

IN THE HIGH COURT OF BOMBAY AT GOA.**Criminal Appeal No.2/2014**

Shri Bhimraj Sagar, son of Hardayal Singh
Hindu, 31 years,
r/o D-2/6 HPCL Housing Complex
Loni Kalbhor, Pune

Permanent address:
16/692, H.Bapa Nagar,
Military Road, Karole Baug,
New Delhi – 110 005.

Appellant**Versus**

1. Central Bureau of Investigation
Anti Corruption Branch
Surekha Building,
Near Doordarshan Kendra,
Altinho, Panaji, Goa.
2. State of Goa through Public Prosecutor,
New High Court building
Altinho, Panaji, Goa.

Respondents

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Shri Sudin Usgaonkar, Senior Advocate with Ms. Vinita
Palekar, Advocate for the Appellant.
Shri J. Vaz, Special Public Prosecutor for the Respondents.

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CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON :22/08/2017.
PRONOUNCED ON :06/09/2017.

JUDGMENT:

1. This is an appeal against the judgment and order of conviction passed by Special Judge, C.B.I., Court, Mapusa, Goa on 16.12.2013, convicting the appellant of an offence punishable under Section 13 (1) (e) of the Prevention of Corruption Act,

1988 read with Section 13 (2) of the said Act and sentenced him to undergo simple imprisonment for a period of two years with fine of Rs.20,000/- and in default, to undergo simple imprisonment for six months.

2. The prosecution case, in brief, can be stated as follows:-

The appellant was working as 'Operation Officer' in Hindustan Petroleum Corporation Limited and was posted at the Vasco-da-Gama Terminal of the Corporation. It is alleged that the appellant abused his official position, while working in the said capacity from 17.1.1989 till June 1995. He had amassed huge wealth disproportionate to his known sources of income. According to the prosecution, total income of the appellant during check period was to the tune of Rs.6,37,294/- and the expenses were to the tune of Rs.2,62,461/-. The appellant was in possession of assets worth Rs.8,39,606/-. The appellant did not owe any assets prior to 17.1.1989 and, therefore, he was found in possession of the disproportionate assets worth Rs.4,58,773/-. He was given a benefit of 10% of the total income. The value of his disproportionate assets, therefore, calculated at Rs.4,20,613/-. Since the appellant could not tender an explanation for having possessed the aforesaid disproportionate assets, he has been charge-sheeted as above,

by the C.B.I.

3. Initially, the appellant was tried and was given a benefit of doubt by the then Special Judge, South Goa, by the judgment and order dated 1.12.2004. In an appeal preferred by the State, bearing Criminal Appeal No. 12/2006, this Court remanded the matter to the Special Judge at Margao, mainly on the ground that the learned Special Judge did not properly marshal the evidence and did not give findings, by considering all the oral and documentary evidence, led by both sides.

4. Thereafter, by the impugned judgment, the learned Special Judge held him guilty and passed sentence, mentioned as above against which the appellant approached this Court.

5. I heard Shri Usgaonkar, learned Senior Counsel appearing for the appellant and Shri Vaz, learned Special Public Prosecutor appearing for the respondents.

6. At the outset, Shri Usgaonkar took me through the evidence of the prosecution witnesses vis-a-vis the evidence of defence witnesses and also through the impugned judgment. According to the learned Senior Counsel, the learned trial Judge has misread the evidence inasmuch as he found that the

appellant could not account for Rs.1 lakh, as the learned Special Judge failed to make proper calculations and committed mistakes in calculating the amount and other details brought on record by the prosecution as well as defence. It is also argued by the learned Senior Counsel, at the bar, that the learned trial Court failed to appreciate the evidence of defence witnesses as well as several lacunae, deficiencies and discrepancies in the evidence of the prosecution witnesses as well as the documents tendered on record. The main thrust of the learned Senior Counsel is on the aspect of arithmetical mistakes as well as wrong calculations made by the learned Special Judge. He drew my attention to the fact that the checking period starts from January 1989 and ends in 1995 i.e. three years after the marriage of the appellant, which took place in the year 1992. The learned trial Court failed to take into account the income earned by the appellant prior to his marriage, which was roughly Rs.1,22,000/-. There is no dent in the evidence of defence witnesses, by the Special Public Prosecutor. According to the learned counsel, the degree of proof for the appellant is based on the principle of preponderance of probability and, therefore, the evidence put forth by the appellant is quite probable and, hence, the learned Senior Counsel, prayed for acquittal of the appellant.

