



Crl.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on :31.10.2023

Pronounced on: 20 .11.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.No.1170 of 2000
& CMA.No.425 of 2001 & CMP.No.5525 of 2001

1. A.M.Paramasivan (died)
2. P.Nallammal ... Appellants/Accused No.1 & 2

Leave is granted to the 2nd petitioner to continue the appeal as per order in Crl.M.P.No.1861 of 2020 in Crl.A.No.1170 of 2000, dated 18.02.2020.

/versus/

State by,
The Inspector of Police,
Vigilance and Anti-Corruption Police,
Dindigul. ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 (2) of Cr.P.C.,
pleaded to set aside the judgment dated 15.11.2000 made in Spl.C.C.No.11 of
1997, on the file of the Learned III Special Judge/XIII Additional Judge,
Chennai.

For 2nd Appellant : Mr.M.Velmurugan

For Respondent : Mr.Babu Muthu Meeran
Additional Public Prosecutor



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

C.M.A.No.425 of 2001

WEB COPY

1. Thiru.A.M.Paramasivam,
Formerly Minister for Labour.
2. Tmt.P.Nallammal,
W/o.Paramasivam.
3. Minor P.Rajakumar Pandian,
S/o.Thiru.A.M.Paramasivam.
4. Minor P.Selvakumar Pandian,
S/o.Thiru.A.M.Paramasivam.
5. Minor Selvi Suriyakala @ Sudarsena,
D/o.A.M.Paramasivam
(1st Petitioner Father as Natural Guardian Rep. for minors 3 to 5)

All are residing at
No.18B, HIG Colony,
Anna Nagar, Chennai.

... Appellants/Respondents.

/versus/

State of Tamil Nadu,
Represented by Inspector of Police,
Vigilance and Anti Corruptions, Dindigul,
Detachment at Dindigul.

... Petitioner/Respondent.

Prayer: Civil Miscellaneous Application has been filed under Section 11 of Criminal Law (Amendment) Ordinance 1944, against the order dated 03.01.2001 made in Criminal O.P.No.2/1997 on the file of the Principal Sessions Judge, Madurai.



WEB COPY



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

For Appellants : Mr.M.Velmurugan

For Respondent : Mr.Babu Muthu Meeran
Additional Public Prosecutor

COMMON JUDGMENT

A.M.Paramasivam, was the elected Member of the Tamil Nadu Legislative Assembly during the period 16.06.1991 to 09.05.1996, he was the Minister for Labour Welfare in Government of Tamil Nadu, during 17.05.1993 to 09.05.1996. Hence, he fall under the definition of Public Servant. He along with his wife, had acquired properties beyond the known pecuniary resources, which were disproportionate to the extent of Rs.38,72,545/- during the check period between 16.06.1991 to 09.05.1996. A1 was tried for the offence under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988. The properties were acquired in his name, his wife name and in the name of his minor children mentioning his wife as guardian, therefore his wife (A2) was tried for aiding him to commit the offence.



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

2. The charge against them as framed by the trial Court reads as

WEB COPY
below:-

1. *A.M.Paramasivam, and*
2. *P.Nallammal, W/o.A.M.Paramasivam.*

Firstly, A1 was a Member of Tamil Nadu Legislative Assembly from 16.06.91 to 09.05.96 and during that period you were a Minister for Labour in Government of Tamil Nadu from 17.05.93 to 09.05.96 and during the above period at Chennai and other places that you A1 a public servant had acquired and was in possession of properties and pecuniary resources which were disproportionate to your known sources of income to the extent of Rs.38,72,545/- for which you have not satisfactorily accounted and thereby that you A1 committed an offence punishable under section 13 (2) r/w.13(1) (e) of Prevention of Corruption Act, 1988 and within the cognizance of this court.

Secondly A2 wife of A1, during the above said period abetted A.1 in the commission of the above mentioned offence stated in the first count by permitting A1 to acquire a substantial portion of the properties in your name and in the names of your minor children and holding the said properties on behalf of A.1 and that you



WEB COPY



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

A.2 thereby committed an offence punishable under section 109 I.P.C. r/w. 13 (2) r/w.13 (1) (e) of Prevention of Corruption Act, 1988 and within the cognizance of this court.”

3. To prove the prosecution case, 62 witnesses (P.W.1 to P.W.62) were examined. Marked 160 Exhibits (Ex.P.1 to Ex.P.160) and 31 material objects (M.O.1 to M.O.31). On the side of the defence, 30 witness (D.W.1 to D.W.30) and 15 Exhibits (Ex.D.1 to Ex.D.15) were marked.

4. The trial Court found both the accused (A1 & A2) guilty and sentenced them *vide* judgement dated 15.11.2000 as below:-

<i>Accused</i>	<i>Offences under Section</i>	<i>Conviction and Sentence passed by the Trial Court</i>
A-1	13(2) r/w 13(1)(e) of P.C Act.	To undergo two years R.I and to pay fine of Rs.1000/-, in default of payment of fine, 2 months S.I.
A-2	109 of I.P.C r/w 13(2) r/w 13(1)(e) of P.C Act.	To undergo one year R.I and to pay fine of Rs.5000/-, in default of payment of fine, 1 months S.I.

5. The trial Court determined the value of the assets acquired by A-1 disproportionate to his known source of income as Rs.35,25,136/- for the purpose of action under Section 12 of Criminal Law (Amendment) Ordinance



Crl.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

Act 1944.
WEB COPY

6. Aggrieved by the judgment of conviction and sentence passed by the trial Court, dated 15.11.2000, the present appeal was preferred by the accused A1 & A2, in Crl.A.No.1170 of 2000.

7. In the Appeal, petition in Crl.M.P.No.406 of 2007 to receive two additional documents as evidence was filed by the appellants and this Court allowed the application. As a consequence, those two documents were received and marked as Ex.D.16 & Ex.D.17.

8. Pending appeal, A.M.Paramasivam [A1], the Public Servant died on 23.05.2015. A-2 (wife of A-1) filed an application in Crl.M.P.No.1861 of 2020, to continue the appeal of A1 and same was allowed by this Court *vide* order dated 18.02.2020.

9. The prosecution case as found in the final report is that at the beginning of the check period i.e., 16/06/1991, A-1 the public servant had in his possession of agricultural land measuring about 5 acres and an ancestral house at Nalliyendalpatty Village, besides that Rs.1000/- cash in hand and 100



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

sovereigns of gold jewels which were given as Sridhana during his marriage with A-2 in the year 1983.

