HIGH COURT OF SIKKIM, GANGTOK

(Criminal Appellate Jurisdiction)

Crl. A. No.06/2013

State (Central Bureau of Investigation
5B, C.G.O. Complex, Lodi Road, New Delhi
through Bharat Singh,
Inspector CBI,
ACU-VI, CBI,
New Delhi.).

... **APPELLANT**

Versus

Shri Sonam Wangdi,
Son of Late Shri Mandal Sarki Bhutia,
Resident of Bhanupath,
Gangtok, State of Sikkim,
(presently residing at Hotel Rendezvous, Gangtok).

... **RESPONDENT**

Criminal Appeal under Section 378(2) of the Code of Criminal Procedure, 1973

Appearance :

Mr. I. D. Vaid, Special Public Prosecutor for the Appellant/CBI.

Mr. A. Moulik, Senior Advocate with Mr. B. K. Gupta, Advocate for the Respondent.

J U D G M E N T

(23.04.2015)

Following Judgment of the Court was delivered by **SUNIL KUMAR SINHA CJ.** -

1. Being aggrieved with the Judgment of acquittal dated 29.12.2012 passed in S.T. (CBI) Case No. 01 of 2005 by the Special Judge, Prevention of Corruption Act, 1988, South & West Sikkim, at Namchi, the State (CBI) has filed this Appeal. By the impugned Judgment, the Respondent has been acquitted of the charges framed under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the P.C. Act, 1988).

2. The Respondent was working as a public servant in State of Sikkim. He was on various posts including the post of Chief Secretary during the year 1976 to 1999. Two Public Interest Litigations [W.P.(C) No.1/2000 and W.P.(C) No.58 of 1999] were filed against him making various allegations of corruption and acquisition of assets to the tune of lakhs of rupees. These writ petitions were disposed of vide order dated 27.09.2000 and it was directed that these allegations in both the writ petitions be investigated by CBI, New Delhi and it be carried out by an officer not lower in rank then the Superintendent of Police. In consequent of the above direction, the CBI registered FIR No. RC.5(A)/2000-ACU(VI) dated 07.12.2000

(Exbt.-137) against the Respondent under the aforesaid Sections of the P.C. Act, 1988 and Mr. M. P. Singh, Superintendent of Police (P.W.-62), was assigned with the duty of investigation.

3. The check period for calculation of income, expenditure and assets was taken from 01.09.1976 to 30.09.1994. The investigation revealed that the Respondent, while working as a public servant, acquired disproportionate assets either on his own name or in the name of his family members to the tune of Rs.21,30,138.79 . The broad outcome of the investigation, in tabular form, is as follows:-

(i)	Assets at the beginning of check period i.e. which were acquired before 1.9.76	Shares worth Rs.300 purchased by Respondent and 40 acres of agricultural land inherited by him from his father.
(ii)	Assets acquired during the check period from 1.9.76 to 30.9.94.	Rs.45,52,278.94
(iii)	Income earned during the check period from 1.9.76 to 30.9.94.	Rs.29,69,689.87
(iv)	Expenditure made during the check period from 1.9.76 to 30.9.94.	Rs.5,47,549.72
(v)	Likely savings during the check period.	Rs.24,22,140.15
(vi)	The extent of disproportionate assets acquired by Respondenteither in his name or in the name of his family members.	Rs.21,30,138.79

4. On trial, the CBI examined 62 prosecution witnesses and exhibited 308 documents. The Respondent also examined two defence witnesses and exhibited 4 documents. The learned Special Judge,

after due consideration of the evidence, recorded the following findings vide paragraph 152 of the impugned judgment:-

(i)	Total income from the rent	Rs.10,13,784/-
(ii)	Income from vehicle	Rs.7,10,028/-
(iii)	Agricultural income w.e.f. 1976 to 1999	Rs.27,50,000/-
(iv)	Loan from PW-11 Bal Chand Sarda (within check period)	Rs.5,00,000/-
(v)	Unsecured loan from PW-30 L.B. Chettri	Rs.3,50,000/-
(vi)	Loan from Tourism Department	Rs.70,000/-
(vii)	G.P.F. withdrawn on 22.09.1992 and 22.08.1994	Rs.2,78,000/-
(viii)	L.I.C. Policies received on 20.11.1982 and 30.11.1991	Rs.24,860/-
(ix)	Total income earned by Respondent till the check period	Rs.56,96,672/-
(x)	Expenditure on children education during the check period	Rs.2,47,787.05
(xi)	Miscellaneous Expenditure	Rs.2,15,594.58
(xii)	The total expenditure incurred by the Respondent and his family during the check period	Rs.4,63,381.63

5. Apart from the above, the Special Judge also held that the estimated cost of building of Hotel Rendezvous was shown as Rs.49,18,066/- in Exbt.-116 filed by the CBI, which was mostly based on photocopies of the measurement and sketches. The Special Judge held that even assuming that the said cost was correct, the CBI still failed to prove disproportionate assets acquired by the Respondent as

the total income of the Respondent was Rs.56,96,672/- till 1999 excluding his salary.

6. The Special Judge, therefore, recorded the finding that the income of the Respondent during the relevant period was more than what was projected in the charge-sheet and the prosecution (CBI) failed to prove that the assets held by the Respondent were disproportionate to his known sources of income. The Respondent, thus, was acquitted of the charges framed against him. Hence, this Appeal.

