IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.11.2022

Pronounced on : 30.08.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.A.No.595 of 2018

P.Pandian ... Appellant

Vs.

State Re.by
Inspector of Police,
SPE:CBI/ACB, Chennai
RC MA1 2009-A-0022 ... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedures, to set-aside the order in C.C.No.37 of 2009, dated 26.09.2019 on the file of the 14th Additional Special Court for CBI.

For Appellant	:	Mr.Infant Dinesh
For Respondent	:	Mr.K.Srinivasan Spl.PP (CBI Cases)

JUDGMENT

This Criminal Appeal arises out of conviction and sentence imposed by the learned XIV Additional Special Judge (CBI Cases), XIV

Additional City Civil Court, Chennai in C.C.No.367 of 2009, dated 26.09.2019, wherein the appellant was convicted for offence under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 and sentenced to undergo four years Rigorous Imprisonment and to pay a fine of Rs.3,00,000/-, in default, to undergo one year Simple Imprisonment.

2. The case of the prosecution is that the appellant joined in Employees Provident Fund Organization, Chennai, as Lower Division Clerk on 10.07.1975, promoted as Upper Division Clerk on 18.09.1980, promoted as Head Clerk on 14.05.1995 and further promoted as Assistant Accounts Officer on 21.10.2005. Subsequently, he has been redesignated as Enforcement Officer on 28.05.2007 and was working as Enforcement Officer, Employees Provident Fund Organization, Regional Office, Chennai. The appellant married one Vennila on 24.05.1981, who is a matriculate and a housewife. The appellant has two sons namely, P.Pranesh Kumar and P.Mahesh.

3. The respondent received reliable information about appellant, and his family members acquired assets disproportionate to his income, preliminary enquiry conducted, thereafter, FIR registered and the check-period was fixed for the period from 01.01.2002 to 30.09.2006. During

investigation, the appellant and his family members were found in possession of immovable and movable assets at the beginning of the check period to the tune of Rs.10,64,404/-, which is reflected in Statement 'A'; at the end of check period, the appellant and his family members were found in possession of immovable and movable assets to the tune of Rs.70,25,867/-, which is reflected in statement 'B'; during the check period, the appellant and his family members had income to the tune of Rs.56,97,574/- from all known source of income, which is reflected in Statement 'C' and during the check period, the appellant and his family members incurred a total expenditure of Rs.22,50,406/-, which is reflected in Statement 'D'. Thus, the appellant was found to amass wealth and assets, which are disproportionate to his known source of income, to an extent of Rs.25,16,295/-, which is around 44.16%.

4. After completion of investigation, charge sheet filed against the appellant and his wife Vennila, for offence under Sections 109 IPC., r/w. Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988. The appellant and his wife on their appearance before the trial Court filed discharge petition in Crl.M.P.No.2076 of 2010 and Crl.M.P.No.973 of 2010. The discharge petition of the appellant was dismissed and as regards A2 / Vennila, the petition was allowed by the trial Court and she was discharged from the case.

5. Against which, the respondent CBI preferred a Revision in Crl.R.C.No.1115 of 2011 before this Court and this Court by an order dated 02.07.2012, confirmed the order of discharge finding that two of the properties in Statement 'A' and first property in Statement 'B' were purchased by A2 prior to the check period, out of her own source of income, in the year 1995, and the said properties were sold for a sum of Rs.25,00,000/-, out of which, after clearing the debts of Rs.7,00,000/-, A2 was with Rs.18,13,840/- and she purchased the property No.1, reflected in Statement 'B' for Rs.10,08,000/- and further, she was left with balance amount of Rs.18,13,840/- which could have been used for construction purpose of the House in Uthandi property. Thereafter, the appellant had filed a petition under Section 216 Cr.P.C., to alter the charges in Crl.M.P.No.791 of 2012, to delete Item Nos.1 & 2 pertaining to the appellant's wife Vennila from the charges already framed on 07.09.2012. Considering the submission, the trial Court allowed the petition deleting the properties, by order dated 27.08.2013 and to deduct Rs.10,08,000/- from the total disproportionate assets of Rs.25,16,295/- and the charge to be altered accordingly.

