

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2017

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THE HON'BLE DR. JUSTICE T. MATHIVANAN

Crl.R.C.Nos.734 & 735 of 2015

in

Crl.M.P.Nos.235 and 251 of 2014

in

Spl. Case No.4 of 2013

(On the file of the Special Judge (Chief Judicial Magistrate),
Thiruvannamalai)

State represented by
The Public Prosecutor,
High Court, Madras
(V & AC, Thiruvannamalai)

... Petitioner/Complainant
(in both the Crl.RCs)

Vs

Tmt. Jeeva Velu,
W/o. E.V.Velu,
No.19, New No.3, Srilabdi Colony,
Alwarpet,
Chennai-600 018

... Respondent/Accused 2
(in Crl.R.C.734/2015)

Thiru. E.V.Velu,
No.19, New No.3, Srilabdi Colony,
Alwarpet,
Chennai-600 018

... Respondent/Accused 1
(in Crl.R.C.735/2015)

Prayer:- Invoking the provisions of Sections 397 and 401 of the Code of Criminal Procedure the above criminal revision petitions have been preferred against the common order, dated 05.06.2015 and made in the petitions in Crl.M.P.Nos.235 and 251 of 2014 in Spl. Case No.4 of 2013, on the file of the learned Special Judge (Chief Judicial Magistrate), Thiruvannamalai.

For Petitioner/
Complainant

: Mr.Rajarathinam,
State Public Prosecutor
(in both the Crl.RCs)

For Respondent/
Accused

: Mr.N.R.Elango,
Senior Counsel assisted by
Mr.R.Vivekananthan
(in both the Crl.RCs)

ORDER

The common order, dated 05.06.2015 and made in the Criminal Miscellaneous Petitions in Crl.M.P.Nos.235 and 251 of 2014 in the Special Case No.4 of 2013, on the file of the learned Special Judge (Chief Judicial Magistrate), Thiruvannamalai is under challenge in these memorandum of criminal revisions.

2. Heard Mr.Rajarithnam learned State Public Prosecutor appearing for petitioner/complainant and Mr. N.R.Elango, learned senior counsel assisted by Mr.R.Vivekananthan learned counsel who is on record for the respondents/accused.

2A. With the crucial issue in both the criminal revision cases is one and the same and the parties to the criminal revisions are also one and the same, both the criminal revisions have been consolidated together, heard jointly and disposed of in this common order.

3. For easy reference and for the sake of convenience the revision petitioner in both the criminal revision petitions may hereinafter be referred to as the complainant and the respondents in both the Criminal Revision Petitions viz., Crl.R.C.Nos.734 and 735 of 2015 may be referred to as the accused 2 and 1 respectively, wherever the context so requires.

4. The accused 2 and 1 in the Special Case No.4 of 2013, on the file of the learned Special Judge (Chief Judicial Magistrate), Thiruvannamalai had filed two Criminal Miscellaneous Petitions in Crl.M.P.Nos.235 and 251 of 2014 respectively under Sections 239 of the Code of Criminal Procedure to discharge them from the clutches of the charges levelled against them under Sections 109 IPC r/w. Sections 13 (2) and 13(1)(e) and under Section 13(2) r/w Section 13(1)(e) of the Prevention of Corruption Act, 1988.

5. The accused Tmt.Jeeva Velu has been ranked as A2, whereas the accused Mr.E.V.Velu has been shown as A1 in the above said case. Both of them are husband and wife. Mr. E.V.Velu (A1) has been charge sheeted under Sections 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988, while Tmt. Jeeva Velu (A2) is charged under Sections 109 IPC r/w Section 13(2) r/w Section 13(1)(e) of the Prevention of Corruption Act, 1988.

6. It is manifested from the final report dated 17.07.2013 that A1 Mr. E.V.Velu was elected as Member of Tamil Nadu Legislative Assembly during the General Election held in May 2001-2006 from Thandarambattu Assembly Constituency. He was the then Minister for Food and Consumer Protection during the period between 13.05.2006 and 14.05.2011 and as such he was the public servant as on 01.04.2006 and upto 14.05.2011

within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988. A2 Tmt. Geeva Velu being the wife of Mr. E.V.Velu is a private individual and the dependent of her husband.

7. It is alleged that at the beginning of the check period i.e. as on 01.04.2006 the first accused Mr. E.V.Velu was found to be in possession of pecuniary resources and properties worth about Rs. 2,88,69,997 in his name as well as in the name of his wife Tmt. Jeeva Velu (as per Statement No. I) appended to the final report) and at the end of the check period i.e. as on 31.03.2008, he was found to have acquired properties in his name and in the name of his wife Tmt Jeeva Velu and was in possession of pecuniary resources and properties worth about Rs.3,08,46,101/- (as per Statement No.II) appended to the final report). Thus as on 31.03.2008, Mr. E.V.Velu was found to have acquired and in possession of pecuniary resources and properties in his name and in the name of his wife, Tmt. Jeeva Velu, which were disproportionate to his known sources of income to the extent of Rs.21,31,820/- (as shown in the Annexure -VII appended to the final report). Hence, as per the case of the prosecution, this acts of Mr. E.V.Velu, (A1) and his wife Tmt Geeva Velu (A2) constitute the offence punishable under Sections Section 13(2) r/w Section 13(1)(e) of the Prevention of Corruption Act, 1988 and Section 109 of IPC r/w. Sections 13(2) r/w 13(1) (c) of the Prevention of Corruption Act, 1988 (Central Act 49 of 1988).

