

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

CRL.A.No. 148 of 2000 (A)

AGAINST THE JUDGMENT IN CC 39/1991 of ENQUIRY COMMR.&
SPL.JUDGE,THRISSUR

APPELLANT(S):

N.CHANDRASEKHARAN NAIR,
S/O.NEELAKANTA PILLAI,
ASSISTANT EXECUTIVE ENGINEER (RETIRED)
SREE VIHAR, VECHOOR, VAIKOM.

BY ADVS.SRI.B.RAMAN PILLAI
SRI.B.RAMAN PILLAI
SRI.R.ANIL

RESPONDENT/COMPLAINANT:

STATE, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 8.10.2015,
THE COURT ON 23-12-2015, DELIVERED THE FOLLOWING:

P.UBAID, J.

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**Crl.A No.148 of 2000**

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Dated this the 23rd December, 2015

J U D G M E N T

The appellant herein was Junior Engineer of the Public Health Investigation and Bridge Division, Vaikom, Assistant Executive Engineer of the Public Health Sub Division, Punalur and Cherthala, and Assistant Executive Engineer at the Water Supply Sub Division, Vaikom during the period from 1.1.1976 to 15.5.1985. On the allegation that during this period, he amassed wealth disproportionate to his known-sources of income, the appellant faced prosecution before the learned Enquiry Commissioner and Special Judge (Vigilance) Thrissur in C.C 39 of 1991 under Section 5 (2) read with 5 (1) (e) of the Prevention of Corruption Act, 1947 (for short "the P.C Act"). The Deputy Superintendent of Police, Kottayam registered crime against the accused on the basis of a report of enquiry conducted by the vigilance, and such an enquiry was conducted on the basis of a complaint dated 30.4.1985. The F.I.R did not show the exact period during which the accused is alleged to have

amassed disproportionate wealth, but later the vigilance conveniently chose the period from 1.1.1976 to 15.5.1985. In view of the allegations, the VACB conducted an effective investigation, and as part of this investigation, so many documents were seized by way of house search and otherwise, by the vigilance. On the finding that during the said check-period, the accused amassed disproportionate wealth worth ₹ 4,12,762/-, the VACB submitted final report before the court below. The case of the vigilance is that as against the total savings of ₹ 2,49,201/- during the check period, the accused amassed wealth worth ₹ 6,61,963/-.

2. The accused appeared before the trial court and pleaded not guilty to the charge framed against him under Section 5 (2) read with 5 (1) (e) of the P.C Act, 1947. The prosecution examined 97 witnesses and marked Exts.P1 to P432 documents. When examined under Section 313 Cr.P.C, the accused denied the incriminating circumstances and submitted that the assets were not properly valued by the vigilance, the income was also not properly assessed, and that he had not amassed anything disproportionate to his

different sources of income from salary, investments, agriculture and rent. To explain away the different circumstances and documents produced by the vigilance to substantiate the allegation, the accused examined eight witnesses and also proved Exts.D1 to D9 documents.

3. On an appreciation of the evidence, the lower court found the accused guilty of having amassed wealth disproportionate to his known-sources of income. The finding of the trial court is that the accused acquired wealth worth ₹ 2,42,334/- in excess of what he could have acquired with his savings during the check period. On conviction, he was sentenced to undergo rigorous imprisonment for four years and to pay a fine of ₹ 3 lakhs under Section 5 (2) read with 5 (1) (e) of the P.C Act by judgment dated 25.2.2000. Aggrieved by the said judgment of conviction, the accused has come up in appeal.

4. When this appeal came up for hearing, the learned counsel for the appellant submitted that the appellant is entitled for acquittal in this case on factual as well as legal grounds. As regards the factual aspects, the

learned counsel submitted that the assets in the possession of the accused were not considered or assessed by the vigilance as on the date of commencement of the check period, that the income from different sources was not properly assessed, that income from so many sources was omitted by the vigilance, and that the expenses during the check period were also not properly assessed by the vigilance. The learned counsel submitted that, had the vigilance done things properly according to law, nobody could find that the accused had amassed anything disproportionate to his known-sources of income. As regards the legal aspects, the learned counsel submitted that the very F.I.R in this case is baseless, or that the F.I.R is not supported by the necessary materials, and that the whole prosecution is barred for the reason that there is no proper and legal sanction in this case, and even the sanction produced by the prosecution stands not properly proved according to law. On the other hand, the learned Public Prosecutor submitted that the vigilance submitted final report in court after proper assessment and valuation, and

that the prosecution sanction is proved by the competent person.

