

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Pronounced on: 21.03.2023 | Reserved on: 13. 04.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.443 of 2014

The State represented by
The Public Prosecutor,
High Court, Madras.
(V & AC, Chennai)
[Crime No.18/2003/AC/CC-I) .. Appellant

/versus/

Thiru.S.Vasanthakumar,
Formerly Assistant Commissioner of Police (Crime),
Thirumangalam,
Chennai 600 040.
Residing at
No.52, Akshaya Colony,
Mygapair, Chennai 40. .. Respondent

Prayer : Criminal Appeal has been filed under Section 378 of Cr.P.C., to allow the appeal, set aside the judgment of acquittal, dated 20.02.2014 in C.C.No.82 of 2011 (old C.C.No.02/2008) on the file of the Court of the Special Court for the Cases under Prevention of Corruption Act, at Chennai and convict the respondent/respondent for offence under Sections 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, as charged, in the interest of justice.



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For Appellant :Mr.S.Udaya Kumar
Govt.Advocate (CrI.Side)

For Respondent :Mr.V.Gopinath, Senior Counsel
for Mr.S.Manimaran

J U D G M E N T

This Criminal Appeal is preferred by the State against the order of acquittal passed by the trial Court, where the respondent a public servant was acquitted from the charge of holding disproportionate asset to the known source of income, which is punishable under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988.

2. The respondent/respondent while serving as an Assistant Commissioner of Police, Madurai, was prosecuted for holding Rs.17,56,179/- over and above his known source of income during the check period commencing from 01.01.1991 to 31.12.2000. As per the charge, his asset on 01.01.1991 was Rs.67,832/-. He has held asset worth of Rs.28,08,062.80 at the end of the check period, while his known source of income during the check period was only Rs.19,50,428/-.



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3. The prosecution to prove the charges has examined 30 witnesses and marked 48 exhibits. The respondent in defence has examined 5 witnesses, marked 14 exhibits.

4. On appreciating the evidence, the trial Court has acquitted the respondent holding that considering 18 years of service of the respondent as on 01.01.1991; the income derived from his ancestral property; the rental income from the building; and the agricultural income earned by him during the check period; the alleged asset as valued by the prosecution cannot be considered as disproportionate.

5. The trial Court has acquitted the respondent saying he has satisfactorily accounted for the asset in his possession through oral and documentary evidence. According to the trial Court, the evidence adduced by the respondent/accused shows that there is no disproportionate asset acquired by him during the check period.

6. For better appreciation of the facts, the below table is in respect of the statements of asset, income and expenditure indicating



the case of the prosecution, the case of the defence and the finding of the trial Court is provided.

STATEMENT-I

The value of the asset that stood to the credit of the accused and his family members at the beginning of the check period i.e. on 01.01.1991.

<i>As per the Final Report (Rs.)</i>	<i>As per explanation given by the accused (Ex.P47) (Rs.)</i>	<i>As per the finding of the trial Court (Rs.)</i>
67,832-20	92,332-00	4,43,532-00

STATEMENT-II

The value of the asset that stood in the name of the accused and his family members at the end of the check period i.e on 31.12.2000.

<i>As per the Final Report (Rs.)</i>	<i>As per explanation given by the accused (Ex.P47) (Rs.)</i>	<i>As per the finding of the trial Court (Rs.)</i>
28,75,895-00	16,90,381-00	15,90,557-00

**STATEMENT-III**

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Income of the accused during the check period (i.e) between 01.01.1991 and 31.12.2000:-

<i>As per the Final Report</i> (Rs.)	<i>As per explanation given by the accused (Ex.P47)</i> (Rs.)	<i>As per the finding of the trial Court</i> (Rs.)
19,50,428-00	26,48,102-00	31,76,096-00

STATEMENT-IV

Expenditure incurred by the accused during the check period (i.e) between 01.01.1991 and 31.12.2000:-

<i>As per the Final Report</i> (Rs.)	<i>As per explanation given by the accused (Ex.P47)</i> (Rs.)	<i>As per the finding of the trial Court</i> (Rs.)
8,98,545-00	6,03,196-00	9,37,395-00

STATEMENT-V

Value of the asset acquired by the accused during the check period (i.e) between 01.01.1991 and 31.12.2000 (Statement II-Statement I):-

<i>As per the Final Report</i> (Rs.)	<i>As per explanation given by the accused (Ex.P47)</i> (Rs.)	<i>As per the finding of the trial Court</i> (Rs.)
28,08,063-00	15,98,049-00,	11,47,025-00

STATEMENT-VI

Savings of the accused during the check period (i.e) between



01.01.1991 and 31.12.2000 (Statement III - Statement IV):-

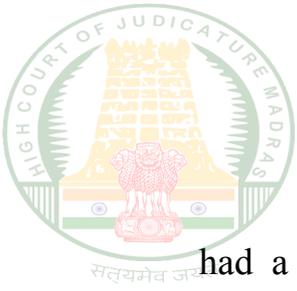
<i>As per the Final Report</i> (Rs.)	<i>As per explanation given by the accused</i> (Ex.P47) (Rs.)	<i>As per the finding of the trial Court</i> (Rs.)
10,51,883-00	20,44,906-00	22,38,701-00

STATEMENT-VII

Excessive disproportionate asset during the check period (i.e) between 01.01.1991 and 31.12.2000(Statement VI - Statement V):-

<i>As per the Final Report</i> (Rs.)	<i>As per explanation given by the accused</i> (Ex.P47) (Rs.)	<i>As per the finding of the trial Court</i> (Rs.)
17,56,179-00	4,46,857-00	10,91,676-00

7. From the above tables, it could be seen that the prosecution case is that the respondent/accused during the check period had income of Rs.19,50,428-00 and his probable expenditure is Rs.8,98,545-00 for him and his family during the check period. After spending for his family, he could have saved only Rs.10,51,883-00. But, he had acquired assets worth about Rs.28,08,062-00 at the end of the check period. Therefore, he is holding 90% asset disproportionate to his income. Whereas, the accused in his explanation (Ex.P47) given during the enquiry had stated that during the check period his income was Rs.26,48,102-00, he had spent for his family Rs.6,03,196-00 and



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had a saving of Rs.20,44,906-00. He during the check period has acquired assets for Rs.15,98,049-00 only and in fact, he has still surplus of Rs.4,46,857-00.

