STATE OF MAHARASHTRA

v.

WASUDEO RAMCHANDRA KAIDALWAR

May 6, 1981

[O. CHINNAPPA REDDY, A.P. SEN AND BAHARUL ISLAM, JJ.]

Prevention of Corruption Act, 1947—Section 5(2) read with section 5(1)(e)—Scope of.

Interpretation—"assets disproportionate to the known sources of income" meaning of.

Evidence—Burden of proof under section 5(2) read with section 5(1)(e)—On whom lies.

The respondent was a Range Forest Officer on a monthly salary of Rs. 515. In a search conducted by an officer of the Anti-Corruption Bureau, Rs. 26 thousand-odd in cash, savings bank accounts in the names of himself, his wife and children, national savings certificates, postal saving certificates, gold and silver oranments, sale deeds of certain properties in the name of his wife, sister-in-law and brother-in-law aggregating in all to over Rs. 79 thousand were discovered from his house. On the allegation that he was found in possession of assets disproportionate to his known sources of income he was charged with offence punishable under section 5(2) read with section 5(1)(e) of the Prevention of Corrouption Act, 1947.

The respondent pleaded that he led a frugal life and that secondly much of the property found in his house belonged to his father-in-law. He added that his father-in-law was a *pairokar* of a Zamindar in the area, that two sisters of his father-in-law were the kept mistresses of the Zamindar, and the Zamindar gave large amounts of cash and presents most of which were passed on to his father-in-law. At the time of his death, his father-in-law entrusted his minor daughter and son to his care and instructed that his property should be divided among his three children equally and that therefore he was holding the property merely as a custodian.

Rejecting the plea of the respondent a Special Judge convicted and sentenced him under section 5(2) read with section 5(1)(e) of the Act.

On appeal a single Judge of the High Court acquitted him holding that the prosecution had failed to discharge the burden of disproving all possible sources of the respondent's income, that it was not possible to exclude the probability that the property found in his possession could be the property left by his father-in-law, and that mere possession of assets disproportionate to his known sources of income would not be sufficient to bring home the guilt under section 5(1)(e) unless the prosecution further excluded all possible sources of income. The High Court was also of the view that the changes brought about by the Anti-

A Corruption Laws (Amendment) Act, 1964 had the effect of limiting the presumption of guilt arising under section 4(1) of the Act to an offence of criminal misconduct specified in section 5(1)(a) and (b) and not to that in section 5(1)(e).

HELD : The construction placed by the High Court on section 5(1)(e) was wrong in that it overlooked the fact that, by the use of the words "for which the public servant cannot satisfactorily acquit", a burden is cast on the accused. [680 B]

B

Section 5(3) which now stood deleted, did not create an offence separate from the one created by section 5(1) but only raised a presumption of criminal misconduct if he or any person on his behalf was in possession of pecuniary resources or property disproportionate to his known sources of income which he could not satisfactorily account. Once the prosecution proves this fact the burden shifts on to the accused to prove the source of acquisition of such assets. [681 F-G]

C

The expression "known sources of income" in the context of the section means "sources known to the prosecution". Secondly, the onus placed on the accused under the section was not to prove his innocence beyond reasonable doubt but only to establish a preponderance of probability. To eradicate the widespread corruption in public services the legislature dispensed with the rule of evidence under section 5(3) and made possession by a public servant of assets disproportionate to his income as one of the species of offences of criminal misconduct by inserting clause (e) in section 5(1). [682 A-C]

D

The meaning to be assigned to the expression "known sources of income" occurring in section 5(1)(e) must be the same as was given to that expression in section 5(3) before its repeal, that is, "sources known to the prosecution". So also the same meaning must be given to the words "for which a public servant is unable to satisfactorily account" occurring in section 5(1)(e). When clause (e) uses the words "if the public servant is unable to satisfactorily account", it is implied that the burden is on such public servant to account for the sources for the acquisition of assets disproportionate to his income. The High Court was, therefore, in error in holding that a public servant charged for having in his possession assets disproportionate to his income for which he cannot satisfactorily account could not be convicted of an offence under section 5(2) read with section 5(1)(e) unless the prosecution disproves all possible sources of income. [682 D-F]

E

F

Sajjan Singh v. *State of Punjab* [1964] 4 S.C.R. 630 and *V.D. Jhagan* v. *State of U.P.* [1966] 3 S.C.R. 736, referred to.

