



BAIL SLIP

K.Amudha, W/o.G.Kannan, Female, aged 54 Accused-2/Appellant in Criminal Appeal(MD)No.128 of 2015 was directed to be released on bail vide order of this Court dated 08/06/2015 made in MP(MD)No.1 of 2015 in Crl A(MD)No.128 of 2015

and

G.Kannan, S/o.Govindan, Male, aged about 55 years Accused -1/Appellant in Criminal Appeal(MD)No.134 of 2015 was directed to be released on bail vide order of this Court dated 02/06/2015 made in MP(MD)No.1 of 2015 in Crl A(MD)No.134 of 2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 16.10.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl A(MD)Nos.128 & 134 of 2015

G.Kannan

... Appellant / Accused No.1
in Crl A(MD)No.134 of 2015

K.Amudha

... Appellant / Accused No.2
in Crl A(MD)No.128 of 2015

Vs.

State, rep.by the Inspector of Police,
Vigilance and Anti-Corruption,
Madurai Detachment,
Madurai.
(Cr.No.7 of 2002)

... Respondent /
Complainant
in both cases

COMMON PRAYER : These Criminal Appeals are filed under Section 374 (2) of Criminal Procedure Code, to set aside the conviction and sentence passed in Spl.Case No.50 of 2011 dated 30.04.2015 by the learned Special Court for Trial of Prevention of Corruption Act Cases, Madurai.

For Appellants : Mr.R.Shanmugasundaram,
Senior Counsel for Mr.S.Ravi

For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor

COMMON JUDGMENT

Heard the learned Senior Counsel for the appellants and the learned Additional Public Prosecutor for the prosecution.

2. These two appeals are directed against the judgment dated



30.04.2015 in S.C No.50 of 2011 on the file of the learned Special Judge for Trial of Prevention of Corruption Act Cases, Madurai. The impugned judgment is one of conviction and sentence. The details are as follows :

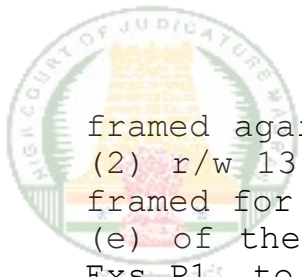
Sl. No.	Name	Rank	Sections	Conviction and sentence
1	G.Kannan	A1	Section 13(1) (e) r/w.13(2) of Prevention of Corruption Act, 1988	to undergo five years rigorous imprisonment and shall also to pay a fine of Rs.1.00 lakh, in default of payment of fine, simple imprisonment for one year
2	K.Amudha	A2	Section 109 of IPC r/w 13(1) (e) r/w.13(2) of Prevention of Corruption Act, 1988	to undergo five years rigorous imprisonment and shall also to pay a fine of Rs.1.00 lakh, in default of payment of fine, simple imprisonment for one year

The court below also directed confiscation of the properties found to have been acquired disproportionate to the known sources of income of the accused.

3.The case of the prosecution : -

A1 G.Kannan was working as Office Assistant in the office of the Regional Deputy Director of Employment, Madurai. He was a public servant as defined under Section 2(c) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act"). A2 Amudha is his wife. Crime No.7 of 2002 was registered on the file of the Inspector of Police, Vigilance and Anti Corruption, Madurai against the first accused for the offences under Sections 13(1)(e) r/w 13(2) of the Act on 14.03.2002. The case was taken up for investigation and on 02.04.2002 between 10.00 A.M and 01.30 P.M, the house of the accused was searched and certain incriminating documents were seized. The period from 01.01.1995 to 02.04.2002 was taken as check period. The income derived by A1 Kannan during this period was only Rs.2,10,678.00. But the expenditure incurred by the accused during this period would come to Rs.6,45,488/-. Properties had also been purchased in the name of A2 Amudha. A2 was only a house wife. She had no independent means of income. After taking into account the value of the assets acquired during check period, and taking into account all the other relevant aspects, the investigation concluded that the accused was in possession of disproportionate assets to the tune of Rs.22,16,364/-.

