

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 08..08..2017

Judgment Pronounced on : 02..02..2018

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.628 of 2014

N.Pasupathy

... Appellant / Accused

-Versus-

State Rep. by
The Inspector of Police,
Vigilance and Anti-Corruption,
Chennai City-II,
Nandanam,
Chennai 600 035.
[Crime No.2/AC/2007]

... Respondent / Complainant

Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973 r/w Sec. 27 of The Prevention of Corruption Act, 1988 against judgment of conviction and sentence dated 24.11.2014 recorded in Special Case No.13 of 2011 by the learned Special Judge and Chief Judicial Magistrate, Thiruvallur, Thiruvallur District.

For Appellant : Mr.S.Ashok Kumar,
Senior Counsel for
Mr.B.Mahendra Naidu

For Respondent : Mr.R.Ravichandran,
Government Advocate
[Criminal Side]

JUDGEMENT

The sole accused in Special Case No.13 of 2011 on the file of the learned Special Judge and Chief Judicial Magistrate, Thiruvallur, is the appellant herein. He stood charged for offence under Sections 13(2) r/w 13(1)(e) of The Prevention of Corruption Act. When the appellant was questioned as to the charges, he pleaded not guilty and therefore, he was put on trial. The learned Special Judge, after full-fledged trial, found the appellant guilty of offence under Sections 13(2) r/w 13(1)(e) of The Prevention of Corruption, 1988. The appellant was accordingly convicted and sentenced to undergo rigorous

imprisonment for two years and to a fine of Rs.1,00,000/- in default to suffer simple imprisonment for three months for offence u/s 13(2) r/w 13(1)(e) of The Prevention of Corruption Act, 1988. The learned Special Judge has also ordered to confiscate M.O.1- Cash (series) totalling to Rs.1,00,000/- which was seized under Ex.P.2 Search List. Challenging the above said judgment of conviction and sentence and also the order of confiscation, the accused is before this court with this criminal appeal.

2. The case of the prosecution in brief is as follows:- The appellant was serving as Inspector of Police, Virudhachalam Police Station, Cuddalore District between 03.08.2008 and 30.04.2010. Prior to that, he was serving as Inspector of Police during the period between 01.01.1996 and 28.02.2007 at various stations. Thus, the petitioner is a public servant within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988.

3. On a complaint received against the appellant, P.W.23, Inspector of Police, Vigilance and Anti-Corruption, perused the contents of the same and submitted a report to the Director, Vigilance and Anti Corruption Department and as per the order of the Vigilance Commissioner by letter No.7936/V & AC2/2006 dated 28.12.2006, thereby granting order to take action against the appellant, P.W.23 registered a case in Crime No.2/AC/2007/CC-II, for offence punishable under Sections 13(2) r/w 13(1)(e) of The Prevention of Corruption Act on 01.03.2007. On the orders of the Superintendent of Police, Central Range, Vigilance and Anti-Corruption, Chennai 600 028 P.W.23 took up the case for investigation. Accordingly, P.W.23 conducted house search on 03.03.2007 between 07.30 a.m. and 02.00 p.m. in the presence of official witnesses P.W.2 and P.W.11 and seized cash of Rs.3,35,000/- which was unaccounted and 39 documents. Necessary investigation was carried out and documentation was done at the spot by P.W.23. P.W.23 examined P.W.2 to P.W.22 and recorded their statements. On his investigation, P.W.23 concluded about appellant possessing disproportionate assets and issued a final opportunity memo to the appellant to explain about the legal sources of income and on being dissatisfied with the reply of the appellant and upon perusing the other materials placed on record and on applying his mind, P.W.1, the Deputy Inspector General of Police, Villupuram Range, Villupuram, had issued sanction order dated 22.10.2010 to prosecute the accused. In the mean time, P.W.23 was promoted and on his promotion, his successor P.W.24 took up the case for further investigation and on completion of investigation, he laid charge sheet against the appellant as stated earlier.

4. According to the prosecution, the check period in this case was between 01.01.1996 and 28.02.2007. At the beginning of the check period, i.e. as on 01.01.1996, the appellant was found to have acquired and possessed properties and pecuniary resources in his name and in the name his family members worth Rs.3,35,860/- and at the end of the check period, he was found to have acquired and was in possession of properties and pecuniary resources in his name and his family members worth Rs.77,21,032/-. Thus, he had acquired and was in possession of properties and pecuniary resources during the check period from 01.01.1996 to 28.02.2007 to the tune of Rs.73,85,172/-. During the check period, the appellant was found to have had a total income from known sources of himself and his family members to the extent of Rs.51,62,211/- and the total expenditure during the same period was assessed as at least Rs.17,28,661/- and thus he had more expenditure than the income of himself and his family members of Rs.34,36,550/-. The appellant was found to have met out the expenditure, acquired and was in possession of properties and pecuniary resources in the name of himself and his family members as on 28.02.2007. The appellant had amassed wealth in his name and his family members which is disproportionate to his known sources of income to the extent of Rs.39,48,622/-. The appellant was unable to account for the same satisfactorily and therefore, he was prosecuted for offence under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988.

5. On appearance before the trial court, the substance of the offences were explained and charges were framed under Section 13(2) r/w 13(1)(e) of The Prevention of Corruption Act. The appellant denied the charges and opted for trial. Thus, he was put on trial.

6. Based on the materials collected during investigation, the prosecuting agency has examined as many as 24 witnesses as P.W.1 to P.W.24, Exs.P.1 to P.73 were marked and M.O.1-cash (series) was marked.

7. Out of the witnesses, P.W.1 was the sanctioning authority. P.W.2 and P.W.11 are the government witnesses. They have spoken about the house search made by P.W.23 and the consequential documentations. the P.W.3 to P.W.5 were bank officials and they have spoken about the opening of account by the appellant in their respective bank and also the fixed deposits and saving of the appellant and his family members.

8. P.W.6, the then Assistant Manager of Sundaram Finance, has spoken about the loan availed by the son of the appellant. P.W.7 has spoken about the evaluation carried out in respect of three house buildings owned by the appellant himself and his

family members. P.W.8, the Sub Post Master of Porur Post Office has spoken about the postal savings of the accused in his name and his family members. P.W.9 the then Manager of I.C.I.C.I. Bank, Porur Branch, has spoken about the fixed deposits in the name of the appellant and his family members.

9. P.W.10, the then Sub Registrar of Kundrathur, has spoken about the plots registered in the name of the appellant. PW.12, the then Personal Assistant to Superintendent of Police, Thiruvallur District, has spoken about the salary particulars of the appellant between the year 2002-2004.

10. P.W.13, who the then Personal Assistant to Joint Commissioner, South Chennai, has also spoken about the salary particulars of the appellant from 1996 to April 2004. P.W.14, the Personal Assistant to Joint Commissioner, South Mount, has spoken about the salary particulars of the appellant from January 1996 to March 1997. P.W.15, the then Personal Assistant to Superintendent of Police, Vellore, has spoken about the salary particulars of the accused from March, 1999 to December 1999.

