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CrlA(MD)No.140 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.11.2019
PRONOUNCED ON : 28.02.2020

CORAM:

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

Crl.A.(MD)No.140 of 2015

S.X.Jeyaraj ... Appellant /Accused
Vs.

State represented by
the Inspector of Police,
Central Bureau of Investigation,
Anti Corruption Branch,
III Floor, Shashtri Bhavan,
No.235 Haddow Road,
Chennai - 600 006.

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the entire records pertaining to CC No.11 of 2008 on the file of the learned II Additional District Judge for CBI Cases, Madurai and allow this appeal and set aside the impugned judgment dated 28.04.2015 passed in C.C.No.11 of 2008.

For Appellant : Mr.C.Manishankar,
Senior Counsel for
Mr.V.S.Venkatesh

For Respondent : Mr.N.Nagendran,
Special Public Prosecutor



CrlA(MD)No.140 of 2015

JUDGMENT

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The appeal is arising out of the conviction and sentence imposed by the II Additional District Judge for CBI cases, Madurai in C.C.No.11 of 2008.

2.By judgment dated 28.11.2015, the trial Court found the appellant guilty for the offence under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988, convicted and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.1,00,000/-, in default of payment of fine, six months of rigorous imprisonment was also ordered

3.The case of the prosecution before the trial Court in brief is as follows:

(i)The appellant / accused officer, namely, S.X.Jayaraj worked as Superintendent of Central Excise, Service Tax Section at Head Quarters Office, Central Excise Commissionerate, Trichy. He joined in the Central Excise Department in the year 1980 as an Upper Division Clerk in Madurai Division, subsequently was promoted as Inspector in the year 1984 and as Superintendent of



CrlA(MD)No.140 of 2015

Central Excise in the year 2002 and he was working in Head Quarters Appeals Section in Trichy up to 2006.

(ii)The accused officer while functioning as a public servant from 01.06.1987 to 21.02.2006 in the Department, acquired movable and immovable assets / pecuniary resources in his name and in the name of his family members to the tune of Rs.30,10,744/-, which is disproportionate to the known sources of his income, which was not properly accounted for by the accused officer.

(iii)Based on the source information, an FIR was registered as against the accused officer by CBI-ACB, Chennai, on 29.05.2006, in RC-MA12006-A0023 for the offence under Section 13(2) r/w 13(1(e) of the Prevention of Corruption Act 1988.

(iv)The investigation was conducted by the respondent investigating agency. The accused officer purchased movable and immovable properties in his name and his family members' name including his father-in-law and mother-in-law, during the period from 01.06.1987 to 21.02.2006. During the said period, the accused officer

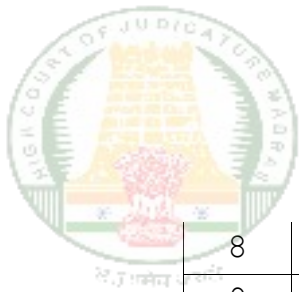


CrlA(MD)No.140 of 2015

incurred huge expenditure on the purchase of properties, vehicles and household articles. The accused officer did not own any property till the commencement of check period, i.e., as on 01.06.1987. The accused officer's wife namely, Lilly is a Homemaker. His sons J. Antony Raj Kumar was studying in the United States of America and Peter Rajasekaran studied B.Tech.,. His father-in-law Mudiappan and mother-in-law Alangarammal, in whose names the accused officer purchased the properties, are no more.

(iv) During the check period from 01.06.1987 to 21.02.2006 the accused officer received a net salary of Rs.13,98,402/- which includes D.A., Pay arrears, rewards, uniform allowance, GPF Advances as follows:

SlNo	Details	Period	Amount in Rs
1	Salary	1986 to 2006	13,08,108
2	GPF Withdrawals	1986 to 2006	2,74,500
3	Rewards and allowances	1986 to 2006	90,294
4	Sale of property- 2640Sq.ft. At Crawford, Trichy	2005	2,40,000
5	Sale of property at Edamalapattipudur	1995	50,000
6	Sale of Jewelry	1987	8,124
7	SB Bank Interest	1993 - 2006	9,220



CrlA(MD)No.140 of 2015

8	Sale of vehicle	2001	8,000
9	Rental Income from 1B & 1C Sakthivinayagar Koil Street	1993 - 1998	10,000
10	Rental income from 1A Sakthivinayagar Koil Street	1998 - 2006	73,850
11	Rental income from 1C Sakthivinayagar Koil Street	1998-2006	70,250
12	Rental income from 1B Sakthivinayagar Koil Street	1999-2005	30,000
13	Rental income from 1D Sakthivinayagar Koil Street	1999-2005	25,000
14	Advance received from 1A Sakthivinayagar Koil Street	1998	5,000
15	Advance received from 1C Sakthivinayagar koil Street	2003	15,000
16	Income from Mutual funds	2003-2005	12,805
17	Income from Post office	1999-2006	1,20,644
	Total		23,50,795

(v) The expenditure incurred by the accused officer during the check period from 01.06.1987 to 21.02.2006 is as follows:



CrlA(MD)No.140 of 2015

SlNo	Details	Period	Amount in Rs
1	Domestic Expenditure	1987-2006	6,33,242
2	Cost of land, stamp duty and registration charges	1987-2006	1,21,528
3	House tax	1993-2006	23,194
4	LIC Premium	1999-2006	34,550
5	Purchase of vehicle	1987-2006	30,175
6	Cell phone bills paid	2004-2003	857
7	Telephone bill paid	2004-2006	1,05,362
8	Donation	2004-2006	15,000
9	Fees paid at Shanmuga Arts and Science Technology and Research Academy, Thanjavur towards the education of J.Peter Rajasekar son of the accused officer	2003-2006	1,80,480
10	Fees paid at Mookambigai College of Engineering, Srinivasa Nagar, Kalamavur, Keeranur, Trichy towards the education of J.Antony Rajkumar, son of the accused officer	2003-2006	2,01,845
11	Fees paid at Vellakanni Raj Matriculation Higher Secondary School, Trichy-21 towards the education of J.Peter Rajasekar	1999-2000	9,000
12	Fees paid at NIIT, Trichy towards the Education of J.Antony Rajkumar	2001-2003	53,697



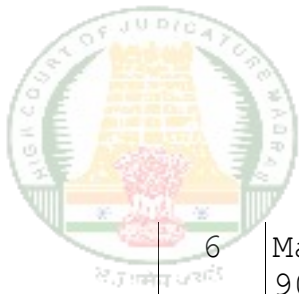
CrlA(MD)No.140 of 2015

13	Medical treatment	2003	1,00,000
14	Vehicle Maintenance including fuel	1996-2006	74,720
15	Towards the application/registration of GRE	2003-2006	66,847
16	Towards the travel expenditure	2005-2006	7,949
	Total		16,58,446

(vi) Assets at the beginning of the check period, i.e., as on 01.06.1987 is **Rs.27,776/-**.

