IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.07.2023	Pronounced on : 16.08.2023

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Criminal Appeal No.267 of 2018

1. D.Ramani, aged 50 years,
   S/o.Late D.Venkataiah,
   Appraiser, Postal Appraising Department,
   Air Customs Department, Chennai.
   R/o.Plot No.11/466, MMDA Colony,
   Moggappair East, Chennai – 600 037. ... Appellant/Accused 1

2. R.Vijayalakshmi, aged 38 years,
   W/o.D.Ramani,
   R/o.Plot No.11/466, MMDA Colony,
   Moggappair East, Chennai – 600 037. ... Appellant/Accused 2

3. R.Adhikesavulu, aged 69 years,
   S/o.Late Pollaiah,
   R/o.Plot No.25-1-528, Postal Colony,
   A.K.Nagar, Nellore. (Andhra Pradesh). ... Appellant/Accused 3

/versus/

State Rep. by.
Inspector of Police,
CBI, ACB, Chennai.
(RC.No.42/A/2010) ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., pleased to call for the records and set aside the order passed in C.C.No.31 of

2011 on the file of the Learned XII Additional Special Judge for CBI Cases, Chennai, dated 27.03.2018 and allow this Criminal Appeal.

For Appellant : Mr.K.Ravi Anantha Padmanaban, Senior Counsel for Mr.N.Santhosh Kumar.

For Respondent : Mr.K.Srinivasan, Senior Counsel Special Public Prosecutor (C.B.I).

J U D G M E N T

The above Criminal Appeal is directed against the judgment passed by the Special Court for CBI Cases at Chennai in C.C.No.31 of 2011 *vide* order dated 27.03.2018. The 1st appellant/Ramani is the public servant. The 2nd (Vijayalakshmi) and 3rd appellant (Adikesavalu) are his wife and father-in-law respectively.

2. Pending appeal, the 1st appellant being a public servant died. The death certificate issued by the Chennai Corporation furnished by the appellant Counsel indicates that, the 1st appellant died on 13.05.2021. The prime accused, a public servant died and his appeal gets abated. Whereas, the 2nd and 3rd appellants, who held guilty for offence under Section 109 IPC r/w.13(2) r/w 13(1)(e) of P.C.Act, are before this Court to set aside the trial Court judgment.

3. At the time of registering the case D.Ramani, the 1st accused was serving as Appraiser, Airport sorting office, Airport customs, Meenambakkam, who come within the meaning of public servant as defined under the P.C.Act. The 2nd and 3rd accused are his wife and father-in-law. On 16.12.2010, based on source of information SPE, CBI, ACB, Chennai, registered First Information Report [Ex.P.161] against the 1st accused under suspicion that, he has amassed wealth disproportionate to the known source of income during the check period between 01.01.2002 to 06.01.2010. As per the information, D.Ramani, S/o.Venkataiah, who hail from a middle class family and his father served as Lubricator in TVS Company between 1960 to 1987, his mother engaged in menial employment and his father-in-law, a retired Head Constable in the Andhra Pradesh Government, has found in possession of asset worth Rs.61,71,186/-, which is about 90.72% more and above his source of income.

4. After investigation, final report was filed disclosing the fact that, the 1st accused, Ramani, Appraiser in the Custom Department as Grade 'B' Officer, had accumulated movable and immovable properties which are approximately 382% disproportionate. The properties held in the name of the 1st accused, the public servant been capsulized as under:-

Sl. No.	*Particulars*	*Amount*
1.	Assets at the end of the check period (Statement-B)	18,381,259
2.	Assets at the beginning of check period (Statement-A)	9,88,259
3.	Assets acquired during the check period (B-A)	1,73,93,000
4.	Income during the check period (Statement-C)	43,08,371
5.	Expenditure during the Check period (Statement-D)	33,83,474
6.	Likely Saving during the check period (C-D)	9,24,897
7.	Disproportionate Assets (B-A) – (C-D)	1,64,68,103
8.	Percentage of D.A	382%

5. Based on the material facts, the trial Court framed the following charges:-

Rank of the accused	*Charge*
A1	U/s.13(2) r/w.13(1)(e) of P.C.Act
A2	U/s.109 IPC r/w.13(2) r/w.13(1)(e) of P.C.Act
A3	U/s.109 IPC r/w.13(2) r/w.13(1)(e) of P.C.Act

6. To prove the charges, prosecution examined 54 witnesses (P.W.1 to P.W.54) and 191 Exhibits (Ex.P.1 to Ex.P.191) were marked. On the side of the defence, one B.Chandriah was examined as D.W.1, 6 documents (Ex.D.1 to Ex.D.6) were marked. Cash of Rs.1,15,000/- marked as M.O.1. Letter of Executive Engineer, CPWD addressed to the Special Court marked as Ex.C.1.

7. The trial Court concluded that, A1 to A3 are guilty of charges, convicted and sentenced them as under:-

Name of the accused	*Charges*	*Punishment*
A1	U/s.13(2)r/w.13(1)(e) of P.C.Act	To undergo 2 years R.I., and fine of Rs.1,00,000/-, in default to undergo 6 months S.I
A2	U/s.109 IPC r/w.13(2) r/w.13(1)(e) of P.C.Act	To undergo 1 year R.I., and fine of Rs.50,000/-, in default to undergo 6 months S.I
A3	U/s.109 IPC r/w.13(2) r/w.13(1)(e) of P.C.Act	To undergo 1 year R.I., and fine of Rs.50,000/-, in default to undergo 6 months S.I

The trial Court ordered the period of imprisonment already undergone to be set off under Section 428 of Cr.P.C.

8. The material object (M.O.1) of Rs.1,15,000/- to be confiscated to the State and the remaining disproportionate properties for the value of Rs.1,55,18,048/- availed at the hands of the accused ordered to be confiscated. The Appeal under consideration is directed against the above said judgment of conviction and sentence.

9. Before adverting to the grounds of appeal, for the sake of convenience the gist of oral and documentary evidence considered by the trial Court is below:-

History of the case:-

P.W.1 Alok Shukla, Commissioner of Customs (Imports), authorized representative of Central Exercise and Service Tax (in short: CESTAT), Chennai. He being Disciplinary Authority to take action against the Officers of Group "B" rank, on perusing the materials placed before him, had accorded sanction to prosecute D.Ramani, Appraiser of Customs, a Group "B" Officer for offence under Section 13(2) r/w 13(1)(e) of P.C. Act. The order conferring Disciplinary Authority over Group "B" Officers to the Chief Commissioner is marked as Ex.P.1 and the sanction order given by P.W.1 is marked as Ex.P.2. This witness has gone through the statement of assets held by the public servant and his family members at the beginning of check period and the assets at the end of the check period.

