BAIL SLIP

That the Appellants/A1 & A3 were released on bail and in by the order dated 22.02.2007 made in MP.1 of 2007 in Crl A.183/2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.01.2018	Pronounced on: 15.02.2018

Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal No. 183 of 2007

1. V.Panneer selvam [A1]
2. P.Janakiammal [A2]
3. P.Dhanapakkiyam [A3] ...Appellants/Accused

/versus/

State, rep. by
Deputy Superintendent of Police,
Vigilance and Anti Corruption wing
Dindugal ... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to set-aside the judgment and sentence imposed in Special C.C.No.1 of 2003 dated 29.01.2007 on the file of learned Special Judge I/X Additional Session Judge, Chennai.

For Appellant : Mr. N.R.Elango Senior Counsel
for Mr.M.Krishnamoorthy

For Respondents: Mr. P.Govindarajan,
Additional Public Prosecutor(Criminal Side)

J U D G M E N T

This appeal is directed against the sentence and conviction imposed on the accused by the Trial Court in Special C.C.No.1 of 2003 on the file of Special Judge I/X Additional Session Judge, Chennai vide judgment dated 29.01.2007 for possessing disproportionate assets beyond their known source of income.

2. The 1st Appellant V.Panner Selvam was the Former Member of Legislative Assembly, died pending appeal. Memo has been filed to that effect by the prosecution reporting his death on 04.02.2012. The 2nd Appellant P.Janakiammal and the 3rd Appellant P.Dhanapakkiyam are the two wives of deceased V. Paneerselvam [A.1]

3. The Case of the prosecution is that, the deceased V.Panner Selvam who was the Member of Tamil Nadu Legislative Assembly, Bodi Assembly Constituency during the year 1991-1996, has amassed wealth during that period by abusing his official possession. The 2nd and 3rd appellants who are his wives have abetted him to amass wealth by lending their name to acquire property from out of the unknown source.

4. Accordingly, charges has been framed against A1 [V.Panner Selvam] for offence under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1998 and as against the appellants A2 and A3 under Section 109 of I.P.C r/w 13(2) r/w 13 (1)(e) of Prevention of Corruption Act.

5. To prove the charges the prosecution has examined 115 witnesses, marked 267 exhibits. In defence 3 witnesses and 25 exhibits marked.

6. The Trial Court after appreciating the evidence let in by the prosecution as well as defence has arrived at following conclusion

(i). This Court hold that the value of ancestral property and other properties possessed by accused and their family at the beginning of the check period at Rs.5,21,932.75 as value of Statement No.I value of properties possessed by accused and their family at the end of check period at Rs.34,16,959/- mentioned in statement no. II, the value of income derived by accused and their family during the check period at Rs.16,34,746.86 in Statement No.III and the value of expenditure of accused and their family during check period at Rs.8,01,155.50 in statement No.IV are duly proved by the prosecution before this Court by adducing oral and documentary evidences.

1. Value of statement No. I - Rs.5,21,932.75
2. Value of Statement No. II - Rs.34,16,959.55
3. Value of Statement No. III - Rs.16,34,746.86
4. Value of Statement No. IV - Rs.8,01,155.50

(ii). The actual value of properties acquired by accused and their family is (2) - (1) comes to Rs.28,68,026.80. Actual savings of accused and their family is (3)-(4) comes to Rs.8,33,591.36. The value of excess assets acquired by accused and their family during the check period is Rs.20,61,435.44 (Rs.28,35,026.80- Rs.8,33,591.36). The explanation given by accused before this Court about the sources for acquiring such disproportionate assets are not acceptable by this Court. The explanations given by accused are moonshine without any support of evidence. The persons connected with Exs.D7, D15, D16, D18 and D25 are not examined by defence to prove the contents of the documents as true. There is no opportunity given to prosecution side to test the documents genuineness. Mere filing of documents without any proof is not acceptable. Those documents are marked as Exhibits subject to objection made by prosecution side. Neither trip sheet nor the receipts for the rents of the vehicles is produced. Hence this Court does not believe them as proved. Some of the transactions mentioned in the said documents had not been stated in the Cash Flow Statements also. More over Ex.P.213 and Ex.P.214 are marked as cash flow statements of A1 and A3 said to be submitted by them to Income Tax Department for the period up to 31.03.1996. Normally the income tax returns will be submitted for the current year only in the next year (or) after the closing of current year. On perusal of cash flow statements, there is no evidence available to say when they have been submitted to Income Tax Department. They contained only the signatures of A1 to A3. No Income Tax Department Office date sale is also available on them to say on which date they were received by Income Tax Department.

7. On the said conclusion, the trial Court sentenced the public servant A1 to undergo 3 years R.I and fine of Rs.10,000/- in default 6 months Simple Imprisonment. The accused 2nd and 3rd were sentenced to undergo one year R.I and fine of Rs.5,000/- in default 3 months Rigorous Imprisonment.

8. Aggrieved by the said findings led to conviction, the appeal has been preferred on the following grounds:

(i). The Lower Court failed ought to have considered that the evidence of PW.43 and Ex.P.14, which clearly establishes that the lands were purchased before the check period A3.

(ii). The Lower Court ought to have considered the Ancestral Properties were cultivated and enjoyed by the First Appellant. The positive evidence let by the appellants that the entire properties were enjoyed by him and the failure of prosecution to prove that other brothers were also enjoying the lands was not considered by the lower Court.

(iii). The lower Court failed to considered List Witnesses 114, 115, 118, 120, 122, 124, 126, 145, 153 were not examined by the prosecution who supported the case of defence in their 161 Statement.

(iv). The lower Court ought to have considered that the agriculture income calculated as per government guideline value by the prosecution error not on the basis of the actual income.

(v). The Lower Court ought to have considered that the evidence of PW.26 regarding the mini diary loan. According of his evidence that a sum of Rs.74,235.50/- alone was repaid up to 01.12.1995, but the lower Court considered the same to the extent of Rs.4,04,235/-.

(vi). The Lower Court failed to considered that the evidence PW.92 to the effect that Rs. 3,00,000/- Lakhs worth old Gold Jewellaries were sold by the appellant during the check period.

