

(2017) 02 MP CK 0173

MADHYA PRADESH HIGH COURT

Case No: 1389 of 2004

Company Registrar of M.P. &
Chhattisgarh

APPELLANT

Vs

M/s. National Board of Trade Ltd.
& Anr.

RESPONDENT

Date of Decision: Feb. 8, 2017

Acts Referred:

- Evidence Act, 1872, Section 106 - Burden of proving fact especially within knowledge
- Prevention of Corruption Act, 1988, Section 13, Section 5,

Hon'ble Judges: S.K. Gangele, Anurag Shrivastava

Bench: Single Bench

Advocate: Ajay Kumar Jain, Pankaj Dubey

Judgement

1. Appellant has filed this appeal against the judgment dated 11/08/2004 delivered in Special Case No. 2/98. By the aforesaid judgment the trial Court held the appellant guilty for commission of offence punishable under Section 13(2) of the Prevention of Corruption Act, 1988 and awarded the sentence of RI two years and fine of Rs. 1,50,000/- in default of fine amount, RI for six months.

2. The appellant was working at the relevant time as Sub-Engineer in the Irrigation Department. The Lokayukta Organization received information that the appellant had property in excess to his known source of income. On the aforesaid basis, FIR at 0/94 was registered. The Lokayukta Organization conducted search at the house situated at Civil Line Sagar and thereafter at the house at Damoh and Bannad (Sagar). Inventories were prepared. The Lokayukta Organization on the basis of search found that at the relevant time, the income of the appellant was Rs. 6,04,228/- and total value of the property cash, Jewellery in the name of the

appellant and his family members was Rs. 18,94,240/- . The competent authority granted permission to prosecute the appellant, thereafter, chargesheet was filed before the competent court of jurisdiction mentioning the fact that the appellant had acquired property in excess to his known source of income between the check period 01/01/1981 to October, 1994, hence he is liable for punishment.

3. Before the trial Court the appellant pleaded that the property was acquired from the income of the appellant and income of his family member including mother and mother-in-law. The appellant forwarded necessary information in regard to acquisition of property to the department time to time. Some of the property was in the name of mother and mother-in-law of the appellant which was purchased by them from their income. The trial court after appreciation of evidence has held that the income of the appellant during check period was Rs. 6,78,425/- and expenses were Rs. 10, 49, 510/-, hence the appellant had property valued at Rs. 3,03,243/- in excess to his known source of income. He did not offer plausible explanation and found the appellant guilty for commission of offence punishable under Section 13(2) of the Prevention of Corruption Act and awarded the sentence as mentioned above.

4. Learned counsel appearing on behalf of the appellant has submitted that the trial court has committed an error of law in holding that the appellant had excess property from his known sources of income. Mother and mother-inlaw of the appellant had their own income. They also deposed before the trial court that they had purchased immovable property from their own income. The persons from whom the property, lands and houses were purchased also deposed the same. The wife of the appellant received "Stridhan" during her marriage which has not been calculated. Some gifts were also offered to the family members. The income from agriculture land earned by mother of the appellant was also not assessed properly. The trial court further committed an error of law by holding that the appellant did not inform the department about acquisition of property, hence, the acquisition of property was contrary to law. In support of his contentions learned counsel relied on the judgment of the Apex Court delivered in the case of P. Nallammal and another Vs. State Represented by Inspector of Police 1999 SCC (Cri) 1133 and State of M.P. Vs. awadh Kushore Gupta and others 2004 SCC (Cri) 353.

5. Contrary to this learned counsel appearing on behalf of the Lokayukta Organization has submitted that the trial court has appreciated the evidence properly. The property which was seized during raid was not explained by the appellant. In accordance with the provision of M.P. Civil Services (Conduct) Rules, 1965, the appellant had to comply the provision of Rule 19 and he had to inform acquisition of property in the name of his relatives to the department. The trial court has rightly held the appellant guilty for commission of offence.

