

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.278 of 2015

Arising Out of PS.Case No. -10 Year- 2013 Thana -C.B.I CASE District- PATNA

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NAWAL KISHORE, SON OF LATE JHARI LAL DAS, RESIDENT OF
MOHALLA - LALLOO POKHAR (MISHRA COLONY), P.S.- KASIM BAZAR,
DISTRICT - MUNGER.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR THROUGH C.B.I., PATNA RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Ram Suresh Roy, Sr. Adv.

Mr. Karuna Nath Sahay, Adv,

For the Respondent/s : Mr. Bipin Kumar Sinha, SC, CBI

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 13-11-2017

Sole appellant Nawal Kishore has been found guilty for an offence punishable under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act and has been sentenced to undergo R.I. for three years as well as to pay fine appertaining to Rs.25000/- and in default thereof, to undergo S.I. for six months vide judgment of conviction and order of sentence dated 22.04.2015 passed by Special Judge, IInd, CBI, patna in Special Case no.06/2013 arising out of R.C. Case no.10A of 2013.

2. R.C. Case no.10A of 2013 was registered on the self-statement of V.K. Singh, DIG, CBI/ACB Patna after preliminary enquiry being reported by the postal official on 01.05.2013 on the



pretext that during check period 01.01.2006 to 30.06.2010, Nawal Kishore, son of late Jharilal Mochi, who was Sub Post Master at Ganga Darshan Munger Town Post Office, Munger accumulated huge assets in his name as well as in name of his wife, children disproportionate to his income so detailed whereupon, investigation concluded by way of submission of charge sheet, followed with order of cognizance as well as conduction of trial, meeting with the ultimate result, subject matter of challenge under the present appeal.

3. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C is that of complete denial. It has also been pleaded that there happens to be no acquisition of properties disproportionate to his income rather those properties have been bequeathed by his uncle to his wife who was working at Jamalpur Railway Factory, got retrial benefit and being issueless, was residing with them along with his wife, and that happens to be the main source of income with the aid of which acquisition has been made in name of wife as well as children, different accounts have been opened, operated upon and to substantiate the same, apart from oral evidence, documentary evidence has also been adduced, exhibited.

4. In order to substantiate its case, prosecution had examined altogether twenty PWs who are PW.1-Suresh Prasad Mandal, PW.2-Ram Bilash Sharma, PW.3-Sadanand Mandal, PW.4-Dineshwar Sah, PW.5-Ram Kishore Prasad, PW.6-Charan Murmu, PW.7-Sanjay Kumar Sanehi, PW.8-Arun Kumar Sinha, PW.9-Udai Rajak, PW.10-Fransis Kullu, PW.11-Tarasha Kumari Tuddu, PW.12-



Basudeo Thakur, PW.13-Sunil Kumar Mishra, PW.14-Radhe Shyam Singh, PW.15-Chandra Bhanu Shah, PW.16-Suman Kumar, PW.17-Alaya, PW.18-Mahesh Kumar, PW.19- Krishna Kumar Singh and PW.20-V.N. Reddy as well as had also exhibited Ext.1-Sanction order, Ext.2-Search List, Ext.2/1 to 2/2-Signature of search list, Ext.3-Inventory List, Ext.3/1 to 3/8-Signature over inventory, Ext.4-Service Book, Ext.5-Forwarding letter, Ext.5/1-Salary statement, Ext.5/2-Arrear statement, Ext.5/3-GPF Loan statement, Ext.6-Recurring Deposit, Ext.6/1-Attested photocopy of ledger of recurring account no.101674, Ext.6/2- Attested photocopy of ledger of recurring account no.801698, Ext.7-Description of all recurring accounts, Ext.7/1 to 7/7-Recurring deposits account, Ext.8/1-08/4-Photocopy of postal life insurance policy, Ext.9-Attested bank statement of Sarita Devi, Ext.10-Account opening form of Punjab National Bank, Ext.X-Photocopy of forwarding letter of PW.9 to CBI, Ext.11-Forwarding report of PW.10, Ext.12-12/12-Policy paper of both Nawal Kishore and Sarita Devi, Ext.13-13/9-Accounts open in the post office, Ext.14-Description of accounts in post office, Ext.15-15/11-Photocopy of 12 MIS accounts, Ext.16-Description of MIS accounts, Ext.17-17/5-Photocopy of all recurring deposit accounts, Ext.18-Details of all recurring deposits accounts, Ext.19-Photocopy of saving account of Sarita Devi, Ext.20-details of post office saving accounts of Sarita Devi, Ext.21-Signature of Sunil Kumar Mishra, Ext.22-Registered documents no.3723, Ext.23-23/9- Attested copy of 10 MIS accounts, Ext.24-Description of Exhibit 23-23/9, Ext.25-Detail of saving accounts of Nawal Kishore, Ext.26-Description of saving accounts, Ext.27-



Forwarding report of detailed saving accounts given to CBI, Ext.28-First Information Report, Ext.29-Receipt showing purchase of iron rod, Ext.30-Investment in UTI. In same sequence defence had also examined five DWs who are DW.1-Smt. Girija Devi, DW.2-Kartik Das, DW.3-Brahmdev Chaudhary, DW.4-Chandra Shekhar Yadav, DW.5-Nawal Kishore as well as exhibited Ext.A-Deed of unregistered will executed by Khopri Ravidas.

