

(2008) 03 BOM CK 0130

Bombay High Court (Aurangabad Bench)

Case No: Criminal Appeal No. 283 of 2006

Shri Bhaskar Shankar Wagh

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision: March 27, 2008

Acts Referred:

- Constitution of India, 1950 - Article 20
- General Clauses Act, 1897 - Section 6
- Maharashtra Civil services (Conduct) Rules, 1979 - Rule 19
- Maharashtra Zilla Parishads District Services (Conduct) Rules, 1967 - Rule 17
- Penal Code, 1860 (IPC) - Section 109
- Prevention of Corruption Act, 1947 - Section 13, 5, 5(1)
- Prevention of Corruption Act, 1988 - Section 13, 13(1), 13(2), 30(2)

Citation: (2008) 110 BOMLR 935

Hon'ble Judges: V.R. Kingaonkar, J

Bench: Single Bench

Advocate: Mukul Kulkarni, in Criminal Appeal No. 283/2006 and Joydeep Chatterji, in Criminal Appeal No. 249/2006, for the Appellant; B.J. Sonawane, Assistant Public Prosecutor for respondent in Criminal Appeal No. 283/2006 and B.R. Khekale, Assistant Public Prosecutor for respondent in Criminal Appeal No. 249/2006, for the Respondent

Final Decision: Dismissed

Judgement

V.R. Kingaonkar, J.

Both these appeals are being disposed of together in as-much-as they arise out of same judgement rendered by learned Special Judge, Dhule, in Special Case No. 5 of 1991. By the impugned judgement, both the appellants, who are husband and wife interse, have been convicted for offences punishable u/s 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 and Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 read with Section 109 of the

I.P. Code, respectively. Appellant Bhaskar Wagh (original accused No. 1) has been sentenced to suffer rigorous imprisonment for seven (7) years and to pay a fine of Rs. three (3) lacs, in default to suffer rigorous imprisonment for three (3) years. Appellant Sow. Mangala Wagh (original accused No. 2) has been sentenced to suffer rigorous imprisonment for three (3) years and to pay a fine of Rs. two (2) lacs, in default to suffer rigorous imprisonment for two (2) years.

2. The gravamen of the charge against the appellants was that in between the check period - 1984 to 1989, appellant Bhaskar Wagh amassed assets disproportionate to his known lawful sources of income, failed to satisfactorily account for the possession of such assets and appellant Sow. Mangala, abetted him in commission of such offence by allowing him to acquire several properties in her name.

3. Admittedly, appellant Bhaskar Wagh was employed as Junior Assistant/Cashier somewhere in 1973 on Establishment of Zilla Parishad, Dhule. He was working as such in Minor Irrigation Department (Z.P.) upto August, 1989. Undisputedly, he was paid net amount of Rs. 1,27,781/- as pay and allowances for the relevant period.

4. Briefly stated, the prosecution case is that on basis of certain complaints received by the Anti Corruption Bureau, State of Maharashtra, Mumbai, and on basis of information received in support of such complaints, PW44 Dattatraya Choudhary, who was attached to Anti Corruption Bureau (A.C.B.), Dhule as Deputy Superintendent of Police, was directed to conduct check and investigation as regards assets of the appellants and their lawfully known source of income. Information with the A.C.B. indicated that the appellants were residing in a bungalow called "Prabham" constructed on Plot No. 29, Wadi-bhokar road, Deopur locality of Dhule. Therefore, PW Dattatraya organized raids on the bungalow and other properties of the appellants. The simultaneous raids at various places were conducted by PW Dattatraya on 2nd August, 1989 with help of other officers of the A.C.B., Nasik. They recovered various gold ornaments valued Rs. 1,10,930/-, luxurious items like TV, Fridge, etc. worth Rs. 5,02,040/- from "Prabham" bungalow. They also recovered a large number of vehicles, including Ambassador car vehicle, scooter vehicles, motor-cycles, etc. They found that the appellants were in possession of various movable and immovable properties worth Rs. 20,41,852.12. The appellants could not explain legal source of income for acquisition of such properties and failed to satisfactorily account for possession thereof.

