

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 211 of 2008

Reserved on: July 25, 2014

Decision on: August 20, 2014

DR. SANTOSH KUMAR JHA Appellant
Through: Mr. Umesh Sinha, Mr. Anil Singh,
Mr. Rajesh Kumar, Ms. Priyanka and
Ms. Awasthi, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION ... Respondent
Through: Mr. Manoj Ohri, Spl. P.P.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT
20.08.2014

1. The challenge in this appeal is to the impugned judgment dated 13th February 2008 passed by the learned Special Judge, CBI, New Delhi in Criminal Complaint No. 101 of 2006 convicting the Appellant for the offence under Section 13 (2) read with Section 13 (1) (e) of the Prevention of Corruption Act, 1988 ('PC Act') and the order on sentence dated 18th February 2008 whereby he was sentenced to undergo rigorous imprisonment ('RI') for a period of three years and to pay a fine of Rs. 1 lakh and in default of payment of fine, to undergo simple imprisonment ('SI') for one year.

Proceedings leading to the launch of the prosecution

2. The case of the prosecution was that a written complaint dated 9th March 2002 was received by the Anti Corruption Branch ('ACB'), Central Bureau of Investigation ('CBI') from Mr. Jagir Singh Sran, (PW-17) Commandant, Border Security Force ('BSF') Academy, Tekanpur stating that an inquiry had been ordered by the Director, BSF Academy, Tekanpur against the Appellant who was a Medical Officer ('MO'), Composite Hospital, BSF Academy Tekanpur. It was stated that during the said inquiry, the Appellant disclosed that he had obtained illegal gratification from various candidates seeking recruitment in BSF as Constables and that he had concealed the money so obtained in a cloth bag at the residential premises of one of his relatives, Mr. Pradeep Kumar, (PW-25) who is an employee of an export house at C-157, Okhla, Phase-I, New Delhi. A Board of BSF officers led by PW-17 and accompanied by the Appellant went to the said premises on 8th March 2002 where the Appellant called on PW-25 and told him that he had come to collect the cash amount kept with him in a cloth bag, given earlier. Thereafter, the Appellant along with PW-25 took the Board to a single room tenement in a slum area known as Indra Kalyan Vihar, Okhla. There, the Appellant brought out and produced one cotton bag containing currency notes before the Board. The Board members accompanied by the Appellant and PW-25 took the said cloth bag to Officers Mess, BSF, Tigri Camp where currency notes contained in the said bag were recovered. The recovered currency notes were counted and were found amounting to Rs. 3,99,900. The same were taken into possession and sealed by a

separate seizure memo as the Appellant could not furnish any convincing explanation for possessing the said amount.

3. The complaint by PW-17 further stated that the Appellant had joined BSF as MO in August 1999. His carry home emoluments during his entire period of service were stated to be not more than Rs. 3 lakhs. The Appellant had recently acquired a flat from Shipra Riverra – GDA at Sun City Ghaziabad for Rs. 7.95 lakhs. The Appellant had taken a bank loan of Rs. 3.30 lakhs for that purpose. He was also reported to have invested Rs. 3 lakhs for the purchase of agricultural land in District Madhubani (Bihar) in the name of his father. The Appellant had two children and wife to support who were residing with him at Tekanpur. Another Board of BSF officers had taken into possession documents of other movable properties said to be in the name of the Appellant. It was requested by PW-17 that action be taken against the Appellant under the PC Act.

Investigation by the CBI

4. On the basis of the aforementioned complaint, an FIR was registered on 9th March 2002 under Section 13 (2) read with Section 13 (1) (e) of the PC Act. The Appellant was arrested on 9th March 2002 by Inspector Umesh Vashisth (PW-32) of ACB, CBI, New Delhi. It is stated that during interrogation, the Appellant disclosed that he had kept some amount with one Birender Nath Jha (PW-19) at Darbhanga and also had kept Rs. 2.5 lakhs and some jewellery with one Jata Shankar Mishra at Tekanpur. He is also stated to have

disclosed that he had invested money amounting to about Rs. 3 lakhs for the purchase of agricultural land in the name of his father, Mahakant and that he had also purchased a flat at Shipra Sun City for about Rs. 8 lakhs. PW-32 stated that he immediately contacted one Mr. D.S. Sidhu, Adjutant, BSF Academy, Tekanpur over telephone on 9th March 2002 and asked him to get the money and jewellery recovered from the house of Mr. Jata Shankar Mishra.

5. While the Appellant was in police remand, PW-17 produced the recovered amount of Rs. 3,99,900 along with one cloth bag and seizure memo in the presence of Mr. V.K. Aggarwal, Chief Manager, Corporation Bank, CGO Complex, an independent witness. The currency notes containing the signatures of the BSF officials as well as the signatures of the Appellant were detached/removed and the same were seized.

