IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

Criminal Application (APPA) No. 991 of 2023
in
Criminal Appeal No. 608 of 2023

[Ajaz Hussain Siddiqui S/o Shahabuddin Siddiqui and anr. **..vs..** The State of Maharashtra through S.P., C.B.I., Nagpur]

with

Criminal Application (APPA) No. 990 of 2023
in
Criminal Appeal No. 607 of 2023

[Irshad Hussain Siddiqui S/o Shahabuddin Siddiqui ..vs.. The State of Maharashtra through S.P., C.B.I., Nagpur]

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. Shashank Manohar, Advocate for the applicants
Mr. P. Sathianathan, Special Public Prosecutor for the State/non-applicant

CORAM : ANIL L. PANSARE J.

Arguments were heard on : 13-9-2023
Order pronounced on : 21-9-2023

Criminal Application (APPA) No. 991 of 2023

The applicants/original accused are seeking to suspend the sentence imposed by the Special Judge in Special Case No. 5/2006.

2. The learned Special Judge, CBI/ACB Court, Nagpur has vide its judgment and order dated 31-8-2023 passed in Special Case No. 5/2006 convicted applicant no. 1 for the offence punishable under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short 'P.C. Act') and sentenced him to suffer rigorous imprisonment for six years and to pay fine of Rs. 22,95,962/-. The applicant no. 2 – wife of applicant no. 1 has been convicted for the offence punishable under Section 109 of the Indian Penal Code

(IPC) read with Section 13(1)(e) of the P.C. Act and sentenced her to suffer rigorous imprisonment for four years and to pay fine of Rs. 4,50,000/-.

3. Briefly stated, the facts are that applicant no. 1 has in the year 1984, joined Western Coal Fields Limited (for short 'WCL') as Loader (Class IV). He was promoted in due course as General Majdoor and thereafter as Chut-man. The prosecution alleged that he was a public servant and during the period from 1-7-1993 to 2-2-2005, total income from his known source was to the tune of Rs. 13,07,190/-. His expenses during the said period were Rs. 8,58,219/-. His assets, however, at the end of the check period were worth Rs. 22,20,295/- The disproportionate assets during the said period were, thus, found to be Rs. 17,71,324/-. The applicant no. 2 is said to have abetted criminal misconduct committed by applicant no. 1.

4. The Special Court, after going through the oral and documentary evidence, has found that applicant no. 1 has acquired 18 properties and applicant no. 2 has acquired 3 properties during the check period. The Special Court has further found that immovable assets of the applicants during the check period were of the value of Rs. 22,97,635/- and movable properties were of value of Rs. 7,40,000/-. The Court has, thus, held that the prosecution has established that the total assets of the applicants were at Rs. 30,37,635/- while the applicants had known pecuniary resource of only of Rs. 2,91,673/-. The applicants were found in possession of disproportionate assets worth Rs. 27,45,962/-, which the

applicants could not satisfactorily account for out of the known source of income. Accordingly, sentenced the applicants to suffer imprisonment as mentioned above.

5. Mr. Shashank Manohar, the learned counsel for the applicants submits that sanction to prosecute the applicant no. 1 suffers from gross illegality and, therefore, the entire trial is vitiated. He has relied upon the judgment of coordinate Bench of this Court in the case of ***State of Maharashtra vs. Ramkrishna Dorkar [1995(1) Mh.L.J. 558]*** to contend that no sanction can be granted in respect of offence under Section 5(1)(e) of the Prevention of Corruption Act, 1947, which is *pari materia* to Section 13(1)(e) of the P.C. Act unless sanctioning authority has accorded an opportunity to the accused to explain satisfactorily the disproportionate assets found. The High Court found that the sanctioning authority therein has neither issued any notice to the accused nor was any explanation called for and, therefore, sanction order was declared as not valid and, thus the accused therein was found to be entitled for discharge.