6. Aggrieved against the said order, the respondent CBI filed a petition Crl.O.P.No.2900 of 2014, under Section 482 Cr.P.C., and this

Court found no infirmity in the order of the trial Court, dismissed the petition, by order dated 13.07.2015. Aggrieved against the same, the prosecution preferred Crl.M.P.No.10252 of 2016 in S.L.P.No.5433 of 2016 and the same was dismissed. Thereafter, a sum of Rs.10,08,000/- and the property in the name of appellant's wife Vennila deleted and the charges framed against the appellant on 01.06.2017.

7. During the trial, the prosecution examined 31 witnesses as P.Ws.1 to 31, marked Exs.P.1 to P.72 and no Material Objects marked on the side of the defence. On the side of the appellant, 4 witnesses were marked as D.Ws.1 to D.W.4 and marked 4 documents as Ex.D1 to D4. On conclusion of trial, the trial Court convicted the appellant as stated above.

8. The primary contention of the petitioner is that after the deletion of the appellant's wife property from the charges, the charge against the appellant was to account for alleged disproportionate assets to the tune of Rs.15,08,295/- and for acquiring immovable properties viz.,(i). Purchase of of site, measuring an extent of 434.3 Sq.Ft., at Ward No.15,(Old No.8), First Street, Muniappasamy Koil Street, Pannayapuram Town, Periyakulam, Theni District. (2) Construction of hose in the name of the appellant in the said property, and for gold

jewels, house hold articles, bank balance etc., totalling to the tune of Rs.15,08,295/-. After the altered charge the appellant was to give explanation and proper account for two immovable properties and movable properties to the the above sum.

9. On the contrary, the trial Court proceeded with the case as though the appellant's wife / A2 is facing trial, the property and assets, income expenditure in the name of A2 were also taken into consideration and rendered the above Judgment, which is improper. Further, the lower court primarily proceeded on the construction and valuation of the property, at Uthandi, which stands in the name of appellant's wife for which there is no charge. The genesis of the case against the appellant is that the appellant while employed as Enforcement Officer in the Provident Fund Office amassed wealth and thereby, acquired properties. The appellant not acted as Enforcement Officer even for a single day, during the check period the appellant was a Head Clerk / Section Supervisor and got promoted as AAO only for the last six months of the check period. On the contrary, P.W.1, sanctioning authority, proceeded and given sanction as though the appellant was an Enforcement Officer during the entire check period and issued Ex.P1, Sanction Order, which clearly reflects non-application of mind. On this score alone, the appeal is to be allowed.

10. He further submitted that the value arrived for construction of property at Pannaipuram, Item No.4 by he lower Court is Rs.4,69,620/-, which is not proper. It is admitted that the property is an ancestral property belonging to the appellant and his five brothers and one sister. P.W.23, the valuer of the property, valued the property on the higher side to suit the prosecution. P.W.30 is the contractor, confirms that agreed construction cost was Rs.3,38,000/- and further it is a joint family property and hence, the appellant to pay only $1/6^{th}$ share in the property as well as the for the expense, which is Rs.56,333/-. D.W.4, the brother of the appellant confirms the same and admits making part payment to the contractor, the same is available in Ex.P36 & Ex.P65. Further, P.W.23 admits that the valuation of the property has been valued as per CPWD rates and not by Tamil Nadu PWD rates. This Court on several occasion have held that the property valued in the State of Tamil Nadu, the application of P.W.D is proper and which is 20% lesser than the CPWD rates.

11. Likewise, as regard to the valuation of the Uthandi property, the appellant examined P.W.19 licensed and approved valuer, doing valuation work of immovable properties to various Nationalized Banks, valuation normally done as per Tamil Nadu PWD Plinth area rate the

construction cost is Rs.33,10,000/-. The lower Court rejected P.W.19 evidence as well as his report Ex.P26. Instead took account of CPWD valuer / P.W.29 evidence and his report Ex.P63 giving reasons that Ex.P.63 is a detailed one. P.W.19 assessed the property even before P.W.29 assessment. Further, from the report Ex.P63 it is seen that P.W.29 furnished with assessment report, Ex.P.26, though P.W.29 recorded the report, he had neither considered, nor discredited the report Ex.P26, in any manner. In such circumstances, the trial Court accepting Ex.P63 only for the reason it has been given by the valuation officer of the Income Tax Department is not proper. In support of his contention that only PWD rates has to be considered while evaluating the property, the petitioner relied upon the Judgment of this Court in ***Commissioner of Income Tax, Coimbatore Vs. K.Jayakumar*** reported in ***(2013 SCC Online Mad 2434)***; ***Commissioner of Income Tax, Trichy Vs. Shri Raya R.Govindarajan*** reported in ***(2014 SCC Online Mad 4484)***.

