

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Criminal Appeal No.771-SB of 2012

Date of Decision : 25.02.2015

Budh Singh

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Bipan Ghai, Sr. Advocate,
with Mr. Joban Singh and Mr. Mandeep Kaushik,
Advocates for the appellant.

Mr. Mehardeep Singh, DAG, Punjab.

JITENDRA CHAUHAN, J.

The present appeal assails the judgment of conviction and order of sentence dated 31.01.2012, (hereinafter referred to as 'impugned judgment') passed by the learned Special Judge, Bathinda, (hereinafter referred to as 'trial Court'), whereby, the accused appellant has been convicted under Section 13(1)(e) of the Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for a period of 3 years and to pay fine of Rs.25,000/-, or in default of payment of fine, to further undergo rigorous imprisonment for six months.

2. Briefly stated facts of the case in hand, as recorded in para No.2 of the impugned judgment, are reproduced as under:-

“The case of the prosecution in brief is that Sh. Baljinder Singh Grewal, SP, Vigilance Bureau, Bathinda Range, Bathinda registered case against above said Budh Singh on the ground that he came to know from the reliable sources that Budh Singh was posted as Inspector, Police District, Bathinda. Inquiry was conducted against Budh Singh with regard to creating assets which were disproportionate to his known sources of income. During inquiry, it was found that during check period 1.1.1987 to 31.12.1998 Budh Singh was having income of Rs. 4,82,695/- but during the said period, he spent sum of RS.21,58,024/-. Thus Budh Singh being a public servant spent sum of Rs. 16,75,329/- more than his known sources of income during check period. After registration of the case Sh.Baljinder Singh Grewal, SP Vigilance Bureau started investigation. The investigation was entrusted to Baldev Singh, D.S.P. The accused was arrested. Search of the house of the accused was conducted.

Documents were taken into possession. His son Balwinder Singh remained posted as Panchayat Secretary in the office of Executive Officer, Panchayat Samiti, Malout. The documents pertaining to his income were also taken into possession. The total income of accused Budh Singh and his son Balwinder Singh of the check period 1.1.1987 to 31.12.1998 was to the tune of Rs. 4,84,748.90 paise. Budh Singh spent the amount which is as under :-

1. Accused spent amount for purchasing the land vide sale deed No. 6935 dated 13.1.1995 and for purchasing the stamps and on registration fee, Rs.2,13,940/-.
2. Accused spent amount for purchasing land in the name of his wife Dalbir Kaur vide sale deed No.2387 dated 13.7.1992 and for purchasing the stamps and on payment of registration fee Rs.78,750/-.
3. Accused spent amount, for purchasing the land vide sale deed No. 7473 dated 3.2.1995 and for purchasing the stamps and on registration fee, Rs.2,11,130/-.
4. Accused spent amount, for purchasing the land in the name of his friend Gurjant Singh son of Kartar Singh, resident of

- village Kalyan Sukha vide sale deed No. 3505 dated 28.7.1994 and for purchasing the stamps and on registration fee, Rs.1,80,000/-.
5. Accused spent amount, for purchasing the land in the name of his friend Gurjant Singh son of Kartar Singh, resident of village Kalyan Sukha vide sale deed No. 6583 dated 1.2.1994 and for purchasing the stamps and on registration fee, Rs.2,02,500/-.
 6. Accused spent amount, for purchasing the land in the name of his second wife Shinder Kaur d/o Nazam Singh, resident of village Ralla vide sale deed No. 6222 dated 28.12.1998 and for purchasing the stamps and on registration fee, Rs.3,81,600/-.
 7. Accused purchased property in the name of his wife Dalbir Kaur vide sale deed No. 6279 dated 12.3.1993 and spent amount for purchasing the stamps and on registration fee, Rs.45,000/-.
 8. Accused purchased land in his own name vide sale deed No. 2127 dated 11.9.1995 and spent amount for purchasing the stamps and on registration fee, Rs.23,540/-.
 9. Accused purchased land in his own name vide sale deed No. 2128 dated 11.9.1995 and spent amount for purchasing the

stamps and on registration fee Rs. 12,792/-.

