

BAIL SLIP

The Petitioner/Accused Viz Mr.H.M.Pandey was released on
Bail dated 30.04.2001 in Crl.MP.No.2059/2001 in
Crl.A.No.192/2001.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 12-01-2016

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal Nos.139 of 1999, 192 and 304 of 2001

In Criminal Appeal No.139 of 1999:

The State of Tamil Nadu

Rep. by Deputy Superintendent of Police

Vigilance and Anti Corruption

City Special Unit III, Chennai - 6 ... Appellant/Petitioner/R1

Vs.

1. Thiu. H.M. Pandey, I.A.S.,
formerly Secretary to Government
Municipal Administration &
Water Supply Department
Fort St. George, Chennai - 9
2. Thiru.P. Rajeev Pandey
3. Tr. Arunkumar Garg
4. Tr. Ramesh Garg
5. Tr. B.K. Misra S/o. Lalmani Misra
Director
Madras Institute of Mind
Plot No.4/746 Mogappair West
Chennai - 50 ...Respondent/Respondents/
Respondents
6. Tmt. Ganga Devi ... Respondent IIIrd party
Petitioner in Crl.MP.NO.
2834/98

In Crl.A.No.192 of 2001:

Mr. H.M. Pandey, I.A.S.,
No.8, North Main Road
Anna Nagar, Chennai - 40

... Appellant/Accused

Vs.

State of Tamil Nadu
Rep. by Deputy Superintendent of Police
Vigilance and Anti Corruption
City Special Unit III, Chennai - 20... Respondent /Complainant

In Criminal Appeal No.304 of 2001

State by Deputy Superintendent of Police
Vigilance and Anti Corruption
City Special Unit III, Chennai - 20
represented by the Public Prosecutor
High Court, Madras Appellant/Complainant

Vs.

H.M. Pandey, I.A.S. Respondent /Accused

Prayer in Criminal Appeal No.139 of 1999:
Criminal Appeal under Section 11 of Criminal Law Amendment Ordinance, 1944 against the common order dated 02-12-1998 made in Crl.M.P.No.2384 of 1998 in Crl.O.P.No.9 of 1997 and in Crl.M.P.No.2637 of 1998 in Crl.M.P.No.2500 of 1997 and Crl.O.P.No.9 of 1997 on the file of the Court of Chief Judge, Small Causes Court at Madras to set aside the same.

Prayer in Criminal Appeal No.192 of 2001:
Criminal Appeal under Section 374 (2) of Cr.P.C., against the judgment passed by the Special Judge No.1/XI Additional Judge, Chennai - 1, in Special C.C.No.3 of 1999 dated 02-03-2001 sentencing the appellant to four years of R.I. and imposing a fine of Rs.1 lac which was paid on 02-03-2001 and ordering that an amount of Rs.1,01,32,107/- shall be forfeited to Government under Sec 13 (3) of Criminal Law Amendment Ordinance 1944 and ordering the Dt. Collector to recover the said amount by the provisions contemplated under the Revenue Recovery Act after the appeal time is over, for an offence under Section 13(2) read with 13(1)(e) of Prevention of Corruption Act, 1988 and prays to set aside the judgment and conviction and order of forfeiture.

Prayer in Criminal Appeal No.304 of 2001:

Criminal Appeal under Section 454 of Cr.P.C., to direct confiscation of the properties proved to have been acquired by the respondent/accused totally disproportionate to the known

sources of his income. The appellant also prays this Honourable Court to set aside the Trial Court order of forfeiture of the value of Rs.1,01,32,107/- and instead direct confiscation of all the assets and pass orders.

For appellants :: Mr. S. Shanmugha Velayutham, PP
Asst. by Mr. P. Govindarajan, APP
for appellant in Crl.A.No.139 of 1999
and 304/2001 and for respondent
in Crl.A.No.192 of 2001

For respondent :: Mr. M.R. Thangavel for
Mr. A.S. Bharathi for R1 in Crl.A.139/99
for respondent in Crl.A.No.304 of 2001
for appellant in Crl.A.No.192 of 2001

No appearance for R2 to R6 in Crl.A.139/99

COMMON JUDGMENT

Criminal Appeal Nos.192 of 2001 and 304 of 2001 have been preferred against the conviction and sentence dated 02-03-2001, passed in Special Calendar Case No.3 of 1999. Likewise, Crl.A.No.139 of 1999 has been preferred against the order dated 07-12-1998 passed in Crl.M.P.2384 of 1998 in Crl.O.P.No.9 of 1997 by the Chief Judge, Small Causes Court at Chennai.

