IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.02.2026
PRONOUNCED ON : 09.06.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.775 of 2016

State rep. by
The Deputy Superintendent of Police,
CBI, ACB, Chennai. ... Appellant

Vs.

L.Kumar ... Respondent

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C., to set aside the judgment dated 25.08.2015 passed in C.C.No.02 of 2007 on the file of the learned II Additional District Judge for CBI Cases, Coimbatore.

For Appellant	:	Mr.N.Baskaran Special Public Prosecutor for CBI Cases
For Respondent	:	Mr.S.Ashok Kumar Senior Counsel for Mr.M.Rajasekhar

JUDGMENT

This Criminal Appeal is filed to set aside the judgment dated 25.08.2015 passed in C.C.No.02 of 2007 by the learned II Additional District Judge for CBI Cases, Coimbatore.

2.The respondent/accused in C.C.No.2 of 2007 was prosecuted by the appellant. The Trial Court, by its judgment dated 25.08.2015 dismissed the case and discharged the respondent from all charges after full fledged trial. Against which, the present appeal filed.

3.The case of the prosecution is that the respondent L.Kumar, Superintendent of Central Excise, Salem Commissionerate joined Central Excise on 10.07.1975 as Inspector of Central Excise at Coimbatore Division-I. He got promoted as Superintendent of Central Excise and joined at Customs Bonded Warehouse, Salem Steel Plant on 12.04.1993 and worked subsequently in Salem Division Office till 09.05.1996. During the period from May 1996 to 29.01.2003, he worked in various places. From 30.01.2003 to 13.08.2003. he worked in Inland Container Depot, Tiruppur.

In August 2003 he was transferred to Salem Commissionerate and attached to Statistics Section of Head Quarters. The respondent L.Kumar, during the period between 1980 and 1991 purchased seven properties, out of which four in his name and the same intimated to the Department in his Immovable Property Returns. The remaining three properties purchased by him in the year 1991 in the name of his wife Mallika, a dependent not intimated to the Department in the Immovable Property Returns. He purchased properties between the years 1993 and 2004 in the name of his wife Mallika, daughters namely Sivavasavi and Vijayavani and also his son Master Vikram Balaji. Hence, this period i.e. 01.01.1993 to 09.07.2004 was taken as the Check Period for calculation of Income, Expenditure and Assets of L.Kumar and his family members. During this period he incurred major expenditures for education of his children, purchase of vehicles etc. besides investments in properties, thereby the respondent L.Kumar acquired assets by illegal means beyond his known sources of income during the Check Period from 01.01.1993 to 09.07.2004.

4.Assets at the beginning of the check period i.e., as on 01.01.1993 in the name of the respondent and his wife, seven immovable properties listed in Statement A to the value of Rs.4,78,000/-. Movable assets shown in Statement A1 is 35 items and the value has been given as Rs.27,100/-. Assets at the end of the check period shown in Statement B, 16 immovable properties listed to the value of Rs.43,46,962/-. Five properties purchased in Kumarasamipatti Village, Salem in the name of his first daughter K.Sivavasavi not intimated to the Department and further, Sivavasavi was not having an independent source of income and she completed her Graduation in Medicine in the year 1998-1999. Likewise, the property purchased in Yercaud and farmland in Veerapandi village in the year 2004 was purchased in the name of his second daughter K.Vijayavani, who graduated in Medicine in the year 2003-2004 and she had no independent source of income. Four properties purchased in the name of his wife K.Mallika in Chengalpattu District and land with farmhouse in Veerapandi village, Salem during the year 1999 to 2004. The respondent's wife Mallika is not an income tax and wealth tax assesse and dependent of the respondent. The respondent also purchased a landed property in the name of his son, Master Vikram Balaji in Veerapandi Village, Salem in the year 2004 when the said Vikram Balaji was an Engineering College student. Thus, these purchases of properties not intimated to the Department as required under

Rule 18(2) of the Central Civil Services (Conduct) Rules, 1964. The value of the landed properties was taken as per the registered documents. Further the properties at Yercaud, Kumarasamipatti and Veerapandi Village includes houses constructed and subsequently renovated by the respondent and the value of these houses was taken as per the assessment of the valuation officer of the Income Tax Department.

5.In Statement B1, 67 immovable properties listed valued at Rs.14,54,551/-. Statement C is Income during the check period such as net salary, rewards, stipend amount to Dr.K.Sivavasavi Dr.Vijayavani, GPF withdrawal, housing loan, Survival benefit received from LIC, loan taken for purchase of two wheeler from Canara Bank, LSP Finance, Salem and the amount received from Vedachala Naicker, father-in-law of the respondent for purchase of a Maruti Esteem Car and also bank interest from Canara Bank, State Bank of India and HDFC Bank, as well as the sale of a motorbike are taken into account and the income given credit is Rs.20,94,000/-. Statement D is the expenditure during the relevant period for landline and mobile phones, payment for Medical College seats under Management quota, Engineering College seat under Management quota, petrol expenses for the vehicles, school fees, insurance paid, kitchen expenditure, items 1 to 23 and the total expenditure comes to Rs.26,64,160/-. Thus, by calculating Statements A, B, C and D, the disproportionate assets arrived at Rs.63,71,673, all given in tabulation which is extracted in the trial court judgment. Hence, the same is not extracted here.

6.A search was conducted on 09.07.2004 in the house of the respondent and inventories taken, document seized, thereafter present case filed after examining the witnesses, collecting documents and property statements collected through Department of the respondent, the explanation was found not satisfactory, charge sheet drawn. After obtaining sanction from the sanctioning authority, charge sheet filed before the Trial Court. During trial, 49 witnesses examined as PW1 to P49 and Ex.P1 to Ex.P177 marked. The accused not examined any witness but marked Ex.D1 to Ex.D17. On conclusion of trial, the Trial Court rendered a judgment of acquittal.

