APHC010289602006

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

THURSDAY, THE NINTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

CRIMINAL APPEAL No: 1461/2006

Between:

1. K.OBI REDDY,, SANITARY INSPECTOR, ANANTHAPUR MUNICIPALITY, ANANTHAPUR DISTRICT.

...APPELLANT

AND

1. THE STATE OF AP REP BY ITS PP HYD ACB INSP OF POLICE, rep. by its Spl. Public Prosecutor, High Court of A.P., at Hyderabad, through the Inspector of Police ACB. Ananthapur District.

...RESPONDENT

Counsel for the Appellant(S):

1. O KAILASHNATH REDDY

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: 1461 OF 2006

J U D G M E N T:

Heard Sri O.Kailashnath Reddy, learned counsel for the appellant and Sri S.Syam Sunder Rao, learned Special Public Prosecutor-cum-Standing Counsel representing the respondent/ACB.

2. The appeal is preferred by the convict/accused, challenging the judgment dated 19.10.2006 delivered by the Additional Special Judge for SPE & ACB Cases at Hyderabad, in C.C.No.13/1997.

3. The appellant is the accused in the case. The Special Judge convicted the appellant for the offence U/secs.13(1)(e)r/w.13(2) of the P.C.Act, 1988 and sentenced him to suffer rigorous imprisonment for a period of two (02) years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only), in default, to suffer simple imprisonment for a period of six (06) months for the above offence.

4. For convenience's sake, the parties are referred to as arraigned in the trial Court.

CASE OF THE PROSECUTION:

5. The case of the prosecution is that the appellant/accused worked as Sanitary Inspector in the office of Ananthapur Munipality from 23.07.1974 to 27.10.1994 in various capacities. The accused being a public servant, acquired assets disproportionate to the known

sources of his income. Therefore, he committed the offence punishable U/s.13(1)(e) of the P.C.Act, 1988.

6. The accused was in possession of assets worth of Rs.8,15,532.70 paise during the above check period. The income of the appellant was Rs.4,42,193.50 paise. The expenditure incurred was Rs.3,57,287.80 paise. Therefore, likely savings of the accused is Rs.84,905.70 paise, but the appellant had assets worth of Rs.7,30,627/- i.e., disproportionate to his known sources of income. The accused could not satisfactorily account for, though he was given opportunity. The Government accorded sanction for prosecution of the appellant.

7. The Special Court charged the accused for the offence U/s.13(1)(e) r/w.13(2) of the P.C.Act, 1988. The charge was explained to the accused. He pleaded not guilty and claims to be tried.

EVIDENCE FOR THE PROSECUTION:

8. The prosecution to substantiate the charge, examined P.Ws-1 to 45 and got marked Exs.P-1 to P-18, apart from M.O-1.

9. The accused was examined U/s.313 Cr.P.C. regarding the incriminating circumstances appearing against him from the evidence for the prosecution. He denied the incriminating circumstances. D.Ws-1 to 6 were examined for the defence. Exs.D-1 to D-13 were got marked for the defence.

FINDING OF THE SPECIAL COURT:

10. The Special Court on consideration of the above evidence, convicted the accused for the offence U/s.13(1)(e) r/w.13(2) of the P.C.Act, 1988, and sentenced him as mentioned above. Hence, the appeal came to be preferred by the accused, challenging the judgment of the Special Court on various grounds.

SUBMISSIONS ON BEHALF OF THE APPELLANT/ACCUSED:

11. Sri O.Kailashnath Reddy, learned counsel for the appellant would argue that the burden of proof is on the prosecution to establish that the appellant possessed assets that are disproportionate to the known sources of income. Then only, the burden shifts to accused to provide a satisfactory account of the source.

12. He would further argue that the trial Court found that in the case on hand, the total income of the accused during the check period is Rs.5,44,572.50 paise even as per the case of the prosecution. The expenditure during the check period of Rs.2,58,490/-. Likely savings during the check period is Rs.2,86,082.50 paise. The prosecution contends that the total assets possessed by the accused as on 27.10.1994 is Rs.6,52,071.70 paise. Therefore, disproportionate assets to the known sources of income are Rs.3,65,989.20 paise. Therefore, found the accused guilty of the charge.