10. The Income and Expenditure during the check period from 01.01.2002 to 06.01.2010 been considered. The Sanctioning Authority had come to *prima facie* conclusion that, the Public Servant namely D.Ramani had amassed wealth in his name and his wife Vijayalakshmi and his father-in-law Adhikesavalu, disproportionate to the known source of income to an extent of Rs.1,64,68,103/-, which is about 382% disproportionate to the known source.

11. Statement A to D, which forms part of the Sanction Order Ex.P.2 is extracted as below:-

STATEMENT -A
Assets at the beginning of the Check Period

S.No.	Description of Item	Value (in Rs.)
1.	House hold articles at the beginning of the Check Period.	80,600
2.	Jewels at the beginning of the Check Period.	143,500
3.	Property at Plot No. 27, Ramalingam Avenue, at 143 Athipattu Village, Minjur Panchayat, Ponneri Taluk measuring 2,340 Sq.ft. registered at SRO, Tbituvotriyur vide Document No.1693/93 dt. 21.06.93, in the name of Smt. Vijayalakshmi W/o. D.Ramani.	32,760
4.	Property at Plot No.2, S.No.1/9A, Bhavani Nagar Layout, Kolathur Village, Chennai, measuring 2448 sq.ft. registered at SRO, Sembiam vide Document No.7448/1996 dt. 20.11.96, in the name of Smt. Vijayalakshmi.	1,14,407
5.	House property at Plot No.C-5, Block No.11, TNHB, J.J.Nagar East, Chennai registered vide Sale Deed Doc. No.3287/1997 at SRO, Konnur in the name of Shri D.Venkataiah.	1,81,215
6.	Property No.25-1-449, Postal Colony, Nellore, Survey No.2024/2, measuring Bit-i in these 160 sq. yard site and Tatched House 319 sq.ft registered vide Sale Deed Document No.7524/1997 dt. 29.11.1997 at DRO, Nellore in the name of Smt. R.Vijayalakshmi.	1,59,656
7.	House property at New Door No.25-1-543, Old Door No.529, Postal Colony, A.K,Nagar, Nellore, measuring 469 Sq.ft. registered at DRO, Nellore in the name of Smt. Vijayalakshthi vide Settlement Deed Doc-No.5442/0i dated 31.07.2001.	250,811

8.	Thrift Deposit, Shares and Family Welfare Deposit in the name of Shri D.Ramani in the Customs Employees Co-op. Society at the beginning of the Check Period.	25,310
	Total	**9,88,259**

STATEMENT "B"
Assets at the end of the Check Period

S.No	Description of Item	Value (in Rs.)
1	Property at Plot No. 27, Ramalingam Avenue, at 143 Athipattu Village, Minjur Panchayat, Ponneri Taluk measuring 2,340 Sq.ft. registered at SRO, Thiruvotriyur vide Document No.1693/93 dt. 21.06.93, in the name of Smt. Vijayalakshmi W/o. D.Ramani.	32,760
2	Property at Plot No.2, S.No.1/9A, Bhavani Nagar layout, Kolathur, Chennai, measuring 2,448 sq.ft. registered at SRO, Sembiam vide Document No.7448/1996 dt. 20.1/.96, in the name of Smt. Vijayalakshmi.	1,14,407
3	Property No.25-1-449, (Old No.528) Postal colony, Nellore, Survey No.2024/2, measuring Bit-1 in these 160 sq. yard site and Tatched House 319 sq.ft registered vide Sale Deed Document No.7524/1997 dt. 29.11.1997 at SRO, Nellore in the name of Smt. R.Vijayalakshmi.	1,59,656
4	Value of the house building at No.25-1-449,(Old No.528) Postal Colony, Nellore, registered vide Sale Deed Document No.7524/1997 dt. 29.11.1997 in the name of Smt. R.Vijayalakshmi.	54,56,000
5	House property at New Door No.25-1-541, (Old Door No.529), Postal Colony, A.K.Nagar, Nellore, measuring 469 Sq.ft. registered at Joint SRO, Nellore in the name of Smt. Vijayalakshmi vide Settlement Deed Doc.No.5442/01 dated 31.07.2001.	2,50,811
6	Value of the house building at New Door No.25-1-541, (Old Door No.529), Postal Colony, A.K.Nagar, Nellore in the name of Smt.Vijayalakshmi, which she received vide Settlement Deed Doc.No.5442/01 dated 31.07.2001.	7,64,000
7	Property at D.No.26-1-44, Gayathri Nagar, Survey No.2041/1 of Nellore Bit-1 of Kondayapalem, Plot No.33 (Part) in these 176 sq. yards registered vide Sale Deed Document No.16102/2006 dt. 15.11.2006 at DRO, Nellore in the name of Shri R.Adhikesavulu.	4,84,000
8	Property at D.No.26-1-44, Gayathri Nagar, Survey No.2041/1 of Nellore Bit-1 of Kondayapalem, Plot No.33 (Part) in these 176 sq. yards registered vide Sale Deed Document No.16103/2006 dt. 15:11.2006 at DRO, Nellore in the name of Smt. R.Vijayalakshmi.	484,000

9	Property at D.No.25-1-413/2, Postal Colony, Survey No.2023/2, Plot No.182 of Nellore Bit-1 in these 128 sq. yard site and ACC sheets House 180 Sq.ft. registered vide Sale Deed Document No.5343/2008 dt. 29.05.2008 at DRO, Nellore in the name of Shri D.Ramani.	544,000
10	Property at Survey No.42/2, Plot No.38 measuring 313.33 Sq. yds. of Buja Buja Nellore Village registered vide Sale Deed Document No.6208/2006 dt. 08.05.2006 at DRO, Nellore in the name of Smt. R.Vijayalakshmi.	1,00,500
11.	House property at Plot No.3287, TNHB, MIG Type at Ambattur Phase I & II Scheme, Ayyapakkam, Chennai-77, measuring 1936.8 Sq.Ft. of land comprised in Survey No.53/2 Part of Ayyapakkam. Village, Ambattur Taluk registered vide Doc. No.13734/06 at SRO, Ambattur, in the name of Shri D.Ramani.	2,200,000
12.	Property at Not No.3438, TNHB, EWS ' B' Type, Survey No.49. of Tamil Nadu Housing Urban Development Project, Ambattur Phase-I & H, No.17, Ayyapakkam Village, measuring 430.4 Sq.ft. registered vide Doc. No.798/2006 purchased by Shri Ramani by way of General Power of Attorney Document No.2972/2008 dt. 30.07.2008.	525,000
13.	House property at Plot No.3920, Survey No.49 Part, TNHB, LIG Type-I, Ambattur Phase-I & II, Ayyapakkam Village, Thiruvallur Dist. measuring 774.72 Sq.ft. registered in the name of Shri D.Ramani vide General Power of Attorney Document No.552/2oo8 dt. 26.03.2008, at SRO, Villivakkam.	600,000
14.	Property bearing Plot No.3264, LIG-II Type,Tamil Nadu Housing Board, Ambattur Phase I & II Scheme, Ayyapakkam, Chennai-77, measuring 968.4 Sq.Ft. registered vide Doc. No.1141/2007, in the name of Shri D.Ramani, at SRO, Ambattur.	600,000
15.	15 Property bearing Plot No.3265, LIG-II Type,Tamil Nadu Housing Board, Ambattur Phase I & H Scheme, Ayyapakkam, Chennai-77, measuring 968.4 Sq.Ft. registered vide Dot. No.1142/2007, in the name of Shri D.Ramani, at SRO, Ambattur.	600,000
16.	Property at Plot No.1, Bhavani Nagar, Kolathur, Chennai in the name of Smt.Vijayalak.shmi registered vide Settlement Deed No/575/2002 at SRO, Sembium.	0
17.	Property at Block No.11/466, MIG Type, Mogappair East, Chennai Survey No.316, 1296(sq.& in the name of Shri D.Ramani registered vide Settlement Deed document No.1453/2003 dt. 28.03.2003 at SRO, Konnur.	600,000
18.	Property at Block No.11/466, MIG Type, Mogappair East, Survey No.316, 1455 sq.ft, in the name of Shri D.Ramani registered vide Settlement Deed document No.2284/2006 dt. 16.q5.2006, at SRO, Konnur. (Building)	495,000