WEB COPY

10. At the end of the check period i.e., 09/05/1996, the value of the properties in possession of A-1 was assessed as Rs.39,78,986/- which includes the immoveable properties purchased in the name of their minor children and his wife A-2. The second accused, who had no independent income of worth mentioning had aided A-1 to acquire these wealth in her name and in the name of her children as their representative and natural guardian (Statement II). During the check period the income of the public servant and his family members from known source was assessed as Rs.7,09,330/- (Statement III). During that period the probable expenses for him and his family consisting of 4 members was assessed as Rs.6,03,889/- (Statement IV). His likely saving from the income through known source after defraying expenses assessed as Rs.1,05,441/-. Thus, he had properties worth Rs.38,72,545/- disproportionate to the known source of income which is about 546 %.

11. After examination of witnesses and on appreciating the evidence relied on by either side, the Trial Court out of 36 items of properties



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

सत्यमेव जयते
including both movable and immovables as well as valuable securities and bank
WEB COPY

balance in the account maintained in the name of the accused persons, accepted the plea of the defence that A/c Machines worth Rs.43,800/- shown in Serial No.22 in the Statement-II, also been included to the value of the house in item No.17 of the same Statement as found in Ex.P.144 and evidence of P.W-59, hence excluded Rs.43,000/-. Likewise, considering the rival claim regarding the value of the second hand Ambassdor Car purchased in the name of A-2, based on the statement of account and evidence of Court reduced the value from Rs.1,30,000/- to Rs.1,00,000/-. In respect of item in serial No.18, the Diesel Car Premier 137D purchased under hire purchase scheme through M/s.Sundaram Finance, based on the statement of account and evidence of PW-19, the trial Court has held that towards the repayment of loan for the purchase of the car A2 had paid Rs.2,33,229/- therefore, the value of the car has to be assessed as Rs.2,33,229/- instead of Rs.2,18,825/- as found in Statement-II serial No.18. In respect of the value of jewels mentioned in serial Nos.29, 30 and 31 totally worth of Rs.1,48,000/- alleged to have been purchased by A-2 during the check period the trial Court declined to accept the case of the prosecution since the witnesses for prosecution turned hostile and no document produced to support the allegation, hence this amount was excluded. Regarding other properties, the



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

सत्यमेव जयते
WEB COPY

value shown by the prosecution was accepted and finally the trial Court has arrived that the value of the asset held by the public servant and his family members at the end of the check period was Rs.37,71,590/-.

12. As far as the income during the check period, the trial Court after giving credit to certain omission in the agricultural income through sale of Sugarcane and Paddy, after defraying the cultivating expenses, had assessed as Rs.7,96,738/- instead of Rs.7,09,330/-. Likewise, in Statement-IV regarding the expenses during the check period, the trial Court had accepted the case of the accused for want of proof, the allegation of repayment of mortgage loans of Rs.42,015/- by A-1 shown in Serial Nos.17 and 18. Thus, the expenses during the check period was fixed as Rs.5,51,284/- and concluded that while the likely saving during the check period. After deducting Rs.1000/- cash in hand at the beginning of the check period was only Rs.2,45,454/- (Rs.7,96,738/- (-) Rs.5,51,284/-), the value of assets acquired during the check period is Rs.37,71,590/-. Thus, the public servant has amassed wealth of 442% disproportionate to the known source of income. Hence the trial Court held A-1 guilty for the offence under section 13(1)(e) of Prevention of Corruption Act and A-2 being his wife for aiding A-1 to commit the said offence by lending her



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

सत्यमेव जयते
WEB COPY

name to acquire properties in her name and in the name of her minor children held her guilty of offence punishable under Section 109 I.P.C r/w Section 13(2) r/w 13(1)(e) of P.C. Act.

13. Aggrieved by the findings of the trial Court, the present appeal is filed on the ground that, the prosecution suffers malafide and perversity on the face of the record. A-1 had income from agricultural land owned by him as well as taken on lease and under his cultivation. He was getting pension as he was an M.L.A during the period 1977-1980. A-2 had her own independent income through agricultural land and money lending. Their income had been disclosed to the Income Tax Department under Ex.D-2 and Ex.D-3. Though these two documents were seized during the search of the accused premises, deliberately it was not relied on by the prosecution with an ulterior motive. When same was produced as defence documents, the Trial Court has failed to give due consideration to the Income Tax Returns even though it was filed much before to the registration of the case.

14. The Learned Counsel for the appellants also submitted that, even at the beginning of the check period A-1 had Rs.3,59,954/- and A-2 had



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

सत्यमेव जयते
WEB COPY
Rs.2,43,000/- cash in hand. However, the prosecution had shown only Rs.1000/- as cash in hand at the beginning of the check period. The value of the house constructed by A-1 been highly inflated. The articles given as gift during house warming ceremony, cash gift given during the ear boring ceremony of the children and the evidence of defence witnesses in this regard were not taken into the account.

15. Further, the Learned Counsel also emphasised that the Income Tax Returns Ex.D-2 and Ex.D-3 filed before initiating the criminal prosecution were subjected to Commissioner Appeal and further appeal to the Income Tax Appellate Tribunal. Since those orders passed on 05/03/2003 and 08/11/2005 respectively after the disposal of the criminal trial, the appellants sought leave to mark it as defence Exhibits and same been allowed by the High Court *vide* order dated 25/08/2008 in CrI.M.P.No.407 of 2007. They are marked as Ex.D.16 and Ex.D.17 respectively. Income Tax Appellate Tribunal order is a necessary document for arriving at just conclusion. It will clinchingly prove that the prosecution had not taken into consideration of various sources of income of the appellants. The Learned Counsel also submitted a chart containing details to disprove the value and sources shown in Statements-I to IV by the prosecution



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

सत्यमेव जयते referring exhibits and testimony of the witnesses.

WEB COPY

16. The learned Additional Public Prosecutor for the respondent State submitted that, A-1 was a M.L.A during 1977 to 1980 and 1991 to 1996. He served as a Minister of Labour and Welfare, Government of Tamil Nadu, during the period 1993 to 1996. Based on specific information, a preliminary enquiry was conducted and on *prima facie* satisfaction that, he possess wealth disproportionate to the known source of income, F.I.R was registered on 20/08/1996. Pursuant to the proceedings issued by P.W-61, the Superintendent of Police, DV&AC, Chennai, the case was investigated by P.W-62 Mr.Rathinakumar, Inspector of Police, DV&AC Dindugul. During the course of investigation search of A-1 residences at Madurai, Nellienthapatti was conducted. Incriminating documents were found and seized. The value of the house constructed during the check period was assessed through P.W-59 and in his report Ex.P.144, he had opined that, the property is worth about Rs.20 lakhs. On completion of investigation, draft Statements-I to VI was prepared and sent to A-1 calling upon his explanation. To the Final opportunity Notice (FoN) Ex.P.159 dated 28/05/1997, the accused sent his reply marked as Ex.P-160 seeking extension of time but did not gave any plausible explanation for



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

holding the properties referred in Statement-II.
WEB COPY

17. Ex.D-1, the statement of income tax return filed under block assessment for five years and Ex.D-2 and Ex.D-3, the statement of account showing A-1 and A-2 had cash balance of Rs.3,59,954/- and Rs.2,43,000/- are self serving documents which were not produced during the investigation when explanation sought under Ex.P-159. The Income Tax Returns and adjudication of the Commissioner and ITAT have no relevancy to the prosecution under Section 13(1)(e) of P.C Act since those proceedings are primarily connected with payment of tax for income and not with the source of income. This legal issue had been settled by the Hon'ble Supreme Court in *State of Karnataka -vs- Selvi.J.Jayalalithaa* reported in *2017 (7) SCC 263* at paragraph Nos.252 to 254 Therefore, the additional documents Ex.D-16 and Ex.D-17 filed during the trial has no significant relevancy to interfere the well considered judgment of the trial Court.

