K. PONNUSWAMY

v.

STATE OF TAMILNADU BY INSPECTOR OF POLICE, DIRECTORATE OF VIGILANCE AND ANTI CORRUPTION SOUTH RANGE, TRICHY

JULY 31, 2001

[K.T. THOMAS AND S.N. VARIAVA, JJ.]

Prevention of Corruption Act, 1947—Sections 13(1) and 13(2)—Prosecution of public servant for having pecuniary resources and property disproportionate to known sources of income acquired during his tenure as Minister—Gifts made by his nephew out of love and affection—Held, on natural presumption and human conduct, appellant used his nephew for transfer of monies to appellant's wife and daughter—Evidence Act, 1872—Sections 3 and 114.

Appellant, before being elected as a Member of Legislative Assembly, was employed as a lecturer in a Government College. He was earning a meagre salary and his financial condition was such that he could not even repay his small debts. Creditors had to recover the amounts by filing suits and executing decrees. After being elected, he was a Minister for about 3 years. During this tenure (check period), he acquired in his name and in the names of his wife, daughter, nephew and another close relative, pecuniary resources and property disproportionate to his known sources of income. Trial Court convicted the appellant and other accused under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1947 and ordered confiscation of the pecuniary resources and properties to the extent of about Rs. 77.50 lakhs. The appellant and other accused filed Criminal Appeals before High Court against the conviction and the order of confiscation. The High Court confirmed the conviction of the appellant and acquitted other accused. The High Court, while upholding the confiscation order in respect of the assets of the appellant, his wife and daughter, however, held that the assets standing in the names of the other two accused should be excluded from confiscation.

In appeal to this Court, the appellant contended that he did not have any pecuniary resources or properties disproportionate to his known sources of income, which had been established by the High Court; that the prosecution

had failed to prove that the properties standing in the names of his wife and daughter were held by them on behalf of the appellant; that the prosecution had failed to prove that these were Benami properties of the appellant; that the properties standing in the names of his wife and daughter were gifted by his nephew out of love and affection; that his nephew was acquitted by the High Court on the ground that the prosecution has not investigated into his personal source of income.

Dismissing the appeals, the Court

HELD : 1.1. The prosecution has established beyond reasonable doubt that prior to the check period, the appellant, his wife and daughter had no real source of income, except some meagre incomes. The appellant only earned a small salary as a Lecturer and his wife had small agricultural and other income. His daughter, being a student, had no real source of income. Prior to the check period, the financial condition of the family was such that the appellant could not even repay his small debts. Creditors had to recover their amounts by filing suits and executing decrees. [107-C, D]

1.2. Presuming his nephew had independent income, prior to the check period he had not been afflicted by any love and affection and had not made any gifts to any member of the family of the appellant. Prior to the check period, the nephew did not even extend help to pay off the small debts of the appellant even after decrees had been passed against the appellant. Yet suddenly, during the check period, when the appellant was a Minister, the nephew donated large sums of money to the appellant's wife and daughter. The natural presumption, considering the common course of natural events and human conduct is that the appellant would have used his nephew to transfer his monies to his wife and daughter. This is the supposition which any prudent man under these circumstances would act upon considering the natural course of events. The Trial Court and the High Court thus rightly took this as proved by legal evidence. The prosecution, having established by legal evidence that the monies were transferred by the appellant to his wife and daughter through his nephew and that these there monies of the appellant in the hands of his wife and daughter, it was for the appellant to satisfactorily account for the gifts. He could have done so by showing that even before and after the check period, his nephew had made gifts of substantial amounts, which was not done. Thus the Trial Court and the High Court were right in not believing the case of gifts supposedly made out of a sudden burst of love and affection. [107-B-H]

Krishnanand **v.** *State of M.P.*, **[1977] 1 SCC 816, referred to.** A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 759 of 2001.

From the Judgment and Order dated 12.4.2001 of the Madras High Court in Crl. A. No. 749 of 2000. B

WITH

Crl. A. No. 760 of 2001.

P.P. Rao, R. Thyagarajan, Rakesh Dwivedi, U.R. Lalit, K. Ramamurthy, C V. Balachandran, S. Jayakumar, E.C. Agarwala, Mahesh Agarwala, Rishi Agarwala, D. Selvaraj, R.K. Sharma, Ms. Purnima Bhat Kak, Mrs. Revathy Raghavan and Ms. Shweta Garg for the appearing parties.