7.The learned Special Public Prosecutor for the appellant filed a written submission and referring to the evidence and judgment of the Trial

Court, made his submissions. He submitted that in this case, the disproportionate asset as per the charge sheet is to the tune of Rs.63,71,673/- which is extracted hereunder:

S.No.	Statements	Amount
i.	Statement A (Asset at the beginning of the check period)	Rs. 4,78,096/-
ii.	Statement B (Asset at the end of the check period)	Rs.62,79,609/-
iii.	Statement C (Income)	Rs.20,94,000/-
iv.	Statement D (Expenditure)	Rs.26,64,160/-
v.	Disproportion	**Rs.63,71,673/-**

8.The disproportionate asset as per the evidence adduced by the prosecution is as follows:

S.No.	Statements	Amount
i.	Statement A (Asset at the beginning of the check period)	Rs. 4,78,096/-
ii.	Statement B (Asset at the end of the check period)	Rs.43,85,147/-
iii.	Statement C (Income)	Rs.19,93,965/-
iv.	Statement D (Expenditure)	Rs.25,20,634/-
v.	Disproportion	**Rs.44,33,720/-**

9.The learned Special Public Prosecutor submitted that in this case, PW1 to PW49 examined, out of which, PW7, PW12, PW31, PW43 and PW47 not supported the case of the prosecution and declared hostile. He further submitted that there is no dispute with regard to Statement A and its valuation. Likewise, the respondent not raised any dispute with regard to item Nos.4 5, 6, 7, 8, 9, and 12. The disputed properties by the respondent are item Nos.1, 2, 3, 10, 11, 14, 15 and 16 in Statement B. Item 1 is a property of land purchased in Yercaud in the year 2004 by the respondent in the name of his second daughter Vijayavani for a consideration of Rs.4,90,000/- as per sale deed Ex.P97. PW28/Rathinam, Vendor of the property and PW29/P.Murugan, Assistant, SRO, Salem, are witnesses examined for this property. The Income Tax Department's valuer valued at Rs.7,65,000/-. The total value along with the stamp duty is valued at Rs.8,10,850/-. The valuation report is Ex.P158. In the valuation report, it is seen that the respondent was present. Vijayavani admits that she took loan of Rs.3,90,000/- from Canara Bank for purchase of the property. The Trial Court not accepted the valuation report/Ex.P158 for the reason that the valuer not examined as witness and hence deducted the difference amount of Rs.2,74,810/- from Rs.8,10,850/-.

10.With regard to item No.2, the landed property at Kumarasamipatti Village, Salem, was purchased in the year 1998 in the name of respondent's elder daughter Sivavasavi. The value of the property was shown as Rs.4,50,000/-, the stamp duty Rs.58,500/- and the registration fee Rs.4,530/-. PW39/Arumugam, Special Officer, Kalaimagal Sabha, Kumarapalayam, Namakkal District/Ex.Joint Sub Registrar I examined to prove the guideline value for the said property as Rs.8,75,000/-. This transaction included additional stamp value and registration charges and Ex.P127 is document No.518/1998. The approved valuer of the Income Tax Department valued the property and submitted a valuation report/Ex.P160 showing the value of the property as Rs.11,79,000/-. No document was produced to prove the income of Sivavasavi, elder daughter and instead the accused relied upon Ex.D11/Varathamana Pathiram stated to have been executed by Vedhachala Naikar, maternal grandfather. This document was marked through PW43/D.Jayasankar, Chartered Accountant. This document was found collected during the search conducted at the house of the accused on 09.07.2004 and no other document produced to show that gift was given by Vedhachala Naicker. Further, this purchase of land was not informed to the Department as could be seen from Ex.P85/property statement submitted by the respondent.

11.With regard to item No.3, a landed property at Irumbuliyur Village purchased in the name of Mallika, wife of the respondent for Rs,29,000/- with stamp and registration fees of Rs.6,200/- and registration fee of 500/-. This registration fee is claimed to have been paid by PW30/vendor of the property. This property was purchased in the year 1993. The prosecution value of the property is Rs.35,200/-. PW9/Assistant from Tambaram SRO confirms the valuation and Ex.P29 is the registered document No.4579/1993. The Trial Court deducted the amount of Rs.500/- and valued the property at Rs.34,700/- as claimed by the respondent.

12.With regard to item No.10, 2 acres of land at Veerapandi Village, Salem was purchased in the name of Vikram Balaji vide document/Ex.P153 for Rs.1,35,000/- and stamp charges of Rs.22,250/-. The respondent intimated the purchase to his office as could be seen from Ex.P85. At the time of purchase of the property, Vikram Balaji was a student. The total value of the property is Rs.1,57,280/-.

13.Item No.11 is a property of 2.50 acres at Veerapandi Village purchased in the name of Mallika in the year 2004 through Ex.P154 for Rs.4,75,000/- and additional stamp charges collected and the total value is Rs.5,29,305/-. The prosecution in the charge sheet shown the value of said property as Rs.9,57,480/-. But the Trial Court deducted the difference amount of Rs.4,28,175/-.

14.With regard to item Nos.14, 15, and 16, the same has been proved by Ex.P26, Ex.P27 and Ex.P28. The total value of these properties is Rs.2,26,597/-. With regard to item No.14, it is a land at Nathampet village, purchased by Mallika for Rs.1,15,486/- and PW8/SRO confirms the same. The respondent claimed that the said property was gifted by Mallika's brothers, Jayavel and Tiruppur Kumaran, as directed by her father Vedhachala Naicker as per Ex.D11. The respondent failed to produce any other document to show that the property was really gifted to Mallika by her brothers.

15.With regard to item No.15, a land at Sevilimedu Village, Kanchipuram was purchased vide Ex.P27 in the name of Mallika for Rs.23,935/-. PW8/SRO and PW12/Ramanan, brother of Mallika spoken about this property. The respondent claimed that this property was gifted by her brother Ramanan and Thatchinamurthi as directed by Vedhachala Naicker.

16.With regard to item No.16, it is a land at Nathampet Village, Kanchipuram purchased through document Ex.P28 for a consideration of Rs.87,156/-. PW8/SRO confirms the same. The explanation given by the respondent was that the said property was gifted by Mallika's brother Tirupur Kumaran as directed by Vedhachala Naicker and relied upon Ex.D11 but failed to produce any document to show that the property was really gifted to Mallika. The Trial Court held that Ex.D11/Varthamana Pathiram is relevant and admissible in evidence and deducted a sum of Rs.2,26,577/-, which is not proper and unacceptable.

17.He further submitted that the prosecution calculated the total value of the immovable property as per the evidence of the prosecution witness as Rs.34,33,513/- instead of Rs.43,46,962/-.

