

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

Criminal Appeal No. 732 OF 2007

Between:

K.Shankaraiah

... Appellant/
Accused Officer

And

The State of Telangana rep. by Inspector of
Police, ACB, City Range, Hyderabad. Rep. by
Spl.Public Prosecutor for ACB Cases,
High Court of A.P., Hyderabad.

... Respondent/
Complainant

DATE OF JUDGMENT PRONOUNCED: 11.07.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 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 the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

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

+ CRL.A. No. 732 OF 2007

% Dated 14.06.2023

K.Sankaraiah

...Appellant/
Accused Officer.

And

\$ The State of Telangana rep. by Inspector of
Police, ACB, City Range, Hyderabad. Rep. by
Spl.Public Prosecutor for ACB Cases,
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... Respondent/
Complainant

! Counsel for the Appellant: Sri M.B.Thimma Reddy

^ Counsel for the Respondents: Sri Vidyasagar Chittineni
Spl. Public Prosecutor for ACB

>HEAD NOTE:

? Cases referred

¹ (1977) 1 SCC 816

² AIR 1980 Supreme Court 727

³ 2021 SCC OnLine SC 923

⁴ 2014 3 SCC (Cri) 529

⁵ (2015) 14 Supreme Court Cases 505

⁶ (1992) 4 SCC 45

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No. 732 OF 2007****JUDGMENT:**

This appeal is filed by the appellant/accused officer, questioning the conviction recorded by the Principal Special Judge for SPE & ACB Cases, Hyderabad, in C.C.No.8 of 1996, dated 08.06.2007, convicting the appellant to undergo Rigorous Imprisonment for a period of one and half year for the charge under Section 13(1)(e) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 and also ordering to confiscate any of the item or items shown in assets of Annexure-I appended to charge sheet, to the State, to the extent of disproportionate assets arrived at by the Court i.e. Rs.3,71,032/-.

2. Heard both sides on facts and law.
3. According to the prosecution case, the appellant was found in possession of disproportionate assets to his known source of income to an extent of Rs.9,06,773/- as on 17.11.1992.

4. The check period was taken from the date of joining of the appellant i.e. from 25.03.1964 till the date of inspection and raid i.e. on 17.11.1992.

5. The total income according to the prosecution was Rs.7,44,536/-. The values arrived at by the prosecution and court findings are as under;

| | Prosecution value | Court finding |
|---------------------|--------------------------|----------------------|
| Income: | 7,44,536/- | 7,74,421/- |
| Expenditure: | 7,88,558/- | 5,71,468/- |
| Total disproportion | 9,06,773/- | 3,71,032/- |

6. The learned sessions Judge having found that there is a disproportion of Rs.3,71,032/-, after considering the evidence on record, convicted the appellant under Section 13(1)(e) r/w.13(2) of the Prevention of Corruption Act and sentenced to 1 ½ years imprisonment.

7. The complete details of the income, expenditure and assets are not germane for adjudicating the present case, since there are only three items of dispute, which were assailed

during the course of arguments by the learned senior counsel, Sri T.Niranjan Reddy.

8. According to the learned Senior Counsel, Item No.19 of Assets, which is land of Ac.22.13 ½ cents, stands in the name of DW15, who is the brother-in-law of the appellant. The prosecution found it as benami property and valued at Rs.4,75,107/-. However, the Court fixed the value of the said asset at Rs.2,88,074/-. However, the said item has to be deleted from the assets of the appellant.

9. Secondly, the gold and jewellery which was found as asset of the appellant was valued by the prosecution at Rs.26,050/- and the Court came to the conclusion that the value is at Rs.18,000/-. However, on the basis of the evidence of DW14, the entire gold and jewellery cannot be considered as the asset value for the reason of the jewellery being gifted. Rs.18,000/- from the assets has to be deleted.

