IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.06.2023

Pronounced on : 16.06.2023

CORAM

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Criminal Appeal No.220 of 2013

S.K.Srivastav,
S/o.late L.P.Srivastav,
Formerly Chief Engineer (Constructions),
Southern Railway, Chennai
Presently Chief Engineer,
South Central Railway,
Rail Nilayam,
Secunderabad-500 071,
Resident of Kenwith Garden,
Mc Nicholas Road, Chetpet,
Chennai-600 031. .... Appellant

/versus/

The State rep.by
The Deputy Superintendent of Police,
Central Bureau of Investigation,
Delhi Special Police Establishment,
Anti Corruption Branch,
III Floor, Shastri Bhavan,
No.26, Haddows Road,
Chennai-600 006. .... Respondent

Prayer:- Criminal Appeal is filed under Section 374, 380 & 401 of Cr.P.C., praying to call for the entire records pertaining to C.C.No.8 of 2008 on the file of the learned Special Judge for CBI cases, (XIII Additional) City Civil Court, Chennai and allow this appeal preferred by the appellant and set aside the same and direct to refund of the fine amount of Rs.20,000/- paid by the appellant and discharge the sureties executed for suspension of sentence.

For Appellant	:	Mr.V.S.Venkatesh
For Respondent	:	Mr.K.Srinivasan, Sr.Counsel Special Public Prosecutor (CBI cases)

*****

JUDGMENT

The appellant, a public servant working as a Chief Engineer (Construction), Southern Railway, Chennai, was tried for possessing asset disproportionate to his known source of income, which alleged to have been acquired during the check period from 01.07.2004 to 30.06.2005 and the disproportionate assets found in possession being worth of Rs.8,96,942.58, which is an offence under Section 13(2) r/w. 13(1)(e) of Prevention of Corruption Act, 1988.

2. The case of the prosecution as spoken by the witnesses is that on 30.06.2005, the residence of the accused was searched by CBI and a sum of Rs.3,86,610/- was seized and the accused was not able to satisfactory account for it. Nine months later, the First Information Report was registered against him for possession of disproportionate assets. FIR in RC MA.1/2006 A dated 22.03.2006 was registered based on the information collected, revealing that at the commencement of the check period i.e., on 30.06.2004, the accused and his wife had a sum of Rs.6,73,298/- in their bank account and in the end of the check period i.e., on 30.06.2005, they had Rs.9,58,700/, which includes the cash of Rs.3,86,610/- seized during the search conducted on 30.06.2005. While the income of the accused and his wife during the check period was Rs.3,87,932/- and they have spend Rs.4,95,975/- for their personal expenditure during the check period, a sum of Rs.3,93,445/- found disproportionate assets to the known source of income.

3. The details of the assets particulars is tabulated as under:-

(A) Assets prior to the check period i.e., on 30.06.2004

S.No	***Particulars of the Assets***	***Value***
1	Cash in Bank in the account No.SB.No.125768 in the name of Smt.Geetha Srivastav W/o.Shri S.K.Srivastav in the Allahabad Bank, Mount Road, Chennai	Rs.6,33,112/-
2	SB-account No.3057 in the name of Shri S.K.Srivastav in the Indian Bank, YWCA, Extn.Counter, Chennai	Rs.40,186/-
	Total	Rs.6,73,298/-

(B) Assets at the end of the check period i.e., on 03.06.2005

S.No	Particulars of the Assets	Value
1	Cash in Bank in the account No.SB.No.125768 in the name of Smt.Geetha Srivastav W/o.Shri S.K.Srivastav in the Allahabad Bank, Mount Road, Chennai	Rs.4,86,327/-
2	SB-account No.3057 in the name of Shri S.K.Srivastav in the Indian Bank, YWCA, Extn.Counter, Chennai	Rs.85,763/-
3	Cash in hand (Seized during the search in RC-17/05 on 30.06.2005)	Rs.3,86,610/-
	Total	Rs.9,58,700/-

(C) Income during the check period from 01.07.2004 to 30.06.2005

S.No	Description	Value
1	Net salary income of Shri S.K.Srivastav	Rs.2,36,122/-
2	Income of Smt.Geetha Srivastav as declared in the Income Tax returns	Rs.1,51,810/-
	Total	Rs.3,87,932/-

