

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Order: February 14, 2019

+ **CRL.A. 9/2013**

ASHOK KUMAR KAPOOR Appellant

Through: Mr.S.K. Rungta, Senior Advocate
and Mr.Prashant Singh and Mr.S.
Shukla, Advocates

Versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Ms.Rajdipa Behura, SPP for CBI
and Ms.Kriti Honda with Inspector
Sanjay Upadhyay

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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Impugned judgment of 22nd November, 2012 holds appellant guilty of possessing assets disproportionate to his known source of income to the extent of ₹8,08,750/- during the check period from 01st January, 1998 to 10th November, 2000. Appellant stands convicted for the offence under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 and vide order of 27th November, 2012, appellant has been sentenced to rigorous imprisonment for two years and to pay a fine of ₹2.5 lakhs with default clause for the offence in question.

The facts as noticed by the trial court in the impugned judgment need not be recapitulated, as disproportionate assets found are to the tune of ₹8 lakhs odd. Suffice it to note that appellant was working as a Private Secretary to the Vice Chairman of DDA during the check period and that the lockers in question was jointly held by appellant's mother-in-law and

himself, in which cash of ₹8 lakhs was found. It is a matter of record that the CBI had retained the bank note slips of the cash recovered from the said locker and had deposited the recovered cash in the bank. On this aspect, the relevant observations made by the trial court are as under:-

“That apart, there were slips which are Mark E which was not legible that did not indicate the name of the bank or date and the same is marked F of Syndicate Bank but nothing more legible about the date; there were mark ‘A’ slip pertaining to Syndicate Bank and the same is not legible about the branch name, code, date. In total there were sixteen bank notes or slips that were found on the wads/bundle of currency notes. At the cost of repetition, non production of bags in which the money was kept is hardly of any significance. The only flaw that I observe is that only eleven of such bank notes/slips were filed along with the charge sheets while the rest of which were not accounted for. There was indeed flawed approach adopted by PW-15 when he got the slips detached from the wads of currency notes in such manner. It would have been prudent to retain the currency notes intact that were having bank slips, legible or not. The only inference as suggested by Ld. Defence counsel is that about Rs.1-2 lakhs were having the slips while the remaining wads of currency notes were without any bank slips. This as per Ld. Defence counsel would raise an inference that only part of the tainted money was put in the locker during the check period.

All said and done, the above said irregularities have not caused any prejudice to the accused. The question of recovery is beyond any dispute and to expect the prosecution to collect and lead evidence as to when the money was put in the locker is something that would be impossible in itself. Evidence of PW1 and PW3 only demonstrate that some part of the money could have been put during the check period and it is for the accused to satisfactorily explain when the money was kept in the locker. What belies common sense is: why such huge

amount of money was kept in the locker if it was legitimate money of accused or his mother in law. It was not yielding any interest or returns. Particularly in the light of the evidence that Smt. Shakuntala Devi was having a bank account with PNB, as reflected in the evidence of PW24, it raises a strong inference that it was ill gotten money of the accused that had been kept by him in the locker as he had been operating it all along. Assuming for the sake of convenience that the ill gotten money had been acquired over a period of time albeit prior to the check period as well, that would be inconsequential since its possession during the check period is all that counts. It cannot be the law that if it is proved that the illegitimate money has been acquired prior to the check period, the public servant would be exonerated.

In order to strengthen the said inference, let us examine the plea of the accused that the amount found in the locker belonged to his mother in law Smt. Shakuntala Devi. It is pertinent to mention here that Smt. Shakuntala Devi was having three daughters beside a son Mohan Lal (DW-4) and she passed away on 07.01.2007 and her husband Harnam pre-deceased her on 11.11.1994. Indeed, she executed a Will on 30.04.2001 Ex. PW4/A prior to her death which was got probated vide judgment dated 20.08.2011 Ex. PW4/C. It is pertinent to mention here that Probate Court, in regard to cash amount in the locker, specifically provided that no one would be entitled to operate the locker or claim or use amount of Rs.8,08,750/- till the final adjudication of the case vide RC No. 75(A)/2000/AC/DLI”.

Upon appreciation of evidence, the trial court has concluded as under:-

“In the light of the discussion above, the total income of the accused minus the expenditure during the check period brings out likely saving of Rs. 3,16,428.79 p. (4,96,504.79 - 1,80,076). Therefore, the assets disproportionate in hand of the accused at the end of the check period comes to

Rs.8,06,971.21 p. (Assets Minus Savings) which appears to be 162% (8,06,971.21X4,96,504.79X100) of the known source of income. On the other hand, if the amount of Rs.8,08,750/- recovered from the locker is excluded, the position that emerges is that there is no case of disproportionate assets”.

