Bail Slip

The 1st appellant/Accused No.1 namley D. Rajasekar, aged 45 years, S/o. R. Dorairaj, was directed to be released on bail as per order of this Honourable Court dated 11.4.2016 in Crl.MP.No.4218 of 2016 in Crl.A.261 of 2016 on the file of this Honourable Court.

The Second Appellant/Accused No.2. J. Yogalakshmi, aged 42 years, W/O. D. Rajasekar was directed to be released on bail as per order of this court dated 11.4.2016 in Crl.MP.No.4219 of 2016 in Crl. A.No.261 of 2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.12.2017

Pronounced on : 09 .01.2018

Coram

The Honourable Dr.Justice G.Jayachandran

Crl.A.No.261 of 2016

1. D.Rajasekar
2. J.Yogalakshmi ..Appellants/1st and 2nd Accused

/versus/

The State Represented by
The Additional Superintendent of Police,
SPE/CBI/ACB/Chennai. ..Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Criminal Procedure Code, to set-aside the conviction and sentence imposed on the 1st and 2nd Appellant in C.C.No.22 of 2012 on the file of the Learned IX Additional Special Judge for C.B.I cases, Chennai dated 30.03.2016.

For Appellants : Mr.V.KrishnaMoorthy

For Respondent : Mr.K.Srinivasan,
Spl.PP for CBI Cases

JUDGMENT

The appeal is against the judgment and conviction passed by the learned IX Additional Special Judge for C.B.I Cases, Chennai in C.C.No. 22 of 2012 dated 30.03.2016.

Gist of the prosecution case:

2. The appellants herein are Husband and wife. The first appellant Mr.D.Rajasekar, IFS (hereinafter referred as A1), while working as public servant in the capacity of Secretary to Animal Welfare Board of India at Chennai under Ministry of Environment & Forest, Government of India on deputation during the period between 22.10.2007 and 15.06.2010 was found in possession of wealth disproportionate to his known sources of income held in his name and in the name of his wife Smt.J.Yogalakshmi, the 2^{nd} appellant herein herself a public servant, employed as Assistant Professor in Rice Research Station, Thiruvallur District, under Tamil Nadu Agriculture University had abetted A1 to acquire wealth in her name.

3. During the Check period between 22.10.2007 and 17.06.2010, the assets alleged to be disproportionate to the know sources of income was assessed at Rs.19,42,401/- which is 74.34% in excess to their income and the final report had been laid against them with the following breakup detail.

Annexure-I :

Assets at the Beginning of the Check Period as on 22.10.2007:

Sl.No.	Description of the Property	Held in the Name of	Period of Acquisition	Value(In Rs.)
Immovable Assets:				
1.	Plot Nos. 14 to 18 at No.47, Vijayanagar, Melaveli Village Thanjavur purchased on 11.01.2002	Shri.D.Rajasekar	2002	Rs.1,85,500/-
2.	House Plot of 1650 Sq.ft.at Coimbatore in the name of Smt.J.Yogalakshmi purchased on 17.07.1996	Smt. J.Yogalakshmi, W/o Shri D.Rajasekar	1996	Rs.4,000/-
Movable Assets:				
3.	Inventory of articles found in the house during the searches conducted on 27.07.2010	Belongs to Shri Rajasekar and his wife found in their residential premises at G-2,Srihari Apartments Karpagambal Nagar, Chennai	1995 to 2006	Rs.1,62,600/-
4.	Santro Car purchased during 2001 bearing Registration No.PB.21.A.0999	Shri.D.Rajasekar		Rs.3,87,000/-

Sl.No.	Description of the Property	Held in the Name of	Period of Acquisition	Value(In Rs.)
5.	ICICI Bank, Chandigarh A/c No.001301511449 in the name of Shri D.Rajasekar & Smt. Yogalakshmi	Shri.D.Rajasekar	At the beginning of the check period	Rs.11,591/-
6.	ICICI Bank, Kottivakkam Branch, Chennai A/c No.027101514117 in the name of Shri D.Rajasekar	Shri.D.Rajasekar	At the beginning of the check period	Rs.33,192/-
7.	Investment made towards Central Govt. Employees Housing Welfare Organisation Scheme at Avadi, Chennai	Shri.D.Rajasekar	2005-2007	Rs.7,04,250/-
			Total	Rs.14,88,133/-

Annexure-II:

Assets at the End of the Check Period as on 17.06.2010

Sl.No	Description of the Property	Held in the name of	Period of Acquisition	Value (In Rs.)
Immovable Assets:				
1.	Plot Nos. 14 to 18 at No.47, Vijayanagar, Melaveli Village Thanjavur purchased on 11.01.2002	Shri.D.Rajasekar	2002	Rs.1,85,500/-
2.	House Plot of 1650 Sq.ft. at Coimbatore purchased on 17.07.1996	Smt. J.Yogalakshmi, W/o Shri D.Rajasekar	1996	Rs.4,000/-
3.	Agricultural land of 50 Cents of No.55, Vedal Village, Survey No.613/7,777, Sithamur Taluk, Cheyyur Taluk, Kancheepuram on 03.03.2008	Smt. J.Yogalakshmi, W/o Shri D.Rajasekar	2008	Rs.50,000/-
4.	Agricultural land of 8 Cents (3500 Sq.ft) at No. 120, Paramakeni Village, Survey No. 406/1B2, 363, Cheyyur Taluk, Kancheepuram on 11.03.2008.	Smt. J.Yogalakshmi, W/o Shri D.Rajasekar	2008	Rs.2,68,000/-
Movable Assets				

