IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :05.06.2023

Pronounced on :15.06.2023

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.10 of 2013

V.Dilip Singh Bhonsle .. Appellant/Accused

/versus/

The Inspector of Police,
SPE/CBI/ACB/Chennai
R.C.No.23(A)/07 ..Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 of Cr.P.C., against the judgment of conviction passed by the learned IX Additional Special Judge for CBI Cases, City Civil Court, Chennai made in C.C.No.20 of 2008 dated 26.12.2012.

For Appellant :Mr.S.Ashok Kumar
Senior Counsel for
Mr.T.R.Sivaraman

For Respondent :Mr.K.Srinivasasan
Senior Counsel and
Special Public Prosecutor (CBI)

JUDGMENT

The appellant is an accused in C.C.No.20 of 2008 on the file of the IX Additional Special Judge for CBI Cases, City Civil Court, Chennai.

2. The case of the prosecution:-

Based on a source information, a case in RC MA.1/2007/A/0023 was registered on 30.05.2007 by SPE/CBI/ACB/Chennai, against the appellant V.Dilip Singh Bhonsle working as Conservation Assistant, Grade-II, Archaeological Survey of India, Mamallapuram Sub Circle, Kanchipuram District, Tamil Nadu under Section 13(2) r/w 13(1)(e)of Prevention of Corruption Act, 1988 and the investigation was taken up.

3. The investigation disclosed that the appellant, during his service while functioning as a public servant in the Archaeology Department as Conservative Assistant from 01.09.2000 to 12.06.2007 at Kanchipuram and other places in Tamil Nadu, amassed wealth in his name and in the name of his family members to the tune of Rs.34,74,387/- and he had incurred major expenditures on immovable and movable properties, vehicle, house hold articles etc. to the tune of

Rs.4,24,105/- and thus, he had in possession of pecuniary resources to an amount of Rs.38,98,492/- against his known sources of income to the tune of Rs.14,11,226/- and thus, the accused was found in possession of disproportionate assets to the tune of Rs.24,87,266/- for which he could not satisfactorily account for.

4. The appellant had purchased an agricultural land to the tune of Rs.50,701/- on 21.08.1995 and he sold the said property on 22.03.2004 for Rs.1,94,500/- and thus, he had derived an income of Rs.1,43,799/- and the same has been shown as income during the check period. The accused had purchased a house plot No.2, measuring about 2178 sq.ft at Gandhi Nagar, Kanchipuram in the name of his wife Smt.Shoba Devi on 25.07.1990 to the tune of Rs.11,360/- and the same was sold to Thiru.R.Vikraman of Kanchipuram on 17.06.2004 for Rs.50,000/- and thus, had derived an income of Rs.38,640/- out of the said property and the same has been shown as income during the check period. Thus, the value of the immovable assets acquired by the accused at the beginning of the check period i.e. 01.09.2000 has been shown as "Nil". The accused was found in possession of movable assets at the beginning of the check period as per the

inventory proceedings prepared on 12.06.2007 (excluding the movable assets acquired during the check period) to the extent of Rs.14,364/-. The movable assets worth of Rs.6,800/- were found available in locker No.C/18 at SBI, Mamallan Nagar, Kanchipuram during the locker operation conducted on 20.06.2007, which is in possession of the appellant or in the name of his family members before the check period.

5. Thus, the accused was found in possession of assets to the extent of Rs.21,164/- at the beginning of the check period i.e. as on 01.09.2000. It was found that the accused had acquired immovable assets during the check period from 01.09.2000 to 12.06.2007 to the value of Rs.32,55,721/-. Further, it was found that the accused had acquired movable assets during the check period to the extent of Rs.1,69,742/-. Further, it was found that the appellant had acquired movable assets which were available in locker No.C/18 at SBI, Mamallan Nagar, Kanchipuram to the extent of Rs.8,800/-. The value of the movable assets in the name of STDRs and cash available in the bank accounts of the appellant discovered at the time of the house search operation conducted on 12.06.2007 was found to be Rs.61,288/-.

