

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 41 OF 2010

Shri Lucio Rodrigues,  
Superintendent of Customs,  
Commissionerate of Customs, Goa  
R/o House No.215,  
Securam Vaddo,  
Chinchinim, Salcete Goa.

... Appellant

***Versus***

State  
Through CBI/ACB

... Respondent

Mr. Salil Saudagar and Mr. Sergio Pinto De Santana, Advocates for the Appellant.

Mr. Mahesh Amonkar, Additional Public Prosecutor for the Respondent.

**Coram:- M. S. SONAK, J.**

**Reserved on : 15<sup>th</sup> October, 2020**

**Pronounced on : 19<sup>th</sup> October, 2020**

**JUDGMENT**

Heard Mr. S. Saudagar and Mr. S. Pinto, learned counsel for the Appellant, and Mr. M. Amonkar, learned Additional Public Prosecutor for the Respondent.

2. This appeal is directed against the judgment and order dated 23.04.2010 made by the Special Judge, South Goa, at Margao, in Special Case No.1/2004 convicting the Appellant for offences

punishable under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 ( the said Act ) and to suffer imprisonment of one year and also pay fine of ₹1,00,000/- and in default, to suffer further imprisonment of six months.

3. The Appellant was appointed as a preventive officer in the Customs Department in October, 1976. Thereafter, sometime, after 1980, the Appellant was promoted to Superintendent of Customs, Goa. There is no dispute that the Appellant was therefore a public servant. It is the case prosecution that for the check period 01.01.1980 to 22.06.2000 the Appellant, a public servant acquired assets, both movable as well as immovable to the tune of ₹38,55,980/- when his income from all sources during this period was to the tune of ₹24,84,072/-. Thus, it is the case of the prosecution that the Appellant was found in possession of assets, disproportionate to his known sources of income by a margin of almost ₹13,71,908/-. Based upon this, the charge was framed against the Appellant under Section 13(1)(e) of the said Act.

4. The Appellant, refused to admit his guilt and claimed to be tried. The prosecution examined 47 witnesses and thereafter the statement of the Appellant was recorded under Section 313 of Cr. P.C. The Appellant also examined 10 witnesses in support of his defence.

5. The Special Court, vide impugned judgment and order

dated 23.04.2010 has convicted and sentenced the Appellant as aforesaid. Hence, the present appeal.

6. Mr. Saudagar, learned counsel for the Appellant submits that there was a serious error whilst determining the total income of the Appellant for the check period. He points out that though the Special Court admitted the Appellant's diary in evidence at Exhibit 225, the entire amount towards the overtime was not taken into consideration. He points out that on account of arithmetical calculation, a certain portion of the salary income has been incorrectly excluded from consideration. He points out that some bank documents have been overlooked and some amounts towards interest have been excluded.

7. Mr. Saudagar submits that the Special Court erred in excluding the rental income received from the apartment at Golden Pebble, Bombay for no good reason. He submits that the evidence of the tenants was incorrectly excluded from consideration. He submits that the Explanation to Section 13(1)(e) of the said Act, at the highest shifts the onus to prove the source of such income upon the public servant. This onus was completely discharged. Therefore, the Special Court erred in excluding this evidence simply on the ground that such income was not intimated by the Appellant in terms of the Service Rules. He relies on the following decisions:-

(1) *Ashok Tshering Bhutia v. State of Sikkim*<sup>1</sup>;

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<sup>1</sup> (2011) 4 SCC 402

(2) *Virender Singh vs Central Bureau of Investigation*<sup>2</sup>;

(3) *Sripada Gouda Vs State by Karnataka Lokayuktha Police Station*<sup>3</sup>.

8. Mr. Saudagar submits that the learned Special Judge erred in calculating the kitchen expenses at the rate of 33% of gross income. Notification based on which this was done was never placed on record by the prosecution. He submits that in any case, the value of clothing, household, kitchen articles were already included in the chart relating to movable assets at Exhibit 132 Colly. Therefore, the same could not have been again included as kitchen expenses. He further submits that the kitchen expenses could have been taken as 33% of the net salary and not gross salary during the check period. He submits that the amount of ₹22,246.6 was required to be deducted from out of the kitchen expenses.