The challenge to impugned judgment and order by learned senior counsel for appellant is on the ground that recovered eleven bank note slips were for only ₹1,50,000/- which are for the check period and there is no basis to conclude that disproportionate assets of appellant are to the tune of ₹8,00,000/-.

It is pointed out that appellant’s mother-in-law is the first holder of the locker and immediately after the seizure made from the locker in question, appellant’s mother-in-law had made an application (Ex. P-19) to the CBI claiming that this locker exclusively belongs to her and the recovery made from this locker belongs to her.

It is also pointed out that mother-in-law of appellant had also moved an application before the trial court for seeking release of the contents of the locker and all other items including cash recovered. It is submitted that appellant had served DDA since the year 1970 and so 10% of the total income has to be treated as savings, which would be much more than ₹8lakhs. Thus, it is submitted that appellant deserves to be acquitted while extending the benefit of doubt.

On the contrary, learned Special Public Prosecutor for respondent-CBI supports the impugned judgment and submits that the recovery of ₹8 lakhs from the locker are not disputed and by depositing the recovered cash with the bank, appellant does not suffer any prejudice. Attention of

this court is drawn to paragraph Nos. 98 to 101 of impugned judgment to submit that there is no substance in this appeal and it deserves to be dismissed.

In support of above submissions, reliance is placed upon decisions in *State of Maharashtra vs. Pollonji Darabshaw Daruwalla* 1987 (Supp) SCC 379; *Tej Prakash Shami vs. State of West Bengal* CRR 1536 (2012); *State of Uttar Pradesh vs. Naresh & Ors.* (2011) 4 SCC 324; *Jitender Kumar vs. State of Haryana* (2012) 6 SCC 204; *State of Punjab vs. Balbir Singh* (1994) 3 SCC 299; *V.K.Sehgal & Anr. vs. State of Haryana* (1999) 8 SCC 501 and *Mahesh Prasad vs. State of Uttar Pradesh* AIR 1955 SC 70.

Upon hearing and on perusal of the impugned judgment, evidence on record and the decisions cited, I find that according to prosecution, the disproportionate assets of appellant are to the tune of ₹8,00,000/- odd. As per the prosecution case, the recovery of cash in question was from the locker which was in the joint name of appellant and his mother-in-law. Pertinently, the mother-in-law of appellant was the first holder of the locker and the rent of the locker was being paid from her account. It is a matter of record that appellant's mother-in-law submitted a letter of 27th October, 2001 (Ex. P-19) to respondent-CBI stating that the contents of the locker, including the cash recovered, belongs to her.

Aforesaid letter was admittedly received by Investigating Officer (PW-37) but no investigation in respect of this letter was conducted. Appellant's mother-in-law had filed an application on 29th April, 2004 before the trial court for release of entire contents of the locker, including the recovered cash, which was disposed of by trial court with direction to

hand over the jewellery etc. found in the locker of appellant's mother-in-law, but there was no order in respect of contents therein, as it was the case property. However, during the trial, the recovered cash was not produced before the trial court, who has noted this infirmity in the prosecution case, but has chosen to rely upon the evidence of Investigation Officer and his team regarding the recovery of the cash in question from the said locker. It is relevant to note that bank slips/receipts only were produced before the trial court and as per the evidence of R.S. Bedi (PW-26), the bank slips/receipts shown to him did not carry any mark of identification to connect those bank slips with the recovered cash. This is a serious infirmity in the prosecution case, which the trial court has erroneously overlooked.

The case of prosecution from the very beginning was that the check period was w.e.f. January, 1990 to November, 2000 but the prosecution has arbitrarily curtailed it and has scrutinized the assets of appellant only for the period from January, 1998 upto November, 2000. Supreme Court in *Pollonji Darabshaw Daruwalla (Supra)*, while dealing with case of disproportionate assets, has ruled that the check period must be long enough so that true and comprehensive picture emerges and has concluded that a liberal view is required to be taken in case of disproportionate assets. Thus, it is quite evident that if the check period is less than the period of ten years, then the recovered cash cannot be considered to be disproportionate to the known source of income of appellant.

In the light of the afore-noted infirmities in the prosecution case, I find that case law relied upon by the respondent is of no avail. In the

considered opinion of this Court, the conviction and sentence awarded to appellant cannot be sustained and thus, is accordingly set aside. The fine deposited by the appellant be refunded to him and the recovered cash be released to the legal heirs of appellant's mother-in-law Smt. Shakuntala Devi, who had died on 7th January, 2007 before she could have deposed in this case.

This appeal is accordingly disposed of. Trial court record be remitted back forthwith.

(SUNIL GAUR)
JUDGE

FEBRUARY 14, 2019
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