(vii) The movable and immovable assets at the end of the check period, ie., as on 21.02.2006 are as follows:

SlNo	Details	Amount in Rs	Total
1	Plot No.73, Devaraya Nagar, Trichy -21	70,400	
2	Construction of house at Plot No.73, Devaraya Nagar, Trichy -21	8,36,000	
3	Plot No.7, Sakthi Vinayagar Koil, Street, Crawford	31,500	
4	Construction of house at Plot No.7, Skathi Vinayagar Koil Street, Crawford, Tricy	5,96,000	
	Total value of Immovable properties	15,33,900	15,33,900
5	Total value of movable properties	1,89,660	1,89,660



CrlA(MD)No.140 of 2015

6	Maruti Alto Car TN 20 9021 dated 11.03.2005	2,72,195	
7	Bajaj Bike TN45 T 9667	54712	
8	Hero Honda TN 45 AB	42,775	
9	TVS XL Moped	18,979	
	Total Value of the vehicles		3,88,641
10	Chit funds investments	25,400	
11	FD in KVB	2,40,000	
12	FD in IOB	20,000	
	Total Bank FDs		2,60,000
13	Bank Balance in SB A/c No.28763 in Canara Bank in the name of Antony Rajkumar	3,48,736	
14	Bank Balance in SB A/c No.3791 in Canara Bank in the name of Jayaraj	1,882	
15	Bank Balance in SB A/c No.7401 in Indian Bank in the name of S.X.Jayaraj	3,15,289	
16	Bank Balance in SB A/c No.101654 PNB Nandanam in the name of S.X.Jayaraj	1,300	
	Total SB Accounts Balance		9,75,099
17	Kotak - Mahindra MF Deposit	45,000	
18	Chola MF Deposit	40,000	
19	Can Bank MF Deposit	30,000	
20	ICICI Prudential MF Deposit	10,000	



CrLA(MD)No.140 of 2015

21	BNP Sundaram Paribas MF Deposit	1,52,000	
	Total Mutual Funds Investments		2,77,000
22	RD HPO Teichy and Theppakulam	70,870	
23	SB HPO Trichy and Theppakulam	8,699	
	Total Post Office Assets		79,569
	BSNL Deposit	1,600	1,600
	Total		37,30,869/-

(viii) The disproportionate assets of the accused officer during the check period, i.e., from 01.06.1987 to 21.02.2006 are as follows:

Sl.No	Description	Amount in Rs.
1	Assets at the beginning of the check period	27,776
2	Assets at the end of the check period	37,30,869
3	Assets acquired during the check period (2-1)	37,03,093
4	Expenditure during the check period	16,58,446
5	Total pecuniary resources possessed by the accused (3+4)	53,61,539
6	Income during the check period	23,50,795
7	Disproportion (5-6)	30,10,744
8	Disproportionate Asset Percentage (7/6 X 100)	128%



CrlA(MD)No.140 of 2015

4.After obtaining sanction from PW.1 the then Commissioner, Central Excise Department, Trichy, the respondent agency conducted investigation and filed a final report as against this appellant on 29.08.2008. The case was committed to the Additional District Judge, for CBI cases, Madurai and was taken on file in CC.No.11 of 2008.

5.During trial on the side of the prosecution 58 witnesses were examined and 150 documents were marked. After completion of the prosecution side evidence, the incriminating circumstances were put before the appellant and the same was denied as false. On the side of the appellant / accused officer 7 witnesses were examined and 33 documents were marked.

6.The trial Court, on conclusion of the trial found the appellant guilty, convicted and sentenced him as stated supra, based on the following calculation :

The disproportionate assets of the accused officer from 01.06.1987 to 21.02.2006:



CrlA(MD)No.140 of 2015

Sl.No	Description	Findings of the Trial Court, amount (in Rs)
1	Assets at the beginning of the check period	1,36,405
2	Assets at the end of the check period	35,74,769
3	Assets acquired during the check period (2-1)	34,38,364
4	Expenditure during the check period	11,49,971
5	Total pecuniary resources possessed by the accused (3+4)	45,88,335
6	Income during the check period	21,44,347
7	Disproportion (5-6)	24,43,988
8	Disproportionate Asset Percentage (7/6 X 100)	114%

As against the conviction and sentence, the appellant has preferred the present appeal.

7.Heard Mr.C.Manishaknar, learned Senior Counsel appearing for the appellant and Mr.N.Nagendiran, learned Special Public Prosecutor appearing for the respondent CBI and perused the materials placed on record.

8.The learned Senior Counsel appearing for the appellant has raised the following points:



CrlA(MD)No.140 of 2015

i.The sanction order [ExP1] suffers from non application of mind, due to omission to decide the violation of any service rule. Since the contents of ExD2 and ExD3 show that the properties attributed to the appellant, fall within the exceptions in Sub Rule 26 of Rule 18 of the CCS Service Rules and hence no malice could be attributed to the appellant. The in-laws cannot be considered as family members and therefore, the properties standing in the name of the appellant's father-in-law and mother-in-law should not have been taken into account.

ii.The check period commences from 01.06.1987, which is prior to the notification of the Prevention of Corruption Act. Hence fixing of the check period prior to the date of notification of the Act is in violation of Article 20(1) of the Constitution of India. The check period ended on 21.02.2006 itself, but the appellant was in service till 30.09.2014 and if the end of the check period is taken as 30.09.2014, there will not be any valid ground to prosecute the appellant.



CrlA(MD)No.140 of 2015

iii.The search is said to have been conducted at an earlier point in a different case. But, either the Investigating Officer of the alleged earlier case or the officer in whose presence the search conducted, was not examined in this case.

iv.Ashok Kumar, Deputy Superintendent of Police [PW50] himself has admitted that he was not given with any order to be present during the search and therefore, his presence is highly doubtful.

iv.The cost of the three plots and the cost of the construction on two of the three plots were attributed to the appellant and the prosecution case rests on these properties. PW2 and PW3, in their cross examination admitted that as per the recitals of their respective sale deeds that it was the mother-in-law of the appellant, who paid the sale consideration and she was the purchaser, would itself prove that the properties do not belong to the appellant and therefore, the amount of Rs.15,33,900/- of the properties should be deducted from the total amount.



CrlA(MD)No.140 of 2015

v.PW.4-Insurance Advisor, Max Newyork Life

Insurance Company, has clearly stated that it is the appellant's father, who has transacted and though he was treated as hostile, the evidence in favour of the accused must be given its fair and equal weightage.

vi.The trial Court has held that the expenses towards cost of land, stamp duty and registration fee, house tax cannot be fastened on the appellant but contrary to its findings the said three properties are included in the statement of the assets of the appellant.

vii.The builder of the house [PW9] in his evidence has deposed that he received the money only from Alangarammal- mother-in-law of the appellant. The appellant is the sole accused. The in-laws, in whose names, the appellant is alleged to have purchased the properties, were not examined and not even cited as witnesses in the charge sheet.

Viii.The charge against the appellant does not contain the specific charge that the properties were purchased by the appellant in the name of his in-laws as benami transaction.



CrlA(MD)No.140 of 2015

ix. The questionnaire does not place on record any incriminating circumstances against the appellant.

x. There are several arithmetic mistakes, omissions and contradictions in the calculations arrived at by the trial Court.

xi. The value of the movable assets given in the charge sheet and in the judgment of the trial Court are without any basis, inflated and clearly erroneous and Rs.1,52,750/-unproved household articles have to be excluded.

xii. Insofar as the value of the Car, PW11 appellant's brother has clearly deposed that he contributed Rs.20,000/- and apart from himself, the other brothers have contributed Rs.80,000/-. Therefore, the brothers have contributed Rs.1,00,000/-, which should be excluded from the total value of the Car, i.e., Rs.2,57,327 - Rs.1,00,00/- = Rs.1,57,327/-.

