IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.07.2017
PRONOUNCED ON : 14.07.2017

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.381 of 2017
and Crl.MP.No.8256 of 2017

P.S.Kirupanandhan ... Appellant

Vs.

State by
Inspector of Police,
SPE:CBI:ACB:Chennai. ...Respondent

PRAYER : Petitions filed under Section 374 of the Criminal Procedure Code, to call for the records in CC.No.23 of 2011 on the file of the learned Principal Special Judge (VIII Additional) CBI Cases, Chennai to set aside the conviction and sentence imposed on the accused therein and acquit the appellant.

For Petitioner: Mr.R.Ravindran
For respondent: Mr.K.Srinivasan, Spl.PP for CBI cases.

JUDGMENT

This Criminal Appeal is directed against the order passed by the learned Principal Special Judge (VIII Additional) CBI Cases, Chennai made in CC.No.23 of 2011 in Cr.No.RC MA1 2007 A 0039 dated 16.06.2017.

2. The case of the prosecution is that the appellant/accused while he was working as public servant in the capacity of General Manager, Neyveli Lignite Corporation Ltd., during the period from 01.01.2003 to 25.02.2010 acquired assets which were disproportionate to the known source of income and also in the names of his family members to the tune of Rs.49,82,207/- and the appellant could not satisfactorily explain in respect of his pecuniary resources other than his known source of income. Thus the accused being the public servant has committed the offences punishable under Section 13(2) r/w.13(1)(e) of Prevention of Corruption Act, 1988.

3. After the investigation, the respondent filed charge sheet and the same is taken up on file as CC.No.23 of 2011 on the file of the Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai. After serving the copies to the

accused, the trial Court framed the charge against the accused for the offence under Section 13(2) r/w.13(1)(e) of Prevention of Corruption Act, 1988.

4. In order to establish the case of the prosecution, the prosecution has examined 33 witnesses as PW1 to PW33 and marked 124 documents as Ex.P1 to Ex.P124.

5. PW1/Chairman and Managing Director of Neyveli Lignite Corporation Ltd, (NLC) has spoken about the sanction order/Ex.P3 for prosecuting the accused. PW2/Secretary, Provident Fund Office, Neyveli Lignite Corporation Ltd, (NLC) has spoken about the provident funds loans and contribution of the accused and submitted a attested copies of the statement of accounts/Ex.P5. PW3/Deputy General Manager (HR) who maintained the annual property returns filed by the appellant has spoken about the annual property returns/Ex.P4, for the year 2009-2010 statement showing details of immovable properties/Ex.P6 and Statements 1 to VI of immovable property/Ex.P7 possessed by the accused and his dependents. PW4/Chief Vigilance Inspector, Southern Railway, George Town, Chennai has spoken about the Search conducted in the house of the appellant, the List/Ex.P8 and Inventory report/Ex.P9 found in the residential premises of the accused. PW5/Senior Manager, Corporation Bank at Madurai has spoken about the inventory report/Ex.P10 prepared at the Corporation Bank, T.Nagar branch, Chennai in Locker No.70. PW6/Jewel Appraiser, Indian Bank, Clocktower Branch, Royapettah, Chennai has spoken about the details of the descriptions and weighment details and value of the jewel kept in the locker. PW7/Grade II General FCI, Bangalore has spoken about the Search List/Ex.P11 and Inventory report/Ex.P12 descriptions of the items and Ex.P13/description of the items seized in the search. PW8/Deputy Chief Manager (Personnel) at Neyveli Lignite Corporation, Neyveli has spoken about the Comprehensive Service Registers of the accused/Ex.P14 and Ex.P15/pay ledger series for the period from 01.01.2003 to 28.02.2010. PW9/Secretary, Neyveli Lignite Corporation Ltd., has spoken about the Share ledger/Ex.P16 and Loan Ledger/Ex.P17 of the cooperative society. PW10/Professor/Principal of Naryana Medical College, Nellore, Andhra Pradesh has spoken about the fees details for issuing application, college and hostel fees, caution deposit, mess deposit, accommodation and boarding fees for the academic years 2004-2009/Exs.19 to 35 series for the son of the appellant. PW11/Anadakumaran partners M/s.Akar Granites, has spoken about the current account opening in the name of Akar Granites/Ex.P36 and the statement of accounts bearing Nos.4136 and 2006/Ex.P37 and Ex.P38 respectively. PW12/A.R.Mohan, Manager, Shree Subam Kalyana Mandapan, Mandaveli, Chennai has spoken about the marriage hall booking, payments and receipts and other miscellaneous expenditures/Ex.P39 to Ex.P45 respectively. PW13/Manager, Canara Bank, Chengalpet Branch has spoken about the statement of the account details of the appellant's daughter by name Ramya/Ex.P47. PW14/Manager, Indian Bank, Nandanam

Branch has spoken about the account opening form and statement of the account details of the appellant's daughter by name Ramya/Ex.P48 to Ex.P50. PW15/Deputy Manager, State Bank Of Bikaneer and Jaipur (retd) has spoken about the account opening form, photo of the account holder, statement of the account details of the appellant's daughter by name Ramya/Ex.P51 to Ex.P55. PW16/Krishnan, Sindhu Caterings has spoken about the estimate of the catering service/Ex.P56. PW17/Chief Manager, City Union Bank, Kumbakonam has spoken about the account details of the accused and his family members, address, statement of accounts, Fixed Deposits/Ex.P57 to Ex.P68 series. PW18/Chief Manager, Canara Bank, Bommasandra Branch, Banagalore has spoken about the account opening details and the statement of accounts/Ex.P69 to Ex.P72. PW19/Senior Manager, Corporation Bank, Zonal Office, Trichy has spoken about the account opening forms and the statement of accounts/Exs.P73 to Ex.P78. PW20/Assistant Vice President, Citi Bank, Spencer Plaza, Chennai has spoken about the statement of credit card details/Ex.P80. PW21/Saravanan, Proprietor, S.P.Rakie Videos, Mylapore, Chennai (Photographer and Videographer) has spoken about the expenses for photo and videography/Ex.P81. PW22/Kamatchisundaram who played Musical Instrument Nathaswaram in the marriage function of the appellant's daughter has spoken about the details of payment for music concert/Ex.P82 and Ex.P83. PW23/Dr.M.Balasubramanian Vice Chancellor at Karpagam University, Coimbatore has spoken about the merit list and allotment of seat in Valliammai Engineering College for EEE course and the tuition fees particulars for the academic years/Ex.P85 to Ex.87. PW24/General Manager, Odisha Gramiya Bank, Head Office at Bhuvaneswar on Deputation from Indian Overseas Bank has spoken about the copy of the account opening form and the statement of account details/Ex.P88 and Ex.P89. PW25/Venkatesh, Proprietor__Lakshmi Video Studio, Mylapore, Chennai has spoken about the estimate for engagement function of the appellant's daughter/Ex.90. PW26/Senior Manager, Federal Bank, Zonal Office, Chennai has spoken about the rental agreement, offer letter from the Federal Bank and monthly rent/Ex.P91 to Ex.P93. PW27/S.N.Babu Govinda Raj, Head of Corporate Audit Services at Larsen and Tourbo, Chennai has spoken about the renewal agreement and the termination letter/Ex.P5 and Ex.P96. PW28/P.Jayakumar, General Manager, NLC (retd) has spoken about the financial declarations and statement I to IV details of movable and immovable properties and financial investments duly filed by the appellant/Ex.P99. PW29/Associate Director, i Gate Global Solution, Chennai has spoken about the employment agreement, service particulars, income of the Ramya and Form-16/Ex.P101 to Ex.P103. PW30/Additional Superintendent of Police, Special Crime Branch, CBI, Trivandrum/IO has spoken about the details of the investigation of this case. PW31/Regional Provident Fund Commissioner, Grade-II, Regional Provident Fund Office, Tambaram has spoken about the service particulars, Original claim form submitted by the appellant, nomination form, service certificate and the details of the pension and P.F. Contributions/Ex.P113. PW32/Assistant Revenue Officer, Corporation of Chennai has spoken about the property details as well as the tax payment details/Ex.P114 to Ex.P116. PW33/Indumathi has spoken about the seven cheques issued by her to the appellant/Ex.P117.

