

State of Maharashtra

Vs

Wasudeo Ramchandra Kaidalwar

Criminal Appeal No. 277 of 1976

(O. Chinnappa Reddy, A.P. Sen, Baharul Islam JJ)

06.05.1981

JUDGMENT

A.P. SEN, J. –

1. The State Government of Maharashtra has preferred this appeal, by special leave, against the judgment of the Bombay High Court, reversing the judgment and sentence of the Special Judge, Chandrapur and acquitting the respondent of an offence under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 (hereinafter called 'the Act').
2. The respondent, Wasudeo Ramchandra Kaidalwar, was a Range Forest Officer, drawing a salary of Rs. 515 per month. On September 21, 1969, PW 71, Patwardhan, Inspector, Anti-Corruption Bureau under authorisation from the Director, Anti-Corruption Bureau, Bombay, carried out search and seizure at the residential house of the respondent. The Inspector made a recovery of Rs. 26,870 in cash from an almirah, savings bank accounts in the names of the respondent, his wife and children totaling to Rs. 12,588.35, national savings certificates worth Rs. 510, postal savings certificates worth Rs. 184.25 in the name of his daughter, Nandini, savings bank deposits with the State Bank of India and the Postal savings certificates in the name of his brother-in-law, Narayan, amounting to Rs. 2279.05, gold and silver ornaments, house-hold effects etc. of the value of Rs. 8602.50, two sale deeds in respect of two plots bearing Khasras 28/1 K and 28/1 Dh in Chandrapur purchased (1) in the name of his wife, Smt. Sushila for Rs. 5,250 and (2) in the joint names of his wife, Smt. Sushila and his brother-in-law, Narayan for an amount of Rs. 21,210, papers relating to the building of a house at village Gondpipri built in the year 1965 at a cost of Rs. 10000. The petitioner was accordingly put on trial for having committed an offence punishable under Section 5(2) read with Section 5(1)(e) of the Act, being found in possession of assets disproportionate to his income.
3. The respondent abjured his guilt and denied the commission of the offence. He pleaded that he was leading a frugal life and all the property found during the search of his residential house belonged to his father-in-law, Hanumanthu, pairokar of Raja Dharmarao, Zamindar of Aheri Estate. He alleged that two of the sisters of his father-in-law were the kept mistresses of Raja Dharmarao and enjoyed special favours from the late Zamindar who bestowed on them large amounts of cash, ornaments etc. They used to visit the house of his father-in-law, Hanumanthu, once or twice a month, and used to keep all their cash, gold and silver ornaments. Hanumanthu owned a grocery shop. He and his father had a liquor shop besides forest contracts. Hanumanthu used to deal in money-lending business. The respondent alleged that his father-in-law deposited an amount of Rs. 30,000 in April 1957, Rs. 10,000 in August 1957 and Rs. 35,000 in cash and Rs. 1000 in coins and also 23 tolas of gold in September 1957 with his wife, Smt. Sushila. He pleaded that his father-in-

law died on March 10, 1958 at his house leaving behind his son, Narayan and two daughters, Smt. Shakuntala, who on her marriage with the respondent was renamed as Smt. Sushila, and Smt. Sushila, his sister-in-law, minor at that time. He instructed him to divide the property into three equal shares among his three children. The respondent maintained that he was holding the property merely as a custodian and was not the owner thereof.

4. The Special Judge, Chandrapur, by his judgment dated June 7, 1971, convicted the respondent for having committed an offence punishable under Section 5(2) read with Section 5(1)(e) of the Act inasmuch as he was found in possession of property worth Rs. 79,574.70 as against his only known source on income, namely, his total salary in government service amounting to Rs. 44,000. He held that the respondent had failed to account for cash of Rs. 26,870 sale deeds of the two plots purchased for Rs. 5250 and Rs. 21,210 in the name of his wife Smt. Sushila and the other jointly in the name of his wife and brother-in-law, Narayan and for the house built at village Gondpipri at a cost of Rs. 10,000. He held that the acquisition of these immovable properties was not reasonably attributable to the property left by his father-in-law, Hanumanthu. He also rejected the respondent's plea that he was leading a frugal life and, therefore, was able to make a saving of Rs. 15,000 out of his salary income. He accordingly sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs. 26,870. He further directed that the two plots at Chandrapur and the house at village Gondpipri be sold and the sale proceeds be forfeited.