5. Before going to the factual aspects as regards the assets, value of assets, income, expenses etc during the check period alleged by the prosecution, let me go to the legal aspects regarding the F.I.R and the prosecution sanction.

6. Ext.P393 is the prosecution sanction granted by the Secretary to the Government, Vigilance Department. This prosecution sanction was marked in this case through PW91 who was only an Under Secretary of the Vigilance Department. In examination-in-chief PW91 identified the signature of the Secretary in Ext.P393 sanction and stated that it was granted by the Principal Secretary to the Government after examination of the relevant records and documents. In cross-examination, the witness stated that she does not know what are the documents or the materials perused or considered by the Vigilance Secretary for the purpose of granting sanction, and that, usually the Secretary will put his signature in the sanction order

prepared by the Department. She does not know who prepared the Ext.P393 sanction order, and she does not know whether the sanction order was properly granted by the Principal Secretary. She also stated that she had not in fact seen the Principal Secretary perusing or examining the relevant records and documents for the purpose of granting sanction, and she does not know whether the Principal Secretary had properly applied his mind before granting sanction. Thus, it is seen that as regards proof of sanction, the evidence given by PW91 is really worthless. Of course, she is not the competent person to prove the prosecution sanction because it was not granted by her. It is not known why the prosecution brought an Under Secretary to prove the prosecution sanction granted by the Principal Secretary. An identical situation came up before this Court in **Antony Cardoza v. State of Kerala** (2011 (1) KLT 946). In the said case, the prosecution examined an Under Secretary to prove a prosecution sanction granted by the Principal Secretary. In the said case, this Court held that independent application of mind and consequent

satisfaction arrived at for granting sanction are matters which could be proved only by the sanctioning authority. This Court observed that when prosecution sanction including independent application of mind is not proved by the sanctioning authority, it cannot be said that the prosecution sanction is properly and legally proved.

7. In **CBI v. Ashok Kumar Aggarwal**, [AIR 2014 SC 827], the Hon'ble Supreme Court held that the sanctioning authority will have to do complete and conscious scrutiny of the whole materials placed before it, and the authority is bound to consider all the materials properly and apply his mind independently to the facts and the materials before taking decision on the request to grant sanction. The object of prosecution sanction under the P.C Act is to prevent wrong prosecutions or vexatious prosecutions, and to ensure that a corrupt public servant is prosecuted on the basis of definite materials. In **CBI v. Ashok Kumar Aggarwal**, the Hon'ble Supreme Court also held that the sanction order should show that the authority has considered all the relevant aspects and materials placed

before it. Following the earlier decisions of this Court and the Hon'ble Supreme Court, this Court held in **Gurudas v. State of Kerala**, [2015 (3) KLT 749] that the prosecution sanction granted under Section 19 of the P.C Act will have to be proved by the person who granted the sanction, as provided under the Indian Evidence Act. This Court further held that somebody who can identify the signature of the sanctioning authority can prove the sanction formally only in cases where the prosecution sanction can claim some sanctity or immunity under the law. When the sanction cannot claim such sanctity or immunity, it must be proved by the person who granted the sanction, because the burden of proving the essentials as regards sanction, that it was granted on an independent application of mind and after consideration of all the relevant materials and documents, cannot be taken over by somebody else, who had no role or involvement in the process of granting sanction. In **Savithri v Deputy Superintendent, Vigilance and Anti Corruption Bureau** [2015 (3) KLT 909], this Court held that the Investigating Officer is not the

competent person to prove a prosecution sanction granted by some other authority under Section 19 of the P.C Act. A sanction simply marked in evidence by the Investigating Officer cannot be accepted as a proper and legal sanction. As to how and what a prosecution sanction should be and how it should be granted, the Hon'ble Supreme Court held thus, in paragraph 14 of the judgment in **State of Maharashtra through C.B.I v Mahesh G.Jain [(2014) 1 SCC (Cri) 515]**:

“14.1. It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.

