IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 701 of 2013

Against the order dated 03.10.2013 passed by Shri Nand Kumar Srivastava, Additional Sessions Judge-10-cum-Vigilance-Authorised Officer, Special Court No-II, Patna, in Special Case No. 04 of 2010.

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1. Raghubansh Kunwar, Son of Late Ram Ekbal Kunwar.
2. Lalita Devi, Wife of Raghubansh Kunwar

Both Residents of Kanti Factory Road, Gandhi Nagar, PS - Patrakar Nagar, Kankarbagh, District – Patna.

.... Appellants

Versus

The State of Bihar through the Vigilance, Patna

.... Respondent

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Appearance :

For the Appellants : Mr. Binkeshari Singh, Senior Advocate.
Mr. Hemant Kumar, Advocate.

For the Vigilance : Mr. Ramakant Sharma, Senior Advocate.
Mr. Arbind Kumar, Advocate.
Mr. Santosh Kumar Pandey, Advocate.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

CAV

Date: 28-06-2016

1. The appeal is directed against the order dated 03.10.2013 passed by the authorised officer Special Court (2nd Vigilance) passed in a proceeding under Section 13 of Bihar Special Court Act, 2009, by which it has been ordered to confiscate the movable property mentioned in Column Nos. 1, 2, 3 and 4 of Schedule 'A' and immovable property mentioned in Item No. 1, 2, 3 and 4 of Schedule 'B' of the petition be confiscated by the Government with a direction to appellant nos. 1 and 2 to immediate hand over the property to the District Magistrate, else District Magistrate, Patna, authorised to take

possession of the property within thirty days and if the appellants refused to give possession then District Magistrate shall proceed in accordance with law in usual course.

2. A petition has been filed under Section 13 of Special Court Act by Special P.P. and Dy.S.P. for confiscation of the property mentioned in Schedule 'A' and 'B' of the petition that appellant Raghubansh Kunwar, his wife Lalita Devi and five daughters, one married and four unmarried have acquire movable and immovable property by offence i.e. beyond known source of income during the check period from 1983, September the date he joined the service in Biscoman as Assistant Engineer till 24.09.2008, the date of search and seizure. Raghubansh Kunwar was married with Smt. Lalita Devi before he joined the service and during the period they were blessed with five daughters. During the period from the date of his joining of service in September, 1983 till the date of his arrest or search i.e. 24.09.2009, he earned Rs. 25,85,239/- (Rupees twenty five lakhs eighty-five thousand two hundred thirty-nine) from salary out of his known source of income. During the period the income from other source was found nil as no income was declared by Shri Raghubansh Kunwar through other source of income. Out of income earned by Shri Raghubansh Kunwar from his salary and as per normal theory of vigilance only 1/3rd of his income can be saved after his expense, so

the maximum saving by the delinquent from his salary at best Rs.8,61,746/-.

3. Further from search of the house of Shri Raghubansh Kunwar (1) cash recovered from the house at Patna was found Rs.1,94,500/- (2) household goods found in the house at Patna to the tune of Rs.4,30,000/- and as per inventory list gold and jewelries was found to be Rs.14,00,000/- and a draft made from S.B.I., Gaya, A/c No. 01190072597 in the name of Raghubansh Kunwar was Rs. 8,22,963/-.

4. Further the immovable assets found in his possession was (1) land of Mauza Shadikpur Yogi, Khata No. 69, Kheshra No. 696 and 697, Thana No. 09, Rakba-2 Katha standing in the name of Smt. Lalita Devi, wife of Raghubansh Kunwar having valuation of the property is Rs. 1,00,000/- existing at Patna, (2) four storied building on the said land above mentioned bearing House No. 50A/1293, Gandhi Nagar, Patna, standing in the name of Lalita Devi having valuation of Rs. 15,26,601/- (3) A immovable property, a land at Mauza-Shadipur Yogi, Thana No. 09, Kheshra No. 697, Rakwa- area 3 Katha, 19.25 Dhurki(Gandhinagar Patna) standing in the name of Lalita Devi, wife of Raghubansh Kunwar having valuation of Rs. 4,15,000/-, (4) boundary wall and four asbestos roofed rooms on the above land standing in the name of Lalita Devi, wife of delinquent at