18.Likewise, the Trial Court calculated the total value of immovable assets in Statement B as Rs.23,25,589/-.

19.With regard to Statement B1 immovable properties, the total value is Rs.14,54,551/- as per the charge sheet, in which item Nos.48 to 51, the prosecution was unable to produce any documents for these items and deducted a sum of Rs.1,64,000/-.

20.With regard to item No.57, Sivavasavi purchased a Maruti Zen Car for Rs.3,38,917/- after her marriage and hence, the same had been deducted.

21.With regard to item No.58, purchase of Maruti Esteem car in the name of Vijayavani for a sum of Rs.90,000/-, the respondent intimated about the purchase of car to his Department in Ex.P85 only on 10.03.2006, which is after registration of FIR. Hence, it is a clear afterthought and cannot be accepted.

22.The prosecution calculated the total value of Statement B1 for immovable properties as Rs.9,51,634/- instead of Rs.14,54,551/-. He further submitted that Ex.P147 is the search list along with inventory of articles. The Trial Court held that PW49/Investigating Officer stated that for items Nos.1 to 55, which is shown in the inventory list, no documentary proof collected and Ex.P147 is not proved in the manner known to law and rejected the claim of the prosecution with regard to item Nos.48 to 51. Hence, the Trial Court deleted it from the movable assets.

23.The Trial Court deducted a sum of Rs.3,38,917/- for item No.57 of Statement B1. The Trial Court accepted the claim of the respondent for Rs.8,33,974/- with regard to item Nos.12, 21, 22, 23, 24, 58, and 67 and deducted a sum of Rs.1,17,660/- from Rs.9,51,634/-. The Trial Court calculated the total value of moveable assets in Statement B1 as Rs.8,33,974/-.

24.With regard to Statement C i.e. income, the total value of income fixed by the prosecution as per the charge sheet is Rs.20,93,965/-, in which item No.14, it is shown that Sivavasavi took a car loan of Rs.1 lakh from Maruti Countrywide Auto Finance Limited and the prosecution deducted a sum of Rs.1 lakh for item No.14 stating that at that time, Sivavasavi was an independent person having her own income. Hence, the total value of the statement calculated by the prosecution as per the evidence is Rs.19,93,965/-.

25.With regard to Statement D expenditure, the value calculated by the prosecution is Rs.26,64,160/-. It is submitted that the prosecution assessed the domestic expenditure of the accused at 33% of the gross salary and relied upon the evidence of PW44 and PW49. The prosecution calculated the domestic expense of the gross total income as Rs.5,12,190/-. The Trial Court also took the same value towards domestic expense.

26.With regard to item Nos.2 and 3, the prosecution calculated the landline telephone bill expense as Rs.98,327/- and mobile phone charges as Rs.43,010/- and examined PW18/Chief Accounts officer, BSNL, Salem and PW19/Officer in Aircel Office, Salem in this regard and produced Ex.P52 to Ex.P54. The Trial Court took the telephone bill as Rs.98,327/- as per the prosecution claim but disallowed the mobile phone expense of Rs.43,010/- giving reason that Vijayavani is a Doctor by profession having independent source of income.

27.With regard to item No.4, educational expenses of Sivavasavi, the prosecution has calculated the educational expenses as Rs.4,55,810/-, for which the prosecution relied upon the evidence of PW16/Head Clerk, Sri Sithartha Medical College, Agalgort, Tumkoor and Ex.P48 and Ex.P49. The respondent claimed that he had spent only Rs.2,89,715/- and not Rs.4,55,810/- towards educational expenses. From Ex.P49 it is confirmed that Sivavasavi was admitted in MBBS course in the academic year 1993–1994 and paid a sum of Rs.1,23,315/- towards tuition fees and by letter dated 07.10.2005, Ex.P48, it is seen that a sum of Rs.40,000/- was paid as mess fees. The respondent admitted that a sum of only Rs.2,89,715/- was paid towards educational expenses of Sivavasavi and not the amount claimed by the prosecution. The Trial Court held that receipts shown confirms that a sum of Rs.2,89,715/- is recorded in the receipt and there are no records to show for mess bill payments. The Trial Court also held that the prosecution had excessively calculated Rs.1,96,195/- which is not proper considering the fact that Sivavasavi was a student during the relevant period staying in Hostel in Tumkoor and continued her education and necessarily have to utilize hostel and mess service and paid charges.

28.With regard to Item No.5 Educational Expenses of Vijayavani, the second daughter of the respondent, the prosecution calculated Rs.3,78,572/- and examined PW42/Registrar, Annamalai University and marked Ex.P137. She was a student during the period 1998 to 2003. The respondent claimed that he had incurred only Rs.1,55,277/- and further educational loan of Rs.2,60,000/- obtained as advance from his Department when his daughter joined MBBS course in the year 1998–1999. From Ex.P137, it is seen that the respondent paid a sum of Rs.42,285/- towards tuition fees for the academic years 1999–2000 to 2002–2003, He has also paid Rs.6,400/- towards examination fees and Rs.69,887/- towards hostel fees. Hence the total educational expenditure of Vijayavani is Rs.3,78,572/-. But the Trial Court given a finding that as pex Ex.P17, receipt is only for Rs.1,55,277/- and PW49/Investigating Officer also refers to Ex.P137 and held that a sum of Rs.2,23,295/- had been excessively calculated.

29.With regard to Item No.6 College Fees Paid for Vikram Balaji, the prosecution calculated educational expenses as Rs.2,24,463/- towards college fees. PW15/Administrative Officer of Kongu Engineering College, Perundurai was examined and Ex.P47 was marked through him. The respondent claimed to delete the entire amount of Rs.2,24,463/- since the educational expenses of his son was borne by grandfather, Vedhachala Naicker and relied upon Ex.D11. Despite there being no reliable evidence to confirm the same, the Trial Court deducted a sum of Rs.50,000/- from Rs.2,24,463/-.

30.With regard to Item No.7 Petrol Expenses for Maruti Zen, the prosecution calculated Rs.1,37,276/- in respect of Maruti Zen car in the name of Sivavasavi. The Trial Court deducted the said amount on the ground that there were no bills supporting the calculation and further the car was purchased by Sivavasavi after her marriage.