Sl.No	Description of the Property	Held in the name of	Period of Acquisition	Value (In Rs.)
5.	Inventory of articles found in the house during the searches conducted on 27.07.2010	Belongs to Shri D.Rajasekar and his wife in their residential premises at G-2, ShriHari Apartments, Karpagambal Nagar, Chennai-41.	2007-10	Rs.3,35,450/-
6.	Purchase of gold ornaments from G.R.T.Jewellers, T.Nagar, Chennai on 07.02.2010	Purchased in the name of Smt.J.Yogalakshmi, W/o.Shri D. Rajasekar.	2010	Rs.80,200/-
7.	Purchase of gold ornaments from Joyalukkas Jewellers, T.Nagar, Chennai on 16.10.2009	Purchased in the name of Smt.J.Yogolakshmi, W/o Shri D.Rajasekar.	2009	Rs.75,300/-
8.	Santro Car purchased during 2001 bearing Registration No.PB.21.A.0999	Held in the name of Shri D.Rajasekar	2001	Rs.3,87,000/-
9.	ICICI Bank, Chandigarh A/c No.001301511449	In the joint name of Shri D.Rajasekar and his wife Smt.J.Yogalakshmi	Credit balance as on 17.06.2010	Rs.28,872/-
10.	SBI, Nungambakkam Branch, Chennai A/c.No.20019302559	Shri.D.Rajasekar	Credit Balance as on 17.06.2010	Rs.11,682/-
11.	SBI ADB Branch Thiruvallur SB A/c. No.31037630054	Smt.J.Yogalakshmi	Credit Balance as on 17.06.2010	Rs.36,260/-
12.	Fixed deposits with State Bank of Hyderabad	Smt.J.Yogalakshmi	2009	Rs.1,50,000/-
13.	Deposits with State Bank of Hyderabad	Shri D.Rajasekar	2009	Rs.1,50,000/-
14.	Credit Balance in SB A/c.No.62046634546 held in the name of Shri D.Rajasekar with State Bank of Hyderabad, Valmikit Nagar, Chennai	Shri D.Rajasekar		Rs.5,86,261/-

Sl.No	Description of the Property	Held in the name of	Period of Acquisition	Value (In Rs.)
15.	Investment made towards Central Govt. Employees Housing Welfare Organisation Scheme at Avadi, Chennai	Shri D.Rajasekar	2005-09	Rs.15,98,100
Total				Rs.39,46,625

Annexure-III

Income and Receipts During the Check Period from 22.10.2007 to 17.06.2010

Sl.No	Description of the Property	Held in the name of	Period of Acquisition	Value (In Rs.)
1.	Take Home Salary of Shri D.Rajasekar	Shri D.Rajasekar	During the Check Period	Rs.13,46,365/-
2.	Gift from father for purchase of Plot at No. 120, Paramankeni Village, Survey No. 406/1B2, 363, Cheyyur Taluk, Kancheepuram on 11.03.2008 in the name of Smt.J.Yogalakshmi (wife) as intimated to the department	Smt.J.Yogalakshmi	2008	Rs.1,00,000/-
3.	(i) Take Home Salary of Smt.J.Yogalakshmi from December 2009 to June 2010 received from the Tamil Nadu Agricultural University as Assistant Professor (Seed Science and Technology in Rice Research Station, Tirur, Tiruvallur District. (ii) Consultancy fee received from the National Biodiversity Authority Chennai from September 2009 to December 2009	Smt.J.Yogalakshmi Smt.J.Yogalakshmi	During the check period During the check period	Rs.2,28,020/- Rs.84,871.00/-
4.	Housing loan received from Corporation Bank, Chandigarh Sector-VII	Joint Account	2006	Rs.8,53,377/-
Total				Rs.26,12,633/-

Annexure-IV

Expenditure Incurred During the Check Period from 22.10.2007 to 17.06.2010.

