
(2011) ILR (MP) 1284

Madhya Pradesh High Court (Gwalior Bench)

Case No: Criminal Appeal No. 52/06

Kedarilal

APPELLANT

Vs

State of M.P. and
Others

RESPONDENT

Date of Decision: Dec. 16, 2010

Acts Referred:

- Madhya Pradesh Civil Services (Conduct) Rules, 1965 - Rule 14, 14(1), 14(2), 14(3), 14(4)
- Prevention of Corruption Act, 1988 - Section 13(1), 13(2), 5, 5(1), 5(2)

Citation: (2011) ILR (MP) 1284

Hon'ble Judges: Brij Kishore Dubey, J; Abhay M. Naik, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Abhay M. Naik, J.

This appeal has been preferred by the Appellant against the judgment dated 30th December 2005 convicting thereby the Appellant u/s 13(1)(e) read with Section 13(2) of The Prevention of Corruption Act, 1988.

2. Facts relevant for the purpose of this appeal are that the Appellant was holding the post of Sub Engineer and Assistant Engineer in the Public Health Engineering Department of Madhya Pradesh during the check period from 15.7.1978 to 9.2.1994. Case of the prosecution is that he earned during this period in all Rs. 3,86,966/- from the known sources of income, whereas he was found to have possessed Rs. 7,95,243/- and was thus found to have acquired disproportionate income to his known sources. Accordingly, he was found guilty and was convicted for the aforesaid offence.

3. This case depicts an extremely sorry state of affairs that the prosecution has virtually examined all the defence witnesses as witnesses of prosecution. Most of the witnesses of prosecution have virtually supported the accused on facts. Illustratively, Kapoorchand

(P.W.1), who happened to be brother-in-law of the accused, has stated in chief examination on behalf of the prosecution that he had advanced Rs. 10,000/-to the accused for the purchase of gun. Ramgopal (P.W.4) is brother of the accused, who has stated in chief examination that he had advanced Rs. 20,000/-and Rs. 50,000/-in the year 1988/1989 for construction of house. Gopal Agrawal (P.W.5), who is the relative of accused, has stated in his chief examination that he had provided Rs. 75,000/-to the accused without interest in the year 1989 for construction of house. Similarly, Ramjilal Agrawal (P.W.6) has stated that he had advanced Rs. 20,000/-in 1987 as loan to the accused, which has been repaid. These are all versions in the chief examination itself. Brajesh Pradhan (P.W.7) happened to be younger brother of the accused, who, too, has been examined by the prosecution. This witness in the chief examination has stated that he had advanced Rs. 20,000/-on 9.9.1998 and Rs. 15,000/-on 1.4.1999 to the accused in cash for construction of house. Out of this, Rs. 20,000/-were provided as financial assistance for construction. This witness has further stated that there occurred a family partition in the year 1987, wherein Rs. 1,45,000/-was allotted in the share of the accused. Out of this, Rs. 60,000/-was immediately paid by their father to the accused. Remaining amount was paid by bank draft of Rs. 40,000/-and Rs. 45,000/-. These witnesses despite their support to the accused were not declared hostile and were not cross examined by the prosecution after obtaining due permission from the court. It is not understandable from the record that why did the prosecution examine all such witnesses, who otherwise might have been produced in defence. It is also un-understandable that why they were not declared hostile in view of their support to the accused and why they were not cross examined. In the light of their conduct in the absence of declaration of such witnesses as hostile, obviously, the chief examinations of such witnesses are binding on the prosecution and the evidence on record is liable to be appreciated accordingly.

4. Main defences of the Appellant are:

(i) Entire income of the Appellant from the known sources was not properly worked out. His salary from Aug. 1980 to Aug. 83 was not counted and thus was not included in Rs. 3,86,966/-, which is mentioned as the income from known sources.

(ii) Appellant had complied with the provisions of M.P. Civil Services (Conduct) Rules, 1965. Intimation was duly given and sanction was duly obtained as required.

(iii) While assessing the value of assets possessed by the Appellant during the check period, over estimation was made in various items.

(iv) "Stridhan" of Appellant's wife was also included in his assets, whereas the same was exclusive property of his wife.

(v) 10% of the variation to the income from known sources is permissible and such variation does not lead to an inference that the accused is possessed of disproportionate assets to the known sources of income.

(vi) Learned trial Judge has committed a mistake in rejecting 50% of his income as personal expenditure during bachelorhood of the Appellant.

5. Shri S.K. Shrivastava and Shri J.D. Suryavanshi, learned Counsel appearing for the parties made their respective submissions at length, which have been considered in the light of the evidence on record as well as the provisions of law governing the situation.

6. Learned Counsel Shri Shrivastava contended that a sum of Rs. 3,86,966/- was treated as income of the Appellant from the known sources and the salary of the accused for the period from Aug. 1980 to April 1983 was not counted in total earnings of the accused.

On perusal, this submission is not found to be correct. Salary of August 1980 is mentioned at page No. 537 of Paper Book. Similarly, salary from Sept. 1980 to April 1983 is mentioned at pages 230 and 231 of the Paper Book. Learned trial Judge has taken the aforesaid into consideration in paragraph 23 of the impugned judgment.

