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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on : 16/09/2022****Judgment delivered on : 14/12/2022****CRA No. 1277 of 2017**

- Radheshyam Mehra S/o Latelram Mehra, Aged About 58 Years
Occupation Service, The Then Chief Municipal Officer, Janpad
Panchayat Pandariya, District Kabirdham, Chhattisgarh.,
Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh Through The State Economic Offences
Wing Investigation Bureau/Anti Corruption Bureau, Raipur,
Chhattisgarh.

---- Respondent

For Appellant	:	Dr. NK Shukla, Sr. Adv. with Mr. Vivek Sharma, Adv.
For Respondent/State	:	Mr. Vimlesh Bajpai, Govt. Adv.

Hon'ble Smt. Justice Rajani Dubey**C A V Judgment**

01. Challenge in this appeal is to the legality, validity and propriety of the judgment of conviction and order of sentence dated 4.8.2017 passed by the Special Judge (Prevention of Corruption Act), Kabirdham (CG) in Special Sessions Case No.01/2016 whereby the appellant stands convicted under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act and sentenced to undergo RI for five years and pay a fine of Rs.1 lac with default stipulation.

02. Facts, in brief, of the prosecution case are that the accused/appellant was working as Chief Executive Engineer of Janpad



Panchayat and was posted at various places between 1.9.2003 to 10.3.2011. The prosecuting agency obtained search warrant from the competent Court on 8.3.2011 and effected search at four different places at a time on 10.3.2011. According to the prosecution, the check period starts from 1.9.2003 and ends on 10.3.2011. During this period, the appellant acquired properties of Rs.75,43,891/- which is unexplained earning of the appellant. The prosecution obtained sanction from the Additional Secretary, Govt. of Chhattisgarh, Law & Legislative Affairs Department and after completion of investigation, charge sheet was filed against him and accordingly, charges were framed by the trial Court under Section 13(1)(e) read with 13(2) of Prevention of Corruption Act which was denied by him and he pleaded for trial.

03. In order to prove its case, the prosecution examined as many as 31 witnesses and thereafter, statement of the accused/appellant was recorded under Section 313 of CrPC wherein he denied all the incriminating circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In his defence, he examined 10 witnesses and filed documents Ex.D/1 to D/10.

04. The trial Court after hearing counsel for the parties and appreciation of oral and documentary evidence available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para 1 of this judgment. Hence this appeal.

05. Learned counsel for the appellant has submitted that the judgment of conviction and order of sentence passed by the trial Court



is arbitrary, illegal and contrary to the law applicable to the facts and circumstances of the case. The prosecution did not prove its case beyond reasonable doubt. There is no cogent evidence available against the appellant to connect him with the crime in question. The appellant is an employee of Panchayat Department but the sanction for prosecution was given by the Additional Secretary, Govt. of Chhattisgarh, Law & Legislative Department, which is not proper. During the search, the articles which were seized were not valued by the authorized or unauthorized valuer but valuation of the articles including the preparation of inventory is done by the police officers on their own. The entire prosecution case stands vitiated on account of withholding of important witnesses who are related to market value of the seized articles and are foundation of the conviction. Even before filing of charge sheet, no attempt was made by the prosecution to get the seized articles examined by the valuer or the official valuers to establish their value.

06. It is further contended on behalf of the appellant that the income of the appellant prior to the check period has been completely ignored by the trial Court. In his defence, the appellant proved the income of his wife and sons but the trial Court did not appreciate the income of the other family members of the appellant. The agricultural income which is evident from several revenue documents belonging to wife of the appellant and his major son, have also been included on the ground that for this agricultural income, there is no reference in the income tax returns or any other public document. Despite there being evidence to show that the properties were purchased in the name of



appellant's sons Vivek Mehra and Vikas Mehra, by his grand-father, this fact has been totally rejected by the trial Court and further, the fact that appellant's wife Shakuntala Mehra purchased certain properties from her *stridhan* is also rejected by the trial Court.

