NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Acquittal Appeal No. 11 of 2009

State of Madhya Pradesh.

---Appellant

Versus

Rajendra Singh Yadav, Aged 43 years, S/o Lochan Singh Yadav, Sub-Engineer, Irrigation Department, Bilaspur, Chhattisgarh.

--- Respondent

For Appellant	:-	Mr. Ravi Bhagat, Dy. G.A.
For Respondent	:-	Mr. Vijay Deshmukh, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

22/01/2021

1. This acquittal appeal is directed against the judgment dated 31/03/2000 passed by learned Special Judge (Prevention of Corruption Act, 1988) acquitting the respondent herein from offence punishable under Section 13(1)(e) read with Section 13(2) of Prevention of Corruption Act, 1988 (in short, "PC Act"), on the following factual background :-

1.1. The respondent herein worked on the post of Sub-Engineer in the Water Resources Department and during the relevant period from 01/01/1983 to 31/08/1995, he amassed ₹ 7,18,430/- which is disproportionate to his valid source of income and thereby, committed the offence.

1.2. It is the allegation of the prosecution that respondent, in the name of his maternal uncle Shyambabu Yadav and his brothers Shiv Singh and Abhay Singh, has purchased 2.80 acres of agricultural land in Bilaspur worth ₹ 9,76,403/- and he has also purchased property in the name of his mother Chameli Devi and he has raised construction in the plot situated at Bilaspur and also deposited a sum of ₹ 22,515/- in the name of his family members and purchased other movable properties, as such, he was found in possession of property which is disproportionate to his valid source of income for which explanation was sought from the respondent and after finding it unsatisfactory, the aforesaid offence was registered against the respondent vide Exhibits 72 and 73 on 30/08/1995 and he was charge-sheeted before the jurisdictional Special Judge.

2. The respondent abjured his guilt and entered into defence and submitted his explanation vide

Ex. D/12. It is his case that the income of his maternal uncle and his brothers has wrongly been included in his income and the valuable articles obtained by his brothers, uncle, mother and other relatives have also wrongly been shown as his property. He has not purchased any property in the name of his maternal Uncle or his brothers.

3. Learned Special Judge, after appreciation of oral and documentary evidence on record, considered the matter in detail and reached to the conclusion that prosecution has failed to bring home the offence punishable under Sections 13(1)(e) read with Section 13(2) of the PC Act registered against the respondent and he has accepted the defence version of the respondent and has held that the respondent herein has satisfactorily proved that he does not possess extra income which is more than his valid source of income and thereby, acquitted the respondent herein from all the charges leveled against him vide its impugned judgment dated 31/03/2000.

4. Mr. Ravi Bhagat, learned Deputy Government Advocate appearing for appellant/State, would submit that learned Special Judge is absolutely

unjustified in holding that respondent does not possess property which is disproportionate to his valid source of income and he has satisfactorily explained that he does not possess the income which is more than what he is earning from his valid source, as such, the judgment of acquittal passed by learned Special Judge is based on perverse ground and is liable to be set aside.

5. Mr. Vinod Deshmukh, learned counsel appearing for the respondent, would submit that learned Special Judge is absolutely justified in holding that respondent has not amassed income and property which is disproportionate to his valid source of income and thereby, rightly acquitted the respondent from the aforesaid offence which is neither perverse nor contrary to the record and only two views are possible on the evidence available and one view has already been taken by learned Special Judge, as such, there is no reason to upset the view taken by the Special Judge while acquitting the respondent.

6. I have heard learned counsel for the parties, considered their rival submissions made herein-

above and went through the records with utmost circumspection.

7. The respondent herein was charged for offence punishable under Section 13(1)(e) read with Section 13(2) of the PC Act on the ground that he has amassed ₹ 7,18,430/- which is more than he could have earned from his valid source of income and he has also failed to satisfactorily explain about the acquisition of the aforesaid extra income.

8. At this stage, it would be appropriate to notice Section 13(1)(e) of the Prevention of Corruption Act, 1988, which states as under :-

> "**13. Criminal misconduct by a public servant.** - (1) A public servant is said to commit the ofence of criminal misconduct, -
>
> (a) XXX
>
> (b) XXX
>
> (c) XXX
>
> (d) XXX
>
> (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, or pecuniary resources or property disproportionate to his known sources of income."