7. Shri Vaz, learned Special Public Prosecutor for C.B.I., on the other hand, also took me through the evidence of the prosecution witnesses, such as salary slips of the appellant. Though on some aspects, the learned Special Public Prosecutor submits that there were mistakes in calculating certain amount by the learned trial Court, yet, according to him, the learned trial Court could not have considered the statement of the appellant under Section 313 of Code of Criminal Procedure as evidence to give him some benefit, which according to him, is undue. It is also submitted that the learned trial Court has wrongly considered the gifts as assets and, therefore, submits that the findings need to be interfered with and not the final conclusion arrived at, by the learned trial Court.

8. In rejoinder, the learned Senior Counsel for the appellant, submits that 90% attack of the Special Public Prosecutor is on the impugned judgment, which is not permissible sans any appeal by the C.B.I. The learned Senior Counsel for the appellant has placed reliance on a few case laws, which shall be referred, at an appropriate stage.

9. For the disposal of this appeal, it would be sufficient if there is an examination of correctness of the findings given by the Special Court, as regards the value of the disproportionate

assets, which the appellant is found to have possessed; in other words, whether the Special Court has correctly and properly appreciated the evidence adduced by the Investigating Agency vis-a-vis the defence evidence tendered by the appellant whether it satisfactory account for such possession.

10. To substantiate the Charge under Section 13 (1) (e) of the Prevention of Corruption Act, the prosecution must establish that the accused is a public servant, that the nature and extent of pecuniary resources or property which were found in his possession and it must be proved what were the 'known sources of income' i.e. known to the prosecution and lastly, it must prove, quite objectively that such resources or property found in possession of the appellant were disproportionate to his 'known sources of income'. Once the above ingredients are satisfactorily established, offence of criminal misconduct is complete, unless accused is able to account for such resources or property. In other words, only after the prosecution proves the required ingredients, burden of satisfactorily accounting for the possession of such resources or property shifts to the appellant.

11. Indisputedly, the checking period commenced on 1st of January, 1989. The prosecution has not produced salary

slips along with Ex.38 of the appellant for the period from January 1989 to June 1989. As per the defence, the gross salary of the appellant for the month of July 1989 was to the tune of Rs.2288/- which ought to have taken as his monthly income for six months. This aspect was not contested by the prosecution and, therefore, the learned trial Court has rightly taken gross salary of the appellant of Rs.13,728/-. A deduction to the tune of Rs.297.62 per month was effected in order to arrive at his net salary for the aforesaid period of six months. Thus, the net salary of the appellant from January 1989 till June 1989 would be Rs.11,942.28. Thus, the total net salary of the appellant for the checking period from January 1989 to June 1995 would be Rs.3,29,517.44 + Rs.11,942.28 = Rs.3,41,459.72.

12. It is vehemently urged by the learned Senior Counsel for the appellant that the learned Special Judge failed to consider the income of the appellant from two heads namely:

- (i) interest on bank deposits of Rs. 31,236/- and
- (ii) tuition fees to the tune of Rs.19,250/-.

