

(2025) 05 SC CK 0200

In the Supreme Court Of India

Case No : Criminal Appeal No. 2581 Of 2025 (@ Special Leave Petition
(Criminal) No.3472 Of 2018)

P. Shanthi Pugazhenth

APPELLANT

Vs

State Represented By The Inspector Of Police Spe/Cbi/Acb/
Chennai

RESPONDENT

Date of Decision : 13-05-2025

Acts Referred:

Indian Penal Code, 1860 — Section 107, 108, 109Prevention of
Corruption Act 1988 — Section 12, 13, 13(1)(e), 13(2)

Citation : (2025) 05 SC CK 0200

Hon'ble Judges : Sudhanshu Dhulia, J;K. Vinod Chandran, J

Bench : Division Bench

Advocate : Saurabh Jain, Prayag Jain, Tulika Mukherjee, Aakanksha Kaul, Arvind
Kumar Sharma

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J

1. Leave granted.

The appellant before this Court, who was working as an Assistant Superintendent in the Chennai Port Trust assails the judgment and order dated 10.01.2018 passed by the High Court of Madras (hereinafter 'High Court') which has sustained her conviction and sentence under section 109 of the Indian Penal Code (hereinafter 'IPC') read with Section 13(2) and Section 13(1)(e) of the Prevention of Corruption Act 1988 (hereinafter '1988 Act'). The co-accused (husband of the appellant, at the time) was also convicted and sentenced by the same order under section 13(2) and 13(1)(e) of the 1988 Act.

3. In June 2009, an FIR was registered against the appellant's husband alleging that he had illegally demanded and received Rs. 3000 for handing over a cheque relating to a motor accident claim. While investigating the FIR, certain raids were

conducted at the appellant's husband's house and on 31.12.2009 another FIR under section 13(2) read with 13(1)(e) of the 1988 Act was registered against the appellant's husband, while he was serving as a public servant on the post of Divisional Manager in United India Insurance Co. Ltd. When the search was conducted on the residential premise of the appellant's husband, various incriminating documents relating to movable and immovable property in the name of the appellant and her husband were found. Primarily, it was alleged that during the check period between 1.09.2002 and 16.06.2009, the appellant's husband had acquired movable and immovable properties which were disproportionate to his income. The properties were in the appellant's name, as well as of her husband.

4. On 18.12.2010, a chargesheet was filed and the appellant was charged under section 109 IPC read with 13(2) and 13(1)(e) of the 1988 Act, while her husband was charged under section 13(2) read with 13(1)(e) of the 1988 Act, with details of the various movable and immovable assets acquired by them during the check period. It was alleged that disproportionate assets amounting to Rs. 60,99,216 have been acquired by the accused.

5. After perusing the evidence on record, the Trial Court vide order dated 27.05.2013 found the appellant and her husband guilty and held that the appellant's husband has acquired disproportionate assets to the extent of Rs. 37,98,752 during the check period beyond his known sources of income. The appellant was held guilty of abetting her husband in acquiring such disproportionate assets. The appellant's husband was convicted under section 13(2) read with 13(1)(e) of the 1988 Act and sentenced to 2 years of R.I. Whereas the appellant was sentenced under section 109 IPC read with 13(2) and 13(1)(e) of the 1988 Act and sentenced to 1 year of R.I.

6. Both the appellant and her husband preferred their criminal appeal against the above order of conviction and sentence. On 10.01.2018, the High Court dismissed the appeal and found no ground to interfere with the findings of the Trial Court. While dismissing the appeal, the High Court observed that although there are minor discrepancies in the calculation of known sources of income of the accused, the disproportionality of assets is hugely excessive. Specifically the High Court observed that there is no material to show that the assets acquired during the check period, were acquired from their known source or sources of income, and even if the explanations provided by the accused is accepted it does not still remove the disproportionality. Now the appellant is before this Court.

7. The case of the appellant is that the courts below have grossly erred in convicting her for abetting her husband (the main accused) in acquiring disproportionate assets during the check period, and that any property disproportionately purchased by her husband in her name during the check period, cannot be held to be disproportionate in the hands of the appellant. Further, the appellant would argue that the co-accused is no longer her husband and he has subsequently re-married. The prosecution, on the other hand,

contends that the appellant was hand in glove with her husband in commission of the crime and she abetted the commission of offence under section 13(1)(e) of the 1988 Act.

8. We have heard both the sides and perused the material on record.

9. The only question that comes up for our consideration is whether the appellant was rightly convicted for abetment of offence under section 13(1)(e) of the 1988 Act.

10. Section 107 of IPC defines and illustrates as to what is abetment. Section 107 of IPC reads as follows:

"107. Abetment of a thing.-A person abets the doing of a thing, who-

First.-Instigates any person to do that thing; or

Secondly.-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.-A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.-Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."

Section 108 of IPC defines 'Abettor' as follows:

"108. Abettor-A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.-The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.-To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.-It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.-The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.-It is not necessary to the commission of the offence of abetment

by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder."