4.A2 is said to have abetted the offences. After obtaining sanction from the competent authority, final report was laid and the case was taken on file as S.C No.50 of 2011. Charges were

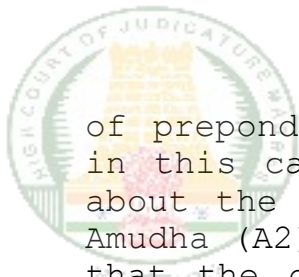


framed against the first accused for the offences under Sections 13 (2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988. A2 was framed for the charges under Section 109 of IPC r/w 13 (2) r/w 13(1)(e) of the Act. The prosecution examined as many as 29 witnesses. Exs.P1 to P41 were marked. On the side of the accused, no evidence was adduced. The learned Trial Judge after a detailed consideration of the evidence on record, convicted and sentenced the accused as mentioned above. Challenging the same, these two appeals have been filed.

5.The learned Senior Counsel appearing for the appellants/accused took me through the entire evidence on record and contended that the impugned judgment will have to be reversed. His contention is that A1 joined duty on 06.02.1984. But the income earned by him for period from 1984 to the start of the check period was not even taken into consideration. Though a long list of articles had been shown in the Annexure II, except two explainable items, the rest belonged to A2 Amudha. Amudha was originally married to one Ramasamy Servai. She obtained divorce in the year 1983 and she received a sum of Rs.1.00 lakh as alimony. Amudha was independently doing business. She was into money lending. She was having a number of autos which she let out on hire. She had a paternal uncle by name Arjunan who was issue-less and who funded the acquisition of certain properties in the name of A2. The prosecution had claimed that the accused had constructed house worth about Rs.8,55,300/-. Ex.P10 was the valuation report. It was marked through PW.8. But, PW.8 admittedly is not the author of the document. The person who signed the evaluation report was not examined as a witness. Therefore, the value arrived at by the prosecution as per Ex.P10 has to be disregarded.

6.The learned Senior Counsel would contend that the appellants were not at all issued with final opportunity notice. Two of the investigation officers, namely, P.W 28 and PW.29 were recalled after two years to depose that the final opportunity notice was given by one Dinakarsamy, Inspector of Police. Dinakarsamy was not all examined by the prosecution. The appellants have been charged not only with mere possession of properties but also failure to properly account the same. According to the learned Senior Counsel, failure to give final opportunity notice to the accused is fatal to the prosecution. He placed reliance on the decision reported in **(2007) 1 MLJ (Cr1.) 86 (G.Malliga and others vs. State)** for this proposition.

7.The learned Senior Counsel for the petitioner would also contend that the investigation was conducted by persons who did not have the requisite statutory authorisation under Sections 17 and 18 of the Act. While reiterating the contentions setout in the notes of submissions, the learned Senior Counsel contended that the accused more than established their defence. The standard is one



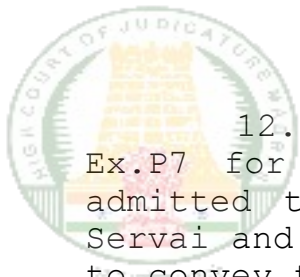
of preponderance of probabilities and that has been adequately met in this case. The prosecution witnesses themselves have spoken about the financial support extended by Arjunan Servai who treated Amudha (A2) as his foster daughter. He of course lamented the fact that the defence could not examine the said Arjunan Servai as he died shortly before the closure of the prosecution evidence. Investigation was done by officers who lacked the jurisdiction to do so. The learned Senior Counsel therefore, wanted this Court to set aside the impugned judgment, allow this appeal and acquit the appellants.

8.Per contra, the learned Additional Public Prosecutor appearing for the prosecution submitted that the impugned judgment does not warrant any interference.

9.I carefully considered the rival contentions and went through the materials on record. PW.1 Tmt.Mahalakshmi was the District Employment Officer, Dindigul and she was authorised to remove Office Assistants from their post. A1 Kannan was the Office Assistant. Therefore, PW.1 was the authority competent to grant sanction. A1 was working in the District Employment Office, Madurai and Dindigul during the relevant period. When the prosecution sought sanction to prosecute A1 G.Kannan, PW.1 granted sanction vide Ex.P1 dated 01.10.2004. PW.1 had categorically deposed that she carefully went through all the relevant documents and she was satisfied about the existence of sufficient evidence against A1. Only thereafter she issued the sanction order. PW.1 was cross examined but nothing useful was elicited from her.