5. The investigation revealed that appellant Bhaskar Wagh was the only earning member of the family which comprises of himself, appellant Sow. Mangala (wife) and two (2) school going minor sons. The investigation also revealed that appellant Bhaskar Wagh held only 1/4th undivided share in the family lands which admeasured 1 hector 8 Rs. It was found that he purchased other agricultural lands during the check period. It was found further that some of the lands were purchased in name of appellant Sow. Mangala. An Ambassador Car vehicle was also purchased in her name, although by raising loan from a Cooperative Bank. Some

shares were purchased by appellant Bhaskar Wagh and investments were made in various business units. The investigation further showed that he had donated a large number of amounts to various religious temples, Institutions, etc. It was found that the appellants were operating a charitable religious trust called "Ekvira Devi Sansthan" and large number of assets were in their possession though were shown to be of said Sansthan. Considering the probable expenditure, the income from known sources and the value of the properties acquired during the check period, it was found that atleast assets worth Rs. 3,98,160/- were disproportionate to the known sources of income of the appellants. Consequently, PW Dattatraya lodged F.I.R. (Exh-264). After necessary sanction accorded for prosecution of appellant Bhaskar Wagh by the Chief Executive Officer, Zilla Parishad, Dhule, both the appellants were chargesheeted to face their trial for the offences punishable u/s 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 and for abetment of the same.

6. A charge (Exh-35) was framed by the learned Special Judge. Both the appellants pleaded "not guilty" to the charge. According to them, the assets found with them were acquired by utilising income derived from agricultural lands in their possession. It is stated by appellant Sow. Mangala that the property of "Prabham" bungalow was gifted to her by her father. She explained that her father had given gold ornaments of approximately 30 tolas weight as "stridhan" at the time of her marriage. The appellants further explained that they have no concern with the properties of "Ekvira Devi Sansthan", which is a Public Trust. They elaborately quoted as to how the agricultural lands were acquired and alleged that the agricultural income was quite sufficient to raise funds for making the acquisition of properties during the check period. It was their defence that their income is miscalculated, particularly, in respect of the agricultural resources and wrongly excessive valuation of the assets with them was made. Hence, they sought acquittal from the charge.

7. At trial, the prosecution examined in all 45 witnesses in support of its case. A voluminous documentary evidence is also produced on record. The learned Special Judge, on appreciation of the relevant evidence, came to conclusion that the prosecution duly proved its case beyond reasonable realm of doubt. The learned Special Judge held that appellant Bhaskar Wagh was found in possession of assets valued Rs. 20,41,857.12 which were enmassed during the check period i.e. July, 1973 till August, 1989, which was disproportionate to his known source of income and that he utterly failed to satisfactorily account for his possession of the said assets. The learned Special Judge further held that appellant Sow. Mangala abetted her husband - Bhaskar Wagh to commit the criminal misconduct of en massing the disproportionate assets and allowing him to acquire some of the properties in her name though she had no source of income as such. In keeping with such findings, both the appellants were convicted and sentenced as stated at the outset.

8. Mr. Kulkarni and Mr. Chatterji, learned Counsel for the appellants, strenuously argued that both the appellants have been wrongly convicted by the learned Special Judge. They would submit that the agricultural income of the appellants was not properly calculated. They would further submit that the donations given by the appellants were wrongly included in separate expenditure though assumptive 50 per cent of domestic expenditure was calculated. The learned Counsel would point out that most of the assets were allegedly acquired prior to coming into force of the amended provision of Section 13(1)(e) of the Prevention of Corruption Act, 1988 and hence, the offence committed prior to the amendment of the Prevention of Corruption Act, 1988 cannot be made punishable under the amended provision which puts on an extra burden on the accused to explain the known lawful source of income for the purpose of acquiring the assets. They would further submit that the explanation given by the appellants should have been accepted by the learned Special Judge and, hence, they are entitled to acquittal. They submitted that the charge framed against the appellants is faulty because they have lost opportunity to explain the acquisition as per the old enactment and the charge could not be one under the amended Act. It is argued that they could not be prosecuted for offence which was not in existence at the time of making acquisitions shown as the assets acquired during the check period, prior to amendment of Section 13(1)(e) of the Prevention of Corruption Act, 1988. It is argued that when the criminal law was set in motion, then the old Enactment was in force and the prosecution delayed filing of the chargesheet, which was filed after the provision of Section 13(1)(e) of the Prevention of Corruption Act, 1988 came to be amended. That would not, however, attract the amended provision and, hence, the prosecution is, according to the learned Counsel for the appellants, vitiated. They urged, therefore, to allow both the appeals and acquit the appellants. Per contra, learned A.P.Ps. would support the impugned judgement.

