2024 INSC 221

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2024
(@ SPECIAL LEAVE PETITION (CRIMINAL) NO. 2044 OF 2021)

PUNEET SABHARWAL …Appellant (s)

Versus

CBI ...Respondent(s)

WITH

CRIMINAL APPEAL NO. OF 2024
(@ SPECIAL LEAVE PETITION (CRIMINAL) NO. 2685 OF 2021)

R.C. SABHARWAL …Appellant (s)

Versus

CBI ...Respondent(s)

J U D G M E N T

K.V. Viswanathan, J.

1. Leave granted.

2. The present appeals call in question the correctness of the judgment of the High Court of Delhi at New Delhi dated 01.12.2020 in Writ Petition (Criminal) No. 200 of 2010 and Writ Petition (Criminal) No. 339 of 2010. These proceedings in the High Court, in turn, challenged the Order on charge dated 21.02.2006, as well as the charges framed on 28.02.2006, by the Special Judge, Delhi. While the charge against the appellant Puneet Sabharwal was under Section 109 IPC read with Section 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988, the charge against appellant R.C. Sabharwal was under Section 13(1)(e) read with 13(2) of the Prevention of Corruption Act, 1988. In substance, the charge was that appellant R.C. Sabharwal owned assets disproportionate to known sources of income and the appellant Puneet Sabharwal, son of R.C. Sabharwal, has abetted him in the commission of the said offence. The High Court, by the impugned order, dismissed the petitions. Aggrieved, the appellants are before us.

Brief Facts:

3. On 23.08.1995, based on source information, the Anti-Corruption Bureau, New Delhi, District New Delhi registered a First Information Report in Crime No.RC-74(A)/95-DLI.

4. On 28.08.1995, a charge-sheet was filed against both the appellants. In substance, the allegations, as set out in the charge-sheet, were as follows:

(i) That the appellant R.C. Sabharwal was Additional Chief Architect in New Delhi Municipal Corporation;

(ii) That while being posted in various capacities from the year 1968 onwards, he had amassed huge assets which are disproportionate to his known sources of income;

(iii) That the assets were acquired by R.C. Sabharwal either in his name or in the name of his family members. Details of the assets were set out.

(iv) The check period was taken from the date when the appellant R.C. Sabharwal joined as an Assistant

Architect in NDMC i.e. 20.08.1968 to the date of the search i.e. 23.08.1995.

(v) That the total income of the appellant R.C. Sabharwal from salary was Rs. 10,00,042/-. Detailed breakup of salary for the years was given. The income from the salary of his spouse was Rs. 8,72,249.42

(vi) Apart from the above salaried income, income accruing to the accused R.C. Sabharwal from several enterprises, companies and trusts was also set out. Rental income was also mentioned as well as income from insurance policies and income arising out of interest. After computing all the income, it was mentioned that the total income was of Rs. 1,23,18,091/-

(vii) Expenditure was provided to the extent of Rs. 18,23,108/-. Movable assets to the tune of Rs. 4,25,450/- was mentioned. It was also alleged that there were bank balances in the name of appellant

R.C. Sabharwal and in the name of his family members to the tune of Rs. 82,63,417/-.

(viii) As far as the immovable assets are concerned, a set of twenty-four properties were set out which were in all valued at Rs. 2,27,94,907/-.

(ix) That the appellant R.C. Sabharwal could not satisfactorily account for the assets disproportionate to his known sources of income.

(x) That the appellant R.C. Sabharwal was a party to the criminal conspiracy with his son, being appellant Puneet Sabharwal, who had received Rs. 79 lakhs through encashment of Special Bearer Bonds and he facilitated commission of the offence as a conspirator.

(xi) That in furtherance of the said criminal conspiracy, assets were acquired by R.C. Sabharwal in the name of M/s Morni Devi Brij Lal Trust, M/s Morni Merchants and other firms in which the sole beneficiary was appellant Puneet Sabharwal, his son.

It was further alleged that appellant R.C. Sabharwal dealt with all the financial matters of the said trusts/firms.

(xii) It was concluded that a criminal case was made out against appellant R.C. Sabharwal and Puneet Sabharwal for offence punishable under 120-B IPC r/w 5(2) r/w 5(1)(e) of PC Act, 1947 corresponding to 13(2) r/w 13(1)(e) of PC Act, 1988.

(xiii) Further, it was concluded that against R.C. Sabharwal a case under Section 5(2) r/w 5(1)(e) of PC Act, 1947 corresponding to 13(2) r/w 13(1)(e) of PC Act, 1988 was made out for possession of assets worth Rs. 2,05,63,341/- disproportionate to his known sources of income.