Sl.No.	Expenditure Incurred	Period	Amount (in Rs.)
1.	1/3rd of Rs.16,92,759/- (gross salary-income tax) of Shri D.Rajasekar	22.10.2007 to 17.06.2010	Rs.5,64,253/-
2.	Donation to Hope Trust	-do-	Rs.2,000/-
3.	Donation to Udavum Karangal	-do-	Rs.2,000/-
4.	Repayment of Housing loan to Corporation Bank, chandigarh (2009-10) during the check period.	-do-	Rs.5,34,032/-
5.	Rent Advance (09.11.2007)	-do-	Rs.70,000/-
6.	Car Repair	-do-	Rs.6,651/-
7.	Purchase of sarees (20.10.2008)	-do-	Rs.4,728/-
8.	Rent at Rs.14,500/-pm (15.11.2007 to 15.09.2008) (Rs.14,500 x 11 = Rs.1,59,500/- (as per Rental agreement) Rent at Rs.15,600/-pm (15.09.2008 to 15.08.2009) (8 % increase) (Rs.15,600 x 11 = Rs. 1,71,600/-) Rent @Rs.16,900/- pm (15.08.2009 to 15.07.2010) (Rs.16,900 x = Rs.1,85,900/-)	-do-	Rs.5,17,000/-
9.	LIC Insurance Premium of Policy No. 270629845 dated 18.01.1999 for Rs. 1 lakh in the name of Smt. Yogalakshmi (yearly premium of Rs. 7,140/- during January) (Rs.7,140 x 3 = Rs.21,420/-)	-do-	Rs.21,420/-
10.	LIC Insurance Premium of Policy No. 131710480 dated 28.05.2002 for Rs.2 lakh in the name of Smt.Yogalakshmi (Yearly premium of Rs.7,711/-) (Rs.7,711 x 2 = Rs.15,422/-)	-do-	Rs.15,422/-

Sl.No.	Expenditure Incurred	Period	Amount (in Rs.)
11.	LIC Insurance Premium of Policy No. 131710066 dated 28.05.2002 for Rs. 1 lakh in the name of Smt.Yogalakshmi (Yearly Premium of Rs. 3,662/-) (Rs.3,662/- x 2 = Rs.7,324/-)	-do-	Rs.7,324/-
12.	LIC Insurance Premium of Policy No. 741860133 dated 28.05.1997 for Rs. 1 lakh in the name of Shri D.Rajasekar (Annual Premium of Rs.4,920/-) (Rs.4,920 x 2 = Rs.12,320/-)	-do-	Rs.12,320/-
13.	LIC Insurance Premium of Policy No. 162787706 dated 08.02.2005 (Rs.10,096/- x 2 = Rs.20,192/-)	-do-	Rs.20,192.00/-
14.	ICICI Prudential Policy No. 01758671 dated 18.07.2005 (30000 x 1)	-do-	Rs.30,000.00/-
15.	Expenditure incurred towards stamp duty and registration fee in respect of land property at No. 55, Vedal Village in Survey No. 613/7, Cheyur, Kanchipuram District in the name of Smt. J. Yogalakshmi.	-do-	Rs.1,916.00 (Rs.1,276/- stamp duty & Rs.640/- regn. Charges)
16.	Expenditure incurred towards stamp duty and registration fee in respect of land property at No. 120, Paramankeni, Cheyur, Kanchipuram district in survey no.406/1B2, in the name of Smt.J.Yogalakshmi	-do-	Rs.24,260.00 (Rs.21,440/- Stamp duty & Rs.2,820/- regn.Charges)
17.	Expenditure incurred through SBI Credit Card No. 5101286924494380 during the check period	-do-	Rs.2,20,462.00
18.	Expenditure incurred towards BSNL telephone for the land line connection Number 24510349	-do-	Rs.42,562.00
	Total		Rs.20,96,542.00

4. Based on the final report, the trial court has framed charges against the first appellant for offences under Section 13(2) r/w 13 (1)(e) of Prevention of Corruption Act and against second appellant for offences punishable under Section 109 Indian Penal Code r/w 13(2) r/w 13(1) (e) of Prevention of Corruption Act.

5. The case of the prosecution as unfold through its investigation is that the appellants had investment on assets worth of Rs.24,58,492/- as against the total income of Rs. 26,12,633/- during the check period between 22.10.2007 and 17.06.2010. While the expenditure incurred during the period being estimated at Rs.20,96,542/- and likelihood of savings was only Rs.5,16,091/- the assets held jointly by the Accused A1 and A2 assessed at Rs.19,42,421/-.

6. The prosecution to prove the charges has examined 26 witnesses and 101 exhibits. To prove their innocence the first appellant Rajesekar has examined as defence witness and 24 Exhibits are marked in support of the defence. The Trial Court on appreciation of evidence let through these witnesses had arrived at a conclusion that the appellants are in possession of assets as below:

The Calculation of disproportionate assets

1.	Assets at the beginning of the Check Period Statement-A	Rs.14,41,133.00
2.	Assets at the end of the check period. Statement-B	Rs.30,51,643.00
3.	Assets acquired during the Check period (2-1)	Rs.16,10,510.00
4.	Expenditure during the check period. Statement-D	Rs.16,37,240.00
5.	Total assets/pecuniary resources possessed by the accused (3+4)	Rs.32,47,750.00
6.	Income during the check period. Statement-C	Rs.23,77,321.00
7.	Disproportionate assets (5-6)	Rs.8,70,429.00

7. The Trial Court concluded that the assets held by the appellants is 36.61 % disproportionate to their known source of income as against 74.34% alleged in the final report and therefore held them guilty and sentenced A1 to undergo Two years Rigorous Imprisonment and also to pay a fine of Rs.50,000/- in default six months Rigorous Imprisonment for offences under section 13(2) r/w 13(1) (e) of Prevention of Corruption Act, 1988 and found guilty and convicted A2 to undergo Rigorous Imprisonment for one year and also to pay a fine amount of Rs.25,000/- in default to undergo rigorous imprisonment for period of three months for offences under Section 109 IPC r/w 13 (2) r/w 13(1) (e) of Prevention of Corruption Act.

8. Aggrieved by the judgment and sentence the appellants have preferred the appeal arising the following grounds.

9. The respondent fail to give an opportunity to the appellants to explain the source of assets held by them, which is mandatory under law. The deprivation of the said right as let to lopsided and biased investigation. The Previous service records of the appellant, his income from 1994 were not collected. The assessment of the asset at the beginning of the check period itself incorrect. The value and investment held by the appellants at the beginning of the check period were not properly considered, but they were taken as assets acquired during the check period so as to show as if the appellants has amassed wealth disproportionate to their income. Had the investigating Officer given an opportunity to the appellant, he would have explained about the assets in his hand and the source from which it was acquired. By including investments and assets acquired prior to check period under the head "property acquired during the check period", the right of the appellant had gravely prejudiced. The appellant being an I.F.S Officer in service since 1994, his entire assets held at the time of beginning of the check period not been taken note of. The first appellant had bank account in Corporation Bank, Chandigarh Branch bearing A/c.No.CLSB 60005. The statement of account marked as Ex.D.18. A sum of Rs.2,84,000/- has been transferred from that account and kept as Fixed Deposit which is an asset held prior to the check period. However, this amount is shown as asset acquired during the check period. Similarly the pay arrears received by the first appellant from Pathankot Wildlife Division [Ex.D.17] and deposited in his account after deputation at AWBI is taken as income during their check period.

10. The individual income earned by the second appellant by way of private consultancy as researcher in rice management were not taken note of. The gift of Rs. 1 lakh received by A2, from her father, though the investigation officer has admitted that A2 has received this amount as gift from her father, the trial court has disbelieved it without any ryme or reason. The 1st Appellant received a sum of Rs.7,50,000/- from his father through banking transfer. Though it is from legal source the trial Court had disbelieved it and declined to give due credit. Further travel reimbursement, LTC claim and other savings made by A1 and A2 during their life time by leading life of austerity were not properly given credit. By arriving a sum of Rs.16,37,240/- as expense during the check period which is less than 30 months its astronomically high for two persons. Had the Trial Court properly given credit to the income and the expenditure, it would not have arrive at the impugned decision.

11. The learned counsel appearing for the appellant has also filed a following written submission pointing out the explanation of the appellants for the source of assets they have held,

Assets at the beginning of Check period: statement-A

(i). The first appellant in his Corporation bank account had Rs.10,906/- as cash balance and rest of the balance Rs.2,84,000/- was swept and auto converted into fixed deposit vide CLKCC/DRSN/00005 MV 30082008 Int @ 8.5% on 30.08.2007 which was not taken into consideration as asset at the beginning of the check period by the trial court. Hence the said sum need to be added as asset in the beginning of the check period. The cash balance on any said date in corporation bank account would be kept approximately at around Rs.10,000/- and any amount above Rs.10,000/- automatically gets converted as fixed deposit. Therefore, the assets held at the beginning of the check period should be taken as Rs.17,25,133/- instead of Rs.14,41,133/-.

Assets held at the end of check period-Statement-B

i) All jewellery of the appellants was included in the inventory. While so GRT bill of Rs.80,200/- was also included in the assets in addition to the value of the assets found in the inventory. The Trial court has failed to appreciate the fact that the value of the said jewel listed in the inventory did not exactly match the value of the bill. It is vital to note that valuation of said ornaments was not done by any appraiser either during the search or during the investigation. The values mentioned in the inventory were only a rough ascertainment. Hence the said amount to the tune of Rs. 80,200/- need to be deleted. If so deleted, the asset at the end of the check period will be as below:-

Sl.No.	Particulars	Amount(Rs)
	Assets at the end of the check period as per trial court	Rs.30,51,643/-
(i)	Value in GRT Bill (to be deducted)	Rs.80,200/-
	Assets at the End of the Check Period	Rs.29,71,443/-

ii) The appellants submit that during his career starting from 1994 till 2008, he did not acquire any immovable assets but saving his income with the 1st appellant's father. It is evident from the inventory that the appellants were simple living and all their furniture, utensils and other materials found at their house were purchased before during 1999-2000 before check period.

iii) The 1st appellant withdrew Rs.70,000/- on 03.03.2008 from SBH and spent only Rs.50,000/- for the land purchased at Vedal Village and Rs.1,915 towards stamp duty for the registration on 03.03.2008. The intimation of the said purchase was given to the department.

iv) The 1st appellant utilized the Fixed deposit in corporation bank held before check period to purchase land at Paramenkeni worth Rs.2,68,000. An amount of Rs.1,00,150/- was transferred on 14.01.2008 from corporation bank to SBH and withdrawn on 19.01.2008 and paid as advance towards Plot. Another amount of Rs.1,00,000/- was withdrawn on 03.03.2008 from the same fixed deposit held in Corporation Bank and paid as advance towards the same plot. On the Date of Registration 11.03.2008, an amount of Rs.1,00,000/- was given by father of 2nd appellant to get the sale completed. The aforesaid amount was used towards balance settlement of Rs.68,000/- and stamp duty of Rs.24,260/- on 11.03.2008. The sale deed was registered for Rs.2,68,000/-.