Vivek Mehra was the major son of the appellant, he was running a Daisey Travels and Daisey Shringar with his wife Jyoti who was also a teacher in Ratanpur and earning from tuitions as well. All these income were included in the income of the appellant ignoring the evidence of the defence witnesses and the documents filed by the appellant to substantiate the above contention. The statements of the prosecution witnesses are not sufficient to prove the case against the appellant. Therefore, the impugned judgment being patently illegal is liable to be set aside.

Reliance has been placed on the decisions in the matters of ***Vasant Rao Guhe Vs. State of MP, AIR 2017 SC 3713; Manoranjan Kalita Vs. The State of Assam, 2014 Cri.L.J. 689; State of MP Vs. Rajendra Singh Yadav, AIR Online 2021 Chh 155; Pozir Uddin Ahmed Vs. Union of India, 2014 Cri.L.J. 238; M. Krishna Reddy Vs. State Deputy Superintendent of Police, Hyderabad, (1992) 4 SCC 45; Krishnanand Agnihotri Vs. State of MP, AIR 1977 SC 796; Ashok Kumar Thakur Vs. State of Rajasthan, 2008 SCC Online Raj 777, DSP Chennai Vs. K. Inbasakaran, AIR 2006 SC 552 and State of Chhattisgarh Vs. Chandrabhushan Shukla, AIR Online 2019 Chh 1125.***

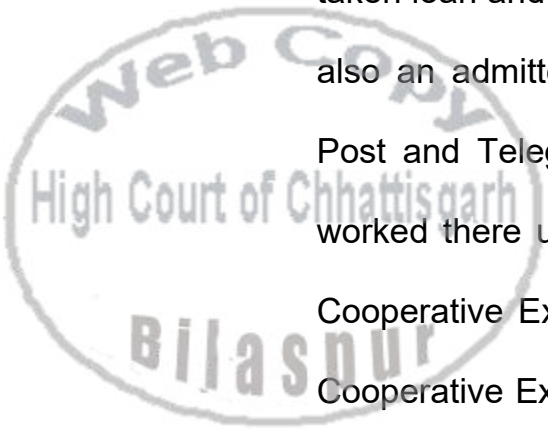
07. On the other hand, learned counsel for the State supporting the



impugned judgment submits that the Special Judge is absolutely justified in holding that the appellant possessed properties which are disproportionate to his valid known source of income and therefore, the present appeal being without any substance is liable to be dismissed.

08. Heard learned counsel for the parties and perused the material available on record.

09. Before the learned trial Court, this is an admitted fact that the appellant was married on 3rd June, 1982 with Shakuntala, resident of Village-Devri and that the eldest son of the appellant Vivek Mehra had taken loan and purchased a vehicle which was being used on rent. It is also an admitted fact that the appellant was an employee of Indian Post and Telegram Department as Postal Assistant since 1982 and worked there up to August, 1987 and thereafter, he was selected as Cooperative Extension Officer and since August, 1988 he worked as Cooperative Extension Officer. It is also not in dispute that Shakuntala Mehra purchased a house by sale deed dated 19.9.2003 from PK Manoharan and one house by sale deed dated 4.5.2010 from one Madhavram and others. Vikas Mehra purchased the land bearing Khasra No.619, area 6.63 acres by sale deed dated 26.4.2006 from Mayaram and Khasra No.411, area 0.14 acre and Khasra No.419, area 0.52 acre were purchased by sale deed dated 7.6.2010 from Deendayal and others. Further, it is also admitted that the land bearing Khasra No.1099, area 0.46 acre was purchased by sale deed dated 7.6.2010 by Vikas Mehra from Deendayal and that land bearing Khasra No.469, area 0.14 acre, Khasra No.470, area 0.38 acre, Khasra





No.471, area 0.28 acre were purchased through sale deed dated 9.6.2005 from Bhanu Kumar and others by Shakuntala and others and likewise, land bearing Khasra No.618/01, 618/02 area 1.83 acre was purchased by Shakuntala and others vide sale deed dated 24.6.1998 from Rameshwar and others.

