

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NO. 94 OF 2009

The State by
Inspector of Police
CBI.

.. Appellant

- Vs -

1. Kalaivanan
2. Malini Kalaivannan
3. M.R.Leelabai (Decd.)

.. Respondents

Criminal Appeal filed u/s 378 of the Code of Criminal Procedure, against the judgment dated 31.10.2008, passed by the learned Addl. Special Judge, CBI Cases, Chennai, made in C.C. No.65/2001.

For Appellant : Mr. Ashok Kumar Gowtham
Spl. Public Prosecutor (CBI Cases)

For Respondents: Mr. L.Rajasekar

JUDGMENT

The respondents herein were arrayed as A-1 to A-3, in C.C. No.65/2001 on the file of the Addl. Special Judge, (CBI Cases), Chennai. Pending framing of charge, A-3 died. Therefore, charges were framed only against A-1 and A-2. A-1 was charged for the offence u/s 13 (2) r/w 13 (1) (e) of the Prevention of Corruption Act (for short 'the PC Act'), while A-2 was charged for the offence u/s 109 IPC r/w 13 (2) r/w 13 (1) (e) of the PC Act. After trial, as the prosecution did not prove the charges, the accused were acquitted of the aforesaid charges. Aggrieved by the said acquittal, the present appeal has been preferred by the appellant/CBI.

2. Shorn of unnecessary details, the brief facts could be summarised as hereunder :-

A-1 is a public servant; A-2 is the wife of A-1 and at the relevant point of time, was working as Lecturer and A-3 is the mother of A-1. It is the case of the prosecution that A-1 while functioning as a public servant in various capacities, during the period 1.4.84 to 29.3.96, had acquired assets, disproportionate to his known sources of income, in his name and in the name of his family members, viz., A-2 and A-3 to the tune of Rs.59,87,001/- and since he could not satisfactorily explain

the acquisition of the assets, he was charged for the offence u/s 13 (2) r/w 13 (1) (e) of the PC Act and A-2 and A-3, were charged as abettors to the said acquisition with the aid of Section 190 IPC. However, since A-3 died pending framing of charges, the case as against A-3 stood abated.

3. A search of the premises of A-1 was conducted by the officials on 22.3.96/23.3.96 and during the said search, incriminating documents showing investments in fixed deposits, bank accounts, foreign currencies, documents relating to acquisition of movable and immovable properties and other documents were seized. Detailed inventory of the articles so seized were tabulated. The lockers at the various banks held in the name of A-1 and A-2 were also searched and an amount of Rs.8.70 lakhs and gold ornaments, valued at Rs.10,23,000/- were also seized. Since the respondents herein were not able to properly account for the acquisition of the movable as well as immovable properties and also the liquid cash, prosecution under the relevant provisions of the PC Act was initiated against A-1 after obtaining sanction from the competent authority and prosecution was also launched against A-2 and A-3 for abetting A-1 to amass the disproportionate asset. Criminal machinery was set in motion which culminated in the filing of the charge sheet against the accused.

4. The accused were furnished with the relied upon documents u/s 207 Cr.P.C. and the trial court framed charges under the provisions of the Indian Penal Code as well as under the provisions of the Prevention of Corruption Act. When questioned, the accused pleaded not guilty.

5. To prove the case, the prosecution examined P.W.s 1 to 106, marked Exs.P-1 to P-173 and M.O.s 1 to 22. When the accused/respondents were questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same as false. On the side of the accused, D.W.1 was examined and Ex.D-1 was marked. The trial court, after hearing either side and after considering the materials, both oral and documentary, available on record, acquitted all the accused/respondents herein. Aggrieved by the said acquittal recorded by the trial court, the appellant/CBI has filed the present appeal.

6. Learned Special Public Prosecutor appearing for the appellant submitted that the finding of the trial Judge that the sanction order, Ex.P-1 is not valid as it was given under the seal of P.W.1 is not sustainable. It is the submission of the learned Special Public Prosecutor that P.W.1 was the officer authorised to issue the sanction order on the directions of the President of India and, Ex.P-1, the sanction order has been accordingly issued by P.W.1. Therefore, the finding of the trial court that the sanction order is not a valid one is per se incorrect. It is the further contention of the learned Special

Public Prosecutor that A-2 not being a public servant, but has been roped in as an accused only with the aid of Section 109 IPC, as an abettor, no sanction order is required.

