BAIL SLIP

The Appellants/Petitioner namely viz., P.Vijay Amaldass, S/o.Packiam was directed to be released on bail as per the Order of this Court, dated 20.11.2008 in MP.No.1/2008 in CRL.A.798/2008, on the file of this Court.

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Reserved on : 13.09.2017

Pronounced on :04.10.2017

Coram

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

Crl.A.No.798 of 2008

P.Vijay Amaldass .. Appellant

/versus/

State by Inspector of Police,
CBI, Chennai. .. Respondent

Criminal Appeal has been filed under Section 374(2) of the Code of Criminal Procedure praying to call for the records of the case in C.C.No.24 of 2004 on the file of the Principal Judge, CBI Court, Chennai, set aside the conviction and sentence dated 12.11.2008 and acquit the appellant.

For Appellant : Mr.V.Gopinath,
Senior Counsel
for Mr.C.Rajan

For Respondent : Mr.K.Srinivasan
Spl.Public Prosecutor
(CBI Cases)

J U D G M E N T

The appellant, P.Vijay Amaldass, a public servant employed as District Manager in Food Corporation of India during the check period between 01.01.1993 to 01.03.2002, was found in possession of assets disproportionate to his known source of income, hence, tried before the learned Principle Judge for CBI cases, Chennai in C.C.No.24 of 2004. The trial Court held the charges proved and sentenced him to undergo 3 years Rigorous Imprisonment and imposed to pay a fine of Rs.5,00,000/- for the offence under Sections 13(2) r/w 13(1) (e) of the Prevention of Corruption Act, 1988. Challenging the sentence and conviction, the present appeal is filed.

2. Background of the case:

On 10.06.2002, the CBI registered First Information Report against P.Vijay Amaldass and his wife Smt.Regina Mary, based on credible information that P.Vijay Amaldass, who joined as Assistant Grade III in Food Corporation of India on 04.07.1973 at Hyderabad, later promoted as Assistant Manager and Deputy Manager, while serving at Hyderabad, Calcutta and Cuddalore, he had acquired assets of moveables, immovables and valuable securities in his name and in the name of his wife and other family members by corrupt or illegal means, disproportionate to his known source of income, which disclose commission of offence under Section 109 IPC r/w 13(2) r/w 13 (1)(e) of Prevention of Corruption Act, 1988.

3. After detail investigation, a final report was laid down against P.Vijay Amaldass, after obtaining sanction to prosecute. The trial Court took cognizance of the report, framed charge against the accused/appellant under Section 13 (2) r/w Section 13(1)(e) of Prevention of Corruption Act, 1988 for he being a public servant as Assistant Manager/ Deputy Manager in Food Corporation of India at Cuddalore, Bankura and Malta during the period 01.01.1993 and 01.03.2002 acquired assets disproportionate to his income. As on 01.03.2002, he had been in possession of pecuniary resources and properties worth about Rs.18,64,048.13 paise in his name and his family members name. Before the trial Court, the CBI, to prove the charges had examined 40 witnesses and marked 238 exhibits. On behalf of the accused one witness and 3 exhibits were marked.

4. The income tax returns was filed by the accused during the relevant point of time. The income of the accused and his wife; the value of the residential building constructed by the accused at Cuddalore and Thanjavur; the value of the house site at Thanjavur and Cuddalore; the fixed deposits stood in the name of the accused, his son and daughter at Cuddalore Central Co-operative Bank; Saving banks accounts in the name of the accused and his family members in State Bank of India; Punjab National Bank and ICICI; debentures of Shriram Transport Finance Corporation; and the investment made in National Savings Certificate of Postal Department, were cumulatively appreciated by the trial Court and after considering the defence exhibits and explanation given by the accused, a sum of Rs.84,493/- being the other emoluments in addition to salary received by the accused's wife, was debited in the total sum of alleged disproportionate assets value. A further sum of Rs.1,00,000/- reduced from the assessed value of the residential house at Thanjavur, which stood in the name of the accused wife and valued as Rs.1,32,885/- instead of Rs.2,32,885/- and finally held that, the accused found in possession of assets worth of Rs.16,79,555.13 excess to his known source of income.

5. The learned Senior Counsel appearing for the appellant, challenging the merit of the trial Court judgment, placed his submission as under:-

The wife of the appellant is employed as Teacher and has been earning monthly salary. While her assets being taken into the account, her income prior to the check period has not been taken note by the prosecution and the trial Court. The value for the buildings was not only exaggerated, even the normal reduction for personal supervision not given credit. Further, the portion of the construction made prior to the check period is taken as construction during the check period without any basis. Through the defence evidence the appellant has proved that old jewels of his wife received as sridhana was sold and the value ought to have been given debited in the total assets value. The trial Court has failed to take note of the fact that the HIG flat in the name of the appellant's wife was purchased from the loan raised by the appellant's wife.

