BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 18.12.2018

DATE ON WHICH PRONOUNCED: 19.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

CRIMINAL APPEAL (MD).No.76 of 2012
and Crl.M.P.(MD).No.10840 of 2017

J.Leela
W/o.Late Jeganathan
(substituted as per the order of this Hon'ble Court dated 26.11.2014 & made in M.P.1/2014 in Crl.A.(md).No.76 of 2012) : Appellant

Vs.

The State rep by
Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Cr.No.4/AC/2002
Dharmapuri. : Respondent/Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure to call for the records from the Special Court for Vigilance and Anti Corruption Cases, Madurai, Madurai District and to set aside the judgment of Special Court for Vigilance and Anti Corruption Cases, Madurai, Madurai District by acquitting the accused in Special Case No.13/2011, dated 30.03.2012.

For Appellants : Mr.V.Kathirvelu, Sr. Counsel for Mr.K.Prabhu

For Respondent : Mr.K.K.Ramakrishnan Additional Public Prosecutor

JUDGMENT

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Originally, the appellant in this appeal was arrayed as first accused in Special Case No.13/2011 on the file of the Special Court for Vigilance and Anti Corruption Cases, Madurai District. During the pendency of the appeal, the appellant died. The wife of the appellant/2nd accused in Special Case No.13/2011 filed an application in M.P.1/2014 in Crl.A.(md).No.76 of 2012 to grant leave to continue the appeal. This Court, by order dated 26.11.2014, permitted her and directed to continue the appeal.

2.The case of the appellant is that the respondent Police registered a case in Cr.No.4/AC/2002 against the appellant/accused No.1 and four others, based on the complaint, given by the defacto complainant/P.W.22 for the offences punishable under Sections 13 (1)(a), 13(i)(e) r/w 13(2) of Prevention of Corruption Act, 1988. The respondent Police, after investigation, laid a charge-sheet against the appellant/A-1 for the offences punishable under Sections 13(2) r/w 13(i)(e) of Prevention of Corruption Act, 1988 and against the accused Nos.2 to 5, charges were abated. The Special Court, after the trial, found the appellant guilty and convicted him for the offences under Sections 13(2) r/w 13(i)(e) of Prevention of Corruption Act, 1988 and sentenced him to undergo a rigourous imprisonment of 3 years and also imposed a fine of Rs.10,000/-, in default to undergo 3 months simple imprisonment and acquitted the other accused from the charges framed against them. Challenging the said conviction and sentence, the first accused alone filed this appeal. During the pendency of the appeal, the appellant died. Hence, the charges were abated against the appellant. However, the wife of the appellant, who was arrayed as accused No.2 in Special Case No.13/2011, filed an application in Mp.No.1/2014 on the ground that the allegations mentioned by P.W.22 in the petition (Ex.P.24) was baseless and to that effect, no independent witnesses were examined to corroborate the version and report sent by P.W.26. P.W.31, the Investigating Officer has failed to peruse the earlier statements recorded by his predecessor and the further explanation of the appellant/Ex.P.67. P.W.26, Naresh Gupta has not sent the entire report to the Director of Vigilance and Anti Corruption and only he has sent the report of the enquiry. The earliest enquiry with regard to Ex.P.24 was not placed before the Court either by P.W.26 or by the Investigation Officer. The Investigation Officers namely P.Ws.30 and 31 suppressed the known sources of income and assets of the appellant and other accused. The Investigating Officer has simply examined some of the witnesses and calculated the income and explained without any guidelines. The evidence adduced by the prosecution has not satisfactorily proved the charges levelled against the appellant. The agricultural income and the rental income from the year 1965 to the beginning of the check period of the appellant was Rs.51,50,200/-. The documents placed by the appellant to disprove the case of the prosecution was not at all appreciated by the Special Court in this case and also the documents of the defence has not been considered and appreciated by the trial Judge and the trial Judge has simply accepted the case of the prosecution and found the other accused not guilty in this case and acquitted them and the appellant was wrongly convicted. Therefore, the appellant has filed this appeal before this Court, challenging the judgment of the trial court.

3.The case of the prosecution is that the appellant, who was a public servant and was directly recruited as Deputy Superintendent of Police in the Tamil Nadu Police Service in the year 1969 and went upto the rank of Inspector General of Police, Salem Zone on 22.01.1997 and he was in-charge of the Commissioner of Police from 22.01.1997 upto 27.05.2000 and retired from service on superannuation on 30.06.2001. After service, he was recruited as Inspector General of Police, State Human Rights Commission from 30.06.2001. During the tenure of the appellant as Commissioner of Police, Salem City and Inspector General of Police, Salem Zone, from the year 1997 to 2001, he was reportedly indulged in corrupt practices and other illegal activities and acquired properties both movables and immovables disproportionate of his income and hence, the Vigilance & Anti-Corruption Unit, Dharmapuri registered a case in Cr.No.4/AC/2002 for the offence punishable under Sections 13(1)(a), 13(i)(e) r/w 13(2) of Prevention of Corruption Act, 1988 against the appellant and investigated the matter. After the investigation, charge-sheet was filed stating that the appellant, during the check period i.e from 01.01.1998 to 30.06.2001 was said to be in possession of assets disproportionate to his known sources of income to the tune of Rs.33,58,490/- in his name and in the name of his wife Smt.Leela/2nd accused, V.J.Kumaresan, his son/3rd accused, Smt.Rama, his daughter/4th accused and Thiru.Guptalingam, his son-in-law/5th accused. The first accused was charged under Sections 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988 and accused Nos.2 to 5 were charged under Sections 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988 r/w 109 I.P.C for having abetted the appellant. On 30.08.2005 itself, as per the order of the Madras High court, the case was transferred from the file of the Chief Judicial Magistrate Court, Krishnagiri to Chief Judicial Magistrate Court, Madurai and the learned Special Judge, Madurai, has taken the case on file in Special Case No.2/2005. The learned Special Judge, after completing the formalities, framed the charges against the appellant under Sections 13(2) r/w 13(i)(e) of Prevention of Corruption Act, 1988 and against the accused 2 to 5 under Sections 13(2) r/w 13(i)(e) of Prevention of Corruption Act, 1988 r/w Section 109 of I.P.C.

4.In order to prove the case of the prosecution, on the side of the respondent/prosecution, 31 witnesses were examined as P.Ws.1 to 31 and 67 documents were marked as Exs.P.1 to 67, besides two material objects were marked as Mos.1 and 2.

5.After examining the prosecution witnesses, when the accused were questioned about the incriminating circumstances appear against them, they denied the same as false. On the side of the appellant, no oral evidence was let in and only 15 documents were exhibited as Exs.D.1 to D.15.