14.2 The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances has granted sanction for prosecution.

14.3 The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.

14.4. Grant of sanction is only an administrative function, and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.

14.5. The adequacy of material placed before the sanctioning authority cannot be gone into by the court as

it does not sit in appeal over the sanction order.

14.6 If the sanctioning authority has perused all the materials placed before it, and some of them have not been proved that would not vitiate the order of sanction.

14.7 The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity.”

8. In this case, Ext.P393 sanction was marked through PW91. She is not the competent person to grant the sanction. She could only identify the signature of the Principal Secretary who granted the sanction. Her evidence shows that she does not know whether the mind was independently applied by the Secretary, and whether the sanctioning authority had considered all the relevant materials, documents and circumstances, before taking decision to grant sanction. The prosecution does not have any explanation why the Principal Secretary who granted sanction was not examined to prove it. In very many cases, this Court could find the prosecution sanction being simply marked by the Investigating Officer, or being marked by somebody else claiming to be familiar with the signature of

the sanctioning authority. Such a practice cannot be accepted in view of the position and guidelines settled by the Hon'ble Supreme Court as regards the nature of the function of the sanctioning authority and also the sanctity and importance of the prosecution sanction granted under the P.C. Act. In this case, I find that the prosecution sanction stands not properly and legally proved, by the person who granted the sanction. In view of the position recently settled by this Court, following the decisions of the Hon'ble Supreme Court, I find that the prosecution in this case is barred under Section 6 of the P.C Act, 1947.

9. Now let me come to the other important aspect, as to whether the prosecution in this case has any basis. Ext.P396 is the F.I.R registered in this case by a Deputy Superintendent of Police of the VACB. He was not examined to prove the F.I.R. The prosecution got it marked through PW96, the Investigating Officer. The F.I.R shows that it was registered on the basis of a report of enquiry submitted by the Dy.S.P. PW96 claims that he is the said Dy.S.P. It is not known where the said report of enquiry is, or what happened

to the said report. When the F.I.R is based on a definite report of enquiry, the said report must be produced in court, and it must be proved as the basis of the F.I.R. The first information report which does not have any basis or which arose from no definite source, or which cannot claim any source of information revealing the commission of a cognizable offence, will have to be called as a “mushroom F.I.R” and a prosecution built on it will naturally collapse.

10. PW96 stated in evidence that he conducted an enquiry on the basis of a complaint dated 30.4.1985. It is not known who the complainant is, or what happened to the said complaint, or why the complainant is not even cited as a witness by the prosecution. It is the settled law that mere proof of F.I.R will not amount to proof of the contents of the F.I.R. When a first information report is based on a definite complaint, or even a report revealing the commission of a cognizable offence, that complaint or the report, must be proved in evidence as part of proof of the F.I.R. The person who registered the F.I.R can only prove registration of the F.I.R and he cannot prove anything more. He can prove the

contents of the F.I.R only if he is the reporting source, or if he registered the F.I.R on the basis of the informations or materials received by him, revealing the commission of a cognizable offence. In such a situation, we will call it a “suo motu F.I.R”.

11. In **Savithri's** case cited supra, the VACB conducted an enquiry on the basis of a written complaint made by two named persons. Though there was such a written complaint, the VACB registered the F.I.R on the basis of a report of enquiry submitted by the DyS.P. The said report was not produced in court by the VACB, but the complaint was produced in court. In the said case, the prosecution did not examine any of the two complainants to prove the complaint, or to prove the information or materials revealing the commission of the cognizable offence. The report of enquiry forming the basis of the F.I.R was not even produced in court in the said case. It is well settled that a first information report can be registered under Section 154 of Cr.P.C only on the basis of some information or complaint or material revealing the commission of a cognizable