2. The epitome of the case of the prosecution is that the accused has served as an IAS Officer during the relevant period. He hailed from Pandit Ki Pura Village in Handia Taluk near Allahabad in Uttar Pradesh and initially served as Assistant Professor in Kanpur University from 1968 to 1970. He married his wife Usha Rani in the year 1967 and both of them have been blessed with a son, by name Rajeev Pandey and a daughter, by name Ritu. He divorced his wife in the year 1985. The children of the accused have been living away from him. The son of the accused viz., Rajeev Pandey is an unemployed and his daughter viz., Ritu is a BBA student. Neither the accused nor his divorced wife has had possessed of any property in the native village except a wet land measuring 2/3 acres in the native village. The said land is nothing but an ancestral property of the accused and the same is in possession and enjoyment of his relatives. The accused has been allotted a house plot at Anna Nagar, Western Extension during the year 1979, at the cost of Rs.24,780/- (Rupees Twenty four thousand Seven hundred and eighty only). The cost of construction of ground floor during the year 1979 to 1985 is Rs.1,75,000/- (Rupees One lakh Seventy Five thousand only). As on 01-01-1985, the accused has been found in possession of pecuniary resources and acquired properties worth of Rs.2,04,400/- (Rupees Two lakhs four thousand and four hundred only) (Annexure No.I). These properties have been acquired before he served in key posts in

Tamil Nadu Government. After 01-01-1985, especially after holding certain key posts, the accused has started to acquire assets in the form of movable properties, investments, immovable properties at Kodaikanal, Korattur Village, Karanodai Village and Chennai in the names of his children and also in the names of his relatives namely Arun Kumar Garg, B.K. Mishra, Ashitosh Dwivedi, Ganga Devi and Ramesh Garg. The said persons have had no independent income. As on 31-05-1997, the properties standing in the names of the persons mentioned supra is worth about Rs.1,07,29,846/- (Rupees One Crore Seven lakhs Twenty Nine thousand Eight hundred and Forty Six only) (Annexure No.II). During Check period, started from 01-01-1985 to 31-05-1997, the properties of the accused are valued at Rs.1,05,25,546/- (Rupees One Crore Five lakhs Twenty Five thousand Five hundred and Forty Six Only) (Annexure No.V). The income of the accused from known sources is Rs.19,86,893/- (Rupees Nineteen lakhs Eighty Six Thousand Eight hundred and Ninety Three only) (Annexure No.III). After deducting expenditure it comes to Rs.18,03,612/- (Rupees Eighteen Lakhs Three thousand Six hundred and Twelve only) (Annexure No.IV). Under the said circumstances, a final report has been filed against the accused by the Deputy Superintendent of Police (Vigilance and Anti-Corruption), City Special Unit, Chennai and the same has been taken on file in Special Calendar Case No.3 of 1999.

3. The Trial Court after hearing arguments of both sides and upon perusing the relevant records has framed a charge against the accused under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 and the same has been read over and explained to him. The accused has denied the charge and claimed to be tried.

4. On the side of the prosecution P.Ws.1 to 79 have been examined and Exs-P1 to P211 have been marked. On the side of the Court, Exs-C1 to C7 have been marked.

5. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. On the side of the accused, D.Ws.1 to 11 and Exs-D1 to D29 have been marked.

6. The Trial Court after hearing arguments of both sides and upon perusing the relevant evidence available on record has found the accused guilty under Sections 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 and sentenced him to undergo Four years' Rigorous Imprisonment and also imposed a fine of Rs.1 lakh (Rupees One lakh Only) with usual default clause. The Trial Court has valued the properties acquired by the accused disproportionate to his known income at Rs.1,01,32,107/- (Rupees One Crore One Lakh Thirty Two Thousand

One Hundred and Seven Only) and passed a forfeiture order under Section 13(3) of Criminal Law Amendment Ordinance, 1944. Further the Trial Court has directed the Recovery Officer to recover the same under Revenue Recovery Act. Against the conviction and sentence passed by the Trial Court, the accused, as appellant has preferred Crl.A.No.192 of 2001 and against forfeiture order passed by the Trial Court, the Investigating Officer has preferred Crl.A.No.304 of 2001 and against the order passed in Crl.M.P.No.2384 of 1998 in Crl.M.P.No.2500 of 1997 in Crl.O.P.No.9 of 1997, Crl.A.No.139 of 1999 have been preferred.

