In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.S-1783-SB of 2003

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Date of decision:4.11.2015

Chaman Lal

...Appellant

v.

State of Punjab

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Gautam Dutt, Advocate for the appellant.

Ms. Simsi Dhir Malhotra, Deputy Advocate General, Punjab for the respondent-State.

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Inderjit Singh, J.

This criminal appeal has been filed by appellant-Chaman Lal challenging the impugned judgment of conviction and order of sentence dated 5.9.2003 passed by learned Special Judge, Sangrur, whereby he has been held guilty and convicted for the offence under Section 13(1)(e) of the Prevention of Corruption Act, 1988 (hereinafter referred to as `the Act'). He has been sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹5,000/- and in default of payment of fine to further undergo rigorous imprisonment for one month.

The brief facts of the prosecution case are that the prosecution has sent-up accused Chaman Lal, Inspector Grade-II, Food and Supply

Department to face trial in case FIR No.81 dated 4.12.1993 registered at Police Station Ahmedgarh for the offence under Section 13(1)(e) of the Act for his allegedly having been found accumulated assets disproportionate to his known sources of income between the period from 1.4.1980 to 30.11.1986. His income from all known sources was calculated to be ₹1,66,126/-, whereas his expenditure during the said period amounted to ₹2,54,293/- and thus, property worth ₹88,167/- was found spent by him, which he could not account for, which was alleged to be misconduct on the part of accused-Chaman Lal, Inspector, Food and Supply Department, a public servant. During the investigation, the evidence was collected. After necessary investigation, the challan was presented in the Court.

On presentation of challan, the trial Court finding prima facie case against the accused, framed charge for the offence under Section13(1)(e) of the Act, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Smt. Saroj Prabhakar, Superintendent, Office of Director, Food and Supply, Punjab, who mainly proved sanction to prosecute the accused Ex.PA. PW-2 Smt. Harjit Kaur, Junior Assistant deposed that she had brought the record pertaining to the income of the accused w.e.f. 1.4.1980 to 30.11.1986 as salary statement for this period is Ex.PB. In cross-examination PW-2 stated that the accused was paid salary w.e.f. 1.4.1980 to 31.12.1986 for ₹77,065.95. PW-3 Sarwan Singh, Manager, State Bank of Patiala produced the statement Ex.PC of account of Smt. Amarjit Kaur wife of Chaman Lal. PW-4 Hem Raj, Clerk, PHC, Fatehgarh Sahib mainly deposed that he has brought the salary statement Ex.PD of Amarjit Kaur ASM w.e.f. 1.4.1980 to 30.11.1986. In cross-examination, she deposed that Amarjit Kaur drew total emoluments to the tune of ₹75,216.55. Apart from this salary, no other payment had been paid to Amarjit Kaur. PW-5 Dharminder Singh, Draftsman deposed regarding site plan Ex.PE. PW-6 Surjit Singh deposed that they are five brothers and four sisters and vide registered sale deed Ex.PF 4 Biswas of land was purchased by Chaman Lal and Amarjit Kaur for ₹3,000/-, which was jointly owned by him with his brothers and sisters. PW-7 Ramesh Kumar, Clerk, office of SDM, Dhuri, brought the record regarding sale deed dated 4.6.1980 executed by Surjit Singh,Sukhdev Singh etc. for consideration of ₹3,000/- i.e. half share in favour of Chaman Lal and half share in favour of Amarjit Kaur. Certified copy of the sale deed is Ex.PF. He further deposed regarding another sale deed dated 11.11.1986 executed by Smt. Shinder Kaur in favour of Amarjit Kaur for consideration of ₹7,500/-. The third sale deed dated 22.7.1985 had been executed by Sukhdev Raj in favour of Chaman Lal for consideration of ₹40,000/- and ₹5,000/- was paid as stamp duty. He next brought the sale deed dated 19.8.1986 executed by Sukhdev Raj as attorney of Hari Bhagwan Thapar for consideration of ₹40,000/-. He also brought the record relating to sale deed dated 1.7.1986 executed by Baldev Singh in favour of Chaman Lal for consideration of ₹20,000/- and ₹2,500/- was paid as stamp duty. PW-8 Harinder Singh, Clerk office of DFSE, Bathinda deposed regarding the service book etc. PW-9 Kamlesh Kumar deposed that he is partner of M/s Subhash Iron Store, Ahmedgarh and M/s Goel Bros. Ahmedgarh. He deposed that Vijay Kumar purchased iron bars and cement valuing ₹20/22 thousands from their firm and the entire payment of purchase was made to them by Vijay Kumar. This witness has not supported the prosecution version and was turned hostile. PW-10 Yadwinder Singh deposed that he sold one plot of about four Biswas for ₹28,000/- to his brother Kuldip Singh and that land was belonging to Amarjit Kaur. He also stated that he had not sold the car to Chaman Lal. This witness has not supported the prosecution version and has also been turned hostile. PW-11 Tek Chand, Clerk, office of DC, Sangrur mainly deposed that he was posted as Registry Clerk in the year 1993-94. He deposed that sale deed dated 3.10.1985 was executed by Khushdev Chand in favour of Chaman Lal etc. Another sale deed dated 3.10.1985 for consideration of ₹2,000/- has been executed by Khushdev Chand and Chaman Lal in favour of Kamlesh Kumar. He earlier deposed that another sale deed dated 9.1.1986 for consideration of ₹49,000/- was executed by Khushdev Chand and Chaman Lal in favour of Jagdev Singh etc. He also deposed regarding sale deed dated 26.6.1986 for ₹36,000/- executed by Khushdev Chand Chaman Lal etc. in favour of Pushpinder Singh. He further deposed regarding other sale deed dated 15.10.1986 executed by Khushdev Chand Chaman Lal etc. in favour of Gurmail Singh etc. for consideration of ₹5,000/-. In cross-examination, he stated that the sale deed dated 22.8.1985 for ₹6,000/- was executed by Hari Chand in respect of 484 Sq. feet in favour of OMB Parkash etc. He also stated about original sale deed dated 18.5.1987 for consideration of ₹49,000/- executed by Khushdev Chand, Chaman Lal etc. in favour of Karam Singh etc. He also deposed regarding sale deed dated 15.6.1989 for a consideration of ₹2,82,000/- of 35 Kanals 17 Marlas of land sold by Khushdev Chand Chaman Lal in favour of Chhaju Singh etc. by Khushdev Chand, Chaman Lal etc. He also stated that sale deed dated 9.12.1985 for a consideration of ₹49,000/- was executed by Khushdev Chand, Chaman Lal etc. in favour of Gurcharan Singh etc. PW-12 Ajmer Singh, SP(H), Ropar deposed regarding investigation of this case. He stated that he prepared `Ruqa' against accused and sent it to Police Station Ahmedgarh for registration of FIR. He also stated that he formally arrested the accused on 6.1.1994 because he was on pre-arrest bail. He correctly recorded the statements of Kamlesh Kumar and Yadwinder Singh. He also stated that challan was prepared by him.

