IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Crl. Appeal No. S-2087-SB of 2006

Date of decision : 05.02.2015

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Nirmaljit Singh

.....Appellant

Versus

State of Punjab

.....Respondent

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Vikram Chaudhri, Senior Advocate with
Ms. Isha Goyal, Advocate for the appellant.

Mr. Gurveer Sidhu, AAG, Punjab.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

This criminal appeal has been filed against the judgment dated 5.10.2006 passed by the Additional Sessions Judge-cum-Special Judge, Amritsar whereby the appellant was convicted for

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commission of offence under Section 13(1)(e) read with Section 13 (2) of P.C Act and was sentenced to undergo rigorous imprisonment for a period of three years and also to pay a fine of Rs.10,000. In default of payment of fine, the convict was further directed to undergo rigorous imprisonment for two months.

In brief, the facts put forth by the prosecution are that Nirmaljit Singh Patwari while being posted for 12 years in Patwari Circle Nangli, Tehsil Amritsar indulged in corrupt practices and corrupt means. He amassed the assets, movable and immovable in his name and in the name of his family members which are disproportionate to his known sources of income.

The appellant-accused had purchased land of village Rakh Shikar Gah which was owned by Punjab Sind Rishikesh and which no person could sell or purchase as it belonged to a religious institution. The accused had got the said land transferred in the name of his brother Bikramjit Singh vide deed No.13855 dated 12.11.1993 for Rs.1,99,900/- and vide deed No. 551 dated 8.3.1995 for Rs.1,97,350/-. Likewise, with malafide intention, he had shown his wife Kashmir Kaur to be the daughter of Sampuran Singh and as per mutation No. 3565, he had purchased land of Rakh Shikar Gah, in name of his wife. As per mutation No.5088, he purchased land measuring 9K 5 M in the name of his brother Bikramjit Singh son of Mohan Singh and his father Mohan Singh son of Sohan Singh. As per mutation No. 5097, 4 kanals 5 marlas of land was purchased in the name of Bkirmajit Singh son of Mohan Singh and Mohan Singh

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son of Sohan Singh. As per mutation No. 5099 land was further purchased in the name of Bikramjit Singh son of Mohan Singh and Mohan Singh. As per mutation No. 9625, this Patwari purchased 4 kanals 5 marlas of land situated at Rakh Shikargah, in the name of his wife Kashmir Kaur brother Bikramjit Singh and father Mohan Singh, through deed No. 27686 dated 29.3.1995. In the same manner, Nirmaljit Singh as per mutation No. 9626, purchased 4k-5m land, in the name of his father Mohan Singh, brother Bikramjit Singh and wife Kashmir Kaur and it was purchased for an amount of Rs. 1,99,300/-. This patwari had purchased land, as per mutation No. 5186 of village Nangli in the name of his brother Birkamjit Singh for Rs. 1,70,000/-. He had also purchased kothi No. 315, B Block. Ranjit Avenue and Kothi No. 56-A, White Avenue, Amritsar and Maruti Zen car bearing No. PB02 AA 7475 after coming into the service. One revolver and one rifle were also purchased by him. Telephones have also been installed in the aforesaid kothis. He also has a mobile Phone No. 98140 70651. The aforesaid assets could not be purchased by the accused from his known sources of income and thus, he committed offences under Sections 13(1)(e) read with Section 13(2) of Prevention of Corruption Act. As such, the case was lodged against the accused. During the course of investigation, check period was taken as **1.12.1988 to 31.3.2002.** The accused was found to have not taken any permission or sent any intimation to the department concerned, with regard to the aforesaid purchases in his name and in the name of his family members. Various charts

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about the income and expenditure and assets were prepared. It was found that during the check period, total income of the accused was Rs.43,22,717/- and total expenditure was Rs.1,91,69,785.40. As such during the check period, the expenditure was more than the income to the extent of Rs.1,48,47,068.40 paise.

The expenditure and assets were found disproportionate to the extent of Rs.1,48,47,068.40 paise. The accused could not explain the said disproportionate assets. Requisite sanction was obtained from the competent authority for prosecution of the accused. On completion of investigation, the accused was sent up to face trial for the commission of offences under Section 13(1)(d)(e) read with Section 13(2) P.C Act, 1988 and under Sections 420, 465, 467, 468, 471, 120-B IPC.

Charges were framed under Sections 13(1)(e) read with Section 13(2) of the P.C Act, 1988. In order to prove its case prosecution examined as many as 27 witnesses and documentary evidence qua the income expenditure as well as acquisition of assets by the accused.