7. Mr. I. D. Vaid, learned Special Public Prosecutor appearing on behalf of the Appellant/CBI, very fairly submitted that he would only be assailing the findings recorded against item Nos. (i), (ii), (iii) and (v) contained in the table mentioned in paragraph 4 (supra). He would submit that the findings recorded by the Special Judge against the above four items are perverse and contrary to the evidence available on record. According to him, if the findings on these items are correctly examined by this Court, the income of the respondent, during the check period, would come down to Rs.29,69,689.87 and it would be clear that the Respondent was having disproportionate assets to the tune of Rs.21,30,138.79 as contained in the table mentioned in paragraph 3 (supra).

8. On the other hand, Mr. A. Moulik, learned Senior Counsel appearing on behalf of the respondent, opposed these arguments and

submitted that the above findings were based on sufficient evidence on record. About item no.(i), income from the rent, he referred to the evidence of P.W.-12, Raghubir Prasad Agarwal; P.W.-13, Tarachand Agarwal; P.W.-33, Smt. Chamla; P.W.-36, Karma Geley Bhutia; P.W.-44, Bhanu Sharma and P.W.-60, S. W. Barfungpa. According to Mr. Moulik, the rent collected from these persons was to the tune of Rs.28,08,320/-. Whereas, according to the Special Judge, the total income from the rent, item no. (i), has been held as Rs.10,13,784/-. About income from vehicle, item no.(ii), he argued that the findings were rightly recorded. About agricultural income, falling under item no. (iii), he argued that it will come more than Rs.27,50,000/- which has been recorded by the Special Judge. About unsecured loan from L.B. Chettri (P.W.-30), he vehemently argued that the Special Judge has rightly recorded the findings that it was Rs.3,50,000/- which was based on the evidence of Mr. Chettri itself.

9. In addition to the above points raised by Mr. Vaid, Mr. Moulik further submitted that valuation of hotel building, in sum of Rs.43,26,605/-, was not properly done. The CBI came to the conclusion on the basis of defective measurements as also on the basis of photocopies of various calculations. That apart, there is no evidence on record to show that how much part of the building (hotel) was completed during the check period and how much was completed after that, as the valuation was done some time in the year 2001. According to Mr. Moulik, the Respondent, in his defence, had produced

various documents relating to valuation of the hotel building which would show that it was worth Rs.17,16,303/-, and if the said valuation is held to be correct, the cost of assets allegedly held by the Respondent would come down to a relatively low amount.

10. Apart from the merits of the case, Mr. Moulik has also submitted that this is an appeal against the judgment of acquittal. Unless the views of the Special Judge were perverse or otherwise unsustainable and there appears compelling and substantial reasons to interfere with a finding, or a case in which the relevant and convincing materials have been eliminated in the process of appreciation, the same would not be interfered by this Court.

11. Mr. Moulik has also submitted that the major part of the investigation was conducted by Rajpal Singh (P.W.-61), who was a Police Inspector, therefore, the entire investigation would be faulty and the trial stood vitiated, because the direction of the High Court in Writ Petitions was to carry out investigation by an Officer not below the rank of Superintendent of Police.

12. Having heard Counsel for the parties, I have perused the records.

13. I shall firstly take up the point, raised by Mr. Moulik, that the investigation was faulty, the cognizance taken by the Special Judge was wrong and the trial stood vitiated. Mr. Moulik has raised

this point on the evidence of Rajpal Singh (P.W.-61). Rajpal Singh (P.W.-61) was working as Police Inspector, CBI, ACUVI, New Delhi. According to him, he had assisted the Chief Investigating Officer, M.P. Singh (P.W.-62), who was Superintendent of Police. The evidence of this witness would show that he had recorded the statements of about 32 witnesses under Section 161 Cr.P.C. and had seized some documents vide seizure memo Exbt.-138 . Mr. Moulik has contended that in the above manner, the investigation was conducted by an officer below the rank of Superintendent of Police and thus, was faulty. Whether on account of recording statements of some witnesses during the investigation by Rajpal Singh (P.W.-61), the entire trial stood vitiated? In somewhat similar situation, in ***Ashok Tshering Bhutia*** **vs.** ***State of Sikkim : (2011) 4 SCC 402***, it was held in paragraphs 20, 21 and 22 as follows: -

> " 20. The issues raised hereinabove are no more res integra. The matter of investigation by an officer not authorized by law has been considered by this Court time and again and it has consistently been held that a defect or irregularity in investigation however serious, has no direct bearing on the competence or procedure relating to cognizance or trial and, therefore, where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless a miscarriage of justice has been caused thereby. The defect or irregularity in investigation has no bearing on the competence of the court or procedure relating to cognizance or trial. (Vide *H.N. Rishbud v. State of Delhi* : *AIR 1955 SC 196*; *Munnalal* v. State of U.P. : *AIR 1964 SC 28*; *Khandu Sonu Dhobi* v. *State of Maharashtra* : *AIR 1972 SC 958*; *State of M.P.* v. *Bhooraji* : *(2001) 7 SCC 679*; *State of M.P.* v *Ramesh C. Sharma* : *(2005) 12 SCC 628* and *State of M.P.* v. *Virender Kumar Tripathi* : *(2009) 15 SCC 533*.)
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> 21. In *Kalpnath Rai* v. *State* : *AIR 1998 SC 201* a case under the provisions of Section 20 of the Terrorist and Disruptive Activities (Prevention) Act, 1987, this Court considered the issue as to whether as *oral direction* to an officer to conduct investigation could meet the requirement of law. After considering the statutory provisions, the Court came to the conclusion that as *oral approval*

was obtained from the competent officer concerned, it was sufficient to legalise the further action.