6. In short the investigation concluded in filing the charge sheet stating the immovable and movable assets acquired by the appellant at the end of the check period i.e as on 12.06.2007 in his name and in the name of his family members are to the extent of Rs.34,95,551/-. The income derived by the appellant during the check period is to the extent of Rs.14,11,226/-. The expenditure incurred by the appellant and his family members during the check period was estimated to Rs.4,24,105/-. Thus, the appellant was in possession of disproportionate assets during the check period at Rs.24,87,266/- which works out to 176.24%.

7. In as much as the appellant could not satisfactorily account for the above said disproportionate assets, the final report has been laid against the accused under Section 13(2) r/w 13(1)(e)of P.C. Act, 1988. Charge against the accused under Section 13(2) r/w 13(1)(e) of P.C.Act, 1988 framed and the accused tried for the said offence.

8. In support of the prosecution case, PWs 1 to 32 were examined. Exs.P1 to P143 were marked. M.Os 1 to 3 were marked. In support of the defence version no

witness has been examined by the accused. Exs.D1 to D40 were marked. No Material Object has been marked.

9. The trial Court, after considering oral and documentary evidence, found guilty and convicted him for the offence under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 and sentenced him to undergo 2 years RI and to pay a fine of Rs.30,000/- in default to undergo two months RI. The period of sentence if any already undergone by the accused was ordered to be set off as provided under law. Aggrieved by the judgment of conviction, the present Criminal Appeal has been filed.

10. The learned Senior Counsel appearing for the appellant submitted that the perverse investigation by the respondent police against the Principle of Natural Justice and improper appreciation of evidence by the trial Court has led to miscarriage of justice.

11. The appellant joined the service as a Foreman in the Archaeological Survey of India on 27.06.1979 and during the trap period, he was posted at

Kanchipuram as a Foreman till 17.06.2009 and thereafter, posted as Conservation Assistant Grade-II, Archaeological Survey of India at Mamallapuram. His father retired as Conservation Assistant from Archaeological Survey of India and died a year before registration of First Information Report and his mother a Central Government Pensioner was living with the appellant. The appellant as well as his wife Smt.Shoba Raje Bhonsle hailed from the affluent background. The appellant is descendent of Raja Saraboji of Tanjavur. The First Information Report registered on 30.05.2007, based on the source information and had led to search of the accused house on 12.06.2007 in the presence of PW-1 and PW-4. Both the official witnesses were taken for Assistant by the Investigating Officer (PW-32), without permission of the superior officers and the Investigating Officer could not properly explain how he was able to get the assistants of these two official witnesses. The accused through cross examination had established that they are the stock witnesses for CBI and not independent witnesses. By not placing all the materials collected during the course of investigation, bias investigation by the Investigating Officer been exposed during the cross examination of the Investigating Officer. Particularly, the statement given by the accused accounting the source of income for the assets in his hand not placed before the sanctioning authority(PW-2) nor placed before the Court to decide whether the explanation accounting the source of income is satisfactory or not.

12. The learned Senior Counsel appearing for the appellant further submitted that the case of the prosecution suffers three fatal infirmity and illegality and therefore, the trial Court judgment of conviction is bound be set aside.

13. The three infirmities alleged by the learned Senior Counsel appearing for the appellant are:

Firstly, the immovable properties stood in the name of the accused at the time of beginning of the check period and the income derived from it till it was disposed in the mid of the check period not been taken into account. Thus, the statement of the prosecution regarding the value of the assets at the beginning of the check period omitting the value of the two immovable properties admittedly held in the name of the accused is a deliberate omission to exclude the income derived from those properties ,till it was disposed during the mid of the check period.

