BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	12.07.2024
Pronounced on	: :	04.03.2025 & 21.03.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No.86 of 2019

State represented by
Inspector of Police,
CBI, ACB, Chennai,
(@ Madurai Branch) ... Appellant

Vs.

1. V.Govindaswamy (A-1)

2. V.Geetha (A-2) ... Respondent

PRAYER: This Criminal Appeal is filed under Section 378 of Cr.P.C. to allow this appeal and set aside the Judgment dated 28.04.2018 pronounced by the learned II Additional District Judge/Special Judge for CBI Cases, Madurai in C.C.No.25/2012.

For Appellant : Mr.C.Muthusaravanan,
Special Public Prosecutor for CBI

For Respondents : Mr.C.Arul Vadivel @ Sekar,
Senior Counsel
for M/s.S.Sankarapandian

JUDGMENT

CBI prepared this appeal against the acquittal judgment passed in C.C.No. 25 of 2012 on the file of the II Additional District Court For CBI Cases, Madurai wherein the A1 was acquitted for the charge under section 13 (1) (e) of the Prevention of Corruption Act 1988 and A2 for the charge under 13 (1) (e) of the Prevention of Corruption Act 1988 r/w. 109 of I.P.C.

2.**Brief facts of the case:**

Respondent No.1 herein was arrayed as A1 in the above C.C. and the respondent No.2 herein was arrayed as a A2. The accused No.1 was appointed as a Inspector of Central Exercise, Ministry of Home on 06.04.1987. Subsequently he was promoted as a superintendent of customs and worked at Tuticorin from 06.06.2011 to 11.04.2012. Thereafter, he was transferred to the Trichy Central Exercise Commissionerate on 11.04.2012. A1 married. A2 in the year 1992. She was housewife. During the course of investigation in R.C.MA1 2012 A 0006, dated 23.02.2012, the CBI conducted search in the properties of the A1 and A2 and recovered the huge cash and documents of the immovable and movable property.

Therefore, the CBI registered the case against the respondents in RC 10(A)/2012 under section 13 (1)(e) of Prevention of Corruption Act r/w. 109 of I.P.C. After the investigation, the CBI filed the final report. In the final report, it is alleged that during the check period from 01.01.2002 to 23.02.2012, A1 had amassed disproportionate assert to the extent of Rs. 1,10,95,676/- in the name of himself and his wife A2 which are 443% disproportionate to the A1's knows source of income. A1 had not satisfactorily accounted for the said disproportionate asserts and A2 had also abessed A1 in acquiring the asserts in her name and in the name of the A1 and their family members. The said final report has been taken on file in C.C.No. 25 of 2012 on the file II Additional District Court For CBI Cases, Madurai by the Learned Special Judge and issued summons to the accused. After their appearance, the Learned Judge served the copies under section 207 of Cr.P.C. The Trial framed proper charges and questioned the accused. Accused Nos. 1 and 2 pleaded not guilty and they stood for trial.

2.1. The prosecution to prove the charges framed against the accused Nos. 1 and 2 , had examined PW1 to PW37 and marked exhibits P1 to P53 and produced the MO1. The Learned Trial Judge after recording the prosecution witnesses, questioned the accused Nos. 1 and 2 under section

313 of Cr.P.C. by putting the incriminating material available against them and they denied them as false and they gave the explanation.

2.2. On the side of the defense 4 witnesses were examined as DW1 to DW4 and Ex.D1 to D16 were marked.

2.3. The Learned Trial Judge after considering the both oral and documentary evidence adduced by the both side, acquitted the accused from all charges by passing the impugned judgment dated 28.04.2018.

3. The challenging the said acquitted judgment, CBI filed the present appeal against the acquittal.

4. **Submission of the Thiru.Muthusaravanan Learned Special Public Prosecutor appearing for the CBI :**

The Learned Trial Judge without properly considering the material adduced by the prosecution which has clearly proved the charges framed under section 13 (1)(e) r/w. 13 (2) of Prevention of Corruption Act against A1 and charges framed under section 13 (1)(e) r/w. 13 (2) of Prevention of Corruption Act r/w. 109 of I.P.C. against A2 beyond reasonable doubt but

the trial court erroneously acquitted the accused Nos. 1 and 2.

4.2. The CBI conducted search relating to the investigation in the R.C.MA1 2012 A 0006, dated 23.02.2012 and found that there was a huge accumulation of the asserts disproportionate to the known source income of the A1. When the sufficient incriminating the material collected during the search, it is not necessary to conduct the preliminary enquiry. Therefore, the Learned Trial Judge erred in holding that the prosecution is vitiated on the ground of registration of the FIR without conducting the preliminary enquiry by misunderstanding the ratio laid down by the Hon'ble Supreme Court in the P.Sirajuddin Vs State of Madras. He further submitted that the Hon'ble Supreme court has held that when the material collected disclose the cognizable offence, there is no necessity to conduct the preliminary enquiry. He relied the judgment of the Hon'ble Three Bench Judge of the Supreme Court reported in 2021 (18) SCC 135.

4.3. The Learned Trial Judge erroneously held that the PW1 is incharge officer and has no jurisdiction to accord sanction to prosecute the A1 and therefore taking cognizance without obtaining sanction from the competent authority is illegal. The strong reliance placed by the Learned

Trial Judge in the case of Division Bench of Madras High Court reported in 1997 Writs L.R. reporter page 33 is subsequently referred to larger bench and larger bench over ruled the said ratio. He also further submitted that the Department of Ministry of Finance and Company Affairs Union of India in its communication dated 16.01.2003 authorized the authority in this case to accord sanction. Therefore, the Learned Trial Judge committed error in holding the sanction was not granted by the competent authority.

4.4. The Learned Special Public Prosecutor would elaborate his argument by producing the short notes of papers and submit that the Learned Trial Judge committed error in factual aspects of giving finding that the prosecution has not proved his case that A1 had amassed disproportionate wealth beyond reasonable doubt.

4.5. The special public prosecutor submitted that the Learned Trial Judge without any basis and legal evidence made a computation of the assets of the accused Nos. 1 and 2 at the beginning of the check period as Rs.14,91,564/- and made a computation of the income of the A1 and A2 at the end of the check period as Rs.91,38,569/-. Similarly, the Learned Trial Judge only on surmise has given a finding that expenditure during the

check period as Rs.24,14,092/-. The Learned Trial Judge curiously without any legal evidence and basis came into conclusion that A1 and A2 had known source of income during the check period as Rs.1,96,49,819/-. In result the Learned Trial Judge erroneously found that there was no offence made out against the respondents herein under the charges framed under section 13 (1)(e) r/w. 13 (2) of Prevention of Corruption Act against A1 and charges framed under section 13 (1)(e) r/w. 13 (2) of Prevention of Corruption Act r/w. 109 of I.P.C. against A2. Therefore, he seeks to set aside the impugned judgment.

4.6. The Learned Special Public prosecutor submitted that the Learned Trial Judge erroneously taken Rs.5,50,624/- as value of the gold articles and Rs. 3,28,500/- value of the house hold articles as a asset prior to the check period. A1 joined the office on 06.04.1987 and he never disclosed about the above articles and also he has not informed to the department and hence the same cannot be treated as a asset to be included in the statement (A). Therefore, the Learned Trial Judge committed error.

4.7. The Learned Trial Judge erroneously calculated the value of the property situated in the Valarasavakkam as Rs.34,00,000/- without any

basis. Whereas the prosecution clearly established through the evidence that the said property had fetched value of Rs.53,22,600/-. There was no contra evidence adduced by the respondents/accused. Similarly, the prosecution evidence clearly established that the accumulated value of the movable assets during the check period was around Rs.1,03,97,529/-. But, the Learned Trial Judge without any legal basis reduced the same as Rs. 82,00,529/-. Therefore, the said finding of the Learned Judge is liable to be set aside.

4.8. The Learned Trial Judge without any legal basis included the following amount as income of the respondents during the check period :

4.8.1.	Loan amount of Rs.10,00,000/-advanced to PW35
4.8.2.	Maturity amount of four fixed deposits to a tune of Rs. 50,75,039/-.
4.8.3.	Rental income of Rs. 12,94,500/- of A1 from Ooteri House for the period of 1996 to 2011 .
4.8.4.	Rental income of Rs. 9,55,000/- of A1 from Ooteri House first floor for the period of 1999 to 2011.
4.8.5.	Rental income of Rs. 7,50,000/- of A1 from Maraimalai Nagar House for the period of 1989 to 2003.
4.8.6.	Agriculture income of Rs. 16,50,000/- for the period 1999 to 2011.
4.8.7.	Sale of agriculture land of Rs.58,00,000/- .

4.8.8.	The Learned Trial Judge from above clearly erred in law in accepting the evidence of the defense without any corroborative evidence, blindly accepted the defense documents and erroneously held that income of the respondents as Rs.1,96,49,819/- as against the prosecution case of income as Rs.31,25,280/-. Therefore, he seeks to set aside the said finding.

4.9. The Learned Additional Public Prosecutor submitted that the Learned Trial Judge without any material boosted the expenditure to the extent of Rs.15,53,426/- as against the prosecution case of Rs.10,91,580/- under the head of Non Verifiable Domestic Expenses.

4.10. Therefore, the Learned Trial Judge without considering the legal principal laid down by the Hon'ble Supreme Court relating to the appreciation of the facts and law in the course of consideration of disproportionate asset case, only on surmise and conjecture, made the following calculation under various heads for the Check period commencing from 01.01.2000 to 23.02.2012 for A1 and A2 as against the prosecution proved case:

Heading	*As per the prosecution evidence*	*As per the Learned Judge finding.*
Assets at the end of the check period (A1 +A2)	1,03,97,529/-	91,38,569/-
Assets at the beginning of the check period	6,12,440/-	14,91,564/-
Expenditure incurred during the check period	19,52,246/-	24,14,092/-
Known source of income during the check period	31,25,280/-	1,96,49,819/-

Therefore, the Learned Trial judged committed error of law and all the finding of the Learned Trial Judge are erroneous and perverse and hence the judgment of the Learned Trial Judge is liable to be set aside and proper conviction and sentence ought to have been passed against the respondents Nos. 1 and 2.

4.11. The Learned Special Public Prosecutor to substantiate his contention placed the following precedents :

CITATIONS

Sl. No.	*Particulars of documents*
1	2021 (18) SCC 135 CBI Vs Thoomandru Hannah Vijayalakshmi
2	Laws (KER) -2019-4-20 P.Kunhikrishnan Vs State of Kerala
3	2013 (8) SCC 119 State of Maharastra Vs Mahesg G Jain
4	1981 (3) SCC 199 State of Maharastra Vs Wasudeo Ramachandran Kaidalwar
5	2004 (1) SCC 691 State of M.P. Vs Awadh Kishore Gupta
6	1999 (6) SCC 559 P.Nallammal and another Vs State

5. **The Learned Senior counsel Thiru. C.Arul Vadivel @ Sekar appearing for the respondents Nos.1 and 2 made detailed submission by relying the following precedents** :

LIST OF CITATIONS

Sl.No.	***Particulars of documents***
1	AIR 1960 SC 210, State V Rehman
2	1970 Cri.L.J. 1401, Bhagwan Prasad Srivastava V N.P.Mishra
3	1970 (1) SCC 595, pt P.Sirajuddin V State of Madras
4	1981 (2) SCC 166, Dudh Nath Pandey v State of U.P.
5	1987 Supp SCC 379, State of Maharashtra V Pollonji Darabshaw Daruwalla
6	2001 6 SCC 145, Takhaji Hiraji V Thakore Kubersing Chamasing and ors
7	2002 SCC online SC 373, Khet Singh V Union of India
8	2003 12 SCC 469, Goura Venkata Reddy V State of U.P.
9	2011 (4) SCC 240, H.Siddiqui V A.Ramalingam
10	2012 1 SCC 532, Dinesh Kumar V Chairman, Airport Authority of India & another
11	Central Bureau of investigation (CBI) and Anr V Thoomandru Hannah Vijayalakshmi @ T.H.Vijayalakshmi and Anr (Criminal appeal No. 1045 of 2021
12	Judgment in Mallappa and ors V State of Karnataka (Criminal appeal No(s). 1162/2011

5.1. The Learned Senior counsel would submit that as per the CBI manual and as per the law laid down by the P.Sirajuddin Vs State of Madras, to register the case against the public servant for the allegation of the accumulation of the assets disproportionate to the known source of

income, preliminary enquiry is necessary. In this case, CBI raided mistakenly in the house of the A1 in connection with the investigation of Crime No. R.C.MA1 2012 A 0006, dated 23.02.2012 and he was not accused in the said case and therefore registration of the case against the respondents without conducting the preliminary enquiry on the basis of the seized items during the house search is illegal. Therefore, he would submit that the Learned Trial Judge correctly appreciated the said law and same cannot be interfered in this appeal against acquittal.

5.2. The Learned Senior counsel would further submit that PW1 incharge officer is not competent authority to accord sanction as per the communication dated 16.01.2003. Hence, the Learned Trial Judge is correct in holding that PW1 has no authority to accord sanction and hence cognizance taken on the basis of the illegal sanction is not legally valid. Therefore, according to learned senior counsel the said finding also in accordance with law.

5.3. The Learned senior counsel would submit that the CBI made illegal search and found that there was accumulation of the assets. Any material found during the illegal search is inadmissible and therefore the

FIR registered under Ex.P.40 is illegal.

