F.R.

IN THE HIGH COURT OF SIKKIM AT GANGTOK

(CRIMINAL APPELLATE JURISDICTION)

Criminal Appeal No. 4 of 2007

Central Bureau of Investigation,
Anti Corruption Unit-V,
8th Floor, Lok Nayak Bhawan,
Khan Market,
New Delhi-110003.
Through Superintendent of Police.

...Appellant.

-versus-

Nar Bahadur Bhandari,
S/o Late Shri Balram Bhandari,
Former Chief Minister,
State of Sikkim,
R/o Samdur Block, East Sikkim.

...Respondent

For the Appellant : Mr. I.D. Vaid, Public Prosecutor.

For the Respondent : Mr. Bhaskar Sen, Mr. K.T. Bhutia, Mr. B.R. Pradhan, Senior Advocates with Ms. Yangchen D. Gyatso, Mrs. Pema Yeshey Bhutia, Mr. Anirban Sen and Mr. Karma Tshering Bhutia, Advocates.

BEFORE : HON'BLE MR. JUSTICE BARIN GHOSH, CHIEF JUSTICE.

Dates of Hearing: 28.07.2010 &
29.07.2010

Date of Judgment: 03.08.2010.

JUDGMENT

Ghosh, CJ.

This is an appeal against an acquittal judgement. In the charge sheet, charge whereon was framed, it was alleged principally that during the check period from 1st January, 1989 to 17th May, 1994 the respondent, while working as Chief Minister of the State of Sikkim, had amassed disproportionate assets to the extent of Rs.53,23,918 to his known source of income. It was alleged that during the said period the total income of the respondent was Rs.62,78,164/- which was reduced to Rs.62,56,659/- by the trial court. The trial court reduced the salary from Rs.2,77,45/- as was alleged to Rs.2,73,455/-. The trial court accepted profit earned on purchase and sale of property from M.G. Road, Gangtok at Rs.16,70,000/-, Soreng Bazar property at Rs.4,49,8000/- and Jorethang Bazar property at Rs.7,25,000/-. Similarly, trial court accepted loan from Central Bank of India amounting to Rs.30,00,000/-, bank interest of Rs.1,55,084/- and dividend on deposit in Sikkim Jewels of Rs.825/-. The trial court also accepted bank interest of Rs.37,031.70 earned from savings bank account No. 263 maintained with

Central Bank of India, Rs.1,00,374.90 earned from savings bank account No. 11454 maintained with State Bank of India and Rs.172.02 earned from savings bank account No. 6934 maintained with State Bank of Sikkim, which were not considered in the charge. Thus the difference. In the appeal, acceptance by the trial court of bank interest earned during the relevant period has not been questioned. Thus there is no dispute that the acceptable income of the respondent during the relevant period amounted to Rs.62,56,659/-.

2. The trial court accepted additional income of Rs.18,72,977/- comprising of Rs.3,81,000/- on account of allowances received as Party President of Sikkim Sangram Parishad, a political party, Rs.11,37,977/- received as sagauney during the marriage of the eldest daughter of the respondent, Rs.1,50,000/- received from publication of a book on Indian Constitution, Rs.1,04,000/- received for publication of books Shrimad Bhagwad Mahapuran and Asthabakra Geeta and Rs.1,00,000/- representing repayment of loan by Shri U.C. Vashisht. In the appeal, the appellant is aggrieved by acceptance of aforementioned additional incomes.

3. It was alleged that during the relevant period respondent had incurred a total expenditure of Rs.7,71,422/-. The trial court accepted expenditure of Rs.2,68,162/- including expenses on education of children amounting to Rs.1,68,162/-, which was alleged as Rs.1,71,916/-. The trial court did not accept gift of Piano to Tashi Namgyal Academy, Gangtok amounting to Rs.1,00,000/-, Rs.27,021/- on account of registration fee and stamp duty paid for acquisition of immovable assets in the name of children, Rs.92,485/- on account of kitchen expenses calculated at 1/3 of the net salary, Rs.2,50,000/- on account of expenses of the marriage of elder daughter of the respondent and Rs.10,000/- on account of expenses on the reception of marriage of the younger daughter of the respondent. Whereas it was contended that amount paid for Nam Nam land was Rs.70,000/-, the trial court accepted the same amounted to Rs.50,000/-. In the appeal, there is grievance pertaining to non acceptance of expenditure to the tune of Rs.1,00,000/- on account of gift of Piano to Tashi Namgyal Academy, Gangtok, but no grievance has been expressed in relation to non acceptance of expenses on account of other aforementioned heads. The respondent has

contended that the trial court had erred in accepting an expenditure of Rs.1,68,162/- on account of education of children.