8. As afore stated the petitions in CrI.M.P.Nos.251 and 235 of 2014 were contested by the complainant by filing their counter statements.

9. After hearing both sides the learned Special Judge (Chief Judicial Magistrate), Thiruvannamalai had proceeded to allow both the petitions and thereby discharged both the accused from the Special Case No.4 of 2013 on the following grounds:

a) No prima facie case is made out against the accused 1 and 2 to frame charges against them;

b) The agricultural income of the accused to the extent of Rs.69,09,300/- which has been shown in document No.65 is accepted ;

c) The alleged disproportionate pecuniary resources to the extent of Rs.21,31,820/- is well accommodated within the scope of agricultural income and consequently the charge of disproportionate assets against the accused persons rendered groundless.

d) In so far as this case is concerned, the prosecution has placed reliance upon the statement of the agricultural department officials for undervaluing the agricultural income;

e) No adequate grounds are available to reject the income tax returns filed by the accused 1 and 2.

10. Having been aggrieved by the impugned order, dated 05.06.2015, the complainant viz., the Superintendent of Police Vigilance and Anti Corruption has come forward with these two criminal revision petitions.

11. This Court has perused the grounds of memorandum of criminal revision, relevant materials tagged with the Revision Petitions along with the impugned order, dated 05.06.2015.

12. It is the common judicial parlance that it is for the prosecution to substantiate its case beyond all reasonable doubts, because it is very easy to make such allegations against any persons, but it is very difficult to prove those allegations leveled against such person. Similarly, in the present case on hand also the prosecuting agency is able to say that the accused persons had acquired pecuniary resources to the extent of Rs.21,31,820/- which is disproportionate to their known sources of income. Whatever may be the allegations, all of them are to be proved by the person who is making them, as the burden of proof solely rests on him to bring home the guilt of the accused persons.

13. In this connection this court would like to refer to the provisions of Sections 101, 102 and 103 of the Indian Evidence Act. Section 101 of the Indian Evidence Act enacts that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

14. Per Lord MAUGHAM in *Constantine Line Vs. I.S.Corp.* (1941) 2 ALL ER 165, 179, the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it; for a negative is usually incapable of proof. It is an ancient rule founded on consideration of good sense and should not be departed from without strong reasons. It is also to be noted here that a person who desires to assert a particular fact, it is for him to prove its existence. In view of the provisions of Sections 101 and 102 of the Indian Evidence Act the burden of proving a fact always lies upon a person who asserts. Until such burden is discharged the other party is not required to be called upon to prove his case.

15. The court has to examine as to whether the person upon whom the burden lies has been able to discharge his burden. Until he arrives at such a conclusion, he cannot proceed on the basis of weakness of the other party. This ratio has been laid down in *Bibhuti Vs Bhusan Datta Vs Samarendra Nath Misra*, (2002 (3) CHN 482 (Cal)

16. The strict meaning of the term 'Onus probandi' is this that if no evidence is given by the party on whom the

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burden is cast, the issue must be found against him. (Per PARKE B, in Barry Vs Butlin, 2 Moo PCC 430) That is the reason why in criminal cases, the Courts used to say that the prosecution must prove its case beyond all reasonable doubts.

17. Clause (e) of sub-section (1) to Section 13 of the Act enjoins a person or any person on his behalf, who is in possession or has, at any time during the period of his office, been in possession of pecuniary resources or property which is said to be disproportionate to his known sources of income to satisfactorily account of his pecuniary resources. Once the person who is accused of is able to account for such resources of property the burden then shifts to the prosecution to prove their case. This nature and extent of the burden cast on the accused is well settled. As observed by the Apex Court in State of Maharashtra Vs Vasudeo (AIR 1981 SC 1186: 1981(3) SCC 199). The accused was not found to prove his innocence beyond all reasonable doubt. All that he has to do is to bring out a preponderance of probability.

18. What Section 227 of the Criminal Procedure Code says is, that If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

19. This Section empowers the Sessions Judge to discharge the petitioner/accused at an initial stage. Obviously, the Sessions Judge has to

- (a) examine the record of the case and the documents received;
- (b) hear the submissions on behalf of the accused and the prosecution on the question "whether there is sufficient ground for proceeding against the accused";
- (c) If it is in the affirmative, he shall proceed to frame charge under Section 228.

20. On coming to the provisions of Section 239 of the Criminal Procedure Code it enacts that:

" If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

21. Section 239 of the Criminal Procedure Code shall have to be read with the provisions of Section 240(1) which follows, being complementary to each other. Reading the two

together, the meaning is that if there is no ground for presuming the accused to have committed an offence, there is no ground for framing a charge under section 240(1) and the accusation brought against the accused must in such a case, be held to be groundless, for the purpose of Section 239.

