BAIL SLIP

Petitioner/Accused namely Komathi Srinivasan, was released on bail as per order of this Court dated 11.04.2012 made in MP (MD).2 of 2012 in CRL A(MD).34 of 2012.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 10.01.2019

JUDGMENT DELIVERED ON : 17.06.2020

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.A.(MD) No.34 of 2012

Komathi Srinivasan ...Appellant/Single Accused

Vs.

State by
The Inspector of Police,
Vigilance and Anti Corruption Wing,
Thanjavur. ...Respondent/Complainant

PRAYER:Criminal Appeal - filed under Section 374(2) of Criminal Procedure Code, to set aside the order passed by the Special Court for trial of cases under Prevention of Corruption Act, Trichy in Special Case No.6 of 2012 dated 29.02.2012 and allow the criminal appeal.

For Appellant : Mr.Gopalakrishna Laxmana Raju
Senior Counsel
for Mr.J.Senthil Kumariah

For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor

O R D E R

This criminal appeal has been filed to set aside the conviction and sentence imposed on the appellant in S.C.No.6 of 2012 dated 29.02.2012 by the Special Court for trial of cases under Prevention of Corruption Act, Trichy.

2. The appellant is the native of Nariyanoor in Papanasam Taluk, Tanjavur District. She belongs to a poor family and her father was a retired head constable. The appellant married one Srinivasan, who is a non-practicing Advocate during the year 1971. The appellant was a Member of Legislative Assembly, Valangaiman constituency in Tanjavur District during the period between

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13.05.1996 and 14.05.2001. She was a public servant within the meaning of Section 2(c) of Prevention of Corruption Act.

3. The allegation against the appellant is that during the above said check period, she had acquired and was in possession of pecuniary resources and properties in her name and in the names of her husband, Srinivasan and her daugher Karthiga Pennarasi. It is also found that before the check period as on 13.05.1996, she was found to be in possession of pecuniary resources and properties in her name and in the name of her husband and daughter for a total sum of Rs.3,65,280/- and at the end of the check period i.e., on 14.05.2011, the appellant was found to be in possession of a total value of Rs.13,89,716.85. During the check period she had acquired properties to a value of Rs.10,24,436.85. But her total income is Rs.8,00,501/- and incurred expenditure is Rs.10,99,003.80. Hence, she disproportionate a sum of Rs.2,98,502.85 to her known sources of income. Her reply dated 27.08.2004 for the letter offering explanation dated 12.08.2004 was not satisfactory and hence, the appellant committed offense punishable under Section 13(1)(e) r/w 13(2) of the Prevention of Corruption Act, 1988.

4. The learned Special Judge after taking the charge sheet on file and completing the formalities under Section 207 Cr.P.C., had taken up the case on file in S.C.No.6 of 2002.

5. In order to prove the case, on the side of the prosecution as many as 36 witnesses were examined as P.W.1 to P.W.36 and 64 documents were marked as Exs.P1 to P.64. After completing the prosecution side evidence, when the incriminating circumstances culled out from the prosecution witnesses, were put before the appellant / the accused, he denied as false. No oral and documentary evidence was produced on the side of the appellant / accused.

6. After hearing the arguments of both sides and considering the oral and documentary evidence, the learned Special Judge found the appellant guilty for the offence under Section 13 1(e) r/w 13 (2) of the Prevention of Corruption Act and sentenced the appellant to under Rigorous Imprisonment for a period of three years and four months and imposed a fine of Rs.5,000/- in default to undergo six months simple imprisonment. Aggrieved, over the same, the appellant has filed the present appeal.

7. The learned counsel for the appellant would submit that the appellant family is a joint family and they own large extent of agricultural land in the name of the appellant and her husband and daughter, which are having very great fertile with sufficient water and producing high yielding. They own three bore wells as

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well as necessary equipments for agricultural activities. The same is evident from the evidence of P.W.2, Village Administrative Officer and the evidence of P.W.18, Thaildhar. Exs.P2 and Ex.P3 also proved the same.

