APHC010155502007

**IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI** **[3368]**
**(Special Original Jurisdiction)**

TUESDAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

**PRESENT**

**THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI**

**CRIMINAL APPEAL NO: 1418/2007**

**Between:**

1. SRI BOYINA VENKATESWARA RAO [DIED] PER LRs, formerly Project Director, DRDA, Guntur; presently working as Deputy Commissioner, Commercial Taxes Department, Kakinada, East Godavari District

2. BOYINA SUBHADRA (WIFE), W/o. late B. Venkateswara Rao, housewife, R/o. D. No. 7/547, Godugupeta, Machilipatnam, Krishna District

3. BOYINA VENKATA NAGA APARNA (DAUGHTER), W/o. Komaravolu Venkatadurga Nageswara Rao, Teacher, R/o. D. No. 7/547, Godugupeta, Machilipatnam, Krishna District

4. BOYINA ANIL KUMAR (SON), S/o. late Sri Boyina Venkateswara Rao, R/o. H. No. 34, Seven Hills, behind Komarla Factory, Chikkalasandra, Bangalore - 560061

**...APPELLANT(S)**

**AND**

1. THE STATE OF ANDHRA PRADESH, REP. BY INSPECTOR OF POLICE, CIU., ACB., GUNTUR H. QRS., REP. BY ITS SPL. PUBLIC PROSECUTOR, HIGH COURT OF A.P., AT HYDERABAD.

**...RESPONDENT**

Appeal under Section 372/374(2)/378(4) of Cr.P.C praying that the High Court may be pleased to present this Memorandum of Grounds of Crl.A., to this Hon'ble Court against the Judgment of the Spl. Judge for SPE & ACB Cases at Vijayawada, in C.C.No.5 of 1998, dt.12-10-07.

**IA NO: 1 OF 2007 (CRLAMP 1935 OF 2007)**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the execution of the sentence passed by the Spl Judge for SPE & ACB Cases, Vijayawada, in CC.No.5 of 1998, dt.12-10-2007 and release the petitioner on bail pending disposal of the Crl.A., before this Hon'ble Court.

**IA NO: 1 OF 2008 (CRLAMP 2475 OF 2008)**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to leave the petitioners to continue the Crl.A.No.1418 of 2007 pending before this Hon'ble Court.

**Counsel for the Appellant(S):**

1. A HARIPRASAD REDDY
2. .....
3. .....

**Counsel for the Respondent:**

1. S.SYAM SUNDER RAO SC cum Spl P.P. For ACB

**The Court made the following:**

**THE HONOURABLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI**

**CRIMINAL APPEAL No.1418 OF 2007**

**O R A L J U D G M E N T:**

The appeal is preferred by the appellant/convict/accused challenging the Judgment dated 12.10.2007 delivered in C.C.No.05 of 1998 on the file of the Special Judge for SPE & ACB Cases at Vijayawada.

2. The Special Court convicted the appellant for the offence under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 (in short 'the P.C. Act') and sentenced him to undergo simple imprisonment for a period of one (01) year and to pay a fine of Rs.2,000/- (Rupees Two Thousand Only), in default to undergo simple imprisonment for a period of six (06) months, and also confiscated the disproportionate assets to the State after the appeal period is over.

3. For the sake of convenience, the parties hereinafter referred to as they were arraigned before the learned Special Court.

**CASE OF THE PROSECUTION:**

4. The case of the prosecution is that the appellant/accused worked as a Project Director, District Rural Development Agency, Guntur, from 09.10.1994 to 26.10.1995. The appellant joined service on 02.06.1963 and continued till 25.10.1995. The appellant, during service as a Public Servant, acquired assets in his name or in the names of his dependents. They are disproportionate to his known sources of income earned during the check period i.e., from 02.06.1963 to 25.10.1995.

5. The Inspector, ACB, Guntur, registered a case under Section 13(2) r/w 13(1)(e) of the P.C. Act, 1988 against the appellant vide Cr.No.10/ACB-VJA/95 on 20.10.1995 and conducted investigation regarding his known sources of income, expenditure, savings and assets. The investigation discloses that the appellant's income from known sources during the check period is Rs.16,83,752-76 ps. The expenditure is Rs.8,95,166-67 ps. The likely savings are Rs.7,88,586-09 ps. The worth of the assets in the possession of the accused is Rs.16,48,223/-.