7. After going through the material on record as well as paragraph 23 of the impugned judgment, learned Counsel Shri Shrivastava further submitted that salary for the month of May and June 1983, May 1990 and December 1990, too, was not included in the income from the known sources of the Appellant.

This, too, is not found to be correct. At page 539 of the Paper Book, salary of May-June 1983 is mentioned, whereas salary for the month of May 1990 and December 1990 is mentioned at pages 549 and 554 of the Paper Book respectively. This being so, it is not correct that the entire salary of the Appellant was not calculated while arriving at a figure of income from known sources, more so in view of paragraph 23 of the impugned judgment, where labour has been put by the learned trial Judge to ensure that the income made from the salary should reflect the total earning of the Appellant during the check period.

8. It has been further contended that the accused had given due intimation and/or had obtained due permission before acquiring the property by gift or the purchase, as the case may be.

9. Before entering into this question, we feel it proper to reproduce Rule 14, 17 and 19 of the M.P. Civil Services (Conduct) Rules, 1965 (hereinafter referred to as the Conduct Rules of 1965):

14. Gifts.-(1) Save as otherwise provided in these rules, no Government servant shall accept or permit any member of his family or any other person acting on his behalf to accept, any gift.

Explanation.-The expression "gift" shall include free transport, boarding, lodging or other service or any other pecuniary advantage when provided by any person other than a near relative or personal friend having no official dealings with the Government servant.

Note.-a casual meal, lift or other social hospitality shall not be deemed to be a gift.

A Government servant shall avoid accepting lavish hospitality or frequent hospitality from any individual having official dealings with him or from industrial or commercial firms, organizations, etc.

(2) On occasions, such as weddings, anniversaries, funerals or religious functions, when the making of a gift is in conformity with the prevailing religious or social practice, a Government servant may accept gifts from the date of receipt of the gift to the Government if the value of any such gift exceeds:

(i) Rs. 1500.00 in the case of the Government servant holding any Class I or Class II post;

(ii) Rs. 700.00 in the case of the Government servant holding any Class III post; and (iii) Rs. 250.00 in the case of the Government servant holding any Class IV post.

(3) On such occasions as are specified in Sub-rule (2), a Government servant may accept gift from his personal friends having no official dealings with him, but he shall make a report (within a period of one month from the date of receipt of the gift to the Government if the value of any such gift exceeds:

(i) Rs. 500 in the case of the Government servant holding any Class I or Class II post;

(ii) Rs. 200 in the case of the Government servant holding any Class III post; and (iii) Rs. 100 in the case of the Government servant holding any Class IV post.

(4) in any other case a Government servant shall not except, or permit any member of his family or any other person acting on his behalf, to accept any gift without the sanction of Government, if the value thereof exceeds:

(i) Rs. 200 in the case of the Government servant holding any Class I or Class II post and

(ii) Rs. 50 in the case of the Government servant holding any Class IV post.

(5) No Government servant shall accept or permit any member of his family or any person acting on his behalf of any member of his family to accept, any gift in cash exceeding Rs. 2000 except through a payee account cheque.

17. Investment, lending and borrowing.-(i) No Government servant shall speculate in any stock, share or other investment.

Explanation.-Frequent purchase or sale or both, of shares, securities or other investment shall be deemed to be speculations within the meaning of this sub-rule.

(2) No Government servant shall make, or permit any member of his family or any person acting on his behalf to make, any investment which is likely to embarrass or influence him in the discharge of his official duties.

(3) If any question arises whether any transaction is of the nature referred to in Sub-rule (1) or Sub-rule (2), the decision of the Government thereon shall be final.

(4) (i) No Government servant shall, save in the ordinary course of business with a bank or a firm of standing duly authorised to conduct banking business, either himself or through any member of his family or any other person acting on his behalf,

(a) lend or borrow money, as principal or agent to or from any person within the local limits of the authority with whom he is likely to have official dealings, or otherwise place himself under any pecuniary obligation to such person, or

(b) lend money to any person at interest or in a manner whereby return in money or in kind is charged or paid:

Provided that a Government servant may, give to, or accept from, a relation of a personal friend, a purely temporary loan of a small amount free of interest, or operate a credit account with a bona fide tradesman or make an advance of pay to his private employee:

Provided further that nothing in this sub-rule shall apply in respect of any transaction entered into by a Government servant with the previous sanction of the Government.

Provided further that nothing contained in this sub-rule shall apply to any transactions done by any Government servant with the prior approval of the Government.

(ii) When a Government servant is appointed or transferred to a post of such nature as would involve him in the breach of any of the provisions of Sub-rule (2) or Sub-rule (4), he shall forthwith report the circumstances to the Government and shall thereafter act in accordance with such orders as may be made by the Government.

(5) No Government servant shall borrow money exceeding Rs. 2000 except through a payee account cheque.