These two items of income ought to have been impleaded in the income of the appellant. The learned Special Judge, in paragraph 46 of the judgment, observed that the prosecution had shown that the appellant had received

Rs.10,000/- as transfer grant when he was first transferred from Vasco-da-Gama to Loni. The prosecution did not produce any documentary evidence in support of the same. However, the appellant, in his statement under Section 313 of Cr.P.C., states that on his first transfer in the year 1990 from Delhi to Vasco-da-Gama, he had saved an amount of Rs.6,972/- and thereafter an amount of Rs.21,355/- when he was transferred from Vasco-da-Gama to Loni. The learned Special Judge, however, instead of taking an amount of Rs.6972/- as an amount saved by the appellant when he was transferred from Delhi from Vasco-da-Gama, only took an amount of Rs.6030/- making short of Rs.942/- which also needs to be added as an income of the appellant. Similarly, the learned Special Judge, while taking into consideration the income of the appellant took an amount of Rs. 45,000/- received as petty cash about which, the prosecution has not raised any dispute and also on the interest earned by the appellant from the Fixed Deposits in the bank amounting to Rs.31,236/-. However, the maintenance amount for furniture in the quarter was taken as Rs.750/-. The case of appellant is that he had received two such payments i.e to the tune of Rs. 1500/- and, therefore, an amount of Rs.750/- needs to be added, as the income of the appellant, during the check period. Thus, the amount of income, which appears to have been omitted by the learned Special Judge, can be computed as

follows:-

Rs.31,236/- + Rs.19,250/- +Rs.942/- +Rs.750/- = Rs. 52,178/-.

13. In para 100 of the impugned judgment, the learned Special Judge tabulated the income of the appellant for the checking period to a sum of Rs.6,17,708.54, which are as follows:-

1	Income from salary	Rs.3,41,459.70
2	Petty cash	Rs. 45,000.00
3	Maintenance of Furniture	Rs. 750.00
4	Transfer allowance	Rs. 22,985.00
5	Additional out of pocket allowance and petty cash	Rs. 33,000.00
6	Advance Salary	Rs. 7,180.00
7	Loan from HPCL	Rs. 2,000.00
8	Arrears of income	Rs. 7,210.84
9	Gifts	Rs. 1,00,000.00
10	Arrears of salary	Rs. 58,123.00
	Total	Rs. 6,17,708.54

If the amount of Rs.52,178/- as above, is added, then the total income would come to the tune of Rs.6,69,886.54.

14. The prosecution has examined in all 25 witnesses. The important witnesses are PW 5 – Shrikant Brahme, PW 8 - Mohan Kamat, PW 9 - Arjun Raikar, PW 20 – Prashant Sanil, PW 21 - Sindhu Sameer, PW 22 - Shri V. Ananda Krishnan and

PW 24 - V. Venkatesh.

15. PW 5 - Shrikant Bramhe, who is the Branch Manager in Bank of Maharashtra Vasco-da-Gama, proved three Short Term Deposits in the name of the appellant with the bank issued on 23.3.1995 of Rs.50,000/- each. He also deposed about the Saving Account of the appellant, which was opened with an amount of Rs.1,000/-. PW 8 - Mohan Kamat is the Manager of Canara Bank, Panaji Branch, who has proved that the appellant had one Fixed Deposit for Rs.50,000/- and one Saving account in his branch. The Fixed Deposit Receipt is proved at Ex.82 and the Statement of the said account is at Ex.83. The appellant also admits about the fixed deposit for Rs.50,000/-. There was an amount of Rs.5,977/- as on July 1995 at his credit in the said bank.

16. The Divisional Manager of State Bank of India, PW 9 - Arjun Raikar testified that the appellant had F.D.in its Vasco-da-Gama Branch between 1994 to 1996, amounting to Rs.35,000/- and Rs.24,000/- at (Ex.89). The appellant also had a PPF Account in the said branch in which the balance was of Rs.30,000/- as on July 1995. PW 20 - Prashant Sanil has proved that the appellant had 10 UTI certificates in its M/s. MCS Limited Company having 950 units in the name of the appellant

