(1997) 06 BOM CK 0040

In the Bombay High Court

Case No : Criminal Appeal No. 467 of 1992

Purshottam Gopal Nanavare APPELLANT

Vs

The State of Maharashtra RESPONDENT

Date of Decision : 19-06-1997

Acts Referred:

Evidence Act, 1872 — Section 3, 61
Prevention of Corruption Act, 1947 — Section 5(1)(e), 5(2)

Citation : (1998) 1 BomCR 168 : (1998) BomCR(Cri) 4

Hon'ble Judges : V.H. Bhairavia, J

Bench : Single Bench

Advocate : R.S. Bhonsale, Smt. V.R. Bhonsale and S.B. Shetty, for the Appellant; S.R. Borulkar, Assistant Public Prosecutor, for the Respondent

Judgement

V.H. Bhairavia, J.—This appeal is directed against the order of conviction and sentence dated 14th August, 1992, awarded by the learned Addl. Sessions Judge, Special Judge, Satara in Special Case No. 3 of 1988, wherein the appellant/accused has been convicted u/s 5(1)(e) punishable u/s 5(2) of the Prevention of Corruption Act, 1947 and sentenced to suffer R.I. for 3 years and to pay a fine of Rs. 10,000/- in default, R.I. for 6 months.

2. The prosecution case in short is that, originally, in all 5 accused persons were charge-sheeted. Accused Nos. 1 to 4 are the family members. Accused Nos. 2, 3 and 4 are the wife, son and mother of appellant-accused and accused No. 5 is the friend of the appellant-accused. However'' accused Nos. 2 to 5 have been acquitted. It is the prosecution story that the appellant-accused was serving as Police Sub-Inspector at Panvel Police Station, Dist. Raigad in the year 1986. The appellant-accused entered in the Police service as Police Constable in the year 1963 and it is alleged that during his service period, right from 1963 to 1986, he has acquired property disproportionate to his known source of income i.e. valuable articles and cash amounting of Rs. 2,78,295.35 and the original accused Nos. 2 to 5 have abated him in committing the offence punishable u/s 5(1)(e) r/

w. section 5(2) of the Prevention of Corruption Act.

3. After recording the prosecution evidence, the learned Judge held the offence proved against accused No. 1 only and therefore, accused Nos. 2 to 5 have been acquitted and the appellant-accused has been convicted by his order dated 14-8-92. Hence this appeal.

4. Heard Mr. Bhonsale, learned Counsel for the appellant and Mr. Borulkar, learned A.P.P.

5. Having gone through the record and proceedings of this case, it appears, this is a very absurd judgment and order of conviction based on no legal evidence and on the face of it, the same deserves to be quashed and set aside. The learned Counsel Mr. Bhonsale took me through the relevant paragraph of the judgment i.e. para 58 pertaining to the statement of properties which reads as under :-

58. Hence, the position of total assets, of the accused No. 1 emerges as under:-

I. Amounts derived from admitted known sources of Income.

(i) 1,12,166.00 Pay and allowances of accused No. 1

(ii) 42,800.00 Agriculture

(iii) 24.000.00 Guravki (rendering services to Deity Siddeshwar Sansthan)

6,000.00 Gavaki.

12,000.00 Stitching business ol accused No. 2 for the period from

14,430.00 Interest from various Bank accounts.

Total 2,11,396.50 ps.

II. Assets found with accused in the name of accused persons.

Rs.

1,00,000.00

Fixed deposits receipts, five in numbers amounting or Rs. 20,000/- each, with Sangli Bank Branch, Kuroli Siddeshwar.

58,618.20 Saving Account No. 793 Sangli Bank Ltd.

22,417.40 Saving Account No. 880 Sangli Bank Ltd.

20,183.35 Saving Account No. 1117 Sangli Bank Ltd.

5,000.00 Saving Account No. 1190 Sangli Bank Ltd.

26.840.00 Saving Account No. 14850 State Bank of India BranchVaduj.

20,855.00

Cash found during house search of accused No, 1 on 30-10-86 at Panvel as per panchanama, Exh. 28.