6. In my view, no benefit could be extended to the applicants in terms of the aforesaid judgment in as much as sub-section (3) of Section 19 of the P.C. Act provides that no finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of the Court, a failure of justice has in fact been occasioned thereby. Sub-section (4) of

Section 19 provides that in determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has been occasioned or resulted in a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

7. The applicant no. 1, in the present case, has not raised the objection of not granting him opportunity to explain his disproportionate assets, during the trial. The objection could have and ought to have been taken by the applicant no. 1 at the earliest possible opportunity. The half hearted attempt was made by the applicants to challenge the sanction order when the sanctioning authority was examined as P.W. 15. This challenge to sanction was, however, on the ground of his competence to accord sanction. The case put forth was that P.W. 5 was not appointing authority of applicant no. 1. Even this suggestion was found to be without merit. In any case, the sanction was not challenged on the ground that the sanctioning authority has not accorded an opportunity to the applicant no. 1 to explain satisfactorily the disproportionate assets. The reason is best known to the applicant no. 1, may be because he had no justification to offer.

8. Mr. Shashank Manohar then contends that there is no absolute bar to raise the grievance against the sanction before the appellate Court. He submits that the question of failure of justice will have to be addressed. According to him, since the opportunity was not granted

to the applicant no. 1, a serious prejudice has been caused because the applicant no. 1 could have explained satisfactorily the alleged disproportionate assets found to have been acquired by him and thus would not have undergone the sufferance of entire trial.

9. I do not find any substance in the aforesaid argument. Merely because such opportunity was not offered by the sanctioning authority, will not, by itself cause or result into failure of justice. The applicant no. 1 has been given complete opportunity, during the trial, to put forth his defence including, to tender his explanation as regards the disproportionate assets allegedly acquired by him. In fact in support of his case, he has examined two defence witnesses, apart from the fact that he had opportunity to throttle the case of the prosecution through cross-examination of the 24 prosecution witnesses examined to prove the charges. It cannot be, therefore, said that prejudice has been caused to the applicant no. 1 or there occurred failure of justice by not affording him an opportunity to explain his assets at the time when sanction was accorded.

10. The concept of failure of justice has been explained by the Hon'ble Supreme Court in the case of ***Rattiram and ors. Vs. State of M.P. [(2012) 4 SCC 516]***. Paragraph nos. 45 to 49 of the judgment read as under :

> "*45. Having dealt with regard to the concept of "fair trial" and its significant facets, it is apt to state that once prejudice is caused to the accused during trial, it occasions in "failure of justice". "Failure of justice" has its own connotation in various*

jurisprudences. As far as criminal jurisprudence is concerned, we may refer with profit to certain authorities.

46. Be it noted that in Bhooraji this Court has referred to Shamnsaheb M. Multtani v. State of Karnataka wherein it has been observed as follows : (SCC p. 585, para 23)

> *"23. We often hear about "failure of justice" and quite often the submission in a criminal court is accentuated with the said expression. Perhaps it is too pliable or facile an expression which could be fitted in any situation of a case. The expression "failure of justice" would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Diplock in Town Investments Ltd. vs. Department of the Environment). The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage." (emphasis supplied)*

47. In State v. T. Venkatesh Murthy, the High Court of Karnataka had upheld an order of discharge passed by the trial court on the ground that the sanction granted to prosecute the accused was not in order. The two Judge Bench referred to Sections 462 and 465 of the Code and ultimately held thus : (SCC pp. 767-68, paras 13-14)

> *"13. In State of M.P. v. Bhooraji the true essence of the expression "failure of justice" was highlighted. Section 465 of the Code in fact deals with "finding or sentences when reversible by reason of error, omission or irregularity", in sanction.*
>
> *14. In the instant case neither the Trial Court nor the High Court appears to have kept in view the requirements of sub-section (3) relating to question regarding 'failure of justice'. Merely because there is any omission, error or irregularity in the matter of according sanction that does not*

affect the validity of the proceeding unless the Court records the satisfaction that such error, omission or irregularity has resulted in failure of justice. The same logic also applies to the appellate or revisional Court. The requirement of sub-section (4) about raising the issue, at the earliest stage has not been also considered. Unfortunately the High Court by a practically non-reasoned order, confirmed the order passed by the learned trial judge. The orders are, therefore, indefensible. We set aside the said orders. It would be appropriate to require the trial Court to record findings in terms of Clause (b) of Sub-section (3) and Sub-section (4) of Section 19."