The following Judgment of the Court was delivered by :

D

S.N. VARIAVA, J. These SLPs are filed against the Judgment dated 12th April, 2001. When these SLPs were called out Mr. Ramamurthy, Senior Counsel for the State of Tamil Nadu, prayed for an adjournment of four weeks. He submitted that, as Accused Nos. 2 to 5 have been acquitted by the impugned Judgment, the State was going to prefer an Appeal against the same Judgment. Mr. Rao opposed the Application on the ground that the E Petitioner was in jail. He submitted that if the State wanted an adjournment, for such a long period, then the Petitioner should be released on bail. We, therefore, felt that the best course to follow would be to hear these SLPs today. When the State files its Appeal it can be heard separately.

Accordingly leave is granted F

Heard parties.

By these Appeals the Appellant is challenging his conviction under Section 13 (1)(e) read with Section 13(2) of the Prevention of Corruption Act. G

Brief facts leading to these Appeals are as follows:

The Appellant was elected as a member of Legislative Assembly from Marungapuri constituency in June 1991. He became the Deputy Speaker of the Legislative Assembly on 3rd July, 1991. He was Minister of Education H

A to the Government of Tamil Nadu from 17th May, 1993 to 9th May, 1996. For the sake of convenience this period from 17th May, 1993 to 9th May, 1996 will hereinafter be referred to as the check period.

Before the Appellant came to the political arena he was employed as a Lecturer in the Government Arts College. It has been shown that in 1973 B the Appellant had taken a crop loan from the Bank of India for a sum of Rs. 13,000. That amount had not been repaid by the Appellant. Ultimately a Suit came to be filed and the amount had to be collected in execution of decree in that Suit. In 1985 the Appellant had borrowed a sum of Rs. 5,000 from R. Palanivelu (P.W.16) who was also working as a Lecturer along with him. For C this loan the Appellant had executed a promissory note. The financial condition of the Appellant was such that he was unable to repay the loan. Ultimately a Suit had to be filed against him and a decree came to be passed. Even after passing of the Decree the amount was not repaid. The Decree had to be executed. The decreetal amount had to be recovered from the salary of the Appellant. This clearly shows that before he became a Minister the Appellant's D financial condition was very weak.

At this stage, it must be mentioned that Accused No. 2 is the wife of the Appellant. Accused No. 3 is his daughter. Accused No. 2 was and is merely a house-wife. She admittedly had only a small agricultural income E and no other source of income. Admittedly Accused No. 3 was a student before and during the check period. She had no source of income. Accused No. 4 is the son of the brother of the Appellant: Accused No. 5 is the brother of the Appellant. Accused No. 6 is the Chartered Accountant who had submitted income tax and wealth tax returns of the Accused Nos. 2 to 5.

F The case of the prosecution was that during the check period the Accused No. 1 acquired, in his name and in the names of Accused Nos. 2 to 5, pecuniary resources and property disproportionate to his known sources of income. The prosecution examined as many as 65 witnesses and got 297 exhibit marks. The Trial Court, on the basis of the evidence lead, acquitted Accused No. 6. However, Accused No. 1 (i.e. the Appellant) was convicted G under Section 13 (1) (e) read with Section 13(2) of the Prevention of Corruption Act. Accused Nos. 2 to 5 were convicted under Section 109 I.P.C. and also under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act. The Trial Court , after convicting the Accused, directed consfication of the pecuniary resources and properties to the extant of Rs. H 77,49,337.77.

Appellant and Accused Nos. 2 to 5 filed Criminal Appeals before the High Court against the conviction as well as against the Order confiscating the pecuniary resources and properties. The High Court disposed of these Appeals by the impugned Judgment dated 12th April, 2001. The High Court acquitted Accused Nos. 2 to 5 but confirmed the conviction of the Appellant. The High Court held that as it had acquitted Accused Nos. 4 and 5 the assets standing in their names had to be excluded from the Order of confiscation. The High Court, however, maintained the order of confiscation in respect of the assets of the Appellant and his wife and daughter. As against this portion of the Order the wife and daughter of the Appellant have also filed SLP (Crl.) Nos. 1867 and 2343 of 2001. Those were also listed on Board along with these Appeals. We have delinked those SLPs.

As stated above, the charge against the Appellant is that whilst he was holding the office as Minister of Education, Government of Tamil Nadu i.e. during the check period he abused his position as a public servant and acquired and possessed pecuniary resources and properties in his name and in the names of Accused Nos. 2 to 5 disproportionate to his known sources of income to the extent of Rs. 77,49,337.77.

Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act read as follows:

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

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) xxx xxx xxx

(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.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine."

A Thus under Section 13(1)(e) if either the public servant or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income the public servant would have committed misconduct unless he can satisfactorily account.

B As stated above, the Trial Court convicted Accused Nos. 1 to 5 on the footing that the prosecution has established that between them assets disproportionate to the known sources of income (to the extent of Rs. 77,49,337.77) had been proved. That there were large assets has not been seriously disputed. Of course there is a dispute as to the exact amount.

C This is set out later. What has however been disputed is that these are assets in the name of the Appellant i.e. that Accused Nos. 2 to 4 are holding these assets on behalf of the Appellant.

The High Court asked the parties to give a break up of the assets in the D names of each of the accused. On such break up it was found that so far as the Appellant was concerned, in his own name, there were no pecuniary resources or assets disproportionate to his known sources of income.

However, it was found that assets standing in the name of his wife i.e. Accused No. 2 were, according to the prosecution in a sum of Rs. 35,23,396 E and according to the defence in a sum of Rs. 29,00,067. The assets standing in the name of his daughter i.e. Accused No. 3, according to the prosecution were in the sum of Rs. 11,14,772 whereas according to the defence they were in the sum of Rs. 11,26,283. The assets in the name of Accused No. 4, according to the prosecution as well as the defence were in region of Rs. 18,55,308/-. The assets in the name of Accused No. 5, according to the F prosecution were in the region of Rs, 13,16,158, whereas according to the defence they were in the region of Rs. 10,01,079. Whether the assets are as claimed by the defence or the prosecution is not material for purposes of these Appeals. Even if the figures are, as claimed by the defence, they are still quite large.

G The High Court then holds that the prosecution had not proved or shown whether Accused Nos. 4 and 5 had any independent source of income of their own. The High Court concludes that the prosecution by failing to conduct an investigation into the individual income of Accused Nos. 4 and 5 had failed to prove that the assets standing in the names of Accused Nos. H 4 and 5 did not belong to them. The High Court held that it could not,

therefore, be held that Accused Nos. 4 and 5 were holding assets only on behalf of Accused No. 1. On this basis the High Court acquits Accused Nos. 4 and 5. As we have been told that the State is likely to file an Appeal against acquittal of Accused Nos. 4 and 5 we make no comments on this aspect.

Accused No. 2 was only a house-wife and Accused No. 3 was only a student before and during the check period. Accused No. 3 being a student had no source of income except some very small agricultural income. It is proved and admitted that the only source of income of Accused No. 2 is agricultural income from 5.45 acres of dry lands amounting to Rs, 82,880 and interest on saving in bank account amounting to Rs. 16,376. It is proved that prior to the check period Accused Nos. 1, 2 and 3 had no substantial income or property. Even according to the defence version, Accused No. 2 got assets amounting to Rs. 29,00,067 and Accused No. 3 got assets amounting to Rs. 11,14,772. According to Accused Nos. 2 and 3 the income is supposed to have been gifted to both of them by Accused No. 4.

The Trial Court and the High Court have dealt in detail with the evidence led by the prosecution to show the existence of the income and the purchase of properties. We are not setting out the entire evidence as in our view the following evidence would suffice to show that the prosecution has proved beyond a reasonable doubt that Accused 2 and 3 derived the income and properties during the check period.

The prosecution has led the evidence of PW10, the District Registrar, Trichy who proved that Accused No. 2 purchased a house site in her name on 10th August, 1984 for a sum of Rs. 3,23,000/-. She purchased another property, from Mr. Selvaraj, on 7th November, 1994 for a sum of Rs. 2,50,000. A third property was purchased by her, from one R. Vijay Lakshmi, on 25th February, 1995 for a sum of Rs. 3,25,000/-. In her statement under Section 313 all these purchases are admitted. The only explanation is that these were purchased from gift cheques received from Accused No. 4.

The prosecution has led the evidence of the Manager, Karur Vyasya Bank, Main Branch, Trichy. He has produced the ledger of the bank relating to the saving bank accounts standing in the name of Accused No. 2. The computer print out has been marked as Ex. P.E.5. It is shown that an amount of Rs. 10,00,000, as per pay in slips, Exs. P.40 and 41, had been deposited in the year 1993-94. Further an amount of Rs. 5,00,000 was deposited as per pay in slip Ex. P.65. On 3.3.1995 another Rs. 5,00,000 was deposited through pay in slip Ex. P.66. On the same day, yet another amount of Rs. 5,00,000

A was deposited as per pay in slip Ex. P.67. One month earlier i.e. on 2.2.1995 an amount of Rs. 5,00,000 was paid into the account through pay in slip Ex. P. 68. Thus an amount of Rs. 20,00,000 has been deposited into the account of Accused No. 2 within a period of not even 40 days i.e. 25.1.1995 to 3.3.1995.

