

BAIL SLIP

The Appellants herein/Accused viz., 1.D.Pugazhanthi S/o.Dhanapal, 2.P.Shanthi Pugazhendhi W/o.D.Pugazhendhi were directed to be released on bail as per order of this court dated 20/06/2013 made in Mp 1/13 in CrI.A.429/13.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.11.2017

Delivered on : 10.01.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.A.No.429 of 2013

1.D.Pugazhenth

2.P.Shanthi Pugazhenth ... Appellants/Accused 1 & 2

Vs.

State Represented by
The Inspector of Police,
SPE/CBI/ACB/Chennai
R.C.No.70/A/2009

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) Cr.P.C. praying to set aside the Judgment passed against the appellants on 27.05.2013 in C.C.No.3 of 2011 in R.C.No.70/A/2009 on the file of XII Additional Special Judge for CBI cases at Chennai and acquit them from all the charges.

For Appellants : Mr. R.Rajarathinam
for A.G.Rajan

For Respondents : Mr.K.Srinivasan
Special Public Prosecutor
for CBI cases

JUDGMENT

This Appeal against the Judgment of Trial Court in C.C.No.3 of 2011 holding the appellant guilty of offence under Section 13 (2) read with 13(1)(e) of the Prevention of corruption Act by A1 and Section 109 of IPC read with 13(1)(e) by A2.

2. The facts of the case are as follows:-

The first appellant-D.Pugazhenthhi, while working as Divisional Manager, United India Insurance Company Ltd., Chennai found in possession of asset disproportionate to his known sources of income, which he held in his name and in the name of his wife Santhi Pugazhenthhi who also happened to be a public servant working as Assistant Superintendent, General Administration, Chennai Port Trust, Chennai.

3. The prosecution has taken 01.09.2002 to 16.06.2009 as check period and the properties held by the first appellant- Pugazhenthhi and the second appellant Smt.Santhi Pugazhenthhi. At the beginning of the check period that is on 01.09.2002 has been found as under:-

Sl.No	Details of Properties	Name Sri/Smt	Date of Purchase	Value Rs.
1	Purchase of land at Plot No.53, No.8, SG Natarajan Street, Muthamizh Nagar, Pammal, Chennai - 75, measuring 2570 sq.ft., from Shri Yuvaraj Singh, S/o.Late Ram Singh, Chennai-75.	Pugazhenthhi	02.09.1988	60,326
2	Construction of House at Plot No.53, No.8, SG Natarajan Street, Muthamizh Nagar, Pammal, Chennai - 75.	Pugazhenthhi	From 1988 to 1995	2,10,000
3	Flat No.1, Ground Floor at No.3, Rangaiah Garden St., Mylapore, Chennai purchased vide Sale Doc No.275/1999	Pugazhenthhi	27.01.1999	7,30,000

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Sl.No	Details of Properties	Name Sri/Smt	Date of Purchase	Value Rs.
4	Plot No.8A, Jeevan Prakash [JP] Nagar, Seneerkuppam Taluk, Sriperumbudur Taluk, Chengai MGR District [Tiruvallur District] Survey No.99/2A, 2C10, 2C11, 3A, 3B, 3C, admeasuring 1914 sq.ft., purchased vide Doc.No.1300/1994 dated 28.04.1994 of SRO Kundrathur.	Santhi Pugazhen dhi	28.04.1994	84,366
5	Three Seater Wooden Sofa along with wooden tea table	Santhi Pugazhen dhi	1999	2,000
6	Wooden Dressing Table	Santhi Pugazhen dhi	1999	1,500
7	Crompton Greaves Ceiling Fan - 1 No [in Bed Room]	Santhi Pugazhen dhi	1995	1,200
8	Whirlpool washing machine [WWAE539SZA]	Santhi Pugazhen dhi	1999	8,000
9	Crompton Greaves Ceiling Fan - 1 No [In Bed Room-II]	Santhi Pugazhen dhi	1995	1,200
10	The balance amount in the Public Provident Fund [PPF] Account No.3368 in Anna Road Post Office, Chennai as on 01.09.2002	Pugazhen dhi	01.09.2002	2,05,328
	Total			13,03,920

4. At the end of the check period that is on 16.06.2009, the appellants were found to be in possession of assets such as new flats, cash balance in PPF account, savings bank account, gold jewels, loan received and receivable outstanding loans extended by them, totally a sum of Rs.1,15,51,911/-. The assets found in their possession at the end of check period has been detailed as under:-

Sl.No	Details of Properties	Name Sri/Smt	Date of Purchase	Value Rs.
1	Purchase of land at Plot No.53, No.8, SG Natarajan Street, Muthamizh Nagar, Pammal, Chennai - 75, measuring 2570 sq.ft., from Shri Yuvaraj Singh, S/o.Late Ram Singh, Chennai-75.	Pugazhendhi	02.09.1988	60,326
2	Construction of House at Plot No.53, No.8, SG Natarajan Street, Muthamizh Nagar, Pammal, Chennai - 75.	Pugazhendhi	From 1988 to 1995	2,10,000
3	Flat No.1, Ground Floor at No.3, Rangaiah Garden St., Mylapore, Chennai purchased vide Sale Doc No.275/1999	Pugazhendhi	27.01.1999	7,30,000
4	Plot No.8A, Jeevan Prakash [JP] Seneerkuppam Taluk, Sriperumbudur Taluk, Chengai MGR District [Tiruvallur District] Survey No.99/2A, 2C10, 2C11, 3A, 3B, 3C, admeasuring 1914 sq.ft., purchased vide Doc.No.1300/1994 dated 28.04.1994 of SRO Kundrathur.	Santhi Pugazhendhi	28.04.1994	84,366
5	Three Seater Wooden Sofa along with wooden tea table	Santhi Pugazhendhi	1999	2,000
6	Wooden Dressing Table	Santhi Pugazhendhi	1999	1,500
7	Crompton Greaves Ceiling Fan - 1 No [in Bed Room]	Santhi Pugazhendhi	1995	1,200
8	Whirlpool washing machine [WWAE539SZA]	Santhi Pugazhendhi	1999	8,000

