IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 699 OF 1992

State of Maharashtra. ... Appellant.

Versus

Motilal Nagesh Chavan.
Asstt. Police Inspector,
R.CF. Police Station,
Chembur Police Station,
Bombay 400071. ... Respondent.

Mrs. A.A. Mane, APP for State-appellant.

Mr. Kartik Garg, Advocate appointed for the respondent.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : DECEMBER 18, 2015

JUDGMENT:

1 The State being aggrieved by the Judgment and Order dated 29/4/1992 passed by Special Judge, Greater Bombay in Special Case No. 26 of 1988 has approached this Court by filing an appeal under Section 378(i) of the Code of Criminal Procedure, 1973. The respondent herein was acquitted by the learned Special Judge of the

offence punishable under Section 5(1)(c) read with 5(2) of the Prevention of the Corruption Act, 1947.

2 Such of the facts necessary for the decision of this appeal are as follows :

The respondent herein was working as a member of Prohibition and Excise Department, Bombay, Pune and Panvel in the capacity of Sub-Inspector, during the period 23/7/1069 to June, 1971 and from July, 1971 to 21/9/1986 he has served as police sub-inspector for Greater Bombay. An application was filed by Gopal Darbi to Anti Corruption Bureau alleging therein that the respondent had amast wealth and assets disproportionate to his known sources of income. On the basis of the said report, preliminary enquiry was conducted. After the preliminary enquiry Pandurang Ramdas Shinde P.I. ACB had filed a first information report against the respondent on 2/9/1986. On 7/10/1988 process was issued against the accused under Section 5(1)(c) read with 5(2) of the Prevention of Corruption

Act for the check period 23/7/1969 to 2/9/86. Charge was framed accordingly.

3 The prosecution examined as many as 37 witnesses to bring home the guilt of the accused including P.W. 37 Shoba Chavan, wife of the accused who was declared hostile. The accused also examined four defence witnesses.

4 According to the investigation, the total assets were to the tune of Rs. 4,08,965/-. The prosecutor had calculated it to Rs. 4,07,413/- and according to the Court, on the basis of the evidence, total assets were worth 3,78,413/-.

5 According to the investigation, the total income during the check period was Rs. 6,05,329/-. According to the prosecutor, it was Rs. 6,66,474.85 whereas, according to the Court, the record showed Rs. 7,77,974/-.

6 Learned Counsel appointed for the respondent has taken herculean efforts to prepare a chart showing the service history of the respondent, statement showing what is held by the respondent and his family member, the statement showing the income earned by the respondent and the statement showing the expenses incurred by the respondent during the check period 23/7/1969 to 2/9/1986 and the disproportionate assets calculation. It would be appropriate to take the chart on record and make it part of the Judgment which is as under :

Service History

Sr. No	Period	Postings
1.	23-7-69 to 31-1-70	Joined Prohibition and Excise Department as Sub Inspector, at Pune.
2.	1-2-70 to 30-9-70	Sub Inspector of Prohibition & Excise Dept., Bombay.
3.	1-10-70 to 31-12-70	Undergone training at Police Training college, Nashik.
4.	1-1-71 to 7-7-71	S.I. of Prohibition & Excise at Panvel.
5.	8-7-71 to 30-6-72	Absorbed in police Department and went to P.T.C., Nashik for P.S.I. training.
6.	1-7-72 to 31-12-72	Matunga Police station Probationer.
7.	1-1-73 to 15-4-76	Dadar police station.
8.	16-4-79 to June 79	Traffic control branch.
9.	June 79 to 30-6-82	Airport Security branch.
10.	1-7-82 to 31-10-82	Bhandup Police Station.

11.	1-11-82 to 30-4-85	S.B.II, C.I.D.
12.	1-5-85 to June 86	L.A.I.
13.	June 86 to 17-9-86	Chembur Police station. 17-9-1986 was put under suspension till today, but shown attached to L.A.I.

