

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Appeal No.1442 OF 2006

Between:

S.V.Rama Chary @ Abdul Rahman & 7 others ... Appellants 2 to 8

And

The State ACB, Hyderabad Range,
Hyderabad Rep. by its Special Public
Prosecutor for ACB Cases,
High Court of A.P.,
Hyderabad.

... Respondent

DATE OF JUDGMENT PRONOUNCED : 04.08.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
- 2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
- 3 Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? Yes/No

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.A. No. 1442 of 2006

% Dated 04.08.2023

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... Respondent

! Counsel for the Petitioner: Sri Badeti Venkata Ratnam

^ Counsel for the Respondents: Sri Sridhar Chikyala
SC SPL Public Prosecutor for ACB

>HEAD NOTE:

? Cases referred

¹ 2011 CRL.L.J 1770

² 2006 CRI.L.J 4598

³ 1999 (1) ALT (Cri.) 69 (A.P.)

⁴ AIR 1977 Supreme Court 796

⁵ (2001) 5 Supreme 484

⁶ AIR 1999 SC 2556 = 1999 SCC (Cri) 1133

⁷ (2003) 3 SCC 57

⁸ (2001) CRI.L.J.111 SC

⁹ (1992) 4 SCC 45

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No. 1442 OF 2006****JUDGMENT:**

This Criminal Appeal is filed by the appellant/Accused officer challenging the conviction recorded by the Additional Special Judge for SPE & ACB Cases in CC.No.15 of 1994, dt.11.10.2006, under Section 13(1)(e) r/w. 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act') for being in possession of disproportionate assets of Rs.1,99,251.67 ps.

2. The ACB filed charge sheet against the appellant/accused officer who was worked in the Medical and Health Department in various capacities during the check period from 04.07.1969 to 27.05.1991.

3. During the course of investigation, ACB found that the income of the appellant/accused officer was Rs.3,89,563/- during the check period and the expenditure incurred was Rs.2,79,072/-. The likely savings was Rs.1,09,491/-. However, the accused was found in possession of assets worth Rs.6,97,551/-. Accordingly, there was disproportion of Rs.5,87,060/-. The appellant was not in a position to explain

for the disproportion of assets held by him for which reason, the charge sheet was filed.

4. The Prosecution examined PWs.1 to 27 and marked Exs.P1 to P42. The appellant/accused officer examined 7 defence witnesses DWs.1 to 7 and marked Exs.D1 to D13.

5. Having considered the evidence on record, the learned Special Judge came to a conclusion that the total assets was valued at Rs.5,19,149.82 ps. (ACB value Rs.6,97,551/-). The income, additional income, gifts etc was Rs.5,02,825.15 ps. (ACB value Rs.3,89,563.80 ps.). The expenditure arrived at was Rs.1,82,927/- (prosecution value Rs.2,79,072/-). Accordingly, the learned Special Judge found that the appellant/accused officer was in possession of disproportion assets worth Rs.1,99,251.67 ps.

6. The learned counsel appearing for the appellant would submit that the error committed by the learned Special Judge was not including the additional income-item No.2 to an extent of Rs.23,435/- which was income received through gift cheques vide Exs.D1 to D4 and also proved through the witnesses PWs.15 and Ex.P25. The third item of additional income

according to the appellant officer was Rs.2,20,395.10 ps. whereas the Court arrived at Rs.95,675.60. Learned Counsel submits that it is an admitted fact that there were foreign remittances to an extent of Rs.2,20,395.10 ps, according to PW18, PW26 and Ex.D7. The learned Special Judge, though, found that the amounts were received through foreign remittances, accepted only an amount of Rs.95,675.60 ps. The reason being the remittances of Rs.95,675.60 ps. were received prior to the insertion of 'Explanation' to Section 13(1)(e) of the Prevention of Corruption Act. Having found that the said amounts were remitted and received from the son into the account of the wife of the appellant, the learned Special Judge ought to have considered the entire remittances under the income of the appellant, which is Rs.2,20,395.10 ps.

7. He relied on the Judgment of Honourable Supreme Court in ***Ashok Tshering Bhutia v. State of Sikkim***³. In the said Judgment the Honourable Supreme Court was dealing with case of disproportionate assets. It was found that the accused officer had not filed form in accordance with the mandatory requirement of Rule-19 of Sikkim Government Servants Conduct Rules, 1981. The Honourable Supreme Court held that

³ 2011 CRL.L.J 1770

in the event of failure to submit such returns, the accused would be liable to face disciplinary proceedings under the service rules applicable at the relevant time and the accused therein could not be fastened with criminal liability only for want of compliance of such requirement of the rules.

