IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.146 OF 2008

The State of Maharashtra]..Appellant

Vs.

1. Dnyanoba Sambhaji Mote]
2. Sou.Kusum Dnyanoba Mote]
3. Sunil Dnyanoba Mote]
   All R/at Mauli Krupa,]
   Somraya Nagar, Mohol,]
   Taluka Mohol, District-Solapur]..Respondents

Mr.Y.Y. Dabke, APP for the Appellant-State.
None for the Respondents.

CORAM : C.V. BHADANG, J.

DATE : 27 NOVEMBER 2021

JUDGMENT :

. By this Appeal, the State, is challenging the acquittal of the respondents, from the offence punishable under Section 13(1)(d) and 13(1)(e) read with Section 13(2) of the Prevention of the Corruption Act, 1988 ('The Act' for short) and Section 109 of the Indian Penal Code ('IPC' for short).

2. On 15 July 1965, the Respondent No.1 was appointed as an Agricultural Assistant in Soil Conservation Department. He served at various places at Maharashtra and at the relevant time was posted at Mohol, District-Solapur. The Respondent No.2 is the wife of the respondent No.1 while the respondent No.3 is their son. The respondent No.1 was residing at various places of his posting with family, while his brothers were staying at Valuj, Taluka-Mohol, Districit-Solapur. In the year 1983, the ancestral property was partitioned between the Respondent No.1 and his brothers.

3. On the basis of a complaint lodged by Mr.Pratap Mote, who is the nephew of the Respondent No.1, an open inquiry was conducted by Mr.V.A. Kulkarni, the then S.P., Anti Corruption Bureau. In the said enquiry it was revealed that the Respondent No.1 has acquired movable and immovable property and assets in his name and in the name of his wife, which were disproportionate to their known sources of income.

4. It appears that PW-1 Dharmesh Pamnani, Deputy Assistant Commissioner, Anti Corruption Bureau conducted further investigation and sought formal permission for prosecution of the Respondent Nos.1 which permission was granted on 8 April 1992. PW-1 thereafter lodged a complaint (Exh.-191) with Mohod Police Station on 9 April 1992. During the course of the investigation

certain documents relating to the assets of the Respondent Nos.1 and 2 were recovered vide panchnamma Exh-192. According to PW-1 the Respondent Nos.1 and 2 were found in possession of assets which were disproportionate to the known sources of income, to the extent of Rs.3,22,538.05 paise. The check period employed for purposes of reckoning the said computation was from 15 July 1965 (The date on which the Respondent No.1 joined the service) to 31 December 1998.

5. It appears that initially a charge-sheet was filed against the Respondent Nos.1 and 2. The Respondent No.3 at the relevant time was stated to be a minor. PW-4 Dilip Shephal filed a supplementary charge-sheet including against the Respondent No.3, on the respondent No.3 attaining majority. According to PW-3 the respondents were in possession of disproportionate assets to the extent of Rs.6,59,319.25 paise. The matter was registered as Special Case No.1/1998 on the file of the learned Special Judge at Solapur. A learned Special Judge framed a charge against the respondent Nos.1 and 2 on 20 April 2000. The Respondent Nos.1 and 2 were charged for having acquired assets disproportionate to their known sources of income to the extent of Rs.4,47,025.19 paise which they could not satisfactorily account for. This was during the period from 5 July 1965 to 31 March 1992. It appears that after filing of the supplementary charge-sheet the charge was altered on 11 April 2004

and for the said period the Respondents were alleged to have acquired assets disproportionate to the known sources of income to the extent of Rs.6,59,319.25 paise.

6. The Respondents pleaded not guilty to the charge and claimed to be tried. The material defence of the respondents is that they were not given any opportunity to explain the assets acquired and there was no proper valuation of the property and income from the agricultural property was not properly considered.

7. At the trial the prosecution examined in all four witnesses, namely PW-1 Dharmesh Pamnani, Deputy Assistant Commissioner, Anti Corruption Bureau, Solapur, PW-2 Dr. Dattatraya Vyavahare, PW.3 Hindurao Thorat and PW-4 Dilip Shephal and produced the record of investigation. The respondents did not lead any evidence in defence.

