M. Krishna Reddy vs State Deupty Superintendent Of Police, ... on 17 February, 1992

Equivalent citations: AIR1993SC313, 1993CRILJ308, 1992(2)CRIMES1197(SC), JT1992(4)SC436, 1992(2)SCALE120, (1992)4SCC45, 1992(2)UJ613(SC), AIR 1993 SUPREME COURT 313, 1992 (4) SCC 45, 1992 AIR SCW 3204, 1993 CALCRILR 66, 1992 (4) JT 436, 1992 (2) UJ (SC) 613, 1992 CRIAPPR(SC) 284, 1992 SCC(CRI) 801, (1993) SC CR R 58, (1992) 3 ALLCRILR 270, (1992) 2 CRIMES 1197, (1993) MAD LJ(CRI) 1, (1992) 2 RECCRIR 481, (1992) 3 SCJ 4, (1992) 2 CURCRIR 238, (1992) 2 CRICJ 275, (1992) 29 ALLCRIC 605, (1993) 2 CHANDCRIC 225

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Bench: S. Ratnevel Pandian, R.M. Sahai

ORDER

S. Ratnavel Pandian, J.

1. The appellant M. Krishna Reddy has preferred this Criminal Appeal challenging the correctness of the judgment rendered by the High Court of Andhra Pradesh at Hyderabad in Criminal Appeal No.660 of 1988 dismissing the appeal preferred by the appellant and confirming his conviction under Section 5(1)(e) read with Section 5(2) of the Prevention of Corruption Act, 1947 as recorded by the Trial Court; but reducing the sentence of two years rigorous imprisonment to six months and enhancing the fine of Rs. 30,000/-imposed by the Trial Court to Rs. 50,000/- in default to suffer simple imprisonment for three months.

2. The appellant took his trial before the Trial Court on the accusation that he being a public servant, to wit working in various capacities under the Government of Andhra Pradesh as tracer, Draftsman, Assistant Engineer, Chief City Planner of Municipal Corporation, Hyderabad etc., during the period from 1958 to 24.8.83, acquired assets in his name and in the names of his dependents and was found in possession of pecuniary resources of property of a value of Rs. 7,02,848.00 which was disproportionate to his known sources of income.

3. As the facts of the case are well set out in the judgments of the Trial Court and the High Court, we feel that it is not necessary to proliferate the same.

4. For the disposal of this appeal it would be sufficient, if we examine the correctness of the findings of the High Court as regards the value of the disproportionate assets, the appellant is found to have been in possession. The Trial Court on the basis of the evidence produced before it, found the value of the disproportionate assets at Rs. 3,47,601.49. On appeal the High Court has reduced the value of the disproportionate assets to Rs. 2,37,842.00. Therefore, we have to now examine as to whether there is any error in the judgment of the High Court in arriving at this disproportionate assets and whether the appellant has satisfactorily accounted this alleged disproportionate assets.

5. Mr. P.P. Rao, learned senior Counsel appearing on behalf of the appellant took us very meticulously through the recorded evidence and strenuously contended that the High Court has gone wrong in rendering its finding that there is disproportionate asset to the tune of Rs. 2,37,842.00 and that the evidence available on record is more than sufficient to satisfy this Court that the High Court has committed an error in arriving at the figure by conveniently ignoring certain material pieces of evidence, standing in favour of the appellant and has also wrongly holding that some of the items of the landed properties as benami in complete violation of the law. Now we shall take up certain items of assets one by one, the value of which according to the appellant, should be deducted from the value of the disproportionate assets, as found by the High Court and find out whether the claim of the appellant is supported by reliable evidence. Before adverting to the facts of the case and considering the submissions of the learned Counsel, we shall give a brief note of the law on this subject.

6. An analysis of Section 5(1)(e) of the Act, 1947 which corresponds to Section 13(1)(e) of the new Act of 1988 shows that is not the mere acquisition of property that constitutes an offence under the provisions of the Act but it is the failure to satisfactorily account for such possession that makes the possession objectionable as offending the law.

