A STATE OF MAHARASHTRA

v.

POLLONJI DARABSHAW DARUWALLA

NOVEMBER 10, 1987.

B [A.P. SEN AND M.N. VENKATACHALIAH, JJ.]

Prevention of Corruption Act, 1947—Respondent's acquittal of offence under section 5(1)(e), read with section 5(2), thereof challenged.

C **The respondent, Pollonji Darabshaw Daruwalla, was an appraiser in the Customs Department. The police searched his residential premises on a suspicion of his complicity in certain offences concerning the export of the Stainless Steel-Ware, in the course of the investigation of that case. Though nothing incriminatory for the purpose of that investigation was discovered, the search revealed that the respondent** D **was in possession of property and pecuniary resources, disproportionate to his known sources of income between 1.4.1958 and 31.12.1968, for which he could not satisfactorily account for. This led to the suspicion of the commission by the respondent of an offence under the Prevention of Corruption Act, 1947, and the respondent was charge-sheeted for an offence under section 5(1)(e), read with section 5(2) of the Act. In sup-** E **port of the charge, a number of documents pertaining to the respondent's investments in the banks, in the company deposits and on shares, both in his own name and jointly with his wife, as also the documents pertaining to the salary and emoluments of the respondent between 1.4.1958 and 31.12.1968 were brought on record in evidence. The defence was that the respondent was in possession of substantial assets** F **even anterior to 1.4.1958.**

The Special Judge held the respondent guilty and sentenced him to rigorous imprisonment and fine. The respondent filed an appeal before the High Court against the Judgment and Order of the Special Judge. The High Court allowed the appeal and acquitted the respon- G **dent. The State appealed to this Court by special leave against the decision of the High Court.**

Dismissing the appeal, the Court,

HELD: In order to establish that a public-servant is in possession H **of pecuniary resources and property disproportionate to his known**

sources of income, it is not imperative that the period of reckoning be spread out for the entire stretch of anterior service of the public-servant. There can be no general rule or criterion, valid for all cases, in regard to the choice of the period for which accounts are taken to establish criminal misconduct under section 5(1)(e) of the Act. The choice of the period must necessarily be determined by the allegations of fact on which the prosecution is founded and rests. However, the period must be such as to enable a true and comprehensive picture of the known sources of the income and the pecuniary resources and property in possession of the public servant either by himself or through any other person on his behalf which are alleged to be so disproportionate. A ten year period cannot be said to be incapable of yielding such a true and comprehensive picture. The assets spilling-over from the anterior period, if their existence is probablised, would, of course, have to be given credit to on the income side and would go to reduce the extent and quantum of the disproportion. It is for the prosecution to choose what is the period, having regard to the acquisitive activities of the public servant, and characterise and isolate that period for special scrutiny. In this case, the selection of a ten year period between 1.4.1958 and 31.12.1968, cannot, by reason alone of the choice of the period, be said to detract from the maintainability of the prosecution, and the view of the High Court on these points is erroneous. [913C-F; 914E; 915C-D]

Once the prosecution establishes the essential ingredients of the offence of criminal misconduct by proving, that the public servant is, or was, at any time during the period of his offence, in possession of pecuniary resources or property disproportionate to his sources of income known to the prosecution, the prosecution has discharged its burden of proof and the burden of proof is lifted from the shoulders of the prosecution and descends upon the shoulders of the defence. It then becomes necessary for the public servant to satisfactorily account for the possession of such properties and pecuniary resources. It is erroneous to predicate that the prosecution should also disprove the existence of the possible source of the public servant. [914G-H; 915A-B]

Equally erroneous and unsustainable is the view of the High Court on the proposition that the respondent was not the beneficial owner in the joint bank investments where the respondent's name was not the first name but his wife's name occurred first. The assumption that in all the joint-deposits, the depositor first-named alone is the beneficial owner and the depositor named second has no such beneficial interest, is erroneous. The matter is principally guided by the terms of the agreement, *inter se* between the joint-depositors. If, however, the