10.PW.2 Ganesan deposed that his father Karuppiah sold a property vide Ex.P2 in favour of A1 on 11.10.1989. Thereafter, on 12.12.1989 another property was sold vide Ex.P3 to the first accused. Vide Ex.P4 dated 30.12.1989 yet another property was sold by PW.2's father. Exs.P2 to P4 are unregistered sale deeds. But they pertained to the year 1989 which is prior to the check period. I am therefore of the view that not much turns on the testimony of PW.2.

11.PW.3 Palaniappan was working as Handloom Inspector and he was the witness to the search conducted on 02.04.2002. He had also signed as witness in Ex.P5 search list. While cross examining him, it was suggested that the investigation officer had not seized materials that were in favour of the accused. PW.4 deposed that she sold a house site measuring 1500 sq.ft for a sum of Rs.11,250/- in favour of A2 on 06.05.1991. It was suggested in the cross examination that the registration had taken place during the period when A1 Ganesan was not in employment. Since he was transferred to Mandapam, Ramanathapuram District, he was unauthorisedly absent on loss of pay from 30.07.1989 to 30.12.1991.



12.PW.5 one Solamalai deposed that he sold a property vide Ex.P7 for a sum of Rs.44,000/-. In his cross examination, he admitted that he had borrowed a sum of Rs.44,000/- from Arjunan Servai and by way of clearing the debt, Arjunan Servai had asked him to convey the property in question in favour of Amudha.

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13.PW.6 Kalavathi stated that she had sold an immovable property vide Ex.P8 in favour of Amudha. PW.7 Elamaran testified that he had sold an immovable property measuring 1620 sq.ft in favour of Amudha on 16.06.1998 for a sum of Rs.66,000/- vide Ex.P9. The learned Senior counsel for the petitioner would point out that the recitals in the sale deed show that the vendor had obtained loan from Arjunan. PW.8 Prakash was working as Assistant Engineer, PWD. He inspected the house bearing Dr.Nos.2/691 and 2/692 at Thiruppalai belonging to Amudha. The value of the house bearing Dr.No.2/692 was assessed at Rs.8,55,300/- vide valuation report Ex.P10. The other house was valued at Rs.4,59,300/- and the valuation report was marked as Ex.P11. It was admitted by PW.8 Prakash that the valuation report was signed by Thiru.Thiagarajan, Executive Engineer. The learned Senior Counsel would point out that Thiagarajan was not examined as witness.

14.PW.9 Mothilal was a retired District Registrar. He was the SRO, Chokikulam during 2001 to 2006. He deposed about the registration of properties in the name of A2 Amudha on 20.03.1997, 16.07.1997, 01.06.1998, 12.06.1998 and 09.07.1998. The relevant sale deeds namely Exs.P12, P13, P8, P9 and P14 were marked through him. PW.10 spoke about the sale of two wheeler in favour of A1 Kannan. The said two wheeler is figuring as item no.31 in Annexure II. PW.11 Kanipandian was the Manager of Indian Bank, K.Pudhur and he spoke about crediting of a sum of Rs.84,735/- from a chit fund in favour of A2. PW.12 Vairavan deposed that he sold his Fiat Car bearing No.2266 to A1 Kannan for a sum of Rs.25,000/- in January, 2001. It was suggested in the cross examination that the car was actually purchased only by Amudha and not in the name of A1 Kannan. PW.13, Alamelu spoke about the name transfer of Auto Rickshaw bearing Reg.No.TN 59 Y 8116 from one Nawabjhon to Amudha on 23.10.1998. PW.14 Arumugathammal deposed that she sold an immovable property in the year 1998 vide Ex.P14 and that the sale consideration was paid by Arjunan Servai.

15.PW.15 is not a material witness. Through PW.16 Kameshwari, Junior Employment Officer, Dindigul, Ex.P19 series was marked to indicate that the income earned by A1 during the relevant period was Rs.2,10,678/-. Ex.P20 Service Registrar was also marked through her. Ex.P21 expenditure report was marked through PW.17 Viswanathan, Statistical Officer. PW.18 was the Headmistress in OCPM Girls Higher Secondary School, Madurai and through her, Ex.P22 series was marked. She deposed that fees paid for the children of the accused during the relevant period was Rs.7,087/-. PW.19 was



Headmistress of an another school and she deposed that a sum of Rs.10,930/- was paid towards tuition fees, conveyance charges and the certificate issued by her was marked as Ex.P23.