12. In the case of ***Commissioner of Income Tax, Coimbatore Vs.K.Jayakumar*** reported in ***(2014 SCC Online Mad 2434),*** this Court held that there is a variation between CPWD rates and the State PWD rates. Considering the geographical location, the availability of work force and the cost of materials, cannot blindly go by CPWD rates, for the purpose of arriving at the cost of construction. Further, it is seen

that the Rajasthan High Court in ***Commissioner of Income Tax Vs. Smt.Prem Kumari Murdia*** reported in ***(2006) 296 ITR 508 (Raj)*** has held that there is 20% difference between PWD rates and CPWD rates. Further, the learned counsel produced the CPWD Office Memorandum, dated 20.10.2014, wherein the plinth area rates are only for the purpose of preparing the preliminary estimate and the same cannot be adopted blindly for already constructed building.

13. Likewise, valuing the jewels found in the locker, the lower Court taking into account a sum of Rs.3,66,300/- as the value of jewels based on Ex.P41 is not proper. P.W.25 clearly stated that he had not calculate the market value of the jewels on the date of locker operation. Further, a bare perusal of Ex.P41, would show that the jewels have been acquired during various period and the locker is in the name of appellant's wife Vennila, who is discharged from the above case. In such circumstances, adding the value of the jewels to the credit of appellant is not proper.

14. The expenditure in this case not properly calculated for the purpose of arriving at the domestic expenditure at Rs.8,65,494/-, as per the statement of P.W.17, which is 1/3rd of the appellant's gross salary, following the ***Sajjan Singh Case***. When the expenditure has been

calculated based on the gross salary, then, the income is also to be taken as gross salary and not net salary. The income is not properly considered. The GPF withdrawal not taken as income. The trial Court had calculated Rs.49,39,559/- as income during the check period, which is not proper. Likewise, inflated amount is shown as expenditure, which includes his wife expenses. The appellant also furnished a calculation report, as follows:-

Calculation for computing disproportionate asset.

AS PER LOWER COURT	AMOUNT	AMOUNT AS PER APPELLANT
Statement-A (Asset at beginning of check period)	403336	403336
Statement-B (Asset at the end of check period)	5154882	33723114
Statement-C (Income during the check period)	4939559	5012251
Statement-D (Expenditure during the check period)	1637652	1539652
Asset Acquired (B-A_	4751546	296878
Likely saving (C-D)	3301907	3472599
DISPROPORTIONATE ASSERT TO INCOME	**14,49,639**	**-5,03,621**

and thus submitted that the appellant in fact, had an amount of Rs.5,03,621, which is savings to his credit. Hence, there is no disproportionate assets and prayed for acquittal.

15. Mr.K.Srinivasan, the learned Special Public Prosecutor for CBI Cases submitted that the Judgment of the lower Court is a detailed and well reasoned one. P.W.1 is the superior officer, an appointing authority or the authority above the appointing authority, is competent authority to accord sanction. P.W.1 categorically stated that prior to issuance of Sanction Order, Ex.P1, he perused the statement of witnesses, documents, the statement of calculation presented to him, after applying his mind, satisfied found *prima facie* evidence against the appellant accorded sanction. As regards the valuation of the property, he submitted that at the initial stage, the appellant had not objected, valuation by the CPWD Engineer / Valuation Officer, adopting CPWD rates, now cannot claim the valuation is on the higher side.