We have referred to the said authority only for the purpose of a failure of justice and the discernible factum that it had concurred with the view taken in Bhooraji. That apart, the matter was remitted to adjudge the issue whether there had been failure of justice, and it was so directed as the controversy pertained to the discharge of the accused.

48. In CBI v. V. K. Sehgal, it was observed: (SCC p. 504 para 10)

"10. A court of appeal or revision is debarred from reversing a finding (or even an order of conviction and sentence) on account of any error of irregularity in the sanction for the prosecution, unless failure of justice had been occasioned on account of such error or irregularity. For determining whether want of valid sanction had in fact occasioned failure of justice the aforesaid sub-section (2) enjoins on the court a duty to consider whether the accused had raised any objection on that score at the trial stage. Even if he had raised any such objection at the early stage it is hardly sufficient to conclude that there was failure of justice. It has to be determined on the facts of each case. But an accused who did not raise it at the trial stage cannot possibly sustain such a plea made for the first time in the appellate court."

The concept of failure of justice was further elaborated as follows:-(V.K. Sehgal SCC p. 505 para 11)

> *"11. In a case where the accused failed to raise the question of valid sanction the trial would normally proceed to its logical end by making a judicial scrutiny of the entire materials. If that case ends in conviction there is no question of failure of justice on the mere premise that no valid sanction was accorded for prosecuting the public servant because the very purpose of providing such a filtering check is to safeguard public servants from frivolous of mala fide or vindictive prosecution on the allegation that they have committed offence in the discharge of their official duties. But once the judicial filtering process is over on completion of the trial the purpose of providing for the initial sanction would bog down to a surplusage. This could be the reason for providing a bridle upon the appellate and revisional forums as envisaged in Section 465 of the Code of Criminal Procedure."*
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> *49. Adverting to the factum of irregular investigation and eventual conviction, the Constitution Bench in M. C. Sulkunte v. State of Mysore opined thus: (SCC p. 517, para 15)*
>
> *"15. ...It has been emphasized in a number of decisions of this Court that to set aside a conviction it must be shown that there has been miscarriage of justice as a result of an irregular investigation."*

11. Thus the Hon'ble Supreme Court has noted that in a case where the accused failed to raise the objection during trial and thereafter the trial ends in conviction of the accused, there is no question of failure of justice because the conviction is based on the judicial scrutiny of the entire material.

12. What should be the test of failure of justice has been explained by the Apex Court in yet another case between ***Shamnsaheb M.Multtani vs State Of Karnataka [(2001) 2 SCC 577]***. The accused therein was charged with an offence punishable under Section 302 and 498A

of IPC on the allegations that he caused the death of a bride after subjecting her to harassment with a demand of dowry within a period of 7 years of marriage. The trial Court found that the offence of murder has not been established but the ingredients necessary for the offence punishable under Section 304-B of the IPC have been established. The question before the Apex Court was "can the accused be convicted in such a case for the offence under Section 304-B IPC without said offence, being part of the charge ?" In other words, the question was whether in a case where prosecution failed to prove the charge under Section 302 of IPC, can the Court convict him for the offence under Section 304-B, in the absence of said offence being included in the charge. The crux of the matter, according to the Supreme Court was, would there be occasion for a failure of justice by adopting such a course and to convict the accused of the offence under Section 304-B of IPC when all the ingredients necessary for the said offence come out in evidence although he was not charged with the said offence. The Supreme Court while answering the question has held that one of the cardinal principles of natural justice is that no man should be condemned without being heard. The Apex Court then noted that the Courts often hesitated to approve the contention that failure of justice had occasioned merely because a person was not heard on a particular aspect. The Apex Court has then held that if the aspect is of such a nature that non explanation of it has contributed to penalising an individual, the Court should say that since he was not given an opportunity to explain that aspect, there was failure of justice on account of non compliance with the principle of natural justice. The Court then proceeded to hold that when accused has no notice of the offence under Section 304-B of IPC, as he was defending a charge under Section 302 of IPC alone, it would lead to grave miscarriage of justice when he is alternatively convicted under Section 304-B of IPC, because he is deprived of the opportunity to disprove the burden cast on him by law. The Apex Court has then held that in such a situation, the Court should call upon the accused to enter on his defence in respect of the said offence.