18. The Learned Additional Public Prosecutor for the respondent/State also submitted that the oral evidence of defence witnesses, who are mostly relatives of the accused has rightly been disbelieved by the trial



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

सत्यमेव जयते
WEB COPY

Court since their oral evidence regarding gifts given during house warming ceremonies and other functions conducted by A-1 for ear boring of his children were not supported by any reliable documents. The claim of the accused that apart from 5 acres of agricultural land shown in Statement-I of the final report, he had purchased 1.29 acres of land from his brother (P.W-49) prior to the check period but got the property registered in the name of his minor son under Ex.P.6 during September 1994 is a defence invented and not believed by the trial Court rightly because P.W-49 is not able to State the date of receiving the sale consideration and the recital in Ex.P-6 says that the consideration was received in lumpsum on the date of registration. Likewise, his claim that, he had taken about 3 acres of land on lease and cultivating in it also not been stated during the investigation and not proved with documentary evidence. The oral evidence of defence witnesses in this regard are vague and not inspiring.

19. Similarly, the claim of A-2 that, she had in her possession and enjoyment of about 1.18 acres of wet land and 1.36 acres of dry land which she claims that she got it from her father at the time of marriage as Sridhana. However, for this claim, there is no supporting documentary evidence for transfer of property. The father of A-2, who was examined as P.W-29 admits



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

सत्यमेव जयते
WEB COPY

that, he continue to cultivate those land, but used to give the income to his daughter A-2. To save her daughter P.W-29 had deposed so and the trial Court has rightly disbelieved the version of the defence in this regard.

20. The Learned Additional Public Prosecutor referring each of the properties acquired by A-1 and his family during the check period and the income from lawful source as spoken by the staff of Legislative Assembly from whom the public servant received salary and other perquisites, the payment receipts from the Sugar mill for the supply of sugarcane by A-1 and A-2, submitted that the trial Court had properly appreciated the evidence and arrived at just conclusion. Hence, the trial Court judgement need to be confirmed.

21. Heard the Learned Counsel for the appellant and the Learned Additional Public Prosecutor for the respondent/State. Records perused.

22. The main contention of the appellants is that the assets held by them at the beginning of the check period were not properly considered. Statement-I is the list containing assets held by the public servant and his family members at the beginning of the check period. The income derived from the



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

सत्यमेव
WEB COPY

agricultural income not been taken into account. If the prosecution properly taken the agricultural income, then the accusation of amassing wealth illegally would have been disproved.

23. The appellants claim that, Ex.D-1, Ex.D-2, Ex D-3, Ex.D-16 and Ex.D-17 are proof to show that, they have derived income from agricultural lands which they taken on lease or purchased prior to the check period but formally transferred in their family members name, during the check period. In addition, A-1 as HUF derived income through money lending. These source not taken into account by the prosecution as known source of income. A-1 and A-2 had cash of about Rs.6 lakhs at the beginning of check period but it was not taken into the account by the prosecution.

24. At the outset, it is made clear by the Hon'ble Supreme Court in the judgment of *Selvi.J.Jayalalitha, cited supra*, that,

“252. The High Court, on the other hand, readily accepted the income tax returns filed by the assessee and affirmed the claim of A1 of agricultural income of Rs.52,50,000/-. It was of the view that though the income tax returns had been filed belatedly, the same



WEB COPY



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

per se could not be a ground to reject the same as a proof of the agricultural income of A1 from grape garden. Thereby, the High Court enhanced the agricultural income of A1 to Rs.52,50,000/- permitting an addition of Rs.46,71,600/-.”

253. Apart from the fact that the approach of the High Court on this aspect appears to be summary in nature without reference to the other evidence on record as had been exhaustively discussed and analysed by the Trial Court, in law the income tax returns/orders passed thereon qua the issue are not final and binding on a criminal court, and at best only are relevant and always subject to its independent appraisal on merits. (Emphasis added)

254. It has been urged on behalf of R1/A1 that her claim of income of Rs.52,50,000/- under this head stands proved wholly on the basis of the relevant income tax returns and the orders passed thereon. Oral evidence of DW-64 and the documentary evidence by way of D-61 to D-64 have been relied upon. As observed hereinabove, the High Court had readily accepted this evidence and had thereby enhanced the income of A1 under this head to Rs.52,50,000/- by



WEB COPY



Crl.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

adding Rs.46,71,600/- to the sum of Rs.5,78,340/- mentioned by the DVAC. In absence of any independent evidence in support of this claim, having regard to the state of law that income tax returns/orders are not automatically binding on a criminal court, in our view, the effortless acceptance thereof by the High Court is in disregard to this settled legal proposition. Thereby the High Court has accorded unassailable primacy to such income tax returns/orders and have made those final and binding on the criminal court without any appreciation of the probative potential thereof.”(Emphasis added).

25. In the light of the said dictum, the question under consideration as to whether the Public Servant was in possession of assets disproportionate to his known source of income has to be examined.

26. The additional documents Ex.D-16 and Ex.D-17 are in respect of decision by the Income Tax Department. Whether the agricultural income of A-1 (HUF) for the years 1992-93, 1993-94 and 1996-1997 mentioned in the returns filed were inflated for the purpose of exemption from tax as income from agricultural income or not was the question before the Commissioner and the



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

सत्यमेव जयते
WEB COPY

Tribunal. While the Assessing Officer ordered that the declared income from agricultural for the relevant assessing years as Rs.2,39,250, Rs.2,40,000/- and Rs.2,49,500/- is highly inflated and from the opinion of the officials from Agricultural Department, the probable income from sale of paddy and other agricultural products will be only Rs.1,44,813/-, Rs.1,27,800/- and Rs.1,17,041/- respectively. The assessee had apparently exaggerated his agricultural income, camouflage his other income under the garb of agricultural income. Therefore, for the difference, the assessee has to pay income tax and penalty.

