**(2019) 06 GAU CK 0083**

**In the Gauhati High Court**

**Case No :** Criminal Appeal No. 147 Of 2011

Manoj Kumar Barman And Anr — APPELLANT

Vs

Central Bureau Of Investigation Cbi — RESPONDENT

**Date of Decision :** 28-06-2019

**Acts Referred:**

Prevention of Corruption Act, 1988 — Section 13(2), 13(1)(e)
Code Of Criminal Procedure, 1973 — Section 313

**Citation :** (2019) 06 GAU CK 0083

**Hon'ble Judges :** Rumi Kumari Phukan, J

**Bench :** Single Bench

**Advocate :** Sk N Mahammad, Sc Keyal

**Final Decision :** Allowed

# Judgement

1. This appeal is preferred against the judgment and order dated 25.07.2011 passed by the Special Judge, CBI, Assam, Guwahati in Special Case NO. 33/2006 there by convicting the accused persons under Section 13(2) read with Section 13(1)(e) of the Prevention and Corruption Act, 1988 and sentencing them to suffer Rigorous Imprisonment for two years and a fine of Rs.10,000/- (Rupees ten thousand) each, in default Rigorous Imprisonment for three months.

2. I have heard Mr. SK N Mahammad, learned counsel for the petitioners and Mr. SC Keyal, learned Standing Counsel, CBI.

3. The brief of the case is that on the basis of information received by Superintendent of Police, CBI, ACB, Guwahati against appellants, namely, Manoj Kumar Barman and his wife Smt. Jini Barman, a case being numbered RC.11(A)/1996 was registered for acquiring assets which is disproportionate to their known source of income while working as Head Goods Clerk at BG Inward Goods Office, New Guwahati, NF Railway and Smt. Jini Barman while working as Office Superintendent (OS) in New Guwahati in the Office of the Assistant Controller of Stores, BG Inward Goods Office, New Guwahati, NF Railway and a

 

case under Section 13(2) read with Section 13(1)(e) of the PC Act, 1988 was registered against both the appellants. After investigation, charge-sheet was filed against both the appellants under the aforesaid sections.

4. The accused persons entered their appearance and denied the charge under Section 13(2) read with Section 13(1)(e) that was framed against them. The plea of defence is of total denial.

5. The prosecution examined 31 witnesses and exhibited number of documents to bring home charge levelled against both the appellants. One of the accused examined himself in his defence in support of their plea. Statements of the accused persons were recorded under Section 313 Cr.P.C. and they have denied all such allegations.

6. At the conclusion of the trial, the learned trial court found and held both the accused persons guilty and convicted them as aforesaid. Challenging the legality and validity of the judgment, present appeal has been preferred.

7. I have heard the submission of learned counsel Mr. SK N Ahmed and on behalf of the appellant and Mr. SC Keyal, learned Standing Counsel appearing on behalf of the CBI.

8. Initiating the argument on behalf of the appellants Mr. Ahmed has submitted that the I/O has prepared the statement of expenditure without accounting the proper and correctness of documents. In respect of salary and allowances of the appellants the prosecution examined P.W. 4 and 7 and exhibited the salary documents as Ext.8 and 12 respectively. But salary particulars for some months were not included in the aforesaid statements. P.W. 4 in his cross-examination admitted that Ext.8 is not a complete document. Again Ext. 12 is the salary particulars of the accused Jini Deka Raja which is exhibited by the P.W. 7 is also not the complete document regarding the income of the accused Jini Deka Raja. As admitted by the P.W.7 arrear salary for the year of 1989,1992 to 1995 were not shown separately in Ext.12. Productivity Life Bonus is also provided to the Railway employs on the eve of Durga Puja as admitted by the P.W.7. But the same is not taken into consideration by the prosecution.

9. Further it was contended that the I/O-P.W.31 in his evidence admitted that in making the salary statement he has not considered the bonus and other benefits received by the appellants.

10. Regarding the valuation report of house and properties of the appellants it is submitted that the evidence of P.W.15, 19 and 23 are contradictory to each other.

11. It was submitted that the P.W.10, 13 and 23 categorically stated that the appellants sold the milk etc. and they used to purchase the same from the appellants for many years. But the I/O has not counted the same though in the list of articles at Sl.No. 88 of Ext.1 shows cows and calves.

12. It is further submitted that while preparing the valuation report the I/O has

 

shown the gold as a property of appellant Manoj Barman. While in the statement under section 313 Cr.P.C., the wife herself took the responsibility of gold ornaments and Monaj Barman has advanced probable and justifiable explanations, the trial court should have held that the gold jewelry belonged to his wife. In support of his contention he has relied upon the decision of our own High Court reported in 2007(3)GLT 122 Madhab Chandra Talukdarvs.CBI.