11. P.W.16, the then Sub Registrar, Guduvanchery, has spoken about the housing plots stood in the name of the appellant. P.W.17, the then Statistical Inspector, has spoken about the family consumption expenditure of the appellant. P.W.18, the then Assistant Engineer, Tamil Nadu Electricity Board, has spoken about the Electricity consumption of the appellant. P.W.19 has spoken about the tenancy agreement between himself and the son of the appellant and also the rate of tenancy and the advance paid under the tenancy agreement. P.W.20, the then Executive Officer, has spoken about the payment of property tax by the appellant. P.W.21, the then Assistant Executive Engineer, has spoken about the evaluation done for the property owned by the appellant. P.W.22, a Chartered Accountant, has spoken about the returns filed by the appellant for the period 2004-2007. P.W.23, the then Inspector of Police, Vigilance and Anti-Corruption, has spoken about the registration of the case after having obtained approval from the Vigilance Commissioner, house search conducted by him and the consequential documentations and also his conclusion about the accused being in possession of assets disproportionate to his known sources of income and also the final opportunity given to the appellant to explain the legal sources of income. P.W.24 has spoken about the further investigation carried out by him in this case and also the filing of charge sheet against the appellant.

12. When all the incriminating materials that appeared in the evidence let in by the prosecution witnesses were put to the appellant before the trial court, he, in general, denied the

same as false and submitted that the prosecuting agency did not take into account the income of his son who was a Doctor by profession and was also a partner in a retail liquor shop and income derived by his wife from milk vending business and also the income derived from his ancestral properties. On his side, the appellant has examined D.W.1 to D.W.6, apart from getting himself into the witness box as D.W.7. He exhibited Exs.D1 to Ex.D.26.

13. D.W.1 is a retired Chief Engineer from Public Works Department, Government of Tamil Nadu. He has stated that he inspected the housing building of the appellant situated at Mangalam Nagar in Porur. According to D.W.1, he estimated the land and buildings at Rs.4,35,000/-. D.W.2 is an Auditor by profession. He has spoken about the filing of returns for and on behalf of the appellant from the year 2005. D.W.3, who claimed to be a partner along with the son of the appellant, has spoken about the retail liquor shop run by him along with the son of the appellant and the investment of the son of the appellant in the partnership business. He has also spoken about the property owned by the son of the appellant at Porur and the income from the partnership business. D.W.4, the brother of the appellant, has spoken about the involvement of the appellant's wife in the cultivation on the ancestral farm lands of the appellant and the produce yielded therefrom. D.W.5, the son of the appellant, has spoken about his graduation in medicine and his independent sources of income also his involvement in the business of liquor retail vending. D.W.6, a brother-in-law of the appellant, has stated that they have given 100 sovereigns of gold jewels and cash of Rs.1,00,000/- to their sister at the time of her marriage besides other sreedhana articles. He has also spoken about the partition between himself and other sharers including the wife of the appellant. He has further stated that when his father relinquished his right in the ancestral properties to his sons and therefore, from out of the proceeds derived from the sale of their ancestral properties in the year 2006-2007, they paid a sum of Rs.5,00,000/- to his sister, the appellant's wife, as a gesture and token of love and affection. He has also stated that he was only taking care of the livestocks of his sister and was paying a sum of Rs.5,000/- every month from out of income derived through the livestocks. D.W.7, the appellant, has spoken about his income; the share given to his wife from the ancestral properties by her brothers and also the income of his wife and son from out of their own businesses and the acquisition of properties in their own name. He has also spoken about the disposition of properties which were standing in his name.

14. Having considered the oral and documentary evidences let in on both sides, the learned Special Judge found the appellant guilty of offence under Section 13(2) and 13(1)(c) of The Prevention of Corruption Act, 1988, convicted and sentenced him thereof as stated in the first paragraph of this judgment. Aggrieved by the said conviction and sentence and the confiscation of cash property (M.O.1), the appellant is before this court.

15. I have heard the learned senior counsel for the appellant/accused and the learned Government Advocate (Criminal Side) appearing for the respondent/State and also perused the records carefully.

16. Challenging the conviction and sentence on the ground that Ex.P.10 and Ex.P.11 could not be acted upon on account of discrepancies in the value estimated; the legal sources of income projected by the appellant during the course of investigation as well as trial have not been taken into account in a proper perspective; the investigating agency despite having been brought to the notice has purposively omitted to take into account the ancestral income and other incomes prior to the commencement of the check period; The sanction accorded by P.W.1 for the prosecution was not in accordance with law and it is hit by non application of mind; and P.W.23 who was the complainant in this case could not have investigated the case, the appellant is before this court with this criminal appeal.

17. Admittedly, between 03.08.2008 to 30.04.2010, the petitioner was serving as Inspector of Police, Virudhachalam Police Station, Cuddalore District. Formerly he was the Inspector of Police at various stations between 01.01.1996 to 28.02.2007. The appellant was a public servant as defined in Section 2(c) of the Prevention of Corruption Act. On a complaint he was prosecuted under the Prevention of Corruption Act on being obtained due sanction. The check period in this case was between 01.01.1996 and 28.02.2007. According to the prosecuting agency, as on 01.01.1996, i.e., at the beginning of the check period, the accused was found to have been in possession of properties and pecuniary resources in his name and his family members worth Rs.3,35,860/- and at the end of the check period, i.e., as on 28.02.2007, he was found to have acquired and was in possession of properties and pecuniary resources in his name and family members worth Rs.77,21,032/- which includes, fixed deposits, amount in savings account and amount in cash besides immovable properties and improvements and developments made on the immovable properties. The appellant was charged with amassing of assets disproportionate to the known sources of his income. According to the prosecution, the disproportionate assets were worked out to Rs.39,48,622/-

18. The defence of the appellant is that he served as a public servant in the police department and had been getting monthly income by way of salary and his family members had been deriving income through agricultural activities and milk vending business and his wife was getting monetary help from her brothers and father. The further case of the appellant is that his son who is a Doctor by profession had been involved in a retail liquor vending partnership business along with D.W.3 and getting sizeable income from his business and apart from that he had also been getting rental income from his self acquired properties. To some extent the appellant would try to make out a defence that he was a man of means at the time of entering into service and his family members had been deriving income through their agricultural and other business activities.

19. The learned senior counsel for the appellant would submit that the appellant hails from Navalur Village, Sriperumbudur Taluk in Kancheepuram District. His father-M.Nadamuni (since deceased) was a Head Constable in Armed Reserve in Chengalpattu District and that he retired from service as early as on 31.01.1972. He left behind, his wife-Baby Ammal; three sons including the appellant and two daughters. The appellant had his school education at St.Thomas Mount and college education at Nandanam. The elder brother of the appellant namely, N.Manickavasagam also joined in the police department and served as a Police Constable and died in a road accident in the year 1980 while he was in service. The younger brother of the appellant namely N.Balasundaram is in affluent circumstances in that he has been doing agriculture in about 10 acres of land as well as manufacturing country bricks and also getting rental income. The last brother of the appellant namely, N.Vishnukumar was a mentally unsound person from the date of his birth. The appellant and the rest of the family members effected a partition of the House and the agricultural properties. Yet, they were continued to be managed by his younger brother -N.Balasundaram and the wife of the appellant namely, Tmt.P.Kanniammal as the appellant was in transferable service and was moving from one place to the other periodically. After the demise of N.Vishnukumar, who was a mentally ill person, his properties were equally divided among the brothers and the appellant was enjoying his properties that fell to his share. The younger brother N.Balasundaram, who was managing the properties of the appellant, used to pay the income that yielded from the lands promptly to the wife of the appellant.

