

Before Harbans Lal, J.

JASWANT SINGH,—Appellant

versus

STATE OF PUNJAB,—Respondent

CrI. A No. 1497/SB of 2005

4th April, 2008

Prevention of Corruption Act, 1988—S. 13(e)—Property disproportionate to known sources of income proved—Burden of accounting for possession of such resources/property shifts on appellant—Appellant failing to discharge it—No interference in findings of trial Court holding appellant guilty u/s 13(e)—However, sentence reduced to one year keeping in view that appellant undergoing agony of trial for 8 years.

Held, that the prosecution has been able to prove that the pecuniary resources/property found in possession of the appellant were disproportionate to his known sources of income. Thus, the burden of satisfactorily accounting for the possession of such resources or property shifts on to the appellant, who has not discharged it.

(Para 15)

Further held, that the prosecution has been able to bring home guilt against the appellant under Section 13(e) of the Act. As such, no interference is warranted in the findings returned by the learned trial Court holding the appellant guilty under Section 13(e) *ibid*. So the conviction is upheld.

(Paras 16)

G. S. Sandhawalia, Advocate *for the appellant*.

Tejinder Singh, Deputy Advocate General, *Punjab for the respondent-State*.

HARBANS LAL, J.

(1) This appeal is directed against the judgment/order of sentence dated 11th August, 2005 passed by the Court of learned Judge, Special Court, Jalandhar, whereby he convicted and sentenced Jaswant Singh, accused-appellant to undergo rigorous imprisonment for two years and to pay a fine of Rs. 5,000 and in default of payment of fine, to further undergo rigorous imprisonment for six months under Section 13(e) of the Prevention of Corruption Act, 1988 (hereinafter to be referred to as 'the Act').

(2) Succinctly put the facts of the prosecution case are that on 6th December, 2000, Ms. Gurpreet Deol, IPS, the then Superintendent of Police, Vigilance Bureau, Jalandhar, received information from reliable sources that Jaswant Singh, Panchayat Secretary Mandiala, Police Station, Mehatpur, has amassed wealth by accepting illegal gratification and during the period from 1st October, 1991 to 31st December, 1998, he had spent Rs. 16,83,062, whereas his actual income from his known sources was Rs. 6,86,176. Thus, he has spent Rs. 9,96,086 which he had accumulated by accepting illegal gratification as a public servant. She was also informed that Jaswant Singh had built two houses besides his having purchased certain plots in the name of his wife and a Maruti Car by misusing his position as a public servant. On the basis of this information, Ruqa was sent for registration of the case. On its basis, FIR was recorded. The accused was arrested. After completion of investigation, the charge sheet was laid in the Court for trial of the accused.

(3) The accused was charged under Section 13(e) of the Act to which he did not plead guilty and claimed trial.

(4) To bring home guilt against the accused, the prosecution has examined Piara Singh, PW-1, Accounts Officer, Telecom Department, Jalandhar, PW-2 Surjit Ram, Transport Clerk, Office of SDM Nakodar, PW-3 Bhinder Singh, Senior Assistant, Rural Development and Panchayat, Punjab, Chandigarh, PW-4 Amarjit Singh, Junior Assistant, Rural Development and Panchayat Department, Shahkot, PW-5 Charanjit Singh, Superintendent, Panchayat Samiti, Rurka Kalan, PW-6 Brijmohan Sehgal,

Senior Assistant, Tehsil Office, Nakodar, PW-7 Surinder Kumar, Clerk, Office of SP Vigilance, Jalandhar, PW-8 Mangal Singh, PW-9 Harnek Singh, Inspector Vigilance Bureau, Jalandhar, PW-10 Hardev Singh, Seed Testing Officer, Gurdaspur, PW-11 Naval Chander Bhalla, Manager, The Nakodar Hindu Urban Cooperative Bank, Nakodar, PW-12 Gurmej Singh, PW-13 Ram Asra, Accountant, Officer of the Block Development and Panchayat Office, Block Nakodar, PW-14 Kulbir Singh, SDO Rural Works, Sub-Division, Kapurthala, PW-15 Mohan Singh, Assistant Manager, State Bank of Patiala, Goraya, PW-16 Jagtar Singh, PW-17 Harmesh Chander Sharma, Superintendent, DDPO Office, Rurka Kalan, PW-18 Vikram Nayyar, Revenue Accountant, Model Town Region, Ludhiana, PW-19 Gurdip Singh Sidhu, Ex-Senior Manager, Punjab and Sind Bank, Nakodar, PW-20 Ms Gurpreet Deol, SSP Hoshiarpur, and closed its evidence.