10. Accused purchased land in his own name vide sale deed No. 2129 dated 11.9.1995 and spent amount for purchasing the stamps and on registration fee, Rs.6,396/-.
11. Accused purchased land in his own name vide sale deed No. 2130 dated 11.9.1995 and spent amount for purchasing the stamps and on registration fee, Rs. 12,792/-.
12. Accused purchased land in his own name vide sale deed No. 2131 dated 11.9.1995 and spent amount for purchasing the stamps and on registration fee, Rs.38,376/-.
13. Accused purchased land vide sale deed No. 802 dated 27.5.1997 and spent amount for purchasing the stamps and on registration fee, Rs. 1,60,500/-.
14. Accused purchased land in his own name vide sale deed No. 178 dated 22.4.1987 and spent amount for purchasing the stamps and on registration fee. Rs. 17,025/-.
15. Accused purchased land in his own name vide sale deed No. 1189 dated 15.6.1995 and spent amount for purchasing the stamps and on registration fee Rs.29,540/-.
16. Accused purchased land in his own name vide sale deed No. 1190 dated 15.6.1995

and spent amount for purchasing the stamps and on registration fee, Rs.72,705/-.

17. Accused purchased land in his own name vide sale deed No. 1191 dated 15.6.1995 and spent amount for purchasing the stamps and on registration fee Rs.36,355/-.
18. Accused purchased land in his own name vide sale deed No. 1192 dated 15.6.1995 and spent amount for purchasing the stamps and on registration fee Rs. 17,040/-.
19. Accused purchased land in the name of his son Balwinder Singh vide sale deed No. 240 dated 21.4.1989 and spent amount for purchasing the stamps and on registration fee Rs.5,675/-.
20. Accused purchased land in the name of his son Balwinder Singh name vide sale deed No. 546 dated 15.5.1990 and spent amount for purchasing the stamps and on registration fee Rs.10,215/-.
21. Accused purchased land in the name of his wife Dalbir Kaur vide sale deed No. 141 dated 25.9.1989 and spent amount for purchasing the stamps and on registration fee Rs.9,080/-.
22. As per assessment report amount spent by accused on his Kothi at Muktsar Rs.2,51,845/-.

23. Expenditure incurred for additional construction in Kothi situated at Malout Road, Bathinda by accused, as per assessment report Rs. 3,00,169/-.
24. Balance shown in the account No.3420 dated 31.12.1998 in Punjab National Bank, Muktsar in the name of Balwinder Singh son of the accused Rs.3,340.20P.
25. Balance shown in the account No. 14747 dated 31.12.1998 in State Bank of India, Muktsar in the name of Davinder Singh son of the accused Rs.1,112/-.
26. Balance shown in the account No.13734 dated 31.12.1998 in State Bank of India, Muktsar in the name of Sita Rani daughter of the accused Rs.602/-.
27. Balance shown in the account No. 10288 dated 31.12.1998 in Punjab National Bank, Sadar Bazaar, Muktsar in the name of the accused Rs.628.60P
28. Balance shown in the account No. 1418/5 dated 31.12.1998 in Punjab & Sind Bank, Harike Pattan in the name of accused Rs.295/-.

Accused being public servant spent sum of Rs. 18,38,194.10 P more than his known sources of income during the check period of 1.1.1987 to 31.12.1998. After completion of necessary formalities of investigation, challan against the accused was presented in the Court.”

3. Upon presentation of the challan, the accused was charged under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, to which he pleaded not guilty and claimed trial.

4. In order to substantiate its case against the accused, the prosecution examined the following witnesses:-

PW1 Inspector Shamsheer Singh

PW2 Sh. Baljinder Singh Grewal, earlier posted as S.P Vigilance, Bathinda Range, Bathinda.

PW3 Inspector Pishori Lal.

PW4 Sh. Gurcharan Singh, Registration Clerk office of Sub Registrar, Rampura Phul.

PW5 Sh. Naresh Kumar Sharma, Record Keeper-cum-cashier, State Bank of India Main Branch, Muktsar.

PW6 Sh. Balwinder Singh, Junior Assistant office of Deputy Commissioner, Muktsar.

PW7 Sh. Parmod Goyal, Manager, State Bank of Patiala, Branch Nabha.

PW8 Sh. Lakhwinder Singh, Clerk in the office of PNB, Main Branch, Muktsar.

PW9 HC Gurmit Kaur

PW10 HC Sukhpal Kaur

PW11 Sh. Surinder Pal Jasuja, Manager, State Bank of Patiala, Branch Balluana.

PW12 Sh. Jarnail Singh, Deputy Manager, State Bank of Patiala, branch Muktsar.