22. In *State (Inspector of Police)* v. *Surya Sankaram Karri* : *(2006) 7 SCC 172*, a two-Judge Bench of this Court had taken a contrary view without taking note of the earlier two-Judge Bench judgment in *Kalpnath Rai* and held as under: (*Surya Sankaram Karri*, SCC p. 178, para 16)

> "*16.* … When a statutory functionary passes an order, that too authorizing a person to carry out a public function like investigation into an offence, an order in writing was required to be passed. A statutory functionary must act in a manner laid down in the statute. Issuance of an oral direction is not contemplated under the Act. Such a concept is unknown in administrative law. The statutory functionaries are enjoined with a duty to pass written order."

However, the Court taking note of subsequent proceedings recorded its conclusions as under : (*Surya Sankaram Karri*, SCC p. 179, para 21)

> "*21.* It is true that only on the basis of illegal investigation a proceeding may not be quashed unless miscarriage of justice is shown, but, in this case, as we have noticed hereinbefore, the respondent had suffered miscarriage of justice as investigation made by PW 41 was not fair."

14. In the instant case, M.P. Singh (P.W.-62) has deposed in his examination-in-chief that Rajpal Singh (P.W.-61) had assisted him in the investigation of this case. He used to conduct the investigation which included seizure of documents and examination of witnesses etc. and he used to report the investigation done by him to this witness through the supplementary case diaries which he used to write from time to time. According to M.P. Singh (P.W.-62), he used to scrutinize the investigation conducted by Rajpal Singh (P.W.-61) and incorporate the same in his main case diary. M.P. Singh (P.W.-62) has clearly deposed that he had personally recorded the statements of about 32 witnesses and had also examined the Respondent on a number of occasions.

15. Evidence of M.P. Singh (P.W.-62) is duly supported by the evidence of Rajpal Singh (P.W.-61), who admitted that some part of investigation was conducted by him as assigned to him by M.P. Singh (P.W.-62). Though he admitted that there was no written authority, however, he clearly deposed that he conducted the investigation on the instructions of his Superintendent of Police, M.P. Singh (P.W.-62), and had reported the same to him. Rajpal Singh (P.W.-61) used to submit supplementary diaries of the case along with all the documents, statements under Section 161 Cr.P.C. and other material collected during the course of his investigation to M.P. Singh (P.W.-2) as per his instructions, because, he was the Chief Investigating Officer of this Case as per the order of the High Court. That apart, in the FIR (Exbt.-138), M.P. Singh (P.W.-62) has been shown as the Investigating Officer of the case. It is, thus, clear that in fact, Rajpal Singh (P.W.-61) was simply assisting M.P. Singh (P.W.-62), who was the Chief Investigating Officer. Rajpal Singh (P.W.-61) used to conduct the investigation as per oral instructions of M.P. Singh (P.W.-2) which was sufficient. Moreover, as held by the Supreme Court, only on this ground, the entire proceedings cannot be quashed unless a miscarriage of justice is shown. In the instant case, there is nothing on record to show that either the investigation was unfair or a miscarriage of justice is caused. Thus, the cognizance taken by the Special Judge cannot be held to be illegal and the trial conducted by him cannot be held as vitiated on this account.

16. Mr. Vaid firstly disputed the findings relating to agricultural and rental income. According to him, the agricultural and rental income, both, should have been calculated @ Rs.1,00,000/- per year from the year 1989 to the year 1994 as per the property return filed by the Respondent before the State Government according to Service Rules. For the period commencing from 01.09.1976 till December, 1988, he argued that the rental income for the said period should have been held as Rs.3,97,600/- and the agricultural income for the said period should have been held as Rs.5,06,351.83. Thus, according to him, the total rental and agricultural income should have been held in sum of Rs.15,03,951/-. Mr. Moulik has opposed these arguments and has contended that much higher amount would come as income of the Respondent during the check period under the above two heads. He insisted that the amount of income, determined by the Special Judge under rental head, is very low and the findings on these aspects are perverse.

17. The Special Judge has determined Rs.10,13,784.00 as the rental income [item-(i)] and Rs.27,50,000/- as the agricultural income [item-(iii)]. The prosecution has examined 6 (six) witnesses for proving rental income of the Respondent. Raghubir Prasad Agarwal (P.W.-12) has deposed that he was the tenant of the Respondent since March, 1988. According to him, he paid Rs.2,500/- per month as rent to the Respondent for the period from 01.03.1988 to 31.08.1994. Thereafter, the rent was enhanced and he was paying Rs.3,500/- per

month. Thus, according to this witness (P.W.-12), the total rent which he paid during the check period would come to Rs.1,95,000/-.

18. Tarachand Agarwal (P.W.-13) was the next witness of the prosecution for proving the rental income. According to him, he lived as a tenant in the house of the Respondent at Singtam during the period from December, 1975 to December, 1987. He was paying a monthly rent of Rs.295/-. In cross-examination, he admitted that from inception of tenancy, he was paying rent @ Rs.295/- per month for a period of 3 (three) years and, thereafter, he paid it @ Rs.500/- per month for the next 3 (three) years and for an other 3 (three) years, he was paying the rent @ Rs.1,500/- per month. For last 3 (three) years, he paid the rent @ Rs.2,500/- per month and ultimately, he was evicted by filing an ejectment suit in a civil court at Gangtok.