10. As per the FIR, the check period was from 1.9.2003 to 10.3.2011 and during this period, income of the appellant was calculated as Rs.38,10,556/-. Valuation of the movable and immovable properties of the appellant was calculated at Rs.76,93,008/- and the expenditure during the check period was assessed at Rs.36,61,439/- and the unaccounted money is calculated at Rs.75,43,891/-.

11. PW-31 Anil Baxi, the investigating officer, in his detailed examination accepted various documents. Article 95 to Article 136 are various policies in the names of Shakuntala Mehra, Vikas Mehra and Vivek Mehra whereas Articles 138 to 140 are the insurance policies and Kisan Vikas Patra in the name of Shakuntala Mehra. Articles 141 to 151 are the bank passbooks of Shakuntala Mehra, Geetabai Mehra and Vikas Mehra. Jewellery bill and cash memo are Articles 152 and 153 in the name of Vikas Mehra. Articles 156, 158, 159 and 160 are the jewellery bills in the name of Shakuntala Mehra. The prosecution exhibited number of documents which were not only in the name of the appellant but in the names of his wife, sons and even his daughter-in-law.

12. The trial Court recorded a finding in para 114 of the impugned judgment that the prosecution has not proved that the earning from the



sale of vehicle bearing No.CG 10 F 1317 and the expenditure of the difference of transfer of the said property, house construction expenditure, entire jewellerys expenditure, three houses shown in the inventory and the agriculture produce obtained from the land situate at Village-Kekti, the policies of Geeta Rajaram, CS Mehra etc., are the expenditure of the appellant but as per the documents filed, it is proved that the appellant acquired properties in excess of his income during the check period.

In para 115 of the impugned judgment, the trial Court has drawn a table and calculated the expenditure of the appellant during the check period and in the table at para 116, the vehicle purchase amount is mentioned as Rs.8,59,808/- and again vehicle purchase amount is mentioned in the said table as Rs.11,53,193/-. However, no reason has been assigned or any explanation given by the trial Court as to on what basis two different amounts have been mentioned under the same head.

13. Rajaram Mehra (DW-7) states in examination-in-chief that in May-June, 2005 he purchased 80 decimal of land with his sister-in-law (appellant's wife) Shakuntala Mehra in Village-Kekti and in 1998 Shakuntala Mehra purchased two acres of land in Village-Kekti. DW-8 Jyoti Mehra, daughter-in-law of the appellant, states in examination-in-chief that since 1.4.2008 she was working as teacher in Mahamaya Public School, Ratanpur and her experience certificate is Ex.D/13. Her father had given her Rs.2 lacs as gift and she was running a shop in the name of Daisy Travels and Shringar with her husband Vivek



Mehra. She filed income tax returns Exs.D/14 & D/15 of the years 2009-10 and 2010-11 respectively.

14. DW-9 Jayprakash Mehra exhibited the documents of income tax return as EXs.D/6, D/7 of Shakuntala Mehra and D/16, D/17 & D/18 of Vikas Mehra. DW-10 Shakuntala Mehra states in her examination-in-chief that she purchased land in 1996 from her *Stridhan* i.e. gold ornaments and her father-in-law got the said land registered in her name in 1998. She states that the house in Shantinagar is also in her name since 2003 and that she purchased 80 decimal of land in June, 2005 with her brother-in-law.

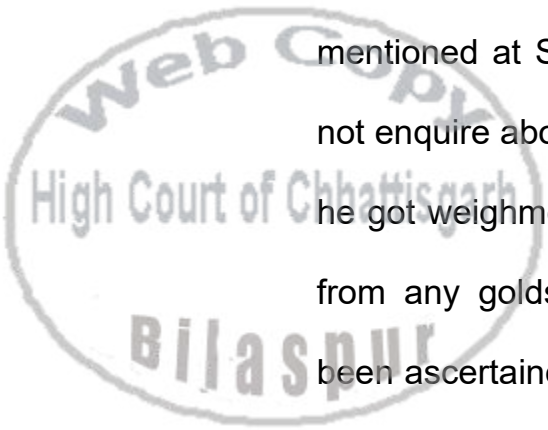
15. The prosecution has also filed number of property papers in the name of Shakuntala, Vikas and Vivek Mehra. In these circumstances, the prosecution has to prove this fact beyond all reasonable doubt that all these properties were purchased by the appellant in the name of his family members from his own income but the prosecution did not examine any witness in this regard or file any document which shows that these properties were purchased by the appellant. The defence witnesses have clearly stated that the appellant's wife, his major son and daughter-in-law are earning members.