10. Thirdly, the rental income of Rs.84,500/- as claimed by the appellant to be income from the ancestral house at Singarayakonda was totally rejected by the Court without giving adequate reasons, when the evidence of DW2 vide Ex.D1 is

proved. The amount of Rs.84,000/- has to be added to the income.

11. Learned Senior Counsel submits that if these three items which were incorrectly considered by the trial Court are taken correctly, no disproportion would be found. He further submits that in the event of the prosecution claiming that an asset is a benami of any public servant, the burden shifts on to the prosecution to prove the nature of the property as benami.

12. He relied on the Judgment of Honourable Supreme Court in **Krishnanand Agnihotri v. The State of Madhya Pradesh**¹ wherein at para 26 the Apex Court held as follows;

“26.It is well settled that the burden of showing that a particular transaction is benami and the appellant owner is not the real owner always rests on the person asserting it to be so and this burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of benami is the intention of the parties and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of the serious onus that rests on him, nor justify the acceptance of mere

¹ (1977) 1 SCC 816

*conjectures or surmises as a substitute for proof. (Vide **Jaydayal Poddar v. Mst.Sibi Hazra 1974 2 SCR 90: (1974) 1 SCC 3.** It is not enough merely to show circumstances which might create suspicion, because the court cannot decide on the basis of suspicion. It has to act on legal grounds established by evidence.....”*

13. He also relied on the Judgment of Honourable Supreme Court reported in **Bhim Singh v. Kan Singh**² wherein the Honourable Supreme court while dealing with proof of property being benami in nature held at para 17 as follows;

*“ 17.the principle enunciated by Lord Macmillan in the case of Manmohan Das (supra) has been followed by this Court in **Jaydayal Poddar v. Mst.Bibi Hazra (1974) 2 SCR 90** where Sarkaria, J. observed thus:*

“It is well settled that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of a benami is the intention of the party or parties concerned; and not unoften such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof.”

² AIR 1980 Supreme Court 727

14. In the present case according to the learned Senior Counsel, the prosecution has utterly failed to prove that the asset which is landed property at Item No.19 was not the land of DW15. The documents relied by the prosecution are Exs.P2 & P7- search lists dated 17.11.1992, Exs.P98 to 114-sale deeds/agreements and Ex.P89 -statement of DW15 recorded by the Police on the date of search.

15. Counsel argued that taking the documents into consideration which were found in the house of the appellant and also on the basis of the statement of DW15 recorded by the Police i.e. Ex.P89, the Court has concluded that the asset i.e. agricultural land at item No.19 of the asset belongs to the appellant. The approach of the Court below is erroneous. In case of a benami transaction, the burden is always on the party who claims it to be benami to prove by providing evidence that the property is benami. In the present case, only for the reason of sale deeds being found in the premises of the appellant, it cannot be said that the said asset belongs to the appellant. In fact, DW15 entered into the witness box and stated that the said lands were purchased by him.

16. Coming to jewellery, the counsel argued that though, DW14 has clearly stated that the jewellery was gifted by their parents, however, the said amount of Rs.26,054/- was not properly considered and no reasons are given as to why the Court came to a conclusion that the amount of Rs.18,000/- would be the value of the said asset.

17. Further, regarding the rental income, DW2 was examined to substantiate the fact that the rental income was from the house of Singarayakonda and that rent was being paid @ Rs.300/- during the year 1976. Ex.D1 is a certificate issued by the Bank regarding receipt of rents. Taking an average of Rs.450/- per month, the accused sought indulgence of the court to add an amount of Rs.86,400/- as rental income from 1976 to 1992. Since the rent of Rs.300/- was being paid even according to DW5 the Court can come to a reasonable conclusion on the basis of facts and keeping in view the rise in rentals over the period, Rs.450/- would be appropriate.

18. Learned Senior Counsel further stated that these three items have been totally misjudged by the learned Special Judge. If the said amounts are taken into consideration and i) deleting the item-19 agricultural land from assets; ii) deleting gold

jewellery worth Rs.18,000/- from assets; iii) adding an income of Rs.86,400/- as claimed, there would be no disproportion in the assets of the appellant.

