A VASANT RAO GUHE

v.

STATE OF MADHYA PRADESH

(Criminal Appeal No. 1279 of 2017)

B AUGUST 09, 2017

[DIPAK MISRA, AMITAVA ROY AND A.M. KHANWILKAR, JJ.]

Prevention of Corruption Act, 1988:

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s.13(1)(e) r/w. s.13(2) – Concurrent conviction under – If justified– Held: A public servant charged of criminal misconduct has to be proved by the prosecution to be in possession of pecuniary resources or property disproportionate to his known sources of income, at any time during the period of his office – To succeed in D *a criminal trial, the prosecution has to pitch its case beyond all reasonable doubt and lodge it in the realm of "must be true" category and not in the domain of "may be true" – However, in the instant case the prosecution failed to prove the charge of criminal misconduct against the appellant beyond all reasonable doubt –* E *He is thus entitled to benefit of doubt – Further, on facts, the charge for which the appellant was finally convicted was different from the one with which he was arraigned at the initiation of the trial – This is opposed to the fundamental percepts of a criminal prosecution – Thus, appellant's conviction and sentence is set aside.*

F *s.13 – Burden of proof – Held: The primary burden to bring home the charge of criminal misconduct is on the prosecution to establish beyond reasonable doubt that the public servant either himself or through anyone else had at any time, during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income – It is only on the* G *discharge of such burden by the prosecution, if the public servant fails to satisfactorily account for the same, he would be in law held guilty of such offence – If prosecution fails to discharge such burden, he would not be required in law to offer any explanation to satisfactorily account therefor.*

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Allowing the appeal, the Court A

HELD: 1.1 On the two major heads of income i.e. pay and agricultural earnings, the Trial Court not only of its own embarked on an inquiry to ascertain and compute the figures, it wholly resorted to inferences in calculating the pay for the periods omitted by the prosecution as well as in fixing 60% expenditure B from pay towards household needs. Its assessment of agricultural income of the appellant, to say the least, was also wholly presumptive in absence of any basis whatsoever in support thereof. The figures ultimately arrived at by the Trial Court, were thus patently different from those mentioned in the charge framed against the appellant and on which he was put on trial. In C other words, the appellant was convicted by the Trial Court on a charge different from the one framed against him and that too on the basis of calculations made by it by applying inferences and guess works. The High Court also fell in error in the lines similar to that of the Trial Court. [Paras 12 and 14] [577-A-B, C-D; 578- D B]

1.2 Admittedly, having regard to the ultimate figures as calculated by the Courts below, the charge has undergone a metamorphosis. This assumes immense significance in view of the fact that no fresh charge had been framed on the allegations E for which the appellant was eventually convicted and sentenced. Any adverse inference prejudicial to the appellant was thus not available in law, he not having been confronted with the altered imputations. To reiterate, the charge for which the appellant was finally convicted wore a new complexion different from the one with which he had been arraigned at the initiation of the trial. The F appellant thus for all practical purposes was subjected to a trial involving fleeting frames of accusations of which he was denied prior notice. This is clearly opposed to the fundamental precepts of a criminal prosecution. [Para 17] [579-B-C]

1.3 Apart therefrom, both the Courts below indulged in G voluntary exercises to quantify the pay of the appellant for the periods excluded by the prosecution as well as his agricultural income and that too premised on presumptions with regard to his possible expenditures/investments and his share in the agricultural receipts. Having regard to the nature of the charge H

A cast on the appellant and the inflexible burden on the prosecution to unfailingly prove all the ingredients constituting that same, there could have been no room whatsoever of any inference or speculation by the Courts below. A person cannot be subjected to a criminal prosecution either for a charge which is amorphous and transitory and further on evidence that is conjectural or B hypothetical. The appellant in the determinations before the Courts below was subjected to a trial in which both the charges and evidence on aspects with vital bearing thereon lacked certitude, precision and unambiguity. [Para 18] [579-D-F]