5. The learned counsel for the appellant while assailing the judgment of conviction and sentence has submitted that the finding recorded by the learned lower court happens to be perverse, cryptic in the background of the fact that while recording conviction and sentence, the learned lower court had ignored the legal evidence having adduced on behalf of appellant without any just, cogent reason. It has further been submitted that the proceeding since its inception suffers from inherent defect and so, did not justify the conclusion having been recorded by the learned lower court. In order to substantiate the same, it has been submitted that appellant got his employment in the year 1990 and so, the check period should have been right from 1990 as, it would not be on the whims of the prosecution. The prosecution knowingly and intentionally left the period from 1990 to 31.12.2005 in order to cage the appellant illegally otherwise the salary and the savings corresponding thereto would have been considered and calculated at the end of the prosecution including the check period as shown by the prosecution and the same would have dimidiated the allegation. It is needless to say that at least 1/3rd of total salary is legally permissible as net savings which, in



the facts and circumstances of the case, as the appellant happens to be member of a scheduled caste, getting all sorts of benefit provided by the government including grant of scholarship, providing study materials (books) copies to his children, that means to say zero expenses over education of his children, giving additional source of savings. Furthermore, the family members being employed at Jamalpur rail factory and savings therefrom including bequeath of property (movable and immovable) by his uncle in bulk happens to be the additional source including continuing contribution by her widow aunt who resides with him which, the learned lower court should have considered while calculating the asset but the learned lower court ignored the aforesaid aspect without any substance. If the aforesaid sources which are legal one are duly acknowledged, accepted and taken into consideration, then in that event, whatsoever been shown as an asset having acquired disproportionate to his saving, is found properly explained. That being so, the conviction and sentence recorded by the learned lower court did not justify its prevalence.

6. It has also been submitted that prosecution has to substantiate its case beyond all reasonable doubt and that being so, it happens to be an obligation at the end of the prosecution to properly substantiate the allegation and during course thereof, as stated above, the prosecution acted with ulterior motive whereunder, instead of identifying the check period right from 1990 to the year 2009 when he was suspended as well as illegally questioned over devolution of property by way of having been bequeathed in legal manner, and so, the learned lower court should have inferred that prosecution



miserably failed to substantiate its case. To utter surprise, the evidences of the prosecution witnesses clearly suggest that instead of proper calculation in a way as disclosed hereinabove, they not only confined the check period rather also veiled the source that means to say proper recognition of the properties coming from uncle, aunt of the appellant. Furthermore, it has also been submitted that identification of check period would not be at the dictat of prosecution, rather it should be in rightful manner, covering the whole truck, as, after all, the acquisition is to be seen, verified inconsonance with the saving for the whole tenure, till the date of allegation.

7. It has also been submitted that the learned lower court without any rhyme and reason rejected the lawful source having shown by the appellant properly explained through valid, legal document as also substantiated by oral evidences. So submitted that in its entirety, the judgment impugned did not justify its prevalence and is accordingly, fit to be set aside.

8. The learned Special P.P. representing the CBI has controverted the submission and submitted that appellant being a government servant is not at all denied. That means to say, he has to follow the mandate of law governing conduct of the government officials. Under Central Civil Services (Conduct) Rules, 1964 it is incumbent upon the employees to inform his employer regarding acquisition of a property by him or by his family members. Admittedly, appellant has not informed the department and so, the source was non-acknowledgeable. Furthermore, it has also been submitted that though, document, Ext.A unregistered will happens to



be legally permissible but, its propriety happens to be doubtful in the background of the fact that when raid was conducted at the house of the appellant, all other items were located, seized but, Ext.A was not at all available nor, there happens to be proper explanation at the end of the DW or by the appellant himself regarding its non-availability or at the time of conduction of raid aforesaid document was seen by the CBI officials and had intentionally been left out. In absence of the same, the document became doubtful as well as suggests its creation in collusive manner to defeat the legal prosecution. Apart from this, after going through the recital of the document, it is manifest that it suffers from vagueness which is indicative of the fact that same has purposely been created in order to shield the appellant. Now coming to other aspect, it has been submitted that prosecution witnesses have categorically proved, detailed the properties having acquired by the appellant which has not been controverted. Once, presence of properties is found properly substantiated having no explanation at the end of the delinquent, over its valid legal, known source of acquisition then in that event, the delinquent is to be convicted and sentenced under the P.C. Act which, the learned lower court rightly recorded, hence needs no interference. Furthermore, it has also been submitted that it happens to be within the exclusive domain of the prosecution to identify the check period. Accordingly, the judgment impugned does not suffer from any kind of infirmity whereupon, is fit to be confirmed.

9. From plain reading of Section 13(1)(e) along with its explanation, it is abundantly clear, that in order to prove the charge



therefore, the prosecution has to prove.

- i) The accused is a public servant.
- ii) The nature and extent of pecuniary resources of property found in his possession.
- iii) His known sources of income, more particularly known to the prosecution.
- iv) Such resources or properties found in possession of accused were disproportionate to his known sources of income.

Once the prosecution establishes the essential ingredients of the offence of criminal misconduct by proving that public servant was in possession of disproportionate assets, burden of proof shifts on the defence and prosecution need not also prove existence of possible sources of income of public servant, as held by the Apex Court in **State of Maharashtra vs. Wasudeo Ramchandra Kaidalwar** reported in **AIR 1981 SC 1186**.

10. In **State of Karnataka Vs. J. Jayalalitha and Ors.** reported in **(2017) 6 SCC 263**:

“156. The 1947 Act was succeeded by a new version of anti corruption law in the form of the Prevention of Corruption, 1988, which seeks to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith. The statute, as the prefatory introduction thereof authenticates, retraced the evolution of the law regarding the offence of



bribery and corruption amongst public servant, starting from the Indian Penal Code to the 1947 Act seeking to respond to the exigencies of time, precipitated by the post World War-II manifestations. Having felt that even the 1947 Act had proved to be inadequate to deal with the offence of corruption effectively warranting a result oriented legislation, the 1988 Act was ushered in amongst other by widening their coverage and re-enforcing the provisions thereof. The Bill as a precursor of the 1988 Act was introduced in the Parliament with these objectives.