22. The term "Groundless" in other words, means that there is no prima facie case regarding the commission of an offence. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence (if any), cannot show that the accused committed the offence, then there is no ground for framing a charge.

23. With reference to Section 397 (1) of Criminal Procedure Code it enacts that the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

24. The object of revisional jurisdiction conferred under Section 397 (1) of Criminal Procedure Code is to confer a sort of supervisory power. The purpose is to rectify miscarriage of justice. The main consideration is whether substantial justice is done. When there is a clear illegality in the order of discharge passed by the Magistrate, revision petition should be entertained and not dismissed summarily on the mere technical ground of limitation. When the Lower Court's order having glaring defects of a serious nature has resulted in grave failure of justice or when there is glaring defect in procedure or manifest error on a point of law which resulted in miscarriage of justice, revisional jurisdiction should be invoked.

25. Section 401(1) of Criminal Procedure Code deals with the High Court's power of revision. The extraordinary constitutional power of the High Court under Article 227 cannot be taken away by anything in Sections 397, 401 of Criminal Procedure Code. Of course, the High Court can interfere under Article 227 only if the conditions necessary for application of that provision exist, e.g., where the order in question is without jurisdiction or founded on no evidence.

26. On coming to the present case on hand, the prime question which arises for the consideration of this Court is "Whether the learned Special Judge's finding which resulted in discharge of the accused persons is correct or not?"

27. As per the case of the prosecution, the check period is between 01.04.2006 and 31.03.2008. As it is seen from paragraph (iv) of the First Information Report, the check period is fixed between 01.04.2006 and 31.03.2010. However, as per the final report, dated 17.07.2013 the check period is fixed between 01.04.2006 and 31.03.2008. As it is revealed from paragraph (xii) of the First Information Report, Mr.E.V.Velu (A1) and his wife Tmt.Jeeva Velu (A2) being the dependent of the Mr.E.V.Velu on his behalf were in possession during the period of his office as Member of Legislative Assembly and as Minister for Food, Tamil Nadu Government from 01.04.2006 to 31.03.2010 of pecuniary resources and properties to the tune of Rs.26,30,787/- which is disproportionate to their own sources of income. But in the final report it is stated that the accused Mr.E.V.Velu is thus found to have acquired and in possession of pecuniary resources and properties in his name and in the name of his wife Tmt. Jeeva Velu which were disproportionate to their own source of income as on 31.03.2008 to the extent of Rs.21,31,820/- (as appended in Annexure VIII to the final report).

28. At the first instance we can easily visualize the inconsistency between the First Information Report and the final report with reference to the figure which is stated to have been disproportionate to the known source of income of Mr. E.V.Velu.

29. A careful perusal of the impugned order this Court finds that paragraph nos.24 to 29 therein assume importance.

In paragraph(24) the learned Special Judge (Chief Judicial Magistrate),

Thiruvannamalai has observed that the agricultural income for the financial year 2007-2008 was assessed at Rs.40,63,500/-. He had also filed his income tax returns in respect of his agricultural income prior to the registration of this case and the same was accepted by the income tax authorities . The Investigating Officer himself had collected the income tax returns and filed them before this Court as document No.65. The Investigating Officer had independently assessed the agricultural Income during the check period at Rs.9,79,510/- as per document No.66. This independent assessment is not supported with any other material records. The assessment of the Investigating Officer with the assistance of the department officials is not with the support of any documents. Therefore the assessment of the Investigating Officer with regard to the agricultural income of Rs.9,79,510/- is not sustainable and against the principles

of natural justice. Therefore the agricultural income of Rs.9,79,510/- arrived by the Investigating Officer can never be substituted in the place of original income of Rs.69,09,300/- as per document No. 65. The agricultural income of Rs.69,09,300/- if, as per document No.65 is taken into consideration there is no scope for the prosecution to frame the charges. So far as the petitioner in CrI.M.P.No.235 of 2014 is concerned Tmt. Jeeva Velu (A2) is not a dependent of her husband A1. She owned 4.57 acres of agricultural land out of which she got income. Further, she is one of the Chair persons of Saraswathiammal Educational Trust. She has filed her income tax returns for the financial year 2004-05 & 2005-06 (document No.17)

In paragraph 25, the learned Special Judge has observed that On perusal of statement Nos.I to VII filed by the prosecution It is found that the petitioners have not purchased any properties during the check period. Admittedly, the petitioner in CrI.M.P.No.251 of 2014 (A1) Mr. E.V.Velu had constructed an additional office building during the check period. Accordingly, the petitioner had spent Rs.9,00,000/-. But the Income tax Officer estimated the amount at Rs.20 lakhs as per document No.17. The estimation of the Income tax Officer is not accurate.

In paragraph 26, he has observed that when the agricultural income of Rs.69,09,300/- as per document No.65 is taken into account, a sum of Rs.21,31,820/- which is said to be disproportionate to the own source of income of the petitioner is not sustainable.

