**BAIL SLIP**

A.Chandran, S/o.Appusamy Thevar, aged about 60 and R.Jegathambal, W/o.A.Chandran, aged about 54, were released on Bail dated 27.01.2016 made in Crl MP.746 of 2016 in Crl A(MD)No.23 of 2016.

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON: 03.08.2018**

**DELIVERED ON: 21.12.2018**

**CORAM:**

**THE HONOURABLE MRS. JUSTICE R. THARANI**

**Crl.A(MD)No.23 of 2016**

1.A.Chandran

2.R.Jegathambal : Appellants/Accused No.1 & 2

Vs.

The State represented by
The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Madurai Detachment.
(Crime No.8 of 2004) : Respondent/Complainant

**PRAYER:** Criminal Appeal is filed under Section 374 (2) of Cr.P.C, to allow the above appeal and consequently set aside the order of conviction and sentence imposed on the appellants by the learned Special Judge for Trial of Prevention of Corruption Act cases, Madurai District by means of judgment, dated 18.01.2016 made in Special Case No.45 of 2011.

For Appellants : Mr.S.Palanivelayutham
For Respondent : Mr.M.Chandrasekar
Additional Public Prosecutor

**JUDGMENT**

Heard Mr.S.Palanivelayutham, learned counsel appearing for the appellants and Mr.M.Chandrasekar, learned Additional Public Prosecutor appearing for the respondent.

2.This Criminal Appeal is filed against the conviction and sentence imposed on the appellants by the learned Special Judge for Trial of Prevention of Corruption Act Cases, Madurai District, on 18.01.2016 in Special Case No.45 of 2011.

3.The case against the appellants is that the first appellant is a Government Servant, who joined as a Labour Officer on 17.05.1985 and he is a Public Servant as defined under Section 2(c) of the Prevention of Anti Corruption Act and that the second appellant is the second accused and that during the check period from 01.01.1994 to 30.06.2002, there were so many transactions regarding movable and immovable properties and as on 01.01.1994, the first appellant/A1 was in possession of movable and immovable properties to a total value of Rs.2,54,574/- Thereafter, the first appellant/A1 purchased lands, house buildings, started industries, purchased vehicles in the name of himself and in the name of his wife to a value of Rs.52,03,585/- and that the quantum of excess Assets acquired by the first appellant/A1 and the second appellant/A2 was Rs.49,49,011/- (Statement No.II (-) Statement No.I) and that the income of A1 from lawful resource was Rs.42,07,946/- as per (Statement No.III) and that the various expenses for A1 and his family was Rs.32,41,691.80/- as per (Statement No.IV) and that the expenditure of A1 and his family exceeds his income to the tune of Rs.9,66,254.20/- as per (Statement No.VI) and that there is no possibility for acquiring the assets from out of lawful sources of income and that A1 committed criminal misconduct under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988. A2 abetted A1 in the commission of the said offence and had acquired substantive portion of properties and A2 is liable under Sections 109 I.P.C. read with 13(2) read with 131 (e) of Prevention of Corruption Act.

4.The prosecution side has examined 46 witnesses as P.W.1 to P.W.46 and Exhibits. P.1 to 156 and M.O.1 were marked. Defence side has examined 10 witnesses as D.W.1 to D.W.10 and marked Exhibits D.1 to 127.

5.After the trial, the trial Court found both the appellants guilty under the said Act and convicted and sentenced A1 to under go three years R.I and to pay a fine of Rs.20,000/- and in default of payment of fine, A1 has to undergo simple imprisonment for a further period of one year and A2 was convicted and sentenced to under go three years Rigorous Imprisonment and to pay a fine of Rs.20,000/- and in default of payment of fine, A2 has to undergo simple imprisonment for a further period of one year. (Total fine imposed is Rs.40,000/-)

6.Against the conviction and sentence, the appellants have filed this Criminal Appeal.

7.The case of the prosecution is that prosecution had conducted search in four places that belong to the accused and had seized documents relating to the Assets and Liabilities of the accused and the prosecution had prepared five statements regarding the assets and that the accused 1 and 2 were not able to prove the source of income for the purchase of the assets and found that the first accused has acquired properties to the tune of Rs.9,66,254/- disproportionate to the known income and A2 has abetted the said offence.

8.The prosecution has filed seven statements. The first statement narrates the value of the assets of the accused prior to the check period. The second statement narrates the value of the assets at the closing of check period. The third statement narrates the value of the income of A1 and A2 during the check period. The fourth statement narrates the family expenditure of A1 and A2 during the check period. The fifth statement of assets narrates the value acquired during the check period by deducting the assets available prior to the check period from the value of assets available after the check period. The sixth statement is the statement of income after deducting the expenditure. The seventh statement is the calculation of the value of assets exceeding the lawful income.

9.The 1st statement contain 12 items. The value of the 1st statement is stated as Rs.2,54,574/-. On the side of the appellant, it is stated that the Special Court has modified the value of item no.12 and that the Special Court has added Rs.3,401/- towards the salary of A2 drawn on 31.12.1993 in to the 1st statement and that the Special Court has decided the value of 1st statement as Rs.2,77,875/- as on 01.01.1994 and that the correct value to be fixed is Rs.4,52,876/-. The trial Court has modified item no.12 as Rs.1,50,580/- and has added one more item of Rs.3,407 towards the salary of A1 on that date and work out statement no.1 as Rs.2,77,875/-.

10.On the side of the appellants, it is stated that the value of item no.10 is to be modified. It is stated that as per Ex.D73, the investment of A2 in Karthikeya Forgings as on 31.03.1994 is Rs.75,000/- including Rs.12,500/- stated in Ex.D7 partnership deed. On the side of the prosecution, it is stated that as per the evidence of A2 (D.W.8), no other partners had invested anything in excess of Rs.12,500/- and that there is no supporting document to prove the investment of Rs.75,000/-. A perusal of the records reveals that D.W.8 has deposed that the investment is one lakh. A perusal of Ex.D73 reveals that the contention of the accused is correct. Hence, it is decided that the amount mentioned in Item 10 is to be modified as Rs.75,000/-.

11.On the side of the appellants, it is stated that a sum of Rs.62,501/- as reported in the I.T. Returns for the year 1993-1994, Ex.P38 is to be included as item no.13 in the statement. On the side of the prosecution, it is stated that this amount was shown as amount in the hands of A2 and that no supporting document is filed and that Ex.P38 is a self explanatory statement and is highly unreliable. Though I.T. Returns were statement given by the tax payers themselves, there is no evidence to show that the statement given in the I.T. Returns are wrong. Hence, it is decided that this amount is to be included in the statement.

12.On the side of the appellants, it is stated that a savings of Rs.50,000/- from the salary of A1 is to be included in the statement. No supporting document was filed. No bank pass book was filed to show the above said savings. Hence, this contention of the appellants is not acceptable.

13.By modifing items 10 and 12 and by including one more item the total value of the 1st statement is fixed as Rs.4,03,181/-.

14.The 2nd statement is the assessment of value of assets acquired during the check period. There are 43 items and the value is fixed as Rs.52,03,585/-. The acquisition of majority of the properties are proved by the prosecution by the examination of witness P.Ws.2 to 8, 10, 11, 15, 16 and 17 and through the documents Exs.P1 to P12, P15, P20 to P25, P101 and P132. Out of the 43 items stated in the 2nd statement, the value of 34 items are accepted by the appellants.

15.Out of the 9 disputed items, the trial Court has accepted the value of 3 items I.e., Item Nos.12 and 13 and 39. After modifying the value of item 12 and 13 and 39, the value of the assets was fixed as Rs.51,60,824/- by the trial Court. The trial Court fixed the value of item no.12 as Rs.1,60,580/- and fixed the value of item no.13 as Rs.3,48,139/- and fixed the value of item no.39 as Rs.50,000/-.