157. The Statement of Objects and Reasons of this statute, while reiterating the above mission, referred to the provisions in Chapter IX of the Indian Penal Code, dealing with public servants and those who abet the offences mentioned therein, by way of criminal misconduct. The provisions in the Criminal Law Amendment Ordinance, 1944 enabling attachment of ill gotten wealth, obtained through corrupt means, was also adverted to. The Bill was clearly contemplated to incorporate all these provisions with necessary modifications, so as to make those more effective in combating corruption amongst public servants. With that end in view, the ambit of “public servant” was sought to be expanded. Additionally, the offences hitherto enumerated in Sections 161 to 165A IPC were recommended to be incorporated in the legislation with enhanced penalties. Finality of the order of the Trial Court upholding the grant of sanction for prosecution and provision for day to day trial of cases were also integrated as few other unique features of the initiative.

158. In order to obviate avoidable references, certain provisions of decisive relevance would only be dilated upon. Section 3 empowers the Central or the State Government to appoint Special Judges, by notification in the official gazette, to try cases, as may be specified therein, namely;

(a) any offence punishable under the Act; and

(b) any conspiracy to commit or any attempt to commit or any abetment of the offences specified in clause (a).

159. Section 4 clarifies that the special Judge, so appointed, shall try the offences specified in Section 3 of the Act and may also try any offence other than those with which an accused may be charged at the same trial under the Code of Criminal Procedure, 1973 (hereinafter referred to as the ‘Code’ as well). Section 5 predicates that subject to the deviations, as contemplated in sub-



sections (1) and (2) thereof, the provisions of the Code would, so far as they are not inconsistent with the Act, apply to the proceedings before a special Judge, whose court would be that of Court of Session and the person conducting it would be deemed to be a public prosecutor. Section 5(6) enjoins that a special Judge, while trying an offence punishable under the Act, would exercise all the powers and functions, exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944.

160. Chapter III dwells on “offences and penalties” and Section 13 thereunder sets out the contingencies under which a criminal misconduct is committed by a public servant. Clause 1(e) of Section 13 being the gravamen of the charge herein is quoted hereunder:

“13. (1) (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.”

161. A significant addition to this clause otherwise reproduced from the 1947 Act is the explanation appended thereto which expositis the expression “known sources of income” to be the income received from any lawful source, the receipt whereof has been intimated in accordance with the provisions of any law, rules or orders for the time being, applicable to a public servant.

162. Lawfulness or legitimacy of the known sources of income of the public servant, to satisfactorily account the pecuniary resources or property, alleged to be disproportionate thereto, is, thus the indispensable legislative edict.

163. Section 22 of the Act also makes the provisions of the Code of Criminal Procedure, 1973 applicable to a proceeding in relation to an offence punishable thereunder, subject to certain modifications as mentioned therein. Here as well, the applicability of Section 452 of the Code otherwise empowering a criminal court to order for disposal of the property at the conclusion of the trial before it, has not been excluded. While Section 27 recognises a special Judge under the Act to be a Court of Session qua the powers of



appeal and revision, conferred by the Code of Criminal Procedure, 1973 available to the jurisdictional High Court, Section 28 ordains that the provisions of the Act would be in addition to and not in derogation of any other law for the time being in force and that nothing contained therein would exempt any public servant from any proceeding which might be instituted against him/her. By Section 29, amongst others, paragraph 4A of the Criminal Law Amendment Ordinance Act, 1944 has been substituted as hereunder:

“4-A. An offence punishable under the Prevention of Corruption Act, 1988”. Significantly, prior to the substitution, Item 4-A of the aforementioned ordinance read as follows:

“4-A: An offence punishable under Section 5 of Prevention of Corruption Act, 1947”

164. Assuredly thus, the offence under Section 5 of the Prevention of Corruption Act, 1947 (for short “1947 Act”), was included in the schedule of offences, appended to the Criminal Amendment Ordinance, 1944 since 18.12.1964 w.e.f. which Anti Corruption Laws (Amendment) Act, 1964 was enforced.

165. As a consequence of the integration of the offences under Sections 161 to 165A contained in Chapter IX of the Indian Penal Code dealing with the criminal misconduct of a public servant and the offence of abetment thereof, by Section 31 of the statute, these provisions were omitted from the IPC and were construed to have been repealed by a Central Act.

166. The scheme of the Act 1988, thus ensure a stricter legislation to combat and eradicate corruption in public life and takes within its sweep, not only the public servants but also those who abet and conspire with them in the commission of offences, enumerated therein. The avowed objectives of the statute prompted by the compelling exigencies of time and the revealing contemporary realities, thus demand of a befitting curial approach to effectuate the same sans qua the rule of benefit of doubt on intangible and trivial omissions and deficiencies.

167. A plain perusal of the scheme of the Act presents several noticeable special features thereof in accord with the legislative intendment to achieve the objectives set therefor. Apart from the overwhelming backdrop demanding the necessity to consolidate and reinforce the anti corruption law, the main mission being to achieve a catharsis in public office, the statute besides



expanding the notion of “public servant” to effect maximum extension of its sweep as envisaged, has ordained the constitution of a court of Special Judge to try the offences thereunder and also the charge of any conspiracy or attempt or abetment in the commission thereof. Thus, an exclusive autonomous adjudicative regime has been put in place. The provisions of the Code have been made applicable subject to the modifications contemplated and the special Judge in particular, while trying an offence punishable under the Act has been authorised to exercise all powers and functions invocable by a District Judge under the Ordinance. Sections 7 to 12 of the Act correspond to Section 161 to 165A of the Indian Penal Code, thereby integrating the offences in the legislation to be tried by a special forum as envisaged. Resultantly, Sections 161 to 165A have been effaced from the Indian Penal Code for obvious reasons. Explanation to Section 13(i)(e) makes it limpid that the known sources of income of the public servant, to satisfactorily account the pecuniary resources or the property otherwise alleged to be disproportionate thereto, has to be from a lawful source and further that the receipt thereof had been intimated in accordance with the provisions of any law, rule or orders for the time being applicable to him/her, as the case may be. This prescription indubitably emphasizes the lawfulness or legitimacy of the income to enable the public servant to satisfactorily account for the pecuniary resources or property otherwise imputed to be disproportionate thereto. Not only the Act entertains presumption against the public servant, in the eventualities as comprehended in Section 20 of the Act, it is clarified in Section 28 that nothing in the statute would exempt any public servant from any proceeding which might apart from the Act, be instituted against him or her. Section 29, amongst others to reiterate, has substituted in paragraph 4A of the Ordinance, an offence punishable under the 1988 Act, in lieu of the offence under Section 5 of the 1947 Act. The legislation thus is a complete code by itself, vibrant with the purpose therefor and animated with the spirit to effectuate the statutory goal. All these predicate a purposive explication of the provisions thereof to further the salutary legislative vision.”