Order on Charge:

5. On 21.02.2006, the Special Judge pronounced an order on charge after elaborately discussing the principles governing

discharge. The learned Judge rendered the following findings in the order on charge:

(i) The expression "known sources of income" can only have reference to the sources known to the prosecution;

(ii) The prosecution cannot be expected to know the firms of the accused persons;

(iii) The income from firms of the accused persons would be within the special knowledge of the accused, under Section 106 of the Evidence Act and it was for the accused to 'satisfactorily account' for the charge of owing disproportionate assets, which can only be discharged at trial;

(iv) Insofar as the appellant Puneet Sabharwal is concerned, reliance was placed on the statement of Chartered Accountant Anil Mehta to the effect that the properties were purchased benami by appellant R.C. Sabharwal in the name of his son and sister;

(v) The learned judge relied upon ***P. Nallamal v. State, (1996) 6 SCC 559,*** wherein this Court held that a non-public servant can be tried in the same trial along with the public servant for abetment of offence under Section 13(1)(e) r/w 13(2) of the PC Act.

(vi) There was sufficient material to show the existence of grave suspicion arising out of the material placed before the Court regarding involvement of both the appellants for commission of offences under Section 109 IPC read with Section 13(1)(e) r/w 13(2) of the PC Act as far as the appellant Puneet Sabharwal was concerned and under Section 13(1)(e) read with 13(2) of the Prevention of Corruption Act, 1988 as far as R.C. Sabharwal was concerned.

Charges:

6. Thereafter, by order dated 28.2.2006, charges were also framed. For the sake of convenience, the charges against both the appellants are set out hereinbelow:

"**CHARGE NO. 1**

That you being a public servant employed as Additional Chief Architect, NDMC, New Delhi, during the period 20.8.1968 to 23.08.1995 were found in possession of assets to the tune of Rs. 3,10,58,324/- as against your income and that of your family members Income, to the tune of Rs. 1,23,18,091/- and expenditure of Rs. 18,23,108/-and you were found in possession of total assets to the tune of Rs. 2,05,63,341/- which were disproportionate to your known sources of income and which you could not satisfactorily account for and thereby you committed an offence U/s. 13(1)(e) punishable U/s. 13(2) of the PC Act, 1988 and within my cognizance.

And I hereby direct you to be tried by this court for the said offence.

CHARGE NO. 2

That while your father Shri R.C. Sabharwal being a public servant employed as Additional Chief Architect, NDMC, New Delhi during the period 20.08.1968 to 23.08.1995 you intentionally aided him in commission of the offence U/s 13(1)(e) read with 13(2) of the PC Act as he was found in possession of assets to the tune of Rs. 3,10,58,324/- as against his income and that of his family members income, to the tune of Rs. 1,23,18,091/- and expenditure of Rs. 18,23,108/- and he was found in possession of total assets of the tune of Rs. 2,05,63,341/, which were disproportionate to his known sources of income and which he could not satisfactorily account for and thereby you committed an offence, of abetment U/s 109 IPC read with 13(1)(e) and Sec. 13(2) of the PC Act, 1988 and within my cognizance.

And hereby direct you to be tried by this court for the said offence."

[emphasis supplied]

Orders on the income tax front:

7. After the order of the Trial Court, both with regard to the order on charge and the framing of charges, and before the High Court disposed of the Petitions before it, leading up to the impugned order, certain developments took place on the income tax front.

8. The Income Tax Appellate Tribunal pronounced its judgment on 31.08.2007 in appeals and cross appeals filed by the assessees [which included the Appellants herein] and the department, with regard to the reopening of the assessments for the years 1989-1990 to 1995-1996 and 1997-1998 to 2001-2002.

9. Earlier, the Assessing Officer had reopened the assessment for Assessment Year 1996-1997 and made certain additions and deletions in the hands of the Appellants herein and other assessees. Thereafter, the CIT (Appeals) had upheld the validity of the reopening while approving or disapproving some of the additions and deletions made by the Assessing

Officer. However, the Tribunal had, on 07.03.2005, held that the reopening of the assessment for the Assessment Year 1996-1997 was not justified since the conditions precedent for reopening the assessment were not fulfilled. Consequently, the issues regarding the merits of additions or deletions were not adjudicated by the Tribunal in the said Order.

10. However, the Tribunal in its order dated 31.08.2007, while hearing appeals and cross-appeals concerning the reopening of assessment for the years 1989-1990 to 1995-1996 and 1997-1998 to 2001-2002, found that materials did exist for reopening the assessment for the said assessment years. Thereafter, it examined the merits of the additions made on substantive basis and additions denied, in the years under consideration in the hands of appellant R.C. Sabharwal. It noted that the Tribunal was required to examine the additions and deletions carried out by the Assessing Officer and the CIT (Appeals) in the assessment year 1996-1997 because, in the view of the Tribunal, the issue of additions in all the other

years under consideration flowed from the base assessment year of 1996-1997.

11. While considering the various additions and deletions, the Tribunal *inter alia* considered the addition carried out by the Assessing Officer [which was thereafter deleted by the CIT (Appeals)] in the hands of the appellant R.C. Sabharwal herein with respect to income of M/s Morni Devi Brij Lal Trust. The Assessing Officer had justified these additions on the grounds that:

(i) The source of investment made by the founders of the said trust being Smt. Morni Devi and Sh. Brij Lal was not explained.