27. The said assessment order was challenged by the A-1 before the Commissioner of Income Tax (Appeals). The Commissioner as Appellate Authority accepted the opinion given by VAO of the jurisdiction instead of the data provided by the Agricultural Department and has held that, due to better farming practise, the assessee could have gained higher yield and corresponding income. For the said reason, the order of the Assessing Authority was set aside. On appeal by the Department was dismissed by the ITAT (Ex.D-17) confirming the order of the Commissioner.



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

WEB COPY

28. This Court, on perusing these two additional documents find that, these orders speak about whether the agricultural income declared by the assessee for the purpose of exemption was actual or inflated. The Income Tax Department has not tested whether the source of the income fake or genuine. Further, it is to be noted that, these orders came to be passed after initiating criminal prosecution and delivery of judgment. The very source claimed by the accused tested in the Criminal trial and the material placed by the accused to show additional source for the income not been substantiated through reliable evidence except some *ipse dixit* testimony of interested witnesses.

29. Except for about 5 acres of land in possession at the beginning of check period, the appellants had not produced acceptable evidence to show that they had other lands and were under his direct cultivation. The income disclosed in the Income Tax Returns and the finding of the Income Tax Department confines to income assessable to Tax. It is not a proof for income to assess tax or not, but it does not *per se* be a proof that the assets from which the income derived were acquired legally.



Crl.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

WEB COPY

30. Likewise, Ex.D-1 to Ex.D-3 are self serving documents which surfaced after the search conducted at the residential premises of the public servant. They have no evidentiary value. The said amount neither found in the house of the accused during the search proceedings nor reflected in the bank accounts maintained by them.

31. Except properties shown in Statement-I, which were the sources of income at the beginning of check period, though it is contended by the appellants that, they had other sources which they declared in their Income Tax Returns. To substantiate this fact, they rely upon the testimony of P.W-29, M.V.Veeranan, the father of A-2 and few others, who are all his own relatives. P.W-29 had deposed that, he and his wife were having taxable Agricultural Income even during the year 1973-1974 and received notice from the Department. He is blessed with 8 children (4 sons and 4 daughters). At the time of his daughter Nallammal (A-2) marriage, he gave 100 sovereigns jewels as Shridana, 1.18 acre wet land, 1.35 acres dry land with 50 coconut trees and 15 mango trees and cash of Rs 10,000/- was given to her during marriage. It is to be noted that, there was no title documents produced to prove the ownership. The marriage between A1 & A2 took place in the year 1983, whereas the check



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

सत्यमेव जयते
WEB COPY

period commenced from 16/06/1991. There is no document placed before the Court to indicate that, after marriage till soon before the check period A-1 and A-2 had any source of income other than 5 acres of land shown in the Statement-I or purchased any property. They both had thought fit to file Income Tax Returns only in the beginning of the year 1996 and submitted block assessment return but not earlier. Same been tested by the Commissioner on Appeal and by the Appellate Tribunal on further appeal by the Department for assessment tax on the income sought to be exempted. The written submission presented before the trial Court by A-1 that, he was cultivating lands of Namachevaya Mudaliar, Meenakshiammal under lease and in the year 1988, he purchased 1.29 acres of land from his brother A.M.Pandi thus, had 6.37 acres land on his own and 6.61 acres of land under lease not supported by any legally reliable evidence. The self serving evidences spoken by interested witnesses in respect of immovable properties are hard to believe. Particularly, when A-1 himself claims that, he was a full time Politician, his tall claim of cultivating about 6.61 acres of land under lease besides his own 5 acres of land rightly been disbelieved by the trial Court for it lacks evidence.



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

WEB COPY

32. For the reasons stated above, this Court holds that the Statement-I about the Assets at the beginning of check period does not suffer any omission or error to interfere.

33. Statement-II relied by the prosecution contains details of assets held by the deceased public servant and his family members at the end of the check period dated 09/05/1996. The value of the properties which they possessed prior to the check period i.e., 16/06/1991 is not taken into account. The appellants admits the acquisition of the properties shown in the Statement. They contested the value mentioned by the prosecution as over estimated and some of the items were not purchased by them but been gifted by known persons mostly their relatives. For clarity the Statement-II is extracted below:-

STATEMENT-II

Assets in the possession of A1 and A2 as on 09.05.1996., at the End of the Check Period

<i>Sl.No</i>	<i>Items/Assets</i>	<i>Value as per Prosecution</i>
1.	5 Acres of Wet Land at Nellianthalpatty	Nil
2.	One House at Nellianthalpatty	Ancestral Property (Nil Value)
3.	100 Sovereigns of Gold jewels given as gifts to Tmt.Nallammal W/o.A.M.Paramasivam during marriage 1983	Value not known (Nil Value)



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

<i>Sl.No</i>	<i>Items/Assets</i>	<i>Value as per Prosecution</i>
4.	Cash hand as on 09.05.1996	5,000
5.	0.45 Acres of Wet land S.No.209/2 of Kodikulam Village during 1992 purchased in the name if Tmt.Nallammal. Sale deed document No.2094/92 dated 25.11.1992 of Sub Registrar's Office, Thamaraiipatti. (Rs.16,875/- + Stamp duty Rs.2030/-)	18,905/-
6.	0.09 acres of dry land is S.No.231/13 at Kodikulam during 1992 purchased in the name of Tmt.Nallammal Sale deed Doc.No.4103 of 1992 dated 14.09.1992 of District Registrar's Office, Madurai. (Rs.4,500/- + Stamp Duty Rs.540/-)	5,040/-
7.	1.45 Acres of wet land in S.No. 253/3 & 296/1 at Kodikulam during 1993 purchased in the name of T.R.Selvakumar Pandian, minor S/o. Tr.A.M.Paramasivam Sale Deed Doc. No.744/93 dt. 15.4.93 of Sub Registrar's office, Thamaraiipatty. (Rs.64,980/- + Stamp Duty Rs.7,860)	72,840/-
8.	One ready built house at K.K. Nagar, Madurai and 0.01 acre of land in S.No.514/1, at Kulathoor village, Kerala state during 1993 purchased in the name if Tmt. Nallammal Sale Deed Doc. No. 3359/93 dt: 22.09.93 of S.R.o Kulathoor, Kerala State. (Rs.1,50,500/- + Stamp duty Rs.9050/-)	1,59,550/-
9.	2.48 Acres of wet land in S.No.256/2 & 261/2 at Kodikulam during 1994 purchased in the name of Tr.Rajkumar Pandian, minor son of Tr.A.M.Paramasivan Sale Deed Doc. No. 608/94 dt. 04.04.94 of S.R.O. Thamaraiipatty. (Rs.80,600/- + Stamp Duty Rs.9,680/-)	90,280/-
10.	2.43 Acres of wet land in S.No.259/2 & 331/1 at Kodikulam during 1994 purchased in the name of Tr. Selvakumar Pandian Sale deed doc. No.1772/94 dt. 12.09.94 of S.R.O. Thamaraiipatty (Rs.1,23,160/- + Stamp duty Rs.14,800/-)	1,37,960/-
11.	1.29 Acres of wet land in S.No. 207/2 & 3 at Kodikulam during 1994 purchased in the name of Tr. Selvakumar Pandian, Sales Deed Doc. No. 1902/94 dt.23.9.94 of sub Registrar's Office Thamaraiipatty. (Rs.70,950/- + Stamp Duty 8,520/-)	79,470/-