11. In **Kedari Lal Vs. State of Madhya Pradesh & Ors.**



reported in (2015) 14 SCC 505:

“10. The expression “known sources of income” in Section 13(1)(e) of the Act has two elements, first, the income must be received from a lawful source and secondly, the receipt of such income must have been intimated in accordance with the provisions of law, rules or orders for the time being applicable to the public servant. In *N. Ramakrishnaiah* (2008) 17 SCC 83, while dealing with the said expression, it was observed: (SCC pp. 86-87, para 17)

“17. ‘6. ... Qua the public servant, whatever return he gets from his service, will be the primary item of his income. [Other income which can conceivably be] income qua the public servant, will be in the regular receipt from (a) his property, or (b) his investment.’*”

The categories so enumerated are illustrative. Receipt by way of share in the partition of ancestral property or bequest under a will or advances from close relations would come within the expression “known sources of income” provided the second condition stands fulfilled that is to say, such receipts were duly intimated to the authorities as prescribed.

11. We have gone through Rules 14, 17 and 19 of the Rules. Rule 14 lays down that a government servant on occasions such as weddings, anniversaries or religious functions may accept gifts up to a certain limit, if he makes a report of such fact to the Government within a period of one month. Sub-rules (4) and (5) provide, inter alia, that in any other case, the government servant shall not accept any gift without the sanction of the Government and if the gift exceeds Rs 2000, except through an account payee cheque. Rule 17 deals with investment, lending and borrowing and provides inter alia that government servant may give to, or accept from a relation or a personal friend, a purely temporary loan. Rule 19 lays down that the government servant must intimate the details of property inherited or acquired by the government servant. There is no absolute embargo or prohibition in the Rules and all that is required is sanction or permission from the Government.”

12. So far identification of check period is concerned, it



happens to be prerogative of the prosecution as held by the Apex Court in **State of Maharashtra vs Pollonji Darabshaw Daruwalla** reported in **AIR 1988 SC 88**.

“10. Shri Bhasme for the appellant seriously assailed the reasoning of and the conclusion reached by the High Court on these points and more particularly on the points noticed at (a) and (b). Learned counsel submitted that the view of the High Court on points (a) & (b) was manifestly erroneous and the High Court misdirected itself in law on these propositions.

We are inclined to agree with the learned counsel on the submission on points (a) and (b). In order to establish that a public-servant is in possession of pecuniary resources and property, disproportionate to his known sources of income, it is not imperative that the period of reckoning be spread-out for the entire stretch of anterior service of the public-servant. There can be no general rule or criterion, valid for all cases, in regard to the choice of the period for which accounts are taken to establish criminal misconduct under Section 5(1)(e) of the 'Act'.

The choice of the period must necessarily be determined by the allegations of fact on which the prosecution is founded and rests. However, the period must be such as to enable a true and comprehensive picture of the known sources of income and the pecuniary resources and property in possession of by the public-servant either by himself or through any other person on his behalf, which are alleged to be so disproportionate. In the facts and circumstances of a case, a ten year period cannot be said to be incapable of yielding such a true and comprehensive picture. The assets spilling-over from the anterior period, if their existence is probablised, would, of course, have to be given credit-to on the income side and would go to reduce the extent and the quantum of the disproportion.

On this aspect, the High Court observed:

"... 20. But at the same time, it has also to be remembered that the prosecution, without showing any reason has selected to begin the calculation of the assets from 1958. I do not see



any substantial reason in the selection of the year 1958. It is on record that from 1954, the accused had become the Appraiser. It is also on record that from year 1958 the accused had separated from his brother mother after the child was born to his wife. When I a the Public Prosecutor for the reason for selecting the period of 1958 to 1968, he said that it was done because the prosecution could lead evidence so as to show that the investment during these 10 years would be disproportionate of assets compared to the moneys received. Looking to the logic of the prosecution, if amounts invested upto 1958 excluded by themselves, I see considerable force in Vashi's arguments that the first year of 1958 should also be considered along with the previous years. There is no charm in selecting the year. I think that the prosecution would have been in a better position instead of selecting the period of 1958 to 1968, it had taken the entire period service from 1946 to 1968 and given credit of the amount that he has earned against all the assets that he had collected. It is therefore difficult to understand why the prosecution has chosen the period from 1958 to 1968 ".... 20. We have carefully considered this evidence of the Police Inspector but still we are not convinced about the selected of the period. We feel that the prosecution by selecting the check period of 10 years, when the accused had put in service from 1946 to 1968, i.e. for 22 years has done something whereby the chances of prejudicing the case of the accused are there

11. The assumptions implicit in the above observation of the High Court suffer from a basic fallacy. It is for the prosecution to choose what according to it, is the period which having regard to the acquisitive activities of the public-servant in amassing wealth, characterize and is late that period for special scrutiny. It is always open to the public-servant to satisfactorily account for the apparently disproportionate nature of his possession. Once the prosecution establishes the essential ingredients of the offence of Criminal Misconduct by proving, by the standard of criminal evidence, that the public servant is, or was at any time during the period of his offence, in possession of pecuniary resources or property disproportionate to his sources of income known to the prosecution, the prosecution discharges its burden of proof and the burden of proof is lifted from the shoulders of the prosecution and



descends upon the shoulders of the defence. It then becomes necessary for the public-servant to satisfactorily account for the possession of such properties and pecuniary resources. It is erroneous to predicate that the prosecution should also disprove the existence of the possible sources of income of the public servant. Indeed in *State of Maharashtra v. Wasudeo Ramchandra*, A.I.R. 1981 SC 1189 this Court characterised the approach of that kind made by the High Court as erroneous. It was observed:

" The High Court, therefore, was in error in holding that a public servant charged for having disproportionate assets in his possession for which he cannot satisfactorily account, cannot be convicted of an offence under Section 5(2) read with Sections 5(1)(e) of the Act unless the prosecution disproves all possible sources of income. In the present case, the selection of a ten year period between 1.4.1958 and 31.12.1968 cannot, by reason alone of the choice of the period, be said to detract from the maintainability of the prosecution."