19. Movable, immovable and valuable property.(1) Every Government servant shall on his appointment to any service or post and thereafter at such intervals as may be specified by the Government, submit a return of his assets and liabilities, in such form as may be prescribed by the Government, giving the full particulars regarding:

(a) the immovable property inherited by him, or owned or acquired by him or held by him on lease or mortgage, either in his own name or in the name of any member of his family or in the name of any other person;

(b) share, debentures and cash including bank deposits inherited by him or similarly owned, acquired or held by him;

(c) other movable property inherited by him or similarly owned acquired or held by him;
and

(d) debts and other liabilities incurred by him directly or indirectly.

Note.-Sub-rule (1) shall not ordinarily apply to Class IV servants but the Government may direct that it shall apply to any such Government servant or class of such Government Servants.

In all returns, the value of items of movable property worth less than Rs. 1,000.00 may be added and shown as a lump sum. The value of articles of daily use such as clothes, utensils, crockery, books, etc., need not be included in such return.

Every Government servant who is in service on the date of commencement of these rules shall submit under this sub-rule on or before such date as may be specified by the Government after such commencement.

(2) No Government servant shall, except with the previous knowledge of the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name of any member of his family:

Provided that the previous sanction of the prescribed authority shall be obtained by the Government servant, if any such transaction is with a person having official dealings with him.

(2a) If a Government servant or, with his consent, tacit or otherwise during the term of his employment, any member of his family:

(1)purchases any immovable property or gets any house owned by him whether in his own name or benami in the name of any other person erected, or re-erected, or

(2)makes any alternation or repairs exceeding Rs. 5,000/-in any of the immovable property already owned by him, whether in his own name or benami in the name of any other person or as the case maybe, by way member of his family: such Government servant shall give prior intimation of such erection, re-erection, alteration or repairs, as the case may be, to the prescribed authority, disclosing the total amount estimated for the said acquisition, erection, re-erection, alteration or as the case may be, repairs and also disclose the source from which he, or as the case may be, the member of his family, proposes to raise the required funds for the purpose. He shall further give prior intimation if during erection, re-erection, alteration or as the case may be, repairs, the revised estimates are likely to exceed by more than 10% of the original estimates. At the completion of the work, the Government servant shall furnish the final cost of such work

and the source from which the funds were actually raised, with copies of documents, if any, in support thereof.

(3) Every Government servant shall report to the prescribed authority every transaction entered into by him either in his own name or in the name of a member of his family in respect of movable property, if the value of such property exceeds Rs. 10,000.00 in the case of a government servant holding any Class I or Class II post or Rs. 5,000.00 in the case of a Government servant holding any Class III or Class IV post:

Provided that the previous sanction of the prescribed authority shall be obtained by the government servant, if any, such transaction is with a person having official dealings with him.

(3A) If a Government servant either fails to file a return prescribed in Sub-rule (1) or files a return for any year which does not fully disclose all the property that is required to be indicated or otherwise conceals any such property it would amount to misconduct.

(3B) In a disciplinary proceeding on account of misconduct under Sub-rule (3A) it shall be presumed that the property not included in the return or the value of which is incorrectly shown was acquired through means in contravention of these rules. In such proceedings the burden of proof of establishing that the property was acquired legitimately shall lie on the government servant.

4(i) The Government or the prescribed authority may, at any time, by general or special order, require a Government servant to furnish, within a period specified in the order, a full and complete statement of such movable or immovable property held or acquired by him or on his behalf or by any member of his family as may be specified in the order. Such statement shall, if so required by the government or by the prescribed authority, include the details of the means by which, or the source from which such property was required.

(ii) If the movable and immovable property is, or at any time was found to be beyond his known sources of income, it shall be presumed, unless the contrary is proved by the Government servant, that the acquisition was from a corrupt source. (5) The Government may except any category of Government servants belonging to Class III or Class IV from any of the provisions of this rule except Sub-rule (4). No such exemption shall, however, be made without the concurrence of the Government in the General Administration Department.

Explanation.-For the purpose of this rule:

(1) the expression "movable property" includes:

(a) Jewellery insurance policies the annual premia of which exceeds Rs. 1,000.00 or one-sixth of the total annual emoluments share, securities and debentures; received from

Government whichever is less;

(b) loan advanced by such Government servants secured or not;

(c) motor cars, motor cycles, horses or any other means of conveyance; and

(d) refrigerators, radios and radiograms.

(e) Television sets and other electronic items.

(2) "Prescribed authority" means:

(a)(i) the Government, in the case of a Government servant holding any Class I post, except where any lower authority is specifically specified by the Government for any purpose.

(ii) Head of Department, in the case of a Government servant holding any Class II post;

(iii) Head of office, in the case of a Government servant holding any Class III or Class IV post;

(b) In respect of a Government servant on foreign service or on deputation to any other Government, the parent department on the cadre of which such Government servant is borne of the administrative department of Government to which he is administratively subordinate as member of that cadre.

