

N. RAMAKRISHNAIAH (DEAD) THR. LRS.

v.

STATE OF A.P.

(Criminal Appeal No. 1628 of 2008)

OCTOBER 17, 2008

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

*Prevention of Corruption Act, 1947:*

*s.5(1)(e) r/w s.5(2) – Public servant – Acquiring assets disproportionate to his known sources of income – Conviction by trial court – Certain assets of accused directed to be sold in public auction and sale proceeds confiscated to Government – Judgment and order upheld by High Court – HELD: Analysis made by trial court and High Court, and evidence on record leave no manner of doubt that conviction and sentence suffer from no infirmity.*

*s. 5 – “Income” – Connotation of – Interest accrued on deposits – Since total income and expenditure formed basis of computation, accrued income duly taken note of – If it is excluded, income earned would be reduced to that extent – It would not be a factor in favour of accused.*

*Prevention of Corruption Act, 1988:*

*s. 13(1)(e) r/w s.13(2) and s.5(1)(e) r/w s.5(2) of 1947 Acts – Expressions “income”, “known sources of income”, “satisfactorily account for” – Connotation of – Burden is on the accused to offer a plausible explanation worthy of acceptance as to how he acquired the wealth – Prevention of Corruption Act, 1947 – s.5(1)(e) r/w s.5(2) – Evidence Act, 1872 – s. 106.*

**The appellant-accused, an Executive Engineer in the State Panchayat Raj Department, was prosecuted for commission of offences punishable u/s 5(1)(e) read with s.5(2) of the Prevention of Corruption Act, 1947 on the allega-**

A tion that during the service period he had acquired as-  
sets disproportionate to his known sources of income.  
The Special Judge convicted the accused of the offences  
charged and sentenced him to simple imprisonment for  
one year and to pay a fine of Rs.20,000/-. Certain assets,  
B belonging to the accused were also directed to be sold in  
public auction and the sale proceeds confiscated to the  
State. The High Court upheld the judgment and order of  
the Special Judge. Aggrieved, the accused filed the in-  
stant appeal. During pendency of the appeal, consequent  
C upon death of the appellant, his heirs were brought on  
record.

Dismissing the appeal, the Court

D HELD: 1.1 The expression "known sources of in-  
come" means income received from any lawful sources,  
the receipt of which has been intimated in accordance  
with the provisions of any law, rules or orders for the time  
being applicable to a public servant. The expression  
"known source of income" has reference to sources  
E known to the prosecution after thorough investigation of  
the case. The prosecution cannot, in the very nature of  
things be expected to know the affairs of an accused per-  
son. Those will be matters "specially within the knowl-  
edge" of the accused, within the meaning of Section 106,  
of the Indian Evidence Act, 1872. [para 14] [740-C-E]

F 1.2 The emphasis of the phrase "known sources of  
income" in Section 13(1) (e) of the Prevention of Corrup-  
tion Act, 1988 ( Section 5(1) (e) of 1947 Act) is clearly on  
the word "income." It would be primary to observe that  
G qua the public servant, the income would be what is at-  
tached to his office or post, commonly known as remu-  
neration or salary. Other income which can conceivably  
be income qua the public servant will be in the regular  
receipt from (a) his property, or (b) his investment. A re-  
H ceipt from windfall, or gains of graft, crime or immoral se-

cretions by persons prima facie would not be receipt for the "known sources of income" of a public servant. [para 15] [740-F; 741-B] A

1.3 The legislature has advisedly used the expression "satisfactorily account." The emphasis must be on the word "satisfactorily" and the legislature has, thus, deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the Court that his explanation was worthy of acceptance. [para 16] [741-C] B

2.1 In the instant case, one of the items as far as income is concerned was interests on deposits. The High Court noted that the same related to interest accrued on deposits. Since total income and expenditure formed the basis of computation, the accrued income has been duly taken note of. The accrual of interest was on the deposits made, in a sense that it is not an investment. That was accrued income. If it is excluded, the income earned would be reduced to that extent. Thus, it would not be a factor in favour of the accused. [para 7] [738-C-D] C

2.2 The analysis made by the trial court and the High Court and evidence on record leave no manner of doubt that the conviction as recorded does not suffer from any infirmity. [para 17] [741-D] D

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 1627 of 2008 E

From the Judgment and Order dated 7.10.2005 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Crl. Appeal No. 1524 of 1998 F

Sarvesh Bisaria and Anil Nag for the Appellant. G

Altaf Fathima and D. Bharathi Reddy for the Respondents.

