P. Satyanarayan Murty vs State Of Andhra Pradesh on 22 July, 1992

Equivalent citations: 1992(3)CRIMES36(SC), JT1992(4)SC454, 1992(2)SCALE134, (1992)4SCC39, AIRONLINE 1992 SC 48, 1992 (4) SCC 39, 2003 CRI LJ 166, (1992) 3 CRIMES 36, (1992) 3 SCJ 41, 1993 CHAND LR (CIV&CRI) 100, (1992) 2 CUR CRI R 231, (1992) 2 LAB LN 411, (1992) 3 ALL CRI LR 276, (1992) 2 CRI CJ 268, (1993) 1 CUR LJ (CIV&CRI) 689, (1992) 4 JT 454, (1992) 2 LS 9, 1992 SCC (CRI) 795, (1993) 1 CURLJ(CCR) 689, (1992) 4 JT 454 (SC), (2003) 1 ALD(CRL) 395, (2003) 1 ANDHLT(CRI) 330, (2003) 2 FAC 345

Author: S. Ratnavel Pandian

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

JUDGMENT

S. Ratnavel Pandian, J.

1. This appeal is directed by the appellant Mr. P. Satyanarayan Murty challenging the correctness of the judgment made in Criminal Appeal No. 1150 of 1987 on the file of the High Court of Andhra Pradesh dismissing the appeal and confirming the conviction of the appellant under Section 5(1)(e) read with Section 5(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as the Act) but reducing the sentence of imprisonment from two years to till rising of the court while retaining the fine of Rs. 20,000/- in default to suffer simple imprisonment for six months.

2. The charge against the appellant is that the appellant being a public servant employed as Assistant Agricultural Officer in Agricultural Department during 1966 and June 1977 and thereafter as Regional Transport Officer between 25.6.77 and 15.9.83, in the Transport Department acquired assets which were disproportionate to his known sources of income and that he was found in possession of pecuniary resources of property in his name and the names of his father P. Venkata Reddy and his wife Smt. P. Satyavathi Devi of a value of Rs. 5,39,050.64 for which he could not give satisfactory account. The facts of the case are set out in detail in the judgments of the Trial Court and the High Court. Hence we feel that it is not necessary to repeat the same in its entirety.

3. For the disposal of the appeal, it would be sufficient if we examine the correctness of the finding of the High Court, according to which the total unaccounted disproportionate asset was to the value of Rs. 93,937.24 as against the finding of the Trial Court at Rs. 2,27,937.24. As rightly pointed out by

Shri P.P. Rao, the learned senior counsel for the appellant the questions that arise for consideration are (1) whether the finding of the High Court is supported by legal evidence and (2) whether the appellant has satisfactorily accounted his" total asset, thereby showing that there is no disproportionate asset.

4. According to the learned Counsel for the appellant, the High Court has failed to appreciate the evidence in the proper prospective with reference to the documentary evidence but on the other hand it has conveniently omitted some material part of the evidence which evidence if taken into consideration would explain the assets of the appellant. He further submits that the finding of the High Court that certain items of properties, standing in the names of the appellant's father and wife are benami in nature and the ostensible owner of these properties is only the appellant is totally opposed to both oral and documentary evidence. Mr. Rao gave a detailed not showing certain amounts under four heads, totalling upto Rs. 97,968/- which, according to him, ought to have been deducted from the total value of the assets of the appellant. The are:

> (1) error in the calculation of sinking of the well Rs. 11,686/- (2) the error committed in calculating the income from leasehold land 42,282/- (3) the failure on the part of the courts below to take into consideration of the income from the agricultural produce namely pulses and to add that income to his known sources of income Rs.15,000/- (4) the value of the assets wrongly included on the ground of benami transaction Rs. 29,000/ _____ Total: Rs.97,968/- _____

5. According to the learned Counsel, if the above total sum of Rs. 97,968/- is deducted from the total value of the appellant's asset the entire alleged disproportion of assets not only gets wiped out, but also the appellant will be left with a surplus of Rs. 4030.76, even without giving the margin of 10% of the total income which, according to the teamed counsel, would work out to Rs. 51,696-67.

6. We shall now scrutinise whether the contentions of the learned Counsel are supported by cogent and reliable evidence and whether there is any error committed by the courts below in calculating the assets of the appellant.

7. First of all we take up the plea that there is an error in calculating the expenditure in sinking a well, met by the appellant and that a sum of Rs. 11686/- is excessively shown as having been expended. According to the Deputy Executive Engineer examined as PW-27 the total estimate for the excavation of well, bore in the well, installation of a pump-shed and construction of a tile house would come to Rs. 34,239.00 and that the cost of the portion of the work for excavation of the earthen well alone would come to Rs. 29.968/- in accordance with data of Public Works Department. Contrary to PW-27's evidence, PW-51, the person who actually carried out the work has stated on oath that the actual expenditure on the excavation of the well was Rs. 9300/-. In support of his oral evidence, he has produced the document, Ex.P-160. One should not loose sight of the fact that it is only the prosecution which has examined the PW-51 and filed Ex.P-160 as a prosecution document. PW-51 has not been treated as hostile. On the other hand, the prosecution rests upon the evidence of PW-51. Therefore, the prosecution cannot be permitted to blow hot and cold, that is to say, through PW-27 that a sum of Rs. 29.986/ - had been expended by the appellant

for excavation of the well and then by the next berth through PW-51 that the actual expenditure was Rs. 9,300/-. As pointed out supra PW-27 has based his opinion only on a hypothesis, that is on the basis of the PWD data. When there is unassailable evidence of PW-51, vouched by documentary evidence i.e. Ex.P-160, the undeniable conclusion would be that the actual expenditure meted out by the appellant on this head was only Rs. 9,300/-. On that finding, a sum of Rs. 11,686.- has to be excluded from the total value of the alleged total disproportionate assets.