10. Crucial question before this Court is that what is meant by the term "known sources of income". Much emphasis has been put on the fact that most of the amounts taken into consideration by the prosecution were already shown in the returns of income tax. Few of them have also been intimated to the superior officers of the department of the Appellant. This being so, it has been contended that all such amounts were disclosed duly and they ought to have been taken into consideration within the ambit of "known sources of income" since the sources were disclosed. We do not agree with this contention in view of the existing provisions contained in Rules 14, 17 and 19 of the Conduct Rules of 1965. These rules permit a public servant to accept a gift or loan only in specific situation. They prohibit a government servant from accepting the gift or loan except in the manner prescribed therein. Similarly, they prohibit a government servant from making the purchase except in accordance with the provisions contained therein. A public servant, who contravenes any of the provisions of the Conduct Rules of 1965, may be answerable in departmental proceedings, in case, if, he is found to have possessed at any time during the period of office of the property disproportionate to his known sources of income. He may be also prosecuted under the provisions of the Prevention of Corruption Act 1988. If a public servant receives money without making compliance of the aforesaid rules and acquires the property with the aid of such money, the money received in contravention of the Conduct Rules of 1965 would not be treated as "known sources of income" for the

purpose of Section 13(1)(e) of the Prevention of Corruption Act, 1988, which is also evident from the explanation to Section 13(1)(e), which reads as follow:

Explanation.-For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

This being so, disclosure of receipt of money in the income tax return is of no assistance in the present case, unless it is established that the provisions contained in Rules 14, 17 and 19 of the Conduct Rules of 1965 were duly complied with and the receipts by the Appellant were duly intimated in accordance thereof. On these parameters, this Court is now required to examine the case.

11. Kapoorchand (P.W.1), at page 565 of Paper Book, has stated that he had given a sum of Rs. 10,000/-without interest to the accused in cash for the purchase of gun. In the cross examination, this witness has stated that the said amount was not liable to be refunded. Obviously, such an amount was in the nature of "gift".

It is submitted on behalf of the Appellant that intimation of the aforesaid amount was given vide Ex.D/18 (Page 292 of Paper Book).

Ex.D/18 is a letter dated 15.3.1993 informing thereby by the Appellant to the Executive Engineer of Public Health Engineering Department Shivpuri about having received Rs. 10,000/-in cash from Kapoorchand Agrawal for purchase of gun. Sub rule (5) of Rule 14 (supra) prohibits a government servant from accepting any gift in cash exceeding Rs. 2,000/-, except through a payee account cheque. Since the sum of Rs. 10,000/-was not liable to be refunded, it ought to be treated as a "gift". By virtue of sub rule (4) of Rule 14 (supra), the said gift ought not to have been accepted without the sanction since it was in excess of Rs. 2000/-. From the perusal of sub rule (4) Rule 14 (supra), it is clear that a government servant was required to obtain sanction of the Government before accepting the gift. No prayer was made vide Ex.D/18 to seek the sanction of Government. Intimation vide Ex.D/18 was not sufficient at all because such intimation by virtue of sub rule (2) Rule 14 (supra) was required in the case of "gift" at the time of weddings, anniversaries, funerals and religious functions, when the making of a gift is in conformity with the prevailing religious or social practice. Accordingly, the amount of Rs. 10,000/-received from Kapoorchand can not be said to be the income from known sources.

12. It is evident from Ex.P/1 that the Appellant purchased a plot situated at Gram Chhavni, Tahsil Shivpuri for consideration of Rs. 45,000/-. However, he obtained a sanction vide Ex.D/14 at page 275 of Paper Book to make a purchase for stipulated cost of Rs. 30,000/-only. This being so, extra sum of Rs. 15,000/-can not be treated as "known sources of income" being in contravention of sub rule (2) of Rule 19 of the Conduct Rules of 1965.

13. Appellant vide Ex.D/4 has admitted that he was paid in all a sum of Rs. 2,49,535.35 as net pay for the check period from 15.7.1978 to 9.2.1994 after the deduction of HRA, water charges, GPF, conveyance allowance etc. Besides this, it is stated in Ex.D/4 that he is in receipt of following money during the check period:

- (i) Rs.60,000/- As his share allotted to him on family partition on 4.4.1987.
- (ii) Rs.20,000/- By way of amount received from M/s Harnarayan Ramjilal, Shivpuri vide cheque No.419148 dt.25.6.1987.
- (iii) Rs.20,000/- By way of gift from brother Ramgopal on 3.12.1988.
- (iv) Rs.20,000/- By way of gift from brother Brijnarayan on 9.9.1988.
- (v) Rs.75,000/- By way of loan from M/s Radhavallabh Dal Mill vide cheque No.900140.
- (vi) Rs.15,000/- By way of loan from brother Brijnarayan on 1.4.1989.
- (vii) Rs.15,000/- By way of loan from brother Ramgopal on 10.9.1989.
- (viii) Rs.50,672/- Received as per wishes of mother late Smt. Gabbo Bai in 1990-91.
- (ix) Rs.45,000/- By way of balance amount of his share vide bank draft No.798443 dated 26.8.1991 as per family partition.
- (x) Rs.40,000/- By way of balance amount of his share vide bank draft No.798459 dated 1.10.1991 as per family partition.
- (xi) Rs.10,000/- By way of gift from brother in law Kapoorchand Agrawal on 15.3.1991.