13. Apart from the fact that on account of tracing out of defalcation as well as theft of postal certificates during the period of which appellant was custodian, whereupon matter was reported to CBI whereupon the check period has been identified from the aforesaid date to his remaining period service.

14. Being a Post Master of Sub Post Office, there is no dispute with regard to status of the appellant to be a Central Government employee and as per Rule-18 of the Central Government Employees Departmental Rules, the acquisition has to be reported to the appointing authority. For better appreciation same is quoted below:

"18. Movable, immovable and valuable property

- (1) (i) Every Government servant shall on his first appointment to any service or post submit a return of his assets and liabilities, in such form as may be prescribed by the Government, giving the full particulars regarding -



(a) the immovable property inherited by him, or owned or acquired by him or held by him on lease or mortgage, either in his own name or in the name of any member of his family or in the name of any other person;

(b) shares, debentures and cash including bank deposits inherited by him or similarly owned, acquired, or held by him;

(c) other movable property inherited by him or similarly owned, acquired or held by him; and

(d) debts and other liabilities incurred by him directly or indirectly.

NOTE I.- Sub-rule (1) shall not ordinarily apply to Group 'D' servants but the Government may direct that it shall apply to any such Government servant or class of such Government servants.

NOTE II.- In all returns, the values of items of movable property worth less than Rs.3310,000/- may be added and shown as a lump sum. The value of articles of daily use such as clothes, utensils, crockery, books, etc. need not be included in such return.

NOTE III.- 20Where a Government servant already belonging to a service or holding a post in appointed to any other civil service or post, he shall not be required to submit a fresh return under this clause.

18(ii) Every Government servant belonging to any service or holding any post included in Group 'A' and Group 'B' shall submit an annual return in such form as may be prescribed by the Government in this regard giving full particulars regarding the immovable property inherited by him or owned or acquired by him or held by him on lease or mortgage either in his own name or in the name of any member of his family or in the name of any other person.

(2) No Government servant shall, except with the previous knowledge of the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name of any member of his family:

27Provided that the previous sanction of the prescribed authority shall be obtained by the Government servant if any such transaction is with a person having official dealing with him.

41(3) Where a Government servant enters into a transaction in respect of movable property either in his own name or in the name of the member of his family, he shall, within one month from the date of such transaction, report the same to the prescribed authority, if the value of such property exceeds two



months' basic pay of the Government servant:

Provided that the previous sanction of the prescribed authority shall be obtained by the Government servant if any such transaction is with a person having official dealings with him.

(4) The Government or the prescribed authority may, at any time, by general or special order, require a Government servant to furnish, within a period specified in the order, a full and complete statement of such movable or immovable property held or acquired by him or on his behalf or by any member of his family as may be specified in the order. Such statement shall, if so required by the Government or by the prescribed authority, include the details of the means by which, or the source from which, such property was acquired.

(5) The Government may exempt any category of Government servants belonging to Group 'C' or Group 'D' from any of the provisions of this rule except sub-rule (4). No such exemption shall, however, be made without the concurrence of the 11 Cabinet Secretariat (Department of Personnel).

Explanation I. - For the purposes of this rule -

- (1) the expression "movable property" includes-
- (a) jewellery, insurance policies, the annual premia of which exceeds Rs. 42 'two months' basic pay of the Government servant, shares, securities and debentures;
 - 30(b) all loans, whether secured or not, advanced or taken by the Government servant;
 - (c) motor cars, motor cycles, horses or any other means of conveyance; and
 - (d) refrigerators, radios radiograms and television sets.

2. "Prescribed authority" means-

- (a) (i) the Government, in the case of a Government servant holding any Group 'A' post, except where any lower authority is specifically specified by the Government for any purpose;
- (ii) Head of Department, in the case of a Government servant holding any Group 'B' post;
- (iii) Head of Office, in the case of a Government servant holding any Group 'C' or Group 'D' post;
- (b) in respect of a Government servant on foreign service or on deputation to any other Ministry or any other Government, the parent department on the cadre of which such Government servant is borne or the Ministry to which he is administratively subordinate as member of that cadre.

Explanation II.- For the purpose of this rule '*lease*' means, except where it is obtained from, or granted to, a person having official dealings with the



Government servant, a lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent.”

15. In the aforesaid backdrop, now proceeding ahead in order to scrutinize the evidence adduced on behalf of prosecution in order to see whether it has substantiated its case, certain salient feature visualizing from the record is to be taken into consideration. The appellant had not denied his status as well as recoveries having made by the prosecution on raid from his house. The appellant also did not deny the different passbooks standing in name of his children, wife showing presence of cash, dealing with different schemes, presence of debentures in their names, LIC Policy, shares, landed property and further, had not questioned over its genuineness, authenticity. So, by such activity the appellant had made the obligation having on the party of the prosecution easy to some extent side by side, during course of discharging his onus by way of examining himself as well his aunt, released the situation furthermore.

16. Because of the fact that there happens to be no denial at the end of the appellant regarding recovery, even then the prosecution evidence is to be considered in order to find out its relevancy authenticity, reliability and further, happens to be sufficient to infer adverse to the appellant on the score of amassing property disproportionate to his known sources.

