IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1103-SB of 2008
DATE OF DECISION : January 30, 2015

Ram Dev Sharma ...Appellant

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR.JUSTICE M.JEYAPAUL

Present:- Mr. Surinder Garg, Advocate
with Mr. Surinder Gaur, Advocate for the appellant.

Mr. Arshvinder Singh, Addl. Advocate General, Punjab.

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M.JEYAPAUL, J.

1. Accused Ramdev Sharma has challenged the conviction under Section 13 (1) (e) of the Prevention of Corruption Act and sentence recorded thereunder to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹10,000/- and in default to undergo further period of six months rigorous imprisonment.

2. It is the case of the prosecution that accused Ramdev Sharma who was serving as SDO, Punjab Mandi Karan Board

acquired property to the tune of ₹31 lacs disproportionate to his known sources of income of ₹6,66,556/- received by him as salary during the check period from March 1994 to February, 2000 as per salary statement Ex. P48 produced by PW18 Smt. Varinder Kumar, Senior Assistant, Punjab Mandi Board.

3. The material evidence adduced on the side of the prosecution is as follows :-

i) PW3 Darbara Singh, Inspector spoke to the fact that appellant Ramdev Sharma suffered disclosure statement Ex. P23 before him.

ii) PW4 Inspector Bajinder Pal deposed that he made a recovery of gold ornaments, silver articles and a car during the search made in the house of the appellant.

iii) PW15 Kuldip Singh Sohan assessed the value of the house of the appellant and submitted a report that the house was constructed at a cost of ₹15,10,000/- He also produced the site plan Ex. P43.

iv) PW18 Smt. Varinder Kaur, Senior Assistant, Punjab Mandi Board deposed on the basis of the salary statement Ex. P48 that the appellant received a total salary of ₹6,66,556/- during the check period commencing March 1994 to February 2000.

v) PW20 Prem Kumar was the Tax Assistant hailing from Income Tax Department, Bathinda. He produced the copy of the Income Tax Return of M/s KBA Construction company wherein Anita Sharma the wife of the appellant was a partner for the year 2002-2003. The relevant Income Tax Return was produced as Ex. P75.

vi) PW21 Shamsher Singh, Deputy Superintendent of Police was the Investigating Officer, who investigated the case. He deposed about the registration of the case, arrest of the accused, disclosure statement made by him and the recovery effected in connection with this case.

4. Appellant Ramdev Sharma in his statement under Section 313 Cr.P.C. denied all the incriminating circumstances spoken to by the witnesses examined on the side of the prosecution. He pleaded that his wife had 25% share in the firm M/s KBA Constructions Company, Balwana and invested ₹2,04,000/- in the said company but unfortunately the investigating officer wrongly showed that she invested ₹10,53,805/-. Value of the gold possessed by the wife was ₹1,56,825/-. But the investigating officer had assessed the value of the gold in the hands of his wife ₹15,67,250/-. A sum of ₹49,630/- recovered in this case belonged to his wife Anita Sharma who withdrew a sum of ₹55,000/- from her capital amount with M/s KBA Constructions Company. Bush television set was given by his in laws to her daughter at the time of marriage. The other television set was purchased by his son on 12.12.2000 from Bhatinda beyond check period. One double bed also was given by her in laws at the time of her marriage. The Refrigerator belonged to his brother Lachhman Dass who purchased the same from M/s Om Parkash Kedar Nath, Sangrur on 12.3.1997 and the other Refrigerator was purchased by his wife on 14.6.2000 which was

beyond check period. Value of record player which was given to him by his in laws had been wrongly shown by the Investigating Officer. The value of gold given by his in laws at the time of marriage was only ₹17,955/- but it was shown as ₹1,80,000/- by the Investigating Officer. The appellant purchased a mobile set for a sum of ₹5000/- after the check period. The car belonged to M/s KBA Constructions Company in which his wife was a partner having 25% share.

5. On the side of the defence DW1 R.C. Nayyar who has a diploma in Civil Engineering was examined. He having inspected and assessed the value of the house property of appellant submitted report Ex. D12 and site plans Ex. D12/A and Ex. D12/B. He valued the house property at ₹12,85,088/-.

6. DW2 Jagsir Singh was a gold smith. He deposed that 314.450 gms. of gold was entrusted to him for making ornaments by Shimla Devi, the mother in law of the appellant. He made the ornaments and gave the same to her on 29.2.1988.

7. DW3 Gurmeet Singh was the partner of M/s KBA Constructions Company. He produced documents Ex. D13 to Ex.D16 and testified that Anita Sharma who was a partner in the firm took advance of ₹55,000/- from the firm. He also deposed that the car bearing registration no. HR05C-3167 was owned by the company.