19.	Value af house Building at Block No.11/466, MIG Type, Mogappair East, Chennai as per the Valuation Report dt. 28.02.2011.	2,523,000
20.	Property at Plot No.10/959, Veeramamunivar Street, MMDA Colony, Mogaippair East, Chennai-50 received by Shri D.Ramani vide Release Deed No.159/2oo3, registered at SRO, Konnur.	100,000
21.	Hyundai Car (Magna 2008 model) in the name Smt.R.Vijayalakshmi bearing Regn. No.TN-02-AH-0770.	190,434
22.	Hero Honda Pleasure two-wheeler bearing Regn. No.TN-02-V-2525 in the name of Snit. Vijayalakshmi.	41,165
23.	Hero Honda Splendor Plus Motorbike bearing Regn. No.TN-02-AC-2003 in the name of Shri D.Ramani.	44,705
24.	Closing balance as on 31.12.2009 in the SB A/c. No.1017845830 (Old No.4632) of Shri D.Ramani maintained at Central Bank of India, Mogaippair Branch, Chennai.	10,586
25.	Closing balance as on 31.12.2009 in the SB A/c. No.432387349 of Shri D.Ramani maintained at Indian Bank, Harbour Branch,Chennai.	17,934
26.	Closing balance as on 06.01.2010 in the SB A/c No.169501000003862 of Shri D. Ramani & No.169501000005175 of Smt. R.Vijayalakshmi maintained at Indian Overseas Bank, Mogappair East Branch, Chennai.	2,93,303
27.	Closing balance as on 04.01.2010 in the SB Account No.238011581 (Old Account No.2703) of Shri D.Ramani maintained at TNSC Bank, Mogaipair Branch, Chennai.	54,244
28.	Closing balance as on 06.01.2010 in the SB Account No.30164697680 of Smt. R.Vijayalakshmi maintained at State Bank of India, Vedayapalem Branch, Nellore.	99,104
29.	Thrift Deposit, Family Welfare Deposit and Share Amount in the name of Shri D.Ramani in the Customs Employees Co-op. Society at the end of the Check Period.	58,320
30.	Aquaguard Total Sensa WP System purchased, from Eureka Forbes Limited.	16,900
31.	Household articles at the end of the Check Period. (As per Inventory dt. 06.01.2010)	3,78,250
32.	Value of the Jewels purchased during the Check Period (As per Inventory dt. 06.01.2010 and Locker Operation Proceeding dt. 16.02.2010)	3,17,200
33.	Cash in hand (Seized during house search, handed over to Smt. R.Vijayalakshmi during house search and also found during the Locker Operation Proceedings)	2,25,980
	TOTAL	**183,81,259**

STATEMENT – "C"
Income during the check period

S. No	Income	Amount (hi Rs.)
1.	Net Salary income of Shri D.Ramani from January 2002 to December 2009.	14,75,227
2.	Rental Income received by Smt,Vijayalakshmi as declared in her Income Tax Returns.	6,16,700
3.	Housing Loan availed by Shri D.Ramani from ICICI Bank, Adyar, Chennai vide Loan Agreement No. LBCHE000 00365836.	2,50,000
4.	Hand Loan received by Smt. Vijayalakshmi from Shri T.Sathyanarayana as declared in IT Returns for the Assessment Years 2008-2009 and 2009-2010.	4,00,000
5.	Maturity amount received vide LIC Policy No.712111916 by Shri.D.Ramani.	1,87,600
6.	Maturity amount received vide LIC Policy No.711669480 by Shri.D.Rarnani.	39,149
7.	Divided received by Shri D.Ramani from Customs Employees Co-op. Society.	9,229
8.	Finance availed from M/s.Kotak Mahindra Prime Limited, Chennai towards purchase of Santro Xing Car bearing Regn. No.TN-02-V-9005 in the name of Shri D.Venkataiah.	100,000
9.	Sale proceeds received from the house property at Plot No.C-5, Block No.11, TNHB, J.J. Nagar East, Chennai registered vide Sale Deed Doc. No.1454/2002 at SRO, Konnur in the name of Shri D.Venkataiah. (14,00,000 -1,81,215)	12,18,785
10.	Interest and maturity amount received by Shri D.Ramani from IDBI Infrastructure Tax Savings Bond No.022888160 (Dist. Nos.2242485114-2242485115)	11,681
	Total	**43,08,371**

