

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :07.11.2017

Pronounced on :16.11.2017

Coram:

The Hon'ble Dr.Justice G.Jayachandran

Crl.A.Nos.646 and 647 of 2008

Mrs.B.Sreedaladevi

.. Appellant in
Crl.A.No.646 of 2008

R.Baskaran @ S.R.Baskaran

.. Appellant in
Crl.A.No.647 of 2008

/versus/

The State by
Deputy Superintendent of Police,
SPE/CBI/ACB/Chennai
(Crime No.RC 61(A)/97)

.. Respondent in both
Crl.As

Common Prayer:

Criminal Appeal filed under Section 374(2)
Cr.P.C., against the conviction and sentence passed in C.C.No.32 of 1999
dated 26.08.2008 on the file of the Principal Special Court for CBI Cases,
Chennai.

For Appellant :Mr.I.Subramaniam, Sr.C.
for Mr.K.M.Subheramaniam in
Crl.A.No.646 of 2008

Mr.S.Ashokkumar, Sr.C. For
For Mr.K.M.Subheramaniam in
Crl.A.No.647 of 2008

For Respondent :Mr.K.Srinivasan, Spl.PP for CBI Cases
(both cases)

COMMON JUDGMENT

Crl.A.No.647 of 2008: The appellant R.Baskaran @

S.R.Baskaran is a Public Servant. He along with his wife B.Sreedaladevi were prosecuted in C.C.No.32 of 1999 on the file of the Principal Special Court for CBI Cases, Chennai, for offence under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 and Section 109 IPC and r/w 13(2) r/w13(1)(e) of the Prevention of Corruption Act, 1988 respectively. The trial Court had found both of them guilty of the charges and had convicted the appellant S.R.Baskaran to undergo RI for a period of 5 years and fine of Rs.20,00,000/- i/d to undergo 18 months RI for committing an offence under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988. Aggrieved by the said order of conviction and sentence, the

present appeal is preferred by the first accused [S.R.Baskaran].

2. Crl.A.No.646 of 2006: This appeal is filed by B.Sreedaladevi [A2], W/o S.R.Baskaran in C.C.No.32/99 on the file of the Principal Special Court for CBI Cases, Chennai. She had been found guilty for abetting the public servant to acquire assets disproportionate to his known source of income and therefore, sentenced to undergo 3 years RI for the offence punishable under Section 3(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 r/w 109 of IPC and find of Rs.10,00,000/- i/d to undergo 9 months RI.

3. Since the point agitated in these appeals is identical and arising out of the same judgment, a common judgment is delivered as under:

4. Brief facts of the case as placed by the prosecution: One Baskaran @ S.R.Baskaran, Clerk/Coin Note Examiner Grade II, Reserve Bank of India, Chennai joined the Public Service on 14.12.1988. Before joining into service, he was living with his parents and carrying a Finance Business in the name of Baskaran & Company and also assisting his father D.S.Rajamanickam of Mannargudi Village in Tanjore District. The said

Baskaran married B.Sreedaladevi, the 2nd accused on 26.08.1990. The CBI, after registering a case in Crime No.RC61(A)/97 on 24.11.1997, conducted search at various places on 18.03.1998 and 30.06.1998. Bank locker was searched on 29.06.1998. Several incriminating documents were seized from the residence of the accused persons, which revealed huge investment in movables, besides cash deposits and loan advanced to third parties. Particularly, during the search of bank locker of first accused [S.R.Baskaran] at TNSC Bank, Santhome Branch, Chennai, 80 numbers of gold bars were found and seized.

5. After completion of investigation, the prosecution laid final report alleging that S.R.Baskaran, Public Servant had acquired assets disproportionate to his known source of income to the extent of Rs.1,68,54,305/-, which stands in his name or in the name of his wife Tmt.B.Sreedaladevi (A2). The statements of assets annexed in the Final Report is extracted below for easy appreciation of the facts.

ANNEXURE - 1

STATEMENT -A

Statement showing the details of assets in possession of Shri S.R.Bhasgeran, Clerk/Coin Note Examiner Grade II, Reserve Bank of India,

Chennai before the check period.

(According to the Balance Sheet filed along with the Income Tax Returns for the Assessment year 1989-1990)

		Rs.	P.
Capital account of Shri S.R.Bhasgeran	=	1,56,519	50
Net Profit for the year	=	74,488	50
LIC amount received	=	28,739	00
Sundry creditors to VTR Traders	=	25,000	00
-do- Baluserry Benefit Chit Fund	=	12,069	00
TOTAL	=	2,96,816	00

Thus, the assets of Rs.2,96,816/- was found before the check period.

Shri S.R.Bhasgeran and his wife have been found possessing immovable and movable properties listed below as on 31st July 1998.

STATEMENT -B

Statement showing details of assets in possession of Shri S.R.Bhasgeran Clerk/Coin Note Examiner Grade II, Reserve Bank of India, Chennai and his wife Smt.B.Sreedaladevi at the end of check period (as on 31st July 1998).

IMMOVABLE PROPERTY

<i>Sl. No.</i>	<i>Description of Property</i>	<i>Value Rs.</i>
1.	400 sq.ft land with building in ground floor at Door No.11, Krishnapuram, Street, Royapettah, Chenna 14, purchased in the name of Shri S.R.Bhasgeran, S/o Shri D.S.Rajamanickam vide Sale Deed No.2328/92 (value include stamp duty, Regn.fees etc.)	1,83,040-00
2.	3570 sq.ft land with building at Door No.5/33 Venkatesapuram, Kottivakkam, Chennai-41 in S.No.259/19, purchased in the name of Shri.S.R.Bhasgeran, S/o Shri D.S.Rajamanickam, vide Sale Deed No.2304/96 (Value includes stamp duty and fees etc.)	5,53,800-00
3.	1190 sq.ft.,land with building at Door No.5/33 Venkatesapuram, Kottivakkam, Chennai-41 in S.No.259/33 purchased in the name of Shri S.R.Bhasgeran, S/o Shri D.S.Rajamanickam vide Sale Deed No.2305/96	3,50,370-00
4.	1144 sq.ft. land with building at 280, Lloyds Road, Royapettah, Chennai-14 purchased in favour of M/s Vigneswaran Builders, represented by Mrs.B.Sreedala Devi, W/o Shri S.R.Bhasgeran vide Sale Deed No.765/1996(value includes stamp duty, fees etc.)	14,49,650-00
5.	Plot No.19 at Kottivakkam Chennai in S.No.239/2B and 2-C vide G.O.Ms.No.782, dated 14.09.1993 of Housing and Urban Development HB5(1) and Department letter No.B6/7694/B/93, dated 15.06.1994 in the name of Smt.B.Sreedhaladevi, No.16-A Laurdes Road, Kilpauk, Chennai-10.	3,18,763-00
6.	The land with ground floor and 2 nd floor at Door No.8, Old No.9, Saradapuram, 1 st Street, Mylapore, Chennai-4, in R.S.No.3556/1 purchased in the form of Power of Attorney in	7,00,000-00