16. Before the trial Court, 31 witnesses examined and documents marked. The witnesses can be broadly classified in this case. P.W.1 is the sanction witness; The Bank witnesses are P.W.2 / Manager, Syndicate Bank, Royapettah Branch, who speak about appellant salary account, taking personal loan. P.W.6 is Manager, Bank of India, speak about the Joint account maintained by the appellant and his wife Vennila; P.W.13 is the Manager, ICICI Bank, speak about the credit in the accounts of the appellant; P.W.21 is the Manager, Syndicate Bank, Tambaram, who speaks about the loan availed by the appellant; P.W.26, Manager,

Central Bank of India speaks about Housing and Educational Loan. P.W.24, Manager, Bank of India, who is a witness to the inventory for the articles found in Appellant's house. P.W.25 is the Appraiser of the Indian Bank, who states about the valuation of the jewels.

17. The officials from Provident Fund office, P.W.17, the Assistant Commissioner, Provident Fund, state about the salary particulars of the appellant; D.W.1 and D.W.2 are the Assistant Commissioners of Provident Fund office, who state about the Provident Fund withdrawal, Transfer grant and Festival Advance of the appellant. P.W.3 Secretary from the Provident Fund Employees Co-operative Society, state about the loan availed by the appellant. D.W.3 is the another secretary of the society who state about the deposits and dividend of the appellant. P.W.8 RTO, state about the Car of the appellant. P.W.9, P.W.10 and P.W.22 are the Sub Registrars, speak about the property documents. P.W.11 and P.W.12 are from the Income Tax Department. P.W.27 is from the EB; P.W.12 is the Village Administrative Officer, who state about the agricultural property of appellant's wife Vennila and the income derived. As regard the valuation of the building and connected facts, P.W.15 is the valuer, who valued the property of Vennila at Thoraipakkam . P.W.19 is the approved licence valuer, who valued the Uthandi property. P.W.29 is the valuer of Income Tax Department Valuation Cell, who also valued

Uthandi property. P.W.23 is a CPWD Engineer, who valued Pannaipuram property of the appellant. P.W.30 is the building contractor for Pannaipuram property. The other witnesses are P.W.4, purchaser of Thoraipakkam property from appellant's wife Vennila; P.W.5 is the vendor of Uthandi property to appellant's wife vennila. P.W7 and P.W.14 are from the Colleges, who speak about the tuition fees of appellant sons. P.W.16 state about the appellant son receiving salary. P.W.20 from whom the appellant had purchased the property from Pannaipuram. P.W.22 confirms the sale of property by Vennila. P.W.28 is the owner of Cardamom estate. D.W.4 is the brother of appellant, who is into cardamom plantation. Thus, from the evidence of the above witnesses, the trial Court found the appellant was unable to give proper explanation for the properties owned by him disproportionate to his known source of income and finally convicted the appellant.

18. The learned Special Public Prosecutor submitted that initially, the charge sheet filed A1 and his wife A2 Vennila. Both of them filed discharge petitions. Later, the case against A2 got discharged and this Court confirmed the same deleting the name of Vennila/A2, and charges framed on 07.09.2018, against which, the appellant filed a petition to alter the charges, deleting the properties of discharged accused / A2. The trial Court, deleted certain of the properties and reduced the

disproportionate assets to be explained and answered. Aggrieved against the same, the prosecution filed a Criminal Original Petition against the alteration of the charges, and deleting of properties of Vennila before this Court and this Court negatived the CBI contention. Against which, an SLP preferred and the same not entertained and thereafter, charges were framed against the appellant alone with Pannaipuram properties and for disproportionate asset of Rs.15,08,295/-, on 01.06.2017. The charge against the appellant was with regard to two properties. One is with regard to purchase of property at Pannaipuram and second was construction of house in the said property and to give account and given explanation for the other movable properties.

19. The trial Court, after alteration of charges, formulated eight points for to be answered and the points are as follows:-

> 1. Whether the Sanction accorded to prosecute the 1st accused is valid and effective?
>
> 2. Whether the accused possessed assets of Rs.4,03,337/- at the beginning of the check period?
>
> 3. Whether the accused possessed assets of Rs.52,04,027/- at the end of the check-period?
>
> 4.Whether the accused incurred expenditure

during the check-period comes at Rs.22,50,406/-?

5.Whether the accused earned income of Rs.38,83,734/- during the check-period?

6.Whether the accused possessed disproportionate assets of Rs.15,08,595/- and thereby amassed disproportionate assets?

7.Whether the prosecution has established the offences against the accused beyond all reasonable doubt?

