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*Crl.R.C.Nos.260, 261, 263 and 264 of 2013*

**Crl.R.C.Nos.260, 261, 263 and 264 of 2013**

**P.VELMURUGAN, J**

Today, this petition is listed under the caption "for being mentioned" at the instance of the learned counsel appearing for the respondents (in Crl.R.C.Nos.260 and 264 of 2013).

2. It is represented by the learned counsel for the respondents that, in the cause title and at paragraph No.18 of the order dated 08.04.2025, the year of the Revision Case Numbers has been wrongly mentioned as '2012' instead of '2013' and hence, they sought to correct the same.

3. In the light of the above submissions, the Registry is directed to rectify the error that had crept-in in the order dated 08.04.2025 and issue fresh order copy. In all other respects, the earlier order dated 08.04.2025 shall remain unaltered.

**08.07.2025**

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**P.VELMURUGAN, J**

ms

**Crl.R.C.Nos.260, 261, 263 and 264 of 2013**

**08.07.2025**



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*Crl.R.C.Nos.260, 261, 263 and 264 of 2013*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

|              |                |
|--------------|----------------|
| Reserved on  | 12 / 12 / 2024 |
| Delivered on | 08 / 04 / 2025 |

CORAM

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN**

Crl.R.C.Nos.260, 261, 263 and 264 of 2013

State Represented by:  
the Deputy Superintendent of Police,  
Vigilance & Anti Corruption,  
Salem.  
(Crime No.19/AC/2002)

... petitioner in  
all Criminal Revisions

Vs.

Mrs.Nirmala

... sole respondent in  
Crl.R.C.No.260 of 2012

1.Mrs.Ranganayagee  
2.Mrs.Leela

... 1st and 2nd respondents in  
Crl.R.C.No.261 of 2012

Tmt.Brinda

... sole respondent in  
Crl.R.C.No.263 of 2012

1.A.Rajendran (died)

... 1st respondent in  
Crl.R.C.No.264 of 2012

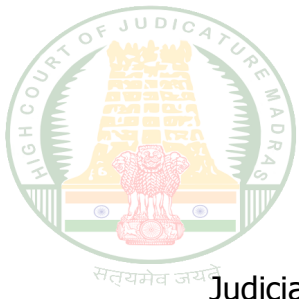
**(Dismissed as abated  
vide order dated 07.09.2023)**

2.Shanthi

... 2nd respondent in  
Crl.R.C.No.264 of 2012

**Prayer:** Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C. to  
set aside the common order passed by the learned Special Judge and Chief

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Judicial Magistrate, Salem in Crl.M.P.Nos.885 of 2005, 570 of 2005, 571 of 2005, 531 of 2005 and 1964 of 2006 in Special C.C.No.14 of 2004, dated 06.11.2006.

For Petitioner in  
all Criminal Revisions: Mr.J.Ravindran  
Additional Advocate General  
Assisted by Mr.P.Vinoth Kumar  
Government Advocate (Criminal Side)

For Respondents in  
all Criminal Revisions : Mr.Richardson Wilson  
For Mr.P.Wilson Associates  
for sole respondent in  
Crl.R.C.No.260 of 2013 &  
for second respondent in  
Crl.R.C.No.264 of 2013

R1-died in Crl.R.C.Nos.261  
and 264 of 2013

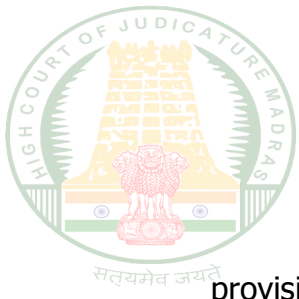
No appearance for R2 in  
Crl.R.C.No.261 of 2013

Mr.Manivasagam  
For M/s.Manivasagam Associates  
for respondent in Crl.R.C.No.263 of 2013

### **COMMON ORDER**

These Criminal Revisions have been filed by the State challenging the order dated 06.11.2006 passed by the learned Special Judge and Chief Judicial Magistrate, Salem, in C.C.No.14 of 2004, whereby the learned Chief Judicial Magistrate discharged the accused from the criminal case under the

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provisions of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "P.C. Act").

2. Since the issue involved and the allegations are one and the same, pertaining to corruption and vigilance-related offenses, and the respondents are the family members and relatives of the first accused-deceased public servant, these Criminal Revisions have been taken up together and are disposed of by this common order.

3. The case of the prosecution is that S.Arumugam was the Minister for Agriculture, Government of Tamil Nadu, from 13.05.1996 to 14.05.2001. As a Minister, he was a public servant as defined under Section 2(e) of the P.C. Act. He hailed from Poolavari Village, Salem District, and had various business interests, including a steel factory named Karuna Steel Re-rolling Mill and a transport service named Anbu Transport. He was a Member of the Tamil Nadu Legislative Assembly from 1962 to 1976, a Member of the Legislative Council from 1978 to 1983, and subsequently elected as MLA from Veerapandi in 1989 and 1996, holding ministerial positions in the Government of Tamil Nadu. The prosecution has taken the period from 13.05.1996 to 14.05.2001 as the check period for assessing the alleged disproportionate assets.



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4. The prosecution alleges that on 13.05.1996, at the commencement of the check period, he was in possession of pecuniary resources and properties in his name and in the names of his family members, amounting to Rs.74,53,036.99. By the end of the check period on 14.05.2001, the total assets held in his name and in the names of his family members had increased to Rs.2,43,57,820.92. Thus, it is alleged that he acquired disproportionate assets amounting to Rs.1,69,05,783.93.

5. Further, during the check period, he is stated to have derived a total income of Rs.1,25,49,450.35 from known sources while incurring an expenditure of Rs.1,37,29,302.95. The excess expenditure beyond his income was calculated at Rs.11,79,822.60. Thus, the total disproportionate assets allegedly acquired amount to Rs.1,80,85,606.53. Since he failed to satisfactorily account for these assets, he was charged under Section 13(2) read with Section 13(1)(e) of the P.C. Act. The prosecution further alleged that his family members abetted him in committing the offense by holding substantial portions of these properties and pecuniary resources on his behalf,



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making them liable under Section 109 IPC read with Section 13(2) read with Section 13(1)(e) of the P.C. Act.

6. The learned Special Judge and Chief Judicial Magistrate, upon considering the material and documents before it, took the case on file as Special C.C.No.14 of 2004. The accused/respondents moved an application under Section 239 Cr.P.C. seeking discharge from the case. On 06.11.2006, the learned Special Judge allowed the petitions and discharged the respondents/accused from the charges.

7. Aggrieved by the order of discharge passed by the learned Special Judge, the State preferred Criminal Revision Petitions. In the meantime, the main accused/S.Arumugham died. Initially, these revisions Crl.R.C.Nos.260, 261, 263, and 264 of 2013 were dismissed by this Court on 11.03.2013, holding that due to the death of the main accused, the charge had abated, and nothing remained for further consideration. For better appreciation, the order is extracted hereunder:-

*"In this case, the respondents in these Criminal Revision Petitions are only co-accused. First accused, who was a public servant and main accused died. It was only the first accused who was bound to explain with regard to*



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*the disproportionate assets and he being not available, it is not proper to shift the burden on the co-accused, who are implicated only as abettors, being family members. Any further proceedings against the co-accused would be only futile. Hence, these Criminal Revision Petitions are dismissed."*

However, upon appeal by the prosecution, the Hon'ble Supreme Court, by order dated 13.09.2017, set aside the dismissal and remanded the matter for fresh consideration, holding that the death of the main accused does not result in the abatement of charge against the remaining accused. The relevant portion of the said order is extracted below:-

*"4. However, our attention has been drawn to another judgment/decision of this Court in the case of State through Central Bureau of Investigation, New Delhi vs. Jitender Kumar Singh (2014) 11 SCC 724 by the learned counsels for the respondents to contend that this Court, in a situation where charges were yet to be framed, as in the present case, took the view that as trial had not commenced the Special Court under the P.C. Act would not have jurisdiction under Section 4(3) of the P.C. Act to try the offences committed under the IPC. In the aforesaid case, this Court had approved the view taken by the Special Court that the proceedings need to be transferred to the competent court.*

*5. Having considered the decisions of this Court and upon hearing the learned counsels for the parties we are of the view that the death of the main accused does not result in abatement of the trial. The High Court, therefore, would now be under an obligation to consider the order of discharge passed by the learned trial Court on merits. We, therefore, remand the case to the High Court for a reconsideration on the aforesaid issue in the course of which it will be open for the agitating parties to raise any other*



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*point including the issue as noticed above with regard to the jurisdiction of the Special Court under Section 4(3) of the P.C. Act in terms of the decision of this Court in Jitender Kumar Singh (supra).*

*6. We request the High Court to hear and decide the matter in the light of the observations made above as expeditiously as its calendar would permit.*

*7. The appeals consequently are allowed to the extent indicate above and the order of the High Court is set aside.*

8. After remand, the criminal revisions came alive again. The respondent in Crl.R.C.No.260 of 2013 is Nirmala (A5), daughter of the deceased public servant. The respondents in Crl.R.C.No.261 of 2013 are Ranganayagee (A6), the first wife of the deceased public servant, and Leela (A7), the second wife of the deceased public servant. The respondent in Crl.R.C.No.263 of 2013 is Brinda (A4), wife of Late Nedunchezhan, the first son of the deceased public servant. The respondent in Crl.R.C.No.264 of 2013 is Rajendran (A2), son of the deceased public servant, along with Santhi (A3), wife of Rajendran and daughter-in-law of the deceased public servant. These revisions are now taken up for fresh consideration in light of the direction of the Hon'ble Supreme Court.

9. Mr.J.Ravindran, learned Additional Advocate General appearing for the petitioner/Police, submits that the order of discharge is legally



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unsustainable, as the trial court failed to appreciate the materials on record in the proper perspective. The gravity of the charges, including large-scale accumulation of wealth through corruption, is evident from the final report filed under Section 173 Cr.P.C., supported by oral and documentary evidence. The trial court ought to have framed charges instead of allowing the petition under Section 239 Cr.P.C., as a prima facie case against the accused is clearly established. The prosecution has meticulously calculated the income of A1 and his family members, demonstrating that it is significantly lower than the value of the assets acquired and expenditures incurred, amounting to 144% of their known income. The accused were given an opportunity to account for the disproportionate assets through a notice dated 10.02.2004, and in response, A1 sought an extension until 25.02.2004 but failed to provide any explanation. This deliberate omission further strengthens the presumption against the accused. The learned Special Judge erred in scrutinizing evidence at the stage of framing charges, contrary to the principles laid down by the Hon'ble Supreme Court, which prohibit a trial court from assessing defense documents at this stage. The presence of sufficient materials to frame charges against the accused is evident, and there exists a strong presumption regarding the commission of the offenses alleged. The available materials, including witness statements and documents collected during the investigation, are enough to substantiate that the properties and pecuniary

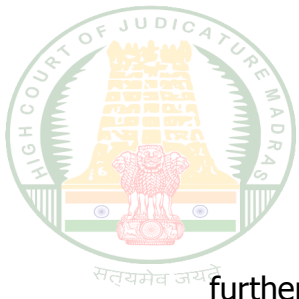


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resources held by the respondents were acquired through illegitimate means.