Sl. No.	Description of Property	Value Rs.
	favour of Mrs.B.Sreedhala Devi from A.D.Vasudevan.	
7.	The land with first floor building at Door No.8, Old No.9, Saradapuram, 1 st Street, Mylapore, Chennai-4 in R.S.No.3556/1 purchased in the form of Power of Attorney in favour of Mrs.B.Sreedala Devi from Smt.Swathy Ramkumar.	5,00,000-00
8.	Newly constructed 12 flats at Door No.8 Saradapuram 1 st Street, Mylapore, Chennai-4, evaluated by the CPWD Civil Engineer.	41,95,700-00
9.	12flats at Door No.8, Saradapuram 1 st Street, Mylapore, Chennai-4 evaluated by CPWD Electrical Engineer	1,95,500-00
10.	Advance paid for the purchasing of the property on 13 grounds at No.89, Arakkonam, Municipality 3 rd Street, AN Kandigai "D" Ward, 25 th Block in T.S.No.51, R.S.No.299/1. The above property was executed to Mrs.B.Sreedala Devi in the form of power of attorney by Shri P.Varadarajulu.	3,50,000-00
	Grand Total	87,96,823-00

MOVABLE PROPERTY

Sl. No.	Description of the property	Value Rs.
1.	Bank Balance in Standard Chartered Bank No.40, Royapettah High Road, Madras-14 in SB account No.015/01/12317 in favour of Shri S.R.Bhasgeran on 31.07.1998	11,845-00
2.	Bank Balance in Corporation Bank, Kellys	145-00

Sl. No.	Description of the property	Value Rs.
	Branch, No.12, Ormer's Road, Kilpauk, Chennai-10 in Account No.01/008531, in favour of Shri S.R.Bhasgeran as on 31.07.1998	
3.	Deposit in Corporation Bank, Kellys branch, Chennai-10 in A/c No.KCC/01/A/970317 in favour of Shri S.R.Bhasgeran as on 31.07.1998	1,58,330-00
4.	Bank Balance in Corporation Bank, Kellys branch, Chennai 10 in S.B.A/c No.6492 in favour of Mrs.B.Sreedhaladevi as on 31.07.1998	9,615-00
5.	Bank Balance in Corporation Bank, Kellys Branch Chennai-10 in S.B.A/c No.6881 in favour of Mrs.B.Sreedaladevi as on 31.07.1998	13,417-00
6.	Deposits in Corporation Bank, Kellys Branch, Chennai-10 in A.C.No.FD 01/970213 in favour of Mrs.B.Sreedhaladevi as on 31.07.1998	1,21,895-00
7.	Bank Balance in Indian Bank, 93 Peters Road, Chennai-86 in SB A/c No.7839 in favour of Mrs.B.SreedhalaDevi as on 31.07.1998	52,571-00
8.	Bank Balance in Canara Bank No.129, R.H.Road, Luz, Mylapore, Chennai-4 in CA A/c No.2238 in favour of Mrs.B.Sreedhaladevi as on 31.07.1998	1,00,161-00
9.	Bank Balance in Indian Bank No.116, Dr.Radhakrishna Salai, Chennai-4, in SB A/c No.12469 in favour of S.R.Bhasgeran as on 31.07.1998	19,951-00
10.	Bank Balance in Indian Bank No.116, Dr.Radhakrishna Salai, Chennai-4 in SB A/c No.12414 in favour of Mrs.B.Sreedhaladevi as on 31.07.1998	24,523-00
11.	Bank Balance in Indian Overseas Bank,	51,305-00

Sl. No.	Description of the property	Value Rs.
	Chennai Saving Bank A/c No.10525 in favour of Mrs.B.Sreedala Devi	
12.	Deposit in TNSC Bank, 44, Santhome High Road, Chennai-4, cash certificate No.031986 in favour of Shri S.R.Bhasgeran deposited on 13.07.1998 as on 13.07.1998	75,000-00
13.	Deposit in TNSC Bank, 44, Santhome High Road, Chennai-4 FD No.0279569 in favour of Shri S.R.Bhasgeran deposited on 21.05.1998	10,000-00
14.	Bank Balance in TNSC Bank, Santhome High Road in SB A/c No.13704 in favour of Shri S.R.Bhasgeran on 30.06.98	138-50
15.	Himalaya Benefit Funds Limited, No.69, Panchavarnasamy Koil Street, Woriyur, Tiruchirapalli-620 003, vide cash receipt S.No.022, PMM-280 Fixed Deposit dated 21.02.94 in favour of Mrs.B.Sreedhaladevi, W/o S.R.Bhasgeran.	1,00,000-00
16.	Himalaya Benefit Funds Limited vide cash receipt S.No.020, PMM 278, in favour of Mrs.B.Sreedhaladevi, Fixed Deposit dated 21.02.1994.	1,00,000-00
17.	Himalaya Benefit Funds Limited vide, cash receipt S.No.021, PMM-279, in favour of Mrs.B.Sreedhaladevi-Fixed Deposit dated 21.02.1994	1,00,000-00
18.	Investment in Mahasubalakshmi Kalyana Mandapam by Mrs.B.Sreedhaladevi	6,30,000-00
19.	Investment in Fishing Boat by Smt. Sreedaladevi	3,50,000-00
20.	Movables such as furniture and other house hold articles at the room of Shri.S.R.Bhasgeran, Dr.Radhakrishnan Salai, Mylapore, Chennai-4, (Articles of alleged gift including gold jewellery of 270 gms and silver	1,44,576-00

Sl. No.	Description of the property	Value Rs.
	of 1kg are excluded)	
21.	Movables such as furniture and other house hold articles at the rented house of Shri S.R.Bhasgeran, Kottivakkam House.(Articles of alleged gift like VCR, Steel Almirah, Silk Sarees etc. are included)	3,03,300-00
22.	The cost of the 80 Nos. of foreign made gold bars seized from the locker No.D 305 of TNSC Bank, Santhome Branch, belongs to Shri S.R.Bhasgeran	43,68,312-00
23	The cost of the gold jeweller of 78 gms noticed at the locker No.25, Corporation Bank, Kellys Branch belongs to Shri S.R.Bhasgeran	29,640-00
24.	The cost of the gold jewellery and silver articles belongs to Smt.Sreedala Devi seized by Income Tax Department from the residence of Shri S.R.Bhasgeran on 18.10.1996	22,31,170-00
25.	The cost of the Contessa Car No.TN 07Y3552 purchased on 04.07.1995 from the Reliance Motor Company Limited, No.761, Anna Salai, Chennai-2.	4,15,923-00
26.	The cost of the Maruthi 800 car Registration No.TN-09-J-2345 purchased during September 1993	2,00,000-00
27.	The cost of the Revolver and Cartridges	75,700-00
28.	The cost of the 22 Bore Rifle and Cartridges	14,654-00
29.	Loan given to Shri C.K.Ramjee, Wings Garments, No.5, Dr.Radhakrishna Salai, Chennai-4	12,00,000-00
30.	Loan given to Shri N.Anandan, Sivasakthi, Riksha Industries, Mannadi Street, Koyambedu, Chennai 107	18,000-00

Sl. No.	Description of the property	Value Rs.
31.	Investment in shares	30,000-00
32.	Loan given to Shri S.Rajaram, Proprietor, Shri Vigneswaran Enterprises, No.29, Balaji Nagar, 1 st Street, Royapettah.	5,00,000-00
33.	Loan given to Shri A.Anbaruvi, Meth Flow Engineering private Limited, No.23, Mathaji Shopping Complex, No.1, Ballers Lanes, Mount Road, Chennai.	10,00,000-00
34.	Loan given to Shri Salam	35,000-00
35.	Loan given to Shri P.Anand Raj	16,00,000-00
	Grand Total	1,40,95,171-00
	Total of immovable and movable assets	2,28,91,994-00

(Shri.S.R.Bhasgeran's name is found to have been spelt differently in some of the documents/Bank accounts mentioned above)

Thus, Shri S.R.Bhasgeran and his wife have acquired assets to the extent of Rs.2,25,95,178/- (Rs.2,28,91,994 – Rs.2,96,816)

Whereas during the period from December 1988 to 31st July 1998 Shri S.R.Bhasgeran and his wife have received income from the following sources.