13. Counsel for the CBI has submitted that in this case check period is 01.01.1986 to 11.03.1996 during which period both the appellants accumulated huge assets disproportionate to their income. The I/O has prepared the statement A,B,C and D after giving 10% margin as laid down by the Hon'ble Apex Court in the case of CSD Swami (AIR 1960 SC7) at Rs.1,39,905.75 which is more than 10% of the total income. The income of the appellant Manoj Barman, prior to the check period was Rs.1,08,372 and after deduction of 1/3rd the amount comes to Rs.72,248/-. He acquired wooden bed, gas cylinder etc. of Rs.9,000/-. Thus his savings prior to the check period likely comes to Rs.63,248/-. During the check period, the accused Manoj Barman received salary etc. Rs.3,00,427/- and house rent of Rs.43,000/-, interest of SBI Rs.21,013/- and thus total amount comes to Rs.3,64,440/- After deduction of 1/3rd of his income as expenditure, the amount comes to Rs.2,42,960/- and after adding the saving of pre-check period i.e. Rs.63,428/-, the amount comes to Rs.3,06,208/-. But Ext. 5 shows that at the closure of check period, he acquired assets of Rs.4,86,113.75 which is disproportionate assets to his known income 14. It was next contended that with respect to the appellant Smti. Jini Deka Raja Barman her income prior to the check period was Rs.79,440/- and after deduction of 1/3rd, the amount comes to Rs.52,960/-. During the check period she received salary etc. Rs.3,49,623/-. After deduction of 1/3rd of her income as expenditure the amount comes to Rs.2,86,042/- including the income of the pre-check period.

15. Again submitted that as both the appellant resided in the same house as such 1/3rd of the income of Jini Deka Raja is not deductible, but her defence is that her pay and allowance is Rs.4,00,000/- but the same is wrongly shown by the prosecution as Rs.3,49,623/-. But to that effect, the appellant No. 2 could not produce any documentary evidence. The plea as taken by her that she received Rs.9,300/- as maturity value of LIC Policy,Rs.2,592/- CRBD amount and Rs.500/- flood advance which was not included in her statement but the appellants could not produce any evidence to show that the aforesaid amount was received by her. As such her pay and allowances during the check period should be taken as Rs.3,49,623/-and after adding the saving of pre-check period the amount comes to Rs.4,29,063/-. But at the closure of check period she acquired assets of Rs.5,05,013/- which she acquired disproportionately to her known source of income amounting to Rs.73,950/-and the learned trial court has rightly convicted the accused persons and the appeal is liable to be dismissed.

16. In the present case, the prosecution side has examined 31 witnesses, one court witness and appellant /accused Manoj Barman examined himself as D.W.1

 

17. Now let us discussed the evidence on record.

18. The P.W. 2 Phanidhar Purakayasthya and P.W. 3 Joseph Jamir are the prosecution sanctioning authority who accorded sanction for prosecution of Jini Barman and Manoj Barman respectively. From their evidence it is found that they applied their mind and after considering all the materials produced before them sanction was given for prosecution .In appeal the appellants have not assailed the matter of prosecution sanction

19. P.W. 1 C.Runhung, P.W. 8 Nagendra Nath Kalita, P.W.11 Dul Deka ,P.W.13 Ganesh Das are the search/seizure witnesses and they are formal witnesses.

20. P.W. 6 Lenda Ram Boro in his evidence stated that during the year of 1986 to 1996 he was posted in Punjab and Sindh Bank ,Rajgarh Road, Guwahati .he has deposed that vide Ext.9 and 10 Rs.110- each was deposited in the name of Barnali Barman. Along with Ext. 10 another Rs.45/- was deposited as School fee for the period of April to June 1997 and accused Jini Barman in her statement under section 313 Cr.P.C. admitted about the said deposit towards the school fee of her daughters.

21. From the evidence of P.W. 10 Pramod Goswami and P.W. 27 Rabin Kr. Das it is found that they were tenants of the accused Manoj Barman and from their evidence and P.W. 13 Ganesh Das it is found that they used to purchase milk from the accused.P.W.17 Dhiren Chandra Roy is the valuer of gold. They have deposed nothing against the appellant/accused.