31.With regard to Item No.8 Petrol Expenses of Rs.30,000/- for TVS Motor Bike, the respondent contended that there was no evidence that the vehicle belonged to him and PW49/Investigating Officer admitted that there is no evidence with regard to calculation of petrol expenses. On that basis, the Trial Court deducted the entire amount of Rs.30,000/- which is not proper.

32.With regard to Item No.9 Petrol Expenses for Suzuki Fiero Motorcycle, PW49 admitted that there is no document to show that the vehicle belong to the respondent and there was no document to prove the petrol expense. Hence, the amount of Rs.8,000/- had been deducted. Likewise, with regard to Item No.10 Petrol Expenses of Rs.8,000/- for TVS Scooty, this amount also deducted for the same reason. Failing to consider the fact that the vehicles were in usage by the respondent and his family members and in normal course no vehicle will run in air and hence, necessarily some petrol expense ought to have been incurred and hence, a rationale outlook should have been taken by the Trial Court and deleting the entire claim is not proper.

33.With regard to Item No.11 Marriage Expenses of Sivavasavi, elder daughter of the respondent, the prosecution calculated the marriage expenses at Rs.2,19,000/- and relied upon the evidence of PW36/Manager of Raja Muthaiah and Rani Meiyammai Marriage Hall and Ex.P114 to Ex.P118 which are the application and receipts given by the Marriage hall. Ex.P114 confirms that the marriage hall booked in the name of the respondent and that he had paid a sum of Rs.80,000/- towards hall charges. Ex.P115 to

Ex.P117 are receipts issued in the respondent's name. A sum of Rs.6,367/- was subsequently refunded after the marriage and hence, the prosecution calculated the total marriage expenditure, including food and other incidental expenses at Rs.2,19,000/- The respondent referring to Ex.P114 to Ex.P118 contended that he had spent only Rs.73,633/- towards marriage expense. Accepting the said contention, the Trial Court deducted a sum of Rs.1,45,367/- as excess from the total expenditure of Rs.2,19,000/-. Once it is proved that the marriage hall was booked in the respondent's name, it is quite natural that the respondent should have incurred other marriage expenses. No explanation offered to show expenses were shared equally with the bridegroom's family. In such circumstances, outright deletion of the remaining marriage expenses, including food and related expenditure, is not proper.

34.With regard to Item No.15 repayment of loan by Vijayavani of Rs.3,90,000/- availed from Canara Bank for purchase of property at Yercaud, PW5/Senior Manager of Canara Bank was examined and Ex.P16 to Ex.P20 marked. The respondent contended that Ex.P162/ housing loan application stood exclusively in the name of Vijayavani and PW28, vendor of the property confirmed that the property was purchased by Vijayavani. Hence, a sum of Rs.1,66,000/- has to be deducted and the Trial Court also deducted the same.

35.With regard to Item No. 16 – Repayment of Loan for Suzuki Fiero Motorcycle in the name of Mallika and a sum of Rs.38,430/- recorded in expenditure. PW33/Accountant, LSP Finance, Salem confirmed the loan availed by Mallika and produced Ex.P104 to Ex.P110. The contention of the respondent is that Mallika availed loan in her own name and she is an independent person having independent income and hence, the same has to be deducted. The Trial Court accepted the contention and deducted the expenditure amount of Rs.38,430/-.

36.With regard to Item No.17 Loan availed for purchase of Maruti Zen Car by Sivavasavi and the same has been deducted for the reason that car was purchased after her marriage. With regard to Item No.18 repayment of Loan for TVS Scooty in the name of Mallika. The prosecution claimed a sum of Rs.18,000/- as expenditure and PW33/Accountant of LSP Finance was examined and he produced Ex.P104 to Ex.P110.

37.With regard to Item No.19 payment of insurance premium for vehicles for the period 1996 to 2004 a sum of Rs.16,602/- paid. PW20/Senior Assistant of New India Assurance Company confirmed the payments and marked Ex.P55 to Ex.P59. The respondent contended that a sum of Rs.5,901/- had been paid by Mallika, Sivavasavi and Vijayavani from their independent income and therefore, the same ought to be excluded. The Trial Court, however, without any supporting evidence, deducted a sum of Rs.10,701/- from the total amount of Rs.16,602/-.

38..With regard to item Nos.21 and 22, it is the school fees being paid for Vijayavani and Vikram Balaji Rs.3,570/- and Rs.20,000/- respectively. But the Trial Court deducted Rs.3,570/- and Rs.20,000/- from the said expense stating that the prosecution not produced any documents or examined any witness.

39.With regard to item No.23, payment of rent for the locker in the name of Mallika at State Bank of India, the prosecution recorded the expenditure of Rs.3,000/- and PW1 confirmed this. The Trial Court deducted this expenditure.

40.Thus the prosecution calculated the expenditure as Rs.25,20,634/- but the Trial Court calculated the expenditure as Rs.15,29,533/- and held that the amount of Rs.41,08,254/- was omitted to be taken as income as claimed by the respondent.

41.He further submitted that the properties have been valued by the Valuation Officer of Income Tax Department, who submitted his report and for non-examination of the Valuation Officer rejecting the valuation report in toto is not proper. In this regard, he relied upon the judgment of the Apex Court in the case of ***Devenderpal Singh Vs State of NCT of Delhi*** reported in ***2002 Crl.LJ 2034*** and submitted that there is a statutory presumption under Section 114 of Indian Evidence Act that judicial and official acts have been regularly performed and Section 114 to be construed that when official act has been proved to have been done it is presumed to have been regularly done. In the above case, the valuation officer of Income Tax Department under Ministry of Finance, Government of India is an independent agency and this valuation officer conducted the valuation and the accused were present at the time of valuation. Ex.P158, Ex.P159 and Ex.P160 confirm the same. The reports shows the details of the property and valuation of the same. The Trial Court had given undue importance to Ex.D11/Varthamana Pathiram which is said to have been executed by Vedhachala Naicker, father-in-law of the respondent who claim he had given gifts and paid huge amount to the respondent, his daughter and his grandchildren. Ex.D11 is a created one and it has been marked through PW43/Chartered Accountant during cross examination was declared hostile. The marking of Ex.D11 was objected and PW43 not involved in it either directly or indirectly. Ex.D11 does not show at which place and on which date it was executed though PW43 claimed that it is executed in his Office but there is no reference or he had not signed in Ex.D11. Further, Ex.D11 shows that stamp papers purchased only on 01.09.2004 hence Ex.D11 created for the purpose of giving explanation in the above case. It is to be noted that in Ex.D11 though it is notarized by Advocate Balakrishnan, the respondent not taken any steps to examine the said Balakrishnan, hence as per Section 10 burden of proof of fact which is within the knowledge of the respondent to prove the same.

42.In this regard, he also relied upon the judgment of the Apex Court in the case of ***P.N.Krishna Lal vs. State of Kerala*** reported in ***1995 SCC***

Crl. 466, wherein the proposition laid down is "it is settled law even under general criminal jurisprudence that Sections 105 and 106 of Evidence Act place a part of burden of proof on the accused to prove facts which are within his knowledge.

43.He further relied upon the judgment of the Apex Court in the case of ***State rep. by Inspector of Police, Vigilance & Anti-Corruption Branch, Tiruchirapally, Tamil Nadu Vs V.Jayapaul*** reported in ***AIR 2004 SC 2684***, wherein the Apex Court held that there is no illegality in the same Officer, who registered the case conducting the investigation unless some prejudice is shown. In this case, the respondent had not shown any prejudice, in view of the same PW49 who registered FIR and conducted investigation is proper.

44.Further, the contention of the respondent is that he was not given final opportunity notice and hence, unable to give explanation for the properties held by him is not sustainable. The Apex Court in the case of ***K.Veerasamy vs. Union of India*** reported in ***1991 SCC (Crl) 734***, held that after collection of all material the Investigating Officer must give an opportunity to the accused and call upon him to account for the excess of assets over his known source of Income and then decide whether the accounting is satisfactory or not, would be elevating the Investigating Officer to the position of an enquiry Officer or Judge. The Investigating Officer must collect material from all sides and prepares a report and file it in the Court as charge sheet. Further, in this case, the respondent was called upon to give his explanation and as per Ex.P85 Statement 1 to 3 on movable properties submitted on 10.03.2006 was also considered and thereafter only charge sheet filed. Thus the Trial Court merely gone by Ex.D11 which is a created document and the explanation given by the respondent that his wife, daughters and son are independent person and also having received properties as gift and regular cash gifts from Vedhachala Naicker. Further a petition seeking for return of Ex.D11 filed in Crl.M.P.No.202 of 2007 along with affidavit of Vedhachala Naicker on 14.04.2007, in which, no objection for return of Ex.D11 given which was given undue importance which is not proper. Hence, the judgment of the Trial Court is perverse and the respondent to be appropriately convicted in the above case.

45.The senior counsel appearing for the respondent submitted that during the check period 01.01.1993 to 09.07.2004, the respondent not purchased any immovable property. During the check period, properties purchased by the family members – his wife Mallika, two daughters Sivavasavi and Vijayavani and a minor son – Vikram Balaji out of their own source of income and they have not been examined in this case. LW14 Mohammed Iqbal and LW31 Sivalingam not examined as witnesses. These two persons sold their properties listed in Sl.Nos.1 and 2 in Statement B and there was no chance to cross-examine them.

46.Likewise, the valuation officer who assessed the properties listed in Sl.Nos.1, 2 and 11 was not examined. The respondent's father-in-law Vedhachala Naicker who gifted the family members of the respondent was not examined. The vendors of the property can confirm the value of the property considering the circumstances and therefore there is difference in the market value and guideline value.

47.The respondent not abused his official position to amass wealth as deposed by PW3/sanctioning witness. The sanction/Ex.P7 dated 21.12.2006 is invalid without application of independent mind. It was only on the compulsion of CBI sanction granted. In this case, FIR registered by PW48 on 04.04.2005 and thereafter, on completion of investigation, charge sheet filed by the same officer on 10.01.2007 which is prohibited and confirm no independent investigation conducted and investigation is with prejudice. In this case, none of the witnesses stated that the respondent's wife, daughters and son purchased the properties during the check period from the money and resources of the respondent. He further, referred to the tabulation submitted before the Trial Court along with explanation.

48.PW49 after registration of FIR/Ex.P149 in Crime No.18 of 2005 on 04.04.2005 conducted search of the residential premises of the respondent on 06.04.2005 and several documents, passport, gold and silver articles seized listing 23 items. The inventory also taken on the articles available in the house listing 127 items by one Ananthakrishnan, Inspector of Police, CBI and Billi Christudas. Simultaneously search was conducted in the residence of respondent's father-in-law Vedhachala Naicker at Kanchipuram by one Raj Alexander seizing 19 items, of which, 18th item is a bunch of loose sheets marked 1 to 214 containing Varthamana Pathiram @ Uruthimozhi Pathiram executed on 09.09.2004. Inventory found in the house of respondent's father-in-law marked as Ex.P151. Search list for the search conducted in Ariyanur Village, Veerapandi by Billi Christudas and Ananthakrishnan marked as Ex.P152. He further submitted that on 09.07.2004 search was conducted in the house of respondent in a case in Crime No.46 of 2004 by Billi Christudas and 10 documents seized and inventory listing 94 items taken. Thus, his house was searched and inventories taken twice. The respondent not disputed the posting and promotions submitted by the appellant.

49.He further submitted that the properties purchased in the name of his wife Mallika vide Document No.1727/1993 - Ex.P23, Document No.4579/1993 – Ex.P29, Document No.3079/1995 -Ex.P24 and Document No.458/2004 – Ex.P154, were purchased by her own source of income.

50.Six properties were purchased by his elder daughter K.Sivavasavi, out of which, one property was on 18.10.2000 i.e., after her marriage on 09.03.2000. The other properties were purchased out of her own income and by the gifts given by her maternal grandfather Vedhachala Naicker.

51.The second daughter Vijayavani purchased a property in Yercaud by availing bank loan and from the gift given by her grandfather including the property at Veerapandi Village.

52.His son purchased a property vide Ex.P153 in Veerapandi village is again through the gift of his grandfather.

53..In this case, the disputed items are item Nos.1, 2, 3, 10, 11, 14, 15 and 16 in Statement B. With regard to item No.1 which is a property in Yercaud, the same was purchased from PW28 on 03.03.2004 under Ex.P97 and the sale consideration is Rs.4,90,000/-. The prosecution admits that Vijayavani availed loan of Rs.3,90,000/- from Canara Bank and the valuer of the property not been examined. On the other hand, PW28 deposed that the property sold by him remains as it was sold. Hence there was no value addition.

