IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.11.2023	Pronounced on: 19.12.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.No.53 of 2017

State Represented by:
The Public Prosecutor,
High Court, Madras.
[V & AC Villupuram
Crime No.7/2011] ... Appellant/Petitioner/Complainant

/versus/

1. K.Ponmudi @ Deivasigamani,
   S/o.M.Kandaswamy,
   Former Minister for Higher Eduction &
   Mines of Tamil Nadu,
   No.6 – S&B Thirupanalwar Street,
   East Shanmugapuram Colony,
   Villupuram.

2. Tmt.P.Visalakshi,
   W/o.Ponmudi @ Deivasigamani,
   No.6 – S&B Thirupanalwar Street,
   East Shanmugapuram Colony,
   Villupuram. .... Respondents/Accused [A1 & A2]

Prayer:- Criminal Appeal has been filed under Section 378 of Cr.P.C., pleased to set aside the judgment of acquittal passed in Special Case No.44 of 2014, dated 18.04.2016 by the Court of Special Court for Prevention of Corruption Act Cases, Villupuram and convict the respondents/accused (A-1 & A-2) as charged.

For Appellant : Mr.Babu Muthu Meeran,
Additional Public Prosecutor.

For R1 : Mr.N.R.Elango, Senior Counsel,
for Mr.A.S.Aswin Prasanna.

For R2 : Mr.R.Basand, Senior Counsel,
for Mr.A.S.Aswin Prasanna.

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J U D G M E N T

The Criminal Appeal is filed against the order of acquittal passed by the Special Court for Prevention of Corruption Act in Special S.C.No.44 of 2014. The State represented by the Deputy Superintendent of Police, DV&AC, Villupuram, is the appellant. A-1/K.Ponmudi @ Deivasigamani (Public Servant) and A-2/P.Visalakshi the wife of the Public Servant tried for charges under Section 13(2) r/w 13(1)(e) of P.C Act, 1988 and Section 13(2) r/w 13(1)(e) of P.C Act 1988 r/w 109 of I.P.C respectively are the respondents.

2. A-1/K.Ponmudi @ Deivasigamani was the Minister for Higher Education and Mines, Government of Tamil Nadu, during the year 2006 to 2011. Soon after his party lost the power, case for disproportionate assets was registered against him in Crime No.No.7 of 2011 on 26.09.2011.

3. The final report alleged that, first respondent as M.L.A and Minister for Higher Education and Mines, Government of Tamil Nadu, along with his wife the second respondent during the check period 13.04.2006 to 13.05.2010 acquired assets 65.99% more than their known source of income and could not satisfactorily explain the source. Accordingly, charges were framed and taken up for trial in Special C.C.No.44 of 2015 by the Special Court for Prevention of Corruption Act at Villupuram.

4. To substantiate the charges, on the side of the prosecution 39 witnesses (P.W.1 to P.W.39) were examined and 85 Exhibits (Ex.P.1 to Ex.P.85) were marked. To disprove the charges, on the side of the accused 6 documents (Ex.D.1 to Ex.D.6) were marked in the course of the cross examination of prosecution witness. No witness for defence examined.

5. Pending trial, exercising the power under the Criminal Law Amendment Act, 1944 interim attachment of the respondents properties mentioned in the annexure to the order was passed on 19/07/2013 in Cr.M.P.2115 of 2013. Later, the order of interim attachment was withdrawn vide order dated 24.06.2014. This withdrawal order of the trial Court is

challenged by the State and that Appeal is subject matter of C.A.No.679 of 2016.

6. On completion of trial, the trial Court held charges not proved and acquitted both the accused in Special C.C.No.44/2014 on 18th April, 2016.

7. Challenging the order of acquittal, State has preferred the Criminal Appeal.

8. Brief Facts:

Based on informations collected during discreet enquiry followed by detailed enquiry, the First Information Report marked as Ex.P.74 came to be registered on 26.09.2011 against A-1. After giving opportunity to explain the source for their assets, Final Report against A-1 and A-2 filed on 18.07.2012, taking the period 13.04.2006 to 14.05.2011 as the check period. Based on the materials relied by the prosecution, the trial Court framed charges as under:-

*Firstly, You, **1st Accused K.Ponmudi alias Deivasigamani**, as holding the position as Minister for Higher Secondary Education and Mines, Government of*

Tamil Nadu, and as Tamil Nadu Legislative Assembly Member from 13.04.2006 to 13.05.2011, is a person known as Public Servant as defined under Section 2(C) of the Prevention of Corruption Act, 1988. ***Tmt.Visalakshi, the 2nd Accused*** *in this case, as an individual, in the capacity of being your wife, is the one living with your support. It was found that wealth disproportionate to the known sources of income has been accumulated, in the names of both of you, the 1st Accused and your wife, during the aforesaid periods and the period from 13.04.2006 to 31.03.2010 was reckoned as Check Period in this case. On a calculation, from the commencement of the Check Period taken as Check Period, viz., from 13.04.2006, the value of the wealth, stood in the names of the 1st and 2nd Accused, was totally calculated as Rs.2,71,75,011/-. (Statement– I).*