16.The value of item Nos.24,31,34, 35 and 43 are disputed by the appellants. It is stated that in item 20, a sum of Rs.65,000/- as the value of 10 sovereigns jewels purchased during the period from 2002 to 2003, was added on the basis of the I.T. Return Exs.P90 and P96. On the side of the appellant, it is further stated that this gold was purchased after the check period and the Investigating Officer has admitted that he has not enquired from whom and when this gold was purchased. It is further stated that while deciding the value of the building, the prosecution has calculated ¼th of the value to have been spent during the three months of the check period but the Investigating Officer has not followed the same analogy to calculate the value of this item. Following the same analogy adopted by the prosecution, it is decided that the value of item no.24 is to be modified as Rs.48,750/-.

17.Regarding Item 31, on the side of the appellants, it is stated that P.W.45 has failed to consider that as per Ex.P90 I.T. Return, Rs.9,58,904/- was the amount spent for construction during the check period as on 30.06.2002.

18.On the side of the appellants, it is stated that the house was constructed availing a loan of Rs.5,00,000/- from the Indian Overseas Bank, Madurai and that P.W.36 has deposed about the same. The second building plan Ex.D26 was approved on 16.09.2002 and a loan of Rs.10,00,000/- was obtained from the Syndicate Bank, Ex.D70 and that both these constructions are after the check period.

19.On the side of the prosecution, it is stated that as per the I.T. Return, the accused has spend Rs.9,58,904/- upto 31.03.2002. The amount spent during the year 2002-2003 is Rs.7,13,824/-. Hence, $1/4^{th}$ of the amount must have been spent during the three months of the check period. It is stated that the total value is correctly fixed as Rs.9,58,904/-+Rs.1,78,456/- =11,37,360/-.

20.On the side of the appellants, it is stated that P.W.8, Assistant Executive Engineer has reported that both portions of the residential building were constructed during the year 2003-2004 after the check period. The report is marked as Ex.P16 and that P.W.34, the Executive Engineer, P.W.D has corroborated this evidence.

21.When P.W.8 and P.W.34, Engineers reported that the building was constructed during 2003-2004. how P.W.45 has come to the conclusion that $1/4^{th}$ of the building was constructed during the check period is not properly explained by the prosecution. Hence, it is decided that the cost of construction during the check period is Rs.9,58,904/-.

22.Regarding Item No.34, the value fixed is Rs.6,21,242/-. On the side of the appellants, it is stated that loan amounts sanctioned through Ex.P30 and Ex.P69 was taken into account as asset and that this amount include labour wages, road formation, etc. On the side of the prosecution, it is stated that though the tractor was in the name of the one Malairaj, tractor was shown as A2's property in the I.T. Return and the tractor was also purchased for the farm and the value of the tractor is Rs.1,20,000/-, and the same should be included in the calculation of assets.

23.The value of the assets including the value of the tractor as per the I.T. Return is Rs.5,32,749/-. In any farm, there will be labour wages and developing charges and other expenses and the contention of the appellant is acceptable. Hence, it is decided that the value of item 34 is to be modified as Rs.5,32,749/-.

24.On the side of the appellants, it is stated that value of item 35 is to be deleted as it is a hand loan, returned back to the proprietor during 1995-1996. It is stated that in the IT Return for the year 1993-1994, in Ex.P61 a sum of Rs.17,000/- was stated to have been deposited by A2 and subsequently, the said amount was returned back to A2 by Tamil Vanan during 1995-1996 as per the I.T. Return, Ex.D62. On the side of the prosecution, it is stated that evidence of P.W.26 and the I.T. Return filed by A2 reveals that there was a deposit of Rs.17,000/- by A2.



25.Perusal of records reveals that the trial Court has taken into consideration Ex.D61 but fails to consider Ex.D62. When one

I.T. Return is considered, the other I.T. Return also is to be considered. Hence, it is decided that this item is to be removed.

26.Regarding item 43, on the side of the appellants, it is stated that only a sum of Rs.25,000/- was deposited as partners capital in Karthikeya Forgings during the year 1995 and that the Investigating Officer has wrongly calculated the same as Rs.1,00,000/- .

27.On the side of the prosecution, it is stated that A2 has admitted in her cross examination that "except Rs.12,500/- and Rs.1,00,000/-, we already invested, no other partners have invested any money ..... during this period I showed capital of Rs.1,00,000/- each for me, Tamil vanan and Chandra and showed Rs.1,08,000/- as the capital investment of Chandru" and that the contention of the appellant is not acceptable.

28.Documentary evidence shows that the investment as on 31.03.1994 as per Ex.D73 is Rs.75,000/-. Ex.P46 shows that the investment of A2 as on 31.03.1995 is Rs.1,00,000/-. The investment of Rs.25,000/- was shown in Ex.D.38 as an investment during the check period. Hence, it is decided that an amount of Rs.25,000/- is to be taken in to account. After considering the above points, it is decided that the total value of 2nd statement is to be modified as Rs.48,26,875 /-.

29.The 3rd statement is an statement denoting the income of A1 and A2 during the check period. This statement contains 26 items. On the side of the appellant items 1, 16, 22 and 23 are disputed. The total amount arrived by the prosecution is Rs.42,07,946/-. The trial Court has modified the value of item no.26 as Rs.1,51,580 and has added unsecured loan from private parties as Rs.6,35,000/- and income from the father of A2 as Rs.1,20,000/- and bank subsidy as Rs.1,23,400/-. The trial Court has taken the total income as Rs.51,34,701/-. The claim of the appellants is that the total amount in the 3rd statement should be Rs.1,00,61,833/-.

30.On the side of the appellants, it is stated that in item no.1, the pay and allowance drawn by A1 is Rs.6,63,376/- and that the prosecution has wrongly calculated the same as Rs.5,49,935/- in item no.1. At the stage of arguments on the side of the appellants, it is fairly admitted that the sum to be considered is only Rs.5,56,880/- only. A perusal of Exs.P27, 29, 32, 148, 149 and Exs.D74, 87 to 91 reveals that the pay drawn by A1 during the check period is to be fixed as Rs.5,56,880/-.

31.On the side of the appellants, it is stated that in item no.16 the profit for A2 from Karthikeya Forgings is wrongly stated as Rs.21,604/-. It is stated that the profit as on 31.03.2001 as per Ex.P35 IT return is Rs.93,120/-. A2 was a partner till 31.12.2000 and she became the sole proprietor from 01.01.2001. The share of her profit is 23.3% till 31.12.2000 which works out to be Rs.16,203/-

and the profit from 01.01.2001 to 31.01.2001 is to be calculated as Rs.39,583/-.

32.On the side of the prosecution, it is stated that D.W.8/A2 has deposed that she has not filed any proof to show the profit from Karthikeya Forgings and that the total profit was shown as Rs.93,119.65/- and her share would be only Rs.21,604/- and that the evidence of A2 contradicts the contention of the appellant.

33.Profit as per Ex.P35, IT return as on 31.03.2001 is Rs.93,120/-. A2 was a partner till 31.12.2000. The partnership was dissolved on 31.12.2000. The documentary evidence will prevail over the oral evidence. From Ex.P60 and Ex.D71, it is clear that A2 become the sole proprietor after 01.01.2001. Hence, the profit till 31.03.2001 is to be calculated in that proposition that is 23.2% till 31.12.2000 and the entire profit from 01.01.2001 till 31.03.2001 is to be calculated. Hence, it is decided that a sum of Rs.39,583/- is to be taken as the profit of A2. Hence, value of item no.16 is to be modified as Rs.39,583/-.