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

WEB COPY

Sl.No	Items/Assets	Value as per Prosecution
12.	House site measuring 3045 Sq.ft. at 18-B HIG Colony Anna Nagar, Madurai 20 purchased during 1992 in the name of Tr.A.M. Paramasivam Sale deed doc. No.2693/95 dated 02.11.95 of S.R.O. Tahallakulam, Madurai. (Rs.2,76,141/- + Stamp duty Rs.2,715/-)	2,78,856/-
13.	0.51 Acres of wet land in S.No. 264/6 at Kodikulam during 1996 purchased in the name of Tr.A.M. Paramasivam Sale Deed Doc. 488/96 dt. 8.3.96 of S.R.O. Thamaraiipatty (Rs.23,000/- + Stamp Duty Rs.2,760)	25,760
14.	4.27 Acres of ,wet land in S.No. 240/5 etc. at Kodikulam during 1996 purchased in the name of Selvi Suriyakala @ Sudarsana, minor daughter of Tr. A.M. Paramasivam Sale deed Doc. No. 791/96 dt. 11.04.96 of SRO, Thamaraiipatty. (Rs.2,32,210/- + Stamp duty 28,000/-)	2,60,210
15.	0.51 acres of wet land in S.No.264/6 at Kodikulam during 1996 purchased in the name of Tr.A.M.Paramasivam, Sale Deed Doc.No.815 of 916, dated 15.04.1996. (Rs.23,000 + Stamp duty 2,760/-)	25,760/-
16.	1.61 acres of wet land in S.No. 267/1B at Kodikulam during 1996 purchased in the name of Selvan.Rajkumar Pandian Sale Deed Doc.No.1026/96 dated 06.05.1996 of SRO Thamaraiipatty. (Rs.87,620/- + Stamp duty Rs.10,680/-)	98,300/-
17.	Cost of the house constructed at plot No.18-B HIG colony, Anna Nagar, Madurai by Tr.A.M. Paramasivam during 1993-94 and 1994-95.	20,00,000/-
18.	One New Premier 137D Diesel Car TN-02-F-2345 purchased in the name of Tmt. Nallammal during 1994.	2,18,825/-
19.	One second hand Ambassador Car TCM 790 purchased in the name of Tmt.Nallammal during 1994.	1,30,000/-
20.	One ONIDA 20' colour TV acquired by Tr.A.M.Paramasivam during 1995.	20,390/-
21.	One 250 litres BPL Fridge acquired by Tr. A.M.Paramasivam during 1995.	21,350/-
22.	Two O.General A/c Machine acquired by Tr.A.M.Paramasivam	43,800/-



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

<i>Sl.No</i>	<i>Items/Assets</i>	<i>Value as per Prosecution</i>
	during 1995.	
23.	Sofa set 3 acquired Tr.A.M.Paramasivam during 1995.	7,000/-
24.	One Hero Honda 2000 watts Generator acquired by Tr.A.M.Paramasivam during 1995.	21,200/-
25.	One Dish Antenna acquired by Tr.A.M.Paramasivam during 1995.	12,000/-
26.	One Office table with six chairs acquired by Tr.A.M.Paramasivam during 1995.	11,800/-
27.	One during table with 7 chairs acquired by Tr.A.M.Paramasivam during 1995.	11,000/-
28.	Teak wood single and double cost each 2 in Nos. acquired by Tr.A.M. Paramasivam during 1995.	20,000/-
29.	10 sovereigns of gold (old) jewels purchased by Tmt.Nallammal during 1991.	28,000
30.	25 coverings of gold (old) jewels purchased by Tmt. Nallammal during 1992.	75,000
31.	15 sovereigns of gold (old) jewels purchased by Tmt. Nallammal during 1993.	45,000
32.	Share certificates of National Co-op. Sugar Mills Alanganallur held by Tr.A.M. Paramasivan and Tmt. Nallammal during 1992, 95 & 96.	7,400/-
33.	Cash balance as on 09.05.1996 as per S.B. A/c.3043A of Tr.A.M. Paramasivan in Madurai District Certral Co-op Bank Ltd. Madurai.	8,910/-
34.	Cash Balance as on 09.05.1996 as per S.B. A/c.No. 3042 of Tmt. Nallammal in Madurai District Central Co-op. Bank Ltd. Madurai.	10,055/-
35.	Cash balance as on 09.05.1996 as per S.B. A/c No. 95 of Indian Bank Ext. Counter M.L.A. Hostel Complex, Chennai in the name of Tr.Am. Paramasivam.	4,362/-
36.	Cash balance as on 09.05.96 as per S.B. A/c. No. 6956 of I.O.B. Secretariat Branch, Chennai in the name of Tr.A.M. Paramasivam.	24,963/-
	Total	39,78,986/-

34. While discussing Statement-I, (assets at the beginning of check



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

सत्यमेव
WEB COPY

period), it has been affirmed that, except the agricultural income from about 5 acres of land, A-1 had no other source of income. As far as A-2, she had no independent source of income. From 1983 the year of marriage till 1992, there is no acquisition of immovable property either in the name of A-1 or A-2. After A-1 become an M.L.A in the year 1991, the acquisition of immovable properties in the name of A-1 or A-2 or in the name of minor children had started. The property mentioned in Serial No.6, purchased by A-2 on 14/09/1992 for Rs.4500 + Rs.540/- (Stamp Duty). Three months later, she had purchased Serial No.5 on 25/11/1992 for Rs.16,875 + Rs.2030 /- (Stamp Duty). The property in Serial No.7 purchased on 15/04/1993 in the name of minor son T.R.Selvakumar Pandian for Rs.64,980/- + Rs.7860/- (stamp duty).

