Jastinder Singh Vs. State

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Court : Delhi

Decided On : Jul-25-2000

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Judge : Vijender Jain, J.

Acts : Prevention of Corruption Act, 1947 - Sections 5(1)(2)

Appeal No. : Criminal Appeal No. 210 of 1993

Appellant : Jastinder Singh

Respondent : State

Advocate for Def. : Mr. A.K. Dutta, Adv.

Advocate for Pet/Ap. : Mr. Sandeep Sethi, Adv

Judgement :
ORDER

Vijender Jain, J.

1. The appellant was prosecuted for the offence punishable under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 on the allegation that he was found to be in possession of pecuniary resources as on 9.2.1976 disproportionate to his known source of income. Appellant was found

guilty of criminal misconduct and he was convicted and sentenced to undergo rigorous imprisonment for one year and he was directed to pay fine of Rs.1 lakhs or in default to further undergo rigorous imprisonment of one year. Appellant joined services with Director General of Technical Development as Junior Field Officer on 10.7.1953 in the pay-scale of Rs. 250-500 and was promoted as Assistant Development Officer Grade-II on 7.2.1959 in the pay-scale of Rs. 400-600. He became Assistant Development Officer Grade-I on 4.1.1962 and remained on the said post till 7.6.1966 in the pay-scale of Rs. 450-950. He was promoted as Development Officer w.e.f. 8.6.1966 in the pay scale of Rs. 700-1600, which was revised to Rs. 1100-1800.

2. It was alleged that appellant while functioning and posted as Development Officer in the Director General of Technical Development w.e.f. 1.6.1970 to 9.2.1976 was found to be in possession of assets/property/pecuniary resources as on 9.2.1976 to the tune of Rs. 5,06,393/- standing either in his name or in the name of his family members and out of that assets worth Rs. 2,80,131/- was found to be disproportionate to his known source of income after adjusting his total saving of Rs. 2,26,262/-.

3. Mr. Sandeep Sethi, learned counsel appearing for the appellant, has challenged the findings of the Trial Court. He has contended that the disproportionate assets found by the Trial Judge after deducting 10% of the amount was Rs. 1,88,700/= and the appellant had explained each and every item which was wrongly added as an asset of the appellant.

4. Mr. Sethi has assailed the impugned judgment on three counts. Firstly, that the Trial Court had grossly erred in appreciating the evidence which was brought on record by the appellant to demonstrate that the assets alleged to have been found in the hands of the appellant was not assets of the appellant but of his wife and other family members. Secondly, it was contended before me that the Trial Judge fell in error by first holding that some of the amounts were to be excluded from the assets of the appellant but in concluding paragraph of the impugned order the Trial Judge instead of excluding those amount has included these amounts as the income of the appellant. Lastly, it was contended before me that the onus of proof

has been wrongly placed on the appellant. As a matter of fact, it was the prosecution which had to prove its case and no cogent evidence or material was brought by the prosecution with regard to the fixed deposit accounts in the name of the minor children of the appellant and other relations that in fact these belonged to appellant, yet the amounts lying in these accounts were treated as asset of the appellant.

5. On the other hand, Mr. A. K. Dutta, learned counsel appearing for the respondent has contended that the Trial Court has gone in detail and discussed the evidence and, thereforee, there is no reason to set aside the finding of the Trial Court. He has further contended that it is not a case of improper appreciation of evidence and, thereforee, this Court will not interfere in the finding of the Trial Court. He has contended that the appellant was charged for having found in possession of disproportionate assets amounting to Rs. 2.80 lakhs. F.I.R. was registered against the appellant on 4.2.1976 under Section 5 (2) and 5 (1) (e) of the Prevention of Corruption Act 1947. Mr. Dutta further contended that disproportionate assets was found to the extent of Rs. 2.10 lakhs and after giving a benefit of 10%, the appellant was found to have possessed assets worth Rs. 1,88,700/- for which he could not give any Explanationn. Mr. Dutta has further contended that Trial Court has taken into consideration the income as well as expenditure and has taken every item in this regard for arriving at the correct conclusion. It has been further contended by Mr. Dutta that the immoveable properties in the name of appellant's wife have correctly been added as per paras-157 to 173 of the impugned judgment. He has also strongly defended the addition of the money in the joint accounts in the name of the wife and minor children of the appellant. He has further contended that as the wife of the appellant did not have any income prior to the year 1969, thereforee, it was for the appellant to discharge onus that the amounts so deposited in the bank accounts either in the name of the wife or minor children of the appellant were not deposited by the appellant. He further contended that the prosecution has fixed check period from June,'1970 to February'1976 and cited in his support State of Maharashtra v. Pollonji Darabshaw Daruwalla (supra) in which Supreme Court held:-