Statement showing ASSETS held by M. N. Chavan and family members during check period (23/07/1969 to 02/09/1986)

Sr. no.	Particulars	Calculation as per Investigation	Defence	Court's observation
1.	Plot at Badlapur, Plot No.17 Survey No. 220 Dist Thane	Rs. 8,000/-		
2.	Plot No. 3, Survey No. 278/1, 2, 3 and S.No. 279/1 & 2 Hotgi Road, Sholapur	17,000/-		
3.	**Bunglow on plot No.3 S.No. 278/1, 2, 3, and S.No. 279/1 & 2, Hotgi Rd. Sholapur (Renuka Sadan)**	2,33,300/-	Defence disputed the amount. And argued that 10% contractor charge atleast should be deducted.	Court accepted the same and deducted 23,000/- from the amount and therefore the valuation worked out as 2,10,300/-. (Para 103)
4.	Plot No.47 S.No. 278/1, 2, 3 & S.No. 279/1 & 2 at Hotgi Road Sholapur	31,325/-		

5.	Telephone instrument at Renuka Sadan Sholapur	6,377/-		
6.	Investment in Peerless and General Finance, Bombay	1,165/-		
7.	FDR No. 3656/605 in the name Smt. Shobha M.Chavan of Abhyuday Coop. Bank Ltd. Kurla	15,000/-		
8.	Bank Balance as on 2.9.1986	4,219.48/-		
9.	EC TV with antena (Black & White)	3,959/-		
10.	**Motor Cycle No. MMA 9966 (Enfield)**	8,000/-	Defence examined DW 1 to prove that the Motor Cycle is sold for Rs. 12,000/- and this amount is wrongly added.	Court accepted and reduced this amount from assets. (Para 105 to 108)
11.	Sumeet Mixer	1,044/-		
12.	Shares in Bombay Labour Coop. Bank Ltd. Bombay (Now New India Coop. Bank Ltd Bombay)	160/-		
13	Gold Ornaments	6,397/-		
14	Refrigerator(Godrej make small size)	1,500/-		
15	Plot booking at twin Sholapur with Pune Housing & Area Development Board Pune	415/-		
16	Cash found during the house search at	2,353/-		

	Bombay			
17	Hero Honda motor cycle booking	500/-		
18	Household articles (as per panchanama)	14,271/-		
19	Investment in business at Sholapur (As per PP the contents of letter at EX 403 shows investment made by accused and therefore at least half of the amount 25,000/- needs to be considered.)	50,000/-	Defence argued that no evidence that 50,000/- was invested as share capital. PW 19 and PW 37 has stated that only 11,000/- was invested which Shobha has received by way of gift from family members.	Court accepted the plea of Defence. The amount was deducted and revaluated as 11,000/-. (para 104)
20	Balance in A/C with G.B.P. Co.op. Credit Society (From June 1977 to Aug. 1986)	3,980/-		
	Total:	4,08,965.48		Court valuation : 3,78,413/-
	Public Prosecutor's Calculation (As per PP assets are)	4,07,413/-		

Note: Court came to the final amount as 3,78,413/- after deducting Rs. 6,000/- for the bike and 23,000/- as deuction in Renuka Sadan.

(Note : in the Judgment though 39,000/- is deducted as investment in Solapur but the same is not considered by court while calculating final assets. If we consider that also the valuation of assets would be 3,39,413/-)

Statement showing the INCOME earned by M N Chavan during check period

Sr.No.	Particulars	Amount	Defence	Court's Observation
1.	Pay and allowances	1,79,385-35		
2.	Family Business (Chavan Cap Depot and Chavan Garments)	56,027-00		
3.	Encashment of leave	2,704-00		
4.	**Agricultural Income** **(**The Ld. PP during trial conceded that the agricultural income is not calculated properly and Rs. 24,475/- should be considered.)	5,436-00	Defence pleaded that the amount from agricultural income not calculated properly. PW 19 to support the case.	Court considered amount as 24,475/- Agricultural income. (Para 84)
5.	Loan from Bank of Maharashtra for Purchase of M/cycle No. MMA 9966	6,000-00		
6.	Loan from Grater Bombay Police Coop. Credit Socy. Bombay	45,130-00		
7.	Loan from Bombay Labour	3,200-00		

	Coop. Bank P Demelo Road. Bombay Now new Indian Coop. Bank Ltd. Fort Bombay			
8.	Loan from Shri Durby of Sholapur	1,03,000-00		
9.	Loan from M/S Durby Textile, Sholapur	1,00,000-00		
10.	Interest received from Shri Durby Textile, Sholapur	5,625-00		
11.	Gift received from Shri Mohan K.Kolhapur, Brother-in-law	50,000-00		
12.	Accident claim from MACT Bombay	2,200-00		
13.	Loan from Abhyudaya Coop. Bank Ltd. Nehru Nagar Kurla (east)	42,000-00		
14.	Interest on bank accounts	3,274-26		
15.	Interest received from Grater Bombay Police coop. Socy. Bombay	1,121-00		
16.	Gifts received at the time of Vastu Shanti of Renuka Sadan Sholapur	225-00		
	Total as per Charge Sheet:	**6,05,329.36**		
	Defence Addition			
17.	As per defence and PW2 cross examination an amount of Rs. 36,670.50 as proceeds of sale of gold ornaments was not considered by the prosecution. 36,670.50/- (Public Prosecutor agreed with defence)		36,670.50/-	Court agreed and added 36,670.50/- (Para 81.)
18.	Sale of Motor Cycle as supported by DW 1 not taken into consideration. Therefore 12,000/- more needs to be added.		12,000/-	Court accepted the defence version of sale of