9. Before I proceed to embark upon scrutiny of the prosecution evidence, first, I shall deal with the legal submission of the learned Counsel in respect of fault charge and the consequence of amendment in Section 13(1)(e) of the Prevention of Corruption Act, 1988. In this context, it is most significant to note that the check period is since July, 1983 till August, 1989. The chargesheet was filed on 15th March, 1991. The F.I.R. (Exh-245) was lodged by PW44 Dattatraya on 2nd August, 1989. The sanction (Exh-220) for prosecution of appellant Bhaskar Wagh was accorded by PW27 Manukumar, Chief Executive Officer of Dhule Zilla Parishad, on 14th March, 1991. Much of the investigation was carried out after the F.I.R. was lodged. The assets acquired by the appellants till August, 1989 are covered under the prosecution.

10. Mr. Kulkarni and Mr. Chatterji, seek to rely on [State of Maharashtra Vs. Kaliar Koil Subramaniam Ramaswamy](#), and [Jagan M. Seshadri Vs. State of Tamil Nadu](#), in support of their contention that Explanation to Section 13(1)(e) of the Prevention of Corruption Act, 1988 cannot be read as an Explanation to Section 5(1)(e) of the 1947

Act. In "State of Maharashtra v. Ramaswamy Kaliar Koil Subramaniam Ramaswamy" (supra), the Apex Court held that where disproportionate assets recovered from public servant were found prior to search before the amendment as inserted by Act No. 40 of 1964, in Section 5(1)(e) of the Prevention of Corruption Act (2 of 1947), he could not be found guilty u/s 5(1)(e) of the Prevention of Corruption Act as amended by Act No. 40 of 1964. This view is taken particularly because it was held:

...But it cannot be gainsaid that the new offence, under the newly inserted Clause (e), became an offence on and from December 18, 1964 by virtue of Section 6 of the Amending Act 40 of 1964. In this view of the matter, the High Court rightly held that "in the absence of any evidence on record to show that the appellant acquired or was found to be in possession of pecuniary resources or property disproportionate to his known sources of income after the coming into force of the Amending Act", he was entitled to the protection of Clause (1) of the Article 20 of the Constitution....

In the present case, however, acquisition of assets upto August, 1989 are covered and the chargesheet was filed after the amended provision of Section 13(1)(e) came into force. Obviously, there is material difference in the fact situation and, therefore, balance cannot be drawn from the caselaw relied upon by the learned Counsel for the appellants. With due respects, therefore, case of "State of Maharashtra Ramaswamy v. Kaliar Koil Subramaniam Ramaswamy" is not attracted in the present matter.

11. In "N. Jagan M. Seshadri v. State of T.N." (supra), the Apex Court observed:

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, insofar 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 the 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 or 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.

The explanations furnished by the accused and statement of his mother-in-law was not taken into consideration by the High Court in that case. The High Court held that

the explanation of the mother-in-law, who was examined as PW31 and was not declared hostile, could not be surmounted. It was held that PW31 was examined as witness of the prosecution, she was mother-in-law of the accused and supported his explanation regarding receipt of Rs. 90,000/- by him from her. The prosecution, it was held, could not wriggle out from her statement. In the wake of such circumstances, it was held that finding of the High Court that the amounts allegedly received by the accused from his mother-in-law had "not been intimated in accordance with the provisions of law" could not be a ground to reject the explanation. It was held by the Apex Court, therefore, that appreciation of evidence by the Trial Court could not be interfered with by the High Court in the fact situation.