'The assumptions implicit in the above observation of the High Court suffer from a basic fallacy. It is for the prosecution to choose what according to it, is the period which having regard to the acquisitive activities of the public servant in amassing wealth, characterise and isolate that period for special scrutiny. It is always open to the public servant to satisfactorily account for the apparently disproportionate nature of his possession. Offence the prosecution establishes the essential ingredients of the offence of criminal misconduct by proving, by the standard of criminal evidence, that the public servant is, or was any time during the period of his offence, in possession of pecuniary resources or property disproportionate to his sources of income known to the prosecution, the prosecution discharges its burden of proof and the burden of proof is lifted from the shoulders of the prosecution and descends upon the shoulders of the defense. It then becomes necessary for the public servant to satisfactorily account for the possession of such properties and pecuniary resources. It is erroneous to predicate that the prosecution should also disprove the existence of the possible sources of income of the public servant. Indeed in State of Maharashtra Vs . Wasudeo Ramchandra, : 1981 CriLJ884 this court characterised the approach of that kind made by the High Court as erroneous. It was observed (at p. 1189):

'.....The High Court, thereforee, was in error in holding that a public servant charged for having disproportionate assets in his possession for which he cannot satisfactorily account cannot be convicted of an offence under S. having disproportionate assets in his possession for which he cannot satisfactorily account cannot be convicted of an offence under S.5(2) read with S.5(1)(e) of the Act unless the prosecution disproves all possible sources of income.'

In the present case, the selection of a ten year period between 1-4-1958 and 31-12-1968 cannot, by reason alone of the choice of the period, be said to detract from the maintainability of the prosecution.'

6. Mr. Dutta has stated on the basis of the compilation that the maximum income of the appellant's wife from agricultural land during the check period would be Rs. 45,000/-, from rent of house at Chandigarh would be Rs. 31,120/= and from rent of showroom at Chandigarh at Rs. 30,478/-, however, interest is added at Rs.

15,523/- and the said amount would be Rs. 1,22,121/-. Even if this income is taken to be appellant's income the benefit which has been given by the Trial Court to the appellant on account of wife's income is more. Mr. Dutta has strongly contended that the bank accounts and fixed deposit of wife of the appellant was rightly added as an asset of the appellant and has based his arguments on the reasoning given in the judgment. Mr. Dutta also tried to canvass before me that jewellery found of the wife of the appellant amounting to 153 grams valued at Rs. 7,650/- could not have been the jewellery of Satpal Kaur but the same was the asset of the appellant.

