

Jagan M. Seshadri Vs State of Tamil Nadu

Court: Supreme Court of India

Date of Decision: Sept. 25, 2001

Acts Referred: General Clauses Act, 1897 " Section 6

Prevention of Corruption Act, 1947 " Section 5, 5(1), 5(2), 5(1)(d), 5(1)(e)

Prevention of Corruption Act, 1988 " Section 13, 13(1)(e), 13(2), 30, 30(2)

Citation: (2002) 1 ACR 186 : AIR 2002 SC 2399 : (2002) AIRSCW 2613 : (2002) CriLJ 2982 : (2001) 10 JT 227 : (2003) 1 RLW 9 : (2002) 9 SCC 639 : (2002) 1 UJ 330

Hon'ble Judges: A. S. Anand, C.J; R. C. Lahoti, J; Ashok Bhan, J

Bench: Full Bench

Advocate: Mr. T. L. V. Iyer

Final Decision: Allowed

Judgement

Anand, C.J.

On the allegations that during the check period from 11.05.1977 to 31.03.1984, the appellant, who, at the relevant time, was

serving as a superintendent of police, had acquired assets disproportionate to his known source of income, first information report was lodged on

18.06.1986 by the superintendent of police, Western Range, Vigilance and Anti Corruption, Madras alleging commission of offence under

Sections 5(1)(d) and (e) read with Section 5(2) of the Prevention of Corruption Act, 1947. The appellant, after the prosecution obtained requisite

sanction, was sent up for trial. Charges were framed and evidence was led. The learned IVth additional special judge, Madras, on appreciation of

evidence, both documentary and oral, vide judgment dated 09.07.1990, acquitted the appellant of all the charges by a detailed judgment.

Aggrieved by the order of acquittal recorded by the learned IVth additional special judge, the state filed an appeal against the acquittal of appellant

before the High Court of Madras. By an order dated 24.12.1998, the High Court accepted the appeal of the state and reversed the order of

acquittal of the appellant. The appellant was convicted for offences u/s 13(1)(e) of the Prevention of Corruption Act, 1988 read with Section

13(2) of the Prevention of Corruption Act, 1988 and sentenced to undergo simple imprisonment for one year and to pay a fine of Rs. 5,000/ and

in default to undergo further simple imprisonment for a period of three months.

2. By special leave, the appellant is before us.

3. We have heard learned counsel for the parties and carefully examined the judgment of the High Court. In paragraph 7 of the judgment, the High

Court has found "flaw" in the framing of charge by the learned special judge u/s 5(1) (e) of the Prevention of Corruption Act, 1947 (hereinafter

1947 Act). According to the High Court, the 1947 Act had been repealed by the Prevention of Corruption Act, 1988 (hereinafter 1988 Act)

which came into force with effect from 09 " 09.1988. According to the High Court, since charge was framed after 09.09.1988, though, with

regard to offence allegedly committed by the appellant during the check period 1977-1984, the appellant should have been charged u/s 13(1)(e)

read with Section 13(2) of the 1988 Act and not u/s 5(1)(e) of the 1947 Act. Relying on Section 30 of the 1988 Act, the High Court opined that

the appellant shall be "deemed" to have been charged for offences u/s 13(1)(e) read with Section 13(2) of the 1988 Act and the framing of charge

by the trial court u/s 5(1)(e) read with Section 5(2) of the 1947 Act, was invalid.

4. The High Court, thereafter, analysed the evidence of the record de novo and observing that the lower court had not properly appreciated vital

circumstances of the case went on to hold:

Hence, on an analysis, I am satisfied that the prosecution has proved satisfactorily that the accused was in possession of assets during the check

period, disproportionate to the known source of his income, and this in fact has not been received from lawful source and that the receipt has not

been intimated in accordance with the provisions of law and thus, the accused has committed criminal misconduct and acquisition of such

disproportionate income is attributable only to corrupt practice and therefore, the accused is guilty u/s 13(e) of the Prevention of Corruption Act,

1988, and is liable to be punished for the same u/s 13(2) of the said Act.

5. A perusal of the judgment of the High Court reveals that High Court has failed to deal with various reasons given by the trial court in support of

an order of acquittal. It is apparent from the terms and tenor of the impugned judgment that High Court was influenced by the phraseology of

Section 13(1)(e) of the 1988 Act, which, except for the explanation as added to that section, is in pari materia with Section 5(1)(e) of the 1947

Act. High Court has pressed into aid the explanation to Section 13(1)(e) of the Act to hold the appellant guilty. For what follows the approach of

the High Court is erroneous.

