
(2007) 04 GAU CK 0045
In the Gauhati High Court

Madhab Chandra Talukdar

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 11-04-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Prevention of Corruption Act, 1988 — Section 13, 27

Citation : (2008) CriLJ 181 : (2007) 3 GLT 122

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.N. Sarma, J.—This Appeal is filed u/s 27 of the Prevention of Corruption Act, 1988 read with Section 374(2) of the Code of Criminal Procedure, 1973 challenging the conviction and sentence imposed upon the accused/appellant vide judgment and order dated 9-7-1979 passed by learned Special Magistrate, Kamrup, Assam in Special Case No. 52(C)/94 convicting the accused/appellant u/s 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act and sentenced him to undergo rigorous imprisonment for 1 (one) year and to pay fine of Rs. 10,000/-, in default, further imprisonment for 3(three) months.

2. Heard Mr. J.M. Choudhury, learned senior counsel assisted by Mr. P. Katakey, learned Counsel appearing on behalf of the appellant and Mr. D.K. Das, learned standing counsel, CB1 appearing for the respondent.

3. On the basis of an information lodged by the Superintendent of Police, CBI dated 24-4-1993 R.C. Case No. 9(A)/93 SH was registered by police wherein it has been alleged that credible information has been received that the accused/appellant serving as the Assistant Commercial Manager (Marketing & Sales). N.F. Railway. Maligaon has amassed huge wealth by corrupt and dishonest means during his service period from 1983-93, while working in different capacities at different places, which is grossly disproportionate to his known source of income also stating therein certain specific facts.

4. The case u/s 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 (for short, "the Act") was registered against the accused /appellant. The case was investigated by one Sri K.C. Choudhury, Inspector of CBI. PW-28 who read the statement of witnesses and also seized a large number of documents and having found a prima-facie case against the accused/appellant submitted charge-sheet against him, being charge-sheet No. 16, dated 30-9-1994.

5. On the basis of the materials produced by the investigating agency, the learned Special Judge framed charges against the accused u/s 13(2) read with Section 13(1)(e) of the Act, vide order dated 25-9-1995, but accused denied the said charges.

6. The case against the accused as unfolded by the prosecution inter alia is that the accused joined as Commercial Apprentice in Indian Railways and retired as Commercial Manager on 30-4-1994. The accused started acquiring assets both movable and immovable including one RCC building, one Maruti van, gold ornaments and other valuable household goods costing Rs. 8,51,332/- by corrupt means while he was serving in the capacity as the Assistant Commercial Manager, Maligaon, Guwahati w.e.f. 1983-93, which was disproportionate to his known source of income.

7. The prosecution for the purpose of calculating income expenditure and assets of the accused took into account the period from 12-4-1985 to 29-4-1993 as check period. It is also alleged that the total income from his known source of income is Rs. 5,54,036/- and total expenditure shown by the accused is Rs. 2,57,377/-. Accordingly taking into account of the income and expenditure and assets, it was found that during the said period the accused acquired assets worth Rs. 5,08,2006/- which is disproportionate to his known source of income.

8. In order to establish their case the prosecution examined as many as 28 witnesses who proved as many as 77 numbers of exhibits. The statement of the accused u/s 313 Cr. P.C. was also recorded. Defence also examined 3 witnesses in support of his case.

9. The defence of the accused was of total denial so far it relates to the gold ornaments alleged to be under possession of the accused which was seized by Ext. 36, in box marked R alleging that the same belongs to his wife and also denied the marriage expenditures of his daughter allegedly made by him. The further defence of the accused is that his son is staying with him, who is serving as Engineer in the OIL, also contributed his income.

10. According to the accused, the assessment of expenditure amounting to Rs. 1,03,000/- shown to be spent in the marriage of his daughter as per the statement contained in Ext. 17 is not correct and without any basis and he has not spent the said amount.

11. The learned Special Judge at the end of the trial and upon marshaling the

evidence adduced by the prosecution and defence, allowed benefit of Rs. 3,79,899/- to the accused holding that the accused had disproportionate income during the said period, to the extent of Rs. 1,38,312/- and accordingly convicted and sentenced him in the manner indicated above, vide judgment and order dated 9-7-1999.