5.4. The Learned Trial Judge correctly believed the evidence of the DW1 namely brother of A1 and correctly accepted his evidence that he had handed over Rs.29,00,000/- to the A1 from his salary for the year 1989 to 2010. The A1 purchased the house using the said money and to repay the said amount he executed the sale deed in favour of him on 12.03.2012. All the above are mentioned in the income tax returns dated 31.03.2012 which is marked as Ex.D2. Therefore, the Learned Trial Judge is correct in accepting his evidence to prove the source of income. The said appreciation of the fact is not liable to be interfered with in this appeal against the acquittal.

5.5. The Learned senior counsel also submitted that DW2 another brother also deposed that he is a Ph.D, holder from the Sri Venkateswara University and joined in the Dravidien University, Kuppam, Andhrapradesh and got monthly of Rs.17,000/- and after his tenure, he generated income through the running of tutorial institute and earned more than Rs.1 to 1.50 Lakhs per year. He entrusted the said amount with the A1 as he was the person who educated him and to repay the said amount, A2

gave the property to him by way of the sale deed dated 12.03.2012. DW3 is the father of the A2 and he deposed that he has given dowry of 60 sovereigns of gold jewels to her and 10 sovereigns of gold to A2. He also deposed that he has purchased the jewels and the house hold articles mentioned in the "***statement B"*** of the prosecution and he purchased the property in the name of A2 in the year 1989 and he rented the said house for 5 years and generated rental income of Rs.7,50,000/- and finally sold the same in the year 2003 for the value of Rs.4,70,000/-. He also deposed that he also purchased a house in his name in the year 1988 and sold the same in the year 2006 and repaid the said amount of Rs.7,25,000/- to A2. He also collected rent from the Ooteri house of the A1 and handed over the same to A1. He collected the rent from the ground floor to the tune of Rs. 12,94,500/- and first floor to the tune of Rs.9,55,000/- and he marked the rental note book as Ex.D8. DW4 accused No.1 examined himself as DW4 and deposed that he earned salary of Rs.12,00,000/- as a Inspector of the department and using the same he purchased the house in Ooteri and received rental income of Rs.11,57,000/- from both ground floor and first floor. Before her marriage with A2, A2 had independent house at Maraimalai Nagar and from that A2 received rental income of Rs. 11,57,000/- from 1989 to 2003 and he sold the same for Rs.4,75,000/- in

the year 2003. Using the said income she purchased the house in Trichy and sold the same. Thereafter she purchased the agricultural land to the extent of 3.47 acres and she was getting the agriculture income of Rs. 1,50,000/- per year from 1999 to 2011 which totally incomes Rs. 16,50,000/-. She subsequently sold the same to his brothers DW1 and DW2 and derived the income of Rs.29,00,000/- he also claimed that his previous salary earned from railways and sale proceeds, agriculture income, rental income, the jewellers given to A2 and A1 and the house hold articles at the time of the marriage were not taken into consideration by the investigating agency. He further deposed that the investigating agency also not included Rs.34,00,000/- incurred by him for the construction of house at Valarasapakkam. He also submitted that the investigating agency omitted in the '***statement c'*** about the credit amount of Rs.16,07,425/- (SBI Branch, Thoothukudi) Rs.20,83,056/- (Bank of Maharastra) and Rs. 13,84,558/- (Canara Bank). Therefore, he pleaded that independent assets of A2 has been taken in his name to calculate the disproportionate assests. Hence, he seeks for the acquittal. The above evidence of defense was supported with relevant documents D1 to D14 and the same was considered by the Learned Trial Judge and accepted by the learned Trial Judge and there was no infirmity in the said finding and

therefore the Learned Senior counsel seeks to confirm the impugned acquittal judgment.

5.6. The Learned senior counsel has reiterated the principle laid down by the Hon'ble Supreme Court that the defense witnesses has to be given equtal treatment to the prosecution witnesses and hence the Learned Trial Judge applied the principle and accepted the evidence of defense.

5.7. The Learned senior counsel also submitted that the material witness namely the officer who registered the case under Ex.P40 has not been examined. The non examination of the said witness vitiated the trial.

5.8. The Learned senior counsel further submitted that mere marking of the prosecution documents without proof and probative value is not sufficient to prove the charge against the respondents Nos. 1 and 2.

5.9. Finally the Learned senior counsel cautioned this court by placing the reliance of the various Hon'ble Supreme Court judgment relating to the circumstances to interfere in the well merited impugned acquittal judgment and he seeks to confirm the same. He further argued

that on available evidence adduced by the both prosecution and accused, two views are possible and hence he seeks to give the benefit of doubt to the accused.

6. This Court considered the rival submissions made by the learned Special Public Prosecutor appearing for CBI and the learned Senior Counsel appearing for the respondents and perused the materials available on record and also the precedents relied by both side.

7. The question to be decided in this appeal is whether the prosecution has established the case beyond reasonable doubt to convict the respondents No. 1 under section 13 (1) (e) of the Prevention of Corruption Act 1988 and A2 for the charge under 13 (1) (e) of the Prevention of Corruption Act 1988 r/w. 109 of I.P.C.

8.**Discussion on the legislative history and proof of offence of disproportionate assets:**

Legislative history teaches lesson. Such lesson is used in the course of interpretation of provision and nature of burden of proof. Therefore, before going to the merit of the case, this Court inclines to trace the

history of the relevant provision relating to the "*offence of disproportionate asset*".

1947 Act	1964 Act	1988 Act
Section 5(1)(3) (3) In any trial of an offence punishable under sub-section (2) the fact that the accused person or any other person on his behalf is in possession, for which the accused person cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income may be proved, and on such proof the Court shall presume, unless the contrary is proved, that the accused person is guilty of criminal misconduct and his conviction therefore shall not be invalid by reason only that it is based solely on such presumption.	Section 5(1)(e) If he or any person on his behalf, is in possession or has, at any time during the period of his office, being in possession for which the public servant cannot satisfactorily account of pecuniary resources or property disproportionate to his known sources of income.	Section 13(1)(e) If he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Explanation- for the purpose of this section, "Known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

8.1.In the Act 1947, under section 5(1)(3) of the Act 1947, only in the pending case for offence under section 5(1)(a) to (d), the prosecution would have been initiated. Thereafter, 5(1)(e) was incorporated in the year 1964 on the basis of the recommendation of Santhanam Committee. As per the amended provision, the prosecution could he initiated independently under section 5(1)(e) r/w 5(1)(3) of the 1947 Act. The said 5(1)(e) culminated into 13(1) (e) of Prevention of Corruption Act with explanation clause. The language in 13(e) and 5(1)(e) are same and only addition in 13(1)(e) is explanation and meaning of known source of income.

8.2. As per the law laid down by the Hon'ble Supreme Court in the case of ***State of Maharasthtra V. Kaliar Koil Subramaniam Ramaswamy***

reported in ***1977 (3) SCC 525*** and in the case of ***M.Krishna Reddy Vs. State by. Superintendent of Police*** reported in ***1992 (4) SCC 45***, mere acquisition or possession of the property does not constitute offence. Only in the case of failure to "satisfactorily account" of such possession constitutes the offence.

9. MEANING OF " KNOWN SOURCE OF INCOME":

AIR 1960 SC 7 C.S.D.Swami –Vs- State

Now, the expression " known sources of income " must have reference to sources known to the prosecution on a thorough investigation of the case. It was not, and it could not be, contended that " known sources of income " means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters " specially within the knowledge" of the accused, within the meaning of s. 106 of the Evidence Act. The prosecution can only lead evidence, as it has done in the instant case, to show that the accused was known to earn his living by service under the Government during the material period.

9.1. In the case of **State of Maharastra -Vs– Wasudeo Ramachandra Kaidalwar** reported in **1981 (3) SCC 199**

> *"The provisions of section 5(3) have been subject of judicial interpretation. First the expression "known sources of income" in the context of s.5(3) meant "sources known to the prosecution".*"

9.2.In the case of ***State of M.P. v. Awadh Kishore Gupta***, reported in ***(2004) 1 SCC 691***

> *..Clause (e) of sub-section (1) of section 13 corresponds to clause (e) of sub-section (1) of section 5 of the Prevention of Corruption Act, 1947 (referred to as 'Old Act'). But there has been drastical amendments. Under the new clause, the earlier concept of "known sources of income" has undergone a radical change. As per the explanation appended, the prosecution is relieved of the burden of investigating into "source of income" of an accused to a large extent, as it is stated in the explanation that "known sources of income" mean income received from any lawful source,* ***the receipt of which has been intimated in accordance with the provisions of any law, rules orders for the time being applicable to a public servant. The expression "known sources of income" has reference to sources*** *known to the prosecution after thorough investigation of the case. It is not, and cannot be contended that "known sources of income" means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person.*

Those will be matters "specially within the knowledge" of the accused, within the meaning of Section 106 of the Indian Evidence Act, 1872 (in short the 'Evidence Act'). The phrase "known sources of income" in section 13(1)(e) {old section 5(1)(e)} has clearly the emphasis on the word "income". It would be primary to observe that qua the public servant, ***the income would be what is attached to his office or post,*** *commonly known as remuneration or salary. The term "income" by itself, is elastic and has a wide connotation. Whatever comes in or is received, is income. But, however, wide the import and connotation of the term "income", it is incapable of being understood as meaning receipt having no* ***nexus to one's labour, or expertise, or property, or*** *investment, and having further a source which may or may not yield a regular revenue. These essential characteristics are vital in understanding the term "income". Therefore, it can be said that, though* ***"income" is receipt in the hand of its recipient, every receipt would not partake into the character of*** *income. Qua the public servant, whatever return he gets of his service, will be the primary item of his income. Other incomes which can conceivably are income qua the public servant, will be in the regular receipt from (a) his property, or (b) his investment. A* ***receipt from windfall, or gains of graft, crime, or immoral secretions by persons prima facie would not be receipt from the "known sources of income" of a public servant.***

10. SATISFACTORILY ACCOUNT:

AIR 1960 SC 7	1991 (3) SCC 655	2004(1) SCC 691	2017 (6) SCC 263
The Legislature has advisedly used the expression "satisfactorily account". , The emphasis must be on the word " satisfactorily ", and the Legislature has, thus, deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the court that his explanation was worthy of acceptance.	The Legislature has advisedly used the expression "satisfactorily account". The emphasis must be on the word "satisfactorily". That means the accused has to satisfy the court that his explanation is worthy of acceptance	The legislature has advisedly used the expression "satisfactorily account". The emphasis must be on the word "satisfactorily" and the legislature has, thus, deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the Court that his explanation was worthy of acceptance.	**Paragraph No. 237.** It was emphasised that the word "satisfactorily" did levy a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth but also to satisfy the Court that the explanation was worthy of acceptance. The noticeable feature of this pronouncement thus it that the explanation offered by the accused to be acceptable has to be one not only plausible in nature and content but also worthy of acceptance.

11.Extent of burden of proof upon the accused:

The Hon'ble Constitution Bench of Supreme Court in the case of **K.Veerasamy Vs Union of India** reported in **1991 (3) SCC 655** has held that the accused has to satisfy the Court that his explanation is worthy of acceptance and the same required proof of evidentiary burden and not pursuasive burden in the following words:

> *But the legal burden of proof placed on the accused is not so onerous as that of the prosecution. However, it is just not throwing some doubt on the prosecution version. The Legislature has advisedly used the expression "satisfactorily account". The emphasis must be on the word*

"satisfactorily". That means the accused has to satisfy the court that his explanation is worthy of acceptance. The burden of proof placed on the accused is an evidential burden though not a pursuasive burden.

11.1.In the case of ***P. Nallammal –Vs- State*** reported in ***1999 6 SCC 565*** – The Hon'ble Supreme Court considered the new provision 13(1)(e) of the P.C.Act 1988 and held that in view of the explanation, the accused not only required to prove the lawful source of income and the same was properly intimated in accordance with the provision of law in the following words:

> *Shri K.K. Venugopal endeavoured to establish that the offence under Section 13(1)(e) of the P.C. Act is to be understood as an offshoot of the different facets of misconduct of a public servant enumerated in clauses (a) to(d) of the sub-section which a public servant might commit. According to him, unless the ill-gotten wealth has a nexus with the sources contemplated in the preceding clauses the public servant cannot be held guilty under clause (e) of Section 13(1). Learned senior counsel elaborated his contention like this: If a public servant is able to account for the excess wealth by showing some clear sources, though not legally permissible, but not falling*

under any of the preceding clauses of the sub-section, he would be discharging the burden cast on him. He cited an example like this:

If the public servant satisfies the court that the excess wealth possessed by him is attributable to the dowry amount which he received from the father-in-law of his son, the public servant is not liable to be convicted under the aforesaid clause.

The above contention perhaps could have been advanced before the enactment of the P.C. Act 1988 because Section 5(1)(e) of the old P.C. Act did not contain an "Explanation" as Section 13(1)(e) now contains. As per the Explanation the "known sources of income" of the public servant, for the purpose of satisfying the court, should be "any lawful source". Besides being the lawful source the Explanation further enjoins that receipt of such income should have been intimated by the public servant in accordance with the provisions of any law applicable to such public servant at the relevant time. So a public servant cannot now escape from the tentacles of Section 13(1)(e) of the P.C. Act by showing other legally forbidden sources, albeit such sources are outside the purview of clauses (a) to (d) of the sub-section.