(D) Expenditure during the check period from 01.07.2004 to 30.06.2005

S.No	Description	Value
1	Domestic expenditure @ 33% of Gross Salary income of Shri.S.K.Srivastav after deduction of Income Tax	Rs.1,21,235/-
2	Expenditure on Air ticket (4 Nos)	Rs.34,230/-
3	Purchase of Microwave oven and other item for Spencer /Super Son, Chennai	Rs.19,488/-
4	Purchase of Bed from Landmark	Rs.19,999/-
5	Subscription to PF No.10813 in HPO, Sansad Marg, New Delhi	Rs.5,000/-
6	Amount paid to Vimonisha Art Gallery	Rs.20,500/-
7	Purchase of Plaza from Lorry exclusive	Rs.4,990/-

S.No	Description	Value
8	Payment of School fees & St.Johns Mandaveli in respect of his two children	Rs.18,423/-
9	Purchase of Ear Rings	Rs.9,600/-
10	Purchase of various household articles	Rs.18,890/-
11	Purchase of Chandelier	Rs.22,000/-
12	Purchase of Gold from G.R.Thanga Maligai	Rs.17,800/-
13	Payment made to Cell Shoppe	Rs.1,320/-
14	Purchase of Nokia from Faith Trade Service Private Limited	Rs.10,500/-
15	Insurance for Car No.TN-01-9888	Rs.15,000/-
16	Life time Tax for Car	Rs.24,800/-
17	Other expenditure on Car	Rs.92,200/-
18	Purchase of Tax saving Bond from ICICI	Rs.30,000/-
19	Jeevan Suraksha Premium to the L.I.C	Rs.10,000/-
	Total	Rs.4,95,975/-

4. The investigation was conducted by Mr.Krishnamurthy, DSP, CBI/DSPE/ACB, Chennai, who registered the FIR and on completion of the investigation, he filed final report after obtaining sanction to prosecute the accused. The trial Court framed charge for the offence under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act and tried the accused.

5. To prove charges, the prosecution examined 27 witnesses marked 113 exhibits and cash of Rs.3,86,610/- seized from the accused on 30.06.2005 as

M.O.1. In defence, the accused has marked 23 exhibits.

6. The trial Court, after discussing the evidence let in by the prosecution and the defence, concluded that at the beginning of the check period, the accused had asset in hand worth Rs.29,77,388/-. During the check period, his income was Rs.3,81,045/- and he has acquired property worth Rs.4,42,338/-. The expenditure incurred during the check period assessed as Rs.5,88,539/-. Thus, at the end of the check period, the total asset possessed by the accused worth Rs.34,19,726.58/-. Hence, hold that the accused was in possession of asset worth Rs.6,49,832/- disproportionate to his known source of income, which he has failed to satisfactorily account. As a result, the accused convicted and sentenced to undergo 2 years of R.I., and pay a fine of Rs.20,000/-, in default to undergo 2 months R.I. The period of sentence already undergone ordered to be set off. The prosecution was directed to take necessary action against the properties in the possession of the accused and his family members to the extent of disproportionate assets held by him.

7. The judgment of the trial Court is under challenge on the ground that the trial Court miserably failed to appreciate the evidence placed by the prosecution and the defence, in respect of the charge of disproportionate assets. The property held by the wife of the accused also taken into account as the asset held by the accused, ignoring the fact that the wife of the accused have independent source of income and an income tax assessee. The asset of the family members cannot be clubbed into the asset of the public servant, if the family members have own source of income, otherwise if the prosecution has material to show that the public servant had acquired asset in the name of his family members, then the prosecution ought to have placed documents to that effect and also prosecuted the family members for abetting the crime. Based on a final report, which is bereft of details, charges were framed against the accused and he was erroneously found guilty, contrary to the evidence.

8. The accused joined service as a Group I officer in the year 1980. On the date of FIR, he had already put 27 years of service. His wife, a teacher by profession had her own income and paying Tax for her income. After 27 years of service as Group-I Officer and his wife as a teacher, they had saved the assets found at the end of the check period.

