
(2014) 03 SHI CK 0029

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 4111 of 2013

Shyam Lal Sodha

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 28-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 162, 313
Evidence Act, 1872 — Section 106
Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1988 — Section 13, 13(1)(e), 13(2), 4(1), 5(1)(d)
Wealth Tax Act, 1957 — Section 34AB

Citation : (2015) 2 RCR(Criminal) 74 : (2014) 2 ShimLC 698

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Anoop Chitkara, Advocate for the Appellant; Neeraj Sharma, Deputy Advocate General, Advocate for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—This appeal is instituted against the judgment dated 19.8.2013 rendered by learned Special Judge, Sirmaur District at Nahan in Corruption Case No. 44-CC/7 of 2011, whereby the appellant-accused (herein after referred to as the "accused"), was charged with and tried for offences u/s 13(2) read with Section 13(1)(e) of Prevention of Corruption Act (hereinafter referred to as the "Act" for brevity sake), has been convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 5,000/-, and in default of payment of fine, he was further ordered to undergo simple imprisonment for three months. Case of the prosecution, in a nutshell, is that accused remained posted as Superintendent in the office of Regional Transport Officer, Parwanoo Barrier with effect from 1.1.1998 to 31.12.2002. A complaint was received against accused in Vigilance South Zone, Shimla, regarding accumulation of assets beyond his known sources of income. The complaint was assigned for enquiry to PW-9, Dilshad Mohammed, the-then Inspector Vigilance, Nahan. He

submitted his report dated 28.1.2005, Ex. P-35, supplementary reports dated 29.12.2005 Ex. P-33 and 31.7.2006, Ex. P-27. PW-10 Ms. Shubhra Tiwari, then Deputy Superintendent of Police, SV & ACB, Nahan conducted further inquiry into the sources of income of the accused during the check period from the years 1998 to 2002. She submitted supplementary inquiry report, Ex. PW-10/A. According to her, during the check period from the years 1998 to 2002, the total income of the accused from all sources was Rs. 8,39,257.00 and the total expenditure was Rs. 15,07,319.00 and, as such, he spent a sum of Rs. 6,68,062.00 beyond his known sources of income. On the basis of report Ex. PW-10/A, FIR Ex. PW-12/A was registered against the accused in Police Station, SV & ACB, Nahan. The Investigating Officer collected the documentary evidence against the accused. Total income of the accused from known sources was Rs. 8,39,257.00 and the total expenditure was found to Rs. 15,37,259.00 and, as such, he has unexplained expenditure of Rs. 6,73,002.00. The challan was put up in the Court after completing all the codal formalities.

2. Prosecution examined as many as 12 witnesses to prove its case against the accused. Statement of the accused u/s 313 of the Code of Criminal Procedure was also recorded. He pleaded innocence. According to him, he had 40 years unblemished career in the Department. The Learned Special Judge convicted and sentenced the accused, as noticed herein above. Hence, the present appeal.

3. Mr. Anoop Chitkara has vehemently argued that the prosecution has failed to prove its case against the accused.

4. Mr. Neeraj Sharma, learned Deputy Advocate General has supported the judgment dated 19.8.2013.

5. I have heard the learned Counsel for the parties and have perused the records meticulously.

6. PW-1 Surajpal Singh Jaswal has testified that he remained posted as Assistant Engineer, H.P. P.W.D., Nahan with effect from July, 2003 to January, 2004. A request was received from the Vigilance Department in the month of October, 2003 to assess the building of the accused situated near Carmel School on Shimla Road, Nahan. In the month of November, 2003 to 22nd January, 2004, he alongwith Kuldeep, Junior Engineer visited the spot and on the basis of the spot position drawing. Ex. PW-1/A was prepared and on the basis of prevailing market rates, assessment Ex. PW-1/B was prepared. In his cross-examination, he has deposed that measurements were done by Kuldeep, Junior Engineer and he assessed the valuation of the house of accused on the basis of plinth area. The valuation was done on the basis of outer appearance by applying the Scheduled of rates, as approved by the Public Works Department plus premium as admissible under the rules. He has admitted in his cross-examination that while preparing assessment report Ex. PW-1/B, he did not take into consideration the quantity and ratio of the material, which was actually used by the accused in the building.