Secondly, the statement of the relatives recorded by the Investigating

Officer, explains the financial assistance rendered by them to the accused and his family. However, they were not called to give evidence by the prosecution, for the Court to appreciate the allegation of disproportionate asset. The Investigating Officer as well as the trial Court had proceeded on the premises that the wife of the accused is a house wife and had no independent income of her own. Ignoring the fact that her family hails from affluent background and she had been financially assisted by her brother and other family members, which have been spoken by them, during the course of investigation, when the Investigating Officer examined them and recorded their statement under Section 161 of Cr.P.C.

Thirdly, the house of the accused at New No.2, Old No.72, Ottakoothar Street, Mamallan Nagar, Kanchipuram, was gifted to him by his father prior to the check period and during the check period, the accused demolished the first floor retaining the ground floor and put up additional construction. While so, ignoring the documentary evidence, such as the settlement deed, plan and building construction approval by the authorities, which are marked as Ex.P5, Ex.P8 and Ex.P65, the trial Court had relied upon the evidence of PW-17-Abdul Rehman and a letter marked as Ex.P33. Neither the testimony of PW-17 nor the letter Ex.P-33 is worth reliable, since PW-17 claims that he was an employee under Azharudeen

Traders, during the relevant point of time and Ex.P33 is an undertaking letter of PW-17, which is dated 14.03.2005 that he will receive a sum of Rs.22,000/- to demolish the building at Door No.72, Ottakoothar Street and hand over a vacant site, within a period of 15 days. Neither PW-17 is a competent person to speak on behalf of Asharudeen Traders nor the letter (Ex.P33) given by PW-17 is a proof that the building was demolished to the ground and handed over to the accused or the accused put a new construction in the property at the cost of Rs.32,55,721/-.

14. The learned Senior Counsel appearing for the appellant referring Ex.P45, Valuation Report given by Mr.G.Ganesan, (PW-6) submitted that the valuation has been done as if the entire building was constructed during the period from March 2005 to May 2007 and from June 2004 to December 2004 (Annexure building) without ascertaining the age of the ground floor and the age of the first floor. By including the cost of construction of the ground floor as if it was constructed during the check period, the valuation of the building has been boosted up wantonly. Further, the cost of construction, architect charges, and contractor commission, added without any basis. The CPWD guidelines alleged to have been followed for fixing the valuation of the construction is also erroneous

and there is no evidence to show that the accused engaged architect and contractor for constructing the building.

15. The learned Senior Counsel appearing for the appellant pointing out that the trial Court ignoring Ex.P65 has given predominant to Ex.P8-plan, which is anterior in point of time and arrived at a wrong conclusion that Ex.P8 planning permission was given for new building, after demolishing the old building and this will prevail over the planning permission marked as Ex.P65 given subsequently for the additional first floor construction upon the existing ground floor construction.

16. The trial Court failed to take note of the fact that all along the check period the accused and his family were residing in the ground floor of the premises and the ground floor was never demolished. Water tax and the house tax as well as the purchase bill of electronic items in the name of his wife, wherein No.72, Ottakoothar Street, Mamallan Nagar, Kanchipuram, is shown as the address of the appellant family will prove that the existing ground floor was never demolished and this fact totally ignored by the trial Court. By boosting the value of the

building the prosecution had painted a picture before the trial Court as if the accused holding asset in his possession over and over the known source of income.

17. Per contra, the learned Special Public Prosecutor (CBI) appearing for the respondent submitted that it is incorrect to say that the trial Court ignored the asset held by the accused on the commencement of the check period. The trial Court had properly appreciated the evidence and has found that out of two immovable properties held by the accused prior to the check period, one of the property is the house-site purchased by the accused in the name of his wife on 25.07.1990 for Rs.11,360/-. The house-site was sold on 17.06.2004 during the check period for a sum of Rs.50,000/-, thereby a sum of Rs.38,640/- was earned by the accused and the same is shown as income during the check period. Therefore, there is no error in not showing the said property held at the commencement of the check period. As far as the other property, which is an agricultural land at Pazhaveri Village purchased by the accused prior to the check period for Rs.43,250/- and spent Rs.5,200/- as stamp duty, Rs.435/- as registration fee and Rs.1676/- as deficit stamp duty Rs.140/-, put together Rs.50,701/- been sold by

the accused on 22.03.2004 for Rs.1,94,500/- and income of Rs.1,43,799/- derived from the said investment been included in his income statement and therefore, the Investigating Officer cannot be faulted on this score.