8.If it is proved by the prosecution, what would be the sentence to the accused?

20. The trial Court, point by point, answered the contention of the petitioner by analyzing the evidence and the relevant documents connected to it. The objection of the appellant considered and thereafter it had rendered the Judgment and found that assets at the beginning of the check period was Rs.4,03,336/-, assets possessed by the appellant and his family members at the end of the check period was determined at Rs.51,04,882/-. The total income of the appellant and his family members during the check period determined at Rs.49,39,559/-, expenditure incurred by the appellant and his family was fixed at Rs.16,37,652/- and finally held the appellant was holding assets disproportionate to his known source of income to the tune of Rs.14,49,639/- which is 29.35% disproportionate and accordingly, convicted the appellant.

21. I have heard the learned counsels appearing on either side and

perused the materials on record.

22. The charge against the appellant is for purchase of a site at Panniapuram Town, measuring 434.5 sq.ft and putting up a house construction there. Further, to explain satisfactorily for the movable properties such as, gold jewels, household articles, bank balance etc., totally to the tune of Rs.15,08,295/-. The appellant's wife Vennila, originally A2, was discharged from the case in Crl.M.P.No.973 of 2010, the same was questioned before this Court in Crl.R.C.No.1115 of 2011, this Court, confirmed the discharge of Vennila, at the same time, observed it was for the appellant to prove his borrowings to construct the houses both from the bank and from private persons, explain his income and other expenditure, which has to be decided by the trial Court. When the charges were re-framed deleting the properties of A2 in Crl.M.P.No.791 of 2012, this was again challenged before this Court in Crl.O.P.No.2900 of 2014, this Court dismissed the said Criminal Original Petition reiterating the finding given by this Court in Crl.R.C.No.1115 of 2011. Against which, CBI gone on an appeal before the Apex Court in SLP No.5433 of 2016, the same was negatived and rejected. Thus, the appellant is expected to give acceptable explanation to the tune of Rs.15,08,295/-, the construction cost involved to the extent of the appellants contribution are also to be considered.

23. From the order of this Court in Crl.R.C.No.1115 of 2011, it is seen that the appellant's wife Vennila sold the property of Thorapakkam purchased before the check-period and had Rs.25,00,000/- with her. Out of this Rs.25,00,000/- a sum of Rs.6,86,160/- was used for clearing her earlier debts and she was having Rs.18,13,840/-. With this amount, she purchased the Uthandi property for Rs.10,08,000/- and she had with her Rs.8,05,840/-. Now, the evidence of P.W.19, the Government registered valuer for banks, including Public Sector Banks and his report Ex.P26 to be considered along with P.W.29. CPWD Executive Engineer report Ex.P63. From Ex.P29 report, it is seen that the construction cost of the building is arrived at Rs.33,10,000/-, whereas, the construction cost arrived at by CPWD Engineer, Ex.P63 is Rs.46,08,000/-. The trial Court accepted the CPWD evaluation for the reason that it is a detailed report, is not proper. As per the Office Memorandum of CPWD, dated 20.10.2014. the Plinth Area Rate is primarily for the purpose of preparing preliminary estimate to get an idea of likely expenditure on the work. In the Memorandum it is further stated that the actual cost of may vary significantly depending upon the requirements, site condition, detailed planning and design of various structures, buildings and services, level of competition in the tendering process etc., Thus, it is clear that the various factors to be considered, includes level of

competition in the tendering process, which mean the profit of the tenderer to be included.

24. In this case, it is a private individual construction, hence, there is no adding up of tenderer profit. Further, the report Ex.P26 is also a detailed one, which is worked out with Tamil Nadu Publics Works Department Plinth Area Rate for the year 2004-2005 and 2005-2006. In the report, it had considered the age of building. This report was very much available with P.W.29, CPWD Engineer. As could be seen from Ex.P63 report, in column 1.4. P.W.29 not questioned or discredited the valuation process and the value arrived in Ex.P.63. When Ex.P29 not questioned or discredited, the trial Court coming with its observation in rejecting Ex.P29 is not proper. As submitted by the appellant, this Court in several of the cases has consistently held that PWD rates to be adopted. This Court has held that since there is no notification or circular indicating that CPWD rates alone should be adopted in arriving the cost of construction, Tamil Nadu PWD rates to be considered. Further, it is also consistently held that CPWD rates are higher by 20% and there is no reason to reject the State Public Works Department rates. In view of the above, it would be appropriate that Ex.P29, valuation report, a detailed one, arrived using Plinth Area rate of State P.W.D acceptable.