(5) When examined under Section 313 of the Code of Criminal Procedure Code, the accused denied all the incriminating circumstances appearing in the prosecution evidence against him and pleaded innocence. He has come up with the following plea :—

“I am innocent, the police has deliberately involved me in this false case. They did not consider the income of my wife and other family members. My wife right from her marriage is doing stitching work and earning to the tune of Rs. 4,000 per month. My elder son Gurvinder Singh is running a taxi and he also do motor mechanic work. My daughter was teaching computer. Both of them were earning to the tune of Rs. 4,000 per month each since 1994. They were all contributing towards the expenses of house hold expenditure. My wife was also having Istri Dhan and she during the construction of our house, sold her jewellery. We spent together on the construction of the house also. The estimated cost of construction was about Rs. 150 per square feet.

I also sold two plots for an amount of Rs. 15,000 and agreement to sell for Rs. 1,23,000. My wife also took up loan of Rs. 2 lacs from her relative Gurdial Singh and another loan of Rs. 20,000 was taken from Puran Singh, son of Tara Singh, r/o vill. Rajowal.

Kuldip Singh is my brother in law. He is running a business of furniture since last 20 years. He purchased the plot himself and also sold it as a plot only. One katcha room was built in it. His subsequent purchaser constructed the house in the plot. I own about 2-1/2 kilas of agricultural land. My all these sources of income were disclosed to the police, but they deliberately did not consider it.”

(6) In defence, he examined his son Gurvinder Singh, DW-1, DW-2 Kuldip Singh and closed his evidence by tendering certain documents.

(7) I have heard the learned counsel for the parties besides perusing the record with due care and caution.

(8) Mr. G. S: Sandhwalia, Advocate, appearing on behalf of the appellant eloquently urged that the learned trial Court has ignored the fact that valuation of the house sold to Joginder Singh on 1st January, 1999 for Rs. 1,60,000 was made after the check period on 4th November, 1999 though the same had been purchased for Rs. 1,50,000 on 16th April, 1998 and as regards the other one, the appellant had taken a loan in the year 1992, whereas the value of the same was assessed in 1994. The amount of valuation was exaggerated by huge amount of Rs. 5,14,228. If both these amounts had been taken out of the expenditure, there would have been no alleged disproportionate income. Admittedly the sale deed was in favour of Kuldip Singh. Mere installation of electric connection in the name of the appellant-Jaswant Singh, would not mean that the property belonged to him as he being a close relative and a government servant, was in a position to help his brother in law for grant of electric connection. His son Gurvinder Singh and his major daughters were too contributing towards the income. This fact has been ignored in its entirety by the learned trial Court. It is in the cross-examination of Kulvir Singh, SDO, PW-14 that he had not seen the title deed of the above said persons regarding the houses. At the fag end of his cross-examination, he has admitted that the cost of construction of that type of house in the year 1992 was around Rs. 150 per square feet. If the amount is calculated on its basis, the cost of construction as assessed by this witness, cannot be taken into account. By relying

upon the observations rendered in re : **M. Krishna Reddy versus State Deputy Superintendent of Police (1)**, Mr. Sandhawalia urged that the house in the name of Kuldip Singh, brother-in-law of the accused has not been proved to be a Benami transaction by the prosecution.

(9) To overcome these submissions, Mr. Tejinder Singh, Deputy Advocate General, Punjab, for the State of Punjab, canvassed at the bar that the report submitted by Kulvir Singh, SDO, PW-14 was checked by the Executive Engineer and he agreed therewith. There is nothing on the record to pick holes in it. The documentary evidence on record fully substantiates the charge against the appellant. It is hard to swallow the contentions of Mr. Sandhawalia for the reasons to be recorded hereinafter.

(10) It is not the mere acquisition of property that constitutes an offence under Section 13(e) of the Act, but it is the failure to satisfactorily account for such possession that makes it objectionable as offending the law. To substantiate a charge under Section 13(e) of the Act, the prosecution must prove (a) that the accused is a public servant ; (b) the nature and extent of the pecuniary resources or property which was found in his possession ; (c) it must be proved as to what were his known sources of income that is known to the prosecution ; (d) it must prove quite objectively that such resources or property found in possession of the accused were disproportionate to his known sources of income.