18. Regarding the omission to place the statement of the accused in respect of the source for the asset held by him, the learned Special Public Prosecutor (CBI) submitted that this has not caused any prejudice to the accused, since he had every opportunity to explain the source of asset during the trial and the accused marked nearly 40 documents in support of his defence, but none of the documents had satisfactorily explained the source of accumulating the asset over and above the known source of income. Therefore, the trial Court had rightly held that there is no need to give an opportunity during the course of investigation to explain about the disproportionate asset standing in the name of the accused. The right to seek opportunity commences only during the course of trial and not at the earliest stage and in the course of trial, the explanation given by the accused found not satisfactory by the trial Court.

19. The learned Special Public Prosecutor further submitted that the trial Court has explained the reasons for concluding that the building at No.72, Ottakoothar Street, Mamallan Nagar, Kanchipuram was constructed during the check period and the said reason is based on the oral and documentary evidence. In the absence of contrary evidence, the reasoning has to be up held.

20. The learned Special Public Prosecutor also submitted that an attempt of the accused for filing the income tax return after the check period disclosing certain source of income during the check period and certain concession given by the Investigating Officer to fix the total income during the check period as Rs.14,11,226/- itself a sign of gracious and magnanimous attitude of the Investigating Officer. The accused having failed to disclose the asset acquired by him to the department under the Conduct Rules, itself a misconduct and his attempt to disclose certain income to the Income Tax Authority for the income during the check period after registering the First Information Report and admission of the assets held by him is sufficient to hold that the accused has misconducted himself and had amassed wealth over and above the known source of income. Therefore, the trial Court judgment is to be confirmed.

21. The point for consideration, whether the finding of the trial Court that the accused failed to satisfactorily account the assets in hand is contrary to the evidence?

22. The Court, the trial Court judgment is challenged primarily on the ground that the failure to give opportunity during the investigation to explain the asset standing in the name of the accused and failure to place the explanation given by the accused before the Court for proper appreciation of the fact is pointed out to term the investigation perverse. As far as opportunity to explain a right, which emanates from the Natural Justice Principle, the case against the accused been registered based on the source information. Nearly after 43 days of the registration of the First Information Report, the house of the accused been searched. The search process been photographed and they are all placed before the Court. In the cross examination, it is admitted by the Investigating Officer (PW-32) that he did not obtain permission from the superior officers of PW-1 and PW-4 to spare their services to be witnesses. He did not record the statement of PW-3 the Deputy Manager, who was present at the time of examining the locker

and PW-5 the photographer engaged by him to photograph the search proceedings. The Investigating Officer in the cross examination admits that during the course of investigation, he sought explanation from the accused regarding the proportionate asset held by him and a written explanation was offered by the accused. The said written explanation of the accused not produced in the Court.

23. In this connection, it is to be noted that the sanctioning authority (PW-2) in the cross examination has stated that he did not remember whether the accused statement was also sent to him along with the witnesses statements. In the chief examination, he has listed out the documents he has perused, but it does not include the statement of the accused given during the investigation. Therefore, it is to be presumed that sanction to prosecute the accused accorded by the competent authority without considering the explanation of the accused.

24. Defect in the sanctioning order will not fatal to the prosecution case, provided the prosecution is sustainable dehors of the explanation and the trial finds material to frame charges.

25. According to the prosecution, the value of the asset held by the accused at the end of the check period was Rs.34,95,551/- (-) Rs.21,144/- = Rs.34,74,387/- includes the value of the building estimated at the cost of Rs.32,55,721/-.