34.Item no.22 is the agricultural income of A1. The prosecution has calculated the income as Rs.17,145/-. The claim of the appellant is that the amount is to be modified into Rs.1,96,250/-. The trial Court has fixed an amount of Rs.65,000/- as agricultural income of A1 during the check period.

35.On the side of the appellants, it is stated that crops such as paddy, gingili and groundnut were grown in survey Nos.77/2, 127/2. 138/3. 147/2A and 191/4 during the check period that is fassli years 1404, 1406, 1410 and 1411 and that the property statement, Ex.P14 will clearly reveals the income of Rs.1,96,250/- and that the trial Court has failed to consider that agricultural income should be calculated for three spells in each year.

36.On the side of the prosecution, it is stated that there was no records regarding the yield and its value and as per the evidence of the Tahsildar, P.W.48 and as per the Adangal Ex.P78 series the agriculture income is 'nil' and that Ex.D108 and Ex.D109 were created for the case and that they do not have the seal of the Government Office and that the documents were dated 04.03.2015 and this documents are not proved through the examination of the concerned Officers. It is further stated that as per the evidence of A1, the yield of paddy per acre is 30 bags and the rate per bag is Rs.30/- to Rs.35/- and that the income from 3 ½ acre will be only Rs.3,675/- and that there is no possibility for A1's brother Gunasekaran to give A1 Rs.10,000/- per year and for his brother Gandhi to give Rs.15,000/- per year.

37.The prosecution has calculated the income on the basis of the report of P.W.42, Tahsildar, Thiruchuli and P.W.26, V.A.O. The agriculture income is mentioned as ' Nil' during the fassli years 1404, 1406, 1410 and 1411. But Exs.P102, 104, 108 and 109 reveals that during the above fassli years there were paddy, gingli and groundnut cultivated in survey Nos.77/2, 127/2, 138/3, 147/2A and 191/4 which belong to A1. Ex.D42, Partition deed reveals that A1 has got agriculture lands by partitioning his ancestral properties, Exs.D19 and D35, are the tax receipts. Ex.P14 is the property statement filed by A1 mentioning the agriculture income.



38.It is seen that the agriculture income calculated by the prosecution was based only on the report of P.W.42 and P.W.26. The prosecution has not filed any report from the District Agricultural Marketing Society or from the Statistics Department to show the market value of the agriculture proceeds. Hence, it is decided that Exs.P101 to P109 are not acceptable. Ex.P14 was filed by A1 in his regular course of work. When two possibilities are available, the one favourable for the accused is to be taken into consideration. Hence, it is decided that the agriculture income from 01.01.1994 till 30.06.2002 during the eight years period is to be fixed as Rs.1,96,250/- and item no.22 is to be modified as Rs.1,96,250/-.

39.On the side of the appellants, it is stated that item no.23 is to be modified as Rs.3,43,147/- instead of Rs.1,41,700/-. Item no.23 is the calculation for the agricultural income of A2. The prosecution has fixed the agriculture income as Rs.1,41,700/- based on the report of P.W.38, Tahsildar, Kariyapatti. The Special Court has accepted this calculation.

40.On side of the appellants, it is stated that P.W.38 has prepared the details on the basis of the particulars given by the V.A.O. And P.W.38 has admitted that the particulars given by him are only approximate details. It is stated that there were cash crops like onion, groundnut and gingili in the 2 acres of land at Tharanganedal village as per Adangal Ex.P7 and that there were Mango, Sapotta, Guava, Amala and coconut in 13.5 acres in Kambikudi Village and that Ex.D86 series will show the crops in 13.5 acres of lands at Kambikudi Village. It is stated that Ex.D86 reveals the availability of Sapotta trees in survey No.2/93 and that the trees were planted during 1999-2000 and were yielding and that Guava Tees planted during 1999-2000 were yielding from 2003 onwards as per Ex.D31. It is stated that Ex.D110 series will prove that onion was sold from the agriculture land of 2 acres in Arasukulam.

41.It is further stated that from the Sreedana Othi lands at Manoor from 1975-1986, A2 was getting an income of Rs.46,500/- during the check period and that she was getting an agriculture income of Rs.5,000/- from her Shreedana Othi lands and the evidence of D.W.3 proves the same.

42.On the side of the prosecution, it is stated that A2 owned 2 acres in Tharaganendal Village and she has purchased 13 acres at Kambikudi Village and that P.W.38, Tahsildar of Kariyapatti has reported that she might have received an amount of Rs.36,950/- and Rs.1,04,750/- from the above said lands. Exs.P72 and P73 are the reports. P.W.38 gave these reports based on the prevailing rates available in his office and that no witness was examined by the accused to disprove the same. In support of the contention, the Judgment published in ***2008 (110) Bank. L.R 935*** is cited by the prosecution.



43.A2 is having 2 acres in Tharanganedal Village and 13.5 acres at Kambigudi Village. This fact was admitted by both sides. P.W.38 has deposed that his calculation is an approximate one. P.W.37 Bank Manager of Indian Overseas Bank, Gnanaolipuram, Madurai has deposed that he gave a report to the Bank with details of plants with details of survey Number and FMB sketch. This report is marked as Exs.D84 and D31. A team of Horticulture Officers have filed a report before the National Horticulture Board and a subsidy was released to A2 on the basis of their report. Exs.D86 and D31 reveals the availability of Sapotta and Guava trees in the agriculture lands of A2. Hence, the entries as 'Tharisu' are wrong. Report of P.W.38 is not supported by any statement from the Statistics Department or from the Agriculture Marketting Society. Ex.D108 and Ex.D109 do not have the Government seal but they are supported by Ex.D84 and Ex.D34 and Ex.D86. Hence, it is decided that the agriculture income based on the report of Ex.P38 is not acceptable.

44.In the IT return, the agricultural income till 1998-1999 is shown below Rs.25,000/- and during 1999-2000 it is shown as Rs.30,000/- but the income stated during 2002-2003 is three folds higher than the agricultural income during 1999-2000. There would not be a chance for such a vast difference in the income within such a short duration. There may be a possibility of an agriculture income of Rs.35,000/- during the year 2000-2001 and an income of Rs.40,000/- during 2002-2003 and an income of Rs.17,500/- from 01.04.2002 to 30.06.2002. Hence, a sum of Rs.2,21,500/- can be taken as the agriculture income of A2.

45.The special Court has considered and included a sum of Rs.1,51,580/-towards the loan from TIIC, Virudhunagar and Rs.6,35,550/- towards unsecured loan from private parties and a sum of Rs.1,20,000/- as gift from A2's father and a sum of Rs.1,23,400/- received by A2 as subsidy. No reasons are stated by the prosecution as to why these amounts are not to be included. Hence, the above sums are to be included as items 27 to 30 in the 3$^{rd}$ statement.

46.On the side of the appellants, it is stated that some of the income particulars are left out in this statement and that nine items are to be added in this statement. It is stated that 4 more Bank loans obtained by the appellants are to be included.

47.On the side of the appellants, it is stated that an amount of Rs.1,51,589/- is to be included in this statement as outstanding term loan obtained from TIIC, Coimbatore. It is stated that a loan of Rs.6,53,400/- was sanctioned for Karthikeya Forgings on 12.03.1993. As per Ex.D7, partnership deed, A2 was having 23.2%

share in the FIRM and that the loan amount was a source of income and that a sum of Rs.1,51,589/- is to be included as an income of A2.

48.On the side of the prosecution, it is stated that the loan amount was utilized for purchasing machineries and for constructing buildings. The value of the company was taken as an asset and that the loan cannot be taken as income, which will amount to double entry.

49.On the side of the appellants, it is stated that a loan is to be repaid and the repayment will be an expenditure and that a loan is to be considered as an income. The loan details are marked as Ex.P59.