22. Prosecution side has examined Mr. Gautam Ch. Das as P.W. 4 who is the Asst. Personal Officer, N.F. Railway, Guwahati In his evidence stated that Ext. 8 is the pay particulars of Manoj Kr. Barman from January 1986 to March 1996. The same was compiled by him from official record and it was authenticated by the then APO Sri Subhash Nandi and Ext.8(1) to 8(5) are the signatures of Subhash Nandi. From his evidence it is found that Ext. 4 does not cover the period of March'86, February'88, August '88 ,April'89, November'89, September'90 and March'92 which is within the check-period. In cross-examination he has admitted that Ext. 8 is not a complete document. Further stated that during the period of 1986-1996 Manoj Barman entitled to bonus. During the said period arrear amounts were drawn through supplementary bills. Arrear if any drawn during that period is not reflected in Ext.8 because the bills were not available.

23. Now , in view of Ext.5 during the check period Manoj Kr. Barman acquired following assets-

Sl. No.

Particulars

Amount in

Rupees

 

1

Purchase one plot of land measuring 2K at

500.00

Mathgharia ,Guwahati in 1986

2

Constructed one Assam type house at

1,84,314.00

Mathgharia during 1986-88

3

Purchase one old Ambassador car in the  name

40,000.00

of Haramohan Barman

4

Purchased 6 numbers of IDBI Cash  certificate

16,200.00

dated 31.03.1992 in the name of Dipali  Barman,

Barnali Barman and Madhuri Barman

3 numbers of UBI Cash certificate dated

5

45,000.00

03.07.1991 in the name of Dipali Barman,

Barnali Barman and Madhuri Barman

6

UBI re investment certificate No. 687  dated

5,000.00

08.02.1991 in his name

7

Gold piece weighing 233.200 grams and

1,25,770.00

Ornaments weighing 33.00 grams

 

8

One Bajaj Scooter No.AXA 7210

11,966.00

9

Balance in SB A/C No.1147

92.75

10

Household gadgets as per inventory

57,271.00

dated11.03.1996

Total Rs.

4,86,113.75/-

24. In this case , the prosecution side has alleged that Manoj Kr. Barman purchased one Ambassador car bearing registration No. AXA at Rs.40,000/-in the name of his brother Harmohan Barman which is also incorporated in Statement A(Ext.5). But as deposed by P.W.5 Kamal Ch Das he sold his Ambassador car bearing registration No. AXA 1758 to Harmohan Barman at Rs.40,000/- which also finds support from the evidence of P.W. 26 Bipulananda Pathak ,DTO, Kamrup that the Ambassador car No.AXA 1785 stands in the name of Harmahan Barman and Ext. 47 is his reply to queries made by the I/O of this case. So there is no any convincing evidence that Manoj Barman purchased the said Ambassador car in the name of his brother Harmohan Barman. As such same is to be excluded from the list of assets as mentioned in Ext.5 and thus value of assets come down to Rs.4,86,113.75-Rs.40,000/-=Rs. 4,46,113.75.

25. On the other hand, accused Jini Barman in her statement under section 313 Cr.P.C. admitted that two piece of gold, 2 numbers of gold chain and 2 numbers of gold locket were found in their locker at Union Bank of India, Noonmati Branch. She has stated that two gold chain was received by her at the time of her marriage as Stridhan and two pieces of gold purchased by her for her daughters out of the gift received by them. Appellant Manoj Kr. Barman appearing as D.W. 1 in his evidence stated that most of the gold ornaments received by his wife as stridhan. So accused Monoj Barman has given a reasonable and plausible explanation about the ownership of the aforesaid gold ornaments as in our society bride acquired the gold ornaments during or after the marriage as gift. Moreover, though the gold ornaments were seized from the locker of the husband, but in our society it is the practice to keep such property in the locker of the husband and there is nothing to doubt that the said properties kept in the locker of Manoj Barman does not belong to his wife. So if

 

the said amount of Rs.1,25,770/- is deducted from the aforesaid amount, then the amount comes to Rs.4,46,113,75-Rs.1,25,770/-=Rs.3,20,343/- which is 22 % above of his alleged saving of Rs.3,06,208/- during the check period.

26. Apart from all above, from the evidence of P.W.4 Mr. Gautam Ch. Das Asst. Personal Officer, N.F. Railway, Guwahati found that in the Ext.8 the pay particulars of Manoj Kr. Barman from January 1986 to March 1996 did not find place about his income for the month of March'86, February'88, August '88, April'89, November'89, September'90 and March '92 and the arrear amount of the check period. So calculation is not at all proper regarding disproportionate assets acquired by him during the check period.

27. Again, as per the prosecution, prior to the check period, Jini Barman received Rs.79,440/- as pay and allowances. After deduction of 1/3 of her income total savings comes to Rs.52,960/-During the check period she received Rs.3,39,623/- as pay and allowances. After deduction of 1/3 of the said amount remains Rs.2,33,082/- as savings. Thus till the check period her savings was (Rs.52,960/- +Rs.2,33,082/-)Rs.2,86,042/-But as per the defence version during the check period the pay and allowances was Rs. 4,00,000/- and prior to check period Rs.79,440/- and thus her total saving was Rs.4,79,440/-.The plea of the accused is that her pay and allowances during the check period is wrongly shown by prosecution as Rs.3,49,623/- Further ,as both the accused are residing together as husband and wife as such deduction of 1/3 is not desirable.