9. In order to prove the charge under Section 13(1)(e) of the PC Act, 1988, the prosecution must

prove the the following ingredients, namely (1) the prosecution must prove that the accused is a public servant, (2) the nature and extent of the pecuniary resources or property which are found in his possession, (3) it must be proved as to what were his known sources of income i.e. known to the prosecution, (4) it must prove quite objectively that the resources or property found in possession of the accused were disproportionate to his known source of income. Once the above-mentioned ingredients are satisfactorily proved, the offence of criminal misconduct under Section 13(1)(e) of the PC Act, 1988 is complete, unless the accused is able to account for such resources or property and it is only thereafter the burden shifts to the accused to prove his innocence.

10. The Supreme Court in the matter of **State of Maharashtra v. Wasudeo Ramchandra Kaidalwar**[1] dealing with Section 5(1)(e) of the Prevention of Corruption Act, 1947 which is pari-materia to Section 13(1)(e) of the PC Act, 1988, has held that the accused having been found in possession of disproportionate assets, he is duty bound to account satisfactorily for such possession. It was observed as under:-

1 AIR 1981 SC 1186

> "13.....To substantiate the charge, the prosecution must prove the following facts before it can bring a case under S. 5(1)(e); namely, (1) it must establish that the accused is a public servant, (2) the nature and extent of the pecuniary resources or property which were found in his possession, (3) it must be proved as to what were his known sources of income i.e. known to the prosecution, and (4) it must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income. Once these four ingredients are established, the offence of criminal misconduct under S. 5(1)(e) is complete, unless the accused is able to account for such resources or property. The burden then shifts to the accused to satisfactorily account for his possession of disproportionate assets....."

11. Similarly, in the matter of **M. Krishna Reddy v. State Deputy Superintendent of Police, Hyderabad**[2], Their Lordships of the Supreme Court again analyzing the provisions contained in Section 5(1)(e) of the Prevention of Corruption Act, 1947 (pari-materia provision to Section 13(1)(e) of the Act of 1988) held that it is not the mere acquisition of property that constitute an offence under the provisions of the Act but it is the failure of accused to satisfactorily account for such possession that makes the possession objectionable as offending the law. Their Lordship further held that only after the prosecution has proved the required ingredients, the burden of

2 AIR 1993 SC 313

satisfactorily accounting for the possession of such resources or property shifts to the accused. It was observed as under:-

> "6. An analysis of Section 5(1)(e) of the Act, 1947 which corresponds to Section 13(1)(e) of the new Act of 1988 shows that is not the mere acquisition of property that constitutes an offence under the provisions of the Act but it is the failure to satisfactorily account for such possession that makes the possession objectionable as offending the law.
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> 7. To substantiate a charge under Section 3(1)(c) of the Act, the prosecution must prove the following ingredients, namely, (1) the prosecution must establish that the accused is a public servant, (2) the nature and extent of the pecuniary resources or property which were found in his possession (3) it must be proved as to what were his known sources of income, i.e. known to the prosecution and (4) it must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income. Once the above ingredients are satisfactorily established, the offence of criminal misconduct under Section 5(1)(e) is complete, unless the accused is able to account for such resources or property. In other words, only after the prosecution has proved the required ingredients, the burden of satisfactorily accounting for the possession of such resources or property shifts to the accused."

12. The Supreme Court in the matter of **<u>K. Veeraswami v. Union of India and others</u>**[3] with reference to Section 5(1) (e) of the PC Act, 1947 observed as under:-

3 1991 (3) SCC 655

"Clause (e) creates a statutory offence which must be proved by the prosecution. It is for the prosecution to prove that the accused or any person on his behalf, has been in possession of pecuniary resources or property disproportionate to his known sources of income. When that onus is discharged by the prosecution, it is for the accused to account satisfactorily for the disproportionality of the properties possessed by him. The Section makes available statutory defence which must be proved by the accused. It is a restricted defence that is accorded to the accused to account for the disproportionality of the assets over the income. But the legal burden of proof placed on the accused is not so onerous as that of the prosecution. However, it is just not throwing some doubt on the prosecution version. The legislature has advisedly used the expression "satisfactorily account". The emphasis must be on the word "satisfactorily". That means the accused has to satisfy the court that that his explanation is worthy of acceptance. The burden of proof placed on the accused is an evidential burden though not a persuasive burden. The accused, however, could discharge that burden of proof "on the balance of probabilities" either from the evidence of the prosecution and/or evidence from the defence.

