
(1995) 07 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 382 of 1987

Shri N.K. Gupta

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 21-07-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 106

Prevention of Corruption Act, 1947 — Section 4(1), 5(1), 5(2), 5(3)

Citation : (1995) 2 ShimLC 346

Hon'ble Judges : Lokeshwar Singh Pant, J

Bench : Single Bench

Advocate : Jigdish Vats and T.R. Chandel, for the Appellant; Om Prakash, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Lokeshwar Singh Pant, J.—The Appellant was tried for offence u/s 5(1)(e) read with Section 5(2) of the Prevention of Corruption Act, 1947 (hereinafter the Act) by Special Judge, Solan and Sirmour Districts at Nahan, who by his judgment dated 17-9-1987/24-9-1987 convicted the Appellant and sentenced him to undergo rigorous imprisonment for one year and pay fine of Rs. 1,00,000. In default of payment of fine, the Appellant was further ordered to suffer rigorous imprisonment for 6 months Through this appeal, the Appellant has questioned his conviction and sentence.

2. The facts that emerge from the prosecution case may be briefly stated:

3. The Appellant was employed as Range Officer in the Forest Department and in and around the year 1981 he was posted Range Officer of Dharampur Forest Range, District Solan. Shri Guru Datt (PW 10) of Dharampur, a political worker of Communist Party of India in the year 1981 addressed a complaint (Ext, PW 10/A) to the Forest Minister of Himachal Pradesh levelling charges of illicit felling of trees in the area of Dharampur Forest The allegations made in the said complaint

were that the Appellant was posted in the said range for the last about 5 years, and that he owned property worth more than his known sources of income i.e. to say, house worth over Rs. 8,00,000 near Sunder Cinema at Solau, fetching monthly rent over Rs. 5,000; 60 Bighas of land at Chhaila, District Shimla with telephone facility in the cottage standing on the orchard and luxurious items like Fiat Car, Motor bike and television etc. It was further alleged that the Appellant was responsible for destruction of green Chil belt around Dharampur and also in Barog range and that he had managed to stay at Barog Range-Dharampur inspite of the fact that his transfer was ordered thrice by the authorities. The said complaint was forwarded to the Anti Corruption Unit at Solan by the office of the Deputy Inspector General (Vigilance) and pursuantly, preliminary inquiry was conducted which revealed that the Appellant had constructed a building known as "Aradhna" at Solan and the cost of construction of which was assessed to the tune of Rs. 6,06,500 by the Executive Engineer, Public Works Department. An amount of Rs. 20,000 was found to have been spent towards the price of the land underneath the house, besides Rs. 11,640 for furnishing thereof. It was further noticed that the accused did obtain permission from his department for expending Rs. 1,10,000 for the construction of the house, but in his own assessment an amount of Rs. 3,50,000 was shown to have been expended towards the construction of the house. It was also found that land measuring 41-01 Bighas was purchased by the Appellant in the year 1972 for Rs. 8,500 in the name of his wife, Smt. Himachali Gupta and had also purchased 526 square metres of land in the year 1971 at Sundernagar District Mandi for Rs. 2,000. Further that he was having luxurious items in his possession which were disproportionate to his known sources of income. Consequently, Shri Balbir Singh, Deputy Superintendent of Police (PW 17), Anti Corruption Unit Solan submitted his inquiry report (Ext. PW 17/A) dated 23-7-1983 on the basis of which F.I.R. No. 2 of 1983 (Ext PW 17/B) came to be registered on 3-8-1983 at Anti Corruption Unit, Solan.