6.The Special Judge, after completing the trial, after hearing the arguments of both sides, convicted the appellant under Sections 13(2) r/w 13(i)(e) of Prevention of Corruption Act, 1988 and acquitted him from other charges. Hence, the appellant is before this Court. During the pendency of this appeal, he died and hence, charges are abated. However, the second accused, his wife wanted to continue the appeal. Since this matter involves the character assassination of the appellant and his family, the second accused was permitted to continue the appeal.

7.Learned counsel for the appellant submitted that the appellant was a retired I.P.S Officer and he sent intimations with respect to his property statements of various years and mandatory returns in accordance with All India Services (Conduct) Rules, 1968 from time to time. P.W.31-Deputy Superintendent of Police has very clearly deposed in his cross-examination that the accused was holding only one house and a land to the extent of 4 acres 33 cents which are shown in the charge-sheet. During the check period, in between 01.01.1998 to 30.06.2001, for the 42 months, no transaction was made and each and every monitory transaction and handling of cash by the appellant himself had been duly intimated as per All India Services (Conduct) Rules, 1968. In the explanation-Ex.P.67, the appellant on 25.09.2003, has given all the details regarding the acquisition of property and all the transactions mentioned in the various schedules placed in the charge-sheet. But, the Investigating Officer has not accepted the explanation given by the appellant and the same is violative of the ratio laid down by the Hon'ble Apex Court in the case of ***Deputy Superintendent of Police Vs. Inbasagaran reported in 2006 (1) SCC 420***. In the explanation to Section 13(1) (e) of Prevention of Corruption Act, it is very clear for the purpose of this section "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, laid down by this Court and the Hon'ble Apex Court and also in the Acts, rules or orders for the time being applicable to the public servant. The appellant also intimated all pecuniary resources as per All India Services (Conduct) Rules, 1968. As per the dictum laid down by the Hon'ble Apex Court in **Nallammal Vs State reported in 1999 SCC (Crl) 1133**, "known sources of income" should be by any lawful source and receipt of such income should have been intimated by the public servant in accordance with law applicable to him". It is also clearly applicable to the present case on hand that the Investigating Officer as well as the Special Court has not applied their minds and not appreciated the explanation submitted by the appellant and also the property statements of accounts submitted during his service before the department. As per the ratio laid down by the Hon'ble Apex Court in **Kanwarjith Singh Kakkar Vs.**

State of Punjab and another (SC) reported in (2011) 6 SCR 895 in para No.15, the Hon'ble Apex Court has held as "But the most important and vital check before a public servant can be booked under the Prevention of Corruption Act, the ingredients of the offence will have to be deduced from the facts and circumstances obtained in the particular case".

8.Learned counsel for the appellant would further submit that in the G.O.(D).No.376, dated 30.04.1996, which was recorded in page No.88 of the explanation-Ex.P.67 called for from the appellant that the purchase value of the property is Rs.1,91,700 and Rs.50,850/-. But, P.W.26, then Home Secretary to the Government of Tamil Nadu in the year 2001-2002 claims that the above land was purchased for Rs.65,00,000/- without any record. Unfortunately, the same has been accepted by the Court below and hence, the said finding of the court below is liable to be set aside. He would further submit that even without conducting a preliminary enquiry also not producing a copy of the preliminary report to the appellant, they have registered the case and. It is also violative of the law laid down by the Hon'ble Apex Court in the above cases. P.W.31, without examining any other witnesses and without perusing the statements recorded under Section 161(3) Cr.P.C by his predecessors, has deposed before the Court and chosen to send the statements of P.Ws.1 to 6 to the appellant on 02.09.2003 along with the letter of final opportunity for his explanation. The appellant furnished his reply on 25.09.2003. Stating that explanation given by the appellant did not satisfy him, P.W.31, filed the charge-sheet against the appellant and other family members on 28.02.2005 before the Chief Judicial Magistrate, Krishnagiri. The witness P.W.30, knowing fully well that the occurrence took place in Salem as indicated in printed F.I.R/Ex.P.26, obtained warrant from the Chief Judicial Magistrate at the jurisdictional point. But without any authenticated search warrant, they have not only searched the premises of the appellant but also the houses of the son and daughter of the appellant. He would also submit that the appellant has got independent source and he has shown assets and liabilities before the department concerned. The second accused/wife of the accused has got an independent source. Therefore, her assets cannot be clubbed with the appellant's assets and like that A-3/son of the appellant and A-4-daughter of the appellant have got independent source of income for purchasing properties. Like that, A-5, appellant's son-in-law, who is the husband of A-4 and was working as a scheduled contractor, has got independent source to purchase the property and for constructing the houses. The Investigating Officer has failed to consider all these facts and also the explanation given by the appellant and he clubbed all the properties and wrongly stated that accused Nos.2 to 5 are not having any independent source and the appellant alone has purchased the property in the name of his wife and their children and son-in-law and constructed houses. He would further submit that, without any evidence and no legal propositions, under these circumstances, the trial court has failed to consider the legal and factual positions. Though they rightly acquitted the other accused, wrongly convicted the appellant alone. In order to support the case of the appellant, he has placed reliance on the following decisions:-

i)**Deputy Superintendent of Police, Chennai Vs. Inbasagaran, reported in 2006 (1) SCC 420**

ii)Kanwarjit Singh Kakkar Vs State of Punjab and Another reported in [(2011) 13 SCC 158]

iii)**P.Sirajuddin, Etc Vs State of Madras, ETC, reported in [1970 SCC (Cr) 240]**

iv)**Lalita Kumari Vs. Government of Uttar Pradesh and Others reported in [(2014) 1 SCC (Crl) 524]**

v)**State of Maharashtra Vs Pollonji Darabshaw Daruwalla reported in [1988 SCC (Cri) 91]**

vi)**State of Maharashtra Vs. Wasudeo Ramchandra Kaidalwar reported in [(1981) 3 SCC 199]**

vii)**Kedari Lal Vs State of Madhya Pradesh and Others reported in [2015 (4) SCALE]**

viii)**Krishnanand Agnihotri Vs. State of Madhya Pradesh, reported in AIR 1977 SCC 796**

ix)**State by Lokayuktha Police Vs. H.Srinivas, decided, in Crl Appeal Nos.775-779/2018, on 18.05.2018**

x)**Siddappa M.Poojari Vs State of Karnataka, decided, in Crl Appeal 388/2011, on 21.03.2017**

xi)**State Inspector of Police, Visakhapatnam Vs Surya Sankaram Kurri, reported in [2006 (3) Crimes 316 (SC)]**

xii)**P.Nallammal and another Vs. State represented by Inspector of Police reported in 1999 SCC (Cri) 1133**