Sl.No	Details of Properties	Name Sri/Smt	Date of Purchase	Value Rs.
9	Crompton Greaves Ceiling Fan - 1 No [In Bed Room-II]	Santhi Pugazhendhi	1995	1,200
10	Flat at Old No.23, New No.4, Block No.37, Balakrishna	Pugazhendhi	02.08.2007	25,10,000
11	Flat F2 in First Floor at Plot No.5A & 5B, Mannarmudali 2 nd Street, Vadapalani, Chennai-26 [776 sq.ft., with UDS 225 sq.ft] [including EB, sewage, water and registration charges]	Santhi Pugazhendhi	13.04.2007	21,30,000
12	Flat F2 in First Floor at Plot No.4, Mannarmudali 2 nd Street, Vadapalani, Chennai-26 [735 sq.ft., with UDS 221 sq.ft] [including EB, sewage, water and registration charges]	Pugazhendhi	13.04.2007	20,40,000
13	Flat S1 in Second Floor at Plot No.4, Mannarmudali 2 nd Street, Vadapalani, Chennai-26 [1040 sq.ft., with UDS 165 sq.ft] [the total cost of the flat is Rs.34,00,000 and effectively paid amount is Rs.19,00,000/-]	Pugazhendhi	13.06.2008	19,00,000
14	Balance in SB A/c.No.395702010009001 at UBI, Myalpore as on 16.06.2009 [The account was opened on 25.03.2004]	Pugazhendhi	16.06.2009	
15	LG Multiple PIP flatron 1200-29" Colour TV and TV Stand	Santhi Pugazhendhi	2009	20,000
16	Sony BM 368 VCD Player	Santhi Pugazhendhi	2005	4,000

Sl.No	Details of Properties	Name Sri/Smt	Date of Purchase	Value Rs.
17	Usha Ceiling Fans-2 Nos	Santhi Pugazhendhi	2008	2,400
18	Ornamental Central Light	Santhi Pugazhendhi	2008	2,500
19	Haier Refrigerator 170 Ltrs with stabiliser	Santhi Pugazhendhi	2007	5,500
20	Usha Wall Mounted fan	Santhi Pugazhendhi	2008	1,000
21	Feber Electric Chimney	Santhi Pugazhendhi	2008	3,000
22	Onida Power Grill 21 microwave oven	Santhi Pugazhendhi	2006	3,000
23	Nightingale 2 burner gas stove	Santhi Pugazhendhi	2005	1,500
24	LG Colour TV	Pugazhendhi	2004	20,000
25	Kenstar Refrigerator	Pugazhendhi	2004	15,000
26	LG DVD/VCD/CD Player	Pugazhendhi	2004	3,000
27	E-Tel Cordless Phone	Pugazhendhi	2004	1,200
28	Premier Wet Grinder	Pugazhendhi	2009	4,000
29	Preeti Mixie	Pugazhendhi	2004	2,000
30	Premier Gas Stove	Pugazhendhi	2004	1,200
31	IFB Washing Machine	Pugazhendhi	2007	10,000
32	Samsung 1.5 Ton ACPugazhendhi	Pugazhendhi	2007	25,000
33	Steel Cot with bed + 2 Nos	Pugazhendhi	2004	10,000
34	Plastic chairs - 4 Nos	Pugazhendhi	2004	800
35	Fujital Portable VCD Player	Pugazhendhi	2004	2,000
36	Necklace with ear stud - 20 gms and 1 gold ring	Pugazhendhi	2009	11,000
37	Liquor Bottles - 8 Nos	Pugazhendhi	2009	4,800

Sl.No	Details of Properties	Name Sri/Smt	Date of Purchase	Value Rs.
38	TVS Victor Motor Cycle bearing Registration No.TN-07-S-3001. Rs.2000/- road tax was paid on 13.09.2002. Rs.44,738+2000=Rs.46,738 /-	Santhi Pugazhendhi	13.09.2002	46,738
39	The balance amount in the Public Provident Fund [PPF] account No.3368 in Anna Road Post office, Chennai as on 16.06.2009.	Pugazhendhi	16.06.2009	3,33,398
40	Balance in SB A/c. No.302401011000840 at Vijaya bank, Vadapalani, as on 16.06.2009. [The account was opened on 14.02.2007]	Pugazhendhi	16.06.2009	2,32,178
41	Loan given to Smt.Kalpana Palanivel	Pugazhendhi	25.08.2008	1,00,000
42	Loan given to Nandagopal [Rs.6,00,000 on 01.10.2002 & Rs.4,00,000 on 19.01.2004]	Pugazhendhi	01.10.2002 & 19.01.2004	10,00,000
	Total			1,15,51,911

5. While the total income of the appellant during the check period including salary, PF loan etc. was only Rs.78,00,799/- and expenditure for during the said period was Rs.36,52,024, the difference between his known sources of income and the asset held by them minus expenditure and asset held at the beginning of the check period was Rs.60,99,216/- which is found to be 78.18% in excess.

6. The Trial Court has framed charges under Section 13(2) read with 13(1)(e), as against A1, and Section 109 IPC read with 13(2) read with 13(1)(e) of Prevention Corruption Act, as against A2, and tried them. To prove the charges the prosecution has examined 45 witnesses marked 110 Exhibits. In defence, the accused/appellants have examined five witnesses and marked 27 Exhibits.