6. Thus, it is found that the assets are disproportionate to his known sources of income, worth of Rs.8,59,636-91 ps. The Government of Andhra Pradesh granted sanction in accordance with law to prosecute the accused for the offence under Section 13(2) r/w 13(1)(e) of the P.C. Act, 1988. Hence, the Investigation Officer laid the report before the Special Court.

7. The Special Court charged the accused for the offence under Section 13(2) r/w 13(1)(e) of the P.C. Act, 1988. The accused denied the charge and claims to be tried.

**EVIDENCE FOR THE PROSECUTION**:

8. The prosecution, to substantiate the charge, examined 73 witnesses as PWs-1 to 73 respectively and got marked Exs.P1 to P275 documents, apart from these, Exs.X1 to X28 were also marked during the evidence.

9. The accused was examined under Section 313 Cr.P.C., regarding the incriminating circumstances appearing against him from the evidence for the prosecution. He denied the same as not true and correct. 17 witnesses were

examined as DWs-1 to 17 for the defence, apart from Exs.D1 to D5 filed for the defence.

**FINDING OF THE SPECIAL COURT**:

10. Basing on the above evidence, the learned Special Court found the accused guilty of the offence under Section 13(2) r/w 13(1)(e) of the P.C. Act, 1988, convicted and sentenced him as mentioned above. Hence, the appeal came to be preferred by the appellant/accused, challenging the judgment of the Special Court.

**SUBMISSIONS ON BEHALF OF THE APPELLANT/ACCUSED**:

11. Learned counsel for the appellant/accused, Sri A. Hariprasad Reddy, would submit that the Special Court made a grave error in applying the principles of criminal law to the case. Therefore, it led to a travesty of justice. He would submit that the Investigation Officer, during cross-examination, admitted that if the properties standing in the name of the wife of the accused are not included as assets of the accused, the case would not come under the purview of Section 13(2) r/w 13(1)(e) of the P.C. Act, 1988. However, the Investigation Officer included certain properties standing in the name of the wife of the accused as assets acquired by the accused during the check period.

12. It is an admitted fact that the wife of the accused was also a Public Servant, worked as a Telugu Pandit Grade-I in Municipal High School, Machilipatnam, from August 1972 to May 1993 i.e., during the check period in

the case. The properties shown in the name of wife were acquired during the service period of the wife.

13. Therefore, the burden is on the prosecution to prove that the accused officer acquired those properties with his funds, in the name of wife, or that the wife is in possession of those properties on behalf of the accused officer. Only then, the accused officer shall satisfactorily account for it i.e., how he got pecuniary sources for purchasing the said properties.

14. The prosecution evidence does not lead the Court anywhere to conclude that the accused officer provided the funds to acquire the properties standing in the name of his wife. The prosecution did not examine any person to state that the sale consideration amount relating to the said properties was paid by the accused, and not by his wife.

15. There is no evidence on record leading the Court to say that wife had no financial capacity or independent income to acquire those properties. On the other hand, it is an admitted case that the wife of the accused was a Public Servant worked as a Teacher in a Municipal School from 1972 to 1993, for a period of 21 years. All the disputed properties were acquired during that period only.

16. In those circumstances, the burden rests heavily on the prosecution to establish that wife has been in possession of the said properties on behalf of the accused. The prosecution failed to discharge its burden as required under Sections 101 and 102 of the Indian Evidence Act, 1872.

17. Unfortunately, the Special Court observed that the accused did not examine his wife and, therefore, the properties are included in the assets of the accused, as claimed by the prosecution. Thereby came to an erroneous conclusion that the accused was in possession of the property disproportionate to his known sources of income during the check period, worth of Rs.2,09,982-07 ps., though, the prosecution had claimed it to be as Rs.8,59,631/-.