12. There is much difference between fact situation in present case and that of "Jagan M. Sheshadri Sheshadri". It must be borne in mind that the first information was lodged in the given case before the amended Act came into force. The Apex Court noticed that the F.I.R. was lodged during the operation of 1947 Act and, therefore, held that the High Court erred in invoking Section 30(2) of the 1988 Act to hold that the accused should have been charged u/s 13 thereof instead of Section 5 of the 1947 Act. It was further held that the High Court was not right in holding the accused to be guilty by invoking the Explanation to Section 13(1)(e) which was absent in Section 5 (1)(e) of the 1947 Act. It need not be reiterated that the F.I.R. (Exh-264) in the present case was lodged on 22-08-1989. Thus, the law was set in motion when the amended provision was already on the Statute Book. So far as acquisition of assets is concerned, it cannot be ignored that the assets accumulate from time to time. It is a continuous process. The assets cannot be spread over in terms of the legal provisions of the Prevention of Corruption Act as would be applicable at the time of acquisition. The cumulative effect thereof will have to be taken as per the juxta position available when the F.I.R. is lodged.

13. The modifications made in the definition of "criminal misconduct" may be briefly noted. An entirely new offence of criminal misconduct by a public servant in the discharge of his duty was created on 11-3-1947. It was for the first time that the abuse of his position by a public servant was made an essential ingredient of a penal offence and it was also for the first time that the said abuse of his position was rendered punishable irrespective of the purpose for which the abuse was resorted to. Clause (e) was added after Clause (d) of Sub-section (1) of Section 5 by the Anti Corruption Laws (Amendment) Act, 1964. By the same Act, Sub-section (3) of Section 5 was deleted. By the addition of Clause (e), possession of assets disproportionate to his known source of income of an accused person has been made a substantive offence. The subsequent addition of Explanation brought about change to Section 13(1)(e) of the Prevention of Corruption Act. Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act which existed prior to the Amendment of 1988 read as follows:

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

(a) - (d) xxx xxx xxx

(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.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

14. The amendment after 1988 added following Explanation below Sub-clause (e) to Section 13(1).

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.

15. Now, it may be gathered that due to addition of such Explanation, no new offence is brought on the Statute Book. The Explanation is clarificatory to the last words used in Sub-clause (e), namely, "his known sources of income". So what could be the known sources of income is further clarified by way of Explanation appended to Sub-clause (e). This explanation, in effect, relieves the prosecution of the burden of investigation into "sources of income" of an accused person to a large extent. The Explanation shifts burden on the accused to explain his income received from any lawful source, the receipt of which has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to him as a public servant. In other words, if acquisition of disproportionate assets is proved by the prosecution, then it would be for the accused to explain utilisation of his lawful income for the purpose of such acquisition or the lawful receipt of any income or the assets from known sources which he is under obligation to intimate to the employer.

16. In [Sajjan Singh Vs. The State of Punjab](#), the Apex Court held that to take into consideration the pecuniary resources or property in the possession of the accused or any other person on his behalf, which are acquired before the date of the Act, is not in any way giving the Act a retrospective operation. It is held that a Statute cannot be said to be retrospective because a part of the requisite for its action is drawn from time to time antecedent to its passing. The past acquisition of assets by the appellants before the amended Act came into force can be, therefore, taken into account. The words in Clause (e) "at any time during the period of his office possession been in possession" indicate that the clause covers past possession of

assets. Their Lordships, in the given case, observed:

Looking at the words of the section and giving them their plain and natural meaning it is impossible to say that pecuniary resources and property acquired before the date on which the Prevention of Corruption Act came into force should not be taken into account even if in possession of the accused or any other person on his behalf. To accept the contention that such pecuniary resources or property should not be taken into consideration one has to read into the section the additional words "if acquired after the date of this Act" after the word "property". For this there is no justification.

17. Considering the foregoing discussion, it is difficult to say that the charge framed by the learned Special Judge is faulty. It is also difficult to say that the appellants could not be convicted for the offence of "criminal misconduct" under the amended provision of Section 13(1)(e) and 13(2) of the Prevention of Corruption Act. The argument advanced by learned Counsel, raising objection to legality of the conviction on such legal ground, must fail. It is accordingly rejected.