9. In the course of search and on completion of investigation, the Investigating Officer was able to find assets worth Rs.9,58,700/, which include cash of Rs.3,86,610/- (M.O.1) seized during the search proceedings initiated on 30.06.2005. Regarding the cash marked as M.O.1., the accused examined his wife as D.W.1 and marked Ex.D.1 to Ex.D.22 to explain the source for the assets including the cash. Most of the documents relied by the prosecution admitted by the accused under Section 294 of Cr.P.C. By way of statement to the incriminating material placed against him, sufficient explanation adduced by the accused regarding the assets held by him. Despite that, the trial Court, due to improper appreciation and omission, has held the accused guilty.

10. It is contended by the learned counsel appearing for the appellant that the present FIR was a sequitur of the earlier case registered by the same Investigating Officer in R.C.17A/2005. Wherein, the appellant herein is not an accused, but his house was searched pursuant and a sum of Rs.3,86,610/- was seized during the search conducted. His bank account was also freezed. However in that case, he was not an accused and after completion of the investigation, the case was closed as “Mistake of Facts” and closure report was filed. Thereafter, fresh FIR in R.C.No.15/A/2006 dated 20.03.2006 came to be registered on the strength of source information and same culminated in filing the final report, which was taken cognizance in C.C.No.8 of 2008.

11. The learned counsel appearing for the appellant contended that the wife of the accused an income tax assessee even before her marriage in her native and had income through her profession as teacher in a School. Thereafter, she joined as lecturer in a College. From her income acquired assets at Lucknow in the year 1982 for a value of Rs.1,26,900/- and this was purchased even prior to her marriage with the appellant. This property has been shown as asset acquired by the accused in the name of his wife, as if she had no independent income. This is a contrary to the evidence placed before the Court and the Court was mislead by the Investigating Officer, who bend upon to wreak vengeance against the accused. The Investigating Officer had freezed the bank account, locker and foisted the case, since he was not able to fix the accused in the earlier complaint registered in R.C.17A/2005. He has apparently included the assets held by the wife of the accused, but had not included the entire income of her in the statement under income during the check period. Inspite of knowing fully well that his wife is an income tax assessee, the Investigating Officer had deliberately assumed as if, she had no income of her own. In the cross examination of the Investigating Officer, he has admitted that the transaction entered into by the spouse of a public servant will not attract any criminal liability as per Rule 18 of the Central Civil Services (Conduct) Rules, 1964. Despite knowledge of the Law he had consciously ignoring the IT returns of Geetha Srivastav, her salary income, rent from house property and profit from the business, he had filed a lopsided final report, after getting sanction to prosecute without placing all the materials he collected during the investigation.

12. The Learned Counsel for the appellant further submitted that the explanations given by the accused and his wife were not produced before the Sanctioning Authority and the Court. Had it been produced before the Sanctioning Authority, he might have not accorded sanction and the Court ought have not taken cognizance. The Learned Counsel also submitted that the accused had no immovable asset in his name and only a meager amount of Rs.40,183/- in his Bank account. To show as if he had amassed wealth disproportionate to his income, all the transactions pertaining to the wife of the accused been construed as transaction of the accused, in spite of the fact that the wife of the accused had her own independent income and this fact overlooked by the trial Court, which has led to miscarriage of justice.

13. The specific contention of the learned counsel for the appellant is that the wife of the appellant earning income by conducting self grooming course and boutique also involved in trading which shares. His son has won one Santro car as prize. All her income and source were disclosed by way of returns filed with the Income Tax department, which could be seen from the defence side exhibits. While so, under an erroneous presumption that a sum of Rs.3,86,610/-, which was in fact the money of the accused wife, which was kept in the house after conducting a sale exhibition at Vimonisha Exhibition Centre just a couple of days before the search has been taken as the ill gotten money of the accused obtained from unknown railway contractors. Baseless doubt in spite of contra evidence discharging the burden by way of rebuttal been ignored by the trial Court. Hence same may be set aside.

