(1999) 05 MP CK 0018

Madhya Pradesh High Court

Case No: Criminal Revision No. 7/97

Permanand Jha		APPELLANT
	Vs	
State of M.P.		RESPONDENT

Date of Decision: May 13, 1999

Acts Referred:

- Constitution of India, 1950 - Article 21
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Prevention of Corruption Act, 1988 - Section 13(1), 13(2), 5(1)

Citation: (2000) ILR (MP) 888 : (2000) 1 MPHT 97 : (2000) 1 MPLJ 360 : (2000) 2 RCR(Criminal) 427

Hon'ble Judges: R.P. Gupta, J

Bench: Single Bench

Advocate: S.P. Shrivastava, for the Appellant; R.K. Khare, Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

R.P. Gupta, J.

Accused is challenging the order of Special Judge, Jabalpur dated 1-10-1996 in Special Case No. 12/95 directing framing of charge for offence punishable u/s 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 against the accused. He was a public servant allegedly found in possession of assets disproportionate to his known sources of income. The charge was that the accused in capacity as Junior Engineer in the Irrigation Division since 2-1-1986 and thereafter worked at various places at various posts and he was working as Superintending Engineer in Upper Narmada Zone, Jabalpur when the first information report was lodged against him that he had acquired pecuniary resources and property in his own name and in the name of his wife and his son beyond his known sources of income and as such committed criminal mis-conduct punishable u/s 13(1)(e) read

with Section 13(2) of the Prevention of Corruption Act, 1988 in so far as he and his wife Smt. Manjari Jha and his son Shri Manish Jha (both on his behalf) had been in possession of pecuniary resources of the property disproportionate to the extent of Rs. 9,81,792/-, to his known sources of income.

Factual matrix is that the house of this accused was searched under warrant of search under this provisions, on 27-8-1992. His wife and son were residing with him. In reaching the extent of disproportion of this pecuniary resources and assets, it was presumed in favour of the accused that he received 12.01 acres of land in partition of family agriculture land in the year 1986 and it must have created some earnings, as also there was income from sale of some plots of land so acquired. All these were counted as known sources of income. Since his family members were also residing with him, adjustments to the extent of Rs. 1,84,038/- were given for their earnings.

The contention of the accused mainly is that had he been given notice he would have explained and accounted for all the assets in his name, in the name of his wife and son. He was not given any notice by the investigating officer after investigation to explain his known sources of income and to explain the disproposition of his existing pecuniary resources and property. The argument was that in the absence of this notice the necessary ingredients of offence u/s 13(1)(e) of the Prevention of Corruption Act, 1988 remains missing. The learned Special Judge did not accept this contention in view of the existing interpretation of the provisions given by the Supreme Court.

In the present revision petition also the same argument has been pressed into service by the counsel for the petitioner. He has also mentioned in the revision petition certain details of his sources of income of his own, his wife and his son and urged that if these be taken into consideration his acquisition of pecuniary resources and property become fully explained. The argument regarding prior notice before filing of challan by the investigating office has been vehemently stressed. If he had been asked to explain sources of income he would have explained his own sources including income from ancestral agriculture land, sources of income of his wife from her own agriculture land, own parental agriculture land, income of his son Manish from his own sources and occupation and so the assets of his wife and son could not be counted as his assets or assets acquired by them on his behalf. Since he was not given opportunity to explain these facts, he has been prejudiced in the investigation. He has produced copies of certificate and documents with the revision petition to suggest that his lawful sources of income, and that of his wife and son covered the entire assets and nothing was disproportionate. It is argued that the Trial Court has taken into consideration only the material collected by the prosecution and refused to take into consideration the material submitted by him before the Trial Court.

These arguments which were raised before the Trial Court were repelled by it on several premises; firstly, that his wife Smt. Manjari Jha in her statement before the investigating officer clarified about her property that her husband could explain and give proper information about it, secondly, that merely by producing certain details of income, the same in the name of his wife and son could not become lawful and it would be a question of fact to be decided on trial, if their income was independent lawful income, thirdly, there were pecuniary assets and property disproportionate to the known sources of income and assets of the accused to the extent of Rs. 9,81,792/- and hence, there was prima facie, an offence made out.