(emphasis added)"

13. In the matter of **State of Maharashtra and others v. Ishwar Piraji Kalpatri and others**[4] the Supreme Court following the principle of law laid down in **K. Veeraswami** (supra) has held that the opportunity which is to be afforded to the delinquent officer under Section 5(1)(e) of satisfactorily explaining about his assets and resources is before the Court when the trial

4 AIR 1996 SC 722

commences and not at an earlier stage. It was observed as under:-

> "15. In our opinion, there is a complete misreading of the aforesaid provision by the High Court. It is no doubt true that a satisfactory explanations was required to be given by the Delinquent Officer. But this opportunity is only to be given during the course of the trial. It is no doubt true that evidence, had to be gathered and a prima facie opinion formed that the provisions of Section 5(1)(e) of the Act are attracted before a first information report was lodged. During the course of gathering of the material, it does happen that the officer concerned or other person may be questioned or other queries made. For the formation of a prima facie opinion that an officer may be guilty of criminal misconduct leading to filing of the First Information Report. There is no provision in law or otherwise which makes it obligatory of an opportunity of being heard to be given to a person against whom the report is to be lodged. That such satisfactory account had to be rendered before a Court is also borne out from the judgment of this Court in Veerswami' case (supra).
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> 16. The aforesaid passage leaves no manner of doubt that the opportunity which is to be afforded to the delinquent officer under Section 5(1)(e)of the Act of satisfactorily explaining about his assets and resources is before the Court when the trial commences and not at an earlier stage. The conclusion arrived at by the learned Single Judge that principles of natural justice had been violated, as no opportunity was given before the registration of the case is clearly unwarranted and contrary to the aforesaid observations of this Court in K. Veeraswami's case (supra)"

14. The Madhya Pradesh High Court in the matter of **Permanand Kedar Natha Jha v. State of M.P.**[5] has held that investigative trial before filing

5 2000(1) M.P.L.J. 360

chargesheet and after completion of investigation not contemplated by any provision in law and also also held that there is no provision in law, or otherwise which makes it obligatory for an opportunity of being heard to be given to the person against whom the report is to be lodged. It was observed as under:-

> "9. In these judgments the Court was nowhere faced with the question whether an investigative trial before filing the charge-sheet and after completion of the investigation is called for on the part of investigating officer. In our case the investigations are completed and challan has been filed showing the extent of properties being beyond the known sources of income and in the face of the explanation of the wife of the accused that only accused could explain about her acquisition. The trial Court, in rejecting the objection of the petitioner on the point of need of prior notice prior to filing of challan, relied upon the observation of the Supreme Court in *AIR 1996 SCW 15* where the Court observed that it was no doubt true that a satisfactory explanation was required to be given by the delinquent officer, but, this opportunity is only to be given during the course of trial. It was also no doubt true that evidence had to be gathered and prima facie opinion formed whether the provisions of section 5(1)(e) of the Act (old Act) are attracted before the first information report was lodged. During the course of gathering of the material it does happen that the officer concerned or other person may be questioned or other queries made for the formation of guilty criminal misconduct leading to filing of first information report. There is no provision in law or otherwise which makes it obligatory for an opportunity of being heard to be given to the person against whom the report is to be lodged. The said satisfactory account is to be rendered before the Court. The same result was reached by the Supreme

Court in case of *Veera Swami* cited at *1991 (3) SCC 655*. The trial Court has observed regarding assets of the son of the accused and his sources of income that there is a vast difference between them also and similar about the wife of the accused on the basis of the material placed on record. So the Court said that the trial was necessary. The accused could give satisfactory account, in his evidence after the prosecution has discharged the initial burden of proof placed on them to prove the various ingredients of the offence. The accused could disprove by giving satisfactory account by evidence worth acceptance, the accused could discharge the burden which comes on him on the balance of probability either from the evidence of the prosecution or from the defence or both as was held in *Veeraswami's* case by the Supreme Court. So the trial Court has fully discussed the material placed before it and kept in mind the various guidelines laid down by the Supreme Court."