STATEMENT "D"
Expenditure during Check Period

S. No	Expenditure	Amount (in Rs.)
1.	Household expenditure taken as 1/3 of Shri D.Ramani's gross income.	6,78,000
2.	Premium paid by Shri D.Ramani and Smt.Vijayalakshmi towards below mentioned LIC Policies:- a. No.715277744 - Rs. 55,262 b. No.712111916 - Rs. 46,725 c. No.714699286 - Rs. 126,294 d. No.717322453 - Rs. 47,165 e. No.711669480 - Rs. 10,912 f. No.716995615 - Rs. 612 g. No.712844813 - Rs. 13,648 h. No.712845226 - Rs. 14,858	3,15,476
3.	Annual Premium paid by Smt. R.Vijayalakshmi towards Life Insurance Policy No.0027232854 in Bajaj Allianz Life Insurance Company Limited.	30,000
4.	Expenditure incurred towards telephone charges for the telephone numbers 26567215and 26245057.	36,668
5.	Educational expenditure incurred by Shri D.Ramani for his daughter Ms .D.Vineeli to SBOA Matric & Hr. Sec. School, Anna Nagar Western Extension Chennai-101.	1,37,165
6.	Education expenditure incurred by Shri D.Ramani for his daughter D.Nivi to SBOA Mat, Hr. Sec. School, Anna Nagar Western Extn., Chennai.	1,75,795
7.	Education expenditure incurred by Shri D.Ramani for his daughter D.Nikhila to DAV SR. Secondary School, (Girls), Mugkappair, Anna Nagar Western Extension, Chennai-101.	56,785
8.	Expenditure towards Registration Charges and Stamp Duty paid for Plot No.1, S.No.1/9, Bhavani Nagar Layout, Kolathur, Chennai at SRO, Sembiam vide Settlement Deed Doc. No.7575/2002 dt. 14.11.2002 in the name of Snit. Vijayalakshmi.	2,660
9.	Expenditure towards Registration Charges and Stamp Duty paid by Shri D.Ramani for the property at Block No.11/466, TNHB, MIG Type, Mogappair East, Chennai comprising of 1296 sq.ft registered vide Sale Deed Doc.No.2861/2002, at SRO, Konnur.	1,02,811
10.	Expenditure towards Registration Charges and Stamp Duty paid by Shri D.Ramani for the property at Block No.11/466, TNHB, MIG Type,	2,650

	Mogappair East, Chennai comprising of 12446 sq.ft. registered Vide Settlement Deed Doc. No.1453/03 at SRO, Konnur.	
11.	Expenditure towards Registration Charges and Stamp Duty paid by Shri D.Ramani for the property at Block No.11/466, TNHB, MIG Type, Mogappair East, Chennai comprising of 1455 sq.ft, for the Sale Deed Doc.No.4143/2004, at SRO, Konnur.	1,57,490
12.	Expenditure towards Registration Charges and Stamp Duty paid by Shri.D.Ramani for the property at Block No.11/466, TNHB, MIG Type, Mogappair East, Chennai comprising of 1455 sq.ft. for the Settlement Deed Doc. No.2284/2006 at SRO, Konnur.	12,150
13.	Expenditure towards Registration Charges and Stamp Duty paid by Sh.D.Ramani for the at Plot No.10/959, Veeramamunivar Street, MMDA Colony, Mogaippair East, Chennai-50 for the Release Deed Doc. No.159/2003, registered at SRO, Konnur.	5,151
14.	Expenditure towards Registration, Stamp Duty and other 1 charges paid by Shri D.Ramani for the house property at Plot No.3287, TNHB, MIG Type at Ambattur Phase I & II Scheme, Ayyapakkam, Chennai-77 for the registered vide Sale Deed Doc. No.13734/06 at SRO, Ambattur.	66,970
15.	Expenditure towards Registration, Stamp Duty and other charges paid by Shri Adhikesavulu for the house property at Plot No.3920, Survey No.49 Part, TNHB, LIG Type-I, Ambattur Phase-I & II, Ayyapakkam Village, Thiruvallur Dist. for the Sale Deed Doc. No.8870/2007 at SRO, Ambattur.	49,670
16.	Expenditure towards Registration and.Stamp Duty paid by Shri. D.Ramani for the house property at Plot No.3920, Survey No.49 Part, TNHB, LIG Type-I, Ambattur Phase-I & II, Ayyapalckam Village, Thiruvallur Dist. for the Power of Attorney Doc. No.552/2008, registered at SRO, Villivakkam.	250
17.	Expenditure towards Registration, Stamp Duty and other charges paid by Shri D.Ramani for the property bearing Plot No.3264, LIG-II Type,Tamil Nadu Housing Board, Ambattur Phase I & II Scheme, Ayyapakkam, Chennai-77, measuring 968.4 Sq.Ft. for the Sale Deed Doe. No.1141/2007 at SRO, Ambattur,	21,943
18.	Expenditure towards Registration, Stamp Duty and other charges paid by Shri D.Ramani for the property bearing Plot No.3265, LIG-II Type,Tamil Nadu Housing Board, Ambattur Phase I & II Scheme, Ayyapakkam, Chennai-77, measuring 968.4 Sq.ft. for the Sale Deed Doc. No.1142/2007 at SRO, Ambattur.	21,943

19.	Expenditure towards Registration Charges and Stamp Duty paid by Smt.R.Vijayalakshmi for the property at Survey No.42/2, Plot No.38 measuring 313.33 Sq. yds. of Buja Buja Nellore Village registered vide Sale Deed Document No.6208/2006 dt. 08.05.2006 at SRO, Nellore.	9,550
20.	Expenditure towards Registration Charges and Stamp Duty paid by Shri R.Adhikesavalu for the property at D.No.26-1-44, Gayathri Nagar, Survey No.2041/1 of Nellore Bit-i of Kondayapalem, Plot No.33 (Part) in these 176 sq. yards registered vide Sale Deed Document No.16102/2006 dt. 15.11.2006 at SRO, Nellore.	45,980
21.	Expenditure towards Registration Charges and Stamp Duty paid by Smt. R.Vijayalakshmi for the property at D.No.26-1-44, Gayathri Nagar, Survey No.2040 of Nellore Bit-1 of Kondayapalem, Plot No.33 (Part) in these 176 sq. yards registered vide Sale Deed Document No.16103/2006 dt 1511.2006 at SRO, Nellore.	45,980
22.	Expenditure towards Registration Charges and Stamp Duty paid by Shri D.Ramani for the property at D.No.25-1- 413/2, Postal Colony, Survey No.2023/2, Plot No.182 of Nellore Bit-1 in these 128 sq. yard site and ACC sheets House i8o Sq. ft. registered vide Sale Deed Document No.534.3/2008 dt. 29.05.2008 at SRO, Nellore.	51,780
23.	Water and Sewerage Tax/Charges paid by Shri D.Ramani for his two houses located at No.11/466 and No.10/959, Mogappaii East, Chennai-37 to Chennai Metro Water Supply and Sewerage Board.	9,525
24.	Expenditure incurred towards Demolition Charges, and Plan Approval and other charges paid to Ambattur Municipality by Shri, D.Ramani for the construction of house at No.11/466, Mojappair East, Chennai-37.	18,420
25.	Property Tax paid to Ambattur Municipality by Shri D.Ramani for houses at (1) No.10/959, Mugaippair East, Chennai and (2) No.11/466, Mogappair East, Chennai37.	19,891
26.	Water and Sewerage Tax/Charges paid by Smt.R.Vijayalakshmi for the property located at No.P-1, Bhavani Nagar, Kolathur, Chennai to Chennai Metro Water Supply and Sewerage Board.	8,387
27.	Property Tax paid to Chennai Corporation by Smt.R.Vijayalakshmi for her house at No.P-1, Bhavani Nagar, Kolathur, Chennai.	23,016
28.	Property Tax paid to Nellore Municipality by Smt.R.Vijayalakshmi for her properties located at No.25-1-. 528 and D.No.25-1-541, Revenue Ward No.251, Postal Colony, A.K. Nagar, Nellore.	5,716
29.	Water Tax paid to Nellore Municipality by Smt.R.Vijayalakshmi for her property located at No.25-1- 528, Postal Colony, A.K. Nagar, Nellore.	4,240