7. Since common questions of law and facts are involved in all these proceedings, common judgment is pronounced.

8. The schema of the case of the prosecution is that during the Check period, the accused has had served as an IAS Officer and by utilising ill-gotten money, he acquired various properties disproportionate to his known income in the names of his children and relatives to an extent of Rs.1,03,42,165/- (Rupees One Crore Three Lakhs Forty Two Thousand One Hundred and Sixty Five Only) as on 31-05-1997 and thereby, he committed an offence punishable under Section 13(2) read with Section 13(1) (e) of the Prevention of Corruption Act, 1988.

9. The learned counsel appearing for the appellant in Crl.A.No.192 of 2001 has elaborately contended that item Nos. 11 and 12 have not been found in Annexure No.II. In Valuation Report Item No.10 has not been properly mentioned. No evidence has been adduced with regard to item Nos.13 and 14. The son of the accused viz., P.W.2 has borrowed a sum of Rs.45 Lakhs (Rupees Forty Five lakhs Only) from distant relatives of the accused and also through his maternal grandfather and to that extent on the side of the accused replete evidence has been adduced and further, the accused has received refund of Income Tax and the same has not been included in Ex-P209. The accused has had no connection whatsoever with the properties relied upon by the prosecution and the Trial Court without considering the enormous evidence adduced on the side of the accused and proper explanation given by him, has erroneously found him guilty under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 and further, in Crl.M.P.No.2384 of 1998, attachment has been rightly raised and therefore, the conviction and sentence passed by the Trial Court are liable to be set aside.

10. On the side of the appellant/accused the following decisions are relied upon:

I. In AIR 1977 SC 796 (Krishnanand Agnihotri Vs. State of Madhya Pradesh) it is observed as follows:

"In the instant case though the prosecution alleged that certain amounts lying in the name of

accuser's wife S was an asset belonging to the accused, no evidence at all was led on the side of the prosecution to show that the monies lying in fixed deposit in her name was provided by the accused. Howsoever strong may be the suspicion of the Court in this connection, it cannot take the place of proof. Beyond raising suspicion and doubt in the mind of the Court, the prosecution has not been able to adduce any legal evidence of a definite character which would establish the benami character of this bank account. On the contrary, the evidence led on behalf of the accused shows that S had means of her own."

II. In 1993 CrI.L.J. 308 (M. Krishna Reddy Vs. State Deputy Superintendent of Police, Hyderabad) it is observed that,

"It is well settled that the burden of showing that a particular transaction is benami and the owner is not the real owner always rests on the person asserting it to be so and this burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of benami is the intention of the parties and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of the serious onus that rests on him nor justify the acceptance of mere conjectures or surmises as a substitute for proof."

III. In 2006 I SCC 420 (DSP, Chennai Vs. K. Inbasagaran) it is held that, "in absence of any evidence that the assets belonging to the accused, he cannot be held liable under Prevention of Corruption Act for such assets."

IV. In 2007 (2) SCC 273 (State of Karnataka Vs. Ameerjan) the Honourable Supreme Court has held that the sanction order must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority.

V. In 1998 (9) SCC 268 (State of Tamil Nadu Vs. M.M. Rajendran) "Failure to place before the detaining authority all the relevant materials including the statements recorded by the IO - Sanction accorded on the basis of report of Vigilance Department is invalid."

VI. In 2013 (14) Scale 280 (CBI Vs. Ashok Kumar Aggarwal), it is held that, "Prosecution has to send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statement of witnesses, recovery memos, draft charge-sheet and all other relevant material."

VII. In 2014 (3) MLJ 545 (K. Thavasi and another Vs. State of Deputy Superintendent of Police, Vigilance and Anti Corruption, Madurai) this Court had held that the "Prosecution

failed to prove, that Appellants were holding assets disproportionate to their known sources of income."

