

vs. Shri Devendra Kumar Goel & Anr.
DAI/2010A0015
C No. 168/19
CNR No. DLCT11-0007782019

22.07.2020

Present:

Sh. B.K. Singh, Ld. Sr. PP for CBI along with Sh. Vinod Kumar,
Court Naib (CBI).

Convict No. 1 Sh. Devendra Kumar Goel and Convict No. 2
Smt. Susheela Goel in person with Ld. Counsel Sh. Rohit
Sharma.

(Ld. Counsel Sh. J.S. Rai through VC using CISCO Webex App.).

Today, the case is listed for orders on sentence.

Vide separate order, convict No. 1 Sh. Devendra Kumar Goel has been
sentenced to undergo rigorous imprisonment for three years for the offence u/s
13(2) read with Section 13(1)(e) of P.C. Act, 1988. He is also directed to pay a fine
of Rs.2,00,000/- (Rupees Two Lakh Only). In the event of failure to pay the fine, he
shall undergo further simple imprisonment for a period of three months.

Convict No. 2 Smt. Sangeeta Goel has been sentenced to undergo
rigorous imprisonment for two years for the offence u/s 109 of IPC read with
Section 13(1)(e) of P.C. Act, 1988. She is also directed to pay a fine of
Rs.2,00,000/- (Rupees Two Lakh Only). In the event of failure to pay the fine, she
shall undergo further simple imprisonment for a period of three months.

The immovable property i.e. Plot No. 138-S, Saraswati Kunj
Cooperative Housing Building Society Limited, Wazirabad, Gurgaon in the name of
Sh. Devendra Kumar Goel stands confiscated in favour of the State. The Ld.
Counsel has informed the court, after taking instructions from the convict Sh.
Devendra Kumar Goel that the said plot still stands in the name of Convict No. 1
Sh. Devendra Kumar Goel and no encumbrance has been created on the said plot.

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There is no loan from any financial institution against the said plot.

Let the same be sold by public auction and proceeds be given to the State.

At this stage, Ld. Counsel has filed application u/s 389(3) of Cr. P.C. for suspension of sentence. Let a copy be supplied to the Ld. Sr. PP for CBI. The sentence shall remain suspended for a period of 60 days, subject to the convicts furnishing bail bond for a sum of Rs.50,000/- (Rupees Fifty Thousand Only) each to enable the convicts file the appeal before Hon'ble Delhi High Court and secure bail. Bail bond furnished and accepted. So far as the surety bond of Sh. Kunal Goel is concerned, his FDR is already on record in the form of Bond u/s 437A Cr. P.C. The other surety Smt. Sanyogita Aggarwal has furnished a fresh FDR. Letter be sent to the bank not to release the FDR without the permission of the court.

The Ld. Counsel submitted that the fine shall be submitted within two weeks.

List on 25.09.2020 for compliance.

Copy of order be given Dasti to the Ld. Sr. PP for CBI as well as to the Ld. Counsel for the convicts.

*Received copy of order
Dkt of order on sentence
22/07/20*

Recd. copy.

22-07-2020

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Arjun Bhardwaj

(ARUN BHARDWAJ)

**Special Judge (PC Act) (CBI-5),
Rouse Avenue District Court,
New Delhi:22.07.2020**

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IN THE COURT OF SHRI ARUN BHARDWAJ, SPECIAL JUDGE
(P.C. ACT) (CBI-05), ROUSE AVENUE DISTRICT COURT,
NEW DELHI

RCDAI2010A0015

CC No. 168/19

CBI vs. Shri Devendra Kumar Goel & Anr.