7. Let me deal in detail with the submissions of the parties. The appellant has challenged the inclusion of Rs. 82,376/- with regard to bank accounts and fixed deposit of his wife, Smt. Satpal Kaur, and had contended that the same has been wrongly added as asset of the appellant. In para-116 of the impugned judgment the Trial Court has recorded that the accused has valued the amount of Rs. 90,000/- as income of his wife and had disputed that the same cannot be clubbed with the income of the appellant or his assets. Reliance was placed by the appellant to Ex. PW-1/A/10, gift deed for 24 bighas and 18 bids was of land/; Ex. PW-62/DA; Ex. PW-71/DQ, court decree for transfer of 43 bighas and 4 bids was in the name of Satpal Kaur; Ex.PW-71/DK, PW-62/DE, PW-1/A-19 to 22 i.e. gift deeds for about 10 bighas totalling agricultural land of about 78 bighas. In para-117 of the impugned judgment the Trial Court returned the finding that there cannot be any escape but to hold that no amount of income can be included towards that of the appellant under this head. The prosecution has considered a sum of Rs. 31,000/- as income of the appellant from agricultural land belonging to his wife, Smt. Satpal Kaur. Even if I do not take into consideration the land measuring 10 bighas which was acquired by the wife of the appellant in the year 1972, no fault with the finding of the Trial Judge can be found by agreeing to the value of the income of the wife to be Rs. 90,000/= but the said income ultimately has not been excluded from the disproportionate asset found by the Trial Judge in the impugned order.

8. With regard to the fixed deposit of appellant's in-laws jointly with minor children of the appellant it was for the prosecution to show that the saving bank account

No. 9416 with Central Bank of India, Chandigarh, in the joint name of Miss Amita Sodhi, daughter of the appellant with Shri Durga Singh, brother-in-law of the appellant which showed a balance of Rs. 860/= as on 12.1.1976 belonged to the appellant. The said account was opened on 26.12.1975. Once an account was opened in the name of account holders, Shri Durga Singh and Amita Sodhi, it was for the prosecution to show that, as a matter of fact, no account was opened by Shri Durga Singh and Amita Sodhi but the same was opened by the appellant. Merely because money in the said account was deposited by the wife of the appellant, it cannot be taken as an asset of the appellant. Similarly, the fixed deposit account, Ex.PW-52/N-3, in the joint name of Master Mohan Singh, son, and Smt. Tarawanti, mother-in-law of the appellant, was opened on 24.12.1969 having a total balance of Rs. 7208.83 paise. Item No. 8 F. D. Account in the joint name of Miss Amita Sodhi, daughter, and Smt. Tarawanti, mother-in-law of the appellant, with Central Bank of India, Sohana, which showed a balance of Rs. 7740.34 paise vide Ex. PW-52/N-1, was opened on 24.12.1969. Item No. 9, F.D. Account in the joint name of Miss Amita Sodhi, minor daughter, and Shri Mela Ram, father-in-law of the appellant, vide Ex. PW-52/N-2, started on 21.6.1971. Item no.10, F.D. Account vide Ex. PW-52/N-4, with Central Bank of India, Sohana in the joint name of Master Manmohan Singh, son, and Shri Mela Ram, father-in-law of the appellant, showed a balance of Rs. 5245.45 paise was started on 21.6.1971 and item no.11, joint account with Central Bank of India at Sohana in the name of Master Navdeep, minor son, and Smt. Tarawanti, mother-in-law of the appellant, with balance of Rs. 4966.17 paise was started on 22.1.1972. The Trial Judge held in para-195 that the amount pertaining to item No. 6, i.e. in the joint name of Miss Amita Sodhi, daughter, and Shri Durga Singh, brother-in-law of appellant, was not an asset of the appellant. While arriving at conclusion in para-201 of the impugned judgment, the same has been taken as the moveable asset of the appellant. The presumption that the amount, though deposited by the wife of the appellant, did not pertain to the account holder without any evidence in its support was contrary to law. The presumption is that when a bank account is opened, the opening form is signed by the parties and the account may be operated by either attorney or some other person on accountholder's behalf. There was no evidence before the Trial Court to come to a finding that it was Smt. Satpal

Kaur, who has taken the money from the appellant and deposited the same. On the contrary, there was evidence to the contrary to rebut the presumption in view of the testimony of PW-52, Shri U.C. Taneja, who was the Branch Manager of Central Bank of India to that effect that father-in-law of the appellant was wealthy person and it is not uncommon that the in-laws being well of could deposit small amounts, as have been mentioned, in favor of children of their daughter.