17. PW.1 is the Superintendent of Post Office who had accorded sanction against the appellant for launching of prosecution. During cross-examination, he has not been challenged regarding his



competence to accord sanction. It is further apparent from his evidence that on account of perceiving defalcation of Rs.1,26,000,00/- (One crore twenty six lacs) he had reported the matter to CBI and that happens to be the basis for institution of instant case. He had also divulged that a substantial criminal case is also pending against the appellant for the same. He had also admitted status of the appellant belonging to scheduled caste.

18. PW.2 is the Divisional Engineer, BSNL who had deposed that on 06.06.2013 while he was posted at Munger as JTO, BSNL, CBI had conducted raid at the house of Nawal Kishore and during course thereof, searched, seized the items incorporated in the inventory list which was prepared on account thereof, over which, he had put his signature and exhibited the same. Nawal Kishore was present during whole event. During cross-examination, it is evident from para-2 that while he was at duty, he was directed by TDM, BSNL, Munger to accompany the CBI officials as desired by them. He had further stated that at the time of seizure Nawal Kishore was present. In his presence, household articles were seized. There was no tag affixed over the aforesaid items but, price was himself disclosed by the Nawal Kishore. PW.3 had also deposed on that very score and after parallel scrutiny of the evidence of PW.2 and PW.3, there happens to be no inconsistency so far manner of search and seizure is concerned as well as preparation of inventory list.

19. PW.4 happens to be Postal Inspector who, as required by the CBI had submitted service book of appellant Nawal Kishore. He had also submitted salary statement from 01.01.2001 to



31.08.2013 of appellant Nawal Kishore. He had also stated that Nawal Kishore was suspended from 20.06.2009 to 30.06.2010 and during course thereof, he was allowed to withdraw Rs.1,15,617/- as suspension allowance. He had also shown payment of arrear after implementation of sixth pay commission. He had also exhibited loan having taken by the appellant, from GPF on 17.05.2001 Rs.8000/-, 29.01.2002 Rs.7000/-, 05.08.2002 Rs.8000/-(exhibited). During cross-examination, he had detailed the mode of employment. On 30.05.1990 appellant was appointed as Postman at Head Office, Munger. Then had stated that he was never posted with appellant Nawal Kishore. He also shown ignorance on what basis the salary statements were prepared by the accountant, though not challenged that same happens to be wrong, incorrect.

20. PW.5 is Postal Assistant, Head Post Office, Munger who had exhibited Recurring Account No.104645 in joint name of Nawal Kishore and Sarita Devi having installment of Rs.1500/- per month opened on 28-03-2006 and up till 30.06.2009 Rs.60,000/- was deposited. He had also produced the relevant information with regard to Recurring Account No.101674 having in name of Sarita Devi and Deep Sikha (wife, daughter of Nawal Kishore). It was opened on 30.06.2006 and up till 31.03.2010 Rs.57,000/- was deposited. He had also exhibited the third Recurring Deposit Account No.108698 standing solely in name of Nawal Kishore which was opened on 06.07.2006 having installment of Rs.1500/- per month and up till 28.04.2009 Rs.52,500/- was deposited. (Exhibited). During cross-examination he had admitted that those documents did not contain



word attested nor those documents bore his signature, but existence of aforesaid recurring accounts have not been denied.

21. PW.6 happens to be Sub Postmaster, Munger Collge TSO who had exhibited seven recurring deposit account (a) 775232 in name of Prasant Kumar & Sarita Devi (b) 775333 in name of Prasant Kumar & Sarita Devi (c) 775334 Sarita Devi & Deep Shikha (d) 775335 Avinash Kumar and Prashant Kumar, (e) 775336 Deep Shikha & Avinash Kumar, (f) 775337 Deep Shikha and Sarita Devi, (g) 775338 Prashant Kumar and Avinash Kumar (exhibited). During cross-examination he had stated that originals are kept at the TSO, Munger College. None of the accounts happen to be in name of Nawal Kishore. Amount has not been withdrawn from any of the recurring deposit.

22. PW.7 is the Section Supervisor who had exhibited four postal insurance life policy standing in name of Nawal Kishore. (Exhibited). He had also exhibited details relating to payment of the premium relating thereto. During cross-examination he had stated that he was not at all posted at Munger circle.

23. PW.8 is the Inspector CBI who had deposed that he conducted raid at the house of Nawal Kishore on an order of DIG, CBI and during course thereof, had prepared inventory relating to the recovery. Price which has been incorporated therein is based upon disclosure having been made by the Nawal Kishore himself who was present. During course of cross-examination he had stated that inventory was prepared in presence of Nawal Kishore at his house. He



had also stated that same happens to be prepared over printed form.

24. PW.9 is the Branch Manager of Punjab National Bank who had exhibited Account No.0326000100196642 standing in name of Sarita Devi wife of Nawal Kishore. He had exhibited the statement prepared under computerized process attested by him. Up till 02.03.2010 Rs.20,380/- was standing. He had also exhibited the accounts application form. During course of cross-examination he had stated that the statement dated 02.12.2007 suggest balance transfer of Rs.6,53,153/-. Account was opened on 23.05.1996. Statement was furnished to the CBI for the tenure 03.04.2002 to 01.04.2013.

25. PW.10 is the Secretary, CRM LIC who had detailed the policy having in name of Nawal Kishore and Sarita Devi, Policy No.523687553 in which, up to 2010 Rs.1,10,368/- was deposited. Another Policy No.523689354 standing in name of Sarita Devi in which up to 2010 Rs.1,08,258/- was deposited. He had exhibited the attested copy verified by him. He had further stated that he had deposed on the basis of the document.