Income during the check period statement - C

Though the check period was fixed from 22.10.2007 to 17.06.2010 by the prosecution, the 1st appellant was working since 1994 and the 2nd appellant from 1996. The certificates of their employments and appointments were marked as Ex. D 3 to D 14. The defence document Ex.D-17 would show that, Rs.2,25,024/- was pay arrears received by the 1st appellant during the check period. However the trial Court had only considered Rs.78,129/- and Rs.10,080/- received during October 2007. Part of the pay arrears was drawn as cheque of Rs.1,01,519/- and was deposited on 23.10.2007 on opening the new salary account at SBH after joining AWBI Chennai which was credited on 24.10.2007. Hence an amount of Rs.1,01,519/- needs to be taken into account as income during check period. Further the, Leave travel concession claim amounting to Rs.37,190/- was received during the check period as per Ex.P.24. This claim includes Air Ticket booked using credit card. As the tickets for the same was booked using credit card and shown in expenses, hence it needs to be taken into account as income during check period.

(v). While the Investigating officer [PW.26] himself has admitted in his evidence that Rs.1,00,000/- was gifted to 2nd appellant by her father, who was an Ex-Service man and had independent sources of income and the 2nd appellant being his only daughter Rs.1,00,000/- gifted by him ought to have been taken into account as income during check period.

vi) The ICICI account no. 1301511449 was maintained by the 2nd appellant and all her private consultancy and other gift received from her parents on various occasions were deposited in this account. From this account an amount of Rs. 1,50,000/- was given to the 1st appellant on 03.03.2009 which was deposited in savings account of corporation bank. The said amount was used for payment towards and instalment for type D flat. Hence, Rs. 1,50,000/- needs to be included in income.

vii). The 2nd appellant had been working since 1996 on various appointments. She had practiced as private agricultural consultant and has earned income during the check period in addition to agricultural income and gifts on several occasions from her parents. The said income was not to the tune of Taxable limits hence no income tax returns were filed.

Viii) An amount to the tune of Rs.7,50,000 was transferred from the account of 1st appellant father to the account of 1st appellant on 24.01.2008. Admittedly the above said amount was transferred from the account of 1st appellant's father to the account of 1st appellant and the investigating officer has failed to consider the said sum as income but he had taken the closing balance in the SBH as asset at the end of check period in the hands of 1st appellant. The said amount was accrued savings of the 1st appellant for over a period of ten years with his father and 1st appellant has not acquired any immovable property in the said period. So the income during the check period should be held as below:

Sl.No	Particulars	Amount(Rs)
	Income During check period as per Trial Court	Rs.23,77,321/-
(i)	Pay Arrears of the 1st Appellant	Rs.1,01,591/-
(ii)	Leave Travel Concession Claim	Rs.37,190/-
(iii)	Part withdrawal from FD	Rs.2,00,150/-
(iv)	Gift From 2nd Appellant's father	Rs.1,00,000/-
(v)	Amount Transfer to Corporation Bank from ICICI Bank by Cheque	Rs.1,50,000/-
(vi)	Accrued Savings of 1st appellant (Transferred from father)	Rs.7,50,000/-
	Total Income During Check Period	Rs.37,16,180/-

Expenses during the check period Statement-D

i) The Trial Court had failed to appreciate that domestic expenses would include food, clothing and housing. The rent ought to have been included in the domestic expenses. In the present case, the rent paid was shown separately in addition to the one third of net income as domestic expenses notionally. The appellants were family consist of only two members and they were leading a simple lifestyle. They have spent only Rs,3,000/- to Rs.5,000/- per month on domestic expenses in addition to actual house rent paid. The appellant had never spent two third of their net income on domestic expenditure inclusive of rent. The house rent was initially agreed to be paid by AWBI in its Board approval. However, since there was difference of opinion between Ministry and Animal Welfare Board of India the same was paid for 4 months but later recovered from the appellant. Hence amount to the tune of Rs.1,60,000/- (Rs.5000 per month x 32 months) alone to be added to the expenditure instead of Rs.4,48,789/-.

ii) The rent ascertained till 15.07.2010 by the Trial court was Rs.4,82,250/- however the check period ends on 17.06.2010. Hence a month's rent to the tune of Rs.15,000/- needs to be deducted from the expenditure.

iii) It is also submitted that the Rental advance of Rs.70,000 was added separately as expenditure but the said advance was adjusted towards the rent payable from the month of March 2010 of July 2010 as evident from the fact no rent was paid for the above mentioned period. Hence Rs.70,000/- needs to be deleted from the expenditure.