35. On 17/05/1993, A-1 become the Minister for Labour Welfare, Government of Tamil Nadu. Thereafter the accumulation of wealth further accelerated. Within period of 4 months, Serial No.8, a ready build house at K.K.Nagar, Madurai along with 1 cent of land in Kerala (this one cent land in Kerala is a sham and nominal sale to avoid higher Stamp duty on the property prevailing then in Tamil Nadu) and got it registered at Kerala on 22/09/1993 in the name of A2 for Rs.1,50,500 + Rs.9050/- (stamp duty). This followed by



Crl.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

सत्यमेव जयते
properties in Serial Nos.9 to 16.
WEB COPY

36. In the HIG Colony Anna Nagar, a plot of TNHB, purchased for Rs.2,78,856/-. A-1 had constructed a house which is estimated as Rs.20,00,000/- worth by the prosecution. The evidence of D.W-30 Rajasekaran authorised Valuer for Central Government Department and his valuation report Ex.D.15 is relied by the defense to show that the valuation of the house in Serial No.17, building on the plot purchased in the year 1992 (Serial No.12) for Rs.2,78,856/- was only Rs.9,97,270/-.

37. D.W-30 is a freelance valuer. On the request of A-1, he has inspected the house and given his valuation certificate. His valuation report Ex.D-15 is half the value shown by the P.W.D Valuer Mr.Muthukumarasamy (P.W.59). The proceedings during the inspection of the house and the valuation report given by P.W-59 are marked as Ex.P-143 and Ex.P-144. The photographs of the house are marked as M.O.1 to M.O.31.

38. The Trial Court in its judgment at paragraph Nos.83 to 85 had



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

WEB COPY

discussed the evidence regarding the value of the house relied by the prosecution and the defence. On comparing the valuation report of P.W-59 marked as Ex.P-144 and the valuation report of D.W-30 marked as Ex.D-15, the main difference pointed out by the trial Court is the build up area. The defence witness Mr.Rajasekaran examined as D.W-30 had given his report based on Ex.P.44, which is the building plan approved. He had given the valuation report for the purpose of Income Tax Returns. He admits in the cross examination that, M.O.1 to M.O.31 are the photographs of the house of A-1 at K.K.Nagar, Madurai. He admits that the lawn in the building was not valued by him. The house front elevation not valued. His valuation report not to specification but in general.

39. The Learned Counsel for the appellants contended that, P.W-59 had added Rs.1 lakh (½ %) for Architect charge. On what basis this amount fixed not explained by the prosecution. Further, the architect not examined as witness. Whereas, only Rs.25,000/- spent on plan approval, drawing, supervision, watchman etc. Further, he also submitted that, through D.W-26, D.W-27 and D.W-28, the man who provided scaffold materials for centring, the electrician and the carpenters have deposed that materials were supplied by A-1



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

WEB COPY
himself and they received only the Labour cost. Hence, the construction costs was much less than what the prosecution estimated. However, the defence had not filed any purchase bills to support the oral evidence of these witnesses.

40. Contrarily, the prosecution has proved that the building is not constructed exactly as per the approved plan Ex.P-44. The additions and deviations are noted by PW-59 in his report and same is admitted by DW-30. P.W-59 had valued the building as per the prevailing P.W.D rates and guidelines. In his inspection report Ex.P-143, he had explained how he had arrived at the value. While Ex.D-15 is vague and obviously not valued with specification also not covered the entire structure or the actual structure of the building, Ex.P-144 is more specific and authentic.

41. Regarding the construction cost, the only point which requires the interference is the fees paid to Architect. Though ½ % of the building tentative cost is added as Architect fees which is the normal procedure, however as contended by the Learned Counsel for the appellant, it may vary based on various other factors. In the absence of Architect evidence, the contention of the defence regarding the Architect fees of Rs.25,000/- alone to be



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

सत्यमेव जयते
taken and not Rs.1,00,000/- as fixed by the prosecution. On all other aspects,
WEB COPY
the value shown in Ex.P-144 to be accepted.

42. As far as the two cars shown at Serial Nos.18 and 19, the trial Court has re-fixed its value and given the reason for re-fixing. No further contemplation on the value of these cars is required.

43. Serial Nos.20 to 28 are house hold articles, electronic appliances like TV, Fridge, A/c machines and sofa set, generator, chairs, dinning table and wooden cots. The defence has marshalled the relatives to say these items were presented by them during the house warming ceremony. There is no documentary proof for this claim. The trial Court deleted Rs.43,800/- the value shown for the two A/c Machines (Serial No.22), since the value of the A/c machines is included in the construction cost of the building.

44. In so far as other items, the trial Court has accepted the prosecution value. For the sake of argument, even if the said explanation is accepted, assuming that the relatives of A-1 and A-2 presented those household articles during the house warming ceremony, the entire value of these house



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

WEB COPY

hold appliances like Colour TV - Serial No.20 for Rs.20,390/-; BPL Fridge - Serial No.21 for Rs.21,350/-; Three sofa set - Serial No.23 for Rs.7000/-; Honda Generator - Serial No.24 for Rs.21,200/-; Dish antenna - Serial No.25 for Rs.12,000/-; Office table with 6 chairs - Serial No.26 for Rs.11,800/-; One dinning table with 7 chairs - Serial No.27 for Rs.11,000/- and Teak wood single and double cots (each 2 in Nos) – Serial No.28 for Rs.20,000/- only a total sum of Rs.1,24,740/- can be reduced from the total value of the assets acquired during the check period. At the most, the dispute in valuation can be only in respect of Architect fees (less Rs.75,000/-) and the value of the household articles alleged to have been gifted by known persons and relatives less Rs.1,24,740/-. The value of assets acquired during the check period will thus come from Rs.37,70,590/- = Rs.35,71,330/-

45. Statement-III deals with the income of the public servant during the check period. The appellants known source of income is the salary of A-1 and the agricultural income from the 5 acres of land. All other properties were acquired during the check period and the source is unknown. The income if any derived from the assets acquired without legal source of income also carrying the trappings of unknown source. What is known source of income and the



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

expression of known sources of income as found in Section 13(1)(e) of the P.C Act, 1988 is explained by the Hon'ble Supreme Court in the following two cases:-

(i). ***Kedarai Lal -vs- State of Madhya Pradesh*** reported in (2015)

14 SCC 505, wherein it has held that,

“10. The expression “known sources of income” in Section 13(1)(e) of the Act has two elements, first, the income must be received from a lawful source and secondly, the receipt of such income must have been intimated in accordance with the provisions of law, rules or orders for the time being applicable to the public servant. In N.Ramakrishnaiah [N.Ramakrishnaiah v. State of A.P., (2008) 17 SCC 83 : (2010) 4 SCC (Cri) 454], while dealing with the said expression, it was observed : (SCC pp. 86-87, para 17)

“17. ‘6. ... Qua the public servant, whatever return he gets from his service, will be the primary item of his income. [Other income which can conceivably be] income qua the public servant, will be in the regular receipt from (a) his property, or (b) his investment.”

