

**M. Kishan Vs. State**

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**Court :** Andhra Pradesh

**Decided On :** Jan-28-2005

**Reported in :** 2005(1)ALD(Cri)462; 2005CriLJ2103

**Judge :** G. Yethirajulu, J.

**Acts :** [Prevention of Corruption Act, 1988](#) - Sections 2, 13(1) and 13(2);  
[Prevention of Corruption Act, 1947](#) - Sections 5(1), 5(2) and 5(3)

**Appeal No. :** Cri. Appeal No. 1671 of 2001

**Appellant :** M. Kishan

**Respondent :** State

**Advocate for Def. :** V. Ravi Kiran Rao, Spl. Public Prosecutor for ACB

**Advocate for Pet/Ap. :** C. Praveen Kumar, Adv.

**Judgement :**

**G. Yethirajulu, J.**

1. This appeal is directed against the judgment of the Additional Special Judge for SPE and ACB Cases, Hyderabad dated 16-10-2001.

2. The appellant is the accused in C.C. No. 10 of 1996. He was charged for the offence under Section 13(1)(e) read with Section 13(2) of the [Prevention of](#)

[Corruption Act, 1988](#) ('the Act' for brevity). He worked as a Technical Assistant in A. P. State Agro Industries Development Corporation Limited from 13-12-1968 to 27-4-1977 and later joined as an Assistant Motor Vehicles Inspector in the Transport Department on 29-4-1977. He was promoted as a Motor Vehicles Inspector on 5-3-1984. He is a public servant within the meaning of Section 2(c) of the Act. The Anti-Corruption Bureau (ACB) received information that the appellant acquired huge assets disproportionate to the known sources of income by indulging in corrupt practices. A crime was registered and investigated. A search was conducted over the properties of the appellant and on verification of the relevant records it came to light that the appellant's income from all known legal sources was Rs. 7,67,615/- and the expenditure was Rs. 4,07,541/- during the check period from 10-12-1968 to 14-7-1993. It was found that the appellant was in possession of assets to a tune of Rs. 10,32,543/-, which is disproportionate to the known sources of his income. The charge sheet was accordingly laid by the ACB in the trial Court.

3. A charge under Section 13(1)(e) read with Section 13(2) of the Act was framed, to which the appellant pleaded not guilty and claimed for trial. The prosecution examined PWs-1 to 21 and marked Exs.P1 to P.85. The appellant examined DWs-1 to 11 and marked Exs.D.1 to D.41. The learned Special Judge after considering the oral and documentary evidence adduced by both parties held that the appellant was in possession of assets disproportionate to all known sources of income to an extent of Rs. 2,93,975/- and failed to give satisfactory account for the same, therefore, he convicted the appellant for the offence under Section 13(1)(e) read with Section 13(2) of the Act and sentenced to undergo rigorous imprisonment (R.I.) for three years and to pay a fine of Rs. 20,000/- in default to suffer R.I. for six months. The appellant being aggrieved by the judgment of the Special Judge dated 16-10-2001 preferred this appeal challenging its validity and legality.

4. The learned Public Prosecutor contended that the appellant acquired many assets far disproportionate to the known sources of income by indulging in corrupt practices, therefore, the lower Court was right in passing the order of conviction and sentence. The appellant contended that the properties that were shown in the

list of assets were acquired by his wife from out of the savings of self-employment of tailoring and embroidery work and they are the properties of his wife.

5. During the course of arguments the learned counsel for the appellant submitted that the appellant is disputing Item Nos. 3 to 5 and 7 of the assets, Item Nos. 6, 9, 10, 12 and 13 of the income and Item Nos. 5, 11, 12 and 16 of the expenditure and there is no dispute regarding the other items.

6. In the light of the contention of both parties, the point for consideration is :

Whether the prosecution proved the guilt of the appellant of acquiring assets disproportionate to the known sources of income by corrupt practices beyond reasonable doubt and whether there are grounds to interfere with the conviction and the sentence imposed by the lower Court?