7. PW-2 Gurcharan Singh has deposed that the Vigilance team visited Malhotra Niwas near R.T.O. Office, Sauli Khud, Mandi. Accused was staying there as a tenant. The Vigilance team gave its personal search in his presence and in this regard memo Ex. PW-2/A was prepared. Sh. Subhash Chand Malhotra was also present there. The search of entire residential accommodation of the accused was conducted and the inventory of the items was prepared vide memo Ex. PW-2/B. During search, 6 pass-books of P.N.B. and S.B.I., Bilaspur of accused and his family members, one passport of accused, LIC policy and 5 applications of transfer of bank accounts from Nahan to Bilaspur at P.N.B. were also found. These were taken into possession vide memo Ex. PW-2/C.

8. The prosecution has given up Subhash Chand Malhotra and Vishvender Gupta to avoid repetition.

9. PW-3 Dharam Singh Panwar has proved copy of sale deed No. 180 dated 11.6.1997 Ex. PW-3/A.

10. PW-4 Brijesh Kumar Jain has deposed that Smt. Saroj Jain is his sister-in-law. She was Director of M/s. Kraft Electrical Appliance (P.) Limited, Trilokpur Road, Kala Amb, District Sirmaur. She entered into an agreement with the accused for purchase of three storeyed house situated on Shimla Road, Nahan near Carmel School. The sale consideration was Rs. 16 lakhs. Attested copy of agreement is Ex. PW-4/A. Since the permission u/s 118 of the Himachal Pradesh Tenancy Land Reforms Act was not accorded, as such, sale deed could not be executed. However, the possession was delivered.

11. PW-5 Virender Upadhyay has proved the salary statements of accused from the years 1978-79 to 1988-89 as Ex. P-14, copy of permission for purchase of land and vehicle as Ex. P-15, attested copies of ITR as Ex. PW-17 and Ex. P-18, copies of assets and liabilities disclosure forms as Ex. P-19 to Ex. P-23, copies of appointment and posting orders as Ex. P-24 and copy of retirement order as Ex. P-25. He has also proved Ex. P-26, copy of letter dated 10.8.2010.

12. PW-6 Suresh Chand has prepared copy of Jamabandi Ex. PW-6/A and Tatima Ex. PW-6/B.

13. PW-7 Gurpreet Singh has deposed that he has prepared copy of Aksh Ex. PW-7/A and copy of Jamabandi Ex. PW-7/B. He handed over the same to the Vigilance Department.

14. PW-8 Sudhir Chauhan has deposed that he handed over Ex. P-27 to Ex. P-41 and Ex. P-14 to Ex. P-19 to the Investigating Officer vide seizure memo Ex. PW-8/A.

15. PW-9 Dilshad Mohammad has deposed that he remained posted as Inspector Vigilance Department, Nahan during the years 2004 to 2006. He conducted inquiry into the allegations against the accused and submitted his report Ex. P-35. The Superintendent Vigilance raised certain objections and he again submitted supplementary report dated 30.12.2005 Ex. P-33. Certain objections

were again raised by the Superintendent Vigilance. He again submitted supplementary inquiry report dated 31.7.2006 Ex. P-27. In his cross-examination, he has admitted that during check period, Sh. Thakur Sen son of accused was earning Rs. 3,19,020/-. He mentioned the income of son of accused in his inquiry report after verifying the same from the concerned Department. He has also admitted that during inquiry, accused had disclosed to him that he has taken financial assistance from his parents, in-laws and two brothers for construction of the house. However, he could not substantiate this fact during the course of inquiry. He had made inquiry from the parents and others regarding financial assistance given by them to the accused. They stated that they have given financial assistance, but they did not produce any proof.