PW13 Sh. Vijay Kumar Sukhija, Asstt. State Bank of India, branch Kotkapura Road, Muktsar

PW14 Sh. Vipin Kumar Bansal, earlier posted as S.D.E., Provincial PWD B&R, Muktsar

PW15 Sh. Sukhdev Singh son of Karnail Singh

PW16 Sh. Gurnam Singh Bhullar, Officer earlier posted at Punjab and Sind Bank, Harike Pattan.

PW17 Sh. Manjit Kumar, Record Keeper, P.N.B, Sadar Bazar, Muktsar.

PW18 HC Jaswant Singh, Accounts Branch, office of SSP, Mansa

PW19 Sh. Jagdish Singh, Patwari earlier posted as Patwari Jassi Pau Wali, Teh. & Distt. Bathinda

PW20 Sh. Mota Singh son of Karnail Singh

PW21 Sh. Kasturi Lal, retired Accountant earlier posted in office of BDPO, Malout

PW22 HC Balwinder Singh, Accountant, office of SSP, Mansa

PW23 HC Rajbir Singh, C.R.C., office of SSP, Mansa

PW24 Sh. Kasturi Lal, retired accountant, earlier posted in the office of Executive Officer, Panchayat Samiti, Malout.

PW25 Sh. Sham Sunder Bedi, Retired Deputy Manager, State Bank of India, branch, Muktsar

PW26 SI Gurmail Singh earlier posted as OASI in the office of SSP, Faridkot.

PW27 HC Rawinder Singh earlier posted as OASI branch, office of SSP, Mansa

PW28 ASI Dev Singh, 1st IRB, Patiala

PW29 Sh. Inder Singh, Retired Sub Divisional Engineer earlier posted as SDE, Provincial Sub Division, PWD B& R, No.2, Bathinda

PW30 Sh. Baldev Singh, Retired DSP earlier posted as DSP, Vigilance Bureau, Faridkot. PW31 ASI Gurpal Singh

PW32 HC Surinderpal Singh office of IGP, Commando Bahadurgarh, Patiala.

The PWs, namely, Jaspal Singh and Ranjit Singh, were given up being won over by the accused and closed the evidence of the prosecution.

5. The accused was examined under Section 313 Cr.P.C., wherein, all the incriminating circumstances appearing in the prosecution case were put to him, which he denied and pleaded false implication. The accused furnished written statement and further pleaded that State of Punjab remained in grip of terrorism. As a result of which, many innocent persons including the police officials were killed by the terrorists. He was put on duty during the days of terrorism by the department and he performed his duty to the best of his ability. The Government of Punjab gave various cash awards and commendation certificates including the cash award of Rs. 1,89,200/- during his posting at Mansa District in the year 1994 for his outstanding services. He was also given out of turn promotions in service which earned the jealousy and hatred of his colleagues and higher officers in the police department. The DGP, Punjab came to Mansa in February, 1994 and conferred upon him awards and promotion which are also depicted in the photographs. He earned the wrath of Shri

Rajdeep Singh Gill, the then I.G. of Police (Zonal) as he did not oblige to help his friend Baljinder Singh Mansahia. Sh. Rajdeep Singh Gill, I G of Police Zonal wanted that he should not make any enquiry against one Jugraj Singh and set him free. Said Jugraj Singh had stood surety for Gurdev Singh alias Debu a dreaded terrorist of Babbar Outfit. Thus, he earned the displeasure of Sh. Rajdeep Singh Gill, I.G. of Police (Zonal) who got him lifted from his house on 28.3.2001 in order to get him reverted from the post of Inspector. His wife filed a criminal Writ Petition No. 315 of 2001 titled as Dalbir Kaur wife of Budh Singh Vs Sh Rajdeep Singh Gill IPS, Inspector General of Police (Zonal), Patiala Zone, Patiala etc under Article 226 of the Constitution of India. Under the orders of Hon'ble High Court he was got released on 4.4.2001 by the Warrant Officer, from illegal custody of police of police station, Kotwali, Faridkot. He submitted applications regarding his abduction. He also filed a complaint on 13.10.2001 in the court of learned Chief Judicial Magistrate, Muktsar against Sh. Rajdeep Singh Gill aforesaid and others under Sections 342, 343, 365, 368, 382, 397, 398 of IPC etc and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act. His name was recommended on 23.3.1991 and 13.3.19 93 by SSP, Bathinda and SSP, Mansa respectively for President's Police Medal for exemplary meritorious service for fighting against terrorism in the State. He was falsely involved in various cases at

the instance of Sh. Rajdeep Singh Gill, the then IG of Police (Zonal), Patiala and other disgruntled police officers who were out to take revenge against him. In Criminal Appeal No. 289-SB decided on 15.10.2010 titled as Budh Singh Vs State of Punjab, Hon'ble High Court held as under :-