7. To substantiate a charge under Section 3(1)(c) of the Act, the prosecution must prove the following ingredients, namely, (1) the prosecution 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 resources or property found in possession of the accused were disproportionate to his known sources of income. Once the above ingredients are satisfactorily established, the offence of criminal misconduct under Section 5(1)(e) is complete, unless the accused is able to account for such resources or property. In other words, only after the prosecution has proved the required ingredients, the burden of satisfactorily accounting for the possession of such resources or property shifts to the accused.

8. Coming to the case on hand the first item claimed to be included in the income and consequently to be deducted from the disproportionate assets is Rs. 56,240. The break up figures of this amount of Rs. 56,240 comprises of (1) Rs. 20,000 borrowed by the appellant as loan from his co-brother (PW-21); (2) another loan of Rs. 20,000 from his son-in-law Dr. K Ravindra Reddi; (3) a sum of Rs. 5,000 from his father-in-law by was of gift and (4) Rs. 11,240 from the sale proceeds of the gold necklace of the wife of the appellant. The entire amount of Rs. 56,240 was not at all given any deduction by the courts below and the claim of the appellant has been rejected. The substantiate this

claim the appellant relies upon his income tax returns as well as of Dr. K. Ravindra Reddi and the Wealth Tax returns of his wife.

9. The Trial Court for the reasons given in paragraphs 6 to 14 of its judgment has rejected this claim of deduction from the disproportionate assets.

10. The appellant has strenuously challenged the findings of the Trial Court; under ground Nos.26, 27, 29, 31, 32 and 36 of his appeal memorandum filed before the High Court which read as follows:

> 26. The learned Judge has not given any valid reasons for not accepting the evidence of P.W. 21 that he lent Rs. 20,000/- to the accused. This transaction was also shown in the Income Tax return Ex. P-155 and Ex P.111.
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> 27. The learned Judge failed to see that the loan amount of Rs. 20,000/- taken by the accused from Dr. Ravindra Reddy was spoken to by P.W. 27 and the income tax returns Ex. P.61 to P.63.
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> 29. The learned Judge failed to see that the gifts received by the wife of the accused to the tune of Rs. 8,750/- was declared in the Income Tax return for 1975-76 as is evident from Ex.P. 148.
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> 31. The learned Judge should have accepted the evidence of P.W. 14 that the accused sold necklace for Rs. 11,240/- and this item was shown in the income tax returns of the accused P-155 and Wealth Tax returns of the accused's wife P.53 to 55 and P.111.
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> 32. The learned Judge failed to see that the father-in-law of the accused advanced Rs. 5,000/ - and it was shown in Ex.P. 148 Income Tax return for 1975-76.
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> 36. The learned Judge erred in fixing the expenditure in maintenance of Scooter at Rs. 16,693/- basing on the amount claimed in I.T. returns. The standard directions in IT returns are only notional and not based on actuals.

11. In support of the above contentions, the appellant not only based his claim upon the documentary evidence - i.e. the Income Returns filed in 1982 before the search of the house of the appellant and registration of the case but also on the oral testimony of PW-27, the Income Tax Officer. PW-27 testifies that the appellant's wife Smt. Sulochana filed her Wealth Tax Returns for the assessment years 1980-81, 1981-82 and 1982-83 on 26.8.1982 under Exs. P- 53 to P-55 with enclosures; that the appellant's daughter Smt. Indira, wife of Dr. Ravindra Reddy filed her Wealth Tax Returns for the same assessment years 1980-83 on 26.8.1982 under Exs P-56 to P-58 and that the appellant's son-in-law Dr. Ravindra Reddi filed his Income Tax Returns for the assessment years 1980-1983 on 27.8.1982 under Exs.P-61 to P-63 showing the lending of Rs. 20,000/- to his father-in-law. It is pertinent to note that the search in the house of the appellant was conducted on the strength of a search warrant issued on 24.8.1983, that is one year after the submission of all the above Wealth Tax Returns and Income Tax Returns for a consolidated period of three years in 1982.