50.Though machineries were purchased from the loan amount, the loan amount has to be taken in to account as income when the machineries were included in the list of assets, the appellants have to explain the source of income and the loan is an explanation for the source of income and it has to be included under the heading of income.

51.The Branch Manager was examined as P.W.25. As per Ex.D7, Partnership deed, A2 was having 23.2% share in Karthikeya Forgings. 23.2% of the loan amount that is 23.2% of Rs.6,53,400/- = Rs.1,51,589/- was included in the list of income as item no.27 in the 3rd statement. This amount was already included by the trial Court and there is no necessity to re-appreciate it again.

52.It is stated that Tamilvanan during 1991-1992 has obtained a term loan from TIIC, Virudhunagar and the outstanding amount as on 01.12.1995 was Rs.3,18,266/- as per Ex.P57, A2 joined as partner in Karvijivannam Industries as per Ex.D6, Tamilvanan retired on 30.11.1995 as per Ex.D5, A2 became the sole proprietrix. A2 has repaid the loan fully. Account ledger copy is Ex.P57. TIIC, Manager was examined as P.W.24.

53.On the side of the prosecution, it is stated that a loan cannot be taken as an income as the value of the company was already taken as an asset. The contention of the prosecution is not acceptable as the value of the machineries and companies were taken into account for fixing the value of the assets, the loan amount obtained by A2 is an source of income for purchasing the machinery and for constructing companies, and the loan is to be included in the statement. A2 has repaid the loan and that the repayment of this loan is noted as Sl. No.8 of the 4th statement though the loan was obtained by Tamilvanan. From the evidence of P.W.24 and from Exs.P57, D5 and D6, it is decided that the loan outstanding in TIIC, Virudhunagar is to be included as an income of A2 as on 01.12.1995. Hence, it is decided that as item no.31 the loan from TIIC, Virudhunagar for a sum of Rs.3,18,266/- is to be added in the 3rd statement.

54.On the side of the appellants, it is stated that a cash credit loan facility was extended to Karthikeya Forgings from the year 1994 by the Indian Overseas Bank, Gandhipuram, Coimbatore and this cash credit facility was available even after A2 became the sole proprietrix and that the outstanding cash credit as on 30.06.2002 was Rs.9,47,046.09/- and that this amount is to be included in this statement.

55.On the side of the prosecution, it is stated that the loan may be a cash flow and that A2 has deposed that this account was a daily income and expenditure and that A2 has deposed that no date was stated in Ex.D93 and that there was no signature of the Manager and that a credit facility cannot be taken as a loan and that this amount can be utilized then and there to be paid only after the delivery of consignments and that the appellants has failed to prove that the amount was used for the business and that A2 has deposed that she has no loans except the agriculture loans and that all secured loans were settled on 31.03.2002 and that no such loan existed on that date and that a cash credit cannot be taken as an income.

56.D.W.10 Sethulingam, Manager has deposed that there was a cash credit facility of Rs.3,00,000/- in the year 1996 and the same was then increased to Rs.9,00,000/-. P.W.39 has deposed that 3 term loans were there, as per Exs.P74 to P76 and that Ex.D93 show an outstanding cash credit loan of Rs.9,47,046.09/- as on 30.06.2002. The Bank statements are marked as Ex.D125 and the financial credibility certificate is marked as Ex.D126 and a letter from the Bank was marked as Ex.D127. The particulars of the outstanding cash credit loan is stated in Ex.D68.

57.On the side of the appellants, it is stated that IT return of the year 1994-1995 will show that the cash credit loan was used continuously. Exs.B35 to B39, B41, B43, B46, B93 and B97 reveals that the cash credit outstanding as on 30.06.2002 is Rs.9,47,046.09/-. These documents clearly reveals that the cash credit facility availed as on 30.06.2002 is Rs.9,47,046.09/- and a loan amount is to be treated as an income. Hence, it is decided that this amount is to be included as an income in item no.32 of the 3rd statement.

58.On the side of the appellants, it is stated that a depreciation amount generated from Karthikeya Forgings, Karvijivannam Industries and Meenakshi Industries are to be included as income. It is stated that depreciation is an amount permitted to be deducted from the value of assets and the same is to be treated as an expenditure. It is stated that the amount of depreciation in Karthikeya Forgings from 01.04.1993 to 31.03.2003 is stated in Ex.D95 I.e. Copies of profit and loss account statements filed before the I.T. Department and that the value of depreciation during the check period was Rs.14,27,528/- and that the share of A2 was

Rs.5,03,192/-.

59.It is stated that the depreciation amount for Karvijivannam Industries/Meenakshi Industries from 31.03.1996 till 31.03.2003 was Rs.6,55,399/- as per Ex.D96 and that this amount is to be included as an income.



60.On the side of the prosecution, it is stated that the depreciation is not an actual income or expenditure and it is only a concession given by the I.T. Department and the source of income means the income from salary, allowance, etc., but it will not include depreciation. It is further stated that A1 and A2 have deposed that depreciation is not an income but only a concession given by I.T. Department.

61.On the side of the prosecution, it is stated that depreciation is not an actual income received as amount in hands and that it was not profit or loss and that the said value is a notional value and not actually incurred and that it cannot be considered as an income.

62.On the side of the prosecution, it is stated that “income” means legally received amount in the hands of accused and all other things are not income.

63.To substantiate his claim, the learned counsel for the prosecution cited a Judgment passed by the Hon'ble Supreme Court in the case of ***N.Ramakrishnaiah (dead) thr. Lrs. V. state of A.P.,*** reported in ***MANU/SC/8206 2008-2009 Crl.L.J.1767, 2008(13)SCALE536, (2008)17 SCC83.***

64.On the side of the appellants, it is stated that Exs.D95, 73,36,37,40,42,44,46,94,98 and 151 were marked to prove depreciation in Karthikeya Forgings and that Ex.D96, 79,83,85,88,91,99,140 and 151 were marked to prove the depreciation value of Karvijivannam Industries. This profit and loss statement filed in the IT returns mentioned the depreciation. It is stated that the term 'income' itself is elastic and has wide connotation. “Whatever comes in or received is income”. In support of this contention, a Judgment passed by the Hon'ble Supreme Court in the case of ***State of Madhya Pradesh v. Awadh Kishore Prasad*** reported in ***AIR 2004 SC 517*** is cited.

65.Depreciation is only a concession given by the I.T. Department. Depreciation cannot be taken as an amount received and hence this contention of the appellants is not acceptable.

66.On the side of the appellants, it is stated that a sum of Rs.2,02,000/- is to be taken into account as income as salary of A2 drawn from Karthikeya Forgings and Karvijivannam Industries during 1995-1996 to 2001-2002 and that as per Section 28(v) of I.T. Act 1961 any interest salary, bonus, Commission or remuneration received by a partner of a FIRM should be taken as income.

67.In this regard, the appellants rely on the Judgment of the Hon'ble Supreme Court published in the case of ***Commissioner of Income Tax v. R.M.Chidambaram Pillai*** reported in ***1977 AIR 489*** is cited, which reads as follows:

> *"when the Assessee is a partner of a Firm, then, whether the Firm has made a profit or loss, its share (whether a net profit or net loss) shall be taken to be any salary, interest, commission or other remuneration payable to him by the Firm in respect of the profit or loss of the Firm after the deduction of any interest, salary, commission or other remuneration payable to any payable in respect of the previous year."*

68.On the side of the prosecution, it is stated that the appellants claimed Rs.2,02,000/- as salary of A2. This amount was stated only for I.T record purpose and that A2 was eligible only for the profit and loss and she was not eligible for any salary and that D.W.10 has deposed that no salary was paid to any partners and that no interest was paid to any partners and that under Section 13 Mutual Rights and liabilities a partner is not entitled to receive remuneration and that a partner is entitled to interest on capital only out of the profit and that the IT return were not signed by any of the partners except A2 and that no resolution accepting the accounts by the other partners are filed and that the details of the personal bank accounts was not produced and that the claim of the appellants is not acceptable.