C 2.1 As ordained by the statutory text, a public servant charged of criminal misconduct thereunder has to be proved by the prosecution to be in possession of pecuniary resources or property disproportionate to his known sources of income, at any time during the period of his office. Such possession of pecuniary resources or property disproportionate to his known D sources of income may be of his or anyone on his behalf as the case may be. Further, he would be held to be guilty of such offence of criminal misconduct, if he cannot satisfactorily account such disproportionate pecuniary resources or property. The explanation to Section 13(1)(e) elucidates the words "known sources of income" to mean income received from any lawful E source and that such receipt has been intimated in accordance with the provisions of law, rules, orders for the time being applicable to a public servant. [Para 20] [580-C-E]

2.2 From the design and purport of clause (e) of sub-clause (1) to Section 13, it is apparent that the primary burden to bring F home the charge of criminal misconduct thereunder would be indubitably on the prosecution to establish beyond reasonable doubt that the public servant either himself or through anyone else had at any time during the period of his office been in possession of pecuniary resources or property disproportionate G to his known sources of income and it is only on the discharge of such burden by the prosecution, if he fails to satisfactorily account for the same, he would be in law held guilty of such offence. In other words, in case the prosecution fails to prove that the public servant either by himself or through anyone else had at any time

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during the period of his office been in possession of pecuniary resources or property disproportionate to his known sources of income, he would not be required in law to offer any explanation to satisfactorily account therefor. Even in a case when the burden is on the accused, the prosecution must first prove the foundational facts. [Para 21] [580-F-H; 581-A-B]

State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede **(2009) 15 SCC 200 : [2009] 11 SCR 513 – referred to.**

2.3 The prosecution to succeed in a criminal trial has to pitch its case beyond all reasonable doubt and lodge it in the realm of "must be true" category and not rest contended by leaving it in the domain of "may be true". [Para 22] [581-D]

Case Law Reference

[2009] 11 SCR 513 referred to Para 21

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1279 of 2017.

From the Judgment and Order dated 09.01.2014 of the High Court of Madhya Pradesh at Jabalpur, in Criminal Appeal No. 1573 of 2000

Harsh Parashar, Adv. for the Appellant.

Ms. Sakshi Kakkar, C. D. Singh, Advs. for the Respondent.

The Judgment of the Court was delivered by

AMITAVA ROY, J. 1. The appellant hereby seeks to overturn the judgment and order dated 09.01.2014 rendered by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No.1573 of 2000 thereby affirming his conviction under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, hereinafter to be referred to as the "Act") and sentence to undergo R.I. for two years with fine of Rs.20,000/- with default sentence of R.I. of six months as recorded by the learned Special Judge (Prevention of Corruption Act) in his verdict dated 07.06.2000 rendered in Special Case No.2/1996.

2. We have heard Mr. Harsh Parashar, learned counsel for the appellant and Ms. Sakshi Kakkar, learned counsel for the respondent.

A 3. The genesis of the prosecution lies in a complaint lodged by one Khuman Singh, resident of Betul Ganj alleging that the appellant, who at the relevant time was holding the office of Sub-Engineer, Irrigation Department, Mahi Project Patelabad, Jhabua, by abusing his post, had acquired assets disproportionate to his known sources of income. FIR No.136 Dated 27.10.1992 was registered by Inspector, S.P. B Establishment, Divisional Lokayukt, Office Bhopal and on the completion of the investigation, charge-sheet was laid to the effect that during the check period between 1970 to 1992, after adjusting the income and expenditure of the appellant, he was found to have acquired, by applying corrupt and illegal means while acting as a public servant, assets valued C Rs.7,94,033/- which was disproportionate to his known sources of income and had thereby committed an offence under Section 13(1)(e) read with Section 13(2) of the Act.

4. The Trial Court framed charge under the aforementioned sections of law, punishable under Section 19 of the Act to which the D appellant pleaded "not guilty" and demanded trial.

5. As the charge would disclose, the appellant during the check period was shown to have earned total income of Rs.1,95,637/- and after accounting for an expenditure of 60% thereof towards household needs, he had a saving of Rs.79,045/-. However, having regard to his E bank deposits and his investments in plots and a house that he had built on one of those, he had expended thereby an amount of Rs.9,89,670/- during the said period and thus was possessed of assets to the tune of Rs.7,94,033/- which was disproportionate to his known sources of income.

6. At the trial, the prosecution adduced oral as well as documentary F evidence. Its witnesses included amongst others Inspector A.J. Khan (PW6), the investigating officer and Inspector, Roop Singh Solanki (PW2) who did follow up the investigation taking the baton from PW6. As the testimony of these two witnesses is of decisive bearing and demonstrable from the analysis of the evidence as embarked upon by the Courts below, reference thereto is indispensable.