9.Learned Additional Public Prosecutor appearing for the respondent would submit that the appellant was appointed as Deputy Superintendent of Police on 01.01.1969 and promoted as Superintendent of Police on 13.05.1981. After becoming the Superintendent of Police, then only the appellant's post was upgraded and included in the All India Services. The assets were acquired by the family members either by inheritance or from out of their own funds. The appellant's wife Mrs.Leela purchased a property in Sy.Nos.116, 140/1, 140/3 and 138/1 to the extent of 26 acres and 56 cents at Viralipatti Village, Nilakkottai Taluk in Dindingul District on 04.05.2001 for the value of Rs.89,539/-. However, the wife of the appellant is house wife since from the date of their marriage and she has no independent source of income. Hence, the plea of purchasing the properties to the tune of about Rs.2 lakhs is baseless. Further, on the date of purchase of the properties, either of the family members have any independent income/neither she acquired by inheritance nor own source of income to acquire the properties in their name. The appellant's salary was Rs.1,65,825/- per annum. Since the appellant did not have any inheritance nor independent source of income, the exemption of sub-rule (3) and (4) of All India Service Rules and Section 13(i)(3) of P.C Act are not applicable. Further, he would submit that the intention of the appellant is to legalize the disproportionate income of purchasing 26.56 acres and for that he sent information to the higher authority and the same was recorded and ordered in G.O.Ms.No.376, Home (Police.1A) Department, dated 30.04.1996, which is also marked as Ex.P.35. It shows manifestly the intention of the appellant to legalize the purchase of property by his wife, though she has purchased the property either by inheritance or own source of income. Hence, it is clear that the appellant had clandestinely acted to convert the sources of property by justification. Therefore, the plea that the wife of the appellant has got independent source to purchase the property is not acceptable. Hence, accepting the charge-sheet filed by the Investigating Officer, the trial court has rightly rejected the explanation given by the appellant.

10.Learned Additional Public Prosecutor appearing for the respondent would further submit that the explanation offered by the appellant that the properties stand in the name of his daughter/4th accused and son-in-law/5th accused were acquired from their own funds either through agricultural or through contractual works or by themselves is not appropriate in this case, since the appellant's daughter/4th accused had not obtained any property either before or after her marriage and did not have any independent source of income as she was a house wife at the relevant point of time. Further, in order to elucidate the source of income of the 4th accused, no oral or documentary evidence was let in. Hence, it is clear that the point for consideration raised by the appellant is unsustainable either in law or on facts. Though it is stated that the son-in-law, fifth accused is a Scheduled Contractor and doing work for nearly about 6 crores, he has not produced any account for the same. Admittedly, he is not an income tax assessee.

11.Regarding the non-submission of the preliminary enquiry report to the appellant, the learned Additional Public Prosecutor appearing for the respondent would further submit that after receiving the complaint from P.W.22-Mr.Ramachandran, P.W.26-Mr.Naresh Gupta, then Home Secretary to Government of Tamil Nadu, conducted a discreet preliminary enquiry to ascertain the prima facie case as to whether the case has to be proceeded after registration of F.I.R and after conducting a discreet preliminary enquiry, P.W.26 has forwarded the complaint to the Director of Vigilance and Anti-Corruption, Chennai for necessary action. He is a high dignitary and he has no personal animosity against the appellant. The trial Court has also accepted the reason given by the prosecution that it is only a discreet preliminary enquiry to find out the prima facie case. Therefore, non-submitting of discreet enquiry report is not a ground to disallow the case of the prosecution. Further, he would submit that the Hon'ble Apex Court has held in the case of ***Prakash Singh Badal Vs State of Punjab reported in (2007) 1 SCC Crimes*** that at the stage of registration of the crime or a case on the basis of the information non-disclosing a cognizable offence in compliance with the mandates of Section 154(1) of the Cr.P.C, the concerned Police Officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuses to register a case on the ground that the information is not reliable or credible. On the other hand, the Officer in charge of the Police Station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence for which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157 thereof. Following the said guidelines laid down by the Hon'ble Apex Court, in this case also, after receiving the complaint from P.W.22, P.W.26 conducted a discreet enquiry and since there was prima facie case, he forwarded the complaint to the Director of Vigilance and Anti-Corruption, Chennai for consideration. Therefore, he would submit that mere non-sending of the report of discreet enquiry to the appellant did not vitiate the case of the prosecution.

12.The learned Additional Public Prosecutor appearing for the respondent would further submit that when the second accused/wife of the appellant/2nd accused purchased the properties out of her individual income, what is the necessity for the appellant to send the particulars of sale to his higher authorities and incorporated in his family properties. Further, the Schedule would show that the act of the appellant is to legalize the purchase of the property by his wife clandestinely, who has no independent income. The trial court also found that the second accused did not have any independent income to purchase the alleged property, since she was a house wife.

13.The learned Additional Public Prosecutor appearing for the respondent would further submit that the agricultural income mentioned by the appellant was an imaginary one. It can be seen by perusing the evidence of P.Ws.8, 18, 19 and 20 and the trial court also found that the income mentioned by the appellant seems to be a huge one. But the appellant has not proved the agricultural income either by way of producing any oral evidence or any documentary evidence. The prosecution noted Rs.2,95,260/- as the agricultural income of the accused, as per the statement III in serial No.4. It was also admitted by the accused before the trial court by submitting the written annexure in statement III at serial No.4. Therefore, it shows that the agricultural income was taken into consideration by the trial court. With regard to the purchase of car and expenses towards the maintenance of car, he would submit that it was not intimated to the Government of Tamil Nadu, as per the provisions enumerated in the rules. Hence, the purchase of car is not intimated for the actual purchase value and expenditure incurred for the maintenance of the car. Hence, it is clear that the value of the car and the maintenance charges towards the car was not properly explained before the Court and the appellant did not prove the value by producing proper documents and accounts. Further, he would submit that expenses made to the car was met by way of Travelling Allowance by the appellant and the car was not used for official purpose. Hence, the claim for travelling allowance, which has been used for the purpose of expenses, is not at all considerable one. This only shows that the claim made by the appellant is not a bonafide one. The prosecution has proved its case beyond any reasonable doubt. Though the trial court has accepted the version of the prosecution and also the explanation offered by the defence, convicted the appellant for the offences under Sections 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988 and sentenced him to undergo 3 years rigorous imprisonment and also imposed a fine of Rs.10,000/- in default to undergo 3 months simple imprisonment. Further, other accused persons were acquitted from the charges framed against them. Hence, the appellant was working in the superior rank, in order to escape from the clutches of law, this appeal has been filed. Since the appellant died during the pendency of this appeal, the charges against him are abated. However, the second accused continued this appeal. Hence, there is no merit in the appeal and the same is liable to be dismissed.

14.The learned Additional Public Prosecutor appearing for the respondent would further submit that the trial court has rightly held that the second accused has no independent source of income to purchase the property. Therefore, the documents in the name of the second accused are liable to be confiscated and could not be returned. Therefore, the petition in Crl.M.P.(MD).No.10840 of 2017 filed by the appellant is also liable to be dismissed.

15.Heard both sides and perused the records carefully.