13. The learned counsel for the appellant vehemently argued that in the State of Andhra Pradesh, a circular memo No.700/SC-D/88-4

dated 13.02.1989 was issued by the Government to consider 20% bonus over the income of the Officer and it must be added to determine the disproportionate assets. The trial Court found that 20% bonus on the income of Rs.5,44,572.50 paise comes to Rs.1,08,914.50 paise. But, come to an erroneous opinion that even if the margin of 20% on the income of the Accused Officer is increased as per memo dated 13.02.1989 mentioned above, the Accused Officer cannot escape the liability and determined the worth of disproportionate assets of Rs.3,65,989.20 paise by the end of the check period. It is an error apparent on the record. The trial Court having found that as per memo dated 13.02.1989 mentioned above issued by the Government of Andhra Pradesh in the year 1989, it should deduct a sum of Rs.1,08,914.50 paise from Rs.3,65,989.20 paise and asked the Accused Officer to satisfactorily explained or account for the remaining amount only. Therefore, if a sum of Rs.1,08,914.50 paise is deducted from Rs.3,65,989.20 paise, the amount will come to Rs.2,57,074.70 paise only. The worth of disproportionate assets would be Rs.2,57,074.70 paise.

14. The accused explained that a sum of Rs.2,00,000/- was contributed by his father for house construction. But the trial Court did not consider the same in proper perspective and rejected the same, though accused placed evidence probable to his plea. Further, the accused contended that the agriculture income shall be increased by

Rs.40,000/-. The trial Court also did not consider the same in proper perspective, though there is ample evidence on record to accept the contention of the accused.

15. Therefore, if a sum of Rs.2,00,000/- contributed by the father of accused for construction of house made by the accused and a sum of Rs.40,000/- is increased and added towards agricultural income of the accused, the total income of the accused would come to Rs.5,44,572.50 paise + Rs.2,40,000 = Rs.7,84,572.50 paise. Then 20% bonus shall be calculated on the said amount. It will come to Rs.1,56,914/-. Therefore, the total income will come to Rs.9,41,486/-.

16. The expenditure as per the trial Court during the check period is Rs.2,58,490/-. Hence, savings would be Rs.6,82,996/-. The worth of assets possessed by the Accused Officer as determined by the trial Court is Rs.6,52,071.70 paise. Therefore, the question of accused having assets more than to his known sources of income would not arise. Therefore, the judgment of the trial Court is not sustainable in law.

SUBMISSIONS ON BEHALF OF THE RESPONDENT/ACB:

17. Sri S.Syam Sunder Rao, learned Special Public Prosecutor-cum-Standing Counsel for ACB would argue that the trial Court rightly rejected the contention of the accused regarding contribution of Rs.2,00,000/- made by the father of the accused for construction of the house. The trial Court also did not find any reliable evidence to accept

the contention of the accused about the agricultural income. Hence, the said amount cannot be included in the income of the accused for the check period.

18. He would further argue that even if 20% bonus as claimed by the accused is considered, accused is in possession of assets disproportionate to his known sources of income, as rightly observed by the learned trial Court. Therefore, there are no grounds to interfere with the judgment of the learned trial Court.

19. In the light of above rival contentions, the points that arose for consideration in this Criminal Appeal are as under:

> ***1. Whether the appellant committed misconduct as a public servant by possessing assets disproportionate to his known sources of income that cannot be accounted for?***
>
> ***2. Whether there are grounds to interfere with the judgment of the Special Court?***

ANALYSIS

20. The income of the accused determined by the learned trial Court for the check period i.e., 23.07.1974 to 27.10.1994 is Rs.5,44,572.50 paise. The contention of the accused is that his father contributed a sum of Rs.2,00,000/- for construction of the house made by the accused.

21. The accused examined his father as D.W-16. He deposed that accused is his elder son. He has two more sons. Till date, they are

living as joint family. He inherited agricultural land in partition with brothers. They owned Ac.3-00 wet land and Ac.6-00 of dry land. They cultivate paddy in wet land and groundnut, red gram, green gram in dry land. The net agricultural income of the joint family is around Rs.3,00,000/- per annum. In addition to the cultivation, they also do milk business since 1957. D.W-7 to milk business. He purchased milk from them and sold the milk to the hotels at Puttaparthy. D.W-15 runs a hotel at Kothacheruvu village. The family also sells milk to D.W-15. Therefore, they got income from milk business would around Rs.1,00,000/- per annum. Hence, he could contribute Rs.2,00,000/- for construction of the house by the accused. He also contributed Rs.2,50,000/- for construction of the house by the second son. He constructed a house for the third son.