19. Smt. Chamla (P.W.-33), who was also a witness of prosecution, deposed that she was living as a tenant in the house of the Respondent. She lived for several years. She had started paying Rs.200/- per month as rent initially. After 5/6 years, the rent was increased to Rs.300/- per month and, thereafter, the rent was increased to Rs.1,000/- per month. In cross-examination, she clearly stated that she was staying in the house of the Respondent since 1973. Her rent was increased after every 3 (three) years by Rs.200/- per month and ultimately, in the year 1985, her rent reached upto

Rs.1,000/- per month. She admitted in clear words that from the year 1985, she was paying Rs.1,000/- per month as rent of the premises of the Respondent in which she was also residing on the date of giving her evidence, i.e. on 31.05.2006.

20. Karma Geley Bhutia (P.W.-36) was an other witness of the prosecution, who was produced for proving the rental income of the Respondent. According to him, he was a tenant in a small portion of the wooden house of the Respondent and was paying monthly rent of Rs.300/-. Initially, the rent was Rs.150/- per month, which was enhanced to Rs.200/- per month and, thereafter, Rs.250/- per month and Rs.300/- per month in the year 1980. In cross-examination, he admitted that it was a big house in which there are 15-16 rooms and about 10/12 tenants were residing therein. He was collecting the rent @ Rs.500/- from 5 (five) of them and from other 5 (five) tenants, he was collecting Rs.800/- per month each from 1975 to 1995.

21. Bhanu Sharma (P.W.-44) had lived in the rented premises of the Respondent from 1978 to 1988. Initially, he was paying Rs.60/- per month and after many years, the rent was increased to Rs.100/- per month and during the last phase of 3 (three) years, he was paying rent @ Rs.200/- per month. Some more details have been given in his cross-examination. However, in the cross-examination, he admitted that altogether there were 24 rooms in the said premises and all rooms were occupied by the tenants and it is true that the other

tenants in the 23 rooms also used to pay rent at the same rate as he used to pay in the respective years. He clearly admitted in the cross-examination that when he had vacated the said room, the other tenants were occupying the same. He also admitted that the enhancement of rent in case of other tenants was similar to him as he used to pay Rs.60/- per month for 3 (three) years, then Rs.100/- per month for 4 (four) years and then Rs.200/- per month for 3 (three) years.

22. S. W. Barfungpa (P.W.-60) is the last witness examined by the prosecution on the rental income of the Respondent. According to him, he was working as Additional Director (Accounts) in Health Care, Human Service and Family Welfare Department. According to him, as per statement, Exhibit-136 which was under the signature of Mrs. Nirmala Gurung, who was working as Accounts Officer-cum-Drawing & Disbursing Officer and had already retired in the month of March, 2010, a sum of Rs.1,13,984/- was paid as rent to Mrs. Chumsang Wangdi for A.N.M. Training School, which was in the building belonging to her. His cross-examination was deferred on the first date of evidence. However, when it resumed on a later day, he deposed that he did not find Exhibits-132 to 136 in the court room or in the court record, as deposed by him in his examination-in-chief. However, he admitted that the amount of rent received by Mrs. Chumsang Wangdi was, in fact, Rs.2,83,360/-, which she had received as per charge-sheet. He further admitted that he had deposed about a sum of

Rs.1,13,984/- as rent of the premises occupied by A.N.M. Training School, was as per photocopy of the documents furnished in the Court at the time of his examination.

23. I have gone through the evidence of these witnesses. These are the witnesses produced by the prosecution to prove the rental income of the Respondent. These witnesses were not declared hostile by the prosecution or were not at all confronted with their any earlier statement. I have no reason to disbelieve the testimonies of these witnesses. The learned Special Judge has also believed the testimonies of these witnesses vide paragraphs 52 to 59 of the impugned judgment and has recorded a finding that the Respondent had received a total sum of Rs.10,13,784/- as income from the house rent.

24. The above calculation appears to be incorrect. If the evidence of above witnesses is correctly appreciated, an amount much higher than the amount determined by the Special Judge would come. The Special Judge has calculated the rental income for total check period, i.e. from 01.09.1976 to 30.09.1994. If we workout the rental income from 01.09.1976 to December, 1988, on the testimonies of the above prosecution witnesses, even that amount comes to Rs.20,72,065/-. The reason for such calculation is on account of commencement of the Prevention of Corruption Act, 1988 and the declarations made by the Respondent under Section 13(1)(e) of the

said Act, which, according to me, would be the best document for calculating the rental as well as agricultural income of the Respondent for the remaining period between 1989 till 30.09.1994.

25. So far as the agricultural income from the lands possessed by the Respondent during 01.09.1976 to December, 1988 is concerned, it has been determined as Rs.5,06,351.83 by the prosecution as per the investigation as mentioned vide paragraph 7 of the impugned judgment. Mr. Vaid has argued that the above amount should be treated as the agricultural income for the said period because the same is based on sufficient material on record. Mr. Moulik has argued that during investigation, the Respondent had filed Statement No. I to Statement No. VI under Annexure-II which would show that he had stated on 02.02.2001 that he had earned Rs.2,70,000/- from agriculture during 1976-1980, Rs.9,00,000/- during 1981-90 and Rs.10,80,000/- during 1991-99 and he had also earned Rs.5,00,000/- from the paddy crop during 1976-1999. Therefore, they may be also added in the agricultural income.