G 7. A.J. Khan (PW6) stated that after the registration of the First Information Report, he conducted the preliminary investigation and ascertained amongst others, the sources of income of the appellant during the check period and most importantly admitted not to have added his

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agricultural income and the pay for various periods, before handing over the investigation to PW2.

8. Roop Singh Solanki (PW2) who took over the investigation from PW6 stated that particulars of the income and expenditure for the check period were drawn up by him and were handed over to the Superintendent of Police, Vigilance Commissioner, Bhopal. According to him, the total income of the appellant from pay during the check period was Rs.1,94,365/- which together with the interest on the amount deposited in the bank was Rs.1,95,637/-. According to this witness, if 60% expenditure towards household necessities of the appellant and his family is deducted therefrom, his saving would be of Rs.79,045/-. In that premise, the expenditure of the appellant having been recorded to be Rs.9,89,670/-, the charge of disproportionate asset unrelatable to his known sources of income stood established. This witness in his cross-examination however admitted that from records, the annual agricultural income of the appellant appeared to be Rs.1,25,000/- which for the check period would amount to Rs.27,00,000/-. He conceded further that the appellant's salary for the period October 1970 to June 1974, September 1979 to October 1979 and March 1982 to August 1990 had not been accounted for by the earlier investigating officer and admitted as well to have not added the same to the income of the appellant. This witness testified as well the agricultural annual income of Rs.10,000/- from village Baghoda which for the check period was quantifiable at Rs.2,22,000/- and thus his total agricultural income over the check period was Rs.29,22,000/-. He admitted as well that this agricultural income and the omitted amount of pay, if added, there would be no disproportionate assets qua the appellant.

9. The Trial Court while assessing the evidence on record with particular reference to the testimony of the aforementioned two witnesses came to a categorical finding that the prosecution version that the appellant had income of Rs.1,95,637/- during the check period was patently incorrect. It referred to documents on record and worked out for itself the pay which the appellant was supposed to earn during the periods omitted by the prosecution and computed the same to be Rs.1,93,208/- and adding the amount so calculated concluded that the appellant's income from pay during the check period was Rs.3,06,335/- which together with interest on the amount deposited in the bank came to be Rs.3,07,652/-. It

A deducted 60% therefrom towards expenses for the family needs and determined Rs.1,23,061/- to be his savings under that head.

10. Similarly, the Trial Court referred to the documents on record produced by the prosecution with regard to the agricultural lands at Devbhilai and Baghoda villages in the name of the appellant, his father B and two brothers which disclosed an annual income of Rs.1,35,000/- including the cost of agriculture etc. Though the Trial Court initially was reluctant to accept this figure in absence of any clarification offered by the appellant albeit the evidence to that effect was produced by the prosecution, it eventually acted on the same and after deducting 60% therefrom towards the expenses/investments was of the view that C annually an amount of Rs.54,000/- was available to the appellant, his father and the two brothers as agricultural income. The Trial Court quantified 1/4th of this figure in the share of the appellant and computed it to be Rs.13,500/- per annum which for 22 years i.e. the check period was calculated at Rs.2,97,000/-. According to it, thus at the end of the D check period the appellant had at his disposal, from agricultural income and saving from pay Rs.4,20,061/-.

11. The learned Trial Court thereafter adverted to the expenditures incurred by the appellant towards purchase of plots and construction of house. It also did take account of the deposits in bank. Referring to the E sale deeds of the purchase of two plots from Tapti Housing Cooperative Society Limited in Multai in the name of his wife and at Gandhi Nagar Colony, Betul, it recorded that those acquisitions had been made for Rs.7728/- and Rs.18,000/- respectively. It accepted the valuation of the house constructed over the land at Betul at Rs.1,48,918/- and together with the amounts deposited in the bank in various accounts computed F the quantum of expenditure during the check period to be Rs.6,35,259/-. Though as the Trial Court's narrative would reveal, that in defence, the appellant had produced documents in connection with his immovable property, those were not taken note of in absence of any clarification in connection therewith. The learned Trial Court was thus of the view, G having regard to the difference in the figures representing the income and expenditures, that the charge of acquisition of assets by the appellant disproportionate to his known sources of income as levelled stood established and consequently returned a finding of guilt under Section 13(1)(e) and Section 13(2) of the Act and sentenced him as above.