@Rs.10/- each. This is proved through Certificate Ex.129. This witness has also proved Certificate Ex.130 by which it reveals that the appellant had 1000 Units of UTI – each unit of Rs.10/- and, therefore, total UTI units amounting to Rs.19,500/- are in the name the appellant with M/s.MCS Limited Company. Similarly, the appellant also had some investment in Can Bank Investment Services Ltd., having 1000 Units, worth Rs.10/- each in Can Bank Mutual Fund. The appellant appears to have invested Rs.10,000/- in Can bank Mutual Fund, which was in existence till July 1995. This has been proved by PW 21 - Sindhu Sameer. The appellant had also deposited a sum of Rs.50,000/- for a period of one year with effect from 8.11.1994 in Hindustan Petroleum Corporation Employees Co-operative Society Limited. The receipt is proved at Ex.113. PW 24 - Shri V. Venkatesh is the Officer of the Punjab National Bank at Vasco-da-Gama. According to his evidence, the appellant had five Fixed Deposit Receipts of Rs.20,000/-, Rs.50,000/-, Rs.26,000/-, Rs.1500/- and Rs.67,182/-. The appellant also had Saving Bank account in the Punjab National Bank bearing Account No.6991; wherein balance in the month of July 1995 was Rs.649/-. Thus, an amount of Rs.5,977/- shown in the account of Canara Bank and Rs.649/- shown in the account of Punjab National Bank would come to Rs.6,626/-. The learned Special Judge, while calculating the total assets in para 127 of the impugned judgment, wrongly

shown deposit in Saving Accounts as Rs. 8066/- which ought to have been Rs.6,626/-. Thus, an excess amount of Rs.1,440/- was wrongly shown, while calculating the value of assets. The learned Special Judge has also wrongly shown investment in Units as Rs.29,500/- which, in fact, ought to have been Rs.19,500/- as stated in para 115 of the impugned judgment and, therefore, an excess amount of Rs.10,000/- has been shown, which needs to be reduced. Thus, Rs.10,000/- + Rs.1,440/- = Rs.11,440/- is an excess amount calculated by the learned Special Judge. The total value of assets, as shown in paragraph 127 of the impugned judgment, therefore, comes to Rs.5,64,808.80 instead of Rs.5,76,248.80.

17. PW 13 - Thomas Mascarenhas is an employee of Eureka Forbes Limited, who has been examined by the prosecution, to show that the appellant had purchased one Eureka Forbes Vacuum Cleaner. The witness has produced a letter with Invoice of sale of Vacuum Cleaner. Its price is shown as Rs.4,990/-. However, it appears that the appellant had paid Rs.4,030/- towards the price of the said Vacuum Cleaner. If it was purchased at the price of Rs.4,030/- there was no reason for the learned Special Judge to indicate Rs.4,990/- as the price of the Vacuum Cleaner and, therefore, the assets of the appellant so far as the Vacuum Cleaner is concerned, should

have been Rs.4,030/-. An excess amount of Rs.960/- therefore, needs to be reduced, from the value of assets. The learned Special Judge has calculated the assets in possession of the appellant to the tune of Rs.5,98,823.69. The price of the Vacuum Cleaner of Rs.4,030/- is to be substituted in place of Rs.4,990/-. There is an excess amount of Rs.12,400/- which needs to be reduced and, therefore, the value of the assets would come to Rs.5,98,823.69 – Rs.12,400/- = Rs.5,86,423.69.

18. It would not be out of place to say that in order to substantiate his income and assets, the appellant had tendered evidence of his brother DW 1 - Mahendra Sagar (Ex.154), his father-in-law, DW 2 - Kudanlal Swarup (Ex.155), DW 3 - Geeta Pawar- his sister-in-law, (EX.157), an employee of Hindustan Petroleum Corporation Limited DW 4 -Sharad Jadhav (Ex.162)

19. It is well settled that the burden of proof on the accused is not as stringent as that of the prosecution to prove the charge beyond reasonable doubts. If the accused on the basis of preponderance of probability brings some material on record then that would be suffice to rebut the charge against him. The presumption in the case at hand has been properly rebutted by the appellant that even if, it is presumed that he has income disproportionate to his known resources or property

to his 'known sources of income' is not guilty of criminal misconduct in discharge of his official duty.