5. On appeal, a learned single Judge of the High Court set aside the judgment and sentence passed by the learned special Judge and acquitted the respondent. The order of acquittal was based principally on two grounds : (1) The prosecution having failed to discharge the burden of disproving all possible sources of income i.e. failed to account for the properties left by the respondent's father-in-law, Hanumanthu, he could not be convicted under Section 5(2) read with Section 5(1)(e) of the Act, and (2) it was not possible to exclude the probability that the property found in the respondent's house could be the property left by his father-in-law, Hanumanthu.

6. In coming to the conclusion that it did, the High Court was of the view that the changes brought about by the Anti-Corruption Laws (Amendment) Act, 1964 had the effect of limiting the presumption of guilt arising under Section 4(1) of the Act to offences of criminal misconduct specified in Section 5(1)(a) and (b) and not to that in Section 5(1)(e). It, therefore, held that mere possession of disproportionate assets by a public servant to his known sources of income for which he has failed to account, would not be sufficient to bring home the guilt under Section 5(1)(e), unless the prosecution further excludes all possible sources of income. The construction placed by the High Court on the provisions contained in Section 5(1)(e) of the Act is obviously wrong. It completely overlooks the fact that the burden is case on the accused by the use of the words "for which the public servant cannot satisfactorily account". It is also wrong in distorting the meaning of the expression "known sources of income" occurring in Section 5(1)(e), which has a definite legal connotation and which, in the context, must mean "sources known to the prosecution".

7. It is distressing to find that the High Court has involved itself into a process of evolution of a new theory of law, instead of confining itself to reappraisal of the evidence on record which it was entitled to do sitting as a Court of Appeal against the judgment of conviction. The order of acquittal recorded by the High Court could still be maintained on a proper evaluation of the facts, as, on the proved circumstances, there was a preponderance of probability that the property found in the respondent's house could be the property left by his father-in-law, Hanumanthu.

8. The legislature deleted Section 5(3) of the Act which embodied a rule of evidence by Section 6 of

the Anti-Corruption Laws (Amendment) Act, 1964 and instead, inserted Section 5(1)(e) making, possession of disproportionate assets by a public servant, a substantive offence. Section 5(1)(e) of the Act reads :

5. (1) A public servant is said to commit the offence of criminal misconduct -

(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.

Old Section 5(3) of the Act was in these terms :

5. (3) In any trial of an offence punishable under sub-section (2) the fact that the accused person or any other person on his behalf is in possession, for which the accused person cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income may be proved, and on such proof the court shall presume, unless the contrary is proved, that the accused person is guilty of criminal misconduct in the discharge of his official duty and his conviction therefor shall not be invalid by reason only that it is based solely on such presumption.

9. Three questions arise for our consideration in this appeal, namely :

(1) Whether a public servant charged with having disproportionate assets in his possession, for which he cannot satisfactorily account, cannot be convicted of an offence under Section 5(2) read with Section 5(1)(e) of the Act unless the prosecution disproves all possible sources of his income.

(2) If the prosecution establishes that a public servant is in possession of pecuniary resources or property disproportionate to his known sources of income, whether the burden to disprove the charge shifts to the accused to satisfactorily account for the source of acquisition of such resources or property; and if so, the nature and extent of such burden on the accused.

(3) Whether, on the facts and circumstances of the present case, having regard to the fact that the respondent's father-in-law, Hanumanthu, was paiokar of Raja Dharmarao, Zamindar of Aheri Estate and left substantial properties, it was not improbable that the properties found in possession of the respondent belonged to his father-in-law.