15. The Supreme Court in the matter of **State of M.P. v. Awadh Kishore Gupta and others**[6] has held as under:-

> "5. Section 13 deals with various situations when a public servant can be said to have committed criminal misconduct. Clause (e) of sub-section (1) of the Section is pressed into service against the accused. The same is applicable when the public servant 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 pecuniary resources or property disproportionate to his known sources of income. Clause (e) of sub-section (1) of S.13 corresponds to Cl. (e) of sub-section (1) of S.5 of the Prevention of Corruption Act, 1947 (referred to as 'Old Act'). But there has been drastical amendments. Under the new clause, the earlier concept of "known sources of income" has undergone a radical change. As per the explanation appended, the prosecution is relieved of the burden of investigating

6 AIR 2004 SC 517

into "source of income" of an accused to a large extent, as it is stated in the explanation that "known sources of income" mean income received from any lawful source, the receipt of which has been intimated in accordance with the provisions of any law, rules orders for the time being applicable to a public servant. The expression "known sources of income" has reference to sources known to the prosecution after thorough investigation of the case. It is not, and cannot be contended that "known sources of income" means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters "specially within the knowledge" of the accused, within the meaning of Section 106 of the Indian Evidence Act, 1872 (in short the 'Evidence Act').

14. The phrase "known sources of income" in S.13(1)(e) (old S.5(1)(e)} has clearly the emphasis on the word "income". It would be primary to observe that qua the public servant, the income would be what is attached to his office or post, commonly known as remuneration or salary. The term "income" by itself, is elastic and has a wide connotation. Whatever comes in or is received, is income. But, however, wide the import and connotation of the term "income", it is incapable of being understood as meaning receipt having no nexus to one's labour, or expertise, or property, or investment, and having further a source which may or may not yield a regular revenue. These essential characteristics are vital in understanding the term "income". Therefore, it can be said that, though "income" is receipt in the hand of its recipient, every receipt would not partake into the character of income. Qua the public servant, whatever return he gets of his service, will be the primary item of his income. Other incomes which can conceivably are income qua the public servant, will be in the regular receipt from (a) his property, or (b) his investment. A receipt from windfall, or gains of graft, crime, or immoral secretions by persons prima facie would not be receipt from the "known sources of income" of a public servant.

> 15. The Legislature has advisedly used the expression "satisfactorily account". The emphasis must be on the word "satisfactorily" and the Legislature has, thus, deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the Court that his explanation was worthy of acceptance. ”

16. Coming to the facts of the instant case, learned Special Judge, after a detailed discussion of the oral and documentary evidence on record, has recorded the following conclusion in paragraph 59 of its judgment :-

> “59. उपरोक्त समस्त परिस्थितियों में एवं गहन अनुसंधान के अभाव में यह पाया जाता है की अभियोजन द्वारा अभियुक्त के मामा, अभियुक्त के अनुजगण एवं अभियुक्त की संपत्ति की गणना त्रुटिपूर्ण की गयी है | अभियोजन द्वारा त्रुटिपूर्ण गणना किये जाने के आधार निम्नलिखित हैं :-
>
> अ. अभियोजन द्वारा अभियुक्त की पैतृक संपत्ति की आलोच्य अवधि के पूर्व की आय को गणना में सम्मिलित नहीं किया गया है |
>
> ब. आलोच्य अवधि में अभियुक्त की पैतृक भूमि की कृषि आय के वर्ष त्रुटिपूर्ण रूप से निर्धारित किये गए हैं |
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> स. अनुसंधान अधिकारी राजेंद्र कुमार मिश्रा अ. सा. क्रं. 16 द्वारा अभियुक्त द्वारा प्रस्तुत किये गए व्याख्यात्मक स्पष्टीकरण प्र. डी. 12 पर अविश्वास किये जाने का कोई विश्लेषणात्मक विवरण नहीं किया गया है |
>
> द. अभियुक्त के मामा श्याम बाबू यादव के निवास गृह पर पायी गयी वस्तुओं के क्रय-विक्रय एवं विवाह में उपहार में पाए जाने के बिंदु पर गहन अनुसंधान नहीं किया गया है |

इ. अभियुक्त द्वारा बेनामी संपत्ति क्रय किये जाने के सम्बन्ध में कोई साक्ष्य प्रस्तुत नहीं की जा सकी है |

क. अभियुक्त के मामा श्याम लाल यादव की दुग्ध आय के सम्बन्ध में कोई अनुसंधान नहीं किया गया है |

ख. अभियुक्त के मामा श्याम लाल यादव की ठेकेदारी की आय के सम्बन्ध में गहन अनुसंधान नहीं किया गया है जबकि उपरोक्त दोनों आयकर दाता रहे हैं |