8. DW4 Kasturi Lal was the Senior Assistant of Punjab State Tubewell Corporation. He deposed that a sum of ₹73,178/- was drawn by appellant Ramdev sharma from his PPF account on

04.11.1996.

9. DW5 Avtar Singh was the employee of State Bank of Patiala. He testified that a sum of ₹1,09,000/- in the name of Anita Sharma matured on 15.4.1995. The matured amount was arrived at ₹1,21,411/-.

10. DW6 Brij Lal was record keeper of the State Bank of India. He deposed that ₹28,500/- was paid to Anita Sharma on 22.4.1994 on maturity of her FDR No. 0444 dated 22.4.1994. A sum of ₹28516/- was also paid to her on maturity of the FDR No. 34471 dated 22.4.1991. A sum of ₹57,094/- was paid to her on maturity of the FDR No. 923108 on 18.7.2000.

11. DW14 Ajinder Singh was the Special Assistant from Punjab National Bank. He produced bank account statement of Anita Sharma. A sum of ₹1,37,317/- was withdrawn by her on 12.4.1995.

12. DW16 Surinder Sarin was the shopkeeper. He deposed that as per bill Ex. D21 dated 14.6.2000 a Refrigerator was purchased by Anita Sharma.

13. DW17 Sushil Kumar was also a shopkeeper who spoke about the sale of another Refrigerator to Lachhman Dass, brother of appellant on 13.3.1997.

14. DW18 Mahesh Kumar was another shopkeeper who sold Sony music system under bill Ex. D23 dated 12.12.2000 to Gaurav, son of the appellant for a sum of ₹21,900/-.

15. DW19 Chanan Singh was the Assistant Post Master who

deposed that a sum of ₹1,40,000/- was paid to Panna Devi, the grand mother of the appellant under certificate of payment Ex. D24 on 18.3.1993. A sum of ₹60,000/- was paid to Ram Pyari, mother of the appellant on 19.3.1993 under certificate of payment Ex. D25.

16. DW27 Gurnam Singh was the Senior Assistant hailing from ITO office, Sangrur. He deposed that I.T. Returns Ex. 32 for the assessment year 1995-96 and Ex. D33 for the assessment year 1996-97 were filed by Anita Sharma and IT returns Ex. D34 for the assessment year 1999 and 2000 was filed by the appellant under the caption of Hindu Undivided Family.

17. DW28 Birj Lal, a shopkeeper who was the tenant under the appellant testified that he paid a sum of ₹15,000/- per month to the premises let out to him by the appellant and the same was later on enhanced to ₹28,000/-.

18. DW29 Jangir Singh, Clerk, Union Bank of India, Sangrur Branch referred to the various bank transactions made by the appellant as per the documents Ex. D55 to Ex. D63.

19. DW31 Ashok Bansal, Advocate, Income Tax practitioner, proved on record Income Tax Returns Ex. D65 to Ex. D79 filed by Anita Sharma and the appellant for the assessment year 1993-94 to 2002-03. He also deposed about the FDR's in the name of the minor son and daughter of the appellant.

20. DW34 Anita Sharma spoke of the expenditure incurred by her.

21. DW 36 Dharamvir Sharma, who is the father in law of the appellant testified that it was he who gave gold ornaments to her daughter at the time of marriage. Three FDR's of 3 lacs were also taken by him in the name of his daughter.

22. DW39 Brij Lal from State Bank of India proved documents Ex. D84 to Ex. D89 the FDR's in the name of Anita Sharma and her minor son and daughter.

23. DW40 Narender Singla who was the Taxation Adviser spoke of the amount reflected in the Income Tax returns submitted by Anita Sharma.

24. The trial Court having adverted to the evidence on record came to the conclusion that the prosecution established beyond reasonable doubt that appellant acquired wealth disproportionate to his income punishable under Section 13 (1) (e) of the Prevention of Corruption Act.

25. Learned counsel appearing for the appellant would vehemently submit that the trial Court completely ignored the voluminous evidence produced by the appellant to explain satisfactorily the source of income. It is his further submission that the trial Court totally ignored the contributions made by the in laws and the relatives of the appellant for acquiring gold ornaments, FDR's and the house property. He would further submit that the cost of construction had been shown on the higher side by the prosecution. The fact that the wife of the appellant was a partner of

M/s K.B. Constructions Company and earned profit therefrom was completely ignored by the trial Court Therefore, it is his submission that the appellant has been convicted only on surmise and not on the basis of oral and documentary proof.