26. PW.11 is the Sub Postmaster of N.D Road who had exhibited five MIS Accounts having in name of Sarita Devi and Deep Shikha and another MIS Account standing in name of Prashant Kumar and Avinash Kumar. The details thereof, duly attested by him prepared by the M.R. Mandal, have been exhibited. During cross-examination he had stated that none of the aforesaid MIS stood in name of Nawal Kishore.

27. PW.12 is the Sub Postmaster of Salen Bazar Post Office



who had exhibited twelve MIS account, saving account in name of Sarita Devi, Deep Shikha, having duly attested by him as well Mr. Mandal and exhibited the same. During cross-examination he had admitted that none of the account stands in name of Nawal Kishore.

28. PW.13 is Sunil Kumar Mishra, an advocate who had executed sale deed on 02.12.2003 in favour of Sarita Devi, wife of Nawal Kishore for Rs.1,32,000/- relating to two kattha ten dhur. During cross-examination, he had stated that he had transferred the title as well as possession of the land in favour of Sarita Devi.

29. PW.14 is Assistant in the Registry Office who had exhibited Sale Deed No.2723 dated 17.12.2008. He had exhibited certified copy of aforesaid document having in favour of Sarita Devi.

30. PW.15 is Chandra Bhanu Sah who happens to be executor of sale deed no.3732 dated 17.12.2010 in favour of Sarita Devi, wife of Nawal Kishore, Prashant Kumar son of Nawal Kishore for rupees fifteen lacs. During cross-examination he had stated that document was executed in favour of aforesaid three persons.

31. PW.16 is another Assistant of Postal Department who had exhibited ten MIS policy out of which five standing in name of Deep Sikha, Prashant Kumar and remaining five in name of Avinash and Deep Shikha. He had further exhibited saving account having in name of Nawal Kishore. During course of cross-examination he had admitted that he was not present at the time of opening of the account.

32. PW.17 is the Inspector of CBI who had inspected with



regard to information against Nawal Kishore, Sub Post Master as directed by the DIG, CBI. He had investigated the case after its registration up to 22.08.2013 and during course thereof, he had made correspondence with regard to relevant banks, post office to submit statement of accounts having in name of Nawal Kishore and his family members, obtained the same and then thereafter, he had handed over charge to Krishna Kumar Singh. During cross-examination he had stated that he is unable to disclose who had preliminary investigated the case before its registration.

33. PW.18 Mahesh Kumar who happens to be a shopkeeper and has exhibited receipt granted by him relating to rod having been supplied to Nawal Kishore.

34. PW.19 is Krishna Kumar Singh, the part I.O. He had deposed that during course of investigation, he recorded statement of different persons with regard to their presence over relevant search and seizure list. He had also obtained statement from UTI mutual fund and during course thereof, procured report therefrom which was purchased by Nawal Kishore to a tune of Rs.40,000/-. Then thereafter, he had prepared the list and found accumulation of assets by Nawal Kishore to a tune of 511% enhanced in comparison to his known source of income for the check period 01.01.2006 to 30.06.2010 whereupon, he had submitted charge sheet. During cross-examination he had stated that whatever information he had gathered, compiled happens to be during the check period. he had further stated that there happens to be some sort of discrepancy with regard to check period having shown in the First Information Report as well as shown



by him.

35. PW.20 is the DGM who had exhibited purchase of UTI mutual fund appertaining to Rs.40,000/- by the Nawal Kishore and Sarita Devi.

36. On behalf of appellant, during course of defence five DWs have been examined including the appellant himself who are DW.1-Mrs. Girija Devi, DW.2-Kartik Das, DW.3-Brahmdev Chaudhary, DW.4-Chandra Shekhar Yadav, DW.5-appellant Nawal Kishore himself. Appellant had also exhibited unregistered will. (Ext.A) Considering the nature of cross-examination as well as suggestion given to the respective prosecution witnesses wherefrom it is evident that whatever recovery has been shown to be has not been denied, the relevant accounts under different heads also not been controverted, on account thereof, first of all, the evidence of DW.5, appellant himself is to be taken into consideration. He had deposed that he joined on 30.05.1990 in the Postal Department. At the time of suspension (20.06.2009) he was posted at Munger Town Head Post Office as Sub Post Master. His father had three brothers namely Jharilal (his father), Khopri Ravidas and Kartik Das. He has three children, two sons and a daughter. His uncle Khopri Das was issueless and so, was residing along with him. He retired as Charge Man, Railway Factory, Jamalpur. His uncle died about 10-12 years ago. His wife Girija Devi (PW.1) lives with him. As Khopri Ravidas was residing with him on account thereof, he used to give his income to him as well as to his wife. He also handed over his pension amount. Khopri Ravidas had gifted him rupees twenty lacs in cash, ornaments



appertaining to rupees five lacs. He had also executed will in his favour regarding his properties (movable, immovable). Whatever amount he had received from Khopri Ravidas, he along with his wife had opened MIS, RD Account, PLI. Further he disclosed that premium of PLI as well as installment of RD Accounts were being deducted from his salary. He purchased land from Chandra Bhan Singh for rupees fifteen lacs. He obtained money from his another uncle namely Kartik Das. Some amount from saving and some from his income of his wife. He had disclosed the source of income to the CBI. He had further stated that valuation of the household articles was made by the CBI officials themselves in casual manner. Those items were purchased much prior to 2005. The temple made of marble was constructed at the behest of Khopri Ravidas during his lifetime. He had further stated that inverter was purchased in the year 2001, freeze in the year 2005 and Sony DVD Player, Samsung TV were purchased during 2005-2006. Furniture were purchased prior to 2006. His both sons got education at government school as well as Government College. Being Harijan, they were provided scholarship by the government. He had further stated that all the documents have been seized by the CBI. He has been made an accused relating to theft of postal certificates.