Xiii. With regard to GPF withdrawal the trial Court relying upon the document Exp133, held that the appellant



CrlA(MD)No.140 of 2015

had withdrawn Rs.2,70,000/- during the check period.

As per Ex.P133 series the appellant had withdrawn Rs.7,00,000/- and therefore, the difference amount of Rs.4,30,000/- (Rs.7,00,000 - Rs.2,70,000) should be added as the income of the appellant during the check period.

xiv.As per ExD21 marked through DW.4, withdrawal from the account of the mother of the appellant, namely, Irudaya Mary is Rs.3,36,500/-, which is corroborated by the evidence of PW1 that the appellant alone was operating the account and therefore, this amount of Rs.3,36,500/- has to be taken as income of the appellant.

xv. Insofar as the expenditure is concerned, even if it is calculated as per the findings of the trial Court, it comes to only Rs.10,28,443/- and the amount arrived at by the trial Court as Rs.11,4,971/- is wrong.

xvi.In respect Sl.No.5 in the Expenditure Statement - purchase of vehicle, no finding was given by the trial Court and this amount was already added in the movable assets statement and therefore it cannot be again included in the expenditure statement and it would amount



CrlA(MD)No.140 of 2015

to double entry and therefore, Rs.30,175/- has to be excluded. Many of the bank accounts being joint accounts in the name of the appellant and his wife, without any concrete evidence, it cannot be stated that all the amounts lying therein, belong to the appellant.

xvii.The failure to examine the in-laws of the appellant and not even citing them as witnesses is fatal to the prosecution case, especially, when they are alleged to be benamis of the appellant and non production of the pension records of the appellant's father and father-in-law is fatal to the prosecution case.

xviii.The sum and substance of the submission of the learned Senior Counsel appearing for the appellant is that even if the calculation arrived at by the trial Court is assumed to be correct, by excluding the excesses assets and the expenses and by adding the left out income, the prosecution case is disproved.

xix.It is the duty of the prosecution to prove the charges beyond all reasonable doubt, on the other hand, it is sufficient if the evidence of an accused is taken only



CrlA(MD)No.140 of 2015

based on the preponderance of probabilities and as such the appellant has proved the preponderance of probabilities that his income resources are in excess than the pecuniary resources and therefore, the conviction on the appellant cannot be sustained.

xx.The learned Senior Counsel has also relied on the following judgments.

1.Jaydayal Poddar Vs Mst.Bibi Hazra and Others, reported in (1974) 1 SCC 3; 2.Krishanand Aginihotri Vs State of Madhya Pradesh reported in (1977) 1 SCC 816; 3.P.Stayanarayan Murthy Vs State of Andhra Pradesh reported in (1992) 4 SCC 39; 4.Valliammal (D) Vs Subramanian reported in 2004 7 SCC 233; 5.Jagan M.Seshadri Vs State of Tamil Nadu, reported in (2002) 9 SCC 639; 6.Krishnan Chander Vs State of Delhi, reported in 3 SCC 108; 7.M.Krishna Reddy Vs State, reported in 1992 4 SCC 45; 8.Ashok Tshering Bhutia Vs State of Sikkim reported in (2011) 4 SCC 402; 9.Vasant Roa Guhe Vs State of Sikkim, reported in (2017) 4 SCC 402; 10.K.Kumuswami Pillai Vs K. Natarajan, reported in reported in 1993 2 LW 587; 11.Kali Ram Vs State of Himachal Pradesh, reported in 1973 2 SCC



CrlA(MD)No.140 of 2015

1; 12.Lalitha Kumari Vs Government of Uttar Pradesh & Others, reported in (2014) 2 SCC 1; 13.State of Maharashtra Vs Wasudeo Ramachandra Kaidalwar, reported in (1981) 3 SCC 199; 14.State Inspector of Police, Vishakapatnam Vs Surya Sankaram, Karri reported in (2006) 7 SCC 172; 15.State of HP Vs Jail Lal and others, reported in (1999) 7 SCC 280; 16.Roop Kumar Vs Mohan Thedani, reported in (2003) 6 SCC 595;

9.Per contra, Mr.N.Nagendiran, learned Special Public Prosecutor appearing for the respondent CBI made his submission as follows:

i.The appellant had disputed Sl.Nos.1 to 4 of the immovable assets at the end of check period, that they were purchased by Mudiyaappan, father-in-law of the appellant, but as on the date of purchase and construction of the house [Item Nos.1 and 2] the said Mudiyaappan had no sufficient source of income for purchasing the property and constructing the house and the said Mudiyaappan was receiving a sum of Rs.648/- per month as pension.



CrlA(MD)No.140 of 2015

ii.Regarding Sl.Nos.3 and 4, it is purchased by Alangarammal, mother-in-law of the appellant on 24.12.1987 and the appellant gave the sale consideration of Rs.31,500/- as cash and the said property was settled in favour of Antony Rajkumar who is the son of the appellant in the year 2003 by way of Gift Deed by the mother-in-law of the appellant and on the date of purchasing of the above said property, the said Alangarammal was not getting any independent income.

iii.The appellant had disputed item Nos.1 to 26 of the household articles that at the end of the check period there is no evidence to prove that these household articles were available in his house, but the trial Court has considered all the items except Sl.Nos.22 and 25. Sl.Nos.1 to 21, 23, 24 and 26 of the household fixtures found in the house of the appellant were inventoried in the presence of independent witnesses, appellant and his wife. The search list dated 22.02.2006 and the inventory list were marked as ExP129 and ExP130. The value of the articles, mode and year of purchase were recorded as per the information provided by the appellant and his wife, during the search and therefore, the trial Court is correct in including these items.



CrlA(MD)No.140 of 2015

iv. Insofar as the value of the Car is concerned, the appellant had paid Rs.2,55,490/- [Exp25], paid life time tax of Rs.15,225/-[Exp23] and paid Rs.1,450/- for accessories, which comes to Rs.2,72,195/-. The four brothers of the appellant, have deposed that everyone had contributed Rs.20,000/- and therefore, total amount of Rs.80,000/- was deducted from Rs.2,72,195/-, which comes to Rs.1,92,195/-.

v. Insofar as the GPF withdrawal is concerned, the appellant had stated that he had withdrawn Rs.7,00,000/-, but the trial Court has taken into account only Rs.2,70,000/-. It is to be noted that the appellant had withdrawn Rs.1,00,000/- on 03.03.2006 and Rs.3,30,000/- on 01.06.2006, which is after the check period of 01.06.1987 to 21.02.2006. Therefore, this amount of Rs.4,30,000/- cannot be taken into account as income of the appellant.

vi. Insofar as the ground raised by the appellant that a sum of Rs.3,36,500/- withdrawn from the account of the mother of the appellant has to be treated as the income of the appellant is concerned, the mother of the



CrlA(MD)No.140 of 2015

appellant was not staying with the appellant and as per the statement of the account, all the withdrawals are cash withdrawals and therefore, it cannot be presumed that the withdrawal amount from someone's account as the income of the appellant and as such the trial Court is correct and therefore, the learned Special Public Prosecutor prayed that the appeal be dismissed.

10.It is not in dispute that the appellant was an employee working in the Central Excise Department from the year 1980 till 2014 in various capacities, finally worked as Superintendent. Thus he is a public servant as defined under Section 2(c) of the Prevention of Corruption Act, 1988 and it is proved by the evidence of PW1.