8. The trial Court, after considering the evidence let in by the prosecution as well as the defence, has acquitted the accused observing that the income of the accused and his family members during the check period was Rs.31,76,096-00. The accused should have spent for the family during the check period a sum of Rs.9,37,395-00. His likely savings during the check period is Rs.22,38,701-00. He has acquired the asset during the check period for the value of Rs.11,47,025-00. Therefore, he after investing in the asset, have balance of Rs.10,91,676-00.

9. Having observed so, the trial Court has also concluded saying that the accused is holding 34.37% of disproportionate-asset, nonetheless, it is less than 50% mark, that cannot be treated as disproportionate income.



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10. Being aggrieved by the conclusion of the trial Court acquitting the accused after giving a finding that he possess assets 34.37% excess than his known source of income, the appeal is filed by the State.

11. The learned Government Advocate (Crl.Side) appearing for the State submitted that the calculation of the trial Court will expose the non-application of mind by the trial Court and the perversity in the finding. He pointed out that having found the accused holding 34.37% of asset over and above his income, the trial Court ought not to have acquitted him holding erroneously that the disproportionate asset is less than 50%. Law does not permit a public servant to hold assets upto 50% over and above the known source of income. Further more, the trial Court being convinced that the accused had excess assets disproportionate to his known source of income during the check period, with a finding that he is holding 34% income is excess to the known source of income renders her assessments of the income, value of the asset in hand are absurd and obviously perverse erroneous, beside the trial Court gravely erred in fixing the value of the assets,



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the income without proper appreciation of the evidence including the admission of the accused. It has failed to understand both the gravity of the offence and the material evidence placed before the Court. The improper and illegal way in which the trial Court has appreciated the evidence has culminated in an erroneous order of acquittal which requires interference.

12. Pointing out the trial Court order is apparently erroneous, in spite of that the accused holds the finding 34.37% of disproportionate assets, but acquitting the accused on the premises that the dis-proportionality is less than 50% giving concession taking note of the 18 years of service by the accused is sufficient to set aside the order of acquittal and convict the accused for offence under Section 13(1)(e) of the Prevention Corruption Act, 1988.

13. The learned Government Advocate further submitted that the trial Court carried away by the fact that the sanction to prosecute was accorded, 9 months after the proposal sent to the competent



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authority and after receipt of the sanction, final report was not filed within 15 days and therefore, the prosecution case is doubtful in view of the judgment of the ***Dr.Subramanian Swamy v. Dr.Manmohan Singh and others reported 2012 (2) Scale 143.***

14. In addition, the appellant had enumerated the following error in appreciation of the evidence by the trial Court:-

(i)PW-4[Mr.Shanmugam], Executive Engineer, PWD has evaluated the property of the accused, as per the circular issued by the Government and as per the price index prevalent during the relevant period. He has valued the building at No.52, Akshaya Colony, Mogappair, Chennai as Rs.10,61,000/- and the value of the farm house at Sriperumpudhur as Rs.7,53,772.00. Ignoring the Government guidelines and the valuation certificate given by the competent person, which is marked as Ex.P5 and Ex.P6, the trial Judge has substituted her own value, without any worthy reasoning which will sustain the test of judicial scrutiny. The trial Court has fixed the value of the house at Mogappair, Chennai as Rs.4,19,434-00 and the value of the farm house as just Rs.1,10,000/- which is the



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value of the fencing bore-well and cattle-shed alone. The value of the building in the farm house not included.

15. The learned Government Advocate (Crl.Side) appearing for the State submitted that,

(i)while the accused himself has estimated the cost of the construction of his house at No.52, Akshaya Colony, Mogappair, Chennai, was Rs.5,78,000/- as reflected in his statement of Asset and Liability submitted to the Department, strangely the trial Court has valued the property at Rs.4,19,434/-. The said assessment explicitly under valued much contrary to the valuation certificates Ex.P5 and Ex.P6 and the admission of the accused for the reason best known.

(ii)Regarding the value of the farm house at Sriperumpudhur fixed as Rs.1,10,000/- by the trial Court, the learned Government Advocate (Crl.Side) submitted that, the sale deed of the farm land does not indicate the existence of building in the land. The prosecution has examined the Sub Registrar, Sriperumpudhur, to prove that at the time of registering the sale deed of the farm land, there was no building existing. While so, the trial Court has accepted the false explanation given by the accused that the building was



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already in existence and he has put up only compound wall by spending Rs.1,10,000/-. The trial Court has omitted to add the value of the building constructed in the farm land taking into consideration the oral evidence contrary to the document any evidence.

(iii)The leaned Government Advocate (Crl.Side) submitted that the trial Court for the sake of acquitting the accused, had ignored the government order issued by the State which empowers the Inspector of Directorate of Vigilance and Anti-Corruption to investigate the case registered under the Prevention of Corruption Act, 1988. The trial Court had wrongly observed that in the absence of specific authorisation from the Superintendent of Police, the investigation conducted by the Inspector of Police is vitiated and fatal to the prosecution.