9. Mr. Saudagar submits that the learned Special Judge erred in attributing the entire value of Golden Pebble Apartment to the Appellant's account. He submits that admittedly these immovable properties are not in the name of the Appellant and the prosecution has failed to discharge the burden of establishing that these assets, nevertheless, belonged to the Appellant. He relies on *Krishnanand*

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<sup>2</sup> 2010 SCC Online Del.4053

<sup>3</sup> 2012 SCC Online Kar. 8883.

*Agnihotri vs The State of Madhya Pradesh*<sup>4</sup>, to submit that the burden of proving a transaction as Benami, lies on the person alleging it to be so.

10. Mr. Saudagar submits that the Special Judge has failed to appreciate that there was sufficient material on record to establish that the Appellant had received gold by way of gift and inheritance instead by excluding all this evidence, the learned Special Judge has incorrectly concluded that the entire gold was acquired by the Appellant during the check period. This has unnecessarily inflated the value of the Appellant's assets.

11. Mr. Saudagar submits that the learned Special Judge has taken into account the renewed fixed deposit receipts amounts rather than the amount initially invested by the Appellant. Again this has resulted in unduly inflating the value of the Appellant's assets.

12. Mr. Saudagar submits that the learned Special Judge has completely ignored the evidence on record which establishes that both the Appellant and his wife had earned substantial amount before the check period by excluding such evidence, the charge of disproportionate assets has been fastened on the Appellant.

13. Finally, Mr. Saudagar submits that if the calculation errors

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<sup>4</sup> (1977) 1 SCC 816

are corrected and if the excluded income is included then, the difference between the value of assets and the Appellant's total sources of income comes to a maximum of ₹1,70,034.30. Mr. Saudagar submits that since this amount, is less than 10% of the income as determined by the Court, there is no question of sustaining the conviction under Section 13(2) read with Section 13(1)(e) of the said Act. In support of the proposition that a 10% margin is to be allowed in such matters, Mr. Saudagar again referred to the decision in *Krishnanand Agnihotri* (supra).

14. Mr. Amonkar, learned Additional Public Prosecutor defends the impugned judgment based upon the reasonings reflected therein. He points out that there are no errors in calculation and some marginal error here and there nowhere bring the income and the assets of the Appellant in 10% margin which is allowable in such matters. Mr. Amonkar submits that in this case, the Special Court has evaluated the evidence on record in great detail, and therefore, there is no ground made out to interfere with the impugned judgment and order.

15. The rival contentions now fall for my determination.

16. In this case, that during the check period 01.01.1980 to 22.06.2000 the Appellant was posted as a preventive officer and Superintendent of Customs, in the Customs department. There is no dispute that the appellant was a public servant. The Special Court has

concluded that the total income of the Appellant from all sources during the check period was ₹33,26,059/-. After making allowance for expenses of ₹7,18,308/- the value of assets as on 01.01.1980 i.e. ₹17,889/-, the learned Special Court has concluded that the Appellant was found to have been pecuniary resources or the properties to the extent of ₹13,38,765/- above sources of income. On this basis, the Special Court has concluded that the Appellant has committed offence under Section 13(1)(e) of the said Act.

17. Section 13(1)(e) of the said Act during the relevant period reads as follows:-

*“(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.*

*Explanation 2.- The expression “known sources of income” means income received from any lawful sources.”*

18. The burden in such matters is upon the prosecution to prove beyond a reasonable doubt that the Appellant has indeed owned pecuniary resources or the property disproportionate to his known sources of income, which he cannot satisfactorily account. For this

section, “*known sources of income*” means the income received from any lawful source and such receipt has been intimated under the provisions of any law, rules, or orders for the time being applicable to a public servant.

