

Tirakappa Vs. State of Karnataka Represented by State Public Prosecutor

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Court : Karnataka Dharwad

Decided On : Oct-11-2013

Judge : Anand Byrareddy

Appeal No. : Criminal Appeal No. 2835 of 2009

Appellant : Tirakappa

Respondent : State of Karnataka Represented by State Public Prosecutor

Judgement :

(Prayer: This Criminal Appeal is filed under Section 374(2) of Code of Criminal Procedure, 1973, seeking to allow the appeal and set aside the judgment and order of conviction dated 16.11.2009 and sentence dated 21.11.2009 passed by Hon'ble Prl. District and Sessions (Spl.) Judge, Bellary in Spl. Case No.25/2003 and the appellant may be acquitted.)

1. Heard the learned counsel for appellant and the learned Special Public Prosecutor.

2. The appellant was the accused before the Court below, against whom allegations of offences punishable under Section 13(1) (e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the P.C. Act', for brevity) was made. The appellant was a public servant who worked as The Block Development Officer of Huvinahadagali, Bellary district. He had joined service in the year 1968 and as on 29.03.1994 it was alleged that he had acquired

assets which were disproportionate to his known sources of income. The check period, therefore, was between 17.05.1968 and 29.03.1994. His house was searched and on seizure of documents, gold and silver ornaments, apart from cash, it was found that he was in possession of assets worth Rs.14,11,581/- and on an estimate of the expenditure for his family and other expenses it was arrived at in a sum of Rs.10,75,887/- and if these assets and expenditure incurred were added together, it totalled to Rs.24,87,468/- whereas the known sources of income from the date of adjoining service till the check period was Rs.15,47,191/-. Therefore, it was alleged that the appellant was in possession of disproportionate wealth to the extent of Rs.9,40,377/- and which was not accounted for.

Therefore, it was alleged that he had committed offences as aforesaid. After a preliminary enquiry, the police had obtained permission from his higher authorities to register a case in Crime No. 5/1994 and thereafter a search warrant having been obtained his house was raided and the assets seized, and thereafter the appellant was chargesheeted, ultimately charges having been framed, the appellant had pleaded not guilty and claimed to be tried. The prosecution examined 40 witnesses and marked over a 100 documents and material objects. The statement of the appellant having been recorded under section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to 'Cr.P.C.', for brevity) and after hearing both the sides, the Court below had framed the following points for consideration:

1. Whether the prosecution proves beyond reasonable doubt that the accused being the public servant was found in possession of total assets of Rs.14,11,581/- and he has spent the amount of Rs.10,75,887/- during the period 17.05.1968 to 19.03.1994 and he has amassed wealth of Rs.9,44,377/-, which is disproportionate to his known source of income and he has not satisfactorily accounted for it and thereby the accused has committed an offence punishable under section 13(1) (e) read with section 13(2) of Prevention of Corruption Act, 1988?

2. What order?

3. The Court below answered the same partly in the affirmative and sentenced him to undergo imprisonment for one year and to pay a fine of Rs.10,000/-for the offence punishable under section 13(1) (e) read with section 13(2) of the P.C. Act. It is that which is under challenge in the present appeal.

4. The appellant has attained the age of superannuation and has retired from service. The learned counsel for the appellant while taking this Court through the record would submit that there is an error committed by the trial Court in holding and accepting the value of assets as calculated and projected by the prosecution. The Court below has failed to address the contentions urged by the appellant. The learned counsel would firstly point out that as per the sources of income the expenditure and the assets which are tabulated in abstract form as at Annexures- A, B and C to the investigation report would indicate that the cost of construction of the house of the appellant at Hospet has been shown at Rs.2,62,347/-. The said house was constructed under the personal supervision of the appellant. If in the event that the appellant had engaged the services of a contractor, the same would have included the fees payable to such contractor which would not be less than 10% of the cost. Therefore, it is claimed that the value of the building should have been reduced to the extent of 10%.

5. It is further contended that a sum of Rs.3,73,037/- is shown as one of the items of assets of the appellant. This is wholly erroneous as the sheds that were constructed in the decorticating factory at Holalu village is not constructed by the appellant, but it was constructed by a Partnership Firm, of which the wife of the appellant and his brother-in-law were partners and in this regard there was evidence of D.W.1, which has been negated by the trial Court in adopting the said value in the assets column of the appellant's wealth.

6. It is also pointed out that item No.6 of the assets column indicates construction of two houses and one godown at Hagarabommanahalli. This again is not in accordance with the actual circumstances when it was not property that was acquired by the appellant, but was a gift from his father-in-law. The gift deed produced by the appellant has been completely ignored and the same has been assessed at Rs.41,915/- which ought to have been excluded.