22. The contention of the learned counsel for the appellant is that the prosecution did not elicit anything in the cross-examination of D.W-16 to say that his testimony is not true. Learned counsel for the appellant would argue that D. Ws-7 and 15 corroborated the evidence of D.W-16 regarding milk business and agricultural activities.

23. He would submit that the witnesses examined by the prosecution i.e., P.W-13, P.W-19, P.W-22 and P.W-23 i.e., Village Administrative Officer, Mandal Revenue Inspector, Mandal Revenue Officer and Assistant Statistical Officer coupled with Ex.P-71 and P-72 produced by the prosecution would show that the joint family of the

accused own Acx.3-90 cents of wet land and Ac.5-00 of dry land in the village for several years. Their evidence also would disclose that paddy is cultivated in the wet land; commercial crops were raised in the dry land. The evidence of Village Administrative Officer would also establish that they are also doing milk business. But the trial Court did not discuss the above evidence in proper perspective and therefore, came to an erroneous opinion.

24. P.W-19 evidence would show that he was working as Village Administrative Officer at Kothacheruvu village, and he knows the family members of the Accused Officer and their properties. During his evidence, certain Adangals were marked regarding properties of the Accused Officer's family. P.W-19 in the cross-examination deposed that father and mother of accused owns Ac.3-69 cents of wet land and Ac.5-08 cents of dry land. The lands are fertile lands. They are owning the lands for several years. They are raising groundnut in dry lands. They also raising red gram and green gram crops, apart from red gram. The wetlands are situated near Bukkapatnam tank. They are irrigated with the water of the tank. They cultivate paddy in the wetlands. The average yield is 30 to 32 bags of paddy per acre. Each bag is of 80 KGs weight. He also categorically admitted that they supplied milk to Kothacheruvu hotels. The family is a joint family, which includes the Accused Officer.

25. P.W-22 is Mandal Revenue Inspector at Kothacheruvu village. He produced rainfall certificate under Ex.P-70 and agricultural income statement of the accused from fasli 1385 to 1387, 1391, 1393 to 1395, 1397 to 1403. He also produced Ex.P-72 abstract of agriculture income derived by the accused from 1974-1975 to 1993-1994 as Rs.1,84,085/-. During cross-examination, he admitted that there is no mention in Ex.P-67 that it was prepared as per office records. He did not produce the records, on which Ex.P-68 was prepared. He also admitted that he did not prepare the particulars mentioned in Exs.P-69 and P-70. He also admitted that he has no personal knowledge about the person, who furnished the particulars under Ex.P-70. There is no mention in Exs.P-69 and P-70 about the records, on which the particulars are mentioned. He admitted that the Municipal Rainfall Particulars are maintained by the Assistant Statistical Officer in the office of Chief Planning Officer. There is no proforma as shown in Ex.P-71 maintained in their office. He admitted that he did not work at Kothacheruvu Mandal in the year 1974-1975 to 1993-1994. They have no personal knowledge about the prevailing rates at Kothacheruvu during that period.

26. P.W-23 is the Mandal Revenue Officer of Thadimarri Mandal at the relevant point in time. He deposed that Ex.P-70 is Rainfall Certificate from 1989 to 1995. Ex.P-71 is agriculture income estimated by him for the period from 1975-1976 to 1993-1994. The Assistant

Statistical Officer in their office-maintained Rainfall Data. In the cross-examination, he admitted that he has no personal knowledge about the agriculture income of the accused's family. There is no prescribed format maintained similar to Ex.P-71 in their office. It was prepared as per records maintained by Assistant Statistical Officer. He admitted that the Assistant Statistical Officer is not a signatory to Ex.P-71. He admitted that the Assistant Statistical Officer maintained the record is still in service. The original records based on which Ex.P-71 was prepared are not produced before the Court.