(ii) The special bearer bonds which were encashed in the account of the said Trust were not out of investments from the Trust since the said bonds were purchased prior to the formation of the Trust itself. Some other person had invested the amount and encashed it in the hands of the trust.

(iii) The founder of the trust was not shown to have the income necessary to purchase the said bonds.

12. The CIT (Appeals) had deleted these additions. In examining this issue and approving the said deletion, the Tribunal rendered the following findings:

(i) The Appellant R.C. Sabharwal had no obligation to explain the source of investment of the founders of the trust being Smt. Morni Devi and Sh. Brij Lal.

(ii) The Trust itself had been filing its return of income since it came into existence and had been assessed separately. No evidence was produced to show that the assessee was the benami owner of the trust.

(iii) As regards the credits representing deposits of Special Bearer Bonds, relying upon Section 3 of the Special Bearer Bonds (Immunities and Exemptions) Act, 1981 it was held that no person who has subscribed to or has otherwise acquired Special Bearer Bonds shall be required to disclose, for any purpose whatsoever,

the nature and source of acquisition of such bonds and that complete immunity has been granted to the bond holders. The presumption of the Assessing Officer that the bearer bonds were acquired by the trust was held to be not correct;

(iv) Reference is made by the Tribunal to the findings of the CIT (Appeals) that the special bearer bonds were tendered for encashment by the trust and that Assessing Officer exceeded his jurisdiction in making an enquiry and calling upon the trust to explain the nature and source of acquisition of such bonds.

(v) Reference is made by the Tribunal to the findings of the CIT (Appeals) that the trust would be a person within the meaning of the Special Bearer Bonds (Immunities and Exemptions) Act, 1981.

(vi) The Tribunal then quotes the findings of the CIT (Appeals) whereunder it was held that once the assessment has been made and the department has

accepted the existence of the trust it could not be reversed without bringing on record any adverse material. The onus was on the department to show that the trust was benami and there was no evidence in that regard.

(vii) The Tribunal then quotes the findings of the CIT (Appeals) whereunder it was concluded that the Assessing Officer had not been able to prove that the Trust was benami and that the income of the trust belonged to R.C. Sabharwal. Holding so, the additions to the tune of Rs. 8,14,230/- was deleted. No further comments were given by the Tribunal in regard to this addition/deletion.

13. Thereafter, on the issue of appellant Puneet Sabharwal having received funds from the Morni Devi Brij Lal Trust which was held to belong to appellant R.C. Sabharwal, it was found that since Morni Devi Brij Lal Trust was a separate entity and since the appellant Puneet Sabharwal was running its business, its

income could not be added in the hands of the appellant R.C. Sabharwal. The Tribunal also considered the additions/deletions with regard to various other firms and assessees which we do not seek to set out herein for the purposes of brevity.

14. Ultimately, only on the aspect of deposits in the joint bank accounts of minors, so far as it fell within the limitation period, the Tribunal restored the matter back to the Assessing Officer for deciding the issue afresh and the appeal of the revenue was allowed to that limited extent. Holding so, the appeals were disposed of. Consequently, on 30.12.2009, the Assessing Officer passed an assessment order accepting the explanation of the assessee on the aspect remitted and the income of the assessee Puneet Sabharwal was fixed at Rs. 67,550/-.

Proceedings in the High Court:

15. These orders which came subsequent to the orders of the Trial Court were placed before the High Court. It was contended that in view of the orders made by the Income Tax Appellate

Tribunal in the reopening proceedings, which reopening was based on the search conducted by the CBI, there is absolutely no ground to proceed with the criminal trial. It was further argued, with respect to the appellant Puneet Sabharwal, that he was a minor for a large portion of the check period and therefore could not be made an accused.

16. Repelling the contentions, the High Court held as follows:

(i) Simply because for a large part of the period of investigation, the appellant Puneet Sabharwal was a minor, would not by itself be a reason to disregard the fact that at least for the seven years of the investigation period he was a major;

(ii) Under Section 3(2) of Special Bearer Bonds (Immunities and Exemptions) Act, 1981, the immunities under the Act are inapplicable to offences committed under the Prevention of Corruption Act or similar offences;

(iii) Prosecution has sought to rely upon statements of several witnesses;

(iv) In ***State of Karnataka v. Selvi J. Jayalalitha & Ors. (2017) 6 SCC 263,*** this Court had held that income tax assessment orders are apropos tax liability on income and they do not necessarily attest to the lawfulness of the sources of income;

(v) That what was relevant was whether there was a strong suspicion that the accused has committed the offence and that in the view of the High Court there was indeed a case for trial. Holding so, the Writ Petitions were dismissed.

Contentions:

17. Before us Mr. Mukul Rohatgi and Mr. Siddharth Agarwal, learned senior counsel for the appellants reiterated the contentions raised before the High Court.