11.The check period in this case is from 01.06.1987 to 21.02.2006. The case of the prosecution is that the appellant by misusing his official position had amassed wealth disproportion to his known source of income to the tune of 128% disproportionate asset during the check period, which in short is given in the following tabulated form:



CrlA(MD)No.140 of 2015

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Sl.No	Description	Amount (Rs)
1	Assets at the beginning of the check period	27,776
2	Assets at the end of the check period	37,30,869
3	Assets acquired during the check period (2-1)	37,03,093
4	Expenditure during the check period	16,58,446
5	Total pecuniary resources possessed by the accused (3+4)	53,61,539
6	Income during the check period	23,50,795
7	Disproportion (5-6)	30,10,744
8	Disproportionate Asset Percentage (7/6 X 100)	128%

12.On the basis of the above disproportionate asset, the appellant was charged with under Section 13(2) r/w Section 13(1)(e) of the Prevention of Corruption Act, 1988.

13.In conclusion of the trial, the trial Court has arrived at the following calculation:

The disproportionate assets of the accused officer from 01.06.1987 to 21.02.2006:



CrlA(MD)No.140 of 2015

S1. No	Description	Findings of the Trial Court, amount (in Rs)
1	Assets at the beginning of the check period	1,36,405
2	Assets at the end of the check period	35,74,769
3	Assets acquired during the check period (2-1)	34,38,364
4	Expenditure during the check period	11,49,971
5	Total pecuniary resources possessed by the accused (3+4)	45,88,335
6	Income during the check period	21,44,347
7	Disproportion (5-6)	24,43,988
8	Disproportionate Asset Percentage (7/6 X 100)	114%

Thus the trial Court found the appellant guilty, convicted and sentenced him as mentioned above.

14.The issue to be decided here is, whether the appellant had intentionally enriched illicitly during his period of office or disproportionate any asset to his known source of income by misusing his official position during the check period or not?. The issues are dealt with on category (statement) wise as follows:



CrlA(MD)No.140 of 2015

**15.Statement A - Assets at the beginning of the
check period:**

i.According to the prosecution, the assets of the appellant at the commencement of the check period, i.e., as on 01.06.1987 is Rs.27,776/-.

ii.Based on the pay drawn particulars of the accused officer from 1980 to 1986 (Exp103) and also by considering Ex148 (permission letter of the department) the trial court has taken the assets at the beginning of the check period as Rs.1,36,405/- as the accused officer had legal sources of the income from his salary from 17.07.1980 to February 1986 as Rs.85,000/-, from 01.03.1986 to 31.05.1987 as Rs.31,905 and as per Exp.148, Rs.19,500/- thus totalling Rs.1,36,405/- at the beginning in the check period. The prosecution has not challenged the same and accepted this amount.

➤ **Therefore this amount of Rs.1,36,405/- is taken as initial asset of the appellant as on 01.01.1987.**



CrlA(MD)No.140 of 2015

16.Statement - B (I) immovable properties:

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i.A Plot was purchased in the year 1991 at No.73, Devarayar Nagar, Trichy. This immovable property purchased by one Mudiappan, father-in-law of the accused officer was transferred in the name of Lilly - wife of the appellant in the year 1999. The value of the property mentioned in the charge sheet is Rs.70,400/-.

ii.The appellant made certain constructions in the above mentioned Plot No.73, Devarayar Nagar, Trichy in the year 1994 -1995 to the tune of Rs.8,36,000/-.

iii.The plot was purchased by one Alangarammal - mother-in-law of the accused officer, at No.7, Sakthi Vinayagar Kovil Street, Trichy in the year 1988 for the sale consideration of Rs.31,500/-. This property was later transferred to the name of Antony Rajkumar who is the son of appellant.

iv.The construction made in plot No.7 Sakthi Vinayagar Kovil Street, Trichy in the year 1991-1992 is valued as Rs.5,96,000/-. Thus the total value of the movable asset is Rs.15,33,900/-.



CrlA(MD)No.140 of 2015

16A.Item Nos.1 and 2:

Prosecution Case: -

The contention of the prosecution is that, Mudiappan, father-in-law of the accused officer was a retired police constable who got retired in the year 1978 and died in the year 2008. Mudiappan was drawing a pension of Rs.648/- per month and he is having six members in his family. Within this meagre pension amount, he could not have purchased a property worth about Rs.70,400/- and constructed a building worth about Rs.8,36,000/-. The evidence of PW4 would disclose that the accused officer had also accompanied Mudiappan at the time of purchase of the property and also he had signed as a witness in the document. This property was transferred in the name of Lilly wife of the accused officer in the year 1999. On the date of purchase and construction of house, Mudiappan had no sufficient source of income to purchase as well to construct a building and therefore the same are treated as assets of the accused officer.

Defence version: -

i.The defence of the appellant is that the father and mother-in-law of the appellant are not arrayed as



CrlA(MD)No.140 of 2015

accused and not even cited as witnesses in charge sheet.

There is no specific charge that the properties were purchased by the appellant in the name of his in-laws. The evidence of PW2 & PW3 are opposed to the contents of a registered sale deed and therefore those evidence have to be rejected as per section 92 of the Indian Evidence Act. PW4 has categorically stated that he sold the property to Mudiappan. Being PW4 this the evidence of the prosecution witness's testimony will have to be accepted. There is nothing on record to indicate / infer that the accused funded the purchase. The learned senior counsel has also relied on various judgements of Hon'ble Supreme Court on this aspect.

16B.Item Nos.3 and 4:

Prosecution Case: -

The contention of the prosecution is that Alangarammal, the mother-in law of the accused officer was a house wife and had no independent income. The evidence of PW.2 would disclose the accused officer had accompanied Alangarammal, negotiated the price and purchased the property in the name of Alangarammal, the amount was paid in cash and was also paid by the



CrlA(MD)No.140 of 2015

accused officer. The accused officer also stood as a witness to the document of Alangarammal.

Defence version:

The plot at No.7, Sakthi Vinayagarkovil Street, Trichy, were purchased by Alangarammal in her name in the year 1988 i.e., prior to the check period. Alangarammal was neither added as an accused nor as a witness. No materials are placed to infer that the accused officer funded her mother-in-law/ Alangarammal to purchase the property.