16. PW-10 Ms. Shubhra Tiwari has testified that Superintendent Vigilance had directed her to conduct further inquiry against the accused in respect of sources of his income for the check period for the years 1998 to 2000. She further conducted the inquiry and submitted supplementary inquiry report Ex. PW-10/A. She recommended registration of case under the Prevention of Corruption Act against the accused. According to her, during the check period, total income of accused was Rs. 8,39,257/- and his total expenditure was Rs. 15,07,319/- and, as such, he has spent a sum-of Rs. 6,68,062/- beyond the known source of income.

17. PW-12 Sucha Nand has deposed that inquiry report Ex. PW-10/A was received in Police Station, SV & ACB, Nahan on the basis of which FIR Ex. PW-12/A was registered by him. He recorded the statement of Surajpal Singh, Assistant Engineer, who had made the assessment of the house of accused. He obtained search warrant and conducted the search of the house of accused on 23.8.2008. He prepared inventory of the household articles and handed over the same to him on Sapurdari vide memo Ex. PW-2/B. On 28.8.2008, Brijesh Jain produced copy of agreement to sell Ex. PW-4/A, which was-taken into possession by him vide memo Ex. PW-8/B. On 20.9.2008, accused presented copy of return of assets and liability Ex. P-23, copy of permission for purchase of land/plot outside H.P. and intimation regarding sale of house at Nahan alongwith copies of purchase deed Ex. P-42 and Ex. P-16, income tax return of Kamlesh Kumar from the year 2002 Ex. P-18, identity card of accused Ex. P-43, which were taken into possession vide memo Ex. PW-8/C. He also obtained copy of Jamabandi Ex. PW-6/A, copy of Tatima Ex. PW-6/B.

18. DW-1 Ramesh Kumar Bansal has testified that he knew the accused. His brother Rakesh Kumar is a registered Architect. He has worked with him. The house plan was got approved from the Municipal Committee, Nahan which is mark "DA" and sanction is mark "DB". He has identified the signatures of Rakesh Kumar on Mark "DA". Accused engaged him for the construction of the house. The cost of construction was assessed by him after visiting the building which is Ex. DA and the details are contained in Ex. DB. He was supplied copy of Ex. PW-1/A and copy of estimate Ex. PW-1/B. The plan of the house was prepared

and signed by him which is Ex. DC. The documents were prepared on 5.5.2013 after measuring the area and inspection of the building, both from inside and outside. The area under construction is only 261.15 square meters whereas in Ex. PW-1/B, it has been wrongly mentioned as 299.20. The cost of construction as calculated Ex. PW-1/B is wrong as there have never been 12.5% charges on electrical and 12.5% charges on water. According to him, the cost of construction was Rs. 300/- per square feet for the ground floor, Rs. 450/- per square feet for the first floor and Rs. 250/- per square feet for the second floor. According to him, rates as mentioned in Ex. PW-1/B from P.W.D. manual never existed. There are separate rates for every item. According to him, the S.D.O. has charged in lump-sum per square meter which is hypothetical. According to him, the Municipal Committee has approved the area of construction as 223.60 square meters.

19. DW-2 Bal Krishan, Senior Clerk, Municipal Committee, Nahan has proved copy of approved plan Ex. DW-2/A dated 29.8.1998 and the copy of approval was conveyed to the accused on 14.9.1998 vide Ex. DW-2/B.

20. Case of the prosecution, in a nutshell, is that the income of the accused from all known sources was Rs. 8,39,257/-. However, his expenditure was Rs. 15,07,319/-, as such, he spent a sum of Rs. 6,68,062/- beyond the known sources of his income. Accused was posted as Superintendent in the office of Regional Transport Officer, Parwanoo Barrier during the check period, i.e. 1.1.1998 to 31.12.2002. Initially, the inquiry was entrusted to PW-9 Dilshad Mohammad. He conducted the inquiry and submitted report dated 28.1.2005 Ex. P-35. However, Superintendent Vigilance raised certain objections. Thereafter, he again submitted supplementary reports on 30.12.2005 and 31.7.2006 Ex. P-33 and Ex. P-27, respectively. However, the matter was handed over to PW-10 Shubhra Tiwari for further investigation. She investigated the case and submitted inquiry report Ex. PW-10/A on the basis of which FIR Ex. PW-12/A was registered in Police Station, SV & ACB, Nahan. Thereafter house search of the accused was made and the documents were taken into possession, as stated hereinabove.

