

HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD

\*\*\*\*\*

Criminal Appeal No. 1143 OF 2012

Between:

S.Surender

....Appellant

The State through CBI-ACB,  
Hyderabad

...Respondent

DATE OF JUDGMENT PRONOUNCED: 09.08.2024

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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

---

***K.SURENDER, J***

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

**+ CrI.A. No. 1143 OF 2012**

% Dated 09.08.2024

# S.Surender

... Appellant

And

\$ The State through CBI-ACB,  
Hyderabad

... Respondent

**! Counsel for the Appellant:** Sri M.Venkanna

**^ Counsel for the Respondent:** Sri T.Srujan Kumar Reddy,  
Spl.Public Prosecutor for CBI

**>HEAD NOTE:**

**HON'BLE SRI JUSTICE K.SURENDER**  
**CRIMINAL APPEAL No.1143 OF 2012**

**JUDGMENT:**

1. The appellant was convicted for the offence under Section offences under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 (for short "the Act of 1988") and sentenced to undergo rigorous imprisonment for a period of three years vide judgment in CC No.13 of 2005 dated 31.10.2012 for holding disproportionate assets amounting to Rs.6,48,000/-. Aggrieved by the same, the present appeal is filed.

2. The case of the prosecution is that the appellant was working as postman in Musheerabad Post Office during the cheque period from 01.05.1999 to 30.06.1999. According to the investigation, the appellant was in possession of assets to a tune of Rs.7,320/- as on 01.05.1999. However, by 30.06.1999, A1 was in possession of Rs.6,63,320/-. According to the prosecution, the income of A1 and A2 during the cheque period was Rs.10,996/-. The expenditure was to a tune of Rs.3,298.80 ps. Accordingly, disproportion was arrived at Rs.6,48,302.80 ps.

3. Investigation was done only for the period from 01.05.1999 to 30.06.1999, since A1 deposited amounts i.e., Rs.2,04,000/- on 27.05.1999, Rs.2,04,000/- on 31.05.1999 and Rs.48,000/- on 04.06.1999 in Monthly Income Scheme (MIS) account. He also purchased Kisan Vikas Patras (KVPs) in between 03.06.1999 and 04.06.1999 to a tune of Rs.2,00,000/-.

4. The Central Bureau of Investigation (CBI) accordingly laid charge sheet against both the appellant herein and A2, who is wife, for disproportionate assets of Rs.6,48,302.80 ps. The entire case rests on the MIS deposits and KVPs purchased, as detailed supra.

5. Learned Special Judge having examined witnesses P.Ws.1 to 12 and the documentary evidence Exs.P1 to P57 found that the appellant was guilty of being in possession of Rs.6,48,302.80 ps. However, the wife A2 was acquitted on the ground that she was not a party to purchase of KVPs and deposits, though she has consented to open MIS account. Rs.48,000/- was deposited in the MIS account of A2. Learned Special Judge found that only for the reason of depositing Rs.48,000/- in her name, that in itself will not make her abettor of A1 for acquiring disproportionate assets.

6. Learned counsel appearing on behalf of the appellant would submit that right from the beginning, the appellant has been saying that the said amount which was deposited in the MIS account of the post office and also the purchase of KVPs were from the cash provided by his brother namely Srinivas. The appellant was postman and the question of abusing his official position and making such huge amounts within a period of two months does not arise. The burden is on the prosecution to prove as to the illegal acts that were committed by the appellant during discharge of his duties as postman from which he has acquired the cash. In the absence of the prosecution proving as to what are the acts done by him to be in possession of such huge quantity of cash, the prosecution cannot sustain. Consistently, the appellant has been saying that the cash does not belong to him, but his brother. In the said circumstances, the conviction has to be reversed.

7. On the other hand, learned Special Public Prosecutor for the CBI submitted that though it was claimed by the appellant that the cash belongs to his brother, however, his brother was not examined before the Court to substantiate his defence. In fact, having

deposited the amount in MIS account and also purchasing KVPs, he had obtained loan by depositing the KVPs in Andhra Bank. That in itself would reflect the involvement of the appellant in making illegal money and it is for the appellant to prove the possession of the said amount.

8. It is relevant to extract Section 13(1)(e) of the Prevention of Corruption Act, 1988.

“Section 13(1)(A): A public servant is said to commit the offence of criminal misconduct,-

(a).....

(b).....

(c).....

(d)....

(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.”

9. The provision under Section 13(1)(e) of the Act makes it very clear that if a public servant is in possession of any properties that he cannot satisfactorily account for to have been in possession with

known sources of income, it is an offence punishable for being in possession of properties disproportionate to his known source of income. Under explanation to Section 13(1)(e), the known source of income would mean that the income should have been received from any lawful source and such receipts should have been intimated in accordance with the provisions of any law, Rules or Order for the time being applicable.

10. The purchase of KVPs and the amount deposited in the MIS is not disputed by the appellant. However, he states that the amounts were received by him from his brother. Once the appellant has taken a specific plea that the amount belongs to his brother, he ought to have summoned his brother before the Court and examined him as witness in defence. The appellant has not taken any steps to summon his brother. Further, he has not informed his department regarding the amount that he received for the purchase of KVPs and deposits made in to MIS account to the tune of Rs.6,56,000/-.

11. In the present circumstances of the case, mere assertion that the amount was received by the appellant from his brother would

not suffice. The burden is on the appellant to prove the possession of the said amount and not *vice-versa*. The initial burden of proving that the appellant was in possession of disproportionate assets has been discharged by the prosecution by collecting the relevant documents regarding the KVPs and MIS deposits. The said deposits and purchasing KVPs is not disputed. As already discussed, mere assertion that the amounts were received from his brother would not suffice to discharge the burden placed on him under Section 13(1)(e) of P.C.Act.

12. The argument of the learned counsel for the appellant that it is for the prosecution to prove as to the source of funds of the appellant, totally runs contrary to law. In fact, it is the other way round. The burden is on the appellant to prove possession of assets disproportionate to his known source of income.

13. I do not find any infirmity with the finding of the Court below and also the grounds raised by the appellant cannot be sustained. However, the sentence of imprisonment of three years is reduced to one year.



14. Accordingly, Criminal Appeal is partly allowed. Since the appellant is on bail, the trial Court is directed to cause appearance of the appellant and send him to prison to serve out the remaining period of sentence. The remand period, if any, shall be given set off under Section 428 Cr.P.C.

Date: 09.08.2024  
kvs

---

**K.SURENDER, J**