In order to appreciate the first assertion regarding pre-condition of notice by investigating officer to the accused after completion of the evidence and before filing of the charge-sheet, it will be proper to look into the provisions of Section 13(1)(e) of the Act which defines this offence. It is in following term :

"13. Criminal misconduct by a public servant.--(1) A public servant is said to commit the offence of criminal misconduct,--

(a) .....

(b) .....

(c) .....

(d) .....

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

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."

The contention of learned counsel for the petitioner is that in this provision the words "for which the public servant cannot satisfactorily account" should be so interpreted as to mean that before investigation is completed against him i.e., before filing challan, the police, or whosoever is investigating agency, should give him notice to explain it and should hear him and receive his documents and then decide whether his explanation is acceptable or not and then only to file the challan. It is urged to be a necessary ingredient of the offence that there is absence of satisfactory account by the public servant for possession of pecuniary resources or property. So to say learned counsel is urging that there should be ''investigative trial'' in which the accused has to produce his evidence after completion of the investigation, before the investigating officer and then investigating officer has to

make a decision regarding his explanation. This can be said to be ''investigative trial'' by the investigating officer.

Learned counsel for the petitioner put reliance on some judgments of this Court as precedent; one is II (1996) CCR 411 titled K.N. Thapak v. Special Police Establishment and Ors. decided on 22-2-1996 and another in M. Cr. C. No. 2555/95 titled Awadh Kishore Gupta and Ors. v. Special Police Establishment. In case of K.N. Thapak (supra) the observations of the learned single Judge are that the Special Police Establishment had not been able to find out any evidence against the petitioner for the last five years or more, investigation in respect of the house was barred, other articles were fully explained, therefore, it was nothing, but, an abuse of the process of law to continue such inquiry for the last five years, when nothing could be found for prosecution of the petitioner. It was in this context of the process and the result of the investigation that Court observed that merely because a complaint has been received, carrying out raid and seizure without calling upon the accused to explain is an abuse of the mandated provisions of Section 13(1)(e) of the Act itself. In the same vein the Court noticed that no opportunity was given to the petitioner before carrying out the raid for explaining the sources of income from which the property and articles were acquired. As the acquisition of the properties alleged had been fully explained, so there should be no prima facie case against the petitioner. It was observed that no prima facie case for prosecution of the petitioner has been made out in spite of long lapse of investigation and the raid conducted was uncalled for. The Court said that in case of such a long period of pending investigation the Court has to intervene in such circumstances as the petitioner had been suffering harassment without any substance for a long time. It was in these circumstances and in this background of the result of the investigation that investigation was quashed by learned single Judge u/s 482 Cr. P.C.. The main assertion was abuse of process by long pendency of the investigation without any positive result. It was in this context that the observation regarding asking the accused to explain the complaint prior to the raid were made. This judgment of the learned single Judge cannot be construed to indicate a law of necessity of notice to the accused after completion of investigation and prior to filing of the charge-sheet or so to say to conduct an ''investigative trial'' at that stage by the investigating officer. In the second case-- Awadh Kishore Gupta and Ors. (supra) the question under consideration before the same single Bench was regarding return of seized goods in a raid carried out for the purpose of investigating offence alleged u/s 13(1)(e) of the Act. The fact of pendency of investigation for long was also the most important material fact in that case and the petition was u/s 482 Cr. P.C..

In these judgments the Court was nowhere faced with the question whether an investigative trial before filing the charge-sheet and after completion of the investigation is called for on the part of investigating officer. In our case the investigation is completed and challan has been filed showing the extent of properties being beyond the known sources of income and in the face of the