12. Although various points have been raised in this appeal. Mr. Choudhury, learned senior counsel has confined his argument only to the point that the value of the ornaments as per Ext. 77 (B) amounting to Rs. 45,756/- belongs to his wife has been wrongly added and the marriage expenditure amounting to Rs. 1,03,000/- vide Ext. 77(D) has also been wrongly added to the income of the accused and it is submitted that if these two amounts, totaling in Rs. 1,48,756/-, deducted from the properties of the accused, in that event the amounts remaining would be within the permissible limit and provision of Section 13(1)(e) and 13(2) of the Act would not be attracted.

13. In support of his contention Mr. Choudhury has led me to the impugned judgment which discloses that in the ultimate analysis, the learned trial Judge found the total disproportionate assets in the hands of the accused to the tune of Rs. 1,38,312/-. Learned senior counsel further led me to the evidence of the Investigating Officer, PW. 28 as well as the statement made by the accused u/s 313 Cr. P.C. and the deposition of D.W. 1 and Exhibit. 77 proved by the prosecution.

14. In view of the aforesaid contention made on behalf of the accused the point that needs consideration in this appeal is as to whether the prosecution could prove by cogent reliable unimpeachable evidence that the aforesaid amount of Rs. 1,03,000/- was spent by the accused as marriage expenditure of his daughter the value of the gold ornaments vide Ext. 71 in box marked -R and Ext. 36 amounting to Rs. 45,756/- was justified to be clubbed as assets of the accused.

15. In order to arrive at a decision on aforesaid point, the statement of I/O, PW. 28 is perused. The I/O in his evidence has stated inter alia that during the course of the investigation, he searched the bank locker of the accused in SBI, new Guwahati branch and found some ornaments in the locker and the same were given Zimma vide Ext. 67. He further stated that the item wise expenditures and investments made by the accused is shown vide Ext. 77. Ext. 77 (D) is the statement showing the expenditure made by the accused during the check period and Ext. 77(B) is the statement showing the assets at the close of the said period pending at the hands of the accused.

16. The Ext. 77(B) disclosed the amount to be the property of the accused which contains ornaments weighing to 1,468.43 grams at serial No. (J), is valued at Rs. 45,766/-. The aforesaid ornaments though clubbed to be the asset of the accused is admittedly kept in box marked-R in Ext. 36 is claimed to belong to his wife. In order to establish this fact apart from his explanation given in his

statement u/s 313 Cr. P.C., DW. 1, the daughter of the accused was also examined. DW 1 has stated in her deposition that the Ext. 36 (M) indicating the gold ornaments belongs to her mother i.e. wife of the accused. The prosecution however did not cross examine DW. 1 on those points nor gave any suggestion that these gold ornaments do not belong to the wife of the accused (mother of the DW. 1).

17. The learned trial Judge has not considered this aspect of the statement of DW. 1. So far it relates to other amount i.e. marriage expenditures of the daughter of the accused which is included in statement-D of Ext. 77, the said statement discloses that it contains the expenditure in two heads namely, (1) verifiable and (2) non verifiable expenses. The marriage expenditures of the daughter of the accused amounting to Rs. 1,03,000/- as mentioned in Clause (J) falls within the non-verifiable expenditures. The DW. 1 again stated in her evidence that her marriage was solemnized at Kamakhya temple and it was an intercaste marriage and her father was against it and had not permitted such marriage. The said fact has not been disputed by the prosecution.

18. Relying on the aforesaid statement of DW. 1, Mr. Choudhury contends that since the marriage was held at Kamakhya temple, only religious rituals and formalities as per the process prevalent in the temple were performed and there was no social entertainment in the marriage of the daughter of the accused. Consequently, there was a minimal expenditure of about 4-5 thousand at best and even such expenditures was also not made by the accused as he did not approve the marriage.