21. The most material witness relied upon by the prosecution to assess the value of the house of accused is PW-1 Surajpal Singh Jaswal. According to him, he has visited the spot with effect from November, 2003 to 22nd January, 2004 and on the basis of the spot position, drawing Ex. PW-1/A was prepared and on the basis of prevailing market rates, the assessment was made vide Ex. PW-1/B. According to PW-1/A, the total covered area was 299.20 square meters and the total cost of construction of the building was Rs. 13,97,234/-. According to Ex. PW-1/A, total area of ground floor was 77.44 square meters, covered area of first floor was 107.36 square meters and covered area of second floor was 114.40 square meters. According to PW-1 Surajpal Singh Jaswal, the cost of construction of ground floor per square meter is Rs. 4,000/-, first floor is Rs. 3,800/- per square meter and cost of second floor is Rs. 3,000/- per square meter. The electricity and water charges were @ 12.5% of the cost of building and the cost came to

Rs. 10,60,928/-, W.S. & S.E. @ 12.5% of the building cost and site development charges @ 10% of the building cost. The measurement of the building as per the statement of PW-1 Surajpal Singh Jaswal was done by Kuldeep, Junior Engineer. Kuldeep, Junior Engineer has not been examined by the prosecution. PW-1 has undertaken the valuation of the building on the basis of outer appearance. He was supposed to get the evaluation after inspecting the building from outside and inside. It is apparent that the assessment made by PW-1 Surajpal Singh Jaswal is only a guess work. According to him he has applied the Schedule of rates of the Public Works Department plus premium as admissible under the rules. According to him, reserve price is only material for calculating the depreciation cost. He has not produced the Schedule of rates either from the Punjab Public Works Department Manual followed in the State of Himachal Pradesh or the Central Public Works Department. He has not taken into consideration the quantity and ratio of the material, which was actually used by the accused in the building. This is another flaw in his evidence. He was merely an Assistant Engineer and not expert valuer. This job was required to be undertaken by an expert valuer after visiting the building. He has neither disclosed his qualification nor has he stated that he was an expert valuer. It has not come in his statement that he has ever undertaken the assessment of the building. In the instant case, the prosecution has got the evaluation done from the Assistant Engineer.

22. DW-2 Bal Krishan, Senior Clerk, Municipal Council, Nahan has proved Ex. DW-2/A. This is the building plan approved by the Municipal Committee. The total area covered was 223.60 square meters. According to DW-1 Ramesh Kumar Bansal, the total area is 261.15 square meters. While making assessment, he assessed the cost of construction of the ground floor @ Rs. 300/- per square feet, Rs. 450/- per square feet for the first floor and Rs. 250/- per square feet for the second floor. According to him, the total cost of the building is Rs. 9,43,300/-. However, learned Special Judge brushed aside the assessment/valuation made by DW-1 without assigning any cogent reasons. Statement of PW-1 Surajpal Singh Jaswal, as discussed hereinabove, does not inspire confidence. He has made the evaluation of the building on the basis of outer appearance only. It was the most unscientific method adopted by him to make assessment of the building. There is variance in the total covered area of the building. According to PW-1 Surajpal Singh Jaswal, total area is 299.20 square meters whereas according to DW-1 Ramesh Kumar Bansal, total area is 260.15 square meters. The total area, as per building plan Ex. DW-2/A, is 223.60 square meters. Ex. DW-2/A is the most authentic document issued by the Municipal Committee, Nahan. It is not the case of the prosecution that accused has raised unauthorized construction. Learned Special Judge should have taken the total area as 223.60 square meters for the purpose of evaluation instead of relying upon a very unscientific report Ex. PW-1/B whereby the total area has been shown to be 299.20 square meters. The prosecution has not proved on record the rates prevalent at the relevant time in the Public Works Department except