19. On the other hand learned Assistant Public Prosecutor would submit that the only logical conclusion that can be drawn by any prudent person is that if the sale deeds are found in the possession of the appellant, the property belongs to the appellant. Though the property was in the name of DW15 who is the brother-in-law, the brother-in-law failed to produce any evidence to substantiate that he was in a position to purchase the property. During the examination it came on record that he was running a Kirana Store and it cannot be expected that a person running Kirana Store would be in a position to purchase such property. Further, no details of income tax returns or bank statements are produced to believe the version of DW15 that he was the one who had purchased the said property.

20. He relied on the Judgment of Honourable Supreme Court in ***Central Bureau of Investigation v. Thommandru Hannah Vijayalakshmi***³ and argued that even if income tax returns

³ 2021 SCC OnLine SC 923

are filed, it cannot be made basis to come to a conclusion that the properties were legally acquired.

21. He also relied on the Judgment of the Honourable Supreme Court in ***N.Ramakrishnaiah v. State of A.P. in a Criminal Appeal arising out of SLP (Crl.) No.5476 of 2006*** wherein it is held that the expression “satisfactorily account” would mean that the burden is cast on the accused to offer plausible explanation as to how he came into possession of the wealth and satisfy the Court that his explanation was worthy of acceptance.

22. He further relied on the Judgments of Honourable Supreme Court in ***State of Tamilnadu v. N.Suresh Rajan*** ⁴ and ***State through Deputy Superintendent of Police v. R.Soundirarasu in Criminal Appeal Nos.1452-1453 of 2022 dt.05.09.2022.***

23. The learned Special Public Prosecutor would submit that the evidence of defence witnesses cannot be believed since they tend to speak false in favour of the accused. The said argument cannot be accepted. Both the witnesses produced by

⁴ 2014 3 SCC (Cri) 529

the prosecution and the defence stand on the same footing. The Court cannot differentiate on the basis of the witnesses speaking in favour of prosecution or the defence. Further, the evidence of defence witnesses cannot be assessed under cloud of suspicion or an assumption that the defence witnesses would not speak the truth or speak false to help the accused. If the defence witnesses tend to lie, so do the prosecution witnesses. The Court has to assess the evidence of witnesses on the basis of the circumstances of the case and rely upon or disregard such evidence irrespective of a witness deposing on behalf of the prosecution or the defence.

24. The Judgments in ***Soundirarasu's case***, ***Suresh Rajan's Case*** and ***T.H.Vijayalakshmi's case***, the Honourable Supreme Court was dealing with the case of discharge of accused even prior to trial. In fact, in ***T.H.Vijaya Lakshmi's case***, the FIR registered was quashed and on appeal by CBI the Honourable Supreme Court while reversing the Judgment of quashing, found that all the defence that has been projected can only be raised during the course of trial and this Court erred in considering the defence documents placed during quash proceedings.

25. The finding of the learned Judge was that the sale deeds which were found in the premises of the appellant in the name of DW15, which are agricultural lands of Ac.22.13 ½ cents, belongs to the accused. The prosecution valued the same at Rs.4,75,107/-. However, the Court came to a conclusion that value was Rs.2,88,070/-. The learned Special Judge relied on Ex.P89 which is a statement of DW15- brother-in-law of appellant recorded by the Police during investigation. In the said statement DW15 stated that Rs.50,000/- was paid by him for the purchase of the land. Only Ex.P98 to 103 were considered for the reason of the documents standing in the name of DW15. The other sale deeds found during the search, standing in the name of Sadanandam under Ex.P104 and others were not considered as benami of appellant. The total value covered under Exs.P98 to Ex.P103 comes to Rs.3,38,070/- and considering the statement under Ex.P89, Rs.50,000/- was deducted and accordingly the Court arrived at the value of Rs.2,88,070/-.