" This is amongst one of those cases wherein an extraordinary officer, who along with many others played a very significant role during the disturbed phase of Punjab history in restoring law and order and in maintaining the integrity and sovereignty of this country, has been painted black by the colleagues and officers who did not have the courage to perform in the similar manner the appellant performed. All these officers ganged up against the appellant and were successful to paint him black."

The instant case is also an act of revenge. The accused was also involved at the instance of present investigating officer DSP Vigilance, Sh.Baldev Singh under Section 61 of Punjab Excise Act, FIR No.5 dated 24.1.2003, PS Thermal Plant, Bathinda. The accused was also involved in a false case under Section 25 of Arms Act, FIR No. 45 dated 28.3.2001, P.S Nahian Wala. Another case FIR No. 32 dated 11.5.2001, under Sections 457,380,506 IPC, Police Station Thermal Plant, Bathinda was

also registered against him. He was acquitted in all the above said three cases. It was further stated that he was appointed in the police department on 8.10.1974 as Constable and was promoted as Head Constable in 1979-80, ASI in the year 1986, SI in 1982 and as Inspector in 1993. During the said period, there was no complaint against him. That is why he was promoted out of turn from Constable to Inspector Police due to his good performance in the police department. The instant case is also absolutely false and was cooked up in order to harass and humiliate him. The investigation in the instant case was not conducted properly. It was one sided under the instructions from superior officers. The investigating officer failed to take into account the true facts about his income and property. He was given various cash awards including a cash award of Rs. 1,89,200 on 11.2.1994 by Government of Punjab but said cash awards were not taken into consideration. He was the only son of his parents. He had ancestral property including the land and house in village Hari Ke, District Amritsar. The rent of the ancestral house inherited by him from his father was collected by him from tenant Satnam Singh son of Sohan Singh, resident of Hari Ke Pattan with effect from January, 1983 till September, 2009 at the rate of Rs. 2,000/- per month. Said amount was not taken into consideration. His father had agricultural land measuring 11 Killas 4 Marias at village Talwandi Nepal, near Hari Ke, Distt. Amritsar. He used

to collect income of the said agricultural land which amounted to Rs. 33,000/- per annum. Said amount was not taken into consideration by investigation officer. His wife and two sons had also been earning by running a milk dairy at Nohra (cattle shed) at Muktsar, which was yielding an income of Rs. 10,000/- per month w.e.f. 1990 to 1998 and even thereafter. The investigating officer did not take into consideration the rental income of the house situated at Muktsar during check period w.e.f. 1988 to 1998 @ Rs 2,200/- per month which was being collected by him. The income of his sons who were bachelor was not taken into consideration by the investigating officer. Later on one of his son Balwinder Singh was appointed as Panchayat Secretary and his contribution during the check period was not taken into consideration. The investigating officer failed to take into consideration the agricultural income. The lease money of agricultural land in village Jandian during check period w.e.f. 1995 to 1998 was at the rate of Rs. 18,000/- per annum per killa whereas the annual lease money of agricultural land situated at village Thande Wala, District Muktsar during the check period with effect from 1995 to 1998 was Rs. 22,000/- per killa per annum. The said amount was not taken into consideration by the investigating officer. As per case of the prosecution itself the house at Bathinda in the name of Dalbir Kaur and shops situated there fetched monthly rent of Rs.9500/- on an average w.e.f. 1993

to 1998. The said income was also not taken into consideration. Darshan Singh son of Buta Singh, father of Dalbir Kaur had given a sum of Rs. 2 lacs as her share in the property during the year 1989-1990 and 1990-91 in cash. The investigating officer was duly conveyed about the receipt of said amount but investigating officer failed to take the said income into consideration. Investigating officer calculated the assets and income wrongly. He, his wife and sons were not given any opportunity to explain the same. He belongs to Scheduled Castes community so their standards of living is very moderate but investigating officer showed very high expenditure of his family. Investigating officer intentionally attributed the property which was neither purchased by him nor belonged to him. In the bank record most of the entries were pertaining to deposits made before the check period.