7. The Trial Court after appreciating the evidence led in

by the prosecution as well as the defence, accepting the explanation the defence given by the accused person in respect of certain assets which were found to be earned through legal sources, had arrived the disproportionately as below:-

Sl.No	Description	Amount in Rs.
1	Assets at the beginning of the check period as per the Statement - A	Rs.13,03,920/-
2	Assets at the end of the check period as per Statement - B	Rs.1,11,81,585/-
3	Assets acquired during the check period [2-1]	Rs.98,77,665/-
4	Expenditure during the check period as per Statement - D	Rs.32,11,886/-
5	Tota Assets / Pecuniary resources possessed by the accused [3+4]	Rs.1,30,89,551/-
6	Income during the check period as per Statement - C	Rs.92,90,799/-
7	Disproportionate Assets [5-6]	Rs.37,98,752/-
8	DA percentage [7/6x100]	40.89%

7. Thus the Trial Court has found that the first appellant has acquired 40.89% worth assets, over and above his known sources of income and thereby committed offences punishable under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act. The second appellant, Santhi Pugazhenthii abetted A1 to acquire asset disproportionate to the known source of income, hence, liable for the offence under Section 109 IPC read with Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act.

8. Aggrieved by the Judgment of conviction and sentence to undergo two years rigorous imprisonment and a fine of Rs.10,000/-, in default, three months simple imprisonment for an offence under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act against A1, and one year rigorous imprisonment, fine of Rs.5,000/-, in default, three months simple imprisonment as against A2, appeal is preferred challenging on the ground that the Trial Court failed to note that the appellants owned property at Pammal bearing door No.8, SG.Natarajan Street, Muthamizh Nagar, Chennai -74, before the check period which was sold by them for sale consideration of Rs.29,10,000/-. The sale consideration which was received between 22.12.2006 and 04.04.2007 however only Rs.15,10,000/- was given credit by the Trial Court as advanced received till 13.01.2007. The balance of Rs.14,00,000/- which ought to have been given credit to A1's income was not given credit. This has

highly inflated the total assets acquired during the check period.

9. As per the prosecution income of the appellants during the period from 01.09.2002 to 16.06.2009 was detailed in Statement-C, extracted below:-

Sl.N o	Details of Income	Name Sri/Smt	Date	Value Rs.
1	Net Salary income of Shri D.Pugazhendhi from 01.09.2002 to 31.05.2009 [Gross salary Rs.23,25,771 - Deduction Rs.8,19,085 = Net Pay Rs.15,06,686] and festival advance Rs.68,500, Flood Advance Rs.15,000].	Pugazhendhi	01.09.2002 and 16.06.2009	15,90,186
2	Non refundable Provident Fund loan availed by Shri D.Pugazhendhi	Pugazhendhi	01.02.2007	6,50,000
3	Loan from GIC Cooperative Thrift and Credit Society Limited received by Shri.D.Pugazhendhi [He was sanctioned with a loan of Rs.2,50,000/- and after deduction of share capital of Rs,24,980/- he was paid an amount of Rs.2,25,010/-]	Pugazhendhi	08.05.2008	2,25,010
4	Loan from GIC Cooperative Thrift and Credit Society Limited received by Shri.D.Pugazhendhi [He was sanctioned with a loan of Rs.1,30,700/- and after deduction of old loan balance of Rs.1,30,200/- he was paid an amount of Rs.500/-]	Pugazhendhi	19.02.2009	500

Sl.No	Details of Income	Name Sri/Smt	Date	Value Rs.
5	Net salary income of Smt.Santhi Pugazhendhi for the period from 01.09.2002 to 16.06.2009 [Gross salary Rs.12,80,092 - Deduction Rs.9,96,157 = net Pay Rs.2,8,935]	Santhi Pugazhendhi	01.09.2002 to 16.06.2009	2,83,935
6	EL Encashment received by Smt.Santhi Pugazhendhi during August 2003 Rs.17,661 and during August 2005 Rs.18,885]	Santhi Pugazhendhi	August 2003 and August 2005	36,546
7	Hindi incentive received by Smt. Santhi Pugazhendhi	Santhi Pugazhendhi	May 2003	400
8	GPF Loan received by Smt. Santhi Pugazhendhi viz., Rs.4,864 in Feb '03, Rs.49,998 in Mar '04, Rs.49,974 in Mar '05, Rs.1,49,976 in Mar '08 & Rs.71,318 in Nov '08	Santhi Pugazhendhi	Feb '03 to Nov '08	3,69,130
9	GPF final withdrawal received by Smt.Santhi Pugazhendhi viz Rs.60,000 on 01.03.2007 and Rs.50,000 on 08.05.2008	Santhi Pugazhendhi	March 2007 and May 2008	1,10,000
10	Interim Relief received by Smt. Santhi Pugazhendhi	Santhi Pugazhendhi	14.08.2008	42,787
11	Bonus received by Smt.Santhi Pugazhendhi	Santhi Pugazhendhi	2003 to 2008	35,483
12	Flood Advance [Rs.15,000] and Festival Advance [Rs.28,000] received by Smt.Santhi Pugazhendhi	Santhi Pugazhendhi	2003 to 2009	43,000

Sl.N o	Details of Income	Name Sri/Smt	Date	Value Rs.
13	Loan received from The Chennai Port Trsut Employees' Cooperative Bank Ltd by Santhi Pugazhendhi viz., Rs.61,663 on 02.09.2002 ; Rs.1,59,947 on 06.07.2006 ; Rs.1,39,134 on 17.10.2007 and Rs.32,880 on 06.11.2008	Santhi Pugazhendhi	2006 to 2008	3,93,624
14	Income in selling of Santro Car No.TN-07-W-7813 which was purchased by Shri D.Pugazhendhi on 08.12.1999 and sold to Nageswaran on 21.08.2008.	Pugazhendhi	21.08.2008	1,45,000
15	Loan from PNB Housing Finance Limited, Chennai- Loan A/C No.6660001739 for construction of Flat at 4/23, Block No.37, Balakrishna Street, Mylapore, Chennai-4.	Pugazhendhi	01.08.2007	19,00,000
16	Interest from Vijaya Bank, Vadapalani Branch SB No.302401011000840 during the period from 01.09.2002 to 16.06.2009 [interest Rs.2707+917+1644 = Rs.5,268/-]	Pugazhendhi	01.09.2002 to 16.06.2009	5,268
17	Interest from Union Bank of India, Mylapore Branch SB A/c.395702010009001 during the period from 01.09.2002 to 16.06.2009	Pugazhendhi	01.09.2002 to 16.06.2009	2,885