offence. That information or material can be in any form. It can even be the information received or facts seen, or perceived by the person who registered the F.I.R, in which case we will call it 'suo motu F.I.R'. Whatever be the nature of the information or the material revealing the commission of a cognizable offence, such information or material must be proved by the person who furnished the material or information. In **Savithri's** case cited supra, this Court held that whatever be the material that revealed the commission of a cognizable offence, that material must be proved in evidence as as part of proof of the F.I.R, and that when investigation in a case proceeded on the basis of a First Information Report regarding the commission of a cognizable offence, registered on the basis of a definite complaint revealing the commission of such offence, the complainant, or the person who knows about such materials revealing the commission of that offence, must be examined to prove the complaint. Here, PW96 is definite in evidence that the whole prosecution was initiated on the basis of a complaint dated 30.4.1985. The prosecution does not

explain or reveal who the complainant is, or where the complaint is, or why it is not produced in court. When there is a definite complaint, on the basis of which the prosecution is initiated, such complaint or material must necessarily form the basis of the F.I.R, and a report of enquiry made by the police on the basis of the complaint can be accepted only as supportive material. When there is a definite complaint, proof of such report will not by itself amount to proof of the complaint. PW96 is not the person who registered the F.I.R. If he conducted an enquiry and formed an opinion, or made a report, there is no explanation why he did not register the F.I.R. Had it been registered by him he could have proved the F.I.R as a 'suo motu F.I.R'. But here, such a course is also not possible. The whole prosecution is thus baseless, and such a prosecution must necessarily collapse as an inevitable consequence. On this ground also, the accused is entitled for acquittal, even if the case is somehow proved on facts.

12. Now let me go to the facts of the prosecution case, and let me decide whether the prosecution has

succeeded in proving that the appellant herein had amassed wealth disproportionate to his legitimate sources of income during the check period, taken by the VACB. As regards the check period, as to how or on what basis the VACB decided such a period, the prosecution does not have any explanation. The F.I.R does not reveal any such check period. If the prosecution proceeds on a particular premise in such a case, and the prosecution decides a particular check period, the prosecution is bound to explain to the court why such a check period was decided or opted by the prosecution. Anyway, let me see what are the materials produced by the prosecution, and how the prosecution proceeded to prove the materials for successful culmination under Section 5 (1) (e) of the P.C Act, 1947.

13. A prosecution under Section 13 (1) (e) of the P.C Act, 1988 (Section 5 (1) (e) of the P.C Act, 1947) is quite different from a prosecution under the other Sections of the P.C Act like the present Sections 7 and 13 (1)(a) to 13(1)(d). In a trap case, or in a case alleging dishonest misappropriation of public money by a public servant, the

amount involved will always be definite and certain. But in a prosecution on the allegation of amassement of wealth disproportionate to the known-sources of income, the duty is heavy on the prosecution to prove all the required details regarding the assets and income of the accused. The amount of income, or the value of assets, in such a prosecution, may not be always definite or certain. It must be the concern of the prosecution to ensure that the necessary figures regarding the assets and income of the accused are presented before the court to the satisfaction of the court, or on a proper assessment, made reasonably, rationally and realistically. In such a prosecution alleging amassement of wealth disproportionate to the known-sources of income, the prosecuting agency is bound to tell the court what exactly are the known-sources of income, what exactly is his income from each such source, and to what extent wealth was amassed by the accused, disproportionate to such known-sources of income. In such a prosecution, the assets of the accused must be properly valued, and the income must be properly assessed, though

mathematical precision may not be possible. Of course, it is true that some guess work will have to be made in making such assessment and valuation. But such guess work shall be something justifiable on the touchstone of reasonableness and realistic approach. Though mathematical precision is not possible in such assessment, the prosecuting agency will have to convince the court that income was assessed and assets were valued quite reasonably, on a realistic approach, applying the commonly accepted principles and methods of valuation. In short, such a valuation or assessment shall not be whimsical. Now let me see how assessment and valuation was made in this case by the Investigating Officer before he proceeded to submit final report.

14. The prosecution has submitted four statements containing the required details. Statement No.I contains the value of the assets of the accused as on 1.1.1976. The check period in this case is from 1.1.1976 to 15.5.1985. The final report does not explain how, or why the prosecution chose such a check period, or on what criterion such a

period was chosen by the prosecution. Anyway, let me see what are the details furnished.

15. The Statement No.II contains the details of the assets of the accused and his wife and children as on 15.5.1985. The Statement No.III contains the details of the income of the accused during the check period and the statement No.IV contains the expenses incurred by the accused under various heads during the check period.