19. In such matters, therefore, it is for the prosecution to prove by clear and cogent evidence the total income of the accused from all sources in the first instance. Thereafter, it is for the prosecution to make allowances for the reasonable expenses which such accused may have incurred during the check period. The prosecution has to also establish the value of the assets held by such accused at the commencement of the check period and thereafter the assets acquired by such accused during the check period. Based upon these factors, the prosecution is required to establish the extent of disproportionality between the pecuniary sources or property held by such accused and the total income of such accused from all known sources. Once the prosecution reaches this stage, the onus then shifts upon the accused to satisfactorily account for the apparent disproportionality. Only if such accused is unable to discharge the onus and to satisfactorily account the disproportionality, can the Court convict such accused of offence under Section 13(1)(e) of the said Act.

20. Therefore, in most of such cases after the prosecution has led its evidence, the accused either from the evidence of the prosecution itself or by leading defence evidence attempt to establish the following:-

- (i) That the total income during the check period was much more than what has been projected in the prosecution evidence. For this purpose, the accused point out the amounts which ought to have been included for determination of total income;
- (ii) That the expenses incurred during the check period. Usually, the accused pointed out that the expenses have been unduly inflated;
- (iii) That the value of the assets as on the date of the commencement of the check period was much more than what has been projected by the prosecution or that some of the assets have been incorrectly excluded from consideration;
- (iv) That the value of assets after the check period is unduly inflated or that some assets which do not belong to the accused have been incorrectly taken into account.

21. Therefore, in the present case as well, Mr. Saudagar, learned counsel for the appellant urges that the total income of the Appellant from the evidence on record ought to have been determined at ₹38,83,683.20 instead of ₹33,26,059/- determined by the learned Special Court. This means that the Appellant urges that the amount of ₹5,57,624.20 is required to be added to the total income projected by the prosecution.

22. The addition of ₹5,57,624.20 was sought to be justified based on the following:-

- (a) That an amount of ₹38,571.65 was required to be added towards the overtime earned by the Appellant as reflected in the diary at Exhibit 225 already admitted in evidence by the learned Special Court;
- (b) That an amount of ₹21,915/- is required to be added to the net salary income since this amount stands excluded on account of arithmetical calculation error;
- (c) That an amount of ₹1,17,082.05 is required to be added to the income from interest on FDRs since this amount has been excluded by overlooking the bank documents on record and calculation errors;
- (d) That an amount of ₹3055.5 is required to be added to the income on dividend since the amount has been excluded by overlooking some documents on record and calculation errors;
- (e) That an amount of ₹3,76,100/- is required to be added as income from rent of the Golden Pebble Apartment, Bombay, which amount has been unduly excluded by the Special Court disbelieving the testimonies of the various tenants and misinterpreting the Explanation to Section 13(1)(e) of the said Act.

23. In so far as the issue of addition towards the overtime is

concerned, it is true that the learned Special Court, in this case, has admitted the Appellant's personal diary in evidence and marked the same as Exhibit 225. The learned Special Court has reasoned that though, Exhibit 225 was a personal document of the Appellant, looking to the fact that no true copies of vouchers or actual salary bills were produced by the prosecution, this personal diary of the Appellant was required to be admitted in evidence. Mr. Saudagar pointed out that the income amount deposed to by the prosecution witnesses were also accurately reflected in this personal diary and therefore, this personal diary was quite correctly admitted in evidence by the learned Special Court. Mr. Saudagar however contends that once this personal diary was admitted in evidence and on such basis, the credit was given not only towards the salary payments but also the payments towards the overtime, rewards, etc., then there was no justification in excluding the amount of ₹38,571.65 towards the overtime, which is reflected in the very same personal diary.