7. It is the further submission of the learned Special Public Prosecutor that the non-inclusion of the name of the father of A-1, who pre-deceased A-1, as an accused, is in no way fatal to the case of the prosecution, as the said non-inclusion cannot be held that the property acquired in the name of his father are irrelevant and should be ignored for the purpose of computing the assets at the hands of the accused.

8. It is the further submission of the learned Special Public Prosecutor that evidence of P.W.s 3, 11, 12, 25 and 26 coupled with Exs.P-3, P-15 to P-20, P-45 to P-50 and P-114 relate to the income of the father of A-1 and the said evidence having not been refuted/rebutted, it is not open to the accused to contend that the properties in the name/hands of A-1's father cannot be taken into consideration while computing the disproportionate assets at the hands of A-1.

9. It is the submission of the learned Special Public Prosecutor that the theory advanced by the defence with regard to the seizure of a sum of Rs.8.25 Lakhs from the locker held by A-1 is without any proof and the learned trial Judge, without adverting to the materials on record has accepted the theory projected by the defence, which deserves interference.

10. It is the further contention of the learned Special Public Prosecutor that the explanation given by A-2 with regard to the jewels to the tune of Rs.10.23 lacs, seized from the locker, said to have been inherited from her spinster sister, have not been established in a manner known to law and in the absence of proving the same, the finding rendered by the trial court in that regard deserves to be set aside.

11. In fine, it is the submission of the learned Special Public Prosecutor that the trial court has not appreciated the evidence on record in proper perspective, more especially with regard to the rebuttable presumption provided under the PC Act and has erroneously acquitted the respondents herein, which requires interference at the hands of this Court.

12. Per contra, learned counsel appearing for the accused/respondents herein submitted that the sanction order, Ex.P-1 has not only been accorded by an officer, who is not authorised to issue the said order, but the sanction order itself was issued without proper application of mind. It is the submission of the learned counsel that all the required documents, which are necessary for a subjective appreciation of the case, were not placed before the sanctioning authority and in the absence of the same, the sanction accorded is unsustainable and the trial court has applied its mind properly

to the materials available on record and has rendered a correct finding.

13. It is the contention of the learned counsel for the accused/respondents herein that the income of the father of A-1 prior to his death as well as his investments have not been accounted for properly, but all the amounts have been accounted on the head of A-1 to arrive at the disproportionate figure. Further, the documents, which were sought for by the defence in possession of the prosecution, were not produced either at the time of trial or given possession to the defence for establishing their case and the documents related to business transactions of the father of A-1, they are crucial for proving the income of the father of A-1. The said documents would have established the actual income/assets of the accused/respondents herein and in the absence of the same not having been provided to the accused/respondents herein, the computation arrived at by the prosecution, has been appreciated in proper perspective by the court below and held that the assets in possession of the accused/respondents herein are not disproportionate to his known sources of income.

14. In fine, it is the categorical submission of the learned counsel for the accused/respondents herein that the trial court has applied its mind to the materials placed before it by the prosecution and has also taken into consideration the oral and documentary evidence and has come to the conclusion that the prosecution has not proved the possession of assets disproportionate to the known sources of income of A-1 and in the absence of the same, the charge of abetment raised against A-2 was also negatived by the trial court and, therefore, has rightly acquitted the respondents herein. Acquittal having been recorded by the trial court, presumption of innocence definitely stands in favour of the accused/respondents herein and unless the prosecution is able to place materials to prove that the findings recorded by the court below are perverse and illegal, the acquittal recorded by the trial court ought not to be interfered with.

15. This Court paid its careful attention to the submissions advanced by the learned counsel appearing on either side and also perused the oral and documentary evidence to which this Court's attention was drawn and also the calculation of disproportionate assets, allegedly at the hands of A-1, which were tabulated by the prosecution.

