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Court : Karnataka

Decided On : Jul-21-1971

Reported in : 1972CriLJ120

Judge : Honniah, J.

Appellant : Pape Gowda

Respondent : State

Judgement :

Honniah, J.

1. The appellant has been convicted under Section 5(1)(c) read with Section 5 (2) of the Prevention of Corruption Act. 1947 (hereinafter referred to as the Act) and sentenced to undergo rigorous imprisonment for 18 months and to pay a fine of Rupees 1,000 in default to undergo rigorous imprisonment for a further period of 6 months, by the Special Judge, Bangalore Division. Bangalore.

2. The facts leading to the prosecution of the appellant stated briefly, are these : The appellant is an Engineering Graduate. He was appointed as a Supervisor on 10-8-1955 in the H.M.T. Bangalore. He was started on a salary of Rupees 160 plus allowance of Rupees 38.99 P. He served in that capacity till 1959 in which year he was promoted as a Foreman and his pay was raised in the scale of Rupees 400-600, On 1-5-1962. the appellant was promoted as Deputy Manager in

the Civil Engineering Department in the pay scale of Rupees 700-40-1100-50-1250. After his promotion as the Deputy Manager, he was transferred to an other unit of H. M. T. at Kalamassery in Kerala, a public sector undertaking managed by the Government of India. He was again transferred to Bangalore in November. 1964. During the period of his service from, 1955 to 1965, the appellant had earned by way of salary and allowances a sum of Rupees 62,872,67 P. During this period, it is admitted, a sum of Rupees 25,922.40 P. was deducted towards motor vehicle advance, provident fund. Income-tax, insurance premium, house rent and other deductions. Thus, the appellant had received a net amount of Rupees 38,679.77 P. vide Ext. P-188. During this period, the appellant had spent a sum of Rupees 24,750 for maintenance of his family and for his personal expenses, as admitted by him in Ext. P. 250.

3. During this period the appellant purchased 3 cars and sold 2 of them. By this transaction, he made a profit of Rupees 2,750. On this point, the conclusion of the learned Judge appears to be not correct. Admittedly the accused purchased 3 cars during this period, sold 2 of them and on the date he was charged, he was in possession of one car. Taking into consideration the transactions with reference to those 3 cars, the appellant had made a profit of Rupees 2,750, He was maintaining a car for which necessarily he had to spend some-amount. The learned Special Judge found that the appellant had spent a sum of Rupees 6.000 towards the maintenance of the cars during the period although the appellant had shown having spent Rupees 7,500 in the Income-tax returns. It is not disputed that the appellant was paving premium of two insurance policies himself. The Special Judge took into consideration the statement of expenditure filed by the appellant vide Ext P-250 on the basis of which he came to the conclusion that the appellant could have saved a sum of Rupees 20.628.67 P.

4. The evidence in this case shows which is not disputed by the appellant. that he was in possession of properties worth Rupees 78,000 which means that his assets were at least Rupees 57.876. more than the known source of his income. The evidence on behalf of the prosecution itself shows that the appellant had raised loans to build a house from the Housing Board L. I. C. and P. W. 17 Channappa which amounted to Rupees 32,227. If this amount is deducted from Rupees

57,372. the appellant was in possession of properties worth Rupees 26,000 in excess of his known source of income. This is also the finding of the Special Judge.

5. The defence of the appellant was that he was a member of a joint family consisting of himself and D. W. 1 and others, that he got from D. W. 1 who was the manager of the joint family, in all a sum of Rupees 12.000 for construction of the building. He was setting food-grains from D. W. 1 towards the maintenance of his family and he realised a sum of Rupees 1,000 by selling two sites to D. W. 2. Apart from this, the accused claimed deduction of Rupees 1,428.90 P. which he received by way of bonus vide Ext. P-188 and Rupees 2,208 assets possessed by him prior to 1955. as admitted by the prosecution itself vide Ext. P-242.... A sum of Rupees 2,750 is the profit that he realised in the car transaction. According to him. if all these amounts were taken into consideration, he was not in possession of properties worth more than his known source of income, except properties worth Rupees 7,000 or so.

6. The learned Special Judge, after discussing the evidence adduced on behalf of the prosecution and on behalf of the accused, held:

From the foregoing discussion. I have definitely come to the conclusion that the accused cannot satisfactorily account to the extent of at least Rupees 25.000.