6. After completion of trial, when the trial Court questioned the accused under Section 313(1)(b) of Cr.PC with reference to the incriminating circumstances from the evidence of the above said witnesses, the accused denied the same as false and chosen to examine the witnesses, on the side of the defence three witnesses were examined as DW1 to DW3 and 10 documents were marked as Ex.D1 to D10.

7. After hearing the arguments of both sides and on perusal of the materials place before the trial Court, the trial Court found guilty of the accused committing the offence under Section 13(2) r/w.13(1)(e) of Prevention of Corruption Act, 1988, convicted and sentenced the accused to undergo rigorous imprisonment for two years and to pay a fine of Rs.25,000/- in default to undergo six months simple imprisonment.

8. Aggrieved against the said judgment of conviction and sentence passed by the Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai in CC.No.23 of 2011 dated 16.06.2017 , the accused preferred the present appeal before this Court.

9. The learned counsel for the appellant would submit that PW1 has no authority to accord sanction. In the other trap case in RC MA1 2010 A 0012 charge sheet was filed and the case was taken up in CC.No.24 of 2010. The trial Court held that as if the appellant argued that the sanction given by PW1 is not by a competent authority and the sanction also is not valid. The appellant has marked Exs.D6 and D7 viz., deposition of the sanctioning authority/PW1 and the judgment in CC.No.24 of 2010 to drive home the point that in the light of PW1's evidence in the present case. Therefore, the PW1/sanctioning authority has accorded sanction only with a malafide intention.

10. Further, the learned counsel would submit that in this case, the preliminary enquiry was not conducted. The trial Court totally erred in respect of the concept of the preliminary enquiry. The specific case of the accused was that no preliminary enquiry was conducted prior to the registration of the FIR. PW30/IO has also admitted this fact, without conducting the preliminary enquiry registering the FIR and conducting the investigation is vitiated.

11. Further, the statement given by the accused has not been considered by the IO and the trial Court also failed to consider the defence submitted by the accused. During the proceedings under Section 313 Cr.PC, the accused would submit that he has

not involved in any offence and he has given the explanation for his source of income during the check period. But, the explanation offered by the sister of the accused has clearly spoken about the loan extended by her husband to the accused, though she has stated during the cross examination that her husband gave a sum of Rs.10lakhs in three instalments to the accused, the said fact has not been considered by the trial Court.

12. The prosecution has not proved the case beyond reasonable doubt, therefore, the benefit of doubt goes in favour of the accused/appellant. The trial Court failed to consider the explanation offered by the accused and their family members. Therefore, the conviction and sentence passed by the trial Court is liable to be set aside and prays this Court for allowing the criminal appeal.

13. The learned Special Public Prosecutor appearing for the CBI would submit that the Judgment pronounced by the VIII Principal Special Judge for CBI cases Chennai is on sound legal footing after analyzing the entire evidence both oral and documentary and after proper appreciation, the accused was convicted. The Trial Court has pronounced the Judgment after thorough and careful scrutiny and analysis of the oral and documentary evidences submitted by the Prosecution. The Trial Court has taken on record and satisfied with the documentary evidences submitted by the Prosecution with regard to the disproportionate income accumulated by the Petitioner/Appellant/Accused during the check period 01.01.2003 to 25.02.2010. It was proved as follows :

1	Assets at the beginning of the check period	Rs.18,17,313.00
2	Assets at the end of the check period	Rs.67,99,520.00
3	Total income / receipts from known sources	Rs.64,24,960.00
4	Expenditure incurred during the check period	Rs.53,91,588.81
5	Assets acquired during the check period (2-1)	Rs.49,82,207.00
6	Likely savings (3-4)	Rs.10,33,371.27
7	Extent of disproportionate assets	Rs.39,48,835.73
8	Percentage of disproportionate assets over total income	61.46%

14. The Appellant/Accused acquired assets (movable assets) in his name and in the names of his family members i.e., his wife Prema, daughter Ramya and his son K.Suresh which includes credit balance in their Bank accounts and fixed deposit investment and hard cash which amount to Rs.49,82,207/- against

likely savings of Rs.10,33,371.27 and therefore P.S.Kripanandhan has been found in possession of disproportionate assets to the extent of Rs.39,48,835.73/- over a total income of Rs.64,24,960.08/-. Accumulation of assets disproportionate to the income of the public servant is a grave offence. In case the Appellant/Accused is allowed to go scot-free, the corruption will get deep rooted in the society and the trial Court also considered the materials placed before it and correctly comes to the conclusion that the accused had committed the said offences and convicted and sentenced the accused.

15. Heard the rival submissions made on both sides and perused the records placed before the trial Court viz., oral and documentary evidences and also the judgment of the trial Court and the ground of appeal raised by the appellant before this Court.

16. The case of the prosecution is that based on the source information, Murugan/then Superintendent of Police, CBI, ACB, Chennai registered the case in RC MA1 2010 A 0031 on 30.07.2010 under Ex.P104/FIR for the offence under Section 13(2) r/w.13(1)(e) of the Prevention of Corruption Act, 1988. Thereafter, the investigation was entrusted to PW30/Harikumar, then the Deputy Superintendent of Police as well as Additional Superintendent of Police, CBI, ACB, Chennai, the IO received the FIR copy and the related documents and also the copy of the FIR in another case in RC MA1 2010 A 0012 dated 25.02.2010 registered for the offence under Section 7 of the Prevention of Corruption Act, 1988. During the course of investigation, the IO examined various witnesses and collected several documents as mentioned in the charge sheet.

17. The main allegation of the prosecution against the accused is that while working in the capacity of public servant in the capacity of General Manager, Neyveli Lignite Corporation Ltd, (NLC) during the check period from 01.01.2003 to 25.02.2010, the accused had accumulated properties and pecuniary resources in his name and also in the names of his family members to the tune of RS.49,82,207/- which is disproportionate to his known sources of income and the accused could not satisfactorily explain in respect of the pecuniary resources other than his known sources of income. During the check period from 01.01.2003 to 25.02.2010, the accused acquired assets in his name as well as in the names of his family members viz., wife/Prema, daughter/Ramya and his son/Suresh which include credit balance in their bank accounts and fixed deposit investment and hard cash which amount to Rs.49,82,207/- against likely savings of Rs.10,33,371.27 and therefore, the accused has been found in possession of disproportionate assets to the extent of Rs.39,48,385.73_over a total income of Rs.64,24,960.08.

18. For the above said disproportionate amount, the accused could not satisfactorily account and hence the said act of the accused constitute the offence punishable under Section 13(2) r/w.13(1)(e) of the Prevention of Corruption Act, 1988 and after obtaining necessary sanction order from PW1/competent authority, the prosecution laid the final report against the accused as mentioned above before the trial Court.

19. The points arises herein for consideration are as follows :

1.Whether the sanction accorded by PW1 against the appellant for prosecution is malafide, the same vitiated the case of the prosecution?

2. Whether the respondent without conducting the preliminary enquiry has lodged the case against the appellant, if it is so, the same vitiated the case of the prosecution?

3. Whether the respondent as well as the trial Court have not considered the explanation given by the appellant before the investigation officer and the statement given before the trial Court during the Section 313 Cr.P.C proceedings?

Point No. 1 :

20. As far as point No.1 is concerned prosecution has mainly relied upon the evidence of PW1.

21. The learned counsel appearing for the appellant would submit in this regard that PW1 is not a competent authority to issue sanction to prosecute the accused. The sanction granted by PW1 is not valid. Further, he would submit that the connected C.C.No.24 of 2010 ended in order of acquittal passed by the learned IX Additional Special Judge for CBI cases, Chennai, the sanction granted by PW1 was not acceptable one, hence, the sanction is invalid which cannot be relied on and the prosecution fails. Therefore, in this case also, PW1 has accorded sanction of the prosecution with malafide intention.

22. The learned Special Public Prosecutor for CBI cases would submit that PW1 is the competent authority to accord the sanction for prosecuting the appellant in this case. Though, in the other case the trial judge has not believed for other reasons not as malafide one. Therefore, the same cannot be applied to this case also. The sanction order accorded in that case is entirely different and the same has nothing to do with this sanction order accorded in the present case. Therefore, the submission of the learned counsel for the accused/appellant is not acceptable one and the same is liable to be rejected.