18. Insofar as the appellant Puneet Sabharwal was concerned, it was contended as follows:

(i) That the High Court erred in holding that merely because for a large part of the period of investigation, the appellant was a minor, it would not be by itself a reason to disregard the fact that for at least seven years of the investigation period he was a major;

(ii) That the courts below erred in, without more, endorsing the allegations against the appellant(s) solely on account of being named as a beneficiary in the trust deed of M/s Morni Devi Brij Lal Trust. Further, the Court erred in endorsing the allegation that the trust was holding benami properties of which appellant R.C. Sabharwal was a beneficial owner;

(iii) That since out of the twenty years of the check period except 7 years of the said period the appellant Puneet Sabharwal was a minor, it belied logic as to how the said appellant could have conspired with his father. This indicated gross abuse of process of law.

(iv) That the charge as framed indicates that criminal proceedings have been saddled against appellant Puneet Sabharwal merely by virtue of being his father's son and none of the ingredients under Section 109 of the Indian Penal Code were attracted;

(v) That the High Court erred in not taking into account the exoneration of the appellant's father by the Income Tax Appellate Tribunal; that the Income Tax Appellate Tribunal, by its order of 31.08.2007, rendered a categorical finding that the father did not hold the properties of the said trust as benami and even the limited issue on which the Income Tax Appellate Tribunal remanded the matter, by the order of 30.12.2009, the assessment officer found the deposits to be income of the son.

19. Insofar as the appellant R.C. Sabharwal is concerned, the argument was substantially on the basis of the Income Tax

Appellate Tribunal order of 31.08.2007. The contentions were as follows:

(i) The order of Income Tax Appellate Tribunal categorically held that income arising from properties of various entities were wrongly added to the income of the appellant;

(ii) The appellant was not the owner of those entities and consequently the properties and money held by those entities could not be held to be under the ownership of the appellant R.C. Sabharwal;

(iii) The reassessment for thirteen years was carried out on the complaint of CBI itself;

(iv) The courts below misapplied the judgment of this Court in ***Selvi J. Jayalalitha (supra)*** and failed to notice the distinguishing feature namely that, in the present case, it was not a case of reliance on income tax return but the returns which were subjected to an inquisition.

(v) The High Court exercising power under Article 226, 227 of the Constitution of India and Section 482 of Cr.P.C. has power to look into material placed by the accused in arriving at its conclusion for discharge.

20. For both the appellants, reliance was placed on ***Radheshyam Kejriwal v. State of West Bengal & Anr., (2011) 3 SCC 581, Ashoo Surendranath Tewari v. CBI & Anr. (2020) 9 SCC 636 and J. Sekar v. Directorate of Enforcement, (2022) 7 SCC 370*** to contend that where there is exoneration on merits in a civil adjudication, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue since the underlying principle is that the standard of proof in criminal cases is higher.

21. The submissions of the appellants were strongly refuted by Mr. K.M. Nataraj, learned Additional Solicitor General. Learned ASG contended as follows:

(i) That at the stage of framing of charges what is relevant is material as is available on the date of framing of the charge;

(ii) That a court of law is not required to appreciate evidence at the stage of framing of charges to conclude whether the materials produced are sufficient or not for convicting the accused;

(iii) That it was settled law that probative value of material on record cannot be gone into at the stage of framing of charges since the court was not conducting a mini trial;

(iv) Relying on ***Sheoraj Singh Ahlawat & Ors. v. State of U.P. & Anr., (2013) 11 SCC 476***, it was contended that all that has to be seen is whether there is a ground for presuming that the offence has been committed and not whether there was ground for convicting the accused;

(v) That even a strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence would justify the framing of the charge.

(vi) Reliance placed on the order of the Income Tax Appellate Tribunal dated 21.08.2007 is subsequent to the framing of charges and even otherwise cannot be the basis for the discharge of the accused;

(vii) That the criminal prosecution does not depend upon the order passed by the Income Tax Appellate Tribunal and, most importantly, the prosecution was not and could not have been a party before the Income Tax Authorities and the ITAT;

(viii) That the Income Tax Appellate Tribunal order can be at best, if permissible in law, used as a piece of evidence and the Income Tax Appellate Tribunal order will not have the effect of nullifying the order

framing charges by a criminal court. Reliance has been placed on ***Selvi J. Jayalalitha (supra), Vishwanath Chaturvedi (3) v. Union of India & Ors., (2007) 4 SCC 380*** and ***State of T.N. v. N. Suresh Rajan & Ors., (2014) 11 SCC 709*** to contend that the findings of the Income Tax Authorities are not binding on a criminal court to readily accept the legality or lawfulness of the source of income.

(ix) The power to quash a proceeding and nip the same in the bud has to be exercised with great caution and circumspection.

So contending, the learned ASG prayed that no case has been made out to set aside the order on charge and the charges and the appeals deserve to be dismissed.

Question:

22. Under the above circumstances, the question that arises for consideration is: Whether the courts below were justified in

refusing to quash and set aside the order on charge dated 21.02.2006 and the charges as framed on 28.02.2006?

Analysis:-

23. Having heard learned counsels for the parties and perused the records, we are of the opinion that the appellants have not made out a case for interference with the order on charge dated 21.02.2006 and the order of framing charge dated 28.02.2006. We say so for the following reasons.