11.2.In the case of ***CBI v. Thommandru Hannah Vijayalakshmi,*** reported in ***(2021) 18 SCC 135***

> ***58.*** *The ambit of the provision has been explained by a two-Judge Bench of Apex Court in THE CASE OF Kedari Lal [Kedari Lal v. State of M.P., (2015) 14 SCC 505 FOLLOWING EARLIER JUDGMENTS State of M.P. v. Awadh Kishore Gupta, (2004) 1 SCC 691 at p. 697, para 6 : 2004 SCC (Cri) 353 :*
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> *"10. The expression "known sources of income" in Section 13(1)(e) of the Act has two elements, first, the income must be received from a lawful source and secondly, the receipt of such income must have been intimated in accordance with the provisions of law, rules or orders for the time being applicable to the public servant. In N. Ramakrishnaiah [N. Ramakrishnaiah v. State of A.P., (2008) 17 SCC 83 : (2010) 4 SCC (Cri) 454] , while dealing with the said expression, it was observed : (SCC pp. 86-87, para 17)*
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> *'17. ... "6. ... Qua the public servant, whatever return he gets from his service, will be the primary item of his income. [Other income which can conceivably be] income qua the public servant, will be in the regular receipt from (a) his property, or (b) his investment." [**Ed.** : As observed in] ' The categories so enumerated are illustrative. Receipt by way of share in the partition of ancestral property or bequest under a will or advances from close relations would come*

within the expression "known sources of income" provided the second condition stands fulfilled that is to say, such receipts were duly intimated to the authorities as prescribed."

(emphasis supplied)

59. *In the present case, the respondents have filed before us their income tax returns, statements under the CCS Rules, affidavits under the RP Act and all other document filed before the Telangana High Court as well. Based on these documents, the respondents have urged that the calculation of their income, expenditure and value of assets during the check period in the FIR is incorrect. In support of the proposition that these documents can be relied upon, they have pointed out the following observations in the judgment in Kedari Lal [Kedari Lal v. State of M.P., (2015) 14 SCC 505 : (2016) 2 SCC (Cri) 399 : (2016) 1 SCC (L&S) 841] : (SCC pp. 509-10, paras 12-13 & 15)*

"12. In the instant case, every single amount received by the appellant has been proved on record through the testimony of the witnesses and is also supported by contemporaneous documents and intimations to the Government. It is not the case that the receipts so projected were bogus or was part of a calculated device. The fact that these amounts were actually received from the sources so named is not in dispute. Furthermore, these amounts are well reflected in the income tax returns filed by the appellant.

13. In similar circumstances, the acquisitions being reflected in income tax returns weighed with this Court in granting relief to the public servant. In M. Krishna Reddy [M. Krishna Reddy v. State, (1992) 4 SCC 45 : 1992 SCC (Cri) 801] , it was observed : (SCC p. 49, para 14)

'14. ... Therefore, on the face of these unassailable documents i.e. the wealth tax and income tax returns, we hold that the appellant is entitled to have a deduction of Rs 56,240 from the disproportionate assets of Rs 2,37,842.'

***

15. If the amounts in question, which were duly intimated and are reflected in the income tax return are thus deducted, the alleged disproportionate assets stand reduced to Rs 37,605, which is less than 10% of the income of the appellant. In Krishnanand v. State of M.P. [Krishnanand v. State of M.P., (1977) 1 SCC 816 : 1977 SCC (Cri) 190] and in M. Krishna Reddy [M. Krishna Reddy v. State, (1992) 4 SCC 45 : 1992 SCC (Cri) 801] , this Court had granted benefit to the public servants in similar circumstances. We respectfully follow the said decisions."

(emphasis supplied)

61. *On the other hand, it has been argued on behalf of the appellant that the documents relied upon by the respondents are not unimpeachable and have to be proved at the stage of trial. Hence, it was urged that the arguments made on the basis of these documents should not be accepted*

by this Court. The appellant has relied upon the judgment of a two-Judge Bench of this Court in J. Jayalalitha [State of Karnataka v. J. Jayalalitha, (2017) 6 SCC 263 : (2017) 3 SCC (Cri) 1 : (2017) 2 SCC (L&S) 179] , where it has been held that documents such as income tax returns cannot be relied upon as conclusive proof to show that the income is from a lawful source under the PC Act.

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....”

***63.1.** The judgment in J. Jayalalitha [State of Karnataka v. J. Jayalalitha, (2017) 6 SCC 263 : (2017) 3 SCC (Cri) 1 : (2017) 2 SCC (L&S) 179] notes that a document like the income tax return, by itself, would not be definitive evidence in providing if the “source” of one's income was lawful since the Income Tax Department is not responsible for investigating that, while the facts in the judgment in Kedari Lal [Kedari Lal v. State of M.P., (2015) 14 SCC 505 : (2016) 2 SCC (Cri) 399 : (2016) 1 SCC (L&S) 841] were such that the “source” of the income was not in*

question at all and hence, the income tax returns were relied upon conclusively.

11.3.In the case of ***State of T.N. v. R. Soundirarasu,*** reported in ***(2023) 6 SCC 768 at page 803***

> ***35.*** *The Explanation to Section 13(1)(e) defines the expression "known sources of income" and states that this expression means the income received from any lawful source and also requires that the receipt should have been intimated by the public servant in accordance with any provisions of law, rules or orders for the time being applicable to a public servant....*
>
> ***36.*** *The Explanation to Section 13(1)(e) of the 1988 Act has the effect of defining the expression "known sources of income" used in Section 13(1)(e) of the 1988 Act. The Explanation to Section 13(1)(e) of the 1988 Act consists of two parts. The first part states that the known sources of income means the income received from any lawful source and the second part states that such receipt should have been intimated by the public servant in accordance with the provisions of law, rules and orders for the time being applicable to a public servant.*
>
> ***38.*** *The above brings us to the second part of the Explanation, defining the expression "such receipt should*

have been intimated by the public servant" i.e. intimation by the public servant in accordance with any provisions of law, rules or orders applicable to a public servant.

39. *The language of the substantive provisions of Section 5(3) of the 1947 Act before its amendment, Section 5(1)(e) of the 1947 Act and Section 13(1)(e)of the 1988 Act continues to be the same though Section 5(3) before it came to be amended was held to be a procedural section in Sajjan Singh v. State of Punjab [Sajjan Singh v. State of Punjab, AIR 1964 SC 464] . Section 5(3) of the 1947 Act before it came to be amended w.e.f. 18-12-1964 was interpreted in C.S.D. Swami v. State [C.S.D. Swami v. State, AIR 1960 SC 7] , and it was observed : (C.S.D. Swami case [C.S.D. Swami v. State, AIR 1960 SC 7] , AIR pp. 10-11, paras 5-6)*

"5. Reference was also made to cases in which courts had held that if plausible explanation had been offered by an accused person for being in possession of property which was the subject-matter of the charge, the court could exonerate the accused from criminal responsibility for possessing incriminating property. In our opinion, those cases have no bearing upon the charge against the appellant in this case, because the section requires the accused person to "satisfactorily account" for the possession of pecuniary resources or property disproportionate to his known sources of income. Ordinarily, an accused person is entitled to

acquittal if he can account for honest possession of property which has been proved to have been recently stolen [see Illustration (a) to Section 114 of the Evidence Act, 1872]. The rule of law is that if there is a prima facie explanation of the accused that he came by the stolen goods in an honest way, the inference of guilty knowledge is displaced. This is based upon the well-established principle that if there is a doubt in the mind of the court as to a necessary ingredient of an offence, the benefit of that doubt must go to the accused. But the legislature has advisedly used the expression "satisfactorily account". The emphasis must be on the word "satisfactorily", and the legislature has, thus, deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the court that his explanation was worthy of acceptance.

6. Another argument bearing on the same aspect of the case, is that the prosecution has not led evidence to show as to what are the known sources of the appellant's income. In this connection, our attention was invited to the evidence of the investigating officers, and with reference to that evidence, it was contended that those officers have not said, in terms, as to what were the known sources of income of the accused, or that the salary was the only source of his income. Now, the expression "known sources of income" must have reference to sources known to the prosecution on a thorough

investigation of the case. It was not, and it could not be, contended that "known sources of income" means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters "specially within the knowledge" of the accused, within the meaning of Section 106 of the Evidence Act. The prosecution can only lead evidence, as it has done in the instant case, to show that the accused was known to earn his living by service under the Government during the material period. The prosecution would not be justified in concluding that travelling allowance was also a source of income when such allowance is ordinarily meant to compensate an officer concerned for his out-of-pocket expenses incidental to journeys performed by him for his official tours. That could not possibly be alleged to be a very substantial source of income. The source of income of a particular individual will depend upon his position in life with particular reference to his occupation or avocation in life. In the case of a government servant, the prosecution would, naturally, infer that his known source of income would be the salary earned by him during his active service. His pension or his provident fund would come into calculation only after his retirement, unless he had a justification for borrowing from his provident fund. We are not, therefore, impressed by the argument that the prosecution has failed to lead proper evidence as to the

appellant's known sources of income. It may be that the accused may have made statements to the investigating officers as to his alleged sources of income, but the same, strictly, would not be evidence in the case, and if the prosecution has failed to disclose all the sources of income of an accused person, it is always open to him to prove those other sources of income which have not been taken into account or brought into evidence by the prosecution."

(emphasis supplied)

***40.....**As laid down inSwami case [C.S.D. Swami v. State, AIR 1960 SC 7] , the prosecution cannot, in the very nature of things, be expected to know the affairs of a public servant found in possession of resources or property disproportionate to his known sources of income i.e. his salary. Those will be matters specially within the knowledge of the public servant within the meaning of Section 106 of the Evidence Act, 1872. Section 106 reads:*

*'**106. Burden of proving fact especially within knowledge**.—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.'*

In this connection, the phrase the "burden of proof" is clearly used in the secondary sense, namely, the duty of introducing evidence. The nature and extent of the burden cast on the accused is well-settled. The accused is not bound

to prove his innocence beyond all the reasonable doubt. All that he need to do is to bring out a preponderance of probability."

(emphasis supplied)

41. *While the expression "known sources of income" refers to the sources known to the prosecution, the expression "for which the public servant cannot satisfactorily account" refers to the onus or burden on the accused to satisfactorily explain and account for the assets found to be possessed by the public servant. This burden is on the accused as the said facts are within his special knowledge. Section 106 of the Evidence Act applies. The Explanation to Section 13(1)(e) is a procedural section which seeks to define the expression "known sources of income" as sources known to the prosecution and not to the accused. The Explanation applies and relates to the mode and manner of investigation to be conducted by the prosecution, it does away with the requirement and necessity of the prosecution to have an open, wide and roving investigation and enquire into the alleged sources of income which the accused may have. It curtails the need and necessity of the prosecution to go into the alleged sources of income which a public servant may or possibly have but are not legal or have not been declared. The undeclared alleged sources are by their very nature are expected to be known to the accused only and are within his*

special knowledge. (emphasis supplied) The effect of the Explanation is to clarify and reinforce the existing position and understanding of the expression "known sources of income" i.e. the expression refers to sources known to the prosecution and not sources known to the accused. The second part of the Explanation does away with the need and requirement for the prosecution to conduct an open ended or roving enquiry or investigation to find out all alleged/claimed known sources of income of an accused who is investigated under the PC Act, 1988. The prosecution can rely upon the information furnished by the accused to the authorities under law, rules and orders for the time being applicable to a public servant. No further investigation is required by the prosecution to find out the known sources of income of the accused public servant. As noticed above, the first part of the Explanation refers to income received from legal/lawful sources. This first part of the expression states the obvious as is clear from the judgment of this Court in N. Ramakrishnaiah [N. Ramakrishnaiah v. State of A.P., (2008) 17 SCC 83 : (2010) 4 SCC (Cri) 454] .

***42.** Thus, it is evident from the aforesaid that the expression "known source of income" is not synonymous with the words "for which the public servant cannot satisfactorily account." The two expressions connote and have different meaning, scope and requirements.*

11.4.With the above guiding principle, now this Court delves into the appreciation of the factual and legal aspects.

12. Discussion on the requirement of preliminary enquiry before registering the case under Ex.P40.

The Learned Trial Judge has held that the registration of the case under the Ex.P.40 without conducting preliminary enquiry vitiated the trial and the same was reiterated by the Learned senior counsel appearing for the accused Nos. 1 and 2. To address the said issue, following fact is relevant :

12.1.1. The CBI registered the case in RC 6(A)/2012 dated 20.02.2012 against Shri.Sanjay Shaha proprietor of M/s. Edge, Shri Murugan, Proprietor of M/s. Green Port Shipping Agency, Tuticorin, Shri. Thirugnanam, Supreintendent Customs (Retd)., Tuticorin and others u/s. 120 (B) r/w. 420 and Sec 13 (2) r/w. 13 (1) (d) of PC Act, 1988 for evading anti dumping duty while importing steel measuring tapes from Republic of Chainan. Consequent to the registration of case, searches were conducted a various residential as well office premises including residential premises of Shri.V.Govindaswamy, Superintendent Customs Tuticoirn and Chennai. During the search operation in the said case, liquid cash of Rs.2,77,400/-

was seized from the residence premises of Govindasamy and number of incriminating materials were legitimately found to register the case against the A1 and A2 about the accumulation of the assests disproportionate to the known source of the income of the A1 and A2. Therefore, the CBI registered the case on 29.02.2012 in RC MA1 2012 A 0010 against the A1 and A2 under the above said offence. In the FIR it is stated that "source information" in column No.6 . Therefore, the Learned senior counsel submit that there is a requirement to conduct the preliminary enquiry. The Learned Trial judge also persuaded the same. In the considered opinion of this court, there is no justification to entertain the plea that the registration of the case without conducting preliminary enquiry vitiated trial in this case.