23. As far as sanction for prosecution in this case is concerned. It is relevant to refer the deposition of PW1/A.R.Ansari which reads as follows :

> "presently I am working as Chairman cum Managing Director of Neyveli Lignite Corporation Ltd.,(NLC). I have been working as CMD from December 2008 onwards. P.S.Kirupanandhn was working as General Managers and chief General Managers, CMD is the appointing authority. Schedule of delegation of powers to the CMD, NLC is Ex.P1 and the NLC Employees' (Control and Appeal) Rule and Disciplinary Procedure is Ex.P2. In Ex.P1 at Sheet No.9, regarding delegation of powers to CMD, I is mentioned that Board resolved delegation of powers in favour of CMD. In Ex.P2 at Sheet No.10, it is mentioned that Executive of M4 Grade appellate authority for major punishment is shown as CMD. General Managers are under the category of Executives of M4 grade. Accused Kirupanandan falls under Executive M4 Grade. As per Exs.P1 & P2, I am the competent authority having powers of removal of G.M's., and competent to issue sanction orders against G.Ms., of NLC. Sanction Order dated 28.12.2010 is issued by me for prosecuting P.S.Kirupanandhan. The said sanction order is Ex.P3. I signed in Ex.P3 in each and every page. The documents perused by me for issuing sanction order are mentioned in Ex.P3 such as copies of FIR, Proceedings, seizure drawn, statement of witnesses and documents. After perusing all the documents. I applied my mind and I am fully satisfied that prima facie has been made against P.S.Kirupanandhan, hence, I accorded Ex.P3 sanction order."
>
> The re-examination of PW1 reads as follows :-
>
> As per Ex.P2, for executives of M4 grade for major penalties, Director is the disciplinary authority and the CMD is the appellate authority. I am higher in rank above the Director.

24. On perusal of deposition of PW1 and also Ex.P1 to Ex.P3, it proves that PW1 is the competent authority to accord the sanction for prosecution against this accused. There is no malafide intention has been established by the appellant. Therefore, under these circumstances, this Court is of the view that the sanction accorded by PW1 is perfectly valid and answered accordingly in favour of the respondent/prosecution and negatived against the appellant/accused.

Point No.2 :

25. In this regard the learned counsel for the appellant would submit that naturally when a complaint received against any person under the Prevention of Corruption Act, that the prosecution has to conduct preliminary enquiry and if they find any prima facie case or allegation against the person then only they can register a case and conduct investigation and lay the charge sheet. Whereas, in this case, PW30 himself has admitted that he has not conducted preliminary enquiry and without conducting preliminary enquiry, registering of FIR, conducting investigation and laying of charge sheet is not valid.

26. The learned Special Public Prosecutor would submit that this is a peculiar case and further, during the investigation the appellant was given ample opportunity to offer his explanation. But, the explanation given by the appellant before the investigation officer was not utmost satisfaction of the investigating officer. Under such circumstances, the Investigation Officer rejected the explanation given by the accused and proceeded further and laid charge sheet.

27. In this regard, on perusal of records, the prosecution has mainly relied on the evidence of PW30/Investigation Officer in this case, who has deposed that during the period from 11.06.2010 to 18.09.2013 while he was working as Deputy Superintendent of Police as well as Additional Deputy Superintendent of Police in CBI, Anti-Corruption Branch, Chennai. At that time, RC No 31/A/2010 was registered in Anti Corruption Branch, Chennai on 30.07.2010 for the offences under Section 13(2) r/w.13(1)(e) of Prevention of Corruption Act, 1988 against the accused/then General Manager, Neyveli Lignite Corporation Ltd., Regional Office, Chennai and the FIR was registered by Mr.Murugan, the then Superintendent of Police, ACB, CBI, Chennai. The said FIR was marked as Ex.P104. But the investigation of this case was entrusted to him by the then Superintendent of Police vide order dated 30.07.2010 under Section 17 of Prevention of Corruption Act.

28. After receipt of the copy of the FIR and other related document of this case and also copy of the FIR in another case in RC 12/A/2010 which was registered on 25.02.2010 under Section 7 of Prevention of Corruption Act against the accused. The IO received the copies of search lists, inventories and also inventory of safe deposit locker held in the name of the accused/P.S.Kirupanandhan. The search inventory and locker operations were conducted in RC 12/A/2010, he also received a copy of Fixed Deposit Receipt No.389917 dated 03.03.2010 for deposit of an amount of Rs.21,30,000/- which was seized from the residence of the appellant on 25.02.2010, the same was marked as Ex.P106. He has further deposed that he sent a letter dated

05.08.2010 to the Chief Vigilance Officer, Neyveli Lignite Corporation Ltd., requesting him to furnish the details of gross and net salary received by the appellant and also all the other emoluments, pay arrears, loans and advances received from PF account and Annual Property Returns during the check period as on 01.01.2003 to 25.02.2010 and the same was marked as Ex.P98. In response to his requisition, the General Manager, NLC Ltd., in his letter, Ex.P99 dated 26.08.2010 furnished the copies of the Pay Ledger card for the check period has been marked as Ex.P15, certified copies of statements of Accounts of Provident Fund has been marked as Ex.P5, certified copies of statement showing details of Immovable property returns submitted by the accused has been marked as Ex.P6 and certified copy of the Service Book was marked as Ex.P14 and the statements 1 to 6 furnished by the accused to his Department showing all financial transactions, acquisitions of disposal of properties by the accused and his family members were marked as Ex.P7. PW30 has further deposed that his investigation disclosed that at the beginning of the check period as on 01.01.2003 the accused and his family members were in possession of assets both movable and immovable and also credit balance in their SB accounts from various banks valued at Rs.18,17,313/- as per statement ("A") given in the final report. During the investigation, it is disclosed that at the beginning of the check period as on 01.01.2003, the accused and his family members were in possession of assets both movable and immovable and also credit balance in their respective SB accounts from various bank valued at Rs.18,17,313/-. The investigation disclosed that during the check period, no immovable properties were acquired by him whereas he had acquired Item Nos.1 to 11 movable assets. Thus, the investigation disclosed that at the end of check period on 25.02.2010, the appellant and his family members were in possession of assets both movable and immovable valued at Rs.67,99,520/- which shows that during the check period the accused acquired disproportionate assets worth Rs.49,82,207/-.

29. PW30 in his cross examination has categorically stated that no preliminary enquiry was conducted prior to registering the FIR in this case. Earlier to the registration of this case, a trap case in RC 12/2010 was already registered on 25.02.2010 against the accused. In this case, FIR was registered on 30.07.2010. Further, he has deposed that he has not given notice in writing to the accused to appear before the IO for investigation. On 10.08.2010, the IO called the accused for the first time and enquired him. Further, the IO directed the accused to appear before him on 13.08.2010, the accused appeared before IO on 27.08.2010 as per instruction given by him on 13.08.2010. On 28.09.2010, the IO issued a written notice to the accused to appear before him on 04.10.2010. The said notice was received by the accused on 30.09.2010, whereas, the accused appeared before the IO only on 07.10.2010. On 15.11.2010, the IO served another notice to the accused directing him to appear before the CBI Office on 18.11.2010, the accused appeared on

18.11.2010 and his statement was recorded. On 13.12.2010, the accused was again called to CBI Office and enquired him by showing the assets and other material collected by him. In the above said circumstances, it clearly shows that before filing the final report, during the investigation, the accused stated that he received the hand loan of Rs.10lakhs from his brother-in-law/N.Confucius, who is working in State Bank of India as Manager and also stated that the said loan was received in three installments from his brother-in-law. PW30/IO has stated in his evidence that he has not believed the statement of the accused and he has not examined the said Confucius. Further, the accused has not produced any supporting documents for the hand loan amount of Rs.10lakhs received from the said Confucius.

30. In this regard another important evidence PW33/Indumathi widow of the said Confucius. She has deposed during her cross examination that her husband Confucius died on 01.09.2012. She has also produced the hand loan note written by her husband Confucius dated 23.08.2010, the same was also marked as Ex.D5. In that note, the loan amount of Rs.10lakh was given to the accused on various dates. PW30 was cross examined by the learned counsel for the accused on 15.04.2015. But, the defence has not shown any hand note regarding the loan transaction written by Confucius before PW30 and also when the accused was examined by the Investigation Officer during the investigation. Therefore, the hand note produced by PW33 during the cross examination is not at all believable one.

31. From the evidence of PW30, before filing of the final report, the Investigation officer has given sufficient opportunity and recorded the statement of the accused. As per the version of the prosecution, when the accused was examined by the Investigation Officer after registering the FIR and before filing the final report i.e., during the investigation the accused was given opportunity to offer his explanation for the disproportionate assets.