	(PP said no name change in RTO records)			Motor cycle. Therefore 12,000/- more added.
19.	Evidence of PW 19 Madhukar N. Chavan (Not declared hostile.) 1. Gift to Shobha: 11,000/- 2. EX 404 and 405 Chavan Cap Depot and Chavan Garments advanced amount of Rs 20,500/- and 29,500/- for construction loan. 3. Realisation of Share of Shobha in Chavan Cap Depot and Chavan Garments by way of sale of materials: 50,000/-. Also stated by PW 37. 4. In 1982 PW19 gave a loan of Rs. 13,000/- to accused from his provident and gratuity fund. Total: 1,24,000/- (PP argued that the amount not reflected in IT returns.)		1,24,000/-	Court accepted 11,000/- + 50,000/- + 13,000/- (Para 87-88)
20.	PW 18 Radhakrishna has stated that he gave Rs. 5,000/- in 1964.		5,000/-	Court accepted. 5,000/- (Para 89)
21.	EX 45 Statement of Account from Abhyudaya Bank shows entry dated 24/06/1986 showing credit of Rs. 11,000/- by way of transfer which is stated to be amount advanced against pledge of gold		11,000/-	Court accepted 11,000/- (Para 90)

	ornaments. This amount needs to be considered.			
22.	PW 37 has stated in her evidence that at the time of marriage ger father has given Rs. 21,500/- to accused. She has further stated that she is earning 700/- monthly as profits from sale of Solapuri Chaddar also needs to be considered.		21,500/- + valuation of income from sale of Solapuri Chaddar.	Gift from father of Rs. 21,500/- accepted. (Para 91.) Income from Sale of Chaddar not accepted. (Para 92)
23.	Defence Witness No. 2 stated that in 1977-78 he had given Rs. 7,000/- to accused and Chandrakant gave 10,000/- and Tukaram paid 14,000/- to accused for purchase of house at Bombay. Total 31,000/-		31,000/-	Not accepted. (Para 94)
24.	DW 3 stated that in 1977 to 1979 he has given Rs. 9,500/- to accused for purchase of house at Bombay.		9,500/-	Not accepted (Para 94)
	Total	6,05,329.36		Court Valuation: 7,77,974.86 /-
	Valuation as per Public Prosecutor	6,66,474.85 /-		

<u>Statement showing the EXPENSES incurred by M N Chavan during check period</u>

Sr.No.	Particulars	Amount	PP Calculation
1.	Medical expenses at Bombay	Rs. 945/-	

	and Sholapur		
2.	Alluminium bucket purchased	140/-	
3.	Passport Expenditure	100/-	
4.	Plot registration at Sub-Registrar office at Sholapur & Thane(Ulhasnagar)	2,327/-	
5.	Postal charges	20/-	
6.	Photography charges	43/-	
7.	LIC four policies at Bombay & Sholapur	18,508.90/-	
8.	Donation to Balaji Mandir	31/-	
9.	T.V. Entertainment tax	90/-	
10.	Payment of Electric charges at Bombay and Sholapur	4,939.03/-	
11.	Fine in pay in Departmental Enquiry	100/-	
12.	Water and development charges of plot. No.3 Sholapur	8,106/-	
13.	Repayment of loan to Gr. Bombay Coop. Credit Socy. (Police Socy)	33,981.15/-	
14.	Repayment of Loan and Interest to Bombay Labour Coop- Bank P.D mello Rd. Bombay	3,536.43/-	
15.	Repayment of loan and Interest of bank of Maharashtra Ghokle Rd. Branch Dadar	7,577.20/-	
16.	Repayment of loan and Interest obtained against FDR 3556/605 with Abhyudaya Coop. Bank	42,679.45/-	
17.	Repayment of loan to Shri Durbey, Sholapur	55,000/-	
18.	Repayment of loan to Durby Textile Sholapur	1,00,000/-	
19.	Income-tax paid at Sholapur	1,150/-	
20.	Development charges on Flat No.17 S.No.220 Badlapur Dist Thane	3,876/-	