8. Learned Counsel draws parallels with the judgment and argued that the amount of Rs.1,24,719.50 ps should have been included. Not informing the department could be tried by departmental action and not in a criminal case.

9. He also relied on the Judgments reported in ***State, Inspector of Police, Visakhapatnam v. Surya Sankaram Karri***⁴; ***S.Kurminaidu v. State of A.P.***⁵; ***Krishnanand Agnihotri v. State of M.P.***⁶.

10. On the other hand learned Standing Counsel for the State ACB would submit that according to 'Explanation' to Section 13 (1)(e) of the Prevention of Corruption Act, the said gift remittances into the account of the wife of the accused cannot be considered for the sole reason of the accused not disclosing the said receipt to the Government. The learned Special Judge

⁴ 2006 CRI.L.J 4598

⁵ 1999 (1) ALT (Cri.) 69 (A.P.)

⁶ AIR 1977 Supreme Court 796

has rightly refused to add the gifts into the income of the accused. However, the learned Special Judge had arrived at a conclusion that the amount of Rs.95,675.60 which was received prior to insertion of the 'Explanation' to Section 13(1)(e) of the Prevention of Corruption Act was proper. Accordingly, the claim to add the said gift remittances should be refused.

11. Learned Public Prosecutor relied on the Judgment of ***K.Ponnuswamy v. State of Tamil Nadu***⁷; ***Nallammal v. State, represented by Inspector***⁸. The learned Public Prosecutor argued that in accordance with the Judgment in Nallammal case, the income which was not intimated to the Government cannot be considered.

12. The question that arises for consideration in the present appeal is that whether the gift amounts remitted into the account of the wife of the accused by their son can only be refused for the reason of not intimating the Government regarding the said gift remittances.

13. Section 13(i)(e) of the Prevention of Corruption Act, 1988, reads as follows

⁷ (2001) 5 Supreme 484

⁸ AIR 1999 SC 2556=1999 SCC (Cri) 1133

“13. Criminal misconduct by a public servant:

1. A public servant is said to commit the offence of criminal

misconduct,-

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.--For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.”

14. Section 13(1)(e) of the Present Act is the same as Section 5(1)(e) of the repealed Act of 1947. ‘Explanation’ was inserted by the Legislature, when Prevention of Corruption Act was amended in the year 1988. Section 13(1)(e) of the Prevention of Corruption Act, gives opportunity to an accused officer to explain the sources of his income and the disproportion. The words “cannot satisfactorily account” as found in the provision, means that the public servant is given opportunity to

explain pecuniary resources and that the property is not in disproportion to his known sources of income.

15. According to the 'Explanation' to Section 13(1)(e) "known sources of income" means that the income from any lawful source should have been intimated in accordance with the provision of any law, rules or orders for the time being applicable to the public servant.

16. The ingredients of Section 13(1)(e) of the Prevention of Corruption Act are;

- i) The public servant or any person on his behalf should be in possession of assets.
- ii) Such assets should have been acquired during the period of the office of the public servant.
- iii) Such possession of the assets could not be satisfactorily accounted for
- iv) The sources of income should be legitimate and known.
- v) The pecuniary resources should be accounted for.

17. A plain reading of Section 13(1)(e) of the Prevention of Corruption Act and its explanation of 'Known sources of income', a doubt arises whether the opportunity given under

the Section 'to satisfactorily account' for the income has been taken away in the 'Explanation' if such income has not been intimated to the Government.

18. The words "satisfactorily account" means the burden is on the accused to explain regarding his income that there is no disproportion of the assets held by him. Once an opportunity is given to the public servant to explain the income, it cannot be taken away only for the reason of not intimating to the Government.

19. 'Known sources of income' would mean that the income was legitimate and intimated to government. In the event of the public servant not intimating the Government for any reason, he is at liberty to explain to the Court by adducing evidence and satisfactorily account for the income and explain the alleged disproportion.

20. The Courts cannot turn a blind eye to the statute giving opportunity to the accused to explain the income and at the same time refuse to accept any overwhelming evidence produced by the accused regarding income only for the reason of the income not being intimated to the Government.

21. Object of 'Explanation' to a provision is to explain or remove any doubt or ambiguity in the main provision.

22. A plain reading of Section 13(1)(e) of the Prevention of Corruption Act and its 'Explanation' would create incompatibility and contradict each other regarding the opportunity being given to a public servant.

23. The Court has to reconcile and harmoniously read the contradictory nature of the provision. The 'Explanation' to a provision cannot be used to defeat the right given to the accused to satisfactorily account for the income.

24. The Honourable Supreme Court in ***CIT v. Hindusthan Bulk Carriers***⁹ held that courts must avoid a head on clash seemingly contradictory provisions and they must construe the contradicting provisions so as to harmonize them.