(vii). The Lower Court ought to have considered the evidence of PW.77 and Ex.P.156 to Ex.P.160 regarding Trax Jeep item No. 42 (Statement II). Only Rs. 48,759/- was paid by A1 during the check period. The Balance Loan was cleared by A1 on 19.04.2000 by making payment of Rs.2,28,445/-.

(viii). The lower Court ought to have considered the evidence of PW.19, 21 and Ex.P.65, 77, 78 regarding Mahendra Van item no. 46 (Statement II). According to PW.21 evidence he deposed that a sum of Rs.23,514/- only paid by as on 13.05.1996.

(ix). The lower Court ought to have considered that the evidence of PW.99 and 104 regarding Milk sales in Local area during the check period.

(x). The lower Court ought to have considered the evidence of PW.8 and Ex.P.30, 31,32,33 regarding houses and constructed by Appellant during the check period. He deposed that the evaluation report is calculated as per the Government value not the actual value item 34 and 36 (Statement II).

Points for consideration

Whether the Trial Court has failed to appreciate the evidence properly as alleged in the grounds of appeal?

9. The undisputed facts in this case in that A1[V.Panner Selvam] was a public servant. He was the Member of Legislative Assembly, Bodi constituency for the period from 16.06.1991 to 13.06.1996. The 2nd appellant [P.Janakiammal] is the 1st wife, the 3rd appellant [P.Dhanapakkiyam] is the 2nd wife of A1 Pannerselvam. The 1st appellant's father died on 24.02.1992, leaving behind 6 sons and 11.78 acres of dry land. The first accused had an Ambassador car and Enfield Motorcycle prior to he becaming the member of the State Assembly. His 1st wife P.Janakiammal [A2] had purchased two house sites at Pannaipuram on 14.11.1986, dry land of 50 cents at Pannaipuram on 17.04.1989, house site at Sathurangaparai on 15.06.1990. His 2nd wife [P.Dhanapakkiyam] had purchased house sites of 3 cents at Allinagaram on 10.02.1987, dry land of 1.45 acres and 1.23 acres from Perumal Thevar at Mariammankovilpatti, Veerapandi Village on 27.10.1987 and dry land of 4 acres 8 cents at Thiruvalampozhil village from Jayaram Iyer.

10. Besides the above immovables, during the marriage of the 1st accused with 2nd accused, 40 sovereigns of gold jewels were gifted at A2 as Shreedanam and during the marriage of 1st accused with 3rd accused, 75 sovereigns of gold jewels were given as Shreedanam. Apart from immovables and movables, cash balance in the bank accounts held by A1 to A3 as mentioned in the statement is not disputed. According to the prosecution, the total value of assets held A1 to A3 prior to the check period is valued Rs.4,46,932.75/-. At the end of the check period the assets held by the accused persons is valued at Rs.36,16,959.55 though the income during the period was only Rs.16,34,746.86, after deducting the expenditure during the check period and the value of the asset held before the check period, it is alleged by the prosecution that Rs.21,36,435.44 is the value of disproportionate assets held by A1 to A3 together.

11. For better appreciation, the assets and expenditure statements are extracted below:
Statement-I
The assets in the possession of A.1, A.2 and A.3 as on 16.06.1991 i.e., at the beginning of the check period.

Sl.No.	Details of Property	Value
1.	Ancestral Property of 11.78 acres of dry land in S.No.1/7, 4/4, 4/2, 5/3, 15/5, 16/1, 16/9, 20/5, 19/5, 20/1 in joint patta Nos.3043, 3957, 3359 at Thambinaichanpatty village in the name of Tr.Vellaichamy Thevar (father of A.1 and his six sons including A.1-He died on 24.02.1992)	---
2.	A vacant house site of 434.75 sp.ft., in 5th ward at Pannaipuram as per Thevaram Sub-Registry Doc.No. 1560/86 dated 14.11.1986 purchased in the name of Tmt. Janakiammal (A.2) from Tr.Ramu	Rs.2,240.00
3.	A vacant house site of 1178.56 sp.ft., in 5th ward at Pannaipuram as per Thevaram Sub-Registry Doc.No. 1567/86 dated 14.11.1986 purchased in the name of Tmt.Janakiammal [A.2] from Tr.V.N.Abdul Muthulifu.	Rs.5,900.00
4.	A dry land of 50 cents in R.S.No. 1051 at Pannaipuram in Theni District as per Thevaram Sub-Registry Doc.No.378/89, dated 17.04.1989 purchased in the name of Tmt.Janakiammal [A.2] from Tr.Pown Chettiar @ Veerabatran	Rs.3,920.00
5.	A vacant house site of 8.75 cents in S.No.105 at Sathurangaparai at Udumbansolai Taluk, Idukki District, Kerala State as per Doc.No. 1501/90, dated 15.06.1990 of Udumabansolai Sub-Registry purchased in the name of Tmt. Janakiammal [A.2] from Tr.Chinnakaruppa Thevar (Since it was gifted to A.2 by her father, its value is not shown).	----

Sl.No.	Details of Property	Value
6.	A vacant house site of 3 cents at Allinagaram in S.No.619/2, registered on 10.02.1987 at Theni Sub Registry in Doc.No. 295/87 purchased in the name of Tmt.Dhanapackiam [A.3] from Tmt.Logeswari.	Rs.6,208.00
7.	A dry land of 1 acre and 45 cents in S.No. 331 at Mariammankovilpatti hamlet of Veerapandi Village as per Doc. No. 2927/87 dated 27.10.1987 of Theni Sub Registry purchased in the name of Tmt.Dhanapackiam [A.3] from Tr.Perumal Thevar.	Rs.19,488.50
8.	A dry land of 1 acre and 23 cents in S.No.342 at Mariammankovilpatti hamlet of Veerapandi Village as per Doc.No.2928/87 dated 27.10.1987 of Theni Sub-Registry purchased in the name of Tmt.Dhanpackiam [A.3] from Tr.Perumal Thevar	Rs.16,536.00
9.	A dry land of 4 acres and 8 cents in S.No.49/1, 49/2, 61/2-B of ThiruvalampozhilVillage, Thiruvaiarrru Taluk as per Doc.No.558/91, dated 10.06.1991 of thiruvalarru Sub-Registry purchased in the anem of Tmt.Dhanapackiam [A.3] from Tr.Jayarama Ayyer.	Rs.1,06,607/-
10.	40 sovereigns of gold jewels gifted to A2 as marriage seenthanam by her parents at the time of her marriage with A.1 in the year 1975.	----
11.	75 sovereigns of gold jewels gifted to A.3 as marriage seethanam by her parents at the time of her marriage with A.1 during 1976.	----
12.	Purchase of Enfield Motor Cycle TDZ 4884 in the year 1984 in the name of A.1	Rs.19,000.00
13.	Purchase of an Ambassador Car bearing Reg.No.TAU 6000 in the name of A.1 in the year 1986	Rs.1,10,000/-
14.	One Wooden Bureau	---