A terms of the acceptance of the deposit by the depositee stipulate that the name of the beneficial owner shall alone be entered first, then the presumptive beneficial interest in favour of the first depositor might be assumed. There was no such material before the Court in the case. The respondent virtually acknowledged his beneficial interest in the deposits in the course of his examination under section 342, Cr. P.C. [915D-G]

B

However, though there are errors of approach and of assumption and inference in the judgment under appeal, they did not by themselves detract from the conclusion reached by the High Court that in the ultimate analysis, the prosecution had not established the case against the respondent beyond reasonable doubt. The conclusion reached by the High Court tends to show that the disproportion of the assets in C relation to the known sources of income was such as to entitle the respondent to be given the benefit of doubt, though, however, on a consideration of the matter, it could not be said that there was no disproportion or even a sizeable disproportion; for instance, the acceptance by the High Court of the case of receipt by the respondent of the D alleged gift from his mother, was wholly unsupported by the evidence. There were also other possible errors in the calculations in regard to the carried-forward assets, etc. The finding became inescapable that the assets were in excess of the known sources of income. But on the question whether the extent of the disproportion was such as to justify a conviction for criminal misconduct under section 5(1)(e) read with sec- E tion 5(2), the Court thought it should not, in the circumstances of the case, interfere with the verdict of the High Court, as, in the Court's view, the difference would be considerably reduced in the light of the factors pointed out by the High Court. A somewhat liberal view was required to be taken of what proportion of assets in excess of the known sources of income constitutes "disproportion" for the purposes of sec- F tion 5(1)(e) of the Act. [915G-H; 916A-D]

The respondent should have the benefit of doubt. *State of Maharashtra* v. *Wasudeo Ramachandra,* A.I.R. 1989 S.C 1189, referred to. [916E]

G CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 318 of 1978.

From the Judgment and Order dated 29th and 30th April, 1976 of the High Court of Bombay in Criminal Appeal No. 1044 of 1973.

H A.S. Bhasme for the Appellant.

Prem Malhotra for the Respondent. A

The Judgment of the Court was delivered by

VENKATACHALIAH, J. This appeal, by special leave by the State of Maharashtra, arises out of and is directed against the judgment, dated, April 29-30, 1976 of the High Court of judicature at B Bombay in Criminal Appeal No. 1044/73 on its file setting-aside respondent's conviction and sentence dated, 21.7.73, under Section 5(1)(e) read with Section 5(2) of the Prevention of Corruption Act of 1947 ('Act' for short) in Special Case No. 24/70 on the file of the Special Judge, Greater Bombay.

The special judge held respondent guilty of the charge of Criminal Misconduct in that respondent was in possession of property and pecuniary resources, disproportionate to his known sources of income for which he could not satisfactorily account; and sentenced respondent to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.20,000. D

The High Court allowing respondent's appeal before it acquitted him of the charge. The State has come-up in appeal.

2. At the relevant time, respondent—Pollonji Darabshaw Daruwalla—was an Appraiser in the customs department at Bombay. E He and several other customs officers were suspected of their complicity in certain offences, concerning export of stainless steel-ware to Hongkong. On 9.12.1968, Police-inspector (PW 34), armed with a warrant in this behalf searched the residential-premises of the respondent in the course of the investigation of that case. Though nothing incriminatory for purpose of that investigation was discovered, F however, the search revealed respondent's possession of furniture, refrigerator, tape-recorder and cash of Rs.7593 which were susceptible of the suspicion of the commission of an offence under Section 5(1)(e) read with Section 5(2) of the 'Act'. PW 34, accordingly, obtained the requisite authorisation to investigate into this offence and after investigation, sought and obtained on 26.10.1970 sanction to prosecute G respondent. On 2.11.1970, the charge-sheet was placed against the respondent for an offence under Section 5(1)(a) read with 5(2) of the Act.