12. Dr. Ravindra Reddi had shown the loan of Rs. 20,000/- to his father-in-law namely, the appellant herein in his Income Tax Returns. Similarly PW-21 had also show the loan of Rs. 20,000/- as evidenced by his income tax returns Exs. P-155 and P-111. Besides the appellant himself had shown in his Income Tax Return Ex. P-148 the receipt of the gift of Rs. 5,000/- from his father-in-law and the sale proceeds of Rs. 11,240/- obtained by the sale of the gold necklace of his wife was shown in his wife's Wealth Tax Returns Exs. P-53 to P-55. The learned Counsel for the respondent is not able to challenge the above Wealth Tax and Income Tax returns, evidently for the reason that he could not do so in the fact of the unimpeachable documents. As rightly contended by Mr. P.P. Rao, these documents could not have been manipulated and concocted anticipating this prosecution in 1983.

13. The Trial Court has brushed aside this piece of evidence on the ground that the daughter and son-in-law, Dr. Ravindra Reddi had only little experience during that period; that they had submitted their income tax returns for a consolidated period of three years in 1982 and therefore the case of the appellant that he got a loan of Rs. 20,000/- from Dr. Ravindra Reddi is not acceptable. This reasoning is based on mere conjectures or surmise. As repeatedly pointed out earlier, the raid was in 1983 and so, there could not be any conceivable reason even to entertain any suspicion or surmise.

14. We are unable to appreciate that reasoning and hold that the prosecution has not satisfactorily discharged the expected burden of proof in disproving the claim of the appellant. Therefore, on the fact of these unassailable documents i.e. the wealth tax and income tax returns, we hold that the appellant is entitled to have a deduction of Rs. 56,240.00 from the disproportionate assets of Rs. 2,37,842/-.

15. The next plea advanced by the learned Counsel is for a deduction of Rs. 65,857.06 which reflects the value of the gold ornaments which according to the appellant belong to his married daughter and wife as Stridhana. What the appellant would state is that gold jewellery worth Rs. 32,607.06 belonged to his wife as stridhana and the remaining gold jewellery worth Rs. 33,250/- belong to his married daughter Dr. Indira. In support of his defence that gold jewellery does belong to his wife as stridhana, reliance was placed on the evidence of PWs 51, 21, 27 and 40 and Exs. P-45, 46, 53-55. To substantiate the case that certain gold jewellery belonged to his daughter, Indira, the appellant placed reliance on the evidence of PWs 17, 23 and 27 and Exs.56, 57 and 58. Of the witnesses examined, PWs 23 and 40 were treated as hostile. When we go through the evidence of these witnesses and documents, we are of the opinion that the defence case of the appellant is well founded. The prosecution cannot be allowed to say that the oral and documentary evidence should not be accepted, especially when the witnesses barring witness Nos.23 and 40 have not been treated by the prosecution as hostile witnesses. Admittedly, the jewellery which are claimed to be belonging to Dr. Indira were found kept in a separate locker in the bank standing in the name of Dr. Indira. Mr. Madhava Reddy, learned senior counsel appearing on behalf of the respondent would urge that since the key of the locker was seized from the house of the appellant, it can be legitimately presumed that it was the father who had been keeping the gold jewellery in the locker, though it stood in the name of his daughter as benami. This contention of Mr. Madhava Reddy was opposed by Mr. P.P. Rao stating firstly that the locker could not be opened except by Dr. Indira in whose

