P. Satyanarayan Murty

Vs

State of Andhra Pradesh

Criminal Appeal No. 636 of 1990

(S. C. Agarwal, S. Ratnavel Pandian JJ)

22.07.1992

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 June 25, 1977 and September 15, 1983, 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 the father P. Venkata Reddy and his wife Smt. 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 an the High Court. Hence we feel that it is not necessary to repeat the same in their 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 assets, 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 note showing certain amounts under four heads totalling up to Rs. 97,968 which, according to him, ought to have been

deducted from the total value of the assets of the appellant. They are :

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(1) error in the calculation of sinking of the Rs. 11,686 well

(2) the error committed in calculating the Rs. 42,282 income from leasehold land

(3) the failure on the part of the courts Rs. 15,000 below to take into consideration the income from the agricultural produce namely pulses and to add that income to his known sources of income.

(4) the value of the assets wrongly included Rs. 29,000 on the ground of benami transaction

Total Rs. 97,968

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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 or 10 per cent of the total income which, according to the learned 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. 11,686 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, born 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 is 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. Once should not loose sight of the fact that it is only the prosecution which has examined PW 51 and field 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 breath 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 are mentioned as Item Nos. 2 and 4 in the above note. First of all, we shall deal with the those purchases are benami in nature. Needless to say that this Court in a series of decisions has 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. ((1977) 1 SCC 816 : 1977 SCC (Cri) 190 : AIR 1977 sc 796) 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 : (SCC pp. 830-31, Para 26)

> "It is well settled that the burden of showing that a particular transaction is benami and the appellant 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 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 the above evidence, we hold that the finding of the courts below that the 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 that 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 acres 6.40 cents for a sum of Rs. 1,65,00 under a document dated July 17, 1980 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. 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 is 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 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 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 leasehold 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. Deduction Rs. 20,000 towards the rent for the lease 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 Rs. 15,000 as his income on this account. Both the courts below have not accepted the claim of the appellant but rejected it 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 form the agricultural land. Hence we have no hesitation in 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 per cent. The High Court was not inclined to give this margin of 10 per cent 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 per cent 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 per sent 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 therefore. The fine amount if already paid is directed to be refunded. Accordingly, the appeal is

allowed.

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