Patna, valuation of Rs.1,00,000/- and (5) a building in the Village-Taran, P.S. Mohaddinagar, District-Samstipur in the name of Shri Raghubansh Kunwar valuation of said building worth Rs. 3,72,000/- and hence total immovable property found to existing worth Rs.25,13,601/-.Hence, it was found total property movale+immovable property was found to be worth Rs.53,61,064/-. However, deducting the savings i.e. Rs. 8,61,746/- from the total assets was found in possession of the appellant worth Rs. 53,61,064/- the disproportionate assets come to the tune of Rs.44,99,318/- which was alleged to be kept by the delinquent Raghubansh Kunwar as well as his other family members was disproportionate to his known source of income. Hence it was found appellant was in possession of the property more than known source of his income in his name as well as his family members.

5. Consequently, on the petition filed under Section 13 of Special Court Act, a notice was issued to appellant Raghubansh Kunwar and his wife Lalita Devi under Section 14 of the Special Court Act. The appellant Raghubansh Kunwar came and reply to the notice disclosed that amount seized to the tune of Rs.1,94,500/- belong to his wife Lalita Devi and this is her personal property and she has earned the said amount from rent from the house as her Shtreedhan and other source which she had kept for marriage of her

daughter

6. He further claims that with regard to Item No. 2 the valuation of movable property has not been properly calculated. It has been asserted that in Column No. 8 in place of Rs.5,000/- it has wrongly been shown as Rs.15,000/- as the valuation of two geysers, but no valuation of the geyser has been given.

7. It is further stated with regard to Item no. 3 disclosed the said jewellery is of his wife Lalita Devi which is Shtreedhan which cannot be confiscated.

8. With regard to Item No. 4, it is stated the said amount is salary amount which was earned from the salary account and that cannot be said to be disproportionate asset.

9. It has further been contended that the appellant had got five bighas of agricultural land out of which he has earned Rs. 85,000/- per year and in this manner he earned Rs. 20,00,000/- during the check period. It has further been contended that salary earned was Rs. 30,41,830/- and if agricultural income is added to the tune of Rs.20,00,000/- during the check period then total income comes to Rs. 50,41,830/- and it is not disproportionate income of the victim.

10. Lalita Devi in her reply to notice has stated that she had earned Rs.1,94,500/- from the rent and earned by Shtreedhan and other source. With regard to Item No. 3 she has stated that said

jewellery are her shtreedhan which she earned at the time of her marriage from her father, mother and other family members. It has further been asserted that the valuation of the jewellery is wrongly done and on re-valuation of jewellery it has comes to Rs.2,43,054. It has been stated that at the time of marriage she was only one sister amongst six brothers and her father was also a Zamindar and she got the gold, cows and cash at the time of her marriage. She has stated that after the marriage she started business of dairy at her sasural and earned money so she could save some money from the business of milk. Thereafter, she purchased the land in the year 1990 and made construction over it. During construction, she found lack of fund so she sold some of her jewellery. Subsequently shifted her business to Patna which continued till 2003. Thereafter, by saving some amount from the said dairy business at Patna she again purchased land worth Rs.4,15,000/- on 28.04.1998 and 03.08.1998 by two sale deeds and has given return in the income tax department.

11. The delinquent Raghubansh Kunwar submits that movable property in Column No. 5 belongs to his mother and two brothers as the building standing on the joint family property. The joint family had 18 bighas ancestral land got from his father and said property belongs to his mother and three brothers. Out of said 18 bighas of ancestral land each of three brothers have got 5 bighas of

land each and mother got 3/1/2 bighas and residential house fell in share of his mother and two brothers. It has further been pointed out that two brothers lives with his mother. Further it is stated that after death of his father Ram Ekbal Kunwar ,the house was built by the agricultural income and hence property left by Ram Ekbal Kunwar between 1985 to 1990 belongs to Laxmi Devi and her two sons.