18. Before appreciation of evidence, it may be mentioned that the expression "known sources of income" has reference to sources known to the prosecution on a thorough investigation of the case. The prosecution cannot, in the very nature of things, be expected to know affairs of an accused person. Those will be matters "especially within the knowledge" of the accused, within the meaning of Section 106 of the Evidence Act. The prosecution can only lead evidence to show that the accused was known to earn his living by service under the Government or Semi-Government Organisation during the material period. The known source of income of appellant Bhaskar Wagh would be his hometake pay and allowances and agricultural income. Other income, like a receipt from windfall or gains of graft, crime or immoral accretions by a public servant would not be regarded as "known sources of income", for the purpose of Section 13(1)(e) and Section 13(2) of the Prevention of Corruption Act, 1988. The income derived from unknown sources also cannot be taken into account. The income derived from the property acquired from unknown source cannot be added to income of an accused. The proper method to determine the actual disproportionate assets of the accused, therefore, would be actual calculation of the income after deducting the expenditure and the investigation made in acquiring particular properties date-wise as per balance-sheet of income, expenditure and available resource from his known legal source of income in acquiring the assets. The Explanation appended below Sub-clause (e) would make it necessary for the accused to explain that such acquisition was intimated by him under the provision of law or rule applicable to him. In the present case, appellant Bhaskar Wagh was under legal obligation to inform acquisition of movable and immovable properties valued more than Rs. 300/- to the competent authority under provisions of Rule 17 of the Maharashtra Zilla Parishads District Services (Conduct) Rules, 1967 [equivalent to Rule 19 of the Maharashtra Civil

services (Conduct) Rules, 1979].

19. Coming to the evidence of the prosecution, it may be gathered that when PW44 Dy.S.P. (ACB) Dattatraya conducted discreet inquiry, then it was revealed that the assets with the appellants were disproportionate to the income of appellant Bhaskar Wagh. So, he submitted a report to the Director of Anti Corruption Bureau, Maharashtra State, Bombay. He was informed by letter dated 27-07-1989 (Exh-261) to carry out detail investigation. He arranged for (20) raids. His version reveals that on 02-08-1989, he lodged a complaint at Police Station, Deopur, Dhule as regards disproportionate assets acquired by the appellants. He directed Inspector Mr. Kohak to search premises of tinshed situated in Deopur locality and also directed Dy.S.P. Mr. Joshi to search the office of Zilla Parishad (M.I.D.), Dhule. He further directed Dy.S.P. Mr. Kolage to take search of residential house owned by brother-in-law of appellant Bhaskar Wagh, namely, Vijay Baliram Patil. He also directed Dy.S.P. Mr. Chavan to search residential premises of father-in-law of appellant Bhaskar Wagh, situated at village Gorgaonle. He directed Dy.S.P. Mr. Kadve to search residential house of appellant Bhaskar Wagh situated at village Rohane. Simultaneously, PI Mr. Khaire was directed to seize the Bank locker No. 161 of appellant Bhaskar Wagh, which was at Dhule District Central Cooperative Bank. He alongwith his other colleagues and panchas went to house of appellant Bhaskar Wagh situated at Wadibhokar road, Dhule. The house was a newly constructed and big bungalow, named "Prabham Bungalow". He noticed that the bungalow was ground floor plus two. The search resulted in recovery of gold ornaments valued Rs. 1,10,930/- and luxury items like TV, Fridge, etc. valued Rs. 5,02,040/-. He and the panchas found that the appellants were leading luxurious life. A large number of National Saving Certificates, R.C. Books of vehicles, Purchase Receipts, Tax Receipts, etc. were recovered. Then, appellant Sow. Mangala was found wearing gold ornaments valued Rs. 9974/-. A detailed panchanama (Exh-266) was drawn. A goldsmith was present at the relevant time and certified about valuation of the gold ornaments found in the house. The version of PW Dy.S.P. (ACB - Retd.) Dattatraya clearly proves that appellants were leading luxurious life and were found in possession of large number of items like TV, Fridge, etc. as well as gold ornaments of more than rupees one (1) lac.