14. Items at Sl. No. (iii), (iv) and (xi) are in the nature of gift as per the Appellant himself, as revealed in Ex.D/4 at pages 210-211 of the Paper book.

Such gifts from near relatives as per sub rule (2) of Rule 14 of the Conduct Rules of 1965 is permissible on occasions such as wedding, ceremonies, funeral when the making of gift is in conformity with the prevailing religious or social practice. Brothers and brothers-in-law were obviously near relatives of the Appellant, however, it is nowhere on record that such gifts were made on occasions contemplated in sub rule (2) of Rule 14 (supra). It is nowhere on record that the gifts were in conformity with the prevailing religious or social practice. Accordingly, it is held that the aforesaid receipts were not in accordance with the provisions of Conduct Rules 1965 and would not fall within the ambit of "known sources of income" of the Appellant for the purpose of Section 13(1)(e) of the Prevention of Corruption Act,1988 read with its explanation.

15. Besides this, the Appellant was required to make report within one month from the date of the receipt of the gift to the Government. No such report is established to have

been made to the Government. Intimation sent to the superior officer of the department at pages 560 and 564 can not be treated as report to the Government within the meaning of sub rule (2) of Rule 14, unless it was addressed to the Government or was given to the superior officer with a request to forward it to the Government pursuant to the said sub rule.

Learned Counsel for the Appellant has been unable to point out any memorandum or circular of the Government requiring the Government servant to make the report merely to the higher officer and not the Government, as required under the aforesaid sub rule. Government is obviously represented by the Principal Secretary or Secretary of the department and not merely by superior officers. Vide page 560 of the paper book, intimation is shown to have been given merely to the Assistant Engineer, who was not even a class I officer of the department. Neither such officer nor E.E. at District level can be treated to have represented the State Government within the meaning of the aforesaid sub rule. This being so, such intimation does not fall within the definition/description of the word "report" appearing in the aforesaid sub rule. Accordingly, the amount received by way of gift by the Appellant can not be said to have been received from known sources of income within the meaning of Section 13(1)(e) of the Prevention of Corruption Act, 1988 read with its explanation.

16. Items at Sl. No. (ii), (v), (vi) and (vii) are shown to be in the nature of loan.

Sub rule (4) of Rule 17 of the Conduct Rules of 1965 permits a government servant to borrow money in the ordinary course of business with a bank or a firm of standing duly authorised to conduct banking business. By virtue of the proviso to the sub rule, a government servant is not prohibited from transaction of lending or borrowing money with anyone with the previous sanction of the Government. Sub rule (5) prohibits a Government servant from borrowing money exceeding Rs. 2,000/-except through a payee account cheque. Items at S. Nos. (vi) and (vii) reveal that the Appellant borrowed money in cash in violation of sub rule (5). Therefore, this sum of Rs. 30,000/-can not be treated as a known source of income being in violation of Rule 17 (5) of the Conduct Rules of 1965. Clause (3) of sub rule (2a) of Rule 19 lays down that every Government servant shall report to the prescribed authority every transaction entered into by him either in his own name or in the name of a member of his family in respect of movable property, if the value of such property exceeds Rs. 10,000.00 in the case of a government servant holding any Class I or Class II post or Rs. 5,000.00 in the case of a Government servant holding any Class III or Class IV post.

17. Items at S. No. (i), (ix) and (x) are shown to have been received as share on account of family partition.

Intimation with regard to receipt of Rs. 60,000/-is shown to have been given to the Assistant Engineer (Paper Book Page No. 558) and intimation regarding receipt of Rs. 85,000/-is shown to have been given to the Executive Engineer, Public Health

Learned Counsel for the Appellant on 7.9.2010 placed on record memorandum No. 1933-1505-1(3)/60 dated 27th August 1960 and Memorandum F. No. C5-1/94/3/One - One Bhopal dt.5.1.94 issued by the General Administrative Department, Govt. of M.P., which as per the subject cited therein are in relation to the Madhya Pradesh Government Servants (Conduct) Rules, 1959 -Rule 18(3) -Immovable property form part of return and instruction regarding the same. These memorandums are in relation to the immovable property and do not relate to the acquisition of movable property. They were issued under the M.P. Government Servants (Conduct) Rules, 1959, which ceases to be in force after enforcement of M.P. Civil Services (Conduct) Rules, 1965. Thus, the Appellant has been unable to establish that the receipt of money by him on account of his share in the family partition was duly reported to the prescribed authority in accordance with Clause (3) of sub Rule (2a) of Rule 19 of the Conduct Rules 1965.

18. As regards sum of Rs. 50,672/-received pursuant to the wishes of late mother Smt. Gabbo Bai, it may be seen that it would be in the nature of gift and the same is not found to have been reported to the Government within one month from the date of it's receipt as required under sub rule (2) of Rule 14. Intimation about it vide paper book page 562 is not shown to have been given to the Government. Moreover, the same was not through account payee cheque and was thus in violation of sub rule (5) of Rule 14 of the Conduct Rules 1965.