12.1.2. In this case, during the course of the search, apart from the recovery of liquid cash, the CBI seized the material documents which prima facie disclose the material facts to register the case under section 13 (1)(e) r/w. 13 (2) of Prevention of Corruption Act 1988. Therefore, there was no need to conduct the preliminary enquiry in this case when the material collected during the search disclose the cognizable offence to register the case. The ratio of the P.Sirajuddin Vs State of Madras is not applicable to the present case. In the said case, information was received

by the vigilance department and the vigilance department without verifying the source of information and without ascertaining the materials, directly registered the case on the basis of the information without conducting preliminary enquiry. There are no such circumstances in this case to apply the said principle. In this case at the cost of the repetition, as stated earlier CBI collected the incriminating documents and liquid cash during the course of the search. Therefore, there was no necessity to conduct the preliminary enquiry. The same was also reiterated by the Hon'ble Three Bench Judges of Supreme Court in the case of ***CBI Vs Thommandru Hannah Vijayalakshmi*** reported in ***2021 (18) SCC 135*** and held as follows :

> ***39.*** *The precedents of this Court and the provisions of the CBI Manual make it abundantly clear that a preliminary enquiry is not mandatory in all cases which involve allegations of corruption. The decision of the Constitution Bench in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] holds that if the information received discloses the commission of a cognizable offence at the outset, no preliminary enquiry would be required. It also clarified that the scope of a preliminary enquiry is not to*

check the veracity of the information received, but only to scrutinise whether it discloses the commission of a cognizable offence. Similarly, Para 9.1 of the CBI Manual notes that a preliminary enquiry is required only if the information (whether verified or unverified) does not disclose the commission of a cognizable offence. Even when a preliminary enquiry is initiated, it has to stop as soon as the officer ascertains that enough material has been collected which discloses the commission of a cognizable offence. A similar conclusion has been reached by a two-Judge Bench in Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] as well. Hence, the proposition that a preliminary enquiry is mandatory is plainly contrary to law, for it is not only contrary to the decision of the Constitution Bench in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] but would also tear apart the framework created by the CBI Manual.

42. *In view of the above discussion, we hold that since the institution of a preliminary enquiry in cases of corruption is not made mandatory before the registration of an FIR under CrPC, the PC Act or even the CBI Manual, for this Court to issue a direction to that effect will be tantamount to stepping into the*

legislative domain. Hence, we hold that in case the information received by CBI, through a complaint or a "source information" under Chapter 8, discloses the commission of a cognizable offence, it can directly register a regular case instead of conducting a preliminary enquiry, where the officer is satisfied that the information discloses the commission of a cognizable offence.

12.1.3. Therefore, the first finding of the Learned Trial Judge that the registration of the FIR under Ex.P40 without conducting preliminary enquiry is vitiated is perverse finding and against the law. Therefore, this court inclines to set aside the same.

13. Discussion on the point of incompetency of the PW1 sanctioning authority to accord sanction:

PW1 was holding additional charges commissioner in Central Excise, Trichy in the year 2012. A1 was working as a superintendent of Central Excise, Trichy. He deposed that he is competent authority to remove him and hence he accorded sanction. According to the Learned Trial Judge he is holding the "additional charge as a commissioner" in the Central Excise, Trichy and hence he has no jurisdiction to accord sanction.

Therefore, the cognizance without sanction from the competent authority is illegal. For which he relied the judgment of the Hon'ble Division Bench of this court reported in 1997 writ law reporter 33 and 2006 (3) crimes 316 and 2004 (1) LW Crl 275. The judgment of the Hon'ble Division Bench reported writ law reporter 33 is referred to larger bench and the Hon'ble Larger Bench of this court over ruled the same. Further here PW1 is competent person and authorized person to accord the sanction. To show the authorization Ex.P9 also marked. In the Ex.P1 it is clearly mentioned about the power of the PW1 to accord sanction. Therefore, the finding of the Learned Trial Judge that the sanction order granted by PW1 is illegal is not correct and the same is also perverse and against the record. Hence this court inclines to set aside the said finding also.

14. Discussion on the "known source of income" :

14.1. According to the prosecution on the basis of the assets declaration form and the explanation offered by the A1, the known source of income is salary of A1. A2 is a house wife and has no independent source of income. She was not income tax assessee. Her income from the property also not disclosed in the property declaration statement of A1. Therefore, the investigating agency calculated the known source of income

from salary (including pay and allowance) as Rs.21,81,998/-. The investigating agency after conducting investigation gave the final opportunity notice to the accused No. 1 disclosing the above said income. He accepted the same and there was no explanation either with inclusion of the some other income. But, during the course of the trial, both accused pleaded following source of income :

14.1.1. Rent Income:

1	The rent from the house of Maraimalai Nagar from 1989 to 2003.	1989 - 2003	7,50,000.00
2	The said Maraimalai Nagar house was sold in favour of Kumari under Ex.D.12	14.07.2003	4,75,000.00
3	The agricultural income of the land of A2 from the property which is described below from 16.06.1999 to 2011. The asset covered under Chittoor Revenue Division, Kuppam Sub Revenue Division, Kuppam Mandalam, Kamathamur Village Panchayathi Board area, 152 Kamathamur Village, wet land Survey No. 4-1, the total extent of 3-47 Acres, out of which, the extent of 1.73 Acres (0.700) hectares land.	16.06.1999 to 2011	16,50,000.00
4	The sale proceeds of the agricultural land which is described below the asset covered under Chittoor Revenue Division, Kuppam Sub Revenue Division, Kuppam Mandalam, Kamathamur Village Panchayathi Board area, 152 Kamathamur Village, wet land Survey No. 4-1, the total extent of 3-47 Acres, out of which, the extent of 1.73 Acres (0.700) hectares land.	12.03.2012 (sold by A2)	58,00,000.00
5	Trichy District Taluk and Trichy Registrict joint 1 and 2 Co-Official from village Survey No.77/2, 76/3, 77/3 Resurvey No.77/3-A, Plot No.32, 2400 sq.ft., under Ex.D.13	12.04.2004 (sold by A2)	1,50,000.00

14.1.2. Fixed deposit amount :-

Bank of Maharashtra, Tuticorin in maturity of FD Rs.20,83,056/-	20,83,056
The maturity amount of four FD at SBI, Bazar Branch, Tuticorin under Ex.P.13	16,07,425
The maturity amount of deposit at Canara Bank, Tuticorin under Ex.P.27	13,84,558

14.1.3. The court below accepted the said income without any sufficient proof.

14.2. The Learned Trial judge blindly accepted the evidence of the defense witnesses namely two brothers of A1 and father of A2 and the deposition of A1 and came to the conclusion that the prosecution failed to prove the amassing of wealth disproportionate to the known source of income of A1. It is true that Hon'ble Supreme Court laid down the principle that equal treatment is to be given to the defense witness also. But it does not mean that without ascertaining the truthfulness and reliability of the evidence of the defense witness, mechanically to accept the version of the defense witness and revisited the computation of the assets as follows and acquitted the accused :

Heading	*As per the prosecution evidence*	*As per the Learned Judge finding.*
Assets at the beginning of the check period	6,12,440/-	14,91,564/-
Expenditure incurred during the check period	19,52,246/-	24,14,092/-
Known source of income during the check period	31,25,280/-	1,96,49,819/-
Assets at the end of the check period (A1 +A2)	1,03,97,529/-	91,38,569/-

15.**Discussion on the assets at the beginning of the check period commencing from 01.01.2002 to 23.02.2012:**

After completion of the investigation, the investigating agency have served the final opportunity notice upon the A1. The appellant gave the following explanation under Ex.P.47 dated 28.09.2012 " I have seen and understood the transactions income expenditure as such its and I have no explanation". At the time of the framing charge also, both the respondents pleaded not guilty without any explanation.

15.1.Therefore, this court is duty bound to consider the reliability and trustworthiness of the defense witness. The learned trial judge included the gold articles value of Rs.5,50,624/- in the statement No. A and the same was given at the time of the marriage in column No.7. Similarly, he had also added the value of the house hold articles Rs.3,28,500/- in column No. 8 of the statement No. A. The Learned Trial Judge added the

same without any evidence. As per the explanation to the section 13 (1) (e), "known source of income" means income received from any lawful source and such receipt has been intimated in accordance with the provision of any law, rules or orders for the time being applicable to a public servant. In this case, A1 had not intimated the said receipt of the huge quantity of gold jewels and value of articles to the department which is mandatory. "Further, this court also finds no material to the said information was duly furnished". Therefore, this court is unable to concur with the finding of the Learned Trial Judge that the same is to be included in the Statement A namely the said huge quantity of jewels obtained as a Sridhana.

16. **Valuation of the building at Valasaravakkam:**

The prosecution adduced the evidence to prove the value of the Valasaravakkam. As per the final report, the value of the said Valasaravakkam property is fixed as Rs.62,12,600/- according to the investigating officer the said property is situated in Chennai and the same fetched more value. To prove the value of the property, PW35 was examined, PW35 is the managing partner of the Sakthi builders and developers. He deposed that A2 purchased the plot No. 131A from him he received value of Rs.62,12,600/- (flat value is Rs. 9,22,600/- +

construction cost Rs.34,00,000/- + interior decoration Rs.18,00,900/-) and he repaid the amount of Rs.8,90,000/- on the account of that she did not carry out some interior decoration work. Even as per the cross examination, the only dispute was the interior decoration cost and there is no dispute over the flat value and construction cost. Therefore, fixing the Rs.34,00,000/- as a value of the house by the Learned Trial Judge is erroneous one. When the unimpeachable evidence of PW35 is available to arrive at the conclusion of cost of the said house is Rs.53,23,600/-, this court has no hesitation to fix the value of the said property is Rs. 53,23,600/-. Therefore, finding of the Learned Trial Judge that the value of the house is Rs.34,00,000/- is erroneous.

17. **Discussion on the fixed deposit.**

The Learned Trial Judge has accepted the case of the accused that the maturity amount of the following fixed deposit are treated as there known source of income.

Bank	**Maturity amount**
Bank of Mahashtra Tuticorin	Rs.20,83,056/-
SBI, Bazar branch, Tuticorin	Rs.16,07,425/-
Canara Bank, Tuticoirn	Rs.13,84,558/-

17.1.The said fixed deposits were not informed to the department. The source of the said amount has not been explained. From the savings bank account statement of the accused, it is clear that there was continuous flow of money in the account. There was no explanation in this regard. From that it is easily presumed that the amount was ill-gotten money. It is settled principle that to prove the known source of income it is duty of the accused to prove that the amount was obtained from legal source and duly intimate to the department, otherwise, the same cannot be accepted. The Learned trial judge totally failed to follow the said principle and erroneously held that the said amount is to be taken into account as a income of the A1 during the check period.

18. Discussion on the loan advance to PW35:

PW35 managing partner of the Shri Sakthi Builders he sold the house flat to the A2. The construction cost is Rs.34,00,000/- and flat value is Rs.9,22,600/- and interior decoration cost is Rs. 18,90,000/. He received Rs.62,12,600/- from A2. He did not carry out the interior work. Therefore, he returned Rs.8,90,000/-and for the remaining amount of Rs. 10,00,000/- he is said to have executed a promissory note. But he has not paid the said amount. The Learned Trial Judge has taken the said amount as income of

the A1. The said finding is not correct. In his cross examination he categorically admitted that the cost of interior decoration is not to be included in the total cost of the flat. Therefore, the said amount should not be treated as income of the A1.

19**. Discussion on the rental income :**-

The learned trial judge has accepted the case of the respondents that they have received the following rental income.

19.1.1.A.Rental income from the ground floor of Ooteri House for the period of 1996 to 2011.	Rs. 12,94,500/-
19.1.1.B.Rental income from the first floor of Ooteri House for the period of 1999 to 2011.	Rs. 9,55,000/-
19.1.1.C.Rental income from Maraimalai Nagar for the period of 1989 to 2003	Rs. 7,50,000/-

19.1. To arrive the said conclusion, the Learned Trial Judge relied the evidence of the DW3 and DW4. DW3 is father of the A2 and DW4 is A1. DW3 has produced the Ex.D6 and Ex.D8. It is the note book containing the statement of the DW3 with the following heading:

Ex.D6	Ex.D8
"V.கீதாவுக்கு மறைமலை நகரில் கட்டியவீடு ஒதுக்கீடு முறையில் வாங்கிய H.I.G. எண். 420 வடகை பணம் பெற்றுக் கொண்டதின் வரவு செலவு கணக்கு புத்தகம்".	*"V.கோவிந்தசாமி 414 – பெரியார் தெருவிலுள்ள ஓட்டேரிபாளையம் வீட்டில் வாடகை பணம் மற்றும் செலவு கணக்கு புத்தகம்"*

19.2.The entire note book is not produced. In the said note book it is mentioned that receipt of the monthly rental amount. In the year 1992 it is stated that there was a expenditure of Rs.8,000/- for the white wash. Similarly, in the year 1997 there is a mentioning of the expenditure of Rs. 50,000/- to raise the compound wall. The rental was spontaneously increased from Rs.4,000/- (1990) to Rs. 10,500/- (2003). The Learned Trial judge accepted the same without considering the admissibility of the said document and also credibility of the said statement contain in the document and the evidence of the DW3. The Learned Trial Judge failed to note that the said rental income has not been informed by A1 to his department during the course of the filing of the annual property statement DW4 in his examination clearly admitted that he never declared the assets. The admission of the DW4 was as follows :

> *"At the time of joining I have not filed any declaration under rule 18 of CCS conduct rule to the department". I have not intimated to the department for the purchase of the house in Ooteri, Vellore.*

19.3.The said rental hand book of the DW3 is in admissible one. It neither contain any particulars about the tenant nor contain any affirmation of receipt of the amount from the said premises. Without sufficient proof of the statement made in the note book to receive the rental income, the learned trial judge ought to have rejected the same. But he accepted the said rental income. In the absence of corresponding rental receipt to corroborate the said statement in the rental book issued to the each tenant in the said premises, and failure of the A1 to inform the said fact either to the department or in the income tax returns, the case of the DW3 that there was a receipt of rental income to the tune of Rs12,94,500/- + Rs.9,55,000/- + Rs.7,50,000/- can not be accepted.