name the locker stood. Secondly, Dr. Indira was living with her husband at Pittance which is 30 Kms. away from Hyderabad where the jewellery were kept in the bank. According to Mr. Madhava Reddy, even the mother of Dr. Indira, namely, the wife of the appellant was also allowed to operate the locker. Taking into consideration of the relationship of the parties, we feel that there is nothing strange in the conduct of the daughter handing over the key to her mother at Hyderabad and also authorising her to operate the locker in the bank. Whatever it may be that nothing adverse can be safely inferred that the daughter was holding this jewellery as benami for her father. To rebut the case of the appellant that the certain jewellery was Stridhana, we do not find any material on the side of the prosecution. The evidence led by the appellant to substantiate that the jewellery of his wife were Stridhana are more acceptable. Under these circumstances, we are unable to agree with the finding of the High Court and on the other hand, we hold that the sum of Rs. 65,857.06 representing the value of the gold jewellery should be given a deduction from the value of the disproportionate assets.

16. The next claim of deduction is Rs. 86,998.22 standing to the credit of Dr. Indira and deposited in her savings bank account. According to the prosecution, the amount was deposited then and there by the wife of the appellant as spoken to by PW-40. Admittedly, Dr. Indira is an income tax assessee.

17. PW-10 who was working as a 'Kamati' in the Municipal Corporation of Hyderabad has stated in the chief examination that he had deposited certain amounts in various banks in the account of Dr. Indira on being given and at the instance of the wife of the appellant. He files Exs. P-27 to 35 (i.e. paying in slip). In the cross examination this witness had given a complete go by stating that:

> The amount to be deposited to the account of Indira Reddi was given normally by Indira Reddi and occasionally by her mother.

18. After the cross-examination, PW-10 was treated as hostile with the permission of the Trial Court. Further in the chief examination, it has been brought out that PW-10 had deposited Rs. 100 to Rs. 200 per month in the account of Dr. Ravindra Reddy during 1981-82; but Ravindra Reddy's account is not produced to corroborate the evidence of PW-10. In view of the evidence that the amount was used to be given by Dr. Indira Reddi herself on many oceasions, we are of the view that Exs.P-27 to 35 will not help the prosecution in establishing the allegation that the entire amount was deposited only by the appellant's wife to the credit of Dr. Indira. However, we are not impressed by the evidence of PW-10. Therefore, we do not find any force in the submission made by the prosecution that this amount standing to the credit of Dr. Indira was benami and that the ostensible owner of the amount was only the appellant.

19. Needless to say that this Court on a series of decisions have laid down the guidelines in finding out the benami nature of a transaction. Though it is not necessary to cite all those decisions, it will suffice to refer to the rule laid down by Bhagwati, J. as he then was in Krishnanand Agnihotri v. State of M.P. . In that case, it was contended that the amounts lying in fixed deposit in the name of one Shanti Devi was an asset belonging to the appellant and that Shanti Devi was a benamidar of the appellant. The learned Judge speaking for the Bench has disposed of that contention holding thus:

> It is well settled that the burden of showing that a particular transaction is banami and the owner is not the real owner always rests on the person asserting it to be so and this burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence 6f 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 person asserting the transaction to be benami of the serious onus that rests on him nor justify the acceptance of mere conjectures or surmises as a substitute for proof.

20. When the facts of the present case arc tested in the light of the principle laid down in the above case, the case of benami transaction alleged by the prosecution has to fail. For the discussion made above, a total amount of Rs. 209,095.28 is to be deducted from the value of the disproportionate assets of Rs. 2,37,842 as found by the High Court.

21. According to the High Court, the value of the disproportionate assets was at Rs. 2,37,842.00 after giving the 10% margin on the total income of the appellant. As we have now held that a sum of Rs. 56,240.00 should be treated as income of the appellant both on account of loan as well as gift and sale of gold necklace, and added to the total income of Rs. 9,43,961.87 as found by the High Court, the total income would amount to Rs. 10,00,201.87. On this calculation, the 1.0% margin which the High Court itself was inclined to give would come to nearly about Rs. 1 lakh. The High Court has deducted only a sum of Rs. 94,396.18 by granting 10% margin on the total income. As we have not held that the 10% margin on the present calculation would be Rs. 1 lakh, a further deduction of Rs. 6,000/- should be made on the 10% margin. Then the total value of the disproportionate assets would come down to Rs. 28,746.72 less Rs. 6,000.00 which would work out at Rs. 22,746.72 which amount alone would be, if at all, the disproportionate assets.