16. The appellant and his wife belong to a middle class family having so many assets including buildings and agricultural properties. These things are not disputed by the prosecution, and such aspects are admitted by PW96, the Investigating Officer. It is admitted that the appellant secured his Engineering Degree in 1969, and he joined as Overseer trainee in the K.S.E.B in 1970. He worked there for one year as Overseer. Thereafter, he joined the Technical Education Department as Tutor in Natakam Poly Technic. While working there as Tutor, he got selected by the Public Service Commission as First Grade Draftsman, and he joined in the Public Health Engineering Department

on 6.5.1971. On 26.5.1972, he was promoted as Junior Engineer, and as on 1.1.1976 he was working as Junior Engineer in the P.H.E.D. All these facts are admitted by PW96 in evidence. He admitted that the accused had drawn salary as a public servant, for nearly six years prior to the commencement of the check period taken by the vigilance. When asked about the total salary or the income earned by the accused prior to the commencement of the check period PW 96 pleaded ignorance.

17. It is curious to note that the total value of the assets of the accused as on 1.1.1976, shown by the prosecution, is just ₹ 6.88. The accused had six years of service under the Government as Overseer, Poly Technic Tutor, Draftsman and Junior Engineer, prior to the commencement of the check period. I reserve my comments on the wisdom of the Investigating Officer who believed that a court of law will believe that such a public servant who had six years of service under the Government and who had drawn salary during the said period of six years, had assets worth only ₹ 6.88 as on 1.1.1976. This itself will make the

court doubt the genuineness and truth of the prosecution case. It has come out in evidence that the accused and his wife had land properties including garden land and paddy land, acquired in 1973. This was tactfully suppressed by the prosecution, and the prosecution did not disclose what exactly was the income derived or earned by the accused and his wife from such landed properties prior to 1.1.1976.

18. The Statement No.II contains the details of the assets of the accused at the end of the check period. This statement also contains the details of the valuation and assessment made by the prosecution. Item No.2 therein is a house building, the value of which is assessed by the prosecution as ₹1,91,497/-. PW62 was examined to prove the valuation. PW25 and PW26 were examined by the prosecution to speak about the details of the construction. The prosecution would practically admit that the said construction was done under an estimate of ₹ 74,000/- approved by the local authority. PW25 and PW 26 gave evidence that the construction was made in conformity with the approved plan. However some variations will have to be

accepted. When the estimate was for ₹ 74,000/- and when the defence case is that the total cost of construction had not gone beyond ₹ 1,00,000/-, PW2 assessed the cost of construction as ₹ 1,91,497/-. The evidence given by PW62 shows that the valuation was in fact done by his subordinate officer and he just endorsed the assessment made by the subordinate officer. Of course, PW62 says that he had gone to the site and seen the building, but his evidence shows that the assessment was not in fact made by him. The Ext.P245 assessment made by him does not contain the exact details of the assessment as to what was the expenses met under different categories or heads. When the prosecution would practically admit that the construction was made under an estimate of ₹ 74,000/- and when the prosecution alleges a total cost of ₹ 1,91,497/-, the prosecution is bound to tell and convince the court as to how the value was so assessed, or how the total cost of construction went up to more than double the amount of estimate. PW96 has nothing to say about the assessment.

19. Item No.14 in the statement No.II is 2.13 acres of

property. The value of this property assessed by the prosecution is ₹35,081/- when the defence case, on the basis of the details shown in the sale deed is that the value is only ₹ 22,081/-. The prosecution does not explain how the value was assessed as ₹ 35,081/-. Anyway, the trial court accepted the value as ₹ 22,081. ItemNo.16 in the statement No.II is 35 cents of property, purchased as per the Ext.P193 sale deed. PW53 has given evidence regarding this property. The value assessed by the prosecution is ₹ 61,581/-, whereas according to the defence, it is only ₹ 16,581/- as per document. The court accepted the value stated by the prosecution, but I find that there is no basis or material at the hands of the prosecution to show how the value was assessed as ₹ 61,581/-. Thus, I find that as regards the statement No.II containing the value of the assets, the prosecution has not presented the correct figures or the probable figures on a realistic assessment, or on a proper assessment.