32. The accused also admitted that he has given the explanation, the same was not considered by the Investigation Officer. Assuming it to be true, Ex.D5/hand note was available at the time of the statement given by the accused before the IO during the investigation the same should have been given to the IO, even otherwise at the most when PW30 was examined in cross examination. When the counsel for the accused put a question before the IO/PW30, this hand note would have been produced before the Court and could have been shown to PW30 during the cross examination, the same has not been done so. Even when PW33 was examined in chief examination also, she has not produced, but only during the cross examination she has produced the Ex.D5/hand note. Therefore, it creates suspicion in the minds of

the Court and the defence taken by the accused that preliminary enquiry was not conducted and also the explanation offered by the accused has not been considered are not acceptable.

33. Before registering FIR, there was no preliminary enquiry, as stated earlier, this is a peculiar case, under such circumstances FIR was registered in this case. As already stated, there was a case against the accused for demanding a bribe of Rs.50,000/-, FIR in RC MA1 2010 A 0012 was registered during the post-trap search liquid cash of Rs.21,37,500/- was also seized from the house of the accused. Hence, there was a prima facie case to register a FIR in this case.

34. Therefore, absolutely there is no preliminary enquiry is necessary before registering the FIR in this case. However, before filing charge sheet during the investigation, the Investigation Officer given opportunities to the accused to offer his explanation with regard to disproportionate assets, but the accused has not offered any explanation to the utmost satisfaction of the prosecution.

35. Therefore, the Investigation Officer did not believe the explanation offered by the accused and filed a final report against the accused and also obtained sanction order for prosecution against the accused in this case and proceeded further in accordance with law. Therefore, the defence taken by the accused in this regard is not acceptable. In the light of the above discussion, this Court, finds that without conducting preliminary enquiry before registering the FIR is fatal to the case of the prosecution is not acceptable. This point is answered accordingly.

Point No.3

36. As far as the point No.3 is concerned, the learned counsel for the appellant/accused would submit that the statement given by the accused during the investigation before the Investigation Officer has not been considered without considering the same the IO has filed charge sheet against the accused. Further, at the time of Section 313 Cr.PC questioning. The accused filed the statement of defence before the trial court. The Trial Court has not considered the same in its judgment and without considering the explanation offered by the accused, both the Investigation Officer and the Trial Court have dealt with the case. Therefore, the same is vitiated and the judgment of the Trial Court is liable to be set aside and the appeal is liable to be allowed.

37. The learned Special Public Prosecutor for CBI case would submit that considering the peculiar circumstances of this case, though the preliminary enquiry could not have been conducted

before registering the FIR. During investigation, sufficient opportunity was given to the accused and called for his explanation, the accused has not offered his explanation immediately, but he has filed the statement belatedly and the same was not supported with any documentary evidence. Therefore, the Investigation Officer did not believe the explanation offered by the accused and laid charge sheet against him for the offences as stated supra.

38. In this regard, this Court has carefully gone through the entire evidences recorded by the Trial Court and the documentary evidence produced before the Trial Court. From the reading of the evidence of PW30/IO particularly during the cross examination, the learned counsel for the accused has put a question before the Investigation Officer itself shows that during the investigation he was given sufficient opportunity to offer his explanation with regard to the disproportionate assets. Though, the accused has made an attempt to give some explanation which is not supported by any legally acceptable documentary evidence, in the absence of one such documentary evidences, the Investigation Officer did not satisfy with the explanation offered by the accused. Therefore, the same was rejected by the IO, which shows that the accused was given an opportunity during the investigation to offer his explanation regarding the disproportionate assets. Therefore, the stand taken by the counsel for the appellant in this regard is not acceptable one and the same does not vitiate the case of the prosecution. This point is also answered in favour of the prosecution.

39. In order to test the correctness of finding of the trial Court with reference to conviction and sentence passed in this case, as the fact finding Court/first Appellate Court, it has to deal with the case independently with the materials available on records before it. Therefore, this Court has to analyse and appreciate the oral and documentary evidence placed before the Trial Court independently and has to come to an independent conclusion.

40. On perusal of the charge sheet, the period from 01.01.2003 to 25.02.2010 has been taken as check period, during the said period the appellant had acquired disproportionate assets to his known sources of income. After the investigation, the investigating officer has arrived that the appellant and his family members were in possession of both movable and immovable assets, at the beginning of the check period viz., 01.01.2003 which were acquired prior to the check period.

DETAILS OF THE ASSETS AT THE BEGINNING OF THE CHECK PERIOD AS ON 01.01.2003 is as follows :

S. No.	Description of the Property	Held in the name of	Period of Acquisition	Value (Rs.)
Immovable Assets :				
1.	Flat No.29, 12 E, 2nd Floor, Bridge Fort Apartment, Burkit Road, T.Nagar in the name of R.K.Prema (ancestral property)	Prema, W/o.P.S.Kirupanandhan	1994	Inherited Property
2.	Flat No.B1, 11/20, 10th Avenue, Ashok Nagar, Chennai - 83 (875 Sq.ft.) 1st Floor	P.S.Kirupanandhan	2000	Inherited Property
3.	Flat no.4/5, VOC Nagar, Saligramam, Chennai (794 Sq.ft) ground floor)	P.S.Kirupanandhan	1999	Acquired at a cost of 7,67,000/-
Movable Assets :				
4.	Maruti 800 CC Car bearing Regn. No.TN-01-5603.	P.S.Kirupanandhan	1994	Purchased at a cost of 2,81,658/-
5.	Household items found in Flat No.29, 12E, 2nd Floor, Bridge Fort Apartment, burkit Road, T.Nagar	Prema, P.S.Kirupanandhan	Acquired during the period 1981	77,600.00
6.	Household items found in Flat No.B1, 11/20, 10th Avenue, Ashok Nagar, Chennai - 83.	Prema, P.S.Kirupanandhan	Acquired during the period 1982	58,500.00

S. No.	Description of the Property	Held in the name of	Period of Acquisition	Value (Rs.)
7.	Value of jewelery fond in safe deposit locker No.70, maintained with Corporation Bank, T.Nagar Branch .	P.S.Kirupanandhan and Ramya	Acquired during the period 1981-2009	4,73,160.00
8.	Credit balance in SB A/c 28206 with City Union Bank, T.Nagar Branch, Chennai at the commencement of Check Period.	Prema, P.S.Kirupanandhan	Account opened on 08.04.1999	44,692.00
9.	Credit balance in SB A/c 4776 with Corporation Bank, T.nagar Branch, Chennai at the commencement of check period.	P.S.Kirupanandhan	Account opened on 25.11.2002	393.00
10.	Credit balance in SB A/c 1620 with Corporation Bank, T.Nagar branch, Chennai at the commencement of check period.	Ramya, D/o.P.S.Kirupanandhan	Account opened on 09.05.1997	1,14,310.00
		Total		18,17,313.00

41. The investigation disclosed that the accused and his family members are in possession of both movable and immovable assets to the tune of Rs.18,17,313/- at the beginning of the check period i.e, 01.01.2003. The movable and immovable properties acquired by the accused and his family members before the commencement of the check period were continued to be in possession till the end of the check period i.e, 25.02.2010.

42. During the check period from 01.01.2003 to 25.02.2010 the accused and his family members acquired movable assets in the form of Fixed Deposits and credit balances in various bank accounts held in their names was also found in possession of hard cash of Rs.21,37,500/- which was seized from his possession during the house search in the course of investigation of case RC MA1 2010 A 0012 of CBI/ACB, Chennai on 25.02.2010.