20. DW 1 - Mahendra Sagar testified on oath about involvement of the appellant in the family business prior to his employment with the Hindustan Petroleum Corporation Limited. They carry business of making ladies' shoes. The appellant was earning Rs.1,500/- to Rs.1,600/- per month on account of tuition fees. The appellant had a share in the profit and loss of the business. The family used to earn profits to the tune of Rs.70,000/- to Rs.80,000/- per year, which appears to be distributed amongst five brothers. He also testified of having two houses in Delhi, out of which they receive rent to the tune of Rs.6,000/- from one house. This witness categorically deposed that since the appellant was in need of money, he had paid Rs.40,000/- by two installments in the year 1994. An amount of Rs.38,000/- was also paid to the appellant from the income earned from the business which was utilised by the appellant towards the medical expenses. That amount was reimbursed by the Company to the appellant to the tune of Rs.32,000/-. The appellant has been reimbursed medical expenses for the treatment of his mother by the employer, which is permissible. It is his contention that the expenses, in fact, were borne by the family and they refused to accept the amount of reimbursement

which is received by the appellant from the employer. This amount was retained by the appellant. This amount, according to the appellant, was spent by him in which he need not show any bank account that the said amount was retained by him. It seems that the learned trial Court erred in observing that the appellant ought to have furnished some proof of spending the amount. During his cross-examination by the learned Special Public Prosecutor, it has been reiterated the family business styled as "Kalpana Footwears" dealing in manufacturing of ladies' shoes. Even though, this witness could not produce any document, it cannot be *ifso facto* construed that he has no business of manufacturing ladies' shoes. The cross further reiterates about the appellant conducting tuition classes in English, Maths and Science before joining service and is earning to the tune of Rs.1,500/- to Rs.1,600/- per month. It cannot be lost sight of the fact that the prosecution has brought out in cross that the appellant is a degree holder in Mechanical Engineering and, therefore, it is quite obvious in order to support the family, he must have been conducting private tuition classes. The witness further admits that they are not paying Income Tax as the annual turn over of the family business is about Rs.4 lakhs. There is also no documentary evidence to show that one of their houses was leased out as the witness further admits that there was no agreement of lease

executed between the parties. That itself would not falsify the fact that the appellant's family had a business of manufacturing of Ladies' Footwear and some earnings of the appellant by conducting tuition classes as well as income from rent, in absence of effective cross-examination.

21. DW 2 - Kundanlal Swarup, who is the father-in-law of the appellant, deposed that the appellant's marriage was solemnized in the year 1992 and in his marriage he had paid Rs.70,000/- to the appellant as per custom. Apart from that, the appellant had received gifts from his friends and family members at the time of marriage. The checking period admittedly started in the year January 1989 till the end of 1995. It is also testified by DW2 – Kundanlal Swarup that at the time of engagement the appellant had received cash of Rs.25,000/- and thereafter during the birth of first child he had paid an amount of Rs.9000/- to the appellant and Rs.18,000/- during first marriage anniversary. This witness has family business of making dresses where his children and his wife also works. He also earns house rent income as he had rented seven rooms. Apart from that, son of DW 2 – Kundanlal Swarup works as Inspector for railways. It has also come in the evidence of this witness that after the death of his eldest son-in-law, his wife deposited the amount with the wife of the appellant whenever

she gets some cash amount, for the purpose of safe custody. As and when the wife of the appellant required some amount, she would request this witness to inform her co-sister to give amount to her. In support of the same, this witness has produced a letter dated 7.5.1995, which is marked at Ex.156 proved to be in the handwriting of this witness.

22. A Government servant is to satisfactorily account for the disproportionate assets and not to prove his claim with mathematical exactitude beyond all possibility of doubt. One in many might be keeping accounts of expenditure for his satisfaction; but why should he procure and preserve supporting bills and vouchers? These are not government cash to be audited. Besides why should one keep them from the beginning of his career till his superannuation anticipating to be required in a Court of law? Even for certain expenditure, supporting vouchers are not feasible for which audit accepts a flat rate. These are the observations made by the **Orissa High Court in the case of Hemanta Kumar Vs. State of Orissa, reported in 1973 (1) S.L.R. 1121**. The ratio aptly applicable to the contention of the appellant.

