

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

Criminal Appeal No. 468 OF 2008

Between:

Nelakurthi Krishna Reddy

... Appellant

And

State of Andhra Pradesh rep. through
Inspector of Police, A.C.B
Rep. by the Special Public Prosecutor,
Warangal Range, Khammam.

... Respondent

DATE OF JUDGMENT PRONOUNCED: 25.07.2023

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

K.SURENDER, J

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

+ CRL.A. No. 468 of 2008

% Dated 25.07.2023

Nelakurthi Krishna Reddy

... Appellant

And

\$ State of Andhra Pradesh rep. through
Inspector of Police, A.C.B,
Rep. by the Special Public Prosecutor,
Warangal Range, Khammam.

... Respondent

! Counsel for the Appellant: Sri K. Raghuveer Reddy

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

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No. 468 OF 2008****JUDGMENT:**

This Criminal Appeal is filed by the appellant/Accused officer challenging the conviction recorded by the Prl.Special Judge for SPE & ACB Cases in CC.No.32 of 2004, dt.24.03.2008, convicting the Accused Officer under Section 13(1)(e) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act') for being in possession of disproportionate assets of Rs.5,03,971/-.

2. Briefly, the case of the prosecution is that the appellant joined in government service on 11.04.1985 as Reserve Sub Inspector, Warangal range. Thereafter, he worked at different places till 26.02.1999 till his suspension from service. However, ACB conducted search on 29.01.2002 on the information that the appellant possessed assets disproportionate to his known source of income.

3. Having registered the crime, investigation was conducted and the ACB found that the appellant had acquired assets to an extent of Rs.14,21,329/-. The income was arrived at Rs.9,38,585/- and the expenditure was calculated at

Rs.3,13,585.65 ps. According to the investigation the appellant was found to be in possession of assets to an extent of Rs.7,96,329.70.

4. During the course of trial, the prosecution examined PWs.1 to 16 and marked Exs.P1 to P29. The appellant/Accused officer examined DWs.1 to 16 and marked Exs.D1 to D8 and also marked Exs.X1 to X14 which documents were summoned. The learned Special Judge having conducted trial and assessing the evidence on record concluded that the total income of the Accused Officer was Rs.9,77,665/-, total expenditure was Rs.3,17,777/- and the likely savings of the Accused Officer was Rs.6,59,888/-. The disproportionate arrived at by the Court was Rs.5,03,971/-.

5. The only point canvassed by the learned Senior Counsel Sri T.Niranjan Reddy appearing for the appellant was that the trial Court committed an error in considering the Asset No.1 which is house bearing No.5-1-196/3 which stood in the name of wife of the appellant as the asset of appellant though intimation was given by the appellant to the Government in his annual property statements. Ex.P3 is the statement of immovable property submitted by appellant giving details of

the said house site on 10.01.1999 that it belonged to his wife. The said statement was accepted by the defendant/Government. As such, both the ACB and the Court below committed an error in finding that the property belongs to the appellant. If Asset No.1 is eschewed from consideration as the property of the appellant, the appellant would succeed in the appeal.

6. On the other hand, learned Special Public Prosecutor for the ACB did not dispute the fact that the details of the property was intimated to the Government and that the property belongs to the wife of the Accused Officer. However, the learned Public Prosecutor supported the finding of the learned Special Judge who found that the father and the father-in-law did not prove their sources of income for acquiring the plot and constructing the building. For the said reasons given by the learned Special Judge, the conviction has to sustain.

7. Section 13(i)(e) of the Prevention of Corruption Act, 1988

“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."

8. To prosecute a public servant for the offence under Section 13(i)(e) of the Act, the Public Servant who cannot satisfactorily account for being in possession of property and the resources are not shown, such property would be considered as disproportionate asset. However, according to the explanation which was introduced in 1988, 'known sources of income' means the income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law or rules applicable to the public servant.

9. In the event of the public servant intimating the Government in accordance with the existing rules and accepted by the Government, such property or income had to be

considered as claimed by the public servant/accused in his property declaration during the course of a criminal trial for prosecution under Section 13(i)(e) of the Act.

10. The Act does not give the liberty to the Court to go beyond the scope of the explanation under Section 13 (i)(e) of the Act. The intimation to the Government regarding any asset or income would mean that the pre-requisite is met. The Criminal court trying a public servant for the offence under Section 13(i)(e) of the Act, cannot probe into the correctness or otherwise of the claims made in the property statement submitted to the Government to conclude whether an offence is made out or not.

11. It is not the case of the prosecution or the Government that the intimation under Ex.P3 regarding the house property bearing No.5-1-196/3, which prosecution valued at Rs.12,00,000/- and the Court valued at Rs.10,50,000/-, was either unacceptable or any show-cause notice was issued to the appellant after the statement was provided to the Government. Even during the course of investigation, except adding the said asset standing in the name of the wife of the Accused Officer as that of the Accused Officer, no further investigation is

conducted. The statement was given on 10.01.1999 and the search was conducted nearly three years thereafter i.e. on 29.01.2002. During the said period the Government or the Department where the appellant worked have neither issued any notice or memo calling for explanation regarding the assets standing in the name of the wife of Accused Officer. Even during the course of investigation, it is not the case of the ACB that any investigation was done into the correctness or otherwise of Ex.P3 statement of immoveable property given by the appellant. It is not the case that the property statement was either incorrect or any steps taken by the Government or the Department questioning the said acquisition of property standing in the name of the wife of the Accused Officer.

12. Learned Special Judge in the Judgment having accepted the intimation by the appellant to the Government regarding the house asset bearing no.5-1-196/3 found that though such intimation was given, the appellant failed to give the details of the amount that was given by his father and the father-in-law for the purpose of constructing the house. The Special Court erred in finding that the statement under Ex.P3 was not convincing since the father and the father-in-law did not

produce any clinching documentary evidence to show that they had such income to provide for construction of house.

13. The said finding of the learned Special Judge is beyond the scope of explanation to Section 13(i)(e) of the Act.

14. The issue would have been different if the Department or the ACB had conducted any inquiry into the said statements filed under Ex.P3 and refused by the Department/Government.

15. The finding of the learned Special Judge considering the house bearing No.5-1-196/3 as the property or asset of the appellant is hereby set aside. The Court had come to a conclusion that the disproportionate assets was Rs.5,03,971/- after considering the house property standing in the name of Accused Officer which is Item No.1 of the assets and valued at Rs.10,50,000/-. Since the asset value cannot be tagged on to the appellant, Rs.10,50,000/- is deducted from the assets of the appellant.

16. In view of the above, the Valuation of house property bearing No.5-1-196/3 i.e. Rs.10,50,000/- is deducted from the assets of the appellant. Total disproportion found by Special

Court was Rs.5,03,971/-. Deducting 10,50,000/- from assets surplus of Rs.5,46,029 would be arrived at.

17. Accordingly, the Criminal Appeal is allowed and the conviction recorded by the Prl.Special Judge for SPE & ACB Cases in CC.No.32 of 2004, dt.24.03.2008, convicting the Accused Officer under Section 13(1)(e) punishable under Section 13(2) of the Act, is hereby set aside and the appellant stands acquitted. Since the Appellant/Accused officer is on bail, his bail bonds shall stand cancelled.

Miscellaneous applications, if any pending, shall stand closed.

K.SURENDER,J

Date: 25.07.2023

Note: LR copy to be marked.

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THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No. 468 OF 2008
Dt.25.07.2023

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