6. During the investigation, PW-32 asked the Appellant to contact PW-19 on telephone and direct him to bring the suitcase which he had kept at his residence to the CBI office at CGO Complex. PW-19 brought the suitcase on 14th March 2002. The Appellant informed that he neither had the key with him nor was the same handed over to PW-19. The suitcase was opened with the help of a screw driver in the presence of two independent witnesses (Mr S.K. Shukla and Mr. K.C. Sharma) and it was found to contain currency notes totalling to Rs. 30,000 which were kept in a polythene bag and the remaining amount was kept in 26 woollen threads totalling to Rs. 2,97,400. The said

independent witnesses, both Senior TCRs in the Northern Railways also signed the seizure memo. The recovered amount was deposited in the *malkhana* of CBI and later on was deposited with the Corporation Bank, CGO Complex, Lodhi Road, New Delhi. The statement of PW-19 was recorded on 15th March 2002 by PW-32.

7. Inspector S.C. Bhalla (PW-29) seized and made the inventory of the household articles during the search conducted at the appellant's house in Tekanpur on 16th March 2002. On 17th March 2002, PW-29 handed over the proceedings drawn by him along with a supplementary case diary. On 20th March 2002, the Deputy Commandant, BSF, Mr. Baby Joseph (PW-7) and Inspector Kaviraj produced the documents seized by the Board of officers, BSF Academy, Tekanpur as well as the recovery of Rs. 2,83,800, some jewellery and one receipt of LIC premium that were seized from the residence of Meera Devi (PW-9).

8. During the investigation, PW-32 had also collected the salary details of the Appellant, details of GPF advance with forwarding letter and details of interest received by appellant from bank accounts held with State Bank of India ('SBI'), United Commercial Bank ('UCO'), Tekanpur and Punjab National Bank ('PNB'), Indirapuram, Ghaziabad. The loan details of Rs.3,30,000 availed from the PNB were also collected. PW-32 had also collected the details of loans taken by the Appellant amounting to Rs. 50,000 each from his relatives, Chitrakant (PW-28) and Mahender Jha (PW-26). PW-32

explained that DW-10, the wife of the Appellant was a housewife and was not engaged in any kind of business.

9. The check period for computing the income, expenditure and assets was taken from 9th August 1999, the date on which the Appellant joined as MO to 9th March 2002, the date on which the case was registered.

10. After completion of the investigation, the chargesheet was filed by the CBI on 30th June 2003 where it was stated that the income of the Appellant during the check period worked out to Rs. 8,07,636.22 whereas the total expenditure had been calculated at Rs. 1,57,602.33. He was found to be in the possession of movable and immovable assets either in his own name or in the name of his father to the extent of Rs. 22,32,285.50. The value of the disproportionate assets worked out to the extent of Rs.15,82,251.67. Since the Appellant could not satisfactorily account for the possession of the above disproportionate assets the offence under Section 13 (2) read with Section 13 (1) (e) of the PC Act was made out against him. It was mentioned in the chargesheet that the Competent Authority ('CA') had accorded the sanction for prosecution of the Appellant.

11. Charges were framed against the Appellant for the aforesaid offences on 1st October 2003. The Prosecution examined 32 witnesses.

Appellant's statement under Section 313 Cr PC

12. In his statement under Section 313 Cr PC the Appellant denied the evidence gathered against him. He admitted that he had paid Rs. 7,98,388 for flat No. 539-B, Shipra Sun City, Ghaziabad and that he was sanctioned a loan of Rs. 3,30,000 by the PNB for that purpose though he had applied for Rs. 4.5 lakhs. As regards the money recovered from Mitlesh Devi, (PW-8) and Meera Devi, (PW-9), the Appellant contended that the money belonged to his wife, Manjul Jha, (DW-10) and the same was accumulated by her from her own sources. He learnt this fact when DW-10 told the Investigating Officer ('IO') that she had kept the said money with PW-8.

13. The Appellant admitted that he had withdrawn Rs. 80,000 from his General Provident Fund ('GPF') account. He claimed that during the check period he received Rs. 3,26,962 as salary inclusive of post graduation allowances, uniform grants and book allowances from PAD through UCO Bank Tekanpur. As regards the LIC premium, DW-10 had paid premium from her own sources. The Appellant completely denied and falsified the search led by PW-17 accompanied by him at the residence of PW-25 at Okhla Industrial Area, New Delhi. He stated that PW-25 accompanied BSF officials and repeatedly told them that this money belonged to PW-25 and his brother. He claimed to have no knowledge about the seizing and counting of money because it did not happen in his presence. He further stated that he was arrested by CBI on 9th March 2002.

14. The Appellant denied PW-19's statement that in July or August 2001, he along with his wife and child had kept grey colour suitcase (Ex.P-62) in locked condition at PW-19's residence without disclosing to him contents of the suitcase. According to the Appellant, DW-10 (his wife) had gone along with Mahender Jha (PW-26), himself and his son because she wanted to purchase a land in Darbhanga and that she had kept her money with the wife of PW-19. Appellant claimed he had no knowledge of whether the suitcase was brought to the CBI office by PW-19. He claimed that the money contained belonged to his wife, DW-10.