ORDER ON SENTENCE

1. This order shall decide the sentence to be awarded to Convict No.1 Sh. Devendra Kumar Goel and Convict No. 2 Smt. Sangeeta Goel.
2. Vide Judgment dated 14.07.2020, Sh. Devendra Kumar Goel has been convicted for the offence under Section 13(2) read with Section 13(1)(e) of the P.C. Act, 1988, in as much as he was found to be in possession of assets which were disproportionate to his known sources of income to an extent of Rs.83,26,124/- i.e. 55.02% of his known sources of income. Smt. Sangeeta Goel has been convicted under Section 109 of IPC read with Section 13(2) read with Section 13(1)(e) of P.C. Act, 1988 for abetting Sh. Devendra Kumar Goel commit the offence under Section 13(2) read with Section 13(1)(e) of P.C. Act, 1988.
3. The Ld. Sr. PP for CBI has addressed, on the point of sentence, as under:-

"The purpose of enactment of Prevention of Corruption Act, 1988 is to achieve purification of public service. He submitted that minimum punishment is prescribed as a deterrent for others also. He submitted that leniency in sentence affects the society. He submitted that corruption is a cancer, as per several rulings of the Hon'ble Supreme Court. He submitted that unless special circumstances are shown, no leniency be

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shown at the time of sentencing. He submitted that the accused was Group A officer and was a role model for others. He was expected to serve with sincerity and dedication. He referred to Section 16 of the Prevention of Corruption Act, 1988 to submit that while imposing fine, the court shall take into consideration the amount of the value of the property, if any, which the accused person has obtained by committing the offence. The learned Sr. PP. submitted that in this case reasonable sentence be passed”

4. On the other hand, Sh. Jaspreet Singh Rai, Ld. Counsel for the convicts has addressed the Court on the point of sentence as under:-

“Convict No. 1 is first-time offender. He submitted that the Convict No. 1 is suffering from diabetes and blood pressure for the last 4 years. He submitted that the convict had impeccable service record. He submitted that the convicts always attended the court hearings regularly and punctually and the matter was never adjourned due to absence of the convicts in the court. He submitted that there is no allegation against the convicts that during the trial, they tried to tamper with the evidence or influence the witnesses. It was submitted that Convict No. 1 is IITian from Roorkee and M.Tech from IIT, Delhi. He has Degree of Law from Delhi University and Degree of LLM from ILI. He submitted that Convict No. 1 is working as consultant with Ministry of Skill Development since June 2018.

So far as Convict No. 2 is concerned, it was submitted that she is BSc, MSc and BEd. She is a senior citizen. She always attended the court hearings regularly. She is first-time offender. It was submitted that being prosecuted was sufficient blot for the convicts as they faced this prosecution for nearly a decade. It was further submitted that the prosecution against the convicts is also pending against under Prevention of Money Laundering Act and their immovable properties,

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agricultural lands in the name of M/s KABA have been provisionally attached under the said Act. Therefore, it was submitted that most lenient sentence be awarded against the convicts."

5. Considering the facts and circumstances of the case and submissions made, Convict No. 1 Sh. Devendra Kumar Goel is awarded the sentence of rigorous imprisonment for three years.
6. So far as, Convict No. 2 Smt. Sangeeta Goel is concerned, she is awarded rigorous imprisonment for two years.
7. So far as confiscation of property in a disproportionate assets case is concerned, reference can be made to the decision of the Hon'ble Supreme Court in the case of **State of Karnataka versus Selvi J. Jayalalitha & Ors.** 2017(6) SCC 263. In that case, the Hon'ble Supreme Court has held in Para 163, 564 and 565 as under:-

"163. Section 22 of the Act also makes the provisions of the Code of Criminal Procedure, 1973 applicable to a proceeding in relation to an offence punishable thereunder, subject to certain modifications as mentioned therein. Here as well, the applicability of Section 452 of the Code otherwise empowering a criminal court to order for disposal of the property at the conclusion of the trial before it, has not been excluded.

564. In our comprehension, the course adopted by the Trial Court cannot be faulted with. To reiterate, in terms of Section 5(6) of the Act, it was authorised to exercise all powers and functions exercisable by a District Judge under the Ordinance. The offences at the trial were under Sections 13(1)(e), 13(2) of the Act, Sections 109 and 120B of the Indian Penal Code encompassed within paragraphs 4A and 5 of the Schedule to the Ordinance. These offences were unimpeachably within the contours of the Act and triable by a special Judge

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thereunder. Having regard to the frame and content of the Act and the limited modifications to the provisions of the Code of Criminal Procedure, in their applicability as occasioned thereby and the authorisation of the special Judge trying the offences thereunder to exercise all the powers and functions invocable by a District Judge under the Ordinance, we are of the opinion that the order of confiscation/forfeiture of the properties standing in the name of six companies, as involved, made by the Trial Court is unexceptionable. In any view of the matter, with the peremptory termination of the criminal proceedings resultant on this pronouncement, the direction of the Trial Court towards confiscation/forfeiture of the attached property, as mentioned therein, is hereby restored and would be construed to be an order by this court as well. The decisions cited on behalf of the respondents on this issue, are distinguishable on facts and are of no avail to them.