30.	Plan Approval and other charges paid to Nellore Municipality by Smt.R.Vijayalakshmi for the construction of house at No.25-1-528, Postal Colony, A.K. Nagar, Nellore.	12,408
31.	Expenditure incurred by Shri D.Ramani towards recharge of his Aircel mobile No.9841346807.	12,863
32.	Expenditure incurred by Smt. R.Vijayalakshmi towards recharge of his Aircel mobile No.9941199728.	14,073
33.	Expenditure incurred towards purchase of V-Guard Stabilizer and LCD Cleaning Wipes.	3,000
34.	Expenditure incurred on the purchase of Santro Xing Car bearing Regn. No.TN-02-V-9005 in the name of Shri D.Venkataiah.	4,50,000
35.	Repayment of finance availed from M/s.Kotak Mahindra Prime Limited, Chennai towards purchase of Santro Xing Car bearing Regn. No.TN-o2-V-9005 in the name of Shri D.Venkataiah.	3,200
36.	Repayment of Housing Loan availed by Shri D.Ramani from ICICI Bank, Adyar, Chennai vide Loan Agreement No.LBCHE00000365836 including preclosure charges and interest.	3,32,268
37.	Locker Rent paid by Shri D.Ramani for his Locker No.I8 maintained at TNSC Bank, Mogaipair Branch, Chennai.	6,600
38.	Repayment of hand Loan received by Snit. Vijayalakshmi from Shri.T.Sathyanarayana.	4,00,000
39.	Income Tax paid by Smt. R.Vijayalakshmi for the Assessment Years 2005-2006 to 2009-2010 to the Income Tax Department, Nellore.	23,000
40.	IDBI Infrastructure Tax Savings Bond No.022888160 (Dist.Nos.2242485114-2242485115) in the name of Shri D.Ramani.	10,000
	Total	**33,83,474**

12. In the course of investigation, prosecution recorded the statements of S.Mariajohn [P.W.26] and B.K.Malakondaiah [PW.6] under Section 164(5) of Cr.P.C., before the Metropolitan Magistrate, Chennai. The Judicial Magistrates, who recorded the statement (Ex.P.5) of S.Mariajohn and the statement (Ex.P.7) of Malakondaiah were examined as P.W.2 and P.W.3 respectively. Mariajohn

[P.W.26] examined by the prosecution to show that, Flat No.3287 at Ayappakkam Village was purchased by him through Power Agent for a sum of Rs.17,00,000/- in the month of January 2006 and sold it to the 1st accused Ramani for Rs.22,00,000/- in the month of November 2006. However, in the sale deed [Ex.P.22] for sale consideration shown only as Rs.3,20,000/- and the guideline value as Rs.6,00,000/-. Ex.P.26 is the sale deed executed by K.Prakash represented by its power agent M.S.Madhana Gopal executed in favour of the 1st accused D.Ramani on 02.02.2007, in which, P.W.26 has signed as witness and identified his signature in the document. He is also witness to the sale deed [Ex.P.24], dated 27.07.2007 executed in favour of 3rd accused Adhikesavalu. B.C.Malakondaiah was examined as P.W.6, who is cousin of A-1 had deposed that, the 1st accused borrowed Rs.3,00,000/- from him by way of cheque and returned back after 4 or 5 days and both were cheque transaction. He has further deposed that, Rs.3,00,000/- is the money of the 1st accused. Apart from that, he, through overdraft facility from his bank debited Rs.3,00,000/- and he admits that, in this regard, he gave a statement to Magistrate on 25.04.2011. The details of property statement given by A-1 to his Department for the period 01.01.2004 to 01.01.2009 is spoken by P.W.4 B.K.Sreedhar and the attested copy of his personal file is marked as Ex.P.8.

13. P.W.5 Syed Shah Aminuddeen Hussain, Sub Registrar, Thiruvottiyur, referring Ex.P10 had deposed that, Plot No.27, Ramalingam Nagar, Minjur Panchayat, Athipattu Village measuring to an extent of 2340 sq.ft was purchased by A-2 for Rs.32,760/-. Through, PW.7 Anandi Kannan, Customs Officer, Chennai, the prosecution has proved that, the gross salary of A1 for the period between 2002 to 2009 was Rs.20,54,546/-; his net salary Rs.14,75,227/-. G.Selva Vinayagam was examined as PW.8, had deposed that, to show 1296 sq.ft of residential plot in Mogappair village sold to Venkataiah, the father of the 1st accused by K.S.Prakash and Uma Prakash for consideration of Rs.6,00,000/-. The settlement deed of Venkataiah in favour of his son D.Ramani, the property purchased from K.S.Prakash and Uma Prakash, the title deed is marked as Ex.P.13 and the settlement deed is marked as Ex.P.14. Venkataiah had purchased another plot measuring 1455 sq.ft in the same survey number for Rs.4,95,000/- from one Arunachalam. The said sale deed is marked as Ex.P.15. The guideline value for the property was Rs.17,46,322/- besides stamp duty and registration. This property was also settled in favour of A-1 on 16.05.2006 *vide* Ex.P.16.

14. According to the prosecution, these two properties were purchased from out of the money given by the 1st accused in the name of his father and later, settled in his favour. The transaction of sale and settlement been spoken by the then P.W.9 V.S.Murugan, Assistant, SRO, Ponneri. Similarly, the sale deed [Ex.P22] dated 05.12.2006 executed by Ramaguru in favour of A1 through his power agent of Mariajohn for consideration of Rs.3,20,000/- in respect of flat No.3287, Ayapakkam, Chennai and the sale deed [Ex.P.23] dated 01.02.2006 executed by Prabhakaran as power agent of Kamatchi in favour of Ravi for Rs.5,25,000/-. Ex.P.24 is the sale deed dated 27.07.2007 executed by Chelladurai through power agent Adhilakshmi in favour of Adhikesavalu A-3 in respect of Ayapakkam R.S.No.49, Housing Board, LIG plot, measuring 774.72 sq.ft. Ex.P.25 is the general power of attorney dated 30.07.2008 given by S.Ravi in favour of D.Ramani regarding the property which is the subject matter of Ex.P.23 is spoken by V.S.Murugan, [PW.9] SRO, Ponneri. This witness and documents relied by the prosecution to show the property purchased in the name of Ravi and Venkataiah were settled in favour of A-1. However, the money used to purchase the property was given by A-1 himself. P.W.9 has also spoken about Ex.P.26, the sale deed executed by G.Madhana Gopal as power of attorney of Prakash to A1, Ramani in respect of another property at Ayapakkan, Housing Board LIG II Type, Plot No.3264 for Rs.1,94,000/-. The sale deed in favour of A1, D.Ramani is marked as Ex.P.27. Almost, same extent of land for the same price, Plot No.3265 purchased by A1, Ramani from G.Madhan Gopal as power of attorney of one Sundari. R.S.Rajan, SRO, Villivakkam was examined as P.W.10. He has identified Ex.P.32 the general power of attorney deed, dated 23.06.2006 executed by A-3 Adhikesavalu in favour of A1 in respect of property bearing plot No.3920, Ayapakkam village.

