In the High Court of Punjab and Haryana at Chandigarh

......

Criminal Appeal No.S-649-SBA of 2004

.....

Date of decision:23.9.2015

State of Punjab

...Appellant

v.

Lakhwinder Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. B.S. Bhullar, Assistant Advocate General, Punjab for the appellant-State.

Mr. Mandeep Singh Bedi, Senior Advocate with Mr. G.S. Bawa, Advocate for the respondent.

......

Inderjit Singh, J.

This criminal appeal has been filed by appellant-State of Punjab challenging the impugned judgment of acquittal dated 24.1.2003 passed by learned Special Judge, Gurdaspur, whereby the respondent-accused has been acquitted of the charge under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as `the Act').

The brief facts of the prosecution case are that on 3.3.1994, DSP (Vigilance Bureau), Gurdaspur, received a secret information that accused-Lakhwinder Singh, who was posted as General Manager, Punjab

Roadways, Pathankot, collected properties by illegal means during the period from 1986 to 1989 and purchased property in the names of his wife, children and sister of the value of ₹1,63,534/-, whereas his income was ₹31,363/- and thus, he was in possession of assets of the value of ₹1,22,168/-, which were disproportionate to his known sources of income. On this secret information, `Ruqa' Ex.PT was sent to the Police on the basis of which formal FIR Ex.PT/1 was registered. Investigation was conducted by Inspector Jasvir Singh and on completion of the investigation, the accused was challaned for the offences under Sections 13(1)(e) and 7 of the Act.

On presentation of challan, the trial Court finding prima facie case against the accused/respondent, framed charge for the offence under Section 13(1)(e) read with Section 13(2) of the Act, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Narinder Kumar, Patwari Halqa, Nandpur, who mainly deposed that he remained Patwari Halqa, Nandpur from September 1993 to January 1995. He produced copies of Jamabandi Ex.PA and Khasra Girdawri Ex.PB. In cross-examination, he stated that mutation of 3 Marlas of land mentioned in

Ex.PA has been sanctioned in the name of the accused. PW-2 Daya Nand, Junior Assistant, S.D.O. Office, Dhar Kalan brought the summoned record showing the Jonga in the name of the accused and proved the copy Ex.PB. PW-3 Amarjit Singh, Senior Assistant, Punjab Roadways Depot, Pathankot deposed that he was working at Pathankot Depot from 1986 to 1989. He had brought the record regarding the pay bills pertaining to the period from 25.10.1986 to 22.6.1990 and attested copy of the same is Ex.PC. PW-4 Kesho Dass, Clerk, State Bank of India,Dhangu Road, Pathankot deposed that the account was opened by the accused and Ex.PD and Ex.PE are correct copies of various transactions of the said account and ledger sheets are Ex.PF. and Ex.PG and account opening form is Ex.PH. PW-5 Paramjit Singh, Mechanic, Pappu Auto Electric Works mainly deposed that the accused got repaired one Jeep (Jonga) from their shop and he issued the bill under his signatures, the copy of which is Ex.PJ. PW-6 Naresh Kumar, Patwari Halqa, Malakpur brought the register regarding the mutation and proved the copy of the mutation Ex.PK. As per the record mutation No.3517 stands sanctioned in the name of Sukhjinder Kaur daughter of Hardit Singh, who has 3/10 share out of the total land of 88 Kanals 14 Marlas out of which mutation was sanctioned. In cross-examination, he stated that Sukhjinder Kaur daughter of Hardit Singh was resident of Village Nano, Tehsil Amritsar. It was not mentioned whether she was married or not. PW-7 Mohan Lal, Kanungo brought the summoned record and proved copy of mutation Ex.PM stating that mutation was sanctioned in favour of Kanwardeep Singh son of Lakhwinder Singh and Pritam Singh son of Teja Singh in equal shares regarding land measuring 6 Kanals 19 Marlas. PW-8 Subhash Padam, Tehsildar, Dhuri deposed that he was posted as Naib Tehsildar at Pathankot on 8.8.1994. The house of the accused was searched by the Police and the Inspector prepared the list of the articles recovered from the house of the accused. PW-10 Bhajan Pal, Senior Assistant, Health

Department proved the sanction for prosecution. PW-11 Om Parkash Chopra, Clerk proved the copy of the sale deed dated 22.12.1987 Ex.PQ executed by Thakar Singh son of Partap Singh in favour of Pritam Singh son of Teja Singh, Kanwardeep Singh son of Lakhwinder Singh. He also proved the copy of sale deed dated 13.6.1989 Ex.PR executed by Harbans Lal son of Shamsher Singh in favour of Lakhwinder Singh son of Munsha Singh. He also proved the sale deed dated 2.6.1989 executed by Smt. Giano Devi widow of Kesar in favour of Smt. Suman Mahajan. PW-12 Krishan Lal, DSP (Retired) mainly deposed regarding sending of `Ruqa' on the basis of secret information and deposed that the investigation was conducted by Jasvir Singh.