The expression "burden of proof" has two distinct meanings : (1) the legal burden, that is, the burden of establishing the guilt and (2) the evidential burden, that is, the burden of leading evidence. Notwithstanding the general rule that the burden of proof lies exclusively upon the prosecution, in the case of certain offences, the burden of proving a particular fact in issue may be laid by law upon the accused. This burden is not so onerous as that which lies on the prosecution and is discharged by proof of a balance of probabilities. To substantiate the charge of criminal misconduct under section 5(2) read with section 5(1)(e) the prosecution must prove (1) that the accused was a public servant ; (2) the nature and extent of the pecuniary resources or property in his possession, (3) his known sources of income, i.e. known to the prosecution ; (4) that such

G

H

sources or property were disproportionate to his known sources of income. Once these are established, the offence of criminal misconduct under section 5(1)(e) would be complete. The burden then shifts to the accused to substantially account for possession by him of assets disproportionate to his income. The extent and nature of burden of proof resting upon the public servant cannot be higher than establishing his case by a preponderance of probability. [683 A-E]

In the instant case the High Court has placed an impossible burden on the prosecution to disprove all possible sources of income which were within the special knowledge of the accused. The prosecution cannot in the nature of things be expected to know the affairs of a public servant found in possession of resources or property disproportionate to his known sources of income that is his salary, because these are matters specially within his knowledge, within the meaning of section 106 of the Evidence Act.

The phrase "burden of proof" in section 106 of Evidence Act is clearly used in the secondary sense, namely the duty of introducing evidence. The nature and extent of the burden cast on the accused is well settled. The accused is not bound to prove his innocence beyond all reasonable doubt. All that he need do is to bring out a preponderance of probability. [684 B]

On the proved circumstances there was a preponderance of probability that the property found in the respondent's house could be the property left by his father-in-law. There is overwhelming evidence on record that the respondent's father-in-law was a man of affluent circumstances, being a *paiorkar* of a Zamindar and that he had amassed considerable wealth, more so because his two sisters were the kept mistresses of the Zamindar. On the death of the Zamindar his father-in-law stayed with the respondent. Also, the respondent's father had a liquor shop besides forest contracts. The evidence led in the case was sufficient to create a doubt whether the respondent was in possession of assets disproportionate to his known sources of income. On the other hand there is preponderance of probability that the property in his possession belonged not to him, but to his father-in law. [684 D-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 277 of 1976.

Appeal by special leave from the judgment and order dated the 9th April, 1975 of the Bombay High Court (Nagpur Bench), Nagpur in Criminal Appeal No. 134 of 1971.

M.C. Bhandare and *R.N. Poddar* for the Appellant.

P. Govindan Nair, K. Ramavtar and *K.R. Choudhury* for the Respondent.

The Judgment of the Court was delivered by

SEN, J. The State Government of Maharashtra has preferred this appeal, by special leave, against the judgment of the

A Bombay High Court, reversing the judgment and sentence of the Special Judge, Chandrapur and acquitting the respondent of an offence under s. 5(2) read with s. 5(1)(e) of the Prevention of Corruption Act, 1947 (hereinafter called 'the Act').

