

A N. NAVEEN KUMAR AND ORS.

v.

STATE OF A.P.

(Criminal Appeal No. 1627 of 2008)

OCTOBER 17, 2008

B [DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Prevention of Corruption Act, 1947; Ss.5(1)(e) and 5(2):

C *Pecuniary resource disproportionate to known source of
income – Possession of, by accused government servant –
D Sentencing the accused to undergo simple imprisonment for
1 year, trial Court directed to sell by auction item Nos. 1 to 4 of
assets and sale proceeds therefrom to be confiscated to State
– During pendency of the appeal before High Court, convict
E died – Filing of application by children of the deceased for
grant of permission to deposit the appropriate amount in lieu
of auction of certain items of assets – Dismissed by High Court
holding that s.482 Cr.P.C. not empowered the Court to review
its own order – Correctness of – Held: Correct – However, It is
open to appellants to participate in the auction sale of the as-
sets in question – Code of Criminal Procedure, 1973 – s.482.*

*Code of Criminal Procedure, 1973 – S.482 – Inherent
power of High Court – Invoking of, to review its own judgment.*

F **Accused, a government servant was allegedly pos-
sessing the pecuniary resources disproportionate to the
known source of income. He was charged for commit-
ting the offence under Section 5 (1)(e) read with Section 5
(2) of the Prevention of Corruption Act, 1947. Trial Court
G found him guilty of committing the offence and sentenced
him to undergo simple imprisonment for one year, to pay
a fine of Rs.20,000/- and directed that item No 1 to 4 of the
assets shall be sold in public auction and the sale pro-
ceeds shall be confiscated to the State. The accused pre-**

ferred criminal appeal. During pendency of the appeal before the High Court, the appellant died. Appeal was dismissed by the High Court. Appellants, children of the deceased, filed an application praying for grant of permission to deposit the amount as considered appropriate in lieu of the confiscation of Item Nos. 1 to 4 of the assets, which were directed to be sold in public auction. The High Court dismissed the application holding that Section 482 Cr.P.C. did not empower the Court to review its own judgment by exercising inherent powers. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1.1 The High Court has rightly noted that it is the present value of the properties which is of relevance and not the value of the assets at the relevant point of time of seizure. [Para – 7] [732-A]

1.2 It is open to the appellants to participate in the auction for sale of the properties in question as and when held. [Para – 7] [732-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1627 of 2008

From the Judgment and Order dated 27.4.2006 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Misc. Petition No. 247 of 2006 in CrI. Appeal No. 1524 of 1998

Sarvesh Bisaria and Anil Nag for the Appellant.

Altaf Fathima and D. Bharathi Reddy for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J 1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Andhra Pradesh High Court dismissing the application filed by the appellants.

A 3. Background facts in a nutshell are as follows;

The appellants are the sons and daughters of the accused N. Ramakrishnaiah in C.C. No.64 of 1992 on the file of the Principal Special Judge, for SPE & ACB Cases, Hyderabad. He was charged for the offence under Section 5 (1)(e) read with Section 5 (2) of the Prevention of Corruption Act, 1947 (in short the 'Old Act') possessing the pecuniary resources disproportionate to the known sources of income. The accused worked as Executive Engineer as on the date of search of his house and other properties. Evidence was adduced and the Special Judge found the accused guilty, convicted him for the above mentioned offence and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.20,000/- in default to suffer simple imprisonment for three months. The Special Judge also directed that item No 1 to 4 of the assets shall be sold in public auction and the sale proceeds shall be confiscated to the State. The accused, being aggrieved by the conviction and the sentence imposed by the Special Judge preferred Criminal Appeal No.1524 of 1998. The High Court dismissed the appeal. As noted above, during the pendency of the appeal before the High Court, the appellant died, therefore, the sentence of imprisonment stood abated against the appellant.

Prayer before the High Court was that the appellants may be permitted to deposit entire amount of Rs.6,37,850.92 on such sum as may be considered appropriate in lieu of the confiscation of Item Nos.1 to 4 of the assets possessed by the accused in the case. It was pointed out that Item No.1 was a house property. The appellants had sentimental attachment to the properties. Stand of the State was that since Criminal Appeal was dismissed there was no scope for passing the order as the Court had become functus officio. The appellants' stand was that Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') permitted the course to be adopted. The High Court did not find any substance in the plea and it was held that Section 482 Cr.P.C. did not empower the Court to review its own judgment by exercising inherent powers.

4. Learned counsel for the appellants submitted that since the appellants are willing to deposit money there is no reason as to why the High Court should not permit release of the properties in favour of the legal heir of deceased accused. Undisputedly, when the offence was committed Section 5(2) of the Old Act was in force which reads as follows:

“5(2)- Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine:

Provided that the Court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year.”

5. The corresponding Section 13(2) of the Prevention of Corruption Act, 1988 (in short the ‘Act’) reads as follows:

“Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.”

6. According to the appellants in an appropriate case the fine amount as imposed can be enhanced and the custodial sentence can be reduced. We need not go into that question because Section 16 of the Act reads as follows:

“Matters to be taken into consideration for fixing fine- Where a sentence of fine is imposed under sub-section (2) of Section 13 or Section 14, the court fixing the amount of the fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (c) of sub-section (1) of section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.”

- A 7. The High Court has rightly noted that it is the present value of the properties which is of relevance and not the value of the assets at the relevant point of time of seizure. We find no substance in the plea of the appellants as canvassed in this appeal. It is open to the appellants to participate in the auction
- B for sale of the properties in question as and when held.

8. The appeal is dismissed.

S.K.S.

Appeal dismissed.