26. I have considered the rival claims made by learned Counsel for the parties. In fact, the above statements were part of Exbt.-40, which is a memo issued by the Department of Personnel, Adm. Reforms & Trg., Government of Sikkim dated 16.02.2001 to the Investigating Officer, M. P. Singh (P.W.-62). It appears that after registration of the case by CBI, the Investigating Officer (P.W.-62)

wanted certain information from the Respondent in form of his declaration under various statements as per Annexure-II and the declaration made by the Respondent under the above questionnaire on 02.02.2001 was forwarded to the Investigating Officer under Exbt.-40. Mr. Moulik has contended that since the statements were not submitted to the Police Officer or were not made before the Police Officer by the Respondent, therefore, they would not be hit by Section 162 Cr.P.C., as contended by Mr. Vaid and the contents of the above statements (vide Statement No. I to Statement No. VI as part of Annexure-II) would be admissible in evidence. The contention of Mr. Moulik appears to be correct that the statements made in this Annexure were not to the Police Officer or before the Police Officer, therefore, these documents were not hit by Section 162 Cr.P.C. However, only on this account one cannot be dispensed with the liability to prove the contents of the said documents. In the above statements, the Respondent had shown various income from agriculture amounting to Rs.23,00,000/-, but he has not discharged his burden to prove that either his fields were under cultivation for the above crops or he, in fact, had earned that much of amount by doing agricultural operations. The burden of proving these facts was on the Respondent under Section 103 of the Indian Evidence Act, which he did not discharge. The Respondent did not examine himself as a defence witness. No other witness was also examined to prove that the lands, in fact, were in cultivating possession of the Respondent and the cultivation was yielding the crops to the above tune. I am of the

view that in light of the above facts situation, it was not proved that the Respondent had earned Rs.23,00,000/- as agricultural income as per his statements under Annexure-II (Exbt.-42) annexed to the memo (Exbt.-40).

27. Thus, in absence of any proof regarding yielding of crops to the above tune, I take the agricultural income of the Respondent during 01.09.1976 and December, 1988 as Rs.5,06,351.83.

28. I have bifurcated the income in two phases, i.e. from 01.09.19976 to December, 1988 and from January, 1989 to 30.09.1994, on account of commencement of the Prevention of Corruption Act, 1988 because the income can be calculated easily by this method.

29. In ***P. Nallammal etc., Appellant* v. *State rep. by Inspector of Police, Respondent: 1999 CRI. L.J. 3967*** cited by Mr. Vaid, it has been held that if a public servant is able to account for the excess wealth by showing some clear sources, though not legally permissible, but not falling under any of the preceding clauses of the sub-section, he would be discharging the burden cast on him perhaps could have been advanced before the enactment of the P. C. Act, 1988 because S. 5(1)(e) of the old P. C. Act did not contain an "Explanation" as S. 13(1)(e) now contains. As per the said Explanation the "known sources of income" of the public servant, for the purpose of satisfying the Court, should be "any lawful source".

Besides being the lawful source the Explanation further enjoins that receipt of such income should have been intimated by the public servant in accordance with the provisions of any law applicable to such public servant at the relevant time. So a public servant cannot now escape from the tentacles of S. 13(1)(e) of the P.C. Act by showing other legally forbidden sources, albeit such sources are outside the purview of Cls. (a) to (d) of the sub-section.

30. In ***N. Ramakrishnaiah (Dead) thr. LRs*** **v.** ***State of A.P.: 2009 CRI. L.J. 1767*** and in an earlier decision rendered in ***State of Madhya Pradesh, Appellant*** **v.** ***Awadh Kishore Gupta & Ors., Respondents : 2004 CRI. L.J.598***, the Supreme Court interpreted the provisions of S. 13(1)(e) of the P.C. Act, 1988 and held that the burden is cast on the accused not only to offer plausible explanation as to acquisition of much wealth but also to satisfy the Court that explanation is worthy of acceptance. The three paragraphs from 2009 CRI. L.J. (paragraphs 14, 15 and 16) are quoted as under:-

> " 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 public servant or any person on his behalf, is in possession or has, at any time during the period in his office, been in possession for which the public servant cannot satisfactorily account of pecuniary resources of 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').
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> 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 source of income" of a public servant.
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> 16. The legislature has advisedly used the expression "satisfactorily account". The emphasis must be on the work "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."

31. So far as the rental income of the Respondent from 01.09.1976 to December, 1988 is concerned, I have already held it to be as Rs.20,72,065/-. The agricultural income in this period, however, is held as Rs.5,06,351.83 as admitted by the prosecution. As far as rental and agricultural income of the Respondent from January, 1989 to 30.09.1994 are concerned, the same were @ Rs.1,00,000/- per year, which the Respondent himself had declared in his property returns filed under the relevant rules. The first property return was for

the year 1989, which the Respondent filed on 23.05.1990 and he mentioned therein that he had landed property and houses amounting to Rs.10,00,000/- and he was earning Rs.1,00,000/- per annum from the above properties. This is proved as Exbt.-92 and it also finds place in the judgment of the writ petition by the High Court. Thereafter, the Respondent by a letter bearing No.2610/P & D dated 02.06.1993 intimated to the concerned Secretary that the returns submitted by him in the previous year may kindly be treated for the year 1990, 1991 and 1992. Further, by an other letter bearing No.23/P & D dated 30.04.1994, the Respondent again intimated to the concerned Secretary of the Government that the annual returns of his properties during the year 1993-94 may be taken as during the previous year. Thus, it is clear from the above that after commencement of the P.C. Act, 1988, the Respondent himself had intimated to the concerned authorities that his annual income from the properties, which would include houses and agricultural lands which he mentioned in the relevant form, was Rs.1,00,000/- per year.