7. The Court has also committed an error in holding that the purchase money of Rs.49,000/- and cost of construction of sheds, that insofar as the purchase money of Rs.49,000/- towards purchase of machinery of decorticating factory has been wrongly shown as against assets of the appellant when it was the purchase money pertaining to machinery which was purchased by the Firm, which was the owner of the decorticating factory. It is also contended that the property situated at Dombarahalli bearing re-survey No.66 is not the property purchased by the accused in the name of his other sister and brother that the reasoning of the Court below that the landed property was not the property purchased by the appellant in the name of his mother, sister and brother, but at the same time holding that Rs.14,000/- towards purchase of plots to the expenditure account of the appellant was erroneous and that the same would have to be excluded from the expenditure account of the appellant. That the recurring deposit of Rs.50,000/- which was in the name of his wife has been shown in the Assets column of the appellant. When there was material on record to indicate that his wife had independent income as a partner of the Firm holding the decorticating factory and house income from her Holalu house was available to her. It could not be held that the money standing to the account of his wife was held benami. Therefore, if the amount of Rs.50,000/- from the Assets column of the appellant should be excluded. Further, a sum of Rs.14,578/- is added to Rs.50,000/- shown in the recurring deposit which is again indicated as Fixed Deposit in the Banks. This is wholly erroneous and could not be attributed to the petitioner.

8. The gold jewellery belonging to his wife have been taken as jewellery that was gifted by the appellant to his wife which was a presumption without any evidence thereof when it was her own property and which had been given to her by her parents. It is also stated that the value of the gold and other household utensils has been grossly exaggerated. Therefore, the same cannot be sustained on an arbitrary valuation of the same. The learned counsel would also point out that the expenditure shown as Rs.1,78,275/- as being the value of expenses towards travel, medical expenditure, clothing and other expenses is on the higher side. There was no material evidence on record to support the same. There is also duplication of certain amounts towards travelling allowance which is another error as seen from para 47 of the judgment.

9. The electricity bills of the power consumed in the houses rented out as tenants has been inexplicably included in the expenses incurred by the appellant which is not tenable. This is ought to have been deducted from the expenses as the tenants have paid the said amount.

10. The Court below has unjustly rejected the version of the claim. The learned counsel would therefore contend that the actual assets of the appellant valued at Rs.4,96,318/- and the actual income of the appellant at Rs.13,51,567/- for the check period with an expenditure at Rs.7,36,107/-. There is no asset in the hands of the accused, which could be considered as disproportionate to his known sources of income. Therefore, the finding of the Court below that the accused possessed Rs.1,17,734/- in excess of his known sources of his income is without any legal or factual basis and is not supported by any valid evidence tendered by the prosecution. It is further contended that the Court below ought to have allowed atleast 10% of the margin of the total value and income of the accused, but, whereas, 10% of the margin has been allowed on only Rs.87,734/- which was found in excess after deducting Rs.30,000/- as being the value of gold and silver ornaments. It is in this fashion that the learned counsel for the appellant would submit that when these multiple errors have crept into the reasoning of the Court below in proceeding to address the case of the prosecution, it cannot be said that the prosecution had established its case beyond all reasonable doubt, and therefore, seeks that the judgment of the Court below is set aside. The learned counsel would place reliance on the decision of the Apex Court in *M. Krishna Reddy v. State Deputy Superintendent of Police, Hyderabad*, AIR 1993 Supreme Court 313, and seeks that the appeal be allowed.

11. While the learned Special Public Prosecutor would refute each and everyone of the contentions raised by the appellant and would submit that these very contentions were indeed addressed even before the trial Court and it is on a close consideration of the entire material on record that the Court below has passed a detailed and reasoned order addressing everyone of the contentions that are raised by the learned counsel for the appellant and hence seeks to justify the reasoning of the trial Court in arriving at his conclusions.

12. The learned Special Public Prosecutor would draw attention to certain aspects of the contentions raised before this Court, namely, that the claim of the appellant as to 10% of the value of the building at Hospet being allowed and the value being reduced by 10% is not a legal entitlement. The hypothetical claim that if the appellant had engaged a contract, he would have spent not less than 10% towards the contractors profit or fees, and therefore, the value should stand reduced by 10% of the value is clearly speculative and hypothetical, no such value can be attributed to the personal supervision of the work by the appellant.

13. Insofar as the claim that the house property at Hagara Bommanahalli was gifted to the appellant by his father-in-law, is not evidenced by any valid document, evidencing such transfer, on the other hand, the alleged gift deed is an unregistered document which would not establish any such transfer. Therefore, the contention that it was a gift to the appellant cannot be accepted.

