IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.07.2024	Pronounced on: 01.08.2024

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.No.168 of 2021
& Crl.M.P.No.5679 of 2022

R.P.Paramasivam, M/72 years,
S/o.Ponmalai Udaiyar,
No.57, Sivan Kovil Street,
Chinna Salem, Kallakuruchi Taluk,
Villupuram District. .... Appellant/Accused No.1

/versus/

State Rep. by,
The Deputy Superintendent of Police,
Vigilance & Anti Corruption,
Cuddalore.
(Crime No.2/AC/98/SA). .... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., against the conviction and sentence imposed upon him by the Learned Special Judge to try Criminal Cases involving members of Parliament and Members of Legislative Assembly of Tamil Nadu (Principal Sessions Court), Villupuram in Special Case No.04 of 2019 dated 29.03.2021 for the offences under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 and sentenced to undergo R.I for four years and a fine of Rs.33,04,168/-, in default to undergo S.I for 1 year, the period of detention undergone by the appellant is set off under Section 428 of Cr.P.C.

For Appellant : Mr.V.Gopinath, Senior Counsel,
for Mr.Swami Subramanian.

For Respondent : Mr.S.Udaya Kumar,
Government Advocate (Crl.Side).

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J U D G M E N T

The appellant Mr.R.P.Paramasivam as Member of the Tamil Nadu State Assembly during 1991-1996 and his wife/Poongodi as P.G Teacher in the Government Girls Higher Secondary School, Chinnasalem, were Public Servants as defined under the Prevention of Corruption Act, 1988.

2. On investigation by the Vigilance and Anti Corruption Cuddalore, A1 and A2 were found in possession of assets accumulated during the check period from 17.06.1991 to 13.05.1996, which was worth Rs.30,17,194/-. After taking into account the income and probable expenditure during the check period concluded that property worth Rs.22,58,746/- excess to the known source of their income. Hence, the appellant/A1, who was M.L.A and Minister in the State Government was charged for offence punishable under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act and his wife A2 charged for offence under Section 13(2) r/w 13(1)(e) of P.C Act read with 109 of I.P.C. After framing charges, pending trial A2/Poongodi died on 22.06.2017. Hence, the charge against her got abated.

3. The examination of witnesses commenced on 21.11.2003. To substantiate the charge against A1, the prosecution examined 83 witnesses (P.W.1 to P.W.83), marked 86 Exhibits (Ex.P.1 to Ex.P.86) besides one Court Exhibit (Ex.C.1) (death certificate of A2). In defence 3 witnesses (D.W.1 to D.W.3) were examined and one Exhibit (Ex.D.1) was relied upon.

4. The trial Court, after appreciating the evidence held A1 guilty of offence under Section 13(1)(e) r/w 13(2) of P.C Act, he was sentenced to undergo four years R.I and to pay a fine of Rs.33,04,168/- was imposed, in default, to undergo S.I for a period of one year. The period of detention already undergone by the A1 ordered to be set off under Section 428 of Cr.P.C.

5. Being aggrieved by conviction and sentence, 1st accused has preferred Criminal Appeal No.168 of 2021 before this Court under Section 374(2) of Cr.P.C., on the following grounds.

(i) The trial Court failed to appreciate the evidence properly and erred in holding that the appellant amassed disproportionate wealth to a tune of Rs.33,04,168/-, which is contrary and excessive to the final report filed by the prosecution and the charge for which the appellant was supposed to defend.

(ii) For the house property at Pondicherry in the name of A2/Poongodi, the prosecution has given two different values for Rs.4,55,000/- in Annexure-II under Item 3 and Rs.3,20,000/- in Item 5. The plot was purchased for Rs.80,000/- before the check period. The said value ought to have been deducted from the total value of the property assessed by the valuer. The trial Court failed to deduct Rs.80,000/- from Rs.4,55,000/- being the land cost paid prior to check period.

(iii) The money to a tune of Rs.15,17,291/- withdrawn by the appellant from his bank account during the check period erroneously classified as unexplained expenditure in Annexure-IV under item 16, to 20. Having accepted that the appellant has purchased properties from the said withdrawal instead of showing the sum of Rs.15,17,291/- under the head of income, had erroneously classified it as unexplained expenditure. This error has led to grave miscarriage of justice.

(iv) The construction of rice mill in Annexure-II under Item 2 is assessed at Rs.17,29,368/- whereas, the explanation given by the appellant in the Final Opportunity Notice that construction material to a value of Rs.9,00,000/- was procured for construction, prior to the check period not been taken into account by the trial Court. Despite the defence has let in evidence to that effect by examining D.W.1 and the admission of the Investigation Officer P.W.82 regarding the wherewithal of the appellant to procure construction material prior to the check period, the trial Court omitted to take into consideration this fact.

(v) The Court below failed to accept the evidence of D.W.2 who had advanced loan of Rs.5 lakhs to the appellant during the check period for construction of rice mill. If borrowal of Rs.5 lakhs from Chamundi Finance is accepted and value of the construction material of Rs.9,00,000/- procured before the check period is accounted, then the value of the assets at the end of the check period would drastically decrease and disproportionality will be Nil or very negligible.

(vi) The finding of the trial Court that the construction of the rice mill completed during the check period is erroneous, and contrary to the prosecution case as well as the evidence of P.W.45 who said that only 80% of construction was completed at the end of the check period.

(vii). A2/wife of the appellant, who was working as P.G Teacher in Government Girls Higher Secondary School, Chinnasalem and being a public servant, having independent source of income, maliciously coupled with the A1 and prosecuted together is *ex facie* erroneous and illegal. The property of A2 ought to have been totally excluded since she had her own source of income and being a public servant, she could not have been prosecuted for abetting the appellant without taking note of her independent income.

(viii). The income of the appellant/A1 from his granite business prior to the check period not been considered. While there is possible evidence through P.W.67 that the appellant/A1 had license to export granite from his patta land and he was carrying on business even prior to the check period and had sizable income, the Court below had totally ignored the savings out of the income prior to check period.

(ix) The Court below had miserably failed to take note of the fact that the expenditure incurred during the election to a tune of Rs.19,728/- ought to have been excluded since it is obviously spent prior to the election and prior to the appellant become a public servant and undoubtedly prior to the check period.

(x) The property mentioned as items 9 to 12 in Annexure-II were jointly purchased by appellant/A1 and one R.Govind. Therefore, only 50% of the property value ought to have been taken into account. When the prosecution had said that a property was jointly held by appellant/A1 and R.Govind, the trial Court had erroneously held that R.Govind is benami of the appellant/A1 and had taken the entire value of the property in the appellant account.