37. During cross-examination, he had stated that allegation has been levelled against him with regard to theft of Kishan Vikash Patra. He had stated that on 06.06.2013 CBI had conducted raid at her house and prepared search cum inventory list. Again corrected that CBI had seized all the documents on 31.03.2010. He had



admitted his presence over exhibit 2 & 3 with an explanation that his signature was forcibly taken. Then had stated that CBI had forcibly entered inside her house and searched. In para-8 he had denied suggestion that as document (will) happens to be afterthought on account thereof same was not available during course of conduction of raid by the CBI. In para-9 he had stated that he had given details of acquisition to the government. He had further stated that he had filled up the forms relating to income tax showing source of income. Then had admitted that neither in the income tax department nor to his own department he had informed regarding alleged gift of cash, ornaments and other items by Khopri Ravidas. In likewise manner he had not informed his department as well as income tax regarding gift of cash made by Kartik Ravidas. He had further stated that same was not necessary as the same was given to his wife as well as children. Then had denied that he had got illgotten property. From his evidence, it is apparent that he had not questioned over salary statement, as well as running of different recurring accounts standing in his name, wife's name, daughter's, son,s name (jointly), M.I.S. in similar way, P.L.I., UTI certificate. He tried to explain that, premium of some of those accounts were deducted from salary, but failed to substantiate the same, nor, during examination of PWs, more particularly PW.4, who had exhibited salary statement even suggested regarding deduction of the same from his salary wherefrom the contention of appellant is found falsified.

38. DW.4 is the scribe of the document (unregistered will), which has been exhibited as Ext.A. During cross-examination he had



admitted that he has got no license of scribe rather at the relevant time he was advocate clerk.

39. DW.3 is one of the attesting witness over Ext.A and had deposed that in his presence Khopri Ravidas had executed will in favour of Nawal as, Khopri Ravidas was issueless and had adopted Nawal as his son. In his presence Khopri as well as his wife had put their signature. He had further stated that in his presence he had given rupees thirty lacs in cash and articles appertaining to rupees five lac. During cross-examination at para-5 he had stated that document was prepared in presence of officer. He is unable to say the cost of the stamp but stamp was affixed thereupon. He had further stated that rupees twenty lacs was paid in cash and remaining were articles.

40. DW.2 is Kartik Ravidas who had stated that he happens to be uncle of Nawal. He was LDC in Finance Department where he joined in the year 1971 and retired in the year 2005. He had helped Nawal by giving cash appertaining to rupees Rs.9,15,000/- before 2005 as well as after 2005. He had received aforesaid amount on retirement. It was non-refundable. During cross-examination he had admitted that he had got no proof in support of payment of aforesaid amount to Nawal. He had further stated that he is unable to say whether Nawal Kishore is being prosecuted.

41. DW.1 is Girija Devi wife of Khopri Ravidas who had stated that as they were issueless on account thereof, they adopted Nawal Kishore. She had handed over all her belongings as well as



property to Nawal Kishore through a document. She had handed over rupees twenty lacs in cash, ornaments. She had put her signature over the document. Her husband as well as witnesses had also put their signature over the aforesaid document. Aforesaid document was prepared in the court. She had further disclosed that her father-in-law Mandhak Das was also employed at Rail Factory, Jamalpur and was residing along with her. He used to hand over his income to them. Her husband died 10-11 years ago. After retirement, her husband got pension and after his death, she is getting family pension, approximately 8000/-. She used to pay entire amount to Sarita Devi as, she looks after the affairs. She had further stated that her husband was also money lender. She also disclosed that she resides with Sarita and Nawal. During cross-examination she had stated that she adopted Nawal while was in service and for that, no document was prepared. She had executed will only which is unregistered. She had handed over cash as well as other articles. She had further stated that she is unaware whether money was deposited or not which her husband had received on retirement.

42. From the evidences of the DWs, it is apparent that there is no connectivity in between. Had Khopri Ravidas appointed as Charge Man in Railway Factory, Jamalpur, then in that circumstance there should have been some document with regard thereto and in likewise manner, after his retirement, there should have been a pension paper and after his death, PW.1 might have been receiving the family pension amount. The relevant passbook would have been a best piece of paper to substantiate the same. Likewise situation



happens to be with regard to DW.2. DW.3 and DW.4 are related with Ext.A. Its authenticity is found doubtful in the background of the fact that witness (DW.2) had deposed that it was prepared on stamp paper, while Ext.A is on plain paper, even DW.1 had stated that same was prepared in presence of an officer which Ext.A lacks. Furthermore, DW.5 failed to explain the same. Now coming to handing over of cash appertaining to Rs.20 lacs and ornaments appertaining to five lacs, less said is better. No document is found to substantiate the same.

43. In terms of Section 21 of the P.C. Act, 1988, there happens to be proper recognition with regard to status of accused being a competent witness and so, whenever an accused comes in witness box to explain the property having amassed by him then in that circumstance it should be in such manner that it should at least diminish the presumption in terms of Section 20 of the P.C. Act, as being rebuttable.

44. From the salary statement, it is evident that appellant had received monthly salary of Rs.12,370/- on Aug. 2013 being highest one. He received less than aforesaid amount (apparent from Ext.5/1) prior to that, received Rs.1,62,470/- as arrear, while deposit as installment under recurring accounts happens to be Rs.10,600/- premium under PLI Rs.1384/- per month, excluding premium of LIC as well as deposit of huge amount under Bank as well as under MIS Schemes. Apart from this, the quantum of payment against purchase of land is also found unexplained. Cost of articles as shown under



inventory happens to be in addition thereto.

45. Giving anxious consideration to the evidences having available on the record coupled with relevant exhibits, it is manifest that prosecution has succeeded in substantiating its case with regard to amassing the property disproportionate to his known sources which, the appellant failed to properly account for and in likewise manner, failed to intimate his Department. That being so, instant appeal sans merit and is accordingly dismissed. Appellant is on bail. His bail bond is hereby cancelled directing him to surrender before the learned lower court within four weeks to serve out the remaining part of sentence, failing which, the learned lower court will be at liberty to proceed against the appellant in accordance with law.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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