

Kedari Lal vs State Of Mp on 23 March, 2015

Equivalent citations: 2015 AIR SCW 4413, 2015 (14) SCC 505, AIR 2015 SC(CRI) 1643, AIR 2015 SC (SUPP) 2159, 2015 CRILR(SC MAH GUJ) 518, 2016 (2) SCC (CRI) 399, (2015) 149 ALLINDCAS 79 (SC), (2015) 3 DLT(CRL) 324, (2015) 3 ALLCRILR 56, (2015) 2 CURCRIR 148, (2015) 61 OCR 733, (2015) 2 CRILR(RAJ) 518, (2015) 89 ALLCRIC 633, (2015) 4 SCALE 175, (2015) 2 RECCRIR 477, 2015 CRILR(SC&MP) 518, (2015) 2 CRIMES 142

Author: Uday Umesh Lalit

Bench: Uday Umesh Lalit, Dipak Misra

Non-Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.782 OF 2011

KEDARI LAL

.... Appellant

Versus

STATE OF M.P. AND ORS.

.... Respondents

J U D G M E N T

Uday Umesh Lalit, J.

1. This appeal seeks to challenge the judgment and order dated 16.12.2010 passed by the High Court of Madhya Pradesh, Bench at Gwalior in Criminal Appeal No. 58 of 2006 dismissing the appeal and affirming the judgment of conviction recorded by the Special Judge (Prevention of Corruption Act) Shiv Puri, Madhya Pradesh in Special Sessions Trial No. 4 of 1996 against the appellant herein.

2. The appellant joined the services of Public Health Engineering Department of the State of Madhya Pradesh on 15.07.1978 as Assistant Engineer and thereafter served in various capacities. According to the prosecution, during the period of 15.07.1978 to 9.02.1994, the appellant had earned total amount of Rs.3,86, 966/- as public servant but he was found to be in possession of assets worth Rs.7,97,243/- at the end of that period and as such he was in possession of assets

disproportionate to his known sources of income to the tune of Rs.4,08,077/-. Accordingly Crime No. 17 of 1994 was registered on 9.02.1994 by the Special Police Establishment, Lokayukta Sanghathan for the offence punishable under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (the Act, for short). After conducting appropriate investigation chargesheet was filed and the appellant was accordingly charged and tried.

3. The prosecution in support of its case examined 10 witnesses. The defence of the appellant was that:-

(i) On the occasion of his marriage he had received gifts from his in-

laws, (ii) he had received certain sums as and by way of his share in family partition, (iii) he had received bequest under the will executed by his mother, and (iv) he had taken loan or advances for purchase of plot and construction from his relations and friends. It was submitted that every such receipt was duly intimated by him to the department. The details of such receipt and intimation as submitted, are as under:-

On 16.04.1984, the appellant got married and had received gifts from his in- laws such as Fridge, Colour TV, Sofa Set, Almirah, which fact was intimated to the Department vide letter dated 25.04.1984.

In 1987, in terms of the family partition that took place, an amount of Rs.1,45,000/- was agreed to be given to the appellant by his father. The father of the appellant gave an amount of Rs.60,000/- which was intimated by him to his Department vide letter dated 10.05.1987.

The balance amount was remitted to the appellant vide two Bank Drafts of Rs.45,000/- and Rs.40,000/- and the same was intimated to the Department vide letter dated 14.11.1991.

In the year 1987, the appellant wanted to purchase a plot of land, for which he took a loan of Rs.20,000/- from PW-6 Ramji Lal Agarwal, a friend and resident of the same area, which was intimated to the Department vide letter dated 03.09.1987.

In the year 1988-1989, the appellant had applied for a construction loan which had not been sanctioned by the Department till then. To ensure continuous construction work, he took loans or received gifts from his close relative, details of which were reflected in his letter to the department dated 15.12.1989. The details being:-

On 09.09.1988 and 01.04.1989 he received gifts in cash of the amounts Rs.20,000/- and Rs.15,000/- from his brother PW 7 Brij Narayan and on 03.12.1988 and 10.04.1989 he received gifts of Rs.20,000/- and Rs.15,000/-

in cash from his other brother PW5 Gopal Agarwal.

