



HIGH COURT OF SIKKIM, GANGTOK
(Criminal Appellate Jurisdiction)

Crl. L.P. No. 08 of 2014

PETITIONER

State of Sikkim

Versus

RESPONDENTS

1. Lakpa Tshering Gensapa,
S/o Lt Tenzing Norgay Bhutia,
R/o Mazigoan, Jorethang,
South Sikkim.
2. Anita Chettri,
W/o Lakpa Tshering Gensapa,
R/o Mazigoan, Jorethang,
South Sikkim.

An Application under Sub Section 3 of Section 378
of the Cr. P.C. 1973 for Leave to Appeal.

Appearance :

Mr. J.B. Pradhan, Public Prosecutor with Mr. D.K. Siwakoti,
Advocate for the Petitioner/State.

O R D E R (Oral)
(11.03.2015)

Following Order of the Court was dictated on Board by
SUNIL KUMAR SINHA, Actg. CJ.

1. Delay condoned in Crl. Misc. Application No. 81/2014.
2. Heard on admission.



3. The Petitioner/State is seeking leave to file an Appeal against the judgment of acquittal dated 30.07.2014 passed in Sessions Trial (Vig) Case No. 02/2012 by the Special Judge (PC Act), South Sikkim at Namchi. By the impugned judgment, the Respondents have been acquitted of the charges framed under Section 13 (1)(e) of the Prevention of Corruption Act, 1988, read with Section 120-B of the IPC.

4. The Respondents are husband and wife. Respondent No. 1 was appointed as Lower Division Clerk (LDC) under the Rural Management and Development Department (RMDD) in the year 1978. He was also posted as Store Keeper and then was promoted as Upper Division Clerk (UDC). Respondent No. 2 was working as a Teacher.

5. On 17.03.2008, on a source information received by Sikkim Vigilance Police Station, Gangtok, the matter was taken up for investigation of the alleged disproportionate assets of the Respondents. The check period was taken from 01.04.1989 to 18.03.2008. After the investigation, it revealed that during the check period the Respondents had moveable and immovable properties worth Rs.82,90,900/-. It was further found that at the end of check period the Respondents had various properties amounting to Rs.62,41,619/-. On various investigations, the prosecution, ultimately determined that the Respondents were having disproportionate assets of Rs.43,48,628/- to the known



sources of their income. The allegations, thus, made by the prosecution were summarized in the following manner: -

Sl. No.	Details	Value (In Rs.)
(a)	Assets at the end of check-period	62,41,619/-
(b)	Assets at the beginning of check-period	27,537/-
(c)	Assets acquired during the check-period	62,14,082/-
(d)	Expenditure during the check-period	5,24,184/-
(e)	Total expenses (c) and (d) above	67,38,266/-
(f)	Less income from known sources during the check-period	23,89,638/-
(g)	Assets disproportionate to the known source of income	43,48,628/-
(h)	Percentage	182%

6. At the trial the Respondents produced various documents and witnesses showing the details of their income (substantial income and income through loans) other than the salaries received by them during the said check period. The learned Special Judge, considering the entire evidence adduced by the prosecution as also the defence, recorded the findings that during the check period Respondent No. 1 received salary of Rs.8,72,036; likewise Respondent No. 2 received salary of Rs.7,12,530/-; Respondent No. 2 also received Rs.8 lakhs as 'daijo' from her father; Rs.32 lakhs was received by them as loan advances; Rs.7 lakhs was received as loan from Nar Singh Agarwal; Rs.3 lakhs was received as loan from United Bank of India (UBI) and Rs.30,000/- was received as loan from Central Bank of India (CBI). Thus, a total sum of Rs.66,14,566/- was



determined as income of the Respondents in the check period by the Special Judge. The Special Judge further recorded a finding that they had also 18 *tolas* of Gold and their building materials were worth Rs.3,25,500/-. The Special Judge, thus, finally held that the above figure determined as income of the Respondents was almost thrice the figure of Rs.23,89,638/- which was shown as the know sources of income during the check period by the prosecution. The Special Judge, therefore, held that the income of the Respondents was Rs.66,14,566/- plus the above amount of 18 *tolas* of Gold and the building materials and, therefore, the assets found in the possession of the Respondents, if looked against the said income of them, was not disproportionate. The Respondents were, thus, acquitted of the charges framed against them.

7. Mr. J.B. Pradhan, learned Public Prosecutor appearing on behalf of the Petitioner/State, submitted that the loan taken for the Scorpio vehicle i.e. Rs. 8 lakhs and the interest thereon as also the loans taken from the UBI and CBI in sum of Rs.3,30,000/- plus interest thereon were not taken into consideration.

8. I have gone through the details of the prosecution case. It is writ large on record that all these amounts were taken into consideration by the Investigating Officer as also by the Special Court and, thereafter, the statements of the properties etc. were



prepared and these amounts were taken note of for determining the income of the Respondents during the check period. Even for the sake of arguments we take that the outcome of the above loan advances should be added as expenditure, the grand total would not exceed or even come nearer to the income of the Respondents, which has been determined by the Special Court.

9. Mr. Pradhan has also argued that the loan advanced to the Respondents in sum of Rs.32 lakhs was not proved on record and finding in this regard appears to be perverse.

10. According to the Respondents, they had received various amounts, total amounting to Rs.32 lakhs, from many persons during the check period. They came forward with the documents relating to the said loans. The persons from whom the loans were taken in fragments, were also examined by the Respondents in support of their contention. The said witnesses, along with the documents proved by them, were put to cross-examination by the prosecution. These witnesses had proved that they had advanced the said loans to the Respondents. This was not demolished by the prosecution during the course of their evidence. The learned Special Judge has relied on the testimonies of these witnesses and the documents proved by them and has recorded a finding vide paragraph 39 of the impugned judgment that from the above evidence it was proved that a substantial amount of loan i.e. Rs.32 lakhs was taken by



the Respondents during the check period from the above persons.

11. In a matter of appeal against acquittal, the Court is free to consider the entire evidence on record so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unreasonable. Further, it is also entitled to consider as to whether in arriving at a finding of fact, the trial Court has failed to take into consideration admissible evidence and has taken into consideration evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject matter of the scrutiny of the Appellate Court. (Vide ***Budh Singh and others vs. State of U.P. : (2006) 9 SCC 731***).

12. The principle to be followed by the Appellate Court considering the matter of Appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. The paramount consideration of the Court, in such matters, is to ensure that miscarriage of justice is prevented. In a case where admissible evidence is ignored, a duty is cast upon the Appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose



of ascertaining as to whether any of the accused has really committed any offence or not. (Vide ***V.N. Ratheesh vs. State of Kerala : AIR 2006 SC 2667; Bhagwan Singh and Others vs. State of Madhya Pradesh : 2000 (2) Supreme 567***).

13. In ***Ramesh Babulal Doshi vs. State of Gujarat : (1996) 9 SCC 225***, the Supreme Court said that "While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, in the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then—and then only—reappraise the evidence to arrive at its own conclusions".

14. On due consideration of the above facts and circumstances, I do not find any compelling and substantial reason to interfere with the findings recorded by the Special Court. It is not a case in which the impugned judgment is clearly unreasonable or a case in which relevant and convincing material has been eliminated in the process of appreciation.



15. For all these reasons, I do not find any substance in this Petition. The Petition seeking leave to file an Appeal, therefore, is liable to be dismissed and is hereby dismissed.

Sd/-
(Sunil Kumar Sinha)
Acting Chief Justice
11.03.2015

Approved for Reporting : Yes/~~No~~
Internet : Yes/~~No~~

pm/jk