The categories so enumerated are illustrative. Receipt by way of share in the partition of ancestral property or bequest under a will or advances from close



WEB COPY



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

relations would come within the expression “known sources of income” provided the second condition stands fulfilled that is to say, such receipts were duly intimated to the authorities as prescribed.

11. We have gone through Rules 14, 17 and 19 of the Rules. Rule 14 lays down that a government servant on occasions such as weddings, anniversaries or religious functions may accept gifts up to a certain limit, if he makes a report of such fact to the Government within a period of one month. Sub-rules (4) and (5) provide, inter alia, that in any other case, the government servant shall not accept any gift without the sanction of the Government and if the gift exceeds Rs 2000, except through an account payee cheque. Rule 17 deals with investment, lending and borrowing and provides inter alia that government servant may give to, or accept from a relation or a personal friend, a purely temporary loan. Rule 19 lays down that the government servant must intimate the details of property inherited or acquired by the government servant. There is no absolute embargo or prohibition in the Rules and all that is required is sanction or permission from the Government.

12. In the instant case, every single amount



WEB COPY



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

received by the appellant has been proved on record through the testimony of the witnesses and is also supported by contemporaneous documents and intimations to the Government. It is not the case that the receipts so projected were bogus or was part of a calculated device. The fact that these amounts were actually received from the sources so named is not in dispute. Furthermore, these amounts are well reflected in the income tax returns filed by the appellant.”

(ii). ***State of Tamil Nadu -vs- R.Soundirarasu reported in 2023(6) SCC 768***, wherein it is held that,

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

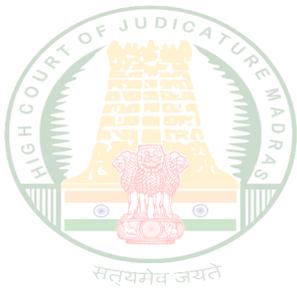


WEB COPY



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

prosecution and not to the accused. The Explanation applies and relates to the mode and manner of investigation to be conducted by the prosecution, it does away with the requirement and necessity of the prosecution to have an open, wide and roving investigation and enquire into the alleged sources of income which the accused may have. It curtails the need and necessity of the prosecution to go into the alleged sources of income which a public servant may or possibly have but are not legal or have not been declared. The undeclared alleged sources are by their very nature are expected to be known to the accused only and are within his special knowledge. (emphasis supplied) The effect of the Explanation is to clarify and reinforce the existing position and understanding of the expression “known sources of income” i.e. the expression refers to sources known to the prosecution and not sources known to the accused. The second part of the Explanation does away with the need and requirement for the prosecution to conduct an open ended or roving enquiry or investigation to find out all alleged/claimed known sources of income of an accused who is investigated under the PC Act, 1988. The prosecution can rely upon the information furnished by the accused to the authorities under law, rules and orders for the time being applicable to a public servant.



WEB COPY



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

No further investigation is required by the prosecution to find out the known sources of income of the accused public servant. As noticed above, the first part of the Explanation refers to income received from legal/lawful sources. This first part of the expression states the obvious as is clear from the judgment of this Court in N. Ramakrishnaiah [N. Ramakrishnaiah v. State of A.P., (2008) 17 SCC 83 : (2010) 4 SCC (Cri) 454] .

42. Thus, it is evident from the aforesaid that the expression “known source of income” is not synonymous with the words “for which the public servant cannot satisfactorily account.” The two expressions connote and have different meaning, scope and requirements.”

46. In the instant case, the known source of income for A-1 and A-2 was the pay received from the Legislative Assembly and the Agricultural income. The salary income and other perks of A-1 is spoken P.W-8 Soundarabai Satyavati and P.W-9 Ethendrababu. The total pay drawn by A-1 during the check period is Rs.61,597/- for the period before he become as Minister and Rs.1,55,581/- for the period after he become as Minister. The



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

WEB COPY

Statements for the respective period are Ex.P-28 and Ex.P-29. The Learned Counsel for the appellants contend that the travelling allowances during the check period not taken into account. The pension as M.L.A for the period 1977 to 1980 not taken into account. The travelling allowance is given for the money spent on travel and it is not a income. Likewise, the claim that A-1 that he was paid pension as Ex.M.L.A for the period 1977 to 1980, even after being elected again in the year 1991 is not established by A-1.

47. With regard to income from agricultural land owned by the appellants, the prosecution through Revenue Officials had proved the extend of land, nature of crop, yield and net income after defraying expenses. The trial Court, after weighing the evidence re-fixed the income as Rs.7,96,738/-. As far as the claim of the appellants in respect of alleged income from the land cultivated under lease and return of money advanced as loan prior to the check period and received during the check period is spoken only by the witnesses examined on the defence side. Without any document to support, rightly rejected by the trial Court since this claim is an afterthought and never reflected in any of the records maintained by the accused. Thus, it is clearly established through evidence that the other income which the appellants claims are not from



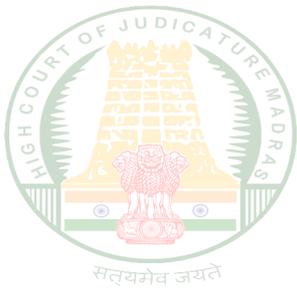
CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

सत्यमेव जयते the known source but otherwise.
WEB COPY

48. One important plea raised by the Learned Counsel for the appellant is that, A-2 had her own source of income. Her income through the independent source not been taken note by the prosecution. Relying upon the judgment of the Hon'ble Supreme Court rendered in **DSP, Chennai -vs- K.Inbasakaran** reported in (2006) 1 SCC 420, the Learned Counsel for the appellant contended that the dictum laid in this judgment will apply to A-2.

49. In *K.Inbasakaran* case cited supra, the wife/A2 of the Public Servant was not an accused. She was running three concerns. The public servant contended that the unaccounted money recovered from his premises are that of his wife. In the said context, the Hon'ble Supreme Court held that,

“15. We have heard both the learned counsel at length. The basic question that emerges in the present case is whether the accused could be saddled with all the unaccounted money at his hand or not. It is the admitted position that both the husband and wife were living together. The wife was running three concerns though



WEB COPY



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

those concerns were running in loss. Yet she could manage to earn black money by selling goods without bills and amassed this wealth without disclosing the same to the Income Tax Authority and when the raid was conducted she disclosed the unaccounted money and accepted herself for being assessed by the Income Tax Department. Therefore, in this context, the question arises whether the joint possession of the premises by the husband and wife and the unaccounted money which has been recovered from the house could be said to be in exclusive possession of the accused.”