15. To prove that, the property at Ayapakkam village bearing No.3287, MIG Type, T.N.H.B, purchased under Ex.P22 on 05.12.2006 by A-1, though the sale consideration for Rs.3,20,000/- and the guideline is shown Rs.6,00,000/-, same was purchased by A-1 for Rs.22,00,000/-. The prosecution has examined PW.11 A.Arul Jayakumar, who claims to be the cousin of Mariajohn [P.W.26]. The witnesses to the sale deeds executed in favour of A-1 were examined by the prosecution. Apart from the SRO of the respective registration Office, to show that, the sale consideration shown in the document is under value and higher amount was paid by A-1 for purchase of property. The purchase of Santro Car by A-1 for Rs.4,50,000/- out of which, Rs.3,50,000/- paid in cash by A-1 and the balance finance was arranged from Kotak Mahindra, Chennai, is the evidence of Ramakrishnan [PW.14]. Similarly, the evidence given by Selvapandian [P.W.15] in respect of purchase of new i10 car for Rs.3,91,303/- by A-2, Vijayalakshmi, who paid Rs.1,90,434/- by cash, after exchanging old Santro car bearing registration No.TN-02-V-9005 for a sum of Rs.2,37,000/-. The statement of bank account of A-1 marked as Ex.P.35 been spoken by the Senior Manager, Central Bank of India, was examined as P.W.16. The transactions by A1 from the account is marked as Ex.P.36 to Ex.P.38. The statement of account in the Indian Bank, Harbour Branch maintained by A-1 as on 31.12.2009, A1 had cash balance of Rs.17,954/- is spoken by P.W.17 and Ex.P.39 is the covering letter along with the statement of account. M.Madhanagopal [P.W.18] had deposed about the sale of his property through Ex.P.26 and Ex.P.27 for consideration of Rs.6,00,000/- through Mariajohn. The bank account maintained by A-2 R.Vijayalakshmi at IOB, Mogappair Branch is spoken by P.W.19 S.Somasundaram. Ex.P.40 to Ex.P.44 are the statement of account and other documents relating to the account maintained by A2. This statement of account disclosed that, at the end of 03.08.2009, A-2 had cash balance of Rs.15,166/- in her account. The savings account maintained by A-1 in Mogappair East branch is spoken by P.W.20

Sivagnanam, the Chief Manager and the statement of account is marked as Ex.P.46. The closing balance in the said account as on 04.01.2010 was Rs.54,244/-. A1 was maintaining the locker in the said bank and had paid Rs.6,600/- towards locker rent. The father of A-1 also had an account in this Branch and the statement of account is marked as Ex.P.49. On 12.08.1998, Venkataiah has invested Rs.1,35,000/- in a fixed deposit and on maturity, again he had reinvested the same. P.W.21 P.T.Venkatarao, Branch Manager, SBI, Vedayapalem had spoken about the account maintained by A2 in the said Branch. Ex.P.54 is the statement of account for the said account of A2. Huge money flow has occurred and spoken by this witnesses and most of the accounts were withdrawn and paid to A3. P.W.24 S.P.Pream Kamel, Income Tax Officer, Salary Ward-I, Chennai spoken about the returns filed by A1 during the check period. P.W.25, the Senior Branch Manager, LIC had identified the documents and premium paid by A1 for the LIC policies. By examining the other Branch Managers, where the accounts maintained by A1 and his family members, LIC personnels to show the payment of premium in the name of A1 and his family members, through school staffs, to show the educational expenditures incurred by A1 for the studies of his two daughters and the Revenue and Water Board staffs to prove the expenditure towards payment of tax for the properties held by A1 and his family members, private telephone operators to show the expenditure towards the telephone charges were examined as witnesses for the prosecution. P.W.42, Srinivasan Deputy General Manager, Sundaram Motors, Annasalai, Chennai had spoken about the service details and salary of Venkataiah, the father of A-1. P.W.43 Bhupalan Valuation Officer attached to Income Tax department, on the request of C.B.I had inspected the property at Plot No.11/466, MIG Type, S.No.316 part, Mogappair village and given his report marked as Ex.P123. He also inspected two other properties at A.K.Nagar Postal Colony, Nellore, had given his report marked as Ex.P124. One of the property at Nellore, Kondayapalem was sold by one C.M.Ramesh to A3 for Rs.4,84,000/- and another property Plot No.33 (part) sold to A-2 Vijayalakshmi for consideration of Rs.1,42,500/- and Rs.1,00,500/- in the same postal colony, Nellore. A1 has purchased a property from Vemuri Subramanyam for Rs.5,44,000/- and the said sale is reflected in Ex.P.129. The property purchased by A3 later settled in favour of A2. The purchase of two wheeler Hero Honda Splender by A-1 spoken by PW.46, K.Parthiban, Manager at Nagappa Auto. The Income Tax returns of A2 and A3 during the check period is spoken by PW.49 M.Laxmana Rao working as Income Tax Officer, Ward-II, Nellore. Ex.P.167 to Ex.P.173 relates to the transaction of Venkataiah, father of A-1 in respect of his savings bank A/c.No.4513 at MMDA Colony, Mogappair East, Chennai. P.W.52 G.Chandrasekaran had spoken about the transaction of money flow from different source into the account of Venkataiah during the relevant period.

16. Regarding filing of Income Tax by A2 and A3 in corroboration with the evidence of PW.49, Lakshmana Rao, ITO and the evidence of P.W.53, Surya Narayana Rao Chaluvadu, practising Chartered Accountant stands to establish A2, daughter of A3 is an Income Tax assessee and had filed returns for the Assessment years 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10 and the relevant Exhibits are Ex.P.143 to Ex.P.148. The Income Tax returns for A3 Adikesavalu for the corresponding period is marked as Ex.P.149 to Ex.P.153. From his evidence, it is clear that, A2 and A3 started filing income tax returns from 2005-2006 onwards. The returns were filed based on the bank statements and information given by these two accused persons.