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8. He would further submit that the appellant family is doing cultivation in an extent of 19 acres and 40 cents, 13 acres 54 cents is evident from ExsP2 and P3 and the rest of the land is evident from the evidence of P.W.2. Whereas the prosecution has shown the land 9 acres 32 cents only in the statement No.1 as assets beginning of the check period. The prosecution has worked out the agricultural income with 6 acres 81 cents only through P.w.18, Thasildar and marked his certificate as Ex.P19. Ex.P19 is unreliable and unacceptable. The prosecution wantonly suppressed the real income of the appellant's family.

9. Admittedly, there are three crops and harvest. Tow crops are paddy crops and third one was money crop. But while calculating the income the number of crops and harvests are omitted. The rate for agriculture produce was given at low price. Further it is an admitted fact that the appellant family is an agricultural family and they are having own equipments for agricultural activities. But the prosecution wantonly deducted 50% of gross income towards expenses for the cultivation which is on higher side, but the actual expenses is not more than 30%. It was further submitted that since the appellant is from a poor family, she and her family had lead a very reasonable and frugal and spend thrift life despite the appellant being a Minister for two times in the State Cabinet and this case is filed with her stint of MLA with the check period from May 1996 to May 2001 elected from Valangaiaman Reserved Constituency. The husband of the appellant is a Lawyer and a Chairman of the Melatur Municipality during the check period besides being an agriculturist.

10. If the amount against statement No.II and statement No.IV shown with boosted figure and on higher side is deleted and the amount towards income which was omitted by the prosecution is added against the statement No.III, there comes excess at the hands of the appellant. The learned counsel would further submit that if the approved principle that there is unexplained income is at 10% or below to it is excusable as expounded by the Hon'ble Supreme Court is applied in this case, there is no case at all against the appellant and the documents clearly show that the appellant had no disproportionate of any assets.

11. It is the further submission of the learned counsel for the appellant that the learned trial Judge had failed to consider the entire evidence in *toto* and the chief examination of

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the witnesses was only given much importance than the evidence given by the witness during cross examination.

12. The learned counsel for the appellant has placed reliance on the following judgments:-

1. P.Satyanarayan Murty vs. State of Andhra Pradesh [(1992) 4 SCC 39]

2. Krishnanand Agnihotri Vs. The State of Madhya Pradesh [1977 SCC (Cri) 190]

3. DSP., Chennai vs. K.Inbasagaran [(2006) 1 M.L.J. (Crl.)293

4. O.T.P.Bhutia vs. State of Sikkim [2011 CrI.L.J. 2860]

5. Kedari Lal Vs. State of M.P and others [2015(2) Crimes 142(SC)]

6. Ashok Tshering Bhutia vs. State of Sikkim [2011 CRI.L.J.1770]

13. The learned counsel for the respondent would submit that the appellant got elected and represented Valangaiman Legislative Constituency in Thanajavur District during the period between 13.05.1996 and 14.05.2001. The appellant was a public servant as M.L.A., of the above said constituency. The appellant in her capacity as public servant accumulated property, disproportionate to her known sources of income. The check period was fixed for the period between 13.05.1996 and 14.05.2001. The property and other pecuniary resources found at the time of beginning of check period was Rs.3,65,280/-. The property and other pecuniary resources found possessed by the appellant in her name and her family members name at the end of check period is Rs.13,89,716.85. The expenditure of the appellant for the check period after deducting the total income from the expenditure incurred by her during the check period will be Rs.2,98,502.80. The excess property found after deducting the earlier property found before the check period will be Rs.10,24,436.85. Hence, the net disproportionate properties will be Rs.13,22,939.70. The details of the disproportionate properties found possessed by the appellant reads as follows:-

i)R.C.'s House at Nariiyanur, Purampoke (statement-II)	- Rs.3,59,461.00
ii)H.I.G.House No.939 (TNHB) purchased in the name of accused's daughter	- Rs.3,33,290.00
iii)TATA Sumo Car No.TN-09 X-2403	- Rs.2,00,000.00
iv)Ambassador Car No.TMP 2505	- Rs. 35,000.00

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v)	Balance in S.B.A/c7812 syndicate bank Egmore Branch as on 14.05.2001	- Rs. 96,685.85
vi)	Excess expenditure (Statement-VI)	- Rs.2,98,502.80
		Rs.13,22,939.65

14. In order to prove the case of the prosecution as many as 36 witnesses were examined as P.Ws.1 to 41 and Exs.P1 to P64 were marked.