50. In the present case, contrary to *K.Inbasagaran* case, the wife of the public servant is arrayed as second accused. She had no independent source of income till she got married the Public Servant in the year 1983 or thereafter. There was no property yielding income acquired by her till 1992. A-2 being charged for aiding and found guilty of the said charge, therefore the dictum laid by the Hon'ble Supreme Court in *K.Inbasagaran* case does not apply to the case in hand.

51. With regard to A-2, the dictum laid by the Hon'ble Supreme Court in *P.Nallammal and another -vs- State Rep. by the Inspector of Police*



Crl.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

reported in **1999 (6) SCC 559** squarely applies. Having obliged her husband (a public servant) to keep the ill-gotten income other than the known source of income to account for, by lending her name for purchase of properties both in her name and in the name of her minor children showing her as guardian, she is guilty of abetment under Section 109 of I.P.C.

52. It is a settled preposition of law that in case of disproportionate assets acquired by the Public Servant, the initial burden is on the prosecution to prove objectively the property found in possession of the accused were disproportionate to his known sources of income. What the expression known sources of income also been explained by the Hon'ble Supreme Court in catena of judgments, few already referred in the earlier part of this judgment.

(i). In ***M.Krishna Reddy -vs- State, Rep by DSP, Hyderabad*** reported in **1992(4) SCC 45**, it has been held that,

“7. To substantiate a charge under Section 5(1)(e) of the Act, the prosecution must prove the following ingredients, namely, (1) the prosecution must establish that the accused is a public servant, (2) the nature and extent of the pecuniary resources or property which



WEB COPY



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

were found in his possession (3) it must be proved as to what were his known sources of income, i.e. known to the prosecution and (4) it must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income. Once the above ingredients are satisfactorily established, the offence of criminal misconduct under Section 5(1)(e) is complete, unless the accused is able to account for such resources or property. In other words, only after the prosecution has proved the required ingredients, the burden of satisfactorily accounting for the possession of such resources or property shifts to the accused.”

53. After meticulous examination, this Court able to find that, if at all any benefit in error of assessment regarding the value of assets acquired during the check period to be given, it can only be to a tune of Rs.1,99,260/- rounded off to Rs.2 lakhs which is in respect of Architect fees and the value of household articles claimed to be received as gift. Even, if concession of Rs.2 lakhs is given to the value of assets acquired during check period, the disproportionality will be reduced to only marginally and not to the extend to fall outside the scope of the offence under section 13(1)(e) of the P.C Act or



CrI.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

Section 109 r/w 13(1)(e) of P.C Act. Hypothetically, even if we take the value of the assets acquired during check period as Rs.35,70,590/-, instead of Rs.37,71,590/- then the asset worth Rs.33,25,136/- will be disproportionate after deducting the likely savings of Rs.2,45,454/- during the check period (Statement VI). Then, the percentage of disproportionality will be 417.34% instead of 442 % .

54. Thus, it is evident that the deceased first accused being a Public Servant had acquired wealth above 400% of his known source of income. From undeclared source, the properties been acquired by the public servant (A1) in his name and in the name of his wife (A-2) also in the name of his minor children. A-2 have lend her name for purchasing the property through source undeclared. Therefore, the trial Court judgement of conviction dated 15/11/2000 is hereby confirmed.

55. As far as the sentence imposed on A-2 for aiding, the Learned Counsel for the appellant submitted that, A-2 been facing the ordeal of criminal prosecution for more than 25 years. The prosecution was laid against A-1 due to political rivalry and her husband, who was public servant is no more. Being



Crl.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

सत्यमेव जयते a lady above 80 years, she may be spared from incarceration.

WEB COPY

56. The offence being acquiring wealth by a public servant beyond his known source of income and A-2 for aiding the public servant, had been sentenced for one year R.I being the minimum sentence prescribed under the law. So there cannot be further reduction of sentence. In such circumstances, the appellant/A2 has to be sentenced to undergo atleast the minimum sentence which is one year. Accordingly, the judgment of the trial Court in Special S.C.No.11/1997 stands confirmed.

57. In fine, *Criminal Appeal No.1170 of 2000 is dismissed.* The trial Court is directed to secure the appellant/accused-2 and commit her to the prison to undergo the remaining period of sentence. Any period of imprisonment if already undergone by the accused shall be set off under Section 428 of Cr.P.C.

C.M.A.No.425 of 2001

58. The trial Court determined the value of the assets acquired by A-1 disproportionate to his known source of income as Rs.35,25,136/- for the



Crl.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

सत्यमेव जयते
purpose of action under Section 12 of Criminal Law (Amendment) Ordinance
WEB COPY
Act 1944.

59. Separate order in Crl.O.P.No.2 of 1997 passed by Principal Sessions Judge, Madurai, under Section 11 of Criminal Law (Amendment) Act, 1944 on 03.01.2001. Against the said order, the Civil Miscellaneous Application is filed.

60. The Civil Miscellaneous Application has been filed under Section 11 of Criminal Law (Amendment) Ordinance 1944, against the order made in Crl.O.P.No.2 of 1997, passed by the Principal Sessions Judge, Madurai, on 03.01.2001. Against the said order, the public servant, his wife and two children in whose name the attached property stand had preferred this Civil Miscellaneous Application. In view of the confirmation of the conviction and modification to the value of the property acquired by the accused by means of the offence, the order passed by the Principal Sessions Judge in Crl.O.P.No.2 of 1997, regarding forfeiting the properties mentioned in the annexure for recovery of Rs.35,25,136/- is confirmed with modification to the effect of recovering a sum of Rs.33,25,165/- instead of Rs.35,25,136/- with interest at



Crl.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

the rate of 6% p.a from the date of interim attachment i.e., 06.03.1997, in
WEB COPY
Crl.M.P.No.1168 of 1997, which was made absolute by order of the Principal
Sessions Judge, Madurai.

61. Accordingly, *Civil Miscellaneous Application No.425 of 2001 is dismissed.* Consequently, connected Miscellaneous Petition is closed.

20.11.2023

Index :Yes/No.
Internet :Yes/No.
Speaking order/non speaking order
bsm

Copy To:-

- 1.The III Special Judge/XIII Additional Judge, Chennai.
- 2.The Learned Principal Sessions Judge, Madurai.
- 3.The Inspector of Police, Vigilance and Anti-Corruption, Dindigul.
- 4.The Public Prosecutor, High Court, Madras.



WEB COPY



Crl.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

DR.G.JAYACHANDRAN,J.

bsm

Pre-delivery common judgment made in
Crl.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & CMP.No.5525 of 2001



WEB COPY



Crl.A.No.1170 of 2000
& C.M.A.No.425 of 2001 & C.M.P.No.5525 of 2001

20.11.2023