28. Now, as per statement A Ext.3 during the check period Smti Jini Barman acquired following assets-

Sl. No.

Particulars

Amount in

Rupees

1

One RCC building at Mathgharia ,Guwahati

4,62,413.00

2

One plot of land 2K 2L on which said RCC house

10,600.00

constructed

3

The Assam Co-Operative Apex BankLtd.Re-

 

20,000.00

investment plan deposit certificate No.A/RP

018683 dated 01.07.1989 and certificate No.

20,000.00

A/RP 018685 dated 03.07.1989

Total Rs.

5,03,013.00

29. Regarding the deposit certificate as mentioned in the Sl. No. 3 of Ext.3 and the existence of the building in the name of Jini Barman, there is no denial on her part. But she has disputed that the valuation of the property. As per her statement under section 313 Cr.P.C. the valuation of the building should be approximately Rs.3,25,000/-

30. As per Ext. 3 the value of the building of Jini Barman was assessed at Rs.4,62,413/-.

31. In this case from the evidence of P.W.15 Bhupen Talukdar,P.W. 19 C.L. Mahato and P.W.23 Gyani Ram done the valuation of the building of Jini Barman. From the evidence of P.W. 15 Bhupen Talukdar Ext. 32 valuation report was prepared by himself and P.W. 23 Gyani Ram. But from his cross examination it is found that for the RCC building they have applied the Delhi Plinth Area Rate as per CPWD manual with up-to-date cost index of that period and they have submitted the draft before the P.W. 19 C.L. Mahato but subsequently C.L. Mahato alone went to the building site and checked and verified and changed the rate. Again from the cross examination of P.W.23 Gyani Ram it is found that while they have visited the site measured the water tank (item No. 8 of Ext.32) and it was of 1,000 ltrs and assessed the value but subsequently it was made 2,500 ltrs and the value was accordingly re-assessed by C.L. Mahatu . Further stated that C.L. Mahatu without consulting him or with P.W. Bhupen Talukdar quoted the rates and put by himself without their knowledge. Again stated that he does not know on what basis C.L. Mahato took the measurement and put the rates there in. So from the evidence of the P.W.15 and 23 it is found that they have assessed the value of the Building in question and submitted the report to P.W. 19 and the P.W. 19 without consulting the P.W.15 and 23 quoted the rate in Ext.32 and even changed the measurement of the water tank. So all these implicates that there was no proper valuation of the property which belonged to Jini Barman and there is serious doubt about the valuation of the building as mentioned in Ext.3.

32. Again, the plea of the accused Jini Barman is that the pay particulars from 1977 to 1996 as shown in Ext.12 are not accurate .

33. In this respect ,P.W.7 Anup Chakarvarty who is the Deputy Controller of Stores ,N.F. Railway, Guwahati has exhibited the pay particulars of Jinni Barman

as Ext.12.From his cross examination it was found that the arrear for the year 1979, 1989, 1992,1993, 1994 and 1995 and DA have not been shown in Ext.12 separately.PLB particulars are also not shown.

34. So, from the above discussion it is found that calculation is not proper regarding disproportionate assets acquired by Jini Barman during the check period.

35. The primary burden to bring home a charge of criminal misconduct is on the prosecution and the prosecution is to establish beyond reasonable doubt that the public servant either himself or through anyone else had at any time during the period of his office, been in possession of pecuniary sources or the property disproportionate to his own source of income and it is only on discharge of such burden by prosecution and if the accused fails to satisfactorily account for the same, he would be held guilty of such offence. A public servant facing such charge cannot be comprehended to furnish any such explanation in absence of proof of allegation of being in possession of such property.

36. In view of the materials on record, this Court is of considered opinion that the prosecution has failed to prove beyond reasonable doubt the charge of criminal misconduct under Section 13 (1) (e) of the P.C. Act punishable under Section 13(2) of the Act and the accused/appellants are entitled to get benefit of doubt. As has been held by the Hon'ble Supreme Court in 2017 (14) SCC 442 Vasant Rao Guhe vs. State of Madhya Pradesh the prosecution to succeed in a criminal trial has to pitch his pace beyond all reasonable doubt and lodge it in the realm of "must be true" category not rest contended by leaving it in the domain of "may be true".

37. Resultantly conviction of sentence is hereby set aside. The appeal is allowed.

38. Return the LCR along with the copy of the judgment.