

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 128 of 2009**

- State of Madhya Pradesh through Special Police Establishment, Lokayukt Office, Raipur Division, Raipur (Now CG)

---- Appellant

Versus

- Hariprasad Shukla S/o Dwarika Prasad Asst Food Officer, Durg

---- Respondent

For the Appellant/State : Mr. Luv Sharma and Mrs. M. Asha,
Panel Lawyers.

For the respondent : Mr. Manish & Upadhyay, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****4-10-2018.**

1. This acquittal appeal filed under Section 378(3) of the Cr.P.C., 1973 is directed against the order dated 24-3-1999 passed by the Special Judge (Prevention of Corruption Act, 1988) Durg (CG) in Special Case No. 2/1997, wherein the said Court acquitted the respondent for charge under Sections 13(1) E & 13(2) of the Prevention of Corruption Act, 1988 (for short, "the Act, 1988) for having possession of the property for the period between 1-6-1973 to 19-4-1994 for which he cannot satisfactorily account of pecuniary resource and the property is

disproportionate to the tune of Rs.6,63,804/- to his known source of income.

2. In the present case, check period is 1-6-1973 to 19-4-1994.

Within this period the respondent was working as an Assistant Food Inspector, Durg and upon search it is found that the house owned by him at Mukta Nagar, Durg is valued to Rs.10,00,000/-. Land found in his possession was valued to Rs.24,000/-. Gold ornaments found in his possession were valued to Rs.4,72,985/-. Silver ornaments found in his possession were valued to Rs. 27,300/-. It is also case of the prosecution that the amount deposited in the bank account was Rs.1,85,000/-. In all it is said that total property in possession of the respondent is valued to Rs.18,33,968/- while his known source of income is Rs.11,70,164/-. On investigation it is found that property is disproportionate to the tune of Rs.6,63,804/-.

3. To substantiate the charge, prosecution examined Inspector of Special Police Establishment, Lokayukt, Raipur namely Satish Kumar (PW/1) and Nitish Kumar (PW/2). To nullify the charge, defence side examined Chandrika Prasad Verma (DW/1).

4. From the evidence of prosecution side, it is established that the house situated at Mukta Nagar, Durg, was purchased by Uma Shankar from one Sarada in the year 1985 for cash consideration of Rs.80,000/-. There is no connecting piece of

evidence that sale consideration was paid by the present respondent for the said house. In absence of connecting piece of evidence, it is not established that the house in question was property of the respondent which was assessed to be of Rs,10,00,000/-. There is no record that any land at village Risda was purchased by the respondent and therefore, amount for property of land was not proved to be of respondent. No Goldsmith was examined by the prosecution to substantiate the charge that the ornaments which were shown to be disproportionate were made of gold and their purity was also not proved. In absence of evidence of Goldsmith, purity of ornaments made of silver is also not established. Goldsmith is only expert for evaluating gold and silver ornaments. As per Section 45 of the Indian Evidence Act, 1872 only opinion of the expert is relevant. No other person is expert for evaluating gold and silver ornaments and, therefore, in absence of expert opinion value of ornaments was also not established. Only one property of house is calculated to be valued of Rs.10 lakhs while the case of the prosecution is based on disproportionate asset to the tune of Rs.6,63,804/-. If the amount of only house is deducted from the entire calculation, the other articles are well within known source of income of the respondent.

5. In the present case, since the evidence on each count is lacking, case of the prosecution for disproportionate asset is not established. The trial Court has assessed the evidence in its entirety and this court has no reason to record contrary finding and substitute the finding of its own. It is not a case where interference by this court is required to convert the finding of acquittal into finding of conviction.
6. Accordingly, the instant appeal is liable to be and is hereby dismissed.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju