



Crl.A.(MD).No.88 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	20.12.2023
Pronounced On	:	12.03.2024

CORAM

THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN

Crl.A(MD).No.88 of 2017

Deivanayaki

..Appellant/

Accused No.2

Vs.

1.State Represented by
The Inspector of Police,
Vigilance and Anti-Corruption,
Trichy.
(Crime No.10/2022)

.. Respondent/Complainant

R.Sakthivel(Died)

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure r/w Section 27 of Prevention of Corruption Act, 1988, to call for the records and set aside the judgment of the learned Special Judge (Vigilance and Anti-Corruption Cases), at Trichy, dated 28.02.2017 in Special Case No.75 of 2011 and acquit the accused.



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For Appellant : Mr.Lakshmi Gopinathan
for M/s.Polax Legal Solution

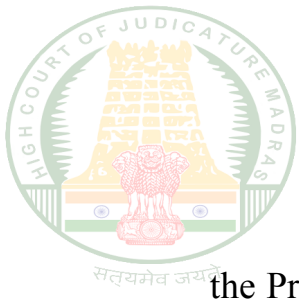
For R1 : Mr.T.Senthil Kumar
Additional Public Prosecutor

JUDGMENT

The appellant is the wife of A1 in Crime No.10 of 2002 on the file of the respondent police. The respondent police registered a case against the appellant and her husband viz., Sakthivel for the alleged offence under Sections 13(2) r/s 13 1(e) of the Prevention of Corruption Act, and Section 109 IPC.

2.The said Sakthivel, husband of the appellant joined as a Constable in Samayapuram Police Station and subsequently, he got promotion as Sub-Inspector of Police and was lastly working at Thogaimalai Police Station, Karur District. On receipt of secret information regarding A1 viz., Sakthivel accumulated assets over his lawful source of income, the respondent conducted a detailed enquiry and registered the case in Crime No.10 of 2022, against the appellant and her husband namely the said Sakthivel, for the alleged offence under Sections 13(i)(e) r/w 13(2) of

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the Prevention of Corruption Act, 1988 and 109 of IPC, for their possession of the disproportionate assets to the value of Rs.6,77,626/- ie, 115% over his lawful income.

3. The Investigating Officer, after conducting a detailed investigation examined number of witnesses and collected number of documents, issued final opportunity/notice to the appellant as well as her husband viz., Sakthivel. After the receipt of the final opportunity notice, both of them sent a reply to the Department. The Investigating Officer, after considering the same, found that there is some false plea in the said explanation and submitted the final report before the learned Special Judge constituted under Prevention of Corruption Act viz., the Special Court for Prevention of Corruption Act, cases Trichy. The learned trial Judge has taken on file the said final report in Special Case No.75 of 2011.

4. The learned trial Judge served the copy to the accused under Section 207 of Cr.P.C and framed the necessary charges and questioned the accused. Both the accused pleaded not guilty and stood for trial.

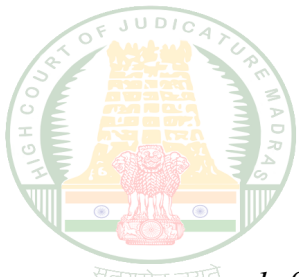


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5. The learned trial Judge, after considering the evidence adduced by the prosecution and the defence raised by the appellant has held that the accused accumulated more than Rs.6,77,626/- over his lawful source of income during the check period commencing from 01.01.1992 to 31.12.1996 and the same was established through legal evidence. Hence, the prosecution proved the case beyond reasonable doubt and during the pendency of the said trial, the first accused died and the charge against the present appellant viz., the wife of A1 under Section 109 IPC r/w Sections 13(2) and 13(1)(e) of the Prevention of Corruption Act, 1988 is established by the prosecution beyond reasonable doubt and convicted and imposed the sentence of imprisonment by the impugned judgment dated 28.02.2017. Hence, the appellant preferred the above appeal.

6. The learned counsel appearing for the appellant submitted that the Investigating Agency without any basis chose the check period from 01.01.1992 to 31.12.1996. Hence, choosing of the check period was arbitrary and hence, initiation of the proceedings with the said period is



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malafide and hence, the entire proceeding is vitiated on the ground of

malafide and hence, seeks for setting aside the impugned judgment.

7. The learned counsel for the appellant submitted that the sanctioning authority has not considered the explanation furnished by A1 submitted to the Investigating Agency at the time of granting sanction. Further the learned counsel submitted that the sanctioning authority has not applied his mind to the facts of the case and hence, sanction granted by the sanctioning authority to prosecute the case as against the deceased accused is not valid one and hence, cognizance taken by the Special Court without valid sanction is not correct.

8. The learned counsel further submitted that the Investigating Agency and the learned trial Judge did not take into consideration the evidence of P.W.1 and P.W.2 who have categorically stated that 50 sovereign of gold jewels were given to the appellant at the time of marriage. According to the learned counsel for the appellant, except 15 sovereign of gold jewels, the remaining sovereign of gold jewels were sold and utilized



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for the expenditure for construction of building. When this fact has not been investigated by investigating Officer, the learned trial Judge ought to have taken into account the evidence of P.W.1 and P.W.2, and hence, the trial Court's finding suffers from non consideration of a material fact.

9. The learned counsel for the appellant further submitted that P.W.7, P.W.8 and P.W.10 have submitted the building valuation report without accuracy. They did not examine number of tenants in the said house and they have not properly calculated the rental income. They arrived at the valuation as Rs.7,33,000/- whereas, the valuation of the building according to the appellant is only Rs.4,00,000/- for which, there are many circumstances available in the evidence of prosecution witnesses. Hence, there is material infirmity in the calculation of the building valuation. Therefore, the learned trial Judge has not properly considered the same and erroneously convicted the appellant.

10. The learned trial Judge did not consider the agricultural income of the appellant. They assessed only Rs.2,00,000/- for the whole



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check period of four years. According to P.W.2, the evidence of income from the agricultural field is more than Rs.4,00,000/-, but the same was not properly considered by the learned trial Judge, particularly, the land is situated near Caveri Basin and hence, they were following triple crop system per year. Hence, the agricultural income fixed by the Investigating Agency at Rs.20,000/- per annum is very low and it should be more than Rs.4,00,000/-. The learned trial Judge also not properly considered the same and more particularly the evidence of P.W.2 was not properly considered. Hence, the learned trial Judge committed an error in not properly assessing the agricultural income of the property.

11. The rental income of the house was assessed only at Rs.1,45,000/-, whereas, the rental income of the house is more than Rs.1,75,000/-. In the said circumstances, without any basis, the rental income was fixed only as Rs.1,45,000/-, and therefore, the fixation of rental income is also not in accordance with law. Hence, the findings of the learned Trial Judge fixing the rental income as Rs.1,45,000/- is not correct.



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12. The specific case of the appellant is that he sold the jewels to the tune of Rs.1,50,000/- and utilized the same for the construction of house and the same was disclosed by P.W.24. But the said evidence was not properly considered by the learned Trial Judge.

13. The learned counsel for the appellant submitted that the appellant and her husband A1 had offered explanation to the final opportunity notice. It is clear that the income of the appellant is more than the income assessed by the Investigating Agency and hence, there was no question of disproportionate assets as alleged by the Investigating Agency.

14. The learned counsel also submitted that in all aspects the Investigating Agency did not conduct a fair investigation and they have not calculated the accurate income, accurate expenditure and hence, there is an error on the part of the Investigating Officer and the same was not properly considered by the learned Trial Judge. Considering the above aspects, the appellant counsel seeks indulgence of this Court to set aside the conviction and sentence passed against her by the learned Special Judge by the impugned judgment.

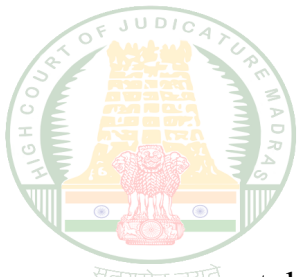


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15. Per contra, the learned Additional Public Prosecutor submitted that it is the prerogative of the Investigating Agency to fix the check period.

16. The independent P.W.D officers P.W.7, P.W.8 and P.W.10 without any motive made the building valuation as per the norms and submitted a report under Ex.P.11. The same was marked without any objection. The learned trial Judge considered the same and accepted the same. Hence, their valuation is in accordance with law. Further, the submission of the learned counsel for the appellant that the rental income was not properly calculated by the P.W.D staff, is not correct. The rental income of the house is correctly assessed by the investigating officer as Rs. 1,45,000/-, therefore, the case of the appellant that it fetched more than Rs. 1,76,000/- has not been proved by any evidence. Hence, the appellant's contention is liable to be rejected. The non-examination of the tenants residing in the building is not relevant to raise a suspicion about determination and the rental income arrived by the investigating agency. More particularly, no clear evidence was let in by the accused to prove more



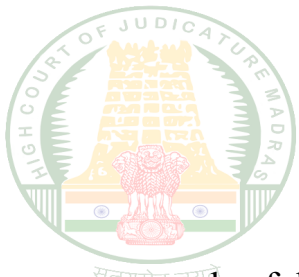
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rental income and hence, the submission of the learned counsel for the
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appellant is not correct.

17. The submission of the learned counsel for the appellant that the agricultural income is more than Rs.4,00,000/- on the basis of the evidence of the Village Administrative Officer, is not correct. He has not deposed that it would fetch Rs.4,00,000/- during the check period. The assessment officer considering all the land records and surrounding circumstances correctly assessed that the agricultural income is Rs. 2,00,000/- for the entire check period. Further there was no evidence to prove more income than fixed by the investigating agency. Hence the Court below held that the case of the appellant is not proved in respect of agricultural income that it is more than Rs.4,00,000/-.

18. The case of the appellant that she sold the jewels to the tune of Rs.1,50,000/- is not true as held by the trial Court, without any document to prove the same. In all aspects, the prosecution proved beyond reasonable doubt that the appellant's husband accumulated wealth beyond known



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lawful source of income. Further, the appellant has not satisfactorily accounted for the accumulated asset. Hence, the appeal is to be dismissed.

19. This Court considered the rival submissions made on behalf of both parties and perused the documents filed by the prosecution as well as the appellant and also the precedents relied upon by both parties.

20. Now, the question arising for consideration in this case is whether the conviction and sentence imposed by the learned trial Judge against the appellant under Section 13(1)(e) r/w 13(2) of the Prevention of Corruption Act 1988, and 109 of IPC is sustainable?

21. Before going to the merits of the case, it is relevant to extract Section 13(1)(e) of the Prevention of Corruption Act, 1988, which reads as follows:

*“ 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***



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to his known sources of income.

Explanation.—*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.*

22. MEANING OF “ KNOWN SOURCE OF INCOME”:

22.1.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.



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22.2.1981 (3) SCC 199 State of Maharashtra -Vs- Wasudeo

Ramachandra Kaidalwar

“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".”

22.3.State of M.P. v. Awadh Kishore Gupta, (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***

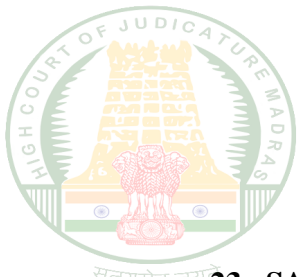


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*expected to know the affairs of an accused person. Those will be matters "specially within the knowledge" of the accused, within the meaning of Section 106 of the Indian Evidence Act, 1872 (in short the 'Evidence Act'). The phrase "known sources of 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 be 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.***



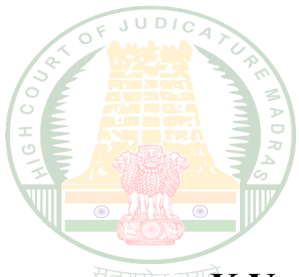
23. SATISFACTORILY ACCOUNT:

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AIR 1960 SC 7	1991 (3) SCC 655	2004(1) SCC 691	2017 (6) SCC 263
<p>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.</p>	<p>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</p>	<p>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.</p>	<p>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.</p>

24.Extent of burden of proof upon the accused:

The Hon'ble Constitution Bench of Supreme Court in the case of



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K.Veerassamy 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 evidential burden and not persuasive 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 persuasive burden.

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



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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



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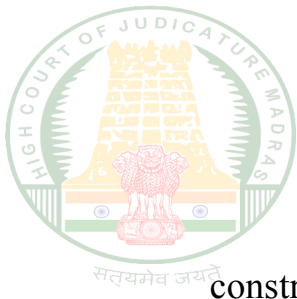


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satisfying the court, should be "any lawful source". Besides being the lawful source the Explanation further enjoins that receipt of such income should have been intimated by the public servant in accordance with the provisions of any law applicable 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.

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

25.1.A1 viz., the husband of the appellant joined the Department in the year 1992. At the time of joining, he had only assets to the value of Rs.2,000/- ie., he only had a TV valued Rs.2,000/- and subsequently, within four years check period, ie., commencing from 01.01.1992 to 31.12.1996, he acquired wealth of Rs.6,77,626/- over his lawful source of income. The accumulation of wealth were in the form of land, house sites and



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construction of the ground floor and the first floor. The particulars of the assets at the end of the check period is as follows:

STATEMENT II

Assets at the end of the check period i.e.31.12.98

Sl.No.	ASSETS	VALUE
1	A 16" Black and White TV Set	2,000
2	The AO acquired 1.97 acres of wet land from his brother and sister Doc.55/BK4/92 dated 4.12.92	30,000
	Stamp and Regn. fee	600
3	The AO purchased a house site at Musiri, Parvathipuram in the name of his wife (2025 sq.ft) S.F.No.92/1C in Doc.No.1014 dt.10.6.92.	1,20,000
	Stamp and Regn.Fee	16,250
	Shortage of Stamp fee	3,200
4	The A.O. purchased a house plot at Parvathipuram in the name of his wife with the plinth area of 357 Sq.ft. in DOC.No.1711 on 23.10.92.	12,300
	Stamp and Regn. fee	1,625
Sl.No.	ASSETS	VALUE
5	The AO constructed East side Ground floor and first floor East Wing in the name of his wife Tmt.Deivenayagi during 1995 at Parvathipuram, Musiri Taluk with plinth area of 1,029.09 Sq.Ft.	2,23,895



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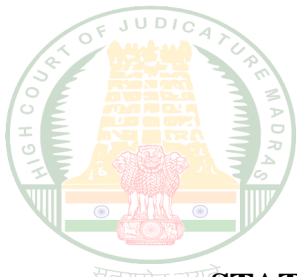
6	The AO constructed Ground floor West Wing in the name of his wife Tmt.Deivenayagi during 1994 at Parvathipuram, Musiri Taluk plinth area of 997.88 Sq.Ft.	2,63,122
7	The AO constructed west side first floor West Wing in the name of his wife Tmt.Deivenayagi during 1994 at Parvathipuram, Musiri Taluk with plinth area of 1,070.73 Sq.Ft.	1,94,651
8	Cost of the common amenities 1.Compound wall, 2.Water Tap, 3.H.P.Motar, 4.Borewell, 5.Compressor Motor, 6.Sanitary arrangements	75,262
TOTAL =		9,42,905

According to the prosecution, the details of the income during the check period, the detail of expenditure, expected savings are as follows:

STATEMENT III

Income during the check period i.e.1.1.92 to 31.12.96.

Sl. No.	ASSETS	VALUE
1	Pay and allowance particulars of the A.O. during the check period (after all deductions)	2,06,697
2	Total rental income from A.O's house in Parvathipuram (9G/2A, 9G/4,9G4/B, 9G/5)	1,45,900
3	House rent allowance received from the A.O.during the check period.	35,000
4	A.O.incurred income through Agriculture during the check period. (40,000*5)	2,00,000
TOTAL =		5,87,597



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STATEMENT IV
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**Expenditure incurred by the AO during the check period
i.e.1.1.92 to 31.12.96**

Sl. No.	ASSETS	VALUE
1	Family expenses including Education and Electrical charges during the check period (for 3 adults and 3 children)	1,92,207
2	Houses Tax expenses by the A.O.during the check period. 1992-96	2,111
3	Payment of Tr.Rasu, the gardener of the A.O., during the check period.	30,000
4	Expenditure spent for Agricultural cultivation.	1,00,000
TOTAL =		3,24,318

On the basis of the above calculation, the prosecution proved the assets acquired during the check period was Rs.9,40,905/- which reads as follows:

STATEMENT V

1. Assets at the end of the check period (II) Rs.9,42,905

2. Assets at the beginning of the check period (I) Rs. 2,000

Assets acquired during the check period Rs. 9,40,905



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On the basis of the receipt of income during the check period and the expenditure incurred during the check period the prosecution calculated the savings as Rs.2,63,279/- which reads as follows:

STATEMENT VI

1. Income during the check period (III)	Rs.5,87,597
2. Expenditure during the check period (IV)	Rs.3,24,318

Savings

Rs.2,63,279

Finally, the prosecution calculated the disproportionate asset as Rs.6,77,626/- and calculated the percentage as 115. The deceased accused officer purchased the house site measuring an extent of 2025 Sqt in S.F.No. 92/1C at Musuri Parvathipuram in the name of the appellant and the value has been arrived at Rs.1,39,450/-. Similarly, another house site to an extent of 357 sq ft. was purchased at Musuri Parvathipuram in the name of the appellant and the value has been arrived at Rs.13,925/-. According to the deceased accused officer, the appellant purchased the said house sites

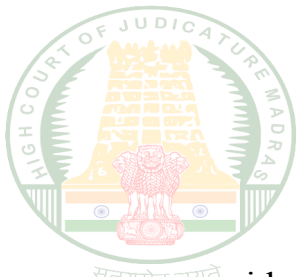


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through the amount given by her father. No evidence was adduced by the appellant to prove the said plea. Therefore, the source of income was only through the deceased, the appellant's husband.

26.Determination of the Building Valuation:-

The construction was made in the said house sites at the cost of Rs.7,53,930/-. To prove the same, the prosecution examined number of witnesses from P.W.D Office, Trichy. They calculated the valuation of entire building and submitted their report as Ex.P.11. To support the said report, P.W.7, P.W.8 and P.W.10 cogently deposed before the Court about the calculation of the valuation of the building. The said report was marked without objection. P.W.7, P.W.8 and P.W.10 even though were subjected to the cross examination, no material circumstances were elicited to disbelieve their calculation of the building value at Rs.7,56,300/-. Apart from that there was no contra evidence adduced by the appellant to prove that the above said valuation is escalated one. P.W.7, P.W.8 and P.W.10 are the public servants from P.,W.D department who have no motive against the appellant and her husband to give escalated figure. Further, without any contra



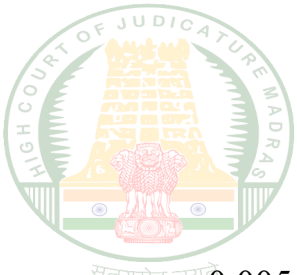
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evidence elicited during the course of the examination of P.W.7, P.W.8 and P.W.10, this Court agrees with the valuation of the building at Rs.7,56,300/- as mentioned in Ex.P11.

27.Agricultural Income:

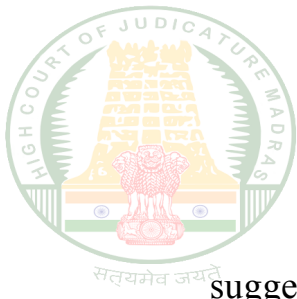
According to the prosecution in the Mullippadi Village in S.No. 184/2 an extent of 0.70.05 Hectares of agricultural land belongs to the appellant and the income from the said agricultural land is calculated as Rs. 2 lakhs for the check period from 1992-1996. P.W.12/Village Administrative Officer deposed about the manner of the calculation of the said agricultural income. He produced the document Ex.P13. His evidence is cogent and the same was corroborated by the evidence of P.W.15, P.W.14. The revenue document namely adangal was produced before the Court below. This Court perused the revenue document namely the adangal extract pertaining to the year 1994,1995 and 1998 and the same was marked as Ex.P14. From Ex.P14, it is clear that for the fasli year 1404 (1994) and 1405 (1995) the adangal extract was relating to the check period. During the period fasli 1404, the coconut trees were planted only in a smaller extent of the land ie.,



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0.005 hectare. The ground nut was cultivated only to the extent of 0.0405 hectares and paddy was cultivated in the remaining extent of land ie., 0.0385 hectares. In the fasli year 1405(1995) coconut trees were planted to the extent of land 0.180 hectares and paddy was cultivated in remaining extent of the land ie., 0.600 hectares. Therefore, the revenue authorities perused the adangals prior to the check period and after the check period and assessed the agricultural income as Rs.40,000/- per year. But as per the appellant's case, the land is situated in the Cauvery Basin and hence, it would fetch more income. According to the appellant, they were following triple crop system per year and also had income from the coconut trees. But, no evidence was produced to substantiate the same. The learned counsel for the appellant relied the following stray statement found in the cross examination of the Village Administrative Officer and submitted that the agricultural income is more than a sum of Rs.1,00,000/- per year 3
போகமும் அந்த நிலத்தில் சாகுபடி செய்யப்பட்டிருந்தால் வருடத்திற்கு ரூ.
1.00.000/- வரை ஆண்டு வருமானம் கிடைக்க வாய்ப்புள்ளது என்பதை
என்னால் மறுக்க முடியுமா? என்றால் மறுக்க முடியாது. This Court
considered the above portion of the evidence P.W.12. There is a general



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suggestion put to the witness and he deposed as above. Therefore, there is no evidence to substantiate the case of the appellant. It is well settled principle that to arrive at a conclusion, it is the duty of the Court to read the whole evidence and not to pick up some portion of the evidence as held by the Hon'ble Supreme Court in the following cases:

(i) ***Mustak v. State of Gujarat, (2020) 7 SCC 237 at page 247***

34. .. the evidence of the witnesses have to be read as a whole. Words and sentences cannot be truncated and read in isolation.

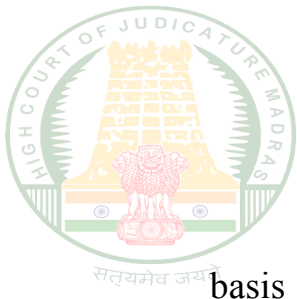
(ii) ***Rakesh v. State of U.P., (2021) 7 SCC 188 at page***

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14. .. One is required to consider the entire evidence as a whole with the other evidence on record. Mere one sentence here or there and that too to the question asked by the defence in the cross-examination cannot be considered stand alone...

27.1. Even according to P.W.12-Village Administrative Officer, the land may fetch Rs.4,00,000/- for the entire check period and the said evidence was not considered by the trial Court. The said submission of the appellant is not accepted for the reason that the assessment was made on the

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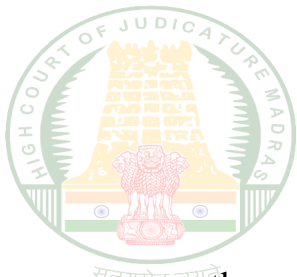
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basis of the evidence of the Village Administrative Officer as well as the other revenue officials under Ex.P.13. The answer in cross examination that it may fetch, cannot be accepted as income upto Rs.4,00,000/-. Further, the appellant did not produce any evidence to show that more agricultural income is derived from the above said land during the check period. In the absence of any contra evidence, only on the basis of the answer given by P.W.12, to the general question by way of suggestion, this Court is unable to accept the appellant's arguments that the income is more than Rs.4,00,000/- and hence, the submission of the appellant that the agricultural income is to the tune of Rs.4,00,000/-, cannot be accepted.

28.Rental Income:

According to the appellant, during the check period they received the rental income Rs.2,45,400/- and received an advance amount of Rs. 57,000/-. But the prosecution fixed the rental income of Rs.1,45,000/- alone. To prove the receipt of rental income of Rs.2,45,400/-, the appellant has not produced any evidence. Further, no evidence was produced to prove the advance amount of Rs.57,000/-. The said amount also was not disclosed as



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the yearly income amount in the property statements legally required to be furnished as per the explanation to Section 13(1)(e) of the Act, to treat the same as a legally valid known source of income. There fore, this Court accepts the prosecution case that the rental income is only Rs.1,45,000/-.

29.Sale of Jewels:

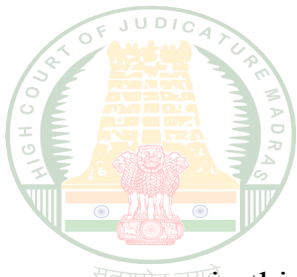
According to the appellant, at the time of marriage, her parents gave 50 sovereigns of gold jewels and the portion of the jewels were sold and utilized for the construction of the house and the same was not properly assessed by the investigating officer and the learned trial Judge. The said plea of the appellant is without any proof. There is no evidence to prove that 50 sovereigns of gold jewels was given at the time of marriage, and the same was also not disclosed in the statement of assets of the accused. As per the explanation to Section 13(1)(e) of the PC Act, it is the paramount duty of the accused officer to disclose the jewels particulars in the proper form as per the conduct rules. This Court finds no such disclosure as per the explanation. A1 (Sakthivel, husband of the appellant) in his explanation under Ex.P33 to the final opportunity notice stated that he pledged jewels



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given to his wife to the value of Rs.1,50,000/-. But the appellant, in her explanation stated that he sold the jewels and generated a sum of Rs. 1,50,000/- and therefore, there is diametrically opposite versions between the accused,ie., A1 stated that “*he pledged the jewels*”. A2 stated that “*she sold the jewels*” and the amount received by them is Rs.1,50,000/-. Similarly, there was no cogent evidence to prove that the appellant generated a sum of Rs.1,50,000/- either by pledging or selling. One witness deposed that they sold the jewels and another witness deposed that they pledged the jewels. As per the conduct Rules 1973, he was bound to disclose the same in his property statement. But the appellant's husband failed to disclose about jewels and its valuation in his property details as per law and hence, their case of possession of said jewels cannot be treated as lawful source of income. As a sequel, the case of the appellant that she generated income of Rs.1,50,000/- by selling the jewels deserves to be rejected. Even assuming that either they sold or pledged the jewels and accumulated a sum of Rs.1,50,000/- and the same is taken into consideration, there is no big difference to bring down the disproportionate asset. Therefore, this Court declines to accept the argument of the appellant



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in this aspect.

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30.The receipt of loan from the father of the appellant and father-in-law:

The learned counsel for the appellant contended that she received a loan of Rs.4,00,000/- from her father-in-law Rajagopal and Rs.3,00,000/- from her father Palaniappan and the same was utilized for construction. This Court finds no evidence for the same. It is well settled principle that the mere pleadings is not evidence and the plea without proof can not be taken into account to substantiate the case of the parties. The appellant neither examined the said Rajagopal or Palaniappan nor produced any documents to prove the same. Even in her explanation under Section 313 of Cr.P.C, she has not stated anything about the said income. As per the Tamilnadu Government Servants Conduct Rules 1973, the deceased/appellant's husband is duty bound to obtain permission from the department, to borrow any amount more than Rs.5000/-. This Court finds no such materials. Therefore, this Court is unable to accept the said contention of the learned counsel for the appellant that she received a sum of Rs.7,00,000/- as loan



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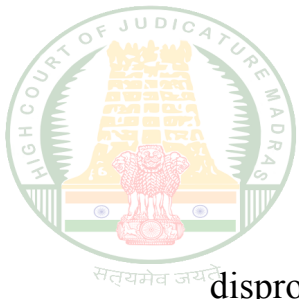
from her father and father-in-law. In the considered view of this Court, the said plea is stage managed to escape from the prosecution.

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31.Expenditure

The prosecution on the basis of the Government Statistical Officer's Report, fixed the expenditure of the appellant's family as Rs. 1,92,207/-. P.W.27, Statistical Officer furnished his report of expenditure under Ex.P.20. The same was marked without objection and P.W.27 was subjected to cross-examination and no material was elicited to disbelieve his version. The appellant also not produced any contra evidence. Therefore, the appellant's version that the expenditure is only Rs.75,000/- deserves to be rejected.

31.1.In this case, the appellant's husband accumulated huge amount disproportionate to the lawful source of income to the extent of 115 percentage. As per the disclosure statement of his property details, he disclosed the assets as Rs.2,000/- T.V., alone. For the check period from 1992 to 1996, he accumulated Rs.9,40,905/- which is highly



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disproportionate to his lawful income. The value of the assets are in the form of house sites and construction. The prosecution properly assessed the value of the building and house sites; properly assessed the rental income of the said house and also properly assessed the expenditures and calculated the disproportionate asset after deducting the savings during the check period as Rs.6,77,626/-. This Court finds no infirmity in the judgment of the learned trial Judge in accepting the case of the prosecution and the learned trial Judge correctly assessed the value of disproportionate assets as Rs.6,77,626/- without any perversity and also no materials were produced to disprove the same. The appellant has not satisfactorily accounted for the said amount. Therefore, this Court declines to accept the argument of the learned counsel for the appellant and hence, this Court confirms the conviction passed against the appellant under section 13(1)(e) r/w 13(2) of the PC Act, r/w 109 of IPC.