The respondent, Wasudeo Ramchandra Kaidalwar, was a Range Forest Officer, drawing a salary of Rs. 515 per month. On
B September 21, 1969, PW 71, Patwardhan, Inspector, Anti-Corruption Bureau under authorisation from the Director, Anti-Corruption Bureau, Bombay, carried out search and seizure at the residential house of the respondent. The Inspector made a recovery of Rs. 26,870 in cash from an almirah, savings bank accounts in the names of the respondent, his wife and children totalling to Rs. 12,588.35, national
C savings certificates worth Rs. 510, postal savings certificates worth Rs. 184.25 in the name of his daughter, Nandini, savings bank deposits with the State Bank of India and the postal savings certicates in the name of his brother-in-law, Narayan, amounting to Rs. 2,279.05, gold and silver ornaments, household effects etc. of the value of Rs. 8,602.50, two sale-deeds in respect of two plots bearing
D Khasra Nos. 28/1K and 28/1Dh in Chandrapur purchased (1) in the name of his wife, Smt. Sushila for Rs. 5,250 and (2) in the joint names of his wife, Smt. Sushila and his brother-in-law, Narayan for an amount of Rs. 21,210, papers relating to the building of a house at village Gondpipri built in the year 1965 at a cost of Rs. 10,000.
E The petitioner was accordingly put on trial for having committed an offence punishable under s. 5(2) read with s. 5(1)(e) of the Act, being found in possession of assets disproportionate to his income.

The respondent abjured his guilt and denied the commission of the offence. He pleaded that he was leading frugal life and all
F the property found during the search of his residential house belonged to his father-in-law, Hanumanthu, *pairokar* of Raja Dharmarao, Zamindar of Aheri Estate. He alleged that two of the sisters of his father-in-law were the kept mistresses of Raja Dharmarao and enjoyed special favours from the late Zamindar who bestowed on them large amounts of cash, ornaments etc. They used to visit the
G house of his father-in-law, Hanumanthu, once or twice a month, and used to keep all their cash, gold and silver ornaments. Hanumanthu owned a grocery shop. He and his father had a liquor shop besides forest contracts. Hanumanthu used to deal in money-lending business. The respondent alleged that his father-in-law
H deposited an amount of Rs. 30,000 in April 1957, Rs. 10,000/- in August 1957 and Rs. 35,000 in cash and Rs. 1,000 in coins and also 23 tolas of gold in September, 1957 with his wife, Smt. Sushila.

He pleaded that his father-in-law died on March 10, 1958 at his house leaving behind his son, Narayan and two daughters, Smt. Shakuntala, who on her marriage with the respondent was re-named as Smt. Sushila, and Smt.Sushila, his sister-in-iaw, minor at that time. He instructed him to divide the property into three equal shares among his three children. The respondent maintained that he was holding the property merely as a custodian and was not the owner thereof.

The Special Judge, Chandrapur, by his judgment dated 7.6.1971, convicted the respondent for having committed an offience punishable under s.5(2) read with s.(5)(1)(e) of the Act inasmuch as he was found in possession of property worth Rs. 79,574.70 as against his only known source of income, namely, his total salary in government service amounting to Rs. 44,000. He held that the respondent had failed to account for cash of Rs. 26,870, sale-deeds of the two plots purchased for Rs. 5,250 and Rs. 21,210 in the name of his wife Smt. Sushila and the other jointly in the name of his wife and brother-in-law, Narayan and for the house built at village Gondpipri at a cost of Rs. 10,000 He held that the acquisition of these immoveable properties was not reasonably attributable to the property left by his father-in-law, Hanumanthu. He also rejected the respondent's plea that he was leading a frugal life and, therefore, was able to make a saving of Rs. 15,000 out of his salary income. He acoordinly sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs. 26,870. He further directed that the two plots at Chandrapur and the house at village Gondpipri be sold and the sale proceeds be forfeited.

On appeal, a learned Single Judge of the High Court set aside the judgment and sentence passed by the learned Special Judge and acquitted the respondent. The order of acquittal was based principally on two grounds : (1) The prosecution having failed to discharge the burden of disproving all possible sources of income i.e. failed to account for the properties left by the respondent's father-in-law, Haumanthu, he could not be convicted under s. 5(2) read with s. 5 (1)(e) of the Act, and (2) it was not possible to exclude the probability that the property found in the respondent's house could be the property left by his father-in-law, Hanumanthu.