19. Learned Counsel for the Appellant further submitted that the immovable property vide registered sale deed Ex.P/3 was purchased in the name of Appellant's wife with the aid of Stridhan. Therefore, the same could not have been considered as a property of the Appellant. Reliance has been placed on AIR 2005 SCW 6208 (D.S.P. Chennai v. K. Inbasagaran) to buttress this submission that wife's assets can not be considered for the purpose of offence u/s 13(1)(e) of Prevention of Corruption Act, 1988.

It is true that the registered sale deed (Ex.P/3) is in favour of Smt. Sangita alone, who happens to be the wife of the Appellant. However, there is no presumption in law that a property standing in the name of a woman must have been purchased by Stridhan. Smt. Sangita was/is not in employment and is not shown to have possessed Stridhan. She has not been examined by the Appellant to establish that the consideration of sale deed (Ex.P/3) was paid by her from her Stridhan. Her parents or any other relatives have also not been examined to show that she possessed Stridhan and the purchase was made by her with the aid of Stridhan alone.

In the case of D.S.P. Chennai (supra), the wife was running certain companies and was an income tax payee. In the present case, wife is not shown to have earned individual earning from any profession, occupation or otherwise.

Relying upon [Subhash Kharate Vs. State of M.P.](#), it has been contended that the prosecution has failed to prove that purchase vide Ex.P/3 in the name of wife was made by the accused himself. Accordingly, learned trial Judge has acted illegally in treating it as the assets of Appellant.

Said purchase is stated to have been made during the check period. Though the purchase was made in the name of wife, but it ought to have been established by the Appellant, which could have been proved by the Appellant that the same was made by Stridhan of the wife himself or his wife. This fact also could have been proved by any person, who might have gifted money to her as Stridhan to the exclusion of her husband.

20. Coming to the evidence, it is found that P.W.1 (Kapoorchand) has stated that he had advanced a sum of Rs. 10,000/-without interest to the Appellant for purchase of a gun. P.W.2 has stated that he had sold a plot for a consideration of Rs. 45,000/-to the Appellant vide registered sale deed dated 15.3.1997 (Ex.P/1). P.W.4 (Ramgopal) is the brother of the Appellant, who has stated that he had paid a sum of Rs. 20,000 and Rs. 15,000 on different occasions in the year 1988-89 for the purpose of construction of house. He has also stated that father of him as well as of Appellant made a payment of Rs. 60,000/-in cash to the Appellant. He has further stated that two bank drafts of Rs. 40,000/-and Rs. 45,000/-were issued by his father in favour of the Appellant. Similarly, he has stated that as per the wishes of the mother, a sum of Rs. 49,407/-was also paid to the Appellant. Other witnesses have also equally supported about the money transactions mentioned in Ex.D-4, a letter issued by the Appellant. However, as observed herein above that there was no intimation/report about having received the said money in accordance with the Conduct Rules, 1965. The money so received by the Appellant did not pertain to the character of known sources of income within the meaning of Section 13(1)(e) of the Prevention of Corruption Act, 1988 read with its explanation. Land purchased vide Ex.P/1 is shown to have made for consideration of Rs. 45,000/-Appellant himself admitted that he has spent a sum of Rs. 2,50,000/-in construction of the house.

21. Learned Counsel for the Appellant submitted vehemently that the Appellant during his bachelorhood was in a position to save more money. Accordingly, 40% of his monthly ought to have been treated as having been spent on himself. Reliance for this purpose is placed in the case of Bhogilal Saran v. State of M.P. (ILR 2007 137)

In [N.P. Jharia Vs. State of M.P.](#), it has been held that saving of the person during bachelorhood may be 50%. In the aforesaid case, Hon"ble Supreme Court of India has observed:

3. Corruption as such has reached dangerous heights and dangerous potentialities. The word "corruption" has wide connotation and embraces almost all the spheres of our day-to-day life the world over. In a limited sense it connotes allowing decision sand actions of a person to be influenced not by rights or wrongs of a cause, but by the

prospects of monetary gains or other selfish considerations. Avarice is a common frailty of mankind, and while Robert Walpole's observation that every man has a price, may be a little generalised, yet it cannot be gainsaid that it is not far from truth. Burke cautioned "Among a people generally corrupt, liberty cannot last long."