The Judgment of the Court was delivered by H

A **DR. ARIJIT PASAYAT, J** 1. Leave granted.

B 2. Challenge in this appeal is to the judgment of a learned Single Judge of the Andhra Pradesh High Court dealing with Criminal Appeal preferred by appellant No.1-N. Ramakrishnaiah who died during the pendency of the appeal and his legal heirs were brought on record as appellants in this appeal.

3. The factual matrix leading to the conviction of the accused N. Ramakrishnaiah was as follows:

C The accused joined government service as a Supervisor on 02.11.1955 in the Andhra Pradesh Panchayat Raj Department. He was promoted as a Deputy Executive Engineer on 02.01.1967 and further promoted as an Executive Engineer on 01.03.1979. He continued to work as an Executive Engineer, Kamareddy of Karimnagar District till he was kept under suspension on 26.05.1986. On reliable information that he had acquired assets disproportionate to his known sources of income, a case was registered on 12.05.1986 and the investigation was taken up. During the course of investigation, search was conducted. The documents found during the search disclosed acquisition of number of assets by the accused in his name and in the name of his dependents. During the check period i.e. from 2.11.1955 to 13.5.1986, he acquired assets worth Rs.14,71,578. His income from all known sources was Rs.8,23,634/- and the expenditure during the check period was Rs.7,88,574/-. After deducting the expenditure from the income, he would have saved Rs.35,040/-. But he had acquired the assets worth Rs.17,71,578/-. After deducting the likely saving of Rs.35,040/-, the disproportionate assets in possession of accused from his known sources of income was worked out at Rs.14,36,538/- and he could not give satisfactory account for acquisition of those assets. He was, therefore, liable for punishment under Section 5 (1)(e) read with Section 5 (2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as the "Old Act").

H The following was the charge framed against the accused:

"That you being a public servant employed as Supervisor on 02.11.1955 subsequently promoted as Dy. Executive Engineer on 02.01.1967 and Executive Engineer on 01.03.1979 in the Panchayat Raj Department of Government of Andhra Pradesh, during the period between 02.11.1955 and 13.05.1986 acquired assets, which were disproportionate to your known sources of income and on or about the 13th day of May, 1986 you had been in possession of pecuniary resources or property in your name and in the names of your wife and children to the extent of Rs. 14,36,538.00 which were disproportionate to your known sources of income and for which you could not satisfactorily account and you thereby committed an offence under section 13 (1) (e) of the Prevention of Corruption Act, 1988 .(Sec. 5(1) (e) of the Old Act) punishable under Section 13(2) of the said Act (Sec. 5(2) of the Old Act) and within my cognizance."

He denied the above charge and claimed for trial. The prosecution in order to prove the guilt of the accused examined P.Ws. 1 to 52, and marked Exs. P.1 to P.195. No oral evidence was adduced on defence side. But, Ex.D-1 relating to the agricultural income for some period was marked.

The learned Special Judge after considering the oral and documentary evidence, found the accused guilty for the offence punishable under Section 5(1)(e) read with Section 5(2) of the Act, convicted 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 learned Special Judge also directed that Item Nos.1 to 4 of assets to be sold in public auction and the sale proceeds was directed to be confiscated to the State. Being aggrieved by the judgment of the trial Court accused preferred the appeal in the High Court, which was dismissed.

4. It is to be noted that in the appeal before the High Court, the dispute was restricted to only Item No.26 of the assets (mov-

A ables) and agricultural income. It was stated that the former was over estimated and deserved to be scaled down and there was underestimation of the latter and the same was to be increased. The High Court with reference to the evidence and materials on record did not find any substance in the plea and upheld the conclusions.

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5. The stand was re-iterated by the learned counsel for the appellants.

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6. On the other hand, learned counsel for the State supported the judgments of the trial Court and the High Court.

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7. One of the items as far as income is concerned was interests on deposits. The High Court noted that the same related to interest accrued on deposits. Since total income and expenditure formed the basis of computation, the accrued income has been duly taken note of. The accrual of interest was on the deposits made, in a sense that it is not an investment. That was accrued income. If it is excluded, the income earned would be reduced to that extent. Thus, it would not be a factor in favour of the accused.

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8. Similar is the position in respect of deposits in Pratibha Finance Corporation and Saphagin Finance Corporation.

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9. So far as movables covered by item No.26 are concerned, the trial Court and the High Court relied upon the evidence of PW 36 and PW 52 and Ext P-112 (list of movables).