12. Taking into consideration the reply given by the parties, the Special Judge held that cash worth Rs. 1,94,500/- liable to be confiscated rejecting the objection that amount has been earned by Lalita Devi and she has neither given any account regarding income of rent nor there is any declaration of Shtreedhan by her husband nor they have disclosed any satisfactory explanation of their economical income and no document has been shown regarding receipt of rent or dairy business. The authorised officer also rejected the plea of Lalita Devi of dairy income or income by rent as the there is no mention of any such sale deed and source of income which did not inspire confidence to be believed, rather held that said property having been earned by the disproportionate income gain by illegal means. Hence held that cash recovered Rs. 1,94,500/- is liable to be confiscated. However, movable property mentioned in Item No. 2 shown to be Rs. 4,30,000/- and objection raised in Item No. 8 instead of Rs. 1,000/- it has been mentioned as Rs. 5,000/- and in the list, valuation of geyser

has not been mentioned and has been written as Rs. 15,002/- so there is no unity in the valuation and so there is confusion or diversity in evaluating and hence the court below considered that the valuation instead of Rs. 4,30,000/- be deemed to be Rs. 4,29,498/- and held that this property is liable to be confiscated. With regard to Item no.3 movable property it was held that cost of jewellery shown to be Rs.14,00,000/- and on the revaluation it comes to Rs. 2,40,354 and hence it was held that vigilance has shown valuation of Rs.11,54,494/- more. Hence, this higher value of Rs. 11,54,494/- was deducted from the original income and disproportionate property income was held Rs. 33,42,770/- and since claim of Lalita Devi, the said property is Shtreedhan property, gained during the marriage, but regarding the said jewellery, there is no declaration by Raghubansh Kunwar and hence held that said jewellery has been obtained by illegal means liable to be confiscated.

13. With regard Item No. 4 movable properties, received as salary from the Government Treasury and there is no other deposit in the said salary account has been made. So that amount to the tune of Rs. 8,20,000/- liable to be deducted from the disproportionate property. However, Special Court held that during the period in between 2004 to 2008 only Rs. 18,720/- was withdrawn on 20.02.2006 and Rs. 25,000/- on 23.02.2006 from the salary account

and hence it shows nothing was spent for kitchen for food, clothes and education or marriage or for other expenses. Thereafter, on 10.09.2008 the delinquent withdrawn Rs. 8,20,000/-. Hence, held that the said amount obtained by illegal means and is not liable to be deducted from the disproportionate assets.

14. With regard to movable property is mentioned in Item No. 1, 2, 3 and 4, it has been held that Lalita Devi had purchased two properties in 1990 and .1997-98 by two sale deeds. She has shown her income from rent, shtreedhan and dairy business. The construction made on the said land was shown to be worth Rs.15,26,601/-. She had neither disclosed any income nor has she filed any document with regard to her income from dairy business or income from rented house. She has neither disclosed earlier regarding source of income nor she has been able to give satisfactory explanation of her income nor produce any paper.

15. With regard to Item No. 5, a house constructed on the ancestral land, it has held that prosecution has not been able to prove that said building was constructed by illegal income of the appellant Raghubansh Kunwar.

16. The joint family had 18 bighas of land and constructed of the said building to the tune of Rs.3,72,000/- may have been constructed by the joint family ordered to be deducted that property

from the disproportionate property and deducting Rs. 11,54,446/- from Item No. 3 of the movable property as valuation of jewellery was found Rs.2,43,434/-. Further Rs. 3,73,000/- cost of the building of ancestral land.

17. The claim of the appellant that he has got Rs. 85,000/- yearly income from the agricultural land of his share if it has been held that since the appellant in his income tax return has shown his agricultural income zero and so it has been held that the appellant has got no income from the agricultural land.

18. The authorised officer further rejected the plea that saving of the appellant is about 2/3rd of his income as held in Sajjan Singh Versus The State of Punjab and Harayana reported in AIR 1964 SC page 464 is not applicable as it depends upon fact to fact of the case.