In paragraph 27, he has observed that the payment of electric charges of Rs.1,74,049/- was made during the check period as per document No.57. There is no material on records to show that Mr. E.V.Velu had paid the abovesaid amount. The petitioner had stated that the said amount was paid by the Government as it was his official residence.

In paragraph 28 he has observed that there is no material on record to support that A1 had transferred fund to A2 either directly or through some one. The petitioner Tmt. Jeeva Velu (A2) had not acquired any property either in her or in the joint name of herself and husband (A1) during the check period. Therefore, there is no material on records to link A2 with A1 to constitute the offence under Section 109 IPC. The contention of the prosecution is not supported by any records.

In paragraph 29 it was observed that as far as the instant case is concerned, the prosecution has not considered the agricultural income of Rs.69,09,300/- of Mr. E.V.Velu as per Document No.65. If it is taken into account the alleged assets disproportionate to the known source of income of Rs.21,31,820/- is well accommodated within the declared

agricultural income. Therefore, the prosecution cannot accuse A1 as well as A2 as if they were in possession of pecuniary resources and properties to the tune of Rs.21,31,820/- The accusation of prosecution is not based on record on their undervaluation of expenditure.

Ultimately in paragraph 30 the learned special Judge has observed that the agricultural income borne on document No.65 is accepted as Rs.69,09,300/-. The alleged disproportionate to the mere source of income of Rs.21,31,820/- is well accommodated within the above said agricultural income ,consequently, the charge of disproportionate assets against the petitioner rendered groundless.

30. In this connection Mr. Rajarathinam, learned State Public Prosecutor has submitted that the conclusion of the trial Court was not correct and that the order itself seemed to be erroneous in nature. He has also invited the attention of this Court to the provisions of Section 13(1)(e) of the Prevention of Corruption Act,1988. Section 13 of the Prevention of Corruption Act, 1988 deals with criminal misconduct of a public servant.

Section 13(1) of the Act contemplates that a public servant is said to commit the offence of criminal misconduct,-

(a).....
(b).....

(c).....

(d).....

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate 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.

31. The learned State Public Prosecutor while advancing his arguments has adverted to that the conclusion of the learned Special Judge (Chief Judicial Magistrate), Thiruvannamalai was erroneous and not based upon any settled legal principles. He has also invited the attention of this Court to paragraph nos.24 to 28 of the impugned order.

32. The explanation to clause (e) of Section 13(1) of the Act unambiguously interprets the phraseology 'known source of income'. It defines, that the term "known source of income" means the income received from lawful sources and means

income 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.

33. At the charge stage, the trial Court has to go by the material on record to see if there is ground to proceed against the accused. The accused is entitled to show his source of income and legal acquisition of his assets. In the absence of any material to show that the accused had obtained any pecuniary advantage or valuable thing for himself or for any other person, framing of the charge under Section 13(1) (d) (ii) and (iii) of the Prevention of Corruption Act, 1988 or even for Section 13(1)(d) of the said Act as now projected by the prosecution is not valid and as such the said charges against the petitioners are groundless. Consequently, the petitioners are entitled to be discharged for the said offence under Section 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988. This principle is laid down by this Court in V.R. Nedunchezhiyan Vs State of Tamil Nadu ((2000) CrL.L.J 976 @ 986 MAD.)

34. Learned State Public Prosecutor has contended that filing of income tax return is mandatory for every citizen and therefore, it is not surprise to contend that the accused persons had filed their income tax returns before the competent authorities. He has also maintained that unless the charges leveled against the accused is groundless, the Court cannot discharge the accused under Section 239 of Criminal Procedure Code and at the stage of consideration of Application for discharge, the Court has to proceed with an assumption that the materials brought on record by the prosecution are true and valuable. The materials filed under Section 173 (5) of Criminal Procedure Code is to find out whether any prima facie case is made out or not and it is not expected to go deep into the matter and the law does not permit a mini trial at this stage.

35. In support of his contention, the learned State Public Prosecutor has placed reliance on the following two decisions.:

- i) State of Tamil Nadu Vs N.Suresh Rajan (2014(11) SCC 709 @ paragraph 29) &
- ii) Ravikumar V State of Tamil Nadu (CrL.R.C.No.64 of 2015)

In N.Suresh Rajan's case. cited first supra, the Apex Court in paragraph 29 has held that :

"We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order

of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage"

In Ravi Kumar Vs The State rep. by the Deputy Superintendent of Police, Vigilance & Anti Corruption Wing, Madurai (Crl.R.C.(MD) No.64 of 2015, decided on 03.03.2015) a learned single Judge of this Court in paragraph Nos.35,37 and 40 has observed as under:

"35. In the considered opinion of this Court, such a kind of exercise cannot be done in exercise of the revisional jurisdiction under Section 397 read with Section 401 Cr.P.C., as it is for the trial Court to adjudicate on the merits of the case based on the oral and documentary evidence, especially, with regard to the quality of the evidence tendered before it. If this Court gives any finding, it may either affect the case of the prosecution or the defence to be projected by the accused and hence, this Court is not prepared to venture into the same.

