

CASE NO.:
Appeal (crl.) 1262 of 2001

PETITIONER:
N.P. Jharia

RESPONDENT:
State of M.P.

DATE OF JUDGMENT: 30/07/2007

BENCH:
Dr. ARIJIT PASAYAT & P.P. NAOLEKAR

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. It is a strange co-incidence that the Prevention of Corruption Act, 1947 (hereinafter referred to as the 'Act') was enacted in the year of our country's independence.

2. Corruption is one of the most talked about subjects today in the country since it is believed to have penetrated into every sphere of activity. It is described as wholly widespread and spectacular.

3. Corruption as such has reached dangerous heights and dangerous potentialities. The word 'corruption' has wide connotation and embraces almost all the spheres of our day to day life the world over. In a limited sense it connotes allowing decisions and actions of a person to be influenced not by rights or wrongs of a cause, but by the prospects of monetary gains or other selfish considerations. Avarice is a common frailty of mankind, and while Robert Walpole's observation that every man has a price, may be a little generalized, yet it cannot be gainsaid that it is not far from truth. Burke cautioned "Among a people generally corrupt, liberty cannot last long".

4. Challenge in this appeal is to the judgment of a learned Single Judge of the Madhya Pradesh High Court, Jabalpur, upholding conviction of appellant for offence punishable under Section 5(1)(e) read with Section 5(2) of the Act. The trial Court had while recording conviction sentenced the appellant to undergo imprisonment for three years and to pay a fine of Rs.75,000/-. The High Court reduced the sentence to one year while maintaining the fine. With the modification of sentence the appeal was dismissed.

5. Prosecution version in a nutshell is as follows: The appellant was appointed as Sales Tax Officer on 16.9.1975 and he was occupying that post during the check period 16.9.1975 to 31.12.1983. He was married to Pushpa Jharia (D.W.1) in the year 1969 and he has three children. During the period 16.9.1975 to 31.12.1983 the appellant was in possession of pecuniary resources and property worth Rs.10,19,210/- as disproportionate to his known sources of income. Proceedings were accordingly initiated. After investigation the Special Police Establishment (in short 'SPE')

had submitted "final report" on 1.3.1990 informing the court that no offence is made out against the appellant. That final report was accepted by the Special Judge on 17.4.1990. But on 1.7.1992 the S.P.E. submitted an application before the Special Judge for permission for further investigation. The Special Judge permitted further investigation. Thereafter, the sanction for prosecution was obtained from the State Government on 1.3.1995. The charge sheet was filed in the Court on 24.7.1995.

6. Accused pleaded not guilty and his version was that he had satisfactorily accounted for all the properties not only in his own name, but also in the name of his wife.

7. The Special Judge after an exhaustive and elaborate consideration of all the documentary and oral evidence on record came to the conclusion that the total income of the appellant and his wife was Rs.9,32,086.90 and the expenditure was Rs.18,81,745.81 and thus the value of the disproportionate assets was Rs.9,49,658/- It was further held that the submission of the Final Report once by the investigating agency was not a legal bar to make further investigation and file the charge-sheet. It has also been found that the sanction for the prosecution is valid and proper.

8. High Court referred to the various items of expenditure, the assets acquired, the sources and the incomes. It was held that the assessee had explained the income of himself and his wife from the known sources for a sum of Rs.2,62,061/- while the assets found were Rs.10,79,438/-. Therefore the value of the disproportionate assets was of Rs.8,17,377/-. The High Court held that in respect of certain items of income the trial court was rather charitable but since the State has not questioned the computation, the same was to be accepted.

9. Accordingly, the conclusions of the trial court were upheld and the appeal was dismissed except for modification of the sentence.

10. In support of the appeal, learned counsel for the appellant submitted that the trial Court and the High Court had erroneously held that the value of the assets found in possession of the appellant was disproportionate to his known sources of income. The prosecution has not discharged the burden that lay on it.

11. Learned counsel for the State on the other hand supported the judgment of the High Court.

12. Learned counsel for the appellant submitted that the proceedings were initiated on the basis of complaint to the Lokayukt and therefore the proceedings under the Act could not have been taken. It is to be noted that a faint plea in this regard was raised before the trial court. It was urged that once the final report was submitted there is no scope for further investigation. It appears that after referring to the proceedings the trial court found that there was no substance in the plea. Before the High Court such plea was not raised. In the appeal also the main grounds relate to the defect in sanction and legality of the further investigation.

13. So far as the further investigation is concerned in the background of Section 173(8) of the Code of Criminal Procedure, 1973 (in short the 'Code') the plea is clearly untenable.

14. So far as the factual position is concerned various sources of income disclosed by the accused were the salary, the income of his wife and certain earnings from agricultural lands of the family. It was urged that before joining as a lecturer he had earned approximately Rs.50,000/-.

15. The High Court noted that the salary earned came to about Rs.24,000/- and since he had to maintain the family there was hardly scope for any saving and therefore any availability of funds at the beginning of the check period has not been established. We find no infirmity in this conclusion. The trial court had estimated the appellant's income from agricultural land at Rs.1,49,000/- from about 10 to 15 acres of land. The High Court rightly observed that the trial court has been rather liberal in accepting the income of accused in the share of the joint family property on the basis of mere assertion without any supporting material. Same could not have been accepted. But since the State had not questioned the computation there was no scope for any further relief. The total income was taken to be Rs.2,38,561.95 which was also not disputed by the appellant. The trial court had noted that even by most liberal standards the appellant and his family consisting of five persons could not have saved more than 50% of the earnings of the salary and must have spent Rs.44,500/- Therefore, the savings of the appellant from salary and agriculture was taken at Rs.1,94,061/-. Ms. Pushpa Jharia, DW1 had deposed that she was doing the work of knitting. The trial court without any supporting material fixed the income at Rs.68,000/-. The High Court rightly noted that the computation was on the liberal side. Only a small knitting machine was found during search. DW1 accepted that she had not employed any other person for knitting, from which she used to fetch between Rs.15/- to Rs.35/- per sweater. Since the finding of the trial court was not challenged by the prosecution the High Court accepted the amount fixed and held that the appellant and his wife have satisfactorily accounted for Rs.2,62,061/- from the known sources. Though a claim was made that DW1 used to cultivate land, same was found to be totally unacceptable plea by the trial Court, and therefore the claim that Rs.32,000/- had been earned from the said source was rejected. Similarly, the plea relating to availability of a sum of Rs.80,000/- on the basis of the appellant's father's Will was found to be unacceptable as the 'Will' itself was not produced and the availability of Rs.80,000/- with appellant's father was not established. Similarly, the plea that appellant had Rs.75,000/- from the property of his father after his death was unacceptable. There was no material to substantiate the plea. Similarly plea of having availed loans from relatives was not pursued before the High Court.

16. So far as the valuation of the assets was concerned on the basis of the valuation report (Ex.P.11) of the Executive Engineer (Valuation) of the Income Tax Department, Jabalpur, the house was valued at Rs.6,91,000/- and including the value of the land, value was fixed at Rs.7,22,000/-. Apart from that, cost of acquisition of a house of five plots was added. Admitted cost of house as per Ext.P-12 was Rs.1,43,671/-. The value of movable property available at the time of search was fixed at Rs.1,22,283/-. The High Court fixed it at Rs.80,000/-. Thus, the total value of immovable and movable properties was computed at Rs.10,79,438/-. Both the trial Court and the High Court have analysed the evidence in great details so far as the valuation of the properties is

concerned. There is no scope for any interference in this appeal so far as the valuation and the determination of the disproportionate assets is concerned.

17. Appeal is dismissed.

JUDIS