16. In dealing with matters, where the acquittal rendered by the court below is put to test, it is trite that unless the order of the court below suffers from the vice of perversity, the High Court ought not to interfere with the said order. In *Shailendra Pratap & Anr. - Vs - State of U.P.* (2003 (1) SCC 761), the Supreme Court has categorically held that the appellate court would not be justified in interfering with the

order of acquittal unless the same is found to be perverse. The relevant portion of the order is extracted hereunder for better clarity :-

"8. Having heard learned counsel appearing on behalf of the parties, we are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was a reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the vice of perversity."

17. Yet again, in Ram Kumar - Vs - State of Haryana (1995 Supp. (1) SCC 248), the Hon'ble Supreme Court has once again highlighted the need for the High Court to give proper weight and consideration to the view of the court below and has further held that if the view taken by the court below is reasonable and plausible, order of acquittal should not be disturbed. In the above context, the Supreme Court held as under :-

"15. Learned counsel for the appellant contended that the trial court had recorded the order of acquittal of all the accused persons including the appellant giving sound and cogent reasons for disbelieving the prosecution case and, therefore, the High Court should not have interfered with the order of acquittal merely because another view on an appraisal of the evidence on record was possible. In this connection it may be pointed out that the powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379 (sic 378) CrPC are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the trial court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of accused to the benefit of any doubt and the slowness of appellate court in justifying a finding of fact arrived at by a judge who had the advantage of seeing the witness. No doubt it is settled law that if the main grounds on which the court below has based its order acquitting the accused, are reasonable and plausible, and the same cannot entirely and effectively be dislodged

or demolished, the High Court should not disturb the order of acquittal.”

18. The Hon'ble Apex Court, in V.Sejappa - Vs - State by Police Inspector, Lokayukta, Chitradurga (2016 (12) SCC 150) reiterating the principles to be followed in an appeal against acquittal, as has been laid down in a catena of judgments, held as under :-

“22. If the evaluation of the evidence and the findings recorded by the trial court do not suffer from any illegality or perversity and the grounds on which the trial court has based its conclusion are reasonable and plausible, the High Court should not disturb the order of acquittal if another view is possible. Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. In State v. K.Narasimhachary [State v. K. Narasimhachary, (2005) 8 SCC 364 : (2006) 1 SCC (Cri) 41] , this Court reiterated the well-settled principle that if two views are possible, the appellate court should not interfere with the acquittal by the lower court and that only where the material on record leads to an inescapable conclusion of guilt of the accused, the judgment of acquittal will call for interference by the appellate court. The same view was reiterated in T. Subramanian v. State of T.N. [T.Subramanian v. State of T.N., (2006) 1 SCC 401 : (2006) 1 SCC (Cri) 401]

23. In Muralidhar v. State of Karnataka [Muralidhar v. State of Karnataka, (2014) 5 SCC 730 : (2014) 2 SCC (Cri) 690] , this Court noted the principles which are required to be followed by the appellate court in case of appeal against order of acquittal and in para 12 held as under: (SCC pp. 735-36)

“12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu [Tulsiram Kanu v. State, AIR 1954 SC 1 : 1954 Cri LJ 225], Madan Mohan Singh [Madan Mohan Singh v. State of U.P., AIR 1954 SC 637 : 1954 Cri LJ 1656], Atley [Atley v. State of U.P., AIR 1955 SC 807 : 1955 Cri LJ 1653] , Aher Raja Khima [Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217 : 1956 Cri LJ 426], Balbir Singh [Balbir Singh v. State of Punjab, AIR 1957 SC 216 : 1957 Cri LJ 481], M.G. Agarwal [M.G. Agarwal v. State of