Findings of this Court:-

i.The movable property purchased by the father-in-law in the year 1991 and the property purchased by the Alangarammal mother-in-law in the year 1988 and the development made in those properties are attributed as against the accused officer. Since those properties were settled in the name of Lilly (wife of the accused officer and Peter Rajasekar son of the appellant). The property of Alangarammal was purchased in the year 1988 prior to the check period. Both Mudiappan and Alangarammal were not



CrlA(MD)No.140 of 2015

arrayed as an accused in this case. They were not even examined as witnesses during the course of the investigation and not cited as witness in the charge sheet. Without examining the father and mother-in-law of the accused officer, the prosecution is not justified in claiming that they were not having sufficient source of income to purchase the property as alleged by the prosecution. The prosecuting agency has not made any attempt to ascertain the source of income by examining them. In the absence of such materials, this court cannot presume that the properties were purchased by the appellant based on the evidence of PW2 and PW3.

ii. PW2 to PW4 are vendors who sold their properties to Alangarammal (mother-in-law) & Mudiyaippan (Father-in-law) of the appellant. PW2 has stated that appellant negotiated the sale of property and handed over the sale consideration to him. In cross examination, PW2 and PW3 have admitted that as per the recitals of their respective sale deeds, it was the mother-in-law of appellant who paid the sale consideration and she was the purchaser of the property. The oral deposition of these witnesses i.e., PW.2 and PW.3 are opposed to section 92 of



CrlA(MD)No.140 of 2015

the Indian Evidence Act. The stamp duty and the registration charges incurred for this documents are also attributed as against this accused officer, however the same has been removed by the trial court that not even a single asset was purchased by the accused officer during the check period and not even a single document stands in his name as well. The learned trial judge has also held that the expenditures that were made by Mudiyaippan and Alangarammal cannot be fastened on the accused without any concrete proof. While so based on the vague statement of PW.2 the trial court had arrived at the conclusion as against the appellant. Without adding the mother-in-law and father-in-law as abettors or as co-conspirators of the alleged offence those properties cannot be considered as the properties purchased by the appellant.

16.C.It is relevant to refer to Section 91 and Section 92 of Indian Evidence Act, 1872, which read as follows: -

(i) Section 91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document. — When the terms of a contract, or of a grant, or of



CrlA(MD)No.140 of 2015

any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Section 92. Exclusion of evidence of oral agreement. — When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

None of the exception to either of the sections (91 and 92) apply to the present case because the validity of the documents present before the court are neither questioned nor challenged. Therefore, documentary evidence



CrlA(MD)No.140 of 2015

prevails over oral evidence by application of the
'Best evidence rule'.

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16D.The Hon'ble Supreme Court in **Roop Kumar Vs. Mohan**

Thedani reported in (2003) 6 SCC 595,held as follows: -

" **16.** The practical consequence of integration is that its scattered parts, in their former and inchoate shape, have no longer any jural effect; they are replaced by a single embodiment of the act. In other words, when a jural act is embodied in a single memorial all other utterances of the parties on the topic are legally immaterial for the purpose of determining what are the terms of their act. This rule is based upon an assumed intention on the part of the contracting parties, evidenced by the existence of the written contract, to place themselves above the uncertainties of oral evidence and on a disinclination of the courts to defeat this object. When persons express their agreements in writing, it is for the express purpose of getting rid of any indefiniteness and to put their ideas in such shape that there can be no misunderstanding, which so often occurs when reliance is placed upon oral statements. Written contracts presume deliberation on the part of the contracting parties and it is



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CrlA(MD)No.140 of 2015

natural they should be treated with careful consideration by the courts and with a disinclination to disturb the conditions of matters as embodied in them by the act of the parties. (See McKelvey's Evidence, p. 294.) As observed in Greenlear's Evidence, p. 563, one of the most common and important of the concrete rules presumed under the general notion that the best evidence must be produced and that one with which the phrase "best evidence" is now exclusively associated is the rule that when the contents of a writing are to be proved, the writing itself must be produced before the court or its absence accounted for before testimony to its contents is admitted.

17. *It is likewise a general and most inflexible rule that wherever written instruments are appointed, either by the requirement of law, or by the contract of the parties, to be the repositories and memorials of truth, any other evidence is excluded from being used either as a substitute for such instruments, or to contradict or alter them. This is a matter both of principle and policy. It is of principle because such instruments are in their own nature and origin, entitled to a much higher degree of credit than parol evidence. It is of policy*



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CrlA(MD)No.140 of 2015

because it would be attended with great mischief if those instruments, upon which men's rights depended, were liable to be impeached by loose collateral evidence. (See Starkie on Evidence, p. 648.)

18. *In Section 92 the legislature has prevented oral evidence being adduced for the purpose of varying the contract as between the parties to the contract; but, no such limitations are imposed under Section 91. Having regard to the jural position of Sections 91 and 92 and the deliberate omission from Section 91 of such words of limitation, it must be taken note of that even a third party if he wants to establish a particular contract between certain others, either when such contract has been reduced to in a document or where under the law such contract has to be in writing, can only prove such contract by the production of such writing.*

19. *Sections 91 and 92 apply only when the document on the face of it contains or appears to contain all the terms of the contract. Section 91 is concerned solely with the mode of proof of a document with limitation imposed by Section 92 relates only to the parties to the document. If after the document has been produced to prove its terms*



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CrlA(MD)No.140 of 2015

under Section 91, provisions of Section 92 come into operation for the purpose of excluding evidence of any oral agreement or statement for the purpose of contradicting, varying, adding or subtracting from its terms. Sections 91 and 92 in effect supplement each other. Section 91 would be inoperative without the aid of Section 92, and similarly Section 92 would be inoperative without the aid of Section 91.

20. The two sections, however, differ in some material particulars. Section 91 applies to all documents, whether they purport to dispose of rights or not, whereas Section 92 applies to documents which can be described as dispositive. Section 91 applies to documents which are both bilateral and unilateral, unlike Section 92 the application of which is confined to only bilateral documents. (See: *Bai Hira Devi v. Official Assignee of Bombay* [AIR 1958 SC 448] .) Both these provisions are based on "best-evidence rule". In *Bacon's Maxim Regulation 23*, Lord Bacon said "The law will not couple and mingle matters of speciality, which is of the higher account, with matter of averment which is of inferior account in law." It would be inconvenient that matters in writing made by advice and on consideration, and which



CrlA(MD)No.140 of 2015

finally import the certain truth of the agreement of parties should be controlled by averment of the parties to be proved by the uncertain testimony of slippery memory.

21.*The grounds of exclusion of extrinsic evidence are: (i) to admit inferior evidence when law requires superior would amount to nullifying the law, and (ii) when parties have deliberately put their agreement into writing, it is conclusively presumed, between themselves and their privies, that they intended the writing to form a full and final statement of their intentions, and one which should be placed beyond the reach of future controversy, bad faith and treacherous memory. "*

16.E. Applying the above principles, this court is of the opinion that

(i) mere statement by a party to the document, against his own recitals in the deed, without any further material to corroborate the same is simply impermissible and against the provisions of the Indian Evidence Act.

(ii) Best evidence in a case of documentary evidence is the original of the document and oral evidence requires



CrlA(MD)No.140 of 2015

the witness to state as evidence only something perceived by that person directly.

(iii) If the oral evidence given in the present case is considered, then it turns into an allegation of a benami transaction.

(iv) Sale deeds in the names of Alangarammal and Mudiyaippan (later on transferred to Antony Rajkumar and Lilly respectively) are to be considered as conclusive proof that the properties do not belong to appellant.

16F. The Apex court in **Valliammal Vs. Subramaniam reported in (2004) 7 SCC 233** held as follows: -

"12. There is a presumption in law that the person who purchases the property is the owner of the same. This presumption can be displaced by successfully pleading and proving that the document was taken benami in the name of another person for some reason, and the person whose name appears in the document is not the real owner, but only a benami. Heavy burden lies on the person who pleads that the recorded owner is a benami-holder.