20. The recitals of F.I.R. (Exh-264) would show that the discreet inquiry revealed a large number of acquisitions of movable and immovable properties by the appellants. There is no denial to the fact that appellant Bhaskar Wagh was the only earning member of the family. The net amount of pay and allowances received by him during the check period was only Rs. 1,27,781/- as per the chart (Exh-50). The version of PW3 Shankar who was working as Senior Assistant of Zilla Parishad, Dhule goes to prove the total earnings of appellant Bhaskar Wagh towards pay and allowances. He corroborates the information shown under the chart or schedule (Exh-51). It appears that the monthly hometake salary of appellant Bhaskar Wagh was only Rs. 1630/- in the month of December, 1989. He received net amount of pay

during 1973 till 1989 in tune of Rs. 1,27,781/-. As stated before, appellant Bhaskar Wagh was only Cashier in Minor Irrigation Department of Zilla Parishad.

21. If we consider acquisitions made by appellant Bhaskar Wagh, it will be manifest that he was frequently amassing movable and immovable properties during the check period. From version of PW1 Sulabha, it can be gathered that appellant Bhaskar Wagh purchased 1000 shares of Khandesh Ceramic Private Limited for Rs. 10,000/-. She corroborates letter (Exh-44) in this behalf. Her evidence also reveals that appellant Bhaskar Wagh used to previously reside in a rented room in 1973-1974. The version of PW2 Ahmed Abdul Hussain reveals that appellant Bhaskar Wagh purchased a revolver for Rs. 9500/- on 21-04-1988. This witness was serving as a Manager in M. Saleh and Company, Bombay, which deals in sale of arms and ammunitions. He corroborates the letter (Exh-47). So also, PW4 Kashinath proves purchase of 400 shares of Dhule District Government Servants Cooperative Bank by appellant Bhaskar Wagh. The shares were valued Rs. 7070/-. The witness corroborates account extract (Exh-53). PW Kashinath was working as Accounts Manager of the said Bank. His version further shows that as per the extract (Exh54), amount of Rs. 3846.10 was in the saving account of appellant Bhaskar Wagh. The version of PW7 Pradeep reveals that appellant Bhaskar Wagh was having Bank account at Janata Sahakari Bank, Dhule and balance amount in his saving account was Rs. 1936/-.

22. The version of PW8 Shantilal reveals that appellant Bhaskar Wagh was having saving account with Bank of Maharashtra and balance amount was Rs. 717/-. The version of PW9 Pukhraj shows that appellant Bhaskar Wagh had four (4) deposits of Rs. 2100/- each in his name, name of appellant Sow Mangalabai and names of each of his two minor sons.

23. The version of PW10 Pandharinath reveals that appellant Bhaskar Wagh had purchased 22 shares of Rs. 2000/- each on 02-06-1989. The said shares of Shetkari Sanjeevani Startch Factory were valued Rs. 44,000/-.

24. There is evidence of PW17 Pramod, Special Assistant attached to Bank of Baroda, to show that two (2) Fixed Deposits were made in name of appellant Sow Mangalabai each being of Rs. 5440/-.

25. The most important evidence is tendered by PW11 Ravindra. He is the Architect who prepared Plan of the posh bungalow called "Prabham", situated at Wadibhokar Road, Dhule. His version reveals that appellant Bhaskar consulted him in 1984 for proposed construction of the bungalow. So, PW Ravindra visited the open plot of 2500 sq. feet which was to be constructed. His version reveals that he prepared the Construction Plan (Exh-98) and lateron supervised construction of the bungalow until it was completed. His version categorically shows that for the construction work, appellant Bhaskar Wagh used to provide the material and also used to pay the masons and labours. The estimated cost of the construction was Rs. 3,50,000/-. It is

the version of PW Ravindra that he received an amount of Rs. 11,000/- towards his fees for preparing construction plan and regarding supervision of the work. He admits, no doubt, that he does not possess any documentary evidence to indicate that the construction cost was of Rs. 3,50,000/-. Still, however, PW Ravindra is a known Architect. He personally supervised the work of construction. Consequently, his estimated cost of construction can be accepted as the probable expenditure required for the purpose of carrying out the construction of double storied bungalow.