18. Learned counsel for the appellant/accused has pointed out the findings of the trial Court regarding the properties in the name of wife from Item Nos:

| **Item** | **Particulars** | **Amount Rs.** |
|---|---|---|
| 1. | Bank Balance. | 20,650/- |
| 3. | Kisan Vikas Patra | 1,00,000/- |
| 5. | Post office savings A/c. 15345. | 48,000/- |
| 6. | Deposits in Modern Agro | 25,000/- |
| 8. | Kothari Finance investment | 20,000/- |
| 9. | FDR in Ashok Leyland | 20,000/- |
| 10. | UTI Certificates | 15,468/- |
| 12. | Investments in UTI MEP-1992. | 5,000/- |
| 13. | UTI Master plus | 5,000/- |
| 15. | Promissory note | 1,00,000/- |
| 17. | House property | 1,06,500/- |
| 18. | House Property | 51,000/- |
| 19. | Open plot at old Guntur. | 12,500/- |
| 21. | Open plot at Eluru | 3,000/- |
| 22. | Thatched house at Guntur | 11,000/- |
| 24. | Plot at Guntur Co-op. Society. | 17,126/- |
| 27. | Fridge 165 Ltrs. | 7,500/- |
| 29. | F.D. in ABE Co-op Bank Ltd., | 9,367/- |
| 30. | Gold | 89,950/- |
| | Total | 6,67,061/- |

19. He would submit that all these properties are admittedly in the name of the wife and were acquired during the check period when she was working as a teacher. The trial Court observed that the accused officer had not examined his wife and, therefore, presumed that the accused officer had purchased/acquired these properties and consequently refused to delete the same from the assets of the accused. It is not sustainable in law. If these assets are removed from the list of assets standing in the name of the accused, the question of possession of assets disproportionate to his known source of income would not arise. Hence, the conviction of the accused is not sustainable either on facts or in law.

**SUBMISSIONS ON BEHALF OF THE RESPONDENT/ACB**:

20. Learned Standing Counsel-cum-Special Public Prosecutor for ACB, Sri S.Syamsunder Rao, would argue that the above properties referred by the learned counsel for the appellant stands in the name of the wife of the accused. The evidence on record would show that she was in possession of those properties on behalf of the accused. The accused did not satisfactorily account for the said assets standing in the name of his wife. Therefore, the trial Court rightly refused to delete those properties from the list of assets standing in the name of accused. Hence, there are no grounds to interfere with the judgment of the trial Court.

21. The burden to explain the sources of income for the assets standing in the name of his wife lies on the accused. He did not choose to examine his

wife of the accused for the reasons best known to him. Therefore, he failed to satisfactorily explain the sources of income for the said properties.

22. The Investigation Officer-PW-72, during cross-examination at page No.26, admitted that the wife of the accused i.e., Smt.B.Subhadra was a Public Servant. She worked as a Telugu Pandit Grade-I Teacher in Municipal High School at Machilipatnam from August 1972 to May 1993.

23. He also admitted that the assets covered under item Nos.1, 3, 5, 6, 8, 9, 10, 12, 13, 15, 17, 18, 19, 21, 22, 24, 27, 29 and 30, worth of Rs.6,67,061.61 ps. belong to the wife of the accused officer and are found in her name. He also categorically admitted that the assets, expenditure and income of the accused officer are taken into consideration, there may not be disproportionate assets.

24. In the light of above contentions made by the respective sides,

1) The main contention in the case is regarding the assets standing in the name of wife of the accused officer?

2) The question is whether the properties standing in the name of wife of the accused can be included in the list of assets of the accused in the case, as claimed by the prosecution? and

3) Whether the finding of the trial Court that accused did not examine his wife to speak about the sources of income, and therefore, it shall be treated that those assets belong to the accused, is sustainable?

**ANALYSIS**:

25. It is an admitted fact that the wife of the accused, Smt.B.Subhadra was a Public Servant. She worked as Telugu Pandit Grade-I in Municipal High School, Machilipatnam from August 1972 to May 1993. The check period in the case is from 1963 to 1995. So, during major portion of the check period i.e., for a period of twenty (20) years, the wife of the accused also worked as a Public Servant. It is also an admitted fact that the items of property/assets referred above stands in the name of Smt.B.Subhadra and acquired during the check period.

26. The contention of the prosecution is that the wife of the accused is in possession of the above properties on behalf of the accused i.e., to say that those properties/assets were acquired by the accused in the name of his wife, and therefore, she is in possession of the said properties. It is pertinent to note down that the wife of the accused is not arraigned as an accused in the case, contending that she facilitated the commission of offence by holding the properties or in possession of the properties acquired by her husband.

27. The prosecution admittedly did not examine any witnesses stating that the funds/sources for acquiring/procuring the above properties were provided by the accused, though the sale deeds/other documents stand in the name of the wife.