Maharashtra, AIR 1963 SC 200 : (1963) 1 Cri LJ 235], Noor Khan [Noor Khan v. State of Rajasthan, AIR 1964 SC 286 : (1964) 1 Cri LJ 167], Khedu Mohton [Khedu Mohton v. State of Bihar, (1970) 2 SCC 450 : 1970 SCC (Cri) 479], Shivaji Sahabrao Bobade [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033], Lekha Yadav [Lekha Yadav v. State of Bihar, (1973) 2 SCC 424 : 1973 SCC (Cri) 820], Khem Karan [Khem Karan v. State of U.P., (1974) 4 SCC 603 : 1974 SCC (Cri) 639], Bishan Singh [Bishan Singh v. State of Punjab, (1974) 3 SCC 288 : 1973 SCC (Cri) 914], Umedbhai Jadavbhai [Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC 228 : 1978 SCC (Cri) 108], K. Gopal Reddy [K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355 : 1979 SCC (Cri) 305], Tota Singh [Tota Singh v. State of Punjab, (1987) 2 SCC 529 : 1987 SCC (Cri) 381], Ram Kumar [Ram Kumar v. State of Haryana, 1995 Supp (1) SCC 248 : 1995 SCC (Cri) 355], Madan Lal [Madan Lal v. State of J&K, (1997) 7 SCC 677 : 1997 SCC (Cri) 1151], Sambasivan [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320], Bhagwan Singh [Bhagwan Singh v. State of M.P., (2002) 4 SCC 85 : 2002 SCC (Cri) 736], Harijana Thirupala [Harijana Thirupala v. Public Prosecutor, (2002) 6 SCC 470 : 2002 SCC (Cri) 1370], C. Antony [C. Antony v. K.G. Raghavan Nair, (2003) 1 SCC 1 : 2003 SCC (Cri) 161], K. Gopalakrishna [State of Karnataka v. K. Gopalakrishna, (2005) 9 SCC 291 : 2005 SCC (Cri) 1237], Sanjay Thakran [State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] and Chandrappa [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

19. Keeping the above principles of law laid down by the Apex Court in mind, this Court will now proceed to examine the evidence and the materials on record to see whether the conclusions recorded by the court below for acquitting the accused/respondent herein are reasonable and plausible or the same stands vitiated by manifest illegality or the conclusions recorded by the appellate court are such which could not have been possibly be arrived at by any court acting reasonably and judiciously, which could in turn be said to be perverse.

20. Even at the very outset, the finding recorded by the trial court as regards the validity of the sanction order deserves to be set aside. It is not in dispute that sanction has been accorded by P.W.1. Ex.P-1 is the sanction order, which reveals that the competent authority, having satisfied himself with the materials placed before it has decided to accord sanction for prosecution. P.W.1, being the officer to comply with the said direction, has issued the sanction order. It cannot be said that the order has been issued by P.W.1. The order has been issued under the seal of the competent authority by P.W.1, which is generally the procedure followed. Further, the evidence of P.W.1 categorically reveals that all the

materials were placed before the competent authority for arriving at a subjective satisfaction. Merely stating that the requisite materials have not been placed before the competent authority, which in turn renders the sanction order bad in law, is too high an ask to be acceded to by this Court. The evidence of P.W.1 is conclusive that all the materials have been placed for consideration and in the absence of contradiction, the said submission cannot be sustained.

21. While the calculation of disproportionate assets by the appellant is sought to be projected as the correct figure, however, the same is countered by the accused/respondents stating that it does not reflect the true picture of assets. The trial court has considered the tabulated statement of assets and has ruled in favour of the respondents herein.

22. A perusal of the tabulated statements reveal that there are four statements, which are shown as Annexure 'A', Annexure 'B', Annexure 'C' and Annexure 'D'. Annexure 'A' relates to the assets at the hands of the accused/respondents herein prior to the check period. Annexure 'B' relates to the assets at the hands of the accused/respondents and his family members at the end of the check period, i.e., 29.3.96. Annexure 'C' relates to the income received by the 1st and 2nd respondents and the parents of the 1st respondent during the check period. Annexure 'D' relates to the expenses incurred by the 1st respondent/A-1 and his family members during the check period.

23. The appellant has arrived at the assets at the end of the check period at Rs.66,96,010/-, as is revealed in Annexure 'B', which in turn relate to the assets acquired by the accused/respondents herein during the check period, as the assets at the beginning of the check period of treated to be 'Nil'. The expenditure of the respondents herein during the check period was quantified at Rs.7,79,162/- and savings during the said period was quantified at Rs.7,09,009/-. The disproportionate asset was arrived at Rs.59,87,001/- (Rs.66,96,010 - 7,09,009).