26. The submission made by the learned Additional Advocate General appearing for the State of Punjab supporting the conviction and sentence passed by the trial Court as against the appellant under Section 13 (1) (e) of the Prevention of Corruption Act was heard.

27. It is found from the evidence of PW 18 Smt. Varinder Kaur, Senior Assistant, Punjab Mandi Board that the appellant drew a total salary of ₹6,66,556/- during the check period commencing from March 1994 to February 2000. It is found from the testimony of PW20 Prem Kumar, Tax Assistant that in the Income Tax Return filed by M/s KBA Construction Company, Anita Sharma, the wife of the appellant was shown as partner. The evidence of DW3 Gurmeet Singh, who was the partner of M/s KBA Constructions Company, categorically stated that Anita Sharma, wife of the appellant invested ₹2,04,000/-. She withdrew a sum of ₹55,000/- in cash from the company. It appears that she having withdrawn a sum of ₹55,000/- from M/s KBA Constructions Company, spent a sum of ₹ 5370/- and retained a balance of ₹49,630/- with her. In the above facts and circumstances, I am of the considered view that a sum of ₹49,630/- found in the possession of Anita Sharma, the wife of the appellant,

has thus been explained.

28. The prosecution has projected without any ryhme or reason that Anita Sharma had invested a sum of ₹10,53,805/- in M/s KBA Constructions Company. I find that there was no documentary proof to establish such an escalated projection of the investment made by Anita Sharma in the said firm. The documentary evidence referred to above would go to establish that she had invested only ₹2,04,000/-. Not only had she withdrawn a sum of ₹55,000/- from her capital amount with the said firm but she had also received profit from the company.

29. I find from the testimony of DW2 Jagsir Singh, gold smith that 314.450 gms. of gold was entrusted to him by Shimla Devi, mother in law of the appellant for making gold ornaments. The ornaments were given to her by him on 29.2.1988.

30. The father in law of the appellant Dharamvir Sharma was examined as DW 36. He categorically spoke of the gold ornaments given to his daughter at the time of marriage. There was no reason to disbelieve the evidence of DW2 and DW 36. It is quite normal for the family to give gold ornaments at the time of marriage of the daughter. Surprisingly, the investigating official had not taken note of the normal practice in the Hindu family.

31. The value of the jewels brought by Anita Sharma also had been arrived on a higher side by the investigating official as contended by the appellant.

32. The evidence of DW 4 Kasturi Lal, Senior Assistant, Punjab State Tubewell Corporation would go to establish that during the check period, a sum of ₹71,178/- was withdrawn by the appellant from PPF account on 4.11.1996 under Ex. D17 but the same had not been taken into consideration by the investigating official while arriving at the quantum of disproportionate income.

33. On a careful perusal of the evidence of DW 5 Avtar Singh employee of the State Bank of Patiala and DW 39 Brij Lal, record keeper of the State Bank of India, it is found that Anita Sharma had received a sum of ₹1,21,411/- on maturity of FDR on 15.4.1995, a sum of ₹28,500/- was received by her on maturity of FDR on 22.4.1994 and a sum of ₹57,094/- on maturity of FDR on 18.7.2000. From the evidence of DW 39 Brij Lal, official from the State Bank of India it is found that Anita Sharma and her minor son and daughter had got fixed deposits as evidenced by documents Ex. D84 to Ex. D89.

34. It is relevant to refer to the evidence of DW36 Dharmabir Sharma, the father in law of the appellant. He has categorically deposed that he had made FDR's in the name of his daughter for a total sum of ₹3 lacs. In order to make the living of the daughter comfortable, the father has discharged his parental obligation. But unfortunately the proceeds from the FDR's received by Anita Sharma had been accounted as disproportionate wealth, completely ignoring the above evidence of DW5, DW6, DW36 and DW39. I am of the

considered view, in the face of the above evidence that Anita Sharma had received full financial support from her father Dharambir Sharma.

35. That apart it is found from the evidence of DW19 Chanan Singh, Assistant Post Master that Panna Devi, grand mother of the appellant had received a sum of ₹1,40,000/- under certificate of payment Ex. D24 dated 18.3.1993 from the Post Office. Ram Piari, mother of the appellant had also received a sum of ₹60,000/- from the Post Office under certificate of payment Ex. D25 dated 19.3.1993. The plea of the appellant in the background of the evidence of DW19 that the said amount received by his mother and grand mother from the Post Office on maturity had also been expended by him cannot be simply discarded. In my considered view, the above source of income flowed from the family of the appellant should have also been considered while assessing the alleged disproportionate wealth acquired by the appellant.

