

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.3506 of 2016  
and  
Crl.O.P.No.26493 of 2019

[Orders Reserved on 26.10.2019]

1.M.C.Sreelatha ....Petitioner / A2 (in Crl.O.P.3506/2016)  
2.Pratap Jampala ....Petitioner / A1 (in Crl.O.P.26493/2019)

Vs.

State By  
Deputy Superintendent of Police,  
SPE / CBI / ACB / Chennai  
.... Respondent / Complainant in both Crl.O.Ps.

COMMON PRAYER: Petitions are filed under Section 482 of Criminal Procedure Code, praying to call for the records in C.C.No.37 of 2013, pending on the file of XII Additional Special Court for CBI Cases at Chennai and quash the same.

For Petitioners : Mr.K.Suresh Babu  
(in both cases)

For Respondent : Mr.K.Srinivasan  
(in both cases) Spl.PP for CBI cases

COMMON ORDER

These Criminal Original Petitions have been filed praying to quash the proceedings in C.C.No.37 of 2013, pending on the file of XII Additional Special Court for CBI Cases at Chennai and quash the same.

2. For the sake of clarity, the petitioners are referred as, according to their ranks, as mentioned in the charge.

3. The petitioners are A2 and A1 / wife & husband. The grounds raised by them are common, hence, by way of a Common Order, both the petitions are taken up together for

final disposal.

4.The short facts of the case are as follows:-

(i)The 1<sup>st</sup> petitioner/A2 is the wife and the 2<sup>nd</sup> petitioner/A1 is the husband. A1 was working as an Appraiser in Air-Cargo Complex, Customs, Meenambakkam, Chennai. The petitioners' assets for the check period 01.01.2005 to 30.09.2012 are as follows:

| Sl.No | Description                                               | Amount Rs.     |
|-------|-----------------------------------------------------------|----------------|
| 1     | Assets at the beginning of the check period Statement "A" | 22,17,210.00   |
| 2     | Assets at the end of the check period Statement "B"       | 1,36,78,086.83 |
| 3     | Assets acquired during the check period (2-1)             | 1,14,60,876.83 |
| 4     | Expenditure during the check period Statement "C"         | 1,00,53,225.00 |
| 5     | Total resources possessed by the accused (3+4)            | 2,15,14,101.83 |
| 6     | Income during the check period Statement "D"              | 94,77,469.00   |
| 7     | Disproportionate Assets (5-6)                             | 1,20,36,632.83 |
| 8     | DA percentage (7/6x100)                                   | 1.27           |

(ii)Based on reliable information, a search was conducted at the resident of A1, it came to light that A1 and his wife/A2, who is a house wife, are in possession of assets to the tune of Rs.1,20,36,632.83 disproportionate to his known sources of income during the period from January 2005 to September 2012, during his tenure in Customs, in the capacity of Appraiser, he could not explain satisfactorily. Hence, the period from 01.01.2005 to 27.09.2012 is taken as check period for the purpose of computation of income, expenditure and disproportionate assets.

(iii)A2 is a house wife and she has no independent income other than the salary income of A1. Further, A2 has lent Rs.63 lakhs to Shri K.V.V.Ravindra Chawdary of Hyderabad, for the purpose of investing the same, thereby, A2 abetted A1 in acquiring assets. She is an income tax assessee.

(iv)Thus, A1 has committed an offence punishable under

Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act,

1988 and A2 has committed an offence punishable under Section 109 IPC r/w Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988. After investigation, charge sheet has been filed before the Additional Special Court for CBI at Chennai, on 21.08.2013 and the same is taken on file as C.C.No.37/2013 and is under trial.

5. The learned counsel appearing for the petitioners would submit that A1 is the public servant and A2 is his wife. The main grievance of the accused is that though income details forms part of prosecution documents and also references are available in 161 Cr.P.C., statement, they have not taken into consideration. Likewise, double entries are made in expense column. The premium paid on the insurance policy. The premium for the entire period has been taken, failing to consider the premium made only during the check period. Likewise, assets, which are acquired prior to the check period forms part of expenses. In statement "B", loan amount of Rs.36,20,000/- has been shown as given to LW.33 KVV Ravindranath Chowdary, by way of cash. Placing reliance on excel sheet, which is inadmissible, as per Section 34 of Evidence Act. The substantial amount of agricultural income earned by A2, through her inherited property, have not been taken into consideration. The income allowed and accepted by the Income Tax Department and the I.T. Returns filed much before registration of the case are not considered.