(iv)Regarding the rental income claimed by the accused and accepted by the trial Court, the learned Government Advocate (crl.side) submitted that it is beyond comprehension of any prudent person that the building constructed at the cost of Rs.4,19,434/- as per the trial Court, would fetch a total rental income of Rs.6,24,500/- in 7 years. While the accused himself has stated that he got rental income

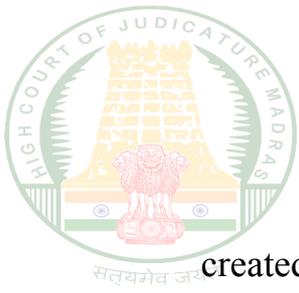


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of Rs.5,04,000/- only from the building, as per the explanation given in Ex.P47, the learned Judge has boosted the rental income from that building as Rs.6,24,500/-.

(v)While the accused has obtained permission from the Department to construct ground floor at No.52, Akshaya Colony, Mogappair on 20.05.1993 and started the construction, the trial Court has found fault with the valuation, which was based on the guidelines value of the year 1993-1994 and taking into consideration the fact that the property in Akshaya Colony is within 32 k.m., radius from the Chennai City. The trial Court had accepted the boosted rental income and under value of the property over and above the explanation of the accused, just to favour the accused. Likewise, the first floor of the building was completed as per the document on 28.02.1995 and hence, the value was fixed as per the guidelines for the year 1994-1995. The trial Court has no valid reason found fault in fixing 1994-1995 guidelines.

16. The learned Government Advocate (Crl.Side) also submitted that the trial Court had given undue consideration for the documents purported to be the loan transactions with private parties



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created and produced during the course of trial and apparently after registering the case against the accused for holding disproportionate assets. These two documents never seen the light of the day till produced and marked though DW-1 and DW-2.

17. Per contra, Mr.V.Gopinath, the learned Senior Counsel appearing for the respondent/accused submitted that there is no error or illegality in the judgment of the trial Court which has appreciated in the evidence independently and arrived at a right conclusion. According to him,

(i) The prosecution has erred in arriving at the value of the asset and income by omitting the agriculture income of the accused which he derived from his ancestral property. The prosecution has not taken into account the December month salary while considering the asset in hand on the date of commencement of the check period i.e. on 01.01.1991. The portion of 64 sovereigns of gold given to the wife of the accused during the marriage was not taken into account by the prosecution. This omission has been pointed out by the trial Court and added to the asset in hand. The valuation certificates Ex.P5 and Ex.P6



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been prepared admittedly without proper inspection and few months subsequent to the alleged inspection leading to improper assessment.

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(ii)As far as the house constructed at Mogappair, the ground floor was constructed after obtaining permission in the year 1992 and the first floor was constructed after obtaining permission in the year 1994. While so, the guideline for the year 1993-1994 and 1994-1995 respectively is erroneous. It should have been based on the guideline of the previous years .

(iii)In respect of the farm house, it has been proved through evidence that the land was purchased along with the building measuring hardly 300 sq.ft. The valuation certificate [Ex.P6] itself indicates that it was build prior to the date of purchase by the accused. He has spent only Rs.1,10,000/- to put up a cow shed and for fencing the land.

(iv)Regarding the rental income, the learned Senior Counsel appearing for the respondent/accused submitted that to prove the income through the building at Mogappair, Ex.D10 and Ex.D12 which are the rental agreements marked and tenants were examined as witness on the side of the defence to prove the rent paid by them.



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Therefore, there is no error or illegality in the trial Court order fixing Rs.6,24,500/- as total income derived from the house property situated at Mogappair.

(v)The brother of the accused was examined to prove the agricultural income from the ancestral property and even though the accused has said in his explanation (Ex.P47) that he has derived only Rs.1,09,000/- towards agricultural income, the Court has applied its mind independently and arrived at the conclusion that the agricultural income from the ancestral property would be Rs.3 lakhs.

(vi)Therefore, the learned Senior Counsel appearing for the respondent/accused submitted that the trial Court's finding based on the proper appreciation of evidence has to be confirmed. The respondent, who has established his innocence, need not be put to ordeal because alternate view possible. In such circumstances, the Hon'ble Supreme Court has categorically held that if two views are possible, the view in favour of the accused to be taken and confirmed. The appellate Court cannot substitute its view, ignoring the view of the trial Court, which is possible and probable.



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18. Heard the learned Government Advocate (Crl.Side) appearing for the State and the learned Senior Counsel appearing for the respondent and also perused the records.

19. A public servant, who is tried for holding assets disproportionate to his known source of income is expected to satisfactorily account the assets he holds. The explanation offered regarding the value of the property and the source to acquire the property should be his salary and a regular income if any from his property or/and investments. A receipt from windfall or gain of graft, crime or immoral secretions by persons *prima facie* would not be receipt from the known source of income of a public servant.

20. The Hon'ble Supreme Court, while interpreting the expression “satisfactorily account” in the context of Section 13(1) (e) of the Prevention of Corruption Act, 1988 has held in ***C.S.D.Swami v. the State reported in [1960 1 SCR 461]*** observed that

“The test of plausible explanation was inapplicable as under this statute, the accused person was required to satisfactorily account for the



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possession of the pecuniary resources or property disproportionate to its own sources of income and that the word “satisfactorily” used by the legislature deliberately did cast a burden on the accused not only to offer a plausible explanation as to how he came to acquire his large wealth but also to satisfy the Court that his explanation was worthy of acceptance.”