54.With regard to item No.2, it was purchased by his elder daughter Sivavasavi on 19.03.1998 under Ex.P127, it is valued as Rs.11,79,000/-.

55.Item No.11 was purchased by respondent's wife on 01.03.2004 through Ex.P154 and it is valued as Rs.9,57,480/-. Sale Deed Ex.P97 confirms that the property was purchased fro Rs.4,90,000/- and after adding stamp charges, it is Rs.5,36,000/-, under Ex.P127 property was purchased for Rs.4,50,000/- and after adding stamp charges it is Rs.5,27,600/- and under Ex.P154 property was purchased for Rs.4,75,000/- and after stamp charges it is Rs.5,29,305/-. But the prosecution boosted the value and shown higher value. Hence, the amount of Rs.2,74,810/-, Rs.6,51,400/- and Rs.4,28,175/- has to be deducted.

56.The prosecution attempted to project that the valuation reports Ex.P58, Ex.P159 and Ex.P160 for the above three properties have given a higher valuation and hence, it had shown value of the property as Rs.8,10,850/-, Rs.11,79,000/- and Rs.9,57,480/-. In view of non-examination of the valuer, admission by vendor of the property and non-examination of LW14/Mohammad Iqbal and non-examination of LW31/Sivalingam for the second property, the Trial Court held that the value addition cannot be added. Hence, the amount of Rs.13,54,385/- was deleted.

57.Item Nos.14, 15 and 16 are the properties which were gifted by the brother of Mallika which has been made as Sale Deed by Ex.P26, Ex.P27 and Ex.P28 but it is only a gift deed which was confirmed by PW12 and corroborated by the evidence of PW43/Chartered Accountant.

58.He further submitted that respondent's father-in-law Vedhachala Naicker filed a petition seeking return of Ex.D11 along with an affidavit in CMP.No.202 of 2007 and the prosecution had given no objection. Hence the petition and the contents in the affidavit are not disputed. Hence, these values to be excluded.

59.Likewise, with regard to Item Nos.3 and 10, it was purchased by respondent's wife from the amount given by her father and hence, a sum of of Rs.23,25,589/- is the actual amount at the end of the check period as regards movable properties.

60.With regard to movable properties. Ex.P147 is the inventory list which is a photocopy. The original has not produced by the prosecution and the Trial Court had rightly rejected the claim of the prosecution finding that inventory list is only a photocopy and not proved in the manner known to law.

61.With regard to item No.57 Maruti Car, it was purchased by Dr.Sivavasavi after her marriage on 09.03.2000 and the prosecution also not relied on the expenses incurred in purchase of the car. The prosecution fixed the value of the movables at Rs.9,51,634/- and the Court considering the claim of the respondent deleted an amount of Rs.1,17,660/- and held that the movable asset held by the accused is to the tune of Rs.8,33,974/-.

62.As regards the income of the accused in Statement C the prosecution claimed that the income is Rs.20,93,465.76, in which, Rs.1 lakh amount was deducted since it is the independent income of Dr.Sivavasavi. Hence, the Court fixed the income at Rs.19,93,965.76. As regards the expenditure, 23 items have been shown.

63.With regard to domestic expenditure, though the prosecution claimed that 33% of the gross income has been calculated as Rs.5,12,190/-, the Trial Court also confirmed the same. But it is not the gross income it is only the net income, of which 33% is to be deducted. Hence, the corresponding expenditure to be deducted.

64.As regards the telephone bill expenses of Rs.98,327/-, the learned senior counsel submitted that PW18/BSNL official admits that landline telephone is in the name of respondent's wife Mallika and the telephone charges paid has been taken as Rs.98,327/- and this expense has already been calculated in the domestic expense, hence the same to be deleted.

65.With regard to item No.3 mobile phone charges PW19/Officer in Aircel confirms that mobile phone is in the name of Vijayavani and she is having independent income and hence, it cannot be added to the account of the respondent.

66.With regard to item No.4 it is Hostel fee of elder daughter Sivavasavi, the prosecution though claimed that the respondent incurred Rs.4,55,810/- but produced receipts to the tune of Rs.2,89,715/- which the Trial Court accepted.

67.Likewise with regard to Tuition fees and mess bill of second daughter Vijayavani, though it is claimed Rs.3,78,572/- the prosecution would produce documents only to the tune of Rs.1,55,277/- and the same has been accepted.

68.With regard to College fee of Vikram Balaji, the prosecution projected that Rs.2,22,463/- was incurred by the respondent but considering the recitals in Ex.D11, Rs.50,000/- had been deducted and Rs.1,72,463/- was added as expenditure.

69.With regard to item Nos.8 to 10 which is petrol expenses for the vehicles, a sum of Rs.46,000/- was deleted.

70.The marriage expense was projected as Rs.2,19,000/-, PW36 examined and Ex.P114 to Ex.P118 marked but the receipts produced only to the tune of Rs.73,633/-, hence the balance amount had been deleted.

71.With regard to property purchased in Yercaud, PW6/Chief Manager, Canara Bank admits that Vijayavani obtained loan of Rs.3,90,000/-

for purchase of property and the balance amount was paid by the amount gifted by her maternal grandfather and hence, this expenditure to be deleted.

72.The repayment of loan for Suzuki Fiero Motorcycle, no document produced to confirm that Mallika is the owner of the bike and hence, the same has to be deleted. Item No.17 is in the name of elder daughter Sivasavi who purchased the property by her own income and hence, the same to be deleted.

73.Item No.18 is the TVS Scooty loan which was paid by the respondent's wife. Likewise, for the LIC premium a sum of Rs.5,901/- alone can be taken and the balance amount to be deleted.

74.With regard to item No.20, there is no dispute and item Nos.21 and 22, the appellant failed to produce any document to confirm the payment of school fees. With regard to item No.23, it is the locker rent of Rs.3,000/- which was paid by Mallika and not by the respondent. Thus the Trial Court found that the respondent incurred expenditure of Rs.15,29,533/- but from the above submissions, the learned senior counsel submitted that the accused incurred expenditure of only Rs.13,45,978/-.