4. It was alleged that assets worth Rs.1,08,31,826/- were acquired by the respondent during the relevant time. The trial court accepted that assets worth Rs.74,88,063/- were acquired by the respondent during the relevant time. The trial court accepted that land acquired in the name of Shri Roshan Raj Bhandari, son of respondent, at Ranipool was Rs.4,95,000/-. The trial court accepted that the value of the house constructed on the said land was Rs.59,75,000/- and not Rs.78,99,840/- as was alleged in the charge sheet. The trial court also accepted that two shops were acquired in the name of Ms. Primulla Bhandari, daughter of respondent, at Shopping Complex, Gangtok and the same were worth Rs.4,00,000/-, that the 7th floor of the house was also thus acquired and the same was worth Rs.1,50,000/- and the land acquired thus at Tadong, East Sikkim was worth Rs.30,000/-. Similarly, the trial court accepted that the land was acquired in Samdur Block, East district, Sikkim in the name of Shri Roshan Raj Bhandari and the same was worth Rs.51,000/- and acquisition of pistol

and revolver worth Rs.28,162/-. The bank balance as on 17th May, 1994 was increased to Rs.1,90,111/- instead of Rs.1,88,944/-. The trial court accepted premium paid to LIC at Rs.1,38,790/-, but reduced the investment in UTI from Rs.50,000/- to Rs.30,000/. The trial court did not accept the sum of Rs.54,000/- on account of 2 motor cycles standing in the name of Shri Roshan Raj Bhandari and a sum of Rs.13,46,090/- on account of inventory items allegedly acquired during the period in question as assets acquired by the respondent. The appellant is aggrieved for reduction of the cost of construction. The appellant is also aggrieved of reduction of the amount of investment in UTI. The appellant is contending that a sum of Rs.11,36,640/- should have been accepted as the value of assets acquired by the respondent during the relevant period as mentioned in the inventory. The appellant is not aggrieved by the decision of the trial court pertaining to non acceptance of other assets mentioned above as was alleged to have been acquired by the respondent during the relevant period. The respondent is contending that the trial court erred in taking into account the value of two shops worth Rs.4,00,000/- acquired by Ms. Primulla Bhandari at Shopping Complex,

Gangtok, 7th floor of the house worth Rs.1,50,000/- thus acquired by her and also the land worth Rs.30,000/- so acquired by her at Tadong, East District, Sikkim as acquisition by the respondent. Similarly, the respondent is aggrieved for the trial court accepting land worth Rs.51,000/- acquired by Roshan Raj Bhandari in Samdur Block, East District at Sikkim as acquisition by the respondent.

5. In the appeal, the appellant is contending that assets at the beginning of the check period amounted to Rs.1,166/-, however, no such assertion was made in the charge sheet, nor any of the prosecution witnesses contended the same and at the same time no question pertaining thereto was put to the respondent under Section 313 of the Code of Criminal Procedure.

6. According to the appellant, income of the respondent was Rs.62,56,659/-; expenses was Rs.3,68,162/-; thus the likely savings was Rs.58,88,497/-; whereas assets acquired was of Rs.1,07,75,826/- less assets at the beginning of the check period was of Rs.1,166/- and as a result thereof assets acquired was of Rs.1,07,74,660/-,

resulting in disproportionate assets worth Rs.48,86,163/-. According to the respondent, expenditure should be further reduced by Rs.1,68,162/- on account of expenses on education of children. Similarly assets worth Rs.4,00,000/- on account of two shops, Rs.1,50,000/- on account of 7th floor of the house and Rs.30,000/- on account of land acquired by Ms. Primulla Bhandari should be reduced and also asset worth Rs.51,000/- on account of land acquired by Roshan Raj Bhandari should be reduced.