69.As per Section 28(V) of Income Tax act, the word 'income' include the salary of a partner. Exs.P38,39,81,84,87,140 and 151 are the I.T. Returns from 1995-1996 till 2000-2001. This IT. Returns were not filed for the purpose of this case. Hence, it is decided that a sum of Rs.2,02,000/- is to be included as an income as item no.33 in the 3rd statement.

70.On the side of the appellants, it is stated that A2 received drawings from her investments as partner in Karthikeya Forgings and in Karvijivannam Industries and that a sum of Rs.8,10,444/- is to be included as an income from drawings from the capital Investments. On the side of the prosecution, it is stated that A2 was entitled only for the profit and loss and she was not entitled for "drawings".

71.A total sum of Rs.8,10,444/- was mentioned in the I.T. Assessments for the period from 1997-1998 to 2001-2002 through Exs.D38, 43, 45, 81 and 90 under the head as drawings from capital investments. On the side of the prosecution, it is stated that the "drawing" cannot be termed as salary and that as per Section 28(V) of the I.T. Act. A2 was entitled to receive salary and "drawing" cannot be taken as an income.



72.Already a sum of Rs.2,02,000/- was included as salary. As per Section 28(v) only salary can be taken as income and not drawings on capital investments. Hence, this claim of the appellants is not acceptable.

73.On the side of the appellants, it is stated that interest received on capital is to be included as income and that a sum of Rs.1,26,975/- is to be included as interest on capital invested in Karthikeya Forgings and Karvijivannam Industries and Karthikeya Procession Works. It is stated that the evidence of D.W.1, evidence of A1, A2 and the evidence of P.W.22, the Deputy Commissioner of IT and the evidence of P.W.40, the Deputy Commissioner of IP and P.W.44 the Deputy Superintendent of Police, Rajkumar and the documents, Exs.P39, P41 and P43 and Ex.P35 and the documents in Exs.P81 and P84 and Ex.P87 and the documents in Exs.P140 and P151 and the IT returns filed through the witness will show that a sum of Rs.1,26,975/- was received towards interest on capital from the above industries during the check period.

74.On the side of the prosecution, it is stated that IT returns were not signed by the other partners and that the above documents are not acceptable. On the side of the appellants, it is stated that as per Ex.D7 partnership deed A2 has the power to file the IT returns.

75.On the side of the appellants, a Judgment of the Hon'ble Supreme Court delivered in ***Sudhir Dattram Patil v. Deputy CIT*** reported in ***2005 2 SOT 678 Mum*** is cited wherein it is held that

*"an Assessee is entitled to the deduction of the interest paid"*

76.Ex.D7 empowers A2 to file IT returns and the signature of other partners is not necessary. The Judgment cited by the appellants is applicable and the interest on capital is to be included as income. Hence, it is decided that an amount of Rs.1,26,975/- is to be included as income as item no.31 in the 3rd statement.

77.On the side of the appellants, it is stated that A2 was having sundry advances as her father was cultivating gingili, groundnuts, chilly coriander and cotton in his 30 acres of land and was maintaining flocks of goats and sheep and was getting Rs.30,000/- to Rs.50,000/- income and that as per the custom prevailing in their community in that area one bag of agriculture produce from each field for every cultivation from the 13 fields was given to A2 and that the products were sold and was given for interest to local needy people through her mother and this sundry Advance was to be included as income. It is stated that a sum of Rs.16,000/- was received by A2 as gift during her marriage from her relatives and part of that amount was used for purchasing goats. It is stated that A2's father used to give her Rs.5,000/- to 30,000/- every year as gift. Already the trial Court has included Rs.1,20,000/- towards gift from A2's father and there is no necessity to re-appreciate the same again.

78.On the side of the appellants, it is stated that A2's maternal aunt Angammal obtained 1.80 acres of land for lease for a sum of Rs.1,500/- from Chinnasamy Thevar of Manoor village and that the land was cultivated by A1's brother, D.W.5, Gunasekaran and he used to give A2 Rs.10,000/- to Rs.12,000/- per annum from the sale proceeds of the agricultural products.

79.It is further stated that A2's maternal grandfather Thirunagalinga Thevar gifted A2 the rights of a lease which he got for Rs.4,000/- from one Balusamy Thevar of Akkiramesi during her marriage in 1975 and that A2's father was cultivating the said land and he used to give Rs.15,000/- per year and that D.W.6 Ramalingam has redeemed the mortgage as per Ex.D56 and that A2 has earned Rs.3,50,000/- till 1988-1989 and the same is shown in the statement of receipt and expenditure in the IT Returns, Ex.D38. Amounts stated in the agriculture income are already included and there is no necessity to add them again under this head.

80.On the side of the appellants, it is stated that G.P.F loans received by A1 are to be included in the list of income and that Ex.D66 is the G.P.F loan sanction orders and a sum of Rs.4,79,700/- was drawn as G.P.F. Advance during the check period and the same is to be included in the list of income. It is stated that G.P.F loan was repaid in monthly instalments like any other loans and the same is to be included in the list of income as like the other loans.

81.On the side of the prosecution, it is stated that the Special Court has come to the correct conclusion that G.P.F. Loan was spent for the purpose for which it was sanctioned and that there is no savings. G.P.F. Loan is also a loan repayable. Hence, G.P.F. Loan amount of Rs.4,79,700/- is to be taken as income as item no.35 in 3rd statement.

82.To sum up the particulars regarding 3rd statement it is decided that item no.1 is to be modified as Rs.5,56,880/-. Item no.16 is to be modified as Rs.39,583/-, Item no.22 is to be modified as Rs.1,96,250/- and item no.23 is to be modified as Rs.2,21,500/-.

83.The income to be included are as follows:

| | |
|---|---|
| Loan from TIIC, Viruthunagar | Rs.3,18,266/- |
| Cash Credit, Indian Overseas Bank | Rs.9,47,046/- |
| Salary drawn by A2 | Rs.2,02,000/- |
| G.P.F. Loan of A1 | Rs.4,79,700/- |
| Interest on capital | Rs.1,26,975/- |
| Total | Rs.20,73,987/- |



84.The value of 3rd statement as stated by the prosecution is

Rs.42,07,946/-. The trial Court fixed the same as Rs.51,34,701/-. A sum of Rs.20,73,987/- is to be included in the 3rd statement towards the value of new items 31 to 35. After modifying the value of item nos.1,16,22 and 23, the total value of 3rd statement will be Rs.75,29,192/-.



85.4th Statement is a statement of family expenditure of the appellants during the check period. The total amount stated in the 4th statement is Rs.32,41,691.80/-. The Special Court has decided that the total expenditure is Rs.25,26,493/-. Out of the 28 items stated in the statement, the appellants are disputing only item nos.1 and 8. Ex.P111, is the Statistical data and Ex.P112 is the worksheet for fixing the family expenditure. P.W.43 has worked out this data on the request of P.W.45, the Investigating Officer. The expenditure stated in item no.1 was calculated as Rs.2,89,776/-.

86.Out of the 12 consumable items stated in item no.1, 43.28% was allocated towards the expenses for food, beverages, extra which is calculated as Rs.1,25,415/-. On the side of the appellants, it is stated that A1 was provided with quarters and the appellants used to get rice, pulses, oils, fruits and vegetables from their own cultivation and that due to kidney transplantation, food habits of A2 was restricted and the appellants were not in the habit of going to cinema or other recreations and A1 and A2 were not having the habit of Tobacco or Alcoholic or non Alcoholic beverages and that a sum of Rs.69,505/- is to be deducted.