37. It is also the submission of the learned Counsel for the revision petitioner/A-2 that once the Income Tax Department accepted the Returns, the legality or otherwise of the same cannot be gone into by the investigating agency and the trial Court while dealing with the same, has referred to the decision reported in 2011 (4) RCT (Crl.) 844, wherein it has been held that merely because, the properties held by the Government servant had been disclosed in Income Tax Returns and in property statements, does not itself provide any legal inference that the same were lawfully acquired and it requires evidence.

40. The trial Court has also considered the scope of Section 239 of Criminal Procedure Code by placing reliance upon a catena of decisions rendered by the honourable Supreme Court, wherein it has been uniformly

held that 'At the stage of consideration of an application for discharge, the Court has to proceed with an assumption that material brought on record by prosecution are true and evaluate the said materials to find out whether a prima facie case is made out or not and it is not expected to go into deep into the matter and the law does not permit a mini trial at this stage.'

36. Mr. Rajarathinam learned State Public Prosecutor has further maintained that the prosecution had to establish that the pecuniary assets acquired by the public servant were disproportionate to their known sources of income and then it was for the public servant to account for such excess. He has added that the offence becomes complete on the failure of the public servant to account or explain such excess. It does not mean that the Court could not frame charge until the public servant fails to explain the excess or surplus pointed out to be the wealth or assets of the public servant concerned. This exercise could be completed only in the trial.

37. With reference to the term satisfactorily account as moduled in clause (e) of Section 13(1) of the Prevention of Corruption Act, 1988, the learned State Public Prosecutor has contended that the opportunity which was to be afforded to the delinquent officer under Section 5(1)(e) of the said Act corresponding to new Section 13(1)(e) of the said Act of satisfactorily explaining about his assets and resources was before the Court when the trial commenced and not at an earlier stage.

38. In support of his contention, he has made reference to the decision of the apex Court in State by Central Bureau of Investigation Vs S.Bangarappa (2001) 1 SCC 369, wherein the apex Court has held that

" At the stage of framing charge the court should not enter upon a process of evaluating the evidence by deciding its worth or credibility. The limited exercise during that stage is to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed further. No doubt the prosecution has to establish that the pecuniary assets acquired by the public servant are disproportionately larger than his known sources of income and then it is for the public servant to account for such excess. The offence becomes complete on the failure of the public servant to account for such excess. The offence becomes complete on the failure of the public servant to account for for or explain such excess. It does not mean that the court could not frame charge until the public servant fails to explain the excess or surplus pointed out to be the wealth or assets of the public servant concerned. This exercise can be completed only in the trial. In the present case the materials which the prosecution enumerated are sufficient to frame the charge for the

offence under Section 13(2) read with Section 13(1)(e) of the Act."

In another case in State of Maharashtra Vs Ishwar Piraji Kalpatri & others with State of Maharashtra & others Vs Ishwar Piraji Kalpatri (1996) 1 SCC 542), while speaking on behalf of a Division Bench of the Apex Court Hon'ble Mr Justice B.N. KIRPAL in paragraph nos. 15 and 16 has held that:

"15. In our opinion, there is a complete misreading of the aforesaid provision by the High Court. It is, no doubt true that a satisfactory explanation was required to be given by the delinquent Officer. But this opportunity is only to be given during the course of the trial. It is no doubt true that evidence had to be gathered and a prima facie opinion found that the provisions of Section 5(1)(e) of the Act are attracted before a first information report was lodged. During the course of gathering of the material, it does happen that the officer concerned or other person may be questioned or other queries made. For the formation of a prima facie opinion that an officer may be guilty of criminal misconduct leading to the filing of the First Information Report, there is no provision in law or otherwise which makes it obligatory of an opportunity of being heard to be given to a person against whom the report is to be lodged. That such satisfactory account had to be rendered before a court is also borne out from the judgment of this Court in Veeraswami case, where referring to Section 5(1)(e) of the Act at page 713 of the said judgment, it was observed as follows:

"Clause (e) creates a statutory offence which must be proved by the prosecution. It is for the prosecution to prove that the accused or any person on his behalf, has been in possession of pecuniary resources or property disproportionate to his known sources of income. When that onus is discharged by the prosecution, it is for the accused to account satisfactorily for the disproportionality of the properties possessed by him. The Section makes available statutory defence which must be proved by the accused. It is a restricted defence that is accorded to the accused to account for the disproportionality of the assets over the income. But the legal burden of proof placed on the accused is not so onerous as that of the prosecution. However, it is just not throwing some doubt on the prosecution version. The legislature has advisedly used the expression "satisfactorily account". The emphasis must be on the word "satisfactorily". That means the accused has to satisfy the court that his explanation is worthy of acceptance. The burden of proof placed on the accused is an evidential burden though not a persuasive burden. The accused, however, could discharge that burden of proof "on the balance of probabilities" either from the evidence of the prosecution and/or evidence from the defence."