15. The Appellant questioned the validity of sanction and whether it was granted by the competent authority. According to him neither Joint Secretary nor Minister in-charge of the Ministry of Home Affairs (MHA) had any authority to remove him. He denied that having kept large amounts of money and jewellery in the house of Jata Shankar Mishra and his son K.K. Mishra residing in Tekanpur. He admitted receiving two drafts of Rs. 49,000 each from PW-26. He admitted that Chitrakant Jha (PW-28) who is his real uncle had given him a loan of Rs. 50,000 by way of two demand drafts. He stated that his father had purchased agricultural land in District Madhubani on 7th December 2001 from his own income. He maintained that his wife was an earning member of his family even prior to the check period and that she was also an income tax assessee.

16. When asked if he wanted to say anything more, the Appellant stated that in 1996 a sum of Rs. 70,000 was withdrawn prematurely from a fixed deposit and given to his uncle who had since expired. The uncle had returned this amount with interest in the sum of Rs. 1 lakh and this had remained with the Appellant since the beginning of year 1999. He claimed to receive stipend during his internship as a house surgeon from July 1994 to April 1996 of Rs 5000 a month. He received a sum of Rs.2,70,000 as stipend while he was doing post graduation in Gwalior from May 1996 to May 1999. He claimed that his wife had filed income tax since 1996 and had been able to accumulate assets of about Rs 11 lakh. He claimed that the amount seized from the residence at Okhla of Mr. Pradeep Kumar Jha, (PW-25) belonged to PW-25 only. The other two amounts belonged to his wife and that the land in Village Madhubani was purchased by his father from his own savings.

The defence evidence

17. The Appellant examined 12 witnesses: Raj Kumar, (DW-1), the Special Assistant of Punjab National Bank ('PNB'), Janjhadpur, S.P. Sinha, (DW-2), the then Branch Manager, State Bank of India ('SBI'), Dalshing Sarai, Samastipur Bihar, Janardhan Sha (DW-3), then Deputy Branch Manager, SBI, GRMC, Gwalior, Dinesh Jha (DW-4), brother-in-law of the Appellant, Suresh Naam Joshi, (DW-5), the then Branch Manager, SBI, BSF Academy, Tekanpur, Prakash Singhvi (DW-6), the then Branch Manager, SBI, Saket, Munandra Dev Pathak (DW-7), Higher Grade Assistant in LICE Tansen Road, Gwalior, SI

Amarjeet Singh (DW-8), Adjutant BSF Academy, Tekanpur Gokul Prasad Patwa (DW-9), Member (Judicial) Commercial Tax, Appellate Board, Bhopal, Manjul Jha, the wife of the Appellant (DW-10), K.K. Mishra, LIC Agent, Gwalior (DW-11), Ram Nivas Sharma (DW-12), Clerk of DW-9.

Judgment of the trial Court

18. By the impugned judgment dated 13th February 2008 the trial Court held as under:

(i) The prosecution was able to prove through the evidence of PWs 1, 2, 3, 7, 11, 17, 27, 30 that the sum of Rs. 3,99,000 recovered from the residence of PW-25 Pradeep Kumar Jha belonged to the Appellant and the version of PW-25 that it belonged to him, was not acceptable.

(ii) The sum of Rs. 2,83,800 recovered from Smt. Mithlesh, (PW-8) and the jewellery amounting to Rs. 76,000, kept with Meera Devi, (PW-9) given to them by DW-10 as well as the sum of Rs. 3,27,400 brought by PW-19 were not proved to be the independent source of income of DW-10 as sought to be projected by the Appellant.

(iii) The Appellant had failed to intimate his department about availing of loan from Mahender Jha, (PW-26), Pradeep Kumar Jha, (PW-25) and Dinesh Jha, (DW-4) for purchasing the flat at Shipra Sun City, Ghaziabad and therefore, the loans given by PW-25, PW-26 and DW-4 could not be taken into account as income of the Appellant. Consequently, the balance payment of Rs. 4,68,000 for purchasing the

immoveable property at Shipra Sun City ,Ghaziabad has not been explained by the Appellant.

(iv) The Appellant's father being a retired person, having no independent income, the Appellant's explanation that the land at Madhubani was purchased by his father from his own income was not acceptable.

(v) The income of the accused was calculated during the check period at Rs.3,08,763.22. The expenditure was shown to be Rs.1,54,812.33. The submission of the Appellant that he had an FDR of Rs. 1 lakh during the check period was not corroborated by any documentary evidence. No documents were also produced concerning the receipt of stipend amount, therefore, that income of the Appellant was not taken into account. The recoveries of cash totalled to Rs.10,11,100 and the value of the immovable assets worked out to Rs. 22,23,618.22 which were beyond his source of income and for which he could not furnish any satisfactory explanation.

(vi) The sanction was validly accorded for prosecuting the Appellant.

19. The trial Court thus concluded that the prosecution had proved its case beyond reasonable doubt and the Appellant had assets to the extent of Rs. 15,70,794.61 which were disproportionate to his known sources of income. The trial Court accordingly convicted the Appellant for the offence under Section 13 (2) read with Section 13

(1) (e) of the PC Act and sentenced him in the manner indicated hereinbefore.

Validity of separate proceedings for disproportionate assets

20. Mr. Umesh Sinha, learned counsel for the Appellant, first referred to the fact the case registered by the CBI on the basis of the complaint dated 9th March 2002 of PW-17 was in fact a continuation of a complaint dated 4th March 2002 which had resulted in the registration of another case, namely, RC NO ACI-2002-A-0002/ACUI New Delhi in which nothing incriminating had been found against the Appellant. Since the very basis of the present case was the case registered under Section 13 (1) (d) of the PC Act, the entire prosecution of the Appellant in the present Disproportionate Assets (DA) case stood vitiated.