26. Two aspects have to be considered. Firstly, whether the prosecution succeeded in proving that Exs.P98 to P103 were held as benami of the appellant by DW15. Secondly, whether

the statement under Ex.P89 can be relied upon to deduct Rs.50,000/- from the said value to arrive at an amount of Rs.2,88,070/-. Ex.P89 is a statement of DW15 recorded on 17.11.1992 in the presence of P.Nageswara Rao and N.Srinivasulu who were the witnesses to the search of the premises of the appellant. The said statement was disowned by DW15 stating that he was forcibly taken to Humayunnagar Police Station by two ACB Inspectors and the contents of Ex.P89 was dictated. Signature was obtained under threat and coercion. On the next day DW15 personally went to the ACB head office at Mojamjahi Market and complained to the Joint Director, ACB. He called the inspectors and instructed them not to do such things and consoled DW15 that he should not worry about any of his documents. According to DW15, his documents Exs.P98 to 103 and the document of DW12 were kept by him in the house of the appellant.

27. How Ex.P89 can be considered by the Court, is not stated by the learned Sessions Judge nor the Public Prosecutor was in a position to explain under what category of evidence Ex.P89 falls into. DW15 brother-in-law of appellant specifically stated that the said statement was taken under duress by the Police.

DW15 was a witness according to the Police. Even assuming that a statement was given in writing by DW15 (marked as Ex.P89), it would be hit by Section 161 of Cr.P.C. Such statement cannot be accepted in its totality by reading into the contents of the said exhibit. There is no evidentiary value which can be attached to Ex.P89, in the background of DW15 stating that such statement was taken under threat by the Police.

28. Coming to the claim of the prosecution that the sale deeds standing in the name of DW15 were in fact purchased by the appellant, the Honourable Supreme Court in case of ***Krishnanand v. State of M.P. (supra 1)*** held that the burden of showing that a particular transaction is benami, always rests on the person asserting it to be so and such burden has to be strictly discharged by adducing legal evidence of a definite character which would directly prove the fact of benami or establish, circumstances unerringly and reasonably raising an inference of the fact. The Honourable Supreme Court further held that it is not enough merely to show circumstances which might create suspicion, because the Court cannot decide on the basis of suspicion.

29. Similar view was taken by the Honourable Supreme Court in the Judgment of ***Bhim Singh (supra 2)*** by holding that a person asserting the transaction to be benami, a serious onus rests on him and such onus cannot be discharged on mere conjectures or surmises.

30. In the present case, the learned Special Public Prosecutor would submit that since the sale deeds were found in possession of the appellant, it has to be inferred that the properties were purchased by the appellant. In the absence of any proof that is produced by DW15 to show that he had the resources to purchase the land, it has to be concluded that the land belongs to the appellant.

31. With due respect to the public prosecutor there cannot be any reverse onus shifting the burden on to the appellant. The honourable Supreme Court has stated that the party asserting that the transaction is benami has to prove such transaction as benami by letting in admissible and legal evidence. Any amount of suspicion cannot form basis for drawing such inference. It is not for DW15 to show his resources to purchase the property but it is for the prosecution to collect evidence that the said property was purchased by the appellant. No such evidence is

produced by the prosecution to show that there were any kind of transactions either in the bank statements or statements of vendors involving the appellant. The ACB ought to have examined the vendors to ascertain to whom the said lands were sold to. There is no evidence that appellant had provided them the consideration towards purchase of the land.

32. For the said reasons of inadmissibility of Ex.P89 and there being no proof filed by the prosecution to draw any kind of inference that the lands covered under Exs.P98 to 113 belongs to the appellant, the value of Rs.2,88,070/- has to be eschewed from the assets of the appellant.