16.Admittedly, it is the case of the prosecution that the appellant was a public servant. He was recruited as Deputy Superintendent of Police in the Government of Tamil Nadu in the year 1969 and he had gone upto the rank of Inspector General of Police at Salem Zone on 22.01.1997 and he was in-charge of the Commissioner of Police, Salem City from 22.01.1997 to 03.07.2010 and retired from service on superannuation on 30.06.2001. After serving as Commissioner of Police, his service was extended on 30.06.2001. On the basis of the information, during his tenure of service as Commissioner of Police, Salem City and Inspector General of Police, Salem Zone, he has repeatedly indulged in acquisition of assets both movables and immovables disproportionate to his known sources of income. Hence, a case was registered against him in Cr.No.4/AC/2002 for the offences punishable under Sections 13(1)(a), 13(i)(e) r/w 13(2) of Prevention of Corruption Act, 1988. During the investigation, the Investigating Officer examined 49 witnesses and recorded their statements and collected 67 documents. After the investigation and also finding that the appellant indulged in acquisition of assets and liabilities disproportionate to his income, as per schedule I to VI, as mentioned herein below,

Statement-I

Assets that stood to the credit of the Accused Officer and his dependent at the beginning of the Check period as on 01.01.1998

Sl.No.	Assets	Value	Witnesses to speak	Document No.
1.	Acquired by inheritance a Terraced house having D.No.5-1-38 South Street, Batlakundu with an extent of 2284 Sq.ft. by AO. Recorded vide D.Dis.No.12476/GB-I/4/96, dated 09.05.96 of DGP, Chennai.	-	W-20, 23 & 37	D-21 & 23.
2.	Acquired by inheritance 4.33 acres of land in Batlakundu S.No.791 & 792 by family agreement deed dated 01.01.1996 by AO. Recorded vide D.Dis.No.12476/GB-I/4/96, dated 09.05.1996 of DGP, Chennai.	-	W-20, 23 & 37	D-21 & 23

3.	Purchased lands measuring 26.56 acres in S.No.116, 140/1, 140/3 and 138/1 of Viralipatti Village vide Doc.No.1642/95, dated 30.08.1995 on the name of AO's wife Tmt.J.Leela. Recorded vide G.O.(D).No.376 Home (Police-IA) Department, dated 30.04.1996.	-	W-20, 16, 17, 18 & 19	D2 & 23
4.	Gold Jewels about 100 sovereigns were gifted to the wife of AO during their marriage on 27.03.1966. Out of which 49 ¾ sovereigns of gold jewels were gifted to AO's daughter Tmt.Rama during her marriage on 06.06.1988.	-	D-20 & 39	D-64
5.	AO purchased an Ambassador Car bearing Registration No.TNT 1771 on 03.08.1979 for Rs.15,000/-. Purchase was recorded vide L.Dis.No.113502/GBI(3)/ 1979 of DGP, Chennai, dated 10.09.1979. The engine of the Car was replaced with diesel engine on 16.02.1993. The cost of the engine was Rs.61,630/-.	76,630.00	W-20 & 37	D-26
6.	AO purchased an Air Conditioner on 07.06.1989 for Rs.24,892.73. The above purchase was recorded in GO.RT.No.2592 Home (Police-I) Department, dated 11.08.1989.	-	W-20 & 48	D-25 & 64

7.	AO purchased a Symphony air cooler on 16.04.1990 for Rs.4,730/-.	-	W-20	D-64
8.	AO purchased a vacuum cleaner Sureka Forbes Limited, Salem for Rs.3,990/- on 17.08.1990.	-	W-20	D-64
9.	AO purchased a Solidare Television for Rs.7,750/- on 25.09.1984. Recorded vide GO R.T.No.1149, Home Police-I, Department, dated 13.03.1985.	-	W-20 & 48	D28 & 64
10.	AO purchased a National Panasonic Tape recorded vide K.Dis.No.177515/GBI/81 of DGP, Chennai.	-	W-20 & 37	D-29 & 64
11.	AO's father-in-law gifted Cot, Dining table etc. during the marriage of AO during 1966.	-	W-20	D-64
12.	AO purchased Silk Sarees and clothings etc worth Rs.10,000/-	-	W-20	D-64
13.	AO purchased a Canon Camera for Rs.1,500/- during the year 1981.	-	W-20	D-64
14.	AO purchased a second hand SBBL gun for Rs.1,400/- on 29.11.1973.	-	W-20	D-64
15.	AO purchased Yamaha Motor Cycle bearing registration No.TN-59-D8178 on the name of his son Tr.V.J.Kumaravel for Rs.37,343/- on 13.06.1994. Recorded vide GO(2D)No.163 Home (Police-I), Department, dated 21.11.1994.	-	W-20 & 38	D-30 & 64

16.	AO purchased a Leonard Refrigerator with voltage stabilizer and stand during 1982 for Rs.5500/-. Recorded vide K.Dis.No.1042491/GB-I (4)/82 of DG of Police, dated 7/82.	-	W-20	D-31 & 64
17.	AO purchased 5 ½ years Kissan Vikas Patram 4 Nos. each Rs.10,000/- and one for Rs.5000/- on 24.02.1993 at HPO, Villupuram 00CC315917 to 920 and 315246.	45,000-00	W-20	D-64.
18.	AO purchased 3 NSC certificates each for Rs.1000/- and 2 NSC certificates each for Rs.10,000/- on 10.02.1993 at HPO, Villupuram. 6NS/12CC 351809 to 6NS/12CC 351811 and 6NS/12FF430083, 430084	23,000-00	W-20	D-64.
19.	AO purchased 2 NSC for each Rs.10,000/- and one NSC for Rs.5,000/- at HPO, Palani on 10.03.1994 vide certificate No.001167 and 168 and 232333. Recorded in GO(2D) No.161, Home(Pol.I), Department, dated 21.11.1994.	25,000-00	W-20	D47 & 64
20.	The AO was having a balance of Rs.12,995/- as on 01.01.1998 at SBI, Salem under Saving Bank A/c No.32750	12,995-00	W-20 & 49	D47 & 64

21.	A sum of Rs.2,52,634/- was deposited under Special Term Deposit on the name of Tmt.J.Leela for 39 months at SBI, Ganguvarpatti on 16.09.1997. Vide Certificate No.SD A/10 772705	2,52,634-00	W-20 & 46	D64 & 67
22.	A sum of Rs.1,51,580/- was deposited under Special Term Deposit on the name of Tmt.J.Leela for 39 months at SBI, Ganguvarpatti on 16.09.1997. Vide Certificate No.SD A/10 772704	1,51,580-00	W-20 & 46	D64 & 67
23.	A sum of Rs.2,30,966.80 stood in the name of Tmt.J.Leela with SBI, Salem in PPF A/c No.19/2026 as on 01.01.1998	2,30,966.80	W-20, 47 & 49	D-72 & D79
	Total Rs.	8,17,805-80		

Statement-II

Assets that stood to the credit of the Accused Officer and his dependent at the end of the Check period as on 30.06.2001

Sl.No.	Assets	Value	Witnesses to speak	Document No.
1.	Acquired by inheritance a Terraced house having D.No.5-1-38 South Street, Batlakundu with an extent of 2284 Sq.ft. by AO. Recorded vide D.Dis.No.12476/GB-I/4/96, dated 09.05.96 of DGP, Chennai.	-	W-20, 23 & 37	D-21 & 23.