24. The case of the prosecution is that the appellant R.C. Sabharwal, the father of appellant Puneet Sabharwal, owned assets to the tune of Rs. 2,05,63,341/- and that this was disproportionate to his known sources of income which was computed at Rs. 1,23,18,091/-. The allegation against the son Puneet Sabharwal was that he had received Rs. 79 lakhs through encashment of Special Bearer Bonds and he facilitated commission of offence inasmuch as assets were acquired by appellant R.C. Sabharwal in the name of M/s Morni Devi Brij Lal Trust, M/s Morni Merchants and other firms in which the

sole beneficiary was appellant Puneet Sabharwal. The order framing charge invokes Section 109 IPC to be read with Section 13(1)(e) read with Section 13(2) of the PC Act against Puneet Sabharwal.

25. The main plank of the arguments of the appellants is that the Income Tax Appellate Tribunal order dated 31.08.2007, has, while allowing the appeals of the assessees and dismissing the cross appeals of the department (except to a small extent which too got settled with the assessment order of 30.12.2009), held that no case was made out to justify that the income and assets of the entities such as the Morni Lal Brij Trust were to be added to the income of R.C. Sabharwal. In view of the same, it is argued that there is no case for prosecuting them for owning disproportionate assets.

26. It is argued that *per se* the Income Tax Appellate Tribunal order should result in quashment of proceedings and the discharge of the accused. Additionally, it is argued that on the ground that analogous tax proceedings have ended in favour of

the appellants, a criminal prosecution on identical facts cannot continue. For this, reliance is placed on the judgments mentioned hereinabove.

27. We have already discussed the substance of the Income Tax Appellate Tribunal order of 31.08.2007. In law, the submissions of the appellants ought to fail on both the counts as there is no basis to nip the criminal prosecution in this case in its bud.

28. As far as the first argument about the criminal proceedings losing its efficacy in view of the Income Tax Appellate Tribunal order of 31.08.2007 is concerned, we accept the submission of the respondent CBI that the prior rulings of the court ending with the judgment in ***Selvi J. Jayalalitha (supra)*** have clearly concluded the issue against the appellants.

29. This Court, in ***Selvi J. Jayalalitha (supra)***, was concerned with an appeal against an order of acquittal passed in a case of disproportionate assets under Section 13 of the Prevention of Corruption Act. The accused persons therein had

sought to place reliance on income tax returns and income tax assessment orders. In that context the Court had concluded that income tax returns and orders are not by themselves conclusive proof that they are lawful sources of income under Section 13 of the Prevention of Corruption Act and that independent evidence to corroborate the same would be required. The Court held:

> "**188.** In *Anantharam Veerasinghaiah & Co.* v. *CIT*, 1980 Supp SCC 13 : 1980 SCC (Tax) 274] , the return filed by the petitioner assessee, who was an Abkari contractor, was not accepted by the ITO as amongst others, excess expenditure over the disclosed available cash was noticeable and further several deposits had been made in the names of others. The assessee's explanation that the excess expenditure was met from the amounts deposited with him by other shopkeepers but were not entered in his book, was not accepted and penalty proceedings were taken out against him holding that the items of cash deficit and cash deposit represented concealed income resulting from suppressed yield and low selling rates mentioned in the books. The Appellate Tribunal, however, allowed the appeal of the assessee and set aside the penalty order. The High Court reversed [*CIT* v. *Anantharam Veerasingaiah & Co.*, 1971 SCC OnLine AP 262 : (1975) 99 ITR 544] the decision of the Appellate Tribunal and the matter reached the Supreme Court.
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> **189.** It was held that as per Section 271(1)(*c*) of the Income Tax Act, 1961, penalty can be imposed in case where any

person has concealed the particulars of his income or has deliberately furnished inaccurate particulars of such income. The related proceeding was quasi-criminal in nature and the burden lay on the Revenue to establish that the disputed amount represented income and that the assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars. *The burden of proof in penalty proceedings varied from that involved in assessment proceedings and a finding in assessment proceedings that a particular receipt was income cannot automatically be adopted as a finding to that effect in the penalty proceedings*. In the penalty proceedings, the taxing authority was bound to consider the matter afresh on the materials before it, to ascertain that whether a particular amount is a revenue receipt. *It was observed that no doubt the fact that the assessment year contains a finding that the disputed amount represents income constitutes good evidence in the penalty proceedings, but the finding in the assessment proceedings cannot be regarded as conclusive for the purpose of penalty proceedings*. Before a penalty can be imposed, the entirety of the circumstances must be taken into account and must lead to the conclusion that the disputed amount represented income and that the assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars.

190. The decision is to convey that though the IT returns and the orders passed in the IT proceedings in the instant case recorded the income of the accused concerned as disclosed in their returns, in view of the charge levelled against them, such returns and the orders in the IT proceedings would not by themselves establish that such income had been from lawful source as contemplated in the Explanation to Section 13(1)(*e*) of the PC Act, 1988 and that independent evidence would be required to account for the same.