STATEMENT -C

Statement showing details of income received by Shri S.R.Bhasgeran, Reserve Bank of India, Chennai and his wife during the period December 1988-31st July 1998.

Sl. No.	Particulars	Amount Rs.
1.	Salary Income from December 1988 to 31.07.1998	2,81,118-95
2.	Bank interest accrued from SB A/c No.15/01/12317 from Standard Chartered Bank, No.40, Royapettah High Road, Chennai-14 in favour of Shri S.R.Bhasgeran	1,30,976-00
3.	Bank interest accrued from Corporation bank, Kelleys Branch, No.12, Ormers Road, Kilpauk, Chennai-10 in A/c No.01/008531 in favour of Shri S.R.Bhasgeran	95-00
4.	Bank interest accrued from Corporation Bank, Kellys Branch, Chennai-10 in A/c No.KCC/01/970317 in favour of Shri S.R.Bhasgeran	11,323-55
5.	Bank interest from Corporation Bank, Kellys Branch, Chennai-10 in A/c No.6492 in favour of Mrs.B.Sreedala Devi	67,445-00
6.	Bank interest from Corporation Bank, Kellys Branch, Chennai-10 in A/c No.6881 in favour of Mrs.B.Sreedala Devi.	92,883-00
7.	Bank interest accrued from SB A/c No.7839 at Indian Bank, Peters Road, Chennai-86 in favour of Mrs.B.Sreedala Devi	4,536-00
8.	Bank interest accrued from the SB A/c No.12469, Indian Bank, Radhakrishna Salai, Chennai-4 in favour of Shri S.R.Bhasgeran	15,748-00
9.	Bank interest accrued from Indian Bank, Dr.Radhakrishna Salai in SB A/c No.12414 in favour of Shri	1,02,404-00

Sl. No.	Particulars	Amount Rs.
	S.R.Bhasgeran	
10.	Bank interest accrued from TNSC Bank, No.44, Santhome High Road, Chennai-4, in SB A.c No.13704 in favour of Shri S.R.Bhasgeran	44-00
11.	Bank interest accrued from IOB, Chennai in SB A/c No.10525 in favour of Mrs.B.Sreedala Devi, W/o Shri S.R.Bhasgeran	9804-30
12.	Loan received from the Corporation Bank, Kellys Branch, by Shri S.R.Bhasgeran	80,000-00
13.	Advance received from Shri S.R.Kadar Hussain for the building at No.11, Krishnapuram, Royapettah, Chennai-14.	75,000-00
14.	Rental income from the ground floor of the building at No.11, Krishnapuram Street, Royapettah, Chennai-14.	1,76,500-00
15.	Rental income from the building at No.280, Lloyds Road, Royapettah, Chennai-14	1,28,700-00
16.	Loan from his father	51,98,481-00
17.	Loan from Smt.N.Sasikala	7,20,000-00
18.	Loan from Shri Sathiyamoorthy	12,00,000-00
	Grand Total	82,95,058-80

WEB COPY

Whereas for the period from December 1988 to 31st July 1998, Shri S.R.Bhasgeran and his wife incurred expenditure as per the following details:

STATEMENT-D

Statement showing the details of the expenditure incurred by Shri S.R.Bhasgeran, Reserve Bank of India, Chennai and his wife during the period December 1988 to 31st July 1998.

<i>Sl. No.</i>	<i>Particulars</i>	<i>Amount Rs.</i>
1.	Family consumption estimate for the family of Shri S.R.Bhasgeran as estimated by the Director, Economics and Statistics, Chennai.	1,51,446-00
2.	House Rent paid to Shri Jambukeswaran for the house at 16(A), Landans Road, Kilpauk, February 1993 to October 1994	63,000-00
3.	House Rent Paid to Shri P.Sathyanarayana for the house at N.124-A, Peters Road, Chennai 1-2-95 to 31-12-96	2,07,000-00
4.	House Rent paid to Shri C.K.Ramji for the house at Kottivakkam from November 1997 to May 1998	28,000-00
5.	Expenses incurred for the air ticket for travelling charges by Shri S.R.Bhasgeran and Sreedala Devi	1,70,331-00
6.	Expenses incurred for purchasing the foreign exchange by Shri S.R.Bhasgeran and Sreedala Devi	68,108-00
7.	Demolition charges for the second floor of the building at No.8, Saradapuram, Mylapore, Chennai.	14,300-00

Sl. No.	Particulars	Amount Rs.
8.	Amount deposited at Telephone Exchange, GR Complex, Saidapet for the telephone connection	29,000-00
9.	Income-Tax paid by Smt.Sreedala Devi	15,00,000-00
10.	Income Tax paid by Shri S.R.Bhasgeran	2,63,000-00
11.	Amount paid to Shri Seetharaman, Advocate for his service	60,000-00
	Total	25,54,185-00

Thus, Shri S.R.Bhasgeran has been found in possession of assets disproportionate to his known source of income as per the following details:

Computation of disproportionate assets:

	Rs.	P.
1.Assets held at the end of the check period (B)	..2,28,91,994-00	
2.Assets held at the beginning of the check period (A)	.. 2,96,816-00	
Assets acquired during the check period (B-A)	..2,25,95,178-00	
3.Receipts of the accused employee during the Check Period ©	.. 82,95,058-00	
4.Expenditure of the accused employee during the check period (D)	.. 25,54,185-00	
Likely surplus (C-D)	.. 57,40,873-00	
Disproportionate assets	.. 1,68,54,305-00	

Thus, Shri.S.R.Bhasgeran and his wife Smt.B.Sreedaladevi have been found in possession of disproportionate assets to the extent of Rs.1,68,54,305/-.