3. The substance of the charge was that respondent, as a public-servant, between the period of 1.4.1958 and 31.12.1968 was in H

possession of pecuniary resources and property of the value of Rs.2,62,122.15; that his known sources of income during the said period was Rs.85,114.12; that, therefore, the property possessed by the respondent was disproportionate to his known sources of income to the extent of Rs.1,71,647 for which respondent could not satisfactorily account and that, thereby respondent was guilty of Criminal Misconduct within the meaning of and punishable under Section 5(2) of the Act. Respondent having pleaded not guilty, the matter went for trial.

4. In support of the charge, the prosecution examined 34 witnesses. A number of documents pertaining to the respondent's investments in Banks; in company deposits; and on shares both in his own name and jointly with his wife, as also documents pertaining to the salary and emoluments of the respondent between 1.4.1958 and 31.12.1968 were brought on record and marked in evidence.

In the course of the trial, for the most part, respondent was not defended by a counsel. Many of the prosecution witnesses were not cross-examined. It was only at a late stage of the proceedings that an advocate appeared for him. From what is disclosed by the trend of the answers, in the course of the examination under Section 342 Cr. P.C., the possession of the assets in the form of investments in Fixed Deposits with Banks and with companies and on shares in the joint name of the respondent and his wife was not disputed. The defence was that respondent was in possession of substantial assets even anterior to 1.4.1958 and that respondent had also derived substantial assets from his wife's side. His wife was stated to be the only daughter of a practising doctor. Respondent also claimed that he and his daughter were in receipt of gifts from his mother.

5. The trial court went through the somewhat complex exercise of computing and collating the particulars of the investments, made by the respondent in his own name and in the name of his wife from time to time over the years. In Chart No. I, appended to and forming part of its judgment the trial court formulated what, according to it, were the results of the collation of these particulars as to the receipts and investments for the various years. In Chart No. II, the pay and emoluments which respondent was in receipt of, for and during the relevant period were set-out. In Chart No. III, the trial court has set-out the amounts of interest and dividends received by the respondent during the relevant-years.

6. The substance of the outcome of the exercise by the trial, in relation to the total-income of the respondent for the relevant-period was referred to and summarized by the High Court thus:

> "The total of all these items aggregate of Rs.169736.69. It is urged on behalf of the State that out of this, estimated expense of Rs.31,114.47 should be deducted because they were not available to the respondent to be accumulated as his assets. So the total sources available to him were Rs.1,38,621.83."

Referring to the total assets acquired by the respondent during the relevant-period and the extent of the disproportion, the High Court noticed the results of the findings of the trial court thus:

> "It was urged that the total assets being Rs.2,21,606.45, the assets of worth Rs.82,984.23 were in excess".

7. We have heard Shri Bhasme, learned counsel in support of the appeal and Shri U.R. Lalit, who was requested to assist the court as Amicus Curiae in view of the circumstance that respondent remained unrepresented. Learned Counsel have taken us through the judgment under appeal and the evidence on record on the material points.

8. From what we can gather from the somewhat spread-out reasoning of the High Court, the considerations that principally weighed with the High Court in reaching such conclusions as it did on the material points in controversy before it, admit of being formulated thus:

(a) That the selection of the particular period (from 1.4.1958 to 31.12.1968) for the ascertainment and determination of disproportionate-assets is itself arbitrary and caused prejudice to the respondent;

> The period of reckoning should have been from 1946 to 1968 as that would have given a fuller and a more complete picture;

(b) That it was erroneous to proceed—as was done by the trial

court—on the premise that respondent was the beneficial owner of the joint bank investments where his name was not the first name;

That prosecution had failed to establish—and it was erroneous on the part of the trial court to have assumed—that in respect of the deposits in which the wife's name occurred first and respondent's name second, the respondent alone was the beneficial-owner.

(c) That the deduction of Rs.41,839.17 as the carried-forward assets from the period prior to 1.4.1958 was inadequate and it should have been Rs.56,822.