6. Per contra, the learned Special Public Prosecutor (for CBI Cases) submitted that the appellant and his wife before check period had disclosed assets worth less than one lakh rupees. During the check period from 1993 to 2002, their income through know source was only Rs.24,88,437.85. Out of which, a sum of Rs.10,34,749.30 was deducted towards expenditure for the appellant family, which consists of four members. During the check period, his daughter had just completed her MBBS course and his son completed BE at Annamalai University and MBA in Pondicherry University. During the said period, the appellant has constructed first floor of his house at Thanjavur and another HIG house in the name of his wife at Thanjavur. In addition to immovable assets, investment in bank fixed deposits, debentures and deposits in bank accounts, which stood in the name of the appellant's son Mr.Arun Kumar and daughter Ms.Sujatha has proved periodical deposits in those accounts, though they had no income of their own, a sum of Rs.1,90,000/- was found accumulated in the joint account of Mr.Arun Kumar and Ms.Sujatha and a sum of Rs.87,750/- in the account of Ms.Sujatha. These documents clinchingly proves disproportionate assets. The trial Court has come to right conclusion, after considering the documentary and oral evidence let in by the prosecution. The defence explanation that the loan advanced to their relatives were repaid and deposited in his son's account and the shridana jewels were sold, is unacceptable in law and facts. The trial Court has rightly pointed out in its judgement that if the jewels were available before the check period, then as public servants both the appellant and his wife should have disclosed it in their assets and liability statements, which they are supposed to declare periodically to their employer. Hence, the appeal is liable to be dismissed.

7. Heard the rival submissions and perused the records.

8. The facts undisputed are, the appellant joined service in the year 1973 as Assistant Grade III in Food Corporation of India and rose to the rank of Deputy Manager in the year 2002. He got married to Ms.Rajina Mary, a Teacher employed in a School at Cuddalore and they had a son and daughter. Both the appellant and his wife are income tax assessees. The appellant and his wife have houses at Thanjavur and Cuddalore. The appellant daughter was pursuing M.B.B.S., course and his son was pursuing B.E., and M.B.A., during the check period. Chits were subscribed by the appellant in Shriram Chit funds, saving bank accounts were opened in the name of the appellant and his family members and regular investment were made into those accounts. That apart, investment in NSC bonds, debentures of Shriram Transport Financial Corporation, Fixed deposits in Cuddalore Co-operative Central Bank are also admitted. While so, the appellant questions the assessment of his wealth on the ground that his agricultural income and rental income have not been taken into account and the value of his assets prior to check period has not been taken into account.

9. To arrive at the value of the assets prior to the check period, the prosecution has relied upon the salary particulars of the appellant, which has been spoken by PW-3 Ilakkiya Ashokan, Assistant Manager, Accounts, District Office, Food Corporation of India, Cuddalore and PW-6 Shri.E.Vijith Paul, Deputy Manager, Food Corporation of India, Bankura and Purulia, West Bengal. According to these witness, the total salary and arrears for the appellant during the entire check period is (Rs.4,93,085/ + Rs.3,77,693-) only. The salary particulars of Mrs.Rajina Mary, W/o the accused appellant is spoken by PW-4 [Mr.Mahalingam]. According to this witness, the net salary of the Mrs.Rajina Mary for the period covering 01.01.1993 to 28.02.2002 is Rs.7,11,747/-. She has availed House Building Allowance (HBA) on 25.03.1996 a sum of Rs.3,37,594/- and had been recovered from the salary of Mrs.Rajina Mary. The above said facts are supported by Exs.P4 to P7.

10. The declared income of the appellant to the Income Tax Department is spoken by PW-8, [Mr.N.Annamalai] ITO, Ward-1 (2), Cuddalore. The income tax files of the appellant for the assessment year 1997-98 to 2002-2003 are marked through PW-8 as Exs.P-16 to P-37. The Income Tax Department had summoned the appellant under Section 131 of the Income Tax Act on 05.11.2001 and had enquired the appellant about his income, expenditure and investments. In the said proceedings, the appellant has admitted that his source of income are his salary, his wife salary, agricultural income, rental income and bank interest. His son has no income. His daughter got married to a Lecturer in Pondicherry Engineering College on 06.05.2001 and he spent Rs.2,50,000/- for her marriage. He started the construction of the house in the year 2000 at No.54, Arun Nagar, Cellankuppam, Cuddalore OT and completed it in March 2001. Further, he has stated that he own about 1 acre

agricultural land at Thanjavur District and he purchased it on 5th July 1993 for Rs.65,901/-. The proceedings marked as Ex.P-38 clearly reveals that, the appellant has constructed the building at Cuddalore during the check period. He has undervalued the building by about Rs.70,000/- and when confronted with the valuer's report, he has replied that the building was constructed under his direct supervision and he incurred only Rs.4,00,000/- to build it. In the said proceedings, the appellant has also annexed the details of his immovable assets as on 05.11.2001. The same is extracted below to show that the constructions of the houses were completed only during the check period and not before the check period as claimed by the appellant.