31.2.The learned counsel for the appellant submitted that conviction under Section 109 of IPC, after the demise of her husband during the trial is not legally valid and the same was already addressed by the



24. Shri Shanti Bhushan cited certain illustrations which, according to us, would amplify the cases of abetments fitting with each of the three clauses in Section 107 of the Penal Code vis-a-vis Section 13(1)(e) of the PC Act.

The first illustration cited is this:

If A, a close relative of the public servant tells him of how other public servants have become more wealthy by receiving bribes and A persuades the public servant to do the same in order to become rich and the public servant acts accordingly. If it is a proved position there cannot be any doubt that A has abetted the offence by instigation.

Next illustration is this:

Four persons including the public servant decide to raise a bulk amount through bribery and the remaining persons prompt the public servant to keep such money in their names. If this is a proved position then all the said persons are guilty of abetment through conspiracy.

The last illustration is this:

If a public servant tells A, a close friend of his, that he



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has acquired considerable wealth through bribery but he cannot keep them as he has no known source of income to account, he requests A to keep the said wealth in A's name, and A obliges the public servant in doing so. If it is a proved position A is guilty of abetment falling under the “Thirdly” clause of Section 107 of the Penal Code.

32.Choosing of the check period:

The learned counsel for the appellant submitted that the investigating agency without any basis arbitrarily chose the check period from 01.01.1992 to 31.12.1996. Per contra, the learned Additional Public Prosecutor submitted that it is prerogative of the investigating agency to fix the check period. The said issue is no longer *res integra* that it is within the domain of the investigating agency, as held by the Hon'ble Supreme Court in the case of *State of Maharashtra v. Pollonji Darabshaw Daruwalla*, reported in 1987 Supp SCC 379 at page 385

18. .. It is for the prosecution to choose what, according to it, is the period which having regard to the acquisitive activities of the public servant in amassing wealth, characterise and isolate that period for special scrutiny. It is always open to the public



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servant to satisfactorily account for the apparently disproportionate nature of his possession...

In the present case, the selection of a ten year period between April 1, 1958 and 31-12-1968 cannot, by reason alone of the choice of the period, be said to detract from the maintainability of the prosecution.

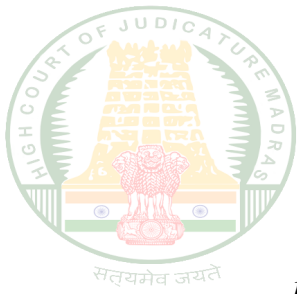
33. Conclusion:

It is the duty of the appellant, wife of the Public Servant to discourage her husband from receiving bribe. 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



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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.*

33.1. 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.

33.2. Therefore, the life for the appellant was bed of roses with the ill-gotten money and she should face the consequences namely conviction and atleast the minimum sentence of imprisonment under Section 109 r/w 13(1)(e) r/w 13(2) of the Prevention of Corruption Act, 1988. Therefore, the

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punishment imposed by the learned trial Judge deserves no interference. The Court below leniently awarded only one year of imprisonment and imposed a fine of Rs.1,000/- only.

34. Accordingly, this Criminal Appeal is dismissed by confirming the impugned judgment passed by the learned Special Judge (Vigilance and Anti-Corruption Cases), Trichy, in Special Case No.75 of 2011, dated 28.02.2017.

(i)The bail bond executed by the appellant is hereby cancelled.

(ii)The learned trial Judge is hereby directed to secure the accused and confine her in prison to serve the remaining period of imprisonment imposed by the trial Court and also take steps to confiscate the purchased properties through illegal means as per law.

12.03.2024

NCC :Yes/No

Internet :Yes/No

Index :Yes/No

NS/*sbn*

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To

1. The learned Special Judge
(Vigilance and Anti-Corruption Cases),
Trichy.
2. The Inspector of Police,
Vigilance and Anti-Corruption,
Trichy.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN,J.

NS/sbn

Predelivery Judgment made in
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