2.	Acquired by inheritance 4.33 acres of land in Batlakundu S.No.791 & 792 by family agreement deed dated 01.01.1996 by AO. Recorded vide D.Dis.No.12476/GB-I/4/96, dated 09.05.1996 of DGP, Chennai.	-	W-20, 23 & 37	D-21 & 23
3.	Purchased lands measuring 25.56 acres in S.No.116, 140/1, 140/3 and 138/1 of Viralipatti Village vide Doc.No.1642/95, dated 30.08.1995 on the name of AO's wife Tmt.J.Leela. Recorded vide G.O.(D).No.376 Home (Police-IA) Department, dated 30.04.1996.	-	W-20, 16, 17, 18 & 19	D2 & 23
4.	AO purchased 1980 Sq.ft. of house plot No.13 in MMJ Nagar, Survey No.156/8B & 8C on 04.05.2001 in the name of his wife Tmt.J.Leela, vide Doc.No.1703/2001, dated 04.05.2001 Land cost = 79,200-00 Stamp Paper = 5,600-00 Cash collected =3,904-00 Regn. Fees. = 835-00 ------------------- 89,539-00	89,539-00	W-20 & 42	D35 & 64

5.	Gold jewels weighing 110 ¼ sovereigns. Out of which 50 ¼ sovereigns received from the father-in-law of the AO during AO's marriage on 27.03.1966. AO claimed that he received 30 sovereigns as gift during his 60th year birthday on 15.06.2000 and the remaining 30 sovereigns purchased after the marriage of AO's daughter on 06.06.1988. Gift during AO's marriage / 50 sovereigns on 1966. Gift on 60th birthday on / 30 sovereigns on 15.06.2000. Purchase of 30 sovereigns / 30 " after the marriage of AO's / daughter	90,000-00	W-20	D-64

6.	AO purchased a Ambassador Car bearing Registration No.TNT 1771 by AO on 03.08.1979 for Rs.15,000/-. The engine of the Car was replaced by a diesel engine which was purchased for Rs.61,630/- on 16.02.1993. The above engine was sold for Rs.40,000/- and a new engine was purchased for Rs.70,000/- on 01.05.2000. Total cost of the Car is Rs.1,06,630/-. The charge of engine was recorded by G.O.(2D) No.256 Home (Police-IA) Department, dated 16.08.2000.	1,06,630-00	W-20 & 41	D24 & 64
7.	AO constructed a house in the plot No.101, Paramasamy Thevar Street, Narayanapuram West, Madurai from 10.01.2001 to Sep. 2001 on the name of his son-in-law Tr.P.S.Kuthalingam. The house was evaluated by the Executive Engineer, PWD (building maintenance) Madurai and furnished the value Rs.27,30,000/-	27,30,000-00	Ws-20, 23, 40, 43, 59, 63, 65, 66, 70 & 72	D.Nos.36, 52, 60, 61, 63, 65 & 66.
8.	AO purchased an Air Conditioner on 07.06.1989 for Rs.24,892.73. The above purchase was recorded in GO.RT.No.2592 Home (Police-I) Department, dated 11.08.1989.	-	W-20 & 48	D-25 & 64

9.	AO purchased a Symphony air cooler on 16.04.1990 for Rs.4,730/-	-	W-20	D-64
10.	AO purchased a vacuum cleaner Sureka Forbes Limited, Salem for Rs.3,990/- on 17.08.1990.	-	W-20	D-64
11.	AO's purchased a Solidare Television for Rs.7,750/- on 25.09.1984. Recorded vide GO R.T.No.1149 Home Police-I Department, dated 13.03.1985.	-	W-20 & 48	D28 & D-64
12.	AO purchased a National Panasonic Tape recorder for Rs.3,000/- on 20.08.1981. Recorded Vide K.Dis.No.177515/GBI/81 of DGP, Chennai.	-	W-20 & 37	D-29 & 64
13.	AO's father-in-law gifted Cot, Dining table etc. during the marriage of AO during 1966.	-	W-20	D-64
14.	AO purchased Silk sarees and clothings etc worth Rs.10,000/-.	-	W-20	D-64
15.	AO purchased a Canon Camera for Rs.1,500/- during the year 1981.	-	W-20	D-64
16.	AO purchased a second hand SBBL gun for Rs.1,400/- on 29.11.1973.	-	W-20	D-64

17.	AO purchased Yamaha Motor Cycle bearing Reg.No.TN-59-D8178 on the name of his son Tr.V.J.Kumaravel for Rs.37,343/- on 13.06.1994. Recorded vide GO(2D)No.163 Home (Police-I) Department, dated 21.11.1994.	-	W-20 & 38	D-30 & D-64.
18.	AO purchased a Leonard Refrigerator with voltage stabilizer and stand during 1982 for Rs.5500/-. Recorded vide K.Dis.No.1042491/GB-I (4)/82 of DG of Police, dated 7/82.	-	W-20	D-31 & 64.
19.	AO commenced a fixed deposit account on the name of his wife vide A/c No.29/01 and certificate No.609788 on 24.04.2001 at Karnataka bank, Madurai.	3,664-00	W-20 & 59	D-64 & 76
20.	AO deposited Rs.9,51,640-00 under fixed deposit scheme on the name of his wife vide A/c No.28/2001 and Certificate No.609787 on 23.04.2001 in Karnataka Bank at Madurai.	9,51,640-00	W-20 & 59	D-64 & 39
21.	AO purchased 3 NSC certificates No.20EE 782238 to 20EE 782240 each for Rs.10,000/- at Post Office, Hasthampatti on 13.02.1999.	30,000-00	W-78	D-27

22.	AO purchased a motorized Treadmill CP 3712 on 21.12.1998 for Rs.35,000/- from M/s.Shagun Health Products (P) Ltd. 20 Montieth Road, Egmore, Chennai- Recorded vide G.O.2(D) No.38, Home (Pol.I), dated 05.02.1999.	35,000-00	W-20	D-64
23.	AO operated a saving bank Account in A/c No.01190 1032750 at SBI, Vinayaga Nagar, Madurai on 28.06.2001. The balance amount as on 30.06.2001	3,56,830-00	W-62	W-73
	Total Rs.	43,93,303-00		

Statement-III

<u>Income of the Accused Officer and his dependent during the Check period between 01.01.1998 and 30.06.2001</u>