Trial Court observed that the assets in the hands of the father Mohan Singh and brother Bikramjit Singh have to be totally excluded from the calculations in the case in hand as father and brother are two separate individuals. Investigating Officer did not associate both father and brother to know about the genuineness of the assets standing in their names and their sources of Income. This fact was admitted in cross-examination by PW-25, Jagir Singh who

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conducted the part investigation of the case. He admitted that he did not examine Bikrmajit Singh, brother and Mohan Singh father of the accused regarding the ownership of the landed property, building, tractor and vehicles and the fire arms to know how they purchased the same from what sources. They were not cited in the list of witnesses and he did not collect the details of the income of the father and brother of the accused for the relevant period in question. PW-26, Tejinderpal Singh while facing cross-examination, stated that he did not know if any explanation regarding the properties purchased in the name of three persons (Kashmir Kaur, Mohan Singh and Bikramjit Singh) were got from him. PW-21 Mohinder Singh Patwari has proved various jamabandis and khasra Girdawaris of the land in the name of the accused as well as the brother and father. Jamabandi proved by this witness are Ex.PW21/12 to Ex.PW 21/17 and Khasra girdawaris are Ex.PW21/1 to Ex.PW 21/11 which amply establish the ownership of agricultural land by Mohan Singh and Bikrmajit Singh, father and brother of the accused and this land is self-cultivated. The plea of benami was discarded and properties in the names of Bikrmajit Singh and Mohan Singh were excluded from the calculations made against the appellant-accused. The trial Court thereafter proceeded to make assessment of the income and expenditure of the accused and the properties in his name and in his wife's name Kashmir Kaur. The details of the six heads are as follows:

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1	***Total Salary received by accused Nirmaljit Singh during the check period 1.1.1988 to 31.3.2002 while being postes a Patwari Tehsil Office Amritsar***	***Rs. 5,34,029.00/-***
2	***Total Income received by accused Nirmaljit Singh while being posted at Patwari during the check period in Tehsil Office Patti District Amritsar***	***Rs. 13,467.00/-***
3	***Total income received by accused Nirmaljit Singh while being posted at Patwari during the check period in Tehsil Tarn Taran District Amritsar***	***Rs. 22,944.00/-***
4	***Arrears received by accused Nirmajit Singh while being posted at Patwari during the check period***	***Rs.10,586.00/-***
5	***Rent received by accused Nirmaljit Sing of Show room of Kuchehri chowk in his name w.e.f. 7.11.2001 at the rate of Rs.13,900/- p.m***	***Rs. 69,500/-***
6	***Total agricultural income of the land owned by the accused in village Sir Singh during the check period***	***Rs.36,72,191.00/-***
	TOTAL	***Rs. 43,22,717.00/-***

As per the deposition of PW-21, Mohinder Singh, Patwari Halqa Algon-I Tehsil Patti, District Amritsar, total income out of the land as per the khasra girdawaris of the aforesaid land which are Ex.PW21/1 to Ex.PW21/11 in the name of the petitioner, Nirmaljit Singh was estimated at Rs.36,72,191/-.

The salary of the accused during the check period taken in hand is from **1.1.1988 to 31.3.2002**.

The prosecution has considered the valuation of the **investments on vehicles** as Rs.10,15.816/-. It has been so worked out in pursuance of the purchase of Maruti Zen bearing No. PB-02 AA 7475 of the value of Rs. 3,44, 604/-, Maruti Car bearing No. PB-02-AC 0959 for a value of Rs. 2,04,884/- and Farmtrac Tractor bearing No. PB-02 AC-1667 of Rs. 4,66,328/-. But later on accused could not be proved to be the owner of these vehicels. Even qua the

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ownership of the vehicles by the father and brother, benami transaction could not be established. Hence, the investment of Rs. 10,15,816/- is not to be considered.

Investment in Arms and Ammunition as per issue voucher Ex. PW24/A which is for **Rs.63,969/-** and which is in the name of the accused fell within the check period and was to be considered.

Expenditure incurred on the education of the children worked out to be **Rs.41,900/-.**

Investment in insurance policies was valued at **Rs. 45,186/-.**

The prosecution has considered the value of the bill of mobile of the accused bearing No.98140 70651 as Rs. 1488/-. But, later on prosecution failed to prove that this mobile phone was owned and possessed by accused Nirmaljit Singh. Therefore, the same was excluded from consideration.

Prosecution has considered the **Investment on kothis and showroom** in the form of Kothi No.56-A, White Avenue, Amritsar as Rs.13,32,591 and Kothi No. 315-B Ranjit Avenue as Rs. 43,9961 and Show Room Kachehri Chowk as 1,28,2328/-. However, as regards Kothi No. 315 Ranjit Avenue, there is no document proved by the prosecution to establish the ownership of the accused. Valuation of other two properties comes to be **Rs. 1,33,2591/-+ Rs. 1, 28, 2328 = 2614919/-** has to be considered.

As regards **expenditure of telephone**, Telephone No.

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502315 is in the name of Nirmaljit Singh and its value as per Ex. PH comes to be **Rs.36804/-** which is to be considered.