16. The investigating officer Anil Baxi (PW-31) admitted this fact in para 65 of his deposition that he did not enquire from Shakuntala Mehra regarding acquisition of said property. This witness prepared inventory but admitted in para 74 that the documents of Ex.P/3 and P/4 are not in his handwriting. In reply to the question put to this witness by the Court as to what does he mean by mentioning in page number 2 of



Ex.P/3 “one big size almirah worth about 15 years”, he states that the appellant had told that the big size almirah is about 15 years old and therefore, before mentioning its value, “about 15 years” was written. In para 79 again he admits that at Sl.No.7 of page No.3 of Ex.P/3 the weight of silver plate “about 348 gm” is written at the instance of the appellant after obtaining opinion of the independent witnesses and whether the said plate was of silver, was not got examined from anyone but was written at the instance of the appellant and the witnesses.

17. In para 80, PW-31 Anil Baxi admits that weight of the silver tray mentioned at Sl.No.8 of page No.3 of Ex.P/3 is not written. He could not enquire about the weight of the said silver plate. He admits that had he got weighthment of all those silver articles mentioned in Ex.P/3 done from any goldsmith, then their weight and genuineness could have been ascertained. He expressed his inability to tell the price of silver at the relevant time. He admits that he did not enquire as to how old the said silver articles were. In para 83 he admits that he cannot tell that out of 48 numbers of *saris*, how many *saris* were synthetic, georgette, silk, cotton, banarsi and how old they were, and on being asked it could have been told by Shakuntala Mehra but admittedly, it has not been written in his inventory that Shakuntala Mehra was asked about the same. In para 94 he states that he did not mention in the inventory that the jewelleryes shown at Sl.No.54,55, 56 of page No.4 of Ex.P/6 are of 23 carat. He cannot tell the weight of golden nose-pin mentioned at Sl.No.59 of page No.5 of Ex.P/3 because it has not been mentioned in the inventory. The golden jewelleryes shown at Sl.No.60 to 63 of





page No.5 of Ex.P/3 were of 23 carat, has not been mentioned in the inventory. He admits that he has not got any training of examining the carat of golden jewellerys, and volunteers that he can tell on the basis of experience.

In para 95 he admits that had the jewellerys mentioned at Sl.No.52 to 56 and 59 to 63 of page No.4 of Ex.P/3 been examined by a goldsmith, its genuineness and weight could have been ascertained and on that basis, its value at that time could have been known. At Sl.No.5 of page No.5 of Ex.P/3 beads necklace is mentioned, but he cannot tell as to how many beads were there, what was the size of beads and necklace and whether the beads were genuine or fake. He volunteers that if the beads necklace was fake, the same would have been mentioned in the inventory. He admits that it has not been mentioned that the necklace was genuine and further clarifies that the necklace was genuine, therefore, it was not written. However, he admits that he has no experience of distinguishing beads.

18. Thus, from perusal of deposition of the investigating officer PW-1 Anil Baxi, it is clear that this witness has mentioned the articles in Ex.P/3 without getting the same valued by any valuer, on the basis of his own or at the instance of the appellant and/or the witnesses. It is also admitted by the prosecution that before the check period, the appellant was posted in other department but his salary before the check period was not calculated by the prosecuting agency.

19. In the matter of **Rajendra Singh Yadav** (*supra*), this Court referring to various judgments of the Hon'ble Supreme Court held in



paras 9, 10 and 11 as under:

“9. In order to prove the charge under Section 13(1)(e) of the PC Act, 1988, the prosecution must prove the following ingredients, namely (1) the prosecution must prove that the accused is a public servant, (2) the nature and extent of the pecuniary resources or property which are found in his possession, (3) it must be proved as to what were his known sources of income i.e. known to the prosecution, (4) it must prove quite objectively that the resources or property found in possession of the accused were disproportionate to his known source of income. Once the abovementioned ingredients are satisfactorily proved, the offence of criminal misconduct under Section 13(1)(e) of the PC Act, 1988 is complete, unless the accused is able to account for such resources or property and it is only thereafter the burden shifts to the accused to prove his innocence.