16.PW.20 was the Headmaster of an another school where the son of the accused studied. Ex.P24 was marked through him and he deposed that the fees paid for the child was Rs.11,672/-. PW.21 Prabhakaran was Assistant Executive Engineer, TNEB who spoke about the electricity consumption charges. According to him, the charges paid by the accused was Rs.14,733/-. Ex.P25 was marked through him. PW.22 was the BSNL official and he deposed that the telephone consumption charges was Rs.27,909/- for the period from 05.09.1997 to 31.03.2002. Ex.P26 was marked through him.

17.PW.22 Chandrasekaran who was working as Senior Accounts Officer in BSNL, Madurai during the relevant time deposed that the accused had paid a sum of Rs.1650/- as deposit for obtaining telephone connection and that during the relevant period he paid consumption charges to the tune of Rs.27,909/-. The details were marked vide Ex.P26. PW.23 Tmt.Prema Sekar was the Proprietor of Karthikeya Gas Agency. She deposed that the accused were given a connection and that they had paid a sum of Rs.3053/- and a sum of Rs.10,094/- towards deposit and filling charges. PW.24 and PW.25 were LIC employees and they spoke about the LIC policies taken by the accused and payment of a sum of Rs.16,107/-. PW.26 was the Branch Manager of Shriram Chit Company and he stated that A2 Amudha was the chit subscriber and a sum of Rs.84,735/- was paid to her. Ex.P30 was marked through him.

18.PW.27 Subramanian was the Panchayat employee and he spoke about the payment of Rs.7495/- towards plan approval charges. PW.28 Mutharasu was the Inspector of Police, V&AC, Madurai and he took up investigation in Crime No.7/2002. He conducted the house search. He recorded the statements of most of the witnesses and gathered evidence. PW.29 Nambirajan took up further investigation from PW.28 and filed the final report.

19.Let me consider the first contention of the learned Senior Counsel for the appellants that failure to give final opportunity notice to the accused is fatal to the prosecution. No doubt the decision reported in **(2007) 1 MLJ (Cr1.) 86 (G.Malliga and others vs. State)** relied on by him is in his favour. A learned Judge of this Court in Paragraph 27 of the said order noted as follows :

"27.In this case as highlighted by Mr. I. Subramaniam, and Mr. T.Sudanthiram, learned senior counsels, no notice was given to A.2 and A.3 before prosecuting them to explain with regard to the income in their hands. Both the learned senior counsels also relied on the judgment in Vedagiri In re 1985 M.L.J (Criminal) 151, wherein it is held as follows:



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"Under Section 5(1)(e) of the Act, it is not merely the possession of the property disproportionate to the known sources of income that constitute an offence, but it is the failure to satisfactorily account for such possession that makes the possession objectionable and offending the law. In other words, two phases are contemplated in the investigation, firstly the discovery of the existence of property disproportionate to the source of income openly known to the investigation machinery, and secondly the scrutiny of the explanation that the public servant might offer in disclosing other source of legal income or in any other manner. Therefore, for an offence under Section 5(1)(e) of the Act the Investigating Officer has necessarily to satisfy himself that the concerned public servant has not satisfactorily accounted for the possession of pecuniary resources or property, found by the Investigating Officer disproportionate to his own source of income. It is thus obvious that the Investigating Officer should give an opportunity to the person investigated against to explain the disproportion found by him."

And the learned Judge proceeded to acquit the accused.