24. Mr. Amonkar, learned Additional Public Prosecutor also did not join serious issues with the contention of Mr. Saudagar. However, he pointed out that even in terms of the personal diary at Exhibit 225 the addition towards the overtime will not come to ₹38571.65 but much lesser. On perusal of the material on record, it appears that the figure indicated by Mr. Saudagar is the correct figure, and therefore, an amount of ₹38571.65 will have to be added to the total income as determined by the learned Special Court in this matter.

25. Similarly, Mr. Saudagar was able to demonstrate that on account of arithmetical calculation error the amount of ₹21,915/- has been excluded from the net salary income of the Appellant. Accordingly, even this amount of ₹21,915/- will have to be added to the total income of the Appellant as determined by the learned Special Court in this matter.

26. In so far as the interest amount of ₹1,17,082.05 is concerned, there is no good reason to make such an addition. Suffice to record that in respect of income by way of interest from FDRs, the prosecution examined no less than nine witnesses i.e. mostly the bank officials, and produced several documents on record. From the perusal of the evidence of these witnesses including their cross-examination statements, it cannot be said that there is an error in the calculation of this interest amount to warrant the addition of ₹1,17,082.05.

27. Mr. Saudagar, at the stage of final hearing has placed a chart on record in an attempt to explain why this amount of ₹1,17,082.05 is required to be added to the income from interest on FDRs. However, Mr. Saudagar was unable to co-relate this chart with the evidence on record. Besides, this chart includes a certain amount towards the interest even though, remarks fairly state that no such records are available with the banks who are supposed to be paid this additional interest amount. Further, Annexure refers to certain amounts which according to the Appellant were not accounted for by the respective banks. It is not

possible to accept that the banks have not accounted for any interest components as alleged in the absence of any proper cross-examination of the bank witnesses who were examined by the prosecution. For all these reasons, there is no case made out for the addition of the amount of ₹1,17,082.05 to the income by interest on FDRs in this matter.

28. The addition of ₹3055.5 towards the income on dividend/warrants/sale of shares can be made because of the calculation errors pointed out by Mr. Saudagar in the course of his submissions.

29. The Appellant contends that the amount of ₹3,76,100/- is required to be added to the total income of the Appellant from rentals of the Golden Pebble Apartment at Bombay. In support of this income, the Appellant has examined DW1, DW2, DW6, DW7, DW8, DW9, and DW10 as witnesses. The Appellant also relies upon the testimonies of PW24 and PW45 in this regard.

30. As noted earlier, the Explanation to Section 13(1)(e) stipulates that for the purpose of this Section “*known sources of income*” means the income received from any lawful source and such receipt has been intimated under the provisions of law, rules or orders for time being applicable to a public servant. Although, the check period, in this case, is 01.01.1980 to 22.06.2000, even according to the Appellant most of the rentals relate to the period beyond 1988. The rentals for the period between 1985-1988 comes to ₹80,400/- as per the

deposition of DW9.

31. This distinction between pre-1988 rentals and post-1988 rentals is important because Mr. Saudagar contends that the earlier provisions of the Prevention of Corruption Act, 1947 did not contain any such Explanation regards the intimation of the earned incomes to the Department by a public servant. He points out that such a requirement has been introduced only in the Prevention of Corruption Act, 1988 and therefore, it cannot be said that before 1988 there was any bar for taking into consideration the income which may not have been intimated by the public servant to his department even though such intimation was necessary in terms of the Service Rules applicable to such public servant.

32. Mr. Saudagar points out that even after the Prevention of Corruption Act, 1988 entered into force, the Explanation in no manner bars taking into account rental income even though no intimation may have been given by the public servant of such income to the department. He relies on the decisions in *Ashok Bhutia* ( supra ) and *Sripada Gouda* (supra) in support of such contentions. He submits that in these two decisions hold that there is no bar to the admission of any evidence as to rentals and at the highest, the Explanation embodies a rule of evidence, in terms of which, the onus shifts upon a public servant to establish that such income was indeed earned even though, there may have been a lapse in the matter of intimation of the same to

the department.