Point :

7. The family background of the appellant, as narrated by PW-20, the investigating officer, discloses that the appellant did not come from an affluent family. His family was not having any properties by the date of entry into Government service in the year 1968. His wife also did not bring any properties, except the customary gold ornaments and silver articles. He has three sons, but none of them were employed by the date of check. The appellant contended that his wife acquired professional skill in tailoring and embroidery in her leisure time. She took up self-employment by imparting training to some students in tailoring and embroidery besides doing embroidery work on sarees and garments. She used to get considerable income on self-employment. She is an income-tax assessee. She acquired the properties from the income derived by her through self-employment. In the light of the family background of the appellant and the contention that his wife was earning money through self-employment, it has to be verified whether the evidence placed by the prosecution proved that the appellant acquired assets disproportionate to the known sources of income and whether there is sufficient explanation from the appellant to show that the assets possessed by him were acquired through known legal sources of himself and his wife?

8. Since the appellant is disputing Item Nos. 3 to 5 and 7 of the assets, Item Nos. 6, 9, 10, 12 and 13 of the income and Item Nos. 5, 11, 12 and 16 of the expenditure, I wish to examine the evidence of the prosecution and defence witnesses and the judgment of the learned Special Judge only with regard to the items under dispute.

#### Disputed Items under the head 'ASSETS'

##### Item No. 3 :

9. In the year 1988 an agricultural land admeasuring Ac.3-24 guntas situated in Bachupathy Village was purchased in the name of the appellant's wife. Ex.P.47--agreement of sale dated 27-10-1988 was initially obtained in the name of the appellant for purchase of the said land at Rs. 45,000/-per acre. But, Ex.P.16--sale-deed dated 31-8-1990 towards purchase of the said land was obtained in the name of his wife showing that the entire land was purchased for Rs. 69,000/- per acre. The lower Court after considering the evidence of PW-20, DW-2 and Exs.P.48 and P.49--receipts held that since the payments were made as per the agreement of sale, the land was purchased @ Rs. 45,000/- per acre and not Rs. 69,000/-for the entire land. The total value of the land as per Ex.P.47 is Rs. 1,62,000/-. In the registered sale-deed it was shown as Rs. 69,000/- to avoid stamp duty and registration charges.

10. DW-2, a resident of Bachupathy village disposed that his brothers and himself purchased 125 acres of land in 1966 for Rs. 2,000/- under Ex.D.21--sale deed dated 28-11-1966. They and their tenants sold Ac.3-18 guntas to one Kishore @ Rs. 20,000/-per acre. The said Kishore in turn sold the said land to the wife of the appellant. Initially they entered into an agreement of sale for the same land to sell it @ Rs. 45,000/-per acre. Their tenant Veeraiah objected for execution of a registered sale-deed, therefore, his brothers and himself executed Ex.P.50--agreement of sale in favour of the appellant's wife. Subsequently, they cancelled the agreement. Veeraiah also entered into an agreement of sale covered by Ex.P.47 in respect of the same land in favour of the appellant's wife, but the same was also cancelled. Later, all of them executed Ex.P14 --General Power of Attorney in favour of Mr. Kishore and he in turn sold it to the wife of the appellant

under Ex.P. 16 -- sale-deed. In the cross-examination he stated that there is nothing in writing to show that the agreement of sale executed by him, his brothers and Veeraiah was cancelled. He denied a suggestion that Ex.P. 16 -- sale-deed was executed for avoiding stamp duty and registration charges by showing the value of the land at Rs. 69,000/-.

11. The appellant contended that as per Exs. P. 16 and P. 17 -- sale-deeds, the sale consideration was only Rs. 20,000/- per acre, but the agreements of sales and the receipts are clearly indicating that the land was purchased @ Rs. 45,000/- per acre. The appellant could not place any other material to show that he purchased the land at a lower price, therefore, the lower Court was right in holding that the value of the land was Rs. 1,62,000/-.