In coming to the conclusion that it did, the High Court was of the view that the changes brought about by the Anti-Corruption Laws (Amendment) Act, 1964 had the effect of limiting the presumption of guilt arising under s.4(1) of the Act to offences of criminal misconduct

specified in ss.5(1)(a) and (b) and not to that in s.5(1)(e). It therefore held that mere possession of disproportionate assets by a public servant to his known sources of income for which he has failed to account would not be sufficient to bring home the guilt under s.5(1)(e), unless the prosecution further excludes all possible sources of income. The construction placed by the High Court on the provisions contained in s.5(1)(e) of the Act is obviously wrong. It completely overlooks the fact that the burden is cast on the accused by the use of the words "for which the public servant cannot satisfactorily account". It is also wrong in distorting the meaning of the expression "known sources of income" occurring in s. 5(1)(e), which has a definite legal connotation and which, in the context, must mean "sources known to the prosecution".

It is distressing to find that the High Court has involved itself into a process of evolution of a new theory of law, instead of confining itself to a re-appraisal of the evidence on record which it was entitled to do sitting as a court of appeal against the judgment of conviction. The order of acquittal recorded by the High Court could still be maintained on a proper evaluation of the facts, as, on the proved circumstances, there was a preponderance of probability that the property found in the respondent's house could be the property left by his father-in-law, Hanumanthu.

The legislature deleted s.5(3) of Act which embodied a rule of evidence by s.6 of the Anti-Corruption Laws (Amendment) Act, 1964 and instead, inserted s.5(1)(e) making, possession of disproportionate assets by a public servant, a substantive offence. Section 5(1)(e) of the Act reads :

> 5.(1) A public servant is said to commit the offence of criminal misconduct-
>
> (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.

Old s.5(3) of the Act was in these terms :

> 5.(3) In any trial of an offence punishable under sub-section(2) the fact that the accused person or any other person on his behalf is in possession, for which the accused

person cannot satisfactorily account, of pecuciary resources or property disproportoionate to his known sources of income may be proved, and on such proof the Court shall presume, unless the contrary is proved, that the acused person if guilty of criminal misconduct in the discharge of his official duty and his conviction therefor shall not be invalid by reason only that it is based solely on such presumption.

Three questions arise for our consideration in this appeal, namely : (1) Whether a public servant charged with having disproportionate assets in his possession, for which he cannot satisfactorily account, cannot be convicted of an offence under s. 5(2) read with s.5(1)(e) of the Act unless the prosecution disproves all possible sources of his income (2) If the prosecution establishes that a public servant is in possession of pecuniary resources or property disproportionate to his known sources of income, whether the burden to disprove the charge shifts to the accused to satisfactorily account for the source of acqusition of such resources or property. and if so, the nature and extent of such burden on the accused. (3) Whether, on the facts and circumstances of the present case, having regard to the fact that the respondent's father-in-law, Hanumanthu was *pairokar* of Raja Dharmarao, Zamindar of Aheri Estate and left substantial properties, it was not improbable that the properties found in possession of the respondent belonged to his father-in-law.

It is clear both on authority and principle that s.5(3) which now stands deleted did not create an offence separate from the one created by s.5(1), but intended only to lay down a rule of evidence to raise a presumption of guilt in certain circumstances. Section 5(1) defines different species of criminal misconduct which can be committed by a public servant and s.5(2) provides that any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to seven years and also shall be liable to fine. Under the old s.5(3), a presumption of criminal misconduct could be drawn if such a public servant or any person on his behalf was found to be in possession of pecuniary resources or property disproportionate to his known sources of income for which the public servant could not satisfactorily account, Once the prosecution proved that the accused person was possessed of disproportionate assets, the burden was shifted to the accused to prove the source of acquisition of such assets.