19. The authorised officer held that taking into consideration the fact that appellant Raghubansh Kunwar has got five daughters and none of the family members have got any source of income and the appellant has to meet the cost of the kitchen as well as education of five daughters and in such circumstance it will not proper to hold that appellant could have save 2/3rd of his income and hence it was ordered to confiscate movable property mentioned in Column 1, 2, 3 and 4 of Schedule ‘A’ and immovable property mentioned in Column Nos. 1, 2, 3 and 4 of Schedule ‘B’ with modification of deduction of

Rs. 11,00,000/- of Item No. 2 and deduction of Item No. 3 of movable property which is house on ancestral land.

20. Learned counsel for the appellants has challenged the order passed by the authorised officer on the ground that agricultural income of the appellant has not been taken into consideration. It has further been contended that income for dairy and shtreedhan of Lalita Devi, wife of the appellant has not been considered properly and learned court below has mechanically rejected the plea of Lalita Devi whereas appellant no. 2 has filed income return regarding her independent income from the business of dairy milk and income tax return has been accepted. It has further been contended that Lalita Devi has given return since 1995 with regard to her income, but the same has not been taking into consideration by the trial court. It has further been contended that prosecution has to prove the case beyond reasonable doubt, but the same principle is not applicable to defence as defence has only to prove preponderance of probability to show that prosecution has not been able to establish charge beyond reasonable doubt. It has further been asserted that since the defence has produced prima facie evidence and material that appellant Raghubansh Kunwar had five bighas of land. Further Lalita Devi has taken defence that she earned the income from the dairy as well as other business and rent from the house and had filed income tax return

which had been accepted by the income tax authority so she has to file Income Tax return to prove her defence as prima facie true and submitted that court below erred to consider defence set up by the accused persons on the matrix to prove beyond reasonable doubt is not accepted and reliance has been placed on decision reported in 2001(1) PCCR 99 and it is contended that when the wife has filed income tax return which has been accepted then that property cannot be said to be the assets of the accused. It has further been contended that amount which he received by salary likely to be saved to the tune of Rs. 8,61,746/- as mentioned in column no. 4.

21. It has further been contended that 2/3rd salary of the appellant Raghubansh Kunwar could have been saved and saving instead of 1/3rd so it requires to be calculated as 2/3rd savings. It has further been contended that 10% excess assets is permissible in law and further ornaments received in the wedding cannot be assessed.

22. Learned counsel for the Vigilance however submits that position in law is well settled that defence not required to prove his case beyond reasonable doubt, but the defence set up must seems to be probable on the foundational fact which requires to pass the test of preponderance of probabilities i.e. must established the probability. It has further been contended that defence has set up the claim of Lalita Devi regarding her income from dairy business as well as income

from the rent. However, she could not have produce any basic material to show that she was actually and factually engaged in dairy business for which she has neither produced any document regarding business of dairy during the period nor any paper to show that she was doing dairy business. Though, she claimed to have been collected rent, but since the time of purchase of land in the year 1990, she had not received any rent nor there is any probability, she could not give any material to suggest regarding her earning in the year 1990 by dairy business as there is nothing in her explanation to probable the presumption that she was engaged in dairy business since 1993 as no document or materials were produced regarding her engagement in dairy business. Nor there is any evidence that she was earned by rent nor any rent receipt or any document or material has been produced which suggests that earning of the appellant, Lalita Devi from dairy business or rent. Hence, the income tax return without any material to suggest the income either by dairy or rent that whole explanation is only an attempt to turn black money earned by illegal means or offence has been tried to convert into white money by paying income tax to accommodate and convert money earned by offence be converted into white money.

23. However going into the fact and circumstance of he case, it is admitted case that the appellant Raghubansh Kunwar was sole

earning member of his family was blessed with five children. The appellant had to bear the and blessed with five children and all the daughters the expenses of the wife and five daughters and in such circumstances claim of saving to the tune of $2/3^{rd}$ is not at all acceptable.

24. The claim of the appellant Raghubansh Kunwar regarding his earning from 5 bighas of land is concerned, it is apparent that father of the appellant had two sons and his wife were depending on the aforesaid land and father died. It has further been mentioned that appellant claimed that during the life time of his father he got 5 bighas of land in his share and other two brothers also got 5 bighas of land each in the year 1993 and his mother got 3/1/2 bighas in her share. Further, the mother of the appellant had constructed the ancestral house. However, it is not possible for mother to save out income of 3/1/2rd to save such amount to construct house after meeting her expense.

