IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No. S-2061-SB of 2005

DATE OF DECISION: 12.1.2015

Ravi Kumar ....Appellant

Versus

State of Punjab ....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Ashit Malik, Advocate
for the petitioner.

Mr. D.S. Virk, A. A.G., Punjab.

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DAYA CHAUDHARY, J.

The present appeal has been filed to challenge judgment of conviction and order of sentence dated 11.11.2005 passed by Judge, Special Court, Jalandhar, whereby, accused-appellant has been convicted for offence punishable under Section 13 (e) of Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act') and sentenced to undergo RI for a period of two years and to pay a fine of ₹ 3000/- and in default of payment of fine, the accused was further ordered to undergo RI for a period of three months. The period of detention already undergone by accused-appellant during period of investigation and trial was ordered to be set off.

Briefly, the facts as per the prosecution version are that the accused-appellant while working as Junior Engineer in Public Health Department, Punjab Government amassed wealth to the tune of ₹

2,91,424/- which was disproportionate to his known sources of income. Accordingly, charge under Sections 7 and 13 of the Act was framed against him, to which, he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as 21 witnesses.

On closure of prosecution evidence, the statement of accused-appellant was recorded under Section 313 Cr.P.C., wherein, he denied all the allegations and pleaded innocence. It was the stand of the accused-appellant that he had not spent more than his income and had already informed the Department about the details of his income as well as expenditure. All documents and affidavits about known sources of his income were also submitted by him. It was also his stand that he had falsely been implicated in the case.

In defence, the accused-appellant examined Mohiner Singh (DW-1), Kewal Kumar (DW-2), Kewal Krishan (DW-3), Parmod Bhardwaj (DW-4), Shamsher Singh (DW-5) and Sewa Singh (DW-6).

On appreciation of evidence and after hearing both the sides, the appellant was held to have the income disproportionate to his known sources during the check period as per the pecuniary sources held or possessed by him but he failed to account for the acquisition of said properties satisfactorily. The prosecution was able to prove the allegations/charges framed against the accused-appellant and accordingly he was convicted and sentenced as detailed above.

Learned counsel for the appellant submits that the trial Court has not properly appreciated the evidence led by the appellant and before submitting the challan in the Court, the prosecution has obtained sanction from the department to prosecute him on the allegation that he had amassed wealth to the tune of ₹ 2,59,234.57 ps., which was disproportionate to his known sources of income but the charge was framed against him alleging that he had amassed wealth to the tune of ₹ 2,91,424.00. Learned counsel further submits that the appellant had joined service in the year 1973 and he got married in 1976 and his background was from business class family. During those three years, he saved upto 50% of his salary as he was unmarried at that time. As per the provisions of Punjab Financial Rules 10.13 (A), 40% of the gross salary is sufficient to carry home for an employee to meet out his day-to-day expenses. Learned counsel also submits that as per allegations against the appellant, he had spent ₹ 2,36,400/- on the construction of his house at Ambala as shown in assessment report Ex. PH and ₹ 2,28,582/- on the construction of his house at Jalandhar as shown in the assessment report Ex. PG, duly proved by Gurmail Singh (PW-9). The stand of the appellant was that these reports were of the plinth area and rebate of 5% to 10% was given to him. In his statement, he has stated that a rebate of 5% to 20% can be allowed on the valuation as per schedule rates. He has also submitted that he is a diploma holder in Civil Engineering and being a technical person, he saved money spent on construction of building by checking the bills, supervision charges etc. and the estimate was only a guess work. It is also the argument of learned counsel that the trial Court has not taken into consideration the fact that the house owned by appellant at Ambala was given on rent and there is an income of ₹ 56,000/- on account of rent and the income towards rent has not been taken into consideration besides the details given by him. Apart from above, the appellant also took loan for construction of house from three persons and their affidavits are on record and which were proved by those persons but they were not cross-examined. It is also the argument of learned counsel that the evidence led by the appellant was disbelieved. Learned counsel also submits that burden to prove the charge was upon the prosecution but no legal evidence was adduced and the appellant has been convicted only on presumption. Learned counsel also submits that the appellant has faced the agony of trial since registration of FIR i.e. 22.3.1997 and no such complaint was there during the period of 24 years of his service and his service record was neat and clean but this fact has also not been considered while awarding sentence. Learned counsel has also relied upon the judgments of this Court in **Dalip Singh Vs. State of Punjab** 2003 (4) RCR (Criminal) 464 and **Bal Kishan Vs. State of Haryana** passed on 1.12.2012 in Criminal Appeal No. S-787-SB of 2001, in support of his contentions.

Learned counsel for the respondent-State submits that the judgment of trial Court is well reasoned and is based on proper appreciation of evidence and no interference, therefore, is required.

Heard the arguments advanced by learned counsel for the parties and have also gone through the record of the trial Court as well as other documents available on the file.