Sl.No.	Details of Property	Value
15.	Two Double cot with cushion bed	---
16.	Amount invested in Agreement deed no. 1790/91, dated 04.06.1991 of Theni Sub-Registry in the name of A.3. A dry land of 1 acre and 22 cents at Mariammankovilpatti purchased in the name of Tmt.Dhanapackiam as per Doc. No.2357/91 dated 17.07.1991	Rs.10,000/-
17.	One Godrej and one local made steel bureau	---
18.	Two wooden double cot.	----
19.	Cash Balance at the beginning of the Check period as on 16.06.1991 in S.B.A/c.No. 4804/17. 12.86 of Theni Allunagaram I.O.B in the name of Tmt.Dhanapackiam	Rs.60,518.25
20.	Cash Balance as on 16.06.1991 in A/c.No.1517 dated 02.04.1991 at Union Bank of India Kotchadai, Madurai in the name of Tr.V.Panneerselvam [A.1]	Rs.9,882.00
21.	Bank balance as on 16.06.1991 in A/c.No. 1739 dated 22.03.1986 in Tamil Nadu Mercantile Bank, Panniapuram in the name of A.1 Tr.V.Panneerselvam	Rs.28,586.00
22.	Bank balance as on 16.06.1991 in A/c.No.2899 in Tamil Nadu Mercantile Bank, Panniapuram in the name of A.2 Tmt.Janakiammal.	Rs.14,010.00
23.	Amount invested by A.1 towards TNHD Flat No. MIG. 11/24 at Theni.	Rs.34,037.00
24.	One Videocon Washing Machine at A.2's house	---
25.	One Godrej Refrigerator (165 litres) at A.2's house	---
26.	One 24' Onida colour TV at A.2's house	---
27.	One 21' Onida colour T.V at A.3's house	---

Sl.No.	Details of Property	Value
28.	One 165 litres refrigerator at A.3's house	---
29.	One National Washing Machine and another Videocon Washing Machine at A.3's house.	---
30.	New Sofa Set (3 seater-2, Single Seater Sofa-1)	---
	Total	Rs.4,46,932.75

Statement-II

Assets in the possession of A.1, A.2 and A.3 and their family members as on 13.05.1996 i.e., at the end of the check period.

Sl.No.	Details of Property	Value
1.	Ancestral Property of 11.78 acres of dry land in S.No.1/7, 4/4, 4/2, 5/3, 15/5, 16/1, 16/9, 20/5, 19/5, 20/1 in joint patta Nos.3043, 3957, 3359 at Thambinaichanpatty village in the name of Tr.Vellaichamy Thevar (father of A.1 and his six sons including A.1)	---
2.	A vacant house site of 434.75 sp.ft., in 5th ward at Pannaipuram as per Thevaram Sub-Registry Doc.No. 1560/86 dated 14.11.1986 purchased in the name of Tmt. Janakiammal (A.2) from Tr.Ramu	Rs.2,240.00
3.	A vacant house site of 1178.56 sp.ft., in 5th ward at Pannaipuram as per Thevaram Sub-Registry Doc.No. 1567/86 dated 14.11.1986 purchased in the name of Tmt.Janakiammal [A.2] from Tr.V.N.Abdul Muthulifu.	Rs.5,900.00
4.	A dry land of 50 cents in R.S.No. 1051 at Pannaipuram in Theni District as per Thevaram Sub-Registry Doc.No.378/89, dated 17.04.1989 purchased in the name of Tmt.Janakiammal [A.2] from Tr.Pown Chettiar @ Veerabatran	Rs.3,920.00

Sl.No.	Details of Property	Value
5.	A vacant house site of 8.75 cents in S.No. 105 at Sathurangaparai at Udumbansolai Taluk, Idukki District, Keral State as per Doc.No. 1507/90, dated 15.06.1990 of Udumbansolai Sub-Registry purchased in the name of Tmt.Janakiammal [A.2] from Tr.Chinnakaruppa thevar. (Since it was gifted to A.2 by her father, its value is not show).	---
6.	A vacant house site of 3 cents at Allinagaram in S.No.619/2, registered on 10.02.1987 at Theni Sub Registry in Doc.No. 295/87 purchased in the name of Tmt.Dhanapackiam [A.3] from Tmt.Logeswari.	Rs.6,208.00
7.	A dry land of 1 acre and 45 cents in S.No.331 at Mariammankovilpatti hamlet of Veerapandi Village as per Doc. No. 2927/87 dated 27.10.1987 of Theni Sub Registry purchased in the name of Tmt.Dhanapackiam [A.3] from Tr.Perumal Thevar.	Rs.19,488.50
8.	A dry land of 1 acre and 23 cents in S.No.342 at Mariammankovilpatti hamlet of Veerapandi Village as per Doc.No. 2928/87 dated 27.10.1987 of Theni Sub-Registry purchased in the name of Tmt.Dhanpackiam [A.3] from Tr.Perumal Thevar	Rs.16,536.00
9.	A dry land of 4 acres and 8 cents in S.No.49/1, 49/2, 61/2-B of Thiruvalampozhil Village, Thiruvaiarrru Taluk as per Doc.No.558/91, dated 10.06.1991 of thiruvalarru Sub-Registry purchased in the anem of Tmt.Dhanapackiam [A.3] from Tr.Jayarama Ayyer.	Rs.1,06,607/-