Secondly, during the end of the check period i.e., 31.03.2010, the assets which stood in the name of A1 & A2 calculated at Rs.6,27,23,752/- as per Statement – II. Thus, the total value of the asset acquired during the check period is valued as Rs.3,55,48,741/- as per the Statement – V. During the said check period the income of A1 & A2 from the known source arrived at Rs.2,65,95,560/- as per Statement–III. During the same period, the presumed expenditure calculated at Rs.85,99,287/- as per Statement – IV, after deducting

the expenditure from the income earned during the check period by both the accused, the likely savings in their names should be Rs.1,79,97,273/- as per Statement – VII. While the likely savings during the check period is Rs.1,79,97,273/-, the value of the assets acquired during the check period assessed as Rs.3,35,48,741/-. Thus, excess of Rs.1,75,51,468/- is found to be assets beyond the known source of income held by A1 & A2.

The Show cause notice was issued to explain the source of income. The explanations given by A1 and A2 found not satisfactory. Hence, A1/Ponmudi being the public servant liable to be prosecuted for the offence under Section 13(2) r/w 13(1)(e) of P.C Act and his wife Tmt.Visalatchi/A2 for aiding and abetting A1 liable to be prosecuted for the offence under Section 13(2) r/w 13(1)(e) of P.C Act and r/w 109 of I.P.C triable by the Special Court for Prevention of Corruption Act, Villupuram.

9. The Statements I to VII mentioned in the charges is as under:-

STATEMENT-I
Assets at the commencement of the check period as on 13.04.2006

S. No.	Details of Assets	Value Rs.
1.	Agricultural lands of 1.62 acres in Villupuram Taluk,Mathirimangalam Village S.No.39/1 and 3.25 Acres in S.No.41 in the name of AO-1	5,00,000/-

	Tr.K.Ponmudi (Doc.No.82/1992)	
2.	Agricultural lands of 0.68 cents in Villupuram Taluk, Mathirimangalam Village S.No.40 in the name of AO-1 Tr.K.Ponmudi(Doc.No.81/92)	68,000/-
3.	AO-1 Tr.K.Ponmudi has acquired 2400 sq.ft plot at No.2, near EB colony lay out in Villupuram S.Nos.337/B, 339/B and 344 in his name	1,20,000/-
4.	AO-1 Tr.K.Ponmudi has acquired 2085 sq.ft. Plot in Villupuram Taluk, Ayyankoilpattu Village S.No.82 in his name (Doc.No.1904/87)	1,00,000/-
5.	AO-1 Tr.K.Ponmudi has acquired 2000 sq.ft. Plot in Villupuram Taluk, V.Marudhur S.No.140/2 in his name (Doc.No.2538/91)	2,40,000/-
6.	AO-1 Tr.K.Ponmudi has acquired 2400 sq.ft. Plot in Villupuram Taluk, V.Marudhur S.No.140/2 of Villupuram in his name (Doc.No.2133/91)	2,40,000/-
7.	AO-1, Tr.K.Ponmudi has obtained as gift from his mother measuring 6258 sq.ft – two plots in Villupuram Taluk, Kandamanadi Village S.No.355/7 in his his name (Doc.No.2825/2005)	2,00,000/-
8.	AO-1 Tr.K.Ponmudi has constructed a commercial building at Villupuram Taluk, Kandamanadi Village in S.No.355/7 to an extent of 2400 sq.ft.	5,00,000/-
9.	Agricultural lands of 1.27.2 acres in Villupuram Taluk, Mathirimangalam Village S.No.34/C and 39/1 in the name of Tr.K.Ponmudi's wife AO-2 Tmt.P.Visalakshi(Doc.No.631/1997)	1,27,000/-
10.	Agricultural lands in Villupuram Taluk, Mathirimangalam Village S.No.39/1 0.95 acres, S.No.91-2.82 acres, S.No.121-1.12 acres, S.No.94-0.59 acres and S.No.92- 0.49 acres totally 5.97 acres in the name of AO-2 Tmt.P.Visalakshi (Doc.No.270/97)	5,00,000/-
11.	Agricultural lands in Villupuram Taluk, Mathirimangalam Village S.No.34/C 0.33 acres and S.No.39/1, 4.25 acres totally 4.58 acres in the name of AO-2 Tmt.P.Visalakshi (Doc.No.632/97)	3,05,000/-
12	Agricultural lands in Villupuram Taluk, Mathirimangalam Village S.No.44/1 0.95 cents S.No.39/1 0.05 cents S.No.92/4 4.00 cents and S.No.94/4 0.59 cents totally 5.59 acres in the name of AO-2 Tmt.P.Visalakshi (Doc.No.633/1997)	5,60,000/-
13.	Agricultural lands in Villupuram Taluk, Karanai Village S.No.203/3A 0.30 cents in the name of AO-2 Tmt.P.Visalakshi (Doc.No.1543/2000)	30,000/-
14.	Agricultural lands in Villupuram Taluk, Karanai Village S.Nos.203/3D1, 205/1, 203/3D3, 203/3D4, 203/3DF, 204/4D, 204/5, 204/1, 204/4, 203/3E3, 205/1, 204/4E, 205/1C, 205/1A1, 203/1EA and 203/1E, 5 & 6 totally 3.95 ½ acres in the name of AO-2 Tmt.P.Visalakshi (Doc.No.1544/2000)	4,00,000/-