16. The aforesaid passage leaves no manner of doubt that the opportunity which is to be afforded to the delinquent officer under Section 5(1)(e) of the Act of satisfactorily explaining about his assets and resources is before the Court when the trial commences and not at an earlier stage. The conclusion arrived at by the learned Single Judge that principles of natural justice had been violated, as no opportunity was given before the registration of the case, is clearly unwarranted and contrary to the aforesaid observations of this Court in K. Veeraswami's case (supra).

39. Learned State Public Prosecutor has further contended that the property in the name of the income tax assessee itself could not be a ground to hold that it actually belonged to such an assessee. He has further adverted to that if this contention is accepted it will lead to disastrous consequences and it would give an opportunity to the corrupt public servants to amass property in the name of known persons. , pay income tax on their behalf and than be out from the mischief of law.

40. With regard to the probative worth of income tax proceedings, Mr. Rajarathinam the learned State Public Prosecutor has indicated that,

(a) Under the Income tax Act, penalty proceedings are different from assessment proceedings. The burden of proof in penalty proceedings varied from that involved in assessment proceedings and a finding in assessment proceedings that a particular receipt was income cannot automatically be adopted as finding to that effect in the penalty proceedings. In the penalty proceedings, the taxing authority was bound to consider the matter afresh on the materials before it to ascertain that whether a particular amount is a revenue receipt. It was observed that no doubt the fact that the assessment year contains a finding that the disputed amount represents income constitutes good evidence in the penalty proceedings, but the finding in the assessment proceedings can not be regarded as conclusive for the purpose of penalty proceedings.

In support of his contention he has placed reliance upon the decision in Anandthram Vs Veerasinghaiah Vs CIT (1980 Suppl. SCC 13)

Learned State Public Prosecutor has also argued that as decided by the apex Court in Iqbal Singh Marwah Vs Meenakshi Marwah (2005 (4) SCC 370)

b) Neither any statutory provision or any legal principle that the findings recorded in one proceeding may be treated as final or binding on the other as both the cases have to be decided on the basis of the evidence adduced therein.

c) The Income tax department was concerned only with the sources of income and whether the tax was paid or not and not therefore, only an independent agency or CBI could, on Court direction determine the question of disproportionate assets. (See Viswanath Chaturvadi Vs UOI ((2007 (4) SCC 380).

41. He has therefore submitted that all the above said Judgments were rendered after full fledged trial and even in those Judgments, it was categorically held that the income tax returns/orders are not binding on criminal Court and the facts involved are to be proved on the independent evidence adduced during trial.

42. On the other hand, Mr. N.R.Elango, learned senior counsel appearing for the accused persons has invited the attention of this Court to Section 22 of the Prevention of Corruption Act. Section 22 of the Act contemplates that Code of Criminal Procedure 1973 to apply subject to modifications.

With reference to Section 22 of the Act this Court would like to place reliance upon a decision of this Court made in B.Ranganathan vs state (2003 CrL LJ 2779 @ 2785 (Mad) wherein it was held that where specific powers were given to vigilance Inspector to investigate and inspect bank account in a corruption case and he ordered freezing of bank accounts of accused and his family members, the case of disproportionate wealth can be proved by source of income and freezing of account was not justified.

Mr. N.R.Elango has also added that there was no iota of evidence to show that the accused 1 and 2 had purchased a single cent of land in their name during the check period. He has further contended that the accused 1 and 2 are independent persons and they are the income tax assesses individually.

43. While advancing his arguments, Mr. N.R.Elango, learned senior counsel has taken this Court through the Statements of Mr. C.H.Rajeshwara Reddy, Assistant Commissioner of Income Tax Department, Chennai and Mr. A.Bala , Assistant Director of Agriculture Vengikal, Thiruvannamalai. Mr. C.H.Rajeshwara Reddy, Assistant Commissioner of Income Tax Department, Chennai in his Statement under section 161(3) CrI.P.C has made reference to the letter in RC 53/2012/PUB/HQ, dated 26.03.2012 through which the Director of Vigilance and Anti Corruption had requested him to send the income tax returns of Mr. E.V.Velu former Member of Legislative Assembly of Thiruvannamalai Constituency (PAN AAFPV9207K) as well as his wife Tmt. Jeeva Velu in respect of the assessment years 2005-06 to 2010-11 and 2011-12. Accordingly, he had those particulars through his letter No.Misc /2012-13, dated 08.05.2012.