iv) The Trial Court arrived at Rs.1,06,374/- as personal expense in Credit card. However, the trial Court has failed to appreciate the following credit transactions.

a) An amount of Rs.20,000/- was reversed on 27.03.2008 (Ex.P.48)

b) A cancelled ticket amount of Rs.4,971/-credit bank on 30.10.2009 (Ex.P.48);

c) Cash back credit of Rs.1000/- by Ezeego on 24.12.2009 to an extent of Rs.500/- twice(Ex.P.48)

d) Cash back credit of Rs.600/- by Ezeego on 13.03.2010 to an extent of Rs.300/- twice (Ex.P/48), totalling to Rs. 26,571/-

12. Further, it is submitted that most of the transactions were for booking official journey tickets which were reimbursed by the AWBI. The Trial Court had considered only Rs.1,45,976 reimbursed instead of Rs.1,84,721/-. Hence Rs.38,745/- needs to be appreciated as TA claim as spoken by PW 4 and Ex P. 30 TA claim from AWBI and correlated by the 1st appellant as DW 1. In addition, an amount of Rs.37,190/- was reimbursed to the 1st appellant as leave travel concession to Andaman Islands that included air fare of Rs.31,698/- booked using credit card. Hence an amount of to the tune of Rs.2,21,911 was reimbursed.

Sl.No.	Particulars	Amount(Rs)
	Expenses incurred during the check period as per trial court	Rs.16,37,240/-
(i)	Domestic expenses @ (Rs.5,000*32 months) (Rs.4,48,789 - Rs.1,60,000 = Rs.2,88,789 to be deducted)	Rs.2,88,789/-
(ii)	Rent after the check period (deducted)	Rs.15,000/-
(iii)	Rental Advance adjusted (to be deleted)	Rs.70,000/-
(iv)	Credit card Transaction (Reversal Transactions of Rs.26,571/- TA Claim AWBI Rs.38,745 LTC received by 1st Appellant of Rs.37,190/-) totalling to Rs.1,02,506/- needs to be deducted	Rs.1,02,506/-
	Total Expenditure during the Check period	Rs.11,60,945/-

CALCULATION OF ASSETS

SL.NO.	Particulars	Amount(Rs)
1.	Assets at the beginning of the Check period (A)	Rs.17,25,133/-
2.	Assets at the end of check period(B)	Rs.29,71,443/-
3.	Assets acquired during the check period (B-A)	Rs.12,46,310/-
4.	Expenses incurred during the check period	Rs.11,60,945/-
5.	Total assets possessed and expenditure	Rs.24,07,255/-
6.	Income during the check period	Rs.37,16,180/-
7.	Extent of DA assets	Nil

13. Per contra, the learned Special Public Prosecutor appearing for CBI would submit that the submission of the appellants are erroneous and false besides misleading. First of all it is incorrect to say that the appellants never invest their earning prior to the check period and saving their income with A1's father. The list of assets shown in Statement-A under the Caption "Assets at the beginning of the check period as on 22.10.2007" would show the appellants had invested on land and valuable securities like plots, housing society investment, car, besides Bank balance worth Rs.14,88,133/- prior to Check period.

14. The TA and LTC allowances which he has spent has been reimbursed and what he has spent is shown under expenditure statement and what amount he got reimbursed is shown under income statement. Whileso the submission of the appellant that reimbursement alone to be given credit under income column but the corresponding expenditure should not be taken note to assess the holdings of the appellant is preposterous. If the calculation submitted by the appellants in their written submission is accepted, then they have to account for nearly Rs.13 lakhs which is the difference amount between their alleged income during the check period and the assets plus expenditure during the check period. The Trial court after due consideration of the documents relied by the prosecution and the defence has rightly rejected the explanation offered by the appellants that A-1's father gave Rs.7,50,000/- which he was saving for and behalf of the Accused. Except the gift of Rs.1,00,000/- which is said to have been received from A-2's father and conceded by the prosecution, but rejected by the Trial Court, there is no material to substantiate the defence case regarding the property held by him and the legality of his source of income. Having

wealth excessively disproportionate to the known source of income, the minor omission by the trial court will no way enhance the case of the defence to impeach the trial court judgment of conviction and sentence.

Point for consideration:

Whether the trial court has properly appreciated the evidence placed by the prosecution as well as the defendants by way of documents and ocular evidence while arriving at the conclusion that the appellants are guilty of holding disproportionate assert beyond their known source of income?