27. P.W-24 is the Statistical Officer in the Office of Directorate of Economics and Statistics. He deposed that Ex.P-74 letter dated 03.08.1995 was furnished about the particulars of average yield of paddy and groundnut in Ananthapur District from the years 1974-1975 to 1993-1994 and statement is a general statement. He did not prepare the statement. It was not prepared in his presence. He has no personal knowledge about the contents of Ex.P-74.

28. Learned counsel for the appellant vehemently argued that no reliance can be placed on the documents, particularly, Exs.p-71 and P-72 produced by the prosecution in the light of evidence of P.W-19, P.W-22, P.W-23 and P.W-24. They admitted that they have no personal knowledge about the contents of the said documents. They did not prepare the said documents. They say that the statements under Exs.P-71 and P-72 were prepared based on records maintained

by the Assistant Statistical Officer and others. They admitted that the persons, who prepared those statements did not sign on the said statements. They were not examined as witnesses to prove the contents that the abstracts were prepared based on original records in the office, which cannot conveniently produce before the Court. In those circumstances, no value can be attached to those documents to consider the agriculture income of the Accused Officer during the check period, as claimed by the prosecution. But the trial Court did not consider the contention of the defence in proper perspective and came to an erroneous opinion regarding the agriculture income as well as the contribution made by the father of the accused for construction of the house. Simply on the ground that there is no documentary evidence produced by D.W-16 and on the ground that P.W-24 produced statistical data of the agriculture income as Rs.60,000/- during the check period and therefore, the contention of the accused cannot be accepted.

29. He would further submit that those statements produced through P.Ws-23 and 24 are not admissible U/s.65(g) of the Indian Evidence Act, as person/Officer, who prepared they was not examined by the prosecution. The witnesses examined by the prosecution admitted that they have no personal knowledge about the data found in the original records, and they did not prepare Exs.P-71 and P-72. The persons, who prepared the said statements also did not sign on the said

documents, certifying that they are prepared based on the original records.

30. The learned Special Public Prosecutor-cum-Standing Counsel for ACB would argue that as per section 65(g) of the Indian Evidence Act, the evidence may be given as to the general result of the document examined by any person, who is skilled in the examination of said document. The evidence of P.W-23 would show that Ex.P-71 was prepared after due enquiries and based on office records. Ex.P-71 is admissible in evidence, since it was proved by P.W-23.

31. The Hon'ble High Court of Andhra Pradesh in the case of **Vasam Hari Babu Vs. Vasam Veeraraghavamma**[1], held that "*there may be public documents, which cannot conveniently be produced before the Court, the information contained in such documents is nothing but an abstract of information gathered from various public documents to be maintained by the Educational Institutions. Therefore, if a document prepared from various other documents, they cannot be considered as copies of the public documents. But, abstract of the same and is, therefore, admissible under clause (g) of Section 65*".

32. The learned counsel for the appellant would submit that the above judgment makes it clear that the evidence may be given as a general result of the documents by any person, who has examined

[1] **2001(2) ALD 481**

them and who is skilled in examination of such documents. But, in the case on hand, P.Ws-23 and 24 categorically admitted that they have no personal knowledge about the contents of the documents. They did not prepare the abstract under Exs.P-71 and P-72. The persons, who maintained the documents is Assistant Statistical Officer. He did not sign on the said documents. He was not examined by the prosecution. Therefore, the judgment relied on by the prosecution will not help the case of the prosecution to contend that Ex.P-71 or Ex.P-72 are proved in accordance with law, to accept their probative value as true and correct.

33. In the light of rival submissions mentioned above, the dispute confined to two aspects. One is non-inclusion of a sum of Rs.2,00,000- in the income of the appellant towards contribution made by his father at the time of construction of the house. Second is regarding in-correct evaluation of agriculture income of the appellant.

34. The trial Court on consideration of the evidence, determined the income of the accused during the check period as Rs.5,44,572.50 paise. The accused contended that his father contributed a sum of Rs.2,00,000/- for construction of the house, as the father and brothers of the accused are living as joint family. The father contributed a sum of Rs.2,50,000/- for construction of house by the brother of the accused. He also got constructed a house for the other brother of the accused.