20. The learned senior counsel would further submit that the appellant got married on 02.06.1976 to one Kanniammal who was a daughter of late Kistappa Naicker of Amanambakkam Village in Chengalpattu Taluk. Since she was the only female member in the family, his father-in-law, had given a sum of Rs.1,00,000/- as

cash, 100 sovereigns of gold jewels and 3 kgs of silver articles as seethanam and the same has been reflected in the property statement of the appellant which was submitted to the department/investigating officer. That apart, his father-in-law, who was owning about 5 acres of land at Amanambakkam Village and was cultivating, used to extend monetary help periodically to his daughter, the wife of the appellant. Similarly, the maternal uncles of the wife of the appellant also used to extend monetary help as a token of gesture and love and affection.

21. The learned senior counsel for the appellant would also further submit that subsequent to the death of the father of the appellant in the year 1980, a partition was effected among members of his family and in the said partition, which was registered at Sriperumbudur Sub Registrar's Office as a deed of partition, he was allotted 4 cents in S.No.272/2, 56 cents in S.No.262 and 50 cents in S.No.65/15 at Pillaipakkam village; 24 cents in S.No.262 and 50 cents in S.No.13B in all about 2 acres and 94 cents and that the said lands were looked after by his brother N.Balasundaram under the supervision of the wife of the appellant. The wife of the appellant was also doing milk vending business and was nurturing about 10 number of milching buffaloes and 5 number of milching cows and was earning about Rs25,000/- through agricultural and milk vending activities.

22. The learned senior counsel would add that during the year 2006-2007, the wife of the appellant relinquished her rights in the property to her brothers and as a gesture and out of love and affection towards her and her family members, the brother of the wife of the appellant had paid cash of Rs.5,00,000/- so as to enable her to invest the same in any one of the interest accruing deposits in the name of her child for future prospects.

23. The learned senior counsel for the appellant would lastly submit that the appellant got promotion as Inspector of Police on 01.06.1996 and served in various places till he was placed under suspension between 11.05.2006 and 11.04.2007 for no fault of his. In that way, he is an affluent person and was having source of income from besides his salary. Though the appellant had clearly explained about this legal sources of income in his explanations submitted to the show cause notice issued by the investigating officer, the same have not been considered in a proper perspective either by P.W.23 or P.W.24 and that the department had filed a charge sheet against the appellant under Section 13(1)(2) and r/w 13(1)(e) of the Prevention of Corruption Act. The trial court also did not properly appreciate the evidence adduced by the prosecution and the defence witnesses.

24. The learned counsel for the respondent would submit that all the explanations offered by the appellant to the show cause notice were carefully considered and the same were rightly rejected by the investigating officers as the same were not substantiated and not acceptable in law. The trial court after having considered both the oral and documentary evidence let in by the prosecution as well as the defence, has rightly come to the conclusion that the appellant had amassed assets in his name and his family members to the extent of Rs.39,48,622/- which were disproportionate to his known sources of income and when the appellant, who was duty bound to explain satisfactorily as to how he amassed wealth to such extent, was asked to give proper explanation, he did not discharge his burden to explain the legal sources of income, the trial court therefore found him guilty of offence and convicted and sentenced him accordingly. The trial court has given proper reasons to convict the appellant and the same does not require any interference at the hands of this court.

25. The learned senior counsel appearing for the appellant placed reliance heavily upon the testimonies of D.W.1 to D.W.7 in an attempt to convince this court as to the sources of income of the appellant and his family members.

26. In this regard, the learned Government Advocate would submit that though D.W.1 in his evidence has stated that on inspecting the house property situated at Mangalam Nagar in Porur, he came to understand that the building in the ground floor would appear to have been built up in the year 1985 and that the first floor would appear to have been built up in the year 1992, he has not stated anything about, whom he had examined to arrive at such a conclusion nor he had filed any documentary evidence to support his conclusion. Even the routine office registers which have to be maintained have not been filed before the court and D.W.1 has not at all furnished a detailed report of evaluation of the buildings as furnished by the prosecution witnesses. Since the conclusion arrived at by D.W.1 regarding the age of the buildings was itself not supported by any concrete materials, his evidence cannot be taken into account and the evidence regarding the evaluation of the buildings in question were pressed into service by the appellant only in order to escape from the clutches of law.

27. Insofar as the evidence of D.W.2 is concerned, learned Government Advocate would contend that the evidence of D.W.2, who was an auditor by profession, would go to show that the income tax returns for the year 2004-2005, 2006-2006, 2006-2007 have been filed only on 20.04.2007 to accommodate the requirements of the appellant after the case having been filed against him and more over Ex.D.6 was only a Xerox copy without

any proper attestation and therefore, the same is not admissible in evidence and cannot be taken into consideration.

28. As far as the testimony of D.W.3 is concerned, the learned Government Advocate would contend that D.W.3 has admitted that neither he paid income tax for the income alleged to have been derived from his retail liquor vending partnership business nor he filed any account books, registers, bills, vouchers relating to his partnership business which was allegedly run by him along with the son of the appellant. There is also no valid proof of documentary evidence to show that the son of the appellant was carrying on a partnership business of liquor retail vending along with D.W.3 and the investment made by him and also to show that the income derived from the alleged partnership firm and the share of income paid by D.W.3 to the son of the appellant. Both Ex.D.7 and Ex.D.8 were unregistered document and that they might have been created for the purpose of this case. Insofar as Ex.D.9 is concerned, the same is only a Xerox copy without being any attestation and as such the same cannot be taken into consideration. Therefore, it would be evident that there was no partnership business in reality between D.W.4 and the son of the appellant, as pleaded by the defence and in that circumstances, the trial court was right in not taking into account the defence set up by the appellant in this regard.

29. Next coming to the evidence of D.W.4, who is none else than the brother of the appellant, the learned Government Advocate would submit that D.W.4 has, in his cross examination, admitted that he had not filed any documentary evidence to show that the lands of the appellant were cultivated under the supervision of the wife of the appellant and that he had no record to show that he had paid Rs.10,00,000/- to the wife of the appellant as the income derived from the agricultural activities. This witness had not produced any agreement copy or any other documentary proof to substantiate that the lands were cultivated under his supervision at the instance of the appellant nor he let in any documentary evidence to show that he had borrowed a sum of Rs.25,00,000/- as loan from the wife of the accused. Ex.D.10 is a Xerox copy of unregistered document, which cannot be taken into consideration. Ex.D.11 would go to show that it was filed on 10.11.2011 much after the case having been filed against the appellant. Thus, it would be clear that Ex.D.10 and Ex.D.11 were created deliberately much after the case having been filed against the appellant in order to safeguard him from the clutches of law. In such view of the matter, the trial court was right in rejecting the defence set up by the appellant in this regard.