4. During investigation a residential portion of the house of the Appellant was searched on 19-8-1983 and various items like Fridge, Television, Record-player, Washing Machine, Geyser, Radio, Tow-in-one, Pistol, gold ornaments, utensils of silver (2000 grams) and other articles of furniture were found lying therein. An inventory (Ext PW 2/A) in that behalf was prepared. Various documents like photostat copy of the sale deed, blue print of the said building, assessment report relating to the building etc. were produced by the Appellant which were also taken into possession vide Memo Ext. PW 2/B. Further, investigation revealed that total amount which the Appellant could possibly save during the relevant period was to the tune of Rs. 30,000 including the returns from the property. He had withdrawn Rs. 9,000 from General Provident Fund and also obtained building advance of Rs. 80,000 and received rent and advances of Rs. 29,800 besides loan from the Life Insurance Corporation amounting to Rs. 5,900 and financial aid from the relatives to the extent of Rs. 52,000 and Anr. amount of Rs. 7,000 by sale of motor cycle in the year 1981. It was also revealed that an amount of

Rs. 46,300 was shown to have been contributed by the wife of the Appellant in the year 1981 and Anr. sum of Rs. 90,000 towards the construction of the 2nd floor of the said building out of her income from the orchard and other sources duly shown in the return. The total amount of the income came out Rs. 3,50,000. The value of the house assessed by the expert, cost of land underneath the same, value of furnishing as well as amount spent for purchasing plot of land at Sundernagar (District Mandi), amount spent for purchasing Anr. piece of land at Chhaila (District Shimla), and a motor cycle, amount lying in fixed and Saving Bank Accounts and also the value of the articles found lying in the residential house was found to the extent of Rs. 7,41,740. Thus, it was found that the Appellant owned and possessed property disproportionate to the known sources of income to the extent of Rs. 3,91,740. After the completion of investigation charge-sheet was laid before the Special Judge. The Appellant pleaded not guilty to the charge and claimed to be tried.

5. The prosecution examined as many as 20 witnesses in support of its case. The Appellant in his statement u/s 313 of the Code of Criminal Procedure admitted that he joined as Range Officer in the Forest Department of Himachal Pradesh in the year 1965. He also admitted the purchase of 526 square metres of land at Sundernagar in the year 1971 for a consideration of Rs. 2,000. He also admitted the purchase of 41-01 Bighas of land at Chhaila for a consideration of Rs. 8,500 in the year 1972 by his wife from her own income. It was admitted by him that 335 square metres of land was purchased by him in the year 1980 at Solan for a consideration of Rs. 20,000 where the building in question was constructed. He explained that the building had been jointly constructed by him and his wife. The assessment report prepared by Shri R.A. Chaudhary (PW 1) about the cost of the said building was not admitted to be correct. He clarified that he also got the value of the building assessed from Shri S.K. Mitra (DW 5) a registered valuer. He admitted that the amount of Rs. 1,46,000 was received as a salary by him with effect from 1-4-1965 to May 1983. He admitted that 9 fixed deposit receipts and gold ornaments weighing 497 grams worth Rs. 1,06,500 were found in the Locker No. 62 of Union Bank of India Branch at Solan. He clarified that the Locker was jointly owned by him and his wife. So far the other articles like television, Fridge, Geyser, washing machine etc. were concerned, it was admitted that the value of these articles was to the extent of Rs. 46,850. He also admitted that similar returns upto 1-6-1983 (Exts. PE, PF, PG, PH, PJ and PK) were also submitted. He admitted that sanction was taken from the department for spending Rs. 1,10,000 towards the construction of the building through letter (Ext. PC) and further that through letter (Ext. PD) the department was intimated that an amount of Rs. 1,80,000 was to be spent for the said purpose. The copies of the accounts of the State Bank of Patiala (Ext. PW 18/A) and Union Bank of India (Ext. PW 14/A) were admitted to be correct. However, it was explained that the said accounts were jointly held by him and his wife. He stated that he as well as his wife are Income Tax Payees and they have been filing income tax returns regularly before the Income Tax Officer concerned from the year 1980 onwards,

certified copies thereof were produced and marked as Ext. D-1 to Ext. D-8 in respect of the Appellant and Exts. D-9 to D-12 pertaining to his wife. Lastly, he contended that copy of the assessment report obtained by him regarding the cost of construction through DW 5 was supplied to the Investigating Officer, who refused to consider the same. He examined five witnesses in his defence.