Sl.No.	Details of Property	Value
10.	40 sovereigns of gold jewels gifted to A2 as marriage seethanam by her parents at the time of her marriage with A.1 in the year 1975.	---
11.	75 sovereigns of gold jewels gifted to A.3 as marriage seethanam by her parents at the time of her marriage with A.1 during 1976.	---
12.	Purchase of Enfield Motor Cycle TDZ 4884 in the year 1984 in the name of A.1	Rs.19,000.00
13.	Purchase of an Ambassador Car bearing Reg.No.TAU 6000 in the name of A.1 in the year 1986	Rs.1,10,000/-
14.	One Wooden Bureau	---
15.	Two Double cot with cushion bed	---
16.	Amount invested in Agreement deed No. 1790/91, dated 04.06.1991 of Theni Sub-Registry in the name of A.3, A dry land of 1 acre and 22 cents at Mariammankovilpatti purchased in the name of Tmt.Dhanapackiam [A.3] as per Doc.No. 2357/91 dated 17.07.1991	Rs.33,698.00
17.	One Godrej and one local made steel bureau	---
18.	Two wooden double cot.	---
19.	An house site measuring 1258 sp.ft., with a small house in Door No.32, 1st street, 3rd Ward, Pannaipuram purchased as per Thevaram Sub-Registry Doc.No. 1141/91, dated 13.12.1991 in the name of Tmt.Janakiammal [A.2] from Tr.Chinnakaruppa Thevar.	

Sl.No.	Details of Property	Value
20.	An house site measuing 306 sq.ft., in 1st street, 5th ward, pannaipuram purchased as per Thevaram Sub-Registry Doc.No.454/92, dated 29.04.1992 in S.No.1015 in the name of Tmt.Janakiammal [A.2] from Tr.Chinnakaruppa Thevar	Rs.6,935/-
21.	An house site measuring 344 sq.ft., in Kallar Street, 5th ward Pannaipuram purchased as per Thevaram Sub-Registry Doc.No. 353/96, dated 26.02.1996 in S.No. 1015 in the name of Tmt.Janakiammal [A.2] from Tr.Selvaraj	Rs.14,010.00
22.	A vacant site of 15 cents at Pannaipuram in S.No.1020/2, purchased as per Thevaram Sub-Registry Doc.No.5110/94 dated 14.12.1994 in the name of V.Panneerselvam from Tr.Pown Chettiar @ Ramalingam	Rs.1,512.00
23.	A vacant site of 15 cents at Pannaipuram in S.No.1020/2, purchased as per Thevaram Sub-Registry Doc.No.5111/94 dated 14.12.1994 in the name of Selvi Vennila, D/o. A.1 from Tr.Pown Chettiar @ Ramalingam	Rs.1,512.00
24.	A vacant site of 15 cents at Pannaipuram in S.No.1020/2, purchased as per Thevaram Sub-Registry Doc.No.5112/94 dated 14.12.1994 in the name of Selvi Vennila, D/o. A.1 from Tr.Pown Chettiar @ Ramalingam	Rs.1,512.00
25.	A dry land of 18 cents at Pannaipuram in S.No.1020/2, purchased as per Thevaram Sub-Registry Doc.No.5113/94 dated 14.12.1994 in the name of Tmt.Janakiammal [A.2] from Tr.Pown Chettair @ Ramalingam	Rs.1,852.00

Sl.No.	Details of Property	Value
26.	An incomplete residential building in S.No.1020/2 at Pannaipuram in the sites mentioned in Item No. 22 to 25 (S.No.1020/2) at Pannaipuram-Doc.No.5110 to 5113/94) constructed in the year 1995-1996 (Site is in the name of A.1 his daughthers Vennila and Gnanaselvi and A.2. But construction of the building is in the name of A.2 alone)	Rs.3,12,800.00
27.	A dry land of 24 cents in S.No.1021/1, at Pannaipuram purchased as per Thevaram Sub-Registry Doc.No.2622/95 dated 04.12.1994 in the name of Tmt.Janakiammal [A.2] from Rajeswari	Rs.2,520.00
28.	A dry land of 1.92 cents in S.No.1004, 1005 at Pannaipuram purchased as per Thevaram Sub-Registry Doc.No.527/92 dated 18.05.1992 in the name of Tmt.Janakiammal [A.2] from Tr. Palanichamy & 4 others.	Rs.10,980.00
29.	A dry land of 48 cents in S.No.1004, 1005 at Pannaipuram purchased as per Thevaram Sub-Registry Doc.No.495/92 dated 06.05.1992 in the name of Tmt.Janakiammal [A.2] from Tr.Gopinathan & 2 others.	Rs.22,060.00
30.	A dry land of 8.14 acres in S.No.201/6, 201/8, 202/2, 203/2 purchased as per Thevaram Sub-Registry Doc.No.2002/95 dated 15.09.1995 in the name of Tr.Muthukumaran, S/o.A.1 & A2 from Tr.Srinivasan.	Rs.60,174.00

Sl.No.	Details of Property	Value
31.a.	A dry land of 56.04 acres at a stretch at Pannaipuram village registered in 35 documents in thevaram Sub-Registry during the period between 10.06.1992 and 14.12.1995 in the name of Tmt.Jankaiammal [A.2]	Rs.5,17,520.00
31.b	A dry land of 97 cents within the above said land registered in Thevaram Sub-Registry Doc.No. 958/92 dated 30.09.1992 in the name of Tmt.Janakiammal [A.2] from Tr.Periakaruppan and Selvam	Rs.6,705.00
32.	Govt. natham poramboke land encroached by A.1, A.2 in S.No. 361/9, 428/9, 428/8 etc., at Pottipuram village, adjacent to the land mentioned in item No. 31 hence, no value is taken	---
33.	Cost of value on the planation of coconut, mango and other trees in the patta lands as well as in the encroached lands cited in item No. 31-A, B and 32 as per assessment of the A.D.O., Theni	Rs.2,05,198.00
34.	The cost of a house with cattle shed, constructed during the year 1992 and 1993 in patta lands mentioned in item No. 31 as per evaluation report furnished by the Evaluating Officer.	Rs.1,42,000.00
35.	An house site of 8 cents and 46 sq.ft., in R.S.No.28/2A at P.C.Patti hamlet of Veerapandi village as per Theni Sub-Registry Doc.No. 2414/92 dated 26.06.1992 purchased in the name of Tmt.Dhanapackiam [A.3] from Tr.Sivasankaran	Rs.26,599.00