26. The evidence on record shows that appellant Bhaskar Wagh acquired an agricultural land bearing Gat No. 223/2 situated at Dhule on 20th September, 1986 for Rs. 30,000/- (Exh-144 to Exh-146). He acquired agricultural land bearing Gat No. 15/2 at village Rohane in name of appellant Sow. Mangalabai on 23rd March, 1989 for Rs. 70,000/-. He also acquired land bearing Gat No. 321/2 on 08-06-1984 in name of appellant Sow. Mangalabai for Rs. 6000/-. He acquired land bearing Gat No. 371/2 at village Dharne on 20-05-1988 for Rs. 17,000/- (Exh-152 and Exh-153). He further acquired house properties in the year 1985 for Rs. 4000/- at village Rohane. He constructed a house property at village Rohane of which estimated market value is Rs. 1,50,000/-. He purchased two (2) plots at village Deopur for Rs. 15,000/- on 15-10-1988 (Exh-142, Exh-143 and Exh-264) in name of his two (2) minor sons. The evidence on record would show that appellant Bhaskar Wagh acquired immovable properties atleast worth Rs. 6,82,000/- during the check period. An attempt is made by learned Counsel - Mr. Kulkarni to show that the plot on which "Prabham" bungalow is constructed, was gifted to appellant Sow Mangala by her father. However, father of appellant Sow Mangala did not enter the witness box. No explanation is adduced regarding such purchase by her father. Assuming that the plot was gifted to her by him, then also expenditure for construction was incurred by appellant Bhaskar Wagh as would be manifestly clear from version of PW11 Ravindra. Secondly, it was for the appellants to offer "satisfactory explanation" regarding acquisition of such assets. A mere production of the Index of Registration (P-800) would not suffice the purpose.

27. The version of PW13 Bakaram, who was working as Tahsildar, would show that share of appellant Bhaskar Wagh was only 1/4th in the total family lands. His version reveals that since 1972-1973 till 1989-1990, the total family holding with appellant Bhaskar Wagh and his brothers, etc, was 18 hectares 2 Aars. According to PW Bakaram, appellant Bhaskar Wagh could have earned income of his 1/4th share to the tune of Rs. 51,882.15 during the check period. He corroborates the details of agricultural income as shown under Schedules (Exh-104 to Exh-115).

28. The net salary received by appellant Bhaskar Wagh was Rs. 1,29,125/- during the check period. Out of that, having regard to the luxurious way of his lifestyle, atleast 50 per cent of the amount could be his domestic expenditure. Thus, his saving could be only approximately Rs. 64,000/-. Added to this, his agriculture income of Rs.

51,882/-, the amount available with him could be only Rs. 1,15,882/-.

29. The value of immovable properties found with the appellants comes to Rs. 6,82,000/-. The appellants were found in possession of R.C. Books and Purchase Receipts in respect of a motorcycle, a Kinetic Scooter, a Bajaj M80 Vehicle, an Ambassador Car, a Jeep vehicle and a Luna vehicle. The motorcycle was purchased on 02-07-1987 for Rs. 10,000/- by appellant Bhaskar Wagh. He purchased a Kinetic scooter for Rs. 14,125/- on 13-10-1988. He purchased Bajaj M80 vehicle on 08-06-1983 for Rs. 5000/-. He purchased a Jeep vehicle on 25-10-1988 for Rs. 1,91,424/-. He also purchased a Luna vehicle for Rs. 5387/-. The Ambassador Car was purchased by him on 27-03-1986 for Rs. one (1) lac in name of appellant Sow. Mangala. Thus, a large number of vehicles worth Rs. 3,25,936/- were the assets found with the appellants. Considering the movables, vehicles and immovable properties, the assets found with both the appellants were worth Rs. 11,23,214/-. As stated before, the total amount available for the purchases of such properties was only Rs. 1,15,882/- besides loans of about Rs. one (1) lac. For, the Ambassador Car was purchased on obtaining loan from a Bank and other two vehicles were also purchased on obtaining finance from the Bank. All said and done, it is duly proved that assets atleast approximately of Rs. 9,07,332/- (nine lacs seven thousand three hundred thirty two rupees) found in the hands of appellants needed explanation from appellant Bhaskar Wagh. His explanation is far away from being satisfactory. He did not examine any witness in support of his explanation. He only filed a written explanation regarding utilisation of agricultural income.