As regards **investments in the Saving Accounts in the Banks**, cash amount in account No. 3676 of Kashmir Kaur and account No. 1154 of Nirmaljit Singh and also account No. 2125 of Kashmir Kaur total amounts comes to Rs. 84584+ 391721+102739= 5, 79, 040. From this total amount if outstanding loan amount of Rs. 4,26,383/- is deducted, residue valuation works out to be **Rs.1,52,657/-** which ought to be taken into consideration.

As regards **investment in the purchase of land,** the prosecution has considered the valuation of each individual sale deed vide which the land was purchased in the check period by the accused in his name and in the names of his family members. To establish this, the prosecution has examined various witnesses **PW-9, PW-10, PW-13, PW-14, PW-15**. In the various sale deeds, the total value of the share of Kashmir Kaur under the aforesaid sale deeds which is to be considered as assets of accused Nirmaljit Singh comes to be **Rs. 9, 42, 750/-.**

As regards **investment of electricity consumption,** none of the amounts of the consumption of electricity was taken into consideration.

As regards **expenditure on the basis of salary received** by the accused during the check period, total salary drawn by the accused is Rs.13,467/- and taking ¾ of the said amount as expenditure, the amount to be considered as expenditure comes to

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be Rs.10,100/-. Thus total amount considered as expenditure qua the salary received during the check period comes to be Rs.4,21,802/-.

Finally as regards **valuation of the land of the residential house of the accused in Ranjit Avenue, Amritsar,** as per the sale deed Ex. P14/AA and Ex.PW14/BB, total value of the land comes to Rs.4,00,000+Rs.4,00,000/-= **Rs.8,00,000/-** and this amount was taken into consideration as expenditure incurred by the accused to create such assets.

Total expenditure under various heads has been worked out as under:

1.	Investment in Arms and ammunitions	Rs. 63,069/-
2.	Expenditure incurred on education of children	Rs. 41900/-
3.	Investment in insurance policies	Rs. 45186/-
4.	Investment on kothis and show room	Rs. 26,14, 919/-
5.	Expenditure telephone	Rs.36804/-
6.	Investment on purchase of land	Rs.9,42,750/-
7.	Expenditure on the basis of salary	Rs.4,21,802/-
8.	Valuation of land of house No.56-A White Avenue, Amritsar	Rs.8,00,000/-
9.	Investment in saving Account in Banks	Rs.1,52,657/-
	TOTAL	Rs.51,19, 987/-

On comparison of the income and expenditure, disproportion comes to be Rs.51,19,987.00 –Rs.43,22,717.00= Rs.7,97,270.00/-. This amount remained unexplained by the

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appellant.

The trial Court further examined Point B that the accused had transferred some lands in favour of his wife, brother and father during the period 12.11.93 and 8.3.1995. This land belonged to Punjab Sind Kshetriya Rishikes falling in the areas of Rakh Shikargah which belonged to a religious institution and as such, could not be transferred. The prosecution did not lead any evidence to establish that the land of the aforesaid institution could not be transferred by way of sale. The element of fraud and deceit was not established by the prosecution. In the absence of evidence, this point was decided against the prosecution.

Trial Court held that accused Nirmaljit Singh was found in possession of properties/assets disproportionate to his known sources of income to the extent of Rs.7,97,270.00/-, which he has not satisfactorily accounted for its possession. The petitioner was convicted and sentenced by the trial Court in the aforesaid terms

A perusal of the judgment shows that under the head **Investment on Kothis and showroom**, value of the Kothi No. 56-A, White Avenue, Amritsar has been taken to be Rs.13,32,591/-. At the same time, value of the land of this house under the head **valuation of the land of the residential house of accused in Ranjit Avenue, Amritsar** has been taken to Rs.8,00,000/- by making reference to the sale deeds Ex.PW14/AA and Ex.PW-14/BB. In fact value of the land was included in the cost of the kothi which was earlier assessed at Rs.13,32,591/- under the head **Investment on Kothis and**

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showroom. PW -14, Balwinder Kaur, Clerk Office of SDM Office, Amritsar proved the sale deeds of Kothi No. 56-A, White Avenue, Amritsar which is in the name of accused Nirmljit Singh and his wife and same are Ex.PW14/AA and Ex.PW14/BB. They are of the value of Rs.4,00,000/-. The trial Court has gone wrong in calculating the cost of land again by making reference to the same sale deeds in column no.11(**valuation of the land of the residential house of accused in Ranjit Avenue, Amritsar).** Hence the value of Rs.8,00,000/- has to be deleted . Once this value is deleted there are no excess disproportionate assets in the hands of the accused as the disproportionate assets were to the extent of 7,97,270.00. The conviction has been based only on the calculation as made in paragraph 25 which has been wrongly done by adding the cost of the land again at serial no.8 (Valuation of land of house no. 56-A, White Anenue, Amritsar.) After doing the necessary correction, there are no disproportionate assets in the hands of the accused-appellant.

In view of all that has been discussed above, appellant is acquitted of the charges framed against him.

Appeal is allowed.

(RITU BAHRI)
JUDGE

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