30. The learned Government Advocate would contend that insofar as evidence of D.W.5, who is none other than the son of the appellant is concerned, he himself admitted in his cross examination that his salary particulars for the year 2006 and 2007 have been included in computing his income under Ex.P.42, Ex.P.43 and Ex.P.44 and therefore, there was no necessity to deal with again Ex.D.25 and Ex.D.26 separately. He has stated that he had not furnished any valid documentary proof to substantiate his claim that he was a silent partner in the partnership business of retail liquor vending which was allegedly carried on by D.W.3 and was getting income from the same. The income allegedly derived from the partnership business was not reported to the revenue. Being the son of the appellant, he was obliged to depose in favour of the appellant as if he had been deriving income from his business other than medical profession. Therefore, the trial court was right in discarding his evidence.

31. So far as the evidence of D.W.6, the brother-in-law of the appellant is concerned, the learned Government Advocate would submit that D.W.6, in his cross examination, has stated that he had not produced any of the documentary evidence to show that he had given cash of Rs.5,00,000/- after having effected partition of their ancestral properties as a token of love and affection towards the appellant's wife nor he filed any valid documentary evidence to show that he had paid a sum of Rs.5,000/- every month as a profit accrued from milk business which he was looking after for and on behalf of the wife of the appellant at her behest.

32. Lastly coming to the evidence of appellant who examined himself as D.W.7, the learned Government Advocate would submit that the appellant in his cross examination though denied the Statements I to VII filed by the investigating officer, it is for the appellant to establish his legal sources of income. The movable and immovable properties purchased by the appellant from out of the sale proceeds of his properties were duly considered by the prosecution and that the appellant had never reported the movable and immovable properties possessed by his wife all along till such time when the proceedings were initiated for criminal misconduct. The appellant being a public servant ought to have obtained prior permission from the Head of the Department or informed about the transaction soon after the completion of the act and he concluded all those transactions without being obtained prior permission from the head of the department nor he reported the same to the department. The prosecuting agency had given credit wherever it was possible and that the appellant was not able to give any explanation satisfactorily in his any of the statements as to the sources of income. D.W.1 to D.6 are interested witnesses and they are either close relatives or

close associate of the appellant and that the trial court rightly appreciated the oral and documentary evidence let in on either side and rejected the defence version and convicted the appellant. There is no reason to interfere with the judgment of conviction and sentence imposed by the trial court and the appeal deserves to be dismissed.

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

34. On a perusal of the available materials, it is evident that the period from 01.01.1996 to 28.02.2007 has been taken as check period and during the said period, according to the prosecution, the appellant had amassed assets disproportionate to his known sources of income. Originally, the prosecuting agency had taken the check period as between 01.01.1994 to 31.12.2003, but, subsequently, it was altered to 01.01.1996 and 28.02.2007. After the investigation, the investigating officer has arrived at a conclusion that the appellant and his family members were in possession of both movable and immovable assets, at the beginning of the check period viz., 01.01.1996 which were acquired prior to the check period. For better understanding, it would be appropriate to extract the statements of properties:-

STATEMENT-I

ASSETS STOOD TO THE CREDIT OF THE APPELLANT AND HIS FAMILY MEMBERS AT THE BEGINNING OF CHECK PERIOD AS ON 01.01.1996				
Sl. No.	Description	Held in the name of	Period of acquisition	Value [in rupees]
1	House plot at No.149, 5th Cross Street, in S.No.362/3 at Mangalam Nagar, Porur during the year 1982 and constructed a house during the year 1992	Appellant	1992 [construction]	2,62,960

2	Two Wheeler bearing Regn No. TN 22 6003 Yamaha RX 100	Appellant	1994	Notional
3	Plot No.59, Mahalakshmi Nagar Extensin at Nandivaram, Guduvanchery vide Doc.No.2630/90	Appellant	1990	
4	Landed Property at No.160 Navalur Village in Sriperumbudur Taluk measuring an extent of 74 cents	Appellant	-	Inherited
5	Cash on hand		As on 01.01.1996	27,600/-
6	Amount stood to the credit in A/C No.10299703676 at State Bank of India, Guindy	Appellant	As on 18.04.1998	12,300/-
	Total			3,35,860/-

34.1. The investigation disclosed that the accused and his family members were in possession of both movable and immovable assets to the tune of Rs.3,35,860/- at the beginning of the check period i.e, 01.01.1996. Some of the immovable properties inherited and purchased by the accused were sold out during the check period. During the check period, the accused and his family members acquired movable assets in the form of Fixed Deposits and credit balances in various bank accounts held in their names was also found in possession of hard cash of Rs.3,35,000/- which were seized from his possession during the house search in the course of investigation of the case.

34.2. The details of the assets at the end of the check period as on 28.02.2007 is as follows:-

STATEMENT-II

ASSETS STOOD TO THE CREDIT OF THE APPELLANT AND HIS FAMILY MEMBERS AT THE END OF CHECK PERIOD AS ON 28.02.2007

Sl. No.	Description	Held in the name of	Period of acquisition	Value [in rupees]
1	Amount seized through house search dated 03.03.2007 between 07.00 a.m. and 02.00 p.m. at Plot No.149, 5th Cross Street, Mangalam Nagar, Porur, Chennai			3,35,000/-
2	Amount stood to the credit in A/c No.471430913 at Indian Bank, Porur, Chennai	Appellant	As on 22.02.2007	1,80,310/-
3	Amount stood to the credit in A/c No.4070 at Indian Overseas Bank, Porur, Chennai		As on 22.02.2007	3,63,917/-
4	Evaluation Report of EE/PWD, Thiruvallur in Ref.NO.DB/JDO-1/FB/2007 for Plot No.149, Mangalam Nagar, Porur	Appellant		6,55,656/-
5	Evaluation report of EE/PWD, Thiruvallur in Ref. No.DB/JDO-1/F8/2007 for Door No.267, Poonamallee-Guindy Road, Porur, Chennai,	Son of the Appellant		14,92,907/-

6	5-1/2 years Kissan Vikas Patra bearing Certificate Nos.69CD370378 to 69CD370382 (5 Nos.) with the face value of Rs.10,000/- each	Son of the Appellant		50,000/-
7	69 CD 370383 to CD 370387 (5 Nos.) dated 29.01.2007 Regn. No.3558 [Bank Deposit]	Appellant		50,000/-
8	69 CD 370373 to 69 CD 370377 (5 Nos.) dated 29.01.2017 Regn. No.3556 [Bank Deposit]	Appellant		50,000/-
9	5 - 1/2 years Kissan Vikas Patra from Certificate Nos.31CD204182 to d1CD204187 (6 Nos.) with the face value of Rs.10,000/- each	Daughter of the Appellant		60,000/-
10	5 - 1/2 years Kissan Vikas Patra from Certificate Nos.86BB255493 to 500 (8 Nos.) with the face value of Rs.10,000/- each	Daughter of the Appellant		40,000/-
11	5 - 1/2 years Kissan Vikas Patra in the name of N.Pasupathy from 86BB255724 to 743 (20 Nos.) with the face value of Rs.5,000/- each	Appellant		1,00,000/-