VIII. In 2012 (3) MLJ (Cr1) 368, this Court has held, "No fresh material placed before superior authority, who accorded sanction, sanction is illegal."

11. As a repartee to the contentions urged on the side of the appellant, the learned Public Prosecutor has also equally contended that the wife of the accused has been examined as P.W.1 and his son has been examined as P.W.2 and both of them have clearly stated about their relationship between them and accused, and further, some persons in whose names the accused has acquired properties have also been examined on the side of the prosecution and their specific evidence is that the accused has purchased various properties in their names only by way of utilizing his money and apart from their evidence, the prosecution has adduced plethora of evidence so as to substantiate the charge framed against the accused and the Trial Court after considering the evidence adduced on the side of the prosecution has rightly found the accused guilty under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 and therefore, the conviction and sentence passed by the trial court do not warrant interference and further, the Trial Court has erroneously passed forfeiture order instead of passing an order of confiscation and therefore, the Criminal Appeal No.192 of 2001 is liable to be dismissed and Cr1.A.No.304 of 2001 is liable to be allowed.

12. On the basis of the divergent submissions put forth on either side, the Court has to meticulously analyze as to whether the accused has acquired properties disproportionate to his known income, in the names of his children and relatives?

13. For the purpose of analysing the said aspect it would be more apposite to look into the oral evidence given by the following prosecution witnesses.

(i) The wife of the accused viz., Usha Rani Pandey has been examined as P.W.1 and her specific evidence is that she divorced the accused in the year 1985 and ever since she and her children are living separately. The accused has not lent his assistance even to the education of children. Further her children are not having any independent source of income.

(ii) Likewise, the son of the accused by name Rajeev Pandey has been examined as P.W.2 and his specific evidence is that he has not received any assistance from his father and his maternal grandfather has lent financial assistance. Further, he deposed that he purchased various properties in his names by way of borrowing money from various persons especially from his relatives.

(iii) One Ayyakannu has been examined as P.W.3 and his specific evidence is that one Kanniappan has introduced the

accused and on the basis of the request made by the accused, he built up a compound wall around 12 grounds of land which stands in the names of B.K. Mishra, Gangadevi and others. The accused has paid entire amount of Rs.7,00,000/- (Rupees Seven Lakhs only) in instalments. Further in the year 1995, the accused has asked him to complete balance of work in a building which situates in plot No.858, 13th Main Road, Anna Nagar, Chennai - 40. Accordingly an agreement has come into existence between him and Rajeev Pandey(P.W.2). After completing the works, the accused has paid a sum of Rs.32.63 lakhs (Thirty Two lakhs and Sixty Three thousand Only). Further, he deposed to the effect that the son of the deceased viz., P.W.2 has not shown any interest in the construction. Further, he adduced evidence that the accused has to pay a sum of Rs.10.63 lakhs (Rupees Ten lakhs Sixty Three thousand Only) and that the son of the accused has not given anything towards construction work.

(iv) One Gopalan has been examined as P.W.9. He would say that his evidence that he built up a building in the year 1984-85 at No.4, Collector Nagar, Mugappair, Chennai - 101 and he sold the same in favour of Arun Kumar Garg for a sum of Rs.9,50,000/- (Rupees Nine Lakhs Fifty Thousand Only). The entire sale has been concluded through Nalliappan. Further, he has not seen the purchaser.

(v) The Executive Director of City Tower Benefit Fund Ltd., one Vijay has been examined as P.W.10 and his specific evidence is that he knows the accused and he opened an account for a sum of Rs.1000/- (Rupees One thousand only) and subsequently, a mortgage has been created in the name of the son of the accused and on various dates, the accused has borrowed amounts by utilizing his name and position, as his son has no source of income and the accused only has discharged some debts.

(vi) One land broker by name Kathirvel has been examined as P.W.12 and his specific evidence is that in the year 1995, the accused has purchased some landed properties in Karanodai Village. The accused has given a suit-case which contained money to one Dakshinamurthy and subsequently, disbursed the same to vendors.

(vii) One Ranganathan has been examined as P.W.15 and his specific evidence is that he belongs to Karanodai Village. He sold 23 cents of land to the accused.