35. The accused to probable his plea, examined his father as D.W-16. He deposed about the agriculture lands owned by joint family income received on the agriculture lands and milk business carried on by the family. He deposed that he contributed Rs.2,50,000/- for construction of the house by the second son. He also constructed a house for third son. He contributed Rs.2,00,000/- for construction of the house by the elder son i.e., accused. The trial Court did not accept the testimony of D.W-16 on the ground that no documentary evidence is placed on record for contribution of the amount.

36. Learned counsel for the appellant vehemently argued that the joint family of the accused, his father and brothers' hail from village. They live on agriculture and milk business. The evidence of Village Administrative Officer (P.W-19) of the village would prove the same. The joint family is having considerable income on agriculture lands and milk business for several years. No regular accounts can be expected from a person living on agriculture and maintaining cattle in the village, which is not a commercial activity to expect accounts as maintained by business people.

37. The evidence of Village Administrative Officer (P.W-19), Mandal Revenue Inspector (P.W-22), Mandal Revenue Officer (P.W-23) and other witnesses proved that the family of accused, his father and brothers is a joint family. The joint family is having income from wetlands, dry lands and on milk business.

38. D.W-16 on oath categorically deposed that he contributed amount for construction of the house by all his sons. Nothing was elicited in the cross-examination to jettison his testimony before the Court. No contra evidence is available on record to say that he has no such capacity to contribute amount.

39. The Hon'ble Supreme Court in the case of **Dudh Nath Pandey V. State of U.P.[2],** held that "the evidence of the defence witness shall also be considered on par with the prosecution witnesses". In the case on hand, the trial Court simply brushed aside the testimony of the father of the accused on the ground that no documentary evidence is placed on record to prove the contribution. Hence, the said fining of the trial Court is not based on evidence, and therefore, the said finding is not sustainable either on facts or in law.

40. It is true P.W-19 Village Administrative Officer admitted that accused, his father and brothers are living as joint family. The evidence of P.W-19, Mandal Revenue Inspector (P.W-22) and Mandal Revenue Officer (P.W-23) would also discloses that their family owned wet lands, dry lands, they are cultivating paddy and commercial crops for several years during the check period. The evidence of Village Administrative Officer would also show that the joint family is also having milching cattle and selling milk to nearby hotels located near four road junction of the village. These facts and circumstances would

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[2] **AIR 1981 SC 911**

establish that the accused, his father and brothers are living as joint family owns agriculture lands and milching cattle and earning considerable income on agriculture and milk business in the village even prior to the date of check period.

41. The father of accused was examined before the trial Court. On oath, he made a statement about the contribution of amount of Rs.2,00,000/- at the time of construction of the house by the accused, as he contributed amounts to other sons also at the time of construction of their houses. It is a common in joint families living in villages.

42. As rightly argued by the learned counsel for the appellant, the farmers in the village will earn livelihood on agriculture and milching cattle. Generally, they will not maintain any accounts as maintained by businesspeople doing commercial activities. Therefore, merely because no accounts are placed before the trial Court, the evidence mentioned above cannot be brushed aside on the sole ground that no accounts are placed to prove the contribution. All the circumstances coming forth from the evidence shall be considered, before brushing aside the statement of father of the accused. Nothing was elicited in the cross-examination of D.W-16 i.e., father of accused to say that he suppressed the truth, made inconsistent statements, contrary to the former statements. Therefore, the evidence of Village Administrative Officer (P.W-19), Mandal Revenue Inspector (P.W-22), Mandal

Revenue Officer (P.W-23) coupled with the evidence of the father of the accused, plea of the accused is probable.

43. It is settled law that accused need not prove his plea beyond reasonable doubt. If the evidence placed on record would show that the plea of the accused is also probable, in the circumstances of the case, it cannot be brushed aside. Therefore, the opinion of the trial Court rejecting the plea of the accused is not based on evidence. Hence, it is not sustainable either on facts or in law. In that view of the mater, this Court is of the considered opinion that a sum of Rs.2,00,000/- shall be included in the income of the accused, during the check period towards contribution made by his father for construction of the house.

44. When coming to the agriculture income of the accused determined in the case, the prosecution case is that the agriculture income of the accused during the check period is Rs.46,021/-. It is based on the evidence of P.W-45, who prepared Ex.P-110 relying on the rates of agriculture produce furnished by P.W-21 and P.W-24.