The effect of this would be that the whole of the investments made—in the first-year of the accounting-period viz, 1954, would be absorbed by the higher assets so carried-forward;

(d) That a sum of Rs.6,000 which was the value of the probable gift from the mother and Rs.1,275 representing the brokerage on the fixed deposits had to be given credit to the respondent on the resources side;

(e) That from the bank account of Veera Bai, the wife of the respondent, a sum of Rs.82,827.99 had been with-drawn during the period between 1.4.1958 and 31.12.1968 and that only Rs.31,010.12 had been given credit to on the plus side in the accounting and that the balance of Rs.51,815.87 should be treated as belonging to Veera Bai in joint investments and should, therefore be excluded from the value of respondent's assets.

9. The High Court, on the basis of these re-calculations, held that in all a sum of Rs.77,215,03 could not be treated as the assets of the respondent and had to be deducted from a sum of Rs.2,21,66.45. In other words, the High Court held that the value of the assets of Rs.82,984.23 said to be in excess of and disproportionate to the known sources of income should be reduced by Rs.77,215.03. Concluding, the High Court observed:

"32. Now comes the question, whether a man after serving for 22 years from 1946 to 1968, on the prosecution own

showing, is able to save Rs.1,38,822 can it be said that the assets of Rs.1,41,495 as observed by us, are disproportionate assets as required under Section 5(1)(e) of the Act. In this connection, in our opinion, the difference is so negligible that it cannot be said to be disproportionate". A

10. Shri Bhasme for the appellant seriously assailed the reasoning of and the conclusion reached by the High Court on these points and more particularly on the points noticed at (a) and (b). Learned counsel submitted that the view of the High Court on points (a) & (b) was manifestly erroneous and the High Court misdirected itself in law on these propositions:- B

We are inclined to agree with the learned counsel on the submission on points (a) and (b). In order to establish that a public-servant is in possession of pecuniary resources and property, disproportionate to his known sources of income, it is not imperative that the period of reckoning be spread-out for the entire stretch of anterior service of the public-servant. There can be no general rule or criterion, valid for all cases, in regard to the choice of the period for which accounts are taken to establish criminal misconduct under Section 5(1)(e) of the 'Act'. C D

The choice of the period must necessarily be determined by the allegations of fact on which the prosecution is founded and rests. However, the period must be such as to enable a true and comprehensive picture of the known sources of income and the pecuniary resources and property in possession of by the public-servant either by himself or through any other person on his behalf, which are alleged to be so disproportionate. In the facts and circumstances of a case, a ten year period cannot be said to be incapable of yielding such a true and comprehensive picture. The assets spilling-over from the anterior period, if their existence is probablised, would, of course, have to be given credit-to on the income side and would go to reduce the extent and the quantum of the disproportion. E F

On this aspect, the High Court observed: G

". . . . . 20. But at the same time, it has also to be remembered that the prosecution, without showing any reason has selected to begin the calculation of the assets from 1958. I do not see any substantial reason in the selection of the year 1958. It is on record that from 1954, the accused had H

become the Appraiser. It is also on record that from the year 1958 the accused had separated from his brother and mother after the child was born to his wife. When I asked the Public Prosecutor for the reason for selecting the years 1958 to 1968, he said that it was done because the prosecution could lead evidence so as to show that the investment during these 10 years would be disproportionate of the assets compared to the moneys received. Looking to the logic of the prosecution, if amounts invested upto 1958 are excluded by themselves, I see considerable force in Mr. Vashi's arguments that the first year of 1958 should also be considered along with the previous years. There is no charm in selecting the year. I think that the prosecution would have been in a better position instead of selecting the period of 1958 to 1968, it had taken the entire period of service from 1946 to 1968 and given credit of the amounts that he has earned against all the assets that he had collected. It is therefore difficult to understand why the prosecution has chosen the period from 1958 to 1968 ....."

"..... 20. We have carefully considered this evidence of the Police Inspector but still we are not convinced about the selected of the period. We feel that the prosecution by selecting the check period of 10 years, when the accused had put in service from 1946 to 1968, i.e. for 22 years has done something whereby the chances of prejudicing the case of the accused are there ....."