6. In statement 'A', S.No.10, Rs.6,50,000/- had been shown as investment. This amount finds place in statement 'D' expenditure column is an investment prior to the check period, hence, it cannot be taken as expenditure during the check period. As regards statement "B", A2 said to have given loan of Rs.36,20,000/-, in cash, to L.W.33 KVV Ravindranath Chowdary. During investigation of this case, a letter dated 25.02.2013, addressed to the Investigating Officer, was sent by way of registered speed post received by investigating officer on 07.03.2013, but the same has not been produced as document in this case. Hence, the petitioners filed a petition under Section 91 of Cr.P.C., before the trial Court in Cr.M.P., No.576 of 2016. The trial Court directed the Investigating Officer, by order dated 23.08.2016, to produce the said letter. Strangely, the prosecution had taken a stand that no such letter was received by the Investigating Officer and a memo to that effect has been filed. This letter is in addition to the statement made by L.W.33, when he was examined by the Investigating Officer. Further, the Investigating Officer placing reliance on the loose excel sheets is bad in law. As per, Section 34 of Indian Evidence Act, it is not admissible in evidence as document and placed reliance on the Apex Court Judgment in the case of CBI Vs. V.C.Sukla reported in CDJ 1998 SC 438 and Common Causes Vs. Union of India, reported in 1999 (6) SCC 667).

7. The learned counsel further submitted that the personal loan taken from SBI by A1, which is reflected in LD.45, has not been shown as income. L.W.28, the corresponding witness in his statement also, does not mention. As regards A2, LD.15 is the document to show that A2 had availed loan from LW.31 Baskar L.W.32 Latha. This document find place in the house search list. Further, the said Baskar had also given a complaint to the Commissioner of Police for recovery of money and thereafter, a settlement was arrived between them. In the I.T. Returns of the year 2013-14, the same is reflected. Hence, an income of Rs.11,00,000/- has not taken into consideration. Likewise, as stated earlier, the sale of car and income earned is reflected in L.D.15, also shows payments made Katragadda Prasad. Total amount paid to K.G.Prasad is Rs.11,80,000/-. This payemnt is also in Income Tax Returns of the year 2007-08.

8. The learned counsel further argued that the amount received from Prasad is Rs.17,31,000/-, inclusive of Rs.5,51,000/- of interests. This interest income has not been considered and not taken into account. The other interest received by A2, which reflect in the Income Tax Returns, have not been considered. The Agricultural income for the year 2005-06, Rs.13,95,000/-; for the year 2006-07, Rs.10,64,100/-; for the year 2007-08, Rs.12,67,200/-; for the year 2008-09, Rs.11,17,800/-; for the year 2009-10, Rs.5,76,000/-; Totally Rs.54,20,700/- have not been taken into account, despite A2 hails from agriculture family. L.W.46, MCV.Prasad, the brother of A2, who along with A2 appeared before the Investigating Officer, given the details about the land holdings, agricultural activities, income, supported by the statement of sister of A2 and family members. The agricultural income certificate from Tahsildar Mdanapalli had been submitted. The Investigating Officer has not considered the same. The Tuition Fee income of A1 and A2's son Manoj of Rs.96,000/- has not been considered, despite same reflects in the Income Tax Returns of the year 2012-13. The rental income of A2 had not been properly given credit, these income reflects in the Income Tax Returns. Likewise, the LIC maturity amount of Rs.1,67,000/- received by the accused daughter, which reflects in LD.30 has not been given credit, as income. Thus, Rs.88,08,270/- have not been considered. The expenditure have been boosted to reduce the saving. Though 1/3<sup>rd</sup> of the salary of Rs.10,26,339/- has been taken as expenditure on a hypothesis, without any material, despite the same, the broadband charges; purchase of Stabilizer; telephone expense; amenity charges, purchasing of garments, spectacles; transportation charges have been excluded. These expenditures are part of domestic expenditures.