20. But when the very same decision was relied on in another case reported in **2013 (2) MLJ(Crl) 1 (Duraimurugan vs. State)**, that contention was rejected by citing the judgment of the Hon'ble Supreme Court in **State of Maharashtra vs. Ishwar Piraji Kalpatri (AIR 1996 SC 722)**. In Paragraphs 15 and 16, the Hon'ble Supreme Court held as follows :

"15. In our opinion, there is a complete mis-reading of the aforesaid provision by the High Court. It is, no doubt true that a satisfactory explanation was required to be given by the Delinquent Officer. But this opportunity is only to be given during the course of the trial. It is no doubt true that evidence had to be gathered and a prima facie opinion found that the provisions of Section 5(1)(e) of the Act are attracted before a first information report was lodged. During the course of gathering of the material, it does happen that the officer concerned or other person may be questioned or other queries made. For the formation of a prima facie opinion that an officer may be guilty of criminal mis-conduct leading to the filing of the First Information Report, there is no provision in law or otherwise which makes it obligatory of an opportunity of being heard to be given to a person against whom the report is to be lodged. That such satisfactory account had to be rendered before a court is also borne out from the judgment of this Court in Veeraswami's case (supra)

where referring to Section 5(1)(e) of the Act at page



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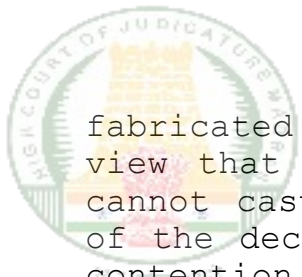
713 of the said Judgment, it was observed as follows :

Clause (e) creates a statutory offence which must be proved by the prosecution. It is for the prosecution to prove that the accused or any person on his behalf, has been in possession of pecuniary resources or property disproportionate to his known sources of income. When that onus is discharged by the prosecution, it is for the accused to account satisfactorily for the disproportionality of the properties possessed by him. The Section makes available statutory defence which must be proved by the accused. It is a restricted defence that is accorded to the accused to account for the disproportionality of the assets over the income. But the legal burden of proof placed on the accused is not so onerous as that of the prosecution. However, it is just not throwing some doubt on the prosecution version. The legislature has advisedly used the expression "satisfactorily account". The emphasis must be on the word "satisfactorily". That means the accused has to satisfy the court that his explanation is worthy of acceptance. The burden of proof placed on the accused is an evidential burden though not a persuasive burden. The accused, however, could discharge that burden of proof "on the balance of probabilities" either from the evidence of the prosecution and/or evidence from the defence.
(emphasis added)

16.The aforesaid passage leaves no manner of doubt that the opportunity which is to be afforded to the delinquent officer under Section 5(1)(e) of the Act of satisfactorily explaining about his assets and resources is before the Court when the trial Commences and not at an earlier stage. The conclusion arrived at by the learned Single Judge that principles of natural justice had been violated, as no opportunity was given before the registration of the case, is clearly unwarranted and contrary to the aforesaid observations of this Court in K. Veeraswami's case (supra)."

Therefore, it is not open to the appellants' Senior Counsel to place any reliance on **G.Malliga** case.

21.Even on facts, it is seen that such final opportunity notice was in fact given not once but twice by the Inspector of Police, Dinakarsamy on 26.08.2003 and 08.01.2004. A1 Kannan had also received the same and affixed his signature by way of acknowledgement. The investigation officer was subsequently recalled only for the purpose of marking the same. Of course, the learned Senior Counsel would contend that these documents have been



fabricated for the purpose of filling up the lacuna. I am of the view that the documents marked through the investigation officers cannot casually be characterized as fabricated documents. In view of the decision of the Hon'ble Supreme Court cited above, the said contention has no substance. The accused were given the fullest opportunity to explain their position and establish their defence in the trial. Even if I hold that no final opportunity notice was given to the accused, still that would not in any way vitiate the prosecution. The accused have not all been prejudiced thereby.

22.The learned Senior Counsel for the appellants strongly contended that most of the properties said to have been acquired disproportionate to the known sources of income of the accused only stand in the name of A2 Amudha. Amudha was never a government servant. According to him, the court below failed to appreciate this aspect of the matter.

23.I am not persuaded by this submission. Amudha was originally married to one Ramasamy and had begotten two children through him. After obtaining divorce from him, Amudha got married to A1 Kannan. They both lived together under one roof. Kannan being a government servant was covered by conduct rules. It is claimed that the properties were acquired by Amudha as she was an independent business woman on her own. It is also claimed that her uncle Arjunan Servai had funded some of the acquisitions. But the fact remains that there are no credible documents to sustain such contention. Though it is claimed that Amudha was into money landing business, but she had not obtained any license to do so. It is claimed that she was having a number of autos which were let on for hire. But no evidence such as log book or driver details have been furnished. There is nothing to show as regards the drivers who were allegedly engaged.