15. The learned Additional Public Prosecutor would submit that from the oral and documentary evidence, it is evident that the appellant disproportionate the assets to a sum of Rs.13,22,939.65 and was found in possession of pecuniary resources. He would further submit that the trial Court after considering the oral documentary evidence rightly convicted the appellant and there is no merit in this appeal, which deserves to be dismissed.

16. Heard the learned counsel on either side and perused the materials placed on record.

17. The case of the prosecution is that the appellant was a Member of the Legislative Assembly of Valangaiman Legislative Constituency in Tanjavur District between 13.05.1996 and 14.05.2001. During the said period she had acquired pecuniary resources in her name and in the name of her husband and daughter. Native of the appellant is Nariyannor in Papanasam Taluk, Thanjavur District and she belongs to a poor family. The father of the appellant was a retired head constable. She had married one Srinivasan during the year 1971, who is a non practicing Advocate. Before the check period as on 13.05.1996 she was found to be in possession of pecuniary resources and properties in her name and in the name of her husband Srinivasan and daughter Karthiga Pennarasi for a total sum of Rs.3,65,280/- and at the end of the check period that is on 14.05.2001 she was found to be in possession of pecuniary resources and properties for a total value of Rs.13,89,716.85. During the said check period she had acquired properties to a value of Rs.10,24,436.85. But she had total income of Rs.8,00,501/- and incurred expenditure of Rs.10,99,003.80. Hence, the appellant disproportionate a sum of Rs.2,98,502.85 to her known sources of income.

18. After having searched the house of the appellant and afforded an opportunity to offer explanation to the appellant and since the explanation given by the appellant was not satisfactory,

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the appellant was charge sheted for the offence punishable under Section 13(1)(e) r/w 13(2) of the Prevention of Corruption Act, 1988.

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19. P.W.31, Thanga Gothandapani sent a petition under Ex.P56 to the Chief Minister Special Grievance Cell alleging acquisition of disproportionate assets against the appellant and a direction was issued to conduct inquiry and on that basis P.W.34, Ulaganathan, Inspector, Vigilance and Anticorruption, received a letter from Secretariat letter No.AC.903/1/2001 Public of V & AC, P.E.84/2001/Public Head Quarters / dated 12.11.2001 and conducted preliminary inquiry and found that the appellant was a Member of Legislative Assembly from Valangaiman constituency from 13.05.1996 to 14.05.2001 and a native of Nariyanoor Village, Papanasam Tauk, Thanjavur District. P.W.34, also came to know that the husband of the appellant Thiru.Srivasan was a law graduate but not a practicing advocate and they are having four daughters. The elder daughter Karthiga Pennarasi was studying M.B.B.S., in a private medical college and second and third daughters Arthika and Agasthika were studying P.H.M.S., and the last daughter Monika was studying in a Private Matriculation school at Chennai during the relevant period.

20. P.W.34 had stated that the appellant was in possession of 6 hector of wet lands in her name and also in the name of her husband and daughter and was in possession of a house at Anna Nagar, a Tata sumo car, 50 soverign of jewels and Teakwood grove at Nariyanoor Village and also she built a house in a poramboke land at Nariyanoor worth about Rs.2.5 lakhs and also having bank balance of Rs.50,000/-. As per the salary, allowances and income from agricultural lands she had income of Rs.13,77,923/- and their family expenses, maintenance of car, the monthly installment paid to the housing board, electricity charges were estimated to a sum Rs.14,37,081/-. Hence, the said preliminary investigation revealed that the appellant had excess income of Rs.5,09,158/- during the check period and hence on the basis of the said preliminary enquiry, P.W.34, Inspector registered FIR against the appellant in Crime No.16/2003 under Section 13(2) r/w 13 (1) (e) of the Prevention of Corruption Act, 1988 on 12.08.2003 under Ex.P55.