"13. This Court in a number of judgments has held that it is well established that burden of proving that a particular sale



CrlA(MD)No.140 of 2015

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is benami lies on the person who alleges the transaction to be a benami. The essence of a benami transaction is the intention of the party or parties concerned and often, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him, nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. Refer to *Jaydayal Poddar v. Bibi Hazra* [(1974) 1 SCC 3] , *Krishnanand Agnihotri v. State of M.P.* [(1977) 1 SCC 816 : 1977 SCC (Cri) 190] , *Thakur Bhim Singh v. Thakur Kan Singh* [1980, 3 SCC 72] , *Pratap Singh v. Sarojini Devi* [1994 Supp (1) SCC 734] and *Heirs of Vrajlal J. Ganatra v. Heirs of Parshottam S. Shah* [(1996) 4 SCC 490] . It has been held in the judgments referred to above that the question whether a particular sale is a benami or not, is largely one of fact, and for determining the question no absolute formulas or acid test, uniformly applicable in all situations can be laid. After saying so, this Court spelt out the following six circumstances which can be taken as a guide to determine the nature of the transaction:



CrlA(MD)No.140 of 2015

“(1) the source from which the purchase money came;

(2) the nature and possession of the property, after the purchase;

(3) motive, if any, for giving the transaction a benami colour;

(4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;

(5) the custody of the title deeds after the sale; and

(6) the conduct of the parties concerned in dealing with the property after the sale.

16H.It is evident from records that a plot at No.7, Sakthi Nagar Vinayagar Koil street, Crawford, Trichy was purchased by Alangarammal, mother-in-law of the appellant vide ExP.3 and a superstructure was put up in that plot and was settled in favour of Antony Rajkumar, son of the appellant in the year 2003 vide ExP.127 [gift settlement deed] and in the year 2004 vide gift settlement deed, the another vacant plot was settled by her in favour of Peter Rajasekar another son of the



CrlA(MD)No.140 of 2015

appellant, who in turn sold the same to one Jahir Hussain in the year 2005.

16I.It is seen that these properties were originally purchased and constructions were made by Alangarammal and the builder of the house in his statement categorically deposed that the construction cost was paid by the said Alangarammal. Though he had been treated as hostile witness, his entire deposition need not be discarded, since there is no evidence to exhibit that the appellant gave money to purchase the property and to construct the building thereon.

(i)No money trail leading the purchase of the property to the appellant is established.

(ii)No control exercised by the accused over the properties was established for the period from 1987 to 2003.

(iii) The means of the purchasers as per sale deeds (mother-in-law and father-in-law) has not been disproved.

(iv) Moreover PW.4 has deposed that only the father-in-law of the appellant transacted. He was declared hostile, his statement cannot be ignored.



CrlA(MD)No.140 of 2015

(v) The builder of the house (PW.9 & PW.31) has deposed that he received the money only from Alangarammal (mother-in-law). His evidence cannot be discredited without any basis.

16J. It appears that the investigating agency had not produced any material to show that the father-in-law and the mother-in-law of the appellant were not having enough source of fund to purchase the plots and to make construction. The trial Court has failed to take into consideration these aspects and therefore, these properties, namely Sl.Nos.1 to 4 cannot be considered as the property purchased by the appellant and the same cannot be attributed against the appellant. The value of the properties of the father-in-law and mother-in-law of the appellant cannot be added as the property of the appellant and therefore, the cost of the said properties and the buildings thereon Rs.15,33,900/- is deleted.

Accordingly, the movable asset of the appellant is arrived at Rs.0 (Zero) at the end of the check period.



CrlA(MD)No.140 of 2015

**17.Statement-B (II) the movable asset at the end
of the check period:**

a.Insofar as this statement - B (II) is concerned, according to the appellant, Sl.No.4 (Steel Cot two numbers) and Sl.No.10 (One Wooden dining table with four chairs) were purchased before the check period in the year 1981 and 1985 and further, they are already included in Statement - A [Asset at the beginning of the check period] therefore, the same has to be deleted from this statement-B.

b. The prosecution case itself is Sl.No.4 - Steel Cot two numbers and Sl.No.10 - One Wooden dining table with four chairs were purchased in the year 1981 and 1985 respectively. Moreover the value of these two items were already included in statement-A - Assets at the beginning of the check period as on 01.06.1987. Therefore when the value has already been included for these two items in Statement-A, it would amount to double entry to include it once again in statement-B. Therefore the submission of the learned Counsel for the appellant is accepted. Accordingly the values of the articles found in Sl.No.4-



CrlA(MD)No.140 of 2015

Steel Cot two numbers Rs.900/- and Sl.No.10 - One Wooden dining table with four chairs Rs.2,500/- totalling to Rs.3,400/- are deleted from statement-B (II).

c.The appellant claims that in respect of Sl.Nos.1, 3, 5 to 12, 14, 15 to 21 and 23, the trial Court has held that there is no evidence let in by the prosecution that these items were available at the time of the investigation and there is no material that reflects the mode and year of acquisition and also not supported by any voucher or bills produced by the prosecution. By holding so, the trial Court has taken the value of these entire items of immovable household fixtures as Rs.1,89,660/-. However, the trial Court has deducted a sum of Rs.76,100/- for Sl.No.22 [Rs.54,500/-] and Sl.No.25 [Rs.21,600], as the purchase of these items were already intimated to the department. When the trial Court has held that there is no supporting evidence, the values of those items should not be considered.

d.It appears that there is no oral or documentary evidence in respect of Sl.Nos.1, 3, 5 to 12, 14, 15 to 21 and 23 of the movable household fixtures as to the date of



CrlA(MD)No.140 of 2015

purchase, the price of the articles. In the absence of any such concrete evidence, the values in respect of these items cannot be taken into consideration by this Court, as the value of the properties cannot be ascertained exactly. Therefore as contended by the appellant only Sl.No.2 Samsung colour TV [Rs.13,000/-], Sl.No.13 Aquaguard [Rs.6,640/-] and Sl.No.24 Music System [Rs.17,270/-] and their value alone can be taken into account, as it was already intimated to the department thus totalling to Rs.36,910/-.

Accordingly, the value of the Statement-B (II) the movable asset [household fixtures] is arrived at to Rs.36,910/-.

18.Statement-B (III) Vehicles:

a. There are four items in this category. There is no dispute raised by the appellant in respect of Sl.Nos.2 to 4 and their values arrived at by the prosecution as well as by the trial Court. Therefore, the same can be taken as it is.



CrlA(MD)No.140 of 2015

b. The appellant claims that in respect of Sl.No.1 Maruti Alto Car having Registration number TN.20 - 9021, the trial Court has held that the contribution by the brothers of the appellant to purchase the car as Rs.80,000/- and taken the value of the car as Rs.1,77,327/- out of Rs.2,57,327/-, after deducting a sum of Rs.80,000/-. But the appellant claims that his brothers have contributed Rs.1,00,000/- and therefore, Rs.1,00,000/- has to be deducted.

c.It is seen from the evidence of PW11, DW1, DW2 and DW2 the brothers of the appellant that they had contributed Rs.1,00,000/- toward purchase of the car and therefore, based on their evidence, by deducting the contribution of the appellants brother, the value of the car can be taken as Rs.1,57,327/-. As such, this court accepts the explanation of the appellant.