7. In order to show that the respondent had received during the relevant period a sum of Rs.3,81,000/- as President of Sikkim Sangram Parishad Party, the respondent relied upon the minutes book of Sikkim Sangram Parishad Party containing a resolution passed on 16th October, 1984, wherein it was resolved that monthly allowance of Rs.10,000/- would be paid to the party President. To show that payment pursuant to the said resolution was made, the respondent relied upon the pay register of the President and other staff of Sikkim Sangram Parishad Party. Those were tendered in evidence. In the resolution though it was mentioned that the respondent would be paid an amount of Rs.10,000/- per month as allowance; in the register it was

shown that during the months of June, 1984 to March, 1988 the respondent was paid Rs.12,000/- per month, from April, 1988 to March, 1989 Rs.7,000/-, from April, 1989 to March, 1990 Rs.5,000/- and from April, 1990 to March, 1995 Rs.6,000/-. It is the contention of the appellant that in such view, the resolution was not adhered to. It is also the contention of the appellant that though a defence witness has deposed that the books of accounts of Sikkim Sangram Parishad party used to be audited but the register does not show that the same was audited. It is the contention of the appellant that in such view of the matter, payments thus shown to have been made and the evidence of such payment contained in the register are highly doubtful. The minutes of the resolution dated 16th October, 1984 has been signed by as many as 148 persons, one of them is the present Hon'ble Chief Minister of Sikkim, Shri Pawan Kumar Chamling. In such view of the matter, it is not being contended in the present appeal that the said resolution is a fabricated resolution. The trial court has held that if the pay register is a fabricated document the accused would have shown that he received Rs.10,000/- every month, in which case his income would be on the higher side, but this has

not been done. That was the principal reason for rejecting the contention that the pay register was a fabricated document. Because the pay register do not have the marks of auditors, no conclusion can be arrived that while audit was done, the pay register was not taken note of. The conclusion of the trial court in that regard in view of standard of proof of probability, therefore, cannot be interfered.

8. Marriage ceremony of the elder daughter, Ms. Primulla Bhandari, of the respondent was held on 18, 19 and 20th of May, 1993. Respondent contended that in course of such ceremony, sagauney was received and in a register such receipts were recorded. The said register was exhibited wherein it was shown cash of Rs.11,37,977/- and other gifts were received. The said register was recorded by a close relative of the respondent. It is the contention of the appellant that the said register was not prepared on the dates of ceremony, but was prepared subsequently for the purpose of this case. 4 of the prosecution witnesses namely, PW 10, PW 20, PW 28 and PW 16 stated that it is the custom in Sikkimese society to extend help by paying some cash at the time of marriage, death, etc. and during

marriage some amount is paid to the parents as such help in addition to gift to the parties to the marriage. They said that they too thus helped out in addition to giving gifts. They also stated what amount of money was given by them by way of help and what gift was given by them. Those were checked up by the trial court with the register and it was found that what they had stated was duly reflected in the register. The said custom is not under challenge in this appeal. The word 'sagunu', wherefrom the word 'sagauney' has been derived, translated to English means 'help'. It was contended that all those who had extended such helps and made gifts did not depose to corroborate. It was also contended that some of such helps were shown to have been received from organizations or officers of organizations and they did not depose to corroborate. It was further contended that those who made large contributions did not depose. The fact remains that in addition to prosecution witnesses named above, some defence witnesses were also produced to corroborate the entries in the said register. The fact also remains that a contribution to the tune of Rs.51,000/- was made by one of the prosecution witness. The standard of proof in relation to means or sources of

income or receipts by the person charged with the offence of having disproportionate assets is probability. When prosecution witnesses accepted contributions made by them as reflected in the register, I do not think the trial court erred in accepting the said register as well as in accepting contributions/gifts made by different persons as were reflected therein. It was contended by placing reliance on Sections 2, 3 and 6 of the Dowry Prohibition Act, 1961 that such contributions by way of help being illegal should not be taken note of and if taken note of, the same would be in law the property of the daughter of the respondent and accordingly the same cannot be treated as income or receipt of the respondent during the relevant period. Whereas, the Dowry Prohibition Act, 1961, which came into force on 1st July, 1961, was extended to the whole of India except the State of Jammu and Kashmir, but at that time the State of Sikkim was not a part of India. State of Sikkim became a part of India w.e.f. 26th April, 1975. In terms of clause (n) of Article 371F of the Constitution of India, the President may, by public notification, extend with such restrictions or modifications as he thinks fit to the State of Sikkim any enactment which is in force in a State in India at the date of