16. The High Court noted that salary earned came to about Rs. 24,000/- and since he had to maintain the family there was hardly scope for any saving and therefore any availability of funds at the beginning of the check period has not been established. We find no infirmity in this conclusion. The trial court had estimated the Appellant's income from agricultural land at Rs. 1,49,000 from about 10 to 15 acres of land. The High Court rightly observed that the trial court has been rather liberal in accepting the income of the accused in the share of the joint family property on the basis of mere assertion without any supporting material. Same could not have been accepted. But since the State had not questioned the computation there was no scope for any further relief. The total income was taken to be Rs. 2,38,561.95 which was also not disputed by the Appellant. The trial court had noted that even by most liberal standards the Appellant and his family consisting of five persons could not have saved more than 50% of the earnings of the salary and must have spent Rs. 44,500. Therefore, the savings of the Appellant from salary and agriculture was taken at Rs. 1,94,061. Ms. Pushpa Jharia, DW 1 had deposed that she was doing the work of knitting. The trial court without any supporting material fixed the income at Rs. 68,000. The High Court rightly noted that the computation was on the liberal side. Only a small knitting machine was found during search. DW 1 accepted that she had not employed any other person for knitting, from which she used to fetch between Rs. 15 to Rs. 35 per sweater. Since the finding of the trial court was not challenged by the prosecution the High Court accepted the amount fixed and held that the Appellant and his wife have satisfactorily accounted for Rs. 2,62,061 from the known sources. Though a claim was made that DW 1 used to cultivate land, same was found to be totally unacceptable plea by the trial court, and therefore the claim that Rs. 32,000/- had been earned from the said source was rejected. Similarly, the plea relating to availability of a sum of Rs. 80,000/- on the basis of the Appellant's father's will was found to be unacceptable as the "will" itself was not produced and the availability of Rs. 80,000/- with the Appellant's father was not established. Similarly, the plea that the Appellant had Rs. 75,000/- from the property of his father after his death was unacceptable. There was no material to substantiate the plea. Similarly, plea of having availed loans from relatives was not pursued before the High Court.

This submission is accepted. During the check period, the Appellant was bachelor for certain earlier period, however, there is no material on record to deviate from the observations of the apex court as stated hereinabove.

22. Hon'ble Apex Court in the case of [P. Nallammal Etc. Vs. State Rep. by Inspector of Police](#), has observed:

As per the Explanation the "known sources of income" of the public servant, for the purpose of satisfying the court, should be "any lawful source". Besides being the lawful source the Explanation further enjoins that receipt of such income should have been intimated by the public servant in accordance with the provisions of any law applicable to such public servant at the relevant time. So a public servant cannot now escape from the tentacles of Section 13(1)(e) of the PC Act by showing other legally forbidden sources, albeit such sources are outside the purview of Clauses (a) to (d) of the Sub-section.

Hon'ble Supreme Court of India in the case of Sajjan Singh v. State of Punjab (1964 SC 464) has observed:

(9) We shall first consider the question whether on the record a presumption u/s 5(3) of the Prevention of Corruption Act arise. It is useful to remember that the first Sub-section of Section 5 of the Prevention of Corruption Act mentions in the four Clauses (a), (b), (c) and (d), the acts on the commission of which a public servant is said to have committed an offence of criminal misconduct in the discharge of his duties. The second Sub-section prescribes the penalty for that offence. The third Sub-section is in these words:

In any trial of an offence punishable under Sub-section (2) the fact that the accused person or any other person on his behalf is in possession, for which the accused person cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income may be proved, and on such proof the court shall presume, unless the contrary is proved, that the accused person is guilty of criminal misconduct in the discharge of his official duty and his conviction therefore shall not be invalid by reason only that it is based solely on such presumption.

(10) This Sub-section thus provides an additional mode of proving an offence punishable under Sub-section (2) for which any accused person is being tried. This additional mode is by proving the extent of the pecuniary resources or property in the possession of the accused or any other person on his behalf and thereafter showing that this is disproportionate to his known sources of income and that the accused person cannot satisfactorily account for such possession. If these facts are proved the section makes it obligatory on the Courts to presume that the accused person is guilty of criminal misconduct in the discharge of his official duty, unless the contrary, i.e., that he was not so guilty is proved by the accused. The section goes on to say that the conviction for an offence of criminal misconduct shall not be invalid by reason only that it is based solely on such presumption.

(11) This is a deliberate departure from the ordinary principle of criminal jurisprudence, under which the burden of proving the guilt of the accused in criminal proceedings lies all the way on the prosecution. Under the provision of this Sub-section the burden on the prosecution to prove the guilt of the accused must be held to be discharged if certain facts as mentioned therein are proved; and then the burden shifts to the accused and the accused has to prove that in spite of the assets being disproportionate to his known

sources of income, he is not guilty of the offence. There can be no doubt that the language of such a special provision must be strictly construed. If the works are capable of two constructions, one of which is more favourable to the accused than the other, the Court will be justified in accepting the one which is more favourable to the accused. There can be no justification however for adding any words to make provisions of law less stringent than the legislature has made it.

Long back, it has been held by the Apex Court in the case of [C.S.D. Swamy Vs. The State](#),

The expression "known sources of income" must have reference to sources known to the prosecution on a thorough investigation of the case and that it could not be contended that known sources of income meant known to the accused.

23. Case of the Appellant in the present matter is that he was having salary as well as different amounts having been received by him as gifts, loans and share in the partition. According to him, all such amounts formed part of known sources of income and after taking them into consideration his assets can not be legally treated as disproportionate within the meaning of Section 13(1)(e) of the Prevention of Corruption Act, 1988. Thus, it was obligatory on the part of the Appellant to show that the other amount received by him fall within the ambit of known sources of income within the meaning of said Section read with accompanying explanation.

24. Much emphasis has been put on [Jagan M. Seshadri Vs. State of Tamil Nadu](#), wherein it has been observed that if witnesses of the prosecution are not declared hostile, prosecution can not wriggle out of the statement of such witnesses even though the witnesses may be relative of the accused. Reliance was also placed on 2005 (5) SCC 272 (Raja Ram v. State of Rajasthan), wherein it has been held that if the witnesses of the prosecution are not declared hostile, evidence of such witnesses if relied upon by the defence would bind the prosecution.