13. In the present case, no such aspect is involved. It is not the case of the applicant no. 1 that he has been charged under one provision of the P.C. Act and has been convicted under the another provision. It is further not the case of the applicant no. 1 that he did not get an opportunity to put forth his defence during the trial. In that sense, there is neither prejudice caused to the applicants nor is there grave miscarriage of the justice occasioned because of failure of sanctioning authority to afford applicant no. 1 to give an opportunity to explain the disproportionate assets found to have been acquired by the applicant no. 1. It cannot be therefore said that ground of failure of justice is available to the applicant no. 1. The contention in this regard is accordingly rejected.

14. Mr. Manohar has then argued that the learned trial Court has not taken into account the income available to his wife and his brothers from the transport

business. He submits that applicant no. 2 owned four trucks and further the transport business run by the family members had almost eighteen trucks, as spelt out through defence witnesses and that the income from the transport business was also available to the applicants to acquire the properties. Mr. Manohar has then criticized the judgment on the ground that this source of income has been ignored by the trial Court on the count that the applicant no. 1 has not disclosed this income and has not reported the acquisition of the property to the employer in terms of Rule 18 of the Central Civil Services (Conduct) Rules, 1964, which rules are not applicable to the applicant no. 1.

15. Learned Special Public Prosecutor has opposed the application by supporting the impugned judgment. He submits that once the prosecution has established that the applicants have acquired the properties disproportionate to his source of income known to the prosecution, the burden was upon the applicants to satisfactorily account the acquisition of the properties by known pecuniary resources. In support, he has relied upon the judgment of this Court in the case of ***Bhaskar Shankar Wagh Vs. State of Maharashtra [2008 ALL MR (Cri) 1104]***. This Court has held in paragraph no. 15 as under :-

> *"15. Now, it may be gathered that due to addition of such Explanation, no new offence is brought on the Statute Book. The Explanation is clarificatory to the last words used in sub-clause (e), namely, "his known sources of income". So what could be the known sources of income is*

further clarified by way of Explanation appended to sub-clause (e). This explanation, in effect, relieves the prosecution of the burden of investigation into "sources of income" of an accused person to a large extent. The Explanation shifts burden on the accused to explain his income received from any lawful source, the receipt of which has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to him as a public servant. In other words, if acquisition of disproportionate assets is proved by the prosecution, then it would be for the accused to explain utilisation of his lawful income for the purpose of such acquisition or the lawful receipt of any income or the assets from known sources which he is under obligation to intimate to the employer."

16. Before I deal with the rival contentions, it will be appropriate to refer to the judgment of the Apex Court in the case of ***Omprakash Sahni Vs. Jai Shankar Chaudhary and anr. [2023 LiveLaw (SC) 389].*** The Apex Court, while dealing with the scope of Section 389 of the Code of Criminal Procedure, has considered various judgments passed by it and held in paragraph nos. 33 to 35 as under :-

"33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an

acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of Section 389 of the CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.

34. In the case on hand, what the High Court has done is something impermissible. High Court has gone into the issues like political rivalry, delay in lodging the FIR, some over-writings in the First Information Report etc. All these aspects, will have to be looked into at the time of the final hearing of the appeals filed by the convicts. Upon cursory scanning of the evidence on record, we are unable to agree with the contentions coming from the learned Senior Counsel for the convicts that, either there is absolutely no case against the convicts or that the evidence against them is so weak and feeble in nature, that, ultimately in all probabilities the proceedings would terminate in their favour. For the very same reason we are unable to accept the contention coming from the convicts through their learned Senior Counsel that, it would be meaningless, improper and unjust to keep them behind the bars for a pretty long time till they are found not to be guilty of the charges.