Sl.No.	Particulars	Amount received	Witnesses to be speak	Document No.
1.	Pay, allowance, SLS arrears etc. received from the District Treasury, Salem as Commissioner of Police, Salem City from 01.01.1998 to 24.05.2001.	9,47,506-00	W-53	D-42
2.	Pay and allowance received for the month of June, 2001 by AO from Human Rights Commission, Chennai.	25,719-00	W-70	D-44

3.	House rent received for the house at 5-1-38 of Batlagundu for the period from 01.01.1997 to 30.06.2001.(Rs.900/- per month) by the AO.	37,800-00	W-20 & 85	
4.	Agriculture income derived from 4.33 acres of lands in S.No.791, 792 of Batlagundu Village by the AO furnished by the Assistant Director of Agriculture, Nilakottai	2,95,260-00	W-20 & 81	D-45
5.	AO received maturity value of Kissan Vikas Patra in No.00CC 335917, 335918, 335919 and 335920 on 23.08.1998 for Rs.45,000/- at HPO, Villupuram.	45,000-00	W-44	D-64
6.	AO received maturity value of NSC certificates bearing Regn.No.430083, 430084, 351809 to 351811 on 10.02.1999 from HPO, Villupuram for Rs.23,045/-	23,045-00	W-44	D-64
7.	AO received maturity value of NSC certificates No.0201167 & 0201168 and 232333 on 10.03.2000 from HPO, Palani for Rs.25,375/-. Recorded vide G.O.2(D) 161 Home (Pol.IA) Department, dated 21.11.1994.	25,375-00	W-45	D-33
8.	Income through maturity value of PPF Account No.19/2026 stood on the name of Tmt.J.Leela on 09.04.1998 from SBI, Salem for Rs.27,095.20	27,095-20	W-20 & 49	D-49

9.	A sum of Rs.4,04,214/- was deposited by AO on the name of his wife and son on 16.09.1997 vide receipt No.SD A/10 772704, 705. The deposits matured on 14.12.2000 and maturity amount of Rs.5,93,601/- was received by the AO. Total interest amount received.	1,89,387-00	W-20 & 46	D-67 & 68
10.	Housing loan received from Karnataka Bank on the name of Tr.P.S.Kuthalingam for the construction of house by the AO during January, 2001.	10,00,000-00	W-23 & 59	D-52
11.	Income earned through interest for the SB Account No.32750 in the name of AO with SBI, Salem Rs.17,604-70	17,604-70	W-49	D-47 & 54
12.	Interest on Term Deposit in A/c No.47062 in Karnataka Bank Divya Towrs, Salem	5,460-00	W-49	D-47 & 54
	Total	26,39,251-90		

Statement-IV

Expenditure of the Accused Officer and his dependent during the Check Period between 01.01.1998 and 30.06.2001

Sl.No.	Particulars	Amount paid	Witnesses.	Document No.
1.	Family consumption expenditure for the period from 01.01.1998 to 30.06.2001.	71,398-00	W-82	D-55

2.	Charge paid for the BPL Cell Phone No.74455 for the period from 09.09.1999 to 18.05.2001 by the AO including deposit, activation charge and Sim charge for Rs.18,601-00.	18,601-00	W-86	D-56
3.	Deposits paid to Electricity Department for getting 4 services under Self Finance Scheme at the rate of 25,125 on 15.05.1999. A borewells for the borewells at Viralipatti. Rs.1,02,600/- +Rs.9984/- =1,12,584-00	1,12,584-00	W-64	D-38
4.	Purchase 4 electric motors and accessories during 5/99 for Rs.83,500/-	83,500-00	W-20, 64 & 84	D-80
5.	Electricity charge paid for the service No.453/H9 for the period from 01.01.1998 to 8/9 for the rented house at Salem by A.O.	22,562-00	W-83	D-59

6.	Electricity charge paid for Service No.696/H16 for the period from 9/99 to 5/001 for the residence of Commissioner of Police of Salem City for Rs.17,216/- by AO.	17,216-00	W-83	D-59
7.	Purchasing of materials for Drip irrigation from Surnam Pillai and Sons, Dindigul for Rs.30,000/- on 13.12.1999 by AO	30,000-00	W-20 & 57	D-62
8.	Maintenance of Car TAT 1771 for the period from 01.01.1998 to 30.06.2001 for Rs.84,000/-	84,000	W-20	
9.	Expenditure for the celebration of 60th year birth day of the AO on 15.06.2000	10,000-00	W-20	
10.	AO has given Rs.3,20,000 to his daughter Tmt.Rama for purchase of Blue Metal Crusher during 2/2001 as per family agreement deed, dated 28.02.2001	3,20,000-00	W-20	

11.	AO's wife Tmt.Leela has given Rs.2,20,000/- to her daughter Tmt.Rama for the purchase of Blue Metal Crusher during Feb. 2001 as per family agreement deed, dated 28.02.2001.	2,20,000-00	W-20	D-63
12.	Spent Rs.11,77,445/- for the construction of the house during 1998-99 in the name of AO's daughter.	11,77,445-00	W-20	D-37
13.	A loan of Rs.3,00,000/- was received in the name of Tmt.J.Leela in A/c No.01590042460 and a sum of Rs.3,06,426/- was repaid and date of closure of loan on 31.10.1998.	6,426-00	W-20 & 49	D-50
14.	Expenditure towards payment of monthly instalment of housing loan with Karnataka Bank at the rate of Rs.18,550/- per month from 1/2001 to 6/2001	92,750-00	W-59	D-52
15.	Land tax paid for the lands stand on the AO and his wife Tmt.J.Leela for the period from 01.01.1998 to 30.06.2001	115-48	W-55 & 56	

16.	House tax paid for the house in Door No.05-01-1938 for the period from 01.01.1998 to 30.06.2001 by the AO	2,138-65	W-77	D-78
17.	AO has got electricity connection in S.C.No.529 under on 04.04.2001 on the name of his son-in-law P.S.Kuthalingam and paid Rs.2,500/- as SD and Labour charges on 04.04.2001 deposit Rs.600/-, CCD amount Rs.750/- and electricity charge Rs.453/-.	4,303-00	W-60 & 69	D-61
18.	AO has spent Rs.68,250/- for digging 4 borewells for a depth of 400 ft, 300 ft, 320 ft and 220 ft for a cost of Rs.40/- per ft. upto 300 ft. and Rs.45.- per ft. above 300 in the lands at Viralipatti Village.	68,250-00	W-84, 87	D-81
19.	AO has remitted Income Tax on 15.02.1999 through chalan for Rs.46,585/-	46,585-00	W-53	D-42

