**S.K. Ghosh Vs. State**

**S.K. Ghosh Vs. State**

**SooperKanoon Citation** : sooperkanoon.com/884187

**Court** : Kolkata

**Decided On :** Jul-03-1986

**Reported in** : 1987CriLJ581

**Judge** : Sudhangsu Sekhar Ganguly, J.

**Appellant** : S.K. Ghosh

**Respondent** : State

**Judgement** :
ORDER

**Sudhangsu Sekhar Ganguly, J.**

1. This revisional application HD/1D/D779/86/HR has been filed for the quashing of the proceedings in Special Court case, 6 of 1970, Under Section 5(2) read with Section 5(1 )(e), Prevention of Corruption Act, 1947, together with the order dt. 30-3-1983 passed in it framing charge against the present petitioner under the provisions of the law mentioned above.

2. It appears that the petitioner held the post of Deputy Assistant Director General in the office of the Director General of Ordnance Factories, Calcutta, in January 1961 and worked continuously in the Truck Section of that office up to 1966 by which time he was promoted as Assistant Director General. While posted in this office the petitioner handled theplacement of a number of supply orders for truck

components required for production of Nissan and Shaktiman Trucks in the Gun Carriage Factory at Jabalpur. The complaint against the petitioner was that during the period 1-1-61 to 31-8-67 he acquired assets worth Rs. 6,22,424.90 which was disproportionate to his known sources of income and for which he could not give any satisfactory account. Hence, the complaint against the petitioner after obtaining sanction for his prosecution.

3. It appears that the prosecution examined not less than 170 witnesses and exhibited not less than 367 pieces of exhibits. On a consideration of all the materials on record the learned Judge has concluded that (1) the assets held by the accused during the aforementioned period was more or less double of his income from his known sources of income and he drew up a charge as per the provision of the law mentioned above holding further that (2) the sanction for prosecution in this case was a valid one.

4. 11 is urged from the side of the petitioner that the learned Judge did not take into consideration several items of legitimate income in the shape of gift and that the assessment of valuations of houses as accepted by the learned Judge was all wrong and exaggerated and it is suggested that if the omitted items of gifts, etc., are taken into consideration and the valuation of the houses cut down to their appropriate valuation, the so-called unaccounted difference between the value of the assets and the income of the petitioner will cease to exist. The validity of the sanction as upheld by the learned Judge has also been questioned again.

5. The prosecution allegation regarding income and expenditure of the petitioner and assets acquired during the relevant period may be tabulated as below:

INCOME

1. Pay & Allowances .. Rs. 91,457.33

2. Rent realised from .. Rs. 18,120.00

houses...

3. Interest... .. Rs. 2,601.72

4. Outstanding loan ..

from L.I.C... .. Rs. 18,144.41

5. Outstanding

advance received

for purchase of Car.. .. Rs. 11,800.00

---

Rs. 1,42,123.4

II

EXPENDITURE

1. Insurance premium

paid... .. Rs. 21,145.87

2. Govt. Insurance

premium... .. Rs. 3,734.14

3. Car expenses.. .. Rs. 22,139.06

4. Edn. expenses for

children... .. Rs. 8,145.85

5. H.R. paid .. Rs. 14,485.76

6. Med. expenses .. Rs. 6,132.50

---

Rs. 1,82,419.08

III

ASSETS

1. Landed property.. ... Rs. 16,316.00

Rs. 1,93,400.00

2. Movables including

cash... ... Rs. 50,938.50

3. Motor Car

(Ambassador)... ... Rs. 15,353.00

4. Motor Car (Fiat)... ... Rs. 18,801.50

Assets as on 31-8-67 ... Rs. 3,26,204.85

Less assets as on 1-1-61 ... Rs. 32,239.69

Assets acquired during

the period 1-1-61 to

31-8-67... ... Rs. 2,93,965.16

Benami Assets acquired during 1965-66:

a) Property at Ranchi .. Rs. 1,10,000.00

b) Three flats in the ... .. Rs. 42,987.00

c) Names of mother,

mother-in-law... .. Rs. 38,000.00

d) wife and sister ... .. Rs. 62,987.00

e) Boral garden in the

name of brother ... .. Rs. 15,000.00

f) Truck No. WBK

8243 in the name of

wife and brother... .. Rs. 19,190.12

---

Rs. 2,88,164.12

---

Grand total of assets .. Rs. 5,82,129.28

Adding the excess expenditure (Rs. 1,82,419.08) over the income (Rs. 1,42,123.46) which comes to Rs. 40,295.62 to the grand total of assets, his total assets come to Rs. 6,22,424,90.