32. Mr. Moulik has argued that the other income of the Respondent may also be added for the period falling between 1989 and 1994. The argument cannot be accepted in light of the explanation to Section 13(1)(e) of the P.C. Act, 1988, because after commencement of the said Act, any income received from lawful source was to be intimated in accordance with the provisions of any law, rules or orders for the time being applicable to the public servant.

Thus, the contention of Mr. Vaid that so far as the rental and agricultural income from January, 1989 to 30.09.1994 are concerned, they should be taken as Rs.6,00,000/- @ Rs.1,00,000/- per year, has to be upheld. Had there been any other income of the Respondent from these sources, at least during this period, that must have been mentioned in his property returns which he never mentioned.

33. I, therefore, record the finding that the Respondent had following rental and agricultural income during the check period (from 01.09.1976 to 30.09.1994):-

Sl. No.	Particulars	Amount (in Rs.)
1.	Rental Income during the period from 01.09.1976 to December, 1988.	20,72,065.00
2.	Agricultural Income during the period from 01.09.1976 to December, 1988.	5,06,351.83
3.	Rental and Agricultural Income during the period from January, 1989 to 30.09.1994.	6,00,000.00

34. Mr. Vaid then contended that the finding on item no.(v) of the table in paragraph 4 that the Respondent had received a loan of Rs.3,50,000/- from L. B. Chettri (P.W.-30) is perverse. In fact, the Respondent had received Rs.50,000/- only from this witness.

35. Let us examine the evidence of L. B. Chettri (P.W.-30). L. B. Chettri (P.W.-30) retired as Secretary to the Government of Sikkim in the year 1998. In examination-in-chief, he deposed that during the

year 1994, he had given the Respondent a loan of Rs.50,000/- vide two cheques of Rs.25,000/- each. The amount was returned to him some time in the year 1995 when his son was getting married.

36. In cross-examination, he admitted that his father and the father of Respondent were Mondals of the two Panchayats and were friends. When their fathers were Mondals, they used to give loans to each other at the time of their need. He also admitted in the cross-examination that the Respondent had approached him for some loan during the year 1987 while he was constructing his house at Gangtok and this witness had given him loan of Rs.3,00,000/- in three installments of Rs.1,00,000/- each. According to him, the first installment of Rs.1,00,000/-, in cash, was given in 1987, the next installment of Rs.1,00,000/- was given in 1988 and the third installment of Rs.1,00,000/- in the year 1989 or 1990. After such deposition in cross-examination, he was immediately re-examined by the Special Public Prosecutor, in which he deposed that when he advanced the above loan to the Respondent, he did not give any intimation to the Government. In further cross-examination, by the defence he deposed that since it was a family arrangement for long period, he did not intimate the same to the Government as he did not feel it necessary.

37. Mr. Vaid has contended that the description of this loan was not shown in the return of the properties submitted by the

Respondent. If we examine the "Form" of return of the property, we find that it mainly relates to statement of immovable properties and there appears to be no column for giving details of loan etc. The "Form" of the property return is also available in the judgment of the writ court in which out of 8 columns prescribed, none of them relates to the income by loan etc. Moreover, the very first line of the "Form" states as "Statement of immovable Property for year 1989……..." which clearly means that the statutory emphasis was particularly on the immovable property of the public servant. That apart, we also note that according to L. B. Chettri (P.W.-30), the above loan was advanced to the Respondent in between 1987 and 1989 and the overlapping period, at the most, would have been one year after the commencement of the P.C. Act, 1988, having explanation under Section 13(1)(e) requiring for an intimation in accordance with the provisions of the relevant rules. The father of L. B. Chettri (P.W.-30) and the father of the Respondent were close friends. Both were working as Mondals. Their families were closely associated with each other. The Respondent and L. B. Chettri (P.W.-30) both were in Government job and as admitted by L. B. Chettri (P.W.-30), the above transactions were made on account of long family relation between them. Therefore, in these circumstances, when the Respondent did not mention the last part of the transaction in his property return of the year 1989 in which there was no column for mentioning such details, the evidence of L.B. Chettri (P.W.-30) cannot be held to be

unreliable. Thus, the finding of the Special Judge on item no.(v) cannot be held to be perverse.

38. Mr. Vaid lastly contended that income from vehicle (under item no.(ii) of the table contained in paragraph 4) calculated by the Special Judge in sum of Rs.7,10,028/- is totally incorrect. According to him, the total income from the vehicle from 1991 should have been calculated as Rs.47,206.29 as is there in the charge-sheet.