19.4.The said book is extracted from the note book and entire note book was not produced. The Hon'ble Supreme Court in the "Jain Hawala Case" has held that loose seat from the note book and entry made in the same is not admissible under section 34 of the Evidence Act. To place reliance on the account book, it is duty of the party to prove that the same was prepared and kept in the course of the business in lawful manner. In this case except the loose seat nothing was established to prove the genuineness of the said document. Rental note book without head and tail

cannot be treated as regular book of account to prove the receipt of rental income. No tenant was examined to prove the tenancy. Not even tenancy agreement has been produced to show the genuineness of the claim of rental. Nothing was adduced to prove the said rental income note book has been prepared in the normal course of business. It was not found during the search made by the department. The said income was not proved as legal source of money by either filing the income tax or disclosed during the annual disclosure property statement of A1. Therefore, without any corroborate evidence to support the entry made in the said note book, the evidence of the DW3 and DW4 that they have received the rental income is nothing but false. The Learned Trial judge in the considered view of this court, made blind acceptance of the same and miserably failed to address the said issue as per law. Therefore, this court finds that DW3 and DW4 never proved their receipt of the rental income as per law and therefore their case of receipt of rental income on the basis of the Ex.D6 and Ex.D11 deserves to be rejected.

20. Discussion on the income from the agricultural land.

The respondent No.1 made a plea that her wife her purchased agricultural land to the extent of 3 acres 47 cents in survey No. 4/1 of

Kuppam Village, Andhra Pradesh prior to the cheque period i.e., on 16.06.1999. From the said agricultural land agricultural income of Rs. 16,50,000/- has been received by her for the entire period from 1999 to 2011. To prove the same, the respondent has produced the agricultural income certificate dated 14.05.2013 issued by the jurisdictional Tahsildar and the same was marked as Ex.D15. The said Ex.D15 contains following :-

> *"This certificate is not valid for any civil, criminal case and any other purpose except to obtain Bank loan subject to rules and regulations of the bank.*
>
> *Note :- This is digitally signed certificate does not require physical signature. And this certificate can be verified at http://www.ap.meesgva.gov.in/ by furnishing the application number mentioned in the certificate".*

20.1. The author of the said the Ex.D15 was neither examined nor the genuineness of the said documents has been proved. When accused has taken plea that Rs. 16,50,000/- agricultural income had been derived from the said land as his known source of income, it is duty of the accused to prove the same as per the law. In this case except the Ex.D15 no other document has been produced to prove such huge amount of agricultural income running from 1999 to 2011. This court has every reason to disbelieve the evidence of the accused No. 1 on simple ground that at any

point of time during the entire service, he had not disclosed the said purchase of the agricultural property and the huge amount of income in the disclosure statement furnished by him. Apart from that A2 also not disclosed the said statement of receipt of huge amount of agricultural income in the income tax assessment. She is not even a income tax assessee during the relevant point of period. Therefore, this court is unable to concur with the finding of the Learned Trial Judge that the respondent has derived agricultural income of Rs.16,50,000/- for the period of 1999 to 2011. The perversity in the Learned Trial Judge's finding accepting the said income as known source of income is apparent from the reliance on the Ex.D15 which contains the following :

> "*This certificate is not valid for any civil, criminal case and any other purpose except to obtain Bank loan subject to rules and regulations of the bank.*
>
> *Note :- This is digitally signed certificate does not require physical signature. And this certificate can be verified at http://www.ap.meesgva.gov.in/ by furnishing the application number mentioned in the certificate".*

21. **Discussion on the sale of the agricultural land.**

As stated above, A2 purchased the above said agricultural property on 16.06.1999 and sold the same to the DW1 and DW2 under Ex.D4 and

D1 respectively. The said sale was made in order to repay the amount of Rs.29,00,000/- allegedly contributed by the DW1 and DW2 to purchase the apartment in the name of the A2 by A1 during the relevant period of the said purchase of the Valarasavakkam Apartment. A2 has filed the income tax returns for the assessment year 2012 to 2013 showing the sale of the said agricultural land for total sum of Rs. 58,00,000/- and the same was marked as Ex.D16. The Learned Trial Judge accepted the same without considering the admissibility of the said documents and the credibility of the said evidence. DW1 and DW2 are the brothers of the A1. DW1 deposed that he obtained doctoarate at Sri Venkateshwara University, Andhra Pradesh on 21.03.2005 and joined as a contract lecture in the Dravidien University, Kuppam in the year 2003 and had continuously worked till 2006 and earned monthly salary of Rs. 17,000/- during that period also, he was running the tutorial institute from the year 1997 onwards and generated the annual income of Rs. 1,00,000/- to Rs. 1,50,000/- through the said tutorial institute. He entrusted his savings to the A1 and the same comes around Rs.29,00,000/- from 1997 to 2011. He made a demand for the repayment. Therefore, the 2nd respondent gave her the above said agricultural property by way of the sale deed dated 12.03.2012 to the extent of 1.73 acres. He also filed the income tax return

in the year ending on 31.03.2012. The said evidence was accepted by the Learned Trial Judge as gospel truth. In the considerable opinion of this court the said evidence of the DW2 not only created for the purpose of introducing the defense in this case and also to deprive the legitimate attachment of the said property under the relevant provision of the criminal law amendment. The said transaction is malafide transaction. The Learned Trial Judge totally failed to consider the truthfulness of the deposition of the DW2. He pleaded that he was running a tutorial and earning more than Rs.1,00,000/- to Rs.1,50,000/- as a annual income. He has not produced any documents to prove the same. He also admitted that he has not maintained the book of accounts and also specifically admitted that he has no record to show that he gave the money of Rs.29,00,000/- to accused No.1. The relevant portion of the evidence as follows :-

> *My tutorial centre is not registered one. We are also not maintaining book of accounts. It is also correct to say that I does not have any record and also I neither produced before the court with regard to giving money to A1 for Rs. 29,00,000/-.*

The conduct of the DW2 and the respondent No. 2 entering into sale of the agricultural property after the registration of the case and has taken the stand of sale of the property in order to repay the amount as already handed over to the A1 to purchase the Valarasavakkam plot during the check

period and furnishing the same to the income tax authority are all not bonafide and intended to create the false evidence in this case apart from avoiding the attachment of the property.

21.1. Similar plea was taken by the DW1, another brother of A1. He was working in the Indian Army. He used to share his saved salaries to his brother A1 from 1989 to 2010 i.e., upto his retirement in the year 2010. The same comes around Rs.29,00,000/- and he handed over the same to A1 and A1 was utilized the same to purchase the Valarasavakkam house. He wanted to repay the said amount. Therefore, the A2 executed the registered sale deed in respect of another portion of the land an extent of 1.47 acres to him on the same day i.e., 12.03.2012. He also submitted the income tax return on 31.03.2012 as deposed by the DW2. His evidence also not properly considered by the Learned Trial Judge. He has also not furnished any acceptable evidence to prove the entrustment of huge amount of Rs. 29,00,000/- in the custody of A1 to purchase the Valarasaravakkam house and his evidence is as follows :-

> *I have not furnished my income of particulars and details to the court and also similar to that I have not furnished any document on which date how much amount have been given to*

A1. The document now shown to Ex.D1 executed on 12.03.2012 in which time is mentioned as 11.55 A.M. I have not produced any document other than sale deed pertaining to the said property is worth about for Rs.29,00,000/- and also i have not produced any document before the court with regarding to giving my entire earnings to A1 for the amount of Rs. 29,00,000/-.

Therefore, his evidence also is not acceptable to prove the known source of income of the A1 and A2 and also the conduct of the DW1 and the respondent No. 2 entering into sale of the agricultural property after the registration of the case and has taken the stand of sale of the property in order to repay the amount as already handed over to the A1 to purchase the Valarasavakkam plot during the check period and furnishing the same to the income tax authority are all not bonafide and intended to create the false evidence in this case apart from avoiding the attachment of the property.

21.2.Hence, in view of the discussion above, the plea of the defense that the A1 had purchased the property in the Chennai, Valasaravakkam in the name of A2 through the contribution of the DW1 and DW2 namely his brother cannot be accepted and the transfer made during the investigation is nothing but malafide.

22**. Discussion on the expenses on the non verifiable domestic expenses:**

A1 was examined as DW4 and he never deposed about the Non verifiable Domestic Expenses. According to the prosecution evidence, it comes around Rs.10,91,580/-. But, the Learned Trial Judge without any basis calculated as Rs.15,53,426/-. Even DW4 has not demanded in his examination. Therefore, the said findings is erroneous one. The requirement of law to prove the case of the accused in the case of the disproportionate assets is that he satisfactorily accounted for and the same demands proof of the case more than the preponderance of probability. Therefore this court without any hesitation holds that the Learned Trial Judge gave the perverse finding in this grounds also.

23. Non inclusion of salary of the 1st accused from 06.04.1987 to 31.12.1999:

A1 joined in the department of customs on 06.04.1987 and working as a Inspector of customs upto 1999. During that period he had earned a sum of Rs. 12,00,000/- as a salary and other allowance and the same was not taken as a accumulated source of income before the cheque period. According to A1, the same has to be included in the statement “A”. The

said submission cannot be accepted for the reason that the respondent No. 1 has not proved that he saved the said salary amount as a savings before the commencement of cheque period and the same was duly informed to the department and included in his assets details and also there is no submission of the income tax including the said amount as a savings. In the said circumstances this court is unable to accept the case of the respondent No.1 that his income prior to the cheque period has to be included.

24. No opportunities was given to the 1st accused:

The plea of the A1 that he has not been given opportunity is not correct. The investigating agency after completion of the investigation gave the final opportunity notice and the same was received by the A1 and he also gave the explanation *under Ex.P.47 dated 28.09.2012 " I have seen and understood the transactions income expenditure as such its and I have no explanation".* From that it is clear that he made false plea before this court that he had not provided adequate opportunities.

25. Non inclusion of the property purchased under Ex.D10 in the statement A:

A1 has claimed that he purchased the property at Vellor on

07.05.1996 and the same was not included in the statement "A" i.e., assets of the A1 prior to the check period. The said argument cannot be accepted and he admitted that he has not disclosed the same in the declaration form which should have been furnished by him under rule 18 of CCS Contact Rule to the department and he also admitted that he has not intimated the same to the department. In the aspect it is relevant to extract the following explanation to the 13 (1) (e) of the Prevention of Corruption Act, 1988:-

> *"For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant".*

25.1.From the above explanation, it is clear that A1 is duty bound to establish that he purchased the said property from his lawful source of income and the same was intimated to the department as per law. Without compliance of the same, he has no right to claim the inclusion of the said in the statement "A". Therefore, his case of inclusion in the statement of "A" deserves to be rejected.

26. **Purchase of the TATA Sumo:**

Similarly, he claims that the TATA sumo vehicle had been purchased in the name of the A2 for the value of Rs. 6,00,000/- on 05.04.2008 through the loan transaction. The loan was granted on 03.04.2008 for the value of Rs.6,00,000/- on the basis of the security of fixed deposit of Rs. 7,83,637/-. She paid a sum of Rs.1,50,000/- on 03.06.2009 and rest of Rs. 5,60,344/- under the OTS scheme. The same was treated as expenditure by the Learned Trial Judge. A1 has not established his known source of income relating to the fixed deposit of Rs.7,83,637/-. The source of the said fixed deposit amount has not been disclosed as per law to the department and the same was also proved as lawful source. Further the obtainment of car loan of Rs. 6,00,000/- on the basis of the said fixed deposit and the repayment of the said car loan within the short span of period is clearly proved that he accumulated the income from the illegal gain. Hence, this finding also is liable to be set aside.