19. Turning to the evidence adduced by the prosecution on this score, I find that I/ O, PW. 28 has only proved the statement of expenditure as Ext. 77. Admittedly, as per version of the prosecution, in this statement the marriage expenditure falls under non-verifiable expenses. Even if such expenditure was a non-verifiable one, it must contain at least some basis, on which the allegation of the prosecution could rest. The accused in his statement u/s 313 Cr. P.C. stated that aforesaid expenditure has been put by I/O on his own and even without asking anything to him about such expenditure. There is no iota of evidence as regards the fact that how the prosecution could arrive at a finding about such expenditure made by the accused.

20. The aforesaid facts clearly demonstrate that there is no legally acceptable evidence on record to show and establish that the prosecution could prove beyond reasonable doubt that the gold ornaments contained in Ext. 36 marked M valued at Rs. 45,766/- belong to the accused. The accused has given a reasonable and plausible explanation about the ownership of the aforesaid gold ornaments through DW. 1 to the effect that those belong to his wife. It is a common knowledge that it is a customary practice in our society that the bride possesses certain gold properties gifted to her during marriage or after marriage and the explanation given by the accused appears to be a reasonable one. Accordingly, I hold that the prosecution has miserably failed to prove beyond

reasonable doubt that the gold ornaments contained in box marked M in Ext. 36 are the properties of the accused.

21. Relating to the marriage expenditures under the heading having verifiable expenditures in Ext. 77(D) (Clause-J) as indicated above, the very nature of the said expenditure, even as per the stand of the prosecution, the same are non-verifiable but it is not meant that there should not be even the bare minimal basis to arrive at a finding for recording such expenditures. The prosecution could have examined some of the witnesses of the locality or could have examined some persons who attended the marriage or the priest of the temple where the marriage was conducted, but that was not done. Even the accused was not put any question as to how the said expenditure was made in the marriage of his daughter of the accused being an inter caste one, the accused did not approve the same. Accordingly, I find that there is no acceptable evidence to prove beyond reasonable doubt that the accused spent Rs. 1.03,000/- in the marriage ceremony of his daughter. The I/ O in his statement also, except stating that Ext. 77 is the expenditure as made for the marriage, and has not stated anything about as to how and in what manner the said expenditure was calculated and how it was made by the accused. Admittedly, the said statement of expenditure was prepared without having even prima facie evidence relating to the same.

22. According to Mr. Choudhury, after exclusion of the said expenditures and value of gold ornaments there are no other materials to attract the provision of Section 13(1)(e) of the Act against the accused. In this connection Mr. Choudhury relied upon the decision rendered by the Apex Court reported in D.S.P., Chennai Vs. K. Inbasgaran,

23. Section 13(2) defines the circumstances in which a public servant is said to commit a criminal offence of misconduct under the PC Act. Section 13(1)(e) provides that if the public servant is in possession or at any time during the period of his offence being in possession of such properties disproportionate to his income to which public servant cannot satisfactorily account, he is said to have committed the offence. Thus the onus is upon the public servant to satisfactorily account, the source of such properties disproportionate to his known source of income. The Apex Court in DSP 2006 Cri LJ 319 (supra) accepting the explanation of the accused in that case held the explanation so offered to be plausible and justifiable and acquitted the accused. The Apex Court further held that it is the burden on the accused to offer plausible explanation and to satisfactorily explain that the properties acquired by him, alleged to be disproportionate income, do not belong to him. In the instant case as in view of the aforesaid discussion, I have no hesitation to hold the explanation given by the accused in his examination u/s 313 Cr. P. C. and though DW appears to be a plausible and justifiable not to attract the provision of Section 13(1)(e) of the Act.

24. In view of the aforesaid discussion, I hold that the prosecution has miserably failed to prove by any clear, unimpeachable and cogent evidence that the gold

ornaments contained in box marked -R of Ext. 36 belong to the accused and that the marriage expenditure of Rs. 1,03,000/- was made by him for marriage of his daughter held at Kamakhya temple. After exclusion of the amount under those two heads the properties found in the hands of the accused are within the permissible limit of his known source of income and his conviction and sentence imposed upon him cannot sustain. In view of the aforesaid discussion the appeal stands allowed and the impugned conviction and sentence passed by the Special Judge against the accused/appellant stand set aside. The accused is discharged from the bail bond.