Details of Immovable property

Date	Property	Deed	Market Value Rs.
29.9.1980 June 1994	Plot @ Thanjavur & Construction Completed	Sale deed	5867.00 112500.00
20.07.1992	1925 Sq.ft., Plot @ Saravana Nagar	Sale deed	12382.00
05.07.1993	Agricultural Lands	Exchange deed	65901.00
29.03.1993	1920 sq.ft., Plot @ Pakkirisamy Nagar	Sale deed	16711.00
28.10.1999	1504 sq.ft. Plot @ Lakshmi Nagar	Sale deed	81673.00
06.12.1999	2100 sq.ft., Plot @ Arun Nagar	Sale deed	35179.00
24.07.2000	1770 sq.ft., Plot @ Lakshmi Nagar	Sale deed	63730.00

11. Thus, from these witnesses, the defence that value of the assets prior to check period has not been taken into account, gets falsified and this Court finds no error in the assessment made. In fact, the valuation of the immovable properties has been leniently valued and the trial Court has further discounted one lakh rupees in so far as the value of the HIG house at Thanjavur, which stands in the name of the appellant's wife.

12. Regarding the investments in Shriram Chit Funds, Shriram Transport Finance Corporation, NSC bonds, Savings in various bank accounts and Fixed Deposits in Cuddalore District Central Co-operative Bank, the documents speaks for itself. The appellant has no explanation to offer for cluster of

investment on the same date and also periodically at regular interval. The explanation that his relatives repaid the loan advanced to them prior to the check period, beside bereft of details appears as an afterthought, since the said explanation does not disclose his source to advance loan to his relatives. Further, the examination of Ex.D-3 series receipts, it appears the appellant and his wife had sold old jewels on 18 occasions between 08.01.2001 and 08.01.2002 to Valli Vilas, Cuddalore. The receipts indicates that nearly 725 grams of 22 carat jewels (90 sovereigns) sold by the appellant and his wife during this period. The appellant has not substantiated through evidence that he had in possession of 90 sovereign jewels prior to check period, which he later sold it through Valli Vilas Cuddalore under Ex D-3. He or his wife had not disclosed in his assets and liability statements about the possession of 90 sovereign jewels.

13. The prosecution has well established through documents the charge against the accused regarding his possession of disproportionate assets beyond the known source of income. The trial Court has properly appreciated the evidence, had reduced the value of disproportionate assets by Rs.1,84,493/-. The possession of excessive wealth worth more than Rs.16,79,555.00 is unexplained by the public servant, which warrants punishment under the Prevention of Corruption Act,1988. Therefore, this Court confirms the judgment of the trial Court impugned in this appeal. Hence, this Criminal Appeal is dismissed.

14. The learned Senior counsel appearing for the appellant also submitted that, in case this Court upholds the conviction, the period of sentence may be reduced taking note of the age of the appellant, who has crossed 68 years and the Department has allowed him to retire, considering his unblemish service all through his career.

15. The statute as it then stood, prescribed minimum sentence of one year R.I and maximum sentence of seven years R.I. The trial Court has imposed only 3 years of R.I. Considering the submissions made by the learned counsel appearing for the appellant, this Court, while confirming the finding of the conviction arrived at by the trial Court viz., learned Principal Judge, CBI Court, Chennai in C.C.No.24 of 2004 dated 12.11.2008, modifies the sentence of three years of Rigorous Imprisonment in respect of offence under Section 13 (2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988, to one of 1 year of Rigorous Imprisonment. The fine amount imposed on the appellant by the trial Court is confirmed. The bail bond shall stand cancelled. The period of sentence, if any already undergone by the accused, is ordered to be set off as provided under law. The appellant is hereby directed to surrender within 2 months from the date of this judgment. In case, he fails to surrender within 2 months, the respondent shall secure him and remand to prison.

16. In view above modification, this Criminal Appeal is disposed of.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Principle Judge,
CBI Court, Chennai.

2.The Inspector of Police,
CBI, Chennai.

3.The Special Public Prosecutor(CBI Cases),
Chennai.

4.The Section Officer,
Criminal Section, High court,
Madras.

+2cc to Mr.C.Rajan, Advocate SR.No.71236

Crl.A.No.798 of 2008

SK(CO)
GN(26/10/2017)