6. In defence, the accused examined HC Kulwant Singh as DW1, Sh. Makhan Singh, resident of Hari Ke Pattan as DW2, Sh. Karaj Singh, resident of Hari Ke Pattan as DW3, Sh. Virbhan, brother of his wife as DW4, Sh. Satnam Singh, resident of Hari Ke Pattan as DW5, Sh. Gurdeep Singh, resident of Muktsar as DW6, Sh. Jaswinder Singh @ Jolly, owner of Maharaja Dhaba as DW7, Sh. Sukhdev Singh owner of Vaishnu Dhaba as DW8, HC Balwinder Singh, Accountant, office of the SSP, Mansa as DW9, Sh. Naresh Kumar Gupta, Document Writer, Shahkot as DW10, Sh. Tek Singh as DW10, Sh. Harmander Singh, Patwari as

DW12, Sh. Ranjit Singh, resident of Muktsar as DW13, HC Jaswant Singh, Clerk, office of the SSP, Mansa as DW14, Sh. Sukhmander Singh, resident of Muktsar as DW15. DW Surjit Singh was given up as unnecessary, whereas, DW Hardial Singh was given up being confined to bed.

7. After hearing learned counsel for both the parties and considering material/evidence on record, the learned trial Court convicted and sentenced the appellant for the offence and the term, as detailed at the outset of this judgment. The learned Special Judge held that the total expenditure of Budh Singh during the check period as proved by the prosecution is Rs.15,58,548/-. The total income of Budh Singh from the known sources was Rs.5,96,648/10P, thus, the prosecution has been successful in proving that Budh Singh possessed disproportionate assets to the tune of Rs.9,61,899/10P, beyond his known sources of income during the check period from 1.1.1987 to 31.12.1998.

8. Aggrieved against the judgment of conviction and order of sentence, the appellant has preferred this appeal, which was admitted by this Court on 24.02.2012.

9. The learned Senior counsel contends that this case has been registered due to vendetta whenever a particular officer was posted as an officer in the district where the present appellant was posted. Otherwise, his service record remained outstanding throughout his service career. The learned counsel contends that

Special Judge has legally and factually erred in discarding the evidence of DW-7, Jaswinder Singh @ Jolly, who has proved that the wife of the present appellant has been receiving rent from him and that DW-6 Gurdeep Singh paid one year advance rent to her. The learned Senior counsel further contends that DW-4, Vir Bhan, brother of the wife of the petitioner proves that his father had given Rupees one lac in the year 1989 and another Rupees one lac in the year 1991-91, in cash to her sister, Dalbir Kaur, i.e. the wife of the accused-appellant. In this respect, his father, sworn an affidavit, Ex.DW4/A, dated 09.09.1994, duly scribed by Naresh Kumar Gupta, Petition Writer, and duly attested by Executive Magistrate, Shahkot. He further refers to the statement of DW12, Harmandar Singh, which goes to show that the appellant along with his father, Nazar Singh, was owning 11 acres 4 marlas of agricultural land, the lease money of which was received by them @ Rs.8,000/- to Rs.10,000/- per acre. Apart from the above, there is income from other sources, which the learned trial Court failed to consider. If this income is added in the check period, then no case for possessing assets more than the income is made out.

10. On the other hand, the learned State counsel contends that it is an admitted fact that during the check period, from 01.01.1987 to 31.12.1998, the appellant was a public servant. His income during this period was proved to be Rs.4,84,748/- but

during this period he allegedly spent about Rs.23,22,943/-. During this period he purchased various properties and constructed houses at Muktsar and Bathinda. The learned State counsel concluded that he has collected wealth which is disproportionate to the source of income. He supported the judgment of conviction and sentence.

11. I have heard learned counsel for the parties and perused the record with their able assistance.

12. The charge framed against the accused-appellant, Budh Singh, vide order dated 24.12.2004, by the Special Judge, Bathinda, reads as under:-

“That during the period from 1.1.1987 to 31.12.1998 you Budh Singh, while being posted in Police Department of Punjab Government on various posts, as public servant committed criminal mis-conduct by having possessed of dis-proportionate assets to your known sources of income to the tune of Rs.18,38,194-10 paise and thereby you committed an offence punishable under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988, which is within my cognizance.”