33. In *Ashok Bhutia (supra)* the Hon'ble Apex Court was considering the issue as to whether the electricity and telephone bills could be said to be proved at the time of trial. The prosecution had urged that Rule 19 of 1981 Rules mandated that the public servant fills up a form and gives necessary intimation in this regard to the department. In this regard, the Hon'ble Apex Court held that even if it is assumed that the form required to be filled up was mandatory and the appellant failed to fill up the same, such document could not have been excluded from consideration. Non-filling up the form under the mandatory requirement of Rule 19 of 1981 Rules may render the Appellant liable for disciplinary proceedings under service jurisprudence, but that itself cannot be a ground for rejection of the said documents in toto without examining the contents thereof. Rule 19 had incidentally required the government servant on his first appointment to any service or post and thereafter at the close of every financial year, submit to the Government return of his assets and liabilities in such form as may be prescribed by the Government giving full particulars. In this case, there was no form prescribed by the Government and in such a fact situation the Hon'ble Apex Court held that the Appellant could not be fastened with criminal liability for want of compliance of the said requirement of the Rules. Besides, the Hon'ble Apex Court also held that the Service Rules are not rules of evidence. The admissibility and probative value of evidence is determined under the provisions of the

Evidence Act, 1872.

34. In *Sripada Gouda* (supra), the learned Single Judge of Karnataka High Court considered the decision of the Hon'ble Apex Court in *Ashok Bhutia* (supra) and held that the Explanation to Section 13(1)(e) of the said Act at the highest would indicate that the onus shifts upon a public servant to establish that the amount which he may have failed to intimate to the department despite the rules requiring such intimation, his nevertheless from some legitimate sources of income of such public servant. Incidentally, it is required to be noted in *Sripad Gouda* (supra) the check period was from 01.07.1966 to 02.02.1989. The Prevention of Corruption Act, 1988 came into force from 09.09.1988 i.e. about five months before the end of the check period. The learned Single Judge of Karnataka High Court, in such peculiar facts, noted that where the check period was spanning over approximately 22 years out of which more than 21 years was covered during the period in which the old Act was in force, it was open to the public servant to satisfactorily account for pecuniary resources or property whenever an accusation was made against him alleging acquisition of assets disproportionate to his known sources of income even though he had not reported them to his disciplinary authority as required by the Conduct Rules.

35. The learned Single Judge of Karnataka High Court held that the object of introducing this Explanation in the new Act was to

reduce the burden on the part of the prosecution in proving known sources of income by the public servant. The source of income for the acquisition of assets by a public servant would always be within his personal knowledge. Therefore, parliamentarian thought it necessary to explain the expression “*known source of income*” so that pecuniary resources or the property acquired by a public servant should be reported to the disciplinary authority as per the Conduct Rules and only those pecuniary resources and properties acquired and reported alone should be taken into account while determining the question whether the assets possessed by the public servant can be acquired from a lawful source. Since there was no such compulsion under the old Act and since the check period in the case on hand was almost covered during the period when the old Act was in force, the failure on the part of the accused to report all his incomes to the disciplinary authority by submitting annual assets and liabilities statement could not have been the basis for rejection of evidence relating to such additional income of the public servant concerned.

36. On facts, the decision in *Sripada Gouda* (supra) is distinguishable because in the said case, hardly about five months from out of check period of almost 22 years was the period to which the Explanation to Section 13(1)(e) of 1988 Act could be applied. In contrast in the present case, the check period is from 1980 to 2000. Between 1980 to 1985, even the Appellant has not claimed any earned rental income. The rental income between 1985-1988 comes to

₹80,400/-. The bulk of rental income claimed to have earned by the Appellant pertains to the period between 1988-2000. However, considering the law laid down by the Hon'ble Apex Court in *Ashok Bhutia* (supra) as well as *Sripada Gouda* (supra), it is necessary to take into consideration the evidence of defence witnesses PW24 and PW45 on the aspect of rental income.