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12. As would be evident from the rendition of the learned Trial Court on the two major heads of income i.e. pay and agricultural earnings, the learned Trial Court not only of its own embarked on an inquiry to ascertain and compute the figures, it wholly resorted to inferences in calculating the pay for the periods omitted by the prosecution as well as in fixing 60% expenditure from pay towards household needs. Its assessment of agricultural income of the appellant to say the least is also wholly presumptive in absence of any basis whatsoever in support thereof. This is noticeably in the face of the admission of the prosecution that while levelling the charge against the appellant of acquisition of assets disproportionate to his known sources of income, it had not accounted for his income from pay vis-à-vis the periods omitted as well as from agricultural earnings. The figures ultimately arrived at by the Trial Court are thus patently different from those mentioned in the charge framed against the appellant and on which he was put on trial. In other words, the appellant was convicted by the Trial Court on a charge different from the one framed against him and that too on the basis of calculations made by it by applying inferences and guess works.

13. The High Court in turn, while noticing the aspect that the prosecution while laying the charge-sheet had not accounted for the income of the appellant by way of pay for the aforementioned periods as well as receipts from agricultural lands, reduced the household expenditure from 60% to 50% thereby generating for the appellant, savings of Rs.1,53,826/-. Qua the agricultural income as well, the cost of production and other investments were scaled down to 50% but agreed with the Trial Court that the agricultural lands being the joint family property of the appellant, his father and two brothers, he was entitled to only 1/4th share from the income therefrom at the rate of Rs.16,875/- which was worked out to be Rs.3,71,250/- for the check period. The High Court thus computed the savings from the salary and the agricultural earnings to be Rs.5,25,076/-. It endorsed the price of the plots of land as accepted by the Trial Court but fixed the value of the construction of the house at Rs.1,63,660.44/-. It then proceeded to decide on the charge by accepting the total income of the appellant to be Rs.5,25,076/- and the expenditure as Rs.6,11,121/-. The other segments of the expenditures, as accepted by the Trial Court, were affirmed by it. Based on this computation, the High Court having found the appellant to be in possession of Rs.86,045/- which was in excess of 10% of his income from known

A sources i.e. Rs.5,25,076/- affirmed his conviction and sentence as awarded by the learned Trial Court. It however dismissed the appeal of the State seeking forfeiture of this amount which the Trial Court too had declined.

14. In essence, thus the High Court fell in error in the lines similar B to that of the Trial Court, the only variation in approach being reduction in the percentage of expenditure in household exigencies and investments in agricultural yields. The vitiating infirmity of speculative assumptions in favour of the prosecution and against the appellant therefore afflicted its eventual determination as well.

C 15. The learned counsel for the appellant has insistently impeached his conviction and sentence contending that the prosecution had utterly failed to adhere to and prove the charge levelled against him and thus the impugned judgments are liable to be set aside, lest there would be travesty of justice. According to the learned counsel, not only the Courts below have grossly erred, in absence of any admissible basis, to calculate D the pay of the appellant for the periods omitted as well as his agricultural income, the unfounded assumption of 60/50% expenditure towards household needs and field investments have rendered the findings on his income from the known sources as disclosed by the prosecution patently unsustainable in law and on facts. This is more so as the relevant E witnesses of the prosecution have conceded that the income of the appellant from the pay for the periods excluded as well as agricultural gains, if included, would render the charge of disproportionate assets non est, he urged. As on the basis of the materials on record, the prosecution had failed to prove/establish that the appellant during the check period was in possession of pecuniary resources or property F disproportionate to his known sources of income, he in law was not called upon to offer any explanation therefor and on that premise as well, the adverse inference drawn against him on that count is indefensible.

16. Per contra, the learned counsel for the respondent/State has G urged that the prosecution having proved the charge beyond all reasonable doubt as has been endorsed by the concurrent findings of the Courts below, no interference with the conviction and sentence is warranted.