(11) Once these ingredients are satisfactorily established, the offence of criminal misconduct is complete unless the accused is able to account for such resources or property. To put it differently, only after the prosecution has proved the required ingredients, the burden to account for satisfactorily such possession shifts to the accused. House No. 381, Mohalla Adarsh Nagar, standing in the name of Kuldip Singh has been described as the first house, whereas the house in the name of Jaswant Singh (accused-appellant) and his wife Harjinder Kaur has been denoted as the second house by Kulvir Singh, SDO, PW-14 in his report. First of all, I take up the first house.

(12) The appellant has put on record Exh. DA, photostat copy of the sale deed dated 1st January, 1999 which purportedly executed and registered by Kuldip Singh in favour of Joginder Singh for a consideration of Rs. 1,60,000. As per the prosecution allegations, this house was in fact purchased by the appellant in the name of his brother-in-law Kuldip Singh as a Benami transaction. Is it so? As per evidence of Vikram Nayyar, Revenue Accountant, PW-18, the electric connection in this house is in the name of Jaswant Singh appellant. In his statutory statement recorded under Section 313 of the Code of Criminal Procedure, he has admitted that the electric connection is in his name. He has stated that "I got the connection at Kuldip Singh's plot in my name at his request as he is my brother-in-law." He has not apporportioned any reason as to why he preferred to get this connection in his own name instead of persuading Kuldip Singh to get it installed in his own name, if he was the owner of the plot. When appeared as DW-2 Kuldip Singh merely stated that "I purchased a plot measuring 7-1/4 marla on 16th April, 1991 and sold the same in 1999 and I did not raise any construction on that plot." He has not given any explanation worth the name as to why he asked the appellant to get the electric connection in his name. Furthermore, as per Kuldip Singh's evidence, no construction is existing on the stated plot. If there is no construction, where was the necessity to get the electric connection for the said plot. It is in the evidence of Kulvir Singh, SDO, PW-14 that "I assessed the house standing in the name of Kuldip Singh. The year of construction was 1994. I made the assessment on the basis of Schedule of rates 1970 by taking into consideration the premium fixed for different years by the department. I made the assessment in the year 1999 and thus took into account depreciation for five years in order to evaluate the construction which was made in 1994. The site plan of the house was given to me by the Executive Engineer. I valued that house at Rs. 4,01,086." The correct photostat copy of the report is Exh. PR. It is axiomatic from this evidence that he took into account depreciation for five years in order to evaluate the construction made in 1994 and he made the assessment on the basis of Schedule of rates 1970 by taking into consideration the premium fixed for different years by the department.

True that Kulvinder Singh (sic) has admitted that the cost of construction of that type in 1992 was around Rs. 150 per square feet, but he evaluated the same in 1994. So, this argument holds no water. Sequel, no fault can be found with the method applied by this witness in evaluating this house.

(13) It is in the cross-examination of Ms Gurpreet Deol (Sic) that "I had personally verified the sale deeds produced before me in respect of the ownership of Jaswant Singh. It is correct that one house is registered in the name of Kuldip Singh, who is brother-in-law of the accused but I believe that it was a benami transaction as Kuldip Singh did not have any known source of income in order to buy that property." Now, it is to be seen as to whether Kuldip Singh, DW-2 has accounted for the income from any known source. In his statement as DW-2, he is absolutely silent about any source of income though the appellant in his statutory statement went on to say that he (Kuldip Singh) is running a business of furniture since last 20 years. Had it been so, Kuldip Singh might have produced on record the account books being maintained by him in the regular course of his business. He might have also been an income tax assessee if he was running the business of furniture since last 20 years. The silence of Kuldip Singh with regard to his income from any known source, leads to an irresistible conclusion and an inescapable inference that the above extracted cross-examination is true and correct. If Kuldip Singh had purchased this plot and raised construction on it from his own income, he would have been the last person to get the electric connection installed in the name of the appellant. To justify his true ownership, he would have left no stone unturned in disclosing his sources from where he arranged funds for the purchase of this plot or for raising construction on it. He was lying in the witness box when he stated that he did not raised any construction on that plot for the reason that on this aspect he is materially contradicted by the evidence of Kulvir Singh (sic) who was not inimically disposed towards him. Kulvir Singh's evidence is based on enquiry and record that House No. 381, Mohalla Adarsh Nagar is standing in the name of Kuldip Singh. If there had been no construction on the plot, House No.