9. Assumption that depositor whose name appears first was not beneficial owner but was Benamidar is erroneous. Supreme Court in State of Maharashtra Vs . Pollonji Darabshaw Daruwalla : 1988 CriLJ183 held:-

'Equally erroneous is the view of the High Court on the proposition noticed at point (b). The assumption that in all joint deposits, the depositor first names alone is the beneficial owner and the depositor named second has no such beneficial interest is erroneous. The matter is principally guided by the terms of the agreement, inter se, between the joint depositors. It, however, the terms of the acceptance of the deposit by the depositee stipulate that the name of the beneficial owner shall alone be entered first, then the presumptive beneficial interest in favor of the first depositor might be assumed. There is no such material before the court in this case.

Indeed, the answers of the respondent to the specific questions under S. 342, Cr.P.C. pertaining to the nature of the deposits and the suggestion - implicit in the questions - as to the beneficial ownership in the respondent in the deposits do not support the view of the High Court and lend credence to any doubts in the matter. Respondent virtually acknowledged his beneficial interest in the deposits in the course of his examination under S.342. The view of the High Court on point (b) is clearly unsustainable.

However, these errors of approach and of assumption and inference in the judgment under appeal do not, by themselves, detract from the conclusion reached by the High Court that, in the ultimate analysis, the prosecution has not established the case against respondent beyond reasonable doubt.

The discussion of and the conclusion reached on the contents and parts c) to (e) by the High Court tends to show that the disproportion of the assets in relation to the known sources of income is such that respondent should be given the benefit of doubt though, however, on a consideration of the matter, it cannot be said that there is no disproportion or even a sizeable disproportion. For instance, Shri Bhasme is right in his contention that the acceptance by the High Court of the case of the alleged gift from the mother is wholly unsupported by the evidence. There are also other possible errors in the calculations in regard to point (c). The finding becomes inescapable that the assets were in excess of the known sources of income.

But on the question whether the extent of the disproportion is such as to justify a conviction for criminal misconduct under S. 5(1)(e) read with S. 5(2), we think, we should not, in the circumstances of the case, interfere with the verdict of the High Court as, in our view, the difference would be considerably reduced in the light of the factors pointed out by the High Court. A somewhat liberal view requires to be taken of what proportion of assets in excess of the known sources of income constitutes 'disproportion' for purposes of S.5(1)(e) of the Act.'

10. Supreme Court in Rabindra Kumar Dey Vs . State of Orissa : 1977 CriLJ173 , while dealing with a case under prevention of Corruption Act held:-

'.....Another question that arises is what are the standards to be employed in order to judge the truth or falsity of the version given by the defense? Should the accused prove his case with the same amount of rigour and certainty, as the prosecution is required, to prove and criminal charge, or it is sufficient if the accused puts forward a probable or reasonable Explanationn which is sufficient to throw doubt on the prosecution case?'

'.....The Evidence Act does not contemplate that the accused should prove his case with the same strictness and rigour as the prosecution is required to prove a criminal charge. In fact, from the cardinal principles referred to above, it follows that, it is sufficient if the accused, is able to prove his case by the standard of preponderance of probabilities as envisaged by Section 5 of the Evidence Act as a result of which he succeeds not because he proves his case to the hilt but

because probability of the version given by him throws doubt on the prosecution case and, thereforee, the prosecution cannot be said to have established the charge beyond reasonable doubt. In other words, the mode of proof, by standard of benefit of doubt, is not applicable to the accused, where he is called upon to prove his case or to prove the exceptions of the Indian Penal Code on which he seeks to rely. It is sufficient for the defense to give a version which competes in probability with the prosecution version, for that would be sufficient to throw suspicion on the prosecution case entailing its rejection by the Court. This aspect of the matter is no longer rest integra but is concluded by several authorities of this Court. In Harbhajan Singh Vs . State of Punjab, : 1966 CriLJ82 this Court observed as follows:

'But the question which often arises and has been frequently considered by judicial decisions is whether the nature and extent of the onus of proof placed on an accused person who claims the benefit of an Exception is exactly the same as the nature and extent of the onus placed on the prosecution in a criminal case; and there is consensus of judicial opinion in favor of the view that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. That, no doubt, is the test prescribed while deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but that is not a test which can be applied to an accused person who seeks to prove substantially his claim that his case falls under an Exception. Where an accused person is called upon to prove that his case falls under an Exception, law treats the onus as discharged is the accused person succeeds 'in proving a preponderance of probability.' As soon as the preponderance of probability is proved, the burden shifts to the prosecution which has still to discharge its original onus. It must be remembered that basically, the original onus never shifts and the prosecution has, at all stages of the case, to prove the guilt of the accused beyond a reasonable doubt.'

The same view was taken in a later case in State of U.P. Vs . Ram Sarup, : 1974 CriLJ1035 , where this Court observed as follows:

'That is to say an accused may fail to establish affirmatively the existence of circumstances which would bring the case within a general exception and yet the facts and circumstances proved by him while discharging the burden under Section 105 of the Evidence Act may be enough to cast a reasonable doubt on the case of the prosecution, in which event he would be entitled to an acquittal. The burden which rests on the accused to prove the exception is not of the same rigour as the burden of the prosecution to prove the charge beyond a reasonable doubt. It is enough for the accused to show, as in a civil case, that the preponderance of probabilities is in favor of his plea.'

While the Courts below have enunciated the law correctly, they seem to have applied it wrongly by overlooking the mode and nature of proof that is required of the appellant. A perusal of the oral and documentary evidence led by the parties goes to show that the Courts not only sought the strictest possible proof from the appellant regarding the Explanationn given by him, but went to the extent of misplacing the onus on the accused to prove even the prosecution case by rejecting the admissions made by the prosecution witnesses and by not relying on the documents which were in power and possession of the prosecution itself on the speculative assumption that they were brought into existence by the accused through the aid of the officers. Furthermore, the Courts below have failed to consider that once the accused gives a reasonable and probable Explanationn, it is for the prosecution to prove affirmatively that the Explanationn is false. In a criminal trial, it is not at all obligatory on the accused to produce evidence in support of his defense and for the purpose of proving his version he can rely on the admissions made by the prosecution witnesses or on the documents filed by the prosecution. In these circumstances, the Court has to probe and consider the materials relied upon by the defense instead of raising an adverse inference against the accused for not producing evidence in support of his defense, because the prosecution cannot derive any strength or support from the weakness of the defense case. The prosecution has to stand on its own legs, and if it fails to prove its case beyond reasonable doubt, the entire edifice of the prosecution would crumble down.'

11. From the arguments advanced by the counsel for the appellant. I find further inconsistency in the approach of the trial court with regard to the addition of Rs. 50,500/-, value of 1/4th share in the show-room at Chandigarh in the name of Smt. Satpal Kaur. The income derived from the said show-room at Chandigarh which has been quantified by the appellant to be that of his wife Satpal Kaur, amounting to Rs. 30,100/-. PW 19 R.K. Sharma who proved the lease-deed (Ex.PW 19/A) stated that the same was leased out to the Ministry of defense at the rate of Rs. 1,900/- per month. PW 19 further stated that he was a power of attorney holder on behalf of the other partners also of the same property. The trial court in paragraph 119 has dealt this controversy in the following manner:-

'The prosecution has fixed Rs. 50,516-00 as the income received by the accused under this item. As discussed above that since after 1969, Smt. Satpal Kaur acquired some agricultural land, thereforee, it is expected that she had some independent source of income other than that of her husband and since it is the prosecution case itself that 1/4th share in Show Room in the name of Satpal Kaur was purchased and constructed after 29.2.1970, thereforee, it appears to me reasonable not to club income from this property, i.e. 1/4th share in show room at Chandigarh with that of the accused. Reason is very simple. Ostensible owner is Smt. Satpal Kaur and there are no circumstances suggesting that in purchasing the share or constructing the show room any money of the accused is involved.'