25. The Panniapuram property purchased by the appellant from one Manavalan for Rs.18,000/- and constructed a house, which is valued at Rs.5,40,900/- by P.W.23, Executive Engineer CPWD, Madurai. It is seen that the property is a Joint Family property of the appellant, his five brothers and sister. D.W.4, the blood brother of the appellant deposed in this regard. P.W.30, the Building Contractor, who was entrusted to construct the house, confirms that as per construction agreement entered between the appellant and his brothers, Ex.65, the construction cost was Rs.3,38,000/-, which was paid by the appellant and his brothers. This agreement submitted to the CBI, who forwarded the same to P.W.23, the Valuation Engineer, who, in his report Ex.P35, records the same and the power Document No.224/2005, authorizing the appellant to deal with the property. The payment made in parts are recorded in Ex.P36. Ex.P36 and Ex.P65 are one and the same. The documents of fact submitted to the Investigating Officer. The explanation is reasonable, as could be seen from the evidence of P.W.23, P.W.30 and D.W.4 and Exs.P.35, P.36 and P.65. It is common, in rural areas the local contractors are engaged for construction. Those factors not considered in the report Ex.P.35.

26. In this case it is pertinent to note that prosecution examined

P.W.15, of Value Assessors & Surveyors Private Limited, who submitted his valuation report Ex.P.21 to P.W.31, the investigation Officer, for the Thoraipakkam property listed in Statement-A, Item Nos.1 and 2. From the report it is seen that P.W.15 adopted Tamil Nadu PWD Plinth Area Rate for construction and this method is an accepted method while arriving at the cost of construction. The CBI for the assessment of one of the properties, accepted the Chartered Engineer and approved valuer report, Ex.P.21, on the other hand, not considering the Chartered Engineer and approved valuer report Ex.P26 of Ex.PW.19, is not proper and acceptable. Further, the consistent view of this Court is that CPWD rates are 20% higher than the PWD rates and CPWD rates are adopted for the purpose of construction, which includes the tender profit and in view of the same, Plinth Area Rate of CPWD cannot be accepted without reasoning, when PWD rates, which is in detail and gives near exact cost of construction in the State of Tamil Nadu. Thus, without comparison and reasoning, CPWD Engineer / P.W.23's report, Ex.P29, and Ex.P35 cannot be accepted in toto.

27. This court finds no reason to discard the report Ex.P26 of

P.W.19, Registered Chartered Valuer. Likewise, the Panniapuram property constructed by a contractor, P.W.30, who produced Ex.P36 and Ex.P.65, the contract agreements. The contract agreements fixed the construction cost at Rs.355/- per sq.ft., totalling to Rs.3,38,400/-. For the movable jewels, it is found Rs.3,66,000/- has to be deducted, for the reason locker and jewels belong to Vennila, the discharged accused. The trial Court formulated eight questions and answered as follows:-

The beginning of the check period and Statement-A derived at Rs.4,03,337/-, Statement-B, at the end of the check period for both movable and immovable properties, it has determined at Rs.51,54,882/-. Income at the end of the check period determined at Rs.49,39,559/- held appellant holding disproportionate assets to the tune of Rs.14,49,639/-. From the expenditure taken as Rs.16,20,592/- deleting Rs.16,760/-, the electricity consumption charges will be proper, since the household / domestic expenditures includes electricity charges.