(viii) One M.K. Manickam has been examined as P.W.17 and his specific evidence is that he entered into a rental agreement with the accused. But actually, the agreement has come into existence between him and Rajeev Pandey, who is none other than the son of the accused in respect of a house property.

(ix) On the side of the prosecution, a person by name Bharathi Ram Mohan has been examined as P.W.20 and his specific evidence is that he estimated some house properties and Valuation Reports have been marked as Exs-P40 to 43.

(x) One B.K. Misra has been examined as P.W.53. He deposed to the effect that he belongs to Pooraykissa Village in Uttar Pradesh. The accused is none other than his mother's brother and his wife viz., Ganga Devi is his sister's daughter. His specific evidence is that initially he worked in Mumbai and in the year 1990, he has come to Chennai. He met the accused and sought help to start a business and in a Bunk shop in Ambattur Municipality he conducted beda/pan business. After sometime, the accused has asked him to open a bank account and accordingly, an account has been opened wherein the accused has deposited money. The accused has kept Bank Pass Books, Cheques etc., with him. The accused has also purchased a house in his name in No.4/746, Water Tank Road, Mugapair West, Chennai. The accused has also made arrangement to execute a Power of Attorney in the name of his wife. The accused has also purchased properties in the names of Ramesh Garg, Rekha Garg, Arun Kumar Garg and others. The accused has also started a business under the name and style of "Rithuraj Builders" and also invested money. Further, the accused has purchased the house in Door No.858, 13th Main Road, Anna Nagar, West Extension in the name of his son.

(xi) One Ashutosh Dwivedi has been examined as P.W.54 and his specific evidence is that he belongs to Karsana Village, Uttar Pradesh and he has come to Chennai to see P.W.53 and also joined in his shop as an Assistant. The accused has started a Bank Account in his name and he started to deposit money. The accused kept Bank Pass Books and Cheques with him.

14. Both P.Ws.53 and 54 have been examined in chief on 25-07-2000. But, after a lapse of four and a half months, they have been recalled and cross-examined. During the course of cross-examination, they adduced evidence in favour of the accused to certain extent and the same cannot be accepted.

15. From a cumulative reading of the evidence given by the witnesses mentioned supra, the Court can very well come to a conclusion that the accused by utilizing money(not from known source) has purchased various properties and also put up various constructions in the names of his son and the persons mentioned in the charge.

16. The specific case of the prosecution is that by using ill-gotten money, the accused has acquired immovable properties to the tune of Rs.1,03,42,165/- (Rupees One Crore Three lakhs Forty Two thousand One hundred and Sixty Five Only) disproportionate to his regular income. In fact, this Court has

closely perused the entire judgment rendered by the Trial Court. The Trial Court in Paragraph No.129 of the judgment has made proper calculation and valued disproportionate assets to the tune of Rs.1,01,32,107/- (Rupees One Crore One lakh Thirty Two Thousand One hundred and Seven Only).

17. At this juncture, a faint attempt has been made on the side of the appellant/accused to the effect that for starting business/ acquiring properties in the name of P.W.2 (son of the accused), his maternal grandfather viz., P.N. Pandey has made all arrangements by lending money and P.W.2 has started business in his name and also purchased properties. In fact, the learned counsel appearing for the appellant/accused has advanced his arguments on the basis of Annexures produced on the side of the prosecution. The said aspect put forth on the side of the appellant/accused is based upon the evidence some of the defence witnesses. Before analysing the evidence given by those witnesses, it would be apropos to look into the evidence given by P.W.2 and his specific evidence is that in the statement given by him under Section 161 of the Code of Criminal Procedure, 1973, he has not specifically stated to the effect that his maternal grandfather, viz., P.N. Pandey has lent him financial assistance.