the notification. From the compodium of enactments in force in a State in India, which have thus been extended to the State of Sikkim upto the year 2001, was produced before this Court, where from it does not appear that the Dowry Prohibition Act, 1961 was extended to the State of Sikkim at the commencement or during the check period. That being the situation and the local custom of making such contributions having not been challenged and the same having been accepted by the prosecution witnesses, I do not think that the trial court erred in adding a sum of Rs.11,37,977/- as income of the respondent on account of sagauney received during the marriage of eldest daughter of the respondent.

9. DW 9 and DW 17 respectively contended that they paid a sum of Rs.1,50,000/- and Rs.1,04,000/- to the respondent by way of royalty in relation to books translated or written. Those were published in the name of the respondent. Those payments were not made by cheques. There are two documents which suggest that those payments were made in cash. Respondent had nothing to do either with writing or translating those books. He is supposed to have permit user of his name as publisher

thereof. He did not publish those books. In consideration of user of his name as publisher, respondent was paid those sums as and by way of royalty. When those payments were made in cash and handed over in person, I do not see any reason why letters were required to be written by the payer to the payee to evidence such payment. Further admittedly no role was played by the respondent in relation to publication of those books, except that he had allegedly permitted his name to be used as publisher thereof. The fact remains that there is no evidence that the said books upon being printed were sold and if sold how many copies thereof had been sold. I, therefore, accept the contention of the appellant that the trial court erred in accepting such payment as receipt or income of the respondent during the relevant period inasmuch as mere statement made from the witness box without anything more is no evidence to suggest income. Similarly, Shri U.C. Vashisht asserted from the witness box that he re-paid loan of Rs.1,00,000/- to the respondent during the relevant period. He did not produce any evidence suggesting receipt of loan and, apart from asserting from the witness box, that the same was repaid. There is nothing to support such repayment. I, therefore,

hold that the trial judge also erred in accepting repayment of loan of Rs.1,00,000/- by Shri U.C. Vashisht. Therefore, acceptance of Rs.3,54,000/- as income or receipt of the respondent during the relevant period by the trial court is interferable. However, trial court has also held in no uncertain terms that taking into account the income and expenses during the relevant period the respondent had an excess of Rs.3,83,411/-. The said sum of Rs.3,54,000/- would thus be absorbed in Rs.3,83,411/-.

10. PW 21 deposed that in the month of May, 1992 in a prize distribution ceremony in Tashi Namgyal Academy, Gangtok respondent was the Chief Guest, when he had announced donation of Rs.1,00,000/- to the said Academy for purchase of a Piano and on 15th May, 1992 one person came with Rs.1,00,000/- and informed the said witness that the said amount has been sent by the respondent and the same was received. The person, who gave Rs.1,00,000/- on 15th May, 1992 was not produced as a witness. The said person was also not identified. There was no independent evidence to suggest that the said Rs.1.00,000/- came from the respondent. PW 23, the then Accounts Officer, Government of Sikkim, Home Department deposed that

reimbursement of the disbursement of donations by Chief Minister and other Ministers is done by the Home Department only and that the respondent was not reimbursed a sum of Rs.1,00,000/- by the Home Department. The standard of proof as regards expenditure by the person charged with disproportionate assets in case of prosecution is beyond all reasonable doubt. Because the respondent announced a donation of Rs.1,00,000/- to the Academy and that later the said amount was received by the Academy would not do. It was required by the prosecution to prove that the payment of said sum was made by the respondent, which is absent in the instant case. Only when payment made by the respondent is established it can be shown that the respondent was not reimbursed. I, therefore, see no reason to interfere with the view of the trial Judge as regards rejection of the expenditure of Rs.1,00,000/- on that account.