37. Admittedly, the Appellant in this case failed to give intimation to his department that he received rental income. It is not the case of the Appellant that he was not required to give such intimation. However, the case of the Appellant is that despite having failed to give such intimation, he has now discharged the onus of establishing that he had nevertheless earned his rental income during the check period.

38. Now if the evidence of the defence witnesses is perused, then, it is necessary to note that most of the witnesses are the relations of the Appellant. Secondly, there are discrepancies in so far as the rent amounts are concerned. There are discrepancies between the deposition of the Appellant and such witnesses when it comes to the indication of the rent amount allegedly received by the Appellant. There is no reference to such a rent amount in any income tax return that may have been filed by the Appellant or his wife. There is no lease deed or other contemporaneous document to establish the lease of Golden Pebble Apartment and the rent earned therefrom. No rent receipts or bank

documents are evidencing the receipt of such amount were ever produced. Therefore, even if we proceed on the basis that the Appellant was entitled to establish by way of evidence that he had received the amount towards the rentals though he may not have intimated such receipt to his department, the evidence on record hardly supports the contention of the Appellant on the aspect of rent receipts.

39. The learned Special Judge has also considered the evidence on record and concluded that no reliance can be placed upon the defence evidence on the aspect of receipt of rentals. The prosecution witness no doubt stated that he was aware that the Golden Pebble Apartment was rented out for some period. However, even this witness has not deposed to this aspect in some detail. Even this witness has not indicated the basis for such a statement. In any case, this witness has not deposed to any rent amount or compensation amount which may have been paid to the Appellant. In this state of evidence, therefore, it cannot be said that the Appellant has made out any case for the addition of the amount of ₹3,76,100/- to his total income.

40. Therefore, by partially accepting the contention of Mr. Saudagar, at the highest an amount of ₹63,542.15 can be added to the total income of the Appellant as determined by the learned Special Court in this matter. This means that the total income of the Appellant can be taken as ₹33,89,601.15 instead of ₹33,26,059 as determined by the learned Special Court.

41. In so far as the kitchen expenses of ₹3,62,448/- determined by the learned Special Court are concerned, it is necessary to note that the learned Special Judge applied the principles set out in the Circular dated 28.11.2001 produced by the learned counsel for the Appellant at the stage of the final hearing in this matter. This Circular provides that unverifiable expenditure such as kitchen, household, clothing, etc., should be taken as 1/3rd of the gross salary as a last resort after attempting to quantify the expenses broadly under each of these heads by verification. Accordingly, there is no good ground to interfere with this figure. However, Mr. Saudagar pointed out that certain items were already included in the chart relating to movable assets at Exhibit 132 Colly. Therefore, he submits that at least these amounts could not have been included for computing kitchen expenses. He points out that the value of the included amount would come to ₹22,246.60.

42. Accepting this later contention of Mr. Saudagar, an amount of ₹22,246.60 is required to be deducted from kitchen expenses computed by the learned Special Judge as ₹3,62,448/-. Thus, the kitchen expenses will have to be held as ₹3,40,201.40. This further means that the total expenses of the Appellant during the check period will have to be taken as ₹6,96,061.40 instead of ₹7,18,308/-.

43. Mr. Saudagar then urges that an amount of ₹1,59,747 is required to be deducted from the amount of ₹13,97,471/- determined by the learned Special Court as being the value of the Appellant's house.

Mr. Saudagar contends that in this case the Appellant personally supervised the construction of the house and therefore, there was no question of the addition of 15% towards the building contractor profit. He relies upon the evidence of PW31 —Valuer and DW5, the defence witness in support of this contention.

44. The contention does not deserve acceptance because in the first place, there is no reason to discard the evidence of PW31, which has not at all been dented in the course of his cross-examination. PW31 has explained the basis for his valuation and there is no error in the adoption of such a basis. Apart from suggestions, there is absolutely nothing on record to detract from clear and cogent testimony of the prosecution witnesses on the aspect of valuation. The Appellant has also not led any positive evidence to warrant any deductions to the extent of 15%. The contention is mostly based upon surmises or interpretation of the valuation principles. PW31, in this case, was a CPWD engineer, and the learned Special Court, upon analyzing his testimony has accepted the value of the Appellant's house as ₹13,97,471/-. There is no case made out to permit any deductions as urged by Mr. Saudagar.