10. It is clear both on authority and principle that Section 5(3) which now stands deleted did not create an offence separate from the one created by Section 5(1), but intended only to lay down a rule of evidence to raise a presumption of guilt in certain circumstances. Section 5(1) defines different species of criminal misconduct which can be committed by a public servant and Section 5(2) provides that any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to seven years and also shall be liable to fine. Under the old Section 5(3), a presumption of criminal misconduct could be drawn if such a public servant or any person on his behalf was found to be in possession of pecuniary resources or property disproportionate to his known sources of income for which the

public servant could not satisfactorily account. Once the prosecution proved that the accused person was possessed of disproportionate assets, the burden was shifted to the accused to prove the source of acquisition of such assets.

11. The provisions of Section 5(3) have been subject of judicial interpretation. First the expression "known sources of income" in the context of Section 5(3) meant "sources known to the prosecution". The other principle is equally well settled. The onus placed on the accused under Section 5(3) was, however, not to prove his innocence beyond reasonable doubt, but only to establish a preponderance of probability. These are the well-settled principles : see C.S.D. Swamy v. State ((1960) 1 SCR 461 : AIR 1960 SC 7 : 1960 Cri LJ 131); Sajjan Singh v. State of Punjab ((1964) 4 SCR 630 : AIR 1964 SC 464 : (1964) 1 Cri LJ 310) and V.D. Jhangan v. State of U.P. ((1966) 3 SCR 736 : AIR 1966 SC 1762 : 1966 Cri LJ 1357). The legislature thought it fit to dispense with the rule of evidence under Section 5(3) and make the possession of disproportionate assets by a public servant as one of the species of the offence of criminal misconduct by inserting Section 5(1)(e) due to widespread corruption in public services.

12. The terms and expressions appearing in Section 5(1)(e) of the Act are the same as those used in the old Section 5(3). Although the two provisions operate in two different fields, the meaning to be assigned to them must be the same. The expression "known sources of incomes" means "sources known to the prosecution". So also, the same meaning must be given to the words "for which the public servant cannot satisfactorily account" occurring in Section (1)(e). No doubt, Section 4(1) provides for presumption of guilt in cases falling under Section 5(1)(a) and (b), but there was, in our opinion, no need to mention Section 5(1)(e) therein. For, the reason is obvious. The provision contained in Section 5(1)(e) of the Act is a self-contained provision. The first part of the section casts a burden on the prosecution and the second on the accused. When Section 5(1)(e) uses the words "for which the public servant cannot satisfactorily account", it is implied that the burden is on such public servant to account for the sources for the acquisition of disproportionate assets. The High Court, therefore was in error in holding that a public servant charged for having disproportionate assets in his possession for which he cannot satisfactorily account, cannot be convicted of an offence under Section 5(2) read with Section 5(1)(e) of the Act unless the prosecution disproves all possible sources of income.

13. That takes us to the difficult question as to the nature and extent of the burden of proof under Section 5(1)(e) of the Act. The expression 'burden of proof' has two distinct meanings (1) the legal burden, i.e. the burden of establishing the guilt, and (2) the evidential burden, i.e. the burden of leading evidence. In a criminal trial, the burden of proving everything essential to establish the charge against the accused lies upon the prosecution, and that burden never shifts. Notwithstanding the general rule that the burden of proof lies exclusively upon the prosecution, in the case of certain offences, the burden of proving a particular fact in issue may be laid by law upon the accused. The burden resting on the accused in such cases is, however, not so onerous as that which lies on the prosecution and is discharged by proof of a balance of probabilities. The ingredients of the offence of criminal misconduct under Section 5(2) read with Section 5(1)(e) are the possession of pecuniary resources or property disproportionate to the known sources of income for which the public servant cannot satisfactorily account. To substantiate the charge, the prosecution must prove the following facts before it can bring a case under Section 5(1)(e), namely, (1) it 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

these four ingredients are 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. The burden then shifts to the accused to satisfactorily account for his possession of disproportionate assets. The extent and nature of burden of proof resting upon the public servant to be found in possession of disproportionate assets under Section 5(1)(e) cannot be higher than the test laid by the court in Jhangan case ((1966) 3 SCR 736 : AIR 1966 SC 1762 : 1966 Cri LJ 1357), i.e. to establish his case by a preponderance of probability. That test was laid down by the court following the dictum of Viscount Sankey, L.C. in Woolmington v. Director of Public Prosecutions (1935 AC 462). The High Court has placed an impossible burden on the prosecution to disprove all possible sources of income which were within the special knowledge of the accused. As laid down in Swamy case ((1960) 1 SCR 461 : AIR 1960 SC 7 : 1960 Cri LJ 131), the prosecution cannot, in the very nature of things, be expected to know the affairs of a public servant found in possession of resources or property disproportionate to his known sources of income, i.e. his salary. Those will be matters specially within the knowledge of the public servant within the meaning of Section 106 of the Evidence Act, 1872, Section 106 reads :

