

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

Criminal Appeal No.488 OF 2008

Between:

P.Devendra Prakash

... Appellant

And

The State of AP,
Rep. by Inspector of Police,
ACB, ACB City Range-I.

..Respondent

DATE OF JUDGMENT PRONOUNCED : 06.03.2024

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.488 of 2008

% Dated 06.03.2024

P.Devendra Prakash

And

... Appellant

\$ The State of AP,
Rep. by Inspector of Police,
ACB, ACB City Range-I.

...Respondent

! Counsel for the Appellant: A.Viswanath

^ Counsel for the Respondent: Sri Sridhar Chikyala
Spl. Public Prosecutor for ACB

>HEAD NOTE:

? Cases referred

¹ AIR 1993 Supreme Court 313

² (1977) 1 Supreme Court Cases 816

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.488 OF 2008****JUDGMENT:**

1. The appellant is questioning his conviction for the offence under Section 13(1)(e) of Prevention of Corruption Act, 1988 and sentenced to rigorous imprisonment of one year and fine of Rs.1,000/- vide judgment in CC No.49 of 2003 dated 03.04.2008 passed by the Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad.

2. In all, learned Special Judge found that an amount of Rs.2,40,025/- worth assets were disproportionate to his known source of income.

3. The ACB, having conducted raid in the premises of the appellant, charge sheeted the appellant for being in possession of Rs.10,56,770/- assets disproportionate to his known source of income during the cheque period 27.01.1976 to 07.02.1988. According to the ACB, the income of the appellant was Rs.17,88,176/- and the expenditure was Rs.15,69,449/-. However, the assets stood at Rs.10,56, 770/-. Accordingly, the disproportion of assets was arrived at Rs.8,38,043/-.

4. Learned Special Judge adduced evidence on behalf of the appellant and the ACB. The ACB examined P.Ws.1 to 35 and marked Exs.P1 to P68. In defence, the appellant examined D.Ws.1 to 6 and marked Exs.D1 to D6.

5. Learned Special Judge having considered the evidence on record arrived at conclusion that the total income of the appellant was Rs.18,89,565/- and the expenditure was Rs.11,07,244/-. The likely savings of the accused also would at Rs.7,82,341/- (Rs.18,89,565-11,07,244/-). Since the total assets were worth at Rs.10,22,366/-, the disproportion was arrived at Rs.2,40,025/- (Rs.10,22,366-Rs.7,82,341).

6. Learned counsel appearing for the appellant would submit that the trial Court had committed an error in assessing;

a) item No.3 of the assets which are household articles at Rs.79,420/- though the value stood at Rs.10,000/-. Accordingly, Rs.60,000/- is to be deducted from the assets;

b) item 4 of the assets which is gold ornaments were pledged and Rs.70,650/- was taken. Since the gold

ornaments were sthridhana which were given to the wife of the appellant by her parents at the time of marriage, the said amount of Rs.70,650/- has to be deducted from the assets;

c) Item No.9 which are promissory notes to the extent of Rs.4,50,000/- were taken into consideration as assets by the trial judge. However, the said promissory notes stand in the name of the mother of the appellant and they cannot be added in the assets of the appellant;

d) Rs.20,000/- which was paid as gold loan by the wife pledging her six bangles was not considered as income, though stated by P.W.9.

7. Learned counsel submitted that if the trial Court had considered that the amount mentioned in the promissory note was considered and held as benami by the mother of the appellant, the burden lies on the ACB authorities to first prove that the asset considered under the promissory notes belong to the appellant. He relied on the judgment of Hon'ble Supreme Court in the case of **M.Krishna Reddy v.**

State Deputy Superintendent of Police, Hyderabad¹

wherein it is held as follows:

“19. Needless to say that this Court on a series of decisions have laid down the guidelines in finding out the benami nature of a transaction. Though it is not necessary to cite all those decisions, it will suffice to refer to the rule laid down by Bhagwati, J. as he then was in *Krishnanand Agnihotri v. State of M.P.* . In that case, it was contended that the amounts lying in fixed deposit in the name of one Shanti Devi was an asset belonging to the appellant and that Shanti Devi was a benamidar of the appellant. The learned Judge speaking for the Bench has disposed of that contention holding thus:

“It is well settled that the burden of showing that a particular transaction is benami and the 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 conjectures or surmises as a substitute for proof.”