10. The Supreme Court in the matter of *State of Maharashtra v. Wasudeo Ramchandra Kaidalwar*, AIR 1981 SC 1186, dealing with Section 5(1)(e) of the Prevention of Corruption Act, 1947 which is parimateria to Section 13(1)(e) of the PC Act, 1988, has held that the accused having been found in possession of disproportionate assets, he is duty bound to account satisfactorily for such possession. It was observed as under:

“13.....To substantiate the charge, the prosecution must prove the following facts before it can bring a case under S. 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

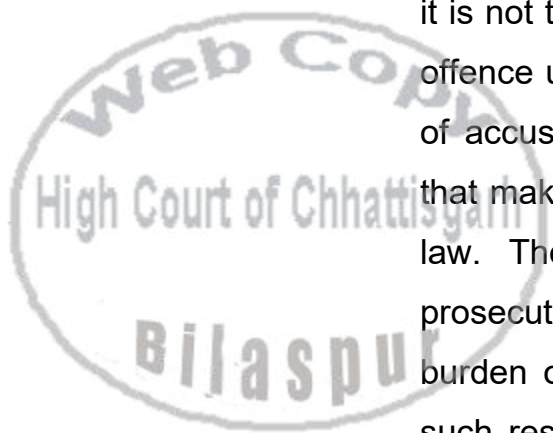


found in possession of the accused were disproportionate to his known sources of income. Once these four ingredients are established, the offence of criminal misconduct under S. 5(1)(e) is complete, unless the accused is able to account for such resources or property. The burden then shifts to the accused to satisfactorily account for his possession of disproportionate assets.....”

11. Similarly, in the matter of *M. Krishna Reddy v. State Deputy Superintendent of Police, Hyderabad*, AIR 1993 SC 313, Their Lordships of the Supreme Court again analyzing the provisions contained in Section 5(1)(e) of the Prevention of Corruption Act, 1947 (parimateria provision to Section 13(1)(e) of the Act of 1988) held that it is not the mere acquisition of property that constitute an offence under the provisions of the Act but it is the failure of accused to satisfactorily account for such possession that makes the possession objectionable as offending the law. Their Lordship further held that only after the prosecution has proved the required ingredients, the burden of satisfactorily accounting for the possession of such resources or property shifts to the accused. It was observed as under:

“6. An analysis of Section 5(1)(e) of the Act, 1947 which corresponds to Section 13(1)(e) of the new Act of 1988 shows that it is not the mere acquisition of property that constitutes an offence under the provisions of the Act but it is the failure to satisfactorily account for such possession that makes the possession objectionable as offending the law.

7. To substantiate a charge under Section 3(1)(c) of the Act, the prosecution must prove the following ingredients, namely, (1) the prosecution 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,



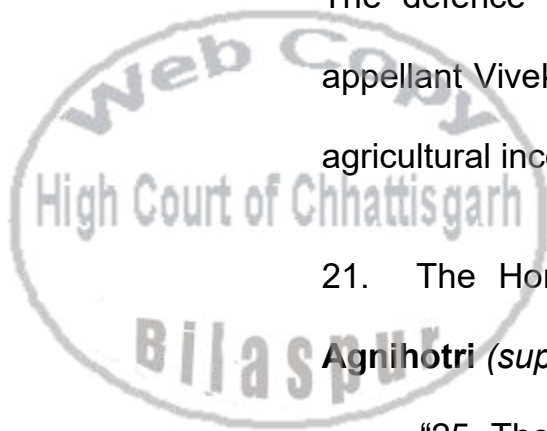


quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income. Once the above ingredients are satisfactorily established, the offence of criminal misconduct under Section 5(1)(e) is complete, unless the accused is able to account for such resources or property. In other words, only after the prosecution has proved the required ingredients, the burden of satisfactorily accounting for the possession of such resources or property shifts to the accused.”