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The investigation reveals that A2 to A7 lacked independent sources of income to either purchase properties or make investments. Despite filing separate Income Tax Returns, the respondents did not possess sufficient independent financial means to justify the assets standing in their names. The Income Tax Returns filed by the auditor for the sons of A1 reflect this inadequacy. The evidence establishes that the investments made in their names were derived from A1's pecuniary resources obtained through illegal means. The learned Special Judge failed to properly consider that the income derived from assets standing in the names of A1's children was insufficient to justify the properties mentioned in Statements 1 and 2. The investigating officer had accounted for the probable income of A1, A2, and other family members while calculating the likely savings. Furthermore, Tmt. Nirmala (A5) resided in an undivided matrimonial house during the check period, and assets acquired in her name were procured through A1's illegally derived income. The failure to furnish income details for A5 during the investigation further substantiates the prosecution's case. Document No.60, the evaluation report, along with the charge sheet and statements recorded from witnesses LWs 23 and 24, establishes that A1 made substantial improvements to the house at Padmanaban Street, Chennai, during the check period. The gifts acquired within this period were not assigned any value by the investigating officer,



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further demonstrating the irregularities in the transactions.

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10. The learned Additional Advocate General would further point out that Section 2(C) Clauses (ii) & (viii) of the P.C.Act, clearly define the term 'public servant,' including individuals in the service or pay of a local authority and those authorized to perform public duties. A reading of these provisions establishes that receiving a salary or emoluments is not a prerequisite for being considered a public servant, as honorary servants also discharge duties equivalent to those in government service.

11. The learned Additional Advocate General would further submit that the properties acquired by A1 and his family members (A2 to A7) during the check period were rightfully taken into account by the investigating officer, and the findings were supported by material documents and statements recorded under Section 161 Cr.P.C. The trial court is barred from meticulously analyzing the evidence proposed to be adduced by the prosecution, as such scrutiny is permissible only during a full-fledged trial. The order of discharge is not sustainable in law, as it lacks valid reasoning under Section 239 Cr.P.C. The presence of sufficient materials warrants the framing of charges under Section 240 Cr.P.C.



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12. Adding further, the learned Additional Advocate General would submit that the trial court failed to consider the grave nature of the charges and ought to have framed charges instead of discharging the accused. The participation of all family members in transactions related to property purchases, acquisitions, and investments, despite the existence of a family partition deed, establishes a strong case for prosecution. The evidence demonstrates that the properties annexed under Statements 1 and 2 in the charge sheet stand in the names of the family members, including the two sons of A1, and that these investments were made using resources unlawfully obtained by A1. The trial court grossly erred in failing to frame charges and in discharging the accused without recording valid reasons. In support of his contentions, the learned Additional Advocate General has relied on the following decisions:-

(i) ***P.Nallammal & another Vs. State*** [1996 (6) SCC 559]

(ii) ***State V. N.Suresh Rajan & Others*** [2014 (11) SCC 709]

(iii) ***State V. R.Sundirarasu & Others*** [2023 (6) SCC 768]

Hence, the learned Additional Advocate General prays to set aside the order passed by the learned Special Judge.

13. Mr.Richardson Wilson, learned counsel appearing for the fifth accused/ respondent in Crl.R.C.No.260 of 2013 and the third accused /

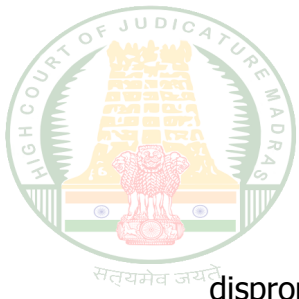


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second respondent in Crl.R.C.No.264 of 2013 would submit that the prosecution has erroneously clubbed the assets of independent individuals with that of A1 without providing any substantive basis or material to establish that these assets were benami properties. The prosecution has proceeded on mere conjectures, failing to produce any cogent evidence to substantiate the claim that the properties in question were held for the benefit of A1. It is a well-settled principle of law that mere assumptions or suspicions cannot be the basis for framing charges. The Hon'ble Supreme Court in ***Krishnanand Agnihotri v. State of M.P.*** [(1977) 1 SCC 816] has categorically held that the burden of proving a transaction to be benami lies on the prosecution and that such burden cannot be discharged by mere conjectures. The judgment states, "*In cases of benami transactions, the onus is on the person who claims that a transaction is benami. The prosecution must establish that the apparent owner holds the property for the benefit of the accused and that the funds for such acquisition came from the accused.*"

14. The learned counsel would further submit that A5, the daughter of A1, has been financially independent since her marriage in 1984, and her assets have been duly declared in her income tax returns from 1984 onwards. Despite this, the investigating officer has arbitrarily clubbed her independently acquired wealth with that of A1, thereby artificially inflating the alleged



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disproportionate assets. Similarly, A2 and A3, who have been living separately since the execution of a partition deed in 1991, have been wrongfully implicated by attributing their independently acquired properties to A1. The prosecution has neither produced documentary evidence to demonstrate that these assets were funded by A1 nor has it examined the legal validity of the partition deed, which clearly establishes the financial independence of A2 and A3. The Hon'ble Supreme Court in **Ananda Bezbaruah v. Union of India** [1994 CrLJ 12] has held that where a family member has an independent financial standing and has declared income separately, the assumption of benami holding must be supported by tangible proof. In the present case, the prosecution has failed to produce any such proof, rendering its allegations wholly speculative.