24.The amount involved in this case would certainly attract the provisions of the Income Tax Act. But no income tax returns have been filed by A2 Amudha. More than anything else, neither the previous permission of the department was obtained nor subsequently intimated. The offence is committed, if a public servant cannot satisfactorily account for the pecuniary resources and the property possessed by him and if they are disproportionate to his known sources of income. The expression "Known sources of income" has been explained in the statute itself as income received from any lawful source and such receipt has been intimated in accordance with the provisions of any Law, Rules or Orders for the time being applicable to the public servant. Rule 7(1) of the Tamil Nadu Government Servants Conduct Rules states that no Government servant shall, except after notice to the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift, exchange or otherwise either in his own name or in the name of any member of his family. The Hon'ble Supreme Court in the decision reported in **(2015) 14 SCC 505 (Kedarilal Vs. State of Madhya**



Pradesh) held as follows:-

"10.The expression "Known sources of income" in Section 13(1)(e) of the Act has two elements, first, the income must be received from a lawful source and secondly, the receipt of such income must have been intimated in accordance with the provisions of law, rules or orders for the time being applicable to the public servant. In N.Ramakrishnaiah, while dealing with the said expression, it was observed: (SCC pp.86-87 para 17). "17. '6.... Qua the public servant, whatever return he gets from his service, will be the primary item of his income. [other income which can conceivably be] income qua the public servant, will be in the regular receipt from (a) his property or (b) his investment.' The Categories so enumerated are illustrative. Receipt by way of share in the partition of ancestral property or bequest under a will or advances from close relations would come within the expression "Known sources of income" provided the second condition stands fulfilled that is to say, such receipts were duly intimated to the authorities as prescribed.

11.We have gone through Rules 14, 17 and 19 of the Rules. Rule 14 lays down that a government servant on occasions such as weddings, anniversaries or religious functions may accept gifts up to a certain limit, if he makes a report of such fact to the Government within a period of one month. Sub-rules (4) and (5) provide, inter alia, that in any other case, the Government servant shall not accept any gift without the sanction of the payee cheque. Rule 17 deals with investment, lending and borrowing and provides inter alia that government servant may give to, or accept from a relation or a personal friend, a purely temporary loan. Rule 19 lays down that the government servant must intimate the details of property inherited or acquired by the government servant. There is no absolute embargo or prohibition in the Rules and all that is required is sanction or permission from the Government."

In the said case, the accused was acquitted because the transactions were duly intimated to the Government and also reflected in the income tax returns filed by him. But such is not the case here. In this case, mere claim that A2 purchased the properties in question with her own earnings is not sufficient. That cannot by itself be determinative of the issue.

25.The Hon'ble Supreme Court in the decision reported in **(2017) 6 SCC 263, State of Karnataka Vs. J.Jayalalitha**, held as follows:-

"....195.In State of Tamil Nadu Vs. N.Suresh



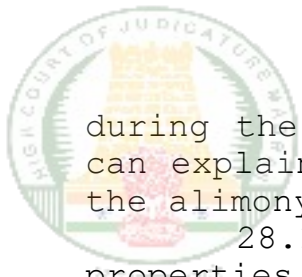
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Rajan, the allegation against the respondent, who was the Minister of Tamil Nadu was acquisition of pecuniary resources and properties in his name and in the name of his family members, and friends disproportionate to the known sources of income. Charge of abetment was also levelled against the family members and friends. Charge sheet was submitted under Section 109 IPC read with Sections 13(1)(e) and 13(2) of the 1988 Act. All of them were discharged by the High Court.

196. This Court ruled that the fact that the accused, other than the two ministers, had been assessed to income tax and had paid income tax could not have been relied upon to discharge the accused persons in view of the allegation made by the prosecution that there was no separate income to amass such huge property. It was underlined that the property in the name of the income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee and that if this proposition was accepted, it would lead to disastrous consequences. This Court reflected that in such an eventuality it will give opportunities to the corrupt public servant to amass property in the name of known person, pay income tax on their behalf and then be out from the mischief of law...."