21. In reply it was pointed out by Mr. Manoj Ohri, learned Special Public Prosecutor (SPP) for the CBI, that while in the case under Section 13 (1) (d) of the PC Act nothing incriminating had been found against the Appellant, the DA case stood entirely on a different footing. Mr. Ohri pointed out that one of the accused in the case under Section 13 (1) (d) of the PC Act, Dr. B.K. Sahoo had protested his being prosecuted separately for the offence under Section 13 (1) (e) of the PC Act by filing Criminal Revision Petition No. 771 of 2011. The said petition was dismissed by the High Court of Madhya Pradesh at Jabalpur in ***B.K. Sahoo (Dr.) v. Central Bureau of Investigation ILR (2012) MP 1077*** holding that though the offences remain criminal

misconduct by the public servant, yet the constituent ingredients of both the offences are entirely different and therefore, he can be prosecuted against for both offences.

22. The Court finds that the DA case against the Appellant was registered by the CBI on the basis of complaint dated 9th March 2002 submitted by PW-17. Earlier to that a letter dated 4th March 2002 was written by the Director, BSF addressed to the Director General, Force Headquarters, BSF regarding malpractice during the recruitment of Constables by the BSF Academy, Tekanpur, Gwalior for the States of Uttar Pradesh, Uttranchal and Chattisgarh in the month of January and February 2002. In relation to the call for appearance of 14 candidates for interview, it was found that no call letter had been issued to them. A complaint was registered at the police station Bilua. When those candidates were interrogated it was disclosed that upon payment of varying amounts, the said candidates were assured of being recruited and medical officers were also involved in the said racket. The said letter referred specifically to the Appellant and Dr. B.K. Sahoo being involved. Accordingly, the Director, BSF suggested that the case should be handed over to the CBI so that “this organized gang could be smashed and large scale cheating of candidates in the State of UP, MP and Uttranchal stopped.” It was pointed out that “it would not be possible for the Gwalior District Police to successfully bring the criminals to book because of the complicated nature of the case.”

23. The above letter was followed by a letter dated 9th March 2002 by Mr. Jagir Singh Sran, PW-17 to the CBI/ACB, New Delhi on the basis of the disclosures made by the Appellant during the enquiry ordered by the Director, BSF Academy, Tekanpur. The charge sheet for the same was filed on 30th June 2003.

24. Sometime in 2006, BSF Academy, Tekanpur, Gwalior had enquired from the CBI, the status of the case and in response thereto, the Superintendent of Police, CBI had sent a communication on 7th January 2006 stating that in the case under Section 13 (1) (d) of the PC Act involving 14 candidates, 11 charge sheets had been filed; Dr. B.K Sahoo along with co-accused had been prosecuted; Mr. Amar Nath Gupta, the then ASI, BSF Academy had also been prosecuted under Section 13 (1) (d) of the PC Act and that “due to want of evidence Dr. S.K. Jha has not been prosecuted” by the CBI. Importantly, this reply was sent by ACU-I of the CBI and not the wing of the CBI which had registered a DA case against the Appellant.

25. On the basis of the above letter dated 7th January 2006, Adjutant, BSF Academy, Tekanpur, Gwalior wrote to the Force Headquarters (Pers Dte) requesting to intimate the next course of action and to consider revocation of suspension of the Appellant. However, what was perhaps overlooked was the fact that the DA case against the Appellant was a separate proceeding in accordance with law. The legal position in this regard is fairly well settled and has been

reiterated by the High Court of Madhya Pradesh in ***B.K. Sahoo*** (supra). Although the Appellant was not prosecuted for the offence under Section 13 (1) (d) of the PC Act, he could validly be prosecuted for the offence under Section 13 (2) read with Section 13 (1) (e) of the PC Act, which was a separate offence. Consequently, this Court is unable to find any illegality committed by the CBI in instituting separate proceedings against the Appellant in the DA case.

Validity of the investigations by the CBI

26. The next ground urged by Mr. Sinha, learned counsel for the Appellant was that the investigation undertaken by the BSF regarding alleged disclosures made by the Appellant during the course of the enquiry was of no legal consequence. Mr. Sinha submitted that there was no power under the Border Security Force Act, 1968 ('BSF Act') for the BSF to have recorded the so-called confessional statement of the Appellant and it was hit by Sections 24, 25 and 26 of the Evidence Act 1872 ('EA'). The disclosure statement (Ex.PW-2/B) also did not fulfil the requirement under Section 27 of the EA. There was no validity of such confessional statement in the eye of law.

27. Countering the above submission, Mr. Ohri drew the attention of the Court to Section 80 of the BSF Act according to which two options were available with the BSF, one was to either try the delinquent under a Security Force Court or the Criminal Court. It was submitted that the evidence collected during the inquiry held by BSF could be acted upon by the CBI for the purpose of the DA Case.