15. The learned counsel would further submit that the prosecution has further erred in failing to consider the income tax records of A2, A3, and A5, which were filed long before the check period. These records clearly establish that their assets were lawfully acquired and not linked to A1. The Hon'ble Supreme Court in **State v. K. Ponmudi** [(2006) 2 LW (CrI) 758] has held that the prosecution cannot club the assets of a public servant's relatives unless there is clear evidence of benami transactions. The judgment emphasizes that without clear documentary evidence linking the acquisition of assets to the accused, mere suspicion is insufficient to sustain a charge under

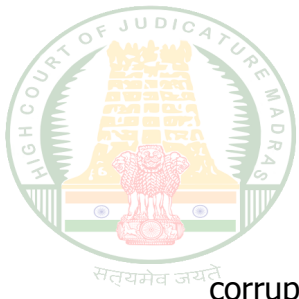


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the Prevention of Corruption Act. Despite this settled position of law, the prosecution has acted in a manner contrary to the principles laid down by the Hon'ble Supreme Court. The settled principle of law is that at the stage of framing charges, there must be strong suspicion based on tangible material and not a mere mechanical acceptance of the prosecution's allegations. The Hon'ble Supreme Court in ***Deepakbhai Jagdishchandra Patel v. State of Gujarat*** [(2019) 16 SCC 547] has held that the trial court must act judiciously and not as a mere post office while considering the framing of charges. The trial court in the present case has rightly applied this principle and found that there is no prima facie case against the respondents. It has meticulously examined the materials placed before it and has rightly concluded that the prosecution has failed to establish a case that warrants the framing of charges.

16. The learned counsel would further submit that the prosecution has artificially enhanced the alleged disproportionate assets by failing to consider legitimate sources of income, loans, and past savings. The Hon'ble Supreme Court in ***Krishna Anand v. State of M.P.*** [1977 SCC CrI 190] has permitted a deviation of up to 10% in the calculation of disproportionate assets. The judgment clearly stated that even if some assets appear disproportionate, unless the excess amount is substantial, it does not necessarily indicate



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corrupt means. After excluding the independently acquired assets of A2, A3, and A5, the remaining alleged disproportionate amount is well within the permissible limit. The trial court has correctly taken note of this aspect and has rightly concluded that there is no case to proceed against the respondents. The prosecution's approach in clubbing assets without substantiating the same with proper evidence violates the fundamental principles of natural justice. The Hon'ble Supreme Court in ***Sajjan Kumar v. CBI [(2010) 9 SCC 368]*** has held that at the stage of discharge, the court must evaluate whether the materials placed on record disclose the ingredients of the alleged offense. The judgment states, *"A trial court must apply its judicial mind to determine whether the material on record gives rise to a grave suspicion; mere allegations unsupported by substantive evidence cannot form the basis of a charge."* Furthermore, the Hon'ble Supreme Court has emphasized that framing of charges requires a strong suspicion based on material evidence, not a theoretical possibility of guilt. The prosecution's failure to adhere to this principle reflects a deliberate attempt to create an inflated calculation of disproportionate wealth, which is impermissible in law.

17. The prosecution has ignored several legitimate sources of income and has merely proceeded on assumptions. The allegations fail to take into account income from agricultural lands, rental income, professional earnings,



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and lawful inheritance. The failure to consider such sources of income renders the prosecution's case incomplete and biased. This Hon'ble Court has time and again held that unless the prosecution can provide evidence linking a family member's property directly to the accused public servant, such assets cannot be included in the calculation of disproportionate assets. This principle was reiterated in **Ananda Bezbaruah v. Union of India** (1994 CrIj 12), where it was observed that where an individual has an independent source of income and has declared it in tax filings, the assumption of benami holding must be supported by substantive proof. In view of the foregoing, it is evident that the prosecution has failed to establish that the assets in question were benami. The prosecution's case was that the properties, though standing in the names of A2, A3, and A5, actually belonged to A1 and were held benami on his behalf. However, the evidence shows that these properties were independently acquired by A2, A3, and A5 from their own lawful sources of income. The prosecution ignored this fact, failed to consider the declared income of the individuals concerned, and proceeded without producing clear documentary evidence. It has violated judicial principles by mechanically clubbing assets without proof and has ignored the principle that a marginal discrepancy does not necessarily indicate corrupt means. The prosecution's case, therefore, suffers from legal infirmities and is devoid of merit. In support of his contentions, the learned counsel has relied on the



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following decisions:-

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(i) ***Asim Shariff Vs. National Investigation Agency***

*[(2019) 7 SCC 148]*

(ii) ***Union of India Vs. Prafulla Kumar Samal & Anr.***

*[(1979) 3 SCC 4]*

(iii) ***State of Orissa Vs. Debendra Nath Prasad*** *[(2005) 1 SCC 568]*

(iv) ***P.Vijaya Vs. State of Kerala & Others*** *[(2010) 2 SCC 398]*

(v) ***Central Bureau of Investigation, Hyderabad Vs.***

***K.Narayana Rao*** *[(2012) 9 SCC 512]*

(vi) ***State, Rep. by Dy.Supt. of Police, Vigilance and Anti-corruption Vs. K.Ponmudi*** *[2006 SCC Online Mad 1596]*

(vii) ***Krishnanand Agnihothari Vs. State of Madhya Pradesh***

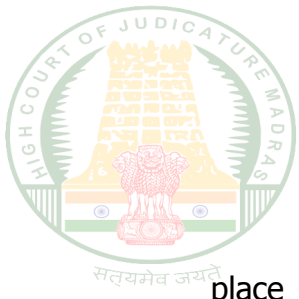
*[(1977) 1 SCC 816]*

(viii) ***Ananda Bezbaruah Vs. Union of India***

*[(1993) SCC Online Gau 52]*

Hence, the learned counsel prayed that the revisions be dismissed in limine.