26. The accused having pleaded that only the first floor of the building was constructed by him during the check period and the ground floor of the building was already in existence, the trial Court had ventured to examine the evidence to ascertain whether the building was constructed after demolishing the ground floor or only the first floor and the annexure building was constructed retaining the ground floor. In this connection, the trial Court has examined Ex.P6 to Ex.P9 and Ex.P65. Ex.P6 is the building licence No.476/2004/F2 dated 25.10.2004. Ex.P7 is the planning permission No.476/2004/F2 and the date of permit is from 14.10.2004 to 13.10.2007. Ex.P8 is the plan showing the proposed ground floor construction in the property. Ex.P9 is the plan permission order dated 18.01.2007 and Ex.P65 is the plan showing the proposed first floor construction in the property. The above said documents are not disputed. Therefore, the trial has concluded that perusal of the above said document would go to show that, as put forth by the prosecution, the accused has demolished the existing construction in

the property and in that site has erected the ground floor+first floor (main building) and the annexure building after getting necessary permission from the Kanchipuram Municipality. A perusal of Ex.P8 would go to show that it is the plan showing the proposed construction on the property with RCC roof residential building and in the note described in the plan, it could be seen that it has been mentioned that the existing building to be demolished and the proposed RCC roof building is to be constructed.

27. The trial Court also in fact had taken into consideration Ex.P65, where there is a note that it is the plan approval for the proposed additional construction of the first floor to be raised on the existing ground floor building. The trial Court however had come to a conclusion that on a conjoint perusal of Ex.P8 and Ex.P65 along with the plaining permission, it indicates that the accused after demolishing the existing building has erected the ground floor, the first floor and the annexure building on the property.

28. To substantiate his conclusion, the trial Court has also relied upon the evidence of PW-P17 and Ex.P33 the letter given by PW-17.

29. On a close examination of these documents, which are relied upon by the trial Court to disbelieve the case of the accused, this Court note that Ex.P8 is the plan showing the proposed construction of the RCC roof residential building. This plan approved by the Commissioner, Kanchipuram Municipality is based on the proceedings dated 25.10.2004 with a direction that it is valid from 14.10.2004 to 13.10.2007. In this plan approval, it is stated that the existing building to be demolished. This plan approval is only for the ground floor. On the date of granting the plan approval, it is noted that the existing building to be demolished. The existence of the building in the said plan is an admitted fact and also form part of the schedule of the settlement deed Ex.P5 executed by the father of the accused in favour of the accused. If the prosecution had sufficiently proved that this building was demolished at some point of time during the check period and constructed, then the value fixed under Ex.P45 by PW-6 Ganesan has to be accepted. Otherwise, the case of the prosecution has to fail.

30. After getting plan approval of the ground floor in the year 2004, the accused had sought for approval for additional construction of the first floor on the

existing ground floor building. This plan for the additional construction of the first floor on the existing ground floor was accorded on 18.01.2007 by the Commissioner of Kanchipurm Municipality with a condition that the approval is valid from 18.01.2007 to 17.01.2010 which means the construction to be completed within the said period. Comparing Ex.P8 and Ex.P65 in juxtaposition, the plan for the ground floor approved under Ex.P8 is retained in the plan approved under Ex.P65 with a small variation in respect of the portico by one inch. While Ex.P8 plan approved for demolishing the existing building and put up the ground floor on 25.10.2004, Ex.P65 is the additional construction upon the first floor and this approval is dated 18.01.2007. Now it is pertinent to consider the evidence of PW-17(Mr.Abdul Rehman), the employee under Azharuddin Traders, who gave the undertaking letter Ex.P33 that he will demolish the existing building to the ground for Rs.22,000/- and the demolition work will be completed within 15 days from the date of the letter (i.e.) 14.03.2005. It is only an undertaking letter and it is not a proof for demolition of the building. Further, this undertaking letter was given by PW-17 on behalf of Azharuddin Traders, in which he was an employee and not the owner. Reliance of this document is highly unsafe, in the absence of the proof that the building was really demolished and the admission of PW-17 in the cross examination that he demolished water tank, two rooms, poultry shed annexed in the premises alone. No further examination to clarify whether he really demolished the entire building to the ground been elucidated. If, PW-17 and Ex.P33 is accepted, the building might have been erased to the ground only after 14.03.2007 and thereafter, a new construction as per the plan approval under Ex.P8 should have been constructed by the accused.