25. With regard to seizuere of Rs.1,94,500/- in the house of the appellants, the appellant Raghubansh Kunwar had been claimed that said property belongs to his wife as Shritidhan Further Lalita Devi claimed that the said money was her Shritidhan property having been earned from rent and other sources and kept the amount for the purpose of marriage of her daughters. She has further claimed the said

amount calculated by the Income Tax Department.

26. Learned counsel for the appellants having relied upon decision reported in 2001(1) PCCR page 99 and submits that income tax return filed prior to the instant case cannot be added as the property or money earned by offence and that amount be separated.

27. However, going into the question raised, it is apparent that Lalita Devi wife of Raghubansh Kumwar, as per her show cause, claims that she is only female member in her family amongst four brothers and her family is a landlord family. At the time of her marriage, her family gifted her heavy amount and jewelries. However, she had claimed that after marriage in the year 1973, she started dairy business and continued this dairy business from 1973 at her sasural till she purchased the land in Patna in the year 1990 for consideration of Rs.1,00,000/-. Thereafter, she claims that she shifted her dairy business in Patna. During the period, she constructed the house over the land to the tune of Rs.15,26,201/-. Subsequently, she again purchased the land in the year 1998. However, she has neither shown any document regarding her business of dairy nor shows any document regarding receipt of rent. There is no mention of any account regarding the dairy business nor showing any document regarding her income or any return filed till 1990 and even thereafter when she purchased the land and constructed the house over it

subsequently she claimed to have earned from rent and dairy business, but neither any basis nor any material have been suggested to show that she was actually or factually engaged in dairy business nor she has filed income tax return till 1990 and even subsequently till 1993-94. Thereafter, regarding the purchase of two lands by Lalita Devi, subsequently in 1998, she could not have been able to satisfy about the money by which the purchase of two lands as well as construction of the house over the plot purchased in 1990., though, she claims that building constructed by earning from her dairy business and rent or from her Shritidhan property, though, she claims to pay income tax return subsequently in the year 1997-98 but at the same time she neither produced any receipt of rent nor she has produced any paper regarding her earning from any dairy business and merely filing income tax return without showing any satisfying reply or any basic fact regarding either purchase of cow or business of dairy and earning by rent from house nor even produce receipt of payment of rent nor any material to prove the foundational fact, but merely filing of income tax return cannot be evidence for accepting explanation that appellant Lalita Devi had earned from rent or dairy business rather it only shows that she has only shown paper transaction to accommodate illegal money earned by her husband.

28. However, the fact of the case reported in 2001 (1) PCCR

99 in paragraph 6 *"that High Court found that the house in question, which is valued at Rs. 4,54,000/- was in fact an asset belonging to the wife of the respondent as claimed by the defence. It was the plea of the respondent that his wife had borrowed a sum of Rs. 1 lakh from Late Maruthareddy, Rs.50,000/- each from D.W. 15, D.W. 16 and D.W. 25 and that his father had given a sum of Rs. 1,34,000/- towards construction of that house. it was also stated that his wife had realised a sum of about Rs.70,000/- by sale of gold jewels belonging to her*" In paragraph 7 it is stated that *"evidence was led by the respondent in support of the above pleas. The prosecution itself placed on record, Ex.P-17 an income tax return filed by the wife of the respondent for the previous year. It was produced from proper forum and proved by ITO, P.W.8 Income Tax Return, Ex.P-17 had been filed by the wife on 2nd January, 1986, admittedly much before date of raid and even before registration of the case. The evidence regarding loans which where claimed to have been received by wife was led through D.W.15 and D.W.25 who stood the scrutiny of cross-examination well. Loan received by the wife from the lenders had found reflection in the accounts of those lenders with their accounts also prepared much earlier to the date of raid. It was argued before the High Court that Ex.P-17, income tax return of the wife should not be relied upon as it was an after thought, brought into existence to save the respondent*

and the High Court rightly rejected it. High Court found that the receipt of various loans what had been shown by the wife in the return that stood accepted by the income tax authority. Hence, under the facts and circumstances held that income tax return is not asset of the husband as property".