6. The trial court in para 78 of the judgment held that the appellant had received an

amount of Rs. 6,78,425/- as his income on the following heads:-

"VERNACULAR MATTER OMITTED"

The appellant incurred expenses of Rs. 10,49,510/- on the following heads:-

"VERNACULAR MATTER OMITTED"

Hence, there was disproportionate income of Rs. 3,03,243/- of the appellant. There is no dispute to the effect that the appellant had purchased house at Damoh situated at Housing Board Colony by investing an amount of Rs. 1,93,340/-. The trial court further fixed the value of articles and ornaments recovered from the house of the appellant MIG 43 Damoh of Rs. 1,45,000/- Ex.P/31 is the inventory prepared in regard to the articles recovered from the house of the appellant it includes T.V. of Orson Company, Double Bed, Sofa, Dinning Table, Dressing Table and Iron Almirah. The appellant pleaded before the trial Court that those articles had received by him during his marriage. The aforesaid fact has been further proved by wife of the appellant DW/4 and DW/5 Brij Narayan Choubey. List was also produced as Ex. D/12. It is further mentioned in Ex. D/2 that Jawellery of Rs. 15,000/- was also given at the time of marriage. Mother-in-law of the appellant DW/2 deposed that she had given Refrigerator and T.V. to the wife of the appellant and children. The receipts were also produced. The trial court rejected the claim of the appellant on the ground that the appellant had not informed to the department in regard to receipt of articles in accordance with the conduct Rules.

7. The appellant was born on 29/10/1952. His father was constable in the Police Department who was died in the year 1962. The mother of the appellant was pensioner. She purchased land of 6.94 acres in the year 1960. The appellant entered into government service in the year 1974. Younger brother of the appellant was working as Assistant Engineer in Irrigation Department. The appellant was married with his wife Vijaya in the year 1975. The appellant further pleaded that his father-in-law was owner of Bidi Factory and he had 60 Acres agriculture land. His mother-in-law Savitri Mishra was teacher in government department for last 35 years.

8. DW/2 Savitri Mishra mother-in-law of the appellant deposed that she had married with Deenanath Mishra, he had very good fortune and agriculture land near about 60- 65 acres. She came in government service as teacher in the year 1964 and retired in the year 2003. At the time of marriage she had given sufficient amount to the appellant and his wife. She had purchased a house at Sagar about 15-20 years

before, from one Kapil Kumar in a consideration of Rs. 35,000/- . She further deposed that she had purchased the house at Civil Line, Sagar in her name and in the name of son of the appellant Mayank and she had paid the amount on behalf of Mayank. She further deposed that at the time of search Lokayukta Police had found inventory in the name of the appellant. She admitted that at the time of retirement she was getting salary of Rs. 9,000/- per month. She further deposed that she had received 20-22 tola Gold and 7-8 Kg. Silver in her marriage. During life time her husband purchased 750 gms of gold. She is also getting pension of Rs. 1600/- per month. There is no partition in the family.

9. Wife of the appellant DW/4 in her evidence deposed that at the time of marriage her mother had given gifts of Rs. 20,000/-, 15 tola gold 4.4 Kg. Silver. List was prepared which is Ex. D/12 and from that amount she had purchased land and my Tau had given me Rs. 25,000/- and I am earning Rs. 50,000/- from agriculture and I purchased four plots at Sagar.

10. DW/5 Brij Narayan Choubey deposed that he had prepared list of articles which were given to the appellant during marriage and an amount of Rs. 20,000/-, 17-18 tola Gold and 4-5 Kg. Silver was also given to the wife of the appellant and the list Ex. D/12 is of my signature.

11. DW/1 Vedwati Dubey is the sister of the appellant deposed that her younger daughter Tripti, niece Jyoti and sister-in-law Sakun were died in a road accident and after accident I resides in the house belonging to the appellant situates at MIG Colony Damoh. She had Rs. 10,000/- and Indira Vikas Patra of Rs. 10,000/- Ex. D/7, another Indira Vikas Patra of Rs. 5000/- . She further deposed that she had purchased a plot Ex. P/195 in the consideration of Rs. 10,000/- from Kashidas Dubey.

12. The trial court refused to count the articles on the ground that the appellant did not inform the department about the gift which he received during marriage and other occasions. Hence, it was an uncounted money.

13. Section 13(1)(e) of the Prevention of Corruption Act reads as under:-

"13. Section 13(1)(e) reads thus: 13(1) A public servant is said to commit the offence of criminal misconduct,-

(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."

Explanation of the aforesaid section provides that 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. However, there was no such provision under old act of Section 5(1)(e). The Prevention of Corruption Act was amended w.e.f. 09/09/1988. Before the aforesaid amendment Section 5(1)(e) was as under:-

"5. Criminal misconduct in discharge of official duty - (1) A public servant is said to commit the offence of criminal misconduct: -

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in Section 161 of the Indian Penal Code; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person; any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been; or to be, or to be likely to be "concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do, or

(d) if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage, or

(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."