12. However, when the trial court dealt with this amount of Rs. 50,500/- in paragraph 203 of the impugned judgment, the same was included in the total assets of the appellant.

13. This is a grave inconsistency and contradiction wherein the trial court after holding that in the amount of Rs. 50,500/-, the money of the appellant was not involved and then returning its finding that the same constituted the assets of the appellant, shows inconsistent approach of the trial court.

14. As per the statement of PW. 13, N.K. Joshi, Manager of M/s Boots India Ltd., Chandigarh, that the premises were let out at monthly rent of Rs. 1740/- since November, 1972 and at monthly rent of Rs. 1925/- w.e.f. 15.11.1975 and at monthly rent of Rs. 3400/- w.e.f. 1.12.1978 and if that amount of rent which was

received by Smt. Satpal Kaur amounting to Rs. 30,100/- as well as the amount which was arrived at by the trial court as income from the agricultural land of Smt. Satpal Kaur amounting to Rs. 90,000.00 is taken together into consideration, then the finding arrived at by the trial court with regard to the bank account of Smt. Satpal Kaur as recorded in paragraph 157,158,159,160,161,169 and 170 in relation to Rs. 82,476.00 which also included the interest income could not have been clubbed with the income of the appellant. Firstly, on account of the fact that Fixed Deposit Account No. 784 with Punjab National Bank, Lajpat Nagar, New Delhi as per the testimony of PW 60 was opened in the year 1968. Post Office Account No. 5661192 was started on 20.2.1967, Account No. 15200 in Srinivas Puri, Post Office, New Delhi was opened on 20.2.1967, Saving Bank Account No. 6023 in Central Bank of India, Chandigarh was opened on 22.6.1971 with a deposit of Rs. 4052.32, transferring from House Saving Scheme Account No. 3195-A of the same bank, which account was opened in 1965. Similarly, Account No.44/7, Central Bank of India, Chandigarh was initially opened on 7th June, 1969. Clubbing of the aforesaid amounts with the income of the appellant was not proper as the accounts were opened prior to check period which was from June, 1970 till June, 1976. In view of the testimony of the tenants that the amount from the show-room of the Chandigarh was paid in the account at Chandigarh, the clubbing of deposits of rent in Savings Bank Account at Punjab National Bank was also contrary to the finding by the trial court itself.

15. It was contended that jewellery belonging to the wife of appellant, Satpal Kaur, amounting to Rs. 7650/- have also been added as assets of the appellant. I find substance in the arguments advanced by the appellant that the amount of Rs. 7650/- in relation to the jewellery, which was recovered weighing 150 grams approximately, could not have been added to the income of the appellant. PW-71, who was the I.O., stated in his testimony:-

'I cannot say if all the ornaments found in the house search were old or not. I do not recollect if some of the gold ornaments were old one. In the inventory Ex. PW-18/C has not been mentioned as to whether the ornaments were old or new.'

16. The seizure took place on 4.2.1976 in view of the testimony of Satpal Kaur that she got old ornaments weighing 50 or 55 Tolas in her marriage coupled with the testimony of Prem Prakash, PW-70, that 60 Tolas of gold ornaments and 100 bighas of land was given to Satpal Kaur in her marriage by father-in-law of the appellant, inclusion of amount of Rs. 7650/- on account of jewellery by the Trial Judge in the assets of the appellant was not correct. Taking in view the testimony of all the witnesses, referred to above, the burden of proving that the gold ornaments belonged to the appellants and not to Satpal Kaur was on the prosecution. No material was brought on record by the prosecution to discharge this burden. Supreme Court in State of Maharashtra Vs . Wasudeo Ramchandra Kaidalwar, : 1981 CriLJ884 held :-

'That takes us to the difficult question as to the nature and extent of the burden of proof under Section 5(1)(e) of the Act. The expression 'burden of proof' has two distinct meanings