36. The evidence of DW14 Ajinder Singh, Special Assistant, Punjab National Bank would go to establish that Anita Sharma had withdrawn a sum of ₹1,37,317/- on 12.4.1995 from her bank account.

37. The appellant also has established by examining DW16 Surinder Sarin, DW17 Sushil Kumar and DW18 Mahesh Kumar that one Refrigerator was purchased by his wife Anita Sharma from the shop of DW6, another refrigerator was purchased by Lachhman Dass, the brother of the appellant from the shop of DW17 and Sony

music system was purchased by the son of the appellant from DW18. It is found that Anita Sharma had source to purchase refrigerator. Appellant need not to explain the refrigerator purchased by his brother Lachhman Dass. The evidence of DW36 would go to show that he had made deposit in the name of grand son as well. Therefore, the purchase of Sony music system by Gaurav, the son of the appellant from the shop of DW18 cannot be treated as a purchase made from unknown source.

38. The appellant had bank transaction in Union Bank of India under documents Ex. D55 to Ex. D63 as spoken to by DW29 Jangir Singh, Clerk, Union Bank of India.

39. The appellant as well his wife Anita Sharma had properly accounted their income by filing Income Tax Returns as detailed by DW27 Gurnam Singh, Senior Assistant, Income Tax Office, Sangrur and DW31 Ashok Bansal, Income Tax practitioner and DW40 Narinder Singla, Taxation Advisor.

40. There is also evidence to establish that the appellant had let out his shop premises to the shopkeeper DW28 Brij Lal, receiving annual rent of ₹15,000/- to 28,000/-

41. It was projected by the prosecution as though the appellant had purchased a car in the name of his wife Anita Sharma but the solid evidence of DW3 Gurmit Singh, partner of M/s KBA Constructions Company would prove the fact that the car bearing registration No. HR05C- 3167 was owned by company. It has been

demonstrated by the appellant that the value of the car which was owned by company and not by his wife was added to the unknown source of income.

42. The evidence of DW34 Anita Sharma would go to establish that she had also borrowed loan from his relatives for the purpose of completing the construction of the house. In this context it was submitted that there was no evidence of repayment nor was any source made out for repaying the said loan.

43. The evidence of PW15 Kuldip Singh Sohan who assessed the value of the house constructed by the appellant would go to establish that the actual cost of construction would definitely vary from the approximate cost of construction made based on the rough cost estimate. In this context, it is relevant to refer to the evidence of DW1 R.C. Nayyar, who inspected the house property of the appellant and submitted a report Ex. D12. As per the above report it is found that the appellant had put up construction of his house spending a sum of ₹12,85,088/-. Even as per the testimony of PW15 personal supervision of the construction would drastically reduce the cost of construction. Therefore, I find that there is no reason to reject the evidence of DW1 R.C. Nayyar based on his report Ex. D12.

44. The testimony of DW34 Anita Sharma would disclose that she borrowed a sum of ₹5,55,000/- from her mother, grand mother and his brother in law. She also received a gift of ₹ 1 lac from her in-

laws. The above amount received from mother, grand mother, brother in law, and father-in-law cannot be treated as a loan. Such close relatives had source of income as per the evidence discussed above. They may not be inclined to get back the amount borrowed from them for the purpose of construction of house. But the investigating official had shown the entire amount received by Anita Sharma from those relatives as unaccounted amount which would fall under the category of disproportionate wealth.

45. The appellant has explained satisfactorily the source of income for the cash and jewelry found in the possession of his wife, the house hold articles found in the house, the car in the possession of his wife and the amount spent for putting up construction of a house.

46. His wife had assets in the shape of gold and FDR's. His parents, his in-laws and his grand mother also had financially helped him. The father-in-law had made FDR's in the name of minor son and daughter. The wife of the appellant had a share in the firm M/s KBA Construction Company. The appellant had received annual rental income from the shop premises let out by him. All the income and expenditure had been scrupulously shown in the Income Tax Returns. The cost of construction had been shown on the higher side by the prosecution.

47. In my considered view, the appellant has satisfactorily explained the source for the wealth he has acquired. The

prosecution has miserably failed to establish that the appellant had acquired wealth disproportionate to his known source of income.

48. For the foregoing reasons, the judgment of conviction and sentence passed by the trial Court under Section 13 (1) (e) of the Prevention of Corruption Act stands reversed. The appellant is acquitted of the aforesaid charge. He is on bail. His bail bond and surety bonds shall stand cancelled. The appeal is allowed.

(M. JEYAPAUL)
JUDGE

January 30, 2015
p.singh