14. The Apex Court in P. Nallammal and another Vs. State Represented by Inspector of Police 1999 SCC (Cri) 1133 has held as under in regard to the earlier provision and the amended provision of Section 13(1)(e):-

"The above contention perhaps could have been advanced before the enactment of the P.C. Act 1988 because Section 5(1)(e) of the old P.C. Act did not contain an "Explanation" as Section 13(1) (e) now contains. 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 P.C. Act by showing other legally forbidden sources, albeit such sources are outside the purview of clauses (a) to (d) of the subsection."

It means that it was not necessary for the public servant to inform the department in regard to receipt of articles and income before amendment and introduction of Section 13(1)(e) in the year 09/09/1988. The marriage of the appellant was solemnized in the year 1975, hence, it was not necessary for the appellant to inform the department at the time of entering into the government service about the cash and articles and ornaments which he had received in the marriage from his mother-in-law.

15. In regard to non compliance of conduct Rule for the purpose of supply of information to department, the Apex Court in Ashok Tshering Bhutia Vs. State of Sikkim (2011) 4 SCC 402 has held as under:-

"40. The contention of the respondents regarding non compliance of the Rules 1981 adversely affecting the evidentiary value of Ext.D-4 must be rejected for at least two reasons;

(i) The Rules 1981 are not rules of evidence. The admissibility and probative value of evidence is determined under the provisions of the Indian Evidence Act, 1872. These

rules are merely service rules by which government servants in Sikkim are expected to abide. Consequently, the respondent has not been able to provide any cogent reason why the contents of Ext.D-4 should be disregarded; and

(ii) Rule 19(i) of the Rules 1981 does undoubtedly require government servants to on first appointment to any service or post and thereafter at the close of every financial year submit to the government the return of their assets and liabilities. However, it is to be noted that the said rule envisages that public servants will submit such returns in a prescribed form. Despite being repeatedly questioned by this Court, the respondents were unable to produce such form. Thus, it cannot be said that the appellant did not comply with the said rule as in the absence of such a form it was impossible for him to have done so (through no fault of his own). In any event, failing to submit such returns even if there had been no such a form, would make the appellant liable to face the disciplinary proceedings under the service rules applicable at the relevant time. The provisions of the Rules 1981 cannot by any stretch of imagination be said to have the effect of rendering evidence inadmissible in criminal proceedings under the PC Act 1988.

Thus, in such a fact situation, the appellant could not be fastened with criminal liability for want of compliance of the said requirement of the Rules."

16. The evidence establishes that fact that the motherCr. in-law of the appellant and his family members had good fortune. Hence, it is not impossible that they had not given an amount of Rs. 20,000/-, gold and silver to the appellant in his marriage because generally in hindu family at the time of marriage family members of the girl used to give gifts to the married couples. The person who had prepared the list Ex. D/12 Brij Narayan Choubey DW/5 in his deposition admitted the fact that he had prepared the list. Hence, the finding of the trial court that the Jwellery which was valued to Rs. 57,962/- as per inventory Ex. P/31 is to be counted in the income of the appellant is contrary to law. The appellant received jwellery during his marriage and the same was valued at the time of preparation of inventory at Rs. 57,962/-, hence, the aforesaid amount be deducted from the assets of the appellant.

17. Apart from this a cash amount was also given to the wife of the appellant in the form of Stridhan, it is near about 19,800/-. It is a common practice that family members and in-laws of newly married couples used to give gifts and money to them. Hence, it can safely be presumed that the wife of the appellant had spent the aforesaid amount in purchasing some property.

18. Mother-in-law of the appellant Savitri Mishra deposed that she had purchased the house situated at Civil Line Sagar by registered sale deed and she had paid the

money on behalf of son of the appellant. Ex. P/19 is a registry in the name of Savitri Mishra and Mayank son of the appellant. It was recovered from the house of the appellant. The trial court has committed an error in holding that the appellant had invested an amount of Rs. 73,554/- out of total amount of Rs. 1,46,908. This finding is contrary to the evidence that the property was purchased by his mother-in-law Savitri Mishra and the plot is also adjacent to the house of mother-in-law. There is no reason for the appellant to purchase the plot and Kachcha house adjacent to the house of her mother-in-law.