17. The Learned Counsel appearing for the appellants primarily attacked the manner in which the value of the assets been determined by the prosecution unilaterally without taking into consideration, the value of the property shown in the respective title documents and ignoring the explanation given by the appellants regarding the source, for purchasing those properties.

18. The Learned Senior Counsel appearing for the appellants also submitted that, the prosecution had omitted to take into account that, the parents of A-1 as well as father of A2 were employed and had their income and savings. The properties purchased from their independent income been settled to their wards. A presumption improperly drawn as if the property was purchased from the money given by A1 and later on, transferred by way of settlement. The prosecution and the trial Court without proper appreciation of evidence has proceeded against the appellants on such baseless presumption.

19. The Learned Senior Counsel for the appellants particularly submit about 4 items of property shown under assets held at the end of the check period were over valued in spite of contra documents. The Learned Counsel submitted that, the property found in Serial No.11 in statement-B which is house property at Plot No.3287, TNHB, MIG Type, Ambattur Phase I & II scheme, valued by the prosecution at Rs.22,00,000/-. Whereas, the sale deed Ex.P.22 shows that, it was purchased for Rs.3,20,000/-. To disprove the value shown in the document and to hold that, the actual value of the property is Rs.22,00,000/-, the prosecution relies upon the evidence of P.W.26 Maria John, who claims to be a Broker and purchased the property for Rs.17,00,000/- and sold it to A-1 for Rs.22,00,000/-. However, to show that, the said property was purchased by Maria John [PW.26], the prosecution has not placed any documents that he was the predecessor in title. Even according to the sale deed, the guideline value for the said property itself is shown only as Rs.6,00,000/-. P.W.26 being a tainted witnesses, his testimony is not worth relying. More so, his oral evidence is contrary to the entries found in the written document namely Ex.P.22. His inconsistent and contradictory oral evidence to be ignored as that of the evidence of Malakondaiah P.W.6, who has come out with different version at different point of time. His evidence under Section 164 of Cr.P.C., statement is not consistent with the chief examination and his chief examination not consistent with the cross examination about Rs.3,00,000/- which A-1 borrowed from him to meet out his financial crisis.

20. The Learned Senior Counsel for the appellants also stated that, inclusion of item No.12 in Statement-B “the assets at the end of the check period” which is the property at Plot No.3438, TNHB, Urban Development

Project, Ambattur, Phase I & II, is not the owner but only holding the power of attorney of its owner S.Ravi. The prosecution has added Rs.5,25,000/- being the value of this property as an assets held by the 1st appellant, though he is only a power agent to manage the property and he is not the owner of the property. The said S.Ravi, who holds the title of the property, not even examined by the prosecution during investigation to find out whether there was any transfer of title or passing of consideration to A-1 in respect of this property. Ex.P.23 title deed for this property stands in the name of S.Ravi. The power of attorney Ex.P.25 was executed by S.Ravi in favour by A-1 to take care of his property. In this Power of Attorney deed, it is specifically mentioned no consideration for the power of attorney passed of. Similarly property worth Rs.6,00,000/- which stands in the name of Venkataiah (1st accused father) purchased from out of his retirement benefit as Lubricator at TVS Company, is taken as a property purchased by A-1 in the name of his father by A-1 from money he got through unknown source. Whereas, the prosecution itself has examined a staff of TVS Company as witness, to show that, the father of A-1 was employed in TVS Company and got retirement benefit. While so, on assumption that, A-1 had given the consideration for purchasing the property at block No.11/466, MIG type Mogappair East, Chennai, in the name of

Venkataiah and settled to his son A-1, out of his love and affection is drawn erroneously. A1's father Venkataiah, who retired from service on 1987, started real estate business and property brokerage. After his retirement, he was earning sufficiently. The property covered under Ex.P.13 was purchased by Venkataiah, from out of his own fund, from one K.S.Prakash and Uma Prakash on 29.07.2002. This property was settled in the month of May 2006 in favour of the 1st appellant *vide* settlement deed marked as Ex.P.16. Without examining A1's father and without taking into consideration his income, without any basis the value of this property is in Statement-B. The value of the property Rs.6,00,000/- got under the settlement deed has to be excluded. By adding Rs.6,00,000/- in Statement-B had inflated the value of the assets held by the accused at the end of the check period. The settlement of the said property in favour of A1 duly informed to the Department and therefore, the ingredient of 13(1)(e) of P.C.Act is not attracted in respect of this property.

21. The Learned Senior Counsel for the appellants also contended that, the property in Plot No.C.5, Block No.11 in J.J.Nagar in Survey No.318, Mogappair village measuring 773 sq.ft was purchased by Venkataiah from one C.Durairaj through his power agent G.K.Sampath on 05.07.1997 with land and building. The property was sold by Venkataiah for consideration of Rs.10,40,000/- to one Kumar of Garden Avenue, Thiruvallur Nagar, Mugappair during the check period and from that source, properties were purchased by Venkataiah, which were later given to his son A-1.

22. The learned counsel has also given a chart to substantiate his arguments how and why certain properties included in the list of assets to be excluded and why certain income ought to have been included been omitted by the prosecution under the statement of "income during the check period".

23. The Learned Senior Counsel for the appellants also took serious objection about Court taking cognizance based on the sanction order Ex.P1, which does not disclose the explanation given by the accused. The sanctioning authority apparently failed to apply his mind and the prosecution has not submitted all the relevant documents necessary to take fair and independent decision regarding granting of sanction for prosecution.

24. The Learned Senior Counsel for the appellants referring his cross examination of PW.1, who has admitted that he has not mentioned specifically that he has perused the statement of A1 to A3, while considering grant of sanction. He had also conceded that, he is not in a position to say whether the statement and explanation of the accused was forwarded to him by the Investigating Officer while requesting sanction. Also a specific plea taken by the learned counsel that many of the documents are in Tamil or in Telugu, whereas the sanctioning authority admits that, he is not conversant with Tamil or Telugu language. He also admits that for giving the sanction order he has not sought help of Vigilance Department to translate the documents sent along with the file seeking sanction.

25. The learned Special Public Prosecutor (CBI) appearing for the State submitted that prosecution evidence has proved the diversification of ill gotten money by A1 in his name, the name of his wife and in the name of father-in-law in various banks. Lands around Chennai and Nellore within a short period of time clearly established by the prosecution, accumulation of wealth in different form, from out of ill-gotten money. Therefore, the contention of the appellants that the prosecution has inflated the value of the properties and failed to taken note of the fact that, the father of the A1 had enough wealth and same has been settled in favour of A1, as well as the father of A2 arrayed as A3 also had wealth and income as a retired Government servant and he had given his property and income by way of settlement to his daughter A2 is untenable. Since the probable income of A3 and the property which stands in his name and property settled in favour of A2 is highly disproportionate. Taking note of the limited income as a pensioner and a person of old age, there is no possibility of purchasing high value property and transferring to his daughter or his son-in-law by way of settlement.