Sl.No.	Details of Property	Value
36.	Evaluated cost of the house, constructed with ground and first floor in the house site mentioned in item No.35 in the name of Tmt.Dhanapackiam, A.3 as per the Evaluating Officer's report dated 27.11.1998	Rs.8,09,200.00
37.	A dry land of 12 cents in S.No.1004 & 1005 at Pannaipuram Village purchased as per Thevaram Sub-Registry Doc.No.494/92 dated 11.05.1992 in the name of Tmt.Janakiammal [A.2] from Tr.Manogiri.	Rs.5,450.00
38.	A dry land of 1 acre and 2.5 cents with a common well in S.No. 320/3, 320/4, 325/1 at Mariammankovilpatty hamlet of Veerapandi Village purchased as per Theni Sub-Registry Doc.No.3436/91, dated 14.10.1991 in the name of Tmt.Janakiammal [A.2] from Tr.Andichamy	Rs.31,931.00
39.	A Vacant house site of 6 cents in S.No.123/7A at Thiruvalamapozhil purchased as per Thiruvaiyarru Sub-Registry Doc.No.199/92, dated 01.03.1992 in Thanjavur District in the name of Tmt.Dhanapackiam [A.3] from Tr.Govindasamy	Rs.25,870.00
40.	A wet land of 1 acre and 43 cents in S.No.48/1D, 48/2D, 62/1C and 62/2D at Thiruvalampozhil purchased as per Sub-Registry Doc.No.912/91, dated 25.09.1991 in the name of Tmt.Dhanapackiam [A.3] from Tr.Mohd Ali.	Rs.46,251.00
41.	A dry land of 1 acre and 13 cents in S.No.48/1E at Thiruvalampozhil purchased as per chennai North Sub-Regsitry Doc.No. 417/95, dated 30.05.1995 in the name of Tmt.Dhanapackiam [A.3] from Tmt.Rajalakshmi	Rs.59,550.00

Sl.No.	Details of Property	Value
42.	A new jeep trax TN.02.6000 purchased in the year 1993 in the name of A.1 Tr.V.Panneerselvam	Rs.2,65,102.50
43.	A new tractor with trailer TN.60-6000 purchased through DD 229 Bodi Co.Op land Development Bank in the year 1994 in the year of A.2	Rs.1,60,859.00
44.	A Yamaha Motor Cycle TN.60-A-6000 purchased in the name of Tr.V.P.Muthukumaran, S/o.A.1 in the year 1995 through Sri Vaigai Finance Company, Bodi.	Rs.45,970.00
45.	A new Suzuku Motor Cycle TN.60-9734 purchased in July 1995 from the Suzuki dealer in Madurai in the name of Tr.V.P.Muthukumaran S/o.A.1	Rs.35,283.00
46.	A new Maxi Cab tourist van TN.60.D.6000 purchased in the year 1995 through the loan availed from TIIC Madurai on 16.12.1995 in the name of Tmt.Dhanapackiam [A.3]	Rs.1,24,349.00
47.	A new auto rickshaw TN.60.7394 purchased in the name of V.P.Manimaran,S/o.A.1	Rs.50,000.00
48.	One Videocon washing Machine at A.2's house	---
49.	One Godrej Regrigerator (165 litres) at A.2's house	---
50.	One 24” Ondia Colour TV at A.2's house	---
51.	One 21” Ondia Colour TV at A.3's house.	---
52.	One 165 litres refrigerator at A.3's house.	---
53.	One National Washing Machine and another Videocon Washing Machine at A.3's house	---
54.	New sofa set(3 seater-2, Single seater sofa-1)	---

Sl.No.	Details of Property	Value
55.	Bank Balance as on 12.05.1996 at Indian Bank, Thevaram in the S.B. A/c.No.9561 of A.2 W/o.A.1	Rs.108.00
56.	Bank Balance as on 12.05.1996 at I.O.B, Theni Allinagaram in the S.B A/c.No.4804 of A.3.	Rs.5,001.05
57.	Bank Balance as on 12.05.1996 at Canara Bank, Theni in S.B.A/c No.18057, dated 05.10.1991 of P.Manimaran, S/o.A.1	Rs.1,203.00
58.	Bank Balance as on 12.05.1996 at Canara Bank, Theni in S.B.A/c No.18057, dated 05.10.1991 of P.Manimaran, S/o.A.1	Rs.5,378.00
59.	Bank Balance as on 12.05.1996 at Tamil Nadu Mercantile Bank at Vallainadhai, Kandamanur in S.B.A/c.No.3537 dated 10.04.1995 of A.3	Rs.62.00
60.	Bank Balance as on 12.05.1996 at Tamil Nadu Mercantile bank at Vallalnadhi, Kandamanur in S.B.A/c No.035724 dated Manimaran	Rs.2,197.00
61.	Bank balance as on 12.05.1996 in S.B.A/c.No.1517 at Union Bank of India, Kotchadai in the name of A.1 V.Panneerselvam	Rs.5,376.00
62.	Cash Balance as on 12.05.1996 in Account No.1739, dated 22.03.1986 in Tamil Nadu Mercantile Bank, Pannaipuram in the name of A.1 Tr.V.Panneerselvam	Rs.1,017.00
63.	Cash balance as on 12.05.1996 in SB.A/c.No.2899 dated 16.04.1991 in Tamil Nadu Mercantile Bank at Pannaipuram in the name of A.2 Tmt.Janakiammal	Rs.9,425.00
64.	Cash balance as on 12.05.1996 in Vijaya Bank, MLA Hostel Premises, Chennai in A/c.No.2732, dated 23.02.1995 in the name of A.1 Tr.V.Panneerselvam	Rs.135.00

Sl.No.	Details of Property	Value
65.	A house site of 2773.5 sq.ft in S.No.28/2 at Palanichettipatti purchased as per theni Sub-Registry Doc.No.278/95 dated 30.11.1995 in the name of A.3 from Tr.M.Muthusamy.	Rs.24,118.00
66.	Paid up amount towards Tamil Nadu Housing Board Flat No.MIG 24/11 at Theni.	Rs.48,132.00
	Total	Rs.34,16,959.55

Statement-II

Income derived by A1 to A3 and their family members during the check period between 16.06.1991 and 13.05.1996.