9.It is his further submissions that the petitioners, though had in the course of investigation came to know (i) the income generated by A2 through S.E.Basker (LW-31) a sum of Rs.11,00,000/-, (ii) the income generated through the sale of Maruti Wagon R Car in 2006, being a sum of Rs.2,00,000/- (iii) the income through interest from Katragadda Prasad in 2007 being a sum of Rs.5,51,000/-, (iv) Other income through interest Rs.5,57,970/-, (v) Agricultural income received from the lands in Madanpallee, being a sum of Rs.54,20,700/- , (vi) Income received by her son Manoj Jampalla being a sum of Rs.96,000/-, (vii) Rental income of Rs.3,60,000/- and (viii) Maturity value of LIC Policy No.711388898, in the name of the petitioner's daughter Manasa, being a sum of Rs.1,87,600/- etc., the prosecution conveniently for reasons best known to them has ignored to and these amounts, as income, in Statement "C", being the income during the check period.

10. He further submitted that the payment for the lapsed LIC policies, which are before the check period, have been taken as expenses incurred during the check period. Thus, the prosecution had failed to consider the materials available in the documents produced and also by way of statement, the Income Tax Returns, accepted by the Income Tax Department, which are the documents, contemporarily prepared much before the registration of the case, for the reasons best known have not considered the same, denied the accepted income, on the other hand foisted the case based on inadmissible evidence, for which, the accused have to undergo the ordeal of trial. The learned counsel appearing for the petitioners, in support of his contentions, relied upon the following decisions:

1.CDJ 2013 Assam HC 497 - Nalin Chandra Buragohain V. State of Assam, wherein, in para 22, it has been held as follows:

"Para 22. From the documents submitted by the wife, sons and cousin of the petitioner, there is no doubt that they have their own independent business and source of income. The correctness or otherwise of the income tax return and the balance sheet submitted by them have not been questioned by the prosecution at the time of consideration and framing of charges. The prosecution has not claimed that the income tax returns submitted by the aforesaid persons have not been accepted or questioned by the income tax authority. In the eye of law unless the contrary is shown, the income tax returns submitted by them must be accepted as valid documents for the purpose of

showing that they have the independent source of income and their sources of income are not dependent on the ones pertaining to the petitioner. The prosecution could not show prima-facie that the petitioner is possessing benami properties and for that matter, his wife, sons and cousins are benamdars. It appears that the learned trial Court, contrary to the decision of the Apex Court in Bhajan Lal's case (supra), proceeded with a pre-conceived idea of guilt of the present petitioner as indicted by the prosecution and passed the impugned order framing the charges mechanically without applying its independent judicial mind objectively and acted like a post office of the prosecution. Such approach of the learned Special Court is not at all acceptable in law and it must be interfered with to prevent the abuse of the process of the Court and securing the ends of justice."

2.CDJ 2013 C 071 - Rajiv Thapar @ Other V. Madan Lal Kapoor, wherein, in paras 22 and 23, it has been held as follows:

"Para 22. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly

reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."

3.CDJ 2017 SC 1384 - Nitya Dharmananda @ K.Lenin & Another V. Sri Gopal Sheelum Reddy also known as Nithya Bhaktananda & Another, wherein, in para 9, it has been held as follows:

"Para 9. Thus, it is clear that while ordinarily the Court has to proceed on the basis of material produced with the charge sheet for dealing with the issue of charge but if the court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not a part of the charge sheet. It does not mean that the defence has a right to invoke Section 91 Cr.P.C. de hors the satisfaction of the court, at the stage of charge."

4.CDJ 1998 SC 438 - Central Bureau of Investigation V. V.C.Shukla & Others, wherein, in para 38, it has been held as follows:

"Para 38. The evidentiary value of entries relevant under Section 34 was also considered in Hiralal Mahabir Pershad (supra ) I.D. Dua, ]. (as he then was ) speaking for the Court observed that such entries though relevant were only corroborative evidence and it is to be shown further by some independent evidence that the entries represent honest and real transactions and that monies were paid in accordance with those entries."