29. However, here under the fact and circumstance of foundational fact that Lalita Devi has kept cow or ever sold milk or either received rent from the tenants is missing. There is no evidence at all regarding the fact from whom she received the rent or whether any receipt was issued regarding received the rent from the house. Hence, under the fact and circumstance the assets of Lalita Devi cannot be accepted. The foundational fact is missing to infer that appellant, Lalita Devi had earned from dairy business or rent. However, it is also absurd that a young lady had kept such huge amount in her house was money from business or rent rather the probabilities that she kept the money earned by offence.

30. So far second item of the house hold article shown to Rs.4,30,000/- and only claimed that there is variation in the price to some extent, though, Special Court has well been considered that there is no material to interfere with Item No. 4.

31. However, with regard to Item No. 3, earlier it was shown that article seized as valuation worth Rs. 14,00,000/-.

However, the same was challenged by the appellant that valuation has been shown to be excess which was sent by the valuer and according to valuation it was found to be Rs, 2,43,054. However, submits that she was only one sister amongst six brothers and her father was a Jamindar and she got gold and huge amount which she claimed to be Shtridhan. However, re-valuation the amount of gold come to Rs. 2,43,054 and taking into consideration the fact it was prudent to accept a female in India has got some jewelries at the time of her marriage. The trial court rejected the plea of the appellant Lalita Devi of her Shtridhan, for the reason that husband has not given in his declaration regarding the said jewelries. However, it is impossible that a marriage lady has no jewellery at all and so the amount of jewelries shown Rs.2,43,054/- can well be presumed as Shtridhan of appellant Lalita Devi and hence this should be exempted from the declaration.

32. Learned counsel for the Vigilance submits that a case has been filed for re-valuation which was challenging by the appellants. However, there is no material finds regarding income of appellant Raghubansh Kunwar out of known source of income by a competent court other then his salary and except Shtridhan of appellant Lalita Devi.

33. With regard to Item No. 4 which was a draft made from

S.B.I. A/c No. **01190072597** in the name of Raghubansh Kunwar to the tune of Rs. 8,22,963/-, it is asserted that said amount has been received as salary i.e. amount earned by salary, so it cannot be said to be ill gotten money. However, the reason explained that the appellant, during the period i.e. from 2004 to 2008 out of total salary 8 to 9 lakhs had only withdrawn Rs. 18,720/- on 20.02.2006 and Rs. 25,000/- on 23.02.2006. Thereafter, on 10.09.2008, he withdrawn to the tune of Rs. 8,02,000 and question raised that saving of a person can only earned 1/3 of his salary. However, the appellant during the period from 2004 to 2008 only spent Rs. 18,720+25,000/ total Rs. 43,720/- rather he was required to spent 2/3rd of his salary to the extent Rs. 5,00,000/- and so during the period instead of withdrawn the amount at installment to meet the expense of kitchen and other necessity at one time withdrawn Rs. 8,02,000/- on 10.09.2008 itself indicates that he must have been spending money from offence or some other source unknown or of ill-gotten money. However, in the aforesaid withdrawal of the said amount there is no explanation how he survived during the period itself indicates doubt about or surviving of this appellant from 2004 to 2008, the money has only withdrawn on 20.02.2006 and 23.02.2006 without any explanation and only assertion that he withdrawn the amount from his salary which is not ill-gotten property is not acceptable.

34. However, attention raised by the learned counsel for the appellant that regarding Item Nos. 1 to 4 of the immovable property which are lands purchased in the year 1990 as well as in the year 1998. Item Nos. 1 and 3 are the purchase land in the year 1990 and 1997-98. Item No. 2 of construction of the house over the land purchased in the year 1990 and Item No. 4 has been shown as boundary wall and four asbestos roofed rooms on the above and construction of building and it has been asserted that this item which is part and parcel of the deed mentioned and this construction was made even prior to the purchase of the land.