22. Mr. Rao would emphatically urge that if this Court takes into consideration the total expenditure as claimed by the appellant which is far less than the total expenditure as found by the High Court, there will not be any asset to be explained at all. He further adds that the estimated calculation of expenditure will always be subject to a margin of error on either side because such a calculation is made only on hypothetically premises and not with any accurate and mathematical precision or on any scientific data. According to him no one can be expected nor could it be possible or practicable to account the family day to day expenditure by vouchers and bills. While according to the High Court the total expenditure would be Rs. 3,69,708.23 the appellant states that the expenditure was only Rs. 2,94,432.23 during the relevant period in question. In the calculation of the expenditure on the claim of the appellant, there will be a difference of Rs. 75,276.00. Secondly, Mr. Rao would state that the High Court while evaluating the gold ornaments have taken only the average value over a period but has not taken the value of the gold as on the date of acquisition as Stridbana. This submission was opposed by Mr. Madhav Reddi submitting that in the absence of any specific evidence about the date of acquisition of the gold jewellery it would not be possible for the prosecution to give the value of the gold as on that date.

23. In addition, Mr. Rao fervently pleaded that the appellant is entitled for the benefit of the Government Memo No.700/SC D/88-4 dated 13.2.89 issued by the Government of Andhra Pradesh giving certain guidelines to the Anti Corruption Bureau to give allowance of a reasonable margin of 20% on the total income of a Government servant while computing disproportionate assets.

In support of his plea he had placed reliance on the judgment of a single Judge of the High Court of Andhra Pradesh rendered in Criminal Appeal No.450 of 1989.5. Thiremolaiah v. State of A.P. Inspector of Police II A.C. B. Karnool Range, Karnool in which the learned Judge has given the benefit of this Government Memo to the appellant therein though the appellant in that case was prosecuted in the year 1983, that is 6 years before the issue of this Memo as in the case on hand. The Government Memo relied on by the learned Counsel is only a guideline for the anti corruption Bureau in computing disproportionate assets of a Government servant. Be that as it may, we do not like to express any opinion on the applicability of the Government Memo by laying down any proposition of law based upon it. Last but not the least, he drew our attention to Ex.D-2 the letter dated 19.8.83 forwarded by the Special Officer. Municipal Corporation of Hyderabad to the Secretary of the Government Housing, Municipal Administration & Urban Development Department, A.P. Secretariat, Hyderabad by which the Special Officer has informed the Government that the appellant was a sincere and honest officer and that he by evicting the unauthorised occupation and demolishing the unauthorised construction of multi-storied buildings of many rich people had incurred a wrath of a section of the rich and influential people and that the appellant was enjoying a good reputation and his confidential report was very good throughout, besides enjoying the high estimation of his superior officers. Our attention was drawn to the evidence of PW.33 who was then the Secretary of the Municipal Department, A.P. Government and who in the cross examination has testified to the fact that the appellant had demolished many unauthorised and multistoried buildings and that the Government did not feel it necessary to suspend him even after the raid in his house was conducted.

24. On the face of the totality of the above circumstances and the cumulative effect thereof according to Mr. P.P. Rao, the prosecution cannot be said to have successfully fixed the criminality under Section 5(1)(e) of the on the appellant who had completed an unblemished service well for over a period of 25 learned Counsel, we feel that the conviction recorded by the High Court affirming the judgment of the Trial Court sentencing the appellant under Section 5(1)(e) read with 5(2) of the Act and the sentence imposed there for cannot be sustained and are liable to be set aside.

25. In the result, the appeal is allowed and the sentence of imprisonment and the fine are set aside and the fine amount if already paid is directed to be refunded to the appellant.