Assuming for the sake of argument what the prosecution has stated is true, the question for consideration is, whether the accused has given satisfactory explanation for being in possession of properties as valued by the prosecution itself. The learned Special Judge has taken into consideration most of the statements furnished by the accused as true, and after taking those statements into consideration has arrived at the conclusion that the accused was still in excess of properties of at least Rupees 25.000 beyond his known source of income. The learned Judge obviously has made an error in not taking into consideration the income of the appellant from the joint family. consisting of himself. D. W. 1 and others. D. W. 1 has given evidence to the effect that he was the manager of the joint family consisting of himself, the accused and others and he was in possession of a large extent of wet and dry lands and was also in

possession of fruit bearing trees. from, which he was deriving considerable income. He has deposed that he was supplying foodgrains to the appellant from which the appellant was maintaining his family, to a certain extent. According to him. the appellant was short of funds to construct his house and therefore he asked him to give him Rupees 9,000 in the first instance and later took from him a sum of Rupees 3,000 for constructing the house. He has stated that he has paid the said amount from out of the joint family funds. Taking into consideration the extent of property that the joint family was holding and the income that it was deriving from the lands and also from the fruit-bearing trees, there is nothing to disbelieve the version of D. W. 1 in this behalf. The conclusion of the learned Judge that D. W. 1 was not in a position to pay any sum to the appellant is not based upon any material. If he had carefully scrutinised the evidence of D. W. 1. that evidence would have conclusively established the truth of the statement of the appellant that he took a sum of Rupees 12.000 from D. W. 1 for constructing the building.

7. Admittedly, the appellant sot a bonus of Rupees 1,428.90 P. and that necessarily is an income which has got to be added to other income of the appellant. It is not disputed in this case that the appellant was in possession of assets to the extent of Rupees 2.200 prior to 1955. The evidence of D. W. 2 shows that the accused realised a profit of Rupees 1,000 by sale of two sites to him. There is also nothing to disbelieve his evidence. The learned Judge has not taken these amounts into consideration. If he had taken these amounts into consideration, he would not have come to the conclusion now arrived at by him.

8. To sustain a charge under Sub-section (c) of Section 5 of the Act. the prosecution has to show that - (1) the appellant is or was a public servant; (2) he himself or on his behalf someone else : (3) possessed or has at any time during the tenure of his office has been in possession of; (4) pecuniary resources disproportionate to his known sources of income for which the accused cannot satisfactorily account for. The Legislature has not chosen to indicate what proportion could be considered disproportionate and the Court may take a liberal view of the excess of the assets over the receipts of the known source of income. While it is quite true that pecuniary resources and property are themselves

sources of income. that does not present any difficulty in understanding a position that at a particular point of time the total pecuniary resources or property can be regarded as assets, and an attempt being made to see whether the known sources of income including, it may be these very items of property in the past could yield such income as to explain reasonably the emergency of these assets at the relevant point of time. Taking, the most liberal view, which has got to be taken in such cases, if the pecuniary resources of the appellant is taken into consideration during the period in question, it cannot be said that it, in any view of the matter, exceeded his known sources of income. On the other hand, what emerges out is that in all probability he must have acquired the assets from known sources of income, such as from his salary or from the joint family funds or the monies that he borrowed from others or from the loans that he raised.

9. But, it is difficult to hold, on the facts of this case, that the appellant acquired these assets through any other sources, excepting by known source of income, which I have indicated above. At the time when the appellant was charged, he was getting a fairly good salary. The appellant is an Engineering Graduate and was appointed as a Supervisor in the first instance and he was getting a salary of about Rupees 250 and between 1955 and 1965, he was promoted to various grades and he was setting salaries varying between Rupees 500 to Rupees 900. Although there is no evidence to indicate that he saved anything out of his salary, taking into consideration the society in which the appellant is living and the fact that he was a member of a joint family which consisted of extensive properties which were yielding considerable income, it cannot be said that he could not have acquired the assets even without borrowing monies. Taking into consideration his status and the income that he was deriving by himself and by other sources, excess assets if any as stated by the prosecution could only have been acquired by known source of income and not by any other source.

10. In cases of this nature, it is not correct to apply exact mathematics and on the basis of it to hold that he is in excess of a few thousands rupees. We have got to take an over-all picture of the situation and decide whether the assets are disproportionate to the known source of income. If the question is answered in the affirmative, then only the accused is liable to be convicted under Clause (c) of

Section 5 of the Act. Otherwise, he cannot be convicted for the said offence.

11. For the reasons stated above, I disagree with the finding of the learned Special Judge and hold that the prosecution have failed to prove that the accused was, during the period in question, in possession of assets disproportionate to his known source of income and set aside the conviction and sentence passed against the appellant and acquit him.