6. The Learned Senior Counsel appearing for the appellant to buttress his argument that the trial Court had not properly examined the evidence, had illustrate the case of the appellant as below:-

Sl. Nos.	***Assets***	***Value***
1.	Item No.2 in Annexure-II Cost 80% of construction of Sakthi Modern Rice Mill at Rayappanur Village, Chinnasalem.	Rs.17,29,368/- (-)
2.	As per evidence of D.W.1 the construction materials worth about 9 lakhs purchased prior to the check period though appellant stated in his explanation to the final opportunity notice received by him but the investigation Officer P.W.81 failed to examine him as witness in this case. Hence, the value of Rs.9 lakhs has to be deducted from the cost of construction of rice mill.	Rs.9,00,000/- = **Rs.8,29,368/-**
3.	Item No.3 in Annexure-II. Storied House at Puducherry Cost of construction and land cost. As per the evidence of Investigation Officer the land was purchased prior to the check period and hence value of	4,55,000/-

	Rs.80,000/- has to be deducted. Further, the value of the building is taken only based on the statement of Arulselvam. During investigation and not based on any valuation hence, the cost of construction of Rs.3,75,000/- has to be deducted.	
4.	The appellant offered an explanation that he had obtained Rs.5,00,000/- from Chamundi Finance as loan through the father in law of D.W. 2 during the check period for the construction of the above said rice mill. The investigation officer P.W. 81 examined one Srinivasan and he recorded his statements. The investigation officer accepts that during the investigation the above said Srinivasan, states that the appellant borrowed a loan of Rs.5,00,000/- from Chamundi Finance and the same was settled by him but till date the appellant failed to return the same. The said Srinivasan in no more and hence he could not be examined. But his statement was corroborated by the evidence of D.W. 2 one Prabhakar and also through the letter exhibit D1 given by the father of D.W. 2 and it is not the prosecution's case that the explanation is false. From the above, it is clear that a sum of Rs.5,00,000/- added as income in Annexure III during check period.	Rs.5,00,000/-
5.	Item Nos.16 to 20 in Annexure- IV Unexplained expenditures withdrawn From his bank accounts. But in the same items though the prosecution has accepted the appellant had purchased properties mentioned in Statement-II from the withdrawn amount and the same was excluded from the list but they failed to show the same as income in Annexure-III and hence the total amount withdrawn by the appellant showed in the above items has to be treated as income during check period since it is withdrawn from the bank accounts.	Rs.15,17,291/-
6.	Annexure IV- Item No.25 Election expenditure of Rs.19,728/- Since the check period starts only after Al became MLA hence the expenses has to be excluded from the list.	Rs,19,728/-
7.	The above said amount in (1) and (2) has to be deducted from Item No.2 and 3in the Annexure - II	Rs.13,55,000/-
8.	The above amount (3) and (4) has to be added as income in Annexure-III.	Rs.20,17,291/-

9.	The amount mentioned in (5) also has to be excluded from Annexure-IV	Rs.19,728/-
10.	Disproportionate assets given by the prosecution	Rs.22,58,746/-
11.	After deducting item (i),(ii) and (iii) from the disproportionate value given by the prosecution, The likely savings is comes to	Rs.11,33,273/-

7. The Learned Government Advocate (Crl.Side) appearing for the respondent in response to the above submissions submitted that the appellant herein is a Diploma holder in Civil Engineering, was working in the Public Health and Municipal Works for some time and resigned the job and later, joined as a Technical Superintendent at Salem Co-operative Land Development Bank and thereafter, resigned his post, joined politics and contested as AIADMK candidate in Chinnasalem Constituency and got elected. Before being elected as M.L.A, he and his family members had assets of total value both movable and immovable properties as well as savings in the bank account at the beginning of the check period total value of Rs.1,66,201/-. Apart from that the appellant owned a land measuring 7 acres in Rayappanur Village. At the end of the check period, A1 and A2 had in possession of assets of estimated value of Rs.31,83,395/-. After taking into account the income during the check period, the expenditure during the check period, the probable savings was only

Rs.1,09,550/-, whereas, the assets to tune of Rs.30,17,194/- been accumulated during the check period. While the income was only Rs.40,61,266/-, the property worth Rs.29,07,554/- was found to be in excess after defraying their savings. Since it was 72% over and above the known source of income, the explanation was sought from the appellant and his wife. After considering their explanation and found they are substantially not satisfied that the assets held by them are disproportionate to the known source of income, final report was filed and charges were framed accordingly.

8. Taking into account the explanation given by the accused persons, the value of the disproportionate assets was ascertained as Rs.22,58,746/- and final report was filed by the respondent. Accordingly, considering the material available, the Special Court, Villupuram framed charges and examined the evidence led in by the prosecution.

9. The Trial Court found the accused guilty under section 13 (2) r/w 13(1) (e) of The Prevention of Corruption Act, 1988 (Act 49 of 1988) and sentenced to undergo Rigorous Imprisonment for 4 (four) years and also to pay a fine of Rs.33,04,168/- (Rupees Thirty Three Lakhs Four thousand One Hundred and Sixty Eight only) in default, to undergo Simple Imprisonment for 1 (one) year. The period of detention already undergone by the Accused No.l is ordered to be set off u/s. 428 Cr.P.C. The charge framed against Accused No.2 was abated, since she died on 22.06.2017.

10. The immovable properties purchased in the name of the Accused No.1 and one Govind, declared as Benami. Accused No.2 and their two sons during the check period 17.06.1991 to 13.05.1996 as per consolidation Statement No.II is ordered to be confiscated to the State Government.

11. As per law and principle laid down by the Courts, the Trial Court held that the evidence adduced on both sides proved that the accused had amassed assets worth Rs.33,04,168/- disproportionate to the known source of income. Though the prosecution had assessed the disproportionality only to tune of Rs.22,58,746/-. This assessment is based on the record collected during investigation but after trial the Court has arrived at the correct valuation as per the evidence available. The table provided by the appellant illustrating the calculation of the assets value is misleading and factually not correct.

12. The contention of the appellant regarding two different value for the same property at Puducherry also incorrect. Item No.3 of Annexure-II relates to house at Puducherry which is valued at Rs.4,55,000/-. Whereas, item No.4 of Annexure-II relates to house at Chinnasalem which was valued at Rs.3,20,000/- in item No.5. It is incorrect to state that the plot at Puducherry was purchased for Rs.80,000/- prior to the check period since the construction upon the value was assessed at Rs.3,75,000/- and the value of the ground as Rs.80,000/-, the prosecution has rightly fixed the value of the house at Puducherry as Rs.4,55,000/- and no contrary evidence let in by the appellant except to say that the ground upon which the construction made was purchased prior to the check period.

13. Regarding the accusation that the withdrawal from the bank to tune of Rs.15,17,291/- is unexplained expenditure. The Learned Government Advocate (Crl.Side) appearing for the respondent submitted that the appellant failed to show the source for deposits in his account during the check period. No oral or documentary evidence produced to explain the source by the accused. Therefore, having withdrawn the money received from unknown source, it has been rightly considered as expenditure not explained.

14. Though the accused has availed loan from T.I.I.C for purchasing construction materials for the Sakthi Modern Rice mill, no document produced to show that those building materials were purchased prior to the check period. Contrarily, P.W.48, the Tractor driver of the appellant had deposed that the stone, sand and bricks for construction of the Sakthi rice mill was procured by A1 during the check period. The testimony of P.W.48 stands unassailed. Without any proof the appellant want to exclude a sum of Rs.9 lakhs from the costs of constructing the Sakthi rice mill. The trial Court rightly declined to accept the said explanation for want of proof. The construction value of Sakthi modern rice mill is based on the balance sheet prepared by the appellant's Chartered Accountant P.W.51.

15. The contention of the accused that, he borrowed a sum of Rs.5 lakhs in the year 1996 from one Chamundi Finance on the recommendation of father of D.W.2, not supported by any reliable evidence either oral or documentary. In the absence of reliable and direct evidence, the evidence of D.W.2 is highly unreliable. In this regard, the trial Court has rightly negatived the contention raised by the appellant.

16. Further, the Learned Government Advocate (Crl.Side) appearing for the respondent submitted that the contention of the appellant that through mining activity and quarry business, he has sufficient income prior to the check period apparently false since he had permit only for a period of three years between 29.10.1984 to 28.10.1987 and thereafter, the license was not renewed and for four years prior to the check period, he had stopped the mining activity. In the absence of documents to prove the alleged income through granite business prior to the check period was rightly rejected by the trial Court.