23. By cross-examining the defence witnesses, the learned Special Public Prosecutor tried to bring exactly the same

facts on record wherein no ordinary prudent man would preserve such minute bills and vouchers. To lend some hand-loan in the family, no one would give or pay through cheque or demand draft. I find no reason to disbelieve the evidence of this witness whose evidence could not be shattered in cross in order to render his testimony unworthy of credit. Thus, it appears from the evidence of DW 2 - Kundanlal Swarup that the appellant had more or less received Rs.1,22,000/- from him.

24. DW 3 - Geeta Pawar is the sister-in-law of the appellant, who appears to be an employee of a Bank, receiving salary of Rs.8,000/- to Rs.9,000/- per month and is also earning Rs.4,500/- per month from house rent. Her husband died in the year 1993, who was also a bank employee. She testified that after the death of her husband due to cancer she received an amount from the Life Insurance Corporation policy and the service benefits of her husband amounting to Rs.2,11,000/-. She has also produced a letter from Syndicate Bank, U.T.I., and L.I.C., as regards the benefits received by her after the death of her husband, which are collectively proved at Ex.158. According to this witness, the entire amount of Rs.2,11,000/- was deposited with the wife of the appellant for safety and that this witness was not keeping good health. She made it clear that she had helped the appellant at the time of

his marriage and other functions by paying cash amount. According to this witness, at the time of engagement of the appellant she had given him Rs.25,000/- and thereafter, from time to time, an amount of Rs.90,000/- at different occasions, which was received as profit. There is no effective cross of this witness, except suggestions which she has denied.

25. DW 4 - Sharad Jadhav is the Manager Finance in HPCL and was posted at Vasco-da-Gama from January 1990 to 1991, as a Senior Accounts Officer. The appellant was his colleague and worked with him at Vasco-da-Gama Terminal in 1990-91. According to this witness, apart from the salary, the Company was paying an additional remuneration in the form of perquisites and perks through vouchers. The appellant was also receiving these facilities. The average additional remuneration by way of perks was about of Rs.1,000/- per month to the appellant when he was working at Vasco-da-Gama Terminal. He admits that the additional remuneration or perks, which were being paid to the appellant, are not reflected in the salary bills. The salary bills were directly issued by Bombay Office. He also made it clear that the employees of the Corporation are entitled for transfer benefits, in case of transfer from one station to another. The transfer benefits, according to this witness, are generally salary of one month and bhatta

charges of 30 days. The salary bills do not reflect these additional payments to an employee. Even travelling allowances are not reflected in the salary slips. Thus, the prosecution has miserably failed to show various incomes including tanker discharge charges earned by the appellant as the prosecution has not produced any data to that effect. What has been elicited in the cross-examination that shift allowances are not reflected in the salary slips; whereas other allowances about extra work on daily basis, are also not reflected in the salary slip.

26. Evidence of DW 4 Sharad Jadhav is significant in the light of the fact that he is also an employee of HPCL and had no reason to depose falsely. In that regard, it would be essential to scan the evidence of PW 6 - Pravin Dhamange, who was the Manager in HPCL and was working in the Vigilance Department of HPCL. He had investigated the complaint against the appellant between October 1994 to March-April 1995. The complaint was also about the qualitative and quantitative aspects of the petroleum products against the appellant apart from the complaint of amounts of amassing of wealth beyond his known sources of income. After conducting the investigation, he submitted his report to the Executive Director, Vigilance. When he was cross-examined on behalf of the appellant, he admits

that certain employees are entitled for payments from the employer besides their salary as reflected in the salary slip. They are also entitled for out of pocket expenses and tanker duty allowances. He further deposed that this payment is made at the terminal where the employee is posted. The payment instructions are contained in the Manual, which is amended. He further deposed that the Company publishes HR policies ready reckoner dealing with such payments. The Company also issues Circulars amending such instructions. However, the witness exhibited his inability to give details of the payments made to the appellant during the period of his investigation regarding out of pocket expenses and tanker duty allowances. The ready reckoner, which is shown to the witness, is proved at Ex.75. He also admits that the complaints, which were received against the appellant were anonymous and has denied suggestion that the complaint and his report was stage managed, out of vengeance against the appellant. At least, one thing is clear that the prosecution has not come clean on the aspects of the additional remuneration/perks, out of pocket expenses, tanker duty allowances paid to the appellant, from time to time, which gives a vital blow to the prosecution case, as regards its authenticity.