6. As one could see, during the check period from 14.12.1988 to 31.07,1997, the salary income of the first accused S.R.Baskaran was

Rs.2,81,118-95. He married the second accused Smt.B.Sreedaladevi in the year 1990. She is a House Wife and she had no income on her own. Before joining service for the assessment year 1989-1990, the first accused S.R.Baskaran has declared his total assets to the income tax as Rs.2,96,816.00. However, he and his wife were able to acquire wealth as listed above. Though the appellants have given their version about the source of acquiring the properties scheduled above, the trial Court, after appreciating the evidence let in by the prosecution as well as the defence, had held that the evidence of DW2 [Thiyagarajan] is unbelievable, since he could not identify the gold bars which was sold to D.S.Rajamanickam, the father of A1 [S.R.Baskaran]. Further, though the said D.S.Rajamanickam was an income tax assessee, his income tax does not reflect purchase of gold bars either from DW2[Thiyagarajan] or any other persons. Having failed to prove the source for purchase of 80 gold bars found in the locker, which stood in the name of the first accused[S.R.Baskaran], the trial Court has taken the value of the gold as assets of the first accused[S.R.Baskaran]. Similarly, the explanations given by A2[B.Sreedaladevi] that she had her own income, so clubbing her property with that of A1's[S.R.Baskaran] property, is improper was not accepted by the trial Court, since the 2nd accused[B.Sreedaladevi] had no income of her

own and she was not even an income tax assessee. She has identified most of the property found in her possession and investments made in her name as gift from her relatives or investments made from loan received by them, which was held to be false explanation by the trial Court.

7. The appellants herein question the legality of the trial Court judgment on the ground that A1[S.R.Baskaran] even before joining the service, was as Income Tax Assessee and had income of his own and continued to carry on his Finance Business besides his Job as Coin Note Examiner Grade II in Reserve Bank of India, Chennai. The trial Court, while considering the source of income, had not taken note of other source of income, which the appellants have placed before the Investigating Officer as well as the trial Court. The Court below failed to note that A1 [S.R.Baskaran] being a reknowned Hockey Player for the country, he was sponsored to visit countries but, the expenses are considered as money spend by A1 [S.R.Baskaran]. Similarly, while arriving at the expenditure under Statement-D, the trial Court has not given due consideration of the expenditures in respect of his wife, who had her own source of income. It is also contended that the trial Court has erroneously clubbed the properties held in the name of the 2nd accused as that of the first accused,

which is contrary to the law as well as the dicta laid down in **District Superintendent of Police, Chennai v. K.Inbasagaran** reported in **2006 (Cri.)LJ 319**.

8. The other point raised by the learned Senior counsels for the appellants is that A1[S.R.Baskaran], Coin Note Examiner Grade II in Reserve Bank of India, has no conduct with the public and there is no scope to obtain illegal gratification by abusing his official position. What he earned and had in his possession are his own hard earning money and contributed by his family members. When there is no allegation about receipt of illegal gratification, it is to be presumed that the property in possession of the appellant has been acquired through proper legal source and not otherwise. Further, by way of the written statement, the appellant has given a specific explanation in respect of the properties listed in the statements A to D extracted above.

9. Per contra, the learned Special Public Prosecutor appearing for CBI Cases, after running through the evidence for prosecution both oral and documents, submitted that A1 [S.R.Baskaran] being a Public Servant expected to exhibit devotion and propriety, had in violation of the law and

had amassed wealth in his name and his wife name. As a Public Servant he is bound to disclose the source of his income to make the investment listed in the statement. The said source should be legal and not otherwise. While so, having failed to account for his assets, he and his wife had been rightly held guilty and no substance in their appeals.

10. The submission made by the learned Senior Counsels appearing for the appellants and the learned Special Public Prosecutor (for CBI Cases) appearing for the respondents heard and records perused.

11. Point for determination in this appeal is whether, the trial Court has given due consideration of the facts placed by the accused explaining their legal source for acquiring the properties listed in the Statement-B and the explanation regarding the charges imputed against them.

12. S.R.Bhaskaran[A1], while functioning as a Public Servant in the Reserve Bank of India as Coin Note Examiner Grade II, was found to have acquired wealth in his name and in the name of his wife Tmt.B.Sreedaladevi[A2], disproportionate to his known source of income

during the check period 14.12.1988 to 31.07.1998. Hence, S.R.Bhaskaran[A1] being a Public Servant was convicted for offence under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act 1988 and for abetting S.R.Baskaran [A1], his wife Tmt.B.Sreedala Devi[A2] was convicted for offence under Section 13 read with 13(1)(e) of the Prevention of Corruption Act, 1988 read with Section 109 of the Indian Penal Code. The first accused [S.R.Bhaskaran] is the appellant in Crl.A.No.647 of 2008. The second accused Tmt. B.Sreedala Devi is the appellant in Crl.A.No.646/2008.

13. It is contented by the counsel appearing for the appellant that A-1 [S.R.Bhaskaran], during the course of his tenure as Coin Note Examiner, has acquired only few properties listed under Statement-B, which totally contains 10 items of immovable properties and 35 items of movable properties. Rest of the items found in the said statement belong to his wife, which she has acquired through her own independent source. However, the prosecution has wantonly clubbed both the properties under one head as if A-1[S.R.Bhaskaran] transferred his fund to A-2[B.Sreedaladevi] and had acquired property in her name. Had the prosecution properly segregated the properties of A-2[B.Sreedaladevi]. Out

from the Statement-B, A-1[S.R.Bhaskaran] will have to account only for Rs.43,49,866.50 instead of Rs.2,25,95,178/-. From the prosecution evidence, the income derived by A-1[S.R.Bhaskaran] during the check period, will go to show that it was much higher than the value of the assets in his name. When there is no evidence to show flow of fund from A-1[S.R.Bhaskaran] to A-2[B.Sreedaladevi], even if A-2[B.Sreedaladevi] is not able to explain the possession of assets in her name or source for acquiring those assets, it is for the Income Tax Authority to take action against her for non-disclosure of income, but by no stretch of imagination can A-1[S.R.Bhaskaran] be prosecuted for offences under the Prevention of Corruption Act, 1988. When the accused through DW-2 and DW-3 evidence had proved that both they have independent source of income, the trial Court should not have held them guilty.

14. A1[S.R.Baskaran] admits the acquisition of immovable properties mentioned against Serial Nos. 1 to 3 and the balance in his bank accounts and deposits, which stands in his name, except a sum of Rs.58,330/- in the Corporation Bank , Kellys Branch, which he claims to be the interest accrued for his investment of Rs.1,00,000/-. Regarding furniture and other household articles found in his room during search, it is

valued at Rs.1,44,576/-. It is contented that the premises at Dr.Radhakrishnan Salai ,Mylapore is a joint family property owned by his father and mother, who were living with him along with his other two brothers namely, Natarajan and Sridaran. The furnitures and household articles listed in Ex.P-80 Mahazar belongs to his father, which he acquired before the check period. Except 3 watches worth of Rs.3,500/-, non-other articles found in his bed room belongs to him.

15. The learned counsel appearing for the appellants vehemently contented that, 80 gold bars with foreign markings seized from the locker at TNSC Bank, Santhome Branch belong to A-1's father D.S.Rajamanickam, who was a Financier and carrying on lucrative business till his life. The said D.S.Rajamanikam purchased those gold bars from Thiyagarajan[DW-2], Sheik Dawood and Ibrahim. The customs duty receipts were produced to the Directorate of Revenue Intelligent Officials. Though the said fact was made known to the Investigation Officer and the duty clearance receipts were produced to him, besides examining DW-2[Thiyagarajan] to prove those gold bars do not belong to him, the trial Court has erroneously held that those gold bars belong to A-1[S.R.Baskaran] and valued it at Rs.43,68,312/- and added it to the list of A-1[S.R.Baskaran] assets.