12	6 Years National Savings Certificate No.37DD921096 to 100 (5 Nos.) with the face value of Rs.5,000/- each	Appellant		25,000/-
13	5 - 1/2 years Kisan Vikas Patra bearing Certificate Nos.48CD706686 & 86 with the face value of Rs.10,000/- each	Wife of the Appellant		20,000
14	5 - 1/2 years Kisan Vikas Patra bearing Certificate Nos.02BC436950 (1 No.) with the face value of Rs.5,000/-	Wife of the Appellant		5,000/-
15	Deposit at Post Office, Porur in MIS A/c No.137085 & 13786 and in A/c No.713140 and 713141			7,00,000/-
16	Cash deposit at Indian Bank, Porur in TD Receipt No.108794		2006	1,00,000/-
17	Deposit made at Indian Overseas Bank, Porur, vide Receipt No.2005/NDRS/843340 dated 12.08.2006 and 2005/NDRS/843286 dated 24.07.2006	Appellant	2006	2,00,000/-

18	Cash deposit at ICICI Bank, Porur in quantum deposit Receipt No.1505691 to 95, 15055668 & 69-2, 3628032 to 34 (3 Nos.) - Totally 10 Nos.	Appellant		12,00,000/-
19	Deposit made at SBI, Guindy in TD Receipt No.8503630326-3/30063059435 dated 24.06.2006	Appellant		1,00,000/-
20	Purchased land measuring about 1970 square feet in S.No.188/53 at door No.267, Mount Poonamallee Road - vide Doc.Mp/1963/98 dated 24.04.1998 at SRO, Kundrathur Consideration: Rs.4,66,992/- Stamp : Rs. 61,000/-	Appellant	1998	5,27,992/-
21	Cash balance in SB A/c No.027501508948 at ICICI Branch, Porur	Appellant	As on 31.01.2007	70,490/-
22	Maruti Car bearing Regn. No.TN 01 L 2797	Appellant	11.05.1997	2,50,000/-

23	Cost of the building at Plot No.59, Mahalakshmi Nagar Extension-II	Appellant	1996	8,48,800/-
24	House Plot at No.149, 5th Cross Street in S.No.362/3 at Mangalam Nagar, Porur (purchased in the year 1982) and constructed house buildings during 1992	Appellant	1992	2,58,160/-
25	Two Wheeler bearing Regn. No.TN 22 6003 Yama RX 100	Appellant	1994	Notional
26	Plot No.59, Mahalakshmi Nagar Extension at Nandivaram, Guduvanchery vide Doc.No.2630/90	Appellant	1990	33,000/-
27	Landed Property at No.160, Navalur Village, Sriperumbudur Taluk measuring an extent of 74 cents	Appellant		Inherited
	Total			77,21,032/-

The investigation disclosed that at the end of the check period, the appellant and his family members were in possession of assets both movable and immovable assets including deposits and credit balance in various bank accounts to the total amount of Rs.77,21,032/-.

34.3. During the check period, the appellant and his family members were in receipt of the following income from all known and verifiable sources:-

STATEMENT-III

INCOME OF THE APPELLANT DURING THE CHECK PERIOD FROM 01.01.1996 TO 28.02.2007				
Sl.No .	Description	Held in the name of	Period of acquisiti on	Value [in rupees]
1	Income received by the appellant after making deductions furnished from the O/o the Joint Commissioner of Police, St. Thomas Mount for the period from 01.01.1996 to 31.12.1996			72,096/-
2	Income received by the appellant after making deductions furnished from the O/o the Joint Commissioner of Police, St. Thomas Mount			4,44,058/-
3	Income received by the appellant after making deductions furnished from the District Police Office, Thiruvallur			2,46,442/-
4	Income received by the appellant after making deductions furnished from the District Police Office, Kancheepuram			1,70,906/-

5	Income received by the appellant after making deductions furnished from the District Police Office, Vellore			1,11,093/-
6	Income received by the appellant after making deductions furnished from the District Police Office, Villupuram			3,29,929/-
7	Income earned by the appellant as per his tax returned filed in the Income Tax Department from 2002 till 2006 November			11,68,347/-
8	Income received from out of the sale of the Plot at No.59, Mahalakshmi Nagar Extension, Guduvanchery	Transferred by Appellant	Feb 2007	21,68,800/-
9	Sale of four landed properties located in Navalur Village vide Doc.No.14988.2006, 14993/2006, 14992/2006, 10467/2006	Transferred by Appellant	2006	3,94,040/-

10	Sale of land in Navalur Village to his brother - N.Balasundaram in S.No.273/3, 174/4, 193/2, 193/3 & 208/B of No.160	Transferred by Appellant		60,500/-
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34.4. The investigation further disclosed that during the check period from 01.01.1996 to 28.02.2007, the appellant had incurred the following expenditures under various heads.

STATEMENT-IV

EXPENDITURE OF THE APPELLANT DURING CHECK PERIOD FROM 01.01.1996 TO 28.02.2007				
Sl.No	Description	Held in the name of	Period of acquisition	Value [in rupees]
1	Family consumption expenditure incurred by the appellant and his family members during the check period			7,62,945/-
2	Fees paid at the RTO/Chennai South West for reserved number as per Challan No.CR4/53002 dated 18.05.2006			8,000/-
3	Payment made to EB/Porur-II for SC No.263-16-718 and SC 263-16-259	Appellant		1,46,707/-

4	Payment made towards the Education of the appellant's son between 1995 and 2001 - details received in Ref.No.6154/K6/2007 dated 17.12.2007		7,79,261/-
5	Payment of house tax for the houses at Door No.149, Mangalam Nagar and Door No.267, Poonamallee - Mount Road at Porur		3,310/-
6	Payment of EB charges for service connection SC NO.241 at Plot No.59, Mahalakshmi Nagar Extension-II, Guduvanchery for the period from 5/96 to 2/2007		28,438/-

The investigation disclosed that during the check period, the appellant incurred a total expenditures of Rs.17,28,661/-.