45. The contention of the accused is that the agriculture income was not properly considered by the Investigation Officer inspite of his explanation;;The trial Court also failed to determine the same in proper perspective on the ground that no documentary evidence produced by the accused that his father cultivated lands on lease of others; The trial Court based its finding on inadmissible documents, and evidence

of P.Ws-23 and 24, though they are not the authors of Exs.P-71 and P.72; Therefore, trail Court considered the agriculture income erroneously at Rs.60,000/- only during the check period, which is on lower side when compared to the actual income received from the agriculture lands and milk business carried on by the joint family of the accused; Therefore, trial Court ought to have included further sum Rs.40,000/- at least, towards agriculture income of the accused basing on the prevailing rates of agriculture produce and milk, at the relevant point in time i.e., during the check period.

46. The trial Court observed that the prosecution to prove the agriculture income, examined P.W-19, P.W-22 and P.W-23. The trial Court observed that P.W-45 i.e., Investigation Officer admitted that accused is a member of joint family of his father and brothers. P.W-19 i.e., Village Administrative Officer also admitted the said fact. He also admitted that the joint family owns Ac.3-69 cents of wet land and Ac.5-08 cents of dry land. They used to cultivate paddy in wetlands and commercial crops i.e., groundnut, red gram, green gram etc., were cultivated in the dry lands during the check period and before by the joint family.

47. P.W-23/Mandal Revenue Officer was examined by the prosecution to prove the estimated agriculture income during the check period basing on rainfall and rates of paddy and pulses at the relevant point in time. P.W-23 relied on Exs.P-71 and P-72.

48. The contention of the accused is that Exs.P-71 and P-72 are inadmissible in evidence. They are not proved in accordance with law. The learned counsel for the appellant would submit that the prosecution produced Exs.P-71 and P-72 as if they are the general result of the documents maintained by concerned officials, who examined them and skilled in the examination of such documents on the request of P.W-23. The prosecution did not examine the concerned officials i.e., Statistical Officer, who maintained the relevant registers of rainfall and Agriculture Officer, who maintained the market prices of paddy and pulses during the check period. The prosecution did not examine the persons, who prepared the general result of the records i.e., Exs.P-71 and P-72. P.Ws-23 and 24 admitted that they have no personal knowledge about the general result covered by Exs.P-71 and P-72. They also admitted that they did not verify or compare Exs.P-71 and P-72 with original records. They admitted that the concerned officials, who examined the original records and prepared Exs.P-71 and P-72 did not attest Exs.P-71 and P-72 documents. They admitted that they are working in the office at the time of trial, and available to the Court, to prove the said documents. But the prosecution did not choose to examine the persons, who maintained the records or the persons, who verified the records having skill to examine such records and preparation of Exs.P-71 and P-72. Therefore, Exs.P-71 and P-72 will not fall under the purview of section

65(g) of the Indian Evidence Act, 1872. The trial Court unfortunately did not consider this legal aspect and relied on those documents and rejected the contention of the accused. Hence, the finding of the trial Court regarding agriculture income of the accused is against the facts and in law and is not sustainable.

49. The contention of the accused is that his joint family was having income of Rs.3,00,000/- during the check period and the joint family was also doing milk business. Therefore, the agriculture income of the accused would be not less than Rs.2,50,000/- during the check period. But the trial Court erroneously enhanced it to Rs.60,000/- only.

50. As already mentioned above, learned Special Public Prosecutor-cum-Standing Counsel for respondent/ACB vehemently argued that Exs.P-71 and P-72 would come under the purview of section 65(g) of the Indian Evidence Act, 1872 and they are admissible in evidence in the light of the judgment of this Court in the case of **Vasam Hari Babu Vs. Vasam Veeraraghavamma.** This Court in the above case, considered section 65(g) of the Indian Evidence Act, 1872 and observed that "*if a document is prepared drawing information from various other documents, may be the public documents, which cannot conveniently be produced before the Court, the information contained in such documents is nothing but an abstract information gathered from various public documents to be maintained by the institutions. In such circumstances, although the information contained in the public*

document is gathered, they cannot be considered as copies of public documents but an abstract of the same and is, therefore, admissible under clause (g) of Section 65".