A The provisions of s.5(3) have been subject of judicial interpretation. First the expression "known sources of income" in the context of s.5(3) meant "sources known to the prosecution". The other principle is equally well-settled. The onus placed on the accused under s.5(3) was however, not to prove his innocence beyond reasonable doubt, but only to establish a preponderance of
B probability. These are well-settled principles : *C.S.D. Swamy* v. *The State*[1] *Sajjan Singh* v. *State of Punjab*[2] and *V.D. Jhagan* v. *State of U.P.*[3]. The legislature thought it fit to dispense with the rule of evidence under s. 5(3) and make the possession of disproportionate assets by a public servant as one of the species of the offence of criminal misconduct by inserting s. 5(1)(e) due to widespread cor-
C ruption in public services.

The terms and expressions appearing in s. 5(1)(e) of the Act are the same as those used in the old Section 5(3). Although the two provisions operate in two different fields, the meaning to be assigned to them must be the same. The expression "known sources
D of income" means "sources known to the prosecution". So also the same meaning must be given to the words "for which the public servant is unable to satisfactorily account" occurring in s. 5(1)(e). No doubt, s. 4(1) provides for presumption of guilt in cases falling under ss. 5(1)(a) and (b), but there was, in our opinion, no need to mention s. 5(1)(a) therein. For, the reason is obvious. The
E provision contained in s.5(1)(e) of the Act is a self-contained provision. The first part of the Section casts a burden on the prosection and the second on the accused. When s. 5(1)(e) uses the words "for which the public servant is unable to satisfactorily account", it is implied that the burden is on such public servant to account for the sources for the acquisition of disproportionate assets.
F The High Court, therefore, was in error in holding that a public servant charged for having disproportionate assets in his possession for which he cannot satisfactorily account, cannot be convicted of an offence under s. 5(2) read with s.5(1)(e) of the Act unless the prosecution disproves all possible sources of income.

G That takes us to the difficult question as to the nature and extent of the burden of proof under s. 5 (1) (e) of the the Act. The expression 'burden of proof' has two distinct meanings (1) the legal burden. i.e. the burden of establishing the guilt, and (2) the

H

(1) [1960] 1 S.C.R. 461.
(2) [1964] 4 S.C.R. 630.
(3) [1966] 3 S.C.R. 736.

evidential burden, i.e. the burden of leading evidence. In a criminal trial, the burden of proving everything essential to establish the charge against the accused lies upon the prosecution, and that burden never shifts. Notwithstanding the general rule that the burden of proof lies exclusively upon the prosecution, in the case of certain offences, the burden of proving a particular fact in issue may be laid by law upon the accused. The burden resting on the accused in such cases is, however, not so onerous as that which lies on the prosecution and is discharged by proof of a balance of probabilities. The ingredients of the offence of criminal misconduct under s. 5(2) read with s.5(1)(e) are the possession of pecuniary resources or property disproportionate to the known sources of income for which the public servant cannot satisfactorily account. To substantiate the charge, the prosecution must prove the following facts before it can bring a case under s. 5(1)(e), namely, (1) it must establish that the accused is a public servant, (2) the nature and extent of the pecuniary resources or property which were found in his possession, (3) it must be proved as to what were his known sources of income i.e. known to the prosecution, and (4) it must prove quite objectively, that such rosources or property found in possession of the accused were disproportionate to his known sources of income. Once these four ingredients are established, the offence of criminal misconduct under s. 5(1)(e) is complete, unless the accused is able to account for such resources or property. The burden then shifts to the accussed to satisfactorily account for his possession of disproportionate assets. The extent and nature of burden of proof resting upon the public servant to be found in possession of disproportionate assets under s. 5(1)(e) cannot be higher than the test laid by the Court in *Jahgan's* case (*supra*), i.e. to establish his case by a preponderance of probability. That test was laid down by the court following the *dictum* of Viscount Sankey, L.C. in *Woolmington* v. *Director of Public Prosecutions*[1]. The High Court has placed an impossible burden on the prosecution to disprove all possible sources of income which were within the special knowledge of the accused. As laid down in *Swamy's* case (*supra*), the prosecution cannot, in the very nature of things, be expected to know the affairs of a public servant found in possession of resources or property disproportionate to his known sources of income i.e. his salary. Those will be matters specially within the knowledge of the public servant within the meaning of s.106 of the Evidence Act, 1872. Section 106 reads :

A B C D E F G H

(1) [1935] A.C. 462.

s. 106. when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

In this connection, the phrase the burden of proof is clearly used in the secondary sense namely, the duty of introducing evidence. The nature and extent of the burden cast on the accused is well settled. The accused is not bound to prove his innocence beyond all reasonable doubt. All that he need do is to bring out a preponderence of probability.