31. If we look at the depositions of PW-6 the valuer who has visited the premises on 13.07.2005 along with the Investigating Officer Mr.B.S.Balasubramanian (PW-32) as well as Mr.A.V.Ramesh (PW-23) the Junior Engineer (PWD), in the cross examination, admits that he did not make any test to find the age of the building. He has valued the building based on the cost of the materials during June 2004 to December 2004 and March 2005 to May 2007. Had the building in existence on 14.03.2005. When PW-17 gave his letter Ex.P33 then the estimation of the building on the premises that it was constructed during June 2004 to December 2004 without ascertaining the age of the building by making any material verification makes the valuation report of PW-6 a farce.

32. Ex.P5 settlement deed executed by Thiru.Vengoji Raj Bhonsle, the father of the accused is dated 06.02.2003. The schedule of the property includes 4557 sq.ft. land and RCC roof residential building on the land along with the other amenities including municipal water supply and electricity supply. While so, the contention of the prosecution that the said building was demolished by the accused and a fresh building was constructed upon it and the plan approval (Ex.P8 and Ex.P65) was obtained for the construction put up in two spell one between June 2004 and December 2004 and another between March 2005 and May 2005, has no proof. Particularly, when the contention of the prosecution gets diminished by their own document (Ex.P33) and witness (PW-17). The failure of the prosecution to ascertain the age of the building and the candid admission of the valuer that he did not make any test on the age of the building renders the case of the prosecution unreliable. Besides the Investigating Officer having admitted that the accused gave his explanation that he build only the first floor the failure to produce his explanation only indicates that the prosecution without placing the materials before the Court for proper appreciation, had proceeded to prosecute.

33. This Court wish to record that the trial Court though taken note of the fact that the accused has taken loan from his GPF account on 05.05.2000 for a sum of Rs.60,000/-, the omission to consider that for assessing the cash or assets at the beginning of the check period is a grave omission and the reasoning given by the trial Court is not a prudent explanation. The loan of Rs.60,000/- has been availed on 05.05.2001. Whereas the check period has commenced just after four months. This amount withdrawn either ought to have been in the hands of the accused as cash or as any consumer durable for which he has availed the loan. Likewise, the trial Court also had wrongly understood the law regarding opportunity to explain the account be accorded to the accused at the time of investigation. Failure to account the asset is entire different from the failure to satisfactorily account the asset. In case of <u>failure to account</u>, it is the omission on the part of the accused to give some explanation about the source. Whereas, in case of <u>failure to satisfactorily account</u>, it means that some explanation given by the accused, but not to the satisfaction of the Investigating Officer or to the Court. The provision under Section 13 (1) (e) of the Prevention of Corruption Act,1988, makes the conduct of the public servant as misconduct, only if he is in possession of property or peculiar resources disproportionate to his known source of income but he fails

to satisfactorily account.

34. In this case, the Investigating Officer admits that he received the statement from the accused in the course of investigation regarding his source for the assets held by him but he was not satisfied with the explanation. The reason for not being satisfied not spelt out by the Investigating Officer . Atleast he should have fairly placed the explanation before the trial Court and ought to have examined Mr.Kiran Rajaram Deshmukh, brother of the accused's wife (LW-33), Smt.Shoba Raje Bhonsle, the wife of the accused (LW-46), and Smt.Leela Raje Bhonsle, the mother of the accused (LW-47) and Tr.V.Prithiviraj Bhonsle, the brother of the accused (LW-35).They have given statements to the Investigating Officer to the effect that they have financially assisted the accused in his construction of the house which was gifted by his father.