28. This Court finds that there is nothing to doubt the competence of P.W.19 and no infirmity in his report Ex.P26. Since the appellant himself has produced Ex.P29, the value arrived in Ex.P29 is not in dispute and taken as such. Hence, the total cost for the building is to be taken as Rs.33,10,000/-. From this Rs.33,10,000/-, the amount available

with the appellant's wife Vennila Rs.8,05,840/- to be deducted. Now, the explanation from the appellant as regards cost of construction of Uthandi property is Rs.24,96,160/-, which has to be taken as the cost of construction contributed by the appellant. Subtracting this cost of Uthandi property from the cost arrived by the trial Court for Uthandi property at Rs.37,94,160/-, an amount of Rs.12,98,000/- is the difference, shown in excess. Likewise, the cost of Jewels Rs.3,66,300/- also to be deleted, since locker and jewels belongs to Vennila, thus in total Rs.16,64,300/- to be deducted from Statement-B. This amount of Rs.16,64,300/- to be deducted, from the amount of Rs.51,54,882/-. Hence, Statement-B to be taken as Rs.34,90,582/-. In this case, it is seen from the evidence of P.W.9 that the amount which received by the appellant out of sale consideration just before the check-period not given due credit. Likewise, Ex.P13 and Ex.P25 Income Tax Returns are computerized documents, without 65-B certificate. In view of the above discussion, the disproportionate assets detail is calculated as follows:-

29. The calculation arrived at by the trial Court and this Court is tabulated below, for easy reference:

S.No.	Period	Statement No.	Type of Assets	Amount Arrived at by the Trial Court (In Rupees)	Amount Arrived at by this Court (In Rupees)

1	Beginning of check Period (01.01.2002)	A	Movable Property	4,03.336	4,03,336
2	End of check Period (30.09.2006)	B	Immovable Property and Movable Property	51,54,882	34,90,582
3	Assets during the check-period (01.01.2002 to 30.09.2006)	B-A	Immovable Property and Movable Property	47,51,546	30,87,246
4	Expenditure during the check period (01.01.2002 to 30.09.2006)	D	Immovable Property and Movable Property	16,37,652	16,37,652
5	Total Assets Possessed by A1 (30.09.2006)	3+4	Immovable Property and Movable Property	63,89,198	47,24,898
6	Income during the check period.(01.01.2002 to 30.09.2006)	C	Immovable Property and Movable Property	49,39,559	49,39,559
7	Disproportionate Assets (30.09.2006)	5-6	-	14,49,639	(-)2,14,661
8	D.A.Percentage	7/6 x 100 1449639 x 100 = 49,39,559		29.35%	(-)2,14,661 x 100 / 49,39,559 = (-)4.35

In view of the above, it is found that the appellant is having to his credit a sum of Rs.2,14,661, over and above the value of the properties.

Hence, there is no disproportionate assets held by the appellant.

30. Now with regard to sanction, P.W.1 issued the sanction order. Though the sanction order signed on 27.10.2009, the sanction order is dated 04.11.2009. The sanction accorded on the premise that the appellant was an Enforcement Officer during the check period. The sanction order includes the property of the appellant's wife Vennila, but nowhere it is mentioned that the appellant acquired the property in the name of his wife and family members and there is no mention that the property has been jointly held by them. P.W.17, the Assistant Provident Fund Commissioner, D.W.1 and D.W.2, the Assistant Commissioners of Provident Fund, as well as the Secretary, Thrift Society, D.W.3 confirm that the appellant was working as Head-clerk, which is confirmed by Ex.D1 and D2 and not as Enforcement Officer. The sanctioning authority feigns ignorance of the same, proceeds to issue sanction order primarily on the ground that the appellant acquired properties as Enforcement Officer. Further, he confirms that the income and expenditure of the appellant and his wife taken together to arrive at the disproportionate assets. In view of the above, this Court finds that the sanction accorded in Ex.P1 is without proper consideration and application of mind and hence, the same is liable to be rejected.

31. In fine, this Criminal Appeal is allowed and the order passed by the learned XIV Additional Special Judge (CBI Cases), XIV Additional City Civil Court, Chennai, in C.C.No.37 of 2009, dated 26.09.2018, is set aside. The bail bond executed by the appellant stands cancelled. The fine amount in deposit is ordered to be returned to the appellant.

30.08.2023

Index : Yes/No
Internet : Yes / No
mpk/vv2

To

1.The XIV Additional Special Judge (CBI Cases),
XIV City Civil Court,
Chennai.

2.Inspector of Police,
SPE:CBI/ACB, Chennai
RC MA1 2009-A-0022

3.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

MPK/VV2

Pre-Delivery Judgment made in
CRL.A.No.595 of 2018

30.08.2023