At the close of prosecution evidence, the accused was examined under Section 313 Cr.P.C. and was confronted with the evidence of the prosecution, but he denied the correctness of the evidence and pleaded himself as innocent. He deposed that he has been falsely implicated in this case on account of the reason that he was due for nomination for I.A.S. This case was planted against him in order to ignore his claim as he had already submitted his property returns to the department which they had accepted and till today no objection was raised by them.

In defence, the accused-respondent examined DW-1 Shashi Kumar, Clerk office of the Director State Transport, Punjab, DW-2 Gurbachan Kaur, DW-3 Jarnail Singh and DW-4 Charanjit Singh. DW-1 Shashi Kumar, Clerk brought the property returns of the accused from the year 1988-89 till 1997-98 and proved attested copies Ex.D.1 to Ex.D.8.

DW-2 Gurbachan Kaur wife Khazan Singh deposed that she purchased one Kanal 2 Marlas of plot at Pathankot, which is in her name. The accused has no concern with that plot. He is her brother. She has three sons, who are in service. DW-3 Jarnail Singh deposed that Gurbachan Kaur belongs to his village. She has three sons, who are in service and she resides with her sons. Gurbachan Kaur may have purchased a plot at Pathankot. DW-4 Charanjit Singh deposed that on 15.5.1989 he sold 1 Kanal 2 Marlas of land in favour of Gurbachan Kaur for a sum of ₹40,000/- and the amount was paid to him by Gurbachan Kaur.

After going through the evidence on record, the learned Special Judge, Gurdaspur, vide its impugned judgment acquitted the accused-respondent. Aggrieved against the impugned judgment, the present appeal has been filed by the State.

The appeal was admitted. Mr. Mandeep Singh, learned counsel for the respondent-accused has put in appearance and contested this appeal.

I have heard learned Assistant Advocate General, Punjab, for the appellant-State as well as learned counsel for the respondent-accused and have gone through the record.

From the record, I find that firstly as regards the properties purchased in the name of Gurbachan Kaur, who is the married sister of the accused-respondent, cannot be linked with the accused. Gurbachan Kaur has three sons, who all are employed and she is residing with her sons. This sale deed is for ₹40,000/- and DW-4 duly proved that Gurbachan Kaur paid the amount to him. DW-3 Jarnail Singh also proved that Gurbachan Kaur has three sons, who are all in service. Gurbachan Kaur herself has appeared as DW-2 and stated that Lakhwinder Singh her brother had no concern with that property. Secondly, the properties purchased in the name of wife and the son of the accused have already been shown in the property returns and have been stated that the property in the name of his wife was purchased by her father and it has already been mentioned in the property statement furnished to the Department much earlier to registration of this case. Similarly, the property given to his son by the father-in-law of the accused and it had been so mentioned. The learned Special Judge also discussed all the entries regarding expenses and income and reached to the conclusion that the prosecution has failed to prove the case by leading cogent evidence.

In this case, one more factor is that all the witnesses produced by the prosecution are proving the sale deeds or the purchase of Jonga etc. But there is no evidence on record to show that the properties purchased in the name of son and the wife of the accused are actually purchased by the accused. In this case, the Investigating Officer has not been examined and in the absence of the Investigating Officer, there is no witness to explain and to connect the transaction by the accused and non-examination of Investigating Officer has caused serious prejudice to the case of the accused-respondent as he could not get opportunity to get explained regarding the expenditure incurred by the accused and income of the accused. Further more, the trial Court held that the prosecution neither tried to establish whether the accused has savings from the income prior to October 1986 and it was necessary to prove this fact nor established beyond doubt that the accused was actually found in possession of assets disproportionate to his known source of income during the check period. It is in the evidence that the accused was in service prior to October 1986. The trial Court has held that there is also no evidence on record to prove that the sale considerations of these sale deeds were paid by the accused-respondent. Further, the fact that the accused has already shown these transactions to his Department much earlier to the registration of the FIR by stating that these properties have been purchased by his father-in-law in the name of wife and son of the accused-respondent. The trial Court also reached to the conclusion regarding the salary also that according to the prosecution the income of the accused from salary was ₹73,120/-, but his income from salary and arrears was ₹86,393/- as is calculated from the salary bill Ex.PC. Thus, the income of the accused was much more as assessed by the prosecution. The Court after discussing the evidence also reached to the conclusion that the expenditure of the accused comes to ₹35,502/- during the check period. The trial Court further held that it is not always necessary that an employee saves 1/4th of his salary and a person can save more money from his salary 1/4th as assessed by the prosecution. The trial Court held that from the evidence it cannot be said that the accused was found in possession of assets which were disproportionate to his known sources of income during the check period. The reasoning given by the trial Court is as per the evidence. Nothing has been pointed out at the time of arguments as to which findings are perverse or against the evidence. Nothing has been pointed out as to which material evidence has been misread by the trial Court and as to which material evidence has not been discussed by the trial Court. The findings given by the trial Court are correct, as per law and do not require any interference from this Court and the same are upheld.

Therefore, finding no merit in the appeal, the same is dismissed.

September 23, 2015. **(Inderjit Singh)**
Judge

hsp