27. Deletion of the liquid cash in the statement B:

The Learned Trial Judge deleted the liquid cash recovered by CBI during the house search, shown as serial No. 11 of the statement "B" on the ground that the recovery was not proved as per law. The CBI made the

search at Valasaravakkam house on 22.03.2012 and also Thoothukudi residence of A1. PW 25 conducted search in the house of the A1 at Thoothukudi and recovered Rs.2,77,400/-. The Xerox copy of the search list was marked as Ex.P33 and the same was marked with objection during the examination of the PW25. The Learned Trial Judge has not accepted the said amount on the ground that search and recovery was not proved. The Learned Trial Judge gave the finding that the A1 was absent in the house at the beginning of the search and he reached the house during the search. Before that two persons came from the house with bag and the same was recovered and found an amount of Rs.2,77,400/-. Therefore, the Learned Trial Judge disbelieves the recovery. The said reasoning is not correct and also not in accordance with law. When, the CBI team reached the house of the A1, two unknown persons came from the house of the A1 with bag containing the amount and they handed over the key of the house. A1 also reached the house during the search and he also received the search list with his signature. In Ex.P33 he subscribed his signature and he did not raise any objection regarding the inclusion of the said amount in the search list. Even, his evidence he never disputed the said seizure of the amount. In his examination running more than 4 pages, he never disputed the said amount. In the said circumstances, when the search was conducted

in the lawful manner, the legal presumption under section 114 of the Evidence Act comes and the official act of seizure to be presumed that the same has been done as per law. Therefore, this court is unable to concur with the finding of the Learned Trial Judge that the amount has to be deleted from the statement "B".

27.**1.** The learned Trial Judge has committed error in accepting the case of the respondents that their known source of income under the following heads without any legal proof :

Bank of Maharashtra, Tuticorin in maturity of FD Rs. 20,83,056/-	20,83,056
The maturity amount of four FD at SBI, Bazar Branch, Tuticorin under Ex.P.13	16,07,425
The maturity amount of deposit at Canara Bank, Tuticorin under Ex.P.27	13,84,558
A.Rental income from the ground floor of Ooteri House for the period of 1996 to 2011	Rs.12,94,500/-
B.Rental income from the first floor of Ooteri House for the period of 1999 to 2011.	Rs. 9,55,000/-
C.Rental income from Maraimalai Nagar for the period Of 1989 to 2003	Rs. 7,50,000/-
Agricultural income of the land of A2 from 16.06.1999 to 2011	Rs.16,50,000/-
Sale proceedings of the said agricultural land sold on 12.03.2012	Rs.58,00,000/-

27.2. The Learned Trial Judge also committed error of law in accepting the case of the respondents that their assets at the beginning of the check period is Rs.14,91,564/- without any legal proof. The learned trial judge included the gold ornaments found in the house at the time of the house search to the value of Rs.5,50,624/- and the house hold articles mentioned in the inventory to the value of Rs.3,28,500/- without proof under the head of Sridhana articles. According to the respondents and the DW3 father of the A2, marriage between the respondents took place in the year 1992. DW3 stated that gold jewels mentioned in the item Nos.1 to 11 of the serial No. 7 of the statement "B" is sridhana articles that said to have given at the time of the marriage. DW4 namely the 1st respondent in his evidence has stated that DW3 had given jewels of 16 sovereigns and other house hold articles except cell phone. The both evidence are liable to be rejected on the ground that the gold items are all purchased in the year 2000, 2001, 2008, 2009, 2011 and 2012. Similarly, all the house hold articles were purchased much after the marriage i.e., in the year 2000, 2005, 2006, 2007, 2008, 2010 and 2011 . The said purchase was not disputed by the either A1 or A2 . Therefore, both A1 and DW3 made the false deposition before this court as if the said articles were handed over to the A2 at the time of the marriage happed in the year 1992. Hence, there is

a perversity in the finding of the learned trial judge in accepting the evidence of the A1 and DW3. Therefore, the learned trial judge erroneously treated Rs.5,50,624/- + Rs.3,28,500/- as assets of the respondents before the cheque period and wrongly included in statement "A".

28**. Conduct of the respondents and their family members** :-

FIR was registered on 29.02.2012. PW37 has conducted investigation. He has collected all materials from his own source. He also served the final opportunity notice to the A1 and A2 on 28.09.2012. In the said final opportunity notice, he has disclosed the following details :

Assets at the beginning of the check period-i.e., on 01.01.2000 "*Statement-A"*	56,240.00
Assets at the end of the check period (01.01.2000 to 23.02.2012) –"*Statement –B"*	11,724,329
Known source of income during the check period "*Statement C"*	25,00,280
Expenditure incurred during the check period (Statement-D)	19,27,867
Total acquired Assets and Expenses incurred during the check period (B-A+D)	13,595,956
Assets acquired during the check period (B-A)	1,16,68,089
Disproportionate Assets (B-A+D-C)	1,10,95,676
% of Disproportionate Assets acquired	443.78

29.<u>The A1 and A2 have furnished the following answer</u>:

" I have seen and understood the transactions income expenditure as such its and I have no explanation".

After the registration of the FIR, A2 sold the land to two brothers of the A1 namely DW1 and DW2 by sale deed dated 12.03.2012 for the value of Rs.58,00,000/-. DW1 and DW2 have submitted their income tax returns on 27.01.2014 with disclosure of the above said purchase. A2's income tax returns marked under Ex.D16 with the following particulars :

<u>Statement of total income</u>

	Rs.
Income from business or profession	
Net income as per income and expenditure Account	235946
Income from capital gains :	
Sale consideration received on sale of Agricultural land at Kuppam	5800000
Less : cost of land	96620
Long term capital gain	5703380

Entire sale consideration of Rs.5800000 is invested in purchase of Residential Flat at "A4, 'A' Block, Sri Sairam Apartments, 131, Indira Nagar, Chennai -600087

Hence Long term capital gain does not arise

Add : Agricultural income	235946
	153200

Total income	389146
Calculation of tax liability	
	Rs.
Income tax on Rs.389146	19915
Less : Rebate for agricultural income (190000+153200)	15320

Add :- Education cess 3%	4595
	138

Total due	4733
Less:- Self Education tax paid	4733

Tax due	Nil

The said assessment was made and the assessment year was 2012 to 2013.

Even the same was not disclosed in the reply notice. From the above it is clear that in order to avoid the confiscation and forfeiture of property, they made the *malafide* transfer. It is open to the CBI to take action against the aid *malafide* transfer as per law.

30.Discussion on the principles laid down by the Hon'ble Supreme Court relating to the scope and interference in the case of appeal against acquittal:

Prosecution clearly proved the respondent No.1 had amassed disproportionate asset to the extent of Rs.1,10,95,676/- in the name of himself and his wife A2, which are 443% disproportionate to his known source of income for which, A1 could not satisfactorily account for and offered any explanation. The prosecution further clearly proved A2 has also abetted A1 in acquiring the assets in her name and in the name of her husband and their family members. The respondents/accused only pleaded their case. Mere pleading is not evidence. The explanation must be worthy of acceptance as held by the Hon'ble Constitution Bench of Supreme Court in the case of ***K.Veerasamy vs. Union of India*** reported in ***1991 3 SCC 655*** and 2004 (1) SCC 691 and 2017 (6) SCC 263. Further, in the case of ***Nallammal Vs. State*** reported in ***1996 6 SCC 565*** and other cases the Hon'ble Supreme Court has laid down the law that the accused officer not only duty bound to explain the lawful source of income and also same properly intimated in accordance with provision of law in view of the explanation to Section 13(1)(e) of the Prevention of Corruption Act, 1988.

In this case, as discussed above, the accused officer has not offered any explanation and the learned trial Judge without any evidence and supporting material erred in calculating the disproportionate asset "***Minus Ninety Four percentage (--94.843%)***". Hence, the view taken by the learned trial Judge is not a "possible view". Further, as the finding of the learned trial judge is perverse in all aspects, this Court finds "substantial and compelling reasons" to interfere with the impugned acquittal Judgement. This Court, in view of the above discussion finds that the impugned judgment of the trial Court is perverse and there is substantial and compelling reason to interfere with the order of the learned trial Judge. Therefore, this Court has jurisdiction to appreciate the evidence, for which there is no legal impediment. Further, the Hon'ble Supreme Court has also held in the case of the appeal against acquittal, that this Court has jurisdiction to appreciate the evidence.

30.1.The learned trial Judge erroneously acquitted the accused, when the available evidence leans towards the only possible view of conviction under the above section. The learned trial Judge stated that there were lot of loopholes in the case of the prosecution. The loopholes assumed by the learned trial Judge is not at all significant and worthwhile to be considered

in these type of cases, more particularly, when the examination of witnesses took place after number of years from the date of occurrence. It is the duty of the Criminal Court to plug the said immaterial loopholes to ensure the criminal justice system is vibrant as held by the Hon'ble Supreme Court in the case of ***Dinubhai Boghabhai Solanki v. State of Gujarat,*** reported in ***(2018) 11 SCC 129 at page 154:***

> ***36.****That apart, it is in the larger interest of the society that actual perpetrator of the crime gets convicted and is suitably punished. Those persons who have committed the crime, if allowed to go unpunished, this also leads to weakening of the criminal justice system and the society starts losing faith therein. Therefore, the first part of the celebrated dictum "ten criminals may go unpunished but one innocent should not be convicted" has not to be taken routinely. No doubt, latter part of the aforesaid phrase i.e. "innocent person should not be convicted" remains still valid. However, that does not mean that in the process "ten persons may go unpunished" and law becomes a mute spectator to this scenario, showing its helplessness. In order to ensure that criminal justice system is vibrant and effective, perpetrators of the crime should not go unpunished and* ***all***

efforts are to be made to plug the loopholes which may give rise to the aforesaid situation.

30.2. Earlier the "Hon'ble Constitution Bench of the Supreme Court", in the case of ***M.G. Agarwal v. State of Maharashtra,*** reported in ***1962 SCC OnLine SC 22*** has held the same in the following paragraph:

> *16....But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused.*
>
> ***17.*** *In some of the earlier decisions of this Court, however, in emphasising the importance of adopting a cautious approach in dealing with appeals against acquittals, it was observed that the presumption of innocence is reinforced by the order of acquittal and so, "the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons" : vide Surajpal Singh v. State [1951 SCC 1207 : (1952) SCR 193 at p. 201] . Similarly in Ajmer Singh v. State of Punjab [(1952) 2 SCC 709 : (1953) SCR 418] it was*

observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are "very substantial and compelling reasons to do so". In some other decisions, it has been stated that an order of acquittal can be reversed only for "good and sufficiently cogent reasons" or for "strong reasons". In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended to introduce an additional condition in clause (a) of Section 423(1) of the Code. All that the said observations are intended to emphasise is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in the case of Sheo Swarup, the presumption of innocence in favour of the accused "is not certainly weakened by the fact that he has been acquitted at his trial". Therefore, the test suggested by the expression "substantial and compelling reasons" should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for

instance, in Sanwat Singh v. State of Rajasthan [AIR 1961 SC 715] and Harbans Singh v. State of Punjab [AIR 1962 SC 439] and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse.

30.3. Hon'ble Three Bench of the Supreme Court in case of ***Ashok Kumar Singh Chandel Vs. State of U.P*** reported in ***2022 SCC OnLine SC 1525*** has crystallized following principles;

> ***70.*** *In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:*
>
> *1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.*
>
> *A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:*
>
> *i. The trial court's conclusion with regard to the facts is palpably wrong;*
>
> *ii. The trial court's decision was based on an erroneous view of law;*
>
> *iii. The trial court's judgment is likely to result in "grave miscarriage of justice";*
>
> *iv. The entire approach of the trial court in dealing with the evidence was patently illegal;*

v. The trial court's judgment was manifestly unjust and unreasonable;

vi. The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

vii. This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/Appellate Courts must rule in favor of the accused."

30.4.In the case of ***Rajesh Prasad v. State of Bihar*,** reported in **(2022) 3 SCC 471** the Hon'ble Three Judges Bench of Supreme Court has held as follows**:**

31.2.2. *Where acquittal would result is gross miscarriage of justice:*

(a) Where the findings of the High Court, disconnecting the accused persons with the crime, were based on a perfunctory consideration of evidence, [State of U.P. v. Pheru Singh [State of U.P. v. Pheru Singh, 1989 Supp (1) SCC 288 : 1989 SCC (Cri) 420]] or based on extenuating circumstances which were purely based in imagination and fantasy [State of U.P. v. Pussu [State of U.P. v. Pussu, (1983) 3 SCC 502 : 1983 SCC (Cri) 713 : AIR 1983 SC 867]].

30.5.The Hon'ble Supreme Court", in the case of ***Babu v. State of Kerala [Babu v. State of Kerala,,*** reported in ***(2010) 9 SCC 189*** has considered following earlier precedents and reiterated the principles to be followed in an appeal against acquittal under Section 378CrPC.

Balak Ram v. State of U.P., (1975) 3 SCC 219
Shambhoo Missir v. State of Bihar, (1990) 4 SCC 17
Shailendra Pratap v. State of U.P., (2003) 1 SCC 761
Narendra Singh v. State of M.P., (2004) 10 SCC 699
Budh Singh v. State of U.P., (2006) 9 SCC 731
State of U.P. v. Ram Veer Singh (2007) 13 SCC 102
S. Rama Krishna v. S. Rami Reddy, (2008) 5 SCC 535
Arulvelu v. State of T.N. [Arulvelu v. State of T.N., (2009) 10 SCC 206
Perla Somasekhara Reddy v. State of A.P., (2009) 16 SCC 98
Ram Singh v. State of H.P., (2010) 2 SCC 445

'12.While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence

brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court.

***30*.6.**Hon'ble the Supreme Court", in the case of State of U.P.v.Banne (2009) 4 SCC 271 gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include : (SCC p. 286, para 28)

> *"28. ... (i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;*
>
> *(ii) The High Court's conclusions are contrary to evidence and documents on record;*
>
> *(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;*
>
> *(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;*
>
> *(v) This Court must always give proper weight and consideration to the findings of the High Court;*

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal."