Item No. 4 :

12. This item pertains to a farm house bearing Plot No. 247 in S.No. 30 of Bachupally Village, Ranga Reddy District, which was purchased in the name of one Mr. Kishore Kumar. The prosecution alleged that during the course of search of the house of the appellant, Ex.P. 18 -- sale-deed standing in the name of the said Kishore Kumar, who is the sister's son of the appellant's wife was seized. The agricultural farm of the appellant is to the North of the said plot. The appellant constructed a house in the said plot and also a compound wall. He laid pipe lines etc. PW-4 evaluated the property at Rs. 1,86,610/- and gave Ex.P. 10 --- report. The total value of the assets, including the cost of the land and the farm house is arrived at Rs. 2,06,060/-. Ex.P.18 -- sale-deed along with the permission granted by the Gram Panchayat and copies of the plan for construction of the farm house was seized from the house of the appellant. The appellant did not dispute the seizure of those documents from his house. He took a plea that since the said Kishore Kumar constructed a house and as it was adjacent to Item No. 3 of Assets, it was taken by him on rent. The appellant did not examine the said Kishore Kumar to prove the purchase of the property in his name, occupation and source of income etc. The lower Court observed that there was a common compound wall to this item and Item No. 3. Both the plots were having a common entrance and water connection. Though the appellant contended that he took this

item on rent, he did not furnish the details as to when he took the said property on lease and what was the necessity for him to take the said property on lease. The lower Court therefore came to the conclusion that the appellant purchased this item in the name of Kishore Kumar and constructed a farm house, which is valued at Rs. 2,06,060/-.

13. It is noticed from the evidence available on record that the documents relating to this property were seized from the house of the appellant. The appellant neither tried through any of the defence witnesses to explain as to why those documents were available in his house nor examined the said Kishore Kumar to speak about his occupation and income and to assert that he is the owner of the property. He also did not place any material or elicit information from the prosecution witnesses that he is in occupation of this item of property by taking it on rent. In the light of the above circumstances, I do not find any grounds to interfere with the findings of the lower Court in respect of this item of property also.

Item No. 5 :

14. This item is a house plot situated at Bagh Ameerri village, Kukatpalli purchased in the name of the appellant's wife. The prosecution is contending that the appellant's wife agreed (Ex.P.53-agreement of sale) to purchase the house plot from the vendor of the plot by paying Rs. 2,32,260/- and, as per Ex.P.54 -- stamped receipt dated 27-12-1990, a sum of Rs. 75,000/- was paid as part of the sale consideration, but subsequently Ex.P. 12 -- sale-deed was obtained for Rs. 45,000/-.

15. The appellant did not dispute the seizure of Exs. P.53 and P.54 and also the genuineness of those documents. The vendor of this item of property was no other than the sister of the appellant's wife. He did not adduce any evidence to prove that the market value for the said house plot was not more than Rs. 45,000/- as on that date. In the absence of any material in favour of the appellant, the lower Court was right in coming to the conclusion that the property was purchased for Rs. 2,32,260/- and there are no grounds to interfere with the same.

Item No. 7 :

