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(2013) 09 GAU CK 0046

In the Gauhati High Court

Case No : Criminal Appeal 143 of 2010

Sri Manoranjan Kalita — APPELLANT

Vs

The State of Assam — RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(2)(i), 313
Prevention of Corruption Act, 1988 — Section 13(1)(c), 13(1)(e), 13(2)

Citation : (2014) CriLJ 689 : (2014) 1 GLD 256

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : D. Talukdar, Mr. K. Saikia and Mr. P. Choudhury, for the Appellant; K.A. Mazumdar, Addl. P. P., Assam, for the Respondent

Final Decision : Disposed Off

Judgement

Iqbal Ahmed Ansari, J.—By the judgment and order, dated 24.08.2010, passed, in Special Case No. 06/2007, by the learned Special Judge, Guwahati, Assam, the accused-appellant, namely, Manoranjan Kalita, stands convicted u/s 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (in short, ''PC Act, 1988'') and sentenced to suffer rigorous imprisonment for 2 (two) years and pay fine of Rs. 25,000/- and, in default of payment of fine, suffer rigorous imprisonment for a further period of 3 (three) months. The case of the prosecution may, in brief, be described as under:

(i) On the basis of an enquiry, conducted by the Vigilance and Anti Corruption, Assam, Guwahati, a First Information Report (in short ''FIR'') was lodged, alleging, inter-alia, thus: Accused Manoranjan Kalita (i.e., the appellant herein) was appointed, on 01.04.1970, as Range Officer in the Department of Soil Conservation, Government of Assam, at the pay scale of Rs. 375/- and, later on, he was promoted to the rank of Divisional Officer and posted to various places in Assam. During the period of his service, from 01.04.1970 to 31.12.1992, he acquired properties, both movable as well as immovable, worth Rs. 7,52,992/-,

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approximately, either in his own name or in the name of his family, which were found to be disproportionate to his known source of income. Based on the FIR, the Anti Corruption Branch Police Station Case No. 2/1995, u/s 13(1)(e) read with Section 13(2) of the PC Act, 1988, was registered and investigation commenced accordingly.

(ii) During investigation, a large number of documents were seized. Following the investigation, final report was submitted, u/s 173(2)(i) CrPC, to the effect that there was no sufficient material for the purpose of enabling the investigator to take the view that the accused had, at any point of time, either in his possession or in the possession of his family, property, movable or immovable, the value whereof exceeded his known source of income. However, this final report was not accepted, the investigation was carried further and, eventually, a charge-sheet was laid, u/s 13(1)(e) read with Section 13(2) of the PC Act, 1988, against the accused.

2. At the trial, when a charge, u/s 13(1)(e) read with Section 13(2) of the PC Act, 1988, was framed against the accused, the accused pleaded not guilty thereto.

3. In support of their case, prosecution examined altogether 11 (eleven) witnesses. The accused was, then, examined u/s 313 Cr.PC and, in his examination aforementioned, he denied that he had committed the offence, which was alleged to have been committed by him, the case of the defence being that of denial.

4. Having, however, found the accused guilty of the offence, which he stood charged with, the learned trial Court convicted him accordingly and passed sentence against him as mentioned above. Aggrieved by his conviction and the sentence, which has been passed against him, the accused, as a convicted person, has preferred this appeal.

5. I have heard Mr. D. Talukdar, learned counsel for the accused-appellant. I have also heard Mr. K.A. Mazumdar, learned Addl. Public Prosecutor, Assam.

6. While considering present appeal, it may be noted that PW1 (Birendra Kr. Das), a retired Executive Engineer, PWD, was the one, who had, admittedly, assessed the value of the residential building of the accused-appellant, the valuation of the building being Rs. 7,13,589/-.

7. In his cross-examination, PW1 has admitted that he did not visit the site himself and that he has made the assessment on the basis of the measurements of the building, which had been collected by his subordinate field staffs. The members of subordinate field staff, who were, according to the evidence of PW1, involved in taking measurements of the said building, have not examined at the trail. However, the correctness of the valuation, made by PW1, was never disputed or challenged.

8. Notwithstanding, therefore, that PW1 was not the person, who had visited the

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site, his assessment of the valuation of the building, in question, was never questioned.