(1) the legal burden, i.e. the burden of establishing the guilt, and

(2) the evidential burden i.e. the burden of leading evidence. In a criminal trial, the burden of proving everything essential to establish the charge against the accused lies upon the prosecution, and that burden never shifts. Notwithstanding the general rule that the burden of proof lies exclusively upon the prosecution, in the case of certain offences, the burden of proving a particular fact in issue may be laid by law upon the accused. The burden resting on the accused in such cases is, however, not so onerous as that which lies on the prosecution and is discharge by proof of a balance of probabilities. The ingredients of the offence of criminal misconduct under S. 5

(2) read with S. 5

(1) (e) are the possession of pecuniary resources or property disproportionate to the known sources of income for which the public servant cannot satisfactorily account. To substantiate the charge, the prosecution must prove the following facts before it can bring a case under S. 5

(1) (e), namely,

(1) it must establish that the accused is a public servant,

(2) the nature and extent of the pecuniary resources or property which were found in his possession,

(3) it must be proved as to what were his known sources of income i.e. known to the prosecution, and

(4) it must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income. Once these four ingredients are established, the offence of criminal misconduct under S.5

(1) (e) is complete, unless the accused is able to account for such resources or property. The burden then shifts to the accused to satisfactorily account for his possession of disproportionate assets. The extent and nature of burden of proof resting upon the public servant to be found in possession of disproportionate assets under Section 5

(1) (e) cannot be higher than the test laid by the Court in Jhingan's case : [1966]3SCR736 (supra), i.e. to establish his case by a preponderance of probability. That test was laid down by the Court following the dictum of Viscount Sankey, L.C. in Woolmington v. Director of Public Prosecutions (1935) AC

462. The High Court has placed an impossible burden on the prosecution to disprove all possible sources of income which were within the special knowledge of the accused. As laid down in Swamy's case : 1960 CriLJ131 (supra), the prosecution cannot, in the very nature of things, be expected to know the affairs of a public servant found in possession of resources of property disproportionate to his known sources of income i.e. his salary. Those will be matters specially within the knowledge of the public servant within the meaning of S.106 of the Evidence Act, 1872. Section 106 reads:-

Section 106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

In this connection, the phrase the burden of proof is clearly used in the secondary sense, namely, the duty of introducing evidence. The nature and extent of the burden cast on the accused is well settled. The accused is not bound to prove his innocence beyond all reasonable doubt. All that he need do is to bring out a preponderance of probability.

Such being the law, the question whether or not the respondent had established a preponderance of probability is a matter relating to appreciation of evidence. On a consideration of the evidence adduced by the respondent the High Court has taken the view that it is not possible to exclude the possibility that the property found in possession of the respondent belonged to his father-in-law, Hanumanthu. We have been taken through the evidence and we cannot say that the finding reached by the High Court is either manifestly wrong or perverse. Maybe, this Court, on a reappraisal of the evidence; could have come to a contrary conclusion. That however, is hardly a ground for interference with an order of acquittal. There are no compelling reasons to interfere with the order of acquittal, particularly when there is overwhelming evidence led by the respondent showing that his father-in-law, Hanumanthu, was a man of affluent circumstances. There is no denying the fact that Hanumanthu was the pairokar of Raja Dharmarao Zamindar of Aheri Estate and by his close association with the Zamindar, had amassed considerable wealth. More so, because two of his sisters were the kept mistresses of the Zamindar and amply provided for.'

17. Supreme Court in M. Krishna Reddy Vs . State Deputy Superintendent of Police, Hyderabad, : 1993 CriLJ308 held:-

'...To rebut the case of the appellant that the certain jewellery was Stridhana, we do not find any material on the side of the prosecution. The evidence led by the appellant to substantiate that the jewellery of his wife were Stridhana are more acceptable. Under these circumstances, we are unable to agree with the finding of the High Court and on the other hand, we hold that the sum of Rs. 65,657.06 representing the value of the gold jewellery should be given a deduction from the

value of the disproportionate assets.'