13. Section 13(1)(e) of the Prevention of Corruption Act, 1988, reads as under:-

“Section 13(1)(e) in The Prevention of Corruption Act, 1988

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Explanation.—For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.”

A reading of the above section transpires that it is not mere acquisition of property that constitutes an offence under the provisions of the Act, but it is the failure to satisfactorily account for such possession that makes the possession objectionable as offending the law. To substantiate a charge under Section 5(1)(3) of the Act, the ingredients to be established by the prosecution are:-

1. that the accused is a public servant;
2. the nature and the extent of pecuniary resources or property were found in his possession or any person on his behalf;
3. what were the known sources of income; and
4. that the property resources found in possession of the accused or any person on

his behalf were disproportionate to his known source of income.

After proving the above requirements by the prosecution, the burden for satisfactorily accounting for the possession of such resources of property shifts to the accused.

14. The investigation is tainted in this case. The accused was never afforded an opportunity to satisfactorily account for. In the absence of such an opportunity being afforded to the accused, the question of his failing to satisfactorily account for or not being able to account for just does not arise. The principles of natural justice apply as much as at the investigation stage. The accused is the only person who has special knowledge about his known sources of income. So, if the investigating officer did not take the defence plea into account, then the Special Judge is duty bound to see that as to whether the accused has satisfactorily accounted for the alleged expenditure. Therefore, a police officer with whom an investigation of an offence under the Act is entrusted should not proceed with a preconceived idea of guilt of that person indicted with such offence and subject him to any harassment and victimization because in case, the allegations levelled against the public servant are found during the course of the investigation as baseless, the harm done not only to that person but also to the office will be incalculable and inestimable.

15. In this case, it is specifically contended that whenever a particular senior police officer was posted in the police district, the work and conduct of the accused was shown as bad. Even, once in the year 2001, he was illegally detained in the Police Station Kotwali, Faridkot, he was freed by a Warrant Officer of this Court on the habeas corpus petition filed by the wife of the accused-appellant. The Parliament, in its wisdom, had entrusted the investigation of these cases under the Prevention of Corruption Act, not below the rank of the Deputy Superintendent of Police, so that there may not be any misuse of power by the junior police officers, while conducting the investigation under the Act.

16. The burden of accounting for the expenditure did shift to the accused as it was for this reason that he was required to lead evidence and produce material to satisfy the Court. In the case of the defence plea of the accused, he has got to establish through a preponderance of probabilities that the evidence produced is acceptable to the Court. In such like cases, the presumption of innocence does not disappear against a public servant merely on presentation of challan under Section 173 Cr.P.C. nor does the basic principle of criminal law that if a plausible explanation is put forward by the accused which fits in with the facts and circumstances of the cases that the Court is duty bound to accept the explanation furnished by the accused.

17. Now, this Court will consider the defence plea which appears to have been misread and misinterpreted by the Special Judge. The defence plea is to be considered from the view point of the accused and not to be ignored simply on the ground that it is at belated stage, it is an afterthought or no such plea was taken at earlier stage of investigation or trial.

18. In this case, the check period is from 01.01.1987 to 31.12.1998. It is alleged in the first information report that the appellant has spent excess amount of Rs.16,75,329/- against his income of Rs.4,82,695/-. During investigation, the prosecution submitted challan against the accused-appellant showing his total expenditure to be Rs.23,22,942/-, his income Rs.4,84,748/90 and excess unexplained expenditure as Rs.18,38,194/10. In this case, the accused has categorically fully explained his entire source of income including his salary, rent from two houses, lease money of agricultural land, money received from his father-in-law to his wife as gift, rent from shops. DW-7, Jaswinder Singh @ Jolly of Maharaja Dhaba, Bathinda, proved that he was having five shops on rent since 1993. He further stated that he used to pay Rs.1500/- per month as rent, per shop to the appellant. This witness had paid Rs.90,000/-, as advance rent to Smt. Dalbir Kaur, wife of the appellant, vide receipt Ex.DW7/A dated 01.01.1993. This witness, continued to run his dhaba business in

the said five shops till December 1998. In all, this witness had paid Rs.5,40,000/-, as rent for six years from 1993 to 1998.

19. DW8, Sukhdev Singh, proves that he was having three shops at Bathinda on rent since 1993 @ Rs.2,000/- per month per shop, belonging to Smt. Dalbir Kaur, wife of the appellant. He had been doing dhaba business in these shops. Thus, the total rent fetched from these three shops comes to Rs.4,32,000/-.