6. There is no dispute that when the offence was committed, it was the Act which was in operation. It is also not in dispute that at the time when

FIR was lodged, it was also the 1947 Act which was in operation. Reliance on Section 30(2) of the 1988 Act to hold that offence for which the

appellant should have been charged was one which fell u/s 13 of the 1988 Act is wholly misplaced.

7. A bare reading of Section 30(2) of the 1988 Act shows that any act done or any action taken or purported to have been done or taken under

or in pursuance of the repealed Act, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken

under or in pursuance of the corresponding provisions of the Act. It does not substitute Section 13 in place of Section 5 of the 1947 Act. Section

30(2) is applicable ""without prejudice to the application of Section 6 of the General Clauses Act, 1897"". In our opinion, the application of Section

13 of the 1988 Act to the fact situation of the present case would offend Section 6 of the General Clauses Act, which, inter alia provides that

repeal shall not (i) affect previous operation of any enactment so repealed or anything duly done or suffered thereunder or (ii) affect any

investigation legal proceedings or remedy in respect of any such rights, privilege, obligation, penalty, forfeiture of punishment. Section 13 both in

the matter of punishment as also by the addition of the explanation to Section 13(1)(e) is materially different from Section 5 of the 1947 Act. The

presumption permitted to be raised under the explanation to Section 13(1)(e) was not available to be raised u/s 5(1)(e) of the 1947 Act. This

difference can have a material bearing on the case.

8. In fairness to Mr. T.L.V. Iyer, learned senior counsel, we must also record that he did not support the finding of the High Court to the fact that

charge framed by the learned special judge for offences u/s 5(1)(e) of the 1947 Act was invalid or in any other manner flawed. Learned counsel

conceded that the view of the High Court that charge should have been framed u/s 13(1)(e) read with Section 13(2) of the 1988 Act, was

incorrect. Mr. Iyer, however, made a valiant attempt to support the judgment of the High Court by reference to evidence on the record.

9. We have, with the assistance of learned counsel for the parties, carefully perused the evidence, particularly, the evidence of PW-19, PW-27,

PW-30, PW-31, besides PW-34. In our opinion, the appreciation of evidence by the trial court of these witnesses is sound and proper. On the

other hand, the High Court has fallen into an error by treating the case as one u/s 13(1)(e) read with Section 13(2) of the 1988 Act and by

proceeding to hold the appellant guilty by invoking the explanation to Section 13(1)(e), which explanation is conspicuous by its absence in so far as

Section 5(1)(e) of the Act is concerned. We are unable to appreciate the submission of learned counsel for the state that PW-31 being the mother-

in-law of the appellant who had supported the explanation offered by the appellant regarding receipt of Rs. 50,000/- and Rs. 40,000/- by him from

her should not be believed. She is a prosecution witness. She was never declared hostile. Prosecution cannot wriggle out of her statement. As a

matter of fact, the main sustenance is sought by the High Court of its view on the basis of her evidence. The explanation offered by the appellant

has not been accepted by the High Court by invoking proviso to Section 13(1)(e). The High Court has opined that since amount allegedly received

by the appellant from his mother-in-law had ""not been intimated in accordance with the provisions of law"", his explanation is not acceptable and the

appellant would be deemed to have committed criminal misconduct within the meaning of Section 13(2) of the 1988 Act. We are constrained to

observe that the High Court was dealing with an appeal against acquittal. It was required to deal with various grounds on which acquittal had been

based and to dispel those grounds. It has not been done so, Salutary principles while dealing with appeal against acquittal have been overlooked

by the High Court. If the appreciation of evidence by the trial court did not suffer from any flaw, as indeed none has been pointed out in the

impugned judgment, the order of acquittal could not have been set aside. The view taken by the learned trial court was a reasonable view and even

if by any stretch of imagination, it could be said that another view was possible, that was not a ground sound enough to set aside an order of

acquittal.

10. We have carefully perused the explanation given by the appellant regarding the source of receipt of Rs. 50,000/- and Rs. 40,000/- which

amounts alone were canvassed before us to be beyond the "known sources of income" of the appellant and find ample support for this explanation

in the prosecution evidence itself. The evidence of PW-19, PW-27, PW-30 and PW31 clearly support the explanation given by the appellant. The

appellant had thus, discharged the burden of explaining the sources of those amounts. Their non-mention in the property statement of the appellant

would have no consequence because explanation to Section 13(1)(e) is not to be read as an explanation to Section 5(1)(e) of the 1947 Act.

11. Thus, for what we have said above, we find that judgment of the High Court reversing a well merited order of acquittal recorded by the trial

court, cannot be sustained. That judgment is, accordingly, set aside and the order of the trial court is, hereby restored. The appellant is on bail. His

bail bonds shall stand discharged. Fine, if paid shall be refunded to the appellant.

12. The appeal is, accordingly allowed.