ग. अभियुक्त के मामा श्याम लाल यादव के दोनों निवास गृहों के निर्माण कार्य के मूल्यांकन में 10% निरीक्षण एवं व्यवस्थापन व्यय कम किये जाने योग्य है |

घ. अभियुक्त की बहु उषा पत्नी शिवसिंह की आय के सम्बन्ध में भी कोई अनुसंधान नहीं किया गया है |"

17. Thereafter, he proceeded to acquit the respondent from the aforesaid charges in paragraph 65, which states as under :-

"64. उपरोक्त विवेचना से स्पष्ट है की अभियोजन द्वारा शंका से परे अभियुक्त के विरुद्ध यह प्रमाणित नहीं किया जा सका है की अभियुक्त द्वारा जांच अवधि में अनुपातहीन संपत्ति अर्जित की गयी थी | परिणामतः अभियुक्त को अनुपातहीन संपत्ति अर्जित एवं धारित करने का दोषी नहींन ठहराया जा सका है | परिणामतः अभियुक्त को भ्रष्टाचार निवारण अधिनियम 1988 की धारा 13(1)(इ) सहपठित धारा 13(2) के आरोप से दोषमुक्त किया जाता है | अभियुक्त के व्यक्तिगत बंधपत्र एवं प्रतिभूति पत्र निरस्त किये जाते हैं | अभियुक्त को स्वतंत्र छोड़े जाने के निर्देश दिए जाते हैं |"

18. A careful perusal of paragraph 59 of the impugned judgment of acquittal would show that it has clearly been recorded by learned Special Judge that the income from the ancestral property of the respondent has not been taken into consideration while computing his total income as well as his income from the agricultural property has also not been taken into consideration and learned Special Judge has also found the explanation submitted by the respondent vide Exhibit D/12 to be acceptable and satisfactory and has recorded the finding that there is no such reason not to accept the said explanation. He has further held that the articles seized from the possession of respondent's maternal uncle Shyambabu Yadav have not been properly investigated and with regard to the benami transaction, no evidence has been led by the prosecution to show that the property which is in the name of his maternal uncle is benami and even otherwise, his maternal uncle Shyambabu Yadav is a contractor and he also pays income tax, but his income has also not been investigated properly. Furthermore, he has held that 10% cost has to be reduced for maintenance

from the total cost of construction made by Shyambabu Yadav in his two homes and the income of the respondent's daughter-in-law namely Usha has also not been investigated into.

19. It is correct to say that in order to prove that respondent has purchased the benami property in the names of his maternal uncle and brothers, no evidence has been laid by the prosecution.

20. The Supreme Court in the matter of **Krishnanand Agnihotri v. The State of Madhya Pradesh**[7] has clearly held that burden of proving a transaction as benami lies on the person alleging it to be so. Paragraph 26 of the Judgment states as under :-

> "26. … It is well settled that the burden of showing that a particular transaction is benami and the appellant owner is not the real owner always rests on the person asserting it to be so and this burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of benami is the intention of the parties and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of the serious onus that rests on him, nor justify the acceptance of mere conjectures or surmises

7 (1977) 1 SCC 816

> as a substitute for proof. (Vide *Jayadayal Poddar v. Mst.Bibi Hazra*[8]). It is not enough merely to show circumstances which might create suspicion, because the court cannot decide on the basis of suspicion. It has to act on legal grounds established by evidence."

21. In the instant case, it was solely upon the prosecution to prove that the property was purchased by the respondent in the names of his maternal uncle Shyambabu Yadav and his brothers Abhay Singh and Shiv Singh as benami by leading legal evidence, but the prosecution has utterly failed in leading evidence and proving the aforesaid.

22. Though learned State counsel took me through the statement of the prosecution witnesses and exhibited documents, but could not demonstrate that any of the findings recorded by learned Special Judge in paragraph 59 of the impugned judgment of acquittal are perverse or contrary to the record, as such, there is no reason to take any other view than what has been taken by learned Special Judge. It is well settled law that this Court should not interfere with the view taken by the lower Court unless the findings recorded by that Court are absolutely perverse and contrary to the record, and as

8 (1974) 1 SCC 3

noticed herein-above, despite serious attempt having been made by learned State counsel, the findings recorded by learned Special Judge in paragraph 59 could not be demonstrated to be erroneous. As such, I do not find any merit in the instant appeal.

23. The instant acquittal appeal, being devoid of merits, deserves to be and is accordingly dismissed. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet