Jaswant Singh Vs State of Punjab

Criminal Appeal No. 1810-SB of 2008

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 11, 2009

Acts Referred:

Prevention of Corruption Act, 1988 â€" Section 13(1)(e), 13(2)

Citation: (2009) 32 CriminalCC 231 : (2010) 1 RCR(Criminal) 880

Hon'ble Judges: Augustine George Masih, J

Bench: Single Bench

Advocate: S.S. Rangi, Mr. Y.P. Singla and Mr. H.S. Tulli, for the Appellant; Amandeep Singh Rai, AAG, Punjab, for the Respondent

Final Decision: Allowed

Judgement

Augustine George Masih, J.
FIR No.9 dated 11.03.2004 was registered against the appellant by the Vigilance Bureau, Patiala u/s 13(1)

(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 on the basis of an information received from the reliable sources that

Jaswant Singh-appellant posted as Patwari in Patwar Circle, Dhammo Majra, Patiala had constructed a double storey palatial house No.22 in

Gursharan colony, near Village Sular and had spent lacs of rupees in the construction and this money, it was alleged, was out of the assets

accumulated by the appellant disproportionate to his known source of income. The check period was, therefore, fixed as 01.04.1923 to

31.12.1998 to ascertain the factual position. Calculating the income and expenditure of the appellant-accused for this period, it was found that the

income of the appellant during this period was Rs.9,53,021.63/- and that he had spent Rs.10,69,004/- during this period. He had, therefore, spent

Rs.1,15,982.37/- in excess of his income. As the appellant had incurred expenses beyond his known source of income curing the check period while being a public servant by way of misuse of his office, the above mentioned FIR was thus registered against him.

2. During investigation, details of salary, purchase and sale of plots, copies of registered sale deed, copies of jamabandi of the land belonging to the

appellant, report regarding the income from the Agricultural Department, Patiala during the relevant period, particulars regarding the salary of wife

of the appellant, namely, Smt.Jaspal Kaur, who was working as a Teacher in Green-well Academy High School Raghomajra, Patiala, was

obtained. Apart from this, details regarding the loan statement pertaining to the house loan taken from Punjab National Bank, Branch Sanaur, were

also obtained and on statements of the witnesses having been recorded, it was found that during the check period i.e. 01.04.1993 to 31.12.1998,

the appellant received salary to the tune of Rs.2,43,275/- and Rs. 11,822/- as dearness allowance, Rs.1 lac was received by him as house building

loan, Rs. 1,11,000/- (being owner of share as income from land plot sold vide sale deed dated 04.10.1995), Rs.28,3331/- on account of 1/3rd

share received after selling joint house vide sale deed No.1688 dated 12.05.1997, Rs.44,625/- being salary of the wife of the accused Smt. Jaspal

Kaur. As regards landed property, which was primarily agricultural in nature, it was found that the family of the accused owned 97 bighas 18

biswas of landed property. Out of this landed property, the appellant-Jaswant Singh was owner of 24 bighas 9 biswas of land, his other brother,

namely, Pavittar Singh, who was younger brother of the accused, also owned 24 bighas 9 biswas of land and the father of the accused, namely,

Sadhu Singh owned 48 bighas 19 biswas of land. Out of this share of 48 bighas 19 biswas. Sadhu Singh had given 16 bighas to each of his two

sons, namely, Jaswant Singh and Pavittar Singh for cultivation and the remaining land with the father Sadhu Singh was 16 bighas 19 biswas. The

appellant was thus found to be cultivating 40 bighas 9 biswas of land. As per the calculations made by the Statistical Assistant of the Agricultural

Department, the appellant had received Rs.4,44,560/- as agricultural income during the check period. Thus, taking into consideration all sources of

income, the total income of the accused during the check period was found to be Rs.9,83,615/- whereas the appellant had spent an amount of

Rs.11,06,733/- He, therefore, had spent Rs.1,23,118/- in excess of his known source of income by way of accumulating the money by way of

corrupt means by misuse of his office of Patwari. Having come to this conclusion, the Vigilance Bureau challaned the application u/s 13(1)(e) read

with Section 13(2) of the Prevention of Corruption Act, 1988.

3. Charges were framed against the appellant vide order dated 07.06.2005 by the learned Special Judge-cum-Additional Sessions Judge, Patiala

u/s 13(1)(e) read with section 13(2) of the Prevention of Corruption Act, 1988 and the appellant having pleaded not guilty, claimed trial. Evidence

was led by the prosecution. Statement of the appellant u/s 313 Cr.P.C. was recorded and thereafter, on his producing defence evidence, witnesses, as produced by the appellant, were examined. On consideration of the evidence on record, the learned Special Judge, Patiala vide

order dated 12.09.2008 found the appellant guilty u/s 13(1)(e) of the Prevention of Corruption Act, which is punishable u/s 13(2) of the

Prevention of Corruption Act and convicted him to undergo rigorous imprisonment for a period of two years and to pay fine of Rs.5,000/- and in

default of payment of fine, to further undergo rigorous imprisonment for three months''. It is this judgment and order, which is under challenge in the

present appeal preferred by the appellant-Jaswant Singh.

4. Counsel for the appellant submits that the Court has erred on facts as also on the law while convicting the appellant. In the first place, he submits

that the Investigating Agency had failed to take into consideration the fact that his father Sadhu Singh was residing with the appellant and was in

cultivating possession of 16 bighas 19 biswas of land. The income from that source was being contributed by him in the income of the appellant.

1/3rd of the rental income, which his father was getting from five shops constructed at Bus-Stand, Dadkala, was also being contributed by him in

running the household, which again should have been added to the income of the appellant. That apart, he contends that the appellant-Jaswant

Singh was also entitled to 1/3rd of the rental income from the shops, which has also not been included in the income of the appellant. During this

check period, it has come of the appellant. During this check period, it has come on record in the statement of his father Sadhu DW6 that there

were two ancestral houses in Village Dadkala, out of which, house constituted in the Abadi of the village was given by Sadhu Singh father of the

appellant, to his younger son Pavittar Singh whereas the other house which was outside was sold by Sadhu Singh and his two sons in favour of

Sham Lal and Santosh Rai of village Dadkala vide registered sale deed dated 12.05.1997 for an amount of Rs.85,000/- and the whole sale

consideration 85,000/- was given to Jaswant Singh-appellant. This complete amount of Rs.85,000/- should, therefore, have been added to the

income of the appellant whereas only 1/3rd of this amount i.e. Rs.28,333/- has been added in the income of the appellant. That apart, he contends

that his mother-in- law, namely Harkesh Kaur DW4 has categorically stated before the trial Court that she had sold a plot in April, 1996 vide

registered sale deed for an amount of Rs.25,000/- (Ex.D.W.O.4/A) and another plot in December, 1996 (Ex.DW4/B) for another amount of

Rs.25,000/- and this amount of Rs.50,000/- which she received as sale consideration of the above mentioned two plots, was given by her

daughter Jaspal Kaur, who is wife of the appellant for construction of house. This amount of Rs.50,000/- also should have been included in the

income of the appellant. His wife Jaspal Kaur was working as a Teacher and apart from the salary which she was receiving from the school, she

was also giving extra tuitions to the students after school hours and the extra income, which is generated by charging tuitions fee from the students, has also not been included in the income of the appellant. Jaspal Kaur has appeared as DW3 before the trial Court and made this positive

assertion before the trial Court. This assertion has been supported by Rajinder Singh DW2, who had deposed that earlier his two daughters,

namely. Henna and Santa were taking extra tuitions from Jaspal Kaur, wife of the appellant and for this, he was paying extra tuition fee to her and

now his son was taking tuition from her. Counsel for the appellant, on this basis prays that this extra income, which the wife of the appellant,

namely, Jaspal Kaur earned from extra tuitions, should have also been included in the income of the appellant. When all these incomes are added

up together, the income of the appellant form known sources of income would exceed much more than the expenditure incurred by him during the

check period. His further contention is that the prosecution has inflated the expenditure incurred by the appellant in constructing the house. In

support of this contention, he relies upon the statement of DW5 Sh. Harmesh Singh. Building Contractor, who had categorically deposed that in

the house he was constructing, the expenditure incurred by the appellant was Rs.5 lacs. On this basis, he prays for allowing of the present appeal

as the learned trial Court has failed to take into consideration the evidence led by the defence in support of the fact that the appellant had much

more income from the known sources of income during the check period than what has been spent by him in the construction of the house even if

the expenditure, as calculated by the prosecution, is taken to be correct. Counsel for the appellant further submits that the learned trial Court has

failed to appreciate that both the appellant and his wife were working and residing together along with their two children and father, who has

independent source of income and as a matter of fact, had been supporting the. appellant in the construction of the house and incurring expenditure

during the check period and, therefore, the income incurred by his wife in toto should have been added to the income of the appellant as it was

only one household, which was being run by two of them. Therefore, no cut in income should have been imposed for house expenses. For this

contention, he relies upon the judgment of this Court in the case of Dalip Singh v. State of Punjab, 2003(3) C C C 616 (P&H) : 2003(4) RCR

464. He, in any case, submits that the income and expenditure during the check period is much less when taken into consideration percent-wise

and the Hon''ble Supreme Court in the case of Krishnanand Vs. The State of Madhya Pradesh, has held that since the excess expenditure was

proportionately small i.e. it was less than 10% of the total income, it would not be right to hold that the assets found in the possession of the

accused were disproportionate to his known sources of income so as to justify the raising of presumption u/s 5(3) (old Act) under the Prevention

of corruption Act. He further relies upon the judgment of the Hon''ble Supreme Court in the case of State of Maharashtra Vs. Pollonji Darabshaw

Daruwalla, to contend that where a public servant possessing assets in excess of his known sources of income and disproportion is not of sizable

extent, conviction was not justified and a liberal view be taken in such like matters. He, on this basis, prays for the allowing of the present appeal

and setting aside the order passed by the learned Special Judge, Patiala dated 12.09.2008.

6. On the other hand, counsel for the State has fully supported judgment of the learned Special Judge, Patiala. He contends that all the benefits,

which the appellant was entitled to from his known sources of income, have been duly granted to him by the prosecution while calculating and

assessing the income and expenditure of the appellant during the check period. The claims, which have been raised by the counsel for the appellant

during the course of hearing, do not call for any consideration as these statements have been duly considered by the learned trial Court and on

consideration of the same, the same have been found to be not worthy of credence and, therefore, no benefit deserves to be granted to the

appellant. He, therefore, prays for dismissal of the appeal.

7. I have heard the counsel for the parties and with their able assistance, have gone through the impugned judgment as also the evidence led by the

prosecution as also the defence.

8. Firstly taking the contention of the counsel for the appellant with regard to the excessive assessment made by the prosecution with regard to the

expenditure incurred by the appellant during the check period, suffice it to say that the report has been submitted with regard to the expenditure on

the house built by the appellant by Sh.Subhash Chander Gupta, Executive Engineer, Public Health, Mohali, PW1, who had visited the house in

question and assessed the evaluation after taking measurement and prepared the report. On consideration of the value of the material and goods

used in the construction, the said report cannot be said be incorrect. The other evidence, which has been produced by the prosecution, also cannot

be faulted with regard to the expenditure incurred by the appellant during the check period.

9. The question, therefore, now which remains to be looked into and adjudicated upon, is whether some income, which according to the appellant

was required to be included in the known sources of his income, has not been taken into account while assessing his income?

10. The first contention was with regard to the non-inclusion of the amounts, which according to Sadhu Singh, father of the appellant DW6, were

given to the appellant-Jaswant Singh and have not been counted for his income. For consideration of the same, statement of DW6 Sadhu Singh

may be referred to here, which reads as follows:-

23 DW6 Sadhu Singh, father of the accused has testified in the manner given below:-

I have two sons namely Jaswant Singh elder and Pavittar Singh is younger to him. I inherited about 100 bighas of land from my father. Out of this

100 bighas of land, I gave 25 bighas each to sons and I kept 50 bighas of land with me. I am jointly residing with my son Jaswant Singh accused

present in the Court. The entire income from my land measuring 50 bighas and that of 25 bighas already given to Jaswant Singh is being used by

my son Jaswant Singh as I am residing with him. I and my son own five shops at Bus stand Dadkala which are given on rent @ Rs.700/- per

month each. Out of this rent, I am entitled to get 1/3 rd per month i.e. out of Rs.3500/- and I also use to hard over part of my rent to my son

Jaswant Singh as I am residing with him. I was having two houses in village Dadkala, out of which the house situated in the Abadi of the village was

given to my son Pavittar Singh, whereas the outer house was sold by me and my two sons in favour of Sham Lal and Santosh Rai of village Dakala

vide registered sale deed dated 12.05.1997 for an amount of Rs.85,000/-. The whole sale consideration of Rs.85,000/- was also given to Jaswant

Singh. The sale deed Ex.PC is already on record which bears my thumb impression. My son Jaswant Singh also brought old bricks from village

Dakala numbering 50,000/- when he constructed his Kothi at Gurmat Colony Patiala. The agriculture land owned by me and my sons is a good

quality land and we use to sow vegetables as well as paddy, cotton, wheat, sunflower, potato etc. We use to earn about Rs.8/9 lacs per year from

the agriculture land owned and possessed by me and my son Jaswant Singh. XXX XXX XXX XXX By APP for the State.

We did not issue receipts to the tenants regarding payment of rent of shops. I have not brought the J.Forms regarding agriculture produce. I do not

know if my son had shown the sale of the house in his income tax return or not. It is wrong to suggest that I am deposing falsely being father of the

accused.

11. A perusal of the above goes to show that Sadhu Singh was Jointly residing with his son Jaswant Singh-appellant. The entire income from his

land was being given to the appellant for the reason that he was residing with him. He has stated that he and his sons owned five shops at Bus-

Stand, Dakala, which were given on rent. He was entitled to get 1/3 rd of the rent per month as he has two sons and his share came to 1/3 rd. Out

of his share also, he used to hand over apart from the rent to his son Jaswant Singh. This shows that Jaswant Singh, apart tram the amount which

his father was giving out of the rent from his share, was entitled to and get, as his own right, 1/3rd of the rent, which, for the check period when

calculated, comes to Rs.26,565/- (as the total income from rent received from five shops for the check period comes to Rs.79,695/-). This income

has not been included in the income of the appellant. Sadhu Singh father of the appellant, has stated that he had two houses in village Dakala. One

house, which was stated in the Abadi of village, was given to his younger son Pavittar Singh whereas the other house was sold by him and his two

sons vide sale deed dated 12.05.1997 Ex.PC for an amount of Rs.85,000/- and the whole sale consideration of Rs.85,000/- was also given to

Jaswant Singh. This assertion of Sadhu Singh also requires to be accepted for the simple reason that out of the two houses, which he owned in village Dakala, one, which was stated in the Abadi of the village, was given to his younger son Pavittar Singh and the other was sold by him along

with his two sons and the sale consideration was handed over to Jaswant Singh i.e. 85,000/-, which he used in the construction of the house in

Gursharan Colony near Village Sular, with whom Sadhu Singh was residing. The house property was equitably distributed by the father amongst

them. This amount of Rs.85,000/- has as a whole not been included in the income of the appellant which sale deed has been duly proved before

the trial Court a Ex.PC and is dated 12.05.1997. which falls within the check period. Only 1/3rd benefit i.e. Rs.28,233/- has been given to the

appellant by counting it towards his income. Therefore, Rs.56,767/- further needs to be added to the known source of income of the appellant. In

cross-examination, nothing has come on record which would shake the credibility the witnesses qua these two incomes which had accrued to the

appellant and were not included in his known source of income.

12. Now coming to the statement of Harkesh Kaur DW4, mother-in-law of the appellant, she has stated as follows:-

21. DW4 Harkesh Kaur, mother-in-law of the accused has stated as under:-

I know accused Jaswant Singh present in the Court Marriage of my daughter Jaspal Kaur was performed with accused in 1985.I have no son. My

husband has retired as Panchayat Officer and is getting pension of Rs.6000/- per month. We also own immovable and commercial property

including shops. We have rented our five shops in Nabha. We have our own house. Since I have no son as such I used to give financial help to my

daughter Jaspal Kaur from time to time as and when it is required by them either in the construction of the house or for purchase of plot. Even I

paid an amount of Rs.25,000/- to my daughter by sale of plot in the year April, 1996. I also paid another amount of Rs.25,000/- to my daughter

Jaspal Kaur by sale of another plot in December, 1996.I have brought certified copies of the sale deed which are Ex.DW4/A and Ex.DW4/B. My

husband is income tax assessee.

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It is wrong to suggest that I have not given any financial help at any point of time to my daughter as stated by me in my examination in chief. It is

also wrong to suggest that I am deposing falsely as accused is my close relative. It is wrong to suggest that I did not pay the amount of sale deed to

any daughter at any point of time. My daughter Jaspal Kaur has passed B.A., and has diploma in Library Science. It is wrong to suggest that I

have deposed falsely.

13. A perusal of the above would show that Harkesh Kaur, mother-in-law of the appellant was well off. Her husband was a retired Panchayat

Officer and was getting handsome pension and he is an income tax assessee. They had immovable and commercial property including five shops at

Nabha, which were rented out and they owned their own house. She did not have any sole and she Had been helping financially her daughter

Jaspal Kaur from time to time as and when it was required by them whether it was for construction of the house or for purchase of plot. She has

categorically stated that she had paid an amount of Rs.25,000/- to her daughter by sale of plot in April, 1996 (Sale deed Ex.DWA4/A) and again

an amount of Rs.25,000/- was given by her to her daughter Jaspal Kaur wife of the appellant by sale of another plot in December, 1996 (sale

deed Ex.DW4/B), in Cross-examination, the prosecution has not been able to bring out anything which would create a doubt or shake the

credibility of the witnesses. I see no reason that a mother would not help her daughter, specially when she does not have any son, to construct a

house. The source, from which the money was pad to her daughter, stands duly proved along with the amount and, therefore, there is no reason

why this amount should not be included in the income of the appellant to calculate his income from the known source of income as it falls within the

check period. Therefore Rs.50,000/-, which have been given by Harkesh Kaur, mother-in-law of the appellant of his wife Jaspal Kaur, needs to

be included in the income of the appellant.

14. The Statements of DW4 Harkesh Kaur, mother-in-law of the appellant and DW6 Sadhu Singh, father of the appellant, have been discarded

by the learned trial Court merely on the ground that they are close relatives and have come forward to help the appellant. As has been observed

above, the credibility of the witnesses has not been shaken despite cross-examination and merely because they are close relatives of the appellant-

accused cannot be made the reason for not accepting their assertions, which have been duly supported with proved documents on record. It is

common knowledge that the parents support their children in owing and constructing a house for them. As far as Sadhu Singh is concerned, who is

father of the appellant-Jaswant Singh, he had direct interest in the construction of the house as he was residing with him and Jaswant Singh was his

elder son. To his younger son Pavittar Singh, he had already given a house in the Abadi of the village and it was thus quite natural that he came

forward to help financially his son in building the house. Similar is the position with Harkash Kaur DW4, mother-in-law of the appellant, who does

not have any son and had come forward to help her daughter in building a house. On taking into consideration these amounts, which were required

to be added to the income of the appellant from his known source of income during the check period, these amounts exceed the expenditure

amount and therefore, the conviction and sentence of the appellant by the learned trial Court cannot be sustained. Income of Rs.56,767/- from the

sale of old ancestral house in village Dakala needs to be added to the 1/3rd, which benefit has been granted to the appellant i.e. Rs.28,233/-,

which would come to a total of Rs.85,000/-, which was the total sale consideration of the house and the said total sale consideration was handed over to the appellant by his father Sadhu Singh and his brother Pavittar Singh. Rs.26,565/- is the rent income, which the appellant received from

five shops at Bus-Stand, Dakala as his 1/3rd share of the rent amount and Rs.50,000/- is the amount which was given as financial help by his

mother-in-law after sale of two plots by her. By adding up all these three amounts, the income of the appellant would increase by Rs. 1,33,332/-

and the excess expenditure over and above the income, for which the prosecution was launched against the appellant, was Rs.1, 15,982.37/-. The

known source of income of the appellant, therefore, during the check period exceeding the expenditure incurred by the appellant, no offence u/s

13(1)(e) of the Prevention of Corruption Act, 1988 is made out against the appellant.

15. In the light of the above, the contentions, as raised by the counsel for the appellant with regard to inclusions of other sources of income which

were not included, are not being gone into. The judgments relied upon by the counsel for the appellant also are not being pressed into service to

grant him benefit in the light of the fact that known source of income of the appellant has been found to be more than the expenditure incurred by

him during the check period.

16. The present appeal is allowed. The judgment dated 12.09.2008 passed by the Special Judge, Patiala is hereby set aside and the appellant is

acquitted of the charges framed against him.