17. The Learned Government Advocate (Crl.Side) for the respondent further submitted that even if the election expenditure to the tune of

Rs.19,728/- to be considered as an expense prior to the check period, it will not change the disproportionality. Likewise, the income and property in the name of his wife /A2 even excluded, the gravity of amassing the disproportionality by the public servant will not alter.

18. As far as the property jointly purchased in the name of A1 and R.Govind even though the prosecution had taken the document on the face value it is held that the appellant has only half share in the said property. However, the trial Court, on considering the other facts and circumstances by taking note of the fact that the said Govind has not come forward to testify that he is the joint owner of the property holding 50% right in it, the trial Court has concluded that the said Govind is only a Benami of the appellant and taken into account the entire value of the property into the account of the appellant.

19. Contending that the trial Court had appreciated the evidence holistically and held that during the check period, two sons of the appellant were pursuing their studies, staying in hostel and the expenses were met out from the income of the appellant and his wife. The witnesses who have sold the property had specifically stated that the stamp duty and other registration expenses were met out by the appellant and held that there is no satisfactory explanation to an extent of 70% of the total value of the property held by the appellant at the end of the check period.

Point for determination:-

Whether the appellant had amassed wealth while he was serving as a public servant and such wealth is disproportionate to the known source of income.

20. Along with the final report, the prosecution has filed seven Statements regarding the assessment of the assets, income, expenditure, savings and disproportionate of assets by way of concise Statements I to VII:-

Statements	***Assets***	***Value***
Statement - I	Assets period to the Check period.	Rs.1,66,201/-
Statement - II	Assets at the end of the check period.	Rs.31,83,395/-
Statement - III	Income during the check period.	Rs.43,19,928/-
Statement - IV	Expenditure during the check period.	Rs.35,61,480/-
Statement - V	Assets acquired acquired during the check period.	Rs.30,17,194/-
Statement - VI	Likely Savings during the check period.	Rs.7,58,448/-
Statement -VII	Disproportionate Assets during the check period.	Rs.22,58,746/-

21. The trial Court, after appreciation of evidence arrived at conclusion as below:-

Statements	Assets	Value
Statement - I	Assets period to the Check period.	**Rs.1,66,201/-**
Statement - II	Assets at the end of the check period.	Rs.46,92,098/-
Statement - III	Income during the check period.	Rs.45,21,103/-
Statement - IV	Expenditure during the check period.	Rs.31,33,308/-
Statement - V	Assets acquired acquired during the check period.	Rs.45,21,238/-
Statement - VI	Likely Savings during the check period.	Rs.78,25,406/-
Statement - VII	Disproportionate Assets during the check period.	Rs.33,04,168/-

Disproportionate of property in Percentage:-

Statement No.VII Rs.33,04,168/- = 70.4%
Statement No.II Rs.46,92,098/-

22. Before filing final report the appellant was asked to explain about the source for the assets held by him by way of Final Opportunity Notice. In response to the Final Opportunity Notice, he contended that he had a quarry license for about 1.31 acres through mining of black granite and was mining on a partnership basis, in the lands of others even prior to became a public servant. He was earning around Rs.3 lakhs through granite business under the name of

M/s.Annai Enterprises, between 1984-1989. From out of this income, he had purchased land prior to the check period worth Rs.10,70,338/-. As far as the Sakthi modern rice mill constructed by the appellant during the check period, he had stocked materials worth Rs.5 lakhs (Brick) and Rs.1 lakh, bricks and stones, prior to the check period. Except the cement and construction wages which was around Rs.8 lakhs, rest of the investment was from the income earned earlier and the materials purchased prior to the check period.

23. Contending that the total assets at the end of the check period was only Rs.22,53,927/- but wrongly assessed as Rs.31,83,395/-, the appellant has pleaded that the action against him must be dropped. Further, he had pleaded that the assessment of his income during the check period is estimated very low and his agricultural income from 13.20 acres of land at Kaniyamur village not properly assessed and also from the land jointly purchased by the appellant along with Govind he had substantial income through cultivating soya, turmeric, paddy and herbal plants and from that he had income not less than Rs.1 lakh per year.

24. Regarding the lorry bearing Registration No.TN-32-A-1111, the appellant has contended that he purchased the lorry by availing loan of Rs.1,95,000/- from Cuddalore Cooperative Central Bank. After building the lorry body at the costs of Rs.75,000/-, he sold it for Rs.3 lakhs and earned the profit of Rs.30,000/-. However, excluding the value of the body built over it, his income by sale of the said lorry being wrongly assessed as Rs.1,05,000/-. The rental income from house at Anna Nagar, Chennai for the past 19 months is Rs.57,000/-, besides he has borrowed a sum of Rs.5 lakhs on 20.04.1996 from Chamundi Finance to complete the construction of the Sakthi modern rice mill and also he borrowed Rs.3,00,000/- on 01.11.1995 from Chennai, Anna Nagar Member Benefit Fund for the very same purpose. Thus, the total income during the check period was not Rs.40,61,266/- as contended by the prosecution but Rs.49,82,622/-. He also stated that from his bank account, he had withdrawn a sum of Rs.15,17,291/- on various dates to met out his expenses including the purchase of the properties and expansion of the properties. While so, the said amount cannot be termed as unexplained expenditure. Therefore, A-1 contended that he has spent only Rs.24,34,425/- towards expenditure and not

Rs.39,51,716/- as assessed by the prosecution and he has provided his own value of the assets based on the explanation as under:-

Statements	Assets	Value
Statement - I	Assets period to the Check period.	Rs.10,70,338/-
Statement - II	Assets at the end of the check period.	Rs.22,53,927/-
Statement - III	Income during the check period.	Rs.49,07,622/-
Statement – IV	Expenditure during the check period.	Rs.24,34,425/-
Statement – V	Assets acquired acquired during the check period.	Rs.11,83,589/-
Statement - VI	Likely Savings during the check period.	Rs.24,73,197/-
Statement - VII	Disproportionate Assets during the check period.	Rs.12,89,608/-

25. Thus, as per the explanation while his likely savings during the check period was over and above the assets acquired during the check period at Rs.12,89,608/-.

26. The trial Court, on comparing the statements relied by the prosecution and the statements of the accused furnished by way of explanation held that regarding the agricultural income from the property held by the appellant, the V.A.O and Tahsildar of the respective village had deposed about the probable income through agricultural activity. The rental income, income from lorry business and salary income been spoken through V.A.O and Secretary of the Tamil Nadu Legislative Assembly. P.W.38 Deputy Secretary, Secretariat had spoken about the allowances paid to the appellant.

27. Regarding the bank loans and savings, the respective Bank Manager had given evidence with supporting documents. His expenses for his two son's education been spoken by the respective College Managements. To speak about the fact that the appellant was cultivating around 6 acres of land in Rayappanur Village and after selling five acres of land, he purchased 10 acres of land in Kaniyamunur village along with Govind the respective vendors are examined.

28. D.W.2 had spoken about his knowledge of borrowal of Rs.5,00,000/- by the appellant from Chamundi Finance. Mr.Vaiyapuri D.W.1 was recalled and examined as D.W.3. This error has been reconciled in the judgment. On further examination Vaiyapurai D.W.3, (D.W.1) had spoken about the purchase of construction material for the Sakthi modern rice mill prior to the check period. While the consolidating the Statement-I i.e., assets before the check period, the judgment erred in mentioning the total value of the properties and amount in the respective bank account. Instead of arriving at Rs.1,66,201/-, the Statement-I shows that a sum of Rs.135/- is the value of the assets held by the appellant at the beginning of the check period. However, while calculating the disproportionality his error has been rectified.