> ***Point for determination:-*** *Whether prosecution evidence is sufficient to hold the properties found in possession of A-1, a public servant and disproportionate to his known source of income, whether A2 and A3 abetted to amass wealth disproportionate his income?*

26. The list of property shown in statement B mentioned above not denied by the appellants. Their only contention is that the property, which were gifted to A1 been valued and presumed to be the property of A1 and it was purchased out of ill-gotten money. Whereas, the recital of the documents relied by the prosecution clearly show that, it was purchased by the father of A1 and settled in favour of A1 after long time of its purchase. It is also contended that, A2 and A3 had their own source of income to hold properties in their name. A1 is the public servant and A2 is his wife. A-3 is father of A2. At the beginning of the check period, A-1 and A-2 together had property worth Rs.9,88,259/-. Item Nos.1 to 33 found in statement-B mentioned above show that, apart from immovable properties, either purchased in their name directly or purchased in the name of their parents and had been settled in their name later. The total value is estimated at Rs.1,83,81,259/-.

27. The learned Senior Counsel for the appellants stating that, the value of the property shown in Item No.11 was purchased only for Rs.3,20,000/- as per the documents, it is highly over valued at Rs.22,00,000/- based on the oral evidence of a person who is not a credit worthy witness. It is also contended that item No.12, which is valued as Rs.5,25,000/- does not stand in the name of A1. He was only a power agent to the owner of the property. Similarly, the property shown in Item No.14 and 15 were purchased for Rs.1,94,000/- each. Whereas, the Court has held that it is valued Rs.3,00,000/-.

28. The Learned Counsel for the appellants while valuing the building which stands in the name of A2 at Nellore. The prosecution alleged over valued the property and inflated as Rs.54,56,000/- though it is worth only

Rs.18,49,456/-. To substantiate this, he relies upon the Income Tax returns and the inspection conducted by the Income Tax department. The property, purchased in the name of A1's father at Block No.11/466, MIG Type, Mogappair for Rs.4,95,000/- and settled in favour of A2, is sought to be exempted on the ground that the father of A2 has own independent income and that cannot be mulcted with the assets of A1 and A2.

29. A similar explanation and defence taken by the Learned Senior Counsel for the appellants in respect of property enumerated in Serial No.6 valued at Rs.7,64,000/-. It is claimed that this property not to be valued at Rs.4,30,356/-. Regarding the property at Serial No.19 valued at Rs.25,23,000/-, which is house and building at block No.11/466 MIG Type, it is contended that the value of the property over estimated and the entire value has to be removed from the assets of the appellants. The father of A1 was employed as Lubricator in TVS Company. This property purchased with his income and retirement benefit, which he got in the year 1987.

30. The prosecution has examined PW.42, who in his testimony marked as Ex.P.122- the gratuity details of Venkataiah, the father of A1. The exhibits reveals that he retired in the month of December 1987 on voluntary retirement from the company. Total sum of Rs.34,988/-was given to him. So, with this money and even if he had been earning through real estate, the number of properties purchased by him and later settled in favour of his son and the value of the building, which is estimated by the valuers does not match each other. Even for argument sake those properties are excluded, the property held by A1 and A2 in their name and the liquid cash held at the end of the check period, the source for it not satisfactory explained by them. The public servant is expected to disclose his asset to the authority and if he fails to disclose any property held by him without disclosure, it is presumed to be acquired illegally.

Section 13(1)(e) of P.C Act, reads as below:-

> ***13***. *Criminal misconduct by a public servant.—*
> ***(1)*** *A public servant is said to commit the offence of criminal misconduct,—*
>
> *(a)......*
> *(b)......*
> .
> .
> .
>
> *(e). if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.*

Explanation.— For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

31. In this case, out of 22 properties excluding the cash in hand, seized spread over various areas at Chennai and Nellore and deposits in different banks. Even if liberal reduction is given to the value fixed by the prosecution, the explanation given by the public servant, who had a total income of Rs.43,08,371/- during the check period from salary, rental income plus interest, it is proved he had at the end of the check period was holding property nearly 3 time his income during the check period.

32. The learned counsel for the appellants by producing some statements and explanation wants this Court to exclude around Rs.1,10,61,218/- from the value arrived by the prosecution in respect of the value of the property in A-1 and A-2 hand. Even if it is done, obviously it exceeds the admitted income. For that purpose the learned counsel had also given an another list to include certain income which according to him not been taken note by the Investigating Officer. For that purpose, he wants to rely upon the income tax return filed which are mostly subsequent to the check period. According to him, the rental income from the property held by A2 has not been adequately given account for.

33. The case of the prosecution is that the property itself acquired from ill-gotten money. The rental income whether less or more also to be taken as income gained illegally. Therefore, the arguments does not carry any merit. Hence, this Court confirms the trial Court judgment holding that the public servant guilty of holding disproportionate asset. The findings of the trial Court that A2 and A3 aided A1 to conceal his ill gotten money is also held to be proved. As a result, the judgment of the trial Court in this regard is uphold.

33. However, regarding sentence, this Court records that, the public servant who had committed the crime, expired pending appeal and the appeal by him is abated. The two surviving appellants are family members who had aided him to commit the offence. As far as A2 and A3 are concerned, they both are charged for abetment to aid the public servant to acquire wealth disproportionate to his known source of income. Their overtact by lending their name and actively managing the property and sharing the ill gotten money, put them equally guilty that of the deceased 1st accused. However, taking note of the fact of long delay and their age, the Rigorous Imprisonment is converted to Simple Imprisonment.

34. As a result, A2 and A3 ordered to undergo one year Simple Imprisonment with fine of Rs.50,000/- each. Since fine amount already paid, the question of default sentence does not arise. The period of imprisonment already undergone, if any shall be set off.

35. The appellants are directed to surrender before the trial Court within a period of 30 days, in case of failure they may be secured and committed to prison to undergo the remaining period of sentence. A-1 appeal dismissed as abated. A-2 and A-3 appeal, sentence of one year Rigorous Imprisonment modified to one year Simple Imprisonment.

36. In fine, this Criminal Appeal is partly allowed.

16.08.2023

Index :Yes/No.
Internet :Yes/No.
Speaking order/non speaking order
rpl

To:-

1.The XII Additional Special Judge for CBI Cases, Chennai.

2.The Inspector of Police,
CBI, ACB, Chennai.

3.The Special Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.

rpl

Pre delivery Judgment made in
Crl.A.No.267 of 2018

16.08.2023