Sl.No	Details of Income	Name Sri/Smt	Date	Value Rs.
18	Interest received from Shri.V.Palanivel [on behalf of his wife Kalpana] for the loan amount of Rs.1 lakh received by her [Rs.4000 x 5 months = Rs.20,000/-]	Pugazhendhi	September 2008 to January 2009	20,000
19	Loan availed from Chennai Port Trust for purchase of TVS Victor Motor Cycle bearing Reg. No. TN-07-S-3001	Santhi Pugazhendhi	02.09.2002	29,960
20	Income received on maturity of LIC Policy No713389530 of Shri D.Pugazhendhi	Pugazhendhi	14.07.2008	77,515
21	Interest from the SB Account No. 006010100093222 of Axis Bank, Mylapore.	Santhi Pugazhendhi	01.09.2002 to 16.06.2009	12
22	Interest credited in the Public Provident Fund [PPF] account No.3368 in Anna Road Post Office, Chennai during 01.09.2002 to 16.06.2009	Pugazhendhi	01.09.2002 to 16.06.2009	1,67,570
23	Amount withdrawn from the Public Provident Fund [PPF] account No.3368 in Anna Road Post Office, Chennai on 09.05.2008	Pugazhendhi	09.05.2008	1,52,000
24	Lease amount received from the lessee Shri B.Sukumaran for the flat F2, 1 st Floor, new No.19, [Old No.5A and 5B], A.P. Apartments, Mannar Second Street, Vadapalani, Chennai-26.	Pugazhendhi	2008	6,00,000

Sl.No	Details of Income	Name Sri/Smt	Date	Value Rs.
25	Lease amount received from the lessee Smt.M.Noorjehan for the flat [10040 sq.ft.] SF-1, 2 nd Floor, Mannar Second Street, Vadapalani, Chennai-26.	Pugazhendhi	2008	6,00,000
26	Rent amount received from Ms.R.Dhakshayini for the flat [765 sqft], F2 Mannar 2 nd Street, Vadapalani, Chennai-26 [Advance Rs.2,00,000 + rent Rs.8,000 x 15 from March, 2008 to May, 2009]	Santhi Pugazhendhi	2008	3,20,000
	Total			78,00,799

11. According to the learned counsel for the appellant, item.2 in statement (A) which is the construction of the house at plot No.53, NO.8, SG.Natarajan Street, Muthamizh Nagar, Pammal, Chennai-74 is valued at Rs.2,10,000/-. The construction of the said house was between 1982 to 1985, which is prior to check period. This property was sold to one E.Mohammed Ibrahim for Rs.29,10,000/- under the sale agreement-Ex.D-14 dated 22.12.2006. The sale got completed on 21.07.2009 under sale deed- Ex.P-9, and the sale consideration of Rs.29,10,000/- was paid in installment as under:-

1. 22.12.2006 - Rs. 7,10,000/-
2. 29.12.2006 - Rs. 5,00,000/-
3. 13.01.2007 - Rs. 3,00,000/-
4. 04.04.2007 - Rs.14,00,000/-

12. The last and final payment of Rs.14,00,000/- was deposited in the account of the appellant, while so, the entire sale consideration ought to have been shown in Statement-C under income during the check period but the prosecution has totally omitted the income derived through sale of the Pammal property, whereas the trial court has only taken a part of the sale consideration as income during the check period. Hence, the learned counsel for the appellant pleaded that under statement (C) the Trial Court should have added Rs.14,00,000/-.

13. It is also contended by the learned counsel for appellant that the Trial Court has failed to appreciate the evidence led in by the defence in respect of the rental income derived from said property namely the house at Pammal from the

date of its acquisition till its disposed. According to the learned counsel for the appellant from the house and flats, the appellants have derived rental income to the extend of Rs.3,36,000/-, at the beginning of the check period and Rs.10,24,800/- rental income during the check period that is 01.09.2002 to 16.06.2009.

14. The learned counsel for the appellant contends that from out of the sale consideration and the rental income derived from Pammal property, they purchased item Nos.11, 12 and 13 shown in statement (B). According to the learned counsel for the appellants item Nos.11,12 and 13 are three Flats at plot Nos.4, 5A & 5B, Mannan Mudali Street, Vadapalani, Chennai. The total value of the property according to the prosecution is Rs.60,70,000/-. While item 11 in statement (B) stands in the name of second appellant, item Nos.12 and 13 stands in the name of first appellant. It is contended by the learned counsel for the appellant that item Nos.11 and 12 plots were purchased as vacant sites under sale deeds - Ex.P-40, Ex.P-80 and Ex.P-39. Separate construction agreement was entered vide Ex. P.81 and Ex.P-82. The sale consideration for the purchase of vacant land comprised in item No.11 is Rs.2,09,700/- and the construction was made at the cost of Rs.15,27,324/-. Item 11 which was purchased in the name of the second appellant was from and out of the sale proceeds of Pammal property, and it was informed to the office of A2. Therefore, there is no investment from out of unknown source regarding item No.11. Similarly, Item No.12, the value of the vacant land is Rs.2,05,972/- and the construction cost is Rs.14,37,124/-. For purchase of this property, loan was availed from Dena bank and a sum of Rs.13,00,000/- is due to Dena bank. As far as item No. 13 plot is concerned, it was purchased in the name of first appellant, only sum of Rs.11,65,000/- has been paid towards part sale consideration and balance sum of Rs.15,50,172/- due to Dena bank. It is not Rs.19 lakhs paid for purchase of this property as contented by the prosecution.