26. If the stand of the appellants' Senior Counsel is accepted, then, every corrupt public servant can circumvent the legal provisions by buying properties in the name of his wife or other family members. Therefore, it is necessary that the accused in such cases satisfy the court that the properties were not acquired by utilizing tainted money. This burden will have to be discharged only by the accused and it cannot be shifted to the prosecution. Of course, the standard of proof will only be preponderance of probability. These are factors that are within the personal knowledge of the accused and they have to discharge the burden. It is seen that on the side of the accused, no witnesses were examined. They had also not marked any documents. As rightly pointed out by the trial court though in the written statement filed under Section 313 of Cr.Pc, the accused claimed that financial assistance came from quite a few persons, none of them deposed before the court to substantiate this claim.

27. It is true that A2 Amudha got about a lakh of rupees by way of alimony when she divorced her first husband Ramasamy. But then, as rightly observed by the court below Amudha had begotten two children through him. The court below had given a specific finding that most of the amount had been set apart for the welfare of the children and only a meagre sum was received by A2 Amudha. In any event, this had taken place in the year 1982. The prosecution had not even taken note of the properties acquired in the year 1989. The prosecution had confined its focus only to what was acquired



during the check period. Therefore, the contention that A2 Amudha can explain the acquisition of the various properties by tracing to the alimony received from her former husband cannot hold any water.

28. It must be emphasized again that the purchases of the properties in the name of A2 during the check period were not at all intimated to the department by A1. A1 was working only in the capacity of an Office Assistant. In any Ministerial Service, it is the lowest post. A2 Amudha was only house wife. During the check period, as per Annexure-II the income earned by A1 was only Rs.2,10,678/-. The value of the assets that stood in the name of the accused at the beginning of the check period was Rs.25,810/-. But at the end of the check period, it was Rs.18,07,364/-. The expenditure incurred during this period, ie., 01.01.1995 to 02.04.2002 even by conservative estimate came to Rs.6,45,488/-. The difference between the income earned and the value of the disproportionate assets is 1052%.

29. The prosecution has clearly established its charges beyond reasonable doubt. The learned trial Judge has analysed the evidence in detail. After a careful re-appreciation of the entire evidence on record in the light of the submissions made by the learned Senior Counsel for the appellants, I find no ground to take a different view.

30. This Court could not take a different view in the case of A2. The charge against her is one of abetment. A2 did not take the defence that she was only a home maker and that she had nothing to do with the acquisition of the properties in her name. On the other hand, she had conducted her defence in such a way so as to shield A1. Since the defence taken by A2 stood rejected, the consequences have to necessarily follow. The Hon'ble Supreme Court in **P.Nallammal and Ors. vs. State Rep. by Inspector of Police (1999) 6 SCC 559** held that the acquisition and possession of any property by a public servant is capable of being abetted. In the case on hand, the evidence marshalled by the prosecution clearly shows that A2 had abetted the act of criminal misconduct committed by A1/public servant who also happens to be her husband.

31. However, taking note of the mitigating circumstances pleaded by the appellants, particularly, the long lapse of time and their current age, I am of the view that indulgence can be shown in the matter of sentence. The court below has sentenced them to undergo five years rigorous imprisonment for each charge. The same is reduced to one year simple imprisonment for both the charges. Since the court below has ordered confiscation of the properties also, I am of the view that the fine imposed on them can be set aside. It is accordingly set aside. The bail bond executed by the accused shall stand cancelled and the trial court is directed to take steps to secure the accused and commit them to jail to undergo the modified sentence. The period of sentence already undergone by them shall be set off under Section 428 of Cr.PC.



32. With this modification in the matter of sentence, the impugned judgment is confirmed in all other respects and the appeals are partly allowed.

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Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Special Judge for Trial of Prevention of Corruption Act Cases, Madurai.
2. The Superintendent, Special Prison for Women, Trichy.
3. The Superintendent, Central Prison, Madurai.
4. The Inspector of Police, Vigilance and Anti-Corruption, Madurai Detachment, Madurai.
5. The Additional Public Prosecutor, Madurai Bench of the Madras High Court, Madurai.

Copy to :

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

Crl A(MD)Nos.128 & 134 of 2015
16.10.2020

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svn(CO)
KK(01.02.2021) 13P 8C