87.On the side of the prosecution, it is stated that the appellants were leading a sophisticated life and were having cars, companies, refrigerators, washing machine and A/C and that the amount taken for family consumption is correct.

88.A1 and A2 are having agriculture land and there is chances for them to get cereals, pulses, oils from their agriculture lands. It is stated that the appellants were not having the habit of eating out and taking tobacco, supari and alcoholic or non-alcoholic beverages. There is no positive evidence that the appellants were having the above said habits. Hence, a sum of Rs.69,505/- is to be deducted from item no.1 and the expenses under item no.1 is fixed as Rs.55,910/-.

89.On the side of the appellants, it is stated that in item (ii) of the data sheet 4.9% was fixed towards fuel charges that comes to Rs.14,460/- and that A1 was provided with Government car with fuel for his usage and only 2.5% towards lighting is to be calculated in the data sheet. On the side of the prosecution, it is stated that A2 was running 5 companies by name Karvijivannam Industries, Karthikeya Forgings, Karthikeya Procession works, Meenakshi Farm and Meenakshi Industries and that it is necessary for A2 to travel a lot which will incur fuel expenses. This contention of the prosecution is acceptable and it is decided that item II of the datasheet is acceptable.

90.In item no.(iii), a sum of Rs.2,89,776/- was mentioned as expenditure on housing. On the side of the appellants, it is stated that A1 was provided with Government quarters and HRA plus 10% of the basic pay was deducted from his salary and amount stated in item no.'c' of the data sheet is to be modified as Rs.45,089 instead of Rs.2,89,776/-. On the side of the appellants, it is stated that the check period is 8 ½ years and due to the running of companies there were possibilities for expenditure on housing. There is no serious objections regarding the house rent. Hence, house rent is fixed as Rs.45,089 is correct.

91.The value of item no.1(v) is fixed by the prosecution as Rs.77,688.95/-. Item 1(v)(a) is the expenses (Rs.10,333/-) for medical care which is not disputed. On the side of the appellants, it is stated that among the 7 items mentioned in item no.1(v) of the data sheet, item V(b) Education expenses was only Rs.6,544.- instead of Rs.14,776/-.

92.On the side of the prosecution, it is stated that the sum of Rs.6,544/- is not for the entire period. The evidence of P.W.20, Pitchaikannu and Ex.P33 reveals that the education expenses is only Rs.6,544/-. No other positive evidence was produced on the side of the appellants to show the educational expenses. Hence, it is decided that item no.IV(b) of the data sheet is correct.

93.In item no.V(c), the prosecution has fixed a sum of Rs.5,462/- towards recreation and amusements. On the side of the appellants, it is stated that A2 was suffering from kidney disease and that the appellants were not in the habit of indulging in any recreation activities. On the side of the prosecution, it is stated that son of the appellants who was then an Engineering student would have enjoyed life. No positive evidence is produced on the appellant side to show that there is no such expenses and hence, it is decided that item V(c) of the datasheet is correct.

94.In item v(d), the prosecution has fixed a sum of Rs.16,773/- towards the expenses on fuel and transport. On the side of the appellants, it is stated that A1 was provided with Government Car and fuel for his office use and there may not be much expenses for communication and hence column d of item V(d) is to be modified as Rs.7,768.90/- instead of Rs.16,773/-. Since A2 was running 5 businesses there must be fuel expenses and communication charges. Hence, this contention of the appellants is not acceptable.

95.Item1(v)e is the expenses for personal care and effect. v(f) is the expenses for household requisites, item i(v)(g) is the miscellaneous expenses. This expenses are not disputed. Value of (v) comes into Rs.77,689/- which is reasonable. As per the above discussions, it is decided that the total expenditure of Item nos.1 (i to v) is to be fixed as Rs.2,20,271/- instead of Rs.2,89,776/-.

96.On the side of the appellants, it is stated that in item no.8 and that repayment of loans obtained by A1 and A2 are to be deducted. On the side of the appellants, it is stated that the total amount repaid to TIIC, Virudhunagar is Rs.8,31,090.50/- and out of this amount, Tamilvanan has paid Rs.2,28,202/- from 24.07.1992 to 27.03.1995. After joining as partner A2 and Tamilvanan have remitted Rs.30,000/- from 01.04.1994 till 30.11.1994 and that as sole proprietor A2 has repaid Rs.5,41,088/- from 01.12.1994 till 30.06.2002 and she has paid Rs.51,800/- after the check period and that A2 has remitted Rs.15,000/- + Rs.5,41,088/- = Rs.5,56,088/- during the check period and that item no.8 of the statement is to be modified as Rs.5,56,088/- instead of Rs.6,61,088/-.

97.On the side of the prosecution, it is stated that P.W.26 Tamilvanan has deposed that A2 has paid Rs.6,61,088/- and that D.W.1 has deposed that only on the oral version of the appellants, the IT returns were filed and hence, IT returns are not conclusive proof. It is stated that the findings of the income tax Appellate Tribunal are not binding on the criminal Court. Any savings or income prior to the check period has to be proved by accused. In support of the contention, the Judgments of the Hon'ble Supreme Court in the cases of ***Susadima Amarolpam v. Director General of Police, Chennai & Another*** reported in ***(1) MLJ (Crl) 315***, ***State of Tamil Nadu by Ins. Of Police Vigilance and Anti Corruption v. N.Suresh Rajan and Ors.,*** reported in ***2014(1) SCALE 219*** and ***State of Bihar v. Lalu Prasad and Ors.,*** reported in ***2008 (56) BLJR 1605*** are cited.

98.Karvijivannam Industries was started by Tamilvanan during 1991 and A2 joined as a partner as per Ex.D6 Partnership deed. Tamilvanan retired on 30.01.1995 as per Ex.D5 outstanding loan of TIIC loan as on 01.12.1995 is Rs.3,18,266/-. Ex.P57 is the ledger extract. From Ex.D6, 5 and from Ex.P57, it is decided that the contention of the appellants is correct and the amount in item 8 is to be modified as Rs.5,56,088/- instead of Rs.6,61,088/-.

99.The total value of the 4$^{th}$ statement is fixed by the prosecution as Rs.32,41,691.80/-. After the above modification, the total will be Rs.30,67,186/-.

100.The 5$^{th}$ Statement is to be calculated by deducting the 1$^{st}$ statement from the 2$^{nd}$ statement. The value of the 2$^{nd}$ statement as fixed by this Court is Rs.48,26,875/-. The value of the 1$^{st}$ statement as fixed by this Court is Rs.4,03,181/-. Then the value of 5$^{th}$ statement will be Rs.44,23,694/-. The value of the 6$^{th}$ statement will be calculated by deducting the 4$^{th}$ statement from the 3$^{rd}$ statement. The value of 3$^{rd}$ statement as fixed by this court is Rs.75,29,192/- and the value of the 4$^{th}$ statement as fixed by this Court is Rs.30,67,186/-. Hence, the value of the 6$^{th}$ statement is fixed as Rs.44,62,006/-.

101.The value of the assets acquired during the check period as per 5th statement is Rs.44,23,694/- and the value of the 6th statement that is the likely savings during the check period is Rs.44,62,006/-. The 7th statement is to be calculated by deducting the 6th statement from the 5th statement that is Rs.44,23,694/- minus Rs.44,62,006/-. The value of the 5th statement is lessor than the 6th statement. From the above calculation, it is seen that the assets acquired during the check period is lesser than the likely savings during the check period.