34.5. The movable assets in the name of the appellant and his family members includes credit balance in their bank accounts, fixed deposits, and cash to an amount of Rs.73,85,172/- against likely savings of Rs.34,36,550/- and therefore, the appellant was found to have been in possession of disproportionate assets to an extent of Rs.39,36,550/- over a total income of Rs.77,21,032/-

34.6. According to the respondent following are the assets acquired during the check period either in the name of the appellant or his family members, likely savings and the quantum of disproportionate assets:

STATEMENT - V

ASSETS ACQUIRED BY THE APPELLANT AND HIS FAMILY MEMBERS DURING THE CHECK PERIOD FROM 01.01.1996 TO 28.02.2007		
Assets that stood to the credit of the appellant and his family members at the end of the check period i.e., as on 28.02.2007 (Statement - II)		77,21,032/-
	(-)	
Assets that stood to the credit of the appellant and his family members at the beginning of the check period i.e., as on 01.01.1996 (Statement - I)		3,35,860/-
Total		73,85,172/-

STATEMENT - VI

LIKELY SAVINGS OF THE APPELLANT AND HIS FAMILY MEMBERS DURING THE CHECK PERIOD FROM 01.01.1996 TO 28.02.2007		
Income of the appellant and his family members during the check period from 01.01.1996 to 28.02.2007 (Statement -III_		51,65,211/-
	(-)	
Expenditure of the appellant and his family members during the check period (Statement - IV)		17,28,661/-
		34,36,550/-

STATEMENT - VII

QUANTUM OF DISPROPORTIONATE ASSETS ACQUIRED BY THE APPELLANT AND HIS FAMILY MEMBERS DURING THE CHECK PERIOD FROM 01.01.1996 TO 28.02.2007		
Assets acquired by the Appellant and his family members during the check period (Statement - V)		73,85,172/-
	(-)	
Likely savings of the appellant and his family members during the check period (Statement - VI)		34,36,550/-
Value of the disproportionate assets of the appellant and his family members during the check period as per regular calculation		39,36,550/-

Percentage of disproportionate assets is calculated from the following formula:

$$\frac{\text{Disproportionate assets} \times 100}{\text{Income}}$$

$$\text{i.e.,} = \frac{39,48,622 \times 100}{51,65,211} = 76.44\%$$

Percentage of Disproportionate Assets = 76.44%
[Rounded off to 76%]

35. As per the charge sheet, the extent of disproportionate assets (assets acquired during the check period + Expenditure - Income) is Rs.39,48,622/-. The percentage of disproportionate assets over total income is 76.44% rounded off to 76%.

36. The learned senior counsel for the appellant would submit that P.W.7 has not prepared the evaluation report properly and has not furnished the correct value of the property situated at Mangalam Nagar in Porur. The appellant on his side evaluated the property in question with the help of D.W.1 who was a retired Chief Engineer from Public Works Department. D.W.1 has stated that he knew the appellant and he had inspected the buildings on 07.11.2007 which is situated at Plot No.149, 5th Cross Street, Mangalam Nagar, Porur, Chennai and gave comprehensive evidence and assessed the valuation of the property at Rs.4,35,000/- and submitted his evaluation report which was marked as Ex.D.5. Whereas P.W.7 has given the valuation of the property as Rs.8,48,800/-. Sl.Nos.4, 5 & 23 relate to the value of three buildings. According to P.W.24, the value of the properties were estimated at as Rs.6,55,656/- , Rs.14,92,907 and Rs.8,48,800/- respectively which are contrary to the evidence of P.W.7. Thus, there are discrepancies in the evidence of P.W.24 and P.W.7. Therefore, the trial court ought not to have relied upon Ex.P.10 and Ex.P.11 evaluation reports.

37. A perusal of the evaluation report Ex.D.5 submitted by D.W.7 would go to show that it does not indicate the cost per square feet. D.W.7 in his cross examination had admitted that the valuation of the cost per square feet would be fixed by the Government and the same would be circulated among the department. He has also admitted that he had not submitted any document to the investigation officer P.W.23 about the valuation of the cost per square feet during the relevant period. He had further admitted that the investigating officer had also not asked him about the cost per square feet and the manner in which he had fixed the valuation of the subject building. The said witness had not even perused the plan regarding the construction of the buildings. Even though he had stated that based on EB card , he had fixed the year of construction, he admitted that he had not indicated the same in his report and he had not given the same also to P.W.23.

38. The respondent has examined P.W.21 who was the then Senior Engineer in order to corroborate P.W.7. But, it was only a futile exercise as this witness did not speak about the cost of construction fixed per square feet during the period of construction. On the other hand the appellant had examined D.W.1, who had evaluated the building in question at Mangalam Nagar in Porur at Rs.4,35,000/- Ex.D.5 is the evaluation report and the evidence of D.W.1 would go to show that he had physically verified the building to assess the age of the building and he estimated the valuation based on the cost per square feet and there is no reason to reject his testimony. There are discrepancies in this regard between the evidence of P.W.7 and P.W.21. To the above extent, the evidence of D.W.1

could be accepted. When there are two views are possible the view which is available in favour of the accused has to be accepted. According to the prosecution, the assets at the end of the check period was Rs.73,08,032/- and if a deduction is given to to an extent of Rs.4,35,000/- as against the value of the property fixed at Rs.8,48,000/- , the total assets at the end of the check period was Rs.68,73,032/-. In this regard even assuming that the defence of the appellant is accepted and the evidence of D.W.1 is taken into consideration, the building at Sl.No.23 was valued at Rs.4,35,000/- and if the said amount is deducted from the total assets of Rs.73,83,032/- even then the disproportionate assets would be Rs.68,73,032/-. Though the appellant had evaluated the building under Sl.No.23 , he had not chosen to evaluate the other two buildings and thus it is inferable that the value of the two other properties fixed by the respondent were acceptable to the appellant.

39. So far as the income from the retail liquor vending is concerned, D.W.3 and D.W.5 have not produced any documentary evidence in support of their oral testimonies. It is the admitted case that D.W.5 was a student in a college during the relevant point of time when the alleged partnership business was established and he could not have invested amount as pleaded by the defence. Insofar as the other income said to have been derived from the partnership business is concerned, D.W.3 admitted that he had not produced any income tax returns or any other statutory documentary evidence. The documents relied on by the defence were only either Xerox copy or unregistered documents. As rightly contended by the prosecution, they could have been created only for the purpose of the case. The evidence of D.W.5 could also be discarded because D.W.5 is none other than the son of the appellant and is an interested witness and in order to safeguard the appellant, D.W.5 could have created those documents with the help of D.W.3. The trial court has rightly discarded those evidence from the purview of consideration. However, P.W.23 and P.W.24 have given due credit to the self acquired properties of D.W.5 and the rental income derived from the same.

40. So far as the agricultural income through the wife of the appellant is concerned, the appellant has not proved the same in the manner known to law since the documents relied on by the appellant are unregistered. Further, the appellant being a public servant he should have declared the the assets and liabilities of himself and his family members to the department in which he served as Inspector of Police in the prescribed format and when ever he intended to purchase or sell any movable or immovable property, if the value exceeds the norms as prescribed by the government, the appellant should have obtained permission before he entering into any negotiation for

acquisition or disposition of any property or he must have informed about the transaction as soon as the same was completed. As it could be seen from the records, there was no such declaration made by the appellant as to the movable and immovable properties which were found to have been acquired through illegal sources of income. The explanations offered by the appellant would also go to show that the appellant neither obtained permission from the department before entering into any transaction nor intimated the same after the transaction was over. Further, D.W.2, the Auditor, has stated that he submitted income tax return for and on behalf of the appellant for the year ending 2005, 2006 and 2007 after the receipt of the show cause notice and therefore, his evidence cannot be given any weightage. The appellant being a public service, he ought to have submitted income tax returns after completion of each financial year or at the best with penalty before the show cause notice had been issued. This court is, therefore, of the view that the documents relied on by the defence in this regard could have been created only for the purpose of this case after the case having been filed against the appellant. The trial court has also rejected the defence with regard to income allegedly derived by the wife of the appellant for want of valid documentary evidence. The plea of the appellant that his wife and son were getting income from their respective business were not substantiated by any proper oral and documentary evidence. The appellant has also got no valid explanation and that the trial court has rightly rejected the defence of the appellant.