20. As regards the movable properties covered by Statement No.II also, I find something unacceptable in the

materials furnished by the prosecution. Item No.20 is a Bajaj Scooter valued at ₹ 13,000/- by the prosecution. The definite case of the defence is that the value of this scooter cannot be included in the value of the assets during the check period, because it was purchased on 6.6.1985. The check period is from 1.1. 1976 to 15.5.1985. If so, the scooter purchased by the accused after the check period cannot at all be included in the statement showing the value of the assets earned during the check period. PW37, and also the Investigating Officer, have practically admitted that this vehicle was purchased by the accused after the check period. This means that the said amount of ₹ 13,000/- will have to be deducted from the total valuation. The schedule contains so many other movables. The prosecution has shown different value for the different items of movables, but there is no satisfactory evidence to show how these movables were valued by the prosecution. I find that the value of different movables assessed by the Investigating Officer was without any basis, or on some guess work. Thus, I find over valuation of assets to the tune

of about ₹ 1.5 lakhs.

21. Now let me see how the prosecution has assessed the income of the accused and his wife from various sources during the check period. As already observed, the prosecution has not elaborated the different sources of income and how income from different sources was assessed. Of course as regards salary and other employment benefits, assessment could be made on the basis of the documents. But as regards the other sources including income from agricultural lands, I find that the assessment was made by the prosecution on the basis of some wild guess work, and without any definite material or basis. I find that income was assessed by the prosecution quite unrealistically, without any data or material. Let me come to the different figures one by one.

22. As already observed, the appellant and his wife belong to a middle class family owning vast extent of properties including agricultural lands. The second item in the Statement III is regarding the agricultural income from a property of 5.74 acres. The income assessed by the

prosecution is ₹ 84,030/-, whereas according to the defence it will be nearly ₹1,15,000/-. PW60 and PW90 have given evidence on this aspect. The relevant documents are Exts.P241, P242 and P392. The evidence of PW60 and 90 will show that the income was not properly assessed by the prosecution. These two witnesses are not able to satisfy the court as to how or on what basis they assessed income from this vast property of about 6 acres. They do not give the details of the different agricultural sources yielding income. It appears that the prosecution just guessed the income from this vast extent of agricultural land. Item No.3 is another property of two acres, from which the prosecution assessed the income as ₹ 35,780/-, whereas it is ₹ 70,000/-, according to the defence.

23. The evidence given by the prosecution is not sufficient and satisfactory at all as to how exactly the income from agricultural properties was assessed, or what exactly is the split up figures from different agricultural sources. It has come out in evidence that every agricultural property from which the prosecution assessed

income, has different sources like coconuts, paddy cultivation, rubber plantation etc. When agricultural income is assessed from a property having different sources of agricultural operations, the prosecution is bound to give the split up figures from each such source. This is not furnished by the prosecution in the case of these items 2 and 3. There is much difference between the income assessed by the prosecution and the income suggested by the defence. As regards Item No.3, DW8, on the side of the defence has given evidence and as regards item No.2, DW3, DW5 and DW8 have given evidence regarding the probable income.

24. On an appreciation of the evidence given by these defence witnesses, I find that their evidence is acceptable, or their evidence will disprove the prosecution version regarding assessment of income from these properties.

25. Item No.13 in the Statement No.III shows the amount received by the accused at the time of marriage, as gift from the in-laws. That is a paltry amount of 15,000/-,

whereas according to the accused, he had received ₹ 1,00,000/- from his in-laws as gift at the time of marriage. When the court considers the financial and social status of the parties, it is really unbelievable and improbable that the accused received only a paltry amount of ₹ 15,000/- as gift from his in-laws at the time of marriage. The evidence given by PW96 shows that the said amount was assessed on a wild guess work. The evidence of DW8 read along with the Ext.P65 diary entries and also the evidence of PW84 in cross-examination will probabalise the defence case that the accused had received a good amount as gift at the time of his marriage. PW96 has admitted in evidence that the accused and his wife belong to a reputed middle class family having vast extent of properties; agricultural and non-agricultural. He has also admitted practically that the accused and his wife had different sources of income besides the salary of the accused. It has come out in evidence that they had made investments in fixed deposits, in chitties, etc, and they had also good income from agricultural properties. The accused was in

Government service at the time of his marriage. In such a situation, if the prosecution says that he received only an amount of ₹ 15000/- as gift at the time of marriage, the court cannot accept or believe it.