18. On the side of the appellant/accused, D.Ws.1 to 11 have been examined. Even though D.Ws.1 to 11 have been examined, the Court has to look into the evidences given by D.Ws.7,10 and 11. One Ruby George has been examined as D.W.7 and he speaks about Income Tax Return filed by the accused. D.W.10 viz., Hari Prasath Pandey has deposed evidence to the effect that he lent a sum of Rs.13 lakhs (Rupees Thirteen Lakhs Only) to Rajeev Pandey under Ex-D29. Likewise, Om Prakash Pandey viz., D.W.11 has deposed evidence to the effect that P.N. Pandey has lent money to Rajeev Pandey to the tune of Rs.45,00,000/- (Rupees Forty Five Lakhs Only). Even though D.Ws.7, 10 and 11 have deposed evidence to the effect that P.W.2 has borrowed money through his maternal grandfather viz., P.N. Pandey, the evidences given by D.Ws.7,10 and 11 are not at all sufficient for coming to a conclusion that P.W.2 has received such a huge amount by way of debt through P.N. Pandey, his maternal grandfather. Further, it has already been discussed in detail that the accused has purchased various properties in the name of his son and also in the names of the persons mentioned in the charge and to that effect, unimpeachable evidence is available on the side of the prosecution.

19. In view of the above discussions, this Court is of the view that the decisions relied upon on the side of the appellant/accused cannot be attuned in the present case, since replete evidence is available so as to prove the charge framed against the appellant/accused.

20. The Trial Court after evaluating the voluminous evidence (both oral and documentary) adduced on the side of the prosecution has rightly found that the appellant/accused has acquired properties worth of Rs.1,01,32,107/- ((Rupees One Crore One lakh Thirty Two Thousand One hundred and Seven Only) disproportionate to his regular income and therefore, the conviction and sentence passed by the Trial Court are not liable to be interfered with.

21. Now the Court has to look into the reliefs sought in Crl.A.No.304 of 2001 and 139 of 1999.

22. The learned Public Prosecutor has contended that the Trial Court after coming to a conclusion that the accused has acquired immovable properties to the tune of Rs.1,01,32,107/- (Rupees One Crore One lakh Thirty Two Thousand One hundred and SEVEN Only) totally disproportionate to his regular income, the Trial Court ought to have confiscated the properties mentioned in the concerned Annexure by invoking Section 452 of the Code of Criminal Procedure, 1973. But, the Trial Court has erroneously passed an order of forfeiture and the same cannot be enforced very easily and therefore, the order of forfeiture passed by the Trial Court is liable to be set aside, instead, an order of confiscation is liable to be passed.

23. It is seen from the judgment passed by the Trial Court that the Trial Court has passed an order of forfeiture to the tune of Rs.1,01,32,107/- (Rupees One Crore One lakh Thirty Two Thousand One hundred and Seven Only) and to that effect necessary direction has been given to the District Collector, Chennai to recover the same under Revenue Recovery Act.

24. It is a settled principle of law that as per Section 452 of the Code of Criminal Procedure, 1973, the Trial Court is having unfettered power of confiscation. In the instant case, during the Check period, the accused has served as an IAS Officer, and he amassed wealth, by using his ill-gotten money to the value of Rs.1,01,32,107/- (Rupees One Crore One lakh Thirty Two Thousand One hundred and Seven Only). Since the accused has indulged in corrupt practice during tenure of his office and especially during Check period, this Court is of the considered view that mere forfeiture is not sufficient. Further, it is humdrum that nowadays, evil practice of corruption is rampant and in order to curb the same in a case like this, confiscation is unavoidable. Therefore, the reliefs sought in Crl.A.No.304 of 2001 can easily be granted.

25. As stated earlier, Crl.A.No.139 of 1999 has been preferred against the order passed in Crl.M.P.No.2384 of 1998 in

Crl.O.P.No.9 of 1997, by the Chief Judge, Small Causes Court, Chennai. The said petition has been filed by a third party wherein it is stated to the effect that he advanced a sum of Rs.23,70,219/- (Rupees Twenty Three lakhs Seventy Thousand Two Hundred and Nineteen Only) to the second respondent therein viz., son of the accused (P.W.2). Further, it is stated in the petition that the fourth item has been mortgaged to City Tower Benefit Fund, Anna Nagar, Chennai by way of depositing title deeds and subsequently, the said loan has been discharged and thereafter, title deeds have been deposited as security with the petitioner for getting loan.

26. The Chief Judge, Small Causes Court, Chennai after making elaborate discussion has given a finding to the effect that the petitioner found in Crl.M.P.No.2384 of 1998 is having first charge over the property in question. Under the said circumstances, Crl.M.P.No.2384 of 1998 has been allowed.