29. On assessing the evidence, the alleged purchase of quarry land prior to the check period and construction material worth Rs.9 lakhs accumulated prior to the check period disbelieved by the trial Court for want of evidence.

30. Regarding purchase of land for mining purpose, no document filed by the appellant to prove the same. Likewise, though he has contended that he has stocked building materials worth Rs.9,00,000/- for constructing the Sakthi Modern Rice Mill prior to the check period, to prove the same, the appellant had recall D.W.1 Vaiyapuri to speak about the said fact which he has omitted to say when he was in the witness box and examined as D.W.1 on

08.04.2019.

31. D.W.1 and D.W.2 were examined to support the case of the defence about income from Granite business and borrowal of Rs.5 lakhs from Chamundi Finance. D.W.2 had deposed about transaction between the appellant and his father. Ex.D.1 a document purported to have been written by his father was marked through this witness. Ex.D.1 is the letter given by one Srinivasan S/o.Ayyalu Naidu stating that, he had settled P.S.Shanmugam, Partner of Chamundi Finance the loan of Rs.5,00,000/- payable by Paramasivam and the said amount is payable to him by Paramasivam. One Mr.Ravindaran, Charatered Accountant of Alagapuram, Salem, has signed as a witness to the letter (Ex.D.1) and same is dated 14.07.2000 at Salem. This document marked subjected to objection by the prosecution. This has been introduced by the defence while examining D.W.1 Vaiyapuri, who is son of Iyyamperumal. He is neither party to this document nor witness to this document. His competency to speak about this document rightly questioned by the prosecution. The trial Court has also rejected to consider this document marked as Ex.D.1. This is a letter purported to have been given by one Srinivasan in favour of the accused Paramasivam. This document by no way prove the case of the accused/appellant that he had borrowed Rs.5 lakhs from Shanmugam on 20.04.1996. Likewise, vague statement of Vaiyapuri D.W.1 when he was recalled and examined on 16.12.2020 as D.W.3 to prove the fact of accumulating construction materials by the appellant prior to the check period also stands unproved. In the cross examination, he admit that there is no receipt or documentary evidence regarding purchase of iron, brick, sand and jelly. Therefore, the trial Court has rightly accepted the case of the prosecution that at the beginning of the check period, apart from the agricultural land which was not valued, the assets held in the hands of the appellant was Rs.1,66,201/-.

32. In respect of assets at the end of the check period mentioned in Annexure-II, the case of the prosecution is that Puducherry property described in item No.3 of Annexure-II is a construction over a plot purchased for Rs.80,000/-. The construction value is Rs.3,75,000/-. Totally, the value of the property assessed as Rs.4,55,000/-.

33. The case of the appellant is that, the plot was purchased prior to the check period. P.W.2 Shanmugam, Superintendent Engineer in P.W.D had deposed that he and his team inspected the property at Puducherry and Kallakuruchi. At the request of the Investigating Officer, he has not submitted the estimation for this property but has given estimation in respect of other two properties held by the accused situated at Kallakurichi.

34. P.W.81 who is one of the Investigating Officer in this case had deposed that on 23.05.1999 he recorded the statement of one Arulselvam S/o.Manikavasagam, a resident of Indira Nagar, Puducherry who had sold the plot for Rs.80,000/- in the year 1983 to the wife of appellant. He has also deposed that on the same day, he also recorded statement of one Mohidin son of Babasaheb, who sold his house property at Puducherry to wife of the appellant for a sum of Rs.7,10,000/-.

35. The trial Court in the consolidated Statement-II, the trial Court has taken into consideration only the house property at Kallakurichi Shivan Kovil Street bearing door No.58-A, in the name of A2 and the estimated value of Rs.3,20,000/-. The property at Puducherry show in item No.3 been deleted and also the registration charges and the value of the plot shown as Rs.17,660/-

also excluded by the trial Court. Hence, the appellant cannot have any grievance in respect of Pondicherry property held by A2.

36. In the course of the argument, the learned Senior Counsel appearing for the appellant submitted that even though the prosecution based on the title document and the evidence of the vendors had taken only 50% of the value in respect of properties mentioned in Serial Nos.9, 10, 11 and 12 of Annexure-II, the trial Court has taken entire value of the property value along with registration charges.

37. This Court, on perusing the trial Court judgment find in its consolidated statement had taken full value of the four properties, stating that the accused has failed to disprove the presumption that the co-purchaser Govind is not the petitioner's benami.

38. This Court is of the view that while the prosecution itself has not contended that Govind is Benami of appellant and the property was purchased exclusively from the fund of appellant, there was no necessity for the appellant to prove the fact which is admitted by the prosecution itself.

39. As far as, these four properties are concerned, 50% of the value as found in the sale deed and registration with expenses with stamp duty alone to be taken into account under the value of the asset acquired by the appellant during the check period.

40. Yet another contentious issue is regarding the unexplained expenditure to tune of Rs.15,17,291/-, this amount been withdrawn by the accused from his bank account and his explanation under Ex.P.78 that the said amount was utilised for purchase of the properties shown in Statement-II. However, the source from where the money came to be deposited not explained by the appellant. The money which has come from unknown source into his account been withdrawn and spent. While so, the money he has received from unknown and unexplained source cannot be treated as income par with income from known source. It is for the appellant to explain how he was able to get the money for his investment or other expenditure. Having failed to explain, the prosecution had classified this amount as unexplained expenditure. The source of deposit into his account ought to have been explained by the appellant. The receipt of a public servant in his bank account if spent, same cannot be ignored when his income and expenditure are subjected to scrutiny. The classification of these receipts and withdrawal can only be termed as unexplained expenditure. If it is put Statement-III under the head of Income, then, it will amount to certifying the receipt through unknown source as legal income. Therefore, this Court find no error of placing a sum of Rs.15,17,291/- under the head **"expenditure not explained."**

41. At the same time, this Court also find force in the submission made by the appellant that a sum of Rs.19,728/- shown under Annexure – IV item No.25 as election expenditure obviously should have incurred during the election and prior to the appellant became as a public servant. While the check period commences from 17.06.1991, the election concluded prior to that. Therefore, the said sum has to be deleted from Annexure-IV.

42. In the course of argument, the Learned Senior Counsel appearing for the appellant submitted that during the check period only 80% of the construction of Sakthi Modern Rice Mill, Rayapanur Village was completed. As per the prosecution case, after surveying the property the value assessed as Rs.21,61,710/-, as per the valuation certificate given by the Executive Engineer, P.W.D. In fact, the accused who has availed loan from T.I.I.C for construction of Sakthi modern rice mill has declared the value as Rs.27,79,727/-. The prosecution taking note of the material collected and the valuation given by the Surveyor of T.I.I.C as well as Executive Engineer of P.W.D and the explanation given by the accused that during the check period only 80% of the construction was over and he completed the construction in the year 1997, after the end of the check period, they had valued the Sakthi Modern Rice Mill at the end of the check period as Rs.17,29,368/-.