15. Therefore, a sum of Rs.7,35,000/- has been shown in excess against value of the plot shown in item 13 of statement (B).

16. It is also contended by the learned counsel for the appellant that the prosecution has valued, the worth of item 10 property, which is a Flat at old No.23 New No.4 Flat No.37, Balakrishna Street, Mylapore, Chennai-4 shown as Rs.25,10,000/- In fact this property was purchased in the name of first appellant/A1, from out of loan of Rs.19,00,000/- availed from the Punjab National bank, Housing Finance Ltd. - Ex.P-14, a sum of Rs.6,04,694/- only has been paid towards EMI by the first

appellant /A1. Therefore, the inflated value of item No.10 to 13 ought to have been taken note by the Trial Court. Had the Trial Court has taken note of the loan availed by the appellant and the actual installments paid to these properties instead of total value of the property, it could have arrived at a right conclusion that there is no disproportionately accumulation of wealth by the appellant. Further, the evidence of DW3, father of A2 who was deposed that he had given Rs.5,00,000/- to his daughter to purchase a property in her name has not been considered by the Trial Court.

17. Regarding the pro-note found in possession of appellant during the search and marked as Ex.P-25 and Ex.P-26 of Rs.6,00,000/-, Rs.4,00,000/- respectively. The appellant contends that in statement (B), this Rs.10,00,000/- ought not to have been added, PW18 does not owe Rs.10,00,000/- to the appellant, a loan of Rs.1,00,000/- alone is due from PW18.

18. It is also contended that the expenditure assessed by the prosecution is excessive except food and clothing, there is no expenditure incurred by the appellant. The transport expenditure, rental expenditure and medical expenses are taken care by the respective employers of A1 and A2 and these expenditure are reimbursed by them. So amount should have been taken for consideration towards the probable expenditure for transport, housing and health care. Instead of deducting 1/3rd of gross income from the salary of A2, under the head domestic Expenditure only 1/4 should have been deducted. With these submission the learned counsel for the appellant has submitted his calculation of asset as under:-

Calculation of Assets		
1.	Assets at the beginning of the check period as per Statement - A	Rs.16,39,920.00 (13,03,920+3,36,000)
2.	Assets at the end of the check period as per Statement - B	Rs.99,16,911.00 (1,15,51,991 Less: 7,35,000 Less: 9,00,000)
3.	Assets acquired during check period (2-1)	Rs.82,76,991.00

Calculation of Assets		
4.	Expenditure during check period as per Statement - D	Rs.29,06,88 6.00 (36,52,024 Less: 2,66,008 Less: 4,79,130)
5.	Total assets/Pecuniary resources possessed by Accused (3+4)	Rs.1,11,83,87 7.00
6.	Income during check period as per Statement-C [78,00,799+29,10,000+10,24,800+5,00,000+4,79,130]	Rs.1,27,14,72 9.00
7.	No disproportionate Assets (6-5)	Rs.15,30,852. 00 (Savings)

In support of his submission, the learned counsel for the appellant, relied upon the Judgments of following judgments

(i) State Inspector of Police, Vishakhapatnam Vs. Surya Sankaram karri reported in [(2006) 3 Supreme Court Cases(Cri) 225].

For the preposition of defective sanction and investigation without authorisation

(ii) Ashoka Tshering Bhutia Vs. State of Sikkim reported in [(2011) 4 Supreme Court Cases (Cri) 258] for the preposition check period very long and possibility of over estimation of expenditure

(iii) K T Uthappa and other Vs. State of Karnataka by Inspector of Police, CBI/ACB, Bangalore, decision rendered by the Karnataka High Court in CrI. A.Nos.933 C/W 835/2010, dated 01.03.2012. and same being confirmed by the Supreme Court in CA. 1873 and 1873 of 2014. [For the preposition defect in sanction order]

19. Per contra, the learned Special Public Prosecutor submitted that A1 and A2 both public servants are bound to inform their respective employers about any acquisition of property and in case of immovable property they have to obtain prior permission as per service rules. While so these two appellants have not informed most of the acquisition and what they have informed were found to be incorrect. So far as item Nos.10,11,12 and 13, A1 had purchased during the check period and the source for purchase of these properties are found to be not from legally known source.

20. Though, the appellants contends that the sale consideration derived from the sale of Pammal property, they have purchased item Nos. 11,12 and 13. in schedule-B. They do not co-related either by value or the period of purchase. Furthermore, A2 while purchasing item No.11 had informed her employer that she is utilizing the sale proceeds of Pammal property. Whereas before this Court, her father/DW3 had deposed that he gave Rs.5,00,000/- to his daughter to purchase that property. While deposing, her father-DW3 ought to have disclosed his source of income for giving Rs.5,00,000/- to his daughter, which he has not disclosed. Without explaining his source for giving a sum of Rs.5,00,000/- to his married daughter, such an explanation cannot be taken into consideration as legal source.

21. Further, the learned Special Public Prosecutor contended that the appellant in order to show he had income from legal source had inflated rental income derived from pammal property. He has examined DW.1 and DW2 who were alleged to be her tenants during different period starting from 1989 to 2008. Admittedly, the appellants have entered into an agreement to sell his house at Pammal for Rs.29,10,000/- as per Ex.D-14 on 22.12.2006. While so, the claim of the appellant that between 1989 to 2002, they derived rental income to the tune of Rs.3,36,000/-, and between 2002 to 2008, they derived rental of Rs.10,24,800/-, would clearly show that the rental income is highly inflated. The evidence of DW2 who has spoken about the rent paid by him and by the other tenant is in-admissible, since there is no documents to show the said amount was really paid to the appellant. Subsequent of the investigation for disproportionate asset and knowing about the prosecution, the appellant have fabricated the rental agreements. The rental agreements alleged to have been entered into by the appellants and the so called tenants, are not reliable documents.