41. It is needless to point out that as per Section 13(1)(e) of The Prevention of Corruption Act, 1988, the primary burden to bring home the charge of criminal misconduct thereunder would be indisputably on the prosecution to establish beyond reasonable doubt, once the prosecution established the charges levelled against the public servant under this Section, then, onus is on the public servant to account for and satisfactorily explain the assets, if he fails to satisfactorily account for the same, he would be in law held guilty of such offence.

42. Section 13(1)(e) of the Prevention of Corruption Act reads as under:-

"13. Criminal misconduct by a public servant. - (1) 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."

43. In this case, the respondent has established through oral and documentary evidence beyond reasonable doubt that during the check period the appellant was in possession of pecuniary resources or property disproportionate to his known sources of income. Whereas the appellant has not produced any documentary evidence in the manner known to law to show that the income received from all lawful sources were intimated in accordance with the provisions of law, rules, orders for the time being applicable to public servant. In other words, as per Police Stating Order, the appellant should have made a declaration as to his assets and liabilities periodically, but, he has not produced any such materials either before the investigating officer or as D.W.7 before the trial court. Even otherwise, he has not stated as to whether the entire assets acquired by him during the check period, has been shown in the assets and liabilities statement submitted before the department.

44. The learned Government Advocate (Criminal side) would rely upon a judgment of the Hon'ble Supreme Court in C.S.D. Swami v. The State, 1960 Crl.L.J. 131 wherein in para 5, the Hon'ble Supreme Court has held as follows:-

6. ... Now, the expression "known sources of income" must have reference to sources known to the prosecution on a thorough investigation of the case. It was not, and it could not be, contended that "known sources of income" means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters "specially within the knowledge" of the accused, within the meaning of Section 106 of the Evidence Act. The prosecution can only lead evidence, as it has done in the instant case, to show that the accused was known to earn his living by service under the Government during the material period. The prosecution would not be justified in concluding that travelling

allowance was also a source of income when such allowance is ordinarily meant to compensate an officer concerned for his out-of-pocket expenses incidental to journeys performed by him for his official tours. That could not possibly be alleged to be a very substantial source of income. The source of income of a particular individual will depend upon his position in life with particular reference to his occupation or avocation in life. In the case of a government servant, the prosecution would, naturally, infer that his known source of income would be the salary earned by him during his active service. His pension or his provident fund would come into calculation only after his retirement, unless he had a justification for borrowing from his provident fund. We are not, therefore, impressed by the argument that the prosecution has failed to lead proper evidence as to the appellant's known sources of income. It may be that the accused may have made statements to the investigating officers as to his alleged sources of income, but the same, strictly, would not be evidence in the case, and if the prosecution has failed to disclose all the sources of income of an accused person, it is always open to him to prove those other sources of income which have not been taken into account or brought into evidence by the prosecution. In the present case, the prosecution has adduced the best evidence as to the pecuniary resources of the accused person, namely, his bank accounts. They show that during the years 1947 and 1948, he had credit at the banks, amounting to a little over Rs 91,000. His average salary per mensem, during the relevant period, would be a little over Rs 1100. His salary, during the period of the two years, assuming that the whole amount was put into the banks, would be less than one-third of the total amount aforesaid, to his credit. It cannot, therefore, be said that he was not in possession of pecuniary resources disproportionate to his known sources of income.

45. Subsequently, while following the above said judgment, the Hon'ble Supreme Court in *State of M.P. v. Awadh Kishore Gupta*, AIR 2004 SC 517, in paragraphs 5, 6 and 7 has held as follows:-

"5. Section 13 deals with various situations when a public servant can be said to have committed criminal misconduct. Clause (e) of sub-section (1) of the section is pressed into service against the accused. The same is applicable when the public servant 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. Clause (e) of sub-section (1) of Section 13 corresponds to clause (e) of sub-section (1) of Section 5 of the Prevention of Corruption Act, 1947 (referred to as "the old Act"). But there have been drastic amendments. Under the new clause, the earlier concept of "known sources of income" has undergone a radical change. As per the Explanation appended, the prosecution is relieved of the burden of investigating into "source of income" of an accused to a large extent, as it is stated in the Explanation that "known sources of income" means income received from any lawful source, the receipt of which has been intimated in accordance with the provisions of any law, rules, orders for the time being applicable to a public servant. The expression "known sources of income" has reference to sources known to the prosecution after thorough investigation of the case. It is not, and cannot be contended that "known sources of income" means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters "specially within the knowledge" of the accused, within the meaning of Section 106 of the Indian Evidence Act, 1872 (in short "the Evidence Act").

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.

7. The legislature has advisedly used the expression "satisfactorily account". The emphasis must be on the word "satisfactorily" and the legislature has, thus, deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the court that his explanation was worthy of acceptance."

46. After having carefully gone through the oral and documentary evidence, the trial court has rightly rejected the defence taken by the appellant. Being a public servant, had he lent or borrowed any amount, or disposed or acquired any movable or immovable property in his name or in any of his family members, necessarily, he ought to have intimated the same to the department by way of prescribed form or obtained prior permission. The appellant has not done so. The explanations offered by the appellant were not substantiated and all such explanations were bald in nature and not admissible in the eye

of law. Certainly it is not necessary to accept those statements or explanations when they are not legally valid and acceptable. Therefore, this court finds that the rejection of the defence of the appellant by the trial Court is perfectly correct and no illegality or irregularity in the same. As already stated surpa, in criminal cases, it is the golden thread of the jurisprudence that prosecution has to prove its case beyond reasonable doubts. In a case of this nature, though the initial burden is on the prosecution to prove the possession of property or resources disproportionate to the known sources of income of public servant and the inability of the public servant to account for them, once it has been discharged by the prosecution, then the onus is on the accused to prove that the assets were possessed from known sources of income.

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

146. Chapter III dwells on "offences and penalties" and Section 13 thereunder sets out the contingencies under which a criminal misconduct is committed by a public servant. Clause 1(e) of Section 13 being the gravamen of the charge herein is quoted hereunder:

"if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Explanation:- For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant."

147. A significant addition to this clause otherwise reproduced from the 1947 Act is the explanation appended thereto which exposts the expression "known sources of income" to be the income received from any

lawful source, the receipt whereof has been intimated in accordance with the provisions of any law, rules or orders for the time being, applicable to a public servant. 148. Lawfulness or legitimacy of the known sources of income of the public servant, to satisfactorily account the pecuniary resources or property, alleged to be disproportionate thereto, is, thus the indispensable legislative edict.