According to him, even assuming that there was an illegality in the collection of such evidence it would not vitiate the subsequent investigation and trial. Mr. Ohri placed reliance on the decision of the Supreme Court in *Rishbud v. State of Delhi AIR 1955 SC 196*.

28. The Court finds that the BSF Act is a statute regulating the functioning of the BSF. It governs acts of misconduct and offences committed by the members of the BSF. Chapter III of the BSF Act deals with such offences. Section 41(e) describes one such offence when a member of the BSF "directly or indirectly accepts or obtains, or agrees to accept, or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave to absence, promotion or any other advantage or indulgence for any person in the service." On conviction for the said offence by a Security Force Court constituted under Section 64, punishment for a period which may extend to seven years may be imposed.

29. Chapter VI of the BSF Act deals with the Security Force Courts. Three kinds of Security Force Courts are mentioned in Section 64 of the BSF Act. Section 80 of the BSF Act which falls in the same chapter reads as under:

“80. Choice between Criminal Court and Security Force Court – When a Criminal Court and a Security Court have each jurisdiction in respect of an offence, it shall be in the discretion of the Director General, or the Inspector General or the Deputy Inspector-General within whose command the accused person

is serving or such other officer as may be prescribed, to decide before which Court the proceedings shall be instituted, and, if that officer decides that they shall be instituted before a Security Force Court, to direct that the accused personal shall be detained in Force custody.”

30. From the letter dated 4th March 2002 of the Director, BSF Academy, Tekanpur, Gwalior, it is evident that the BSF realised that the matter was complicated and may not be handled adequately by the local police at Gwalior and therefore, made a request to hand over the matter to the CBI. The subsequent letter dated 9th March 2002, which was specific to the issue of DA, concerning the Appellant was also, therefore, addressed to CBI. The appellant was involved in acquiring properties in more than one state and keeping cash. Consequently, in terms of Section 80 of the BSF Act, the discretion was exercised that instead of the matter proceeding before the Security Force Court it should be instituted in the regular criminal court. The Appellant was handed over to the CBI in terms of Section 81 of the BSF Act.

31. In *Lt. Col. R.S. Yadav v. State of Madhya Pradesh 2012 Crl LJ 19*, the Petitioner had questioned the validity of the trial in a DA case against him under Section 13 (1) (e) read with Section 13 (2) of the PC Act without following the procedure under Section 126 of the Army Act, 1950. The Division Bench of the Madhya Pradesh High Court discussed the provisions of the Army Act and other provisions applicable thereunder. It was held that since the discretion was

exercised by the competent authority not to try the Petitioner under the regular court martial but in the criminal court, there was no conflict of jurisdiction. As long as the competent criminal court conducts a full and fair trial in which the accused is given a full opportunity of defending himself the mere error of omission in procedure would not vitiate the trial.

32. In the considered view of the Court, the decision in ***Lt. Col. R.S. Yadav*** (*supra*) would apply to the present case. No illegality was committed either in initiating the proceeding against the Appellant in the regular criminal court under Section 13 (1) (e) read with Section 13 (2) of the PC Act or in the entrustment of the material gathered by the Board of BSF pursuant to the inquiry initiated by it against the Appellant to the CBI.

Seizure of Rs. 3,99,900

33. In his cross-examination the IO, Umesh Vashisht (PW-32) made a reference to Ex.PW-2/D, a report of proceedings of Board of Officers of BSF Academy, Tekanpur, Gwalior held on 7th March 2002. He also made a reference to the confession of the Appellant before the said Board. One of the purposes of the Board of Officers was to conduct search of the premises of the Appellant and that of the co-accused Dr. B.K. Sahoo, to ascertain the details of the assets held by them disproportionate to their known sources of income. The specific order of 6th March 2002 (Ex.PW-2/A) issued by the Inspector General ('IG'), BSF details the officers who were to accompany the Appellant

to New Delhi in order to ascertain the details of his disproportionate assets.

34. Ex.PW-2/C is the proceeding of search carried out at the house and office of the Appellant at Tekanpur, Gwalior which did not aid much in ascertaining such disproportionate assets. Ex.PW-11/B is the record of proceedings of the Board of Officers for the search conducted at New Delhi. The proceedings recorded that two bundles wrapped in cloth pieces and further packed in a cloth bag (*jhola* type) was handed over by the Appellant to the Board containing Rs. 3,99,000. The premises were occupied by PW-25 who lived in Indra Kalyan Vihar, Phase-I, Okhla, New Delhi. The seizure memo was signed by PW-17 who was the Presiding Officer and four other members of the BSF.

35. The evidence of Hemant Desai, (PW-2) who was posted as Additional DIG, BSF Quarters, New Delhi revealed that he had been asked by the IG, BSF headquarters to carry out the search of the residential premises of the Appellant. He spoke about the confession made by the Appellant about his keeping an amount of Rs. 3 to 4 lakhs with one of his relatives in Delhi. Although PW-2 was subjected to extensive cross-examination, he remained unshaken. He specifically denied the suggestion put to him that the executive staff of the BSF Recruitment Board was responsible for the recruitment scandal and that the Appellant had been falsely implicated.