20.	AO has remitted Income Tax for the years 97-98 and 98-99 for Rs.34,370/-	34,370-00	-	D-82
	Total Rs.	24,22,244-13		

Statement-V

Assets at the end of Check period i.e. 30.06.2001	:	43,93,303-00
Assets at the beginning of the check period i.e. 01.01.1998	:	8,17,805-80
Assets acquired during the check period	:	35,75,497-20

Statement-VI

Income during the check period	:	26,39,251-90
Expenditure during the check period	:	24,22,244-13
Likely savings	:	(-) 2,17,007-77

Disproportionate Assets

Assets acquired	:	35,75,497-20
Likely savings	:(-)	2,17,007-77
Disproportionate Assets	:	33,58,489-43

Rounder about Rs.33,58,490/-

i.e. : $\frac{33,58,490 \times 100}{26,39,251}$

D.P. Assets = 127.25%

the prosecution has also laid a charge-sheet against the appellant for the offences under Sections 13(2) r/w 13(i)(e) of Prevention of Corruption Act, 1988 and also against their family members viz., wife, son, daughter and son-in-law, who are also shown as A-

2 to A-5 in the said case under Sections 13(2) r/w 13(i)(e) of Prevention of Corruption Act, 1988 r/w Section 109 of I.P.C and for the charges, check period was fixed from 01.01.1998 to 30.06.2001.

17.Based on the charge sheet and after completing all the formalities, the learned Special Judge has framed charge against the appellant and also against their family members for the offences under Sections 13(2) r/w 13(i)(e) of Prevention of Corruption Act, 1988 r/w Section 109 of I.P.C. In order to substantiate the charges framed against the appellant, out of 49 witnesses, the prosecution has examined 31 witnesses and marked 67 documents and exhibited Mos.1 and 2. After receipt of the complaint, the houses of the appellant, his son, daughter were also searched and after obtaining a direction of the Court, certain documents were recovered. Further, in order to substantiate their claim, the defacto complainant one Ramachandran, who was working as Chief Reporter in Kalaikathir Daily Newspaper, was examined as P.W.22. He has spoken about the character of the appellant and also the fact that while he was working as Superintendent of Police, he indulged in various corrupt practices. Hence, he sent a complaint against the appellant through the Home Secretary, Government of TamilNadu, Secretariat, Chennai. Subsequently, in order to ascertain the assets and liabilities, apart from the salary, source of income of the appellant and also the source of income of the family members, they examined the following prosecution witnesses:-

"P.W.1: Venkatraman

He was working as a chief administrative officer in D.G.P. Office, Chennai. He speaks about the family settlement held on 01.01.1996 in respect of order of then DGP dated 09.05.1996(Ex.P.3).

P.W.2: Tamilarasan

He was working as an Assistant in the District Registrar Office, Dindigul. He speaks about the acquisition of property in the year 1995 and its Registration, dated 30.08.1995.

P.W.3: Shanmugam

He was working as a Assistant Revenue Officer, Madurai Corporation. He speaks about the assessment of house tax particulars of AR and A5.

P.W.4:Sampathkumar

He was then private school correspondent. He speaks about the purchase of land in the name of A2 asserted by PW2.

P.W.5: Mr.John Xavier, Advocate

He speaks about the selling of his plot to A2 at Madurai.

P.W.6: Krishnasamy

He was working as an Executive Engineer, PWD, Building Maintenance, Madurai. He speaks about evaluation of house building of A4, A5 and A3.

P.W.7: Ragunathan

He was working as a Assistant Treasury Officer, Salem. He speaks about pay particulars of A1 from 09.06.1997 to 24.05.2001.

P.W.8: Bharathidasan

He was working as a Village Administrative Officer. He speaks about the Chitta, Adangal series and particulars in respect of agricultural lands belonging to A1 to A4.

P.W.9: Thangadurai

He was working as an Assistant Engineer in Agricultural Engineering Department, Dindigul. He speaks about the Government subsidy in respect of Drip irrigation to the land of A2 at Viralipatti Village, Dindigul District.

P.W.10: Periyasamy

He was working as a Chief Town Planning Officer. He speaks about the particulars in respect of construction of houses in the names of A4 and A5.

P.W.11: Prasad

He was working as an Accounts Manager, State Bank of India, Salem. He speaks about old PPF Accounts.

P.W.12: Prabakaran

He was working as an Assistant Engineer, Tamil Nadu Electricity Board. He speaks about service connections in the name of A4, A5 and A3.

P.W.13: Vivekanandan

He was working in the Investigation Wing of Madurai Corporation. He speaks about the construction of house of A4.

P.W.14: Sankaranarayanan

He was working as Revenue Inspector, Batlagundu, Dindigul District. He speaks about the agricultural income of A1 and A3 during the period of December, 1992 to December, 1994.

P.W.15: Kandeepan

He was working as Assistant Executive Engineer, Tamil Nadu Electricity Board, Batlagundu. He speaks about service connections in the name of A2 in respect of Viralipatti lands.

P.W.16: Sankaran

He was working as Sub Registrar, Chittampatti, Madurai. He speaks about the sale of Plot and its Registration in the name of A2 at Madurai.

P.W.17: Kasthuri Bai

She was working as an Account Supervisor, E.B. Office, Thiruppalai, Madurai. She speaks about the E.B. Charges paid by A4, A5 and A3.

P.W.18: Bhoopathy

He was working as a Horticulture Officer, Nilakottai, Dindigul District. He speaks about Horticultural incomes of A2 and A3.

P.W.19: Pappakrishnan

He was working as an Agricultural Officer, Nilakottai, Dindigul District. He speaks about agricultural income of A1 to A4.

P.W.20: Shanmugam

He was working as Sub Post Master, Alagpuram Post Office, Salem. He speaks about the purchase of National Savings Certificates.

P.W.21: Meenakshisundaram

He was working as Secretary of Batlagundu Town Panchayat. He speaks about the assessment of house tax particulars in respect of houses of A1.

P.W.22: Ramachandran

He was working as a Chief Reporter, Kalaikathir, Salem. He speaks about his petition dated 29.06.2001 given to Thiru.Naresh Gupta I.A.S. then Home Secretary, Tamil Nadu.

P.W.23: Rayan

He was working as Special Tahsildar, Kodaikkanal. He speaks about his counter signed in Ex.P.16, report of agricultural income of A1 and A3 in the year 1992 to 1994.

P.W.24: Selvam

He was working as private Bore Well Agent. He speaks about Bore Well particulars in the land of A2 at Viralipatti.

P.W.25: Mrs.Singaram

She was the tenant in the house bearing Door No.5-1-38, South Street, Batlagundu since 1997.

P.W.26: Thiru.Naresh Gupta I.A.S. Then Home Secretary, 2001-2002

He speaks about the petition of P.W.22 and sending letter to DVAC, Chennai for registration of a case against A1.

P.W.27: Somasundaram

The Inspector of Police, Dharmapuri V & AC Unit, Dharmapuri, who registered the case in Crime No.4/AC/2002 on 04.03.2002 at the instance of P.W.26.

