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HIGH COURT OF CHHATTISGARH, BILASPUR

Acquittal Appeal No.150 of 2011

Judgment Reserved on : 5.9.2019

Judgment Delivered on : 4.12.2019

The State of Chhattisgarh through Special Police Establishment, Office of Lokayukta, Bilaspur

---- Appellant

versus

Chandrabhushan Shukla, S/o Ramachal Shukla, aged about 62 years, By Occupation Upper Division Clerk, In Office of Chief Medical & Health Officer, Ambikapur, R/o Darripara, Ambikapur, District Surguja, Chhattisgarh

--- Respondent

For Appellant	:	Shri Alok Nigam, Government Advocate
For Respondent	:	Shri Rajeev Shrivastava and Shri Malay Shrivastava, Advocates

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Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. The instant appeal has been preferred by the State against the judgment dated 18.3.2010 passed by the Special Judge under the Prevention of Corruption Act, 1988 (henceforth 'the PC Act'), Surguja (Ambikapur) in Special Criminal Case No.1 of 2009, whereby the Respondent/accused has been acquitted of the charge framed under Section 13(1)(e) read with Section 13(2) of the PC Act.

2. Facts of the case, in brief, are that the Respondent was a clerk and was appointed in the office of Chief Medical Officer at Ambikapur. He was charged for his having acquired disproportionate assets exceeding to his known sources of income in between the check period from 1.1.1974 and 1.2.1995. According to the prosecution case, on having received a credible information in regard to acquisition of disproportionate movable and immovable assets by the Respondent, investigation commenced and it was found that the Respondent had acquired too many movable and immovable luxurious assets in the name of his wife Amravati, daughters Ku. Rakhi, Ku. Nishtha, Ku. Shraddha, Ku. Pooja and Pragya Shukla. It was also found that the Respondent had made deposits of a huge amount in various banks as also in postal department. Investment was also made in Kisan Vikas Patra. It was also found that the Respondent maintained various bank accounts in the names of his family members. After calculating the total income and expenditure of the Respondent, it was arrived at the conclusion that in between the check period, the Respondent had earned a total sum of Rs.12,99,008.29 and spent a sum of Rs.24,20,567.95 and thus, the Respondent could not account for the access expenditure of Rs.11,21,559.66 apart from his known sources of income. On completion of the investigation, a charge-sheet was filed against the Respondent/accused for offence punishable under Section 13(1)(e) read with Section 13(2) of the PC Act. Charge was framed against him under Section 13(1)(e) read with Section 13(2) of the PC Act.

3. In support of its case, the prosecution examined as many as 33 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Respondent/accused denied the guilt and pleaded innocence. In his defence, the Respondent examined 4 witnesses.

4. On completion of the trial, vide the impugned judgment dated 18.3.2010, the Trial Court acquitted the Respondent/accused of the charges framed against him. Hence, this appeal by the State.

5. Shri Alok Nigam, Learned Government Advocate appearing for the

Appellant/State submitted that the Trial Court has not justified by discarding the prosecution evidence especially of S.K. Tigga (PW24), who registered the First Information Report and raided the house of the Respondent and effected various seizures. The Trial Court ought to have appreciated that the various immovable properties were purchased by the Respondent for him and for his relatives for which the Respondent has failed to offer any satisfactory explanation about the source of purchase capacity. From the statement of N.R. Naik (PW15), Postmaster, it is established that investment in the names of minor daughters were also made. In this regard, the Respondent has not been able to give any explanation. From the statement of G.W. Tigga (PW7), it is also proved that various vehicles have been purchased and registered in the names of the Respondent himself and his family members. The Respondent has also failed to disclose the source of purchase capacity. From the other evidence also, it is established that the Respondent and his family members maintained various bank accounts in different banks and deposited various amounts in those accounts. The evidence available on record shows that the Respondent had disproportionately acquired movable and immovable assets exceeding the known sources of his income and thereby he has committed the offence punishable under the PC Act.

6. Shri Rajeev Shrivastava and Shri Malay Shrivastava, Learned Counsel appearing for the Respondent opposed the above submission made on behalf of the Appellant/State. It was submitted that after due appreciation of the entire evidence available on record, the Trial Court has rightly acquitted the Respondent. The prosecution has failed to prove its case beyond reasonable doubt. The finding of the Trial Court is based on the material available on record. The Trial Court has passed a well reasoned judgment which does not warrant any interference.

7. I have heard Learned Counsel appearing for the parties and perused the record with utmost circumspection.

8. In paragraph 7 of the impugned judgment, the Trial Court has mentioned details of the Kisan Vikas Patra seized from the Respondent. Likewise, in paragraph 8 of the judgment, the Trial Court has mentioned details of the savings accounts of the Respondent and his family members. In paragraph 9 of the judgment, the Trial Court has mentioned details of the lands purchased by the Respondent in his own name and in the names of his family members. From the statements of Hari Prasad (PW13), Maju Ram (PW2), Prem Sagar Jain (PW14), Nigam Mishra (PW17), Sarju Ram (PW23), Umardaraj Ali (PW21) and Vijay Kumar Sinha (PW22), it is established that various lands were purchased by Bachchi Devi and Ramachal, mother and father of the Respondent, respectively.

