Andreza

# IN THE HIGH COURT OF BOMBAY AT GOA

## CRIMINAL MISC. APPLICATION NO. 64 OF 2018
## IN
## STAMP NUMBER MAIN NO. 3152 OF 2016

Central Bureau of Investigation Anti Corruption Brnach., … Applicant-Appellant

*Versus*

Atchut Mukund Alornekar & anr. …Respondents

**Mr. Mahesh Amnkar, Special Public Prosecutor** *for the Applicant-Appellant.*
**Mr. C. A. Ferreira, Advocate** *with Mr. Sujay Kamulkar, Mr. Nehal Govekar and Mr. Alan F. C. Andrade, Advocates for the Respondents.*

**CORAM: MANISH PITALE, J**
**DATED: 27th November, 2021**

## ORAL ORDER

**1.** By this application, the Central Bureau of Investigation (CBI) is before this Court challenging the Judgment and order dated 27.07.2015 passed by the Special Court, CBI Court, Goa, Panaji in Special Case no. 31 of 2013, whereby the Respondents have been acquitted under Section 13(1)(e) and 13(2) of the Prevention of Corruption Act, (for short, *The said Act)*. The allegation against the Respondent no.1, as a Superintendent of Customs and his wife i.e. the Respondent no.2, was that their assets were disproportionate to the known sources of income.

**2.** In the present case, proceedings against the Respondents were initiated when a raid was conducted on Adani Exports Ltd. and documents were allegedly recovered indicating that the Respondents were having assets well beyond their known sources of income. On this basis, an FIR came to be registered and investigation was conducted. Upon the completion of investigation, a chargesheet was filed and the matter went to trial before the Special Court.

**3.** The case of the Appellant-Prosecution was that while the material on record indicated that the likely savings of the Respondent no.1 would be only ₹11,68,235/-, movable and immovable assets of ₹56,15,509/- were found, thereby showing that the income of the Respondents was disproportionate to the extent of ₹36,72,201/- to their known sources of income.

**4.** The parties led evidence before the Special Court. Various defences were raised on behalf of the Respondents, including absence of check period, absence of sanction for carrying out the raid; that there was no preliminary inquiry with regards to the veracity of the documents; calculations were wrongly made as a result of which inflated value of assets was placed on record and that no search warrant was produced.

**5.** The Special Court took into consideration the oral and documentary evidence on record and passed a detailed judgment, considering not only the aforesaid issues on law raised on behalf of the Respondents but also evidence pertaining to the calculations placed on record by the Appellants while alleging that the Respondents had assets well beyond their known sources of income.

**6.** A perusal of the impugned judgment and order shows that the evidence of P.w37, A. K. Dabas, is taken into consideration. This witness was a Police Sub-Inspector of the Appellant, who claimed to have searched the house of the Respondents on 02.05.2008. The cross examination of this witness is taken into consideration and it is found that while the FIR records the check period to be 01.01.1997 to 02.05.2008, this witness has categorically admitted in cross examination that the check period was not fixed by anyone. The Special Court took into consideration the entire material on record and came to a considered conclusion that the check period itself in the present case was never fixed. It was found that fixing of a check period was a basic condition to proceed in a case concerning disproportionate assets and therefore the very initiation of the prosecution appeared to be flawed.

**7.** Thereafter, the Special Court had analysed the evidence and material on record in great detail to verify the claim of the Appellant that the assets of the Respondents were disproportionate to the known sources of income. In the process, the Special Court considered value of various assets, including household articles, Gold ornaments, fixed deposits and other such assets. It was found that the appellant had proceeded in a manner indicating that the assets of the Respondents were calculated in an inflated way and that there were mistakes in raising claims as regards the true value of the aforesaid assets. It was found that even the component of interest pertaining to fixed deposits and other such instruments was wrongly taken into account while raising claims against the Respondents.

**8.** The Special Court considered each and every aspect of the matter in great detail and reached findings in favour of the Respondents. It was found that, considering the fact that the Respondent no.1 had served as an Officer for about 20 years, it could not be said that the assets attributable to him and his wife were disproportionate to his known sources of income.

**9.** Thus, the Special Court not only found that the very basis of initiation of the prosecution against the Respondents was flawed because the check period itself was never fixed, but upon a detailed analysis of the evidence and material on record found on merits that no case for conviction under Sections 13(1)(e) and 13(2) of the said Act was made out.

**10.** This Court has perused the impugned Judgment and order as also the compilation of the evidence of the witnesses. It is found that the Special Court has analyzed the evidence in a proper manner to reach reasonable conclusions and that the Applicant-Appellant has failed to make out a case for grant of leave to appeal against the order of acquittal.

**11.** In view of the above, the application is dismissed.

**MANISH PITALE, J**

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