

SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Krishnarao Dudhappa Shinde

CrI.A.No.1052 of 2002

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

05.02.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Challenge in this appeal is to the judgment of a Division Bench of the Bombay High Court. By the impugned judgment the High Court set aside the judgment of the trial Court, and directed acquittal of the respondent.

2. Background facts in a nutshell are as follows:

“The respondent a government servant was Inspector of Police at the time when a raid was conducted in his house on 28.12.1971. He was convicted for offence punishable under Section 5(1)(e) of the *Prevention of Corruption Act, 1947* (in short the `Act') and was sentenced to under minimum sentence of one year and was directed to pay a fine of Rs.2,50,000/-. The only point which was examined by the High Court was whether the respondent could be convicted for acquisition of wealth disproportionate to his known sources of income prior to 1964 i.e. from the date of inception of service on 29.5.1944 till the date of raid under Section 5(1)(e) which came into force only on 18.12.1964. The High Court was of the view that any acquisition of wealth said to be disproportionate to his known sources of income prior to 1964 could not be taken into account since prior to 1964 the same was not an offence. Reliance was placed by two judgments for the purpose one of this Court in *State of Maharashtra v. Kaliar Koli Subramaniaum Ramaswamy*¹, and the other of the *Bombay High Court in Ramanand Pundalik Kamat v. State of Maharashtra*².”

3. The primary stand of learned counsel for the appellant is that the scope and ambit of Section 5(1)(e) of the Act has been lost sight of.

4. Learned counsel for the respondent on the other hand supported the judgment.

5. Section 5(1)(e) of the Act reads as follows:

“5. Criminal misconduct in discharge of official duty: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 satisfactory account of pecuniary resources or property disproportionate to his known sources of income.”

6. A three-Judge Bench of this Court in *Sajjan Singh v. State of Punjab*³ noted as follows:

“12. Mr Lall contends that when the section speaks of the accused being in possession of pecuniary resources or property disproportionate to his known sources of income only pecuniary resources or property acquired after the date of the Act is meant. To think otherwise, says the learned counsel, would be to give the Act retrospective operation and for this there is no justification. We agree with the learned counsel that the Act has no retrospective operation. We are unable to agree however that to take into consideration the pecuniary resources or property in the possession of the accused or any other person on his behalf which are acquired before the date of the Act is in any way giving the Act a retrospective operation.

13. A statute cannot be said to be retrospective `because a part of the requisites for its actions is drawn from a time antecedent to its passing? (Maxwell on Interpretation of Statutes, 11th Edn., p. 211; see also *State of Bombay v. Vishnu Ramchandran*). Notice must be taken in this connection of a suggestion made by the learned counsel that in effect sub-section 3 of Section 5 creates a new offence in the discharge of official duty, different from what is defined in the four clauses of Section 5(1). It is said that the act of being in possession of pecuniary resources or property disproportionate to known sources of income, if it cannot be satisfactorily accounted for, is said by this sub-section to constitute the offence of criminal misconduct in addition to those other acts mentioned in clauses a, b, c and d of Section 5(1) which constitute the offence of criminal misconduct. On the basis of this contention the further argument is built that if the pecuniary resources or property acquired before the date of the Act is taken into consideration under sub-section 3 what is in fact being done is that a person is being convicted for the acquisition of pecuniary resources or property, though it was not in violation of a law in force at the time of the commission of such act of acquisition. If this argument were correct a conviction of a person under the presumption raised under Section 5(3) in respect of pecuniary resources or property acquired before the Prevention of Corruption Act would be a breach of fundamental rights under Article 20(1) of the Constitution and so it would be proper for the court to construe Section 5(3) in a way so as not to include possession of pecuniary resources or property acquired before the Act for the purpose of that sub-section. The basis of the argument that Section 5(3) creates a new kind of offence of criminal misconduct by a public servant in the discharge of his official duty is however unsound. The sub-section does nothing of the kind. It merely prescribes a rule of evidence for the purpose of proving the offence of criminal misconduct as defined in Section 5(1) for which an accused person is already under

trial. It was so held by this Court in *C.D.S. Swamy v. State* and again in *Surajpal Singh v. State of U.P.*. It is only when a trial has commenced for criminal misconduct by doing one or more of the acts mentioned in clauses a, b, c and d of Section 5(1) that sub-section 3 can come into operation. When there is such a trial, which necessarily must be in respect of acts committed after the Prevention of Corruption Act came into force, sub-section 3 places in the hands of the prosecution a new mode of proving an offence with which an accused has already been charged.

14. Looking at the words of the section and giving them their plain and natural meaning we find it impossible to say that pecuniary resources and property acquired before the date on which the Prevention of Corruption Act came into force should not be taken into account even if in possession of the accused or any other person on his behalf. To accept the contention that such pecuniary resources or property should not be taken into consideration one has to read into the section the additional word "if acquired after the date of this Act" after the word "property". For this there is no justification.

15. It may also be mentioned that if pecuniary resources or property acquired before the date of commencement of the Act were to be left out of account in applying sub-section 3 of Section 5 it would be proper and reasonable to limit the receipt of income against which the proportion is to be considered also to the period after the Act. On the face of it this would lead to a curious and anomalous position by no means satisfactory or helpful to the accused himself. For, the income received during the years previous to the commencement of the Act may have helped in the acquisition of property after the commencement of the Act. From whatever point we look at the matter it seems to us clear that the pecuniary resources and property in possession of the accused person or any other person on his behalf have to be taken into consideration for the purpose of sub-section 3 of Section 5, whether these were acquired before or after the Act came into force.”

7. The view expressed by the High Court is apparently in conflict with the view expressed by this Court in *Sajjan Singh's case* (*supra*).

8. Learned counsel for the respondent submitted that even if the accused has no case on the legal question raised on facts the respondent was bound to succeed. We find that the High Court did not examine the other aspects and only dealt with the applicability of Section 5(1)(e) of the Act on the factual position highlighted above. While we set aside the order of the High Court so far as it relates to the scope and ambit of Section 5(1)(e) of the Act, we remit the matter to it for considering the other aspects which according to learned counsel for the respondent were in issue before the High Court in appeal filed by the accused person. Since the matter is pending since long we request the High Court to take up the matter at an early date and make an effort to dispose of the same within a period of four months from the date of receipt of our judgment. The appeal is allowed to the aforesaid extent.

¹(1977 (3) SCC 525

²(ILR 1973 Bom 1066)

³(1964(4) SCR 630)