20. The investigating officer has also admitted this fact that he had not investigated into this fact as to how many members of the appellant’s family were working and what was their financial condition. The defence witnesses have clearly stated that major son of the appellant Vivek Mehra is working and his wife also stated that she has agricultural income but the prosecution did not investigate into this fact.

21. The Hon’ble Supreme Court in the matter of **Krishnanand Agnihotri** (*supra*), held in para 25 as under:

“25. The next item of assets to which we must refer is the land at Varanasi which was purchased for Rs. 2,500/- in 1956. The sale deed of this land was in the name of Shanti Devi and hence it must be presumed, unless the contrary is shown by the prosecution, that the land belonged to Shanti Devi in whose name it was purchased and it stood in the records of the Municipal authorities. The case of the appellant was that this land was purchased by the father of Shanti Devi for her benefit and the consideration for the sale was also provided by the father of Shanti Devi. Ramadhar Avasthi D. W. 22, the father of the first husband of Shanti Devi, clearly stated in his evidence that Anant Ram, the father of Shanti Devi had purchased a plot of land for Shanti Devi for Rs.





2,500/- and this was supported by Bachhalal D. W. 11 who was one of the attesting witnesses to the sale deed. It is indeed difficult to see how this evidence led on behalf of the appellant could be brushed aside and without any evidence whatsoever led on behalf of the prosecution, it could be concluded that the purchase price of the land was paid by the appellant and that the land was purchased by the appellant in the name of Shanti Devi. We must, therefore, exclude this land in computing the total assets belonging to the appellant.”

In the present case also, wife of the appellant has clearly stated that she purchased the agricultural land from her *Stridhan* with support of her father-in-law and that she purchased land with her brother-in-law. Without any evidence led on behalf of the prosecution, it cannot be proved that the purchase price of the land was paid by the appellant.

22. In the case of **Manoranjan** (*supra*), the Hon'ble Supreme Court held in paras 19 & 20 as under:

“19. Merely submitting a list of assets and liabilities is not enough to attract the offence under Section 13(1)(c) of the PC Act. Someone has to prove the correctness of the entries made in such a list.

20. In order to sustain an offence, under Section 13(1)(e) read with Section 13(2) of the PC Act, 188, three essential conditions are required to be satisfied. Firstly, the prosecution has the burden to prove that the value of the property or properties, which the accused was alleged to have had in possession, either personally or through any member(s) of his family. Secondly, there must be proof of



known source of income and, thirdly, there must be proof that properties, in question, are disproportionate to known source of income. In short, thus, the prosecution ought to have, in the present case, disclosed, on record, with the help of evidence, as to what known source of income of the accused-appellant had been. If mere valuation of property of the accused is given without providing or adducing any evidence with regard to the income of the accused from his known source, the prosecution cannot be said to have discharged its burden of having proved the offence, under Section 13(1)(e) read with Section 13(2) of the PC Act, 1988, and, until the prosecution discharges its initial burden of proving its case, the onus does not shift to the accused to satisfy the Court with his explanation, by adducing evidence, that either the valuation of his property has not been correctly done, or that his known source of income, or in the light of his known source of his income, he has never been in possession of property or properties disproportionate to his known source of income.”

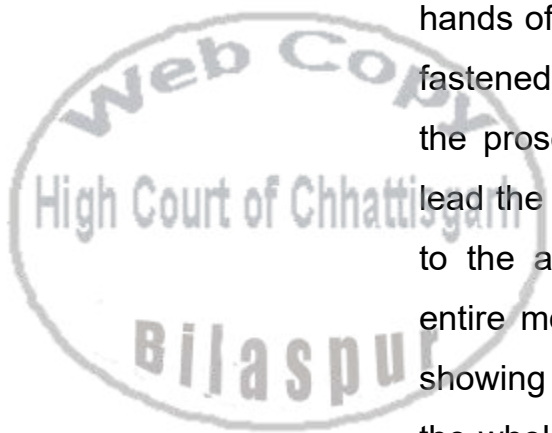
In the case in hand also, the inventory was prepared by the investigating officer and valuation of all the articles was written only on the basis of experience or presumption. The investigating officer has admitted that he did not get valuation of the golden and silver ornaments done from any goldsmith or any other competent person.