the statement of PW-1 Surajpal Singh Jaswal that he has applied the Schedule of rates as approved by Public Works Department. The rates of Public Works Department are generally on the higher side taking into consideration the higher norms. When a private individual constructs a building, he does not follow the norms of Public Works Department. There is variance, as noticed hereinabove, in the Schedule of rates applied by PW-1 Surajpal Singh Jaswal and DW-2 Ramesh Kumar Bansal. In case the rate of Rs. 4,000/- per square meter is applied uniformly to the total area constructed, it would come to Rs. 8,94,400/- average for ground floor, first floor and second floor. Learned Special Judge has placed strong reliance on Ex. P-36. This is dated 31.12.2002 instead of 1999-2000. According to this document, value of the house is Rs. 13,97,234/-. It appears that he has given the market value of the house as on 31.12.2002. Ex. P-36 was never put to the accused in his statement recorded u/s 313 of the Code of Criminal Procedure. In Ex. P-19, accused has given the value of house Rs. 14,00,000/-. The accused has given the market value of the house, as it stood on 20.6.2004. The check period in this case is from the years 1998 to 2002. The total income of the accused was Rs. 8,64,257/- and according to the prosecution, he has spent a sum of Rs. 13,97,234/- for the construction of the house. However, as per the calculations made hereinabove, the value of the house comes to Rs. 8,94,400/-. Thus, he was not in possession of disproportionate assets beyond the "known sources" of his income. He has satisfactorily counted for possession of assets.

23. The prosecution should have got the house of the accused evaluated from a registered valuer. There is a provision of registration of valuers in Wealth Tax Act, 1957 in order to obtain scientific evaluation of the movable and immovable property etc. Section 34AB of the Wealth Tax Act, 1957 provides that Chief Commissioner or Director General shall maintain a register to be called the Register of Valuers in which names and addresses of persons registered under sub-section (2) are to be entered. There is a provision for qualifications also. The valuer is supposed to make an impartial and true valuation of any asset which he may be required to value, furnish a report of such valuation in the prescribed form, charge fees at a rate not exceeding the rate or rates prescribed in this behalf and not undertake valuation of any asset in which he has a direct or indirect interest. In the instant case, the valuation has been called from the Assistant Engineer, Public Works Department and not from a registered valuer. The qualifications of registered valuer of immovable property are provided under rule 8-A of the Wealth Tax Rules, 1957. The valuer of immovable property under rule 8-A of Wealth Tax Rules, 1957 must possess the following qualifications:

- (A) be a graduate in civil engineering, architecture or town planning of a recognised university; or
- (B) be a post-graduate in valuation of real estate from a recognised university; or
- (C) possess a qualification recognised by the Central Government for recruitment to superior services or posts under the Central Government in the field of civil

engineering, architecture or town planning; and

(ii) (A) he must be a person formerly employed--

(a)" in a post under Government as a gazetted officer; or

(b) in a post under any other employer carrying a remuneration of not less than Rs. 2,000 per month, and, in either case, must have retired or resigned from such employment after having rendered service for not less than ten years as a valuer, architect or town planner, or in the field of construction of buildings, designing of structures, or development of land; or

(c) as a professor, reader or lecturer in a university, college or any other institution preparing students for a degree in civil engineering, architecture or town planning, or for any qualification referred to in clause (i), and must have retired or resigned from such employment after having taught for not less than ten years any of the subjects of valuation, quantity surveying, building construction, architecture, or town planning;

OR

(B) he must have been in practice as a consulting engineer, valuer of real estate], surveyor or architect for a period of not less than ten years and must have acquired experience in any of the following four fields:--

(a) valuation of buildings and urban lands; or

(b) quantity surveying in building construction; or

(c) architectural or structural designing of buildings or town planning; or

(d) construction of buildings or development of land; and his gross receipts from such practice should not be less than fifty thousand rupees in any three of the five preceding years:

Provided that in the case of a person possessing a post-graduate degree. in valuation of real estate from a recognised university, the provisions of this sub-rule shall have effect as if,--

(a) for the words "ten years", the words "two years" had been substituted;

(b) for the words "fifty thousand rupees in any three of five preceding years", the words "fifty thousand rupees in any one of the two preceding years" had been substituted.