16. In so far as the loans of Rs.12 lakhs advanced to C.K.Ramjee of Wings Garments against blank cheques, (Sl.No.29 under the head of movable properties in the Statement-B), the loan of Rs.18,000/- to N.Anandan,(Sl.No.30 under the head of Movable Properties in the Statement-B), the Loan of Rs.5lakhs to Shri.S.Rajaram, Proprietor of Shri Vigneswaran Enterprises (Sl.No.32 under the head of Movable Properties in the Statement-B), the loan of Rs.35,000/- to Shri. Salam (Sl.No.34 under the head of Movable Properties in the Statement-B), the loan of Rs.16,00,000/- to Shri.P.Anand Raj (Sl.No.35 under the head of Movable Properties in the Statement-B) and the investment of Rs.30,000/- in shares (Sl.No.31 under the head of Movable Properties in the Statement-B), the defence taken by the first accused [S.R.Bhaskaran] is that he did not advance any loan to S.Rajaram, Shri.Salam and P.Anand Raj as alleged. Mere recovery of blank pro-notes and cheques does not prove the amount found in the documents, which were actually lend to the said persons. Further, he has not invested in any shares and no original documents were recovered from him.

17. The loan availed by the first accused [S.R.Bhaskaran] from

his father D.S.Rajamanickam, as per the prosecution case is Rs.51,98,481/- whereas, the Income Tax Returns Ex.P-102 will go to show that, the total loan is Rs.66,00,000/-. This amount and a further sum of Rs.2,98,481.27, which A-1[S.R.Baskaran] liable to pay his father put together comes to Rs.68,98,481.27. Hence, instead of Rs.51,98,481/- in Serial No.16 in Statement C, it should be Rs.68,98,481.27.

18. It is also contented by the appellants that, though the total rental income from the property at No.11/2, Sri Krishnapuram Street, Royapettah, Chennai was Rs.2,86,000/-, the prosecution has taken into account only part of the rental income and not the entire rental income derived from the property, since its purchased from 1992. Also dispute the expenditure occurred for purchase of air ticket and foreign exchange during his foreign visit, broadly the contention of the first accused is that, after excluding the properties, stood in the name of the second accused and after excluding the value of 80 gold bars seized from his locker, the total assets held by him in excess of his income will be within the permissible limit and therefore, he cannot be held guilty for offence under Section 13 (1) (e) of the Prevention of Corruption Act, 1988.

19. The learned Senior counsel representing the 2nd accused [B.Sreedala Devi] contented that, the second accused hails from a wealthy family. She had been bestowed with high value gifts by her parents and siblings before and after her marriage, none of the properties stood in her name were purchased from the fund of her husband. She is not a name-lender for A-1 [S.R.Baskaran]. All the properties are shown against her name but, clubbed to the assets of her husband has to be excluded. She has been assessed to income tax. When she has her own source of income and having disclosed the income and paid tax, it is illegal to show her properties as assets of her husband and prosecute her for abetment.

20. Further, the learned Senior Counsel representing the 2nd accused [B.Sreedaladevi] contented that the valuation certificate issued by PW-10[Thiru.S.R.Murali] in respect of property shown in Serial No.9 in Statement-B under the head of Immovable Property is not worthy of consideration. On the date, he alleged to have inspected the building, there was no second floor at all. It was demolished much prior to the alleged date of inspection, pursuant to CMDA order. The building valued at Rs.41,95,700/- is without any basis. In respect of Rs.3,50,000/- shown

under Serial No.10 of Statement-B under the head of Immovable Property, there is no evidence to prove the second accused paid Rs.3,50,000/- as advance to purchase of 13 grounds of land at A.N.Kandigai Village from P.Varadarajulu. By inflating the building value and by including properties, which are not owned by A-2 and A-1, the prosecution has attempted to show as if A-1[S.R.Baskaran] has amassed wealth disproportionate to his known source of income and A-2[B.Sreedaladevi] abetted him in the said act.

21. The learned Special Public Prosecutor [CBI Cases] appearing for the respondent would submit that the shallowness in the appellants' argument could be exposed from their own evidence DW-2 [Thiru.Thiyagarajan], who could not even able to identify the gold bars, which he alleged to have sold to D.S.Rajamanickam. The accused could not prove the source from whom it was purchased, when it was purchased and by whom it was purchased. Though they have vaguely claimed that it was purchased by D.S.Rajamanickam from DW-2[Thiyagarajan], Sheik Dawood and Ibrahim, no evidence is produced by them except the passport entry of Thiyagarajan, which noway support the explanation of the defence. Neither the quantity of gold purchased nor the

date of purchase could be inferred from the evidence let by the defence.

22. Likewise, the pro-notes, cheques and documents seized from the premises of the appellants prove the fact that they have lend money to various persons and obtained pro-notes, cheques and bonds as securities. None examination of Rajaram or Anandraj to whom A-1[S.R.Baskaran] has advanced loan of Rs.5,00,000/- and Rs.16,00,000/- respectively, does not mean no such transaction took place. It is admitted fact by the accused that he was in money lending business along with his father. The pro-notes, blank cheques and bonds found in possession of A-1[S.R.Basakaran] executed in the name of the above persons are not denied. The bank accounts of the accused also show transactions with Rajaram Proprietor, Sri Vigneshwara Enterprises, Ramjee of Win's Garments and others. The person in possession of incriminating documents is responsible to explain the possession. Having failed to explain the same, the value as shown in the documents is taken as assets of the accused. Nothing illegal in such conclusion and it is in accordance with law.

23. The prime contention made in this two appeals is clubbing of

assets. It is submitted that though A-1 and A-2 are husband and wife, they are different legal entity and have individual source of income. Hence, clubbing the properties in the name of his wife with that of A-1 is factually and legally wrong. In support of this submission, the learned Senior Counsels appearing for the appellants relied upon the judgment of the Hon'ble Supreme Court in **District Superintendent of Police, Chennai v. K.Inbasakaran** reported in **2006 (CrI)L.J. 319**.