5.CDJ 2017 SC 056 - Common Cause (A Registered Society) & Others V. Union of India & Others, wherein, in para 9, it has been held as follows:

"Para 19. With respect to evidentiary value of regular account book, this Court has laid down in V.C.Shukla, thus:

"37. In Beni Vs. Bisan Dayal, it was observed that entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another. In Hira Lal Vs. Ram Rakha [ A. I. R. 1953 Pepsu 113] the High Court, while negating a contention that it having been proved that the books of account were regularly kept in the ordinary course of business and that, therefore, all entries therein should be considered to be relevant and to have been proved, said that the rule as laid down in Section 34 of the Act that entries in the books of account regularly kept in the course of business are relevant whenever they refer to a matter in which the court has to enquire was subject to the salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability. It is not, therefore, enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts."

11. Per contra, Mr.K.Srinivasan, the learned Special Public Prosecutor for CBI Cases, would submit that LW.46 M.C.V.Prasad, brother of A2, had categorically stated that the agricultural lands of A2 were settled to him through a Settlement Deed, during September 2009. Hence, no

agricultural income after 2009, is possible. Other than this land, A1 or A2 have no other agricultural lands. An Agricultural income of Rs.1,71,000/-, has been shown without A2 possessing any agricultural land. The Income Tax Returns filed by the accused was taken into consideration and the documents are cited as LD. 48 and LD.81 and the witnesses LW.29, LW.41 and LW 44 were recorded and considered. As regards Rs.36,20,000/-. The loan given to LW.33 KVV Ravindranath Chowdary, by way of cash, it is evident from the statement of LW.8, LW.9, the witnesses for search and L.W.35 the Accountant; LD.19 file containing the details of A2 payment seized from the office of LW.33. LD.21 is the extract of consolidated cash transaction statement maintained in the Firm M/s.SCN Infra Developers Private Limited, M/s. Venkateswara Security Agencies and M/s.Venkateswara Infrastructure Providers. LD.22 dated 22.01.2017 relating to seizure of Hard Disc from the Office of LW.33 A.V.Ravindranatha Reddy. Thus, these material would clearly prove the investments of Rs.36,20,000/-. The prosecution categorically denied the letter dated 25.02.2013 received by the Investigating Officer. Further, no such entries are found in the Thabal Register of the respondent Office.

12. He would further submit that L.W.33 had admitted in his statement on 03.01.2013 that a sum of Rs.36,20,000/- in cash was deposited by A2 during the period 20.06.2012 to 19.12.2012. Further, in the Day Book Register of the concern Firms, the entries are reflected as well the interest particulars. S.E.Bhaskar and his wife Latha LWs.31 and 32, small timer running a small grocery shop near the house of the accused got acquainted became friendly with them and at times he used to act as acting driver to the accused, S.E.Bhaskar's house was searched, he had given a statement that he does not have source to lend money, he had been set up by the accused to give explanation.

13. The loan was extended to Katragadda Prasad during 2001-2002, before the check period. The said loan does not figure in the Income Tax Returns. LWs.23, 24, 29 and 41 confirm the same. The Chartered Accountant, LW.29 and the Income Tax Officer LW.41 confirm the case of the prosecution with regard to the wrong/false entries made in the Income Tax Returns. During investigation, the accused could not produce any students, to whom tuition was taken by Manoj Jampala. Likewise, the rental income is also boosted one. A1 had purchased Wagon R car in the name of his wife A2, during the year 2003, for Rs.3,71,334/-, the said car was sold in the year 2006, for Rs.2,18,827/- and they incurred a loss of Rs.52,507/-. Hence, the loss incurred was taken as expenditure. During investigation, the accused / A2 was given an opportunity to explain the assets and liability during that time, the accused did not make any representation.

Now, she is making such claims having failed to give explanation earlier.