43. The Learned Trial Judge while rightly rejected the contention of the appellant that he had procured building material worth Rs.9,00,000/- prior to the check period since no document produced on the side of the accused. No doubt, the trial Court had not taken note that Rs.27,00,000/- is the 100% value of the property. Whereas, even according to the prosecution only 80% of the construction was completed during the check period. Including the value of the machinery worth Rs.2,15,500/-, the trial Court has assessed the value of the Sakthi Modern Rice Mill as Rs.29,15,500/-. At the same time, it is also to be noted that the Panel valuer of T.I.I.C had inspected the Sakthi Modern Rice Mill on 11.11.1996 (after the check period) and given a valuation certificate that 100% of the work completed and the value is Rs.32,43,700/-

44. P.W.44 Perumal Kabilar, Civil Engineer & Evaluator, who had surveyed the property for T.I.I.C and issued valuation certificate marked as Ex.P.38. In his chief examination, he has stated that when he inspected the building during the month of April 1996, he has estimated the value of the construction as Rs.27,79,727/-. In the cross examination, he has stated that on the day when he inspected the Sakthi modern rice mill 80% of the construction was completed. The valuation report given by P.W.44 discloses that the inspection of valuation certificate is dated 25.01.1996. The value of the construction as on the date of inspection is shown as Rs.18,79,615/- excluding machinery. In respect of Sakthi modern Rice Mill, Ex.P.41 is the balance sheet given by Chartered Accountant of the appellant as on 30.04.1996. This balance sheet been spoken by T.Balasundaram, Chartered Accountant P.W.51, in which the value of the building shown as Rs.27,00,000/- and advanced for machinery suppliers is shown as Rs.85,000/- besides Rs.1,46,712/- towards preliminary and pre-operative expenses and Rs.1,20,500/- as value of the building material at site and cash at bank in the account of Sakthi Modern Rice Mill a sum of Rs.545/-. Totally, the balance sheet including the cash on hand assessed the value of the assets as Rs.30,62,436/-. The documents relied by the prosecution further reveals that the appellant has availed loan from T.I.I.C for the construction of rice mill. For the purpose of availing the loan, he has furnished the balance sheet Ex.P.41 through Chartered Accountant which is dated 09.05.1996. The value of the assets as on 30.04.1996. The balance sheet Ex.P.41 is the declaration of the appellant through Chartered Accountant. The evidence of P.W.44 the Panel Valuer of T.I.I.C and his valuation report is dated 25.01.1996. Thus, Ex.P.41 the declaration of the appellant regarding the value of the building is subsequent and nearer to the end of the check period. Therefore, excluding the declared cash on hand and cash at bank, taking into account the value of the Building and Civil work, Advance to Machinery suppliers, Preliminary and Pre-operative Expenses, the value of the Sakthi modern rice mill at the end of the check period including the machinery has to be fixed as below:-

1.	Building and Civil work	Rs.27,00,000/-
2.	Advance to Machinery Suppliers	Rs.85,000/-
3.	Preliminary and Pre-operative Expenses	Rs.1,46,712/-
4.	Building Material at Site	Rs.1,20,500/-
	Total	**Rs.30,52,212/-**

45. The trial Court has marginally erred in favour of the appellant by omitting preliminary and pre-operative expenses which has been disclosed by the appellant himself through Chartered Accountant (Ex.P.41). This Court, therefore value the Sakthi Modern Rice Mill based on the declaration made by the appellant in the Balance Sheet Ex.P.41, which is the estimation made close to the end of the check period.

46. During the check period, the appellant has purchased the Tractor bearing Reg.No.TN-32-A-1111. P.W.21, the Regional Transport Officer has spoken about the registration of the Tractor in the name of the appellant. Ex.P.17 is the particulars furnished by the R.T.O regarding Tractor. The vehicle was registered on 28.06.1995. The costs of the vehicle is shown as Rs.3,00,000/-. The trial Court taking note of the evidence given by P.W.21 and his certificate Ex.P.17 has taken the value of the Tractor as Rs.3,00,000/-.

47. It is contended by the Learned Senior Counsel appearing for the appellant that this Tractor was purchased on loan. Only Rs.27,000/- was paid and the balance loan amount not paid till the end of the check period.

48. Perusing Ex.P.78 the explanation given by the appellant to the Final Opportunity Notice, this Court finds the appellant has stated that he has availed loan of Rs.2,42,500/- from Chinnasalem Co-operative Primary Agricultural Bank, after paying his contribution of Rs.27,000/- for purchasing tractor. The loan was disbursed to the Tractor Company on 25.03.1995. Till the end of the check period, he neither paid the loan nor interest. As far as, the contribution for the purchase of tractor is only Rs.27,000/-. To substantiate his claim though the appellant has not produced any evidence from Chinnasalem Primary Agricultural Co-operative Bank, however, from the evidence of P.W.53, the Supervisor and later, Secretary of the Chinnasalem Primary Agricultural Co-operative Bank, this Court able to see that the said bank has advanced a sum of Rs.2,42,500/- to the appellant on 25.03.1995 for purchase of

Tractor.

49. From the record, P.W.53 had deposed that the said loan was not repaid till 13.05.1996, the appellant had only paid a sum of Rs.27,000/- towards marginal money and Rs.12,130/- towards the share capital. The certificate issued by this witness is marked as Ex.P.43, wherein, the invoice of the tractor showing its value as Rs.2,69,500/- is enclosed. Also the certificate discloses that a sum of Rs.2,42,500/- towards the principal is due and payable as on 13.05.1996.

50. Therefore, from the evidence of the P.W.53 and certificate issued by him marked as Ex.P.43, for availing Tractor loan the appellant had become a Member in the Chinnasalem Primary Agricultural Co-operative and Rural Development Bank by paying share capital of Rs.12,130/- and paid the marginal money of Rs.27,000/-. He purchased the Tractor on 25.03.1995 and not paid the due till the end of the check period. Thus, the investment made by him to get the tractor is Rs.27,000/- + Rs.12,130/-. Therefore, the value of the tractor should be Rs.39,130/- and not Rs.3,00,000/- as assessed by the trial

Court. The trial Court was not oblivious of the fact about the loan. The Court has taken the loan of Rs.2,42,500/- received as income during the check period. Therefore, no prejudice caused to the appellant. If the value of the Tractor to be taken as Rs.27,000/-, the money paid for the tractor, then the loan received cannot be brought under the head income. However, for better clarity this Court taken the value of the Tractor as the money paid by the appellant to acquire the tractor i.e., Rs.27,000/- (+) Rs.12,130/- =Rs.39,130/- only.

51. Further, this Court also takes note of the fact that some of the properties been purchased by A2 during her lifetime and it is an admitted case of the prosecution that A2/Poongodi was gainfully employed as a P.G Teacher in a Government Girls Higher Secondary School, Chinnasalem, during the check period, due to her death, the charge against her got abated and she had no opportunity to prove her innocents hence all her properties and income has to be deleted. At the same time, the properties which were purchased in the name of their sons who had no independent income but pursuing studies been taken as property purchased by the appellant from out of his fund.