28. It is the contention of the prosecution that the wife is in possession of the above properties on behalf of the husband i.e., a binamidar.

29. Accordingly, the prosecution included the above properties in the list of assets of the accused alleging that the accused is having assets disproportionate to his known sources of income. As mentioned above, the Investigation Officer admitted that if those properties are not included in the assets of the accused, case will not come under the purview of the disproportionate assets. In those circumstances, i.e., when wife worked as Public Servant from 1972 to May 1993 for a period of twenty (20) years earning salary and properties acquired during that period, burden is on the prosecution to prove those properties were acquired by the husband and not from the income of the wife.

30. As already discussed above, no oral or documentary evidence placed before the Court below, to draw any presumption that the accused provided the funds to acquire/procure above properties in the name of wife, and therefore, she is in possession of the said properties as a binamidar for the husband.

31. Sections 101 and 102 of the Indian Evidence Act, 1872 deals with burden of proof. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. The burden of proof in a suit or proceeding lies on the person who would fail if no evidence at all were given on either side.

32. The illustrations under Section 101 of the Indian Evidence Act clarify the same. Illustration (a) would state that “A desires a Court to give judgment that

B shall be punished for a crime which A says B has committed". Burden is on A.

33. In the case on hand, the prosecution desires the Court to give judgment that the properties standing in the name of the wife, mentioned above, belongs to the accused and that wife is in possession of the said properties on behalf of the accused. Therefore, the existence of this fact shall be proved by the prosecution. If the prosecution proved the existence of this fact i.e., the husband acquired/procured the properties standing in the name of the wife or in possession of the wife, then only they can be included in the assets of the accused.

34. Section 13(2) r/w 13(1)(e) of the P.C. Act, 1988, contemplates a case where a public servant, or any person on his behalf, is in possession of pecuniary resources or property disproportionate to his known sources of income, which the public servant cannot satisfactorily account for. Therefore, the question of satisfactorily accounting for such pecuniary resources or property would arise only when the prosecution proved its case, that the wife is in possession of the properties on behalf of the accused.

35. In that view of the matter, the prosecution shall discharge its burden of proof that the properties in possession of the wife were acquired/procured by the accused during the check period. As already discussed above, the evidence on record placed by the prosecution would only show that these properties stand in the name of the wife. It will not lead the Court to conclude that she is in possession of the said properties on behalf of the accused.

36. Admittedly, the wife was also a public servant worked as a teacher in the Municipal High School at Machilipatnam during the relevant period. Therefore, it is for the prosecution to establish that she had no capacity to acquire the properties standing in her name or in her possession.

37. Unfortunately, the evidence is falling short on this aspect. However, the trial Court, in respect of all properties mentioned above, simply held that the accused did not examine his wife and, therefore, the said properties cannot be deleted from the assets of the accused. It appears that the trial Court failed to consider the principles of burden of proof as laid down under Sections 101 and 102 of the Indian Evidence Act, 1872, and Section 13(2) r/w 13(1)(e) of the P.C. Act, 1988, in proper perspective. Therefore, committed a grave error, as contended by the learned counsel for the appellant/accused.

38. The result is that it lead to travesty of justice. If the above properties are not included in the assets of the accused, as mentioned above, the case would not come under the purview of Section 13(2) r/w 13(1)(e) of the P.C. Act, 1988, admitted by the Investigation Officer.

**CONCLUSION**:

39. In the light of foregoing discussion, this Court is of the considered opinion that the judgment of the trial Court with on including the properties of the wife as assets of the accused is not sustainable either on facts or in law. Hence, liable to be set aside.

40. In that view of the matter, conviction of the accused and confiscation of properties is not sustainable. Accordingly, all the points are answered.

**RESULT**:

41. In the result, the Criminal Appeal is allowed. The order of conviction and confiscation of properties recorded by the Special Judge for SPE & ACB Cases at Vijayawada is set aside. The appellant/accused is acquitted for the offence under Section 13(2) r/w 13(1)(e) of the P.C. Act, 1988. The fine amount if any, paid by the appellant/accused shall be refunded to him, in accordance with law. This judgment be certified to the Trial Court, as per Section 405 of Cr.P.C.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

**JUSTICE B.V.L.N. CHAKRAVARTHI**

21.04.2026
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**THE HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

**CRIMINAL APPEAL No.1418 of 2007**

Date: 21.04.2026
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