14. The contention of the petitioner with regard to the premium paid to LIC Policy are incorrect. The premium amount were taken into consideration based on the statements of LW.16 and documents LDs.34 to 54. Further, the Income Tax Returns of L.W. 31 Bhaskar has been filed on 22.08.2013, after the filing of the charge sheet. In this case, charge sheet came to be filed on 21.08.2013. Thus, the explanation of Rs.14,00,000/- given in the name of Baskar is a clear after thought. The Income Tax Returns have been filed after Registration of the FIR. The certificates produced in support of Income by agricultural are dated 24.12.2013 after filing of the charge sheet. Further, with regard to the seizure of excel sheets for investments in cash, these points are to be agitated during trial and none of the documents produced by the accused now are of impeccable character, which can be looked into. The documents are produced belatedly. Hence, these documents cannot be looked into now and the only recourse available to the accused is during trial and hence, he prayed for dismissal of the petitions. To support his contention, he relied on the following decisions:

1.(2014) 1 MLJ (Cr1) 315 (SC) - State of Tamilnadu V. N.Suresh Rajan, wherein, in para 22, it has been held as follows:

"Para 22. .... assessed to income tax and paid income tax cannot be relied upon to discharge the accused persons particularly in view of the allegation made by the prosecution that there was no separate income to amass such huge properties. The property in the name of an income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee. In case this proposition is accepted, in our opinion, it will lead to disastrous consequences. It will give opportunity to the corrupt public servants to amass property in the name of known persons, pay income tax on their behalf and then be out from the mischief of law. While passing the impugned orders, the court has not sifted the materials for the purpose of finding out whether or not there is sufficient ground for proceeding against the accused but whether that would warrant a conviction. We are of the opinion that this was not the stage where the court should have appraised the evidence and discharged the accused as if it was passing an order of

acquittal. Further, defect in investigation itself cannot be a ground for discharge. In our opinion, the order impugned suffers from grave error and calls for rectification."

2.(2005) 1 SCC 568 - State of Orissa V. Debendra Nath Padhi, wherein, in para 20, it has been held as follows:

"Para 20. .... invoking its inherent jurisdiction under section 482 CrPC to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence."

3.(1996) 8 SCC 164 - State of Bihar V. Rajendra Agrawalla, wherein, in para 5, it has been held as follows:

"Para 5. It has been held by this Court in several cases that the inherent power of the court under Section 482 of the Code of Criminal Procedure should be very sparingly and cautiously used only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court, if such power is not exercised. So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the First Information Report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged. At that stage it is not open for the court either to shift the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out. In a recent Judgment of this Court to which one of us (Hon. K. Ramaswamy, J.) was a member it has been held, following the earlier decision in Mrs. Rupan Deol Bajaj & Anr. v. Kanwar Pal Singh Gill & anr. (JT 1995 (7) SC 299) :

'It is thus settled law that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High court before embarking to scrutinize the FIR/chargesheet/complaint. In

deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an imitation to move the machinery and to investigate into cognizable offence. After the investigation is concluded and the charge-sheet is laid the prosecution produces the statements of the witnesses recorded under Section 161 of the Code in support of the charge-sheet. At that stage it is not the function of the Court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The Court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence, on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out no further act could be done except to quash the charge sheet. But only in exceptional cases, i.e. in rarest of rare cases of mala fide initiation of the proceedings to wreak private vengeance process of criminal is availed of in laying a complaint or FIR itself does not disclose at all any cognizable offence - the court may embark upon the consideration thereof and exercise the power.

When the remedy under Section 482 is available, the High Court would be loath and circumspect to exercise its extraordinary power under Article 226 since efficacious remedy under Section 482 of the Code is available. When the Court exercises its inherent power under Section 482 the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the court. When investigation officer spends considerable time to collect the evidence and places the charge-sheet before the Court, further action should not be short-circuited by resorting to exercise inherent power to quash the charge-sheet. The social stability and order requires to

be regulated by proceeding against the offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon exercising inherent power."

4.Criminal Appeals Nos.300 to 303 of 2017 and et batch  
- State of Karnataka V. Selvi J.Jayalalitha & Others,  
wherein, in paras 175 to 177, it has been held as follows:

"Para 175.175. The decision is to convey that though the I.T. returns and the orders passed in the I.T. Proceedings in the instant case recorded the income of the accused concerned as disclosed in their returns, in view of the charge levelled against them, such returns and the orders in the I.T. Proceedings would not by themselves establish that such income had been from lawful source as contemplated in the explanation to Section 13(1 (e) and that independent evidence would be required to account for the same.