21. The Hon'ble Apex Court said *“In further elaboration, it was elucidated that the affairs of an accused person would be a matter which his special knowledge in terms of the Section 106 of the Evidence Act and that the source of income of a particular individual would depend upon his position in life, with particular reference to its occupation or avocation in life and in case of government servant, the prosecution would naturally infer that his known source of income would be the salary earned by him during his active service. That however, it would be open to the accused to prove the other sources of income which have not been taken into account or brought into evidence by the prosecution was underlined.”*

22. In *State of Karnataka v. Selvi.J.Jayalalitha and others*



reported in [2017(7) SCC 263], the Hon'ble Apex Court observed that

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“The word “satisfactorily” did levy a burden on the accuse not only to offer a plausible explanation as to how he came by his large wealth but also to satisfy the Court that the explanation was worthy of acceptance. The noticeable feature of this pronouncement thus is that the explanation offered by the accused to be acceptable has to be one not only plausible in nature and content but also worthy of acceptance.”

Unless the public servant satisfactorily account the pecuniary resource for the possession of properties disproportionate to his known source of income, he shall be liable to be prosecuted. The status has also taken pain to explain, what 'known source of income' means as income received from lawful source and such receipt has been intimated in accordance with the provisions of any Law, Rules or Orders for the time being applicable to a Public Servant. Thus, the legislation, though permits a public servant to possess wealth, it expects from him/her that the source of his wealth must be legitimate. Mere declaring the income to the Taxing Authority belatedly or pointing out the source of someone else, without accounting for the same with the appropriate authorities, will not make such source a lawful source.”

With these guiding factors, the assets in the hand of the public servant need to be tested.



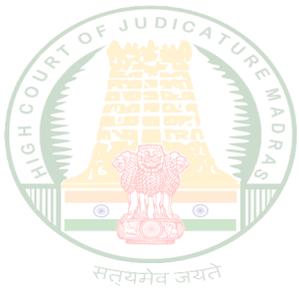
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23. In this case, the accused does not deny the statement of the properties he holds as stated by the prosecution. He only denies the value of the properties and has provided the source by way of explanation Ex.P47, defence witnesses DW-1 to DW-5 and exhibits Ex.D1 to Ex.D14.

24. The examination therefore required to find out whether the value, income and dis-proportionality fixed by the trial Court on appreciating the evidence is reasonable and acceptable.

25. The bone of contention regarding the appreciation of evidence mainly centres around/the valuation of the property at No.52,Akshaya Colony, Mogappair/the rental income derived from that property/the valuation of the farm house at Sriperumpudhur/expenditure incurred for cultivating the farm land/the agricultural income alleged to have been derived from the ancestral property and inclusion of 64 sovereigns of gold jewels as jewels available at the time of the check period, when the accused has declared that no value for the jewels given during the marriage.



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26. According to the prosecution, at the beginning of the check period i.e. on 01.01.1991, the accused had asset worth Rs.67,832/-. Two ancestral properties at Samudram Village, Salem District; the property measuring to an extent 5475 sq.ft at Venus Nagar, at Kolathur Village in Purasaiwakkam; LIC premium paid and cash in hand were taken into account as asset stood at the beginning of the check period. The trial Court has added Rs.3,00,000/- towards the assets in hand stating the income of agriculture land for 18 years i.e. from the date of entry into the service till the date of beginning of the check period to be included.

27. The inclusion of Rs.3,00,000/- by the trial Court as agriculture income for 18 years is *per se* perverse, because the accused as a public servant is supposed to submit his asset and liability statement every five years as per the Service Conduct Rules and being an income tax assessee, he is also supposed to disclose his annual income at the end of every financial year and submit income tax returns. While there is no whisper about Rs.3,00,000/- income



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accrued from the ancestral property, in his earlier statement of asset and liability or in his income tax return and kept intact without spending for a decade, the trial Court has added Rs.3,00,000/- towards asset stood to the credit of the accused at the beginning of the check period. The trial Court has accepted the arguments of the defence counsel and the testimony of the interested witness i.e. the brother of the accused that the said ancestral properties are very fertile and it could have yielded more than Rs.3,00,000/- as income for the past 18 years i.e. from 1973, the year in which the accused joined in the police service. Relying upon Ex.P47, the trial Court has added Rs.3,00,000/- as income accrued for 18 years prior to the check period under the statement of asset stood to the credit of the accused at the beginning of the check period (Statement-I). The said so called agriculture income cannot be placed under the said head at the first instance. When there is no whisper about the existence of this income as an asset in the hands of the accused, strangely the trial Court, referring Ex.P47 and the evidence of PW-27-brother of the accused and DW-5-wife of the accused has added Rs.3,00,000/- under this head which is out rightly to be deleted being an erroneous inclusion.



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28. Apart from this, the trial Court has also added a sum of Rs.20,000/- as cash in hand with the accused's wife Mallieswari and a sum of Rs.4,500/- being December 1990 month salary of the accused and also Rs.51,200/- being the value of 64 sovereigns gold jewels at the rate of Rs.800/- per sovereigns. Here again, the trial Court failed to note that in the explanation given by the accused, he has not given any value for the jewels given at the time of marriage and mentioned as 'Nil' value. According to his statement (Ex.P47) the asset stood in his hand on the date of beginning of the check period was Rs.92,332/- only. Even if the value of 64 sovereigns jewels and December 1990 month salary and Rs.20,000/- in the hands of the DW-5 the wife of the accused is added. In Statement-I, the trial Court has erred in including Rs.3,00,000/- as agricultural income accrued for the past 18 years prior to the beginning of the check period. Therefore, the value of the asset at the beginning of the check period under Statement-I should be as below:-

STATEMENT-I

Assets that stood to the credit of the accused and his family members at the beginning of the check period (i.e.) on 01.01.1991.