21. P.W.36, Investigating Officer, conducted a search in the house situated at Possai Thidal at 08.00 a.m., on 13.08.2003 in the presence of P.W.24, Thasildar, Thanjavur and they also recovered documents shown as below:-

1.Ex.P26, R.C.book for the Amabassador Car;

2.Ex.P28, Cheque Book issued to the appellant by the Syndicate Bank;

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3.Ex.P28, Note cotaining the details of the gift given during the housewarming for the Narianoor House;

4.Ex.P29, L.I.C., Policy stands in the name of the appellant's husband;

5.Ex.P31, telephone bil;

6. Ex.P.32, Property tax bill stand in the name of the daughter of the appellant, Karthiga Pennarasi;

7.Ex.P.33, property tax bill stands in another daughter name Arthika;

8.Ex.P34, land tax receipts;

9.Ex.P35 to 42, receipts for the selling of paddy;

10.Ex.P43, sale agreement stands in the name of Karthiga Pennarasi;

11.E.P44, a book containing the details of the members of the assembly during 1996;

12.Ex.P45, Syndicate Bank dairy.

22. P.W.1, Sub Registrar, issued Ex.P1 showing the details of lands possessed by the appellant and her family. P.W.2, Village Administrative Officer, Papanasam issued Ex.P2, Chitta disclosing the lands stands in the name of the appellant and her family members and Ex.P.3, Adangal for the fasly 1400 to 1406 containing the details of lands possessed by the appellant and her family members. P.W.3, the then Executive Officer issued Ex.P4, stating that the appellant had built a house in a poromboke land at Narianoor and the same was not assessed. P.W.4, Executive Engineer exposed that he along with P.W.5, Assistant Executive Engineer and P.W.6, Electrician visited the house at Narianoor on 13.11.2003 on the request of P.W.36 and prepared Ex.P5 and Ex.P6 arriving the cost of civil works is Rs.3,23,045.00 and the electrical work is Rs.36,416.00. P.W.9, TNHB Executive Engineer sent Ex.P10 showing the payment details for the house HIG939 and the file in Ex.P11 to show that the house stood in the name of Karthiga Pennarasi and subsequently that was sold to P.W.7, Nalini. Ex.P8 is the agreement for the said sale.

23. P.W.18, Tahsildar at Papanasam Taluk Office during the period from 21.06.2002 to 28.02.2004 has sent a report to the Vigilance and Anticorruption Wing under Ex.P.19 disclosing that the lands under Patta Nos.46, 105, 593 stands in the name of the appellant and her family members and they had agricultural income of Rs.2,63,466/-. P.W.15, Baroda Bank Officers, issued a statement under Ex.P16 indicating that the husband of the appellant availed a loan of Rs.10,000/- on 19.08.1999 and discharged the same along with interest of Rs.4,559/- on 23.05.2002. P.W.14, Syndicate Bank Officer under Ex.P.15 sent a statement of account showing the balance in the account of the appellant as Rs.99,306.85 including the accrued interest of Rs.1,186/-. P.W.30, Manager, Tamil Nadu Cooperative Bank,

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Mugaperu Branch stated that the appellant and her husband are having a savings bank account and sent a report under Ex.P52. P.W.16, Deputy Director in the Economic and Statistic Department, Chennai issued a report under Ex.P17 about the estimated expenditure for the accused family between the check period. As per the said report the appellant would have incurred Rs.70,691/- and family members of the appellant would have incurred a sum of Rs.3,53,455/-, totally Rs.4,24,146/-.

24. P.W.17, Executive Engineer, Tamil Nadu Electricity Board Ambattur sent the particulars of the consumption charges for the electrical connection No.40-18-68 under Ex.P18 between February 97 to June 2001. P.W.23, Manager at Collector Office at Thanjavur during the year 2001, states about the amount spent by the appellant for her candidature in the asssembly election under Ex.P24.

25. The main contention raised by the prosecution is that the appellant was a Member of Legislative Assembly during the period between 13.05.1996 and 14.05.2001 and during the said period she had acquired and was in possession of pecuniary resources and properties in her name and in the name of her husband, Srinivasan and daughter, Karthiga Pennarasi. After receiving the complaint from the Chief Minister Cell, the Inspector V & AC registered the case in Cr.No.16/03 and submitted report after having investigated. The trial Court after considering the oral and documentary evidence convicted the appellant for the offence under Section 13(2) r/w 13(1) (e) of the Prevention of Corruption Act, 1988.