14. The contention that the appellant's wife was a partner of the Firm, which held the decorticating factory, and therefore, the cost of construction of the sheds at the said factory would not be attributed to the appellant cannot be accepted as the wife of the appellant was residing along with and any assets held in her name would be deemed to be the assets of the appellant as well. This, in the eye of law would not enable the appellant to seek that the value of six sheds should be excluded.

15. It is also highlighted that the trial Court has committed an error in arriving at the total value of the assets by atleast Rs.27,000/-, and therefore, the endeavour of the appellant to demonstrate that the assets held by him do not exceed the known sources of income is even more difficult as the assets are much more than what is indicated by the trial Court and would also contend that several other deductions and exemptions which are claimed by the appellant are not supported by any evidence or material evidence produced before the court and any such self-serving claim would not advance the case of the appellant, and therefore, seeks dismissal of the appeal.

16. In the above facts and circumstances, the question before this Court is, Whether there is substance in any of the grounds raised by the appellant and if so,

whether the same would render the judgment by the Court below an illegality and hence, whether the appeal should be allowed.

17. The following is the abstract of the Assets, the Expenditure and the Income that is adopted by the trial Court in examining whether the assets held by the appellant and his family exceeded the known sources of income:

ANNEXURE-A (ASSETS)

1 Purchase of Decorticating Rs. 58,250/- machine.

2 Purchase of 1 acre 5 cents land Rs. 555/- out of Sy.No.98 of Holalu in the year 1977 in the name of wife of accused.

3 Purchase of Plot No.204 at Rs. 3,265/- Hospet in the name of the accused in the year 1997.

4 Construction of ground floor in Rs. 2,62,341/- the year 1984 and I floor in the year 1988 on Plot No.204, Hospet.

5 Construction of 7 sheds and Rs. 3,73,037/- compound wall in the Decorticating factory at Holalu village.

6 Construction of 2 houses and 1 Rs. 41,915/- godown at Hagarabommanahalli.

7 Purchase of Plot No.88 at Rs. 14,196/- Raichur in the name of the wife of the accused.

8 Purchase of 38 acres and 38 Rs. 1,40,460/- cents of land out of Sy.No.66 of Dombarahalli village, in the name of mother, sisters and brother in law of the accused.

9 Installation of 2 pumpsets, Rs. 2,75,573/- construction of 1 shed and water tanks and fencing around the land measuring 38 Acs. 38 cents out of Sy.No.66 of Dombarahalli village.

10 Fixed Deposits in the Banks Rs. 64,578/- 11 Utensils and movables found in Rs. 1,77,573/- the house of the accused at the time of raid.

Total Rs. 14,11,581/- ANNEXURE-B (EXPENDITURE)

1 Total deductions in the salary of Rs. 2,50,121.75 the accused.

2 Maintenance of the family of the Rs. 1,65,346.00 accused as per the report of the Deputy Director, Statistics Department, Karnataka Lokayukta.

3 Non verifiable recurring Rs. expenditure.

1. Tour 13,750.00

2. Medical Expenses. 27,525.00

3. Religious functions, tours and 41,250.00 guest expenses.

4. Shaving Cream, Blade, Soap, 28,750.00 Powder, cigarettes and cosmetics

5. Dresses and footwares. 57,000.00

6. Cinema, Audio and Video and 21,875.00 other entertainment expenses.

7. News Papers and Magazines. 8,125.00 4 1. Towards cooking Gas from Rs. 14,040.00 1972 to 1982.

2. Tax on the car and its 37,226.00 maintenance.

3. Donation to Kannada Sahitya 10,000.00 Parishat.

4. Education of the children. 1,786.00

5. Payment of bank loans. 1,34,682.00

6. Tax paid on the houses at 17,759.00 Hospet and H.B.Halli

7. Payment of electricity charges 19,523.00 for the houses at Hospet and H.B.Halli.

8. Payment of income Tax. 686.00

1. Borewells dug in Sy.No. 66 of Rs. 73,460.00 Dombarahalli village.

2. Installation of submercible 85,050.00 pumps to the borewells in Sy.No.66 of Dombarahalli.

6 Payment of electricity charges for Rs. 11,675.00 4 pumpsets.

7 Plantation of 500 coconuts trees Rs. 19,400.00 and 400 mango trees in Sy.No.66 of Dombarahalli .

8 Payment of land revenue of in Rs. 139.00 Sy.No.66 of Dombarahalli village. 9 Digging of the borewell in the Rs. 7,120.00 house at Hospet.