24. In the above said judgment, the wife of the Public Servant was able to convince the Court through documents that she had been carrying on multiple businesses under different trade name and had submitted Income Tax Returns. The business establishments run by her were proved to be in existence and subjected to commercial tax. Under such circumstances, clubbing of wife's assets with her husband's assets, who happen to be a Public Servant, was found fault by the Court. Whereas in this case, the second accused, B.Sreedaladevi, W/o S.R.Baskaran was an housewife and admittedly, she had no other independent source of income, except to say that the movable properties are gifted to her by her parents and brothers. Immovable properties were purchased from loan advanced by them. She was not an Income Tax Assessee till search

operation by Income Tax Authorities conducted at her premises on 18.03.1998, resulting in unearthing undisclosed income and assets. In the Block Assessment Order dated 31.10.1997 marked as Ex.P-95, it is observed that B.Sreedaladevi [A2] has no identified source of income. She had not been assessed to income tax so far. She claims to have filed Wealth Tax Returns for the assessment year 1993-1994 before ITO City Ward II (6) as new case admitting gross wealth of Rs.8,44,230/-. The real source of her investment is not known and as such, the amounts admitted and those brought to tax are to be assessed under the head "**Income from other Sources**". (emphasis added) The Block Assessment Order indicates the Income Tax Authorities have found that B.Sreedaladevi had undisclosed income of Rs.92,99,100/- and liable to pay tax of Rs.55,79,460/-. Ex.P-99, the explanation given by B.Sreedaladevi[A2] to the Assistant Commissioner of Income Tax, which is dated 22.10.1997, she has admitted the investment in fishing boat a sum of Rs.3,50,000/-, purchase of Maruthi Car for a sum of Rs.2,00,000/- and cash deposits in Corporation Bank, Kellys Branch a sum of Rs.1,00,000/- during the year 1993-1994. Likewise, the investment in Mahasubbulakshmi Kalyana Mandabam a sum of Rs.6,00,000/-, investment in Himalaya Benefit Fund a sum of Rs.3,20,000/-, investment in Ruby International a sum of

Rs.25,000/-, deposit of Rs.15,00,000/- and Rs.85,300/- in Corporation Bank, Kilpauk Branch and the investment of Rs.46,775/- in Corporation Bank, Kellys Branch for the assessment year 1994 – 1995 are admitted. Likewise, the investment in house 19, Kottivakkam, Chennai, deposits in Indian Bank, R.K.Salai Branch and Peters Road, Indian Overseas Bank, Edward Elliots Road, Corporation Bank, Kilpauk Branch and Kelly's Branch, a total sum of Rs.9,63,832/- during the assessment year 1995-1996 are admitted. The investments in commercial complex at Lloyds Road, Mylapore a sum of Rs.24,30,400/-, deposits in Indian Bank, R.K.Salai Branch a sum of Rs.3,85,269/-, Indian Bank, Peters Road and deposits in other banks to a total sum of Rs.18,60,849/- during the assessment year 1996-1997 are admitted. The investments in gold and silver articles besides bank deposits totally for a sum of Rs.21,50,597/- for the assessment year 1997-1998 has been admitted by her. The admission of these undisclosed incomes for other sources, strongly proves the case of the prosecution that A-2[B.Sreedaladevi] has lend her name to A-1[S.R.Baskaran] for accumulate the wealth disproportionate to his known source of income.

25. It is also relevant to point that, after the above said

admission, the Block Assessment Order for the period (01-04-1992 to 03-10-1996) Ex.P-95 has been revised vide, assessment order of the Assistant Commissioner of Income Tax dated 31-03-2003, wherein the Income Tax Department has reduced the total undisclosed income of A2[B.Sreedala devi] during the Block Assessment period to Rs.56,37,040/-. This order is relied on by the defence during the trial and the same is marked as Ex.D-3. The contention is that, all the properties which acquired in her name, were through gifts given by her wealthy father and affluent brothers and that is suffice to hold that the source of investment is legal, which does not carry any logic, on going by her letter marked as Ex.P-99 and her own evidence as spoken by DW-3 [Mr.T.Vivekananthan] father of A-2[B.Sreedaladevi].

26. DW-3[Mr.T.Vivekananthan] has deposed that, he retired on 30.09.1994 as Joint Director, Rural Development Department. His eldest son Mr.T.T.V.Dinakaran is a Member of Parliament, the Second son Mr. Baskaran was Former Director of JJ TV and presently in Granite Business and the third son Mr.Vivek Sudaharan is a Politician. Apart from his pension, he derive rental income from five [5] houses at Mannargudi and 40 to 50 acres of agricultural land at Thirvarur. Mr.D.S.Rajamanikam,

the father-in-law of A-2[B.Sreedaladevi] as a Financier, had annual turn over of more than Rs.4 to 5 crores. A-2[B.Sreedaladevi] being only female child in the family, all of them gifted her periodically to buy assets found in her name. This ocular evidence is not matching the documentary evidence. In the absence of corresponding liability or debit in the books of entry maintained by these persons, the assets at least worth of Rs.56,37,040/- which stands in the name of A-2[B.Sreedaladevi] has to be added to the assets of A-1[S.R.Baskaran] the Public Servant, who is under law bound to inform his and his spouse assets and liability to his employer periodically. Whereas, Ex.P-124 the property statement given by A-1[S.R.Baskaran] to Reserve Bank of India does not disclose most of the assets, which are in his name and his wife name.

27. Further, A-2[B.Sreedaladevi] was not an Income Tax Assessee till launching of prosecution, nor she claims to have any source of income of her own. Even in her bank accounts, she has mentioned her occupation as Housewife. But, periodically, she had been investing a substantial amount under Monthly Investment Deposit (MID). A-1[S.R.Bakaran] or his wife[B.Sreedaladevi] has not disclosed these income to the Taxing Authorities till they caught during the search operation.

Therefore, there is no factual or legal error in clubbing the assets found in the name of the A-2[B.Sreedaladevi] with that of A-1[S.R.Baskaran] and holding her guilty for abetting the Public Servant for acquiring wealth disproportionate to his known source of income.

28. Ex.P-2 is the salary particulars of A-1[S.R.Baskaran]. The total salary drawn by him during the check period from December 1988 to July 1998 is Rs.2,81,118.95. Before joining service as Clerk in Reserve Bank of India, A-1[S.R.Baskaran] was carrying on business and his income was assessed to Tax. Ex.P-125 is the Income Tax Returns for the assessment year 1989 -1990 filed by A-1[S.R.Baskaran]. It reveals that his capital assets before he joined service was only Rs.2,96,816.00. During the check period, he has purchased (1) 400 sq.ft of land and building at Door No.11, Krishnapuram Street, Royapettah under Ex.P-3 investing Rs.1,83,040/- inclusive of stamp duty and registration fees; (2) 3570 sq.ft. of land and building at Door No.5/33, Venkatesapuram, Kottivakkam, Chennai – 41 under Ex.P-11 investing Rs.5,53,800/- inclusive of stamp duty and registration fees; (3) 1190 sq.ft. of land and building at the above address under Ex.P-10 investing Rs.3,50,370/- inclusive of stamp duty and registration fees; and (4) Contessa Car for Rs.4,15,923/- and bank balance

around Rs.2,75,000/- as listed in Statement-B under Movable Properties in Serial No.1,2,3,9,12,13 and 14. Besides these investments, during the search of his locker, 80 gold biscuits with foreign marking worth Rs.43,68,312/- had been seized under Ex.P-29.

29. A-1[S.R.Baskaran] claims that the gold bars found in his locker belongs to his father D.S.Rajamanickam. To prove, he has examined DW-2[Thiru.Thiyagarajan]. The reading of DW-2[Thiru.Thiyagarajan] evidence and scrutiny of his passport does not give any credence to the defence version. DW-2[Thiru.Thiyagarajan] has come back to India from Singapore during 1993 to settle in India permanently. He has brought with him 5 kgs of gold and some silver articles with him. He has paid the required custom duty for importing it. Within few days, he sold the gold to D.S.Rajamanickam through brokers and gave the custom receipt to him.