Sl.No.	Details of Property	Value
1.	The value of pay drawn by A.1 as MLA as per report of the Tamilnadu Legislative Assembly Secretariat dated 14.05.1997	Rs.1,61,214.00
2.	The value of agricultural income derived from the lands in Mariammankoilpatty in Doc.No. 2927/87, 2928/87, 2357/87, 3436/91 as per the report of Tahsildar, Theni dated 31.03.1999	Rs.26,500.00
3.	The Value of net agricultural income dervied from the lands in pottipuram in 35 documents and lands in Thevaram and Pannaipuram as per the report of the Tahsildar Uthamapalayam dated 17.12.1996	Rs.1,37,500.00
4.	A net agricultural income from the lands in Thiruvaiyarru Sub-Registry Doc.No. 912/91 as per the report of the Tahsildar, dated 04.12.1998 and 18.11.1999	Rs.2,58,442.00
5.	Loan obtained by A.3 from Theni Allinagaram Co.op House Building Society Ltd., on 01.04.1993 as per mortgage deed No.1081/93 for the purpose of constructing a house at P.C.Patty	Rs.1,00,000.00

Sl.No.	Details of Property	Value
6.	One MTL/Mini Diary loan obtained by A.2 from India bank, Thevaram as per Bank Manager's Report dated 09.10.1997.	Rs.3,30,000.00
7.	Income derived through the sale of groundnut at Uthumalapalayam Agriculture Depot during the check period.	Rs.1,11,149.00
8.	Amount received from Anubhav farm Ltd., Chennai	Rs.1,00,000.00
9.	Income derived through the sale of milk at Thambinaickanpatty milk Society by A.2	Rs.1,23,103.86
10.	Income derived by letting the stores for rent at Udumbansolai in kerala State	Rs.27,600.00
11.	Income derived by way of gifts/presentation on the occasion of puberty ceremony (for Selvi Vennila) conducted by A.2 and A.1	Rs.25,000.00
12.	Income derived by way of gifts/presentation on the occasion of death ritual of accused's father	Rs.83,047.00
13.	Amount earned through sale of 360 grms of gold jewels.	Rs.1,51,191.00
	Total	Rs.16,34,746.86

Annexure-IV

Expenditure incurred by A.1 to A.3 and their family member's during the check period between 16.06.1991 and 13.05.1996

Sl.No.	Details of Property	Value
1.	Family consumption experience of A.1 and his family members	Rs.2,94,801.00
2.	Telephone charges towards phone No. 73941 in the house at Door No.170-B at P.C.Patty in the name of A.1 from the date of telephone connection from 25.07.1994 to 13.05.1996	Rs.26,861.00

Sl.No.	Details of Property	Value
3.	Telephone charges towards phone No.K01 52362 in the name of A.1 in P.C.Patty from the date of telephone connection from 01.01.1993 to 13.05.1996	Rs.17,347.00
4.	House Tax and water tax paid by A.2 for the incomplete house at Pannaipuram	Rs.1,626.00
5.	House Tax and water tax paid by A.3 Tmt.Dhanalakshmi for her house at P.C.Patty	Rs.2,292.00
6.	Property tax paid by A.3 for the land in Theni Taluk area on 14.01.1995	Rs.40.00
7.i. 7.ii 7.iii	Ambassador Car TAU 6000. Tax paid during the period from 16.06.1991 to 13.05.1996 was Rs.1,493/-. Trax TN.02.6000. Road Taxes paid on 16.02.1994 was Rs.750/- and on 11.04.1994 was Rs.650/- (Total Rs.1400/-) Tourist van TN.60 D 6000 Quaterly Tax Paid on 02.01.1996 was Rs.1,800/-	Rs.4,693.00
8.	Repayment of housing loan with interest at M.D.194, Theni Allinagaram Co.Op Housing Society by A.3 till 13.05.1996	Rs.49,260.00
9.	Repayment of MLT/Mini Dairy loan at Indian Bank Thevaram by A.2.	Rs.4,04,235.50
	Total	Rs.8,01,155.50

Annexure-V

Assets at the end of the check period (Annexure.II)	Rs.34,16,959.55
Assets at the beginning of the check period (Annexure.I)	Rs.4,46,932.75
Assets acquired during the check period	Rs. 29,70,026.80

Annexure-VI

Income during the check period (Annexure.III)	Rs.16,34,746.86
Expenditure during the check period (Annexure.IV)	Rs. 8,01,155.50
Likely Saving during the check period	Rs. 8,33,591.36

Annexure.VII

Assets acquired	Rs.29,70,026.80
Likely Saving	Rs. 8,33,591.36
Disproportionate assets	Rs.21,36,435.44

Percentage of disproportionate assets
D.P.asstes during the check period X 100
Income during the check period

21,36,435.44 X 100 = 130.68
16,34,747

12. The learned Senior counsel appearing for the appellants would submit that the property which were purchased prior to check period were included under Statement-II, as if the property was acquired during the check period. Whereas A3 [P.Dhanapakkiyam] acquired the property under Ex.P.14 prior to the check period.