102.On the side of the appellants, it is stated that there is a doubt regarding the FIR. It is stated that the enquiry was conducted by Esakki Anandhan, Inspector of Police and that he sent a source report against A1. This source report was not marked and the FIR was not registered, on the basis of source report and that this Esakki Anandhan was not examined as a witness and that no complaint against the appellants was filed by the prosecution and that the FIR is invalid and that P.W.45, Investigating Officer has deposed that there is no specific complaint against A1 and that the case was registered only on the basis of the source report of the said Esakki Anandhan and that in the FIR, Ex.P113, it is stated that the Deputy Superintendent of Police, Srinivasagam was the complainant and that the complaint is not clearly proved by the prosecution.

103.On the side of the prosecution, it is stated that a preliminary enquiry is to be conducted before the registration of a corruption case and the same dictum was followed in this case and that the preliminary reports are secret reports and are confidential and that the accused has no right to get a copy of the reports and that these reports form part and parcel of the record and that those records are evidence derived from unpublished public records relating to the affairs of the state as per Section 123 of Evidence Act.

104.On the side of the appellants, it is stated that in column no.13 of FIR, it is stated that the Deputy Superintendent of Police has directed Inspector Rajakumar to take up the case for investigation and that the Deputy Superintendent of Police has no power to authorize the Inspector to investigate a Disproportionate Asset case as required under Section 17 of Prevention of Corruption Act. It is further stated that the said Rajakumar was said to have took up the case for investigation on 01.07.2004 but as per the endorsement of Deputy Superintendent of Police in Ex.P114 and as per the instruction of the Deputy Superintendent of Police, he has received authorization from the Superintendent of Police only on 14.07.2004. Without being authorised Inspector Rajkumar has examined witnesses and conducted search against A2 on 06.02.2004.

105.On the side of the appellants, it is stated that P.W.45 was authorised the by S.P., V & AC in No.RC/126/2004 by LAB/MU dated 29.11.2006. But he has examined P.W.5 on 20.11.2006, L.W.52 on 28.11.2006, L.W.4 on 26.11.2006, P.W.10 on 27.11.2006, D.W.5 on

27.11.2006, D.W.4 on 27.11.2006, P.W.42 on 28.11.2006, P.W.27 on 29.11.2006 and he has examined and recorded the statements of all the above witnesses and that the date of their examination has been corrected as if the above witnesses were examined after the date of receipt of authorization on 29.11.2006 though they were examined prior to the date of authorization as mentioned above.



106.It is further stated that P.W.45 had not examined the witness for the search in the premises concerned in Chennai, Coimbatore, Karvijivanan Industries and Krishnapuram Aviyur on 06.07.2004. The search report was not marked during the examination of the concerned Officer. Moreover P.W.46 Investigating Officer is said to have examined L.W.17 Vellaisamy Mooper of Mandri Odai Village of Kariyapatti Taluk on 11.11.2006 regarding the sale 11.53 acres of land to A2 on 10.07.1995. But the witness expired on 10.01.1996 itself and to prove the fact Ex.D6 is marked.

107.On the side of the appellants, it is stated that the sanction order is not valid. P.W.1 has not mentioned, the total number of documents received by him and the description of the documents and that the details regarding the application of mind were not stated in Ex.D1 and that there is no possibile explanation on the side of the prosecution regarding the above said miscrepencies.

108.On the side of the appellants, it is stated that A1 was a honest and sincere Officer and throughout his carrier, he has maintained his integrity and he was devoted to his duty and that the official confidential reports which were marked as Ex.D69 reveals that there were no adverse remarks against A1 thoroughout his service. It is stated that the Disciplinary Enquiry against A1 was not proved and the enquiry was closed in favour of A1.

109.On the side of the appellants, it is stated that the prosecution has failed to prove that A2 instigated A1 or engaged anybody or intentionally aid by any act or any omission, the doing of that thing and that A2 has purchased the property from her own sources and that the IT returns and balance sheet of various Banks filed will reveal the source of her income. It is further stated that the lower Court has failed to consider Ex.D100, G.O.Ms.No.409 dated 24.12.1992, which reads as follows:

> *"A Government servant not required to give notice or to get permission from the authority for acquisition or disposal of properties if the immovable property is not acquired from the sources of Government servants."*

110.On the side of the appellants, it is stated that Ex.D113 is the charges framed in the Departmental Enquiry against A1 and the disciplinary proceedings initiated against the appellants, was marked as Ex.D114 and that the charges against A1 was not proved and that A1 has to be acquitted.

111.In support of his contention, the Judgments passed by the Hon'ble Supreme Court in the case of ***P.S.Rajya V. State of Bihar*** reported in ***(1996) 9 SCC 1*** is cited, which reads as follows:

"*15.*Now reverting to the merits of the case it is the contention of the learned counsel for the appellant that in view of the clear reports of the Central Vigilance Commission and the Union Public Service Commission concerning identical departmental charge, there is absolutely nothing for the prosecution to proceed further. He also submitted that notwithstanding the direction of the High Court to the Special Judge to hold a preliminary enquiry before taking cognizance of the charge sheet either by himself or through higher authorities of the appellant, the learned Special Judge has taken cognizance once again without holding any preliminary enquiry. Therefore, the order of the Special Judge taking cognizance of the charge- sheet confirmed by the High Court cannot be sustained. On this point he placed reliance on a judgment of this Court in the case of P.Siraiuddin vs. State of Madras [1970 (3) S.C.R. 931]. According to Mr. Prashant Bhushan the result of departmental enquiry must be taken as preliminary enquiry and in view of the exoneration order, further proceedings in criminal charge should be dropped. It is the further submission of the learned counsel, for the appellant that the very same engineers who have given the report earlier to the Income-tax Department now at the instance of the CBI, presumably on pressure, have given different valuation and here again there are over-writings and alterations in several places. According to the learned counsel the Central Vigilance Commission has dealt with this aspect in its report elaborately and ultimately came to a conclusion that the subsequent valuation reports on which CBI placed reliance are of doubtful nature. The same view was taken by the Union Public Service Commission. Even otherwise the value given as basis for the charge-sheet is not the value given in the report subsequently given by the valuers.

20.*At the risk of repetition, we may state that the charge had not been proved and on that basis the appellant was cleared of departmental enquiry. In this connection, we may also usefully cite a decision of this Court in State of Haryana and Others vs. Bhajan Lal and Others (1992 Supp.(1) SCC 335). This Court after considering almost all earlier decisions has given guidelines relating to the exercise of the extra ordinary power under Article 226 of the Constitution or the inherent powers under Section 482 of the Code* *of Criminal procedure for quashing an F.I.R. or a complaint. This Court observed as follows:*

*"In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

*(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prime facie constitute any offence or make out a case against the accused.*

*(2) Where the allegation in the first information report and other materials, if any, accompanying the FIR donot disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the ode except under an order of a Magistrate within the purview of Section 155(2) of the ode.*

*(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

*(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-congnizable offence, no investigation is permitted by a magistrate as contemplated under Section 155(2)of the Code.*

*(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

*(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted)*

*to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

*(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private an personal grudge.*

*We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an-arbitrary jurisdiction on the court to act according to its whim or caprice."*

*23.Even though all these facts including the Report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view that the issues raised had to be gone into in the final proceedings and the Report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued. Therefore, we do not agree with the view taken by the High Court as stated above. These are the reasons for our order dated 27.3.1996 for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs."*

112.The learned counsel for the appellants relied upon the Judgment passed by the Hon'ble Supreme Court in the case of ***Radeshyam Kejriwal V. State of West Bengal and another*** reported in ***(2011) 3 SCC 581***, which reads as follows:

*"24. In the present case, it is not the case of the appellant that they were tried by the Enforcement Directorate and therefore further trial by the criminal court is not permissible but their contention is that in the face of the finding in the adjudication proceeding, their continued prosecution is an abuse of the process of the court. In view of what we have observed above, the contention of Mr. Malhotra is without merit and the decision relied on in no way*