(ii) Furthermore, he took a loan of Rs.75,000/- from M/S Radhaballabh Dal Mills, a company in which PW 5 Gopal Agarwal his brother was a partner and the loan was given through a cheque.

On 17.01.1991 the mother of the appellant passed away leaving behind a will under which the appellant received an amount Rs.50,672/- which fact was intimated to the Department vide letter dated 14.11.1991.

In the year 1993, in order to purchase a gun, the appellant took a loan of Rs.10,000/- from his brother-in-law PW1 Kapoor Chand which fact was intimated by him to the Department vide letter dated 15.03.1993.

4. The appellant had thus intimated the department on every occasion that he received any advance or gifts or share in partition or entitlement by way of bequest. These facts are spoken to by various prosecution witnesses. Moreover, the appellant had filed his Income Tax Return on 28.09.1992, which clearly reflected the details of the loan transactions and the amounts that he had received. Copy of the Income Tax Return was also filed with the department on 5.01.1994, well before the present F.I.R. was filed on 9.02.1994. The appellant submitted that if these amounts which were duly intimated and stood reflected in his Income Tax Returns were to be taken into account, the alleged disproportionate assets would not be to the tune of Rs.4,08,077/- but would stand reduced to the sum of Rs.37,605/-.

5. The Trial Court held that the prosecution had established the case against the appellant and thus by its judgment and order dated 30.12.2005 convicted the appellant under Section 13(1)(e) read with Section 13 (2) of the Act and sentenced him to suffer 3 years rigorous imprisonment and a fine of Rs. 15,000 in default whereof to undergo further sentence of rigorous imprisonment for 1 year.

6. While dealing with Criminal Appeal preferred by the appellant, the High Court took the view that Rules 14, 17 and 19 of the M.P. Civil Services (Conduct) Rules, 1965 ("the Rules" for short) prohibit the public servant from accepting gifts or loan except in the manner prescribed therein. It was observed that given the expression "known sources of income" appearing under Section 13(1)(e) of the Act, the income must be such which was received from lawful source and that it must be in compliance of the Rules as well. The High Court held disclosure of receipt of money in the Income Tax Returns was of no assistance to the appellant unless the Rules were duly complied with. The High Court thus affirmed the view taken by the Trial Court and dismissed the appeal confirming the sentence.

7. The correctness of the judgment passed by the High Court is challenged in this appeal by Special Leave. During the pendency of this appeal, this court was pleased to direct the release of the appellant on bail.

8. Appearing in support of the appeal, Mr. Siddharth Luthra, learned Senior Counsel submitted that every receipt of amount was duly intimated by the appellant to the department contemporaneously and such amounts were also reflected in his Income Tax Report, filed well before the initiation of the prosecution in the instant case. It was further submitted that after taking into account the amount

so intimated, the balance of Rs. 37,605 at best remains unexplained. But such amount being less than 10% of the total income, the appellant was entitled to the benefit in terms of decisions of this Court.

9. Mr. C. D. Singh, learned advocate appearing for the State supported the view taken by the court below. Relying upon the decision of this court in N. Ramakrishnaiah (D) through LR's Vs. State of A.P.[1], it was submitted that the loans and gifts received by the petitioner would not constitute "known sources of income" as defined under Section 13(1) (e) of the Act.

10. The expression "known sources of income" in Section 13(1) (e) of the Act has two elements, first the income must be received from a lawful source and secondly the receipt of such income must have been intimated in accordance with the provisions of law, rules or orders for the time being applicable to the public servant. In N. Ramakrishnaiah (Supra), while dealing with said expression, it was observed:-

"...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 (1) his property, or (b) his investment."