26. There is another very important aspect suppressed by the prosecution, as regards the gold ornaments in the possession of the accused and his wife. The prosecution case is that at the commencement of the check period, or when the vigilance conducted a search in the house of the accused only a quantity of 111.100gms gold ornaments could be found. But the evidence of PW96 in cross-examination is that during investigation he could find that the wife of the accused had 920 gms of gold ornaments at the time of her marriage. He also practically admitted during cross-examination that the accused and his wife had sold many gold ornaments to different persons, and that these persons who purchased the gold ornaments were questioned by him during investigation. Sale of huge quantity of gold ornaments by the accused and his wife is practically admitted by PW96 in evidence, but he does not

explain why this amount procured by them by sale of ornaments was not included in the total income during the check period. According to the defence, the total value of the ornaments sold by them will come to ₹1,27,500/- even at the rate suggested by the prosecution. If this amount is added to the total income derived during the check period, the total income will stand considerably increased.

27. In the foregoing paragraphs, this Court has discussed the different items shown in the different statements (schedules), and how or where the prosecution failed in proper assessment of the value of assets and income. The prosecution should have included the sale price of gold ornaments in the total income during the check period. It has come out in evidence that the accused and his wife had sold some properties during the check period. Ext.P179 document proved by PW69, will show sale of a property which the accused and his wife purchased from PW45, a retired Deputy Collector. The said sale was on 29.9.1982 for a total consideration of ₹ 38,000/-. There is no explanation why the prosecution suppressed this fact of sale

and why the prosecution did not include this amount in the total income during the check period. So also, the court finds suppression of facts regarding sale of some other property covered by Ext.P181 and 182 documents. The said property was purchased from PW14, and it was sold to PW47. When PW 47 says that he purchased the property for ₹ 70,000/-, the evidence of PW14 is that the property was sold by him for ₹ 45,000/- to the accused . It is not known how the value of this property was assessed by the prosecution. It is pertinent to note that the property mentioned earlier, purchased by the accused from a retired Deputy Collector was sold along with some building materials. This aspect stands proved by PW45 and PW69. The consideration of ₹ 38,000/- received by the accused was inclusive of the cost of the materials. All these aspects were suppressed by the prosecution.

28. Thus, as discussed in the foregoing paragraphs, I find that the prosecution in this case did not properly assess the income from various sources, and the prosecution in fact suppressed so many items and sources of income during the

check period. I find suppression of income to the tune of about ₹2,00,000/-.

29. The schedule No.IV produced by the prosecution contains the different expenses incurred by the accused during the check period. The grievance of the accused is that in this schedule the prosecution has inflated the expenses under various heads to bring down the difference between income and expenditure considerably. The first item is the bus fare met by the accused from January, 1976 to May, 1978. The amount of bus fare assessed by the prosecution is ₹ 340/-. Item No.2 is the room rent paid by the accused for four months for his stay at Punalur from June,1978 to September, 1978. This is ₹ 600/-, whereas the amount assessed for food during the period is ₹ 1000/-. Item Nos.4 and 5 also relate to the bus fare given to the accused during a short period within the check period. It is not known how the prosecution assessed these expenses. Item No.6 shows the expenses of ₹ 5600/- for the scooter journey from January 1980 to April, 1982. It is not known from where the prosecution got this figure. PW96, the

Investigating Officer admitted that the accused in fact purchased scooter in 1985, after the check period. There is absolutely no material to show that the accused had any scooter or motor cycle during 1980 -1982. The definite case of the defence is that the accused purchased a scooter only in 1985 for the first time. This is practically admitted by PW96 in evidence. In such a situation, the amount of ₹ 5600/- assessed by the prosecution as expenses for scooter journey will have to be deducted from the total expenses, Item No.7 also is in relation to such scooter journey from May, 1982 to 15.5.1985. This amount of ₹5,475/- also will have to be deducted from the total expenses because the accused purchased the scooter after 15.5.1985. Item No.8 shows ₹1200/- as house rent paid from January 1983 to January, 1984. It is not known why or in what circumstance the accused had to reside in a rented house during this period, or how the prosecution assessed the said amount of rent.