52. In the light of the above discussion based on the submissions made by the Learned Senior Counsel for the appellant and after taking note of certain error and omission in the trial Court judgment, the Annexures I to VII regarding of assets, income, expenditure, savings and disproportionality is calculated as below:-

Annexure-I

Assets at the commencement of the Check Period i.e., as on 17.06.1991

Sl.Nos.	***Assets***	***Value***
1.	Lands owned by Tr.R.P.Paramasivam at Rayapanur village in R.S.No. 328/4 and etc. (Total extent = 2.79.0 Hectors 7 acres)	Notional Value
2.	Ambassador Car TAF 1111	Rs.1,50,000/-
3.	Motor Cycle owned by Tr.R.P.Paramasivam (TDF 7891)	Rs.16,000/-
4.	Cash Balance in S.B.Account No.2226 in the name of Tr.R.P.Paramasivam at Villupuram Dist. Central Co-Op. Bank, Chinnasalem	Rs.65/-
5.	Cash balance in S.B.Account No.2563 in the name of Tr.R.P.Paramasivam at Indian Overseas Bank, Chinnasalem as on 17.6.91.	Rs.30/-
6.	Cash Balance in S.B.Account No.7 in the name of Tr.R.P.Paramasivam at Indian Bank, Chinnasalem as on 17.6.91.	Rs.53/-
7.	**Cash Balance in S.B.Account No.1827 in the name of Tmt.A.Poongodi, W/o.Tr.R.P.Paramasivam at Indian Bank, Chinnasalem as on 17.6.91.**	**Deleted**
8.	Land owned by Tr.R.P.Paramasivam at Nevkuppai Pudhur village, in RS.No.171/7A2, a total extent of 1.00 acre.	Notional value
9.	Land owned by Tr.R.P.Paramasivam at Poondi village, in	Notional value

Sl.Nos.	***Assets***	***Value***
	RS.No.164/2 a total extent of 0.35 acre.	
10.	Land owned by Tr.R.P.Paramasivam at Korakkavadi village, in RS.No.511, a total extent of 0.32 acre.	Notional value
11.	Land owned by Tr.R.P.Paramasivam at Korakkavadi Village, in R.S.No.346/1H, a total extent of 0.99 acre.	Notional value
	Total	**Rs.1,66,148/-**

*** Serial No.7, Deleted since it stands in the name of A2/Poongodi (died) and she had her own income.*

<u>Annexure-II</u>

<u>Assets at the end of Check period i.e., as on 13.05.1996</u>

Sl.Nos.	***Assets***	***Value***
1.	**<u>IMMOVABLE PROPERTIES:</u>** Own land at Rayappanur village to an extend of 2.79.0 hectors (7 acres)	Notional value
2.	Sakthi Modern Rice Mill at Rayappanur village, Chinnasalem. **As per the own declaration of the appellant through his Chartered Accountant. Extended the benefit of omitting Preliminary & Pre-operative expenses of Rs.1,46,712/-.**	**Rs.30,52,212/-**
3.**	**Storied house at Pondicherry Initially, a plot was purchased for Rs.80,000/- during the check period. Then house was constructed over it for a value of Rs.3,75,000/-.**	**Deleted**
4.**	**Plot measuring 664 Sq.Ft at Sivan Koil Street, Chinnasalem in the name of Tmt.A.Poongodi. W/o.Tr.R.P.Paramasivam on 5.5.94 as per the Document No.862/94 of Sub Registrar Office, Chinnasalem. The value including cost, stamp paper, Registration fees, etc.**	**Deleted**
5.**	**The value of storied house constructed in the above plot, as per evaluation report of E.E., PWD, Villupuram.**	**Deleted**

Sl.Nos.	*Assets*	*Value*
6.	Two tiled houses in Door No.29-G and 29-H, Salem Main Road, Chinnasalem purchased in the name of Tr.R.P.Mailavan on 17.04.1993 as per Document No.536/93 of Sub Registrar, Chinnasalem. The value including cost, stamp paper, registration fees, etc.	Rs.1,43,520/-
7.**	**Plot measuring about 2100 sq.ft. in Survey No.RS.361/6 to 11 at Chinnasalem purchased in favour of Tmt.Poongodi, W/o.Tr.R.P.Paramasivam, registered on 15.7.92 as per Document No.1555/92 of Sub Registrar office, Chinnasalem. Including cost, registration fees stamp paper cost, etc.**	**Deleted**
8.	Plot measuring 2100 sq.ft. in R.S.No.361/6 to 11 at Chinnasalem purchased in favour of Tr.R.P.Babu S/o. Tr.R.P.Paramasivam, registered on 15.7.92 as per document No. 1556/92 of Sub Registrar Office, Chinnasalem. The total value including cost, stamp paper cost, registration fees, etc.	Rs.36,105/-
9.	Land measuring 2.48 acres at Kaniyamur village in R.S.No.39/3, 263/2-3 was purchased in the name of Tr.R.P Paramasivam and Tr.Govind(third party), registered on 26.10.93 as per document No.1929/93 of Sub Registrar office, Chinnasalem. The total cost of land, stamp papers, registration fees, etc. Rs.48,870/-. In this value, half of the value was taken into account of Tr.R.P.Paramasivam	Rs.24,435/-
10.	Land measuring 2.48 acres at Kaniyamur village in R.S.No.39/6 was purchased jointly in the name of Tr.R.P.Paramasivam and Tr.R.Govind (third party). registered on 26.10.93 as per document No.1930/93 of Sub Registrar Office, Chinnasalem. The total cost of land including cost, stamp papers, Registration fees is Rs.60,455/-. In this value, half of the value is taken into the account of the AO Tr.R.P.Paramasivam.	Rs.30,228/-
11.	Land measuring 2.26 acres at Kaniamur village in R.S.No.38/2 and 263/1-A was jointly purchased by the Accused Tr.R.P. Paramasivam and Tr.R.Govind on 26.10.93 as per Document No.1933/93 of Sub Registrar Office,	Rs.30,643/-

Sl.Nos.	***Assets***	***Value***
	Chinnasalem. The total value including the cost, stamp paper, registration fees, etc. Rs.61,285/-. In this property, half of the value was taken into the account of TF.R.P.Paramasivam.	
12.	Land measuring 5.98 acres at Kaniamur village in R.S.No. 39/2 and 263/1-b was jointly purchased by the Accused Tr.R.P. Paramasivam and Tr.R.Govind on 26.10.93 as per Document No.1934/93 of Sub Registrar Office, Chinnasalem. The total value the cost, stamp paper, registration fees, etc. Rs.1,68,665/. In 5/-. this property, half of the value was taken into the account of Tr.R.P. Paramasivam.	Rs.84,333/-
13.	Land measuring 22 cents at Maravanatham village in R.S.No.227/5 was purchased in the name of Tr.R.P. Mailavan, S/o.Tr.R.P.Paramasivam on 13.12.94 as per the Document No 2157/94 of Sub Registrar Office, Chinnasalem. The value of cost, stamp paper, registration fees, etc.	Rs.8,575/-
14.	The value of Ambassador Car TAF 1111	Rs.1,50,000/-
15.	The value of Enfield Motor cycle TDF 7891	Rs.16,000/-
16.	Tr.R.P.Paramasivam purchased a Tractor for Rs.2,69,500/- through availing loan of Rs.2,42,500/- from the Chinnasalem Co-Op. Primary Agriculture Bank and Rs.27,000/- as his contribution. The loan was disbursed on 25.03.1995 to the concerned Tractor Co., till the end of the check period, he did not repaid the loan or interest. Hence, the amount contributed by him for the purchase of tractor TN-32-B-1111, i.e., Rs.27,000/- is alone taken into account (+) Rs.12,130/- paid for share capital.	**Rs.39,130/-**
17.	E.B.Deposit in S.C.No.593 of Rayappanur for Sakthi Modern Rice Mill.	Rs.46,300/-
18.	E-B.Deposit in S.C.No.1112 for the residence of the Accused at Chinnasalem (Single Phase was altered as Three phase)	Rs.2,500/-