DETAILS OF THE ASSETS AT THE END OF THE CHECK PERIOD AS ON 25.02.2010 is as follows :

S. No.	Description of the Property	Held in the name of	Period of Acquisition	Value (Rs.)
Immovable Assets :				
1.	Flat No.29, 12 E, 2nd Floor, Bridge Fort Apartment, Burkit Road, T.Nagar in the name of R.K.Prema (ancestral property)	Prema, W/o.P.S.Kirupanandhan	Came into possession 2004	Inherited Property from mother.
2.	Flat No.B1, 11/20, 10th Avenue, Ashok Nagar, Chennai – 83 (875 Sq.ft.) 1st Floor	P.S.Kirupanandhan	Came into possession 2006	Inherited Property from father
3.	Flat no.4/5, VOC Nagar, Saligramam, Chennai (794 Sq.ft) ground floor)	P.S.Kirupanandhan	1999	Land purchased and building constructed at a cost of 7,67,000/-
Movable Assets :				
4.	Maruti 800 CC Car bearing Regn. No. TN-01-5603.	P.S.Kirupanandhan	1994	Purchased at a cost of 2,81,658/-
5.	Maruti 1000 CC Car bearing Regn. No.TN-009A-5928	P.S.Kirupanandhan	2007	4,45,967.00
6.	Household items found in Flat No.29, 12E, 2nd Floor, Bridge Fort Apartment, burkit Road, T.nagar	Prema/ P.S.Kirupanandhan	Acquired during the period 1981-2009	2,68,235.00
7.	Household items found in Flat No.B1, 11/20, 10th Avenue, Ashok Nagar, Chennai – 83.	Prema/ P.S.Kirupanandhan	Acquired during the period 1981-2009	93,300.00
8.	Value of jewelery found in safe deposit locker No.70, maintained with Corporation Bank, T.Nagar Branch.	P.S.Kirupanandhan and Ramya	Acquired during the period 1981 - 2009	4,73,160.00

S. No.	Description of the Property	Held in the name of	Period of Acquisition	Value (Rs.)
9.	Fixed Deposit No.2256349 for Rs.8,00,000 with City Union Bank, T.Nagar Branch	Suresh, Ramya K and P.S.Kirupanandhan	17.09.2009	8,00,000
10.	Credit balance in SB A/c 2771.101.2214 with Canara Bank, T.Nagar Branch, Chennai as on 31.08.2009.	K.Ramya D/o. P.S.Kirupanandhan	Account opened on 18.03.2006	3,40,991.00
11.	Credit balance in SB A/c 42956935 with Indian Bank, T.nagar branch, Chennai as on 31.08.2009.	K.Ramya P.S.Kirupanandhan	Account poened on 04.05.2006	5,49,609.00
12.	Credit balance in SB A/c 28206 with City Union Bank, T.Nagar Branch, Chennai.	Prema, P.S.Kirupanandhan	Account opened on 08.04.1999	50,184.00
13.	Credit balance in SB A/c 4776 with Corporation Bank, T.Nagar Branch, Chennai.	P.S.Kirupanandhan	Account opened on 09.05.1997	14,685.00
14.	Credit balance in SB A/c 1620 with Corporation Bank, T.Nagar branch, Chennai as on 31.08.2009	Ramya, D/o.P.S.Kirupanandhan	Account opened on 09.05.1997	3,87,006.00
15.	Credit balance in SB A/c 1650101012973 with Canara Bank, Kilpauk Branch, Chennai	P.S.Kirupanandhan	Account opened on 16.07.2008	1,90,225.00
16.	Liquid cash found in the possession of Shri P.S.Kirupanandhan	P.S.Kirupanandhan	25.02.2010	21,37,500.00
	Total			67,99,520.00

43. The investigation disclosed at the end of the check period the accused and his family members were in possession of assets both movable and immovable assets including Fixed Deposits and Credit balance in various bank accounts to the

total amount of Rs.67,99,520/-. During the check period from 01.01.2003 to 25.02.2010, the accused and his family members were in receipt of the following income from all known and verifiable sources.

DETAILS OF THE INCOME/RECEIPTS DURING THE CHECK PERIOD FROM 01.01.2003 TO 25.02.2010 is as follows :-

S. No.	Description of the Source	Received by	Period	Amount (Rs.)
1.	Net Salary of P.S.Kirupanandhan	P.S.Kirupanandhan	01.01.2003 to 28.02.2010	26,43,884.08
2.	Advance from Provient Fund of P.S.Kirupanandhan	P.S.Kirupanandhan	01.01.2003 to 28.02.2010	8,99,000.00
3.	Wage revision arrears & incentives received during the check period	P.S.Kirupanandhan	2009	Gross arrears of Rs.4,95,159.17 was drawn and a net amount of Rs.1,92,230/- was received in the month of July 2009
4.	Quarterly Plant Performance Reward received by P.S.Kirupanandhan	P.S.Kirupanandhan	2003 to 2009	70,520.00
5.	Annual Production Link Incentives received by P.S.Kirupanandhan	P.S.Kirupanandhan	2003 to 2009	23,660.00
6.	Towards gift / cash awards declared by NLC on special occasions to P.S.Kirupanandhan	P.S.Kirupanandhan	2003 to 2009	5,250.00
7.	Dearness Pay arrears received by P.S.Kirupanandhan	P.S.Kirupanandhan	22.05.2008	29,570.00
8.	Performance related pay / incentives received by P.S.Kirupanandhan	P.S.Kirupanandhan	2007 to 2008	1,52,750.00

S. No.	Description of the Source	Received by	Period	Amount (Rs.)
9.	Advance Wage revision arrears received by P.S.Kirupanandhan	P.S.Kirupanandhan	2007	1,31,840.00
10.	Deposit amount received from NLC Thrift Society	P.S.Kirupanandhan	14.11.08	59,496.00
11.	Pension received from EPF during the check period	P.S.Kirupanandhan	September 2009 @ Rs.1,687/-	10,122.00
12.	Rental income received by Prema, from 12-E, Burkit Road, Chennai during the period from April 2003 to April 2005 at the monthly rent of Rs.7,500/- and from May 2005 to April 2007 at a monthly rent of Rs,8,250/-. From August 2007 to July 2008 at a monthly rent of Rs.10,000/-	Prema, W/o. P.S.Kirupanandhan	During the check period from April 2003 to July 2008	(i) @ Rs.7,500/- from April 2003 to April 2005 - Rs. 1,80,000/- (ii)@ Rs.8,250/- from May 2005 to April 2007 = Rs.1,89,750/- (iii) @ Rs.10,000/- from August 2007 to July 2008 = Rs.1,00,000/- Total - Rs.4,69,750/-
13.	Rental income from House No.B-1, 11/20, 10th Avenue, Ashok Nagar, Chennai	P.S.Kirupanandhan	June 2007 to January 2010	1,90,000.00

S. No.	Description of the Source	Received by	Period	Amount (Rs.)
14.	Rental income from Flat No.4/5, VOC Nagar, Saligramam, Chennai for the period from Septmeber 2008 to August 2009 @ Rs.8,000/- per month	P.S.Kirupanandhan	Septembre 2008 to August 2009	96,000.00
15.	Net Salary of K.Ramya, D/o.P.S.Kirupanandhan	Ramya	From May 2006 to August 2009	10,96,000.00
16.	Interest credited in SB A/c 2771.10.2214 with Canara Bank, T.Nagar branch, Chennai as on 31.08.2009	K.Ramya, D/o. P.S.Kirupanandhan	During the check period	22,890.00
17.	Interest credited in SB A/c 42956935 with Indian Bank, T.Nagar Branch, Chennai as on 31.08.2009	K.Ramya D/o. P.S.Kirupanandhan	During the check period	43,142.00
18.	Interest credited in SB A/c 28206 with City Union Bank, T.Nagar Branch, Chennai	Prema P.S.Kirupanandhan	During the check period	1,14,972.00
19.	Interest credited in SB A/c 4776 with Corporation Bank, T.Nagar Branch, Chennai	Prema P.S.Kirupanandhan	During the check period	84,852.00
20.	Interest credited in SB A/c 1620 with Corporation Bank, T.nagar Branch, Chennai as on 31.08.2009	Ramya, D/o. P.S.Kirupanandhan	During the check period	71,259.00

S. No.	Description of the Source	Received by	Period	Amount (Rs.)
21.	Interest credited in SB A/c1650101012973 with Canara Bank, Kilpauk Branch, Chennai	P.S.Kirupanandhan	During the check period	18,773.00
		Total		Rs.64,25,960.08

44. The investigation further disclosed that during the check period from 01.01.2003 to 25.02.2010 the accused had incurred the following expenditures under various heads.