51. As rightly argued by the learned counsel for the appellant, P.Ws-23 and 24 are not the persons, who prepared Exs.P-71 and P-72. They did not examine the public documents based on which, Exs.P-71 and P-72 were prepared. The officials, who examined the public documents maintained in the office of District Statistical Officer, who examined the public documents maintained in their office and prepared the abstract under Exs.P-71 and P-72, did not certify on Exs.P-71 and P-72 that they examined the original records, and they are having skill in the examination of such documents and Exs.P-71 and P-72 are the abstracts of the said documents.

52. P.Ws-23 and 24 in the cross-examination admitted that the persons, who prepared Exs.P-71 and P-72 are available in their office at the time of trial. Therefore, the prosecution failed to examine the persons, who examined the original records and prepared general result of the documents, to say that they are having skill in examination of public documents, they examined the relevant public documents and they prepared the abstract containing the general result of the documents.

53. Admittedly, P. Ws-23 and 24 are not the persons, examined the original public documents and prepared the abstract. In the above

circumstances, the prosecution did not prove Exs.P-71 and P-72 in accordance with law, to consider Exs.P-71 and P-72 U/s.65(g) of the Indian Evidence Act, 1872.

54. The trial Court without considering the above aspects, erroneously accepted Exs.P-71 and P-72, and the evidence of P.Ws-23 and 24 and determined the agriculture income of the Accused Officer. The trial Court enhanced the agriculture income of the accused to Rs.60,000/- from Rs.46,021/-. No reasons are assigned why it was enhanced to Rs.60,000/- only.

55. The evidence of P.W-19, P.W-22 and P.W-23 discussed above would establish that the joint family of the accused, his father and brothers own Ac.3-50 cents of wet land and Ac.5-00 of dry land for several years well before the check period. They cultivated paddy, commercial crops every year. They also own cattle. They sold milk to the local hotels located near the village. it was also admitted by P.W-19/Village Administrative Officer, a common phenomenon in the village.

56. The contention of the accused is that his agriculture income was not less than Rs.2,50,000/- during the check period. As already discussed above, the joint family owns Ac.3-69 cents of wet land and Ac.5-08 cents of dry land. They are cultivated paddy and commercial crops, well before the check period and during the check period. They also did milk business for several years.

57. Therefore, the agriculture income of the accused during the check period i.e., his 1/4th share received from the joint family can be assessed at Rs.1,00,000/-, instead of Rs.60,000/- fixed by the trial Court. Therefore, another sum of Rs.40,000/- shall be added to the income of the Accused Officer towards agriculture income during the check period. Hence, if the sum of Rs.2,00,000/- and Rs.40,000/- is included in the income of the accused, during the check period, the it will come to Rs.7,84,572.50 paise.

58. As per the memo issued by the Government of Andhra Pradesh at that time, as discussed by the trial Court, 20% of margin can be considered on his income. Therefore, if 20% is taken into consideration over his income, it will come to Rs.1,56,914/-. Therefore, the total income of the accused during the check period will be Rs.9,41,487/-. The expenses of the accused during the check period determined by the trial Court is Rs.2,58,490/-. Hence, likely savings of the accused will come to Rs.6,82,997/-. The total worth of assets possessed by the Accused Officer as on 27.10.1994 determined by the trial Court is Rs.6,52,071/-. Therefore, it would show that the assets possessed by the Accused Officer as on 27.10.1994 are less than his income received during the check period. In that view of the matter, the judgment of the trial Court is not sustainable either on facts or in law.

CONCLUSION:

59. In the light of foregoing discussion, the appeal be allowed.

RESULT:

60. In the result, the Criminal Appeal is allowed. The judgment of the Additional Special Judge for SPE & ACB Cases, Hyderabad, dated 19.10.2006 passed in C.C.No.13 of 1997 is set aside. The appellant/Accused is acquitted for the offence U/s.13(1)(e) r/w. section 13(2) of the P.C.Act, 1988. The fine amount, if any paid by the appellant/accused, shall be refunded to him as per law. The bail bonds of the appellant/Accused shall stand cancelled. This judgment be certified to the trial Court, U/s.405 Cr.P.C.

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

JUSTICE B.V.L.N. CHAKRAVARTHI.

09.04.2026

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

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CRIMINAL APPEAL No:1461 OF 2006

Date: 09.04.2026

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