18. Mr.Manivasagam, learned counsel appearing for the respondent in Crl.R.C.No.263 of 2012, Brinda, wife of late Nedunchezlian (the first son of the deceased public servant), submits that the respondent, along with her children, constituted an independent family following the partition that took



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place on 16.07.1991. This partition resulted in the creation of separate families, with no financial dependence or connection between the respondent's family and the deceased public servant's family. The husband of respondent had no involvement in the financial matters or property acquisitions of the deceased public servant or any other associated parties, apart from the blood relationship with him. The income generated by the respondent's family came primarily from agricultural activities, milk production, and other business ventures. These earnings were duly declared in the respondent's income tax returns, which were filed annually and accepted by the relevant tax authorities. The income tax returns were transparent and in full compliance with the law, reflecting the independent financial status of the respondent's family. The investigating officer, during the investigation, has allegedly disregarded the truthful facts presented by the respondent. Based on conjecture and suspicion, the officer included certain properties in the statement I to IV, which were wrongly attributed to A-1 (the deceased public servant). These properties were legally owned by the respondent's family and had no connection to the deceased public servant, particularly since the partition occurred in 1991. The respondent's family had acquired the properties through lawful mean. The prosecution contended before the trial Court that the properties standing in the name of A-4 were acquisitions attributable to the deceased public servant. The respondent



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submitted before the trial Court that these properties were not acquired by the deceased public servant, nor did the respondent's husband play any role in aiding the deceased public servant to acquire these properties in her name. There is no evidence to suggest any fraudulent intent or involvement in the acquisition of the properties by the respondent. While the investigating officer seized the relevant income tax returns filed by the respondent, it is submitted that these returns were not duly considered during the investigation. These returns demonstrated the independent financial status of the respondent's family and should have been given due weight during the inquiry. Moreover, statements from the Assistant Commissioner of Income Tax and other tax officials corroborate the respondent's claim that the properties in question were not linked to the deceased public servant, further strengthening her defense. The prosecution argued that the deceased public servant failed to provide an adequate explanation for the properties standing in the name of the respondent. The absence of an explanation from the deceased public servant cannot be taken as evidence of the respondent's involvement in any unlawful activity or abetment. After considering the prosecution's submissions, the learned judge, upon appreciation of the evidence, concluded that there was no sufficient evidence to sustain the charges against the respondent. Therefore, the learned judge rightly discharged the respondent from the case, based on the lack of substantial evidence connecting her to

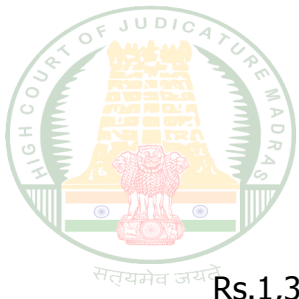


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the alleged offenses. Hence, the learned counsel prayed to dismiss the criminal revision case.

19. Heard the rival submissions made by the parties and perused the materials available on record.

20. The allegation against the deceased public servant was that, during his tenure as Minister for Agriculture, Government of Tamil Nadu, from 13.05.1996 to 14.05.2001 (the "Check Period"), he had amassed pecuniary resources and properties disproportionate to his known sources of income. The prosecution contended that the deceased public servant had illicitly acquired wealth in his own name and in the names of his wives, sons, daughters-in-law, daughters, and minor grandchildren, which far exceeded his legitimate earnings, who are the respondents herein. As per the prosecution's case, at the commencement of the check period on 13.05.1996, the deceased public servant and his family members were found to be in possession of assets amounting to Rs.74,52,036.99. By the end of the check period on 14.05.2001, the total assets in his and his family members' names had increased to Rs.2,43,57,820.92. During the check period, the deceased public servant had derived a total income of Rs.1,25,49,450.35 from his known sources. His total expenditure during the check period was assessed at



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Rs.1,37,29,302.95 and the excess expenditure over and above his income, at the end of check period was calculated as Rs.11,79,822.60. After deducting the known income and expenses, the prosecution calculated that the total pecuniary resources and properties found disproportionate to his known sources of income amounted to Rs.1,80,85,606.53, for which he could not satisfactorily account. The prosecution alleged that the deceased public servant had willfully concealed assets by holding them in the names of his family members, in an attempt to mask his accumulation of disproportionate wealth. Based on these findings, the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Coimbatore, laid a charge sheet against the deceased public servant under Sections 13(2) read with 13(1)(e) of the P.C. Act. Additionally, the respondents, comprising his family members, were charged under Section 109 IPC read with 13(2) read with 13(1)(e) of the P.C. Act for allegedly abetting the commission of the offence. Pending criminal case, the accused/respondents moved an application under Section 239 Cr.P.C. seeking discharge from the case, which was allowed by the learned Special Judge and Chief Judicial Magistrate, Salem. Against which, the present revisions by the State.



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21. Pending criminal case before the trial Court, the first accused/deceased public servant died and pending these criminal revisions, the second accused/1st petitioner in Crl.R.C.No.264 of 2013 died and this Court vide order dated 07.09.2023, dismissed the proceedings as abated as against the second accused/1st respondent in Crl.R.C.No.264 of 2013. Totally, there are 7 accused, in which, two accused, viz., first and second accused died. Insofar as the other accused/respondents, except the fourth accused/second respondent in Crl.R.C.No.261 of 2013, other respondents have entered their appearance through their counsel.