75.He further submitted that certain of the incomes not been considered and omitted by the accused. He would submit that in the account of respondent's wife Mallika, foreign remittance during October 2003 to June 2004 to the tune of 20000 US Dollars and 5500 US Dollars having corresponding value of Indian rupee Rs.4,06,955/-, Rs.2,67,134/-, Rs.2,28,871/- and Rs.2,47,327/-, in total Rs.11,50,287/- had to be added. PW4, PW5 and PW11 confirm the remittance of US Dollars. A cheque of Rs.2,15,000/- was issued by Dr.Sivavasavi Ex.P3 and Ex.P15 favouring her mother Mallika. PW4/Senior Manager, Canara Bank confirms the same. Likewise the loan to the tune of Rs.10 lakhs obtained from PW47 , who is the co-brother of the respondent, confirms that he is in the whole side vegetable business and also doing agriculture and real-estate business having sufficient means and confirms that his father-in-law Vedhachala Naicker given him Rs.20 lakhs on several occasions apart from jewels to his wife, he is having substantial income in his business and he gave loan to his brother-in-law and sister-in-law to the tune of Rs.10 lakhs and the Pronotes which are dated 28.04.2004, 24.03.2004, 27.02.2004 and 25.02.2004 has been marked as Ex.C1. This amount of Rs.10 lakhs has not been taken in income.

76.Likewise the sale proceeds of jewels during 1995-1996 to Selvamaaligai Jewellers, PW25 confirms the same but this amount of Rs.55,745/- had not been taken in income. The sale of two plots bearing Nos.2 and 102 at Potheri Village on 16.12.2003 through Baskar, Power of Agent of Mallika and the same was intimated to the Department in Ex.P85, the sale deeds marked as Ex.D2 and Ex.D3 and the sale consideration received was Rs.1,99,610/- and Rs.2,00,388/-, hence the income of Rs.3,99,998/- for sale of two plots have to be added in income of the respondent.

77.Likewise amounts gifted by Vedhachala Naicker to the respondent and his family members, namely, Rs.5 lakhs to Dr.Sivavasavi, Rs.4 lakhs to Vijayavani, Rs.3,50,000/- to Vikram Balaji which was confirmed by PW43 and PW49, hence the amount of Rs.12,50,000/- to be added. Likewise GPF withdrawal of the respondent on 16.02.1996 and the uniform allowance not been considered.

78.The respondent in his 313 Cr.P.C. examination given explanation and Rs.19,000/- has to be added, in total according to the respondent, a sum of Rs.41,08,254/- have been omitted. Thus, on a conservative estimate, the income and expenditure has to be taken as follows:

Description	Prosecution	Court Finding
Immovable Asset Deducted Amount	Rs.39,07,051/- - Rs.15,81,462/- =	Rs.23,25,589/-
Movable Asset Deducted Amount	Rs.9,51,634/- - Rs.1,17,660/- =	Rs.8,33,974/-
Proved Expenditure Amount of Accused		Rs.15,29,533/-
Total Pecuniary resources possessed by the Accused and his family members at the end of the check period		Rs.46,89,096/-

79.Thus, the respondent has got lawful source of income of Rs.61,02,254/- and hence, he was having income more than the disproportionate asset projected against him. The Trial Court by a well reasoned judgment extracting the worksheet produced by the respondent along with explanation and evidence have rightly considered and rendered the judgment of acquittal. The appellant unable to pinpoint any wrong calculation and only questions the discretionary judgment of the Trial Court which the Trial Court on its own wisdom on the available materials and evidence had rightly come to a conclusion that the prosecution failed to prove the case on the other hand the respondent had sufficient income.

80.In support of his submission, learned counsel for the respondent relied on the decision of the Hon'ble Apex Court in ***K.Prakashan v. P.K.Surenderan*** reported in ***(2008) 1 SCC 258*** for the point that if two views are possible, the appellate Court shall not reverse the judgment of acquittal only because another view is possible to be taken. The appellate Court jurisdiction to interfere in case of the appeal against acquittal is limited. Hence, the judgment of acquittal rendered by the lower appellate Court is not to be disturbed.

81.Considering the submissions made and on perusal of the materials, it is seen that in this case, at the time of registration of FIR the respondent was Superintendent in Central Excise. FIR/Ex.P149 registered by PW49 on 04.04.2005, search was conducted at the residence of the respondent in Salem and farm house in Veerapandi by Ananthakrishnan and Billi Christudas on 06.04.2005 but both Inspectors of CBI not examined as witnesses. Further, the endorsement and authorization to conduct search by these two Inspectors not produced. The house of the respondent's father-in-law Vedhachala Naicker in Kanchipuram was searched by Raj Alexander and the same is marked as Ex.D1. It is pertinent to note that in the search conducted in the house of the respondent as well as in his father-in-law's place, several documents seized and inventories prepared. One of the vital document which was seized is Ex.D11/Varthamana Pathiram @ Urudhimozhi. Ex.D11 is by Vedhachala Naicker who is the father of respondent's wife Mallika and grandfather of Sivavasavi, Vijayavani and Vikram Balaji. Now to consider the status of respondent, it is seen the evidence of PW11/Gopalakrishnan, his son P.G.Dinakaran married elder daughter of the respondent, PW12/Ramanan, son of Vedhachala Naicker and brother of Mallika, PW47/Mani, son-in-law of Vedhachala Naicker who married elder sister of Mallika and PW43/Chartered Accountant all considered. From the evidence of PW12, it is seen that Vedhachala Naicker had four sons and three daughters. His sons are Ramanan/PW12, Thatchinamurthi, Jayavel and Tiruppur Kumaran and three daughters Mallika, wife of respondent, Kamalaveni and Chandra. Vedhachala Naicker was doing agriculture and running a grocery shop and he was also doing real estate business in Kanchipuram. He developed a layout in the name of

Vedhachala Naicker Nagar plotting out hundreds of plots.