DETAILS OF THE EXPENDITURE DURING THE CHECK PERIOD FROM 01.01.2003 TO 25.02.2010 is as follows :-

S. No.	Expenditure incurred	Period	Amount (Rs.)
1.	Household expenditure of P.S.Kirupanandhan & his family members during the check period @ 35% of gross income on salary Rs.43,16,351.27-Rs.14,24,395.83 (approximate)	01.01.2003 to 25.02.2010	14,38,783.68
2.	Education expenditure of K.Ramya, D/o.P.S.Kirupanandhan	2003-2005	25,200.00
3.	Education expenditure of K.Suresh, S/o.P.S.Kirupanandhan	June 2004 to June 2010	12,72,344.00
4.	City Union Bank Master Card Credit Card No.5546379098020 10	01.01.2003 to 25.02.2010	8,30,776.13
5.	Tour expenditure to Andaman	2003	17,000.00
6.	Expenditure incurred towards engagement & marriage of K.Ramya, D/o.P.S.Kirupanandhan	April / August 2009	6,81,795.00
7.	Advance money paid to Anandakumaran	February 2020	11,00,000.00
8.	Property tax paid to the Corporation in respect of Flat No.29, 12E, 2nd Floor, Bridge Fort Apartment, Burkit Road, T.Nagar in the name of R.K.Prema, during the check period	2003-2009	14,154.00

S. No.	Expenditure incurred	Period	Amount (Rs.)
9.	Property tax paid to the Corporation in respect of Flat No.B1, 11/20, 10th Avenue, Ashok Nagar, Chennai - 83 during the check period	2003-2009	5,768.00
10.	Property tax paid to the Corporation in respect of Flat No.4/5, VOC Nagar, Saligramam, Chennai during the check period	2003-2009	5,768.00
Total			53,91,588.81

45. Further, the investigation disclosed that during the check period from 01.01.2003 to 25.02.2010 the accused incurred a total expenditures of Rs.53,91,588.81. As per the movable assets in the name of the accused and his family members includes credit balance in their bank accounts, fixed deposits, and cash to an amount of Rs.49,82,207/- against likely savings of Rs.10,33,371.27 and therefore, the accused has been found in possession of disproportionate assets to an extent of Rs.39,48,835.73 over a total income of Rs.64,24,960.08.

Details of the Calculation of disproportionate assets as on 25.02.2010 is as follows :

1.	Assets at the beginning of the check period	Rs.18,17,313.00
2.	Assets at the end of teh check period	Rs.67,99,520.00
3.	Total income / receipts from known sources	Rs.64,24,960.00
4.	Expenditure incurred during the check period	Rs.53,91,588.81
5.	Assets acquired during the check period (2-1)	Rs.49,82,207.00
6.	Likely Savings (3-4)	Rs.10,33,371.27
7.	Extent of desproportionate assets (Assets acquired during check period + Expenditure - Income)	Rs.39,48,835.73
8.	Percentage of disproportionate assets over total income	61.46%

46. As per the charge sheet, the extent of disproportionate assets (assets acquired during the check period + Expenditure - Income) is Rs.39,48,835.73. The percentage of disproportionate assets over total income is 61.46%.

47. Now, this Court has to see whether the above mentioned details have been substantiated by the prosecution in the manner known to law.

48. The learned counsel for the appellant would submit that the statement filed along with the calculation of disproportionate assets as on 25.02.2010, the assets at the beginning of the check period is Rs.17,58,813/- and there is no disproportionate assets at all. As already stated from the evidence of PW2, PW3 and PW30/IO, the defence taken by the appellant is not supported with any documentary proof.

49. On perusal of the property statement submitted by the accused to NLC was marked as Ex.P7. PW3/R.Mohan in his evidence deposed that it is duty of him to look after the annual property returns and confidential report section of Class-I Officers of NLC and the accused was working as General Manager, comes under Class-I Officer during the relevant period. Under Ex.P4, Jayakumar, General Manager, NLC furnished the Annual property index for the year 2009-2010 and the certified copies of statement showing the details of the immovable property for the year 2009-2010 is Ex.P6. In Ex.P6, the accused has intimated that he is in possession of (i) Plot No.415, Saligramam, Chennai acquired during 1998-1999 at total cost of Rs.7.64lakhs by availing House Building Advance and Rs.4lakhs from his savings and loan break ups are also given; (ii) Flat No.B1, New No.11/4, Old No.20/4, Ashok Nagar, Chennai is inherited by him from his father as per the intimation submitted by him and the said property was transferred to his name in the year 2006 and taken into custody in January 2007. Under Ex.P4, the statement 1 to 6 pertaining to details of movable and immovable properties were also forwarded to CBI, after obtaining the same from the appellant/accused during the investigation of the case. Ex.P7 was submitted by Jayakumar, General Manager, NLC forwarded the Statement 1 to 6 on 26.08.2010 to the CBI, on perusal the date was corrected, the date in Ex.P7 is typed as 20.07.2009 and it is over written as 25.02.2010. PW3 denied that he did not correct and does not know who has done the over writing or correction in Ex.P7 statement and further, he has stated that the appellant/accused furnished the Ex.P7 details as on 20.07.2009 only.

50. PW1/Chairman cum Managing Director of NLC, as per the delegation of powers to the CMD "NLC Employees (control and appeal) Rules and Disciplinary Procedure"/Ex.P2, it is mentioned that Executive of M4 Grade, appellate authority for major punishments is shown as CMD. The accused falls under Executive M4 Grade. As per Ex.P1 and Ex.P2, PW1 is the competent authority having powers of removal of G.Ms and competent authority to issue sanction orders against G.Ms of NLC. After perusal of the FIR, proceedings, seizure drawn, statement of witnesses and documents, PW1 has fully satisfied that prima

facie has been made against the accused and accorded sanction order/Ex.P3.

51. PW2/Secretary in Provident Fund Office, NLC, as per the cover letter in Ex.P4 the salary statements, PF particulars, Annual property index cards and statements I to VI pertaining to movable and immovable properties of the accused were furnished for the period 2001-2002 to 2009-2010 is Ex.P5. Wherein, the accused availed a sum of Rs.30,000/- for education of his children and a sum of Rs.8,69,000/- for the purpose of putting up additional construction of his house from the PF account. During the period from 09.06.2003 to 14.01.2010 the accused had availed a total amount of Rs.8,99,000/- from his PF account and the same has been marked as Ex.P5.

52. PW11/Anandakumaran has spoken about the willingness expressed by the accused for purchase of the flat owned by him for a sale consideration of Rs.33lakhs and the accused paid a sum of Rs.1lakh/Ex.P37 on 11.01.2010 by cheque and a sum of Rs.10lakhs/Ex.P38 by way of cheque during first week of February and requested for handing over the building by evicting the lessee. PW11 requested the tenant to vacate the premises and they in turn seeks 3 to 4 months time for vacating the said premises. The same was informed to the accused and the accused wanted to cancel the deal, as there is no written agreement between the parties and seeks to refund the advance payments. The PW11 returned the cheques for Rs.1lakh the same was encashed on 12.05.2010 which is reflected in Ex.P37 and the cheque for Rs.10lakhs was also encashed on 07.07.2010 is marked as Ex.P38.

53. PW30/Investigating Officer has deposed that he received a copy of the Fixed Deposit Receipt No.389917 dated 03.03.2010 for deposit of an amount of Rs.21,30,000/-, this amount was seized from the residence of the accused. He has also further spoken about the FIR, FD receipts, Probate Order, Last Will and Testament, sale deeds, pension papers, property tax details, cheques issued by Indumathi in favour of the accused, lease agreements, accounts details of the accused and his family members/Ex.P104 to Ex.P124.

54. PW33/Indumathi is the sister of the accused, during cross examination, she has deposed against the prosecution case. During cross examination by the accused, through PW33 the accused marked a letter dated 23.08.2010 as Ex.D5. It reveals that three times, the brother in law of the accused and husband of PW33 gave a hand loan i.e., on 12.09.2009 - Rs.2,75,000/-; on 03.11.2009 - Rs.3,25,000/- and on 11.12.2009 the remaining balance of Rs.4,00,000/- totally Rs.10,00,000/-. In the hand loan notice, the accused has not signed or acknowledged the receipt of loan. The accused has attempted to show the cash of Rs.10lakhs in hand as loan amount.

55. On bare reading of the above said evidences of the witnesses and also the documents referred to above, the specific case of the prosecution is that the other case in RC MA1 2010 A 0012, charge sheet was taken on file as CC.No.24 of 2010 and the same was tried before the IX Additional Special Court, CBI Cases, Chennai. After completion of investigation, it disclosed that during the check period no immovable properties were acquired by the appellant/accused, whereas the appellant/accused acquired movable item Nos.1 to 11. At the end of the check period on 25.02.2010, the appellant/accused and his family members were in possession of assets both movable and immovable valued at Rs.67,99,520/- which shows that during the check period the accused had acquired disproportionate assets worth Rs.49,82,207/-.