22. The pivotal question that arises for consideration is whether the impugned order satisfies the statutory mandate under Section 239 and whether all relevant factors have been duly considered before granting the discharge. At this juncture, it would be useful to refer Section 239 of the CrPC, which reads as follows:-

*"If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary, and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for doing so."*



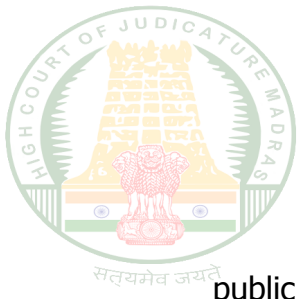
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23. A plain reading of Section 239 of Cr.P.C., indicates that the Magistrate must determine whether the charge against the accused is groundless by considering the police report and the documents submitted under Section 173 Cr.P.C., making such examination of the accused as deemed necessary, and after giving an opportunity of hearing to both the prosecution and the accused. If, upon such consideration, the Magistrate finds no sufficient ground to proceed, the accused shall be discharged, and reasons for such discharge must be recorded.

24. In the present case, the question that arises is whether the learned Magistrate, before discharging the accused, has duly considered these aspects, namely, whether the police report and the documents under Section 173 Cr.P.C. were examined, whether the accused was given an opportunity of hearing, whether the allegations were assessed to determine if a prima facie case was made out, and whether the reasons for discharge were recorded in accordance with law.

25. The main contention advanced by the learned counsel for the respondents is that the prosecution has erroneously clubbed the independently acquired assets of the respondents with those of the deceased

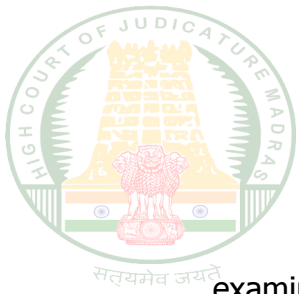


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public servant (A1) without any substantive evidence to show that such properties were benami in nature. It was argued that several of the respondents, including A2, A3, and A5, had long been financially self-reliant, with independent sources of income such as agriculture, professional work, rental earnings, and business ventures. Their assets, it was claimed, had been duly disclosed in income tax returns and supported by partition deeds and other legal documents, which were overlooked by the investigating officer. The defence thus asserted that the entire allegation of disproportionate assets had been inflated by arbitrarily aggregating their wealth with that of A1. It was also the contention of the defence that the legal heirs are not merely name-lenders or passive recipients of wealth, but are independent individuals who possessed their own sources of income and properties, acquired lawfully and independently of A1.

26. The case arose from allegations against the first accused (A1), who was charged with amassing assets disproportionate to his known sources of income. During the pendency of the proceedings, A1 passed away, and his legal heirs, A2 to A7, were implicated on the premise that the assets standing in their names were, in fact, benami properties held for A1's benefit. While considering the discharge petition, the learned Judge exceeded the permissible scope of inquiry at this stage. Instead of confining the

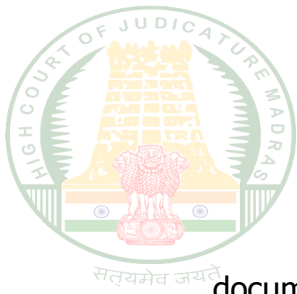


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examination to whether a prima facie case was made out for framing charges or considering discharge, the court engaged in an extensive scrutiny of the prosecution's evidence, effectively conducting a mini-trial. However, these are disputed factual issues that hinge on documentary and oral evidence, including income tax filings, business records, property transactions, and evidence of partition, all of which must be examined during the course of trial. Whether the properties standing in the names of A2 to A7 were genuinely self-acquired or were benami holdings for A1's benefit cannot be adjudicated at the stage of discharge. Such a determination requires a full-fledged trial and cannot be made by weighing rival versions of the case in the manner of a mini-trial. It is a settled position of law that at the stage of discharge, the trial court is only required to examine whether the materials placed by the prosecution, taken at face value, disclose the commission of an offence. It is not the function of the court at this stage to evaluate the credibility of the prosecution's evidence or to determine the probative worth of the documents or explanations offered by the defence. The discharge stage is limited to determining the existence of a prima facie case, not whether the prosecution will ultimately succeed.

27. In the present case, a perusal of the charge sheet filed under Section 173 Cr.P.C., along with the accompanying statements and

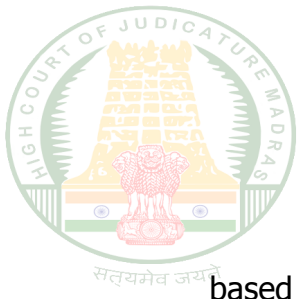


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documentary materials, reveals specific allegations that A1, while serving as a public servant, had acquired assets disproportionate to his known sources of income, and that several such properties were held in the names of A2 to A7. The investigating agency has not proceeded on mere assumption but has placed reliance on property transactions, financial links, and circumstantial material connecting the said assets to A1. The legal heirs were not arrayed as accused in a routine or mechanical manner; rather, their implication is founded on materials indicating possession of properties allegedly traceable to A1's ill-gotten wealth. Thus, all the necessary ingredients to proceed to trial have been disclosed on record. The factual controversies raised by the defence, including claims of self-acquisition, lawful income, and partition, are matters for adjudication during trial and cannot be used to truncate the proceedings at the threshold.