6. The learned Special Judge on consideration of the evidence and after hearing the learned Counsel for the parties found the Appellant guilty holding that he failed to satisfactorily account for a sum of Rs. 90,000 which amount found in his possession was disproportionate to his known sources of income and invested by him in the construction of the building more than his share. So far ownership and possession of other moveable and immovable properties were concerned, the evidence was not found sufficient to fasten criminal liability on him. The Appellant was accordingly convicted and sentenced as aforesaid. Hence this appeal.

7. Before dealing with the submission of the learned Counsel for the parties, it is necessary to bear in mind the law laid down by their Lordships of the Supreme Court in *State of Maharashtra Vs. Wasudeo Ramchandra Kaidalwar*, In paragraphs 12 and 13 of that judgment Justice A.P. Sen, Judge speaking for the Bench held thus:

12. The terms and expressions appearing in Section 5(1)(e) of the Act are the same as those used in the old Section 5(3). Although the two provisions operate in two different fields, the meaning to be assigned to them must be the same. The expression "known sources of incomes" means "sources known to the prosecution". So also, the same meaning must be given to the words "for which the public servant is unable to satisfactorily account" occurring in Section 5(1)(e). No doubt, Section 4(1) provides for presumption of guilt in cases falling u/s 5(1)(a) and (b), but there was, in our opinion, no need to mention Section 5(1)(e) therein. For, the reason is obvious. The provision contained in Section 5(1)(e) of the Act is a self-contained provision. The first part of the section casts a burden on the prosecution and the second on the accused. When Section 5(1)(e) uses the words "for which the public servant is unable to satisfactorily account", it is implied that the burden is on such public servant to account for the sources for the acquisition of disproportionate assets. The High Court, therefore, was in error in holding that a public servant charged for having disproportionate assets in his possession for which he cannot satisfactorily account, cannot be convicted of an offence u/s 5(2) read with Section 5(1)(e) of the Act unless the prosecution disproves all possible sources of income.

13. That takes us to the difficult question as to the nature and extent of the burden of proof u/s 5(1)(e) of the Act. The expression "burden of proof" has two distinct meanings (1) the legal burden, i.e. the burden of establishing the guilt, and (2) the evidential burden, i.e. the burden of leading evidence. In a criminal trial, the burden of proving everything essential to establish the charge against the accused lies upon the prosecution, and that burden never shifts.

Notwithstanding the general rule that the burden of proof lies exclusively upon the prosecution, in the case of certain offences, the burden of proving a particular fact in issue may be laid by law upon the accused. The burden resting on the accused in such cases is, however, not so onerous as that which lies on the prosecution and is discharged by proof of a balance of probabilities. The ingredients of the offence of criminal misconduct u/s 5(2) read with Section 5(1)(e) are the possession of pecuniary resources or property disproportionate to the known sources of income for which the public servant cannot satisfactorily account. To substantiate the charge, the prosecution must prove the following facts before it can bring a case u/s 5(1)(e), namely, (1) it must establish that the accused is a public servant, (2) the nature and extent of the pecuniary resources or property which were found in his possession, (2) it must be proved as to what were his known sources of income i.e. known to the prostitution, and (4) it must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income. Once these four ingredients are established, the offence of criminal misconduct u/s 5(1)(e) is complete, unless the accused is able to account for such resources or property. The burden then shifts to the accused to satisfactorily account for his possession of disproportionate assets. The extent and nature of burden of proof resting upon the public servant to be found in possession of disproportionate assets u/s 5(1)(e) cannot be higher than the test laid by the Court in V.D. Jhangan Vs. State of Uttar Pradesh, i.e. to establish his case by a preponderance of probability. That test was laid down by the court following the dictum of Viscount Sankey, L.C. in Woolmington v. Director of Public Prosecutions (1935) AC 462. The High Court has placed an impossible burden on the prosecution to disprove all possible sources of income which were within the special knowledge of the accused. As laid down in C.S.D. Swamy Vs. The State, the prosecution cannot, in the very nature of things, be expected to know the affairs of a public servant found in possession of resources or property disproportionate to his known sources of income, i.e. his salary. Those will be matters specially within the knowledge of the public servant within the meaning of Section 106 of the Evidence Act, 1972. Section 106 reads:

Section 106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

In this connection, the phrase the burden of proof is clearly used in the secondary sense, namely, the duty of introducing evidence. The nature and extent of the burden cast on the accused is well settled. The accused is not bound to prove his innocence beyond all reasonable doubt. All that he need do is to bring out a preponderance of probability.

8. Mr. Jagdish Vats learned Counsel appearing on behalf of the Appellant contended that the Appellant has satisfactorily explained the source of the amount spent by him for the construction of the building at Solan, and that explanation may not be wholly true but it is probable or reasonable. He submits

that the learned Special Judge has gravely erred in appreciating the evidence of the prosecution and ignoring the explanation and evidence of the defence witnesses especially the evidence of Shri S.K. Mitra, (DW 5) recognized evaluator. The Appellant has satisfactorily accounted for the expenses incurred and also disclosed his pecuniary resources of income and that the prosecution has miserably failed to prove that the property or assets found in possession of the Appellant were disproportionate to his own sources of income or pecuniary resources. It has been proved by the Appellant on record that the income of the wife from the orchard, planted at Chhaila, rent from the house in question at Solan to the extent of her share, as reflected in her Income Tax Returns and loan from relations and friends were the sources out of which the building at Solan was constructed by the Appellant and the learned Special Judge has miserably failed to take all these sources into account. He also submits that in any case the appellaut was also entitled to the benefit of period for ascertaining and determination of disproportionate assets from the period of his joining service to the completion of the building Further according to the learned Counsel, the Appellant was entitled to rebate of Rs. 50,000 granted by the Income Tax Officer on account of repair and maintenance of the building and that amount should have been included in his assets Therefore, there is deficiency of Rs. 40,000 only which the Appellant could not explain and if he is allowed 10% margin, then his assets are not disproportionate to his known sources of income. In support of his submissions, he relied on Shri Rabindra Kumar Dey Vs. State of Orissa, ; Krishnanand Vs. The State of Madhya Pradesh, ; Kuldip Singh v. State of Punjab 1984 (2) RCR 536; State of Maharashtra v. Pollonji Darabshaw Daruwalla 1987 (Suppl) SCC 379 and P. Satyanarayan Murti v. The State of Andhra Pradesh (1992) 2 CC R 231 (SC).

9. On a careful perusal of the above noted judgments cited by the learned Counsel for the Appellant, the ultimate guidance which this Court could get is that the onus lies affirmatively on the prosecution to prove its case beyond reasonable doubt and it cannot derive any benefit from weakness or falsity of the defence version while proving its case and that the onus of the prosecution never shifts. The accused persons were acquitted in the cases referred to above on the basis of the evidence which was not found satisfactory by the Apex Court or High Court in the facts and circumstances of those cases.