24. Their Lordships of the Hon^{ble} Supreme Court in V.D. Jhangan Vs. State of Uttar Pradesh, have held that the burden of proof lying upon the accused u/s 4(1) of the Prevention of Corruption Act will be satisfied if he established his case by a preponderance of probability as is done by a party in civil proceedings. It is not necessary that he should establish his case by the test of proof beyond a reasonable doubt. Their Lordships have held as under:

4. The next question arising in this case is as to what is the burden of proof placed upon the accused person against whom the presumption is drawn u/s 4(1) of the Prevention of Corruption Act. It is well established that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him u/s 4(1) of the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden is shifted to the prosecution which still has to discharge its original onus that never shifts, i.e., that of establishing on the whole case the guilt of the accused beyond a reasonable doubt. It was observed by Viscount Sankey in 1935 AC 462 *Woolmington vs. The Director of Public Prosecutions*, that "no matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained". This principle is a fundamental part of the English Common Law and the same position prevails in the Criminal Law of India. That does not mean that if the statute places the burden of proof on an accused person, he is not required to establish his plea; but the degree and character of proof which the accused is expected to furnish in support of his plea, cannot be equated with the degree and character of proof expected from the prosecution which is required to prove its case. In *Rex v. Carr-Briant*, 1943-1 KB 607, a somewhat similar question arose before the English Court of Appeal. In that case, the appellant was charged with the offence of corruptly making a gift or loan to a person in the employ of the War Department as an inducement to show, or as a reward for showing favour to him. The charge was laid under the Prevention of Corruption Act, 1916, and in respect of such a charge, Section 2 of the Prevention of Corruption Act, 1916, had provided that a consideration shall be deemed to be given corruptly unless the contrary is proved. The question which arose before the Court was: what is the accused required to prove if he wants to claim the benefit of the exception? At the trial, the Judge had directed the jury that the onus of proving his innocence lay on the accused and that the burden of proof resting on him to negative corruption was as heavy as that ordinarily resting on the prosecution. The Court of Criminal Appeal held that this direction did not correctly represent the true position in law. It was held by the Court of Appeal that where, either by statute or at Common law, some matter is presumed against an accused person "unless the contrary is proved," the jury should be directed that the burden of proof on the accused is less than that required at the hands of the prosecution in proving the case beyond a reasonable doubt, and that this burden may be discharged by evidence satisfying the jury of the probability of that which the

accused is called on to establish. The ratio of this case was referred to with approval by this Court in Harbhajan Singh Vs. State of Punjab, . We are accordingly of the opinion that the burden of proof lying upon the accused u/s 4(1) of the Prevention of Corruption Act will be satisfied if the accused person establishes his case by a preponderance of probability and it is not necessary that he should establish his case by the test of proof beyond a reasonable doubt. In other words, the onus on an accused person may well be compared to the onus on a party in civil proceedings, and just as in civil proceedings, the Court trying an issue makes its decision by adopting the test of probabilities, so must a criminal Court hold that the plea made by the accused is proved if a preponderance of probability is established by the evidence led by him.

