusion by the trial court that the sum of Rs.1,80,000/- deposited in the Union Bank of India, Meerut (U.P.) in the name of Harinder Kumar Tyagi and his mother and wife was actually the amount belonging to the appellant is wholly unjustified and not

supported by any evidence. It is also submitted that in fact said Harinder Kumar Tyagi appeared as a witness in Court as PW-12 and categorically stated that he deposited the said sum of Rs.1,80,000/- in the Bank.

9. Counsel for the appellant also submits that the evidence of defence witnesses has been wrongly ignored and bye-passed. Counsel submits that the learned trial court has failed to take into consideration that the wife of the appellant was working and she had her independent source of income.
10. Counsel for the State submits that the prosecution has been able to prove its case beyond any shadow of doubt and there is no merit in the appeal.
11. I have heard counsel for the parties and carefully examined the evidence on record and considered their rival submissions.
12. Counsel for the appellant submits that the appellant had paid only a sum of Rs.75,000/- at the time of purchase of the flat and the trial court has wrongly reached the conclusion that the appellant paid a sum of Rs.1.80 lac for purchase of the said flat.
13. Elaborating his argument further Mr.Yadav, counsel for the appellant submits that the payment of Rs.32,000/- and Rs.75,575/- were deposited with the DDA prior to the agreement to sell entered into between the appellant and the seller and thus it cannot be said that these two amounts were in fact deposited by the appellant. The submission made by counsel for the appellant is without any force. The evidence of PW-6, Tapan Kumar Bapuli and PW-8, Sh.S.P. Sharma show that the sum of Rs.40,000/- was paid by the appellant for purchase of the flat through Sh.S.P. Sharma, who retained Rs.2000/- as profit and gave Rs.38,000/- to Tapan Kumar Bapuli. PW-10 and PW-11 have proved two receipts by which a sum of Rs.75,575/- was deposited with the DDA towards the cost of the flat on 31.3.1995 and Rs.32,000/- was deposited on 24.5.1995.

Evidence of PW-8 also shows that he entered into an agreement to purchase a flat from Tapan Kumar Bapuli on 22.3.1995 for which he paid Rs.38,000/- to Tapan Kumar Bapuli, PW-6. Thereafter the appellant approached Tapan Kumar Bapuli and agreed to purchase the flat for Rs.40,000/- and documents were executed by Tapan Kumar Bapuli in favour of the appellant on 21.7.1995.

14. No doubt the agreement for the flat was entered into after amount of Rs.75,575/- and Rs.32,000/- were deposited, but the flat could not have been sold by Tapan Kumar Bapuli in favour of the appellant for Rs.40,000/- and thus it is evident that these two amounts were deposited towards the cost of the flat. Thus I am of the view that the learned trial court has taken a correct view in the matter to show that the appellant paid a sum of at least Rs.1,57,575/- towards the cost of the flat and not a mere amount of Rs.40,000/-.
15. During the course of hearing Mr.Yadav has strongly urged that the witnesses have falsely deposed against the appellant under threat of the respondent and the sum of Rs.1.80 lac did not belong to the appellant. Vijay Kumar, PW-14, had testified that the appellant had given him Rs.1.80 lac during the period of April to July, 1986. This money was handed over to Sh.K.K. Tyagi for safe custody. PW-14 along with Sh.K.K. Tyagi, went to Harender Kumar, who is the brother-in-law of Sh.K.K. Tyagi; and PW-12, Harender Kumar deposited the amount in Union Bank of India, Meerut, without knowing that the money belonged to the appellant. The deposit receipts have been proved by PW-9, Sushil Kumar Gupta. The trial court has dealt with this argument of the appellant in the following manner:

“The accused has vehemently contended the claim of PW-14 that the money was given to him by accused. A perusal of

the remand papers filed at the time of arrest of Vijay Kumar which form a part of judicial record shows that even at that time the allegation was that Abhilash Singh has given Rs.1,80,000/- to Vijay Kumar, who kept this amount with the intend to conceal and knowing that this amount was ill gotten money of Abhilash Singh at the residence of Harinder Kumar relative of K.K. Tyagi, JE. These allegations are also contained in the reply to the bail application of Vijay Kumar which was filed by the CBI on 30.7.96. It is true that Vijay Kumar and K.K. Tyagi have not been arrayed as accused persons by the CBI in spite of the facts that Vijay Kumar was arrested and K.K. Tyagi was released on anticipatory bail in this case. However, it cannot be said that these witnesses are trying to shield K.K. Tyagi or that money belongs to K.K. Tyagi. The accused cannot get any benefit from this irregularity committed by the prosecuting agency.

I, therefore, hold that the amount of Rs.1,80,000/- which was recovered in the form of FDR's from Harinder Kumar belongs to the accused."

16. The reasoning of the trial court is based on the evidence on record and I find no reason to take a different view in the matter. The movable assets which were found in the house of the appellant have been detailed in Ex.PW-20/X. The value of the articles was assessed in consultation with the appellant and his family members. The amounts lying in various banks stand duly proved through the evidence of the officials of the bank, who testified as witnesses.
17. Another argument raised by Counsel for the appellant before this court is that the wife of the appellant is an educated person and had an independent source of income; she was working as a steno and the income generated from her employment has wrongly been included in the income of the appellant. The wife of the appellant had appeared as a defence witness, DW-1. She testified that she is a graduate and has done a course

in Hindi stenography. She further deposed that she was working with M/s.Natash International Tours and Travels at a salary of Rs.850/-, which was subsequently increased to Rs.1000/-; she was also earning Rs.1500/- to Rs.2500/- by giving tuitions.

18. Counsel for the appellant has also urged before this court that the evidence of this witness has not been considered by the trial court. It may be noticed that DW-1 has failed to produce a single document on record in support of her testimony that she was working with M/s.Natash International Tours and Travels, neither the deposits made by her show that the deposits were regular at Rs.850/- or Rs.1000/- per month, thus the evidence of DW-1 can be of no help to the appellant and is unreliable. More over DW-2 (mother-in-law of appellant) has not placed any document or provided the dates when gifts were made in favour of her daughter. DW-2 has also testified with regard to her income from agricultural produce. However, no supporting documents or details were furnished as to whom the agricultural produce was sold and in the absence thereof her evidence is unworthy of reliance.
19. Having regard to the evidence placed on record, I find no infirmity in the judgment of the trial court and the order on conviction. Accordingly, appeal stands dismissed. Appellant shall surrender on or before 30.11.2013.

(G.S.SISTANI)
JUDGE

OCTOBER 21, 2013
dk/ssn