The categories so enumerated are illustrative. Receipt by way of share in the partition of ancestral property or bequest under a will or advances from close relations would come within the expression "known sources of income" provided the second condition stands fulfilled that is to say, such receipts were duly intimated to the authorities as prescribed.

11. We have gone through Rules 14, 17 and 19 of the Rules. Rule 14 lays down that a government servant on occasions such as weddings, anniversaries or religious functions may accept gifts up to certain limit, if he makes a report of such fact to the Government within a period of one month. Sub Rules (4) and (5) provide inter alia, that in any other case, the government servant shall not accept any gift without the sanction of the Government and if the gift exceeds Rs. 2000, except through an account payee cheque. Rule 17 deals with investment, lending and borrowing and provides inter alia that Government Servant may give to, or accept from a relation or a personal friend, a purely temporary loan. Rule 19 lays down that the government servant must intimate the details of property inherited or acquired by the Govt. Servant. There is no absolute embargo or prohibition in the Rules and all that is required is sanction or permission from the Government.

12. In the instant case, every single amount received by the appellant has been proved on record through the testimony of the witnesses and is also supported by contemporaneous documents and intimations to the Government. It is not the case that the receipts so projected were bogus or was part of a calculated device. The fact that these amounts were actually received from the sources so named is not in dispute. Furthermore, these amounts are well reflected in the Income Tax Returns filed by the appellant. In similar circumstances, the acquisitions being reflected in Income Tax Returns weighed with this court in granting relief to the public servant. In M. Krishana Reddy Vs. State[2]. It was observed in Para 14 :-

".....Therefore, on the face 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/- from the disproportionate assets of Rs.2,37,842/-."

Similarly in D.S.P Chennai Vs. K. Ibasagarain[3], the fact that the money was treated in the hands of the wife of the public servant and that she was assessed by the Income Tax Department was taken note of while accepting the explanation given by the public servant.

13. If the amounts in question, which were duly intimated and are reflected in the Income Tax Return are thus deducted, the alleged disproportionate assets stand reduced to Rs. 37,605, which is less than 10 % of the income of the Appellant. In Krishnanand Vs. State of Madhya Pradesh[4] and in M. Krishna Reddy (Supra), this court had granted benefit to the public servants in similar circumstances. We respectfully follow said decisions.

14. In our view there is no violation of Section 13(1)(e) read with Section 13(2) of the Act. We, therefore, set aside the judgment and order in appeal and acquit the appellant of the charges leveled against him. The appeal thus succeeds and is allowed. The appellant is already on bail. The bail bonds shall stand discharged.

.....J. (Dipak Misra)J. (Uday Umesh Lalit) New Delhi, March 23, 2015 ITEM NO.1D COURT NO.12 SECTION IIA S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS Criminal Appeal No(s). 782/2011 KEDARI LAL Appellant(s) VERSUS STATE OF M.P. Respondent(s) Date : 23/03/2015 This appeal was called on for pronouncement of judgment today.

For Appellant(s) Mr. Sidharth Luthra, Sr. Adv.

Ms. Sopriya Uneja, Adv.

Ms. Shradha Karol, Adv.

Mr. Vipin Kumar Saxena, Adv.

Mr. Rajeev K. Sinha, Adv.

Mr. Anoop Kr. Srivastav, Adv.

For Respondent(s) Mr. C. D. Singh, Adv.
Mr. Darpan Bhuyan, Adv.

Hon'ble Mr. Justice Uday Umesh Lalit pronounced the non-reportable judgment of the Bench comprising Hon'ble Mr. Justice Dipak Misra and His Lordship.

The appeal is allowed. The appellant is already on bail. The bail bonds shall stand discharged in terms of the signed non-reportable judgment.

(R. NATARAJAN)
Court Master

(SNEH LATA SHARMA)
Court Master

(Signed non-reportable judgment is placed on the file)

- [1] 2008 (17) SCC 83
- [2] 1992(4) SCC 49
- [3] 2006 (1) SCC 420
- [4] 1977 (1) SCC 816