56. Except PW33 all other witnesses have clearly spoken and sported the case of the prosecution and the prosecution also established its case through the oral and documentary evidences. Though the appellant/accused has taken the defence that opportunity was not given to offer his explanation and preliminary enquiry was not conducted and explanation offered by him was not considered. As already stated, that the prosecution has done everything meticulously and the stand taken by the defence fails and this Court independently appreciated the evidence of PW1 to PW4, PW11, PW30 and PW33, as stated above, except the witness of PW33 all the witnesses have supported the case of prosecution and the oral and documentary evidences putforth before the trial Court.

57. As already discussed above, the appellant has stated that he obtained hand loan from his brother-in-law/Confucius to prove that during the cross examination he tried to establish through PW33, but as stated above this hand loan document Ex.D5 is not produced before the Investigation Officer either during the investigation or shown before him during the examination before the trial Court. Though, the appellant has taken the defence that the investigation Officer did not examine the brother-in-law/Confucius. If the said Confucius was examined by the Investigation Officer he could have established the factum of truth. But in this case, the prosecution has clearly stated that the amount seized, explanation offered from the appellant for the amount which was seized from the house of the appellant during the search on 25.02.2010. But, it is the duty of the appellant to offer explanation, when the appellant has taken the stand that he obtained the loan from his brother-in-law, definitely the appellant would have given the explanation with supporting document. If that document was available with the brother-in-law of the appellant, he would have obtained either from his brother-in-law/Confucius or from PW33/Indumathi and submitted before the IO. As stated earlier, the said loan note was not even shown before PW30/IO during the course of examination and when the same was produced before the Trial Court during the cross examination of PW33 and the same was

objected and on perusal of Ex.D5 there was no signature of the appellant. During the investigation, the said brother-in-law/Confucius was alive, the appellant would have got any documents from him and an affidavit would have been filed before the Investigation Officer, failure on the part of the appellant to do so would show that the appellant in order to escape from the clutches of law, without any proof has simply stated before the Investigation Officer that he obtained hand loan of Rs.10lakhs from his brother-in-law. Whereas, PW33 has stated that in three times her husband lended the loan to the appellant, for which he has written a hand note. Since, the said hand note was not produced before the Investigation Officer either by the appellant or by PW33 during the course of investigation. The explanation offered by the appellant was not supported with any valid documents. Therefore, the Investigation Officer rightly rejected the explanation offered by the appellant in this regard. This Court finds no illegality, infirmity or perversity for rejecting the explanation offered by the appellant.

58. The appellant filed the written statement of defence before the Trial Court during the proceedings under Section 313 Cr.P.C. After careful perusal of the entire oral and documentary evidence the Trial Court rightly rejected the defence taken by the accused. Further, in the evidence of PW11, it is stated that the accused agreed to purchase a flat for a sum of Rs.33lakhs, as a Government employee (Public Servant) if any properties intended to be purchased or acquired, he has to give an intimation to the Department and to get the permission or subsequent request for ratification. After going through the entire evidences, no such request or permission was sent to the Department/NLC by the appellant. As a public servant, if he lend any money or borrow any money necessarily it has to be intimated to their Department. But admittedly, the appellant has not done so, without submitting any valid and legally admissible documentary evidences, the explanation offered by the accused is bald in nature and not admissible in the eye of law. Certainly it is not necessary to accept those statements and the said statements or explanations are not legally valid and acceptable. Therefore, this Court finds the rejection of the trial Court is perfectly correct and there is no illegality in the rejection by the trial Court on the defence offered by the appellant. The defence taken by the appellant is nothing but an after thought and the same is brain child of the defence counsel.

59. On perusal of evidence of PW33, she has produced Ex.D5 which would reveals that her husband Confucius given hand loan of Rs.10lakhs on 12.09.2009 a sum of Rs.2,75,000/, on 03.11.2009 a sum of Rs.3,25,000/- and on 11.12.2009 a sum of Rs.4,00,000/- totally Rs.10,00,000/-.

60. As already stated, in the hand note neither the signature of the appellant nor the Confucius is found, the said transaction was not intimated to their respective Departments regarding lending and borrowing of the amount. Prior to lodging of FIR, if any paper documents are available in this regard and produced during the investigation of the same are legally valid and acceptable one and the same can be taken into consideration. Whereas, in this case there is no legally acceptable and valid documents have been produced by the appellant along with his explanation submitted before the Investigation Officer or before the Trial Court during the examination in the manner known to law. Since, the appellant has not given acceptable explanation with the valid documents in the manner known to law, the rejection of explanation by the Investigation Officer during filing final report and non consideration of the Trial Court is not fatal to the case of the prosecution.

61. Therefore, the defence taken by the accused in this regard is not acceptable one and the same is liable to be rejected. Further, the case in hand with regard to disproportionate assets, the investigation officer can only collect the possible materials and file it before the Court, when the prosecution found that there is disproportionate assets during the check period, it is bounden duty of the appellant to establish his case by offering explanation along with valid documents. In the present case in hand, the appellant miserably failed to produce the valid documents along with his explanation.

62. In the Criminal cases like this, it is the golden threat of the jurisprudence that prosecution has to prove its case beyond reasonable doubts. But, the case like this the burden of proof is heavily upon the public servant to prove his defence.

63. It is also pertinent to place the reliance on the latest judgment of the Hon'ble Supreme Court reported in JT 2017 (4) SC 14 - State of Karnataka V. Selvi J.Jayalalitha and others wherein the Hon'ble Apex Court has made the following observations, which are extracted hereunder :-

> 146. Chapter III dwells on "offences and penalties" and Section 13 thereunder sets out the contingencies under which a criminal misconduct is committed by a public servant. Clause 1(e) of Section 13 being the gravamen of the charge herein is quoted hereunder:
>
> > "if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Explanation:-For the 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.”

147. A significant addition to this clause otherwise reproduced from the 1947 Act is the explanation appended thereto which exposits the expression “known sources of income” to be the income received from any lawful source, the receipt whereof has been intimated in accordance with the provisions of any law, rules or orders for the time being, applicable to a public servant.

148. Lawfulness or legitimacy of the known sources of income of the public servant, to satisfactorily account the pecuniary resources or property, alleged to be disproportionate thereto, is, thus the indispensable legislative edict.

210. ..... Interpretation of the expression “satisfactorily account” in the context of the offence of misconduct under Section 5(1)(e) of Act of 1947 and Section 13 (1)(e) of Act 1988

211. This Court in C.S.D. Swami Vs. The State, (supra), was dealing with an appeal from a conviction under Sections 5(1) (a) and 5(1)(d) of Act 1947. In the textual facts this Court while examining the purport of Section 5(3) of Act 1947 observed that the said provision did not create a new offence but only laid down a rule of evidence, enabling the Court to raise a presumption of guilt in certain circumstances – a rule which was in complete departure from the established principles of criminal jurisprudence that the burden always lay on the prosecution to prove all the ingredients of the offence charged and that the burden never shifted on to the accused to disprove the charge framed against him. In this premise, it was held that the test of plausible explanation was inapplicable, as under this statute, the accused person was required to satisfactorily account for the possession of the pecuniary resources or property disproportionate to its own sources of income and that the word “satisfactorily” used by the legislature deliberately did cast a burden on the accused not only to offer a plausible explanation as to how he came to acquire his large wealth but also to satisfy the Court that his explanation was worthy of acceptance. This Court enunciated that “known sources of income” must have reference to sources known to the prosecution on a thorough investigation of the case and it cannot be

the resources known to the accused. In further elaboration, it was elucidated that the affairs of an accused person would be a matter within his special knowledge in terms of the Section 106 of the Evidence Act and that the source of income of a particular individual would depend upon his position in life, with particular reference to its occupation or avocation in life and in case of government servant, the prosecution would naturally infer that his known source of income would be the salary earned by him during his active service. That however, it would be open to the accused to prove the other sources of income which have not been taken into account or brought into evidence by the prosecution was underlined. (emphasis supplied)

212. In M. Narayanan Nambiar Vs. State of Kerala, (1963) Suppl. 2 SCR 724, also involving the offence under Section 5(1)(d) of the Act 1947, this Court emphasised that this statute was passed to make more effective provisions for the prevention of bribery and corruption as the general law with regard thereto as contained in Sections 161 and 165 IPC proved to be insufficient to eradicate or even control the growing evil of these offences corroding the public service. This Court held a view that the rebuttable presumption contemplated by the statute though contrary to the well known principles of criminal jurisprudence had been comprehended as a socially useful measure conceived in public interest and thus deserve to be liberally construed to bring about the desired object. This Court added that when the legislature, having referred to the aim of the legislation had used comprehensive terminology in Section 5(1)(d), to achieve a purpose, it would be appropriate not to limit the content by construction when in particular the spirit of the statute is in accord with the words used therein. (emphasis supplied)

213. The same view was reiterated, amongst others in State of Maharashtra Vs. Wasudeo Ramchandra Kaidalwar, (supra), dealing in specific terms with Section 5(1)(e) of 1947 Act.