16. This item relates to purchase of a motor cycle by the appellant in the name of Sri. P. Babu Rao, the brother-in-law of the appellant per Rs. 32,315/-. It is the contention of the prosecution that during the course of house search, they found the motor cycle in the house of the appellant and the name of the appellant's son Sampath on the number plate of the motor cycle. The R.C. book (Ex.P.55) and the insurance certificate (Ex.P.56) were also seized from the house of the appellant during search, though they standing in the name of P. Babu Rao. It is the further contention of the prosecution that during the search PW-20 seized Ex.P.57 -- Government Diary of the year 1992 from the house of the appellant. Though the diary is supposed to be used by a Government employee, it was used by the appellant's son Sampath Kumar. In the page earmarked in the diary for writing the personal memoranda of an individual who uses the diary, the name of Sampath Kumar and the particular belonging to his personal memoranda were written. Thus, on perusing the diary, it is found that the diary was used by none other than the appellant's son and the writings found in the pages of the diary were written by him. It was written on the page dated 8-10-1992, which was marked as Ex.P.57 (a), of the diary that the said Sampath Kumar talked to the appellant for purchase of Yamaha motor cycle and at page dated 28-10-1992, which was marked as Ex.P.57(b), there is a mention that the Yamaha motor cycle was purchased and the appellant's son Sampath Kumar and his brother-in-law Babu Rao have taken the vehicle to Mohankali Temple for pooja and later Sampath Kumar dropped his brother -in-law at his house. The appellant did not dispute the contents of Exs.P.57, 57(a) and 57(b), but he contended that except seizure of the documents relating to the vehicle, no evidence was placed by the prosecution to show that the motor cycle was purchased for his son Sampath Kumar. The lower Court after taking into consideration the factum of the presence of motor cycle at the house of the appellant, the name of the appellant's son Sampath Kumar finding place on the number plate, the availability of the documents relating to the motor cycle in the house of the appellant, the entries in the diary of Sampath Kumar regarding the purchase of the motor cycle, the appellant's son taking the motor cycle to Mahankali Temple for pooja and dropping of his uncle at his house held that the motor cycle was purchased by the appellant in the name of his brother-in-law Babu Rao, therefore, added the value of the motor cycle of Rs. 32,315/- as one of

the items of assets. I do not find any grounds to interfere with the order of the lower Court in respect of this item of assets also.

Disputed Items under the head 'INCOME' Item No. 6 :

17. This item pertains to the income from the farm situated at Bachupally. The prosecution assessed the income from the farm during the check period at Rs. 17,625/-, but the appellant contended that the income from the farm during the check period was Rs. 2,31,040/-. PW-7, the Horticulture Officer who inspected the farm, stated that there are 160 mango and about 200 guava plants. The mango plants were aged about 2 to 3 years and the guava plants were planted very recently. About 30 guava plants were aged about 2 years. PW-20, the investigating officer, stated in his evidence that the appellant realized Rs. 17,625/- from December, 1992 to July 1993 by raising paddy crop in one acre land and the said income was calculated on the average yield and the cost of the paddy in the market during the relevant period. In the cross-examination he stated that the appellant's wife acquired the said property in August 1990 and December, 1990 in two spells. In the observation panchanama they mentioned that they found onions, tomato, green chillies and brinjal in the farm house and mango garden was raised in 3 acres of land. He denied a suggestion that he suppressed the income of the appellant during that period.

18. This property was purchased in August and December 1990, therefore, there was no possibility of raising any crop over the said land during that year. PW-20 took into consideration the income for the period from 1991-92 and 1992-93. Neither the appellant nor his wife entered the witness box to speak about the particulars of the crops, the period during which they were raised, the quantity of the vegetables that were sold, the persons to whom those vegetables were sold etc. But, they examined a private vegetable vendor as DW-3.

19. DW-3 deposed that he has the business of purchasing vegetables from agriculturists directly and selling them to retailers. He further stated that the appellant's wife by name Damayanthi used to sell vegetables to him and he used to give receipts covered by Ex.D.22. He was not a licenced vendor during the check period. He claimed that he obtained licence for the year 2000-2001. He did

not produce any licence for the check period. He claims that the wife of the appellant sold vegetables to him from 1990 to 1993 and he issued receipts of her for the vegetables purchased by him. It was suggested to his witness that he issued the receipts on plain paper to help the appellant at his request by antedating those receipts.