30.7.When the findings of fact recorded by a court can be held to be "perverse" has been dealt with and considered in para 20 of the aforesaid decision, which reads as under : Babu v. State of Kerala, (2010) 9 SCC 189

'20. "findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material" or if they are "against the weight of evidence" or if they suffer from the "vice of irrationality"..

30.8. In K. Gopal Reddy v. State of A.P. [K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355, The Hon'ble Supreme Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule.'

30.9. As early as in 1973, a three-Judge Bench of this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] outlined the guiding principle to be kept in mind by an appellate court while deciding an appeal from an acquittal in the following manner

> *"5. ... an acquitted accused should not be put in peril of conviction on appeal save were substantial and compelling grounds exist for such a course. In India it is not jurisdictional limitation on the appellate court but a Judge-made guideline of circumspection. ... In law there are no fetters on the plenary power of the appellate court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinise the probative material de novo, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the holding without very convincing reasons and comprehensive consideration."*
>
> *(emphasis supplied)*

30.10. In the totality of the circumstances, the learned trial Judge magnified every minute irrelevant fact and made mountain out of a molehill and acquitted the respondent which resulted in miscarriage of justice. In similar circumstances, the Hon'ble Supreme Court, in the case of **State *of Maharashtra v. Narsingrao Gangaram Pimple*,** reported in **(1984) 1 SCC 446 at page 463** dealing the appeal against acquittal has held as follows:

> ***36.*** *.. It seems to us that the approach made by the learned Judge towards the prosecution has not been independent but one with a tainted eye and an innate prejudice. It is manifest that if one wears a pair of pale glasses, everything which he sees would appear to him to be pale. In fact, the learned Judge appears to have been so much prejudiced against the prosecution that he magnified every minor detail or omission to falsify or throw even a shadow of doubt on the prosecution evidence. This is the very antithesis of a correct judicial approach to the evidence of witnesses in a trap case. Indeed, if such a harsh touchstone is prescribed to prove a case it will be difficult for the prosecution to establish any case at all.*

30.11. The learned trial Judge allowed himself to be beset with fanciful doubts and rejected the creditworthy evidence of the prosecution witnesses for slender reasons and has misguided himself by chasing the bare possibilities of doubt and exalting them into sufficiently militating factors justifying acquittal. Therefore, there is an obligation on the part of this Court to interfere with the impugned order of the Court below, in the interest of justice, lest the administration of justice be brought to ridicule and the same was emphasized by the Hon'ble Supreme Court in the following cases:

> ***18.****In Shivaji Sahabrao Bobade v. State of Maharashtra [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793, V.R. Krishna Iyer, J., stated thus : (SCC p. 799, para 6)*
>
> *"6. ... The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community."*

In State of Punjab v. Jagir Singh [State of Punjab v. Jagir Singh, (1974) 3 SCC 277 : (SCC pp. 285-86, para 23) the Hon'ble Supreme Court has held as follows:

"23. A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy... Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy, on grounds which are fanciful or in the nature of conjectures."

30.12. The learned trial Judge merely on the evidence of the family members without any supporting materials and without even seeing the inherent improbability in their evidence accepted their pleading as evidence when the prosecution adduced the legally admissible documentary evidence and the documents marked by the defendant are not only inadmissible and also not relevant to prove their case. Therefore, the learned trial Judge erred in relying number of immaterial circumstances. It is well settled that it is not every doubt, but only a reasonable doubt of which benefit is to be given to the accused. The Hon'ble Supreme Court in the following cases has cautioned the Courts not to extend the proof of benefit of doubt so as to cause the disasterous result and unmerited

acquittal:

In the case of ***Wazir Khan v. State of Uttarakhand*****,** reported in **(2023) 8 SCC 597,** The Hon'ble Supreme Court while cosidering the plea of beyond reasonable doubt, after considering the earlier precedents of the Hon'ble Supreme Court has explained the proof of beyond reasonable doubt and held that proof beyond reasonale doubt cannot be distorted into a doctrine of acquittal and the relevant paragraph is as follows:

> ***26.*** *In the aforesaid context, we may profitably quote the following observations made by this Court in para 14 in Dharm Das Wadhwani v. State of U.P. [Dharm Das Wadhwani v. State of U.P., (1974) 4 SCC 267 : 1974 SCC (Cri) 429 : AIR 1975 SC 241] : (SCC pp. 272-73)*
>
> *"14. The question then is whether the cumulative effect of the guilt-pointing circumstances in the present case is such that the court can conclude, not that the accused may be guilty but that he must be guilty. We must here utter a word of caution about this mental sense of "must" lest it should be confused with exclusion of every contrary possibility. We have in Shivaji Sahabrao Bobade v. State of Maharashtra [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] , explained that proof beyond reasonable doubt cannot be distorted into a doctrine of acquittal when any delicate or remote doubt flits past a feeble mind. These observations are warranted by frequent acquittals on flimsy possibilities*

which are not infrequently set aside by the High Courts weakening the credibility of the judicature. The rule of benefit of reasonable doubt does not imply a frail willow bending to every whiff of hesitancy. Judges are made of sterner stuff and must take a practical view of legitimate inferences flowing from evidence, circumstantial or direct. At the same time, it may be affirmed, as pointed out by this Court inKali Ram v. State of H.P. [Kali Ram v. State of H.P., (1973) 2 SCC 808 : 1973 SCC (Cri) 1048] , that if a reasonable doubt arises regarding the guilt of the accused, the benefit of that cannot be withheld from him."

(emphasis in original and supplied)

30.13. In the case of ***Suresh Chandra Jana v. State of W.B.,*** reported in ***(2017) 16 SCC 466 at page 476***

> ***16..*** *A doubt of a timid mind which is afraid of logical consequences, cannot be said to be reasonable doubt. The experienced, able and astute defence lawyers do raise doubts and uncertainties in respect of evidence adduced against the accused by marshalling the evidence, but what is to be borne in mind is—whether testimony of the witnesses before the court is natural, truthful in substance or not. The accused is entitled to get benefit of only reasonable doubt i.e. the doubt which a rational thinking man*

would reasonably, honestly and conscientiously entertain and not the doubt of a vacillating mind that has no moral courage and prefers to take shelter itself in a vain and idle scepticism.

30.14. *In the case of* ***Rajesh Dhiman v. State of H.P.,*** *reported in* ***(2020) 10 SCC 740 at page 749*** it is observed***:***

> ***15...*** *Reasonable doubt does not mean that proof be so clear that no possibility of error exists****...***

30.15. *In the case of* ***Bhim Singh Rup Singh Vs. State of Maharastra*** reported in ***1974 3 SCC 762*** it is observed:

> *"A reasonable doubt", it has been remarked, "does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other; it does not mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt founded upon reasons*

30.16. *In* ***State of U.P. Vs. Anil Singh*** *reported in* ***(1988) Supp SCC 686*** *the Hon'ble Supreme Court has held as follow:*

> *Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth.*

30.17. In the case of ***Inder Singh v. State (Delhi Admn.)*** *reported in* ***[(1978) 4 SCC 161*** *the Hon'ble Supreme Court has held as follows:*

> *A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish.*

30.18. The Hon'ble Supreme Court on various occasions cautioned the Courts not to extend the arms of the rule of benefit of doubt to render unmerited acquittals by nurturing fanciful doubts or lingering suspicions causing miscarriage of justice. It is not only the duty of the Court to acquit an innocent, it is also the paramount duty of the Court to see that a guilty man does not escape and hence extending the arms of the rule of benefit of doubt in the present case, cannot be appreciated. The relevant precedents

in this aspect is as follows:

> *The lord Viscount Simon in Stirland v. Director of Public Prosecution (1944) 2 All ER 13 (HL)] held as follows:*
>
> *"[A] Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. ... Both are public duties...."*

30.19. *In the case of* ***Gurbachan Singh Vs. Satpal Singh*** *reported in* ***1990 (1) SCC 445*** *the Hon'ble Supreme Court has held as follows:*

> ***17....*** *Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law....*

30.20. In the case of ***Sadhu Saran Singh v. State of U.P.,*** *reported in* ***(2016) 4 SCC 357 at page 365,*** it is observed:

> ***20.*** *...we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by*

acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent.

*30.21.*The function of the criminal Court is to find out the truth and it is not a correct approach to pick up the minor lapse of an investigation, irrelevant omission and minor contradiction to acquit the accused when the ring of the truth is undisturbed from the cogent and trustworthy the evidence of various prosecution witnesses. Therefore, the learned trial Judge has not properly addressed the issue of "reasonable doubt". The cherished principles of golden thread of proof of reasonable doubt which runs through web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubts.

31.Conclusion on conviction:

From the above assessment of facts and circumstances of this case and after taking into consideration of all evidence and the arguments put forward by the both sides, I am of the unhesitant opinion that the impugned judgment rendered by the Learned Trial Judge is untenable and thus set

aside. Upon the analysis of the facts and law, in the opinion of this court the percentage of the disproportionate asset as – **94.843%** as calculated by the Learned Trial Judge is based on completely wrong assessment of evidence on record by incorrect arithmetical calculations. In view of the regnant evidence available on record, the prosecution proved the case of disproportionate asset, as contemplated in section 13 (1)(e) of the Prevention of Corruption Act, 1988, beyond reasonable doubt. The learned trial Judge failed to hold that prosecution proved its case beyond reasonable doubt that as against the income of Rs.25,00,280.00/- (Twenty Five Lakhs and Two hundred and Eighty Only) and expenditure of Rs. 19,27,867/- (Nineteen Lakhs Twenty Seven Thousand and Eight Hundred and Sixty Seven Rupees) during the cheque period, A1 acquired and possessed in his name and in the name of his wife of A2 immovable properties and movable properties of the value of Rs.1,10,95,676/- (One Crore Ten Lakhs Ninety five Thousand and Six Hundred and Seventy Six Only) which A1 could not satisfactorily account. The Prosecution also proved beyond reasonable doubt that A2 abetted the commission of the above offence by intentionally aiding A1 in the acquisition and the possession of the pecuniary resources and properties disproportionate to the known source of A1 income

31.1.Therefore, the learned trial Judge, has committed error of law in acquitting the respondents. In result, this court inclines to allow the appeal filed by CBI, by setting aside the unmerited acquittal judgment passed by the learned trial Judge, in C.C.No.25 of 2012, on the file of the III Additional District Court, for CBI Case, Madurai, dated 28.04.2018.

31.2**.** This court inclines to hold that A1 is liable to be convicted for the offence punishable under section 13 (1) (e) r/w. 13 (2) of the PC Act 1988 and A2 is hereby liable to be convicted under section 109 of I.P.C. r/w. 13 (1) (e) r/w. 13 (2) of the PC Act 1988.

31.3. Accordingly, this Criminal Appeal stands allowed by setting aside the Judgment passed by the learned II Additional District Judge/Special Judge for CBI Cases, Madurai in C.C.No.25/2012 dated 28.04.2018 and convicting the first respodnents for the offences under section 13 (1) (e) r/w. 13 (2) of the PC Act 1988 and the second respondent for the offence under section 109 of I.P.C. r/w. 13 (1) (e) r/w. 13 (2) of the PC Act 1988.

34.List this case for appearance of the respondents for questioning the sentence of imprisonment on 21.03.2025.

04.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
sbn

35.**Appearance and questioning of the respondents/Accused Nos. 1 and 2:**

As per the direction of this Court, dated 04.03.2025, both accused appeared before this Court. When the accused were questioned under Section 235(2) of Cr.P.C., about the sentence of imprisonment to be passed they have pleaded as follows:

Sl. No	***Accused Name***	***Answer of the Accused***
1	V.Govindaswamy	என் பெயர் வி.கோவிந்தசாமி ஆனால் சி.கோவிந்தசாமி என்ற பெயரில் தான் முதல் தகவல் அறிக்கை உள்ளது. இதன் காரணமாக தவறுதலாக எங்கள் வீட்டிற்கு வந்து விசாரணை செய்து என் மீது பொய் வழக்கு போட்டுள்ளார்கள். எனக்கு வயது 66 ஆகிறது. இடது கண்பார்வை இல்லை மேலும் சிறுநீரக பிரச்சனை உள்ளது ஆகவே எனக்கு குறைந்துபட்ச தண்டணை வழங்க கேட்டுக்கொள்கிறேன்.
2	V.Geetha	எனக்கு வயது 60 ஆகிறது. எனக்கு கற்பபை பிரச்சனை தொடர்பாக பல வியாதிகள் உள்ளன. எனக்கும் இந்த வழக்கிற்கும் எந்த சம்மந்தமும் இல்லை. ஆகவே எனக்கு குறைந்த பட்ச தண்டணை வழங்க கேட்டுக்கொள்கிறேன்.

36.Discussion on sentence:

The learned Senior Counsel appearing for the respondents also reiterated the above mitigating circumstances and also submitted that an eye operation is proposed to held on 24.03.2025 to the first respondent herein. Therefore, he seeks to award minimum sentence. He also produced the relevant medical records. He also relied the judgment of the Hon'ble Supreme Court in the case of S.Sundara Kumar vs. State of Tamilnadu reported in (2022) 17 SCC 61. The learned Special Public Prosecutor appearing for CBI would submit that the first respondent as a Superintendent of Customs, Thoothukudi has committed offence under Section 13(1)(e) r/w 13(2) of the Prevention of Corruption Act, 1988, and prosecution proved its case that the first respondent had amassed disproportionate assets to extend of Rs.1,10,95,676/- in his name and his wife's name, namely the second respondent herein, which comes around 443% disproportionate to the first respondent's known source of income. Therefore, he pleaded the above aggravated circumstances and seeks to impose suitable punishment.