> *35. In the overall view of the matter, we are convinced that the High Court committed a serious error in suspending the substantive order of sentence of the convicts and their release on bail pending the final disposal of their criminal appeals."*

17. Thus, the Supreme Court has held that the appellate Court should see as to whether the case presented by the prosecution and accepted by the trial Court can be said to be a case in which, ultimately the convict stands for a fair chance of acquittal and in doing so, the Court should examine whether there is anything apparent or gross on the face of record to arrive at such a conclusion.

18. I have gone through the impugned judgment and the evidence led before the Special Court. There is no dispute that the applicant no. 1 is a public servant. The check period is from 1-7-1993 to 2-2-2005. During the said period, the applicants were found to have acquired immovable properties worth Rs. 22,97,635/- and movable properties to the tune of Rs. 7,40,000/-, the total being Rs. 30,37,635/-. As against, the applicants had known pecuniary source of only Rs. 2,91,673/-. The applicants were thus found in possession of disproportionate assets worth of Rs. 27,45,962/-.

19. It appears that the applicant no. 1 during the check period had received gross salary of Rs. 13,07,190/- and after deductions, the take home salary was Rs. 5,83,345/-. This was the only legitimate income within the knowledge of employer WCL.

20. The evidence of P.W. 4, P.W. 5 and P.W. 14 indicates that the applicants were leading a luxurious life. The house constructed by the applicant no. 1 and his brother Irshad Hussain Siddiqui, who also happened to be Class IV employee of WCL and who has been also convicted for the offence punishable under Section 13(1)(e) read with Section 13(2) of the P. C. Act in Special Case No. 2/2008 by Special Judge, CBI/ACB Court, Nagpur, was found to be plush, luxurious and huge with high profile living. The house contained marble flooring and was equipped with modern amenities including modular kitchen, carpets etc. The evidence of P.W. 5, PWD Officer, who has prepared the valuation report of the house property, appears to have established that the costs of the construction of the said house was Rs. 20,33,369/-, cost of cattle-shed was Rs. 2,62,965/- and cost of farm house was Rs. 4,65,572/-, total amounting to Rs. 27,61,906/-.

21. The trial Court has relied upon the judgment of this Court in the case of ***Bhaskar Shankar Wagh Vs. State of Maharashtra [2008 ALL MR (Cri) 1104]*** wherein the High Court, in similar set of facts as regard the life style of accused therein, has held that 50% expenses on living of the accused and his family should be deducted from the income of known source of the accused. Accordingly, the trial Court has, in the present case, deducted 50% family expenses from the net income of the applicant no. 1. The net income was Rs. 5,83,345/- and thus considering the deduction of 50% on the living of the applicant no. 1 and his family, the available income of

applicant no. 1 to acquire properties would be reduced to Rs. 2,91,673/-.

22. It appears from the evidence that around 18 immovable properties including the plots, agricultural lands were acquired by the applicant no. 1 of which some were in his individual name, some were belonging to his brothers and some to his wife i.e. applicant no. 2. The prosecution has produced Index-II Register from the Sub-Registrar Office and the witness, P.W. 10 to that effect was examined. His evidence has been corroborated by P.W. 3 and P.W. 24. The prosecution has, in addition to Index-II extracts at Exhibits 119 to 128, also produced sale deeds at Exhibits 57, 106, 107, 124, 224, 160, 162, 168, 218 and 76.

23. To justify the acquisition of wealth, the defence has taken aid of income of the applicant no. 2 as also of the transport business of the family. The documents produced by the applicant no. 2 i.e. income-tax returns, Exhibits 79 to 86 indicate that she had an average yearly income of about Rs. 50,000/-. The applicant no. 2 has, however, not produced the statement of profit and loss account or the statement of assets and liabilities to satisfactorily explain that her income was available for purchasing the properties in her name as also in the name of applicant no. 1.

