IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.09.2017

PRONOUNCED ON : 11.10.2017

CORAM:

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Criminal Appeal No.179 of 2009

1.Mr.S.Govindarajan (died)
2.G.Srinivasan
3.Mrs.G.Sathyabama
4.Shantha Sridharan
(fourth appellant impleaded as
per order dated 23.03.2004
in M.P.No.1 of 2004)

.. Appellants

Vs

State
Rep. By : The Inspector of Police,
SPE/CBI/ACB,
Shastri Bhavan,
Chennai – 600 034.

.. Respondent

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Prayer:- Criminal Appeal filed under Section 374 Cr.P.C., against the conviction and sentence passed by the learned Principal Special Judge for CBI cases, Chennai by judgment dated 18.03.2009 in C.C.No.135 of 1997.

For Appellant : Mr.S.Shanmugavelayutham,
Senior Counsel,
for Mr.P.K.Rajagopal

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For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor (CBI)

JUDGEMENT

The appellants herein are aggrieved by the judgment of the learned Principal Special Judge for CBI cases at Chennai, passed in C.C.No.135/1997 on 18.03.2009, convicting and sentencing the first appellant/first accused to undergo rigorous imprisonment for three years and to pay a fine of Rs.10 lakhs for offence under Section 120B r/w Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act; the second appellant/second accused to undergo rigorous imprisonment for three years and to pay a fine of Rs.10 lakhs for offence under Section 120B r/w Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act and the third appellant Mrs.Sathya Bama w/o Mr.Govindarajan/fourth accused to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.5 lakhs for offence under Section 120B r/w Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act. Since, Mr.Seshadri/third accused died pending trial, the charges were abated as against him by the trial Court. Further, since the appellants 1 to 3/accused 1, 2 & 4 were sentenced for offence under Section 120B r/w Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, no separate sentence was awarded by the trial Court in respect of other offence under Section 13(2) r/w

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Section 13(1)(e) of the Prevention of Corruption Act as against A.1 and A.2 and and in respect of offence under Section 109 r/w Section 13(2) r/w Section 13(1)(e) of Prevention of Corruption Act, 1988 as against A.4.

2.Pending appeal, the first appellant died. Hence, his daughter Mrs.Shantha Sridharan has been brought as fourth appellant in this Criminal appeal, as his legal representative. The other two legal representatives viz., son and wife of Mr.Govindarajan were arrayed as accused and being appellants in this appeal, the same has been recorded by this Court vide its order in M.P.No.1 of 2011 dated 23.03.2011.

3.The background of the case is that Mr.Govindarajan – first appellant (deceased) was the Assistant Secretary, Railway Recruitment Board, Southern Railway during the relevant time. Based on source information, his residential premises was searched by the Central Bureau of Investigation on 09.04.1990. Several incriminating documents were seized including cash of Rs.1,80,230/- and gold jewels. A case under Section 120B, 420 I.P.C., and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 was registered under Crime No.16/1990.

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4.As a follow up, based on the reliable information, the Central Bureau of Investigation has registered another case under R.C.No.29A/90 on 29.05.1990 wherein, the collected information revealed that Mr.S.Govindarajan/A.1 in this case, who joined Indian Railways in the year 1954 as a Clerk/Typist at Madras was promoted as Assistant Secretary in the Railway Recruitment Board, Madras on 27.07.1984. Till July 1984, he had only a plot at Nanganallur purchased in the year 1973 for Rs.6,500/- and constructed a house at the cost of Rs.5,500/- in the year 1975. Except this immovable property, he had no property till July 1994. He had two sons by name Mr.Srinivasan and Mr.Seshadri. Both married and employed. Between July 1984 and April 1990, said Mr.Govindarajan/A.1 had acquired wealth beyond the known source of his income. Total income of Mr.Govindarajan, his two sons and daughter in law who were employed during the check period, was Rs.8,11,000/- and the family expenses during the check period was calculated as Rs.1 lakh. Though, the likelihood of saving of Mr.Govindarajan and his family would be at the most Rs.7,11,000/- but, his family were found in possession of the following assets at the end of the check period viz:-

Sl.No.	***Description***	***Value in Rs.***
1	One plot at Nanganallur – 1973	6,500/-
2	One house (ground floor) on plot at Nanganallur –	55,000/-

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Sl.No.	Description	Value in Rs.
	1975	
3	First floor of house on plot at Nanganallur constructed during 89-90	2,00,000/-
4	Two flats in the name of Srinivasan and Seshadri at No.28, Rameswaram Road, T.Nagar, Madras, each worth Rs.2,00,000/-	4,00,000/-
5	Bank balance in the names of all members of the family of the accused in various banks as on 09.04.1990	1,82,000/-
6	Investments in Shares, UTI, NSC etc.,	1,65,000/-
7	One fiat car acquired in 1986	34,000/-
8	Cash seized during search in RC 16/90 on 09.04.1990	1,79,230/-
9	House hold articles as per inventory	50,000/-
Total assets at the end of the check period		12,71,730/-

5.Based on the evidence collected through the investigation, the prosecution has filed the final report alleging that pursuant to criminal conspiracy, Mr.S.Govindarajan and his son Mr.Srinivasan abused their position, as 'public servants', had acquired pecuniary resources disproportionate to their known source of income. The third and fourth accused, Mr.Seshadri and Mrs.Sathya Bama being son and wife of A.1 - Mr.Govindarajan have abetted the first and second accused and accordingly, the trial Court has framed charges under Section

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120(B) r/w 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, against A.1 to A.4. The second charge was framed as against A.1 and A.2 for offence under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act. The third charge was framed as against A.3 and A.4 for offence under Section 109 I.P.C., r/w 13(2) r/w 13(1)(e) of Prevention of Corruption Act. Pending trial, A.3 – Mr.Seshadri died.

6.To prove the charges, the prosecution has examined 49 witnesses and had marked 204 exhibits. On behalf of the accused, 15 witnesses were examined and 126 exhibits were marked.

7.The judgment of the trial Court is faulted by the appellants on the ground that the very framing of charges against A.1 and A.2 are defective and incurable since, A.1 and A.2 are public servants under two different employers, just because they were living as joint family as father and son, they cannot be clubbed together. The accused are all adult, independent persons, having individual income of their own and living together as a joint family. While so, the income of A.2 to A.4 had not been taken into account by the Investigating Officer. The entire assets held by the individuals being shown as asset of A.1 to project as if A.1 has amass wealth in his name and in the name of his family members.

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8.According to the learned counsel for the appellants, A.2, an Operation officer in BPCL had income of his own and likewise, A.3 was employed in Philips India. A.3 though house wife had rental income. None of the earnings of these accused arrayed as A.2 to A.4 were properly given credit while assessing the value of the family asset. The evidence let in on behalf of the defence, have narrated about the rental income of the accused. The evidence of the erstwhile tenants were not at all considered by the trial Court. Likewise, the gifts given by the relatives during family functions as deposed by the witnesses were not considered. A.1 who was serving as Assistant Secretary in Railway Recruitment Board used to travel vastly and was entitled for Traveling Allowance and Dearness Allowance for the tour. This, infact, was not taken note of while assessing the known source of income. Further, the loan availed by the accused through financial institutions and private money lenders has been spoken by the defence witnesses and supported by documents exhibited on behalf of the accused. None of these evidences and documents were taken note by the trial Court to arrive at proper decision. The trial Court, superficially, has gone into the evidence and has miserably failed to render justice.

9.The legal infirmity in clubbing two public servants together for a charge under Section 13(1)(e) of the Prevention of Corruption Act, clearly indicates the non application of mind by the trial Court leading

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to miscarriage of justice. The alleged recovery of Rs.1,89,230/- were not produced before the Court. While so, the trial Court ought not to have taken that money into account while arriving at the value of asset. Likewise, the error pointed out by the defence in arriving the value of asset at the beginning of check period vis., Rs.82,824.85/- was deliberately shown less so as to inflate the disproportionate asset. The earning of two sons and the daughter till her marriage and the daughter-in-law, was not in dispute and the first accused was living with his two sons as joint family, is admitted by the prosecution, while so, the entire income of the other family members ought to have been properly assessed before concluding A.1 factually had wealth disproportionate to the income. Both the prosecution as well as the trial Court has not considered this fact properly. Hence, the conviction and sentence passed against the appellants have to be set aside.

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10.Heard the submissions made by the learned counsel for the appellants and the learned Special Public Prosecutor (CBI cases) appearing for the respondent.

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11.The evidence placed before the trial Court and the judgment of the trial Court perused. From the material placed before this Court, the undisputed facts are A.1 – Mr.Govindaraj entered Government

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service in the year 1954 as a Typist in the Southern Railways. At the time of registering F.I.R., he was Assistant Secretary, Railway Recruitment Board, in-charge of recruiting staff to railways. He was married to A.4 – Ms.Sathya Bama in the year 1958 and had three children (two sons and one daughter). His daughter – Ms.Shantha Sridharan who is now got herself impleaded as fourth appellant in this criminal appeal, was married to one Mr.Sridharan, employed in Air India Mumbai in the year 1982. His sons, Mr.G.Srinivasan and Mr.Seshadri were employed since 1983. Mr.G.Srinivasan-A.2 was Senior Operation Officer in BPCL. Mr.Seshadri – A.3 (deceased) was employed as Sales Officer Grade – II in a private company known as TICD Electrical and Electronics. Both his sons were married during the year 1988. Wife of A.3 – Mr.Seshadri was employed in Central Bank of India, as a Clerk cum Typist. Both his sons were living with him as joint family, except for a brief period while they were employed outside Chennai. On 09.04.1990, the residential premises of A.1 was searched pursuant to case registered by CBI in RC.16A/90 and during the said search, incriminating materials, cash and jewels were seized, which forms basis for the present case of disproportionate asset case.