20. Thus, this Court comes to the conclusion that the rent fetched from all these eight shops comes to Rs.9,72,000/-, received by Dalbir Kaur, the wife of the accused/appellant. The finding of the learned trial Court that the rent in the vicinity could not be more than Rs.200/- per month, is based on surmises and without any evidence on record. This Court instructed the learned State counsel to apprise this Court the prevalent per shop rent in the vicinity, adjacent to the shops in question. The learned State counsel could not rebut the argument of the learned defence counsel in this respect.

21. DW12, Harmandar Singh, Revenue Patwari, proved that Nazar Singh, father of the accused-appellant owns 88 kanals 4 marlas of land in his name. He is in cultivating possession and khasra girdawari is in his name. He has been shown as cultivating possession of the land from 1970 till 1974. Copy of khasra girdawari has been placed on record as Ex.DW12/A. This witness

further proved that prevalent lease money of the said land was approximately Rs.8,000/- to Rs.10,000/- per acre per year. There is no dispute that the appellant was having a joint family along with his father being his only son. As per the statement of the accused-appellant under Section 313 Cr.P.C., he stated that he used to get Rs.3,30,000/- per year from the said land. The land was shown in cultivating possession of the original owner, i.e. Nazar Singh, the father of the appellant. The learned trial Court again erred in not calculating the income derived from this land on the ground that this land was not shown to be in cultivating possession of the accused-appellant. It is believable that the minimum income derived from this 11 acres of agricultural land could not be less than Rs.3,30,000/- as stated by the accused appellant in his statement recorded under Section 313 Cr.P.C.

22. DW4, Veer Bhan, son of Darshan Singh, brother of Smt. Dalbir Kaur, the wife of the accused-appellant stepped into the witness box to prove that his father Darshan Singh gave Rupees one lac to his sister in the year 1989-90 and another Rs.1,00,000/-, in the year 1990-91, in cash, as her share in the property of their father. A duly sworn affidavit dated 09.09.1994, duly attested by the Executive Magistrate, Shahkot, Ex.DW4/A, has been brought on record. The statement of this witness was recorded on 18.03.2011. By no stretch of imagination, the affidavit cannot be got attested on back date. The statement of

this witness duly corroborated by the affidavit proves that his father gave Rupees two lacs to Smt. Dalbir Kaur during the period from 1989 to 1991. The learned trial Court ignored this income by observing that no evidence has been produced to show as to what income Darshan Singh was having and this money was not shown by the appellant in his income tax returns. The learned trial Court has failed to notice that the affidavit is duly attested much prior to the registration of the present case. The money received by Smt. Dalbir Kaur, from his father in lieu of her share in the property is her personal income and the accused appellant is not required to show this money in his own income tax/office returns. Be that as it may, if there is any lapse on the part of the appellant, in not showing this money in his own returns, it is only an omission, the benefit whereof, cannot be accorded to the prosecution.

23. DW11, Tek Singh, proved that he had been paying Rs.54,000/- per year for three acres of agricultural land situated at village Bahadurgarh, Jandian, Distt. Bathinda, to the accused-appellant. This witness has proved a receipt Ex.DW11/A for the period from 1995 to 1998. The learned trial Court has wrongly discarded the income of the accused-appellant received from DW11, Tek Singh, which comes to Rs.1,62,000/-. This income is to be added in the income of the accused/appellant. There is no

justification recorded by the learned trial Judge to ignore the same.

24. Similarly, DW15, Sukhmander Singh, shopkeeper, proved that he had taken 4 ½ acres of agricultural land @ Rs.22,000/- per acre, situated in village Dhandewala, Distt. Muktsar, on 15.06.1995 from Budh Singh, accused-appellant. He paid a sum of Rs.99,000/- as lease money in cash to the accused appellant for one year vide receipt Ex.DW15/A. The prevalent lease money at that time was Rs.22,000/- per acre per year. This is the un rebutted statement. This witness proved that the total lease money received by the accused-appellant was Rs.4,59,000/-, for the period from 1995 to 1998.