Sl.Nos.	***Assets***	***Value***
19.	Telephone Deposit for Telephone No.36379	Rs.100/-
20.	Telephone Deposit for Telephone No.36324	Rs.600/-
21.	Deposit for Locker facility at RBF Nidhi Ltd., Chennai.	Rs.4000/-
22.	Balance in S.B.Account No.5804 at Indian Overseas Bank, Chennai as on 13.5.96.	Rs.19,869/-
23.	Balance in S.B.Account No. 2563 of Indian Overseas Bank, Chinnasalem as on 13.5.96.	Rs.338/-
24.	Balance in S.B.Account No. 2226 of Villupuram Central Co-Op. Bank, Chinnasalem as on 13.5.96	Rs.477/-
25.	Balance in S.B.Account No.7 of Indian Bank, Chinnasalem as on 13.5.96	Rs.168/-
26.	Balance in S.B.Account No.1827 of Indian Bank, Chinnasalem as on 13.5.96	Rs.71/-
27.	Land owned by Tr.R.P.Paramasivam at Neykuppai Pudhur village, in R.S.No.171/7A2, a total extent of 1.00 acre.	Notional value
28.	Land owned by Tr.R.P.Paramasivam at Poondi village, in R.S.No.164/2 a total extent of 0.35 acre.	Notional value
29.	Land owned by Tr.R.P.Paramasivam at Korakkavadi village, in RS.No.511, a total extent of 0.32 acre.	Notional value
30.	Land, owned by Tr.P.P.Paramasivam at Korakkavaid Village, in R.S.No.346/1H, a total extent of 0.99 acre.	Notional value
	Total	**Rs.36,89,604/-**

*** Serial Nos.3, 5, 6, 7 deleted, since these properties are in the name of A2, who had her independent source and died during trial.*

Annexure-III

Income of the accused during the check period i.e., from 17.06.1991 to 13.05.1996

Sl.Nos.	*Assets*	*Value*
1.	Income through salary received by Tr.R.P.Paramasivam	Rs.1,98,349/-
2.	Income through other allowances received by Tr.R.P.Paramasivam	Rs.1,34,113/-
3.**	**Income through pay and allowances received by Tmt.Poongodi, W/o.Tr.R.P.Paramasivam.**	**Deleted**
4.	Agricultural income from lands at Rayappanur village during the check period.	Rs.2,97,198/-
5.	Agricultural income from lands at Kaniyamur village. The total income for 13.2 acres is Rs.1,38,612/-. As the Accused has purchased the land jointly with third party, his portion of income i.e. half of the amount in total income derived from 13.2 acres is Rs.69,306/ which is alone taken	Rs.69,306/-
6.	Income through rent of the tiled houses purchased during check period at Chinnasalem Rs.500 x 2 shops for the period from 17.04.1993 to 13.05.1996, i.e., 36 months x 1000 = 36,000/-	Rs.36,000/-
7.	Income through car TAF 1111 per month Rs.12,100/-i.e., Rs.12100 x 60 = Rs.7,26,000/-	Rs.7,26,000/-
8.	Income through TN-32-A-1111 per month Rs.40,000/- for the period from 10/93 to 3/96 (Rs.40,000 x 29months) Branch, Chennai.	Rs.11,60,000/-
9.	Tr.R.P.Paramasivam purchased a lorry TN-32-A-1111 availing loan amount Rs.1,95,000/- from Central Co-Op. Bank, Cuddalore, on 26.10.93. He spent a sum of Rs.	Rs.30,000/-

Sl.Nos.	*Assets*	*Value*
	75,000/- to built the body at Thiruchengode. He sold the same lorry to W-51 on 25.3.96 for Rs.3 lakhs. Hence, income derived through the sale of above lorry is 3,00,000-2,70,000 Rs.30,000/- It is taken into account. (He also repaid the loan amount Rs.1,95,000/- with the interest of Rs.23,549/-. This amount was taken in Statement IV an expenditure)	
10.	Tr.R.P.Paramasivam purchased a TNHB house at Anna Nagar East, Chennai for Rs.5,52,725/-. For this, he paid Rs.1,52,725/- in cash and Rs.4,00,000/- through LIC loan during the month 6/94. He sold the above house to W-53 for Rs.6,50,000/- and received cash Rs.2,50,000/- from W-53 and asked him to settle the LIC loan of Rs.4 lakhs. Hence, income derived from the sale of house is Rs.2,50,000/- (-) Rs.1,52,750 = Rs.97,250/-.	Rs.97,250/-
11.	Loan and subsidy received from TIIC Cuddalore till 31.1.96 is Rs.6,34,000 + Rs.1,52,000 = Rs.7,86,000/-.	Rs.7,86,000/-
12.	Income derived from the Tractor TN-32-B-1111 at the rate of Rs.15,000/- per month for the period from 25.03.1995 to 13.05.1996.	Rs.2,25,000/-
13.**	**Loan borrowed from Primary Agricultural Co-Op. Bank, Rayappanur for purchase of tractor.**	**Deleted**
14.	Interest accrued in the Villupuram District Central Co-Op. Bank, Chinnasalem in S.B.A/C.No.2226 in the name of Tr.R.P. Paramasivam during check period	Rs.118/-
15.	Interest accrued in the Indian Overseas Bank, Chinnasalem in S.B.A/c.No.2563 in the name of Tr.R.P.Paramasivam during check period.	Rs.87/-
16.	Interest accrued in Indian Bank, Chinnasalem in S.B.A/c. No.7 in the name of Tr.R.P.Paramasivam during check period.	Rs.165/-
17.**	**Interest accrued in Indian Bank, Chinnasalem in S.B.A/c.No.1827 in the name of Timt.A.Poongodi, W/o.Tr.R.P.Paramasivam during check period.**	**Deleted**

Sl.Nos.	*Assets*	*Value*
18.	Interest accrued in Indian Overseas Bank, Secretariat Branch, Chennai in S.B.A/c.No.5804 in the name of Tr.R.P.Paramasivam during check period.	Rs.1989/-
19.	Interest accrued in Term Deposit in RBF Nidhi Ltd., Royapettah, Chennai in the name of Tr.R.P.Paramasivam during check period	Rs.30,082/-
20.	Loan amount borrowed from M/s.Indian Members Benefit Fund Ltd. Anna Nagar, Chennai on 01.11.95.	Rs.3,00,000/-
	Total	**Rs.40,91,657/-**

Annexure – IV

Expenditure incurred by Tr.R.P.Paramasivam during check period i.e., from 17.06.1991 to 13.05.1996

Sl.Nos.	*Assets*	*Value*
1.**	**Family consumption expenditure of Tr.R.P.Paramasivam**	**Rs.22,792/-**
2.**	**Family consumption expenditure of family members of Tr.R.P. Paramasivam**	**Rs.60,748/-**
3.**	**Expenditure towards education of Tr.R.P.Babu, S/o.Tr.R.P.Paramasivam at Annamalai University, Chidambaram (Hostel Fees = Rs.47,517 was excluded as his consumption was included in item 2 of above).**	**Rs.2,12,985/-**
4.**	**Expenditure towards education of S/o. Tr.R.P.Paramasivan at Vinayaga Missions Sankaracharya Dental College Salem.**	**Rs.60,000/-**
5.	Interest paid towards the loan received from Cuddalore District Central Co-Operative Bank, Cuddalore.	Rs.23,550/-
6.	Loan amount repaid to the Primary Agricultural Co-Op.	Rs.15,465/-