14. Per contra, the learned Special Public Prosecutor (CBI) for the respondent submitted that the prosecution has proved that at the end of the check period, the accused had assets worth of Rs.6,49,832/- disproportionate to the known source of income, this includes of cash Rs.3,86,610/- recovered from the residence of the accused on 30.06.2005. The currency recovered were Rs.1,000/- (1 bundle) and Rs.500/- (2 bundles) with the seal of Dena bank, Madurai and State Bank of India, Karaikudi respectively. The dates found in the bank slip indicates that it was issued to the customers on 23.04.2005, 28.05.2005 and 07.05.2005. The accused or his wife was not able to reveal even one name from Madurai or Karaikudi, who purchased the material from the wife of the accused during the said Exhibition cum sale at Vimonisha, which was conducted for 3 days.

15. The wife of the accused had mounted the witness box and examined herself as DW.1. According to her deposition, she is an income tax assessee even prior to her marriage, which was held on 08.05.1984, she received Sridhana, gift, money and jewellary. In the course of investigation, she produced documents pertaining to her income tax returns filed prior to the check period and during the check period, but she had not produced any documents to show that she is having any business to generate income or employed anywhere for salary. The Auditor Report is not a proof for income unless, it is supported by the income tax returns. No documentary evidence produced to show that she had income through the sale cum exhibition at Vimonisha. Therefore, the trial Court, after considering the defence taken by the accused, has rightly rejected it that the defence is not probabilised for want of acceptable evidence and documentary proof. The currency seized from the accused house is not an assorted lot, but one bundle of Rs.1,000/- and 2 bundles of Rs.500/- drawn from the banks at Madurai with the bank slips. Therefore, the trial Court after due consideration of the evidence had convicted the accused and hence same has to be confirmed.

16. Heard the learned counsels and records perused.

17. The sum and substance of the prosecution case is that after getting search warrant, in the presence of the witnesses, the house of the accused was searched on 30.06.2005. Inventory was prepared in the presence of the accused and thereafter, the locker in the name of the accused at Allahabad bank, Annasalai was searched. Though it is contended by the accused that he was not present during search and inventory proceedings, his signatures are found in the search list and the inventory. It is also not the case of the accused/appellant that the articles found in the search list and inventory does not belong to him or his family. PW.1, the competent authority to accord sanction for prosecuting the appellant had identified his sanction order Ex.P2 and his competency to accord sanction. Same is not questioned and there is no doubt about his competency in the light of the order issued by Indian Railways, which is marked as Ex.P1.

18(i) Mr.Vijay Raghavan [PW.2], Senior Account Officer in Southern Railway has marked the salary details, pay slips and DA arrears particulars of the appellant. From these documents, the income of the accused during the check period been ascertained as Rs.2,77,310/-.

18(ii) Mr.Jayasekaran [PW.3], the Director of Madura Travel Service (P) Ltd., had deposed that the accused and his family members used to book tickets through his travel agency and for the travel from Delhi to Chennai on 22.05.2005, they have paid charge of Rs.34,230/-.

18(iii) Mr.A.Viswanathan [PW.4], the Manager of M/s.Vivek Limited had deposed that he has sold gold articles to Sree Srivatsa worth Rs.19,483/- on 31.10.2004.

18(iv) Mr.Din shaw [PW.5], the Manager of M/s.Landmark at Spencer plaza, Anna Salai, Chennai, has been examined to prove that the accused borrowed a slider bed for Rs.19,999/- and issued a cheque drawn on Allahabad bank and purchased ring and ear ring for Rs.9,600/- paying cash.

18(v) Mr.T.S.Sivaprasad [PW.6], Accounts Manager of KUN HYUNDAI, Chennai had deposed that he sold a Santro car to Geetha Srivastav for Rs.4,13,313/- inclusive of all taxes and this was sold under the prize scheme floated by Global Departmental Store. The sale consideration of Rs.3,33,771/- was paid by the Global Departmental Store, the balance of Rs.1,32,044/- was paid by his mother, Geetha Srivastav.

18(vi) Mr.K.Nambirajan [PW.7], the Manager of G.R.Thangamaligai had deposed that Tmt.Geetha Srivastav purchased a Diamond dollar for Rs.17,800/- on

09.06.2005 and he has issued the bill Ex.P.26.