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 also stated that during this long period apart from his and wife's income from the Government job, he had agricultural income, rental income from his shops at Bhawanigarh enough and also from residential houses at Ahmedgarh. He stated that he had disclosed about his income to the Investigating Officer, who did not mention the same knowingly.

In defence, the accused examined DW-1 Mandip Singh, Clerk, PHC, Fatehgarh Panjgrahian, who brought the original record of allotment of Government quarter to Mrs. Amarjit Kaur wife of Chaman Lal. DW-2 Baljinder Singh deposed that he had seen agreement dated 18.8.1986 executed by Chaman Lal in favour of Janvir Singh to sell his house for consideration of ₹30,000/-. At that time, ₹20,000/- were paid by Ajaib Singh to Chaman Lal as earnest money and the day for registration was fixed as 15.11.1986.

After going through the evidence on record, the learned trial Court held that the prosecution has succeeded in proving its case against the accused, who was found in excess amount to the tune ₹28,000/- more than his source of income and vide its impugned judgment and order, convicted and sentenced the accused-appellant for the offence as mentioned above.

At the time of arguments, learned counsel for the appellant argued that the learned trial Court has wrongly placed reliance regarding saving of $1/3^{rd}$ only in this case when both husband and wife are earning hands. He argued that this formula of saving of $1/3^{rd}$ is not a preferred base in assessing this disproportionate case. He argued that it is proved on the record that both husband and wife's total salary income is ₹1,52,282/- and after taking the sale proceeds of the sale deeds executed by the accused etc. reached to the conclusion that there is unexplained amount of ₹28,000/-. Learned counsel for the appellant stated that the version of the accused-appellant has not been considered by the Investigating Officer and the Investigating Officer has not collected evidence regarding the total income of the accused-appellant. Learned counsel for the appellant further argued that the trial Court has not considered the sale deeds Ex.D.1/A, the agreement dated 18.8.1986 Ex.DB and opening balance in the bank account of the wife of the appellant Ex.PC duly proved by PW-3 and after considering all these facts there is no disproportionate assets in the present case.