26. The contention of the learned counsel for the appellant is that the appellant and her family members are having agricultural lands in Papanasam, Thanjavur District, which is a fertile area. Admittedly in the said area there are three crops are harvested i.e., two paddy crops and another one is money crop. While calculating income, the number of crops and harvests are omitted and the rate for the agriculture produce was given at low price. The prosecution wantonly deducted 50% of gross income towards expenses for the cultivation, which is on higher side since the family members of the appellants directly involved in the agricultural work. The actual expenditure is not more than 30%. Even though she is an MLA, her expenses is not much.

27. A careful reading of the records show that the appellant was the Member of Legislative Assembly during the period 1996-2001. As per the evidene of P.W.2, the Village Administrative Officer and the evidence of P.W.18, Tahsildar, the appellant and her family members are having agricultural lands and they are cultivating the same. Though the husband of the

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appellant is a Law Graduate, he is not a practicing Advocate. It is to be noted that the lands of the appellant are situated in Tanjaore District and that too is a fertile area. The prosecution witnesses also did not deny the same. During the year 1996, admittedly, the appellant and her family members are having agricultural lands in Tanjore District and it is Kauveri Delta area and therefore, as per the general guidelines they have to be calculated, but they have not properly calculated the same. Further, the members of the appellant family directly involved in the agricultural lands and the deduction of 50% is not acceptable and it has to be only 30%. It is further stated that the appellant family have got rice for their livelihood from their agricultural land. Therefore, their income must be more and expenses must be less. It is to be noted that the clear cut picture cannot be shown as what was the price for purchasing the second hand car. Further, there is no evidence to show that the Government had taken any action against the appellant for construction of a house in the poramboke land. As per the case of the prosecution the disproportionate amount is Rs.13,22,939.70p. The burden of proof of the appellant is not as that of the prosecution.

28. The Hon'ble Supreme Court while considering the similar case as on hand in the case of ***Kedari Lal Vs. State of M.P and others*** [2015(2) Crimes 142 (SC)] held that if the net excess amount after deducting reported income works out to less than 10% of the totla income, it will not amount to violation of Section 13 (1) (e) r/w Section 13(2) of the PC Act.

29. Admittedly, the family of the appellant has own lands, which are in fertile area and they got income from the said land. From the evidence of the prosecution, this Court finds that the prosecution has not arrived at correct income and also the expenses. It is also found from the records that absolutely there is no evidence to show that there was a drought during the relevant years. They have got the pump sets and bore wells also. The husband of the appellant is non proving advocate and look after the agricultural activities. The prosecution either has examined the husband of the appellant and daughter of the appellant as witnesses or shown as accused. Under these circumstances, the income and expenditure calculated by the prosecution is not just and reasonable. Therefore, this Court finds that the prosecution has not proved its case beyond reasonable doubt. The benefit of doubt would go to in favour of the appellant. Therefore, under these circumstances and considering the facts and circumstance of the case, this Court finds that the prosecution has failed to establish the case beyond reasonable doubt and this Court is inclined to give the benefit of

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doubt in favour of the appellant / accused.

30. In the result, this Criminal Appeal is allowed; the conviction and sentence imposed on the appellant by Judgment dated 29.02.2012, made in Special Case No.6 of 2012, on the file of the Special Court for trial of cases under Prevention of Corruption Act, Trichy, is set aside and the appellant is acquitted. Fine amount, if any, paid by the appellant shall be refunded to him. Bail bond executed by the appellant and the sureties shall stand terminated.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

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To

1.The Inspector of Police,
Vigilance and Anti Corruption Wing,
Thanjavur.

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

3.The Special Judge,
Special court for trial of cases under
prevention of Corruption Act
Trichy.

4.The Superintendent,
Central Prison, Trichy.

5. The Section Officer,Criminal Records,
Madurai Bench of Madras High Court, Madurai. (2 copies)

Pre-delivery Judgment in
Crl.A.(MD) No.34 of 2012
.06.2020

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