22. In so far as purchase of plots shown as item Nos. 11, 12 and 13 in statement (B), the learned Special Public Prosecutor submitted that Exhibit P83 is details of the payment made by the appellants for the purchase of said flats. The builder has certified that for flats shown as Item Nos.11 and 12, a total sum of Rs. 34,40,000/- has been paid by the appellant excluding cost of Rs.2.80 lakhs towards EB charges, Registration costs, compound walls, Grill gate and sewage. Further, additional sum of Rs.5.50 lakhs has been collected from the appellant towards these two flats through Ex.P-83. The builder-PW.36, A.C.Anandan, partner, A.P.Builders in his evidence has deposed about the said payment from A-6.

23. Thus, prosecution has established that for the purchase of two plots item Nos.11 and 12 the appellants have paid Rs.42,70,000/-. The receipts and statement of payment are also

marked as Ex.P-83 series and in so far as item No.13 of statement (B) is concerned initially sale agreement was entered with one Sabarinathan (PW-26) by the builders. Later the appellant herein had purchased the property from PW.26 vide Ex.P-42. It is a plot constructed in the year 2006 measuring an extent of 1046 sq.ft building in second floor bearing flat No.S1. As per Ex.P-42 sale deed, the sale consideration is shown as Rs.10,00,000/-. Though the value of sale consideration as per Ex.P-42 shown as Rs.10,00,000/-. Sabarinathan had purchased the property in the year 2005 has availed loan from Dena bank for Rs.15,00,000/- in the year 2005 and PW.28 - Manager of Dena bank, Aminjikaiarai had deposed that Sabarinathan - PW-26, the vendor of the appellant had availed a loan of Rs.15,00,000/- for purchase of property on 13.06.2008, the balance due to the bank is Rs.15,50,172/- and the statement of account is marked as Exhibit P.39.

24. Therefore, the learned Special Public Prosecutor submitted that the value of the properties shown as item Nos. 11, 12 and 13 are not hyper value as alleged by the appellants and it is valued as per the guidelines and documents. Regarding the pro notes seized during the search, the learned Special Public Prosecutor submitted that PW.18 had deposed that his father was conducting chit of one lakh rupees per month, in which the appellant was one of the subscribers, since the money subscribed by the appellant was with his father. The appellant requested him to give pro-note for a sum held by the father of PW18. Accordingly, for the money his father owe to the first appellant, he has executed pro-notes Exhibit P25 for a sum of Rs.6,00,000/-, and Ex.P.26 for a sum of Rs.4,00,000/-. His wife Gowri has signed as witness in both the pro-notes, therefore the contention of the appellant that only one lakh has to be taken credit as against the two pro-notes of value Rs.10,00,000/- is totally unsustainable.

25. The learned Special Public Prosecutor further submitted that the Trial Court has given adequate consideration into the submission made by the appellants and explanation given by them for acquisition. After deducting admissible portion of income it has rightly come to the conclusion that despite giving credit to certain assets possessed through legal income, the appellants are found in possession of more than 40% excess to the known sources of income hence held them guilty. Therefore the Judgments relied by the learned counsel for the appellant are not applicable to the facts of the case. Hence, the appeal is liable to be dismissed.

Point for determination:

Whether there is any material error in the finding of the Trial Court in holding the appellant guilty of possessing

disproportionate asset beyond known source of income?

26. The first appellant D. Pugazhenthhi, during the relevant point of time was a Divisional Manager, United India Insurance Company Ltd., Chennai, his wife Santhi Pugazhenthhi is the second accused, who is found to have abetted A1 for the above said crime. During the check period from 01.09.2002 to 16.06.2009, the disproportionate asset alleged be acquired by them Rs.60,99,216/-, which is 78.18% in excess to the known source of their income.

27. The Trial Court after considering the evidence placed by the prosecution and the explanation given by the accused persons have found that the value of the disproportionate asset is Rs.37,98,752/- which is 40.89% in excess to the known source of income. The contention of the appellant is that one of the property which is shown as item No.2 in the statement(A) and statement(B) which was sold for sale consideration of Rs.29,10,000/- vide Ex.P-9 had fetched rental income of Rs.10,24,800/-. During the check period and this fact has been established through the evidence of DW-1, DW-2 and DW-5 who were tenants under the appellants before the check period and during the check period. However, the Trial Court has totally eschewed the evidence of these witnesses and the rental agreements marked as Ex.D-2 and Ex.D-13. The defence has established out of Rs.13,60,800/-, derived as rental income from the Pammal property, Rs.10,24,800/- is the rental income received during the check period. This property was sold on 21.07.2009 and the sale consideration of Rs.29,10,000/- was received between 22.12.2006 and 04.04.2007 as found in the entries made in the sale agreement marked as Ex.D-14. While so instead of giving credit to entire sale consideration, the loan payment of Rs.14,00,000/- made on 04.04.2007 was not given credit by the Trial Court.

While assessing the asset before the check period and during the check period the prosecution has failed to place the correct fact before the Court below and the Trial Court in turn has failed to appreciate the evidence placed by the defence regarding legal the source of income for purchase of properties during the check period. It is also contended by the learned counsel for the appellants that through documents and ocular evidence it is shown that properties under item Nos.11, 12 and 13 in statement (B) were purchased substantially from out of sale consideration received by selling the Pammal property. The said fact has not been taken into consideration in the Court below.