27. DW 4 - Sharad Jadhav was also an employee of HPCL and in charge of Pay Roll at the Head Office, Mumbai. He

admits that whenever officers were required to work on holidays for some extra time, they are paid some allowances basically to cover up, out of pocket expenses. This amount is paid every month at the location and is not reflected in the pay roll. The amount would depend upon the number of days, the employee works. He admits that furniture loan is some sort of perk and periodically given as allowance to repair and maintain the same. He testified that, in view of the Computer generated statement Ex.64, the appellant was entitled to Rs.750/- per quarter or half year, by way of maintenance allowance. He also supported the fact of entitlement of settling allowance to the transferred employee, which is generally one month's salary and first class travel for self and dependent of the family including packing and transportation charges depending upon grade of the employee. This does not reflect in the pay roll. He also admits that revised salary, which is paid to the employee by way of allowances are not reflected in the monthly pay slip but a separate slip is generated and given to the employee along with cheque. Thus, the prosecution case suffers from these material lacunae in order to substantiate its charge.

28. Shri J.I. Vaidya, Senior Manager (Finance) of HPCL on 18th July, 1997 written a letter to the Inspector of C.B.I., in

response to their letter seeking certain information about the appellant as regards the expenses claimed by him while he was posted at Vasco-da-Gama. It is informed by the Senior Manager that the office does not have direct access to information of the Vasco-da-Gama Terminal. Similarly, he had also written another letter to C.B.I. dated 3rd October, 1996. He informed the Inspector of C.B.I. that during April 1989 to May 1995 the appellant had doubled the shifts for shift operation/tanker discharge duty, for which there is a provision for payment of extra amount. The letter further reveals that there is a provision for payment of extra amount and the compensation rates have undergone changes from time to time and Vasco-da-Gama Terminal does not have an access to vouchers to determine the precise payments, however, on a fair estimate of the compensation that would have been paid during the said period to the appellant would be to the tune of Rs.45,000/-. It appears that the learned Special Judge ignored the material aspects while considering the evidence on record.

29. In case of **T.Subramanian Vs. State of T.N.** reported in **[(2006) 1 SCC 401]**, the Hon'ble Supreme Court, while dealing the case of Prevention of Corruption Act, observed in paragraphs 12 and 13, observed thus:

"12. Mere receipt of Rs.200/- by the appellant from PW-1 on 10.7.1987 (admitted by the appellant) will not be sufficient to fasten guilt under [Section 5\(1\)\(a\)](#) or [Section 5\(1\)\(d\)](#) of the Act, in the absence of any evidence of demand and acceptance of the amount as illegal gratification. If the amount had been paid as lease rent arrears due to the temple or even if it was not so paid, but the accused was made to believe that the payment was towards lease rent due to the temple, he cannot be said to have committed any offence. If the reason for receiving the amount is explained and the explanation is probable and reasonable, then the appellant had to be acquitted, as rightly done by the Special Court. In [Punjabrao v. State of Maharashtra](#) [2002 (10) SCC 371], the accused, a patwari, was on a campaign to collect loan amounts due to Government. The complainant therein was admittedly a debtor to the Government. The accused explained that the amount in question was received towards loan. This Court accepted such explanation (though such explanation was not immediately offered as in this case, but was given only in the statement under [Section 313](#)) holding thus :-

"It is too well settled that in a case where the accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established. It is further

clear that the accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution, but can establish the same by preponderance of probability."