9. S.K. Tigga (PW24), Investigating Officer of the case has admitted the fact that mother and father of the Respondent were basically residents of Uttar Pradesh. They migrated to Ambikapur and thereafter the properties were purchased in their names. What was the source of income of the parents of the Respondent in Uttar Pradesh, nothing has been investigated into or inquired into about this by the prosecution. From the evidence available on record, it is also established that some houses were purchased in the name of father of the Respondent at Ambikapur. Mahindra Tractor, Bajaj Super Scooter, LML Vespa Scooter were also registered in the name of father of the Respondent. From the statements of R.P. Prasad (PW3), Kailash Ramnani (PW11), P. Tirki (PW26) and Surendra Kumar Singh (PW29), it is also established that there were bank accounts running in the names of Respondent's father Ramachal Shukla, married daughter Pragya Mishra and mother Bachchi Devi. From the evidence on record, it also reveals that in the name of Respondent's father Ramachal Shukla, annual income of Rs.50,000/- from the land situated in Village Darrikala has been shown for the period from 1989 to 1995. Thus, total agricultural income of Rs.3,50,000/- has been shown to be in the name of father of the Respondent. An agricultural land situated in Village Gangapur was also registered in the names of father and mother of the Respondent. Agricultural income from this land is also shown. K.P. Sai (PW20) has also admitted the fact that from the agricultural land situated in Village Gangapur, annual income of Rs.4,000/- and from the agricultural land situated in Village Runpurkala annual income of Rs.50,000/- has been shown. Thus, total agricultural annual income of the parents of the Respondent was shown to be Rs.54,000/-, which was added in the income of the Respondent. From the evidence on record, it is also established that in the name of father of the Respondent, 6 plots were registered and in the name of mother of the Respondent, 4 plots were registered and as opined by P.N. Singh (PW6), S.D.O. (P.W.D.), these immovable properties had stage-1 valuation of Rs.11,92,000/-. Investigating Officer S.K. Tigga (PW24) has admitted the fact that 15 years before parents of the Respondent had come to Ambikapur, but he has not made any investigation regarding the facts that what was the financial condition of the parents of the Respondent in Uttar Pradesh, what were they doing in Uttar Pradesh and had they been earning any income in Uttar Pradesh. He has also admitted that looking to the living standard of the Respondent, he had prepared his confidential report, but he had not investigated into the fact that how many members of the family of the Respondent were working and what was their financial condition. This witness has also admitted that no such document has been produced before the Trial Court by the prosecution from which it could be established that the Respondent had disproportionate property and if he had any disproportionate property then how much.

10. R.D. Uike (PW31) has also admitted that wife and father of the Respondent are income tax payee and they pay income tax. Their income has also been added in the income of the Respondent. This witness has also admitted that in the total income of Rs.24,20,567.95 of the Respondent for the check period, income of mother, wife, father and married daughter of the Respondent has also been added. Parents of the Respondent were residing separately. The fact that the parents and wife of the Respondent are also income tax payee has already been discussed above. R.D. Uike (PW31) has also admitted that a chart was prepared showing how much income was legally earned by the Respondent during the check period and how much disproportionate income was earned by him during that period, but the same was not produced before the Trial Court during trial.

11. On a minute examination of the evidence adduced by the prosecution before the Trial Court, it is established that parents of the Respondent were residing in Uttar Pradesh. In Uttar Pradesh, what was their financial condition and what was their source of income, no investigation has been done in this regard. They are income tax payee. They earned agricultural income. They earned rental income from houses also. Their income has been added in the income of the Respondent. The Respondent's wife is also an income tax payee. Her income has also been added in the income of the Respondent. Income of Pragya Mishra, married daughter of the Respondent has also been added in the income of the Respondent. What was the legal income of the Respondent during the check period and what was his disproportionate property during the said period, no documentary evidence is available on record. According to the prosecution, such a document was prepared, but the same was not produced before the Trial Court.

12. From the above discussion, I find that the Trial Court has duly appreciated the evidence available on record and rightly arrived at the finding of acquittal. The judgment of acquittal passed by the Trial Court is a well reasoned judgment based on the evidence available on record. Even otherwise, it is a settled legal position that if after perusal of the material available on record two views appear in the case then the view favouring the accused has to be taken into consideration. Thus, the finding of acquittal arrived at by the Trial Court is just and proper.

13. Consequently, the appeal is dismissed.

14. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(**Arvind Singh Chandel**)
JUDGE

Gopal