<i>Sl.</i>	<i>Description of properties</i>	<i>Value fixed by this Court</i>
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No.		(Rs.)
1.	One Ancestral house at Samurdram Village, Salem District.	-----
2	Agricultural Land Samudram Village, Salem District (Ancestral Property)	-----
3	Purchased two plots No.83 and 84 measuring 5475 sq.ft in the of accused wife at Venus Nagar at Kolathur Village in Purasaiwakkam – Perambur Taluk, Chennai on 29.02.1982 of SRO, Sembium.	30,000-00
4	Premium paid towards the LIC policy No.089760447, standing in the name of the AO from March 1986 @ Rs.189/PM (57 premiums x 189)	10,773-00
5	Premium paid towards the LIC policy No.710122412, standing in the of the accused from March 1988 @ 62.40/pm (33 premiums x 62.40)	2059-20
6	Cash on hand with the accused	25,000-00
7	Cash in hand with his wife	20,000-00
8	Salary of the accused	4,500-00
9	64 of sovereigns of jewels at the rate of Rs.800/-	51,200-00
	Total	1,43,532-20

Though the prosecution has included Rs.25,000/- cash in hand of accused, which probably includes his December month salary and cash in hand claims to be with the accused wife, the benefit claimed by the accused is extended and the same included by the trial Court is upheld and this Court arrives at the asset at the beginning of the check period as **Rs.1,43,532.00**.



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29. Regarding statement-II, Assets that stood to the credit of the accused Tr.S.Vasanthakumar and his wife at the end of the check period i.e., on 31.12.2000, the prosecution has listed out 24 items of properties which the accused and the family members at the end of the check period holding and has valued it at Rs.28,75,895/-. Except two items, there is no much dispute between the valuation shown by the prosecution by the accused and the value assessed by the trial Court. These two properties, which requires examination are shown in Sl.Nos.4 and 10.

30. Sl.No.4 refers to the cost of the construction of the house at No.52, Akshaya Colony, Mogappair, Chennai. While the prosecution has assessed it at Rs.10,61,000/-, the accused has assessed the costs as Rs.5,78,000/-. He has informed the department soon after the completion of the construction, which is much prior to the registration of the case and the said statement is furnished by the accused in compliance with the Conduct Rules. The trial Court has fixed the value of the said property as Rs.4,19,434/- much less than the admitted value. For arriving the value, the trial Court has relied upon



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the permission granted to the accused to construct the ground floor at the estimated costs of Rs.2,06,932/- and permission granted to construct the first floor at the estimated case of Rs.2,12,500/-. These two estimated costs are not the real cost incurred for construction. The accused himself has admitted the construction was completed at the costs of Rs.5,78,000/- and also disclosed his source for mobilising the money to spend for construction of the ground floor and the first floor of the building. For prosecution, the valuation has been done by an expert. His report (Ex.P5) indicates that the building value is Rs.10,61,000/-. While so, pre construction permission granted to the accused by the Police Department for the building to be constructed at an estimated value has been erroneously taken as an actual value of the building by the trial Court. To say the least, it is non-application of mind to the core by the trial Court while considering the valuation of the building. No plausible reason has been given by the learned trial Judge to discard the valuation certificate (Ex.P5) given by Mr.Shanmugam (PW-4). In any case, the construction cost could not have been less than Rs.5,78,000/- which is the cost admitted by the accused himself.



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31. Therefore, without any doubt the trial Court has miserably erred by under valuing the cost of the construction of the building at No.52, Akshaya Colony, Mogappair, which is the 4th item in the Statement-II. Hence, though this Court is of the view that the valuation certificate (Ex.P5) is credible for acceptance, at least the average be taken between the value admitted by the accused and the value fixed by PW-4 to fix the value of the asset shown in Sl.No.4. Therefore, the construction value of the house at No.52, Akshaya Colony, Mogappair, is fixed as Rs.8,19,500/-.

$$(i.e.) = (5,78,000+10,61,000) = \mathbf{Rs.8,19,500/-}.$$

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32. The valuation of the other property, which requires security is mentioned in Sl.No.10. It is the farm and a house build in it. As per Ex.P6 given by Mr.A.Shanmugam, Executive Engineer (PW-4) its value is Rs.7,53,772/-. This report says after purchase of the property expenses under five difference heads viz, kalam, cow-shed, pump shed, bore well and farm house were made by his wife. Whereas the trial Court accepted the evidence of DW-5, the wife of the accused that she has raised kalam measuring to an extent of 200 sq.ft., and cow



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shed measuring to an extent of 100 sq.ft with a pump-shed and borewell all at the cost of Rs.1,10,000/- and the farm house was in existence while purchasing the land. For rejecting the valuation certificate Ex.P6, the trial Court has said that though the witness PW-4 has said that he has adopted the rates of the valuation provided by Kancheepuram Division, PWD, he has not enclosed the rates in his valuation certificate. Therefore, the report is not an authenticated report. The suggestion put to the witness (PW-4) in the cross examination that the farm house was constructed in the year 2000-2001 has been heavily relied on by the trial Court to hold that the construction of the farm house was made before purchase of the property.

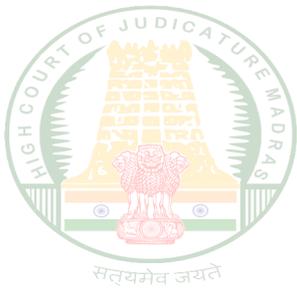
33. In this regard, it is to be noted that, the title documents which are marked as Ex.P9 to Ex.P13 does not indicate that the property at Molachur, Sunguvarchatram Taluk, Kancheepuram District, is a land with building. All these five documents describes it as a punja land and there is no whisper about the existence of the



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building. That apart, DW-5 states that she has put up kalam in 200 sq.ft, cow shed in 100 sq.ft, pump shed and bore well all together at the cost of Rs.1,10,000/-. It is contented by the accused that he has spent money to fence the farm house. PW-4, who has inspected the field, has found that there is a farm house. The sketch of the farm house is also enclosed along with the valuation certificate. That apart, there is a cow-shed, bore well and kalam. While purchasing it was only a vacant land as per the documents. The Sub Registrar has also deposed that when the property got registered, it was only a vacant land without any building if there was any building, there should have been an inspection of the property to assess the value of the building and stamp duty would have been collected for the value of the building. The fact being so, the valuation certificate (Ex.P6) cannot be discarded for the reason that the valuation certificates does not contain the rates prescribed by PWD. If the value not properly done, the contra document should have been let in by the accused. The oral evidence by the wife of the accused that the building was already in existence, which is contrary to the content of the document is inadmissible.