36. Another person present at the search was Rajinder Kumar (PW-11), working as Assistant Commandant, BSF Academy, Tekanpur, Gwalior. He was present at the search which took place at Delhi. In fact he was one of the signatories to Ex.PW-11/B and proved the said document. The seizure memo (Ex.PW-11/C) was also proved by him. He also proved the arrest-cum-personal search of the Appellant (Ex.PW-11/D) and the production-cum-seizure memo (Ex.PW-11/E). He denied that he along with the Director and the other officers had harassed or physically tortured the Appellant. He denied specifically that Rs. 4 lakh had been forcibly recovered from PW-25 by giving him physical beatings. Nothing has been illustrated from PW-11's cross-examination to cast a doubt regarding the veracity of his version.

37. PW-17 Jagir Singh Sran, was the Presiding Officer of the Board which went to New Delhi to recover the money kept by the Appellant with PW-25 at Okhla, New Delhi. He had explained the entire search in great detail. PW-17 was also extensively cross-examined but stood firm and maintained that there was absolutely no need for the BSF officers holding senior positions to falsely implicate the Appellant.

38. The evidence of PW-25 from whom the recovery was made at the instance of the Appellant has also been examined by the Court in great detail. His defence that the money recovered from him belonged to himself and his brother has been exposed to be unbelievable. He obviously turned hostile and had to be cross-examined by the learned

Senior Public Prosecutor for the CBI who confronted him with his previous statement. In his cross-examination by learned counsel for the accused, he offered a large number of other details which were not substantiated. He stated that he was drawing monthly salary of Rs. 6,000 and the house in Okhla was a rented accommodation. He was paying a rent of Rs. 300. He further stated that he gave a loan of Rs. 48,000 to the Appellant. He failed to explain how he came in possession of Rs. 4 lakh in cash. The fact that there was no public witness to the search does not vitiate the recovery of the amount. The relevant witnesses have been examined as have the officers of the BSF who conducted the search.

39. Mr. Sinha, learned counsel for the Appellant referred to the evidence of PW-22, Har Parshad Karmakar, who had purportedly assisted the appellant during the recruitment that took place in September 2001. This witness turned hostile. The Court is unable to agree with the submission of learned counsel for the Appellant that this witness's evidence had corroborated the evidence of PW-25 as regards what had transpired during the search at Okhla. It was submitted that there were contradictions in the statements of PWs 11, 17, 27, 32 regarding the timing of the seizure, counting of recovered amount, place of counting as well as the presence of PW-25 at Tigri Camp. The Court is of the view that these discrepancies are not material and on an overall reading of the evidence, it is proved that recovery of the aforementioned amount was made from PW-25 at the instance of the Appellant in the manner indicated by the prosecution.

40. The Court concurs with the conclusion drawn by the trial Court on a collective reading of the evidence of the above witness that the sum of Rs. 3,99,900 seized clearly did not belong to PW-25 and his brother as claimed by him. The prosecution must be held to have proved beyond all doubt that the money recovered from PW-25 at the instance of the Appellant belonged to the Appellant. He provided no satisfactory explanation for being in possession of that sum.

Seizure of Rs. 2,83,300 and jewellery

41. The Court next turns to the second seizure of Rs. 2,83,800 from Smt. Mithlesh, (PW-8). Ex.PW-24/A is a detailed report of the Officer Commanding, ATS, BSF, Tekanpur (MP) addressing the Director, BSF Academy, Tekanpur about the recovery of cash and jewellery from the residence of Mr. Jata Shankar Mishra at CPWD Quarter in BSF Campus Tekanpur. The report notes that Jata Shankar Mishra and Raj Kumar (DW-1), claimed not to know about any cash and jewellery belonging to the Appellant kept in their residence. However, Mithlesh Devi, (PW-8) wife of DW-1 stated that wife of the Appellant (DW-10) had kept some items belonging to her in safe custody which in turn she had given to her sister-in-law, Meera Devi, (DW-9). PW-8 took the BSF officers to the house of PW-9 who took out two dak folders of red and green colour which contained cash and documents and a purse which contained gold jewellery. The report noted recovery of the cash amounting to Rs. 2,83,800. The total weight of the jewellery was about 76,600 gms. The first premium receipt of LIC

policy of Rs. 21,765 dated 15th January 2002 in favour of DW-10 and certain other documents were also recovered.

42. In her cross-examination, PW-8 admitted that money and jewellery had been entrusted to her by PW-10 but declined to disclose how much money was handed over. In further cross-examination by learned Senior PP, she stated that “It is possible that amount of Rs. 2,83,800 were lying in these two files.” In her cross-examination by learned counsel for the accused, she stated that the parents of DW-10 were doing money lending business and DW-10 also used to loan money on interest and that she was earning Rs. 50,000-60,000 annually as interest income. She stated that neither her husband nor DW-10’s husband, i.e., the Appellant knew about DW-10 keeping the money and jewellery with her. PW-9 confirmed that PW-8 had kept the cash and jewellery with her. She also sought to state that she could not say how much money was seized. She too stated that DW-10 was in the money lending business and used to earn Rs. 50,000-60,000 per year.