8. The learned Special Judge by a detailed judgment and order dated 7 October 2004 in Special Case No.1 of 1998 has acquitted the respondents. Hence this Appeal.

9. I have heard Mr.Dabke, the learned Additional Public Prosecutor for the Appellant. None appears for the respondents.

With the assistance of the learned Additional Public Prosecutor, I have gone through the record.

10. It is submitted by the learned Additional Public Prosecutor that the respondents have not given any explanation for the excess and have not led any evidence in defence. It is submitted that in view of the presumption under Section 20 of the said Act, the respondents were required to lead evidence and/or to give explanation, in order to displace the presumption, which is not done. The learned Additional Public Prosecutor has submitted that in the open enquiry conducted by Mr.V.A. Kulkarni, and the subsequent investigation conducted by PW-1, PW-3 and PW-4, the respondents have been found to be in possession of assets, which they could not satisfactorily explain on the basis of their known sources of income. He therefore, submitted that the learned Special Judge was in error in acquitting the respondents. Except this there are no other contentions raised.

11. I have carefully considered the circumstances and the submissions made in the context of the evidence led by the prosecution. The record discloses that a complaint was lodged by Mr.Pratap Mote who is nephew of accused No.1 alleging that the Respondent No.1 has collected assets disproportionate to his known sources of income. The learned Special Judge has noted that

although the prosecution claims that an application dated 26 June 1987 was given by Mr.Pratap Mote seeking an enquiry, that application is not produced on record. The record contains another application dated 22 March 1998 of Mr.Pratap Mote and the record further discloses that statement of witnesses were recorded from the year 1989 till 1993. The open enquiry was conduced by Mr.V.A. Kulkanri. The prosecution has not examined either Mr.Pratap Mote or Mr.V.A. Kulkarni, which is one of the reasons stated by the learned Special Judge in support of the acquittal. The learned Special Judge has noted that as per the evidence, the difference in the assets acquired after considering the income of the respondents and the expenditure comes to Rs.1,27,715/-. The learned Special Judge has then went upon considering the effect of Section 17 the Act of 1988 which corresponds to section 5A of the Prevention of Corruption Act, 1947. The learned Special Judge has noted the decision of the Supreme Court in ***H.N. Rishbud and Another V/s. The State of Delhi***[1] and ***The State of Madhya Pradesh V/s.Mubarak Ali*** [2], in order to hold that the object of these sections is to provide guarantee against frivolous and vexations prosecutions and the said sections are conceived in public interest. The learned Special Judge has found that apart from the fact that the Mr.V.A. Kulkarni has not been examined, it is also not shown that he is the requisite authority to initiate the open enquiry. The learned Special Judge also found

1 **1955 AIR SC 196**
2 **AIR 1959 Supreme Court 707**

that no opportunity was given to the respondents to explain the acquisition of the assets in the context of their income and expenditure. The learned Special Judge has noticed and to my mind rightly so that the gist of the offence under section 13(1)(e) is the failure of the accused to explain the sources of income sufficient to acquired the assets.

12. Apart from the reasons articulated by the learned Special Judge I also find that the check period reckoned by the prosecution in this case which extends to about 27 years and dates back to the year 1965 when the respondent No.1 has joined the service is too long and cannot be accepted in this case.

13. I have carefully gone through the impugned judgment of the learned Special Court. The learned Special Court after threadbare consideration of the prosecution evidence and the material produced, has come to the conclusion that the prosecution has failed to establish the charge against the respondents. In my considered view the finding so recorded does not suffer from any infirmity. It is now well settled that in an appeal of the present nature, this Court can interfere only when the view taken by the learned trial Court is found to be perverse or is an impossible view. (See the decision of the Supreme Court in ***Chandrappa & Ors. V/s. State of Karnataka***[3]). Applying these principles, no case for

3 **(2007) 4 SCC 415**

interference is made out. The appeal is without any merit and it is accordingly dismissed.

C.V. BHADANG, J.

NILAM SANTOSH KAMBLE
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