9. As far as PW2 is concerned, his evidence is to the effect that he used to purchase milk from the appellant on payment. Similarly, PW3 has deposed that the wife of the accused had a nursery and was in the business of sale of articles of nursery.

10. Lending support to the evidence of PW3, PW5 has deposed that the wife of the accused had a business of flowers and, in the year 1980, the wife of the accused took a loan of Rs. 20,000/- from one Rajib Ahmed in his presence. This apart, the undisputed evidence of Rajib Ahmed (PW6) is that he (PW6) gave an amount of Rs. 20,000/- to the appellant''s wife as loan.

11. So far as PW4 is concerned, he is a witness to the seizure of certain documents.

12. PW7, who was a Police Officer, at the relevant point of time, in the Anti Corruption Department, Assam, merely seized some documents. PW8 is the Investigating Officer, who had submitted the final report. PW9 is also a Police Officer, who, on having found nothing against the accused-appellant, had submitted the final report. PW10 was the one, who had submitted inquiry report alleging the accused appellant to have been in possession of assets disproportionate to his income.

13. As can be clearly seen from what have been brought on record is that except the value of the building, as assessed by PW1, nothing else was brought on record to show as to what was the known source of income of the appellant.

14. The above discussion of the evidence on record brings me to PW11, who has, eventually, submitted the charge-sheet and who had prepared a list of assets and liabilities of the appellant as well as his income and expenditure.

15. What is, now, of immense importance to note is that the prosecution did not examine any witness, who had the knowledge as to what had been the known source of income of the accused-appellant.

16. While considering the commission of an offence, u/s 13(1)(e) of the PC Act, 1988, it is relevant to note that the initial burden to prove, that either the accused or any member of his family had, at any point of time, been in possession of property disproportionate to his known source of income, lies on the prosecution. If the initial burden is not discharged by the prosecution, the onus does not shift to the accused to offer his explanation as to how he could have ever been in possession of, either directly or through some other member of his family, in possession of property disproportionate to the known source of income.

17. In the case at hand, while the assessment, as regards the value of the property of the accused-appellant, has been provided by PW1, there is no

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evidence whatsoever of any person claiming to have the knowledge of any known source of income of the accused.

18. Merely submitting a list of assets and liabilities is not enough to attract the offence u/s 13(1)(c) of the PC Act. Someone has to prove the correctness of the entries made in such a list.

19. In order to sustain an offence, u/s 13(1)(e) read with Section 13(2) of the PC Act, 1988, three essential conditions are required to be satisfied. Firstly, the prosecution has the burden to prove that the value of the property or properties, which the accused was alleged to have had in possession, either personally or through any member(s) of his family. Secondly, there must be proof of known source of income and, thirdly, there must be proof that properties, in question, are disproportionate to known source of income. In short, thus, the prosecution ought to have, in the present case, disclosed, on record, with the help of evidence, as to what known source of income of the accused-appellant had been. If mere valuation of property of the accused is given without providing or adducing any evidence with regard to the income of the accused from his known source, the prosecution cannot be said to have discharged its burden of having proved the offence, u/s 13(1)(e) read with Section 13(2) of the PC Act, 1988, and, until the prosecution discharges its initial burden of proving its case, the onus does not shift to the accused to satisfy the Court with his explanation, by adducing evidence, that either the valuation of his property has not been correctly done, or that his known source of income, or in the light of his known source of his income, he has never been in possession of property or properties disproportionate to his known source of income.

20. In the case at hand, as already indicated above, no one has been examined by the prosecution, who has any personal knowledge, or knowledge based on documents, as regards the known source of income of the accused-appellant.

21. In the circumstances indicated above, the prosecution could not have been held to have proved its case beyond reasonable doubt against the accused-appellant. Consequently, the accused-appellant, in the facts and attending circumstances of the present case, ought to have been acquitted.

22. Because of what have discussed and pointed out above, this appeal succeeds. The impugned conviction of the accused-appellant and the sentence passed against him by the judgment and order, under appeal, are hereby set aside. The accused-appellant is held not guilty of the offence, which he stands convicted of and he is acquitted of the same.

23. Send back the LCR. With the above observations and directions, this appeal stands disposed of.

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