Such being the law, the question whether or not the respondent had established a preponderance of probability is a matter relating to appreciation of evidence. On a consideration of the evidence adduced by the respondent, the High Court has taken the view that it is not possible to exclude the possibility that the property found in possession of the respondent belonged to his father-in-law, Hanumanthu. We have been taken through the evidence and we cannot say that the finding reached by the High Court is either mainfestly wrong or perverse. Maybe, this Court, on a reappraisal of the evidence, could have come to a contrary conclusion. That, however, is hardly a ground for interference with an order of acquittal. There are no compelling reasons to interfere with the order of acquittal, particularly when there is overwhelming evidence led by the respondent showing that his father-in-law, Hanumanthu, was a man of affluent circumstances. There is no denying fact that Hanumanthu was the *pairokar* of Raja Dharmarao Zamindar of Aheri Estate and by his close association with the Zamindar, had amassed considerable wealth. More so, because two of his sisters were the kept mistresses of the Zamindar and amply provided for.

It appears that after the death of Raja Dharmarao, Hanumanthu took up his residence with his elder daughter, Smt. Sushila, who was married to the respondent. To substantiate his plea in defence, the respondent examined as many as 12 witnesses including himself as AW 12, his sister-in-law, Smt. Sushila (AW 11), Dr. Chandrasekhar Merekar (AW 6), Shri V.N. Swamy, Advocate, Chandrapur (AW 8). We cannot brush aside the unimeachable testimony of Shri V.N. Swamy, AW 8, who was a leading advocate of Chandrapur and Member of Lok Sabha, and Dr. Chandrasekhar Merekar, AW 6, Medical Practitioner of Chandrapur, who attended on Hanumanthu at the time of his death. Both these witnesses have unequivocally stated that when Hanumanthu died at the respondents leaving his two minor children, Smt. Sushila and Narayan to the care of the respondent and his wife, Smt.Sushila, he told them that he

A

was leaving properties worth Rs. 70 to 80 thousand comprising cash ornaments, jewellery etc., and expressed a desire that the same be divided equally among, his three children, the two daughters and son. Shri Swamy testified to the fact that he was handling all the litigation of Raja Dharamrao, Zamindar of Aheri Estate who had an yearly income of Rs. 6 to 8 lakhs because the Zamindar had rich forests. B He tells us that he knew Hanumanthu well because he was the *pairokar* of Raja Dharmarao, that Hanumanthu enjoyed great confidence of the Zamindar and had free access to him because his two sisters were the kept mistresses of the Zamindar. His evidence shows that the ladies were well provided for and whenever they visited Hanumanthu they used to hand over their cash, C ornaments and jewellery to him for safe custody. His evidence also shows that Hanumanthu was a man of affluence and that he and his father had a liquor shop besides forest constracts. Hanumanthu also used to deal in money-lending business. The respondent has also placed on record documents showing that Hanumanthu was a man of substantial means. To add to the difficulty of the prose- D cution, Smt. Sushila, AW 11, sister-in-law of the respondent has come and deposed that all the property belonged to her father.

All this evidence is sufficient to create a doubt as to whether the respondent was in possession of disproportionate assets. There is certainly a preponderance of probability that the property found E in the possession of the respondent did not belong to him but belonged to his father-in-law, Hanumanthu.

The result, therefore, is that the appeal must fail and is accordingly dismissed.

P.B.R. *Appeal dismissed.*