45. Mr. Saudagar then urges that an amount of ₹12,500/- is required to be deducted from the value of the plot which has assessed at ₹25,000/- by the learned Special Court. PW7 has deposed the value of the plot and the Appellant does not have any grievance in so far as the value is concerned. The only contention of Mr. Saudagar is that the plot

was jointly owned along with his brother and therefore, the value of the Appellant's share would come to ₹12,500/- and not ₹25,000/-. Although Mr. Amonkar, did make a cogent submission against this contention of Mr. Saudagar, considering the amount involved, the value of the Appellant's share can be taken as ₹12,500/- instead of ₹25,000/-.

46. Mr. Saudagar then contends that the value of the Golden Pebble flat which is taken by the learned Special Court as ₹1,11,000/- is required to be reduced by ₹55,000/-. Again, this flat is located in Bombay and there is no challenge to the valuation as such and in fact, it appears on the lower side. Mr. Saudagar however contends that this flat belonged to the Appellant's mother and his fiancée and was purchased before the Appellant's marriage to his fiancée. He then points out that it is only consequent upon the demise of the Appellant's mother, the Appellant can be said to have acquired 50% right in the apartment. On this basis, it is urged that there ought to be deduction to the extent of ₹55,000/-. Mr. Saudagar submits that this is without prejudice to the primary contention that since, this flat is not in the name of the Appellant, the same, ought not to be regarded as the assets of the Appellant.

47. In this case, the prosecution has discharged the burden which the law casts upon it and established beyond a reasonable doubt that this Golden Pebble Apartment was the asset of the Appellant. There is absolutely no indication as to the source of income of the Appellant's

mother or his fiancée at the stage when this flat was purchased in Bombay. On the contrary, the evidence on record suggests that the real source was the Appellant himself. The learned Special Court has considered these circumstances and there is no case made out to interfere with the findings recorded by the learned Special Judge on this issue. The evidence of PW24 read with evidence of DW1 is sufficient to sustain these findings.

48. Mr. Saudagar then submits that even the flat at Vishwas Apartment is not at all the asset of the Appellant, since, it is in the name of Argentina Rodrigues, the Appellant's mother. Mr. Saudagar pointed out to the evidence of PW11 who deposed that Argentina Rodrigues used to come with her elder son and not the Appellant for dealings to purchase the flat at Vishwas Apartment. Again, there is no evidence on record to suggest that the Argentina Rodrigues, the mother of the Appellant had any independent source of income until she died in the year 1991.

49. Though the Appellant examined several defence witnesses significantly, his elder brother was not examined. If at all the Appellant suggests that his elder brother was a source for purchase of this flat in the name of his mother, then, nothing prevented the Appellant from examining his elder brother now that the appellant has examined so many defence witnesses in this matter. The prosecution, in this case, has produced sufficient evidence from which, the legitimate inference has

been drawn by the Special Court that this apartment was also an asset of the Appellant and consequently there is nothing wrong with the addition of ₹95,000/- to the value of immovable assets.

50. Thus, in so far as the value of the immovable assets is concerned, the amount of ₹22,02,461/- as determined by the learned Special Court, hardly an amount of ₹12,500/- can be deducted and this value can be redetermined at ₹21,89,961/-. Incidentally, even if the contentions of Mr. Saudagar were to be accepted, then the value of the immovable assets would come to ₹19,75,214/-.

51. Mr. Saudagar contends that though the value of the gold is ₹1,50,781.74, the learned Special Judge has completely ignored the evidence of DW1, who has deposed to the items of gold received by him from his parents as also his wife before the check period. Mr. Saudagar submits that DW1 has also clearly deposed to the gold received by his children on various occasions and submits that the source for acquisition of such gold, the valuation could not have been taken as ₹1,50,781.74.