13. As counter to this submission the learned Additional Public Prosecutor drew the attention of this Court to Ex.P.14. Perusal of Ex.P.14 the sale deed executed by one Jayaram Ayyer son of Subaramani Ayyer in favor of A2 [P.Janakiammal] wife of V.Panner Selvam [A1] indicates that on 10.06.1991 A3 [P.Dhanapakkiyam] had purchased about 4 acres 86 cents at Thiruvalampozhil village for value of Rs.1,60,607/-. This property is included as serial no: 9 in the statement-I property acquired before the Check period and the said value is deducted while ascertaining the disproportionate assets therefore, this ground raised by the appellants apparently found to be wrong.

14. The next plea of the learned counsel for the appellants is that lower Court ought to have considered the ancestral property are cultivated and enjoyed by the first appellant excluding the other brothers. Therefore, the assets held before check period should not be restricted to 1/6 share. The entire income derived through that property by way of inter crop has to be taken into account as known source of income. In support of this contention the learned senior counsel for the appellants rely upon the deposition of first accused [A1] who was examined as DW.1 and his brother Jagadesan examined as DW.2.

15. This plea is countered by the learned Additional Public Prosecutor through Ex.P.1. Considering rival submission, this Court find that Ex.P.1 is letter of Tahsildar Uthamapalayam who in response to the request of the investigation officer, had furnished the details of land held by the family members of Vellaichamy who is the father of V.Panner Selvam [A1]. This document clearly indicates that Vellaichamy has left 11.78 acres of dry land intestate and it falls under various Survey numbers as found in Ex.P.1. The alleged Power of Attorney given to A2 [P.Janakiammal] by the deceased Vellaichamy is a document registered at Sub Registrar Office, Uthamapalayam as document No.59/86 dated 31.07.1988. Though, there is no partition as such between the family members of Vellaichamy, through the general Power of Attorney one could infer Vellaichamy has given power to administer property to an extent of 14.49 acres of land to A2 [P.Janakiammal]. The Tahsildar has pointed out that some of the survey numbers found in the Power of Attorney document is not the property of Vellaichamy however, he has given power of Attorney to A2 to administer those properties and this property is presently cultivated by other sons of Vellaichamy.

16. The learned Additional Public Prosecutor submit that the property covered under the Power of Attorney in favour of A2 [P.Janakiammal] are not under Cultivation of A2 [P.Janakiammal], whereas the family members namely A1 [V.Panner Selvam] and his brother DW.2 has deposed otherwise.

17. In any event, power of attorney document does not confer title or right over the income derive through the property. Further more after the death of Vellaichamy Thevar in the year 1992, the power of attorney deed becomes infructuous. Ex.P.1 report of the Tahsildar proves that the properties are not in enjoyment of A2. Therefore, this plea of the appellants does not carry any merit.

18. Insofar as the contention regarding non examination of certain listed witnesses, it is well settled principle of law that it is the prerogative of the prosecution to marshall its witnesses to prove the charges. If the prosecution has failed to examine any of the listed witness, nothing prevents the defence to summon them and examine them as witnesses. Hence, this plea also does not deserve any further deliberation.

19. Regarding the house which is found in item no: 26 in the statement II, it is the contention of the appellants counsel that the building was incomplete during the check period and got

completed subsequent to the check period, but the prosecution has taken the entire value of the building as if it was constructed during the check period.

20. In support of this contention, the learned counsel for the appellants rely upon the evidence of PW.8 and Ex.P.29. Ex.P.29 is the proceedings of Executive Engineer, PWD [Kandasamy] who has examined as PW.8. This statement is in respect of the inspection conducted by the witness and the estimation of the building in Survey No.28/2A, Door No.2/80F Ward No:15 at P.C.patti which is in the name of A3 [P.Dhanapakkiyam]. In the proceedings Ex.P.29 the Executive Engineer has stated as per the information furnished by A3 ground floor of the house was constructed in the year 1993-1994 and first floor of the house was completed during 1995-1996. This proceeding has been conducted in the presence of Mr.Srinivasan, Inspector of Police, [V & AC wing].

21. The learned counsel for the appellant would contend that this statement given in the presence of Police Officer it hit by Section 162 Cr.P.C and therefore not admissible in evidence.

22. The learned counsel for the appellant referring the Ex.P.29 dated 25.03.1998 and Ex.P.34 the proceedings of the Executive Engineer dated 26.03.1998 would submit that even according to this report, building on date of inspection found to be incomplete. In the cross examination of PW.8 it has been elicited that the ground floor and the first floor were not constructed simultaneously but on two different periods. Except the statement of A3 [P.Dhanapakkiyam] regarding the period of construction, he had not conducted any other test or enquiry to ascertain the age of the building. He has also admitted in the cross examination that the statement of [P.Dhanapakkiyam] was recorded in the presence of the Police officer. Hence the valuation of the property inclusive of the construction made after the check period. The age of the building as deposed by PW.8, no doubt based on the information given by A-3 in the presence of police hence hit by Section 162 of Cr.P.C. But, besides the evidence of PW.8, there are other material evidence such as Tax receipts issued for the year 1991-1996, assignment of door numbers as on 05.12.1994, water connection on 05.10.1995 which goes to show that the building as it stood and assessed by PW.8 was constructed and completed during the check period.

23. Regarding the dry land of 56 acres 48 cents Pannaipuram village purchased by A2 [Janakaiammal] during the check period which is valued at Rs.5,714,50/- it is the contention of the

learned counsel for the appellants that this property was purchased in the year 1986 itself and PW.38 evidence fortifies the case of the defence.

24. The perusal of the deposition of PW.38 [S.Ramu] we find that he sold 5 cents of land to 2nd accused A2 [Janakaiammal] in the year 1986 for Rs.2000/-. Regarding the date, extend and value, his evidence is totally contra to the documentary evidence namely the sale deeds. PW.16 Mr.Mohamed kasim, the Sub Registrar of Periyakullam had deposed about his report regarding the properties registered in its jurisdiction in favour of accused persons during the check period, the report is marked as Ex.P.48. The details of property with survey number and the value has been extracted in the report. From the consolidated report of PW.16 and the exhibits marked as Ex.P.218 to Ex.P.244, A2 [Janakaiammal] had purchased several properties during the check period. The learned counsel for the appellants would contend that these documents are in admissible in evidence in view of Sections 76 and 79 of Indian Evidence Act.