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34. Therefore, this Court holds that the trial Court error in valuing the property mentioned in S.No.10 as Rs.1,10,000/-, instead of **Rs.7,53,772/-** as valued by PW-4. In his report Ex.P6.

35. After modification the Assets that stood to the credit of the accused Tr.S.Vasanthakumar and his wife at the end of the check period i.e., on 31.12.2000 under **Statement-II** shall be:-

Sl. No.	Description of Properties	Value fixed by this Court (Rs.)
1	One Ancestral house building at Samudram Village, Salem District (Ancestral Property) 600 sq.ft tiled house	----
2	Agricultural Land Samudram Village, Salem District (Ancestral property)	-----
3	Acquired Plot No.52 in S.No.152/1 Part S.No.152/2 part measuirng 2,400 sq.ft in Mogappair Village, Chennai on 24.06.1992 in the name of A.O's wife through release deed vide Doc.No.5611/1992, SRO, Ambattur (30,000 + 3562)	33,562-00
4	Constructed a house building at Plot No.52 in Akshaya Colony, Mogappair, Chennai-49 in the name of A.O's wife during 1994-95 and 2000-01.	8,19,500-00
5	Purchased 2.28 Acre of dry land in S.No.88/1A1A1 of Thirumangalam Village on 10.11.1999 in the name of A.O's wife vide Doc.No.6362 (Sale	1,29,240-00



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Sl. No.	Description of Properties	Value fixed by this Court (Rs.)
	Consideration) Rs.1,14,000, Stamp Duty Rs.14,000/- Registration fees Rs.1,140/-.	
6	Purchased 4.42 acre of dry land in S.No.82/182, 83/2A1, 83/2A2 etc., of Thirumangalam Village on 15.11.1999 in the name of A.O's wife vide Doc.No.6466. (Sale consideration Rs.2,21,000, stamp Duty-Rs.29,000/-, Registration fee Rs.2,230/-)	2,52,230-00
7	Purchased 0.32 acre of dry land in S.No.84/232 of Thirumangalam Village on 23.11.1999 in the name of A.O's wife vide Doc.No.657/99. (Sale consideration -Rs.16,000, Stamp Duty-Rs.2,000 & Registration Fees -Rs.160/-)	18,160-00
8	Purchased 4.38 acre of dry land in S.No.43/3 of Molachur Village on 23.11.1999 in the name of A.O's wife Vide Doc.No.6363. (Sale Consideration – Rs.2,19,000/-, Stamp Duty – Rs.10,280/- & Registration Fee – Rs.1,055/-)	2,31,490-00
9	Purchased 1.19 acre of dry land in S.No.43/2 and 43/1 of Molachur Village in Doc.No.2992 /2000, dated 12.06.2000 in the name A.O's wife for Rs.1,05,050/-, stamp duty – Rs.12,520/- & Registration fees Rs.1,055/-.	1,18,490-00
10	Value of the Farm House Building, fencing, infrastructure provided at the farm land in Sriperumbudur (mentioned under item Nos..3 to 7 as per the evaluation report)	7,53,772-00
11	Purchased an Ambassador car (TSE 5544, 1987 model in the name of the A.O on 27.01.1997)	1,00,000-00
12	Purchased a TVS Scooty Registration	16,000-00



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Sl. No.	Description of Properties	Value fixed by this Court (Rs.)
	No.TN-05 8083 in the name of V.Nithya, daughter of the A.O on 01.01.1991	
13	Deposit made for obtaining two EB service connections to the Farm House at Molachur (SC Nos.671 & 677) in the name of A.O's wife on 31.07.2000.	26,570-00
14	Purchased 3 sovereign of gold jewels during the check period	10,000-00
15	Purchased a second hand Samsung fridge on 23.08.2000	7,800-00
16	Purchased one Sony colour Television set in the year 1996	4,000-00
17	Purchased one washing machine	2,000-00
18	Deposit made by the A.O to the BSNL towards his telephone No.6251040 installed at his residence at No.52, Akshaya Colony, Mogappair, Chennai.	2,280-00
19	Premium paid towards the LIC Policy No.087760447 insured in the name of the A.O @ Rs.189/PM 86 months upto 2/38	16,254-00
20	Premium paid by the A.O towards the LIC Policy No.710944376 insured in the name of the A.O. @ R.1,339/- half yearly 17 half years.	22,763-00
21	Premium paid by the A.O towards the LIC Policy No.G7.10122412 insured in the name of the A.O @ Rs.62.40/- monthly for 129 months.	7,488-00
22	Premium paid by the A.O towards the LIC Policy No.716143009 insured in the name of the A.O. @ Rs.1,718/-Qly for 11 Qly premiums.	18,898-00
23	Premium paid by the A.O towards the LIC Policy No.716143008 insured in the name of the A.O @ Rs.1718/Qly.	18,898-00



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Sl. No.	Description of Properties	Value fixed by this Court (Rs.)
24	Cash on hand with A.O	25,000-00
	TOTAL	26,34,395/-