8. The next one relates to the error committed in calculating the income from the leasehold land as well as the inclusion of Rs. 29.000/- as an asset on the alleged benami transaction. These two items are mentioned as item Nos. 2 and 4 in the above note. First of all. we shall deal with the finding of the court that the landed properties, standing in the names of the father and wife of the appellant really belong to the appellant and all those purchases are benami in nature. 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 benami 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 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 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.

9. Now coming to the case on hand as regards the purchase of the properties in the name of his father P. Venkata Reddy and his wife Smt. P. Satyavathi Devi, it is clear from the records that the 1st item of property in the list of assets was purchased by the appellant's father in the year 1973 in which year he retired from his service as a school teacher. It is borne out from the records that the father received a sum of Rs. 2,995/- from his GPF account and gratuity of Rs. 3075/- (vide the evidence of PW-50, the senior Accountant of the Sub-Treasury Office). In the year 1973, the appellant was working in the Agricultural Department as an Assistant Agricultural Officer and had hardly put in service for a period of seven years by that time.

10. Taking into consideration of the above evidence, we hold that the finding of the courts below that this purchase is benami cannot be accepted. On the face of the records, it cannot be said that the father of the appellant was having no means to purchase this item of property after having been in service for a long period as teacher and too after having received his GPF as well as gratuity in the year 1973 in which year the property was purchased. According to the prosecution, the purchase of

the agricultural dry land to the extent of Acres 6.40 cents for a sum of Rs. 1,65,000/- under a document dated 17.7.80 in the name of the appellant's father is a benami transaction and the ostensible owner of the property is the appellant. Though the Trial Court has accepted this case of the prosecution and held that this property for a sum of Rs. 1,65,000/- was a benami transaction, the High Court has set aside that finding. However, it has recorded its conclusion holding that the consideration on the benami transaction would be only to the extent of Rs. 29,000/-. The relevant portion of the observation of the High Court reads thus:

> The consideration of Rs. 29,000/- and the expenses for stamp etc. will be about Rs. 2,000/- and the total amount will come to Rs. 31,000/- as against Rs. 1,65,000/-. The amount of Rs. 29,000/- is accepted and the finding of the lower court that the value of the assets at Rs. 1,65,000/- is set aside.
>
> But in the penultimate part of its judgment, the High Court has observed thus:
>
> In this case there is any amount of doubt with regard to the consideration of Rs. 1,65,000/- paid towards land at Needigatla, but as the prosecution has not proved beyond reasonable doubt as it is a case of benami even though the trial court accepted the same, I gave the benefit of doubt and excluded a major portion of the amount.
>
> It is surprising that the High Court after having found that the benami transaction has not been proved and excluded the major portion of the amount and included a sum of Rs. 29,000/- without any conceivable reason. Therefore, in the light of the above self-contradictory observations the finding of the High Court, adding Rs. 29,000/- to the total assets of the appellant cannot be sustained and it is liable to be set aside and this amount of Rs. 29,000/- has to be deducted from the total value of the disproportionate assets.

11. In view of our above finding that there is no benami transaction, it necessarily follows that the sum of Rs. 42.282/- to be added to the income of the appellant from the leasehold land. The above amount of Rs. 42,282/- is calculated on the basis of the income for 10 years from the lease hold lands of 2.67 acres at the rate of Rs. 3,269/- per acre (as concurrently found by the lower Courts) which amounts to Rs. 87,282/-. Deducting Rs. 20.000/- towards the rent for the lease for 10 years, the net income would be Rs. 67,282/-. The courts below have allowed Rs. 25,000/-. On the above calculation a sum of Rs. 42,282/- (i.e. , Rs. 67.282/- less Rs. 25.000/- is to be added to the total income of the appellant to which he is entitled to.

12. The claim of the last item is the income from the sale of pulses from the agricultural land. The appellant claimed a sum of Rs. 15,000/- as his income on this account. Both the courts below have not accepted the claim of the appellant but rejected by saying that it was only fodder crop. Admittedly, there is no evidence that it was fodder crop. On the contrary the evidence is that pulse was produced from the agricultural land. Hence we have no hesitation adding the sum of Rs. 15,000/- on this account to his total income. Therefore, on the four heads which we have indicated above the appellant would be entitled to have an inclusion of a sum of Rs. 57,282/- to his total

income and an exclusion of Rs. 40,686/- from the value of his disproportionate assets. In other words, we must exclude a total sum of Rs. 97,968/- from the alleged value of the disproportionate assets as found by the high Court in computing the total assets belonging to the appellant. On the basis of the above calculation, there will be a surplus of Rs. 4030.76. This exclusion is without giving the margin of 10%. The High Court was not inclined to give this margin of 10% observing.

If that doubt is entertained that some more money has not been accounted for the accused is not entitled for the benefit of 10% rebate.

As we have now found that a sum of Rs. 97,968/- has to be deducted from the total value of the alleged disproportionate assets of Rs. 93,937.24 as found by the High Court even without giving 10% margin, the accused would be entitled for an acquittal on the ground that the prosecution has not satisfactorily established that the appellant was holding assets disproportionate to his known sources of income. On the other hand, there will be a surplus of Rs. 4030.76.

13. In the result, we set aside the conviction of the appellant under Section 5(1)(e) read with Section 5(2) of the Prevention of Corruption Act, 1947 and the sentence of imprisonment and fine imposed therefor. The fine amount if already paid is directed to be refunded. Accordingly, the appeal is allowed.