Toward price of various articles luxury items, confronts found during house search on 31-10-86.

Total 3,25,783.30

III.

The amounts required to be deducted from the source of the Income of accused.

Rs.

56,088-00

Towards expenses calculated at fifty percent of the amount of source of income, Pay and Allowances, (i.e., Fifty percent of the amount of Rs. 1,12,166.50).

25,500.00 Price of Ambassador Gar MXB 1543

4,500.00 Price of Black and none T.V. Standard company.

Total Rs. 86,088:00

I. Item-III Item

Rs. 2,11,396.50 = Rs. 86.088.00 = Rs. 1,25,308.50 p. Thus, the accused No. 1 ought to have been found the amount of Rs. 1,25,308.50 ps. in balance, towards savings.

Total assets, found with accused will be Rs. 3,25,783.30 p. Rs. 1,25,308.50 p. = 2,00,474.80 p.

Thus, Accused No. 1 is found, excess amount of Rs. 2,00,474.80 ps.

Hence, this amount of Rs. 2,00,474.80 p. is in the form of disproportionate to the known source of income of the accused.

6. It is an admitted position that as held in para 60 of the judgment the known source of income of the appellant is Rs. 2,11,396.50 ps. The amount of Rs. 86,088/ - has been deducted from that income and after deducting the amount it has been held that the accused was found in excess amount of Rs. 2,00,474.80 ps. The learned Judge arrived at this calculation on the basis of the assets found with the accused in the name of accused persons i.e. Item No. II. The learned Counsel Mr. Bhonsale pointed out that the learned Judge has failed to appreciate the defence of the appellant-accused that the amount of Rs. 1 lac in respect of which admittedly fixed deposit receipts were found in his possession in the name of accused persons, were borrowed from accused No. 5 and that was invested by the accused. Further, the loan advanced by the Bank of Rs. 70,000/- which was advanced for house purpose was not spent by the accused persons and that amount was also mixed up with this amount. As regards the amounts of Rs. 1 lac

deposited in fixed deposits, admittedly borrowed from accused No. 5 the learned Judge held that there was no source of income of accused No. 5 for giving advances to anybody as his financial condition was not sound. It is in the evidence that accused No. 5 was a contractor and he used to give loans to the labourers and many other people. Not only this, but he had shown Rs. 1 lac in his statement of account submitted to the Income Tax Authorities (Exh. 189). The advance of Rs. 1,04,500/- is shown in the name of Smt. V.G. Nanavare and Family i.e. accused Nos. 2 to 4. This evidence, the learned Judge has rejected on imaginary and flimsy ground that there is no mention in the note Exhibit 92 maintained by accused No. 1 that this amount was using by accused No. 1 and not accused No. 5. This is a very perverse view taken by the learned Judge which has ultimately resulted into miscarriage of justice to the appellant-accused who was a poor Police Officer and who was convicted and sentenced, because of which he lost his job since then. There is no reason to discard this evidence and to exclude from consideration. The defence has established the source of income of the appellant-accused including the loan of Rs. 1 lac is excluded, then nothing remains against the appellant-accused in this case. I do not find any excess property owned by the appellant disproportionate to his income. Therefore, in my view, this appeal deserves to be allowed and the conviction of the appellant-accused deserves to be set aside.

In the result, this appeal is allowed. The conviction and sentence dated 14-8-1992, passed by the learned Addl. Sessions Judge, Special Judge, Satara in Special Case No. 3 of 1988, is set aside and the appellant-accused is acquitted for the offence with which he has been charged. Bail bond of the appellant-accused shall stand cancelled.

Muddemal articles seized from the appellant-accused. No. 1''s house including cash of Rs. 15,000/- and other documents be returned to the appellant-accused. Mr. R.S. Bhonsale, learned Counsel for the appellant stated that the amount of fine has been paid by the appellant-accused. The fine if paid, be refunded to the appellant-accused.

7. Appeal allowed.