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

In this connection, the phrase 'burden of proof' is clearly used in the secondary sense, namely, the duty of introducing evidence. The nature and extent of the burden cast on the accused is well settled. The accused is not bound to prove his innocence beyond all reasonable doubt. All that he need do is to bring out a preponderance of probability.

14. Such being the law, the question whether or not the respondent had established a preponderance of probability is a matter relating to appreciation of evidence. On a consideration of the evidence adduced by the respondent, the High Court has taken the view that it is not possible to exclude the possibility that the property found in possession of the respondent belonged to his father-in-law, Hanumanthu. We have been taken through the evidence and we cannot say that the finding reached by the High Court is either manifestly wrong or perverse. Maybe, this Court, on a reappraisal of the evidence, could have come to a contrary conclusion. That, however, is hardly a ground for interference with an order of acquittal. There are no compelling reasons to interfere with the order of acquittal particularly when there is overwhelming evidence led by the respondent showing that his father-in-law, Hanumanthu, was a man of affluent circumstances. There is no denying the fact that Hanumanthu was the pairokar of Raja Dharmarao, Zamindari of Aheri Estate and by his close association with the Zamindar, had amassed considerable wealth. More so, because two of his sisters were the kept mistresses of the Zamindar and amply provided for.

15. It appears that after the death of Raja Dharmarao, Hanumanthu took up his residence with his elder daughter, Smt. Sushila, who was married to the respondent. To substantiate his plea in defence, the respondent examined as many as 12 witnesses including himself as AW 12, his sister-in-law, Smt. Sushila (AW 11), Dr. Chandrasekhar Merekar (AW 6), Shri V.N. Swamy, Advocate, Chandrapur (AW 8). We cannot brush aside the unimpeachable testimony of Shri V.N. Swamy, AW 8, who was a leading advocate of Chandrapur and Member of Lok Sabha, and Dr. Chandrasekhar Merekar, AW 6, medical practitioner of Chandrapur, who attended on Hanumanthu at the time of his death. Both these witness have unequivocally stated that when Hanumanthu died at the respondent's residence leaving his two minor children, Smt. Sushila and Narayan to the care of the respondent and his wife, Smt. Sushila, he told them that he was leaving properties worth Rs. 70 to 80 thousand comprising cash, ornaments, jewellery etc., and expressed a desire that the same be divided equally

among his three children, the two daughters and a son. Shri Swamy testified to the fact that he was handling all the litigation of Raja Dharmarao, Zamindar of Aheri Estate who had an yearly income of Rs. 6 to 8 lakhs because the Zamindari had rich forests. He tells us that he knew Hanumanthu well because he was the pairokar of Raja Dharmarao, that Hanumanthu enjoyed great confidence of the Zamindar and had free access to him because his two sisters were the kept mistresses of the Zamindar. His evidence shows that the ladies were well provided for and whenever they visited Hanumanthu they used to hand over their cash, ornaments and jewellery to him for safe custody. His evidence also show that Hanumanthu was a man of affluence and that he and his father had a liquor shop besides forest contracts. Hanumanthu also used to deal in money-lending business. The respondent has also placed on record documents showing that Hanumanthu was a man of substantial means. To add to the difficulty of the prosecution, Smt. Sushila AW 11, sister-in-law of the respondent has come and deposed that all the property belonged to her father.

16. All this evidence is sufficient to create a doubt as to whether the respondent was in possession of disproportionate assets. There is certainly a preponderance of probability that the property found in the possession of the respondent did not belong to him but belonged to his father-in-law, Hanumanthu.

17. The result, therefore, is that the appeal must fail and is accordingly dismissed.

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