39. The vehicle, TATA truck No.SK-03/0119, was owned by Smt. Chumsang Wangdi, wife of the Respondent. She had purchased this vehicle for sum of Rs.53,731.94 on 17.07.90. According to K. N. Pradhan (P.W.-22), who had worked as Joint Secretary, Motor Vehicles Department, Government of Sikkim from 1999 to 2003, the said vehicle was plied under the Sikkim Nationalised Transport (SNT). The other witness of the Transport Department was K. Peter (P.W.-23), who proved that the road tax of the said vehicle, which was registered in the name of the wife of the Respondent, was paid upto 04.08.1992 vide Bank Receipt No.1055272 dated 27.02.1992. Nothing contrary to these facts have been brought on record by the defence. Thus, from the above evidence, it is clear that the said vehicle was plied between 17.07.1990 and 04.08.1992 only and not beyond this period. Mr. Vaid has argued that the Special Judge has worked out the income from the vehicle from 17.07.1990 to 30.09.1994 which apparently appears to be wrong. That apart, the income has been calculated on the bare

statement of K. N. Pradhan (P.W.-22), who casually admitted that if the vehicle gives proper services then there can be 25/26 trips from Siliguri in a month and at the relevant time, there would have been Rs.700/Rs.800 net income per trip. Mr. Vaid has rightly pointed out that this is just an imagination and it cannot provide any standard formula to work out the income from the vehicle, that too, for a period beyond 04.08.1992 because the tax token of the vehicle was obtained only till that period. Therefore, I do not accept the finding of the Special Judge that the income from the said TATA truck was Rs.7,10,028/- and the same has to be reconsidered.

40. Let us consider the evidence of the prosecution relating to income from the said vehicle from 17.07.1990 to 04.08.1992. Apart from K.N. Pradhan (P.W.-22) and K. Peter (P.W.-23), other witnesses of the Transport Department have also been examined by the prosecution. The prosecution has examined Wangchuk Lepcha (P.W.-58), who was working as Junior Accountant in the Transport Department, SNT Division, Gangtok. He deposed that the above vehicle belonging to Smt. Chumsang Wangdi, was hired by SNT during the period from 25.10.1990 to 12.11.2991 and some payments were made to her. According to the details submitted by this witness, all the payments were made by cheques on different dates and a total sum of Rs.1,15,028.79 was paid to the owner of the vehicle in between 25.10.1990 and 12.11.1991. Thus, it is clear from the evidence of Wangchuk Lepcha (P.W.-58) that in about one year, i.e. in

between 25.10.1990 to 12.11.1991, the said vehicle had earned Rs.1,15,028.79. According to the prosecution, this vehicle was plied upto 04.08.1992 as has also been contended by Mr. Vaid. Therefore, it is clear that prior to deployment in SNT on 25.10.1990, the said vehicle must have been plied at some other places for about more than 3 (three) months and likewise after 12.11.1991 till 04.08.1992, about 9 (nine) months, it must have been plied at some different places. If we take out the period of deployment in SNT from the total period of running of the vehicle, the remaining period comes to about one year. Even if we calculate the earnings of the vehicle as per its earning from the SNT in one year, it would come to Rs.1,15,000/-. It has also been admitted by Wangchuk Lepcha (P.W.-58) that this vehicle was used by the SNT for sending the goods from Siliguri to any destination in Sikkim and the above fare was paid to the owner for delivery of the goods from Siliguri to the destinations in Sikkim. However, it does not relate to the income derived by the vehicle from its return journey from the destinations (in Sikkim) to Siliguri. That is to say that the above fare was paid to the owner of the vehicle for one side only, i.e. for up-trips and if the vehicle would get a down-trip, about same earning may be there. Even if we reduce the likely income of down-trip on the possibility of not getting load on all the occasions, by 25%, the extra earning from the vehicle would come to Rs.1,72,500/- approx. and thus, the total earning would come to Rs.4,02,556/-. This, we take in round figure as Rs.4,00,000/- and from this amount, we deduct 25% towards expenses incurred on the

vehicle, the net income in between 17.07.1990 to 04.08.1992 would come to Rs.3,00,000/- approx. I, therefore, set aside the finding of the Special Judge that the total income from the vehicle would come to Rs.7,10,028/- and record a finding that the income from the vehicle in between 17.07.1990 to 04.08.1992 can be safely taken as Rs.3,00,000/- approx.

41. Mr. Moulik has vehemently argued that the valuation of Hotel Rendezvous was highly exaggerated and it was not properly done. There was no evidence on record to show that what was the valuation of the Hotel on 30.09.1994; the valuation was done on 30.04.2001; thus, the contention of the prosecution that the building of the Hotel was worth Rs.49,18.066/- and after giving rebate of using own timber etc., the net valuation of the Hotel building at Rs.43,26,605/- was wholly unjustified.

42. As per evidence of A.K. Dasgupta (P.W.-55), S.C. Saha Kuthiyal (P.W.-56) and S.C. Laha (P.W.-57), the measurements of the Hotel building for the purposes of valuation were taken between 28.04.2001 to 30.04.2001. A.K. Dasgupta (P.W.-55) was a Junior Engineer in Valuation Cell of the Income Tax Department, Kolkata; S.C. Saha Kuthiyal (P.W.-56) was Assistant Engineer and S.C. Laha (P.W.-57) was the Executive Engineer. According to these witnesses, the measurements were taken in presence of Rajpal Singh (P.W.-61) and son of the Respondent, namely, Sonam Palden Wangdi. According

to their valuation, the cost of the Hotel building was Rs.49,18,066/-. It was a six storied building. According to these witnesses, the building was constructed in two phases. The ground floor, first floor, second floor and third floor were constructed between 1977 and 1979 and the fourth floor, fifth floor and sixth floor were constructed between 1989 and 1994. As per their evidence, Sonam Palden Wangdi had told them about the phase wise construction of the said Hotel building in the above manner and he had also provided a sketch (Exbt.-126) about all these, which, according to them, bears his signature.