33. The other asset disputed by the appellant is in respect jewellery. Jewellery was found in the premises of the appellant at the time of search. DW14 who is the son-in-law of the Appellant was examined to say that his wife i.e. daughter of appellant went to her parents house at the time of delivery and gold which was found during the inventory is that of his wife. The learned Special Judge did not accept the evidence of DW14 since no such representation was made at the time of inventory. The said aspect was not deposed by the wife of appellant, as such, the evidence of DW14 cannot be believed. However, since

there is a custom of presenting gold jewellery, the learned Sessions Judge valued the item at Rs.18,000/-. Since no specific details of jewellery was given by DW14, I do not find any infirmity with the finding of the learned Sessions Judge in adding Rs.18,000/- to the assets of the appellant.

34. Additional income of Rs.84,500/-was claimed by the appellant on the ground that there was rental income from the ancestral house at Singarayakonda. In support of his claim, DW2 was examined. DW2 who is resident of Singarayakonda, deposed that the father of the appellant late Subbayya was having Ac.10.00 of agricultural land and was receiving income from the said agriculture. He shifted to Singarayakonda in the year 1967 and purchased land and house having four portions. One RCC building was constructed consisting of two portions with ground and first floors in the land that was purchased by the father by the side of National Highway in Singarayakonda. Till his death in 1976, the father was collecting rents from the RCC building. After the death of the father of the appellant, the brother of the appellant was collecting rents in respect of the portions given to the appellant and was sending the same to the appellant. During the course of cross-examination the learned

Public Prosecutor did not dispute that there was rental income from the building. However, it was suggested that since the brother of the appellant was working as a Village Development Officer, the entire rental income derived from the ancestral property was utilized by him. Even according to the ACB, they have investigated the case and found that there was a RCC building which yielded rental income. When it is admitted that the building was given by the father and the rents derived there from were equally divided amongst the appellant and his brother, the learned Special Judge erred in not considering the rents that were received by the appellant from the property.

35. Ex.D1 is the letter of the Branch Manager of Andhra Bank intimating that an amount of Rs.54,000/- was deposited to the account of this appellant on 31.01.1989. The said document is not disputed by the prosecution. The Investigating Officer has refused to add the income of Rs.84,500/- as claimed by the appellant for the reason of his investigation revealing that the brother of appellant was enjoying the rents of the ancestral house. Since the property is joint property, it cannot be said that the appellant was not getting any rents. In fact under Ex.D1, an amount of Rs. 54,000/- as claimed by appellant to

be towards rents received can be added to the income of the appellant.

36. The learned Special Judge found that the income of the appellant as Rs.7,74,421/- and by adding Rs.54,000/- to the income, the total income comes to Rs.8,28,421/-.

37. The disproportionate arrived at by the learned Special Judge is Rs.3,71,032/-, since this Court is of the opinion that Rs.2,88,070/- has to be eschewed from the assets and an income of Rs.54,000/- is to be added. The disproportion comes to Rs.3,71,032/- (disproportions found) - Rs.2,88,070/- (eschewed from assets) - Rs.54,000/- (income added)=Rs.28,962/-.

38. The disproportion found by this Court is Rs.28,962/-. The Honourable Supreme Court in ***Kedarilal vs. State of Madhya Pradesh***⁵ relying on ***Krishnanand case (supra 1)*** and ***M.Krishna Reddy v. State Deputy Superintendent of Police***⁶ granted benefit to the accused if the disproportion is within 10% of the income.

⁵ (2015) 14 Supreme Court Cases 505

⁶ (1992) 4 SCC 45

39. In the present case the income is arrived at by this Court is Rs.8,28,421/- and the disproportion is Rs.28,962 which is less than 10% of the income. In view of the above finding, the prosecution failed to prove that the appellant is in possession of disproportionate assets to his known sources of income.

40. Accordingly, the appellant succeeds and the appeal is allowed. Since the appellant is on bail, his bail bonds shall stand discharged.

Miscellaneous applications if any pending shall stand closed.

K.SURENDER,J

Date: 11.07.2023

Note: LR copy to be marked.

Issue CC by 11.07.2023

B/o. tk

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No. 732 OF 2007
Dt.11.07.2023

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