11. The law was laid down by this Court with respect to offences under section 109 IPC read with 13(1)(e) of the 1988 Act, in *P. Nallammal & Anr. v. State*, represented by Inspector of Police (1999) 6 SCC 559, where this court was considering whether the appellants therein are liable to be convicted of abetting crime under 13(1)(e) of the 1988 Act.

12. In *P. Nallamal (Supra)*, it was contended before this Court that an offence under section 13(1)(e) of the 1988 Act cannot be abetted by a non-public servant. Further, that there is no provision in the 1988 Act which provides punishment for abetment of offence under section 13(1)(e) whereas it provides punishment for abetment of some other offences under the 1988 Act. However, after discussing the history of Section 13 of the 1988 Act which was a substitute for some of the provisions of Chapter-IX of IPC which deals with offences by or relating to public servants, this Court held that an offence under section 13(1)(e) of the 1988 Act can be abetted by any other person. After reading Section 107 of IPC and accepting suggestions of Counsel, this Court gave illustrations that how even a person who is not a public servant can abet the offence under section 13(1)(e) of the 1988 Act. The relevant paragraphs are as follows:

"24. Shri Shanti Bhushan cited certain illustrations which, according to us, would amplify the cases of abetments fitting with each of the three clauses in Section 107 of the Penal Code vis-a-vis Section 13(1)(e) of the PC Act.

The first illustration cited is this:

If A, a close relative of the public servant tells him of how other public servants have become more wealthy by receiving bribes and A persuades the public servant to do the same in order to become rich and the public servant acts accordingly. If it is a proved position there cannot be any doubt that A has abetted the offence by instigation.

Next illustration is this:

Four persons including the public servant decide to raise a bulk amount through bribery and the remaining persons prompt the public servant to keep such money in their names. If this is a proved position then all the said persons are guilty of abetment through conspiracy.

The last illustration is this:

If a public servant tells A, a close friend of his, that he has acquired considerable wealth through bribery but he cannot keep them as he has no known source of income to account, he requests A to keep the said wealth in A's name, and A obliges the public servant in doing so. If it is a proved position A is guilty of abetment falling under the "Thirdly" clause of Section 107 of the Penal Code.

25. Such illustrations are apt examples of how the offence under Section 13(1) (e) of the PC Act can be abetted by non-public servants. The only mode of prosecuting such offender is through the trial envisaged in the PC Act."

(Emphasis Provided)

13. In other words, any person who persuades a public servant to take bribes, decides to raise money through bribes along with a public servant and prompts such public servant to keep the wealth with him/her or keeps the amassed wealth of a public servant in his/her own name is guilty of committing the offence of abetment of offence under section 13(1)(e) of the 1988 Act. We must also note that the 2018 Amendment to the 1988 Act has substituted Section 12 of 1988 Act and made all offences under the 1988 Act abetttable. This Section 12 of 1988 Act reads as follows:

"12. Punishment for abetment of offences.-Whoever abets any offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to seven years and shall also be liable to fine."

In any case, there is no doubt that offence under section 13(1)(e) was abetttable even prior to the 2018 Amendment.

14. In the case at hand, it is an admitted position that the appellant's husband has acquired assets (disproportionate to his income), during the check period, in appellant's name. Both the courts below have given concurrent findings on this aspect, and it is not required for us to deal with that aspect in detail.

15. If we apply the principles laid down in the P. Nallammal case (supra), the present appellant's case would definitely fall either in the 2nd or 3rd illustration. It is not clear from the record whether the appellant and her husband entered into a prior conspiracy to amass a huge bulk of wealth through bribery, but there is no doubt that after such disproportionate wealth was amassed, the appellant has been actively involved in concealing such wealth by keeping assets in her name. By doing so, the appellant is undoubtedly guilty of offence of abetment

falling under section 109 IPC read with 13(2) and 13(1)(e) of the 1988 Act.

Moreover, we would like to note that even the appellant was a public servant at the time of commission of the offence, as she was holding the post of Assistant Superintendent in the Chennai Port Trust, though she has been prosecuted here in her capacity as the wife of the main accused. We would also like to note that the appellant's argument that she is no longer the wife of co-accused as the co-accused has remarried, has no force because at the time of commission of offence, she was the wife of the co-accused. Even if we assume that she was not the wife at the time of commission of crime, then also it is immaterial since it is proven that she had allowed the co-accused to accumulate assets in her name and thus, assisted the co-accused in accumulation of assets disproportionate to the known sources of income. It is a well settled law that even a non-public servant can be convicted under section 109 IPC read with 13(1)(e) of the 1988 Act. We, therefore, find no reason to hold that the appellant could not have been convicted under section 109 IPC read with 13(2) and 13(1)(e) of the 1988 Act.

16. Considering all the facts and circumstances of the case, we are of the opinion that the finding of both the courts below does not require any interference. The appeal is accordingly dismissed.

17. The appellant, who is on bail, is directed to surrender within four weeks from today.

18. Interim order(s), if any, stand(s) disposed of. Pending application(s), if any, stand(s) disposed of.