12.**Sanction and Charges:-**

P.W.2 – Mr.Hamed Syed Khan, the Director, Vigilance Railway

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Board, Ministry of Railway, has accorded sanction to prosecute A.1 and P.W.1 – Mr.Rajkumar Verma, Director Marketing in BPCL has accorded sanction to prosecute A.2 – Mr.Srinivasan.

13.The learned counsel for the appellants questions the very validity of prosecuting two public servants in one case under one charge alleging possession of disproportionate asset abusing their official position for their pecuniary advantage.

14.Three charges were framed against A.1 to A.4 by the trial Court. The first charge is for offence under Section 120(B) r/w 13(2) r/w 13(1)(e) of Prevention of Corruption Act against all the four accused. The second charge against is against A.1 and A.2 for substantial offence under Section 13(2) r/w 13(1) (e) of the Prevention of Corruption Act. The third charge is against A.3 and A.4 for offence under Section 109 I.P.C., r/w 13(2) r/w 13(1)(e) of the Prevention of Corruption Act for abetting the public servant to possess disproportionate asset to the known source of income.

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15.It is an admitted fact that A.1 and A.2 are public servants. Under Section 19 of the Prevention of Corruption Act, sanction is mandatory for any Court to take cognizance of an offence punishable under Sections 7, 10, 11, 13 & 15 of the Prevention of Corruption Act

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alleged to have been committed by the public servant. P.W.1 has accorded sanction to A.2. He has deposed that A.2 – Mr.G.Srinivasan was working as Senior Operation Officer, BPCL. He being the competent authority, to remove the Senior Operation Officer from the post had accorded sanction to prosecute A.2 since, he was satisfied that *prima facie* case made out against A.2. Perusal of the report received from the Superintendent of Police, CBI, copy of F.I.R., copies of statements of witnesses copies of other documents, *prima facie* case is made out to prosecute the case as against A.2.

16.Whenever a public servant is alleged to have been committed offence punishable under Sections 7, 10, 11, 13 & 15 of the Prevention of Corruption Act, statue mandates sanction of prosecution by the competent authority. In this case, final report has been laid down by CBI alleging A.2 along with A.1 and others have conspired to commit offence punishable under Sections 120(B) r/w 13(2) r/w 13(1)(e) of Prevention of Corruption Act. Therefore, A.2 being alleged for conspiring with A.1 and others, sanction is necessary and there is no procedural error or illegality in trying A.2 along with A.1 in this case.

17.The objection regarding sanction and charge are unsustainable, legally speaking, the sanction to prosecute A.2 is to

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comply the mandate of Section 19 of the Prevention of Corruption Act. The allegations against A.1 and others is conspiracy to acquire wealth by abusing A.1 position as public servant were A.2 had lend his name for the investments made by A.1. No allegation is made against A.2 regarding abuse of his official position to commit any misconduct. Therefore, being a public servant, to prosecute him, as conspirator to commit offence under Section 13 of the Prevention of Corruption Act, sanction is required. As a precaution, the prosecution agency has obtained sanction.

18.However, the second charge framed against A.2 is for the substantial offence under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, which is not sustainable. A perusal of the judgment of the trial Court, this Court finds that, the second accused/Appellant is convicted for offence under Section 120(B) r/w 13(2) r/w 13(1)(e) of the Prevention of Corruption Act and no separate sentence was imposed for second charge. Therefore, the error of framing wrong charge has not caused any prejudice to the second accused/second appellant since, he is not sentenced for the said erroneous charge under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act.

19.The point to be considered is, 'Whether there was pre-meeting of mind between the accused to commit the said crime ?'

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and 'Whether the prosecution has proved the conspiracy as well as the alleged crime ?'

20.A.1 to A.4 are father, two sons and mother. The evidence collected during the course of investigation and as spoken by the prosecution witnesses, assets have been acquired by the accused 1 in his name and in the name of A.2 to A.4. worth more than Rs.14 lakhs during the check period, 01.07.1984 to April 1990. The income of the family of A.1 during check period has been assessed as Rs.9,17,028.30/-. After deducting expenditure during the check period and the assets held before the check period based on the evidence placed before the Court, the trial Court has arrived Rs.6,12,492/- as disproportionate asset which is around 67% over and above the known source of income.

21.The case of the appellants is that the salary of A.2 for the period covering 14.03.1983 to 13.04.1984 has not been taken into account by P.W.49. Through Exs.D.9 to D.19, the defence has proved A.2 has earned Rs.26,884/- as salary for the period of 14 months from 14.03.1983 to 13.04.1984 and the same has to be added to the family asset before check period. Likewise, the salary of A.3 for the period 12.07.1982 to 30.06.1984, along with emolument is about Rs.30,000/- which is established from Exs.D.7 & D.8 this amount has

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not been given credit under appropriate head. Likewise, the salary particulars of Mrs.Jayasri w/o Seshadri (A.3) for the period December 1987 to June 1988 was not given credit inspite of evidence of D.W.5.

22.This Court find that the above said statement is incorrect and unsustainable for the reason that the bank balance of A.1 family as on 01.07.1984 had been arrived at Rs.28,292.79/- as per Exs.P.74 to P.80. The salary of A.2 and his wife A.3 between 14.03.1983 and 13.04.1984 ought to have been in his/her bank accounts or even if they had not deposited in bank, that would have been expended or got merged with any one of the asset mentioned in the charge sheet.

23.Yet another defence pleaded by the appellants is that interest income accrued from the deposits, not been properly counted for. The allegation against A.1 is that during the check period, he constructed first floor of his house at the cost of Rs.2,05,000/- and he purchased two flats at T.Nagar at the cost of Rs.2,19,560/- each and invested in fixed deposits at Sakthi Finance, Mylapore; Coramandal Finance; Canara Bank; Ashok Leyland Finance; Mercantile Credit Corporation; SPIC; First Leasing Company; Enfield Business Finance Leasing Company; Sriram Finance Limited; Krish Development and Leasing Limited and the Canbank Mutual Fund. Exs.P.30 to 58; P.62 to 66, P.81, P.82, P.189 to 192 exposes the fact that during the check

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period, the first accused had invested Rs.1,66,000/- in the business investments, mentioned above, in his name and his family members.

24.Apart from that, the following investments in mutual fund and shares are proved through (i) Ex.P.68 - Rs.5,000/- in Canbank mutual fund in the name of A.1 and A.4. (ii) Ex.P.67 - Rs.5,000/- in SBI Capital Market in the name of A.1 and A.4. (iii) Ex.P.69 - Rs.6,000/- in the ITC Cumulative bond in the name of A.1 and A.4. (iv) Ex.P.13 - Rs.20,000/- 100 shares in TICO Electronics and Electrical. (v) A sum of Rs.63,000/- had been deposited in NSS bond proved through Exs.P.70 to 73. (vi) Master shares of Rs.1,500/- and unit certificates (1000 units) of UTI had been purchased by A.1 and A.4. These facts are proved through Exs.P.85, P.86, P.90 to 106.

25.Apart from that, a cash of Rs.1,89,230/- seized during the search of the residence of A.1 on 09.04.1990 and more than Rs.2 lakhs were found in the Savings Bank accounts maintained by A.1 family members in the following Banks:-

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(i)State Bank of India, Nanganallur Branch;

(ii)Indian Overseas Bank, Stella Maris Extension Counter;

(iii)Canara Bank, Nanganallur Branch;

(iv)Central Bank of India, Mount Road Branch;

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(v)Indian Bank, Nanganallur;

(vi)UCO Bank, IFC Colony;

(vii)Indian Overseas Bank, Meenambakkam;

(viii)Standard Chartered Bank, Mylapore and

(ix)Honkon & Shangai Bank.

26.Therefore, while there is no source disclosed by the appellants for their investments, giving credit to the interest accrued through those investments, is not going to be any support to the explanation of the accused. In any event, the prosecution while arriving at the income during the check period, has taken note of the interest received under these investments and are duly been credited along with pay and allowance of A.1, A.2, A.3 and Mrs.Jayasri w/o A.3.

27.Hence, this Court finds no error in arriving at the asset before check period, the income during check period, expenditure during check period, asset at the end of check period as arrived by the trial Court.

28.Minor discrepancies regarding omissions and additions, even if leniently taken into account, the disproportionate asset as found does not get reduced to extend the benefit of doubt in favour of the

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appellants. Particularly, it is contended by the appellants that the value of the building has been inflated and enough deduction has to be given for personal supervision. This contention is not sustainable since, two of the flats purchased from building promoter and constructed under the supervision of the appellants.