381 would have not been allotted by the Municipal Council. These facts conclusively prove that this house is the ownership of the appellant and the same has been purchased by him in the name of his brother-in-law Kuldip Singh. It is, thus, discernible that this house is a Benami transaction. Gurvinder Singh, PW son of the appellant has been given up by the prosecution as having been won over by the accused-appellant. The apprehension of the prosecution turned true when he came to the rescue of his father by appearing as a defence witness. Even otherwise, in the course of natural conduct, he would have not deposed against his father. The sum of substance of his evidence as DW is that the car (referring to car No. PB-33-5156) is owned by him and was got financed by him and he paid the installments. Surjit Ram, PW-2, Transport Clerk has also stated that this car was transferred in the name of Gurvinder Singh son of Jaswant Singh, New Adarsh Nagar, Jalandhar on 11th June, 1996. Jagtar Singh, PW-16 has testified that on 30th May, 1996, Gurvinder Singh, son of Jaswant Singh had taken advance of Rs. 1,50,000 from their Company. The car number was PB-33-5156. It is in his further evidence that Gurvinder Singh paid Rs. 1,50,000 in installments till 31st March, 1998 and that the file relating to the advancement of loan is Exh. PX containing ten leaves. Gurvinder Singh has deposed that he is a Taxi Driver. As per Jagtar Singh's evidence, Gurvinder Singh had purchased this car by obtaining loan and the installments thereof have been paid. This fact can be believed for the reason that advancement of loan in his name and payment of the installments of the same by him stand well established on the record. The details of income and expenditure of the appellant is in the following terms :—

INCOME :

| Sr. No. | Item of Income | Amount (Rs.) |
|---------|---------------------------------|----------------|
| 1 | Salary during the check period | .. 2,75,904.00 |
| 2 | Arrears during the check period | .. 9,051.00 |

| Sr. No. | Item of Income | Amount (Rs.) |
|---------|---|-----------------|
| 3 | Bonus during the check period | .. 1,209.00 |
| 4 | Agriculture income during the check period | .. 1,12,648.00 |
| 5 | Loan taken by the accused from Nakodar Hindu Co-op. Bank, Nakodar during the check period | .. 25,000.00 |
| 6 | Loan taken from Panchayat Samiti Rurka | .. 75,000.00 |
| 7 | Loan taken from Panchayat Samiti Nakodar | .. 60,000.00 |
| 8 | Loan taken from Samra Leasing Ltd. in the name of Gurvinder Singh, son of accused Jaswant Singh | .. 1,25,000.00 |
| 9 | Opening balance in A/c No. 2107 in the name of accused in State Bank of Patiala, Nakodar | .. 526.00 |
| 10 | Interest in A/c No. 2107 during the check period | .. 1,467.00 |
| 11 | Interest in A/c No. 3107 during the check period in State Bank of Patiala, Nakodar in the name of daughter of accused, namely, Kamaljit Kaur | .. 4.00 |
| 12 | Interest accrued during the check period in account No. 13231 in Punjab & Sind Bank, Nakodar, in the name of Harjinder Kaur wife and Kamaljit Kaur, daughter of the accused | .. 327.00 |
| Total : | | Rs. 6,86,136.00 |

EXPENDITURE :

| Sr. No. | Item of Expenditure | Amount (Rs.) |
|------------|---|----------------|
| 1 | 3/4 portion of salary of the accused amounting to Rs. 2,75,904 during the check period | .. 2,06,928.00 |
| 2 | Amount returned to Hindu Co-op. Bank | .. 28,408.00 |
| 3 | Amount of installments paid to Samra Leasing Ltd. Jalandhar | .. 1,60,000.00 |
| 4 | Half portion of the amount i.e. $60,000+7,500+601.50=68,101.50$ regarding purchase of plot of ten marlas by Jaswant Singh at Nakodar on 29th November, 1991 | .. 34,050.00 |
| 5 | The consideration regarding purchase of 5 marks plot at Nakodar by Harjinder Kaur, w/o the accused $30,000 + 3,750 + 301.50 = 34,051.50$ | .. 34,051.50 |
| 6 | Closing balance of account No. 2107 at State Bank of Patiala, Nakodar | .. 566.25 |
| 7 | Closing balance of account No. 13231 at Punjab & Sind Bank, Nakodar | .. 291.00 |
| 8 | Closing balance of account No. 3107 at State Bank of Patiala, Nakodar | .. 304.00 |
| 9 | Assessment regarding the house Built by accused at Adarsh Nagar, Nakodar | .. 7,96,378.00 |
| 10 | Assessment regarding the expenses incurred on house built by the accused in the name of Kuldip Singh at Nakodar | .. 4,01,086.00 |