30. The Locker Register maintained by the TNSC Bank is marked as Ex.P-28 and spoken by PW-17[Thiru.S.Padmanaban] shows that the locker was opened by A-1[S.R.Baskaran] on 28.01.1994 and an agreement was entered by the Bank with A-1[S.R.Baskaran] on the same day. The copy of the agreement is Ex.P-27. The entries in the Register indicate that

the locker was operated by A-1 [S.R.Baskaran] on 28.01.1994, 05.04.1994, 06.07.1994 and 29.06.1998. The first date is the day on which the locker was allotted to A-1[S.R.Baskaran] and the late date is the day on which the locker was broke open in the presence of the accused and the Bank Officials to take inventory of it. In between only on two days, the locker has been opened and those dates are 05.04.1994 and 06.07.1994. Even if the version of DW-3[Thiru.T.Vivekananthan] is accepted that he brought 5 kgs of gold in the year 1993 and the same was sold to D.S.Rajamanickam, within a few days through brokers the total weight of the 80 gold bars seized under Mahazar marked as Ex.P29 comes around 10 kgs, D.S.Rajamanickam has not disclosed in his Income Tax Returns about this purchase either during the accounting year 1993 or subsequently.

31. The learned Senior Counsel appearing for the appellants contented that Late D.S.Rajamanickam was a big Businessman with crores of rupees turn-over paying Income Tax for his income. If so, there must be disclosure of this investment in his Income Tax Returns, which he has not done till his demise. Without disclosure of alleged purchase of the gold bars, only after its seizure, a vain attempt is made by the accused persons

that D.S.Rajamanickam has purchased the gold during his life time and kept it in A-1's locker. Even that attempt is not a complete attempt for entire 10 kgs of gold but, only for 5 kgs, which itself is not acceptable to this Court, since the receipts, time of purchase and identity do not tally with the evidence of DW-2[Thiru.Thiyagarajan].

32. Ex.P-124 is the letter addressed to the Superintendent of Police, SPE/CBI/ACB from Reserve Bank of India in response to the information sought by the Former regarding property statement furnished by A-1 [S.R.Baskaran]. From this exhibit, it could be seen that, A-1[S.R.Baskaran] has declared in his property statement furnished to his employer that he has advanced Rs.3,50,000/- to purchase agricultural land at Arakkonam and the same has been intimated to Income Tax Authorities. This nullifies the submission made by the learned Senior Counsels for the appellants that the advance of Rs.3,50,000/- paid for purchase of land at A.N.Kandigai, Arakkonam, is not proved by the prosecution. The very admission of A-1[S.R.Baskaran] in his property statement furnished to his employer, as seen from Ex.P-124, besides the deposition of PW-13[Thiru.Varadarajulu] well fortifies the prosecution case.

33. To prove the charges, the prosecution has relied upon 56 witnesses, 130 exhibits in P series and 82 material objects. The defence has examined 4 witnesses and marked 3 documents in D series. This Court finds the documents and witnesses relied on by the defence itself lends ample support to the case of the prosecution.

34. DW-1[Thiru.S.Nandakumar] has been examined to emphasis that as a Clerk-cum-Coin Note Examiner in Reserve Bank of India A-1[S.R.Baskaran] has no access to public and no scope to make any pecuniary benefit by abusing his official position (or) by corrupt means. The said plea is projected through DW-1[Thiru.S.Nandakumar], forgetting the fact that the charge against the accused is not for offence under Section 13 (d) of the Prevention of Corruption Act, 1988 but for offence under Section 13 (e) of the Prevention of Corruption Act, 1988.

35. DW-2[Thiru.Thiyagarajan] was examined to impress the Court that he sold the gold bars seized under Ex.P-29. However, his evidence only proves, he brought to India 5 kgs of gold in the year 1993. What is recovered from A-1[S.R.Baskaran]'s locker is about 80 gold bars

each about 116.72 grams in an average, totally weighing about 10 kgs. Linking the gold brought by DW-2[Thiru.Thiyagarajan] from Singapore and sold to D.S.Rajamanickam, the gold bars found in the Locker of A-1[S.R.Baskaran] is not probablised by the accused for the following reason. A-1[S.R.Baskaran], when asked for the locker key, he did not give the key but, had informed the Income Tax Officials that, it got lost. So, the locker was broke open. When he was asked about the small box found inside the locker, he did not say anything about its content or its ownership. Only after break open of the box, he had pleaded that the gold bars belong to his father. PW-17[Thiru.S.Padmanaban]Official of TNSC Bank has deposed that, it was A-1[S.R.Baskaran], who came to Bank and operated the locker on the earlier 3 occasions. So, A-1[S.R.Basakaran] alone had knowledge about the locker content and he cannot escape liability by shifting the ownership to his father, who is no more. More so, when the Income Tax Returns of D.S.Rajamanickam till his death has not been disclosed the purchase of gold bars worth around Rs.45 lakhs. In fact, his Income Tax Returns, during the relevant period, discloses purchase of gold jewellery worth only Rs.1,67,808/-.

36. Ex.D2 is the Block Assessment Order dated 28.03.2003

passed against A2[B.Sreedaladevi], after revising the earlier Assessment Order dated 31.10.1997 marked as Ex.P-95. In spite of giving liberal concession in respect of value of the assets, source of income, the Income Tax Authority has assessed the undisclosed income of A-2[B.Sreedaladevi] as Rs.56,37,040/-. On perusal of Ex.P-87, Block Assessment Order passed against A-1[S.R.Baskaran], the Assessing Authority has in fact found the worth of the investment made by A-1[S.R.Baskaran] during the Block Assessment period as Rs.1,77,04,893/- but, Income Tax Return filed only for Rs.62,90,412/-. Thus, even without referring to the other prosecution documents, from the documents relied on and accepted by the appellants itself, the assets acquired by A-1 and A-2 through undisclosed income exceeds one crore rupees.

37. Whereas, the prosecution through their witnesses and documents have clinchingly proved that, A-1[S.R.Baskaran] and A-2[B.Sreedaladevi], after marriage, have been living in the house of Thiru.N.Jambuheswaran [PW-21] for a rent till 1993, thereafter, have purchased several properties as listed under Statement-B and marked as Exs.P3,P4,P6,P10,P11 and P-15. The Statement of Bank accounts opened by the appellants mostly after 1993 reveals heavy flow of fund in their

accounts. To demonstrate though A-1 was a Public Servant employed in Reserve Bank of India, on 27/01/1995, when he open the account in the Standard Chartered Bank, in the account opening form [Ex P-16], he has mentioned his occupation as Business. The statement of account marked as Ex.P18 discloses that on 27/01/1995, he has opened the account with deposit of one lakh rupees. Thereafter, high value cheques were periodically deposited into that account. It is surprise to note from the salary statement of A-1[Ex.P-2] that A-1[S.R.Baskaran] has not even drawn his salary for the months of January to March 1995. But, during that period, i.e between 27/01/1995 and 27/03/1995, he has made nearly 25 transactions either deposit or withdrawal and on 28/03/1995, after cash withdrawal of Rs.6,50,000/-, his credit balance in the said account was Rs.8,21,757.19.