The findings of the learned Judge on consideration of the evidence on record are the following:

1. Income from all

sources .. Rs. 1,42,202.96

2. Total expenses.. .. Rs. 51,144.41

3. Assets:

i) House at Regent

Estate Land... .. Rs. 6,316.00

costs of construction .. Rs. 17,500.00

ii) House at Naktola.. .. Rs. 1,75,853.00

iii) Movables (includ

ing cash) .. Rs. 97,924.95

---

Total Assets .. Rs. 3,07,593.95

6. Finding that the value of the assets acquired during the period in question was more than double the income of the petitioner from known sources even without taking into account his expenses over his income during this period the learned Judge concluded that the petitioner came within the mischief of Section 5(2), Prevention of Corruption Act.

7. It is urged at the first instance that the learned Judge did not take into consideration a gift of Rs. 40,000.00 made tothe petitioner's wife by her father. There is really no evidence on record worth the name to establish this gift. Mention of any such alleged gift in a Gift Tax Assessment Record (Ext. 15) without anything more cannot be considered as the last word where such a question arises.

8. It is urged next that the learned Judge made a mistake by valuing the house at 344/2, Netaji Subhas Road, Calcutta at Rs. 1,75,000/-on the report of Shri J. P. Mangalik (P. W. 87) who was now a Government Approved Chartered Valuer disregarding the valuation of the same house made by Shri N. Ramamurty (P.W. 5) at Rs. 80,425/-.

9. From the evidence of P. W. 5, it does not appear that he is a Government Approved & Chartered Valuer as claimed or for that matter that he made any valuation for the house at all. All that he says is that in a loan application to Life Insurance Corporation the petitioner valued the existing one storied house at Rs. 20,000/- and estimated the costs of the construction of the proposed first floor Rs. 40,0(X)/-. In that view of the matter the learned Judge certainly made no mistake by relying upon the valuation made by Shri Mangalik IP. W. 87) who is a Graduate

in Civil Engineering and must therefore be having expert knowledge in this regard.

10. It is pointed out next that the land at 344/2. Netaji Subhas Road valued at Rs. 17,900/- was given as a gift to the wife of the petitioner and that the learned Judge made a mistake by not taking it in consideration though I.T.O. proved the same.

11. The gift, so it appears - was not proved by any satisfactory evidence. The learned Judge, therefore, made no mistake by refusing to go by the assertions of the petitioner in this regard.

12. It is urged lastly that the petitioner borrowed Rs. 6,000/- from the Government and Rs. 2,000/- from a private source and that the learned Judge made a mistake by not taking the same into consideration.

13. There is no indication who lent these amounts and when. Without any satisfactory evidence the learned Judge made no mistake in leaving these amounts out of consideration.

14. The findings of the learned Judge are all based on the evidence on record. One may disagree with his assessment of the evidence but no interference with the findings is permissible on that ground. There is no glaring defect in the procedure nor any manifest error of point of law in this case. The findings of the learned Judge cannot, therefore, be interfered with. It appears that while coming to his decision the learned Judge has not taken into consideration the alleged benami properties of the petitioner. A grievance has been made in that regard from the side of the opposite party State. The learned Judge could come to his decision against the present petitioner even without taking into consideration the so-called benami properties of the petitioner. From that it does not follow that he has disbelieved the prosecution case in that regard. I am quite sure that the learned Judge will take into consideration the evidence on record with regard to the so-called benami properties and further that he will also come to a definite conclusion on that ground when he takes up this case for final disposal after the evidence and arguments are completed in this case.

15. As for the question of validity of sanction, it appears that the learned Judge has very properly dealt with the matter. He has held very rightly that in view of the relevant provisions of Allocation of Business Rules, 1961 (vide Clause 20(b) of Department of Personnel and Administrative Reforms, under the Ministry of Home Affairs) the sanction in such a case as the present where investigation has been made by the Delhi Special Police Establishment is to be accorded by the Home Ministry. Nothing different has been laid down in State of Rajasthan v. A. K. Dutta 1980, SCC (Cri) 990 : 1980 Cri LJ 1278. The sanction in this case (Ext. 344) was authenticated by Shri D. K. Guha, Deputy Secretary to the Government of India under the Ministry of Home Affairs. No fault can, therefore, be found with the sanction in this case.

16. The present revisional application has no merit. It shall, therefore, have to be rejected which I hereby do. Send the records back to the learned Judge at once for disposal of this case on a priority basis.