20. On perusing Ex.D.22 receipts the lower Court held that they were issued by the witness to help the appellant.

21. The receipts issued by this witness are not printed receipts. They are on white papers. They are not of same size and the paper was also not the same. The private vegetable merchants are generally not in the habit of issuing receipts to private vendors. The appellant's wife did not enter the witness box to explain whether she was selling vegetables through somebody or bringing them by herself, whether all the private vendors are in the habit of issuing receipts for the vegetables purchased by them. The lower Court after taking into consideration the claim of the appellant, evidence available on record and the report of PW-7, the Horticulture Officer, observing tender plants in the land with standing paddy crop, chilli and onions, assessed the income under this item at Rs. 1,50,000/-. After going through the record, I do not find any grounds to interfere with the finding of the lower Court on this item.

Item No. 9 (Addl. Item No. 1) :

22. This item relates to the salary income of the appellant prior to entering into Government service. The contention of the appellant is that before entering into Government service, he earned Rs. 1,685/- by working in M/s. Swastik Manufacturers Limited from January 1966 to February 1967. Since the appellant did not examine any person concerned with that organization or filed any document to prove that he worked under Swastik Manufacturers, the lower Court did not add this item of income. After going through the record, I do not find any material to accede to the contention of the appellant.

Item No. 10 (Item No. 2 of Additional Income) :

23. This item pertains to the income of the appellant's wife from tailoring and embroidery work. The appellant claimed that his wife earned Rs. 1,19,300/- from 1977-78 to 1991-92, but he did not adduce any evidence in support of the income except contending that the said income was shown by his wife in the income-tax returns filed by her. The wife of the appellant was filing income-tax returns with non-taxable income for the reasons best known to her. She did not enter the witness box to explain what were the factors that made her to file returns of income-tax by getting few thousands of rupees as income. The appellant did not adduce any other evidence as to what was the nature of work his wife was doing, how many hours she was sparing to attend the said work, whether she was doing that work on piece rate or on contract basis, how many customers used to come to get the work done etc. The lower Court observed that the mere filing of the income-tax returns is not sufficient to prove the income of the appellant's wife. In the absence of sufficient material regarding the occupation and income of the appellant's wife, I do not find any grounds to interfere with the finding of the lower Court under this item also.

Item No. 12 (Item No. 4 of the Additional Income) :

24. This item pertains to the agricultural income of the appellant from ancestral property. This item was rejected by the lower Court on the ground that the appellant did not adduce any evidence on this aspect. I do not find any grounds to interfere with the finding of the lower Court under this item.

Item No. 13 (Item No. 5 of the Additional Income):

25. The appellant claimed Rs. 66,272/-towards T.A. and D.A. for his official tours. The lower Court observed that the appellant is entitled for the amounts incurred by him during the official tour, therefore, it cannot be treated as an income and rejected the same.

26. Whenever a Government employee goes on tour, he has to spend money for boarding, lodging and conveyance. Whatever he spends for those purposes would be reimbursed by the Government in the form of T.A. and D.A., therefore, the lower Court was right in coming to the conclusion that this item of income cannot

be included under the head 'Income.'

Disputed items under the head 'EXPENDITURE'

Item No. 5 :

27. The prosecution estimated that the appellant spent Rs. 25,000/- towards maintenance of the vehicle. Since the appellant did not dispute the said item of property, the lower Court accepted the plea of the prosecution. It is contended on behalf of the appellant that this item of expenditure was included in the household expenditure, therefore, it cannot be again included under this head.

28. The prosecution had shown the household expenditure under Item No. 1 and the expenditure for maintenance of vehicles under Item No. 5. Had the amount been included in the items of household expenditure, it would not have been shown separately. The appellant could not point out as to what was the item of household expenditure that relates to the maintenance charges of the vehicles. In the absence of such material, I do not find any grounds to interfere with the finding of the lower Court on this item.

Item No. 11 :

29. This item pertains to payment of life tax for the motor cycle. In the light of the finding under Item No. 7 of assets, the lower Court was right in rejecting the plea of the appellant that the motorcycle belongs to P. Babu Rao. When it is established that the amount for purchase of the motorcycle was paid by the appellant, and the vehicle is being used by the appellant's son, the lower Court was right in adding the amount covered under this item as expenditure of the appellant. I do not find any grounds to interfere with the order of the lower Court under this item also.