191. Though considerable exchanges had been made in course of the arguments, centring around Section 43 of the

Evidence Act, 1872, we are of the comprehension that those need not be expatiated in details. Suffice it to state that even assuming that the income tax returns, the proceedings in connection therewith and the decisions rendered therein are relevant and admissible in evidence as well, nothing as such, turns thereon definitively as those do not furnish any guarantee or authentication of the lawfulness of the source(s) of income, the pith of the charge levelled against the respondents. It is the plea of the defence that the income tax returns and orders, while proved by the accused persons had not been objected to by the prosecution and further it (prosecution) as well had called in evidence the income tax returns/orders and thus, it cannot object to the admissibility of the records produced by the defence. To reiterate, even if such returns and orders are admissible, the probative value would depend on the nature of the information furnished, the findings recorded in the orders and having a bearing on the charge levelled. In any view of the matter, however, such returns and orders would not ipso facto either conclusively prove or disprove the charge and can at best be pieces of evidence which have to be evaluated along with the other materials on record. Noticeably, none of the respondents has been examined on oath in the case in hand. Further, the income tax returns relied upon by the defence as well as the orders passed in the proceedings pertaining thereto have been filed/passed after the charge-sheet had been submitted. Significantly, there is a charge of conspiracy and abetment against the accused persons. In the overall perspective therefore neither the income tax returns nor the orders passed in the proceedings relatable thereto, either definitively attest the lawfulness of the sources of income of the accused persons or are of any avail to them to satisfactorily account the disproportionateness of their pecuniary resources and properties as mandated by Section 13(1)(*e*) of the Act.

199. The import of this decision is that in the tax regime, the legality or illegality of the transactions generating

profit or loss is inconsequential qua the issue whether the income is from a lawful source or not. The scrutiny in an assessment proceeding is directed only to quantify the taxable income and the orders passed therein do not certify or authenticate that the source(s) thereof to be lawful and are thus of no significance vis-à-vis a charge under Section 13(1)(*e*) of the Act.

200. In *Vishwanath Chaturvedi (3)* v. *Union of India*, (2007) 4 SCC 380 : (2007) 2 SCC (Cri) 302], a writ petition was filed under Article 32 of the Constitution of India seeking an appropriate writ for directing the Union of India to take appropriate action to prosecute R-2 to R-5 under the 1988 Act for having amassed assets disproportionate to the known sources of income by misusing their power and authority. The respondents were the then sitting Chief Minister of U.P. and his relatives. Having noticed that the basic issue was with regard to alleged investments and sources of such investments, Respondents 2 to 5 were ordered by this Court to file copies of income tax and wealth tax returns of the relevant assessment years which was done. It was pointed out on behalf of the petitioner that the net assets of the family though were Rs 9,22,72,000, as per the calculation made by the official valuer, the then value of the net assets came to be Rs 24 crores. It was pleaded on behalf of the respondents that income tax returns had already been filed and the matters were pending before the authorities concerned and all the payments were made by cheques, and thus the allegation levelled against them were baseless. It was observed that the minuteness of the details furnished by the parties and the income tax returns and assessment orders, sale deeds, etc. were necessary to be carefully looked into and analysed only by an independent agency with the assistance of chartered accountants and other accredited engineers and valuers of the property.*It was observed that the Income Tax Department was concerned only with the source of income and whether the tax was paid or not and, therefore, only an independent agency or CBI could,*

> *on court direction, determine the question of disproportionate assets*. CBI was thus directed to conduct a preliminary enquiry into the assets of all the respondents and to take further action in the matter after scrutinising as to whether a case was made out or not.
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> **201.** This decision is to emphasise that submission of income tax returns and the assessments orders passed thereon, would not constitute a foolproof defence against a charge of acquisition of assets disproportionate to the known lawful sources of income as contemplated under the PC Act and that further scrutiny/analysis thereof is imperative to determine as to whether the offence as contemplated by the PC Act is made out or not."
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> **[Emphasis Supplied]**

30. The appellants herein have contended that the decision in ***J. Jayalalitha* (supra)** would not be applicable to the present case since, according to them, that decision involved only an assessment order, while the present case involves the findings by an Appellate Tribunal after an inquisition into the issues involved. The Appellants herein seek to rely on Paragraph 309 of the decision in ***J. Jayalalitha* (supra)** in support of the same. Paragraph 309 is set-out hereunder:

> "**309.** In contradistinction, the High Court quantified the amount of gifts to be Rs 1.5 crores principally referring to the income tax returns and the orders of the authorities passed thereon. It did notice that there had been a delay in the submission of the income tax returns but accepted the plea of

> the defence acting on the orders of the Income Tax Authorities. It seems to have been convinced as well by the contention that there was a practice of offering gifts to political leaders on their birthdays in the State. Not only is the ultimate conclusion of the High Court, dehors any independent assessment of the evidence to overturn the categorical finding of the trial court to the contrary, no convincing or persuasive reason is also forthcoming. This assumes significance also in view of the state of law that the findings of the Income Tax Authorities/forums are not binding on a criminal court to readily accept the legality or lawfulness of the source of income as mentioned in the income tax returns by an assessee without any semblance of inquisition into the inherent merit of the materials on record relatable thereto. Not only this aspect was totally missed by the High Court, no attempt seems to have been made by it to appraise the evidence adduced by the parties in this regard, to come to a self-contained and consummate determination."