21.	Vehicle tax of M/cycle No. MMA 9966	427/-	
22.	Expenditure towards marriage of daughter miss Rekha	15,000/-	As per PP witnesses has said that expenditure on marriage was 25,000/- to 30,000/- and IO has undervalued the expenditure. Therefore it was urged that 10,000/- needs to be added.
23.	Household expenditure	78,554.50/-	
24.	Loss on sale of Gold Ornaments	261.15/-	
	Total	Rs.3,77,393-31	
	As per Public Prosecutor some amount needs to be added to expenditure. 1. 3,500/ spent on plot at Badlapur 2. 377/- spent for installation of telephone also needs to be added. Total: 3,877/-		3,877/-
			Figure calculated by PP 3,86,670/-.

Note: Court and Defence agreed with the figure calculated by the PP i.e. Rs. 3,86,670/- (Para 113)

<u>Disproportionate Assets calculation:</u>

	Particulars	Investigation Calculation	Public Prosecutor's Calculation	Court's Calculation
(A)	Total Assets	4,08,965-00	4,07,413/-	3,78,413/-
(B)	Total Income	6,05,329-36	6,66,474.85/-	7,77,974.86/-
(C)	Total Expenditure	3,77,393-00	3,86,670/-	3,86,670.11/-
(D)	Likely Savings (B) minus (C)	2,27,936-05	2,79,804.85	3,91,304.75/-
(E)	Disproportionate Assets (A)minus (D)	1,81,029-43	1,27,608.15	No disproportionate assets.

7 As per the chart, according to the investigation, the total assets were valued at Rs. 4,08,965/-. According to the prosecutor, it was valued at Rs. 4,07,413/-. The Court had calculated it on the basis of the evidence adduced by the prosecution and the total assets were valued at Rs. 3,78,413/-. According to the investigating agency, total income was Rs. 6,05,329/-. According to the prosecutor, it was Rs. 6,66,474.85, whereas according to the Court, on the basis of the evidence, the total income was Rs. 7,77,974/-. Total expenditure according to the investigating agency was Rs. 3,77,393/-, whereas according to the prosecution, it was Rs. 3,86,670/-. The Court accepted the calculation made by the prosecutor. The savings

accumulated by the respondent was to the tune of Rs. 2,27,936/-. According to the prosecutor, it was Rs. 2,79,804/- whereas the Court after verifying all the evidence adduced by the prosecution had calculated it to the tune of Rs. 3,91,304.75. Hence, there were no disproportionate assets to the known source of income.

8 The accused had examined Shri J.M. Chavan as a defence witness who had deposed before the Court that he was working as accountant in Kurla Branch of Abhudaya Cooperative Bank. He had signed a certificate issued by him to the wife of the accused which is at Exh. 536. He has admitted in the cross-examination that at the relevant time, the policy of the bank was to advance the money equivalent to 60% of the valuation of gold ornaments. The Court had considered the entries in the bank account and had taken the said amount into consideration. Rs. 11,000/- were received by the accused by pledging golden ornaments and therefore, the same was taken into consideration as savings.

9 It was a matter or record that the wife of the accused was examined as P.W. 37. She had deposed before the Court that her father had given to the accused Rs. 21,500/-. P.W. 37 was declared hostile and was cross-examined. Her claim that Rs. 21,500 was given to the accused by her father was not shattered. She had received gold ornaments towards stridhan. She was selling bed-sheets at home and had earned some income from the same. The sale proceeds of the motor cycle was also added as income.

10 The learned Special Judge has taken into consideration the oral and documentary evidence adduced by the prosecution and has rightly arrived at a conclusion that the prosecution has failed to discharge burden cast upon it and hence, has failed to prove the charges levelled against the accused. The reasons assigned by the learned Special Judge are justifiable and make out no ground for interference.

11 Needless to quote the settled position of law that when two views are possible, the Court, in the interest of justice, shall adopt the view in favour of the accused.

12 Hence, the appeal stands dismissed and disposed of accordingly.

13 Before parting with the Judgment, this Court appreciates the efforts taken by the learned Counsel appointed to espouse the cause of the respondent. The professional fees are quantified at Rs. 5,000/- to be paid to the advocate so appointed for the respondent.

(SMT. SADHANA S. JADHAV,J)