27. Considering the aforesaid factual circumstances, this Court is of the view that subject to charge created in favour of the petitioner found in Crl.M.P.No.2384 of 1998, properties mentioned in the Annexure can be confiscated.

In fine,

(i) Crl.A.No.192 of 2001 is dismissed. The conviction and sentence passed in Spl.C.C.No.3 of 1999 by the Special Judge No.I (XI Additional Judge) are confirmed. If the appellant/accused is not in duress, the Trial Court is directed to take appropriate steps to immure him in prison to serve out the remaining period of sentence.

(ii) Crl.A.No.304 of 2001 is allowed to the extent of relief sought therein. The immovable properties mentioned in the concerned Annexure are confiscated to the State Government subject to the charge created in favour of the petitioner found in Crl.M.P.No.2384 of 1998 in Crl.O.P.No.9 of 1997.

(iii) Since an order of confiscation has been passed subject to the charge of the petitioner in Crl.M.P.No.2384 of 1998, Crl.A.No.139 of 1999 is dismissed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

glp

To

1. The Deputy Superintendent of Police
State of TamilNadu
Vigilance and Anti Corruption
City Special Unit III, Chennai - 6
2. The Special Judge NO.1/X1 Additional Judge,
Chennai
3. The Superintendent
Central Prison, Vellore
4. The Public Prosecutor
High Court, Madras
5. The Section Officer, Criminal Section
HighCourt Madras

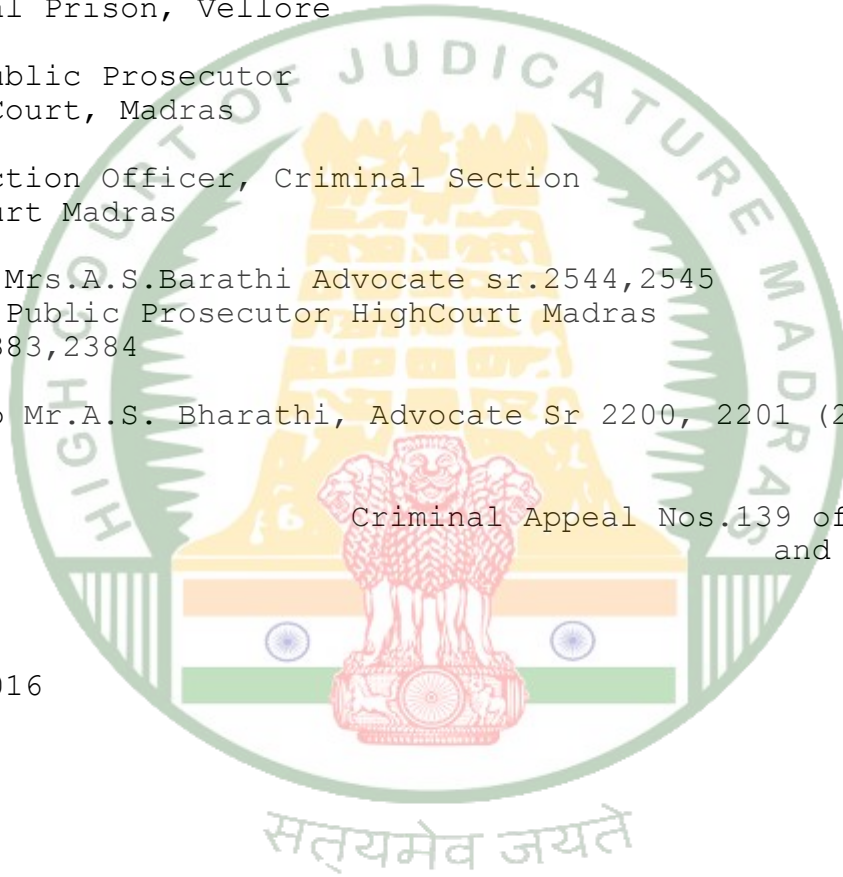
+2 ccs to Mrs.A.S.Barathi Advocate sr.2544,2545

+3 ccs to Public Prosecutor HighCourt Madras
sr.2521,2383,2384

+ 2 ccs to Mr.A.S. Bharathi, Advocate Sr 2200, 2201 (25/1/16)

Criminal Appeal Nos.139 of 1999, 192
and 304 of 2001

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