31. These submissions do not appeal to us for the following reasons:

(i) First of all, the inquisition mentioned in Paragraph 309 of the said decision, is the inquisition to be made by the criminal court. That is clear from a complete reading of the above-said paragraph. In that case, the High Court, while acquitting the accused, had merely gone by the income tax records which were produced by the accused persons. However, the Trial Court had

independently examined the issue and had not mechanically gone by the income tax records. It was while commenting on this that this Court said an inquisition ought to have been made on the material.

(ii) *Secondly*, this Court in ***J. Jayalalitha*** **(supra)**, before arriving at a conclusion regarding the probative value of the income tax returns, has examined in detail the previous decisions of this Court where there were not only assessment orders but also decisions of the Appellate Tribunal and the High Court. It is only after considering this aspect that the Court laid down that the Income Tax Returns and Orders passed in IT Proceedings are not conclusive proof.

(iii) *Thirdly*, this Court has categorically held that while income tax returns/*orders* may be admissible as evidence, the probative value of the same would depend on the nature of the information furnished and

findings recorded in the order, and would not ipso facto either *conclusively prove or disprove a charge*.

(iv) *Fourthly*, it is important to note that the decision in ***J. Jayalalitha* (supra)** was in a matter involving a full-fledged trial and the Court was hearing an appeal against an Order of acquittal passed by the High Court. The Court also noted that income tax returns or orders could at best be evidences which have to be *evaluated* along with the other materials on record.

(v) This Court, in cases involving either discharge [***State of Tamil Nadu v. N. Suresh Rajan & Ors.* (2014) 11 SCC 709** Paragraph 32.3] or quash [***CBI & Anr. v. Thommandru Hannah Vijayalakshmi & Anr.* (2021) 18 SCC 135** Paragraph 63-64] has noted that Income Tax Returns are not conclusive proof which can be relied upon either to quash the criminal proceeding or to discharge the accused persons.

32. Therefore, in the present case, the probative value of the Orders of the Income Tax Authorities, including the Order of the Income Tax Appellate Tribunal and the subsequent Assessment Orders, are not conclusive proof which can be relied upon for discharge of the accused persons. These orders, their findings, and their probative value, are a matter for a full-fledged trial. In view of the same, the High Court, in the present case, has rightly not discharged the appellants based on the Orders of the Income Tax Authorities.

33. Insofar as the submission that where there is exoneration in a civil adjudication, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue is concerned, the same is also without merit as far as the present case is concerned.

34. The appellants herein have placed reliance on the decisions of this Court in ***Radheyshyam Kejriwal*** **(supra)**, ***Ashoo Surendranath Tewari*** **(supra)** and ***J. Sekar*** **(supra)** to argue that once there is an exoneration on merits in a civil adjudication,

a criminal prosecution on the same set of facts and circumstances cannot be allowed to continue. In our opinion, none of the above-referred decisions are applicable to the facts of the present case.

35. In ***Radheshyam Kejriwal*** **(supra)**, this Court was concerned with a fact situation where the Petitioner therein was being prosecuted under the Foreign Exchange Regulation Act, 1973 for payments made by him in Indian currency in exchange for foreign currency without any general or specific exemption from the Reserve Bank of India. The Enforcement Directorate had commenced both an adjudication proceeding and a prosecution under the provisions of the Foreign Exchange Regulation Act, 1973. It so transpired that the Adjudicating Officer found that no documentary evidence was available to prove the foundational factum of the Petitioner therein entering into the alleged transactions which fell foul of the Act and thereafter directed that the proceedings be dropped. The question which fell for the consideration before this Court was

whether the result of this adjudication proceeding would lead to exoneration of the Petitioner in the criminal prosecution.

36. In this background, this Court noticed that the adjudication proceedings under the Foreign Exchange Regulation Act, 1973 involved an adjudication on whether a person had committed a contravention of any provisions of the Act. It is in this context, that the Court went on to hold that where the allegation in an adjudication proceeding and proceeding for prosecution is identical and the exoneration in the former is on merits i.e. that there is no contravention of the provisions of the Act, then the trial of person concerned would be an abuse of process of the Court.

37. The decision in ***Radheyshyam*** **(supra)** was in a fact situation where the adjudicatory and criminal proceedings were being commenced by the same authority in exercise of powers under the same Act. Further, as this Court had noted, the civil adjudication proceedings related to an adjudication as to whether there was contravention of provisions of the Act and

the Rules thereunder, which had an impact on the prosecution under the Act. However, in the present case, the appellants herein are being prosecuted under the provisions of the Prevention of Corruption Act while they seek to rely on an exoneration under the Income Tax Act. The scope of adjudication in both of these proceedings are vastly different. The authority which conducted the income tax proceedings and the authority conducting the prosecution is completely different (CBI). The CBI was not and could not have been a party to the income tax proceeding. Given the said factual background, the decision in ***Radheyshyam*** **(supra)** is not applicable to the present case.