18(vii) Through Mr.Babu [PW.8], the prosecution has proved that the accused has submitted his statement of assets and liability to the Railways department. The asset and liabilities and asset statement for the year 2004 and 2005 are marked as Ex.P.28 and Ex.P.29 respectively. As per these exhibits, the accused has not acquired any immovable property during this period.

18(viii) Through the testimony of Mr.Vijaya Baskar [PW.10], HR Manager of Global Departmental Store, we find that as a promotional scheme during the Diwali Festival of the year 2004, they have announced prize for the best slogan and the son of the accused, who participated in the competition, had won the prize of Santro car for which, the Ex-showroom price Rs.3,33,771/- paid by the Global Departmental Store and the balance of Rs.1,32,044/- towards Tax and insurance etc, paid by the mother, Geetha Srivastav.

18(ix) The prosecution has examined the Bank Managers to show the investment and interest earned by the accused and his wife Geetha Srivastav. Moti

Shivdasani [PW.16] the proprietor of M/s.Vimonisha Exhibition Center at Nawab Khan Road, Chennai had deposed that Geetha Srivastav booked the hall for 3 days from 23.06.2005 to 25.06.2005 and paid rent of Rs.20,500/-. She sold garments during the exhibition she is not aware of the total sale turnover.

18(x) N.Krishnamurthy [PW.27], the CBI officer, who registered the complaint and investigated the same and filed a final report, has deposed that the accused had in his possession of assets worth Rs.6,73,298/- at the commencement of the check period. This asset is the sum of cash balance found in the name of the accused in Indian bank, YMCA extension counter Rs.40,183/- and the cash balance found in the account of Smt.Geetha Srivastav in Allahabad bank, Mount Road Rs.6,33,112/-.

19. Obviously, the asset of the wife added to the asset held the appellant and same is 15 times more than the asset held by the accused.

20. The Investigating Officer had repeatedly reiterated that the wife of the accused [DW.1] is a house wife and had no own source of income. Whereas, the accused through DW.1 had proved through the prosecution documents itself that even prior to the marriage, the wife of the accused was an income tax assessee. She had purchased the property worth of Rs.1,26,000/- at Lucknow prior to her marriage. The Investigating Officer has taken into account the income tax returns filed by Geetha Srivastav, which is marked as Ex.P.13 and had stated that her income during the whole check period was only Rs.1,51,810/-.

21. Specific defence taken by the accused is that the cash of Rs.3,86,610/- during the search of his house on 30.06.2005 belongs to his wife, which is her sales collection from out of the garments exhibition conducted 3 days ago. The investigating Officer had examined Moti Shivdasani [PW.16], the owner of the Vimonisha Art Gallery, who had deposed that Geetha Srivastav paid Rs.20,500/- towards rent for 3 days sales cum exhibition of the garments, the rent paid is included in the expenditure, but had not collected any details from Geetha Srivastav regarding the income derived from the 3 days exhibition. The said omission is one of the patent error in the investigation, which forces the Court to discredit the prosecution case registered, investigated and concluded with final report by one and the same person PW.27. When there is sufficient material to show that the family member of the public servant have their own source of income.

22. In the case of disproportionate assets, the Investigating Officer cannot brush aside the explanation given by the public servant and his family members about their sources of income. He may either get satisfied with the explanation given or may not get satisfied. It is purely the subjective satisfaction of the Investigating Officer. However, when the statute mandates that the offence gets attracted only if the public servant fails to satisfactorily explain the sources for the assets held, then the Investigating Officer need to show why he was not satisfied with the explanation offered. It is a case, where admittedly at the beginning of the check period itself, the wife of the accused had sufficient cash in her bank deposit. Also she had immovable property in her name much before she married the accused. She has filed income tax returns for a period prior to the check period to show that she had been consistently earning. However, the Investigating Officer right through out been claiming that the wife of the accused had no income of her own. Even after enough materials to show that she has sizable investment in the bank and earning interest from it, besides regular business, unreasonably he has ignored material collected in the course of investigation.