28. One of the primary grounds on which the trial court allowed the discharge petition was that A2 to A7 had filed independent income tax returns during the check period, which, according to the learned Judge, demonstrated their financial independence. However, this reasoning is legally unsound. The mere filing of income tax returns does not, in itself, establish lawful ownership of assets, particularly in a case where benami transactions are alleged. It is pertinent to note that the Income Tax Department conducts assessments



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based on the returns filed by the assessee. If any irregularities or discrepancies are found during such assessments, the department has the authority to take appropriate action in accordance with the law. However, in the present case, it is not the Income Tax Department but the Vigilance and Anti-Corruption Department that has initiated proceedings against the first accused. The allegations pertain to corruption and disproportionate assets, which fall under the purview of vigilance authorities rather than the Income Tax Department. Furthermore, while A2 and A7 are relatives of the first accused, their financial transactions and asset ownership, even if duly reported to the Income Tax Department, do not preclude an independent investigation by the Vigilance Department. The functions and mandates of these two departments are distinct. The Income Tax Department primarily deals with tax liabilities, declarations, and compliance with tax laws, whereas the Vigilance and Anti-Corruption Department is responsible for investigating corrupt practices, including the acquisition of assets beyond known sources of income by public servants. The mere acceptance of income tax returns by the Income Tax Department does not automatically validate the legitimacy of assets in corruption-related investigations. If the Vigilance Department, based on its independent inquiry, finds prima facie evidence that certain assets are disproportionate to the known income of the accused and were acquired through corrupt means, it is well within its jurisdiction to proceed with legal



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action. The proceedings initiated by the Vigilance Department are entirely separate from any scrutiny conducted by the Income Tax Department, and the findings of one department do not bind the other.



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29. The meaning of the expression "known sources of income" has been discussed by the Hon'ble Apex Court in the case of **C.S.D. Swami v. State** [AIR 1960 SC 7], wherein it has been observed as follows:

*" Now, the expression 'known sources of income' must have reference to sources known to the prosecution on a thorough investigation of the case. It was not, and it could not be, contended that 'known sources of income' means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters 'specially within the knowledge' of the accused, within the meaning of Section 106 of the Evidence Act."*

Further, the Hon'ble Supreme Court, in a recent judgment in the case of State of **Tamil Nadu v. R.Soundirarasu** [2023 (6) SCC 768], reiterated the aforesaid principle and held as follows:

*"While the expression 'known sources of income' refers to the sources known to the prosecution, the expression 'for which the public servant cannot satisfactorily account' refers to the onus or burden on the accused to satisfactorily explain and account for the assets found to be possessed by the public servant. This burden lies on the accused, as the said facts are within his special knowledge. Section 106 of the Evidence Act applies. The Explanation to Section 13(1)(e) is a procedural provision which seeks to define the expression 'known sources of income' as sources known to the prosecution and not to the accused."*



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In the present case, admittedly, the first accused was issued a notice dated 10.02.2004, affording him an opportunity to explain the disproportionate assets. In response, the first accused sought extension of time till 25.02.2004; however, he failed to furnish any explanation thereafter. The respondents have also not shown that the first accused submitted any reply to the said notice. Therefore, this aspect is a matter to be decided only at the stage of trial. Whether the properties in question were acquired from the first accused or are the independent properties of the respondents is also an issue that can be determined only upon full appreciation of evidence during trial and not at the stage of discharge.

30. It is also to be noted that mere fact that a property is registered in the name of an income tax assessee cannot, by itself, be a ground to conclude that it actually belongs to that assessee. If such a proposition were to be accepted, it would lead to severe and undesirable consequences. At this juncture, it would be useful to refer the judgment of Hon'ble Supreme Court in the case of State of **Tamil Nadu Vs. N.Suresh Rajan** [(2014) 11 SCC 709], wherein, the Hon'ble Supreme Court has observed as follows:-

*32.3. "..... The property in the name of an income tax*



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*assessee itself cannot be a ground to hold that it actually belongs to such an assessee. If this proposition is accepted, in our opinion, it will lead to disastrous consequences. It will give an opportunity to corrupt public servants to amass property in the name of known persons, pay income tax on their behalf, and then evade the mischief of law."*

31. According to the learned counsel for the respondents, the prosecution has proceeded merely on conjecture and has failed to produce any cogent evidence to substantiate the claim that the properties in question were held for the benefit of A1. The burden of proving a benami transaction lies on the prosecution, and mere suspicions cannot form the basis for framing charges. In this regard, the learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Krishnanand Agnihotri Vs. State of M.P.** (*supra*). In the case relied upon, the Hon'ble Apex Court rendered its decision after a full-fledged trial and held that it would not be right to conclude that the assets found in the possession of the appellant were disproportionate to his known sources of income so as to justify raising a presumption against him. However, in the present case, the matter has not yet proceeded to trial. While the criminal case was pending, the respondents approached the court seeking discharge, and the trial court discharged the respondents. Since the trial had not commenced at all in the



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present case, the decision relied upon by the learned counsel for the respondents would not be applicable to the facts of the case at hand.

32. The next decision relied upon by the learned counsel for the respondents is the judgment of the Gauhati High Court in **Ananda Bezbaruah v. Union of India** (*supra*), wherein it was held that when a family member has an independent financial standing and has declared income separately, the assumption of benami holding must be supported by tangible proof. Another judgment cited is the decision of the Hon'ble Supreme Court in **Deepakbhai Jagadishchandra Patel v. State of Gujarat** (*supra*), where it was held that a strong suspicion must be based on tangible material and not merely on a technical acceptance of the prosecution's allegations. However, the principle laid down in these judgments does not support the plea at the stage of discharge. Once the prosecution has filed a charge sheet and produced supporting materials, it must be given an opportunity to prove its case by leading evidence. The assessment of documents, including their probative value, can only be undertaken during trial when the prosecution is permitted to mark and prove them in accordance with law. Without affording such an opportunity, it would be impermissible to



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conclude at the discharge stage that the prosecution lacks sufficient evidence.