10 Payment of electricity charges for Rs. 14,943.00 decorticating machine at Holalu village.

11 Payment of premium of L.I.C. Rs. 14,654.00 Total Rs. 10,75,887.00
ANNEXURE-C (INCOME)

1 Total salary and allowances. Rs. 7,71,337.00 (17-5-68 to 28-3-1994).

2 House rent from house No.1500 Rs. 1,14,240.00 of Hospet.

3 House rent received from the Rs. 60,000.00 house at H.B.Halli.

4 Loan obtained from Government Rs. 67,000.00 for construction of house.

5 Amount received on maturity of Rs. 32,000.00 LIC policy No.40271634 in 1992.

6 Income from Decorticating Rs. 71,720.00 Factory at Holalu village.

7 Rent received from SBM towards Rs. 52,944.00 the house at Holalu village.

8 Loan obtained form SBM for Rs. 2,25,700.00 development decorticating factory.

9 Loan obtained from Syndicate Rs. 10,000.00 Bank for construction of house at Hospet.

10 Loan obtained form SMB Holalu Rs. 10,000.00 for repair of house at Holalu.

11 Agricultural income from land Rs. 70,000.00 Sy.No.21 of Dombarahalli form 1977 to 1994.

12 Agricultural Income form land Rs. 62,250.00 Sy.No.22 of Dombarahalli from 1978 to 1994.

Total Rs. 15,47,191.00 1 Annexure 'A' + Annexure'B'. Rs. 24,87,468.00 2 Annexure 'C'. Rs. 15,47,191.00 3 Additional Income derived from Rs. 9,40,277.00 reliable sources.

18. All the several contentions raised by the learned counsel for the appellant that the learned Special Public Prosecutor has rightly brought to the attention of this Court that it would be speculative for the appellant to claim that the value of the property at Hospet should be reduced by 10% on an assumption that if the appellant had engaged the services of a contractor, he would have spent not less than 10% of the cost of the construction as the profit of the contract. Further, that the alleged gift deed under which the appellant claims that he was gifted the property of Hagara Bommanahalli by his father-in-law is to be excluded and denied to the appellant. The fact remains that insofar as the other items in respect of which the learned counsel for the appellant has argued, it would be seen from the material on record that there was indeed material evidence in support of the contention that the appellant's wife was a partner along with his brother-in-law in the Firm which was holding the decorticating factory. Therefore, the sheds constructed on the said premises of the decorticating factory and the expenditure shown towards construction of the same could not have been included in the Assets column of the appellant. As it cannot be said that merely because the wife of the appellant lives along with him she would not have any independent income from any business enterprise. This was not fair to the appellant. Similarly, the purchase of a plot at Raichur in the name of the wife of the accused could not be held to be benami property of the appellant. The fact that his father-in-law was well provided for and that he had provided his daughter with jewellery and other property cannot be brushed aside in assuming that it was the ill-gotten wealth of the appellant held in the name of the wife and further having due regard to the extended check period which encompasses 26 years, the acquisition of wealth by

his family members namely his wife through her parents and the same being lumped in the Assets column of the appellant would certainly be unfair and if these inclusions such as the Recurring Deposit in the name of his wife and the addition of further sum of Rs.14,578/- as being the deposits to the credit of the appellant though it stood in the name of his wife etc., are taken into account, it cannot be said that the trial Court has proceeded on an accurate identification of the property as being the assets of the appellant. Therefore, since there are several items, the value of which is substantial being included in the assets of the appellant, it cannot be said that any degree of certainty that the prosecution had established its case beyond all reasonable doubt and further the valuation on the basis of which the Court has proceeded though furnished by an expert from the Statistical Department of the State Government, it cannot be said to be a valuation, which is accurate down to the rupee. There is an element of speculation though based on official figures spread over several years, the margin of error cannot be ruled out. Therefore, in the light of these infirmities and having regard to the final sum by which it is held that the assets of the appellant exceed the known sources of income, it cannot be said by any standards that it was of such a degree that there was substance in the case of the prosecution. It is also to be noticed that 10% of the total value of the assets ought to have been excluded as this is the law as laid down by the Apex Court in the case of M. Krishna Reddy (supra), even that has not been given effect to by the trial Court. Therefore, on an overall consideration of the material on record and the manner in which the trial Court has proceeded to adopt the case of the prosecution leads to a mis- carriage of justice. Accordingly, the appeal is allowed. The judgment of the trial Court is set aside and the appellant is acquitted. The fine amount, if any, paid shall be refunded. The bail bond furnished shall stand cancelled.