'....Needless to say that this Court on a series of decisions have laid down the guidelines in finding out the benami nature of a transaction. Though it is not necessary to cite all those decisions, it will suffice to refer to the rule laid down by Bhagwati, J. as he then was in Krishnanand Agnihotri Vs . State of M.P. : 1977 CriLJ566 . In that case, it was contended that the amounts lying in fixed deposit in the name of one Shanti Devi was an asset belonging to the appellant and that Shanti Devi was a benamidar of the appellant. The learned Judge speaking for the Bench has disposed of that contention holding that: (para 26 of AIR):

'.....It is well settled that the burden of showing that a particular transaction is benami and the appellant 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.'

18. There is yet another discrepancy, which was brought to my notice by the appellant. At page-70 in para-123 of the impugned judgment a statement has been shown thereby totalling Rs. 58,927,27 paise, which the prosecution has deducted considering the same as assets held prior to the check period. However, FDR account, Ex. PW-57/DA, principal amount of FDR No. 5/401 on 4.8.1969 was Rs. 6000/- and the said FDR was renewed on 4.8.1970 but the same has not been added, thereforee, that ought to have been deducted from the disproportionate assets found by the Trial Judge.

19. The income tax paid by the wife of the appellant, Satpal Kaur, amounting to Rs. 1968/- has also been added to the disproportionate asset held by the appellant. Although, no reason, as to why it has been shown as the asset of the appellant, has been give in the impugned judgment. When the Trial Court itself

came to a conclusion that Satpal Kaur admittedly had her own source of income, it would be reasonable inference to draw that she could have paid a sum of Rs. 1968/- towards income tax. On the other hand, the prosecution failed to establish by leading any cogent and satisfactory evidence that that amount of the tax paid by Satpal Kaur was not actually paid by Satpal Kaur but by the appellant. Same precedes on surmises and conjectures and has basis on no evidence, thereforee, there was no reason not to believe the statement of Satpal Kaur that the sum of Rs. 1968/- was paid by her. In Krishnanand Agnihotri Vs . State of M.P. : 1977 CriLJ566 Supreme Court held:-

'It is well settled that the burden of showing that a particular transaction is benami and the appellant 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 although. 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.'

20. I also find force in the arguments of the counsel for the appellant that the income received from Government amounting to Rs. 7058.20 paise has been included in income of the appellant by the Trial Court. In para-84 of the impugned judgment the Trial Court has taken into consideration that a sum of Rs. 7058.20 paise was received by the appellant from the Government, which was admittedly received by cheques by the appellant from the Government as per the testimony of PW-71 at page-303 of the paper book in his saving bank account, vide Ex.PW-68/A and Ex.PW-57/A, still the said amount has been added towards the disproportionate assets of the appellant. The reasoning of doing so as given in the impugned judgment is that while calculating the income from salary and allowances the net amount received by the appellant was to be accepted. I find this reasoning to be totally erroneous. There was no evidence that this payment, which was received by the appellant from 2.7.1971 up to 23.1.1976 amounting to

Rs. 7058.20 paise was not by Government. It is not to be forgotten that a Government servant receives the salary and sometime on account of revision of dearness allowance or some other allowance gets the arrears in subsequent months or may be subsequent years. The figures, which have been shown in para-84 of the impugned judgment, are from Rs. 100/- to Rs. 900/- for various months from 1971 to 1976. To hold in the absence of any evidence that these payments, which were received by cheques from the Government and adding the same to the disproportionate assets of the appellant was totally erroneous. The same had to be excluded. I am unable to understand in the absence of any reasoning or material whatsoever produced by the prosecution as to how this amount could have been added to the assets of the appellant.

21. In view of the discussions above, I have no hesitation in setting aside the impugned judgment and order of sentence.

22. The same are hereby quashed. Appeal is allowed.