176. Though considerable exchanges had been made in course of the arguments, centring around Section 43 of the Indian Evidence Act, 1872, we are of the comprehension that those need not be expatiated in details. Suffice it to state that even assuming that the income tax returns, the proceedings in connection therewith and the decisions rendered therein are relevant and admissible in evidence as well, nothing as such, 251 turns thereon definitively as those do not furnish any guarantee or authentication of the lawfulness of the source(s) of income, the pith of the charge levelled against the respondents. It is the plea of the defence that the income tax returns and orders, while proved by the accused persons had not been objected to by the prosecution and further it (prosecution) as well had called in evidence the income tax returns/orders and thus, it cannot object to the admissibility of the records produced by the defence. To reiterate, even if such returns and orders are admissible, the probative value would depend on the nature of the information furnished, the findings recorded in the orders and having a bearing on the charge levelled. In any view of the matter, however, such returns and orders would not ipso facto either conclusively prove or disprove the charge and can at best be pieces of evidence which have to be evaluated along with the other materials on record. Noticeably, none of the respondents has

been examined on oath in the case in hand. Further, the income tax returns relied upon by the defence as well as the orders passed in the proceedings pertaining thereto have been filed/passed after the charge-sheet had been submitted. 252 Significantly, there is a charge of conspiracy and abetment against the accused persons. In the overall perspective therefore neither the income tax returns nor the orders passed in the proceedings relatable thereto, either definitively attest the lawfulness of the sources of income of the accused persons or are of any avail to them to satisfactorily account the disproportionateness of their pecuniary resources and properties as mandated by Section 13(1) (e) of the Act.

177. A Constitution Bench of this Court in Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr., (2005) 4 SCC 370, in this context had ruled that there is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding on the other as both the cases have to be decided on the basis of the evidence adduced therein."

15. I have heard Mr.K.Suresh Babu, the learned counsel appearing for the petitioners and Mr.K.Srinivasan, the learned Special Public Prosecutor for CBI Cases and also perused the materials on record.

16. In this case, L.W.7, Manager of Indus Ind Bank, Nungambakkam Branch states about various transactions of both the accused during the check period in detail. From his statement as well as the statement of account, it is seen huge sums are debited and credited in this account, for which, explanation are necessary. Further, L.W.33, K.V.Ravindra, a relative of A2 running firms viz., M/s.SCN Infra Developers, M/s.Venkateshwara Security Agency and Vengateshwara Infrastrucure Providers, admits about the transactions. L.W.34 Jagdish is an employee and L.W.35 S.Rajesh Accountant state that the accounts are inconfirmitly along with the bank records and srtatements. L.W.8 G.Raj Prasad, L.W.9 Anand Kumar, Senior Officer of the Nationalised Banks have been witnesses to the search and seizure of vital documents. Those documents would go to show the cash involvement. Though it was contended that as per Section 34, the excel sheets are in admissible, it has to be decided on the facts of the case during the trial.

17.L.W.46 MCV Prasad, brother of A2 and L.W.30 S.Anitha Prasad, sister of A2 have stated about the settlement in the family and from the year 2009, there was no holding of agricultural land by A2. Though the accused now produced the agricultural income certificate issued by the Tahsildar, Madanapalle making claim of substantial agricultural income. On perusal of the same, this income certificates are dated 24.12.2013, after the filing of the charge sheet. Hence, in the above facts, these documents cannot be said to be of impeccable character, to be accepted on face value. The accused have to produce these documents only during the trial to prove their case.

18.Further, in this case, the bank officials, income tax officials viz., L.Ws.37, 41 and 44 have been examined to state about the income tax returns. Such returns and orders would not ipso facto either conclusively prove or disprove the charge and can at best be pieces of evidence which have to be evaluated along with the other materials on record. This has to be decided during the trial.