It has already been held keeping in mind the statement of the prosecution witnesses that the money transactions as disclosed by the accused/Appellant can not be doubted, however, the question before this Court is whether the amounts received by the Appellant as proved by the prosecution witnesses themselves would form part of the income from known sources within the meaning of Section 13(1)(e) of the Prevention of Corruption Act, 1988 read with its explanation. This Court has found that in view of the provisions contained in the Conduct Rules of 1965, that the amount disclosed by the Appellant as having been received do not fall within such ambit being in contravention of the Conduct Rules 1965, as held by the Hon'ble Apex Court in the case of [M. Krishna Reddy Vs. State Deputy Superintendent of Police, Hyderabad](#), wherein it has been observed:

To substantiate a charge u/s 5(1)(e) of the Act, the prosecution must prove the following ingredients, namely, (1) the prosecution must establish that the accused is a public

servant, (2) the nature and extent of the pecuniary resources or property which were found in his possession (3) it must be proved as to what were his known sources of income, i.e. known to the prosecution and (4) it must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income. Once the above ingredients are satisfactorily established, the offence of criminal misconduct u/s 5(1)(e) is complete, unless the accused is able to account for such resources or property. In other words, only after the prosecution has proved the required ingredients, the burden of satisfactorily accounting for the possession of such resources or property shifts to the accused.

25. It is contended by the learned Counsel for the Appellant that department had declined to proceed against the Appellant. However, in view of [State of M.P. Vs. Virendra Kumar Tripathi](#), sanction for prosecution may be granted even without concurrence by the department. I may successfully refer to para 8 of the aforesaid decision, wherein it is observed:

8. So far as the defect in sanction aspect is concerned, the circular on which the High Court has placed reliance needs to be noted. The Circular in question is dated 9.2.1988 the relevant portion reads as follows:

The Government also decided that before giving approval of prosecution, the Principal Secretary, Law and Legal Department will obtain the advice of department concerned.

A bare perusal of the paragraph shows that before giving approval for prosecution, advice of the department concerned was necessary. The question arises whether the absence of advice renders the sanction inoperative. Undisputedly the sanction has been given by the Department of Law and Legislative Affairs. The State Government had granted approval of the prosecution. As noted above, the sanction was granted in the name of the Governor of the State by the Additional Secretary, Department of Law and Legislative Affairs. The advice at the most is an interdepartmental matter.

26. It has been contended that while granting the sanction for prosecution, there was no complete material before the sanctioning authority.

In the absence of specific evidence about the absence of record, this Court finds it not possible to draw adverse inference against sanctioning authority in view of the decision in the case of Central Bureau of Investigation v. Edwin Devasthayam (2007) 12 SCC 139. I may successfully refer to Supreme Court's decision in the case of Hindustan Petroleum Corporation Ltd. v. Sarvesh Berry AIR 2005 SC 1406, wherein it has been observed:

It is to be noted that in cases involving Section 13(1) (e) of the P.C. Act, the onus is on the accused to prove that the assets found were not disproportionate to the known sources of income. The expression "known sources of income" is related to the sources known to the authorities and not the accused. The Explanation to Section 13(1) of the P.C. Act provides that for the purposes of the Section, "known sources of income" means

income derived from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant. How the assets were acquired and from what source of income is within the special knowledge of the accused. Therefore, there is no question of any disclosure of defence in the departmental proceedings. In the criminal case, the accused has to prove the source of acquisition. He has to satisfactorily account for the same. Additionally issues covered by charges 2 and 3 cannot be the subject matter of adjudication in the criminal case.

27. Relying upon AIR 1977 SCC 796 (Krishnanand Agnihotri v. State of M.P.), it has been contended that if the excess assets possessed by the accused is less than 10% of the total income, he can not be found guilty of the offence u/s 13(1)(e) of the Prevention of Corruption Act, 1988. This principle can not be doubted, however, in the case in hand, the extent of excess assets being more than 10%, the Appellant does not get any benefit from this ruling.

28. Even if the objections of the Appellant's learned Counsel for over estimation about the value of the property possessed by the Appellant is accepted, it is observed that the Appellant is not entitled to treat the money mentioned in para 13 as having been earned by known sources of income as discussed hereinbefore. This being so, the property of the Appellant is found disproportionate to his known sources of income.

29. Resultantly, we do not find any kind of infirmity in the appreciation of the evidence on record. Consequently, the appeal fails and is hereby dismissed. The Appellant is on bail. His bail bonds and surety bonds are hereby cancelled. He is directed through his counsel to surrender on or before 25th January 2011 before the concerning C.J.M. for undergoing remaining part of his jail sentence. In case of failure, the CJM is directed to issue arrest warrant for taking him into custody.

Registrar is directed to send a copy of the judgment to Lokayukta with a request to examine the role of officers of Lokayukta office, who virtually examined the defence witnesses as prosecution witnesses and further did not declare them hostile with a view to cross examine them.