43. P.P. Sharma, Deputy Commandant (PW-24), 94 Battalion, BSF, Kashmir proved the Ex.PW-24/A. He spoke about members of the BSF going to the residences of PW-8 and PW-9 to make the aforementioned recoveries. Nothing has been elicited from his cross-examination to doubt the recovery.

44. The above three witnesses have fully proved the recoveries from the residence of PW-9 at the instance of PW-8. In the evidence of Ms. Sneha Lata Mishra (PW-18), she too fully supported the evidence of PW-24 about the search at the residences of PW-8 and PW-9. In particular she has spoken about the orders in writing (Ex.PW-18/A) requiring him to undertake the search.

45. Neither of these witnesses, i.e., PW-18 and PW-24 stated that during the search they were told by PW-8 and PW-9 that DW-10 herself was doing money lending business or that she regularly used to keep such money with either of them. This clearly appears to be an afterthought and to offer an explanation for the said amount being found at the residence of PW-9. The BSF officers could not have gone to the residences of PW-8 and PW-9 without such information being provided by the Appellant during the inquiry.

Seizure of Rs. 3,27,400

46. Elaborate arguments were addressed by Mr. Sinha to demonstrate that money recovered belonged to PW-10 from her money lending business and that she was also earning through dividends. Since the same explanation was offered for the recovery of Rs. 3,27,400 from the suitcase brought to the office of the CBI by PW-19, it is necessary to examine the evidence of the said witness in some detail.

47. PW-19 confirmed that in the month of July or August 2001, the Appellant along with his wife and children had kept one grey colour

suitcase in locked condition at his residence and its contents were not disclosed to him. He stated that on 12th March 2002 he received a telephone call from the Appellant informing that he was in trouble and the suit case which he had kept should be brought to New Delhi. When PW-19 started scolding the Appellant saying why should he bring the suitcase to Delhi, the Appellant transferred the phone to some CBI official who directed PW-19 to bring the suit case. PW-19 reached New Delhi on 14th March 2002 and handed over the suitcase to CBI in the presence of two independent witnesses, Mr. S.K. Shukla and Mr. K.C. Sharma. The Appellant was then asked to hand over the keys of the suitcase but he said that the keys were not in his possession at the time. Thereafter, the lock of the suitcase was broken and it was found to contain some currency notes which worked out to Rs. 3,27,400.

48. PW-19 has proved Ex.PW-19/A which was a production-cum-seizure memo. He also identified the suitcase as Ex.P-62. This witness has been cross-examined and confronted with the previous statement made by him stating that the suitcase had has been given to his wife. He denied knowing whether the parents of DW-10 were conducting money lending business.

49. In the considered view of the Court, the evidence of PW-19 fully substantiates the case of the prosecution and his cross-examination has provided nothing substantial as far as the Appellant's defence is concerned.

Evidence of DW-10

50. Faced with the above situation the Appellant has tried to show that both the above recoveries made from PW-9 and PW-19 belonged to his wife (DW-10). In this regard, the evidence of DW-10 needs to be carefully examined. She stated that she was giving loans on 10% to 13% per cent interest. She did not deposit such income in any bank account. She then offered an explanation that her mother, Sachi Devi, was also conducting money lending business. Neither she nor her mother had any requisite licence to do so under the Madhya Pradesh Money Lenders Act, 1934.

51. The income tax returns (ITRs) filed by DW-10 (Ex.DW-9/A and Ex.DW-9/F) for the years 1997-98 to 2002-03 were exhibited. In the evidence of, Gokul Prashad Patwa, (DW-9), who at the relevant time was an Advocate dealing with her tax matters, it transpired that the ITRs for the assessment years 1999-2000, 2000-01 and 2001-2002 were filed on the same date, i.e., 2nd August 2001. Significantly, the stamp of the income tax office mentioned Ward No. 4, City Centre, Gwalior which had merged with AOs of Range 2, Gwalior. DW-9 also stated that he did not know why the ITRs did not reflect the taxable income of the assessee. He had no explanation to offer for the same. From the further cross-examination of this witness by learned Senior PP on 11th September 2007, it does appear that returns were filed on a back date since Ward No. 4 was non-existent on 2nd August 2001.

52. Desperate attempts were made by DW-10 to show that she was doing money lending business. However, she kept no records regarding her money lending business. She stated that “I have not produced any list of the borrowers in the Court to whom I had given the loan”. For a person in money lending business not to maintain any registers is strange.

53. Mr. Sinha, learned counsel for the Appellant, referred to the evidence of PW-25 who stated that DW-10 was doing money lending business. The Court finds that the witnesses examined by defence and some of the prosecution witnesses who turned hostile are related witnesses. They do not inspire confidence. The explanation that PW-10 herself was doing money lending business and earning substantial sums appears to be laboured and not convincing. In particular, the evidence of PW-8, PW-9 and PW-26 which speak about DW-10 earning Rs. 50,000 to 60,000 per annum is not even consistent with the evidence of DW-10 herself who stated that her mother used to give her Rs. 25,000 annually out of love and affection.