➤ **At the end of the check period, Statement B- the value of the vehicles is arrived at to Rs.3,68,641/-.**



CrlA(MD)No.140 of 2015

19.Statement-B (IV) Bank Balance:

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a. There are five items in this bank balance category. According to the prosecution it is Rs.9,75,099/- and the trial Court has also accepted the same.

b. According to the appellant, in respect of Sl.No.2 the rental income of Rs.1,32,000/- including the amount of advance Rs.5,000/- has to be deducted because, the rental income is derived from the property belonging to the son of the appellant, namely Antony Rajkumar from September 1998 till the end of the check period. When the property itself does not belong to the appellant, the rental income cannot be taken into consideration of the appellant.

c. It is seen that Antony Arulraj [PW25] in his evidence deposed that this rent amount has been derived from the property, which was settled by his grand father in his favour and since already the value of the said property has been excluded from the name of the appellant, it is not fair to include the rent in the account of the appellant, when the said property itself is not standing in his name.



CrlA(MD)No.140 of 2015

d. When the above said property itself is excluded from the name of the appellant by the Court, the rent derived from it cannot be fastened on the appellant. Therefore accepting the contention of the appellant, the rental income of Rs.1,32,000/- is deducted from the bank balance and as such the bank balance can be taken as Rs.8,42,799/- [Rs.9,75,099 - Rs.1,32,000].

➤ **Statement - B (IV) Bank Balance is arrived at Rs.8,42,799/-**

e. In respect of category (v) Fixed deposits (vi) Mutual funds, (vii) Head Post office RD and SB A/c, (VIII) Theppakulam Post Office RD and SB, the appellant has accepted the decision of the trial Court and has not raised any dispute. As such the calculation arrived at by the trial Court is taken as it is by this Court.

20.Statement-B (IX) Other Assets

a. The appellant is disputing the chit fund investment of Rs.25,400/- in the year 2005 - 2006 and the deposit of Rs.1,600/- with BSNL deposit in the year 1999, since the person who conducted the chit was not examined.



CrlA(MD)No.140 of 2015

In support of his claim the appellant referred to the deposition of PW15 one Ilangovan, wherein he stated that he was not involved in any chit fund business and it was only his wife who had involved in such a business.

b.It appears that the contention of the appellant in this regard has to be accepted because the real person who involved in the chit fund activities had not been examined and it has not been proved that the appellant had deposited this money with her. **Therefore, the amount of Rs.25,400/- is deleted from the his asset.**

c.Insofar as the BSNL deposit of Rs.1,600/- is concerned, it is in the name of the appellant's wife and it can also be deleted from the account of the appellant. **Therefore, the amount of Rs.1,600/- is deleted.**

Accordingly the total asset possessed by the accused at the end of the check period is Rs.18,44,919/-.

21.Statement- C, contains the income from all sources.

In this statement-C, though the appellant had accepted the values arrived at by the trial Court in



CrlA(MD)No.140 of 2015

respect of some items, had disputed the values in respect of rest of the items. The disputed values are dealt with separately, as follows:

21.A. Sl.No.2.GPF Withdrawal:-

The prosecution version is the GPF withdrawal of the appellant during the said period is Rs.2,74,500/-. But the appellant claims that the GPF withdrawal during the period is Rs.7,00,00/-. The appellant also relied on Ex.P133 and the trial Court taken the GPF withdrawal as Rs.2,74,500/

Finding of this Court:-

(i) It is seen from records through PW51 Manivannan, then superintendent, Central Excise Department Trichy Ex.P.132 letter of the Commissioner and Ex.P133 [part final proforma application for withdrawal from P.F] were marked. As per ExP.132 and ExP.133, GPF withdrawal had taken place from the year 1996 to 2006 as follows:

Sl.No	Date	Amount (in Rs)
1	26.03.1996	20000
2	12.06.1996	10000
3	31.07.1998	24000



CrlA(MD)No.140 of 2015

4	22.06.1999	30000
5	04.04.2001	50000
6	02.04.2002	48000
7	03.04.2003	48000
8	03.06.2003	40000
9	03.03.2006	100000
10	01.06.2006	330000
	Total	7,00,000

(ii) There is no dispute with regard to the check period, i.e., 01.06.1987 to 21.02.2006. From the above table, it is clear that there are 8 GPF withdrawals within the check period and 2 GPF withdrawals are there beyond the check period. Thus withdrawals after the check period, i.e., 21.02.2006, cannot be taken into consideration as the income of the appellant. As such a sum of Rs.2,70,000/- only can be taken as income from GPF withdrawal. Therefore the calculation of the trial Court by rejecting the withdrawal after the check period is proper. Accordingly, the claim of the appellant is rejected by this Court.



CrlA(MD)No.140 of 2015

21B.S1.No.7 - SB Bank interest:-

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The appellant claims that the interest of the bank deposit as alleged by the prosecution as Rs.9,220/- is wrong and the decision of the trial Court that the amount of interest as Rs.6,864/- is also not correct. According to the appellant, the interest should be Rs.14,514/-.

Finding of this Court

As per the documents, interest Rs.2,455/- from IOB A/c No.6376, Rs.130/- from Canara Bank A/c No.3791, Rs.53 from Indian Bank A/c No.7401 and Rs.3,748/- from Indian Bank Account is received by the appellant and his wife totalling to Rs.6,386/- and the trial Court has not taken into consideration the interest of Rs.8,128/- received from Canara Bank A/c No.28763 by the appellant's son Antony Rajkumar. It is seen that there is an arithmetic error in the calculation of interest. It is neither as claimed by the appellant as Rs.14,514/- nor as calculated by the trial Court as Rs.6,864/-, but only Rs.6,386/-.



CrlA(MD)No.140 of 2015

21C.S1.No.8 Sale of Vehicle:

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The appellant fairly claims a sum Rs.8,000/- is liable to be excluded from income, as the trial Court has held that there is no evidence in respect of this sale income. The trial Court has taken a sum of Rs.8,000/- as sale income.

Finding of this Court:

The trial Court in its judgment has held that the investigation does not reveal any details such as the type of vehicle, the details of the purchaser, the value and there is no witness examined in this regard and no document is marked for such transaction. When the trial Court has given such a finding, it is not justified in taking Rs.8,000/- as the vehicle's sale value. Therefore, Rs.8,000/- has to be deleted from the income of the appellant.

21.D.S1.Nos. 9 to 15 Rental Income:

(i)The prosecution case is that the rental income of properties from 1B and 1C, Sakthi Vinayagar Koil



CrlA(MD)No.140 of 2015

Street is Rs.10,000/-; from 1A Sakthi Vinayagar Koil Street is Rs.73,850/-; from 1C Sakthi Vinayagar Koil Street is Rs.70,250/-; 1B Sakthi Vinayagar Koil Street is Rs.30,000/-; from 1D Sakthi Vinayagar Koil Street is Rs.25,000/-; Advance amount for 1A Sakthi Vinayagar Koil Street is Rs.5,000/- and the Advance amount for 1C Sakthi Vinayagar koil street is Rs.15,000/-, totalling to Rs.2,29,100/-.

(ii)The appellant alleges that when the said properties themselves are not belonging to the appellant, the income derived from the said properties cannot be attributed as against the appellant. Moreover, the trial Court has held that there is no oral or documentary evidence produced by the prosecution in this regard.

Finding of this Court

The prosecution has alleged that the above rental income of Rs. 2,291,00/- has to be considered as the income of the appellant. The trial Court in its judgment has observed that the prosecution has not adduced any oral or documentary evidence pertaining to the rents received from the above properties. The prosecution has arrived at



CrlA(MD)No.140 of 2015

this calculation based on presumption. This Court has already held that the above properties do not belong the appellant and when it is so, the rental income derived from the said properties cannot be considered as the income of the appellant. Therefore, this sum of Rs. 2,29,100/- cannot be taken as the income of the appellant. The trial Court has rightly come to such conclusion.