35. It is also pertinent to note that the father of the accused was a retired Government Servant and a Pensioner. He died just a year before registration of the First Information Report. His mother is getting family pension. Both his father and mother were living along with the accused. The investigating Officer admits that

the accused inherited antiques. He and his father sold some of the antiques to the Government Museum and he was also retaining few in his house and they were found during the search. The Investigating Officer had conveniently included certain assets and excluded certain assets, according to his wish by pick and choose. This in the result led to lopsided investigation.

36. The trial Court judgment bristles with fundamental error regarding law that the opportunity to explain about the disproportionate asset commences only during the course of trial and not prior to that. In other words, it would mean that the accused has to face the ordeal of trial to prove his innocence, though he have adequate explanation to satisfy the source of income.

37. The trial Court has misquoted the judgment of the Hon'ble Hon'ble Supreme Court in ***K.Veeraswami v. Union of India and others*** reported in ***[1991 SCC (Cri) 734]***, which is a case under the Prevention of Corruption Act, 1947. In fact by majority 4:1, the Hon'ble Supreme Court has held that:

> "75. ....The Investigating Officer is only required to collect material to find out whether the officer is only appears to have been committed. In the course of investigation, he may examine the accused. He may seek

> his clarification and if necessary he may cross check with him about his known sources of income and assets possessed by him. Indeed, fair investigation requires as rightly stated by Mr.A.D.Giri, learned Solicitor General, that the accused should not be kept in darkness. He should be taken into confidence if he is willing to cooperate. But, to state that after collection of all material the Investigating Officer must give an opportunity to the accused and call upon him to account for the excess of the assets over the known sources of income and then decide whether the accounting is satisfactory or not, would be elevating the Investigating Officer to the position of an enquiry officer or a judge. The Investigating Officer is not holding an enquiry against the conduct of the public servant or determining the disputed issues regarding the dis-proportionality between the assets and the income of the accused. He just collects materials from all sides and prepares a report which he files in the Court as charge-sheet."

38. The above judgment of the Constitutional Bench has made clear that the Investigating Officer has to collect the materials from all sides and prepare a report and file it in the Court as charge sheet. The corollary is, if he fails to place the materials collected from the accused, the lapse on the part of the Investigating Officer to be found with suspicious.

39. In this case, the miscarriage of justice caused not by the omission to offer opportunity but the omission to place the explanation of the accused for appreciation by the sanctioning authority, who has to independently look into the

materials placed before him to accord sanction to prosecute which is the safety check value provided under the statute to protect honest public servants from malicious prosecution and also for the Court to appreciate the defence of the accused for possession of asset which *prima facie* not in tune with his official source of income. In this case, the prosecution having failed to place the explanation given by the accused collected during the course of investigation and the statement of the witnesses, who have disclosed their financial contribution to the accused during the check period, the omission to properly value the assets in his hand particularly, the building on the erroneous premises that the entire ground and first floor were constructed during the check period ignoring the fact that the ground floor was in existence at the time, when the property was settled in favour of the accused all put together give room to grave doubt in the case of the prosecution.

40. Therefore, the judgment of conviction and sentence passed by the IX Additional Special Judge for CBI Cases, City Civil Court, Chennai in C.C.No.20 of 2008, dated 26.12.2012 is hereby set aside. This Criminal Appeal is allowed. Fine amount, if any, paid by the accused shall be refunded to him. Bail bond, if

any executed by the appellant shall stand cancelled. The appellant shall be released, unless his presence is not required in connection with any other case.

15.06.2023

Index:yes/no
speaking order/non speaking order
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To:

1.The Additional Special Judge for CBI Cases, City Civil Court, Chennai.

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

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

DR.G.JAYACHANDRAN,J.

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delivery judgment made in
Crl.A.No.10 of 2013

15.06.2023