54. Mr. Sinha urged the fact that the Appellant’s stipend had not been discussed by the trial Court. The Court finds that evidence of PW-28, uncle of the Appellant who adverted to the above fact has been discussed by the trial Court. It has been noticed that PW-28 stated that the Appellant used to get Rs. 9,000 or Rs. 10,000 per month which was contrary to the version of DW-10 who stated that the Appellant was getting Rs. 5,000 per month as stipend. In any event the Court

finds that no documentary evidence has been placed on record to substantiate the earning of such stipend. It has also not explained the seizure of substantial amounts of cash at three locations.

55. The Court is of the view that the seizure made from the two locations, i.e., the residence of DW-9 and the suit case brought by PW-19 stands proved beyond reasonable doubt. It has also been shown that these monies belonged to the Appellant who could not provide satisfactory explanation for the said sums.

Immoveable properties

56. As regards the acquisition by the Appellant of the immovable property in the shape of the flat at Shipra Sun City, Ghaziabad by paying Rs. 7.95 lakhs, while the Appellant has been able to show that he had availed a loan of Rs. 3.30 lakhs he was not able to give satisfactory account for the balance of Rs. 4.60 lakhs. The explanation offered by the Appellant that PW-25 had given loan of Rs. 48,000 and PW-26 had given two loans of Rs. 49,000 each and DW-4 had given Rs. 48,000, was rightly disbelieved by the trial Court. These loans were not disclosed by the Appellant to his department.

57. The acquisition of immovable property at Madhubani, Bihar in the name of the Appellant's father is also proved by the prosecution through the relevant documents. These details obviously had been provided by the Appellant as reflected in Ex.PW2/B which led the CBI to recover the relevant document. The Appellant has not been

able to show that his father had substantial means to pay for such property. Mr. Sinha referred to the cross-examination of PW-28, Chitrakant Jha, who claimed that the father of the Appellant was a rich person. This statement has to be seen in the context of his earlier statement that father of the Appellant “used to earn income through tuition as well as from agriculture.” That his monthly income was around Rs. 12,000/13,000 per month is not backed by any document. In any event PW-28 appears to be an interested person and his evidence requires careful scrutiny. Further it was stated by PW-32, that the father of the Appellant was asked to produce any document to show his source of income but he failed to do so.

Decisions relied upon by the Appellant

58. Mr. Sinha referred to the decision of the Supreme Court in ***D.S.P., Chennai v. K. Inbasagaran*** 2005 X AD (SC) 368 to urge that unless there was clear evidence to show that monies and properties recovered from his relatives belonged to the Appellant it would be unfair to treat all such income and properties as that of the Appellant. A perusal of the said judgment reveals that in that case the wife was assessed by the Income tax Department for the income earned by her and in those circumstances it was held that it would not be proper to hold the accused guilty under the PC Act. In the present case, the Appellant has failed to show that the money recovered actually belonged to his wife (DW-10). The decision in ***K. Inbasagaran*** (*supra*) is, therefore, distinguishable on facts.

59. Likewise in *Jastinder Singh v. State* 2001 Crl LJ 11 there was no evidence before the trial Court to show that deposits in the name of wife and the amount of jewellery owned by the wife and gifted to her in marriage were in fact that of the Appellant. Obviously each case turns on its own facts and on the basis of kind of evidence produced. In the present case, the burden was on the Appellant to satisfactorily account for his disproportionate assets and to show that they were acquired from his known sources of income. The Court is satisfied that he has not been able to discharge that burden.

Validity of the sanction order

60. Mr. Sinha assailed the sanction order stating that there was no specific power to delegate passing of the sanction order. As pointed out by the trial Court, nothing has been put to PW-23 that he did not have authority to grant sanction. The said sanction order was approved by the Deputy Prime Minister and the then Minister in-charge of the MHA. The sanction order was signed on behalf of the President of India and in the name of the President of India.

61. Mr. Sinha placed reliance on the decision of the Supreme Court in *Ashok Tshering Bhutia v. State of Sikkim* AIR 2011 SC 1363 to urge that mere failure to disclose the borrowing of loans to the department cannot fasten the Appellant to criminal liability. The Court would like to observe that while mere non-disclosure of assets by itself may not make the Appellant criminally liable, in the present case, the evidence that has been placed on record by the prosecution has proved beyond

reasonable doubt that the Appellant was in possession of assets disproportionate to his known sources of income. The evidence does not hinge on the sole factor of the failure by the Appellant to disclose his borrowings to the department.

Conclusion

62. For the aforementioned reasons, the Court finds no legal infirmity in the impugned judgment of the trial Court convicting the Appellant for the offence under Section 13 (1) (e) read with Section 13 (2) of the PC Act.

63. Even on the question of sentence, the Court finds that the appellant who was a MO involved in the certification of prospective candidates for recruitment as Constables in the BSF, has been found guilty for adopting illegal means and jeopardized the recruitment process in an armed force. In the circumstances, the punishment awarded cannot be said to be disproportionate and does not call for any interference.

64. The appeal is dismissed. The bail bond and the surety bond of the Appellant are hereby cancelled. He is directed to surrender forthwith before the trial Court to serve out the remaining sentence.

65. The trial Court record along with a certified copy of this judgment be sent to the trial Court forthwith.

66. Order be given *dasti* to learned counsel for the parties.

S. MURALIDHAR, J.

AUGUST 20, 2014

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