19.Further, with regard to the income attempted to be proved through L.W.31 S.E.Bhaskar and his wife L.W.32 B.latha, on perusal of the same, the income tax returns of the said Baskar has been filed only after filing of the charge sheet. The contention of the petitioners with regard to the letter sent to the investigating officer by L.W.33 K.V.V.Ravindranath Chawdary is also a disputed fact. These incidents are only illustrative.

20.Further, with regard to the contention of sale of car, payment of LIC premium, credit card payments, domestic expenditure and the loan and other aspects, which are raised by the accused are all matters to be decided during the trial. This case is one of disproportionate assets and the expression "known sources of income" have clear emphasis on the word of "income". The income not received from "known sources of income" of the public servant, the burden is cast upon the accused not only to offer plausible explanation as to how he came by large wealth and but also to satisfy the Court that his explanation was worthy of credence. In view of the same, the accused are to give plausible explanation to the satisfaction of the Court during the trial.

21.In view of the above, both the criminal original petitions are dismissed. Since the case is of the year 2013, for the past five years, for one reason or other, the trial had not been allowed to be proceeded, the trial Court is directed to dispose of the case to give top priority within a period of one month. Any observations made in this order is for

the purpose of disposal of these petitions and shall have no bearing on the trial.

Sd/-  
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

Arul

To

1.The XII Additional Special Court for CBI Cases  
Chennai.

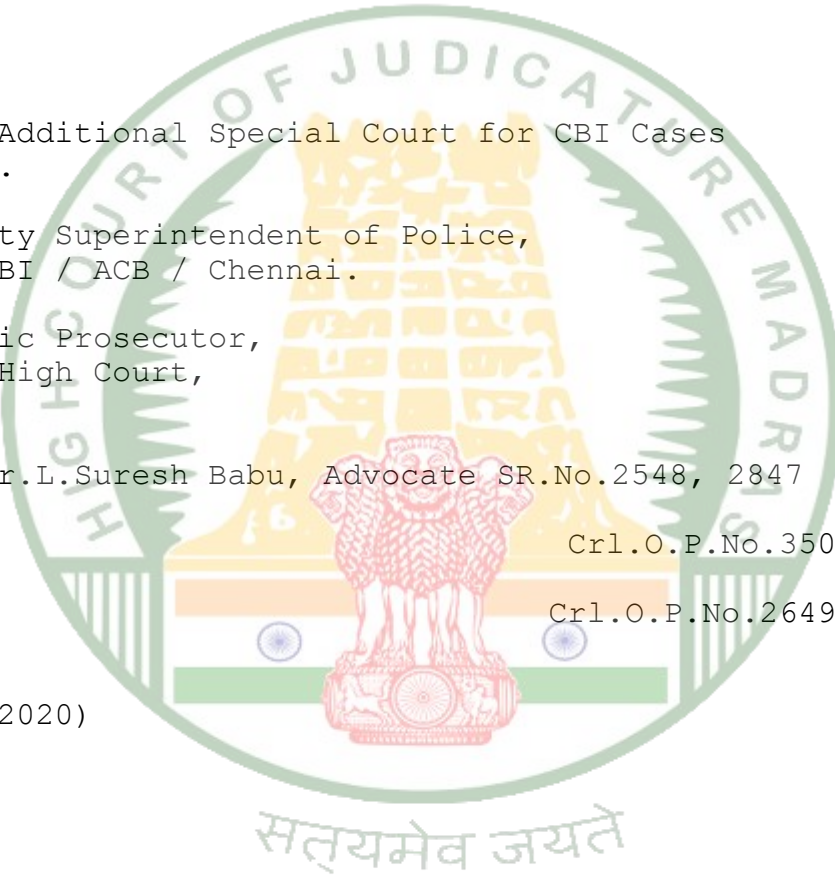
2.The Deputy Superintendent of Police,  
SPE / CBI / ACB / Chennai.

3.The Public Prosecutor,  
Madras High Court,  
Madras

+2ccs to Mr.L.Suresh Babu, Advocate SR.No.2548, 2847

Cr1.O.P.No.3506 of 2016  
and  
Cr1.O.P.No.26493 of 2019

CA(CO)  
GMY(14/02/2020)



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