24. As regards construction of luxurious house, the defence was taken that this house has been purchased and constructed along with brothers of applicant no. 1 and out of the joint family earnings. The valuation of

property is said to be excessive. However, this defence will not be sufficient to jump to infer that the applicant no. 1 has not contributed a single pie or that the house has been constructed only out of the income of joint family business. The applicants have not put forth any document or admissible evidence to show the monetary source for construction of the said house. The Special Court, therefore, has legitimately considered 1/3rd expenses to be shared by the applicant no. 1.

25. It further appears from the evidence that 4 trucks were registered in the name of applicant no. 2. One of the witnesses, P.W. 8, who sold the fourth truck has been examined. The witness deposed that he sold the truck for Rs. 1,20,000/-. The sale price was, however, shown as Rs. 80,000/-. The witness denied that he had sold the truck for Rs. 80,000/-. In addition the other immovable properties including gold, were found in the possession of the applicants.

26. The applicants have examined two brothers of applicant no. 1. Their evidence indicates that in the year 1987, they have sold the common house and added to the sale proceeds, an amount of loan to purchase a truck. The transport business was then flourished and till 2005, they have acquired 18 trucks. According to them, the family business was run in partnership. However, both the witnesses have neither produced the partnership deed nor have produced any document or other admissible evidence to indicate that the income derived from the alleged partnership business was made available to the applicants to purchase properties in

question. That apart, the income-tax returns filed by the applicants does not indicate that they have received income from other source including the transport business of the partnership firm.

27. The trial Court is blamed to have relied upon Section 18 of the Central Civil Services (Conduct) Rules to accept the income available to the applicants from the transport business. However, the trial Court has in the later part of the judgment found that, even if, the income of family business is to be considered, the applicants failed to show by any cogent evidence that the income from the said business was either available to the applicants and, even if available, was utilized for the acquisition of the properties.

28. Another argument was that the applicant had taken loan for construction of the house. The loan appears to be of Rs. 2,00,000/- which is too meager to justify the huge construction.

29. The next contention was that the defence may discharge the burden by plausible explanation and it was sufficient for the defence to show that there existed the transport business of applicant no. 2 as also of the family and that the legitimate funds were available to acquire the properties.

30. This theory of plausible defence is not applicable where the allegations relate to acquisition of disproportionate assets to the known source of income. The Apex Court in the case of ***State of Maharashtra vs.***

Pollonji Darabshaw Daruwala [1987(sup) SCC 379] has held that :

> *"once the prosecution establishes the essential ingredients of the offence of Criminal Misconduct by proving, by the standards of criminal evidence, that the public servant is, or was at any time during the period of offence, in possession of pecuniary resources or property disproportionate to his sources of income known to prosecution, the prosecution discharges its burden of proof and the burden of proof is lifted from the shoulders of the prosecution and descends upon the shoulder of the defence. It then becomes necessary for the public servant to satisfactorily account in the possession of such properties and pecuniary resources."*

This judgment has been relied upon by the trial Court to reject the theory of plausible defence. In addition, the trial Court has also referred to the judgment in the case of ***State of M.P. Vs. Awadh Kishor Gupta [(2004) 1 SCC 691]*** wherein the Apex Court has held that by using the word "satisfactorily" under Section 13(1)(e) of the P.C. Act, the legislature has deliberately cast a burden on the accused not only to offer plausible explanation as to how he possessed such wealth but also to satisfy the Court that his explanation was worthy of acceptance.

31. In the present case, considering the overall evidence, it appears that the defence could not satisfactorily account for the acquisition of the properties under question. In the circumstances, it is difficult to record *prima facie* satisfaction that the conviction as against the applicant no. 1 may not be sustainable.