23. In the matter of **DSP, Chennai** (*supra*), the Hon'ble Apex Court held in para 16 as under:

“16. Now, in this background, when the accused has come forward with the plea that all the money which has been recovered from his house and purchase of real



estate or the recovery of the gold and other deposits in the Bank, all have been owned by his wife, then in that situation how can all these recoveries of unaccounted money could be laid in his hands. The question is when the accused has provided satisfactorily explanation that all the money belonged to his wife and she has owned it and the Income-tax Department has assessed in her hand, then in that case, whether he could be charged under the Prevention of Corruption Act. It is true that when there is joint possession between the wife and husband, or father and son and if some of the members of the family are involved in amassing illegal wealth, then unless there is categorical evidence to believe, that this can be read in the hands of the husband or as the case may be, it cannot be fastened on the husband or head of family. It is true that the prosecution in the present case has tried its best to lead the evidence to show that all these moneys belonged to the accused but when the wife has fully owned the entire money and the other wealth earned by her by not showing in the Income-tax return and she has accepted the whole responsibilities, in that case, it is very difficult to hold the accused guilty of the charge. It is very difficult to segregate that how much of wealth belonged to the husband and how much belonged to the wife. The prosecution has not been able to lead evidence to establish that some of the money could be held in the hands of the accused. In case of joint possession it is very difficult when one of the persons accepted the entire responsibility. The wife of the accused has not been prosecuted and it is only the husband who has been charged being the public servant. In view of the explanation given by the husband and when it has been substantiated by the evidence of the wife, the other witnesses who have been produced on behalf of the





accused coupled with the fact that the entire money has been treated in the hands of the wife and she has owned it and she has been assessed by the Income-tax Department, it will not be proper to hold the accused guilty under the Prevention of Corruption Act as his explanation appears to be plausible and justifiable. The burden is on the accused to offer plausible explanation and in the present case, he has satisfactorily explained that the whole money which has been recovered from his house does not belong to him and it belonged to his wife. Therefore, he has satisfactorily accounted for the recovery of the unaccounted money. Since the crucial question in this case was of the possession and the premises in question was jointly shared by the wife and the husband and the wife having accepted the entire recovery at her hand, it will not be proper to hold husband guilty. Therefore, in these circumstances, we are of the opinion that the view taken by the High Court appears to be justified and there are no compelling circumstances to reverse the order of acquittal. Hence, we do not find any merit in this appeal and the same is dismissed.”

In this case also, the appellant's wife, son and brother have clearly stated about their separate income but the learned trial Court did not appreciate this fact and assigned no particular reason to disbelieve the evidence of the defence witnesses, especially the statement of earning wife, major son and daughter-in-law of the appellant. It is not proved by the prosecution on the basis of legal and cogent evidence that the aforesaid properties were purchased by the appellant in the name of his wife, son and brother. All the defence evidence has been disbelieved by the trial Court without giving any definite finding on the issue. In this case, the offence of



disproportionate property has been registered against the appellant on the basis of suspicion, assumption and presumption as is evident from the nature and quality of evidence adduced by the prosecution and the manner in which valuation of the seized articles was done and the investigation was carried out.

24. For the aforesaid reasons, this Court is of the opinion that the prosecution has miserably failed to prove that the appellant possessed properties disproportionate to his known source of income. As such, the impugned judgment of the trial Court being based on improper appreciation of the overall evidence on record, is liable to be set aside.

25. In the result, the appeal is allowed and the impugned judgment of the trial Court is hereby set aside. The appellant is acquitted of the charge under Sections 13(1)(e) read with 13(2) of the Prevention of Corruption Act. He is reported to be on bail, therefore, his bail bonds stand discharged.

The seized properties and articles, as mentioned from paras 123 to 126 of the impugned judgment, be returned to the appellant and his family members after due verification.

sd/
(Rajani Dubey)
Judge