5. It is against this background of principle that we must proceed to examine the contention of the appellant that the charges u/s 161, Indian Penal Code and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act have not been proved against him. It was argued by Mr. Sethi that the circumstances found by the High Court in their totality do not establish that the appellant accepted the amount of Rs. 10,000 as illegal gratification and not as a loan. It was also argued for the appellant that he had adduced sufficient evidence to show that the amount was really given to him as a loan by Ram Lal Kapoor. Having examined the findings of both the lower Courts, we are satisfied that the appellant has not proved his case by the test of preponderance of probability and the lower Courts rightly reached the conclusion that the amount was taken by the appellant not as a loan but as illegal gratification. It has been found by the High Court that Ram Lal Kapoor was not likely to lend a sum of Rs. 10,000 to the appellant without getting a formal document executed. It is not suggested by the appellant that he executed a hand-note in favour of Ram Lal Kapoor. There was a suggestion that he granted a receipt for Rs. 10,000 to Ram Lal Kapoor but the High Court rejected the case of the appellant on this point. The High Court has observed that, in the first instance, the appellant did not make a statement with regard to the receipt as soon as the amount was recovered from him. It was only after he was taken to Mardan Singh's place that he made a belated statement that the amount was advanced to him by Ram Lal Kapoor as a loan and he had granted a receipt. Mr. Sethi contended that it was the duty of the District Magistrate and the Senior Superintendent of Police to have made a search of the whole bungalow of Ram Lal Kapoor for the alleged receipt and the failure of these two officers to make the search should be taken to prove the appellant's case regarding the grant of the alleged receipt. We do not accept the submission of the learned Counsel as correct. The High Court has remarked that the statement of the appellant was highly belated and the District authorities were justified in not making a search and ransacking the whole bungalow of Ram Lal Kapoor for the recovery of the alleged receipt. It was then contended on behalf of the appellant that no panchnama was prepared by the District Magistrate or the Senior Superintendent of Police who recovered the money from the appellant. It was also stated that no independent witness was summoned to be present at the

time of the search. It was pointed out that the District Magistrate is related to Sidh Gopal and it was suggested by Mr. Sethi that the evidence of the District Magistrate, or the Senior Superintendent of Police and of Sidh Gopal should not have been accepted by the High Court as true. But all the circumstances have been taken into account by the High Court in discussing the testimony of these witnesses and ordinarily it is not permissible for the appellant to reopen conclusions of fact in this Court, especially when both the lower Courts have agreed with those conclusions which relate to the credibility of witnesses who have been believed by the trial Court which had the advantage of seeing them and hearing their evidence. It was then contended by the appellant that the High Court has taken into account the statement of Ram Lal Kapoor made in a departmental proceeding in coming to a conclusion regarding the guilt of the appellant. We do not think there is any justification for this argument. The High Court has properly held that the evidence of Ram Lal Kapoor, dated December 16, 1952-Ex. P-11-was not admissible and has excluded it from its consideration in discussing the guilt of the appellant. It is true that in setting out the history of the case the High Court has referred to the statement of Ram Lal Kapoor but that does not mean that the High Court has used the statement of Ram Lal Kapoor for the purpose of convicting the appellant in the present case. It was also contended by Mr. Sethi on behalf of the appellant that the statements-Exs. F-3 and P-4-should have been excluded from consideration. It was contended that these statements were made by the appellant to the District Magistrate after the recovery of the money and were hit by the provisions of Section 162 of the Criminal Procedure Code. On behalf of the respondent Mr. Desai said that these statements are admissible because they were made to the District Magistrate and not to a police officer and were not during the course of investigation because the First Information Report was lodged on September 13, 1951 at 8-30. p.m. long after the statements were made.. We do not consider it necessary to express any concluded opinion as to whether Exs. P-3 and P-4 are admissible but even if they are excluded from consideration there is sufficient evidence to support the conviction of the appellant on the charges u/s 161, I.P.C. and Section 5(2) read with Section 5(1)(d) of the Prevention, of Corruption Act.

25. Their Lordships of the Hon"ble Supreme Court in M. Krishna Reddy Vs. State Depty Superintendent of Police, Hyderabad, while interpreting Section 5(1)(e) of the Prevention of Corruption Act, 1947 have held that initial burden of proof is on the prosecution and after that burden is discharged by the prosecution, onus shifts on accused-Their Lordships have further held that it is not the mere acquisition of property that constitutes an offence u/s 5(1)(e) but it is the failure to satisfactorily account for such possession that makes the possession objectionable as offending the law. Their Lordships have held as under:

6. An analysis of Section 5(1)(e) of the Act, 1947 which corresponds to Section 13(1)(e) of the new Act of 1988 shows that (it) is not the mere acquisition of property that constitutes an offence under the provisions of the Act but it is the failure to satisfactorily account for such possession that makes the possession

objectionable as offending the law.