25. PW.16 is the District Registrar of Periyakullam, Registrar Office, has spoken about these documents which are photocopy of the extract maintained by the Registrar Department and attested as true copy by the Sub Registrar, Thevaram.

26. In Section 74 of the Indian Evidence Act, what are all public documents is defined. Certified copy of the public document is admissible in evidence as per Section 76. Section 79 of the Indian Evidence Act, provides for the courts to presume the genuineness of the certified copy. Under section 65 (e) when original is a public document within the meaning of Section 74, Secondary evidence may be given for easy reference the provisions are extracted below:

Section 74 of Indian Evidence Act.

74. Public documents.—The following documents are public documents :—

(1) Documents forming the acts, or records of the acts—
(i) of the sovereign authority,
(ii) of official bodies and tribunals, and
(iii) of public officers, legislative, judicial and executive, 1[of any part of India or of the Commonwealth], or of a foreign country;[of any part of India or of the Commonwealth], or of a foreign country;"
(2) Public records kept [in any State] of private

documents.

Section 65 of Indian Evidence Act

> 65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—
>
> (a) ....
> (b) ....
> (c).............
> (d).............
> (e)When the original is a public document within the meaning of section 74;

Section 79 of Indian Evidence Act

> 79.Presumption as to genuineness of certified copies
>
> The Court shall presume 57[to be genuine] every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer 58[of the Central Government or of a State Government, or by any officer 59[in the State of Jammu and Kashmir] who is duly authorised thereto by the Central Government] :
>
> Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.
>
> The Court shall also presume that any officer by whom any such document purports to be signed or certified held when he signed it, the official character which he claims in such paper.

27. In the re-examination and re-cross examination specific questions regarding the nature of the document marked as Ex.P.218 to Ex.P.244 had been put to PW.16. PW.16 has clearly stated that the the photocopies of the sale deed extract maintained by the Registration Department. The Sub Registrar has certified it as true copy signed and affixed his seal, therefore, its genuineness cannot be doubted.

28. This Court considering the provisions of Evidence Act as extracted above and on perusal of the Ex.P.218 to Ex.P.244

which are photocopies of the extract of the document maintained in the Sub Registrar Office duly certified as “true Copy” by the competent person is admissible in evidence under Section 65(e) and there is nothing wrong in admitting it as evidence. These documents are presumed to be genuine under Section 79 of the Indian Evidence Act. The burden to rebut the presumption cast upon the defence. In this case the defence has failed to rebut the presumption their attempt to rebut the presumption through PW.38 has not fructified.

29. Yet another contention raised by the learned counsel for the appellant is that cash flow statement produced by the accused person to the Income Tax Department has not been considered by the Trial Court. In this regard, this court fully concur with the finding of the trial Court. Since, the cash flow statement is a self serving document of the accused persons which has been presented to the Income Tax Department after institution of the Criminal Prosecution and there is no evidence to show the said statement being accepted by the Income Tax Department. PW.109 has categorically stated that in the year 1995, notice dated 12.02.1995 was sent to the first accused for non submitting income tax returns. Thereafter, on 06.09.1996 and 04.02.1996 A1 [V.Pannerselvam] had furnished the details. These details furnished by A1 [V.PannerSevlam] whether accepted by the Income Tax department not properly established by the defence.

30. Regarding the agricultural income claimed by the appellants, the Revenue document as well as the evidence of the local authorities prove to show that substantial extent of land held by the appellants were not under cultivation and left barren. Even if they had agricultural income besides other income they are supposed to disclose it in their Income Tax returns by including the agricultural income and get deduction for agricultural income, which the appellants have not done.

31. Except tall claim regarding income from land which are not in their name, Income from mini diary which in fact admittedly running in loss, no plausible explanation placed by the accused persons to show properties were acquired through know source of income. The explanation provided by the appellants, as their source of income to purchase properties during the check period are not convincing, it is no were near the preponderance of probability.

32. On considering the evidence let in by the prosecution as well the defence to explain the source of income. This court finds that no error in the conclusion of the Trial Court Judgment.

33. Spate of purchases of land in the name of A2 [Janakaiammal] and A3 [Dhanapakkiyam] during the check period while A1[V.Pannerselvam] holding a public office clearly indicates the source for purchasing those properties not being declared to the competent authority to be considered as unknown source. Therefore, this court holds that there is no merit in the appeal.

34. In the result, the Criminal Appeal is dismissed. The trial Court Judgment is confirmed, insofar as the sentence is concerned admittedly the public servant who was kingpin of the crime has already met his maker and the remaining appellants are his spouses. They have abetted the public servant to acquire wealth through illegal means hence, they are liable.

35. The learned counsel for the appellants would submit that these two old ladies are already in their sun-set period counting days with various ailments, so some leniency may be shown. Taking into consideration of the said plea this Court modifies the sentence of Rigorous Imprisonment into Simple Imprisonment. The fine imposed stands confirmed.

Rank of the accused	Conviction under Section	Sentence imposed by the Trial Court	Sentence modifies by this Court.
A2 & A3	Under Section 109 IPC r/w 13 (2) r/w 13(1) (e) of PC Act, 1988	To undergo one year R.I and a fine of Rs.5,000/- in default 3 months S.I	To undergo one year S.I and a fine of Rs. 5,000/- (each) in default three months S.I

36. Accordingly, the Criminal appeal is dismissed with the above said modification. The Trial Court is directed to execute the warrant of arrest after expire of two weeks from today, if the appellants fails to surrender within that time to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

bsm

To

1. The Special Judge, I/X,
   Additional sessions Judge, Chennai.

2. The Deputy Superintendent of Police,
   Vigilance and Anti Corruption wing
   Dindugal.

3. The Additional Public Prosecutor, (Criminal Side)
   High Court, Madras.

+3cc to Mr.M.KRISHNAMOORTHY, Advocate, S.R.No. 12399
+1cc to the Public Prosecutor, S.R.No.12029

Pre-delivery judgment made in
Criminal Appeal No. 183 of 2007

SSD(CO)
TR(01/03/2018)