30. Appellants Bhaskar Wagh and Sow. Mangala were not leading frugal life. The evidence on record reveals that they gave donations to various religious and charitable Trusts. Though the learned Special Judge came to conclusion that "Ekvira Devi Trust" is the personal Trust of appellants Bhaskar Wagh and Sow. Mangala, yet it is not necessary to go into such a question. I do not think it necessary to consider the amounts spent by appellant Bhaskar Wagh and Sow. Mangala for giving donations to the temples and other Institutions. It is also not necessary to examine whether "Ekvira Devi Trust" was formed by appellant Bhaskar Wagh in order to siphon the unlawful gains derived by him.

31. In [K. Poonuswamy Vs. State of Tamilnadu by Inspector of Police, Directorate of Vigilance and Anti Corruption South Range, Trichy](#), the Apex Court held that when appellant K. Ponnuswamy was only a lecturer and his income was meagre, but during the period he held the office of Minister, he acquired assets disproportionate to his known sources of income in the name of his wife and daughter, who had no source of income of their own, it will have to be held that the prosecution proved that the properties were held by the wife and daughter on behalf of the appellant (K. Ponnuswamy). In [P. Nallammal Etc. Vs. State Rep. by Inspector of Police](#), it is held that trial of non-public servant for abetment of offence u/s 13(1)(e) along with public servant is not barred. It is further held that for the purpose of Explanation,

appended to Section 13(1)(e), known source of income should be any lawful source and receipt of such income should have been intimated by the public servant in accordance with the law applicable to him. In other words, it was necessary for appellant Bhaskar Wagh to intimate the competent Authority about acquisition of movable and immovable valuable assets from time to time as per the Service Rules. He failed to do so. He never explained that he acquired such assets after due intimation to the competent authority.

In [State of Madhya Pradesh Vs. Awadh Kishore Gupta and Others](#), the Apex Court held that burden is 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 is worthy of acceptance.

32. Once it is found that both the appellants were found in possession of a large number of movable and immovable property items of which they could not give satisfactory account, it is manifest that they are both guilty of "criminal misconduct" within the meaning of Section 13(1)(e) and Section 13(2) of the Prevention of Corruption Act, 1988.

33. The prosecution evidence reveals that appellant Bhaskar Wagh was a Class-III public servant with meagre salary. He did not possess considerable agricultural land. The various panchanamas of search of the house properties and valuation of the agricultural lands are placed on record. It can be said that since 1983 onwards, appellant Bhaskar Wagh started purchasing, one after another, immovable properties and his lifestyle was entirely changed. He purchased a Jeep vehicle, motorcycle, a Kinetic scooter, Bajaj M80 vehicle and Luna moped for himself. He also purchased an Ambassador Car vehicle in name of appellant Sow. Mangala. It is highly improbable that it was within lawful means of the Class-III Government servant to acquire and maintain a fleet of the vehicles. The purchases of these vehicles except that of the Ambassador car vehicle, are not properly accounted for. The learned Special Judge rightly came to the conclusion that appellant Bhaskar Wagh incurred expenditure for construction of "Prabham" bungalow. There is no reason coming forth to dislodge version of PW11 Ravindra, under whose supervision the construction work was carried out. In my opinion, even taking a liberal approach, disparity between income sources of appellant Bhaskar Wagh and assets amassed by him is such that the charge of "criminal misconduct" must be held to have been duly proved against him. So also, appellant Sow. Mangala held shares and immovable properties as well as an Ambassador Car vehicle in her name notwithstanding absence of any source of income for her. Hence, it will have to be said that she abetted the commission of offence of criminal misconduct by appellant Bhaskar Wagh. Considering the foregoing discussion, I am in general agreement with the findings of learned Special Judge. I am also of the opinion that the impugned order of confiscation of the properties also does not call for any interference.

34. For the reasons aforesaid, I do not find any merit in the appeals. The impugned order of conviction and sentence does not call for any interference. Both the appeals, therefore, fail and are accordingly dismissed. The impugned judgement rendered by the learned Special Judge in Special Case No. 5/1991 is maintained.