7. To substantiate a charge u/s 5(1)(e) of the Act the prosecution must prove the following, ingredients, namely, (1) the prosecution 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, (3) it must be proved as to what were his known sources of income, i.e. known to the prosecution, 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 the above ingredients are satisfactorily 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. In other words, only after the prosecution has proved the required ingredients, the burden of satisfactorily accounting for the possession of such resources or property shifts to the accused.

26. Their Lordships of the Hon"ble Supreme Court in State of Madhya Pradesh Vs. Awadh Kishore Gupta and Others, have held that expression "known sources of income" in Section 13 does not mean sources known to accused. Their Lordships have further held that burden is cast on accused not only to offer plausible explanation as to acquisition of large wealth but also to satisfy Court that explanation is worthy of acceptance. Their Lordships have held as under:

5. Section 13 deals with various situations when a public servant can be said to have committed criminal misconduct. Clause (e) of sub-section (1) of the Section is pressed into service against the accused. The same is applicable when the public servant or any person on his behalf, is in possession or has, at any time during the period of his offence, been in possession, for which the public servant cannot satisfactorily account pecuniary resources or property disproportionate to his known sources of income. Clause (e) of sub-section (1) of Section 13 corresponds to clause (e) of sub-section (1) of Section 5 of the Prevention of Corruption Act, 1947 (referred to as "Old Act"). But there has been drastical amendments. Under the new clause, the earlier concept of "known sources of income" has undergone a radical change. As per the explanation appended, the prosecution is relieved of the burden of investigating into "source of income" of an accused to a large extent, as it is stated in the explanation that "known sources of income" mean income received from any lawful source, the receipt of which has been intimated in accordance with the provisions of any law, rules orders for the time being applicable to a public servant. The expression "known sources of income" has reference to sources known to the prosecution after through investigation of the case. It is not, and cannot be contended that "known sources of income" means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused persons. Those will be matters "specially within the knowledge" of the accused, within the meaning of Section 106 of the Indian Evidence Act, 1872 (in short the "Evidence Act").

6. The phrase "known sources of income" in Section 13(1)(e) {old Section

5(10(e)) has clearly emphasis on the word "income". It would be primary to observe that qua the public servant, the income would be what is attached to his office or post, commonly known as remuneration or salary. The term "income", it is incapable of being understood as meaning receipt having no nexus to one's labour, or expertise, or property, or investment, and having further a source which may or may not yield a regular revenue. These essential characteristics are vital in understanding the term "income". Therefore, it can be said that, though "income" is receipt in the hand of its recipient, every receipt would not partake into the character of income. Qua the public servant, whatever return he gets of his service, will be the primary item of his income. Other incomes which can conceivably are income qua the public servant, will be in the regular receipt from (a) his property, or (b) his investment. A receipt from windfall, or gains of graft, crime, or immoral secretions by persons prima facie would not be receipt from the "known sources of income" of a public servant.

7. The legislature has advisedly used the expression "satisfactorily account". The emphasis must be on the word "satisfactorily" and the legislature has, thus, deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the Court that his explanation was worthy of acceptance.

27. The appreciation of the evidence by the learned Special Judge is very superfluous. The serious infirmities from which the prosecution case suffers were over looked by the trial Court while appreciating the evidence. He has grossly erred in appreciating the evidence, more particularly while appreciating the evidence of PW-1 Surajpal Singh Jaswal. Thus, the accused is not guilty of the charges levelled against him.

28. Accordingly, in view of above analysis and discussion, the prosecution has failed to prove its case against the accused. Consequently, the appeal is allowed. The judgment dated 19.8.2013 rendered by learned Special Judge, Sirmaur District at Nahan in Corruption Case No. 44-CC/7 of 2011 is set aside. Accused is acquitted of the charges framed against him. Fine amount, if already, deposited be released to the accused. Bail bonds are cancelled. Before parting with the judgment, State Government is directed to take steps for registration of the valuers, on the analogy of the norms laid down under the Wealth Tax Rules, 1957 read with Wealth Tax Rules, 1957, within a period of ten weeks from today for the purpose of valuation of movable and immovable assets etc. under the Prevention of Corruption Act, 1988.