11. The assumptions implicit in the above observation of the High Court suffer from a basic fallacy. It is for the prosecution to choose what according to it, is the period which having regard to the acquisitive activities of the public-servant in amassing wealth, characterise and is late that period for special scrutiny. It is always open to the public-servant to satisfactorily account for the apparently disproportionate nature of his possession. Once the prosecution establishes the essential ingredients of the offence of Criminal Misconduct by proving, by the standard of criminal evidence, that the public-servant is, or was at any time during the period of his offence, in possession of pecuniary resources or property disproportionate to his sources of income known to the prosecution, the prosecution discharges its burden of proof and the burden of proof is lifted from the shoulders of the prosecution and descends upon the shoulders of the defence. It then becomes necessary for the public-servant to satis-

factorily account for the possession of such properties and pecuniary resources. It is erroneous to predicate that the prosecution should also disprove the existence of the possible sources of income of the public servant. Indeed in *State of Maharashtra* v. *Wasudeo Ramchandra,* A.I.R. 1981 SC 1189 this Court characterised the approach of that kind made by the High Court as erroneous. It was observed:

> ". . . . . The High Court, therefore, was in error in holding that a public servant charged for having disproportionate assets in his possession for which he cannot satisfactorily account, cannot be convicted of an offence under Section 5(2) read with Sections 5(1)(e) of the Act unless the prosecution disproves all possible sources of income . . . . . ".

In the present case, the selection of a ten year period between 1.4.1958 and 31.12.1968 cannot, by reason alone of the choice of the period, be said to detract from the maintainability of the prosecution.

12. Equally erroneous, in the view of the High Court on the proposition noticed at point (b). The assumption that in all joint-deposits, the depositor first-named alone is the beneficial owner and the depositor named second has no such beneficial interest is erroneous. The matter is principally guided by the terms of the agreement, inter-se, between the joint depositors. If, however, the terms of the acceptance of the deposit by the depositee stipulate that the name of the beneficial owner shall alone be entered first, then the presumptive beneficial interest in favour of the first depositor might be assumed. There is no such material before the court in this case.

Indeed, the answers of the respondent to the specific questions under Section 342 Cr. P.C. pertaining to the nature of the deposits and the suggestion—implicit in the questions—as to the beneficial ownership in the respondent in the deposits do not support the view of the High Court and lend credence to any doubts in the matter. Respondent virtually acknowledged his beneficial interest in the deposits in the course of his examination under Section 342. The view of the High Court on point (b) is clearly unsustainable.

13. However, these errors of approach and of assumption and inference in the judgment under appeal do not, by themselves, detract from the conclusion reached by the High Court that, in the ultimate analysis, the prosecution has not established the case against respondent beyond reasonable doubt.

A The discussion of and the conclusion reached on the contents and parts (c) to (e) by the High Court tends to show that the disproportion of the assets in relation to the known source of income is such that respondent should be given the benefit of doubt though however, on a consideration of the matter, if cannot be said that there is no disproB portion or even a sizeable disproportion. For instance, Shri Bhasme is right in his contention that the acceptance by the High Court of the case of the alleged gift from the mother is wholly unsupported by the evidence. There are also other possible errors in the calculations in regard to point(c). The finding becomes inescapable that the assets were in excess on the known sources of income.

C But on the question whether the extent of the disproportion is such as to justify a conviction for criminal misconduct under Section 5(1)(e) read with Section 5(2), we think, we should not, in the circumstances of the case, interfere with the verdict of the High Court as, in our view, the difference would be considerably reduced in the light of D the factors pointed out by the High Court. A somewhat liberal view requires to be taken of what proportion of assets in excess of the known sources of income constitutes "disproportion" for purpose of Section 5(1)(e) of the Act.

We think that the respondent should have the benefit of doubt. The appeal is accordingly dismissed.

E

S.L. Appeal dismissed.