35. However, taking into consideration that the appellant no. 2 is wife of delinquent had purchased the land from earning rent or either Shtridhan is not acceptable as she has not been able to produce any chit of paper either regarding dairy business or sale of jewelries nor she could not be able to show that she was land lady and ever collected rent from her tenants and in this connection no income tax return had been filed till she purchased the land in the year 1990 for a consideration amount of Rs.1,00,000/-. Further, she can not be able to show that she has any income from dairy business nor she can able to prove any material regarding her dairy business nor she could be filed any paper regarding payment on income tax return till 1990 and there is no evidence that she filed any income tax return up till 1990

and subsequently, there is no explanation how she got Rs. 1,00,000/- for purchase of the land. However, explanation has given that she purchased the land out of her earning from dairy is not acceptable at all. Further she claimed that she constructed four storied building and the aforesaid building valued worth Rs. 15,26,601/-. Further she purchased land in the year 1990 and till then she was not filed any income tax return but only filed paper regarding filing of income tax return, but there is no foundational fact regarding business of dairy or even submitted any receipt of rent earned from the tenants nor any evidence to show that any person has given rent. Hence, there is no evidence regarding her earning nor any filed income tax return for exemption of the property having been valued.

36. So far regarding Item No. 5 the claim of the appellant Raghubansh Kunwar that he got 5 bighas of land out of his family property of 18 bighas. Though, he claimed that out of 5 bighas of land, he earned of Rs. 85,000/- per year. The price index of 1993, it is difficult to say a person could able to earn Rs. 85,000/- per year. Moreover, except this appellant, total family members of the appellant Raghubansh Kunwar were five and after death of his father having their livelihood of the aforesaid land for eighteen years. Though, the appellant submits that his income Rs.85,000/- per year from the aforesaid land out of his salary in the year 1993 itself appears to be

absurd.

37. However, defence has set up to explain that out of 18 bighas of ancestral property, the appellant had got 5 bighas of land and claimed and his earning from the aforesaid land worth Rs.85,000/- per year during the check period from 1983 to 2008 is absurd proposition. Further, the appellant claimed that he got building constructed over the land situated at Village Taran P.S. Mohaddinagar, District-Samastipur to his ancestral property which was shared by his mother and two brothers. However, it appears that father of appellant was no more in the year 1980 and total property distributed among the appellant and his two brothers and his mother. All the three got 5 bighas land each and the mother got 2/1/2 bighas of land along with residential house and it is asserted that alleged house was constructed by Lakshmi Devi, the mother of the appellant from the income of agricultural land during the period from 1985 to 1990 left by the husband of Lakshmi Devi. However, the appellant has never shown in his income from agricultural land when he claimed that he was earning Rs.85,000/- per year from the said property since 1983 which may not found his salary income in the year 1983 and he did not show the amount in the income tax return itself, so his plea regarding his income from ancestral property is not acceptable.

38. However, the trial court exempted Item No. 5 from the

disproportionate property which was belonging to Lakshmi Devi, Ranbir Kunwar and Kumar Shankar Jai Kishan.

39. However, question has been raised that 2/3rd of salary of the appellant can be saved from the income and assessment must have been made that appellant could be saved out of total receipt of Rs. 1,03,000/- and only Rs. 36,000/- taken as expenditure. However, relied upon decision reported in AIR 1964 SC 464 for the proposition regarding savings of the appellant is 2/3rd spent as the land purchased and material placed itself indicates that it is depend on the fact of the case that if the husband, wife and son have all are earning members having income jointly and living together then saving can be made 2/3rd but the fact that the appellant being sole earning member had been the expenses of five daughters and wife, it is not possible to save 2/3rd.

40. Having regard to the fact and circumstance of the case, here the appellant Raghubansh Kunwar is a sole earning member and the income of his wife is not accepted and the fact that the appellant has survived five daughters and wife and in such circumstance, it cannot be presumed that appellant can save 2/3rd Hence, there is no merit in the submission of saving of 2/3rd of his income while the wife and five daughters were depending upon the appellant.

41. Having regard to the fact that assets with jewellery of Rs.

2,43,000/- shall be deemed to be the Shtridhan of Lalita Devi earned at the time of her marriage as gift which can not be held to be assets of the husband and disproportionate assets and **with this exception the appeal is dismissed.**

(Gopal Prasad, J)

m.p.
N.A.F.R.

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