15. The undisputed facts in this case is that Mr.D.Rajasekar, an I.F.S Officer was on deputation to Animal Welfare Board of India, Chennai. During the period from 22.10.2007 to 15.06.2010 as Secretary and his wife Smt.J.Yogalakshmi (A2) working as Assistant Professor, Rice Research Station, Tirur, Thiruvallur District since 26.12.2009. Just before A1 deputation to Chennai as Secretary in AWBI, he was at Chandigarh. The case of the prosecution as accepted by the Trial Court is that the appellants herein had assets worth Rs.14,68,133/- only at the beginning of the Check period which has increased to a sum of Rs.39,46,625/- at the end of the check period. During the check period the immovable property such as plots at Thanjavur District and agricultural land at Kanchipuram had been purchased, besides movable asserts such as Gold ornaments, Car and Fixed Deposits in the ICICI Bank, SBI and SBH. During the house search of the appellant, Gold ornaments purchased in the name of the second appellant from G.R.T Jewellers and Joyalukkas Jewellers were recovered and these two jewel items are mentioned in the Annexure -II in serial no: 6 and 7. The total worth of Gold Jewellers is about Rs.1,55,500/-. Apart from jewels other articles found in the house is worth Rs.3,35,450/- under the expenditure head LIC premium for five policies in the name of the appellants and one ICICI prudential policy for Rs.30,000/- has shown as expenditure during the check period.

16. It is contended by the appellant that the investigating officer fail to give an opportunity to the appellants to explain their source of assets and the assessment of asset at the beginning of the check period is not done correctly. However, to explain the source of income, the first appellant has examined himself has DW.1 and 24 Exhibits being marked in defence of their case. Therefore, no prejudice is caused even if an opportunity to explain not given by the prosecution.

17. Regarding the assessment value at the beginning of the check period, the learned counsel for the appellant submitted that a sum of Rs.2,84,000/- which he held in the bank account prior to the check period, later transferred and converted as Fixed Deposit is taken as income during the check period instead of assets held before check period. To substantiate this plea,

the Statement of account marked as Ex.D.18 in the name of Mr.Rajasekar at the Corporation Bank, Chandigarh is relied wherein the two entries during the month of August 2008 for a sum of Rs.1,29,849/- and Rs.1,54,660/- has been credited in the said account later, a sum of Rs.2,84,000/- on the same day has been debited.

18. According to the appellant this amount was deposited as Fixed Deposit after A1 deputation to Chennai at AWBI but what could be seen from the evidence let in by the prosecution as well as the defendant is that Mr. Rajasekar, (A1) had a bank account at Corporation Bank, Chandigarh wherein huge money transaction could been seen from the statement of account marked as Ex.D.18. While the entry made in Ex.D.18 regarding withdrawal of Rs.2,84,000/- is relied upon by the appellant, it is also obvious that he has suppressed the existence of this bank account during the course of investigation. Certain transactions of higher value found in the statement of account even after the appellant got transferred to Chennai goes to show that for the appellant, apart from salary income, some other source of income he had and been depositing in the Corporation Bank Chandigarh. Though, it is contended that the Fixed Deposit for a sum of Rs.2,84,000/- was made from and out of the savings prior to the check period, except the statement of account marked as Ex.D.18, there is no document to show that this amount was the pay arrears and withdrawn later and invested in purchase of Paramakeni and property. It is also seen from the written submission filed by the appellant before the Trial Court that the Fixed Deposits of Rs.1,50,000/- each in the name of the 1st and 2nd appellants, at State Bank of Hyderabad, were made from out of the agricultural income which they derived from the land at Vedal village which they have purchased during the month of March 2008.

19. From the Annexure -II, I find that the 2nd appellant has purchased 50 cents of Agricultural land at Vedal village at Kancheepuram on 03.03.2008 for Rs.50,000/- and from that 50 cents of land they claim they had agricultural land income of Rs.3,00,000/- in two years. If it is so, first of all the same should have been reflected in the income tax returns. While the first appellant has taken all pains to mark 24 documents in defence strangely they have not chosen to file income tax returns, to substantiate that they have disclosed the agricultural income from the land at Vedal Village and they had income of Rs.3,00,000/- and same being deposited in the name of 1st and 2nd appellants, Rs.1,50,000/-each. Regarding the Gold Jewellers, found during the house search of the premises, though the appellant contended that it was not valued by appraiser and value does not tally with the bill accompanied with the Gold jeweller and found during the search it is very feeble submission, since the possession of these two jewels not been disputed and the bill found along with the jewels in the locker

is also not been disputed. While so, any contra evidence to disprove the case of the prosecution ought to have been placed by the appellant is mere denial of the value will not render any assistance the case of the appellants.

20. The learned counsel for the appellant submitted that both the appellants were employed. By taking 22.10.2007 to 17.06.2010 as check period, the prosecution has falsely laid down the case against the appellants, as if, they have accumulated wealth during the check period disproportionate to their known source of income. The savings held by them prior to the check period and to pay arrears received during the check period and Rs.1 lakh gift and Bank transfer of Rs.7.5 lakhs from the father of A2 and the father of A1 respectively have not been properly given credit.

21. While considering the submission with regard to statement of account in the name of Rajasekar (A1) in SBH marked as Ex.P.53, it reveals that on the date of beginning of the check period i.e 22.10.2007. A1 had bank balance of Rs.500/- only, on 24.10.2007 a sum of Rs.1,10,519/- have been credit into his account. Since, this amount is the pay arrears of the first appellant, he claims that it should be construed the income prior to the check period. The said preposition is not legally permissible for simple reason that, what assets possessed prior to the check period alone can be taken as assets at the beginning of the check period and not the prospective future income which fell due prior to check period.