B The prosecution has examined P.W.6, Manager of Andhra Bank, Trichy. His evidence shows that locker Nos. 122 and 32 were kept by Accused Nos. 2 and 4 jointly. These lockers were opened in presence of P.W. 23, the then Deputy Commissioner of Commercial Taxes by the Deputy Superintendent of Police, Vigilance on 2.9.1996 at about 2.30 p.m. Totally, there were 37 C items of jewels and Ex. P 114. Search list was prepared and signed by P.W.23 and PW 6. PW 34 the proprietor of Devi Jewellers, Trichy states that Accused No. 2 purchased jewels through cash bills Ex. P. 202 to 214. The various dates of purchases are 16.12.1993, 24.1.1994, 28.1.1994, 18.3.1994, 31.3.1994, 28.7.1994, 28.11.1994, 26.12.1994, 10.2.1995, 28.2.1995, 20.3.1995 and 31.3.1995. Even as per the worksheet submitted by the defence, D the total value of the jewels purchased by Accused No. 2 from M/s. Devi Jewellers is Rs. 8,88,086. Further, PW 50, the accountant of Combatore Jewellers has deposed that Accused No. 2 purchased jewels worth Rs. 84,250 on 15.3.1995. The carbon copy of bill was marked as Ex.P.265. On the same day, jewels were purchased for Rs. 18,000 as per Ex. P. 266. According to E the witness on 25.3.1995, jewels for a value of Rs. 1,46,000 were purchased as per Ex. P267, cash bill. Even as per worksheet filed by the defence from 15.3.1995 to 25.3.1995 jewels were purchased from PW 50 Combatore Jewellers for Rs. 3,08,250. When the above said evidence of PW 34 and PW 50 was put to A2 during the course of questioning her under Section 313 Cr.P.C. she admitted the above said purchase but failed to explain through F what income she purchased those jewels. She only stated at the end of her examination that she purchased movable and immovable out of the gift cheques received by her through Accused No. 4.

The prosecution has also led the evidence of P.W.10, District Registrar Trichy. This witness proved that on 25th November, 1990 Accused No. 3 G purchased property under Sale Deed Ex. P.69. Accused No. 3 also purchased another property on 24th November, 1994 under Sale Deed Ex. P.71. The above properties were of the value of Rs. 1,90,000/- and Rs. 1,95,000/-. It must be noted that Accused No. 2 had also purchased other properties from the very same party. Thus the daughter of the Appellant (i.e. Accused No. 3) H was merely a student and had no source of income had purchased properties,

paid for the stamp duty and other costs. When this fact was put to her Accused No. 3 she admitted that the purchases were made in her name. But she failed to explain the source of income from which the properties were purchased.

The prosecution has, through the evidence of T. Ramachandran (P.W.5), i.e. the Manager of Karur Vysya Bank, Main Branch, Trichy, also proved that Accused No. 3 had Saving Bank A/c in that bank. The computer print out of the ledger was marked as Ex. P.34. In that an amount of Rs. 5,00,000 was deposited on 24th November, 1994 through pay in slip Exs. P.35 and P.36. When this fact was put to her in her examination under Section 313 she admitted the accounts but said that she did not know anything about it. Even with regard to the lockers standing in her name she stated that she knew nothing about it.

The prosecution has thus proved beyond reasonable doubt that substantial wealth was acquired by Accused Nos. 2 and 3 during the check period. The only explanation given for the acquisition of this wealth was that it had been gifted to them by Accused No. 4. Both the Trial Court and the High Court have disbelieved the story of gift and concluded that these were in fact the properties held by these persons on behalf of Accused No. 1. On this basis Accused No. 1 had been convicted.