28. It is also contended by the learned counsel for the appellant that while housing loan has been raised for purchase of these properties, and bank loan is outstanding, and yet to be

discharged the Court below, ought not have taken the entire value of the property. It is also contended by the appellants counsel that the pro-note Ex.P-25 and Ex.P-26 totally a value of Rs.10,00,000/- is not really for Rs.10,00,000/-, but only held as security for Rs. 1,00,000/- advanced to PW-18. It is also emphasized by the learned counsel for the appellants that the domestic expenditure is shown excessively. A2 had not incurred any transport expenses or rental expenditure. Those expenses were taken care by A1. Her medical expenses were reimbursed by her office. Therefore, a sum of Rs.2,66,008/- towards her domestic expenses is shown in excess in statement (D) has to be deducted. The prosecution case that a sum of Rs.3,69,130/- shown as medical expenditure of A2 between February 2003 to November 2008 by availing GPF loan is baseless likewise a sum of Rs.1,10,000/- alleged to have been spent for the betrothal/marriage of A2 sister's daughter by availing GPF part final withdrawal is also not borne by evidence. Therefore, the entire sum of Rs.4,79,130/- has to be deducted from statement (D).

29. This Court has gone through the records and evidence in the light of the submission made by the appellant and the respondent. It is an admitted fact by the appellant that A1 as Divisional Manager, United India Insurance Company Ltd., Chennai and A2 as Assistant Superintendent, General Administration Department, Chennai Port Trust, had salary income of Rs.15,19,186/- and Rs.2,83,935/- respectively, during the check period.

30. Apart from the salary income they had rental income from out of residential building at Pammal, which they constructed in the year 1988. Apart from that A1 had a flat at Rengaiah Garden Street, Mylapore, Chennai purchased on 27.01.1999 and A2 had a flat at Jeevan Prakash Nagar, Seneer Kuppam Village, Sriperumbudur purchased on 28.04.1994. From these three immovable properties, the property at Pammal has been sold by the first appellant though the agreement to sell was during the check period i.e on 22.02.2006, the sale has completed only on 21.07.2009 (i.e) after the check period. Further the sale consideration shown in the registered sale deed is only Rs.16,02,413/-.

31. During the check period, from out of the salary income and the sale consideration alleged to have been earned by disposing the Pammal property, the appellants have purchased

(i). land at plot No.53 SG. Natarajan Street, Muthamizh Nagar, Pammal, Chennai-74 had put up construction upon it;

(ii). Purchased Flat No.2, Ground Floor at No.5 Rangaiah Garden Street, Mylapore, Chennai.

(iii). The plot purchased by the second appellant at the Jeevan Prakash Nagar, Seneer Kuppam Village, Sriperumbudur, during the year 1994 has been sold to the first appellant on 10.07.2006 for a sale consideration of Rs.84,366/- A1 and A2 had purchased three flats at Mannanmudali 2nd Street, Vadapalani, Chennai bearing Flat No.F-2 to first floor at Plot No.5a & 5b, F2 first floor at Plot No.4 and Flat S-1 second floor at Plot No.4.

32. Apart from the above said immovable properties, house hold articles, two wheeler and bank balance to the tune of Rs.5,60,000/- and loan against pro-note to Nandagopal for Rs.10,00,000/- were found to be the assets acquired by the appellant during the check period. The prosecution has listed out 42 properties both movable and immovable which the appellants have acquired during the check period. This includes jewels, electronic gadgets, automobile, bank balance and valuable securities.

33. The prosecution has valued the properties as per title deeds and the documents seized during the search of the appellant premises. The Trial Court while considering the value of immovable properties, particularly item Nos. 11,12 and 13 had taken note of Ex.P-39, Ex.P-40, and Ex.P-41, which are the sale deeds of these properties and considering Ex.P-102, the payment detailed for the property had accepted the value furnished by the prosecution for these properties. Though, the counsel for the appellant tried to impress upon the Court that the value of the property is not as assessed by the prosecution, but the documentary evidence and ocular evidence is contrary to his submission. In so far as the sale consideration received by the appellant towards the Pammal house, the Trial Court has given credit for Rs.15,10,000/- as sale consideration for the said property. Though it is contended by the appellant that Rs.14,00,000/- which is the final payment was paid to him on 04.04.2007 and relying upon the endorsement made in Ex.D-14, the sale deed (Ex.P-9) dated 21.07.2009 and the recital in the said document indicates that the value of the property as per Ex.P-9 is only Rs.16,02,413/- and the final payment made on the date of registration that is on 21.07.2009, which is subsequent to the check period. Therefore, though the prosecution has not given credit for entire amount, the Trial Court after taking note of the endorsements made in Ex.D-14 and the recital of Ex.P-9, had credited Rs.1,50,000/- which is paid during the check period and received by A1 towards sale consideration for the Pammal property and had added the same in the statement (C). The balance sale consideration being paid only on the date of registration which is subsequent to the check period therefore rightly excluded the endorsement dated 04.04.2007 for receipt of Rs.14,00,000/- which contains the signature of A1 alone and not been witnessed by anyone and the best evidence could be the buyer not examined in defence.

34. In so far as the GPF loan availed to meet out medical expenses and betrothal expenses, it is based on the records which are relied by the prosecution. They indicate the fact that A2 had undergone Ayurvedha treatment and has spent for the same. Though it is contended by the appellants that all the medical expenses of A2 are reimbursed by the Port Trust. In such case, there is no necessity for A2 to withdraw GPF part final payment stating that the amount is required for her medical expenses. Further, if the said expenses have been reimbursed, the appellant could have very well submitted holding that documents to prove the credit of the said amount into her bank account. In the absence of such evidence, there is no reason to deduct Rs.4,79,130/- from the statement (D) as claimed by the appellant.

35. Regarding the rental income of the Pammal property which the appellant has agreed to sell during the check period and completed the sale after the check period, this Court finds no error in the observation of Trial Court. The evidence of DW-1, who was a tenant under A1, prior to the check period cannot be of much evidently value. The evidence of DW-2- K.T.Mohideen Abdul Kadar would go to show that he has paid rent of Rs.2,94,000/- during his occupation of the property between 2001 to 2007 and one Abdul Noor who occupied another portion of property had paid a sum of Rs.1,76,400/- as rent. But, this rental income has not been shown in the Income Tax Returns of the appellant. The documents which purported to have been executed as rental agreement by the tenants are make belief document to show inflated income. The rental income derived from the flats purchased during the check period is spoken by the first appellant (DW-5) and Ex.D-13. He contends that through these properties, he has derived as Rs.13,16,800/- as rent. Since these properties are construed to have been acquired from unknown source of income, any income derived out of those property should also to construed as income derived from unknown source and not from legal source.