10. I shall now scrutinize whether the contentions of the learned Counsel are supported by cogent and reliable evidence and whether there is any error committed by the court below in calculating the assets of the Appellant. According to Shri R.A. Chaudhary, Superintending Engineer, examined as PW 1, he inspected the building of the Appellant on different dates and worked out the cost of the construction of the building He sub mitted detailed report (Ext. PW 1/ A) alongwith its annexures (Exts. PW 1/A-1 and PW 1/A-2). Final report (Ext. PW 1/B) with Annexure PW 1/B/1 was submitted by him on 31-10-1983. He applied Pubiic Works Department rates prevalent for construction of building in Solan in the year 1981-82 and based his assessment on those rates. He stated that as

per formula, 10 to 12-1/2% of cost of construction represents the costs of electric installation and he assessed cost on electric installation on the basis of that formula. According to his assessment the minimum cost of construction of the building of the Appellant works out to Rs. 6,06,500 The building is of four storeyed with one attic. He had given variation in different rates allowed for construction in the basement, around floor, first floor and other storeys because such constructions were made at different period and because of variation in specification He was assisted in this assessment by Shri B.D. Sharma, Assistant Engineer, Shri R.K. Gupta, Junior Engineer and Mr. Verma Junior Engineer Electrical. He has however, admitted that margin of profits to the extent of 10% allowable to the Government contractor stood included in the scheduled rates applied by him while assessing the cost of construction of the building in question The learned Special Judge has observed that it was not proved on record that the construction work was assigned to any contractor by the Appellant The value of the building as assessed by PW Shri Chaudhary was reduced to the extent of 10% and therefore, on the basis of the opinion of the expert examined by the prosecution it was reasonably assessed at Rs. 5,40,000. In defence the Appellant examined Shri S.K. Mitra (DW 5). He stated that he is retired Chief Engineer and is a Valuer registered under the Ministry of Finance and competent to assess the value of the buildings anywhere in India He is a Graduate in Civil Engineering as well as member of Royal Society of Housing and Health, London as also the Fellow of Institution of Engineers in India. He however, admitted that he was required by the Appellant to do the assessment for the purposes of filing Income Tax Returns. According to the report (Ext. DW 5/C) submitted by DW Shri S.K. Mitra the total cost of the construction of the building of the Appellant was assessed at Rs. 2,17,000 only and plinth/covered area of second floor and attic floor were not included in the report by him. If this report is appreciated in the light of the property returns (Exhibits PE, PF, PG, PH, PJ and PK) filed by the Appellant upto 1-6-1983, then there is material discrepancy in the amounts which are shown to have been spent by the Appellant and his wife during the years 1980-81 to 1983-84 and the amount assessed by Shri Mitra towards the cost of construction upto completion of the building. The Appellant took a stand before the Income Tax Officer that his interest in the building in question was to the extent of 2/3rd share and he expended a sum of Rs. 3,05,333 in the construction of the said building to the extent of his share and the expenditure to the extent of remaining 1/3rd share was said to have been incurred by his wife from her own sources. The learned Special Judge took the value of the building amounting to Rs. 4,92,000 and the Appellant was supposed to have expended a sum of Rs. 3,28,000 towards the cost of construction to the extent of his share besides Rs. 20,000 expended by him for purchasing the land underneath it and Rs. 2,000 towards conveyance charges. The total amount thus, spent by the Appellant on the basis of his own statement comes to Rs. 3,50,000 and if 1/3rd share of his wife is added to this amount of Rs. 3,50,000 the value of the house comes to Rs. 5,25,000. The assessment as done by Shri Mitra was based upon the scheduled rates fixed in the year 1979 by the Public Works Department of

Himachal Pradesh, which were stated to be the latest one. The report submitted by the expert of the prosecution, PW Shri R.A. Chaudhary as already mentioned was based on the prevalent rates duly applied for construction of building at Solan in the year 1981-82. DW Shri Mitra had given allowance for the supervision done by the Appellant in the construction work. But in view of the fact that the Appellant has not proved on record that the work of the construction of the building was assigned by him to the contractor, that concession could not have been given to the Appellant. In his report DW Shri S.K. Mitra had not included the value of the land and conveyance charges amounting to Rs. 22,000. If this amount of Rs. 22,000 is included in the assessment of Shri S.K. Mitra (DW) the total value of the building would be Rs. 5,14,000 and if the Appellant contributed his share to the extent of 2/3rd as claimed by him, the total amount spent by him would come not less than Rs. 3,45,000. Therefore, looking from any angle returns filed by the Appellant under the Income Tax Act reflecting the total expenses of Rs. 3,50,333 towards the construction of the building to the extent of 2/3rd share were not reliable for holding that the Appellant has established a preponderance of probability.