21E.Withdrawal from Irudaya Mary Account:

(i)The appellant claims that the trial Court has not taken into consideration the withdrawal of Rs.3,36,500/-from Irudaya Mary the mother of the appellant's account, as income of the appellant. The appellant states that PW11 has categorically deposed that the appellant was fully operating the bank account of his mother and her mother was also living with the appellant. Further there are regular withdrawals from the account by the appellant. He further relied on Ex.D21 [Statement of account for the period from 01.01.2001 to 12.02.2008]. In the absence of any disputing or contrary evidence, the said amount has to be considered as the income of the appellant.



CrlA(MD)No.140 of 2015

(ii) Prosecution version is that though the appellant claims that his mother was living with him, there is no evidence that he only operated the said bank account. Moreover all the withdrawals are cash withdrawal and it is not known, who has withdrawn the amount. Therefore, this amount cannot be considered as the income of the appellant.

Findings of this Court

(iii) It is seen that the appellant claims that his mother was staying with him and the prosecution has not filed any document to show that her mother was having sufficient income to operate the account and in the absence of any such disputing evidence, this amount can be considered as the income of the appellant. Therefore, a sum of Rs.3,36,500/- is added as the income of the appellant.

Statement - C income from all sources is arrived at Rs.24,72,369/-



CrlA(MD)No.140 of 2015

22.Statement D expenditure during the check period:

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Insofar as the statement D expenditure during the check period is concerned, the appellant has grievance regarding Sl.No.2, i.e., the cost of the land, stamp duty and registration charges of Rs.1,21,528/-. The appellant has referred to paragraph No.158 of the judgment of the trial Court, wherein the trial Court has held that as far as serial No.2 of statement 'D' is concerned, the Investigating Officer has stated that the appellant during 1987 to 2006 has incurred an amount of Rs.1,21,528/- towards stamp duty and registration charges. This expenditure has to be totally removed since not a single asset was purchased by the appellant during the check period and not a single document stands in his behalf and the expenditure that were made by Mudiyaappan, Alangarammal cannot be fastened on the appellant without any basis. But contrary to the above finding, the trial Court included a said sum of Rs.1,21,528/- under the head of the cost of stamp duty and registration charges.



CrlA(MD)No.140 of 2015

Finding of this Court

(i) This Court has already held that the properties do not stand in the name of the appellant and the rental income derived from them is not considered as the income of the appellant. When the properties are not standing in the name of the appellant, the cost of stamp duty and registration charges cannot be considered as the expenditure by the appellant. As such, **Rs.1,21,528/- under the head of stamp duty and registration charges is deleted.**

(ii) The other head the appellant disputes is Sl.No.5, purchase of vehicle Rs.30,175/-. According to the appellant this amount had already been included in the statement of movable assets and thus, including this amount herein amounts to double entry and thus, this amount of Rs.30,175/- has also to be removed. This Court agrees with the submission of the appellant in this regard and hence deletes the same from this statement. **Thus, Sl.No.5, Purchase of vehicle Rs.30,175/- is deleted.**



CrlA(MD)No.140 of 2015

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(iii) Further Sl.No.3 - House tax Rs.23,914/- is concerned, when the property itself is not belonging to the appellant, the house tax paid shall not be considered.

(iv) This Court accepts the submission of the appellant and as such Rs.23,914/- is deleted.

(v) The appellant has no dispute with the findings of the trial Court regarding other heads in the statement-D expenditure during the check period. Thus the statement- D is modified to the extent discussed above and based on the above modification the expenditure of the appellant during the check period comes to Rs.9,74,354/-.

➤ **Statement D expenditure during the check period is Rs.9,74,354/-.**

23. In view of the foregoing discussion and the calculation, the disproportionate assets of the appellant from 01.06.1987 to 21.02.2006 is calculated by modifying the trial Court's calculation as follows in the tabulated form:



CrlA(MD)No.140 of 2015

Sl. No	Description	Findings of the Trial Court, amount (in Rs)	Findings of this Court, amount (in Rs)
1	Assets at the beginning of the check period	27,776	1,36,405
2	Assets at the end of the check period	35,74,769	18,44,919
3	Assets acquired during the check period (2-1)	34,38,364	17,08,514
4	Expenditure during the check period	11,49,971	9,74,354
5	Total pecuniary resources possessed by the accused (3+4)	45,88,335	26,82,868
6	Income during the check period	21,44,347	24,72,369
7	Disproportion (5-6)	24,43,988	2,10,499
8	Disproportionate Asset Percentage (7/6 X 100)	114%	8.5%

24.The learned Counsel for the appellant placed reliance upon the decision of the Hon'ble Supreme Court, in **Krishnanand vs The State Of Madhya Pradesh**, AIR 1977 SC 796, wherein the Court has given benefit to the accused considering the asset possessed by the accused was less than 10% and the relevant portion reads as follows:



CrlA(MD)No.140 of 2015

"33. It will, therefore, be seen that as against an aggregate surplus income of Rupees 44,383.59 which was available to the appellant during the period in question, the appellant possessed total assets worth Rupees 55,732.25. The assets possessed by the appellant were thus in excess of the surplus income available to him. but since the excess is comparatively small - it is less than ten per cent of the total income of Rs.1,27,715.43 - we do not think it would be right to hold that the assets found in the possession of the appellant were disproportionate to his known sources of income so as to justify the raising of the presumption under Sub-section (3) of Section 5. We are of the view that, on the facts of the present case the High Court as well as the Special Judge were in error in raising the presumption contained in Sub-section (3) of Section 5 and convicting the appellant on the basis of such presumption".

25.The income of the appellant during the check period is Rs.24,72,369/- and the asset possessed by the appellant at the end of the check period is Rs.26,82,868/- and the surplus asset possessed by the appellant is Rs.2,10,499/-. Applying the ratio laid down by the Hon'ble Supreme Court cited supra, it is less than



CrlA(MD)No.140 of 2015

10% of the total income of the appellant. Therefore, the benefit should be given to the appellant.

26. In the result,

a. the appeal is allowed;

b. the conviction and sentence dated 28.04.2015 imposed on the appellant in CC No.11 of 2008 by the learned II Additional District Judge For CBI Cases, Madurai is set aside;

c. the appellant is acquitted of the charges framed against him; and

d. the bail bonds executed by the appellant, if any shall stand cancelled and the fine amount if any paid by the appellant shall be refunded.

27. This Court places its appreciation on the way the case was presented by the learned Senior Counsel appearing for the appellant.

28.02.2020

Index: Yes / No

dsk



CrlA(MD)No.140 of 2015

To

1. II Additional District Judge
For CBI Cases, Madurai.
2. The Inspector of Police,
Central Bureau of Investigation,
Anti Corruption Branch,
III Floor, Shashtri Bhavan
No.235 Haddow Road,
Chennai - 600 006.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Record Keeper (2 Copies),
Criminal Section,
Madurai Bench of Madras,
Madurai.



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CrlA(MD)No.140 of 2015

B. PUGALENDHI . J . ,

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Pre delivery judgment made in

Crl.A.(MD)No.140 of 2015

28.02.2020