explanation of the wife of the accused that only accused could explain about her acquisition. The Trial Court, in rejecting the objection of the petitioner on the point of need of prior notice prior to filing of challan, relied upon the observation of the Supreme Court in AIR 1996 SCW 15 where the Court observed that it was no doubt true that a satisfactory explanation was required to be given by the delinquent officer, but, this opportunity is only to be given during the course of trial. It was also no doubt true that evidence had to be gathered and prima facie opinion formed whether the provisions of Section 5(1)(e) of the Act (old Act) are attracted before the first information report was lodged. During the course of gathering of the material it does happen that the officer concerned or other person may be questioned or other queries made for the formation of guilty criminal mis-conduct leading to filing of first information report. There is no provision in law, or otherwise, which makes it obligatory for an opportunity of being heard to be given to the person against whom the report is to be lodged. The said satisfactory account is to be rendered before the Court. The same result was reached by the Supreme Court in case of K. Veeraswami Vs. Union of India (UOI) and Others, . The Trial Court has observed regarding assets of the son of the accused and his sources of income that there is a vast difference between them also and similar about the wife of the accused on the basis of the material placed on record. So the Court said that the trial was necessary. The accused could give satisfactory account, in his evidence after the prosecution has discharged the initial burden of proof placed on them to prove the various ingredients of the offence. The accused could disprove by giving satisfactory account. By evidence worth acceptance the accused could discharge the burden which comes on him on the balance of probability either from the evidence of the prosecution or from the defence or both as was held in Veeraswami''s case by the Supreme Court. So the Trial Court has fully discussed the material placed before it and kept in mind the various guidelines laid down by the Supreme Court.

In the present case, the investigation has gone behind the income tax returns to find out the sources of the income of the son of the accused also and has found that he did not have sources of income sufficient to acquire these assets. If that be so the Court will not mechanically accept the income tax return. Mere declaration of property in income tax return does not amount to showing that the same was acquired from known sources of income of the assessee. The prosecution could show that there was no real source of income and the accused was the real source.

In State of Maharashtra and others Vs. Ishwar Piraji Kalpatri and others, , the Court was concerned with the question as to when opportunity of satisfactorily account should be given to the accused. The Supreme Court said that this opportunity of satisfactorily explaining about his assets and resources is before the Court when the trial commenced and not at earlier stage. The Court said the finding, that principle of natural justice had been violated as no opportunity was given before the registration of the case, would be unwarranted. This was case arising u/s 5(1) (e) of the Prevention of Corruption Act, 1947. The present provision of Section 13(1)(e) of

the new Act is parallel to that provisions. These observations of the Supreme Court go against the the contention of the counsel for the petitioner that there should be ''investigative trial'' by the investigating officer. In this context, it is significant to note that the words in Clause (e) of Section 13(1) of the Act "if he or any person on his behalf, is in possession of has" clearly suggest that if any person is in possession of assets or pecuniary resources on behalf of the public servant, that would included in his assets, in the sense that he would have to account for these assets also. In this context the prosecution could prove that what is being held by another person is in fact being held on behalf of public servant i.e., he is the real source of that financial or pecuniary acquisition by the other persons. Mere declaration in income tax return of the other person when the income tax officer does not challenge the source of pecuniary resources could itself hardly provide a defence, at least the prosecution is free to prove that these resources were held for the accused and he was the real source of acquisition of those assets. The prosecution cannot be debared from proving those facts merely on the ground that the other persons declared those assets in his income tax returns. There is no such interpretation of the law. The ruling cited as already discussed were mainly dealing with the question of return of seized articles because of delay in completing the investigation for years after the seizure of those assets of the accused. The real ground was unfairness of the investigation due to delay and consequent violation of rights of accused under Article 21 of the Constitution i.e., fair trial and fair investigation. Reference to other factors in the judgment is colateral and does not provide ratio for the final result. The Supreme Court''s pronouncement in above referred two cases is binding.
It is pertinent to note that the petitioner has urged that the resources of his wife and his son were brought to the notice of the investigating officer during the investigation along with the income tax return. When this was so it can hardly be said that the investigating officer did not take into consideration what accused had to say about his pecuniary resources held by him and his wife and his son, allegedly on his behalf.

After giving thought to all the submissions of the learned counsel for the petitioner and going through the record submitted this Court is of firm view that framing of charge on the basis of prima facie case made out, cannot be faulted. Charge is framed when there is something prima facie i.e., there is triable case and if every assertion remained unrebutted there is likelihood of conviction. So this Court finds no substance in this revision petition. It is dismissed.