*supports his contention.*

*26.We may observe that standard of proof in a criminal case is much higher than that of the adjudication proceeding. The Enforcement Directorate has not been able to prove its case in the adjudication proceeding and the appellant has been exonerated on the same allegation. The appellant is facing trial in the criminal case. Therefore, in our opinion, the determination of facts in the adjudication proceeding cannot be said to be irrelevant in the criminal case.*

32.*There are authorities of this Court in relation to the Income-tax Act in this regard. The first in the series is the judgment of this Court in the case of Uttam Chand and others vs. Income Tax Officer, Central Circle, Amritsar (1982) 2 SCC 543 in which registration of firm was cancelled on the ground that it was not genuine and prosecution initiated for filing false return. However, in appeal, the Income Tax Appellate Tribunal reversed the finding and held the firm to be genuine. Relying on that, this court quashed the prosecution inter alia observing as follows :*

> *"1. Heard counsel, special leave granted In view of the finding recorded by the Income Tax Appellate Tribunal that it was clear on the appraisal of the entire material on the record and Shrimati Janak Rani was a partner of the assessee firm and that the firm was a genuine firm, we do not see how the assessee can be prosecuted for filing false returns. We, accordingly, allow this appeal and quash the prosecution.*
>
> *2. There will be no order as to costs."*

*33.In the case of G.L. Didwania and Another vs. Income Tax Officer and another 1995 Supp (2) SCC 724, on setting aside the order of the assessing authority which led to the prosecution of the assessee by the Income-Tax Appellate Tribunal, this Court held the prosecution not permissible and while doing so observed as follows :*

> *"4. In the instant case, the crux of the matter is attracted and whether the prosecution can be sustained in view of the order passed by the tribunal. As noted above, the assessing authority held that the appellant-assessee made a false statement in respect of income of M/s.*

*Young India and Transport Company and that finding has been set aside by the Income Tax Appellate Tribunal. If that is the position then we are unable to see as to how criminal proceedings can be sustained."*

*35.Mr. Sharan contends that aforesaid principle shall apply with equal force in the prosecution under the Act as the basic principle which these judgments take note of to quash the prosecution is the higher standard of proof required in a criminal case than the adjudication proceeding and no reference at all has been made to the provisions of the Income tax Act to come to that conclusion.*

*38.The ratio which can be culled out from these decisions can broadly be stated as follows :-*

*(i) Adjudication proceeding and criminal prosecution can be launched simultaneously;*

*(ii)Decision in adjudication proceeding is not necessary before initiating criminal prosecution;*

*(iii)Adjudication proceeding and criminal proceeding are independent in nature to each other;*

*(iv)The finding against the person facing prosecution in the adjudication proceeding is not binding on the proceeding for criminal prosecution;*

*(v) Adjudication proceeding by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20 (2) of the Constitution or Section 300 of the Code of Criminal Procedure;*

*(vi)The finding in the adjudication proceeding in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceeding is on technical ground and not on merit, prosecution may continue; and*

*(vii) In case of exoneration, however, on merits where allegation is found to be not sustainable at all and person held innocent, criminal prosecution on the same set of facts and circumstances can not be allowed to continue underlying principle being the higher standard of proof in criminal cases.*

*39.In our opinion, therefore, the yardstick would be to judge as to whether allegation in the adjudication proceeding as well as proceeding for* *prosecution is identical and the exoneration of the person concerned in the adjudication proceeding is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceeding, the trial of the person concerned shall be in abuse of the process of the court.*

*45.The Delhi High Court also considered this question arising out of a case under Foreign Exchange Regulation Act, in detail in the case of Sunil Gulati & Anr. V. R.K. Vohra 145 (2007) DLT 612, and held as follows :-*

> *"In case of converse situation namely where the accused persons are exonerated by the competent authorities/Tribunal in adjudication proceedings, one will have to see the reasons for such exoneration to determine whether these criminal proceedings should still continue. If the exoneration in departmental adjudication is on technical ground or by giving benefit of doubt and not on merits or the adjudication proceedings were on different facts, it would have no bearing on criminal proceedings. If, on the other hand, the exoneration in the adjudication proceedings is on merits and the concerned person(s) is/are innocent, and the criminal prosecution is also on the same set of facts and circumstances, the criminal prosecution cannot be allowed to continue. The reason is obvious criminal complaint is filed by the departmental authorities alleging violation/contravention of the provisions of the Act on the part of the accused persons. However, if the departmental authorities themselves, in adjudication proceedings, record a categorical and unambiguous finding that there is no such contravention of the provisions of the Act, it would be unjust for such departmental authorities to continue with the criminal complaint and say that there is sufficient evidence to foist the accused persons with criminal liability when it is stated in the departmental proceedings that ex facie there is no such violation. The yardstick would, therefore, be to see as to whether charges in the departmental proceedings as well as criminal complaint are identical and the exoneration of the concerned person in the departmental*

*proceedings is on merits holding that there is no contravention of the provisions of any Act."*

113.A perusal of the records reveals that the statements prepared by the prosecution regarding the assets are based on the IT returns filed by the accused. But the prosecution has failed to consider the calculation of income, on the basis of the I.T. returns. The prosecution fixed the value of the buildings on the basis of the report of the Engineers but failed to consider the report of the Engineer that the buildings are constructed after the check period. The prosecution fixed the agricultural income on the basis of the report of the Tahsildar but failed to collect the particulars from the Statistical Department or Central Statistical Organization or Agricultural Marketing. The prosecution failed to consider that the report of Tahsildar differs from the adangal and when in the report of the Tahsildar, it is stated that there was no agricultural income for a particular fassili, the adangal reveals that there are crops in the particular survey numbers during the particular fassili.

114.The contention of the prosecution is that the FIR was registered based on the report filed by the Inspector Esakki Anandhan but failed to submit the report along with the FIR. The Secret information supplied by an individual person need not be disclosed but the preliminary enquiry was done only by the Inspector in his official capacity and there is no necessity to suppress the report. Why the report was suppressed was not clearly explained by the prosecution. The vague statement that these statements are Secret Official Communication is not applicable since the report was filed by a public servant. The Deputy Superintendent of Police authorising the Investigating Officer to conduct investigation is not proper and even before getting authorisation, the Investigating Officer has examined so many witnesses. The Investigating Officer has filed a report said to have been recorded on examination of a witness who was already dead. These discrepancies are not clearly explained by the prosecution and these discrepancies are fatal to the prosecution.

115.As per the above discussion, it is clear that A1 and A2 have explained their income in the proper manner and all these income were brought on record through their IT returns. The reasons cited by the prosecution are just presumptions. The offence alleged against the accused are not proved properly. The accused has sufficiently explained the source of income and the reasons for rejecting the explanation by the prosecution are not satisfactory. The Departmental Enquiry against the accused ended in favour of the accused and there was no allegation regarding the demanding or receiving of bribe against the accused. The Investigating Officer has deposed that there is no such allegation against the accused. For the above said reasons, this Court deems it fit to acquit the accused from all the charges as the charges are not sufficiently proved by the prosecution.

116.Hence, this Court decided that the accused is to be acquitted of the charges. This Criminal Appeal is allowed. The order passed by the lower Court in Special Case No.45 of 2011 is set aside. Bail bonds if any executed, shall stand cancelled. The fine amount if any paid by the appellants shall be refunded.



Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS )

Mrn

To

1.The Special Judge for Trial of Prevention of Corruption Act cases,
Madurai District.

2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Madurai Detachment.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+3CC to Mr.S.Palanivelayutham, Advocate, Sr.No.101761.

**Crl.A(MD)No.23 of 2016**
**21.12.2018**

CS: (03/06/2019) 28P 7C