36. Regarding the expenditure mentioned in statement (D), the Trial Court had recorded that A1 and A2 are residing separately and A1 is residing with his second wife by name Shobana along with his father, mother and children this fact is not disputed by the appellants. Therefore, the domestic expenditure calculated at the rate of 30% from the gross salary of A1 is not at all an excessive estimation, since A2 is residing separately and she has to met out her expenses on her own which is estimated as Rs.3,86,008/- and the total expenditure of A1 and A2 as Rs.32,78,836/- cannot be excessive expenditure.

37. The Trial Court Judgment has properly appreciated the evidence led in by the prosecution as well as defence had taken note of the advance amount received as sale consideration. The interest of Rs. 20,000/- paid by Kalpana for the loan availed by her against pro-note of Rs.1,00,000/-. Similarly, towards

expenditure a sum of Rs.2,19,133/- has been deducted against Rs.3,69,130/- shown as A1 medicine expenditure for A2 and Rs.60,000/- has been deducted from out of Rs.1,10,000/- shown against expenditure towards the sister's daughter betrothal/marriage of A2 and Rs.1,61,008/- towards the domestic expenditure of A2 during the check period. After adding Rs.15,30,000/- towards the income during the check period under statement (C) and deducting Rs.4,40,138/- in the statement(D) towards the expenditure the Trial Court has assessed the total disproportionate asset, the value of total asset disproportionate income as Rs.37,98,952/- which is nearly 40.89%, over and above the known source of income.

38. This Court after a conscious contemplation of the submission made by the appellant find that even though there is some minor discrepancy in the calculation of the known source of income as alleged by the prosecution and as found by the trial court, the disproportionate of the asset held by the appellants is very excessive and the dictum of the Supreme Court held in Ashok Tshering Butia cannot be much relevancy. More particularly, it is the during the check period, huge assets have been acquired by the appellant and there is no material to infer these properties were acquired from legally known source the explanation and inflated rental income shown by the appellant even if it is taken as gospel truth. It does not match the disproportionality.

39. Therefore, this Court finds that there is no ground to interfere the finding of the Trial Court. The Judgments cited by the learned counsel for the appellants are purely based on the facts and not preposition of law applicable to the facts of the case in hand. Therefore, on the facts and materials placed by the prosecution and the defence, this Court holds that the prosecution has proved the charges and the trial court judgment is held correct and confirmed. Hence, dismiss the appeal for devoid of merits.

40. In the result, Criminal Appeal No.429 of 2013 is dismissed. The Trial Court Judgment of conviction and sentence is confirmed. The appellants are directed to surrender before the Trial Court to serve the remaining period of sentence.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

rpl

To

1.The XII Additional Special Judge for CBI cases,
Chennai.

He is required to serve copies of Judgment on the
Appellant/Accused

2.The Inspector of Police, SPE/CBI/ACB,
Chennai.

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

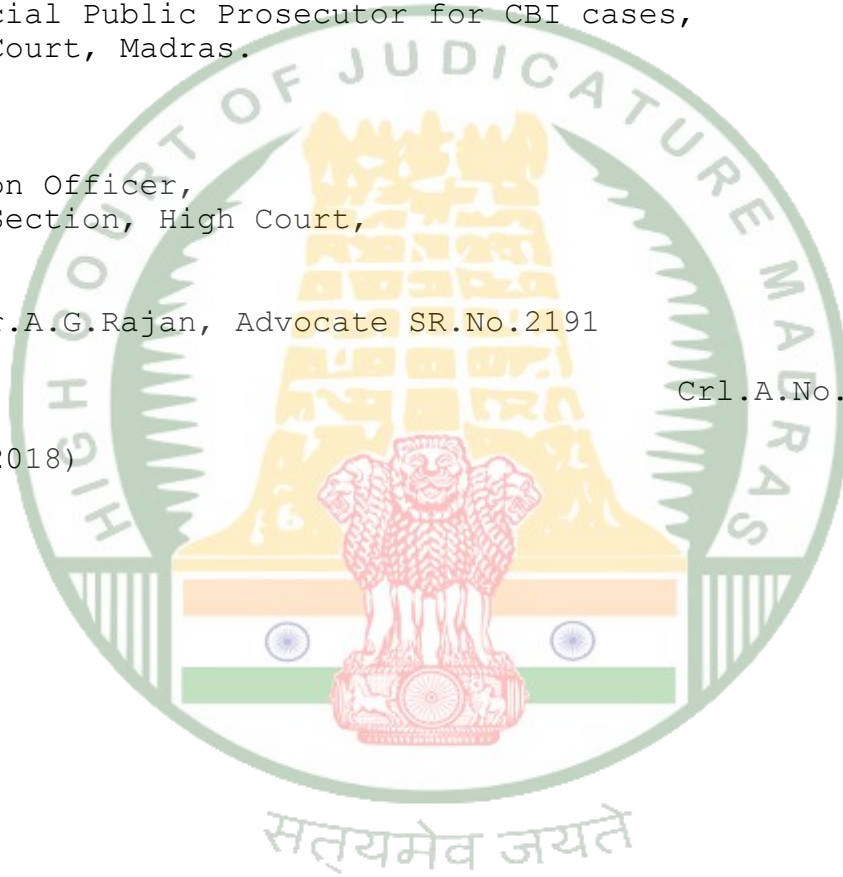
Copy To

The Section Officer,
Criminal Section, High Court,
Madras

+1cc to Mr.A.G.Rajan, Advocate SR.No.2191

Cr1.A.No.429 of 2013

NRJK(CO)
GN(02/02/2018)



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