8. In ***Krishnanand Agnihotri v. The State of Madhya Pradesh²*** and argued that to prove that a person is benami, the burden is always on the party asserting that a property is held as benami.

9. Learned Special Public Prosecutor would submit that the trial Court has given adequate reasons to consider the pronotes found in the house of the appellant as assets of the appellant. Since no evidence is produced to show that the

¹ AIR 1993 Supreme Court 313

² (1977) 1 Supreme Court Cases 816

mother of the appellant was earning any amount, the said amount covered under Exs.P44, 46, 48, 50 and 61 to 64 shall be considered as assets of the appellant.

10. Having gone through the record, learned Special Judge has permitted marking of Exs.P1 to P64 by the Investigating Officer P.W.34. The said documents were marked subject to objection. Though the persons mentioned in the said exhibits were examined during investigation, they were given up by the prosecution. The total amount under Exs.P61 to P64 is Rs.2,70,000/-, according to the Investigating Officer P.W.35. P.W.25 was declared hostile as he stated that he has not obtained any loan under Ex.P44 pronote for Rs.50,000/-. P.W.25 stated that he borrowed Rs.60,000/- from mother of appellant under Ex.P45. P.W.27 also stated that he borrowed Rs.50,000/- from mother of appellant.

11. The Investigating Officer/P.W.34 stated during cross-examination that the mother of the appellant had finance business and she was running such business to the tune of Rs.10.00 lakhs to Rs.20.00 lakhs.

12. Ex.P61 is for Rs.1,50,000/-, Ex.P62 is for Rs.20,000/-, Ex.P63 is for Rs.50,000/- and Ex.P64 is for Rs.50,000/-.

The persons borrowing the amounts namely Ghanshyam Singh under Ex.P61, Upamanyu under Ex.P62, K.Raghuram Reddy under Ex.P63 and Prathap Reddy under Ex.P64, were not examined by prosecution during trial.

13. In the absence of either examining the said four persons and the mother namely P.Sharada in whose favour the promissory notes were executed, merely marking the said documents Exs.P61 to P64 by the Investigating Officer that they were seized during the search, cannot form basis to read the contents of the promissory notes and to infer that the amounts mentioned in the promissory notes as asset of the appellant.

14. Firstly, the documents Exs.P61 to P64 were not proved either by the person executing the said document or the person in whose favour the document was executed. Unless the said witnesses are examined, the Court cannot rely on the contents of the said promissory notes to give an adverse finding against the appellant. The prosecution has given up the said witnesses, who were examined during the course of

investigation. In the said circumstances, having given up the witnesses, the documents Exs.P61 to P64 which were allegedly executed by them, cannot be considered in evidence.

15. Since the prosecution has failed to prove regarding the lending of the amount under Exs.P61 to P64, the question of the mother of the appellant named in the promissory notes cannot be said to be holding the said amount as a benamidar of the appellant. The trial Court has committed a grave error in relying on the documents marked by the Investigating Officer, during his chief examination stating that the said documents were seized during search. Relying upon the contents of the documents when the said documents were not proved in accordance with law is illegal.

16. In the said circumstances, the amount covered under the promissory notes to an extent of Rs.2,70,000/- has to be deducted from the assets of the appellant. The disproportionate assets found by the learned Special Judge is Rs.2,40,025/-. The said amount when deducted from 2,70,000/- which amount is covered under Exs.P61 to P64 considered by the Special Court, there is no disproportion.

This Court need not go into other aspects of the arguments advanced, regarding assets and income in view of the above finding that there is no disproportion.

17. In the result, the judgment in CC No.49 of 2003 dated 03.04.2008 passed by the Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad is set aside. Since the appellant is on bail, his bail bonds shall stand cancelled.

18. Criminal Appeal is allowed.

K.SURENDER, J

Date: 06.03.2024

Note: LR copy to be marked.

B/o.kvs