| | | | |
|---------|---|----|------------------------|
| 11 | Amount spent for purchase of Bajaj Chetak Scooter No. PB-33-9169 | .. | 21,000.00 |
| 12 | Amount spent by Jaswant Singh accused for purchase of Maruti Car being No. PB-33-5156 besides loan amount | .. | 40,000.00 |
| Total : | | | <hr/> Rs. 17,23,063.50 |

(14) In view of the preceding discussion, the amount mentioned against item No. 8 regarding car has to be excluded consideration. It is in the evidence of Gurvinder Singh, DW that "my sister Kamaljit Kaur is running a Computer Centre and her income was Rs. 5,000 per month. She was married 1-1/2 years back. My mother is doing the work of stitching. Her income is Rs. 3,500 per month. My father owned a plot in the village which he sold for Rs. 15,000. My father raised loan of Rs. 2,00,000 from our relative Gurdial Singh. We own 2-1/2 acres of land a village Rajowal from where we got an income of Rs. 2,10,000 from 1993 to 1998." It is in his cross-examination that "the name of the Computer Centre is Pearl Computer Centre. We have no record of that Computer Centre. I do not know what security was given for obtaining the loan from Gurdial Singh. There is no record of our income from the land." If the daughters of the appellant had been running the alleged Computer Centre, they might have been maintaining the record thereof, whereas Gurvinder Singh went onto say that they have no record of the Computer Centre. Thus, the story with regard to running of Computer Centre by Kamaljit Kaur is rendered unbelievable. Further, it is alleged that the appellant had obtained a loan from his relative Gurdial Singh, who having not been examined in defence, it is very difficult to believe this version. The wife of the appellant has also not been examined to prove that she is steamstress and her income is Rs. 3,500 per month. Without there being any proof, it is very hard to accept such a version. Amarjit Singh, PW-4 has proved the salary statement, Exh. PX, Charanjit Singh, PW-5 has proved that on 1st February, 1992, the accused had obtained an advance of Rs. 75,000 for constructing the house as House Building Loan. Obviously, the income of the appellant during the check period was Rs. 6,86,136,

whereas his expenditure was Rs. 17,23,063.50. As per item No. 12 in the column of expenditure, a sum of Rs. 40,000 was spent by the appellant for the purchase of a car. If the same is excluded, as it has been held that this car was purchased by his son by obtaining loan and installments of the same were also paid by him, despite that there is a difference of Rs. 9,96,927.50 in his income and expenditure. He has not produced any income tax return so as to justify this difference in his income and expenditure. It is also noteworthy that he has not produced and proved on record the permission sought from the competent authority with regard to the purchase of the houses, though as per Civil Service Rules, a public servant is required to secure such permission before he goes for the purchase of immovable property.

(15) In view of the above discussion, it is held that the prosecution has been able to prove that the pecuniary resources/property found in possession of the appellant were disproportionate to his known sources of income. Thus, the burden of satisfactorily accounting for the possession of such resources or property shifts on to the appellant, who has not discharged it.

(16) In the ultimate analysis, it is held that the prosecution has been able to bring home guilt against the appellant under Section 13(e) of the Act. As such, no interference is warranted in the findings returned by the learned trial Court holding the appellant guilty under Section 13(e) *ibid.* So, the conviction is upheld. The minimum sentence prescribed by the legislature for this offence is one year. The appellant has been undergoing the agony of trial since 2000. The doctrine of proportionality too contemplates that the sentence must commensurate with the gravity of offence. In the words of Lord Hewart, "It is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done." Therefore, taking into consideration the entirety of facts and circumstances of the case, the sentence is reduced to one year while maintaining the fine as well as its default clause.

(17) With this modification, this appeal fails and is dismissed.

R.N.R.