52. Although, the evidence on record led on behalf of the defence may not be clinching, applying the test of preponderance of probabilities which will be the correct test to adopt in such matters. At least an amount of ₹50,000/- is required to be deducted. Therefore, the valuation of gold found with the Appellant during the check period, the same can be taken as ₹1,00,000/- and not ₹1,50,781.74.

53. Similarly, there is merit in the contention of Mr. Saudagar that it was not appropriate for the learned Special Court to take the value of household articles at ₹4,70,233/- by including items such as old clothes, utensils, blankets, bulb, cutlery, etc. Mr. Saudagar contends that an amount of ₹53,100/- is required to be deducted from the valuation made by the learned Special Judge in respect of these household articles and this contention can be accepted based on the deduction so made.

54. On the aspect of interest on Fixed Deposit Receipts, again Mr. Saudagar points out to certain calculation errors that are not substantiated. Therefore, no deductions are due on the said count. In so far as the movable assets are concerned, after allowing deductions to the extent of ₹1,03,100/- the total value of the amount towards immovable assets determined at ₹17,89,515.24 by the learned Special Court is required to be reduced to ₹16,86,415.24. Incidentally, even if the contentions of Mr. Saudagar were to be accepted in their entirety, this amount would come to ₹16,00,852.63.

55. Mr. Saudagar submits that the assets held on 01.01.1980 as determined by the learned Special Court at ₹17,889/- is too less and such assets should have taken as ₹61,789.83. Mr. Saudagar pointed out that the Appellant used to play in a band and wife had also some income. He refers to the evidence of PW15 and DW1 on this aspect.

56. From the perusal of the evidence, PW15 does not justify

any addition whatsoever. The Appellant (DW1) is a self-serving statement. In any case, even if the value of these assets is taken as ₹61,789.83 as urged by Mr. Saudagar, the same, will make no difference to the ultimate result in this matter.

57. According to the calculation submitted by Mr. Saudagar, the extent of disproportionality comes to ₹1,70,034.13, which is less than 10% of the total income of the Appellant during the check period. However, even after the acceptance of several contentions of Mr. Saudagar and making allowances therefor the extent of disproportionality will work out as follows:

|                                                                                                                                                |               |
|------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| (a) The total income during the check period 01.01.1980 to 22.06.2000 ( check period )                                                         | ₹33,89,601.15 |
| (b) Expenses incurred during the check period                                                                                                  | ₹6,96,061.40  |
| (c) Likely savings during the check period                                                                                                     | ₹26,93,539.75 |
| (d) Movable as well as immovable assets held as on 22.06.2000 ( This includes ₹95000 which the learned Special Judge had included separately ) | ₹38,48,805    |
| (e) Assets held as on 01.01.1980                                                                                                               | ₹61,789.83    |
| (f) Assets acquired during the check period (d-e)                                                                                              | ₹37,87,015.17 |
| (g) The extent of proportionate assets (f-c)                                                                                                   | ₹10,93,475.42 |

58. Admittedly, since this extent is way beyond the 10% margin referred to in *Krishnanand Agnihotri* (supra), there is no case made out to interfere with the conviction recorded by the learned Special Court in this matter.

59. In so far as the sentence is concerned, the learned Special Judge has been extremely lenient and has imposed the minimum sentence than prescribed for the offence under Section 13(2) read with Section 13(1)(e) of the said Act. The fine amount of ₹1,00,000/- is also entirely commensurate and consistent with the principles set out in Section 16 of the said Act.

60. For all the aforesaid reasons, therefore, this appeal is dismissed. The Appellant to surrender before the Special Court within six weeks from today and the Special Court, to take necessary steps to ensure that the Appellant serves out the sentence imposed upon him by the impugned judgment and order. There shall however be no order as to costs.

**M. S. Sonak, J**

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