565. In *Mirza Iqbal Hussain through Askari Begum v. State of Uttar Pradesh*, (1982) 3 SCC 516, two fixed deposit receipts and the cash amount of Rs. 5200/- seized from the house of the appellant and proved to be the subject-matter of charge under Section 5(1)(e) of the 1947 Act, were ordered to be confiscated to the State. Responding to the plea of want of jurisdiction of the Special Court to order confiscation, this Court referring to Section 4(2) of Cr.P.C., held that in terms thereof, all offences under any law other than the Indian Penal Code have to be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the Code but subject to any enactment for the time being in force regulating the manner or place of investigation, enquiry, trial or otherwise dealing with such offences. It was observed that none of the provisions of the Prevention of Corruption Act provided for confiscation or prescribed the mode by which an order of confiscation could be passed and thus, it was ruled that the order of confiscation in the facts of the case could not be held to be de hors jurisdiction. The

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invocation of Section 452 of the Code, in absence of any provision in the Prevention of Corruption Act, excluding its operations to effect confiscation of the property involved in any offence thereunder, was thus affirmed."

8. For better understanding, the judgment in the case of **Mirza Iqbal Hussain through Askari Begum vs. State of Uttar Pradesh**, (1982) 3 SCC 516 requires to be quoted in detail, which is as under:-

1. By a judgment dated Feb. 16, 1976 the learned Special Judge, Deoria, convicted the appellant under Section 5(1)(e) of the Prevention of Corruption Act, 1947 on the charge that during the period of his office as a police constable, he was found in possession of property disproportionate to his known sources of income, for which he could not satisfactorily account. The learned Special Judge directed that the two fixed deposit receipts in the sum of rupees five thousand each and the cash amount of Rs.5,280/- which were seized from the house of the appellant and which formed the subject matter of the charge under S. 5(1)(e) shall stand confiscated to the State. The appellant filed an appeal against the judgment of the Special Judge to the High Court of Allahabad but that appeal was dismissed. No point was raised in the High Court that the order of confiscation passed by the trial Court was either without jurisdiction or was not called for on the facts of the case.

2. In this appeal by special leave, the only point raised by Mr. Bana on behalf of the appellant is that the learned Special Judge had no jurisdiction to pass an order of confiscation. We see no substance in this contention. Section 4(2) of the Code of Criminal Procedure provides that all offences under any law other than the Indian Penal Code shall be investigated, inquired into, tried and "otherwise dealt with according

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to the provisions contained in the Code of Criminal Procedure, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences". It is clear from this provision that in so far as the offences under laws other than the Indian Penal Code are concerned, the provisions of the Code of Criminal Procedure apply in their full force subject to any specific or contrary provision made by the law under which the offence is investigated or tried. Therefore, what we have to ascertain is whether the Code of Criminal Procedure confers the power of confiscation, and secondly, whether there is anything in the Prevention of Corruption Act which militates against the use of that power, either by reason of the fact that the latter Act contains a specific provision for confiscation or contains any provision inconsistent with the power of confiscation conferred by the Code of Criminal Procedure. On the first of these questions, S. 452 of the Code provides by sub-section (1), in so far as material, that if the trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of property by confiscation. This power would, therefore, be available to a Court trying an offence under the Prevention of Corruption Act unless that Act contains any specific or contrary provision on the subject matter of confiscation. None of the provisions of the Prevention of Corruption Act provides for confiscation or prescribes the mode by which an order of confiscation may be passed. The Prevention of Corruption Act being totally silent on the question of confiscation, the provisions of the Code of Criminal Procedure would apply in their full force, with the result that the Court trying an offence under the Prevention of Corruption Act would have the power to pass an order of confiscation by reason of the provisions contained in S. 452 of the Code of Criminal Procedure. The order of confiscation cannot, therefore, be held to be without jurisdiction.