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10. The movables covered are those which were listed in the inventory made at the time of search room wise. The details contained are the year of acquisition, the value of each article and other particulars given by the accused himself. The details were recorded by PW-36. Further, PW-52 also corroborated the evidence by deposing to similar effect. Though suggestion was made that the accused did not give the detail to PW-36, significantly PW-52 was not cross-examined in this regard. High Court noticed that it was not specified by the accused as to in respect of which particular item there was over valuation. Sig-

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nificantly, signature of the accused is there in the inventory. The conclusions of the High Court to reject contentions of the accused do not suffer from any infirmity to warrant interference. A

11. So far as the agricultural income is concerned, prosecution relied upon the evidence of Mandal Revenue Officer (PW-23). He furnished details relating to yield, cultivation, inspection remarks in respect of the agricultural properties for Faslis 1378 to 1395. The details are Ext. P91 and P92. Another witness was PW-24 who gave Ext P94 statement giving details of land in Agadala Lanka Village. He also gave details for Faslis 1379 to 1394. Similarly, PW-25 gave details by Ext.P95 for Faslis 1376 to 1390 in respect of Pydichinthalapadu Village. As per Ext.P96 details were given from 1968 to 1985 relating to market rate of Paddy at Eluru. Other witnesses examined to prove the agricultural income aspect were PWs 40, 41, 27. An agriculturist PW-39 was examined to show the yield. His lands were adjacent to that of the accused. B  
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12. It is interesting to note that accused placed reliance on Ext.D1 purporting to show yields in certain Faslis. It was recovered from the house of the accused. But interestingly no material was adduced to show who was the author of the document and as to on what basis the entries were made. There was not even a signature of the person who had prepared it. The High Court did not attach any importance to it. E

13. We notice that the figure indicated in Ext.D1 is Rs.1,34,160/- for the period from 1961 to 1976. The trial Court has in fact gone to the extent of adopting the figures of these 15 years for the next 10 years. The entries in Exts. P92 to 95 have not been established to be erroneous and therefore the trial Court and the High Court have rightly refused to accept accused's stand of under-estimation. F  
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14. Section 13 of Prevention of Corruption Act, 1988 (in short the 'Act') deals with various situations when a public servant can be said to have committed criminal misconduct. Clause (e) of Sub-section (1) of the section is applicable when the pub- H

A lic servant 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 source of income. Clause (e) of Sub-section (1), of Section 5 of the Old Act was in similar lines. But there have been drastic amendments. Under the new clause, the earlier concept of "known sources of income" has undergone a radical change. As per the explanation appended, the prosecution is relieved of the burden of investigating into "source of income" of an accused to a large extent, as it is stated in the explanation that "known sources of income" mean income received from any lawful sources, the receipt of which has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant. The expression "known source of income" has reference to sources known to the prosecution after thorough investigation of the case. It is not, and cannot be contended that "known sources of income" means sources known to the accused. The prosecution cannot, in the very nature of things be expected to know the affairs of an accused person. Those will be matters "specially within the knowledge" of the accused, within the meaning of Section 106, of the Indian Evidence Act, 1872 (in short, the 'Evidence Act').

15. The emphasis of the phrase "known sources of income" in Section 13(1) (e) (old Section 5(1) (e)) is clearly on the word "income." It would be primary to observe that qua the public servant, the income would be what is attached to his office or post, commonly known as remuneration or salary. The term "income" by itself, is classic and has a wide connotation. Whatever comes in or is received is income. But, however, wide the import and connotation of the term "income", it is incapable of being understood as meaning receipt having no nexus to one's labour, or expertise, or property, or investment, and being further a source which may or may not yield a regular revenue. These essential characteristics are vital in understanding the term "Income". Therefore, it can be said that, though "income"

in receipt in the hand of its recipient, every receipt would not partake into the character of income. For the public servant, whatever return he gets of his service, will be the primary item of his income. Other income which can conceivably be income qua the public servant will be in the regular receipt from (a) his property, or (b) his investment. A receipt from windfall, or gains of graft, crime or immoral secretions by persons prima facie would not be receipt for the "known sources of income" of a public servant.

16. The legislature has advisedly used the expression "satisfactorily account." The emphasis must be on the word "satisfactorily" and the legislature has, thus, deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the Court that his explanation was worthy of acceptance.

17. The analysis made by the trial Court and the High Court and evidence on record leave no manner of doubt that the conviction as recorded does not suffer from any infirmity. We find no infirmity with the order of the High Court. The appeal is dismissed.

R.P.

Appeal dismissed.