24. Though such a quantification, as abovesaid, has been made by the appellant, however, the said quantification is erroneous for the simple reason that many properties, which form part of Annexure 'B', which was taken for the purpose of arriving at the assets at the hands of the 1st respondent and his family members at the end of the check period reveals that the properties, more especially, except for the properties at S. Nos.15 and 17, which belong to A-1 and A-2, all the other properties stand in the names of the parents of A-1. It is not the case of the appellant that the father of A-1 was solely dependent on A-1 and had no movable or immovable properties in his name. A close scrutiny of the statements prepared by the appellant reveals that the father of A-1 was a freedom fighter and that he had received lands under the freedom fighters quota

and likewise the mother of A-1 had also received properties to her share from her parental side. If at all the appellant had sought to question to the means of the father of A-1, he should have been made as an accused in the case so that the properties standing to his name can be brought within the fold of disproportionate assets at the hands of A-1 so as to force A-1 to explain how his father came into possession of those properties. The father of A-1 having not been added as an accused, the properties standing in his name cannot be taken into consideration as properties at the hands of A-1 for quantifying the disproportionate assets.

25. Further, it is to be borne in mind that investments have been made by the father of A-1, which has not been taken into consideration by the appellant while quantifying the disproportionate assets. Though it is contended that the properties acquired in the name of the father of A-1 during the check period would also be considered as properties at the hands of A-1, as the same was acquired during the check period, is a misnomer and cannot be considered as properties at the hands of A-1, which are disproportionate for the simple reason that no evidence has been placed before the court below by the prosecution to show that the father of A-1 was a man of no means and that he was solely dependent upon A-1. Once the means of the father of A-1 has not been established, the properties standing in his name cannot be taken into account for arriving at the disproportionate assets at the hands of his son, viz., A-1. Though it is submitted by the prosecution that A-1 is the only son of his parents, but that would in no way be a ground to suggest that the properties at the hands of his father were properties purchased in his name by A-1 and, therefore, would have to be treated as properties at the hands of A-1. This analogy, as projected by the appellant, is not only too far fetched, but even too synthetic in these days when nuclear family is the order of the day.

26. Further, even according to the prosecution, A-2 was gainfully employed as a Lecturer since 1984 and definitely had received emoluments during that period. She, even according to the appellant, not being a public servant, the properties, both movable and immovable standing in her name cannot be treated to be the properties purchased by A-1 to be calculated as assets, disproportionate to the known sources of income.

27. Though it is contended by the appellant that the sources of income from which the parents of A-1 had received income has not been established by the defense, it is to be pointed out that the trial court has considered this aspect of the matter threadbare and held that the documents, which were necessary to prove such a stand, were in the custody of the appellant, which were summoned u/s 91 Cr.P.C., by filing necessary application. However, the appellant, for reasons best known, had thought it fit not to part with those documents and

in such circumstances, it is not open to the appellant to contend that the respondents herein/accused have not proved the source of income of his parents. The documents having been seized pursuant to the raid and being in the custody of the appellant, inspite of requisition made u/s 91 Cr.P.C., the appellant not having parted with the said documents, it is not open for them to contend that the defense has not probabilsed the theory put forth by them by adducing the necessary evidence.

28. Though very many documents have been marked by the prosecution with regard to the properties standing in the names of the parents of A-1, however, it is not been established by the appellant that the parents of A-1 are persons of no means so as to enable them to improve upon the properties. In fact, the trial court has relied upon Ex.P-115, the diary of the father of A-1 in which he has tabulated the various amounts spent by him. In fact, the trial court has extracted the markings of the tabulation. The diary, Ex.P-115, has been marked by the appellant on which the necessary inference was drawn by the court below. Therefore, it is not open to the appellant to contend that the defense not having proved the means of the father of A-1, placing reliance on some markings made in the diary cannot be the basis to hold that the father of A-1 was a man of means. The trial court has applied its mind to the materials available on record and has arrived at the above finding, which cannot be said to be unreasonable and against the materials available on record.