44. Similarly, the Investigating Officer through his letter in RC 53/2012/PUB/HQ, dated 26.03.2012 had requested

Mr. A.Bala, Assistant Director of Agriculture, Vengikal to send the details of the agricultural income relating to Mr. E.V.Velu and his wife Tmt. Jeeva Velu. Accordingly, he had sent those particulars as requested by the Investigating Officer, wherein he has stated that the agricultural lands comprised in Survey Nos.33/1A, 1/2B, 41/5A, 37/4B, 5A, 38/1A, 2B, 2C, 39/5, 1/1A, 33/1B, 38/1A, 41/6D, 37/2, 33/2, 41/1,4/3C,41/4, 38/1A, 38/1B, 33/2, 33/1A, 38/1A, 41/5A, 5C,6A, 6B, 6D, 40/345/2, 41/3A situate at Thenmathur Village and Kollakudi Village Survey No.6/4, Keezhnachipattu Village Survey No.64/4, 50/1, 63/263/3, 64/4, Thiruvannamalai Survey No.4/38, 4/8 Su.Vallavetti Village Survey No.46/3A, 3B, 3C1, 3C2,3C3, 3C4 Keezhacheerapattu Village survey No.31/3 were registered in the name of Mr. E.V.Velu and his wife Tmt. Jeeva Velu were inspected directly and he had also sent a report saying that during the year 2006-07, Mr. E.V.Velu had derived a sum of Rs.9,79,510/- from the agricultural operations. This fact was intimated to the Investigating Officer through the letter , dated 04.04.2012 in A3/1890/2012 by Mr. A.Bala, Director of Agricultural Department.

45. As rightly pointed out by Mr. N.R.Elango, learned senior counsel, no revenue officials were examined in this connection. Document No.66 contains the agricultural details issued by the Assistant Director of Agricultural Department, Thiruvannamalai District viz., Mr. A.Bala (L.W.56) pertaining to Fasli year 1420 Document No.65 is the Income Tax return of Mr. E.V.Velu for the assessment year 2005-06,2006-07 and 2007-08 . In this connection this Court finds that it would be proper to refer to paragraph 29 of the impugned order, wherein the learned Special Judge has stated that the prosecution had not considered the accepted agricultural income of Rs.69,09,300/- of Mr. E.V.Velu as per document No.65. It is also stated that if it is taken into account the alleged assets which are said to be disproportionate to the extent of Rs.21,31,820/- would definitely accommodate within the declared agricultural income. Document No.66 i.e. the agricultural details issued by L.W. 56 Mr. A.Bala has not even been counter signed and therefore, Mr. A.Bala, Assistant Director of Agricultural Department (L.W.56) is not competent to speak about this document.

46. Column No.12 of Statement No.2, as it is seen from page No17 of the typed set of papers , the value of extended portion of the house has been shown as Rs.20,88,481/-. In this connection, Mr. N.R.Elango, learned senior counsel has submitted that the valuation of the extended portion of the house could not be given by an expert, as contemplated under Section 45 of the Indian Evidence Act. An expert has to form an opinion on the facts in existence as observed in Kulasingam v Thambipillai ((1997) 1Malayan LJ 288 (CA Kuala Lumpur) . An expert witness may give opinion but the Court is free to draw its own conclusions. Mr. N.R.Elango, learned senior counsel has also pointed out that the Investigating

Officer had fixed the check period of the first accused as 'public servant' from 01.04.2006 to 31.03.2008. In this connection, he would submit that when the first accused E.V.Velu had never come under the category of public servant from 01.04.2006 to 12.05.2006, knowing fully well about this fact, the Investigating Officer had erroneously added the election expenditure pertaining to the first accused to the tune of Rs.5,14,956/- which had to be deducted by the prosecution. He has also submitted that as per the prosecution, the income tax returns were filed by the first accused E.V.Velu and that the second accused had not filed her income tax returns for the assessment year 2007-2008, 2008-2009, 2009-2010 and 2010-2011 and therefore, she was shown as dependent of the first accused. In this connection, he would submit that the second accused Tmt. Jeeva Velu had been running an educational institution under the name and style of 'Saraswathi Educational Trust' and she was also having her own agricultural land and hence there were ample evidence to show that A2 was having her own independent source of income, which would have to be deducted from her income tax returns and therefore, she could not be termed as the dependent of the first accused Mr. E.V.Velu.

47. Mr. N.R.Elango has also pointed out that in the final show cause notice which was served on the first accused, he was directed to give his explanation for a sum of Rs.52,14,830/- as disproportionate assets. When a glaring mistake was pointed out by the first accused in his explanation, the Investigating Officer had reduced the said amount in the final report to Rs.21,31,820/-. He would further submit that the infrastructures of the additionally constructed building by Arunai Granites and Evershine Enterprise were wrongly calculated in the income of the first accused Mr. E.V.Velu. He has also invited the attention of this Court to paragraph 11 of the discharge petition in CrI.M.P.No.251 of 2014, wherein it is stated that in the show cause notice the Investigating Officer had unnecessarily impleaded the purchase of land at Somaspadi to the extent of Rs.33,60,573/- as the sale price. He has also clarified that the payment of Rs.33,60,573/- was made through two demand drafts in the months of May and September, 2005. This glaring mistake which was pointed out that The Investigating Officer had included the amounts not covered at the check period. This mistake was pointed out and the Investigating Officer had was accepted and rectified in the final report.

48. Further, he would submit that Statement No.1 had been reproduced in Statement No.2 for eg. in item No.12 the figure had been unnecessarily boosted from Rs.1,27,14,213/- to Rs.1,48,02,694/-. According to Mr. N.R.Elango, learned senior counsel, the house property was purchased even during the year 2001. In this connection, he would submit that the first accused Mr.E.V.Velu during his tenure as Minister in order to accommodate his official work he had remodeled the building

at the cost of Rs.9,00,000/- and the entire amount was paid by cheque.