11. The Appellant in his defence filed a copy of the Income Tax Return (Ext D-4) alongwith documents for the financial year 1983-84 which contains necessary details with regard to the source of the amounts expended by him during the relevant period. In this case, the relevant period necessary for determining the alleged charge is from April 1965 to May 1983. A bare perusal of the document (Ext. D-4) shows the detail of sources of investment made by the Appellant upto 31-3-1981. In this document the Appellant has shown his savings upto March 1980 to the extent of Rs. 30,000 and the total amount alleged to have been spent was to the extent of Rs. 1,04,300.00. In this document various amounts have been reflected having been received by him from his relatives, withdrawal from the General Provident Fund, amounts received on a sale of motor cycle, loan taken from the Bank and Life Insurance Corporation have been included besides the rent amounting to Rs. 7,000 received by him to the extent of his own share from 1-11-1980 to 31-3-1981 with regard to the constructed portion of the building in question. The assessment order (Ext. D-3) passed by the Income Tax Officer shows that after giving allowances towards the expenses of Municipal taxes etc, the net return to the Appellant from the rent was nil. This means that the said amount of Rs. 7,000 is supposed to have been expended by the Appellant against the payment of municipal taxes and other expenses for the maintenance of the building. Similarly, in document, Mark A-2 submitted with Ext. D-4 pertaining to the year 1981-82 an amount of Rs. 1,500 is shown saving for this period and various other amounts including the loan from the Government; the amount received from different persons and an amount of Rs. 19,100 as rent and advance rent received from the tenants to the extent of 2/3rd share of the Appellant. In the assessment order Mark A-19, it is mentioned that the total income to the lessee from the rent earned by him to the extent of 2/3rd share comes to Rs. 6,933. If it is so, it cannot be said that the Appellant earned

profits on account of rent to the tune of Rs. 19,100 during the said period. Similar is the position with regard to the financial year 1982-83 as is mentioned in document Mark A-21. In this document also the Appellant had given the details of the amounts received by him by way of departmental loan, Bank interest, loan from relatives and Rs. 19,100 income from rent. On the basis of this declaration the income tax authority passed assessment order Mark A-20 which reflects that an amount of Rs. 5,981 was the total sum earned by the Appellant towards the income from the rent. Therefore, it cannot be said that the income to the Appellant from the rent during the financial year 1982-83 was to the extent of Rs. 19,100. Further, document Mark A-27 indicates the amount received by the Appellant from different persons and the amount returned by him to the Life Insurance Corporation and also the rent to the extent of Rs. 25,600 received by him towards his share. The authority passed an assessment order Mark A-26 which shows that the net income to the Appellant from his share in the rent was Rs. 7,406 only. Therefore, again it cannot be said that the income to the Appellant from the rent was Rs. 25,600 in that year. In the light of these documents, the contention of the learned Counsel for the Appellant that the income to the extent of Rs. 50,000 derived by the Appellant on account of receipt of the rent of the building from the tenants should be included in his assets is not sustainable. The Appellant has not rendered any explanation that this amount of Rs. 50,000 has not been expended by him for the necessary maintenance of the rented portion of the building during the relevant period and also towards the payment of municipal taxes. On the basis of the income tax returns and documents annexed thereto filed by the Appellant with the Income Tax Officer it is not reasonable to hold that the Appellant has been able to establish a preponderance of probability necessary for discharging the burden satisfactorily to account for his possession of disproportionate assets.