23. Ex.P113, is relied by the prosecution to show the income of the wife of the accused Geetha Srivastav, during the check period was only Rs.1,51,810/-. Perusal of this statement shows that this is for the account year 2003-2004 income for the year ending 31.03.2003. Further, it reveals that apart from interest earned from investments, the wife of the accused been involved in purchase and sale of shares and has obtained short term capital gains. The details of stock trading also found in Ex.P113. As pointed earlier, the wife of the accused been in pursuit of earning money in stock trading and other business and been income tax assessee for a long time, not only the income particulars of Geetha Srivastav for the check period from 01.07.2004 to 30.06.2005 had not been collected by Investigating Officer. The cash balance of Rs.6,33,112/- in her bank account at the beginning of the check period. Her expenditure by way of purchase of household articles, payment of cost difference for the Santro car etc., all been mulcted into the account of the accused.

24. The entire investigation process omitting her as a separate earning member, but including the asset acquired by the her as the asset of the public servant is improper and it is a perfunctory investigation. Unfortunately, the trial Court had failed to take note of the fact, the perfunctory investigation is not due to ignorance but due to the malafide of the Investigating Officer, who happens to be the person registered the case based on source, information, conducted investigation, got sanction to prosecute without placing the statement of the accused explaining his source. In a case similar to the facts of the case in hand, the Hon'ble Supreme Court in ***D.S.P., Chennai -vs- K.Inbasgaran reported in MANU/SC/2223/2005*** has observed:-

> "*15. Now, in this background, when the accused has come forward with the plea that all the money which has been recovered from his house and purchase of real estate or the recovery of the gold and other deposits in the Bank, all have been owned by his wife, then in that situation how can all these recoveries of unaccounted money could be laid in his hands. The question is when the accused has provided satisfactorily explanation that all the money belonged to his wife and she has owned it and the Income-tax Department has assessed in her hand, then in that case, whether he could be charged under the Prevention of Corruption Act. It is true that when there is joint possession between the wife and husband, or father and son and if some of the members of the family are involved in amassing illegal wealth, then unless there is categorical evidence to believe, that this can be read in the hands of the husband or as the case may be, it cannot*

be fastened on the husband or head of family. It is true that the prosecution in the present case has tried its best to lead the evidence to show that all these moneys belonged to the accused but when the wife has fully owned the entire money and the other wealth earned by her by not showing in the Income-tax return and she has accepted the whole responsibilities, in that case, it is very difficult to hold the accused guilty of the charge. It is very difficult to segregate that how much of wealth belonged to the husband and how much belonged to the wife. The prosecution has not been able to lead evidence to establish that some of the money could be held in the hands of the accused. In case of joint possession it is very difficult when one of the persons accepted the entire responsibility. The wife of the accused has not been prosecuted and it is only the husband who has been charged being the public servant. In view of the explanation given by the husband and when it has been substantiated by the evidence of the wife, the other witnesses who have been produced on behalf of the accused coupled with the fact that the entire money has been treated in the hands of the wife and she has owned it and she has been assessed by the Income-tax Department, it will not be proper to hold the accused guilty under the prevention of Corruption Act as his explanation appears to be plausible and justifiable. The burden is on the accused to offer plausible explanation and in the present case, he has satisfactorily explained that the whole money which has been recovered from his house does not belong to him and it belonged to his wife."

25. This Court holds that, while the records clearly prove Smt.Geetha Srivastav, W/o.Srivatsa is an earning member of the family, the refusal of the

Investigating Officer to consider the wife of the accused as an earning member of the family is a grave fault which goes to the root of the matter.

26. In the result, this ***Criminal Appeal is allowed***. The conviction and sentence of the Trial Court is hereby set aside. The appellant is set at liberty. Fine amount, if any paid by the accused shall be refunded to him. Bail bond if any executed by the accused shall stand discharged.

16.06.2023

Index : Yes/No
Speaking order/Non-speaking Order
rpl

To

1.The Special Judge for CBI cases, (XIII Additional) City Civil Court, Chennai.

2.The Deputy Superintendent of Police,
Central Bureau of Investigation, Delhi Special Police Establishment,
Anti Corruption Branch, III Floor, Shastri Bhavan,
No.26, Haddows Road, Chennai-600 006.

3.The Special Public Prosecutor (CBI),
High Court of Madras, Chennai.

Dr.G.JAYACHANDRAN.J.,

rpl

Pre-Delivery Judgment made in
Criminal Appeal Nos.220 of 2013

16.06.2023