13. In [Chaturdas Bhagwandas Patel v. The State of Gujarat](#) (AIR 1976 SC 1497), this Court held that the burden that rests on an accused to displace the statutory presumption that is raised under [Section 4\(1\)](#) of the Act, is not onerous as that cast on the prosecution to prove its case. But such burden has to be discharged, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as is referred to in [Section 161 IPC](#)".

30. Thus, by bringing on record the circumstances and other material, the appellant herein on preponderance of probabilities established his defence. Similarly, in case of **M. Krishna Reddy Vs. State Deputy Superintendent of Police, Hyderabad, reported in [AIR 1993 SC 313]**, "it has been held that it is not the mere acquisition of property that constitutes an offence under the provisions of the Act but it is a failure to satisfactorily account for such possession that makes possession objectionable as offending the law". The ratio in

both the cases can be made applicable to the present set of facts.

31. The Hon'ble Supreme Court in the case of **Krishnanand Agnihotri Vs State of M.P.** reported in **[1977 SC 796]** observed thus:

"On the facts of the case the total income of the accused during the period between 29.11.1949 when he joined the service as Income-tax Officer and 1.1.1962, being the date with reference to which the prosecution sought to establish the disproportion of the pecuniary resources or assets of the accused qua his known sources of income, was found to be in the aggregate Rs.1,27,715.43 and the total expenditure incurred by him during the relevant period was taken to be an aggregate sum of Rs. 83,331.84. Thus after deducting the total expenditure incurred by the accused during relevant period from the total income received by him, an aggregate sum of Rs. 44,383.59 was available with him and the total assets of the accused as on 1.1.1962 amounted to Rupees 55,732.25. The assets possessed by the accused were thus in excess of the surplus income available to him.

Held that since the excess was

comparatively small – it was less than ten per cent of the total income of Rs. 1,27,715.43- it would not be right to hold that the assets found in the possession of the accused were disproportionate to his known sources of income as to justify the raising of presumption under Sec. 5(3) (Cri. Appeal No.835 of 1966 D/-25.8.1971 (Madh Pra), Reversed”.

32. The learned Special Public Prosecutor has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Devender Kumar Singla Vs. Baldev Krishan Singla** reported in **[(2005) 9 SCC 15]**. In this case, it is held that the statement under Section 313 of the Code of Criminal Procedure, 1973, is not an evidence and it is only the stand of the accused or version by way of explanation, when incriminating materials appearing against him are brought to his notice. It is the ratio that the material in Section 313 of CrPC cannot be used to make up absence of any suggestion during cross-examination. Apart from what has been argued by the Special Public Prosecutor that the Special Judge in the impugned judgment tried to give benefit to the appellant from his statement under Section 313 CrPC yet, it is apparent from the discussion of evidence and the facts on record, the prosecution has itself failed to prove the charge against the appellant beyond all reasonable doubts and, therefore, the ratio can be accordingly distinguished. Similar is

the ratio laid down by the Hon'ble Supreme Court in the case of **Manu Sao Vs. State of Bihar reported in [(2010) 12 SCC 310]**.

33. Thus, from the aforesaid discussion and result of the same, the total income expenses, savings vis-a-vis the assets of the appellant can be quantified as under:

Total income	Rs. 6,69,886.54
Less expense	Rs. 1,80,251.00
Saving	Rs. 4,89,635.54

Total Asset Value	Rs. 5,86,423.69
Surplus income	Rs. 4,89,635.54
Excess income	Rs. 96,788.05
10% of Rs.6,69,886	Rs. 66,988.00
To be accounted for	Rs. 29,800.05

34. It will, therefore, be seen that after giving the benefit of 10%, the total income comes about to Rs.29,800/- from which, it cannot be said that the appellant was found in possession of assets disproportionate to his own known sources of income as to justify raising of presumption. On the basis of the facts and evidence of the present case, the conviction will have to be set aside by acquitting the appellant from the Charge. Accordingly, the appeal is allowed and the judgment and order of conviction and sentence is set aside. The appellant is

acquitted of the offence with which he was charged. His bail bond shall stand cancelled.

PRITHVIRAJ K. CHAVAN, J.

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