Mr. Rao has seriously assailed the Judgments of the Trial Court and the High Court. He submitted that it has been established in the High Court that Accused No. 1 himself did not have any pecuniary resources or properties disproportionate to his known sources of income. He submitted that the prosecution has miserably failed to show that the properties standing in the names of Accused Nos. 2 and 3 were held by them on behalf of Accused No. 1. He submitted that it was for the prosecution to prove beyond reasonable doubt and by means of legal evidence that these were Benami properties of Accused No. 1. Mr. Rao submitted that Accused No. 4 had been acquitted by the High Court on the ground that the prosecution has not investigated into his personal source of income. He submitted that, therefore, it could not be presumed that Accused No. 4 had no personal source of income. He submitted that Accused No. 4 was the nephew of the Appellant and, therefore, out of love and affection he had gifted the properties to Accused Nos. 2 and 3. He submitted that it was the prosecution to establish by legal and cogent evidence that the gifts were not genuine and that these were not the properties of Accused Nos. 2 and 3. He submitted that as the prosecution had miserably

A failed to discharge the burden and prove that the properties were held benami by Accused 2 and 3 on behalf of Accused 1 neither the Trial Court nor the High Court could have convicted Accused No. 1 under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act.

In support of his submission Mr. Rao relied upon the authority of this B Court in the case of *Krishnanand* v. *State of M.P.* reported in [1977] 1 SCC 816. In this case this Court has held as follows:

> "It is well settled that the burden of showing that a particular transaction is benami and the appellant owner is not the real owner always rests on the person asserting it to be so and this burden has C to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstance unerringly and reasonable raising an inference of that fact. The essence of benami is the intention of the parties and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the D person asserting the transaction to be benami of the serious onus that rests on him, nor justify the acceptance of mere conjecture or surmises as a substitute for proof. It is not enough merely to show circumstances which might create suspicion, because the court cannot decide on the basis of suspicion. It has to act on legal grounds established by E evidence."

There can be no dispute with the legal proposition. However, let us see what is meant by "Proved". Section 3 of the Evidence Act defines "Proved" as follows:

> F **"Proved".**- A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

G Further, Section 114 of the Evidence Act reads as follows:

> *"114. Court may presume existence of certain facts.*- The Court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events human conduct and public and private business, in their relation to H the facts of the particular case."

Thus the fact is said to be proved when after considering the matters before it, the Court believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exits. In coming to its belief the Court may presume existence of any fact which it thinks likely to have happened having regard to the natural course of event, human conduct and public and private business, in relation to the facts of each case.

Now, let us see the facts of this case. The prosecution has established beyond a reasonable doubt, that prior to the check period Accused Nos. 1, 2 and 3 had no real source of income, except some meager incomes, i.e. Accused No. 1 only earned a small salary as a Lecturer and Accused Nos. 2 had small agricultural and other income. Accused No. 3 being a student had no real source of income. Prior to the check period the financial condition of the family was such that Accused No. 1 could not even repay his small debts. The creditors had to recover their amounts by filing suits and executing decrees. We are presuming that Accused No. 4 had independent income. However prior to the check period Accused No. 4 had not been afflicted by any love and affection and had not made any gifts to any member of the family of the Accused No. 1. Prior to the check period Accused No 4 did not even extend help to pay off the small debts of Accused No. 1 even after the decrees had been passed against Accused No. 1. Yet suddenly, during the check period, i.e. when Accused No. 1 is a Minister, Accused No. 4 donates large sums of money to Accused Nos. 2 and 3. The natural presumption, considering the common course of natural events and human conduct is that Accused No. 1 would have used his nephew Accused No. 4 to transfer his (Accused No 1's) monies to Accused Nos. 2 and 3. This is the supposition which any prudent man under these circumstances would act upon considering the natural course of events. The Trial Court and the High Court thus rightly took this as proved by legal evidence. The prosecution having established by legal evidence that the monies were transferred by Accused 1 to Accused Nos. 2 and 3 through Accused No. 4 and that these were monies of Accused No. 1 in the hands of Accused Nos. 2 and 3, it was for the Appellant to satisfactorily account for the gifts. He could have done so by showing that even before the check period Accused No. 4 had made gifts of substantial amounts. It has not been claimed by Accused 2 and/or 3 and/or 4 that before the check period also Accused No. 4 had made any such gifts. It is also not their case that after the check period gifts were made. Thus the Trial Court and the High Court were right in not believing the case of gifts supposedly made out of a sudden brust of love and affection. Both the Trial Court and

A the High Court were right in convicting Appellant. As we are told that the State is going to file an appeal against the acquittal of Accused Nos. 2 and 3 we are not making any comments thereon.

In our view, there is no infirmity in the Order of the High Court so far as the conviction of Apellant is concerned. We see no reason to interfere.

B

Accordingly these Criminal Appeals stand dismissed. There will be no Order as to costs.

B.S. Appeals dismissed.

C