11. The trial court reduced the value of construction from Rs.78,99,840/- to Rs.59,75,000/-. In order to prove that the valuation of the construction was of Rs.78,99,840/-, PW 8, Executive Engineer (Civil) attached to CBI on deputation since 1st June, 1998, had deposed. He stated in

his evidence that he inspected the property, made measurement thereof and prepared valuation report on the plinth area basis. He stated that in the matter of preparation of the valuation report, he considered the lease deed and not any other document. He stated that he is unaware of the agreement between the contractor and the respondent, if any, made for the construction and that who was the contractor. In the report he had mentioned that no records regarding payment made for labours engaged and cost of materials were made available to him. He accepted that the report does not disclose anything about the work done after 1994. He also accepted that he cannot say whether most of the development works were done after 1994. He said in his report that he gave the time of commencement of the work and completion thereof on presumption. He stated that valuation was made on the basis of Delhi Plinth Area Rates and Delhi Schedule Rates. Neither Delhi Plinth Area Rates, nor Delhi Schedule Rates was tendered in evidence. He accepted that Delhi Plinth Area rates and Delhi Schedule Rates are applicable to Delhi. He also accepted that the Executive Engineer, CPWD prepared a valuation report and the same was received by

him. The said report was not produced. He stated that the valuation was made by way of approximation. In the valuation report, it was stated that the valuation of Rs.78,99,840/- is tentative. As against this, PW 10 stated that he is a Government registered contractor with Class IA category and he made the construction in question. He stated that he started the construction in the year 1991 and it took about two and half years to complete the construction. He stated that he had an agreement for construction and in terms thereof he was to construct at the Public Works Department rate and the maximum expenditure that could be incurred was Rs.60,00,000/-. He stated that he received a total sum of Rs.59,75,000/- from the respondent for the entire construction. He stated that out of the total amount of Rs.59,75,000/- he received Rs.47,50,000/- from the respondent through different cheques, which were exhibited as prosecution exhibits. He stated that the remaining amount he received by way of landed property; the sale deeds thereof, were exhibited. He proved the agreement for construction, which too was a prosecution exhibit. Prosecution did not declare the said witness as hostile.

12. As has been held by the Hon'ble Supreme Court in the case of ***P. Satyanarayan Murty vs. State of Andhra Pradesh***, reported in **(1992)4 SCC 39**, acceptance in such circumstance by the trial court the valuation of the said construction at Rs.59,75,000/- instead of Rs.78,99,840/- is not interfearable. Further, assuming the measurements taken by PW 8 are correct, in the absence of Delhi Plinth Area Rates and Delhi Schedule Rates, even if they were applicable, the Court had no means to gather what would be the appropriate value of the said construction.

13. It is true that PW 10 had stated that he received one/two trucks load of cement and some quantity of iron rods and other materials as well as one/two items of fancy lights from some other source, but the fact remains that he did not disclose the other source, nor did he say what would be the price thereof. No other materials were produced to help the court to ascertain the quantity or the value of such supplies. As aforesaid standard of proof in the case of prosecution in a disproportionate assets case is strict proof. It was obligatory on the part of the prosecution, having regard to such evidence on the part of PW 10, to bring on

record necessary materials to help the court to ascertain the quantum and price of such supplies. No such effort was made. In his cross examination the said witness said that he cannot say the source of such supplies. Furthermore, the said witness proved the bills raised by him, which were exhibited by the defence. In such circumstances, the assertion that he received some supplies from some other source, those being without any corroboration, can be and should be ignored and the same having been done, there is no scope of interference.

14. The prosecution produced in court evidence suggesting acquisition of UTI certificates worth Rs.30,000/- and not worth Rs.50,000/-. PW 33 accepted that there is nothing to show acquisition of UTI certificates more than Rs.30,000/- and that he has no idea as to what happened to Rs.20,000/- deposited in addition to Rs.30,000/- for acquiring UTI certificates. Since the case of prosecution was acquisition of UTI certificates worth Rs.50,000/- and since certificates worth Rs.30,000/- were produced and prosecution remained silent as regards the sum of Rs.20,000/-, the trial court held that the prosecution has established acquisition of UTI certificates worth Rs.30,000/-

and not Rs.50,000/- as was alleged in the charge sheet. There appears to be no scope of interference to the said finding.