49. In this connection he would submit that the reasoning given by the Investigating Officer that the value of the building got increased in the year 2008 was absolutely absurd and the given figure had been invented only to foist a false case against the first accused. Further, he has also maintained that the finding of the Investigating Officer in the final report saying that the accused had acquired assets to the extent of Rs.21,31,820/- was without any basis or unacceptable evidence and it was purely imaginary and hence the same could not be made basis for framing of charge against the accused persons.

50. With reference to the electricity charges as it is seen from statement No.6 to the extent of Rs.1,55,717/- he would submit that the said sum for the house at Alwarpet, Chennai was paid by the Government. This fact had been shown in the list of expenses by the first accused. He would further submit that the Investigating Officer had deliberately boosted up the value of the house property mentioned as item No.12 in statement no.11. In this regard, he would submit that this building was purchased on 24.12.2001 which was very much prior to the check period and remolded to accommodate his official work at a cost of Rs.9,00,000/- and this amount was paid by cheque by the first accused. He has also adverted to that the second accused Tmt. Jeeva Velu was not dependent on the first accused Mr. E.V.Velu as she owned 4.57 acres of land and she was also a Chair person of Saraswathi Educational Trust . Finally, he would submit that there was no material to prove that any fund was transferred from the first accused to the second accused, during the check period.

51. As discussed in the preceding paragraphs, this Court has carefully perused the averments of the grounds of revision along with the impugned order dated 05.06.2015. Having given its careful consideration this Court is of firm view that the impugned order does not suffer from any infirmity or illegality. No prima facie case is made out by the prosecuting agency to frame charges against the accused 1 and 2.

52. In the result, the Criminal Revisions are dismissed and the impugned common order, dated 05.06.2015 and made in CrI.M.P.Nos.235 and 251 of 2014 in Special Case No.4 of 2013 on the file of the learned Special Judge (Chief Judicial Magistrate), Thiruvannamalai is confirmed.

Sd/-
Assistant Registrar(CS III)

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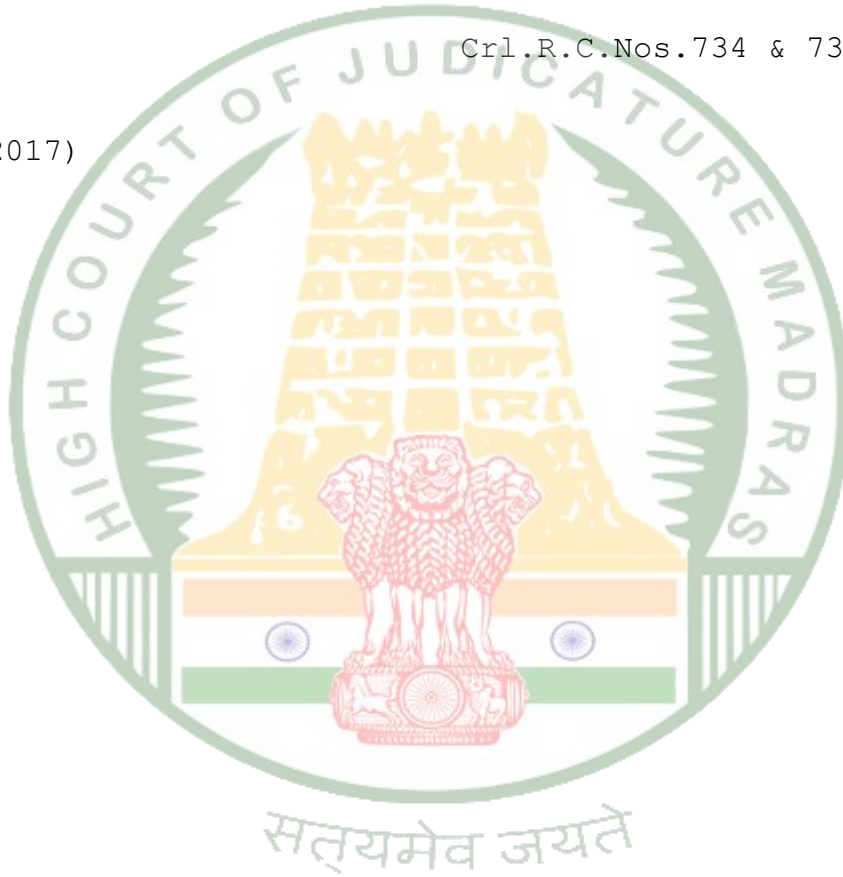
1.The Chief Judicial Magistrate,
Tiruvannamalai.

2.The Public Prosecutor,
High Court, Madras.

+2cc's to Mr.R.Vivekananthan, Advocate, S.R.Nos.38122 & 38123
+1cc to the Public Prosecutor, S.R.Nos.37883 & 37882

Crl.R.C.Nos.734 & 735 of 2015

GMI (CO)
CA(23/10/2017)



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