On the other hand, leaned Deputy Advocate General, Punjab appearing for the respondent-State argued that the prosecution has duly proved its case by leading evidence and there is no merit in the appeal and the same should be dismissed.

I have heard learned senior counsel for the appellant and learned Deputy Advocate General, Punjab appearing for the respondent-State and have gone through the evidence on record minutely and carefully.

From the record, I find that first of all the Court cannot strictly took the saving only of 1/3rd specially in the circumstances when both the spouses are earning hands. If only husband earns in the family, even then the rule will apply that after meeting household expenses with 2/3rd of the salary, he will save 1/3rd which means that in the present case with the salary at ₹75,000/- for the house expenditure can save ₹25,000/- i.e. 1/3rd of the salary and when with the 1/3rd saving of the salary he is meeting whole expenditure of the house, if the wife also earns ₹75,000/-, then this Court cannot conclude that her 2/3rd income will also be spent on the household compulsorily and only 1/3rd will be treated as saving. Where both the spouses are earning hands, there is every possibility of saving the amount more than 1/3rd in total. Therefore, on this ground alone a reasonable doubt exists in the prosecution version. Out of the salary of both the spouses which comes to more than ₹1,52,000/-, the Court has held only disproportionate assets of the amount of ₹28,000/-.

On this point, I am supported by the judgment of this Court in Dalip Singh v. State of Punjab, 2003 (4) R.C.R. (Cr.) 464, wherein it is held that it is not expected of a government official that he must show every saving of every month in his account being maintained in the bank. He can keep some amount with him out of his savings. It is also held in this case that if savings of accused are deducted to extent of 1/3rd as per rules, there cannot be any hard and fast rule in this regard. It depends upon the constitution of the family also. I have gone through the law laid down in this judgment, which fully applies to the facts of the case.

Secondly, I find that the learned trial Court has not considered the amount of ₹20,000/- received as earnest money vide agreement dated 18.8.1986 which has been duly proved by DW-2 Baljinder Singh. The trial Court had also not taken the opening account of wife of the appellant amounting to ₹4,260/-. Learned counsel for the appellant also argued that sale deed Ex.D.1/A has not been considered by the learned trial Court. Even otherwise, a person is not supposed to keep all the saving amount in the bank. The amount is also kept in the house for emergency needs. There is nothing in evidence that what amount was lying in the house. The amount of ₹28,000/- in six years means the amount disproportionate is less than ₹5,000/- per year, but such a small amount can be saved per year when both husband and wife are earning hands.

Therefore, keeping in view the facts and circumstances of the present case, I find that a reasonable doubt exist in the prosecution version to prove the guilt of the accused/appellant. Further more, the Investigating

Officer PW-12 in his statement in cross-examination has stated that he did not examine if house owned by accused at Ahmedgarh remained on lease with tenants. He again said that he cannot say that their aforesaid house was fetching monthly rent of ₹300/- from Jarnail Singh. He also stated that he did not investigate as to how much agricultural land came to his share from his father nor he investigated that the accused had inherited two shops from his father or he was receiving its rent from the tenants. He further stated that he did not investigate nor it was pointed out to him that the accused had agricultural income out of land which had fallen to his share. He further stated that the bills or receipts showing payments regarding the repairs carried out in the house were not produced before him. Volunteered he got it assessed from some building expert, whose name he does not remember nor he recorded his statement.

Keeping in view the cross-examination of the Investigating Officer, it also creates a reasonable doubt in the prosecution version. The Investigating Officer has not investigated all the income and expenditure correctly.

Therefore, from the above discussion, I find that the prosecution has failed to prove its case beyond reasonable doubt. Keeping in view the fact that a reasonable doubt exists in the prosecution version, hence benefit of doubt is to be given to the appellant. Therefore, by giving benefit of doubt to the appellant, he is acquitted of the charges as framed against him.

In view of above discussion, I find merit in this appeal and the same is allowed. The impugned judgment of conviction and order of sentence recorded by the learned trial Court are set aside and the appellant is acquitted of the charges of which he was convicted. Since, the sentence of the appellant has been suspended and he is on bail, his bail and surety bonds stand discharged.

November 4, 2015. **(Inderjit Singh)**
Judge

hsp