22. Yet another entry found in the statement of account of the A1, Ex.P.53 a sum of Rs.7,50,000/- have been transferred into the account by his father. Though, it is contended by the learned counsel that the said amount is the salary saving of the A1 left with his father which in turn had been deposited in his account on 24.01.2008. If it is so, the appellant ought to have placed before the court, evidence that he has left his salary savings with his father for years and he in turn had transferred the money into the account of A1 Because the money has flown into his account through Bank the source does not presume to be legal.

23. From the perusal of the entries found in Ex.P.53 (the Statement of account) it does not correlate with the salary income of A1 and A2. This court on comparing the written submission placed before the trial court by the appellants and the written submissions made during the appeal find contradictory explanations for the source of income being put forth by the appellants. Major investments and assets have been acquired by the appellants during the check period, whereas; the legal source of income for them apart from salary, are rental income and agricultural income from out of 50 cents of land at Vedal village and 8 cents of land at Paramakeni Village. With this known source of income within a period of three years, the

appellants could manage to have assets worth nearly Rs.39,00,000/- as against the income of Rs.29,00,000/-, after meeting out their regular domestic expenditures.

24. It is contented by the learned counsel for the appellants that the expenditure found in the Statement-D of the final report is an inflated expenditure and the Trial court has failed to take note of the fact that the appellants had no reason to spend 1/3rd of their income when their rent and travelling expenses are taken care by their employees.

25. Perusal of the impugned judgment, disprove the said contention. The trial court, after taking note of all the facts placed by the defence including the rent paid by them and evidence let in regarding the rental expenditure, has fixed the expenditure during the check period as Rs.16,37,240/- excluding serial no. 7, 14 and 18 under Statement-D. The Trial Court has also reduced the domestic expenses from Rs.5,64,253/- to Rs.4,48,789/-. It has substantially reduced the value of the assets acquired during the check period from Rs.24,68,492/- to Rs. 16,37,240/-. Despite that the appellants had in possession of assets 34.81% in excess. Therefore, there is no substance in the submission made by the appellant in this regard. The perusal of the impugned judgment, this Court finds that except Rs.1,00,000/- alleged to be gifted by the father of A2 for purchase of the property, all other facts are well considered and taken note by the Trial Court. Even if this Rs.1,00,000/- is given credit as income, during the check period and assuming the rental advance of Rs.70,000/- which has been alleged to have adjusted towards rent, is deducted from the expenditure head, the statement of assets will be as under:

Calculation of disproportionate assets:

1.	Assets at the beginning of the Check Period-Statement-A	Rs.14,41,133/-
2.	Assets at the end of the Check period- statement-B	Rs.30,51,643.00
3.	Assets acquired during the check period (2-1)	Rs.16,10,510.00
4.	Expenditure during the Check period (Statement-D) After deducting rental advance of Rs.70,000/-	Rs.16,34,240/- -70,000/- Rs.15,67,240/-
5	Total assets/pecuniary resources possessed by the appellants(3+4)	Rs.31,77,750/-
6.	Income during the check period Statement-C After adding Rs.1 lakh gifted to A2 by her father	Rs.23,77,321.00 + 1,00,000/- 24,77,321.00
7.	Disproportionate asset (5-6)	Rs.7,00,429/-

Thus the excess of assets vis a viz the known source of income works out to 28.27%.

26. The check period being only 32 months, within this period the appellants have gathered wealth 28.27% disproportionate to the known source of income therefore concession in percentage as done is case were marginal error of calculation possible does not arise in this case.

27. Therefore, this court holds that the prosecution has proved the guilt against the first appellant that the acquisition of the wealth which stands in the name of appellants 1 and 2 is disproportionate to their known source of income. Though appellants had given an opportunity to explain but were unable to place before the trial court any convincing material evidence that the properties which they acquired during the check period are from legal source of income. Hence, this court finds no ground to interfere with the trial court judgment. Therefore, the trial court judgment is confirmed.

28. In the result, this criminal appeal is dismissed. The Judgment of conviction passed by learned IX Additional Special Judge for C.B.I cases, Chennai in C.C.No.22 of 2012 dated 30.03.2016 is hereby confirmed.

29. The first appellant shall surrender before the trial Court forthwith to undergo the remaining period of Sentence. The learned counsel appearing for the appellants submits that A-2 has given birth to twins recently and sometime may be granted for her to surrender before the Court below. Taking note of the said submission, two months is granted for A2 in Crl.A.No. 261 of 2016 to surrender before the Trial Court.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

bsm

To

1. The IX Additional Special Judge,
   For CBI Cases, Chennai,-
   (requiring to serve copy of
   Judgmente on the appellants.)

2. The Additional Superintendent of Police,
   SPE/CBI/ACB/Chennai

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

+ 2 ccs to MR. V. Krizhamoorthy, Advocate SR.1705

Crl.A.No.261 of 2016

NMI(CO)
EU(01/02/2018)