19. The Apex Court in the case of State of M.P. Vs. awadh Kushore Gupta and others 2004 SCC (Cri) 353 has held as under in regard to known source of income:-

5. Section 13 deals with various situations when a public servant can be said to have committed criminal misconduct. Clause (e) of sub-section (1) of the Section is pressed into service against the accused. The same is applicable when the public servant 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 pecuniary resources or property disproportionate to his known sources of income. Clause (e) of sub-section (1) of section 13 corresponds to clause (e) of sub-section (1) of section 5 of the Prevention of Corruption Act, 1947 (referred to as "Old Act"). But there has been drastical amendments. Under the new clause, the earlier concept of "known sources of income" has undergone a radical change. As per the explanation appended, the prosecution is relieved of the burden of investigating into "source of income" of an accused to a large extent, as it is stated in the explanation that "known sources of income" mean income received from any lawful source, the receipt of which has been intimated in accordance with the provisions of any law, rules orders for the time being applicable to a public servant. The expression "known sources of income" has reference to sources known to the prosecution after thorough investigation of the case. It is not, and cannot be contended that "known sources of income" means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters "specially within the knowledge" of the accused, within the meaning of Section 106 of the Indian Evidence Act, 1872 (in short the "Evidence Act")."

6. The phrase "known sources of income" in section 13(1)(e) {old section 5(1)(e)} has clearly the emphasis on the word "income". It would be primary to observe that qua the public servant, the income would be what is attached to his office or post, commonly known as remuneration or salary. The term "income" by itself, is elastic and has a wide connotation. Whatever comes in or is received, is income. But, however, wide the import and connotation of the term "income", it is incapable of

being understood as meaning receipt having no nexus to one's labour, or expertise, or property, or investment, and having further a source which may or may not yield a regular revenue. These essential characteristics are vital in understanding the term "income". Therefore, it can be said that, though "income" is receipt in the hand of its recipient, every receipt would not partake into the character of income. Qua the public servant, whatever return he gets of his service, will be the primary item of his income. Other incomes which can conceivably be income qua the public servant, will be in the regular receipt from (a) his property, or (b) his investment. A receipt from windfall, or gains of graft, crime, or immoral secretions by persons *prima facie* would not be receipt from the "known sources of income" of a public servant.

7. The legislature has advisedly used the expression "satisfactorily account". The emphasis must be on the word "satisfactorily" and the legislature has, thus, deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the Court that his explanation was worthy of acceptance.

20. The Apex Court further in DSP Chennai Vs. K. Inbasagaran (2006) 1 SCC 420 has held as under in the fact when the family members including wife claimed ownership of the property and articles seized by the prosecuting agency.

"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. Therefore, he has satisfactorily accounted for the recovery of the unaccounted money. Since the crucial question in this case was of the possession and the premises in question was jointly shared by the wife and the husband and the wife having accepted the entire recovery at her hand, it will not be proper to hold husband guilty. Therefore, in these circumstances, we are of the opinion that the view taken by the High Court appears to be justified and there are no compelling circumstances to reverse the order of acquittal. Hence, we do not find any merit in this appeal and the same is dismissed "

21. The Principle laid down by the Apex Court is that every receipt would not partake the character of income and the burden is on the accused to explain satisfactorily about acquisition of property and income. The income and property which had been acquired by relatives or family members who have sources of income and they had income at the relevant time to acquire the property could not be turned down.

22. In the result, the finding recorded by the trial court that the Jwellery and articles for personal use including Refrigerator and T.V. valued to Rs. 1,15,000/- are to be included in the income of the appellant is contrary to law because the family members as discussed above claimed that they have given Jwellery and articles to the appellant.

23. Another finding that the appellant purchased the property in the name of his wife, son and mother valued to Rs. 1,67,000/- as "benami" is also against the law because family members have not been arrayed as an accused and they explained properly that they had sources of income to purchase the property. The agriculture expenditure of Rs. 42,000/- incurred by wife of the appellant has been added in the name of the appellant, however, she had given cogent explanation and it is contrary to the receipt of the Tehsildar. Hence, this amount has also been added by the trial court in the income of the appellant erroneously. If this amount is excluded then the income of the appellant cannot be said to be disproportionate to known source of income. Hence, the appellant is entitled to benefit of doubt.

24. The appeal filed by the appellant is hereby allowed. The judgment of the trial court holding guilty of the appellant for commission of offence punishable under Section 13(2) of the Prevention of Corruption Act, 1988 and sentence awarded is hereby set-aside. It is further directed that the documents which were seized by the police in regard to property of the appellant and valuable securities be returned back to the appellant. His bail bonds are hereby discharged.