30. Item No.9 in the schedule IV is a very important entry, wherein, an amount of ₹ 17,100/- is shown as the

amount met for household expenses at the rate of ₹ 600/- per month from January, 1983 to 15.5.1985. It is not known what exactly was the salary of the accused during this period. Anyway, it has come out in evidence that the accused and his wife had different types of agricultural operations, and that they had no necessity at all, of purchasing agricultural produces like rice, coconut, etc. They had huge income from paddy cultivation, coconut cultivation and rubber plantation. It is impossible to believe that such persons had to purchase rice, coconut, and other agricultural items during the check period. PW96 stated in evidence that the amount of house hold expenses assessed by him under item 9 in the IVth statement will include the amount spent to purchase rice and other agricultural produces. The defence version is that the average expenses for household items at the relevant time was ₹ 350/- per month to ₹ 400/- per month. It appears that the prosecution assessed the amount for household expenses as ₹ 17,100/-, on the assumption that the accused had to purchase so many agricultural produces from the open

market, like vegetables, coconut, rice etc. The accused had his own source from different agricultural operations, and it is definite that he had no necessity of purchasing such articles from open market. This means that the amount of ₹ 17,100/- assessed by the prosecution is really excessive and baseless. Item No.20 in the statement shows ₹ 60,083/- as loss incurred in the sale of properties during the check period. This is also included in the total expenses. But in evidence PW96 stated that it was in fact a mistaken assessment. The prosecution does not explain by any sort of evidence as to how the accused incurred such loss in the sale of properties, or how the prosecution found out that the accused had incurred such loss. This means that an amount of ₹ 60083/- was wrongly and baselessly included by the prosecution in the total expenses.

31. On an appreciation of the entire evidence, I find that valuation of the assets and assessment of income was not properly and rationally done by the prosecution in this case. Had it been done properly on a realistic approach, the prosecution would not have come to a huge figure of

difference between the earnings, and the value of the assets acquired during the check period.

34. As discussed in the foregoing paragraphs, I find that a huge amount of income was suppressed by the prosecution. This will have to be added to the total income during the check period. So also, some amount will have to be deducted from the expenses assessed by the prosecution during the check period. This also will have to be considered while assessing the difference between the total earnings and the total value of the assets acquired during the check period. On such assessment, and on an appreciation of the entire evidence, I find that the prosecution in this case has failed to prove that the accused had amassed wealth disproportionate to his legitimate sources of income. Even otherwise I have found, as discussed in the first part of the judgment, that the accused is entitled for acquittal on legal grounds. One is that the F.I.R itself is baseless, and prosecution will without any basis must collapse. The other is that the prosecution sanction stands not properly proved according to law. Thus, I find that the appellant is entitled

for acquittal in this case on factual as well as legal grounds. The evidence given by PW96 convinces me that to bring a prosecution against the accused, he made some sort of assessment without any basis and without applying his mind. He could not properly value the different assets and he could not properly assess the total income. I have found over valuation of assets to the tune of about ₹ 1,50,000/- and suppression of income to the tune of about ₹ 2,00,000/-. Thus, ₹ 1.5 lakhs will have to be deducted from the value of the assets acquired during the check period, and ₹ 2 lakhs will have to be added to the income. When so valued and assessed the value of disproportionate assets will come down considerably to the permissible margin. Without a proper valuation of assets and a proper assessment of income and expenditure, the prosecuting agency cannot prove that the public servant had amassed wealth disproportionate to his legitimate sources of income, and the court cannot accept such a prosecution brought without any basis for assessment of income and valuation of assets.

In the result, this appeal is allowed. The appellant is

found not guilty of the offence punishable under Section 5 (2) read with 5 (1) (e) of the P.C Act, 1947, and accordingly he is acquitted of the said offence in appeal under Section 386(b)(i) of Cr.P.C. Accordingly, the conviction and sentence against the appellant in C.C No.39 of 1991 of the court below will stand set aside, and he will stand released from prosecution. The bail bond, if any, executed by him will stand discharged.

**Sd/-
P.UBAID
JUDGE**

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/True copy/
P.S to Judge