82.PW47 is the son-in-law of Vedhachala Naicker states the financial status of his father-in-law, giving gift to his wife and also helping in his business. PW43/Chartered Accountant looking after the accounts of Vedhachala Naicker from 1995 onwards and filing income tax returns of Vedhachala Naicker periodically, which are marked as Ex.P139 to Ex.P146. He confirms Vedhachala Naicker was in the real estate business, created a Nagar by name Vedhachala Naicker Nagar in Kanchipuram and he is one of the important person in Kanchipuram. Ex.D11/Varthamana Pathiram was prepared by Vedhachala Naicker in consultation with PW43. Vedhachala Naicker also executed a Will in the year 1997 in favour of Vikram Balaji in respect of a property at Tambaram. Further Vikram Balaji, grandson of Vedhachala Naicker receives rental income from Tambaram property and Vedhachala Naicker had been supporting his grandson and granddaughters in their educational expenses.

83.PW11/Gopalakrishnan, who is the Co-parent-in-law of the respondent submits that he has two sons and one daughter, all the three are residing in America. His eldest son is P.G.Dinakaran, working as Software Engineer in America from 1996 and he married eldest daughter of respondent Dr.Sivavasavi on 09.03.2000 at Arulmigu Sugavaneshwarar Temple at Salem. He confirms that Vedhachala Naicker purchased a house and vacant plots for his daughter-in-law and she went to America along with his son five months after the marriage and prior to the marriage, she was a practising Doctor. His son earned 20000 USD in the year 2000 and his son was having NRI account in State Bank of India, Guindy. During the year 2003-2004, his son P.G.Dinakaran sent 5500 USD to his mother-in-law Mallika for purchasing properties. He further states that his daughter-in-law Dr.Sivavasavi had given Rs.2,15,000/- to her mother Mallika and thus affluence of Vedhachala Naicker is not in dispute and also Vedhachala Naicker regularly gifting his daughter, grandson and granddaughters.

84.Vedhachala Naicker was also Panchayat President and a prominent person in Kanchipuram having sufficient means and stature. Thus, Ex.D11 which was seized during house search cannot be questioned of doubted. It is also to be seen that PW43/Manager, Cooperative Urban Bank, Kanchipuram confirmed that he knew Vedhachala Naicker from the year 1976.

Vedhachala Naicker was a Director of the Bank, he was the President of the Bank from 1982 to 1988. He is a rich man, he did real estate business and he is having an area by name Vedhachala Naicker Nagar. This fact has been considered by the Trial Court in the well reasoned judgment and thereafter had considered the evidence of witnesses. It is also to be seen that the Trial Court considered the affidavit filed by Vedhachala Naicker in C.M.P.No.202 of 2007 seeking return of document/Ex.D11 and the prosecution had given no objection and not raised any doubt with regard to the affidavit filed by Vedhachala Naicker. This affidavit re-confirms the contents in Ex.D11 and hence, for the second time Vedhachala Naicker re-confirmed the gifting of cash and properties to his daughter Mallika, grandson Vikram Balaji and granddaughters Sivavasavi and Vijayavani. Added to it, PW49/Investigating Officer confirms that he examined Vedhachala Naicker who confirmed executing of Ex.D11. Further, Vedhachala Naicker even at the time when PW49 enquired him he was aged 87 years and when he reached his 90s, he was in the fragile health, he filed a petition before the Trial Court that he was not in a position to climb stairs and appear before the Court and hence, he may be examined by commission and examination to be completed at the earliest. But unfortunately before conclusion of the prosecution side evidence, Vedhachala Naicker passed away, hence prior attendant facts gains importance for consideration. It is to be seen that the Trial Court observed that on 14.08.2015 a medical certificate of Vedhachala Naicker dated 10.08.2015 issued by Dr.K.P.Kameshwaran, Government Assistant Surgeon, Kanchipuram produced to show that Vedhachala Naicker aged about 97 years with fragile health and he is suffering from Arthritis and hence, he is unable to climb stairs and for that reason, Vedhachala Naicker could not be produced before the Court and give evidence in this case.

85.The fundamental flaw committed by the prosecution in this case is with regard to item Nos.1, 2 and 11 in Statement B to project that the accused incurred substantial expenditure in developing the property like construction. Admittedly, the valuation report though marked as Ex.P158 to Ex.P160 but the valuer of Income Tax Department not examined to prove the same. Mere marking of documents will not be sufficient, the author of the document has to speak to the contents of documents and facts. In this case, the valuation report marked is of no consequence and hence, the Trial Court rightly not considered the valuation report. Added to it, PW28 confirms that property at Yercaud was not developed and it remains as it was sold and LW14 Mohammed Iqbal and LW31 Sivalingam, vendors of the property not been examined. Thus there is no evidence to substantiate value addition to the property. In this case, the Trial Court considered the evidence of each of the witnesses and in detail discussed the same. Further valuation report is a subjective satisfaction of the valuer which depends on various factors and individuals perception. Hence, non-examination of the valuer is fatal to the prosecution case.

86.It is to be seen that Ex.C1 is the Pronotes and PW47 confirms the loan of Rs.10 lakhs to the respondent and his wife Mallika which fact has been informed by the respondent to his Department. PW26/Inspector of Central Excise confirms that the same has been intimated to the Department. Likewise, the remittance of US Dollars in the account of Mallika are not in dispute, the concerned Bank Managers viz., PW5/Senior Manager, Canara Bank, PW1 and PW2, Manager of State Bank of India, all confirmed the remittance of US Dollars. PW11, who is the Co-parent-in-law reconfirms the same. Thus remittance of US Dollars by Sivavasavi and her husband is not in dispute. Even without these amounts, the respondent probabilized that he has got sufficient means of income and admittedly in this case, the respondent's wife, daughters and son have sufficient means of income from the support and gift from respondent's father-in-law Vedhachala Naicker and brother-in-law PW12 Ramanan. These facts have not been considered by the appellant despite statements and materials available, further no plausible reason given why these facts not considered.

87.It is also to be seen that in Rule 18(2) of the Central Civil Services (Conduct) Rules, 1964, it is clear that if the family members of the public servant acquired or hold a property out of their independent source of income, then no intimation or prior permission required. In view of the above, this Court finds that there is no illegality or infirmity in the judgment passed by the Trial Court which is a well reasoned one which needs no interference.

88.In the result, the Criminal Appeal stands dismissed.

09.06.2026

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
cse

To

1.The II Additional District Judge for CBI Cases,
Coimbatore.

2.The Special Public Prosecutor (CBI Cases),
High Court, Madras.

M.NIRMAL KUMAR, J.

cse

Pre-delivery judgment made in

Crl.A.No.775 of 2016

09.06.2026