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3. If we were to accept the above submission of Mr. Bana, it would lead to starting results. If, for example, a person is convicted for taking a bribe under the Prevention of Corruption Act, he could always say that since he has already taken the bribe and the money which forms the subject matter of the bribe belongs to him, no order of confiscation of that amount can be passed. A person who is found guilty of accepting the bribe is not only liable to be convicted and sentenced for the offence of bribery, but the amount which he has taken by way of bribe is liable to be confiscated by reason of the powers of confiscation conferred by Section 452 of the Code of Criminal Procedure to the extent that the said provisions apply.

4. There is equally, no substance in Mr. Bana's contention that even assuming that the Special Judge had the power or the jurisdiction to pass the order of confiscation, he did not exercise his discretion properly in ordering the confiscation of the two fixed deposit receipts and the cash amount found in the house of the appellant. The appellant has been convicted under S. 5(1)(e) precisely for the reason that he was in possession of the two receipts and the aforesaid cash sum. It cannot then be said that the order of confiscation in regard to these amounts has not been properly passed or has been passed without any application of mind."

9. Therefore, as per Section 452 of Cr. P.C. and Section 5(6) of P.C. Act, 1988, this Court has the power to confiscate the property of the convicts acquired through unfair means.

10. In this regard, it is to be noted that Enforcement Directorate has also filed a complaint under Section 45 of the Prevention of Money Laundering Act, 2002 (Case No. ECIR/14/DLZO/2013 Dated 31.12.2013) against Sh. D.K. Goel, Smt. Sangeeta Goel and M/s

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Kunal Agri Business Associates (India) Ltd. (KABA). Para 20 of the said complaint is as under:-

"20. Based on the above, on reasonable belief the following properties purchased in the name of KABA were ordered to be provisionally attached vide provisional attachment order No. 17/2015 dated 31.03.2015. Subsequent to attachment of the above said properties Original Complaint No. 494/2015 under section 5(5) of the PMLA, 2002 was also filed within the prescribed period. Ld. Adjudicating Authority after giving due opportunity to the accused persons confirmed the said provisional attachment order vide order dated 06.08.2015.

S. No.	Details of Assets	Cost of acquisition including stamp duty in Rs.	Period of acquisition
1.	134 Kila No. 16/2(4-4) Chahi 16/1 (3-16), 133 Kila 11/1 (1-2) (Vaskika No. 16091)	5,06,250/-	04.01.1996
2.	134 Kila No. 18 (18-0) (Vaskika No. 15846)	3,36,875/-	01.01.1996
3.	Khawat Khata No. 598/664, Kila No. 134 (Vaskika No. 14487)	4,05,000/-	08.12.1995
4.	Kila No. 134, 17 (7-12) (Vaskika No. 16029)	5,06,250/-	03.01.1996
5.	Kila No. 134, 24 (7-11) (Vaskika No. 16155)	5,06,250/-	05.01.1996
6.	Khawat No. 599 Khata No. 667 Kila No. 134, 14/1 (Vaskika No. 3510)	2,25,000/-	13.06.1996
7.	Kila No. 134, 14/2 (3-12) (Vaskika No.17931)	2,25,002/-	02.02.1996