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At the risk of repetition, it is alleged by the prosecution that the properties acquired by A1 and his family members (A2 to A7) during the check period were duly considered by the investigating officer, and the findings were supported by material documents and statements recorded under Section 161 Cr.P.C. The prosecution further alleges that the active participation of all family members in property transactions, acquisitions, and investments, despite the existence of a partition deed, establishes a strong case for prosecution. It is well settled that once the prosecution has made specific allegations and produced supporting material, the defence put forth by the accused at the stage of discharge cannot be adjudicated. Such contentions require appreciation of evidence, which can only be done after a full-fledged trial. Hence, the decisions relied upon by the learned counsel for the respondents do not apply to the present case at this stage.

33. Yet another judgment cited by the learned counsel for the respondents is that the Hon'ble Supreme Court in ***Krishna Anand vs. State of M.P.*** (*supra*) has permitted a deviation of up to 10% in the assessment of disproportionate assets and further held that unless the excess amount is substantial, it does not necessarily indicate corrupt means. With great respect, there is no quarrel with the proposition laid down in the judgment.



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However, in the present case, the prosecution alleges that the accused acquired disproportionate assets amounting to Rs.1,80,85,606.53, comprising an unexplained asset increase of Rs.1,69,05,783.93 and excess expenditure of Rs.11,79,822.60 during the check period. The extent of disproportionate assets, as well as the permissible deviation threshold, requires a proper assessment based on evidence, which can only be undertaken during trial. Such an evaluation is beyond the scope of discharge proceedings, as the assessment of deviation involves a factual determination that must be made based on material evidence tested during trial. Hence, the reliance on the **Krishna Anand** judgment at this stage is untenable, as the issue of permissible deviation can only be adjudicated upon after a full-fledged trial.

34. Further, there is no quarrel over the other judgments relied upon by the learned counsel for the respondents. However, they are distinguishable on facts and do not apply to the present case. The cases cited primarily deal with situations where the prosecution failed to establish a prima facie case or where the materials on record were insufficient to proceed to trial. In contrast, in the present case, the prosecution has placed reliance on specific materials, including financial records, property documents, and statements recorded under Section 161 Cr.P.C., to substantiate its allegations. The charge sheet and accompanying documents disclose a prima facie case

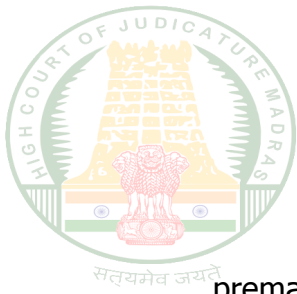


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warranting trial, and the issues raised by the defence, such as independent financial standing, lawful acquisitions, and the genuineness of the transactions, require a detailed appreciation of evidence. Thus, the judgments relied upon by the respondents do not support discharge at this stage, as the factual matrix in the present case necessitates a full-fledged trial for proper adjudication.

35. Furthermore, the trial court appears to have overlooked the fundamental aspect that at the stage of discharge, the prosecution is not required to prove its case beyond reasonable doubt; rather, it only needs to establish a prima facie case warranting the framing of charges. The learned Judge, in questioning the methodology adopted by the Investigating Officer in clubbing the assets of A2 to A7 with A1, failed to apply the settled legal principles governing disproportionate assets cases. The prosecution was not afforded an adequate opportunity to present its case, and the rejection of its materials at the discharge stage was unwarranted and legally unsustainable. The prosecution has alleged a pattern of transactions that indicates that A1 used A2 to A7 as benamidars. The proper stage for evaluating the credibility of this allegation is during trial, based on a full appreciation of evidence. However, the trial court, instead of allowing the prosecution to lead evidence,



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prematurely rejected its case based on presumptions favoring the accused.

This approach runs contrary to the well settled legal principle that at the discharge stage, the court must only assess whether a prima facie case exists and not conduct a meticulous analysis of the evidence.

36. In light of these legal precedents and the material on record, the discharge of the respondents by the trial court was erroneous. The trial court failed to appreciate that the allegations were supported by material evidence, which warranted further adjudication through trial rather than summarily discharge under Section 239 CrPC. Consequently, the present revision petitions are allowed, and the orders of discharge passed by the trial court is set aside. The trial court is directed to proceed with framing charges and conduct the trial in accordance with law.

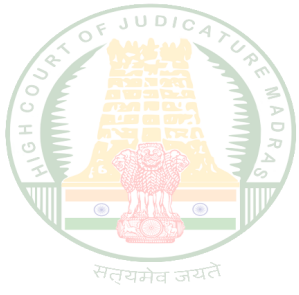
**08/04/2025**

Index : Yes/No

Neutral Citation Case : Yes/No

Speaking Order : Yes/No

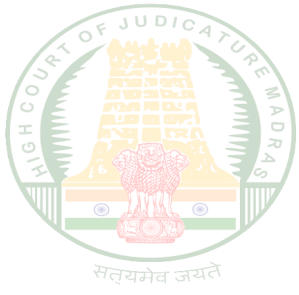
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1. The Special Judge and Chief Judicial Magistrate,  
Salem.
2. The Deputy Superintendent of Police,  
Vigilance & Anti Corruption,  
Salem.
3. The Public Prosecutor,  
High Court, Madras.



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**P.VELMURUGAN, J**

r n s

**Pre Delivery Order in**  
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**08 /04/2025**

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