Sl.Nos.	***Assets***	***Value***
	Bank, Rayappanur, Chinnasalem.	
7.	Expenditure towards Electrical charges for S.C.No.1112 of Chinnasalem furnished by Asst. Accounts Officer, Kallakurichi and expenditure towards electrical charges for S.C.112 of Chinnasalem furnished by Asst. Executive Engineer, Chinnasalem (Rs.657+ Rs.534 = Rs.1,191/-)	Rs.1,191/-
8.	Expenditure towards meter charges and other expenses for availing S.C.112	Rs.800/-
9.	Expenditure towards meter charges and erection charges of B.C.593 at Modern Rice Mill at Rayappanur.	Rs.68,195/-
10.	Expenditure towards telephone charges to phone no.36379 in the name of Tr.R.P.Paramasivam.	Rs.15,668/-
11.	Expenditure towards telephone charges to phone No.36234 in the name of Tr.R.P.Paramasivam.	Rs.10,754/-
12.	Ambassador Car TAF 1111 maintenance charges Rs.7600 x 60 months Rs.4,56,000/-	Rs.4,56,000/-
13.	Maintenance Charges for the Lorry bearing Reg.No.TN-32-A-1111 for the period from 2/93 to 3/96 (Rs.31,600X29months)	Rs.9,16,400/-
14.	Bullet Motor Cycle TDF 7891 maintenance charges	Rs.7,500/-
15.	Tractor maintenance charges.	Rs.1,75,000/-
16.	A sum of Rs.6,73,521/- was withdrawn (Unexplained) in S.B.Account No.5804 of the Indian Overseas Bank, Secretariat Branch, Chennai A sum of Rs.3,44,994/- was deducted as probable withdrawal for the purchase of properties in Statement-II and to met for the expenses shown in Statement-IV. Hence the remaining withdrawal unexplained is:	Rs.3,28,527/-
17.	A sum of Rs.1,55,850/- withdrawn during the check period from S.B.Account No.2563 of Indian Overseas Bank, Chinnasalem and a sum of Rs.3,500/- was deducted as probable withdrawal for the purchase of properties in statement-II and to meet the expenses in Statement-IV.	Rs.1,52,350/-

Sl.Nos.	*Assets*	*Value*
	Hence the remaining withdrawal unexplained is,	
18.	A sum of Rs.20,050/- withdrawn from S.B.Account No.7 of Indian Bank, Chinnasalem and it is taken as unexplained expenditure.	Rs.20,050/-
19.	A sum of Rs.3,06,470/- was withdrawn from S.B.Account No.2226 of Villupuram District Central Co-Op. Bank, Chinnasalem and Was deducted as probable withdrawal for the purchase of properties in statement-II and to met the expenses in Statement-IV. Hence the remaining withdrawal unexplained is,	Rs.2,45,000/-
20.	A sum of Rs.3,61,400/- was Withdrawn from Term Deposit in o various Account Nos. of Tr.R.P.Paramasivam of RBF Nidhi Ltd., Chennai and it is taken as unexplained expenditure	Rs.3,61,400/-
21.	Expenditure towards. tax paid in RTO's office, Villupuram to lorry TN-32-A-1111	Rs.23,396/-
22.	Expenditure towards road tax paid to car TAF 1111	Rs.4,157/-
23.	Expenditure towards registration fees for the agreement of mortgage of Sakthi Modern Rice Mill with TIIC, Cuddalore.	Rs.600/-
24.	Expenditure towards registration fees for the agreement of mortgage of land with Chinnasalem Co-Operative Primary Agricultural Development Bank, Chinnasalem.	Rs.2,700/-
25.	**Election expenditure**	**Deleted**
	Total	**Rs.31,85,228/-**

*** Serial Nos.1 to 4, only 50% of the expenses taken since the wife of the appellant also an earning member. So, the common expenses for the family and the education of the children is divided into half and the* *presumptive contribution taken.*

53. In fine, the property Statements of the accused A1 taken consolidately after re-appreciating evidence as below:-

Statements	***Description***	***Amount***	
Statement-I	Assets at the beginning of the check period	**Rs.1,66,148/-**	
Statement-II	Assets at the end of the check period	**Rs.36,89,604/-**	
Statement-III	Income earned during the check period.	**Rs.40,91,657/-**	
Statement- IV	Expenditure incurred during the check period.	**Rs.31,85,228/-**	
Statement-V	Value of Assets acquired during the check period. **(Statement II (–) Statement I)**	Rs.36,89,604/- **(-)** Rs.1,66,148/- =	**Rs.35,23,456/-**
Statement- VI	Likely savings during the check period. **(Statement III (–) Statement-IV)**	Rs.40,91,657/- **(-)** Rs.31,85,228/- =	**Rs.9,06,429/-**
Statement-VII	Disproportionate Assets acquired during the check period **(Statement-V (–) Statement -VI)**	Rs.35,23,456/- **(-)** Rs.9,06,429/- =	**Rs.26,17,027/-**

Percentage of disproportion

Statement No.VII Rs.26,17,027/- x 100 = 64%
Statement No.III Rs.40,91,657/-

Thus, the disproportionate assets to the known source of income of a public servant well proved. The percentage of disproportion is 64%.

54. The Learned Senior Counsel for the appellant finally argued that the trial Court also erred in imposing sentence of four years of R.I, though the offence was committed prior to amendment to the P.C Act. Further, it is submitted that if this Court confirms the conviction imposed by the trial Court, the sentence shall be modified, considering the age of the appellant.

55. The Learned Senior Counsel for the appellant also submitted that the order to confiscate the properties shown in consolidated Statement-II is *per se* erroneous and without application of mind, since 50% share of K.Govind's properties shown in Serial Nos.9, 10, 11 and 12 also ordered to confiscate it will amount to confiscating the third party property. Furthermore, having imposed fine of Rs.33,04,168/- being a value of disproportionate assets, there is no necessity for confiscating the property which will amount to principle of double jeopardy.

56. This Court finds some force in the above submission made by the Learned Senior Counsel for the appellant. The minimum sentence for the offence under section 13(1)(e) of the P.C Act, before 2018 amendment, was one year imprisonment. Likewise, having imposed fine equal to the value of the disproportion assets, confiscation of the immovable properties acquired at the time of check period in the considered opinion of this Court, is onerous.

57. As a result, this ***Criminal Appeal No.168 of 2021 is partly-allowed.*** Insofar as, the conviction and sentence passed by the trial Court in Special Case No.4 of 2019 against A1/Paramasivam, is modified as below:-

Accused	***Sections***	***Conviction and Sentence imposed by the trail Court***	***Conviction and Sentence as modified by this Court.***
A1	13(2) r/w 13(1)(e) of P.C	Sentenced to undergo 4 years R.I and to pay a fine of Rs.33,04,168/-, in default to undergo 1 year S.I.	Sentenced to undergo **2 years R.I** and to pay fine of **Rs.26,17,500/-**, in default **6 months S.I.**

The period of sentence already gone shall be set off under Section 428 of Cr.P.C. If any fine amount paid in excess, same shall be refunded. Consequently, connected Miscellaneous Petition is closed.

01.08.2024

Index :Yes.
Internet :Yes.
Speaking Order/Non-Speaking Order.
bsm

To:-

1. The Special Judge, (Principal Sessions Court), Villupuram.
2. The Deputy Superintendent of Police, Vigilance & Anti Corruption, Cuddalore.
3. The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.

bsm

Delivery judgment made in
Crl.A.No.168 of 2021

01.08.2024