210. Interpretation of the expression "satisfactorily account" in the context of the offence of misconduct under Section 5(1)(e) of Act of 1947 and Section 13(1)(e) of Act 1988 211. This Court in C.S.D. Swami Vs. The State, (supra), was dealing with an appeal from a conviction under Sections 5(1)(a) and 5(1)(d) of Act 1947. In the textual facts this Court while examining the purport of Section 5(3) of Act 1947 observed that the said provision did not create a new offence but only laid down a rule of evidence, enabling the Court to raise a presumption of guilt in certain circumstances - a rule which was in complete departure from the established principles of criminal jurisprudence that the burden always lay on the prosecution to prove all the ingredients of the offence charged and that the burden never shifted on to the accused to disprove the charge framed against him. In this premise, it was held that the test of plausible explanation was inapplicable, as under this statute, the accused person was required to satisfactorily account for the possession of the pecuniary resources or property disproportionate to its own sources of income and that the word "satisfactorily" used by the legislature deliberately did cast a burden on the accused not only to offer a plausible explanation as to how he came to acquire his large wealth but also to satisfy the Court that his explanation was worthy of acceptance. This Court enunciated that "known sources of income" must have reference to sources known to the prosecution on a thorough investigation of the case and it cannot be the resources known to the accused. In further elaboration, it was elucidated

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

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

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

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

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

215. The significance of this decision is that while evaluating the evidence on record, the attendant facts and circumstances need be taken note of as well, to determine as to whether the materials available, having

regard to the common course of natural events and human conduct do logically prove the point in issue.

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

"The phrase "known sources of income" in Section 13(1)(e) [old Section 5(1)(e)] has clearly the emphasis on the word "income". It would be primary to observe that qua the public servant, the income would be what is attached to his office or post, commonly known as remuneration or salary. The term "income" by itself, is elastic and has a wide connotation. Whatever comes in or is received, is income. But, however, wide the import and connotation of the term "income", it is incapable of being understood as meaning receipt having no nexus to one's labour, or expertise, or property, or investment and having further a source which may or may not yield a regular revenue. These essential characteristics are vital in understanding the term "income". Therefore, it can be said that, though "income" is receipt in the hand of its recipient, every receipt would not partake the character of income. Qua the public servant, whatever return he gets from his service, will be the primary item of his income. Other incomes, which conceivably are income qua the public servant, will be in the regular receipt from (a) his property, or (b) his investment. A receipt from windfall, or gains of graft, crime or immoral secretions by persons prima facie would not be receipt from the "known sources of

income" of a public servant."
(emphasis supplied)

217. It was emphasised that the word "satisfactorily" did levy a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth but also to satisfy the Court that the explanation was worthy of acceptance. The noticeable feature of this pronouncement thus is that the explanation offered by the accused to be acceptable has to be one not only plausible in nature and content but also worthy of acceptance.

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

219. A Constitution Bench of this Court in *K. Veeraswami Vs. Union of India & Ors.*, (1991) 3 SCC 655, again elaborating on an offence under Section 5(1)(e) read with Section 5(2) of the Act 1947 reaffirmed the view that clause (e) of Section 5(1) created a statutory offence which must be proved by the prosecution and when the onus is discharged by it, the accused has to account satisfactorily for the disproportionality of the properties possessed by him. It was noted that the Section did make available a statutory defence to the accused which he/she was to prove and that the public servant was required to account for the disparity of the assets qua the income. Though it was observed that the legal burden of proof placed on the accused was not so onerous as that of the prosecution, it was enunciated that it would not be enough to just throw some doubt on the

prosecution version. Referring to the expression "satisfactorily account", it was ruled that due emphasis must be accorded to the word "satisfactorily" which signified that the accused has to satisfy the Court that his explanation was worthy of acceptance. Though it was marked that the procedure was contrary to the well known principle of criminal jurisprudence that the burden of proof lay always on the prosecution and did never shift to the accused, the competence of the Parliament to shift such burden on certain aspects and particular in matters especially in the knowledge of the accused, was acknowledged. The plea of the appellant therein that the possession of assets disproportionate to one's source of income is no offence, till the public servant was able to account for the excess thereof was not accepted. It was held that if one possesses assets beyond his legitimate means, it goes without saying that the excess is out of ill-gotten gain observing that assets are not drawn like Nitrogen from the air and that have to be essentially acquired, for which means are necessary. It was stressed upon that the public servant concerned was required to prove the source of income or the means by which he had acquired the assets. It was propounded that once the prosecution proved that the public servant possessed assets dis-proportionate to his known sources of income, the offence of criminal conduct was attributed to him but it would be open to him to satisfactorily account for such disproportionality.

220. In V. D. Jhingan Vs. State of Uttar Pradesh (supra), it was expounded that when a statute places burden of proof on an accused person, it is not that he is not required to establish his plea, but a decree and character of proof which the accused was expected to furnish could not be equated with those expected from the prosecution.

221. In N.Ramakrishnaiah (dead) through LRs. Vs. State of Andhra Pradesh, (2008) 17 SCC 83, charge-sheet was submitted against the petitioner (since dead) under Section 5 (1)(e) and 5(2) of the Act 1947 on the

allegation of acquiring disproportionate assets compared to his known sources of income and he was convicted by the Trial Court. In the appeal before the High Court, the dispute was restricted only to Item 26 of the assets (moveables) and agricultural income. It was pleaded that the former was over estimated and deserved to be reduced and the latter was under estimated and was to be enhanced. The High Court rejected the plea. This Court noted that whereas the prosecution in support of the agricultural income amongst others relied on the evidence of the Mandal Revenue Officer and the details furnished by the witness in the documents proved by him, the accused placed reliance on a document without disclosing as to who was the author thereof and on what basis the entries mentioned therein had been made. Placing reliance on the decision in State of M.P. Vs. Awadh Kishore Gupta and others (supra), dealing with "income" of a public servant "known sources" of income" and "satisfactorily account", this Court affirmed the conviction. It reiterated that by using the word "satisfactorily", the legislature had deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the Court that his explanation was worthy of acceptance."

48. As discussed above in this case also, as narrated earlier the appellant being a public servant has not satisfactorily explained along with valid documentary proof to the satisfaction of the prosecution, in the manner known to law.

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

50. In the result, the criminal appeal is hereby dismissed and judgment of conviction and sentence dated 24.11.2014 recorded in Special Case No.13 of 2011 by the learned Special Judge and Chief Judicial Magistrate, Thiruvallur, stand confirmed.

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

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

To

1. The Special Judge,
and Chief Judicial Magistrate, Thiruvallur.

2. The Inspector of Police,
Vigilance and Anti-Corruption,
Chennai City-II,
Nandanam,
Chennai 600 035.

3. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr. B. Mahendra Naidu, Advocate Sr. 150

Criminal Appeal No.628 of 2014

GMR (CO)
EU(16/02/2018)

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