Item No. 12 :

30. It relates to the permit fees paid to the farm-house. In the light of the finding under Item No. 14 of the assets that the farm house belongs to the appellant, and Kishore Kumar is not the owner of the farm house, the lower Court was right in

adding the amount of Rs. 309/- paid towards permit fees of the farm house to the expenditure of the appellant. I do not find any ground to interfere with the order of the lower Court under this item.

Item No. 16 :

31. This item pertains to payment of Municipal taxes. In the light of the findings under Item No. 14 of the assets and Item No. 12 of the Expenditure, I do not find any force in the contention of the appellant that the tax was paid by Kishore Kumar and the lower Court was right in rejecting the plea of the appellant under this item.

32. The appellant contended that his wife used to earn some money by doing tailoring and embroidery work, therefore, the income mentioned in the income-tax returns of his wife has to be taken into consideration before coming to the conclusion whether she had the capacity to purchase Item Nos. 1 to 3 and 5 of the assets.

33. The property purchased in the name of the wife of the accused or his kith and kin is liable to be included in his assets. Unless he establishes through oral and documentary evidence that the persons in whose name the properties were purchased have independent source of income through their occupations or other properties, those properties are not liable to be excluded from the assets of the accused. In the foregoing discussion, it was held that the wife of the appellant did not enter the witness-box to speak about the skills she possessed, whether she was a qualified tailor or embroider, whether she has undergone any training, what was the time she used to spare everyday in attending to that work, how many people were trained during the check period and what was the income she used to get. The non-taxable income-tax returns filed by the wife of the appellant cannot be accepted since those returns were filed even though the income shown in the returns comes within the purview of taxation. In the absence of sufficient evidence, the plea of the appellant that his wife was getting income cannot be accepted. In the absence of proof of income of his wife through tailoring and embroidery work, and she having any other source of income, the appellant cannot claim that the properties shown in Item Nos. 1 to 3 and 5 of the assets were purchased by his wife from out of her income. Since the appellant failed to adduce the evidence of

the persons in whose name the properties are standing or placed any other acceptable material, he failed to discharge his burden and this is leading to a presumption that those properties were purchased with the money of the appellant. When once it is established that those properties were purchased with the money of the appellant, the question of his wife getting income from those properties also does not arise.

34. The learned counsel for the appellant submitted that the mere acquisition of property by itself do not constitute an offence under the provisions of the Act, but it is the failure to satisfactorily accounting for makes the possession objectionable as offending the law. The learned counsel further submitted that since the appellant produced sufficient evidence regarding the source for acquisition, the lower Court erred in convicting him and he is entitled for acquittal. In support of his plea, the learned counsel relied on certain judgments of the Supreme Court and a judgment of this Court.

35. In *M. Krishna Reddy v. State Deputy Supdt. of Police, Hyderabad*, : 1993 CriLJ308 the Supreme Court while dealing with Section 5(1)(e) of the [Prevention of Corruption Act, 1947](#) held that failure of the prosecution to establish the criminality of the accused in acquiring the properties would entitle him to get an acquittal.

36. In *Krishanand v. State of M.P.*, : 1977 CriLJ566 the Supreme Court held as follows :

Sub-section (3) of Section 5 consists of two parts. The first part sets out the facts which if proved give rise to a rebuttable presumption. It requires, in order to the raising of this presumption, that the accused must be shown to be in possession of pecuniary resources or property disproportionate to his known sources of income and he should be unable to satisfactorily account for such pecuniary resources or property. If these facts are shown to exist, a presumption would be raised by the Court trying the offence that the accused was guilty of criminal misconduct in the discharge of his official duty. This presumption would of course be a rebuttable presumption and it would be open to the accused to establish that despite the disproportionate of his pecuniary resources, or property to his known sources of

income, he is not guilty of criminal misconduct in the discharge of his official duty. The burden of displacing the presumption would be on the accused and if he fails to discharge the burden, he would be liable to be convicted for the offence under Sub-section (2) of Section 5.

