
(2016) 02 BOM CK 0037
In the Bombay High Court
Case No : Criminal Appeal No. 276 of 1999

State of Maharashtra

APPELLANT

Vs

Gunwantrao Bhaurao Deshmukh

RESPONDENT

Date of Decision : 04-02-2016

Acts Referred:

Prevention of Corruption Act, 1988 — Section 5(l)(a), Section 5(l)(e)

Citation : (2016) ALLMRCri 5114 : (2017) 2 MhLJCrI 675

Hon'ble Judges : A.B. Chaudhari, J.

Bench : Single Bench

Advocate : None, for the Respondents; Mr. M.J. Khan, APP, for the Appellant

Final Decision : Dismissed

Judgement

A.B. Chaudhari, J.(Oral) - The instant Appeal was filed by the State of Maharashtra challenging the judgment and order dated 15.4.1999 passed by Special Judge, Akola in Special Case No.6/1983, thereby acquitting the respondents for the offence punishable under section 5 (1)(e), 5 (1)(a) of the Prevention of Corruption Act r/ws. 109 of the Indian Penal Code.

2. Heard learned APP for the appellant-State. None appears for the respondents, though served. Perused the impugned judgment.

3. In support of the Appeal, learned APP submitted that the trial Judge has committed a grave error in recording the order of acquittal against the respondents when the prosecution has proved the case beyond doubt that the respondent no.1, a public servant, has held the assets disproportionate to the known source of his income. He further argued that the learned trial Judge ought not to have rejected the prosecution evidence as to the disproportionate assets, looking to the properties purchased by the public servant in his own name and in the names of his father and wife.

4. The impugned order of acquittal was recorded in the year 1999 in a case relating to disproportionate assets. The learned trial Judge recorded the following

reasons for acquitting the respondents. I quote para nos.47, 51 and 52 of the impugned judgment, which read thus,

"47. No documentary or oral evidence is on record to draw a unhesitating conclusion that the transaction of sale vide Exh.102 is Benami in the name of accused no. 3-Pramila. At the costs of repetition, I say that this transaction took place on 17.5.69 i.e. after ten years from the date of joining of service by accused no.1-Gunwant. A person may save Rs. 1,000/- within a period of ten years, though he may be employee having smaller cadre. Therefore, there is no cogent evidence to show that accused Pramila acquired the flour mill or plot in question Benami, as her husband- accused no.1 Gunwant paid consideration for the purchase of plot and flour mill.

51. On perusal of complaint (Exh.134), it is clear that in the complaint, the complainant has mentioned about five field properties and house property situated at Ridhora. The cost of the same comes to Rs. 25,000/-. Already I have recorded the finding that property purchased in the name of Bhaurao or Pramila, none of the transactions is benami transaction nor it was proved by cogent and reliable evidence by the prosecution that it was purchased by accused no.1 - Gunwant in the name of his father-Bhaurao and in the name of his wife Pramila.

52. If we consider that out the field properties and house property which is recorded in the name of Bhaurao, then what remains is one plot purchase vide Exh.102 and a flour mill of which partnership is there as per Exh.105 and consideration for the same is Rs. 12,000/- in total. Even if we believe, for the sake of arguments that it was purchased by accused no.1 -Gunwant in the name of his wife, then also the net income of accused; his expenditure and saving if we considered the same, then that purchase is not disproportionate to the known source of income of the accused no.1- Gunwant...."

5. Having looked the evidence tendered by the prosecution and having read the reasons above, for recording the order of acquittal, I do not find any perversity in the view taken by the learned trial Judge, which is a possible view on the basis of the evidence led. At any rate, I am sure that there is no need to take a second view of the matter on the same evidence, in an Appeal against acquittal. The Hon"ble Supreme Court in the case of Darshan singh v. State of Punjab and another : (2010) 2 SCC 333 (Para No.61) has held thus,

" 61. In a case of acquittal, if the trial court's view is a possible or plausible view, then the appellate court or the High Court would not be justified in interfering with it. It is the settled legal position that there is presumption of innocence and that presumption is further fortified with the acquittal of the accused by the trial court. The appellate court or the High Court would not be justified in reversing the judgment of acquittal unless it comes to a clear conclusion that the judgment of the trial court is utterly perverse and, on the basis of the evidence on record, no other view is plausible or possible than the one taken by the appellate court or the High Court."

6. In the background of the above-referred facts and law, the following order is passed :

ORDER

Criminal Appeal No. 276/1999 is dismissed.