36. Under Statement-III, as far as calculation of the pay and allowance, the trial Court has rightly found that there is a missing calculation to the tune of Rs.1,27,343/-. Since in respect of three months income which should have taken into account, the prosecution has taken only one month pay and allowance. However, regarding the rental income, the addition of Rs.2,95,500/- by the trial Court has no basis since Ex.D10 and Ex.D12 are the documents produced for the first time during the trial and there is no proof to show that this income was disclosed by the accused in his income tax return or asset and liability statement. Further more, even according to the accused, the rental income from the property was only Rs.5,04,000/- and Rs.65,000/- was received from the tenant as advance. The advance money if any received is liable to be returned and when the tenant vacate the building or it ought to have been adjusted to the rent payable. This money cannot be accounted twice. Infact, Rs.65,000/-



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has been disclosed by the accused as a source for constructing the first floor of the building which this Court has already referred in this judgment when in Ex.P2, the accused has disclosed a sum of Rs.65,000/- advance money received, same cannot be shown as income. Therefore, under item No.8 of the Statement-III, the rental income fixed at Rs.6,24,500/- by the trial Court is erroneous and it should be only **Rs.5,04,000/-** as per explanation given by the accused in Ex.P47.

37. The trial Court strangely has accepted the evidence introduced by the accused to substantiate his claim that during the check period his wife had borrowed a sum of Rs.4,00,000/- and Rs.2,50,000/- from two different money lenders. In support of this contention, the accused has examined DW-3 and DW-4. The testimony of these witnesses and the documents, particularly, Ex.D8 and Ex.D9-discharged promissory notes if accepted, then the source to discharge these loan ought to have been explained by the accused. The trial Court has miserably failed to take note of the fact that the accused is a public servant and he is supposed to disclose or



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mentioned about this money transaction to his superior and should have stated in his explanation. Further, on examination of Ex.D9-pronote, this Court finds that DW-5 the wife of the accused has borrowed Rs.2,50,000/- from one Ravindra Kumar Agarwal(DW-4) on 19.02.2000 and promised to repay the money with interest at the rate of 15% p.a. The said DW-4 has made an endorsement that the amount has been fully settled and pro-note cancelled on 27.09.2001. Under Statement-II, at the end of December 2000, the accused had only Rs.25,000/- as cash in hand. While so, within 8 months, DW-5 was able to discharge the loan of Rs.2,50,000/- with interest at the rate of 15% and the source is unknown. It is unfortunate that, a Government servant found in possession of asset over and above the source of income, even after affording an opportunity to suitable explain about the asset in his hand was not able to suitable explain it and explanation offered is not sufficient to wash out the gross dis-proportionality. So, in the course of the trial, he had procured witnesses and create documents to make believe the trial Court that he had enough source of income. Equally it is unfortunate that the learned Judge, who tried the case had gone a step ahead and had



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manipulated the value of the property and income so that it would appear as if in spite of investing in the properties and expenditure for his family, still the accused have surplus to the tune of Rs.4,47,000/-.

38. This manipulation of value was possible because the trial Court at the first instance added Rs.3,00,000/- as agricultural income for 18 years and boosted the value of the asset at the beginning of the check period. Next by under valuing the building at Mogappair much below the value admitted by the accused and less than half of the value fixed by the valuer PW-4. To say precisely, the property which was constructed at the cost about Rs.10,00,000/- been valued at Rs.4,90,000/- relying upon the permission letter given to the accused for putting up the construction at the estimated value mentioned by him. This is contrary to the admission of the accused that on completion of the construction the cost of construction has gone to Rs.5,78,000/- as against the expected cost of Rs.4,19,000/-.

39. The trial Court had ignored the recital in the sale deeds marked as Exs-P9 to P12, but had presumed that the farm house in



Molachur village, Sunguvachandiram Taluk, was in existence even at the time of purchase by the accused in the name of his wife. Against the principle of the Evidence Act, the trial Court has accepted the oral evidence of interested witness DW-5 and DW-2-the vendor to hold that the farm house found in the property is an existence structure even before the accused wife acquired the title over it. Ignoring the recital in the sale deed and the evidence of the Sub Registrar, the trial Court has valued the farm house property at Sriperumpudhur as Rs.1,10,000/- as against Rs.7,53,772/-.

40. It has already been discussed that Rs.3,00,000/- been added as the agriculture income for 18 years prior to the check period under Statement-I and the same is absolutely erroneous. For the very same reason, the agriculture income accrued 18 years prior to the check period cannot be taken and included under Statement-III, which is meant for income during the check period. While the accused in his explanation Ex.P47, has stated that, this agriculture income from the ancestral property is Rs.2,50,000/-. There is no good reason for the trial Court to fix it as Rs.4,25,000/-. Therefore, a sum of Rs.1,25,000/-



has to be deducted. The admitted income of the accused from the ancestral property has to be accepted and the same is taken in to account as Rs.2,50,000/-. So, the agriculture income from the ancestral property is fixed during the check period as **Rs.2,50,000/-** as claimed by the accused instead of Rs.4,25,000/- fixed by the trial Court.

STATEMENT-III

Income earned by the accused Tr.S.Vasanthakumar, during the check period (i.e.) between 01.01.1991 to 31.12.2000.

Sl. No.	Description of Properties	Value fixed by this Court (Rs.)
1	Sale proceeds of housing plots No.83 and 84 Venue Nagar, Kolathur, Chennai sold on 11.01.1999 for a total of sum of Rs.6,29,625/- vide doc.Nos.157, 158 of SRO, Sembium.	6,29,625
2	Pay and allowances received by the A.O during the check period.	6,44,104
3	GPF Part Final withdrawal received by the A.O for the purpose of house construction at No.52, Akshaya Colony, Mogappair, Chennai.	35000
4	Sold 10 sovereigns of gold jewels on 01.04.1993 in Thulasi Krishna Permanent Fund, Ayanavaram.	32000
5	Sold gold jewels in 1993 in Thulasi Krishna Permanent Fund, Ayanavaram.	37000
6	Maturity amount of LIC Policy No.0877760447 received by A.O	43699



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Sl. No.	Description of Properties	Value fixed by this Court (Rs.)
7	Amount received by A.O from his brother in 194	75000
8	Rental income received by the A.O from house at No.52, Akshaya colony, Mogappair (Rs.65,000+1,32,000+1,32,000).	5,04,000
9.	Agricultural income received by the A.O from the ancestral lands at Samudram Village in Salem District.	2,50,000
	Total	22,50,428

STATEMENT-IV

Expenditure incurred by the accused Tr.S.Vasanthakumar, during the check period (i.e.,) between 01.01.1991 to 31.12.2000.