32. As regards the applicant no. 2, though her yearly average income was around Rs. 50,000/-, the three properties acquired by her were valued at Rs. 60,000/- approximately. The Court below, however, considered the market value of the said properties, which runs to the tune of Rs. 4,50,000/- approximately and accordingly held that the properties acquired were disproportionate to her known source of income and is said to have abetted the crime in the sense that she has acquired these properties with the unaccounted money belonging to the applicant no. 1.

33. Learned Special Public Prosecutor could not point out to me any provision of law that would permit the Court to consider the valuation of the properties at the market value than the actual transaction noted in the conveyance, while dealing with such cases. The benefit thus could be extended to her as she has an arguable case.

34. In the result, the applicant no. 1 failed to make out a case but the applicant no. 2 has. Hence, the following order.

ORDER

(i) The relief sought by applicant no. 1 is rejected.

(ii) The execution of sentence imposed upon applicant no. 2 by Special Judge, CBI/ACB Court, Nagpur in Special Case No. 5/2006 by judgment and order dated 31-8-2023, for the offence punishable under Section 109 of the Indian Penal Code read with Section 13(1)(e) of the Prevention of Corruption Act is hereby suspended pending appeal.

(iii) Applicant no. 2 – Mrs. Sajiya Begum W/o Ajaz Hussain Siddiqui shall be released on bail on her furnishing P.R. bond in the sum of Rs. 50,000/- with one or two sureties in the like amount, to be furnished before the trial Court.

(iv) Applicant no. 2 shall remain present before this Court at the time of final hearing of the appeal.

Criminal Application (APPA) No. 990 of 2023

35. The applicant/original accused is seeking to suspend the sentence imposed by the Special Judge in Special Case No. 2/2008.

36. The learned Special Judge, CBI/ACB Court, Nagpur has vide its judgment and order dated 31-8-2023 passed in Special Case No. 2/2008 convicted applicant for the offence punishable under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 and sentenced him to suffer rigorous imprisonment for five years and to pay fine of Rs. 13,65,293/-.

37. Briefly stated, the facts are that applicant has joined Western Coal Fields Limited as Mechanic-Fitter (Class IV). The prosecution alleged that he was a public servant and during the check period from 1-5-1996 to 2-2-2005, the total income from his known source was to the tune of Rs. 10,25,369/-. His expenses during the said period were Rs. 5,86,054/-. His assets, however, at

the end of the check period was worth Rs. 15,47,182/-. The disproportionate assets during the said period were found to be Rs. 10,77,367/- which is 105% more than the actual income.

38. The Special Court, after going through the oral and documentary evidence, has found that the applicant has acquired 15 properties during the check period. The Special Court has found that immovable assets and movable properties of the applicant during the check period were of the value of Rs. 15,47,182/-. Thus, the applicant was found in possession of disproportionate assets of Rs. 15,47,682/- and the applicant could not satisfactorily account these assets to the known source of income.

39. Evidence in both the cases is identical. The only difference is that in the present case, copies of sale deeds of the properties acquired by the applicant have not been produced by the prosecution. However, the copy of Index Part-II extract showing nature of transaction entered into by the applicant in respect of immovable properties acquired by him, has been produced. This difference will not lead to any adverse effect upon the case of the prosecution in as much as it has to prove that the applicant was in possession of the properties disproportionate to his known source of income. The Index Part-II will be sufficient evidence to prove this aspect. The other evidence is identical. Defence witnesses are also same i.e. two brothers, namely, Hidayat Husain Siddiqui s/o Shahabuddin and Inayat Husain Shahabuddin. Similar defence has been taken in

this case that the income of the family business was available for acquisition of the properties and that the applicant has taken loan of Rs. 2,00,000/- to construct the house.

40. The reasoning given by the trial Court in both the cases is identical and, therefore, for the reasons set out in earlier order in Criminal Application (APPA) No. 991/2023 i.e. application of his brother, viz. Ajaz Hussain Siddiqui, who is applicant no. 1 in the said application filed in Criminal Appeal 608/2023, the present application is rejected.

41. The application is accordingly disposed of.

(Anil L. Pansare, J.)

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