43. It was pointed out by Mr. Moulik that almost all the documents relating to measurement, including Exbt.-126, were photocopies and none of these witnesses could tell as to where their originals were. In appreciation of evidence of these witnesses, I find that the only source of their information about completion of the Hotel building in the year 1994 was the son of the Respondent, namely Sonal Palden Wangdi. Sonam Palden Wangdi was not cited as a prosecution witness. He was also not examined before the Court about his alleged signature over Exbt.-126. Other documents were also not proved by the prosecution.

44. Prosecution had examined S.K. Srivastava (P.W.-50), who was the Principal of Tashi Namgyal Academy, Gangtok, where Sonam Palden Wangdi had studied from 1978 to 1984. He had issued a

certificate (Exbt.-109) to this effect to M.P. Singh (P.W.-62), who had demanded it to show as to what fee has been paid by the Respondent to the institution for education of Sonam Palden Wangdi, Sonal Diki Wangdi and Sonam Thendup Wangdi.

45. Here, we are concerned with Sonam Palden Wangdi, who, according to the said certificate which was proved by S.K. Srivastava (P.W.-50), was a student of LKG in the year 1978. He was a student of UKG in 1979 and then he studied from I standard to V standard in the same institution from 1980 to 1984 and, thereafter, took his transfer certificate but later on, he was again admitted in the said institution in 1990 where he studied in XI and XII standard till the year 1991. It is, thus, clear that Sonam Palden Wangdi was studying in LKG in the year 1978 and was a minor at that time. How he can give such detail information to the prosecution witnesses regarding period of construction of the building of Hotel on his personal knowledge as has been described in Exbt.-126.

46. We note that Exbt.-126 is not a certificate or a document prepared by any statutory authority or even by any elder member of the family which Sonal Palden Wangdi allegedly supplied to the valuation team. The contents of the above document would show that it was signed by only one person, who, according to these witnesses, was Sonam Palden Wangdi and the date of 03.04.2001 has been mentioned under the alleged signature.

47. Dr. Satish Kumar Raja (P.W.-51) was another witness, who was the Deputy Registrar of Calicut Regional Engineering College, whose evidence would prove that Sonam Palden Wangdi was a student of Engineering , at the relevant time, after completion of schooling.

48. In rebuttal, the Respondent had examined the General Manager of his Hotel, Ravi Chand Mangla (D.W.-2). He took over as the General Manager in 1994. According to him, at that time, the Hotel was not ready. The construction of the Hotel was still going on. He was the Power of Attorney holder of the said Hotel and he left the job in 1998. Even in 1998, according to him, the construction of the Hotel was going on. The Special Public Prosecutor, in cross-examination, put question No.2 to this witness that the part of the building of the Hotel, including the kitchen, was completed before 30.09.1994 and the guests had started coming and they were being given receipts for tariff and catering. This witness replied to the said question in affirmative and said that they used to serve food to the guests before 30.09.1994 and also issued receipts for tariff.

49. The Respondent had also filed his own valuation report (Exbt.-D1), according to which, the valuation of the Hotel building was Rs.17,16,303/-. The valuation was done in the year 2003.

50. On due consideration of the entire evidence available in this regard, it is clear that the prosecution has utterly failed to prove

that the construction of the Hotel building was completed in the year 1994, i.e. in the check period and further that the cost of the Hotel building on 30.09.1994 was Rs.49,18,066/-.

51. Now, the question arises as to what was the cost of the Hotel building on 30.09.1994? In light of the findings recorded earlier regarding income of the Respondent in the relevant period, which meets the cost of the alleged disproportionate assets, I do not feel it necessary to go in this question because it would only be an academic in the prevailing facts and circumstances having no material bearing on the decision of the case.

52. I have already held that the rental income of the Respondent from 01.09.1976 to December, 1988 was Rs.20,72,065/-. Whereas the prosecution had taken it as Rs.3,97,600/-. Thus, the difference in rental income comes to Rs.16,74,465/-. I have also held that the Respondent had taken loan of Rs.3,50,000/- from L.B. Chettri (P.W.-30). The prosecution had taken that he had received a loan of Rs.50,000/- only from L.B. Chettri (P.W.-30). Therefore, the difference in loan amount comes to Rs.3,00,000/-. So far as income from vehicle is concerned, I have determined that it would be Rs.3,00,000/-. Whereas the prosecution had taken it as Rs.47,206.29. Thus, the difference of amount of income from vehicle comes to Rs.2,52,794/-. I have also held that the valuation of the Hotel building was not properly done. However, even ignoring the point of valuation,

if the additions in income of the Respondent as per findings of this Court is taken into consideration, it comes to a total of Rs.22,27,259/-. Thus, the alleged disproportionate assets amounting to Rs.21,30,138.79 stands sufficiently explained.

53. For the foregoing reasons, I do not find any substance in the Appeal. The Appeal, therefore, is liable to be dismissed and is hereby dismissed.

Sd/-

(Sunil Kumar Sinha)
Chief Justice
23.04.2015