17. The materials on record and the rival assertions have received our due attention. The accusations on which the charge under Section H

13(1)(e) read with Section 13(2) of the Act were framed against the appellant have been set out hereinabove. Admittedly, having regard to the ultimate figures as calculated by the Courts below, the charge has undergone a metamorphosis. This assumes immense significance in view of the fact that no fresh charge had been framed on the allegations for which the appellant was eventually convicted and sentenced. Any adverse inference prejudicial to the appellant was thus not available in law, he not having been confronted with the altered imputations. To reiterate, the charge for which the appellant finally has been convicted wears a new complexion different from the one with which he had been arraigned at the initiation of the trial. The appellant thus for all practical purposes was subjected to a trial involving fleeting frames of accusations of which he was denied prior notice. This is clearly opposed to the fundamental precepts of a criminal prosecution.

18. Apart therefrom, both the Courts below indulged in voluntary exercises to quantify the pay of the appellant for the periods excluded by the prosecution as well as his agricultural income and that too premised on presumptions with regard to his possible expenditures/investments and his share in the agricultural receipts, having regard to the nature of the charge cast on the appellant and the inflexible burden on the prosecution to unfailingly prove all the ingredients constituting that same, there could have been no room whatsoever of any inference or speculation by the Courts below. A person cannot be subjected to a criminal prosecution either for a charge which is amorphous and transitory and further on evidence that is conjectural or hypothetical. The appellant in the determinations before the Courts below has been subjected to a trial in which both the charges and evidence on aspects with vital bearing thereon lacked certitude, precision and unambiguity.

19. Section 13(1)(e) of the Act deserves extraction at this juncture:

"**13. Criminal misconduct by a public servant** –(1) A public servant is said to commit the offence of criminal misconduct, –

(a).....

(b).....

(c).....

(d).....

A (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.

B 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."

C 20. As ordained by the above statutory text, a public servant charged of criminal misconduct thereunder has to be proved by the prosecution to be in possession of pecuniary resources or property disproportionate to his known sources of income, at any time during the period of his office. Such possession of pecuniary resources or property disproportionate to his known sources of income may be of his or anyone D on his behalf as the case may be. Further, he would be held to be guilty of such offence of criminal misconduct, if he cannot satisfactorily account such disproportionate pecuniary resources or property. The explanation to Section 13(1)(e) elucidates the words "known sources of income" to mean income received from any lawful source and that such receipt has E been intimated in accordance with the provisions of law, rules, orders for the time being applicable to a public servant.

21. From the design and purport of clause (e) of sub-clause (1) to Section 13, it is apparent that the primary burden to bring home the charge of criminal misconduct thereunder would be indubitably on the F prosecution to establish beyond reasonable doubt that the public servant either himself or through anyone else had at any time during the period of his office been in possession of pecuniary resources or property disproportionate to his known sources of income and it is only on the discharge of such burden by the prosecution, if he fails to satisfactorily account for the same, he would be in law held guilty of such offence. In G other words, in case the prosecution fails to prove that the public servant either by himself or through anyone else had at any time during the period of his office been in possession of pecuniary resources or property disproportionate to his known sources of income, he would not be required in law to offer any explanation to satisfactorily account therefor. A public

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servant facing such charge, cannot be comprehended to furnish any explanation in absence of the proof of the allegation of being in possession by himself or through someone else, pecuniary resources or property disproportionate to his known sources of income. As has been held by this Court amongst others in ***State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede***[1], even in a case when the burden is on the accused, the prosecution must first prove the foundational facts. Incidentally, this decision was rendered in a case involving a charge under Sections 7, 13 and 20 of the Act.

22. In view of the materials on record and the state of law as above, we are thus of the considered opinion that the prosecution has failed to prove beyond all reasonable doubt the charge of criminal misconduct under Section 13(1)(e) of the Act and punishable under Section 13(2) thereof against the appellant. He is thus entitled to the benefit of doubt. The prosecution to succeed in a criminal trial has to pitch its case beyond all reasonable doubt and lodge it in the realm of "must be true" category and not rest contended by leaving it in the domain of "may be true". We are thus left unpersuaded by the charge laid by the prosecution and the adjudications undertaken by the Courts below. The conviction and sentence, thus is set aside. The appeal is allowed.

Divya Pandey

Appeal allowed.

[1] (2009) 15 SCC 200