213.1 The evident dispensation of this pronouncement is that the spirit of the enactment has to be acknowledged as a relevant factor to construe an offence alleged to have been committed there under. While dilating on the expressions "the public servant cannot satisfactorily account" and "known sources of income", which was construed to mean "sources known to the prosecution", this Court held the view that the plea that unless the prosecution disproves all possible sources of income, a public servant charged for having disproportionate assets in his possession, which he cannot satisfactorily account, cannot be convicted under Section 5(1) (e) of the Act was erroneous. It was enunciated that the possible sources of income beyond those known to the prosecution were matters within the special knowledge of the public servant within the meaning of Section 106 of the Evidence Act, 1872. It was, however, recognized that the burden of the accused was not so onerous as that of the prosecution and could be discharged by proof of balance of probabilities. (emphasis supplied) Page 272 272

214. In K. Ponnuswamy Vs. State of T.N., (2001) 6 SCC 674, this Court referred to the definition of the word "proved" in Section 3 of the Indian Evidence Act 1872 and also Section 114 thereof. While noting that in terms thereof, a fact is said to be proved when after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man, under the circumstances of the particular case, ought to act upon this supposition that it exists. It reflected also on the permissible presumption envisaged under the statute, with regard to the existence of any fact which a Court is likely to think to have happened, regard being had to the common course of natural events, human conduct and public and private business in relation to the facts of a particular case.

215. The significance of this decision is that while evaluating the evidence on record, the attendant facts and circumstances need be taken note of as well, to determine as to whether the materials available, having regard to the common course of natural events and human conduct do logically prove the point in issue.

216. In the context of the sources of income of a public servant which is the kernel of the offence of criminal misconduct engrafted in Section 13(1)(e) of the Act, this Court in State of M.P. Vs. Awadh Kishore Gupta & Ors., (2004) 1 SCC 691, elaborated on the attributes of income as hereunder in para 6:

> "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 the character of income. Qua the public servant, whatever return he gets from his service, will be the primary item of his income. Other incomes, which conceivably are income qua the public servant, will be in the regular receipt from (a) his property, or (b) his investment. A receipt from windfall, or gains of graft, crime or immoral secretions by persons prima facie would not be receipt from the "known sources of income" of a public servant." (emphasis supplied)

217. 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 is 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.

218. In P. Nallammal & Anr. Vs. State, (supra), this Court while elucidating that the 1988 Act does contemplate abetment of an offence under Section 13, proclaimed that in terms of the explanation to Section 13(1)(e) of 1988 Act, the known sources of income of a public servant for the purpose of satisfying the Court should be "lawful source" and further the receipt thereof should have been intimated by him or her in accordance with the provisions of any law applicable to such public servant at the relevant time. It was underscored that a public servant cannot escape from the tentacles of Section 13(1)(e) of the 1988 Act, by showing other legally forbidden sources.

219. A Constitution Bench of this Court in K.Veeraswami Vs. Union of India & Ors., (1991) 3 SCC 655, again elaborating on an offence under Section 5 (1)(e) read with Section 5(2) of the Act 1947 reaffirmed the view that clause (e) of Section 5(1) created a statutory offence which must be proved by the prosecution and when the onus is discharged by it, the accused has to account satisfactorily for the dis-proportionality of the properties possessed by him. It was noted that the Section did make available a statutory defence to the accused which he/she was to prove and that the public servant was required to account for the disparity of the assets qua the income. Though it was observed that the legal burden of proof placed on the accused was not so onerous as that of the prosecution, it was enunciated that it would not be enough to just throw some doubt on the prosecution version. Referring to the expression "satisfactorily account", it was ruled that due emphasis must be accorded to the word "satisfactorily" which signified that the accused has to satisfy the Court that his explanation was worthy of acceptance. Though it was marked that the procedure was contrary to the well known principle of criminal jurisprudence that the burden of proof lay always on the prosecution and did never shift to the accused, the competence of the Parliament to shift such burden on certain aspects and particular in matters especially in the knowledge of the accused, was acknowledged. The plea of the appellant therein that the possession of assets disproportionate to one's source of income is no offence, till the public servant was able to account for the excess thereof was not accepted. It was held that if one possesses assets beyond his legitimate means, it goes without saying that the excess is out of ill-gotten gain observing that assets are not drawn like Nitrogen from the air and that have to be essentially acquired, for which means are necessary. It was stressed upon that the public servant concerned was required to prove the source of income or the means by which he had acquired the assets. It was propounded that once the prosecution proved that the public servant possessed assets dis-proportionate to his known sources of income, the offence of criminal conduct was attributed to him but it would be open to him to satisfactorily account for such dis-proportionality.

220. In V. D. Jhingan Vs. State of Uttar Pradesh (supra), it was expounded that when a statute places burden of proof on an accused person, it is not that he is not required to establish his

plea, but a decree and character of proof which the accused was expected to furnish could not be equated with those expected from the prosecution.

221. In N.Ramakrishnaiah (dead) through LRs. Vs. State of Andhra Pradesh, (2008) 17 SCC 83, charge-sheet was submitted against the petitioner (since dead) under Section 5(1)(e) and 5(2) of the Act 1947 on the allegation of acquiring disproportionate assets compared to his known sources of income and he was convicted by the Trial Court. In the appeal before the High Court, the dispute was restricted only to Item 26 of the assets (moveables) and agricultural income. It was pleaded that the former was over estimated and deserved to be reduced and the latter was under estimated and was to be enhanced. The High Court rejected the plea. This Court noted that whereas the prosecution in support of the agricultural income amongst others relied on the evidence of the Mandal Revenue Officer and the details furnished by the witness in the documents proved by him, the accused placed reliance on a document without disclosing as to who was the author thereof and on what basis the entries mentioned therein had been made. Placing reliance on the decision in State of M.P. Vs. Awadh Kishore Gupta and others (supra), dealing with "income" of a public servant " known sources" of income" and "satisfactorily account", this Court affirmed the conviction. It reiterated that by using the word "satisfactorily", the legislature had 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.

64. As discussed above in this case also, as narrated earlier the appellant being a public servant has not given any satisfactorily explanation along with valid documents to the satisfaction of the prosecution, in the manner known to law.

65. Therefore, in the light of the above discussions and in the light of the decision of the Hon'ble Supreme Court reported in JT 2017 (4) SC 14 (cited supra), this Court comes to a conclusion that prima facie case is made out against the appellant for the offences under Sections 13(2) r/w.13(1)(e) of Prevention of Corruption Act, 1988 and the prosecution proved its case beyond reasonable doubt. The trial Court has correctly come to the conclusion that the appellant has found guilty of the offence under Sections 13(2) r/w.13(1)(e) of Prevention of Corruption Act, 1988 and viewing from any angle, this Court finds there is no reason to interfere with the judgment of conviction and sentence passed by the Trial Court.

66. In the upshot, the criminal appeal stands dismissed by confirming the judgment of conviction and sentence passed by the trial Court in CC.No.23 of 2001 dated 16.07.2017 on the file of the Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai. Consequently, connected miscellaneous petition is closed.

67. The trial Court is directed to secure the accused to undergo the period of sentence awarded to him. The competent authority is directed to take appropriate steps against the disproportionate assets in accordance with law.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Special Judge for CBI Cases,
   VIII Additional City Civil Court, Chennai.
2. The Special Public Prosecutor, CBI Cases, High Court, Madras.
3. The Inspector of Police, SPE., CBI, ACB, Chennai.
4. The Section Officer, Criminal Section, High Court, Madras.

Crl.A.No.381 of 2017

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