29.From the evidence, it is clear that the investigating agency has stumbled upon incriminating materials to prosecute A.2 to A.4 along with A.1 while they conducted such and seizure at A.1 premises on 09.04.1990. From Ex.P.156 - search list, prepared during the search of A.1 premises pursuant to registration of case under Section 120(B) r/w 420 I.P.C., and 13(2) r/w 13(1)(d) of Prevention of Corruption Act in Crime No.16/2009, this Court finds that on the day of search, A.1 was not available in the house. A.2 -Mr.G.Srinivasan and his wife were present. Two steel almirah one full and another half size could not be opened as the keys were not available and reportedly with Mr.S.Govindarajan. Therefore, a lock smith by name Mr.Rajagopal of Alandur had been summoned and he had opened the almirahs in the premises and inventory had been prepared. The description of the currency seized found in the steel almirah which was broke open in the presence of witnesses is marked as Ex.P.187.

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30.So far as Mr.G.Srinivasan - A.2 is concerned, he had purchased a flat at No.86, Kala flats, 28, Rane Road, T.Nagar during the year 1987-88 for Rs.2,19,560/-. Fixed deposit for Rs.5,000/- dated 11.02.1989 with M/s.Krish development and Leasing Limited, stands in the name of A.2 and his sister Ms.Shantha Sridharan. In PPF account with SBI Nanganallur, a deposit of Rs.5,000/- stands in the name of A.2. He had in possession of 1978 model premier padmini car worth about Rs.34,000/-. To purchase this Car, he had availed loan from his employer BPCL. That is evident through Ex.P.8. During the check period, A.2 has earned a sum of Rs.1,72,193.64/- towards pay and allowance and Rs.25,000/- as adhoc payment in anticipation of pay revision, Rs.6,625/- towards allowance and Rs.32,200/- towards rental income including advance.

31.With the said earning, he has investments more and above it as indicated above. This clearly prove that A.2 has aided and assisted his father A.1 to acquire wealth beyond his known source and had lent his name for the said investments.

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32.A.4, is wife of A.1. She had no income on her own, except some gifts given to her by her husband A.1 and her children. Except Fixed deposit receipts, for Rs.10,000/-, with Coramandal Finance Company Limited and a gold necklace worth Rs.12,900/- no other

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asset is alleged to be exclusively in the name of Mrs.Sathya Bama – A.4. All other Fixed Deposit Receipts and investments are jointly in her name and her husband/A.1 name. Obviously, she being an house wife, her name has been included by A.1 in his investments and those investments are made by A.1 from the unknown source.

33.On cumulative assessment of the evidence let in by the prosecution, undoubtedly, A.1 had accumulated wealth disproportionate to his known source of income and he had invested in properties both movable and immovable either in his name or jointly in his name and sons name or his wife name. They all are living together as a joint family under one roof. The fact, they were knowingly aided and assisted A.1 to do the illegal act, could be easily inferred through record and the conduct. Therefore, this Court confirm the finding of the trial Court that there is enough evidence to show that A.1 had acquired property disproportionate to his known source of income and not satisfactory accounted for and the other accused namely his sons and wife have actually aiding A.1 in investing the money. Therefore, the conviction imposed upon the accused by the trial Court requires no interference and the same is legally and factually impeachable. Since, A.1 died pending appeal, question of remanding him to prison to undergo sentence does not arise.

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34.In so far as A.2 and A.4 are concerned, the judgment of conviction passed against them for offence under Section 120B I.P.C., r/w 13(1)(e) of the Prevention of Corruption Act is confirmed.

35.Considering the fact that A.1, the public servant the main perpetrator of the crime has died, whereas, the appellants 2 and 3 who have aided and assisted A.1 in the crime, were passively enjoying the fruits of the crime, and taking note of the age of the third appellant/fourth accused and the long pendency of the case, it is appropriate to modify the period of sentence from 3 years rigorous imprisonment to one year simple imprisonment. The fine imposed by the trial Court on the appellants is confirmed.

36.In the result, the Criminal Appeal is dismissed with modified sentence as stated above. The trial Court is directed to secure the presence of appellants 2 and 3 herein to undergo the remaining period of sentence, if not already undergone.

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Speaking Order/non speaking order

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To

1.The Inspector of Police,
SPE/CBI/ACB,
Shastri Bhavan,
Chennai – 600 034.

2.The Special Public Prosecutor (CBI cases),
High Court, Madras.

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G.JAYACHANDRAN.J.,

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Pre Delivery Judgment made in
Crl.A.No.179 of 2009

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