37. In the above decision, the Supreme Court while dealing with the aspect of benami transaction, further held as follows :

The burden of showing that a particular transaction is benami and the owner is not the real owner always rests on the person asserting it to be so and this burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of benami is the intention of the parties and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But, such difficulties do not relieve the person asserting the transaction to be benami of the serious onus that rests on him, nor justify the acceptance of mere conjectures or surmises as a substitute for proof. It is not enough merely to show circumstances, which might create suspicion, because the Court cannot decide on the basis of suspicion. It has to act on legal grounds established by evidence.

38. In *K. Goverdhan v. State of A.P.*, 2001 (1) Andh LD (Cri) 886 (AP) a single Bench of this Court presided by Justice Vaman Rao while dealing with Section 5(2) read with Section 5(1)(a) of the [Prevention of Corruption Act, 1947](#) held as follows :

Mere fact that the ostensible owner had no source of income in itself would not lead to any inference that the property in question was purchased with the income of a particular person. The absence of any source of income to the ostensible owner would merely indicate that the property might have been acquired with the income flowing from someone else. As to who that someone else is a matter of evidence and proof. That circumstance cannot lead to an inference that the property in question was acquired with the income from the accused.

39. According to the above decision, if the circumstances lead to an inference that the ostensible owner has no source of income to purchase such property and if they lead to an inference that the circumstances placed by the prosecution would establish that the money of the Government employee was utilised for purchase of the said property, it is sufficient to establish the guilt of such Government employee for possessing disproportionate assets to the known sources of income by getting it purchased benami.

40. The principles laid down by the Supreme Court are clearly indicating that whenever a property is in the name of another person, it is for the prosecution to establish that such property was purchased benami with the funds of such Government employee either by direct evidence or through circumstantial evidence.

41. In the present case, the prosecution placed sufficient evidence to establish that the appellant purchased the properties with his money in the name of his wife and brother-in-law. The seizure of the documents from the house of the appellant, the non-examination of the appellant's-wife to prove the source of income and the contention raised by the prosecution that she has no source of income, are the clear circumstances to establish that the appellant purchased the properties in the name of his wife and brother-in-law. Though the appellant tried to establish his case through the evidence of some witnesses, neither he nor his wife entered the witness-box and explained as to why the documents viz., the sale deeds of the farm house which are in the name of one Mr. Kishore Kumar, who is the son of his wife's sister and the R.C. book and insurance certificate, which are in the name of P. Babu Rao, brother-in-law of the appellant were kept in the house of appellant. The appellant did not dispute the seizure of the above documents from his house during search by the ACB officials. I therefore do not find any force in the submissions of the learned counsel for the appellant. In view of the foregoing discussion, Item Nos. 3 to 5 and 7 of the assets are not liable to be excluded, Item Nos. 6, 9, 10, 12 and 13 of the income are not liable to be included and Item Nos. 5, 11, 12 and 16 of expenditure are not liable to be excluded. I find no good ground to interfere with the conviction imposed by the lower Court against the appellant and it is accordingly confirmed.

42. The learned counsel for the appellant represented that the lower Court has passed the maximum sentence prescribed in the provision. He therefore requested that by taking into consideration the totality of the circumstances, a lenient view may be taken regarding the quantum of sentence.

43. By taking into consideration the circumstances of the case, the sentence of rigorous imprisonment of three years imposed by the lower Court is reduced and modified as rigorous imprisonment for one year.

44. In the result, the appeal is allowed in part by confirming the conviction given by the lower Court and by reducing and modifying the sentence of rigorous imprisonment of three (03) years to rigorous imprisonment for one year. The sentence of fine and default sentence remain unaltered.

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