As per the case of the prosecution, the appellant while working as Junior Engineer in his department during the period 1.1.1983 to 30.6.1995 was found in possession of pecuniary resources/property amounting to ₹ 10,16,649.22, which was disproportionate to his known sources of income as his income from all known sources was ₹ 7,57,424.65. The difference of expenditure could not be proved during trial and he was held guilty for offence punishable under Section 13 (e) of the Act. The defence taken by the appellant is that during the period 1973 to 1975, his savings was 50% of the total income as he was unmarried. He has also taken the plea in his defence that he was getting rent from the house situated at Ambala and took loan from three persons and saved money while contructing the house due to technical skills but abovesaid pleas taken in defence have not been considered by the trial Court. The loan amount of ₹ 15,000/- from Mohinder Singh, ₹ 20,000/- from Shamsher Singh and ₹ 50,000/- from Sewa Singh on the basis of different pronotes have been proved and they have given their respective affidavits. The said affidavits and pronotes were handed over to the prosecution but the said amount has not been taken into consideration. At the most it can be considered as irregularity but it cannot be said to be an act of corruption.

The burden to prove the charge was on the prosecution but it has failed to prove the same against the accused. Kamlesh Kumari (PW-6) has testified in her statement that she had taken a shop on rent of ₹ 350/- per month from one Nand Lal and due to some dispute with the appellant as well as Nand Lal, the appellant was not receiving rent and a civil suit was filed by her, which was later on decreed in her favour. A compromise was effected with the present appellant, whereby, she paid an amount of ₹ 13,500/- as arrears of rent, which was proved by Ex. PF. Similarly Ravinder Kumar (PW-11) has proved in his statement that he was running a shop of gold smith in the name and style of Malhotra Jewellers in Bazar Kalan, Jalandhar and had purchased 107.670 mgs of gold from appellant worth ₹ 15,998/- which was paid by way of cheque drawn on UCO Bank. Santosh Gupta (PW-14) has proved sale deed dated 6.1.1983, which was executed by Shankar Singh in favour of present appellant for ₹ 42,432/-.

As per case of the appellant an amount of ₹ 56,000/-, which was in the form of rent from the house owned by him has not been taken into consideration. It has also come in the statement of Kewal Krishan (DW-3) that appellant took an amount of ₹ 27000/- from his father for the construction of house, which was withdrawn on different dates from the saving bank account of his father and a certificate to this effect was also issued by the Bank, which is Ex. D5 but the said amount has also not been considered. Similarly an amount of ₹ 22000/- was received by the appellant from his brother Kewal Kumar and the same has been proved from pass book (Ex. D3) and bank certificate (Ex. D4) but it has not been taken into considration. Similarly loan amount of ₹ 15,000/- taken from Mohinder Singh, ₹ 20,000/- from Shamsher Singh and ₹ 50,000/- from Sewa Singh have not been considered by the trial Court, whereas, the same have also been proved by the said persons on the basis of documents but they were not cross-examined with regard to execution of pronotes or affidavits submitted by them.

From the perusal of statements of prosecution witnesses as well as defence witnesses, it cannot be said that the appellant has spent more than his income. The appellant has been convicted by the trial Court by holding that the accused cannot be permitted to take legal benefit of said income as he has violated the rules by not informing the appropriate authorty with regard to receiving of money as loan from various persons. The expenditure has been stated to be ₹ 2,59,234.57, whereas, the alleged amassed wealth is ₹ 2,91,424/-.

As per judgment of the trial Court, the income of the appellant from all sources comes to ₹ 7,57,424.65, whereas, the expenditure incurred by appellant is ₹ 10,16,649.22 and the difference therefore comes to ₹ 2,59,224.57. In case, the amount borrowed by the accused-appellant or his rental income i.e. ₹ 1,90,000/- is taken into consideration, then difference comes to ₹ 69,224.57-. At the most it can be said that the appellant did not give the details of the loans or small savings to the competent authority which can be treated as an irregularity. Sometimes a Government employee may save some part of his salary but it is not expected that saving is to be reflected every month in the account. Moreover, there is no hard and fast rule to show as to how much amount is to be used to meet out the expenses as it depends upon many facts and quality of life to be led by the members of the family. It has been held by Hon'ble the Apex Court in the case of **State of Maharashtra Vs. Pollonji Darabshaw Daruwala, 1987 (2) RCR (Criminal) 697** that burden to prove disproportionate property is on the prosecution and liberal view must be taken in such like matters. The observations made in aforesaid judgment are reproduced as under:-

> "...on a consideration of the matter it cannot be said that there is no disproportion or even a sizeable disproportion.....There are also other possible errors in the calculations in regard to point (c). The finding becomes inescapable that the assets were in excess of the known sources of income. But on the question whether the extent of the disproportion is such as to justify a conviction for criminal misconduct....., a somewhat liberal view requires to be taken of what proportion of assets in excess of the known sources of income constitutes "disproportion" for purposes of Section 5 (1) (e) of the Act."

Similarly, Hon'ble the Apex Court in the case of **Ashok Tshering Bhutia Vs. State of Sikkim** 2011 (4) SCC 402 has acquitted the accused as only a sum of ₹ 2,71,613/- remain unexplained which is marginal.

In view of the facts as well as law position as explained above, I am of the view that the prosecution has not been able to prove its case beyond reasonable doubt to show that the assets of the appellant were disproportionate to his known sources of income. As such the benefit of doubt goes in favour of the appellant and he is ordered to be acquitted of the charges framed against him. Accordingly, the appeal is allowed and judgment of conviction and order of sentence passed by the trial Court on 11.11.2015 is set aside.

12.1.2015 **(DAYA CHAUDHARY)**
pooja **JUDGE**