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8.	Kila No. 134, 7/1 (Vaskika No.18327)	2,25,003/-	09.02.1996
9.	Kila No. 134, 7/1 (2-6) (Vaskika No. 12980)	2,25,002/-	08.11.1995
10.	Khawat No. 597 Khata No. 663 Kila No. 134, 19 (8-0) (Vaskika No.18271)	1,80,000/-	09.02.1996
11.	Kila No. 134, 20 (8-0) (Vaskika No.18814)	1,80,000/-	22.02.1996
12.	Kila No. 134, 21 (8-0), 22(8-0) (Vaskika No.18634)	3,60,000/-	16.02.1996
13.	Khawat No. 568/650 Kila No. 133, 20 (8-0) (Vaskika No.15334)	4,21,875/-	30.01.1997
14.	Khawat No. 597 Khata No. 663 Kila No. 134, 19, 20, 21, 22 (8-0) (Vaskika No. 18866)	1,80,020/-	23.02.1996
15.	134 Kila No. 23(8-0) (Vaskika No. 15365)	3,36,875/-	22.12.1995
16.	Land No. 600, 668 Khasra No. 134/13/2 Min (Vaskika No. 2127)	32,070/-	13.05.1998
17.	Khewat No. 600/571, Khatoni No. 668, Kila No. 134/13/2 (2-0) (Vaskika No.9887)	10,130/-	27.10.1997
18.	Land No. 568/650, Khasra No. 133/19/1 Min. (Vaskika No.12994)	2,58,750/-	08.02.1999
19.	Land No. 259/227, Khasra No. 296 Mustil No.134 Kila No. 25(7-1) (Vaskika No.934)	5,30,000/-	30.07.2004

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11. Para 22.1 of the said complaint is as under:-

"22.1. D.K. Goel, while working in various government departments, in various capacities, earned assets disproportionate to his known source of income earned by him during the check period July 1981 to 12.05.2010. Such disproportionate assets calculated by the CBI in the subject FIR came to Rs.9126158/-. Hon'ble Special Judge (CBI), Patiala House Court, New Delhi vide order dated 01.04.2015 while framing the charges against Shri D.K. Goel, Smt. Sangeeta Goel and M/s KABA and brought the extent of disproportionate assets to Rs.89,56,158/-. Enforcement Directorate has attached all the assets purchased in the name of M/s KABA in the form of land and fixed assets to the tune of Rs.60,52,893/- vide Provisional attachment order No. 17/2015 dated 31.03.2015 which was confirmed by Ld. Adjudicating Authority under PMLA vide order dated 06.08.2015."

12. The above shows that Enforcement Directorate has already attached immovable properties of M/s KABA for a sum of Rs.60,52,893/-. Since the DA in this case is Rs.83,26,124/-, attachment of immovable properties worth Rs.22,63,231/- is required to be made by this court.

13. Resultantly, the immovable property **of the convicts** described below shall stand confiscated in favour of State:-

"Immovable property i.e. Plot No. 138-S, Saraswati Kunj Cooperative Housing Building Society Limited, Wazirabad, Gurgaon, Haryana."

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14. The Ld. Counsel has informed the court, after taking instructions from the convict Sh. Devendra Kumar Goel that the said plot stands in his name and no encumbrance has been created on the said plot. There is no loan from any financial institution secured against the said plot.

15. Let this immovable property be sold by Public Auction and proceeds transferred to the State.

16. Section 16 of the Prevention of Corruption Act, 1988 (as it existed prior to the amendment of the year 2018) reads as under:-

‘16. Matters to be taken into consideration for fixing fine.—Where a sentence of fine is imposed under sub-section (2) of section 13 or section 14, the court is fixing the amount of the fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.”

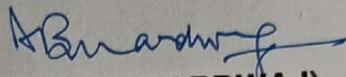
17. Therefore, while awarding fine, the amount or the value of the property which the convicts have obtained by committing the offence or the pecuniary resources or property for which the convicts are unable to account satisfactorily has to be taken into consideration. Considering the attachments of immovable properties by Enforcement Department and by this court, Convict No. 1 Sh. Devendra Kumar Goel is awarded a fine of Rs.2,00,000/-. In the event of failure to pay this fine, he shall undergo simple imprisonment of three months. Convict No. 2 Smt. Sangeeta Goel

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is awarded a fine of Rs.2,00,000/-. In the event of failure to pay this fine, she shall undergo simple imprisonment of three months.

18. Copy of order be given dasti.

**Announced in the open court
on 22.07.2020**


**(ARUN BHARDWAJ)
Special Judge (PC Act)
(CBI-5), Rouse Avenue
District Court, New
Delhi:22.07.2020
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