25. Thus, in all, the learned trial Court did not take into consideration the following income:-

- Rs.8,60,000/- Rent from shops at Bathinda
- Rs.3,30,000/- income from agricultural land of Talwant Nepala
- Rs.2,00,000/- given to Dalbir Kaur, wife of the appellant by her father.
- Rs.4,59,000/- received as lease money from DW11 Tek Singh and DW15 Sukhmander Singh

Total Rs.16,49,000/-

26. This Court, again got it verified from the prosecution during the pendency of the appeal before this bench, as to what was the rent derived by the accused-appellant and his family

members from the rental income or lease money. Rather, the report placed on record is in consonance with the plea of the accused, fully explaining his known sources of income in his defence.

27. PW-1, Inspector Shamsheer Singh, who was a part of the investigation team, admitted in his cross-examination that some of the rooms on the ground floor were being used as commercial shops. He further admitted that no verification was made in his presence from any neighbour about the ownership of the building searched.

28. PW-3, Kishori Lal, Inspector Vigilance, admitted in his cross examination that the shops are built in the front portion of the house of the accused situated on the Bathinda-Malaut Road, opposite to the Thermal Plant. He further admitted that in the house of the accused at Muktsar, two portions were on rent. He further admitted that house of the accused at Muktsar was also attached with a cattle house.

29. The Investigating Officer, PW-30, DSP (Retd.) Baldev Singh, has stated in his cross-examination that he had not recorded the statement of any witness regarding income of the accused from agriculture during the above check period, the alleged agriculture income had not been taken into account in the income of the accused and that he did not remember if the amount of Rs.1,89,200/-, received by the accused as award money was

taken into account during the investigation. He further stated that one shop which had been let out by the accused at Malaut Road, Bathinda, which is part of the house of the accused, and that shop consists of one room, and that he had not recorded the statement of that tenant regarding the rent and the period of payment of rent by the tenant. This witness denied the suggestion that there were 7-8 shops in the house. He, however, admitted that he did not record the statement of Dalbir Kaur or any other person regarding the ownership of the house and the fact of tenancy. He further admitted that the above referred rental income was not accounted for in the income of the accused during the check period. This witness further admitted that he did not know if the accused owned any property at Hari Ke Pattan. This witness has also not recorded the statements of the parents of Smt. Dalbir Kaur, regarding the payment of Rs.2,00,000/-, to her.

30. On the other hand, there is a specific assertion of the appellant that he had received rent of Rs.8,60,100/-, from the shops at Bathinda. In the circumstances, the trial Court was under obligation to consider the documentary evidence produced by the appellant, considering the fact that no inquiry was conducted by the investigating officer in this regard. It is not explained as to why the documentary evidence produced by appellant before the learned trial Court was not considered and what was the foundation of the satisfaction arrived at by the learned trial Court

in determining the rent at the rate of Rs.150/- to Rs.200/-, per month. The subjective satisfaction, contrary to the record, is of no consequence. This Court, in order to satisfy its conscience, directed the learned State counsel to obtain necessary information with regard to the prevalent rate of rent in the area. The learned State counsel has placed on record the statements/information gathered through the concerned police station, which is taken on record as Mark 'A'. From the perusal of this record, it emerges that the prevalent rate varies from Rs.4,000/- to Rs.5,000/- per month per shop.

31. It is established principle of law that if the defence version is more probable than the prosecution version, full weight has to be given to the defence version. The evidence produced by the accused-appellant is probable and trustworthy. The learned trial Court has legally and factually erred in ignoring the above income derived by the family of the accused-appellant from various sources. The observation of the learned trial Court that the total income of the appellant during the check period from the known sources was Rs.5,96,648.10 is palpably erroneous. The above income of Rs.16,49,000/-, proved by the accused-appellant in his defence is to be added in the entire income proved by the prosecution. Thus, the total income of the accused-appellant and his family from all sources comes to more than Rs.22,45,000/-.

The prosecution has proved the expenditure of accused-appellant

during the check period as Rs.15,58,548/-. Thus, it cannot be said that the expenditure incurred by the accused-appellant was more than the known sources of the income of the appellant.

32. In view of the above discussion, this Court feels that the prosecution has failed to prove that the accused-appellant was possessing assets disproportionate to his known source of income.

33. Consequently, the present appeal is allowed; the impugned judgment and order of conviction/sentence passed by the learned trial Court is hereby set aside; and the accused-appellant is acquitted of the charge framed against him. The appellant is stated to be on bail. His bail bonds shall stand discharged.

25.02.2015
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(JITENDRA CHAUHAN)
JUDGE

Note: Whether to be referred to reporter ? Yes/No