Sl. No.	Description of Properties	Value fixed by this Court (Rs.)
1	Interest paid towards the housing loan obtained from LIC Housing Finance Limited.	1,37,301/-
2	Family Consumption expenditure for the A.O and his family members during the check period (as furnished by the Commissioner of Economic and Statistics, Chennai -60.	5,65,513/-
3	Expenditure incurred by the A.O towards of the Higher Education of his three daughters.	27,714/-
4	Expenditure incurred by the A.O towards payment of insurance premium in respect of the	6,111/-



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Sl. No.	Description of Properties	Value fixed by this Court (Rs.)
	Ambassador Car No.TSE 5544 for 3 years @ Rs.2,037/- P.A.	
5	Property tax paid by the A.O towards the house building at No.52, Akshaya Colony, Mogappair, Chennai.	5,101/-
6	Expenditure incurred by the A.O towards the fees paid by the A.O for obtaining Building License etc., to Ambattu Municipality in respect of the house building at No.52, Akshaya Colony, Mogappair, Chennai.	1,270/-
7	Land Tax paid by the A.O to Ambattur Municipality in respect of the house building at No.52, Akshaya Colony, Mogappair, Chennai	1,872/-
8	Development Charges paid by the A.O to Ambattur Municipality towards the house building at Akshaya Colony, Mogappair, Chennai.	625/-
9	Life Tax paid by the A.O towards the vehicle TVS Scooty No.TN-05-8083 purchased by the A.O in the name of his daughter Ms.Nithya	1,310/-
10	Expenditure incurred by the A.O towards the payment of interest for the car loan availed	10,512/-
11	Expenditure incurred by the A.O towards the maintenance of the Car No.TSE 5544 including expenditure towards purchase of fuel (Rs.500 x 5 x 12).	19,000/-
12	Interest paid by the A.O towards	5,400/-



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<i>Sl. No.</i>	<i>Description of Properties</i>	<i>Value fixed by this Court (Rs.)</i>
	the loan obtained for the purchase of the TVS Scooty.	
13	Expenditure incurred by the A.O towards the maintenance of the vehicle TVS Scooty No.TN-05-8083 purchased by the A.O in the name of his daughter Ms.Nithya.	3,054/-
14	Expenditure incurred by the A.O towards Telephone Bills paid in respect of the Telephone No.625100 installed at his residence at Akshaya Colony, Mogappair, Chennai.	43,612/-
15	Expenditure incurred by the A.O towards raising the crop in the Molachur farm house	10,150/-
	Total	8,98,545

STATEMENT-V

Value of the asset acquired by the accused during the check period i.e. between 01.01.1991 and 31.12.2000 (Statement-II – Statement-I) is Rs.26,34,395 – Rs.1,43,532 = **Rs.24,90,863-00**

STATEMENT-VI

Likely savings of the accused during the check period i.e. between 01.01.1991 and 31.12.2000 (Statement III-Statement IV):-



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Income earned during the check period (Rs.)	Expenditure (Rs.)	Savings of the accused during the check period (Rs.)
22,50,428-00	8,98,545-00	13,51,883-00

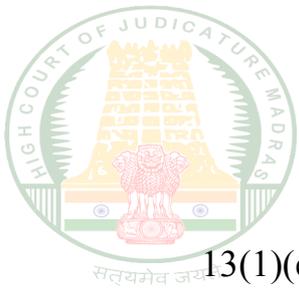
STATEMENT-VII

Excessive disproportionate asset during the end of the check period i.e. between 01.01.1991 and 31.12.2000:-

Asset acquired during the check period by the accused and his wife (Rs.)	Savings of the accused during the check period (Rs.)	Excessive disproportionate asset (Rs.)
24,90,863-00	13,51,883-00	11,38,980-00

41. While, the total income during the check period is Rs.22,50,428/-, having spent for his family a sum of Rs.8,98,545/-, his likely saving is Rs.13,51,883/-. Whereas, he has acquired wealth to the tune of Rs.24,90,863/-. The value of the property is double of his known source of income.

42. From the above assessment, this Court finds that the asset held by the accused during the check period is over and above his known source of income. Hence, unexplained excessive asset brings the misconduct of the accused within the definition of Section



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13(1)(e) of the Prevention of Corruption Act, 1988. Therefore, the judgment of the trial Court, which has proceeded on wrong presumption, is liable to be set aside. Accordingly, *this Criminal Appeal is allowed* and order of acquittal passed by the trial Court in C.C.No.82 of 2011 (Old C.C.No.02 of 2008) dated 20.02.2014, is set aside. The accused is found guilty of the offence under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988.

43. For questioning the sentence, the accused shall be present before this Court on **19.04.2023.**

13.04.2023

Index:yes

Speaking order/non speaking order

NCC:yes/no

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Note:Issue order copy today i.e. 13.04.2023

To

The Special Court for the Cases
under Prevention of Corruption Act, at Chennai



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Dr.G.JAYACHANDRAN,J.

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delivery Judgment made in
Crl.A.No.443 of 2014

13.04.2023