38. The investments in moveable and immovable assets, cash, gold and silver articles seized during the search of the premises, as listed in Statement-B extracted above, by no stretch of imagination gives an impression that they were acquired through legal source. Just pointing the source to D.S.Rajamanickam, who is no more and others, who have no records to prove their legitimate source for the gift (or) donation to A-1[S.R.Baskaran] or A-2[B.Sreedaladevi] will not exonerate A-1 and A-2

from proper accounting the properties found in their possession.

39. In this regard, it is pertinent to record the observations made by the Hon'ble Apex Court regarding Section 13(1)(e) of the Prevention of Corruption Act, 1988, in its recent judgment **STATE OF KARNATAKA V. SELVI J. JAYALALITHA & ORS.**, reported in **2017(7) SCC 263**, where the essence of Section 13(1)(e) of the Prevention of Corruption Act, 1988 as propounded in various judgments of the Hon'ble Apex Court, has been extracted. It is suffice to re-produce the same below, which answers the submissions of the learned Senior Counsels appearing for the appellants.

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*** reported in **(1960)1 SCR 461**, 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. 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)

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 a betment 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."

40. It is made clear in unambiguous terms that, the provisions of Prevention of Corruption Act, 1988 contemplates different situations where a Public Servant can misconduct himself and obtain pecuniary benefits either by corrupt means or by abusing his official position. While Clauses (a) to (d) of Sub-Section (1) of Section 13 of the Prevention of Corruption Act 1988 take care of those situations, Clause (e) an omnibus clause holds a Public Servant accountable for the assets, he possess in his name or his *benami*. The reason for such a provision is obvious. Any offence which falls under Section 7, 11, 13 (1) clauses (a) to (d) will ultimately manifest in accumulation of wealth. Even if the offences under Section 7 or 11 or 13 (a) to (d) does not surface to light, the possibility of manifested offence getting exposed is more. Further, as an alternate, any other person known

to the Public Servant may take advantage of his position and proximity, shall slash his or her ill-gotten money into the account of the Public Servant. In such case, unless the Public Servant satisfactorily account the pecuniary resource for the possession of properties disproportionate to his known source of income, he shall be liable to be prosecuted. The statute has also taken pain to explain, what 'known source of income' means as income received from 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. Thus, the legislation, though permits a Public Servant to possess wealth, it expects from him/her that the source of his wealth must be legitimate. Mere declaring the income to the Taxing Authority belatedly or pointing out the source to some one else, without accounting for the same with the appropriate authorities, will not make such source a lawful source.

41. In this case as indicated, the receipt of the pecuniary resource for the properties held by the appellants never been intimated by A-1[S.R.Baskaran] in accordance with the provisions of Income Tax Act (or) to his own Department. What the appellants have done is, after the search of their premises and seizure of evidences, had filed Income Tax

Returns under Block Assessment admitting undisclosed income and had come forward to pay the Income Tax. On payment of Tax, the liability for non-payment of income tax gets absolved but, it does not purify the source of income, if it is tainted one. It is found that the said admitted undisclosed income of A1 and A2 exceeds far above the known legitimate source.

42. Through documentary and ocular evidence, the prosecution has proved the guilt of the accused to the core. The reasons stated by the learned Senior counsels appearing for the appellants to exclude certain assets and to give credit to certain alleged income do not merit any consideration. As per the assessment order Ex.P-95 and Ex.D-3, the Income Tax Department has found possession of assets worth of Rs.1,14,14,481/- in the name of A-1[S.R.Baskaran] and Rs.56,37,040/- in the name of A-2[B.Sreedaladevi] respectively. This assessment may be slightly lesser than the assessment of the prosecution, which has valued the assets at Rs.2,25,95,178/- (as mentioned in the charge framed against the accused), but the marginal difference does not change the character of dis-proportionality. The material evidence indicates maximum reduction in the value assessment and source have been taken note by the Income Tax

Authorities. The valuation for most of the properties held by the accused are based on title documents and bank balance. In so far as the value of the 80 gold bars, there is no dispute. Therefore, in the said circumstances, concession on percentage of dis-proportionality does not arise.

43. In the result, **these Criminal Appeals are dismissed.** The conviction and sentence passed in C.C.No.32 of 1999 dated 26.08.2008 on the file of the Principal Special Court for CBI Cases, Chennai are hereby confirmed.

16.11.2017

Index:Yes/No

Internet:Yes/No

Speaking order/Non speaking order
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To

1.The Deputy Superintendent of Police,
SPE/CBI/ACB/Chennai.

2.The Special Public Prosecutor for CBI Cases,
High Court, Madras.

DR.G.JAYACHANDRAN,J.

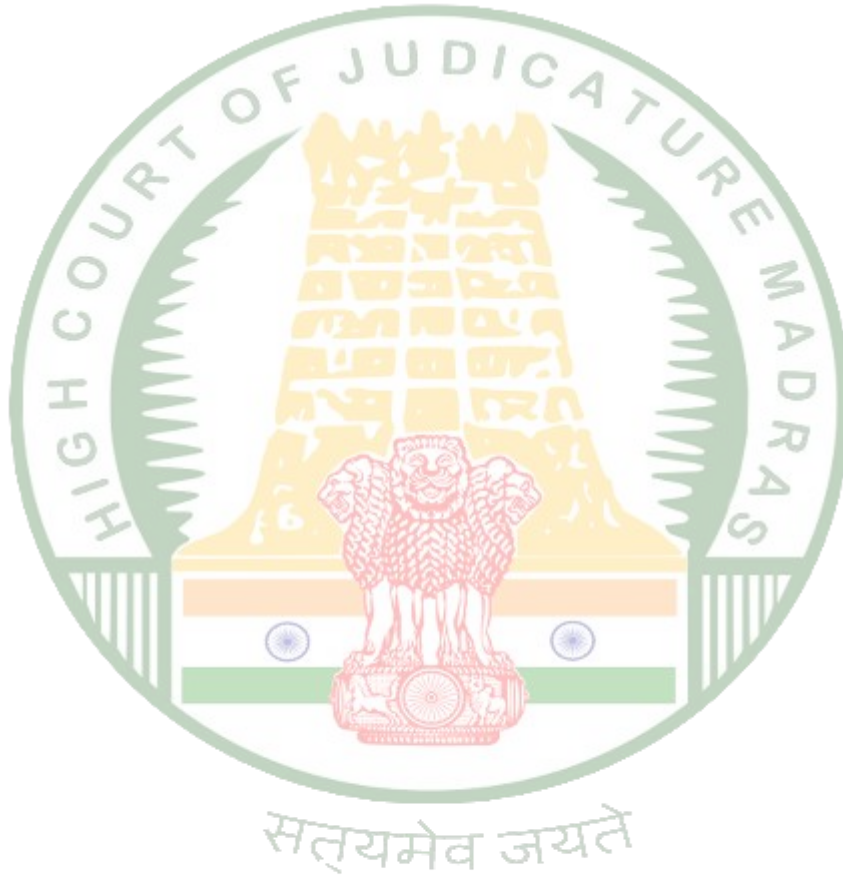
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Pre-delivery judgment made in
Crl.A.Nos.646 and 647 of 2008

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