38. In ***Ashoo Surendranath*** **(supra)**, the Petitioner therein was working as a DGM at the Small Industries Development Bank of India while there was diversion of funds from the Bank. The allegation against the Petitioner therein was that he had shared the RTGS details for the account to which the amount was diverted, to another official who was the purported kingpin of

the crime. The competent authority of the Bank had refused to provide a sanction for prosecution of the Petitioner therein, which was supported by the report of the Central Vigilance Commission. The question therefore posed before the Court was whether the report of the Central Vigilance Commission should lead to discharge of the Petitioner therein.

39. In the above-mentioned factual background, this Court set-out the findings of the Central Vigilance Commission which had recorded that the e-mail sent by the Petitioner therein had clearly been sent to the principal accused for the purpose of verification since the latter was the officer for verification and that this showed that there was no role that the Petitioner played in perpetrating the offence. Thereafter, relying upon the decision in ***Radheyshyam*** **(supra)**, the Court concluded that since the allegation has been found to be "not sustainable at all", the criminal prosecution could not be continued.

40. The decision in ***Ashoo Surendranath*** **(supra)** is not applicable to the present case because the decision in ***Ashoo***

***Surendranath* (supra)** concerned a singular prosecution under the provisions of the Indian Penal Code where the sanctioning authority had, while denying sanction, recorded on merits that there was no evidence to support the prosecution case. In that context, the Court was of the opinion that a criminal proceeding could not be continued. However, in the present case, the charges were framed under the Prevention of Corruption Act, while the appellants seek to rely upon findings recorded by authorities under the Income Tax Act. The scope of adjudication in both the proceedings are markedly different and therefore the findings in the latter cannot be a ground for discharge of the Accused Persons in the former. The proceedings under the Income Tax Act and its evidentiary value remains a matter of trial and they cannot be considered as conclusive proof for discharge of an accused person.

41. The appellants herein have further sought to place reliance on ***J. Sekar* (supra)** to argue that the letter of the Income-Tax

Department was relied upon to quash prosecution under the Prevention of Money Laundering Act, 2002. In our opinion, this decision is again inapplicable to the present case. In ***J. Sekar*** **(supra)**, the criminal proceedings had arisen based upon the information furnished by the Income Tax Department regarding recovery of unauthorized cash and other items during their search. It so transpired that the Income Tax Department accepted the explanation of the accused regarding the recovered cash which led to closure of the Income Tax proceedings. Thereafter, even the criminal proceedings led to filing of a closure report on the ground that no sufficient evidence was found for continuation of prosecution. The proceedings under the Prevention of Money Laundering Act, being based on the Income Tax Department's information after their search and the registration of FIR, were found to be unsustainable in view of no violation being found either by the Department or in the criminal proceeding.

42. The decision in ***J. Sekar*** **(supra)** is therefore distinguishable on facts. In the abovementioned case, there was an exoneration by not only the Income Tax Department, to the effect that no case was made, there was also an exoneration in the criminal proceedings which involved the Scheduled Offence. In the present case, the proceedings under the Income Tax Act which are sought to be relied upon relate to the assessment of income of the assessee and not to the source of income and the allegation of disproportionate assets under the Prevention of Corruption Act. The said Orders cannot be the basis to abort the criminal proceeding in the present case.

43. We are not to conduct a dress rehearsal of the trial at this stage. The tests applicable for a discharge are well settled by a catena of judgments passed by this Court. Even a strong suspicion founded on material on record which is ground for presuming the existence of factual ingredients of an offence would justify the framing of charge against an accused person [***Onkar Nath Mishra & Ors. v. State (NCT of Delhi) & Anr.*** **(2008) 2 SCC**

561 Paragraph 11]. The Court is only required to consider judicially whether the material warrants the framing of charge without blindly accepting the decision of the prosecution [***State of Karnataka v. L. Muniswamy & Ors.*** **(1977) 2 SCC 699** Paragraph 10]. Applying these principles to the present case, we accept the submission of the learned ASG that the appellants have not made out the case to say that the charge is groundless.

44. The other argument about the minority of the appellant Puneet Sabharwal also need not detain the Court since for the last seven years of the check period admittedly he was not a minor. All the defences are available for the appellants to be placed before the Trial Court.

45. In view of what we have held hereinabove, we are not called upon to answer the argument raised by the learned ASG that the Income Tax Appellate Tribunal order being a document which has emerged subsequent to the framing of the charge, it cannot be taken into consideration at all.

46. For all the above reasons, we find no merit in these appeals and the appeals are dismissed. The interim orders stand vacated. All pending applications stand closed. The trial has been pending for nearly 25 years. We direct that the trial be expeditiously concluded and, in any case, on or before 31.12.2024. Needless to mention that the observations made herein are only in the context of the discharge proceedings.

…….……J.
(Vikram Nath)

..……J.
(K.V. Viswanathan)

New Delhi;
March 19, 2024.