29. Further, the evidence of D.W.1 comes to the aid of the accused. In that D.W.1 has deposed that he had paid a sum of Rs.8.25 lakhs to the accused towards the purchase price of the spinning mill, which was sold in auction purchase by the bank, as spoken to by P.W.93. Though it is the contention of the learned Special Public Prosecutor that the finding in that regard by the trial court is a figment of imagination as the amount would not be paid directly to the accused by D.W.1, rather it would be paid to the bank, it has to be borne in mind that the sale consideration, in full, has not been spoken to by D.W.1. The deposition of D.W.1 is only to the effect that he paid an amount of Rs.8.25 lakhs to the accused. It is for the appellant to have cross examined D.W.1 in depth to find out about the total sale consideration for the spinning mill. The evidence on that aspect having not been controverted in any angle, it is not open to the appellant to contend that the amount paid to the accused was the total amount paid for the spinning mill. It would not be out of place to mention here that even in the year 1995, the auction price of a spinning mill would definitely not be Rs.8.25 Lakhs. Therefore, a harmonious interpretation for the amount paid has been given by the trial court, which is wholly acceptable and cannot be said to be a figment of imagination.

30. Further, as pointed out by the learned trial court, non-marking of the statement of D.W.1 recorded u/s 161 Cr.P.C., an adverse inference has to be drawn is wholly justified for the simple reason that though the statement recorded u/s 161 Cr.P.C. is not a substantive evidence and it could only be used to contradict the maker of the statement. The prosecution having not marked the statement recorded u/s 161 Cr.P.C., the only inference that could be drawn from the above is that there appears no contradiction in the said statement to that of the evidence of D.W.1 and, therefore, no necessity arose for marking the same. Definitely, non-marking of the said document would enure to the benefit of the accused.

31. Insofar as the jewels seized from the locker to the tune of Rs.10.23 lakhs, which has been said to have been inherited by A-2 from her spinster sisters, though it is contended by the appellant that no proof therefor has been placed by the defense to substantiate the said plea, however, it is to be pointed out that the defence is only required to raise a rebuttable presumption u/s 13 (1) (e) of the PC Act and it is not incumbent on the defense to prove beyond reasonable doubt the said theory projected. However, once rebuttable presumption is raised, it is the duty of the appellant to prove the contrary to the said presumption and the failure of the prosecution to do so, only probabilises the defense theory. In the case on hand, a theory having been advanced as rebuttable presumption by the defense, the prosecution having not taken any steps to disprove the said presumption, the reasons recorded by the trial court deserves to be necessarily sustained.

32. On an overall analysis of the materials available on record, though the prosecution has marked very many exhibits and examined very many witnesses, however, the prosecution has miserably failed to prove that the properties, acquired during the check period by the family members of A-1, were properties at the hands of A-1 and, therefore, the assets of A-1 were disproportionate to the known sources of income of A-1. The trial court, on clear and cogent reasonings has rendered a categorical finding that the prosecution has not proved the case and that the defense has probabilised its theory through rebuttable presumption and, therefore, this Court is of the considered view that the acquittal recorded by the trial court deserves to be sustained.

33. To sum up, the Apex Court, in the recent decision in Shailendra Rajdev Pasvan - Vs - State of Gujarat (2019 SCC OnLine SC 1616) has reiterated the ratio consistently laid down that unless the acquittal is vitiated by manifest illegality or such a conclusion could not have been possibly arrived at by any Court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse, proper weight should be given to the presumption of innocence in favour of the accused. Therefore, on an overall conspectus of the materials available

on record, both oral and documentary, this Court is led to the irrefutable conclusion that the acquittal of the respondents herein ordered by the court below is based on just and reasonable findings and there being no materials available on record to dislodge the said findings, this Court is left with no other alternative, but to dismiss the appeal.

34. For the reasons aforesaid, this Court does not find any reason to differ from the findings recorded by the court below to acquit the respondents herein and, accordingly, the appeal is dismissed confirming the order of acquittal recorded by the learned Addl. Special Judge, CBI Cases, Chennai, in C.C. No.65 of 2001.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1) The Addl. Special Judge
CBI Cases, Chennai.

2) The Public Prosecutor
High Court, Madras.

+1 cc to Mr.V.Krishnakumar, Advocate,sr.8335

+2 cc's to Mr.L.Rajasekar, advocate,sr.8250

+1 cc to Mr.K.Srinivasan,advocate,sr.8240

spd(co)

krd 20/7

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