15. At the time when search and seizure was conducted at the residence of the respondent, an inventory was prepared in presence of independent witnesses. The inventory recorded particulars of various items found. It indicated when those items were acquired/received by the respondent. Valuation of those items were also indicated in the said inventory. Some of those items were shown to have been received by way of gift. Some of them were shown to have been received or acquired beyond the check period. The independent witnesses did not say a word in relation to valuation of those items. According to the appellant, as contended in the present appeal, the valuation of those items should stand reduce to Rs.11,36,640/- from Rs.13,46,090/-. As regards valuation of those items, the only evidence is that of the investigating officer. He said that such valuation was made by him taking into account informations received from the respondent and the inmates of his residence. In answer to question put under Section 313, respondent denied having given any such information.

The inmates of the residence of the respondent were not identified. No inmate of the residence of the respondent was produced to corroborate the valuation part of the said inventory. If the investigating officer received any such information while examining witnesses under Section 161 of the Code of Criminal Procedure, which, however, is absent from the records, in view of Section 162 of the said Code the same in any event can not be looked at. The logical conclusion would be that the said items were worth Rs.11,36,640/- has not been proved. Further, the investigating officer admitted in his evidence that there is nothing on record to show that inmates were asked about price or the year of acquisition of the items mentioned in the said inventory. Investigating officer in his evidence also accepted that valuation of some of such items were given by him. It further appears that the said inventory included some of the items like furniture and electrical fittings, which were noted as part of the cost of construction duly accounted for by PW 10. In the circumstances, merely because the inventory was tendered in evidence that would not prove the valuation of the items mentioned therein. Prosecution did not bring on record any document to help

the court to assess the value of inventorised items. In the circumstances, the logical conclusion would be that the prosecution failed to prove that during the check period the respondent acquired moveable property worth Rs.13,46,090/- or Rs.11,36,640/- and the findings of the trial Court to that effect is not interferable.

16. In the circumstances, taking into consideration the judgement under appeal and grievances highlighted in relation thereto in the appeal, there is no scope of interference with the judgement under appeal, despite finding recorded above that the trial court erred in taking into account the sum of Rs.3,54,000/- as income or receipt of the respondent during the relevant period, inasmuch as despite that the appellant would have a surplus of Rs.29,411/-. As such, I do not think it would be appropriate for me to go into the question whether the trial Court erred in taking into account Rs.1,68,162/- in relation to education of children as expenditure, 2 shops worth Rs.4,00,000/-, 7th floor of house worth Rs.1,50,000/- and land at Tadong worth Rs.30,000/- all standing in the name of Ms. Primulla Bhandari and land worth Rs.51,000/- standing in the name of Roshan Raj Bhandari as assets acquired by the

respondent as was urged by him and accordingly I refrain from doing so.

17. In addition to the charge of having disproportionate assets, it was alleged that the respondent had pre-dated the agreement he had with the contractor, who made the construction. The said agreement is dated 30th June, 1990. The contractor was, however, not charged for having had pre-dated the agreement. In order to show that the agreement was pre-dated, a report by the India Security Press, Nasik was tendered in evidence. The same suggested that the stamp paper of the agreement was printed on 16th August, 1995, but the basis of the said assertion was not indicated in the report, apart from reporting that the person, who prepared the same, has closely examined and scrutinized the original of the said stamp paper. The said person also deposed in course of trial, when he also asserted that on close scrutiny and examination, he found that the original of the said stamp paper was printed on 16th August, 1995. The said assertion was not corroborated by anything else. The stamp paper of the agreement ex facie did not show that the same was printed on or subsequent to 30th June, 1990. Mere assertion

from the witness box by a witness that he is of the opinion that the stamp paper was printed on 16th August, 1995 without anything more is no opinion at all. Although the prosecution asserted that he is an expert, but it was basic for the expert to demonstrate before the Court that he has expressed his opinion on his expertise. That was missing in the instant case. In the circumstances non acceptance of such evidence i.e. the report and the deposition of the person who prepared the report, by the trial court is not interferable.

18. In the result, the appeal fails and the same is dismissed.

CHIEF JUSTICE

jk/-