25. Any conflict, anomaly, absurdity or any ambiguity in enactment can be interpreted by Courts applying rules of interpretation.

⁹ (2003) 3 SCC 57

26. Applying the rule of 'Harmonious Interpretation', the 'Explanation' to Section 13(1)(e) of the Prevention of Corruption Act will not take away the opportunity of public servant to explain his income, only for the reason of not intimating to the Government. Income is not defined under the Act. If the intention of the Legislature was to shut off the Courts from looking into the evidence of any income produced by the accused during trial, the same would have been stated unequivocally. Except for the details provided by the Government or department regarding income of a public servant, the Court will not be at liberty to assess or adjudicate upon any proof of income produced by the public servant, if it has to be construed that only the income which is intimated to Government has to be considered by virtue of the 'Explanation'.

27. In ***Nallamal case*** reported in 1999 SCC (Cri) 1133, the Hon'ble Supreme Court was dealing with a quash petition at the pre-trial discharge stage and held that any source of income cannot be accepted while seeking discharge and an opportunity should be given. The said claims of an accused can be decided only during trial.

28. Similarly in the Judgment of the Honourable Supreme Court in ***CBI v. S.Bangarappa***¹⁰, the Honourable Supreme Court held that the accused has a right to satisfactorily account for his income at the stage of trial.

29. The learned Special Judge committed an error in not considering the bank remittances made after the Amended Act, 1988 came into force, only for the reason of not intimating to the Government.

30. Item-2 of additional income was received through gift cheques under Exs.D1 to D4. PW15 was examined by the prosecution who is the Manager of SBI Bank. PW15 confirmed that an amount of Rs.23,435/- was received through gift cheques, after verifying the accounts and the credit vouchers pertaining to the said entries. All the amounts were through transfer transactions. The Manager further admitted that gift cheques would be issued in the denomination of 101, 201, 501, 1001 and 1,111. Admittedly, the case is one of receiving gift cheques which were transferred to the account of the accused. The transfer transactions are not disputed by the prosecution but objected to considering them for the reason of non-

¹⁰ (2001) CRI.L.J.111 SC

intimation to Government. The amount of Rs.23,435/- has to be considered and included in the income.

31. The Court having admitted that Rs.2,20,395.10 ps. was received as foreign remittance, considered only Rs.95,675.60 ps. PW18 is the Manager of SBH, Mahabubnagar branch. He deposed that under Ex.D7, there are foreign remittances ranging from Rs.500/- to Rs.24,351/- and the total credits stood at Rs.2,20,395.10 ps. The Special Court considered only an amount of Rs. 95,675.60 ps. for the reason of receiving the said amounts prior to the insertion of 'Explanation' to Section 13(1)(e). The subsequent remittances into the account are also similar to the remittances prior to the insertion of the explanation. The said amounts according to the defence were made by her children and others residing abroad.

32. As seen from the entries, the remittances were over a period of time in between November, 1982 to 20.12.1998. Since the amounts are transfer transactions remitted over a period of six years, the said amounts can also be considered as income of the accused. According to PW18, there is a total of Rs.2,20,395.10 ps. The Court only considered Rs.95,675.60.

The remaining amount of Rs.1,24,719.50 can also be considered in the additional income of the accused.

33. Both the amounts i.e. item-2 of additional income of Rs.23,435/- and additional income in item-3 of Rs.1,24,719.50 when considered, it amounts to 1,48,154.50 ps.

The disproportion arrived at by the learned Special Judge	Rs.1,99,251.67
(-) Additional income of the deceased Considered by this Court	Rs.1,48,154.50
	Rs. 51,097.10

Giving margin of 10% of the income to the assets as observed by the Honourable Supreme Court in **Krishnanand Agnihotri's case (supra)** and also **M.Krishna Reddy v. State Deputy Superintendent of Police¹¹**, no disproportion can be arrived at. The total income arrived at by the trial Court is Rs.5,19,149.82 ps. 10% of said amount would be Rs.51,914/- .Rs.51,914/- - 51,097.10 ps =Rs.816.90 ps surplus.

34. Accordingly, the Criminal Appeal is allowed and the conviction recorded by the Additional Special Judge for SPE & ACB Cases in CC.No.15 of 1994, dt.11.10.2006, convicting the Accused Officer under Section 13(1)(e) r/w. 13(2) of the

¹¹ (1992) 4 SCC 45

Prevention of Corruption Act, 1988, is hereby set aside and the appellant/accused officer stands acquitted. The bail bonds shall stand cancelled.

Miscellaneous applications, if any pending, shall stand closed.

Date: 04.08.2023
Note: LR copy to be marked.
B/o.tk

K.SURENDER,J

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No. 1442 OF 2006
Dt. 04.08.2023

tk