12. The declarations made by the Appellant with respect to his assets and liabilities before the Income Tax Authority are full of discrepancies. In his application (Ext. PC) the Appellant declared on 31-3-1980 that he was to expend an amount of Rs. 1,10,000 which had to be met from his own saving (i.e. Rs. 15,000), Loan from Government, (Rs. 80,000), Advance from G.P.F. (Rs. 10,000), and loan from brother (Rs. 5,000). From the evidence on record, it is established that on 1-3-1981 the Appellant submitted an application (Ext. PD) to his department declaring that he would be spending Rs. 1,80,000 towards the construction of the building. It was mentioned in the said application that an aggregate amount of Rs. 69,900 would be raised by him from the rent advance, own saving with State Bank of Patiala, grant from father, brother and father-in-law besides loan from Life Insurance Corporation and the contribution to be made by his wife to the extent of Rs. 4,000. The stand taken by the Appellant in this application clearly indicated that he never declared that the house was being constructed by him and his wife jointly. The Appellant submitted further statement (Ext. PE) dated 21-7-1983. This statement was made by him upto the period ending on 1-6-1983 when the preliminary inquiry against him was in

progress. A perusal of this document shows that the Appellant declared an amount of Rs. 2,06,000 to be expended by him and also an amount of Rs. 1,90,000 by his wife towards the construction of the building. The sources declared in that statement were namely Government loan (Rs. 80,000), G.P.F withdrawal (Rs. 9,000), L.I.C. loan, (Rs. 5,900) self savings, (Rs. 30,000), sale price of motor bike (Rs. 7,000), contribution by wife (Rs. 46,300), grants from relatives (Rs. 52,000) and Rent advance (Rs. 29,800). It was also declared in the statement that the construction of floor (II) falling in the share of his wife was still incomplete. On perusal of these documents, it is manifestly clear that "declarations made in this statement are totally in contradiction to the source of various amounts shown in the Income Tax Returns referred to above. The learned Special Judge is right in holding that the relevant assessment orders were passed by the Income Tax Officer on or after 19-3-1984 and manifestly the Appellant had ample opportunity to prepare such statements which were contradictory to the statement relating to his assets and liabilities earlier submitted by him to his department. He is also right in holding that the conduct of the Appellant in filing wrong statement regarding his assets and liabilities also militates against the presumption of his innocence and it could not be said that the Appellant expended a sum of Rs. 2,60,000 towards the construction of the house after assuming that he has 2/3rd share in it. The finding of the learned Special Judge that while giving benefit of preponderance of probabilities to the Appellant, the Appellant has been able to prove that the amount of Rs. 3,05,333 was invested by him in the construction of the building to the extent of his share is correct on the basis of oral and documentary evidence. After calculating the amount discussed above and after giving all available deductions on the basis of the evidence referred to above, it is established that the value of the share of the Appellant in the said building was not less than Rs. 3,45,000 and he was only able to show that an amount of Rs. 3,05,333 was invested by him in the construction to the extent of his share. The Appellant has not explained that the amount of Rs. 50,000 received by him on account of rent for the relevant period and shown in his Income Tax Returns was not factually expended by him for payment of municipal taxes and other costs necessary for maintenance of the portion of the building rented to the tenants. He has led no evidence to show that the said amount was not expended by him during the relevant period. Therefore, the Appellant has failed to satisfactorily account for a sum of Rs. 90,000 which amount was found in his possession disproportionate to his known sources of income. In the light of the above discussion, the prosecution has satisfactorily established the four ingredients laid down by the Apex Court in *State of Maharashtra v. Wasudeo Ramchandra Kaidalwar* (supra) constituting the offence of criminal misconduct u/s 5(1)(e) against the Appellant.

In the result, for the foregoing reasons, the appeal is accordingly dismissed and the conviction and sentence passed by the Special Judge, Solan and Sirmour Districts dated 17-9-1987/24-9-1987 are maintained.

13. The Appellant is on bail, his bail bonds are cancelled. He shall surrender

forthwith and serve out the remaining part of his sentence.