36.1.In view of the above submissions, this Court inclines to do a balancing act between two tools ie, sympathy and the administration of Criminal Justice system in awarding punishment. To come out of the complex problem and to meet out balance between two situations, this Court recapitulates the principles relating to the punishment laid down by the Hon'ble Supreme Court in the following cases:

36.1.1.The principle of imposition of punishment should commensurate with crime committed has been illustrated by Hon'ble Supreme Court in the case of ***Sevaka Perumal v. State of T.N.*** reported in ***(1991) 3 SCC 471*** in the following paragraph:

> *"13. ... The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'."*

36.1.2.The said principle was further elaborated by the Hon'ble Supreme Court in the case of ***Shailesh Jasvantbhai v.State of Gujarat*** reported in ***(2006) 2 SCC 359***, and it has been held that :

> *"7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of 'order' should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that:'State of criminal law continues to be—as it should be—a decisive reflection of social consciousness of society.' Therefore,* ***in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants***

to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

8. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc.

(emphasis supplied)

36.1.3.Again in the case of ***Gopal Singh* v. *State of Uttarakhand*** reported in ***(2013) 7 SCC 545*** the Hon'ble Supreme Court has discussed about the gravity of the crime and the concept of proportionality as regards the punishment and observed as follows:

"18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The

principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect— propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasise, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. The real requisite is to weigh the

circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment."

(emphasis supplied)

36.1.4.A three-Judge Bench of the Hon'ble Supreme Court in the case of ***Ahmed Hussein Vali Mohammed Saiyed* v. *State of Gujarat*** reported in ***(2009) 7 SCC 254*** observed as follows :

"99. ... The object of awarding appropriate sentence should be to protect the society and to deter the criminal from achieving the avowed object to (sic break the) law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be resultwise counterproductive in the long run and against the interest of society which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

100. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the victim of the crime but the society at large while considering the imposition of appropriate punishment. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which both the criminal and the victim belong."

36.1.5.In the case of ***State of Punjab v. Bawa Singh*****,** reported in **(2015) 3 SCC 441 at page 447**

16. *We again reiterate in this case that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment. Meagre sentence imposed solely*

on account of lapse of time without considering the degree of the offence will be counterproductive in the long run and against the interest of the society.

36.1.6.The Hon'ble Supreme Court reiterated the above principle in the case of ***Raj Bala v. State of Haryana, reported in (2016) 1 SCC 463 and held as follows:***

> ***3.*** *It needs no special emphasis to state that prior to the said decision, there are series of judgments of this Court emphasising on appropriate sentencing. Despite authorities existing and governing the field, it has come to the notice of this Court that sometimes the court of first instance as well as the appellate court which includes the High Court, either on individual notion or misplaced sympathy or personal perception seems to have been carried away by passion of mercy, being totally oblivious of lawful obligation to the collective as mandated by law and forgetting the oft quoted saying of Justice Benjamin N. Cardozo, "Justice, though due to the accused, is due to the accuser too" and follow an extremely liberal sentencing policy which has neither legal permissibility nor social acceptability.*
>
> ***4.*** *We have commenced the judgment with the aforesaid pronouncements, and our anguished*

observations, for the present case, in essentiality, depicts an exercise of judicial discretion to be completely moving away from the objective parameters of law which clearly postulate that the prime objective of criminal law is the imposition of adequate, just and proportionate punishment which is commensurate with the gravity, nature of the crime and manner in which the offence is committed keeping in mind the social interest and the conscience of the society, as has been laid down in State of M.P. v. Bablu [(2014) 9 SCC 281 : (2014) 6 SCC (Cri) 1] , State of M.P. v. Surendra Singh [(2015) 1 SCC 222 : (2015) 1 SCC (Cri) 603] and State of Punjab v. Bawa Singh [(2015) 3 SCC 441 : (2015) 2 SCC (Cri) 325] .

5. *We sadly and indubitably with a pang proceed to pen the narrative. Respondents 2 to 4 stood trial for the offence punishable under Section 306 IPC. Be it noted, initially the FIR was registered under Section 302 IPC but during investigation, the investigating agency had converted the offence to one under Section 306 IPC. The charge was framed in respect of the offence under Section 306 IPC and the plea of the accused persons was one of complete denial.*

16. *A court, while imposing sentence, has a duty to respond to the collective cry of the society. The legislature in its wisdom has conferred discretion on the court but the duty of the court in such a situation*

becomes more difficult and complex. It has to exercise the discretion on reasonable and rational parameters. The discretion cannot be allowed to yield to fancy or notion. A Judge has to keep in mind the paramount concept of rule of law and the conscience of the collective and balance it with the principle of proportionality but when the discretion is exercised in a capricious manner, it tantamounts to relinquishment of duty and reckless abandonment of responsibility. One cannot remain a total alien to the demand of the socio-cultural milieu regard being had to the command of law and also brush aside the agony of the victim or the survivors of the victim. Society waits with patience to see that justice is done. There is a hope on the part of the society and when the criminal culpability is established and the discretion is irrationally exercised by the court, the said hope is shattered and the patience is wrecked. It is the duty of the court not to exercise the discretion in such a manner as a consequence of which the expectation inherent in patience, which is the "finest part of fortitude" is destroyed. A Judge should never feel that the individuals who constitute the society as a whole is imperceptible to the exercise of discretion. He should always bear in mind that erroneous and fallacious exercise of discretion is perceived by a visible collective.

36.1.7.In the case of ***Baba Natarajan Prasad v. M. Revathi*****,** reported in **(2024) 7 SCC 531,** the Hon'ble Supreme Court recently also considered the above all judgments and held that it is the duty of the Court to impose sentence commensurate with the gravity of offence by keeping view of the interest of the societies and considering the degree of the offence which would be counter productive in long run and against the interest of justice and also noted as follows:

> *Leave granted. Salmond defined "crime" as an act deemed by law to be harmful for society as a whole although its immediate victim may be an individual. Long-long ago,* ***Kautilya said:"it is the power of punishment alone which when exercised impartially in proportion to guilt and irrespective of whether the person punished is the king's son or the enemy, that protects this world and the next"****.*

36.1.8.The Hon'ble Supreme Court in the case of ***State of Gujarat v. Mohanlal Jitamalji Porwal*****,** reported in ***(1987) 2 SCC 364*** also reiterated the said requirement of strenuous action in the following terms:

> ***5.*** *An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be*

manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.

36.1.9.The said requirement also was reaffirmed by the Hon'ble Supreme Court in the case of ***Ram Narayan Popli v. CBI*****,** reported in ***(2003) 3 SCC 641***

> ***381.*** *... the need to pierce the facadial smokescreen to unravel the truth to lift the veil so that the apparent, which is not real, can be avoided. The proverbial red herrings are to be ignored, to find out the guilt of the accused.*
>
> ***382.*** *The cause of the community deserves better treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not a persona non grata whose cause may be treated with disdain. The entire community is aggrieved if economic offenders who ruin the economy of the State are not brought to book.*
>
> ***383.*** *Unfortunately in the last few years, the country has seen an alarming rise in white-collar crimes which has affected the fibre of the country's economic structure.*

These cases are nothing but private gain at the cost of the public, and lead to economic disaster.

36.2.The Hon'ble Supreme Court in the case of Sunita Devi Vs. State of Bihar and another reported in 2024 SCC Online SC 984 has made detailed discussion and directed to consider the mitigating and aggravating circumstances, and award sentence of imprisonment.

36.3.This Court considers the above principles and the submissions of both learned Special Public Prosecutor appearing for the CBI and the learned Senior Counsel appearing for the respondents. The submission of the first respondent that CBI registered case against him on mis-identity is merit of the matter and this Court already discussed earlier

36.4.Philosophy of life is not to take bribe. If anyone accepts bribe, he and his family will be ruined. Once they enjoyed the ill-gotten money, they should suffer as Jesus Christ prophesied in the following phrases:

“If you try to make a profit dishonestly, you will get your family into trouble. Don't take bribes and you will live longer.”

“What you get by dishonesty you may enjoy like the finest food, but sooner or later it will be like a mouthful of sand.”

Do not accept a bribe for a bribe makes people blind to what is right and ruins the cause of those who are innocent. The persons who gets money Dishonesty is like a bird that hatches eggs it didn't lay. In the prime of life he will lose his riches and in the end he is nothing but a fool.

36.5.The first respondent amassed disproportionate wealth of Rs.1,10,95,676/- as a Superintendent of the Customs Department. Therefore, this Court unable to accept the argument of the learned Senior counsel to grant minimum sentence.

36.6.In this country, corruption pervades in an unimaginable ratio. Corruption starts from the home. If the home maker is a party to corruption, there is no end to corruption. Therefore, the Hon'ble former President Dr.A.P.J. Abdulkalam in his address asked the youth to start fighting corruption from the home in the following words: The question is “will the daughter or son would be bold enough to say to their corrupt father please do not do that namely corruption”. Let us start from home.

36.7.Therefore, it is the duty of the appellant, wife of the Public Servant to discourage her husband from receiving bribe. The life for the

second respondent was bed of roses with the ill-gotten money and she should face the consequences namely conviction and the reasonable sentence of imprisonment under Section 109 r/w 13(1)(e) r/w 13(2) of the Prevention of Corruption Act, 1988.

36.8.Applying the above principles, this Court declines to accept the argument of the learned counsel for the accused to grant minimum sentence. But, considering the age and illness, this Court also is unable to concur with the argument of the learned Special Public Prosecutor to award maximum punishment on considering aggravated circumstances. To resolve the same, this Court gets guidance from the following observation made by the Hon'ble Supreme Court in the case of ***R. Venkatkrishnan v. CBI***, reported in ***(2009) 11 SCC 737 at page 791***

> ***168.*** *A sentence of punishment in our opinion poses a complex problem which requires a balancing act between the competing views based on the reformative, the deterrent as well as the retributive theories of punishment. Accordingly, a just and proper sentence should neither be too harsh nor too lenient. In judging the adequacy of a sentence, the nature of the offence, the circumstances of its commission, the age and character of the offender, injury to individual or the society, effect of punishment on offender,*

are some amongst many other factors which should be ordinarily taken into consideration by the courts.

*36.9.*This Court also considered the judgment of the Hon'ble Supreme Court in the case of former Chief Minister of Tamilnadu Selvi.J.Jayalalitha reported in 2017 (6) SCC 263 to award reasonable sentence in the case of disproportionate asset case.

37.**Sentence of Imprisonment:**

Considering the value of the disproportionate asset of Rs. 1,10,95,676/- this Court inclines to impose following sentence of imprisonment with fine. The period already undergone by the accused is ordered to be set off under Section 428 of Cr.P.C.,

37.1. In view of the value of the property amazed illegally, this court is inclined to award the following sentence against the A1 and A2 :

37.1**.1.** For the offence under section 13 (1) (e) r/w. 13 (2) of the PC Act 1988, A1 is hereby sentenced to undergo rigorous imprisonment of 4 years and a fine of Rs.75,00,000/-(Seventy Five Lakhs only) In default to pay a fine amount, he shall undergo further imprisonment for one year.

37.1**.2.** for the offence punishable under section 109 of I.P.C. r/w. Section 13 (1) (e) r/w. 13 (2) of the prevention of Corruption Act, A2 is

sentenced to undergo rigorous imprisonment of 4 years and a fine of Rs. 25,00,000/-(Twenty Five Lakhs Only). In default to pay a fine amount, he shall undergo further imprisonment for 9 months.

37.1**.3.** It is further directed to remit the proceeds of the fixed deposit and cash balance standing to the credit of the A1 and A2 bank account and the gold jewels and house hold articles and said proceeds thereof shall be appropriated and adjusted towards the fine amount.

37.1.4.The first respondent/accused No.1 in C.C.No.25 of 2012 on the file of the learned II Additional District Judge for CBI Cases, Madurai pleaded that he is going to undergone surgery on 24.03.2025. Except A2, there is no other family member available to assist him. Therefore, the Superintendent of Central Prison, Madurai, is hereby directed to grant leave for twenty days to the both respondents (A1/V.Govindasamy and A2/V.Geetha) from 10.30 am., of 22.03.2025, to 03.00 pm., of 10.04.2025. The respondents/accused Nos.1 and 2 are hereby directed to surrender before the jail authority before 04.00 pm., of 10.04.2025.

Summary of Discussion:

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3	The Learned Senior counsel Thiru. C.Arul Vadivel @ Sekar appearing for the respondents Nos.1 and 2 made detailed submission by relying the following precedents :	5-5.9
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5	Meaning of " known source of income"	9-9.2
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21.03.2025

NCC :Yes/No
Internet :Yes/No
Index :Yes/No

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To

1. The II Additional District Judge/Special Judge for CBI Cases,
   Madurai.

2. The Inspector of Police,
   CBI, ACB, Chennai.

3. The Special Public Prosecutor for CBI Cases,
   Madurai Bench of Madras High Court, Madurai.

4. The Section Officer,
   Criminal Section(Records),
   Madurai Bench of Madras High Court, Madurai.

5. The Superintendent of Prison,
   Central Prison,
   Madurai.

K.K.RAMAKRISHNAN,J.

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CRL.A(MD).No.86 of 2019

04.03.2025
&
21.03.2025