P.W.28: Vairappan
He was Assistant Executive Engineer, Tamil Nadu Highways Department. He speaks about his presence at the time of valuation of houses of A4, A5 and A3.

P.W.29: Viswanathan
He was working as a Statistical Inspector, Chennai. He speaks about family consumption expenditure report in respect of A1 and others for the period from June, 1997 to May, 2001.

P.W.30: Periyasamy
He was working as a Deputy Superintendent of Police, V & AC Unit, Dharmapuri. He speaks about the investigation.

P.W.31: Muthusamy
He was working as a Deputy Superintendent of Police, V & AC Unit, Dharmapuri. He speaks about the filing of charge sheet/final report."

After considering all the oral and documentary evidence, the Trial Court accepted the case of the prosecution and rejected the case of the defence regarding the appellant and convicted him for the offences under Sectionor the offences under Sections 13(2) r/w 13 (i)(e) of Prevention of Corruption Act, 1988 and sentenced him to undergo a rigourous imprisonment of 3 years and also imposed a fine of Rs.10,000/-, in default to undergo 3 months simple imprisonment. However, acquitted other accused 2 to 5.

18.Admittedly, though the appellant has stated that he was having agricultural lands at the time of entering into service and also he had got income from the agricultural lands, no evidence has been produced to prove that he was having sufficient means from the agricultural lands. Admittedly, agricultural income is exempted from tax. Though the appellant is exempted from income tax, he has not shown any income from the agricultural source. Further, he has not specifically stated that on the date of entering into service, what is the extent of land he was having and what was the income he has derived for each and every year. In the absence of any proof, the contention raised by the appellant cannot be accepted. According to the prosecution, the property stands in the name of the wife of the appellant/2nd accused is only funded by the appellant. But the appellant has stated that she has got independent source. Admittedly, she is a house wife and she is also not an income tax assessee. He has not filed any proof to show that she has got independent source to purchase the property and even in the property stands in the name of his son and daughter, the appellant only invested the money and purchased the property and only in order to escape from the clutches of law he has stated like this. Though it is stated that the son-in-law, fifth accused is a Scheduled Contractor and doing work for nearly about Rs.6 crores, he has not produced any account for the same. Admittedly, he is not an income tax assessee. The prosecution has established that after receipt of the complaint from P.W.22 and after conducting discreet preliminary enquiry and after examining the prosecution witnesses and recording their statements, they have found that the appellant had acquired properties disproportionate to his known sources of income and in order to substantiate the charges, they have examined 31 witnesses and marked 67 documents with 2 material objects. Once the prosecution has proved its case that the appellant has acquired disproportionate assets to his known source of income, it is for the appellant to rebut the same. The trial court acquitted the accused Nos.2 to 5, however, held that the first accused involved in collecting amazing wealth, during the check period i.e from 01.01.1998 to 30.06.2001. But at the same time, since the appellant has got disproportionate assets under Section 20 of the Prevention of Corruption Act, 1988, burden has been shifted on the appellant. When the prosecution has collected the materials and held that during the check period, the family members of the appellant purchased various properties and constructed the building, for which, they did not have any independent source, the defence neither they produced documentary evidence to show that they have independent sources nor come to the witness box and depose before the Court and satisfactorily rebut the presumption under the law. No doubt, the accused need not go into the witness box and establish their defence that they can very well rebut the presumption through *preponderance of probabilities*. But, in this case, the specific case of the prosecution is that when the appellant was working as the Commissioner of Police (in-charge), Salem City and the Inspector General of Police, Salem Zone, during the check period, he has repeatedly indulged in acquisition of assets both movables and immovables disproportionate to his known sources of income in his name and also in his family members. According to the prosecution, either of his family members do not have any independent source to acquire the property. The only source is the appellant. Hence, it is for the appellant to rebut the presumption. On a careful reading of the evidence of Pws.8, 18, 19 and 20, it is clear that agricultural income has not been established by the defence. However, the Investigating Officer has properly calculated the probable income through the agricultural lands and included in his statement. But, even if it is not true, as stated by the prosecution, it is for the appellant to prove the same by way of oral and documentary evidence what was the income through the agricultural lands. Though the appellant is an income tax assessee, he has not filed his return what was his actual agricultural income. But, in this case, the explanation offered by the appellant is not satisfactory. Regarding the purchasing of plots in his name as well as his family members, neither the appellant nor his family members established that they have got independent sources and the appellant has not accounted money for purchasing the properties. Therefore, the presumption has not been rebutted by the appellant in the manner known to law.

19.A careful reading of the grounds of the appeal and also the submissions made by both the counsel and also a careful reading of the oral and documentary evidence, this court is of the view that the trial Court has rightly appreciated evidence of the prosecution and rejected the defence of the appellant and come to the conclusion that the appellant has committed the offences under Sections 13(2) r/w 13(i)(e) of Prevention of Corruption Act, 1988 and rightly convicted and sentenced him to undergo a rigourous imprisonment of 3 years and also imposed a fine of Rs.10,000/-, in default to undergo 3 months simple imprisonment and also found out that there is no material to convict the other accused. Hence, this Court is of the view that there is no perversity in the judgment of conviction passed by the courts below and there is no merit in this appeal. Therefore, this appeal is liable to be dismissed. In so far as the sentence is concerned, since the appellant is died and the charge is abated, no sentence can be enforced. However, the fine amount has already been paid and the other properties stand in the name of the family members have to be confiscated.

20.Inso far as **Inbasekaran**'s case is concerned, the wife of the appellant was an income tax assessee and also working as Director of Companies. She retracted the statement given by her earlier before the investigating officer. In that case, the Court held that the wife was having independent income and therefore, her income cannot be merged with the income of the appellant. But, in this case, the wife of the appellant/2nd accused was only a house wife, she did not produce any document to show that she was having any independent income to purchase the property stands in her name. Therefore, the facts of the said case are not applicable to the facts of the present case on hand.

21.Even though there is no quarrel with the proposition of law laid down by the Hon'ble Apex Court as well as this Court in various decisions cited by the learned counsel for the appellant, this Court is of the view that the facts of the cases cited by the learned counsel for the appellant are not applicable to the facts of the present case.

22.Accordingly, this Criminal Appeal is dismissed. Consequently, connected miscellaneous petition is also dismissed.

The judgment of the Special Court for Vigilance and Anti Corruption Cases, Madurai, Madurai District in Special Case No.13/2011, dated 30.03.2012 is confirmed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vs

To

1. The Special Court for Vigilance and Anti Corruption Cases,
   Madurai, Madurai District

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

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

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The Section Officer-3 copies
Criminal Section/Record,
Madurai Bench of Madras High Court, Madurai.

JUDGMENT MADE IN
Crl.A.(MD).No.76 of 2012
19.06.2020

KM (06.07.2020) 34P 7C