15.	Agricultural lands in Adenepalle Village, Pakala Mandal, Chittoor District and Andhra Pradesh State in S.No.193/B-5.02 acres in the name of AO-2, Tmt.P.Visalakshi	5,00,000/-
16.	AO-1 Tr.K.Ponmudi has acquired 4770 sq.ft. Plot in Villupuram Taluk, Salamedu Village, S.No.278/4 in the name of his wife AO-2 Tmt.P.Visalakshi (Doc.No.959/87)	1,00,000/-
17.	AO-1, Tr.K.Ponmudi has acquired 1200 sq.ft. Plot in Villupuram Taluk, V.Marudhur S.No.130 in the name of AO's wife Tmt.P.Visalakshi (Doc.No.433/90)	2,50,000/-
18.	AO-1 Tr.K.Ponmudi has acquired 5925 sq.ft. Plot in Cuddalore District, Tiruppapuliyur Town S.No.1898 and 1909/4 in the name of his wife AO-2, Tmt.P.Visalakshi (Doc.No.2641/2000)	6,00,000/-
19.	AO-1 Tr.K.Ponmudi has acquired 6030 sq.ft. Plot in Cuddalore District, Thiruppapuliyur Town S.No.1898 and 1909/4 in the name of his wife AO-2 Tmt.P.Visalakshi (Doc.2642/2000)	6,00,000/-
20.	AO-1 Tr.K.Ponmudi has acquired 2400 sq.ft at Trichy District, Plot in Shop No.12 at Tennur, Trichiapalli in the name of his wife AO-2 Tmt.P.Visalakshi	6,00,000/-
21.	AO-1 Tr.K.Ponmudi has acquired a plot measuring 1897/70000 sq.ft in Chennai, Mylapore, Triplicane Taluk, Plot No.4,5&6 No.20L Greenways Road, R.A.Puram, R.S.No.4272 Block No.93, comprised in C.C.No.280 in the name of his wife AO-2 Tmt.P.Visalakshi (Doc.99/2000)	10,00,000/-
22.	AO-2 Tmt.P.Visalakshi has constructed a commercial building at Cuddalore District, Thiruppapuliyur Town S.No.1898 and 1909/4 to an extent of 521.5 sq.mt.	45,00,000/-
23.	AO-1 Tr.K.Ponmudi has constructed a Residential Building at Villupuram Taluk, V.Marudhur Village, in Punjai S.No.130 to an extent of 2400 sq.ft in the name of his wife AO-2 Tmt.P.Visalakshi	20,00,000/-
24.	Flat in the ground floor bearing No.GD at 20L, Ramaniyam Towers, Greenways Road, R.A.Puram, Chennai 28, to an extent of 1897 sq.ft in the name of Tr.K.Ponmudi wife AO-2 Tmt.P.Visalakshi	45,00,000/-
25.	Bank balance in SB A/c No.34 in Indian Overseas Bank at Chennai-9 branch in the name of AO-1 Tr.K.Ponmudi as on 13.04.2006.	5,40,658/-
26.	Bank balance in SB A/c No.3922 in Co-op Urban Bank at Villupuram branch in the name of the AO-1 Tr.K.Ponmudi as on 13.04.2006.	1,85,452/-
27.	Bank balance in SB A/c No.13358 in UCO Bank at Chennai Saidapet Branch in the name of AO-2, Tmt.P.Visalakshi, as on 31.04.2006 (as per the nomination affidavit filed by the AO-1 on 13.04.2006)	4,345/-

28	Bank balance in SB A/c No.164302000000106 in Indian Overseas Bank at Chennai Texco E.C.Branch, Saidapet in the name of Ponni Kayal Film, Chennai as on 13.04.2006 (As per the nomination affidavit filed by AO-1 on 13.04.2006 - shown in the name of his wife AO-2 Tmt.P.Visalakshi A/c).	1,24,584/-
29.	Bank balance in SB A/c No.17072 in Co-op Urban bank, Villupuram branch in the name of AO-2 Tmt.P.Visalakshi, as on 13.04.2006.	972/-
30.	Investments in EVER SMILE ENTERPRISES (P) LTD, Chennai - by means of 10100 shares x Rs.10/- each in the name of AO-2 Tmt.P.Visalakshi	1,01,000/-
31.	Bajaj scooter TN 32 A 3589 in the name of the AO-1 Tr.K.Ponmudi	3,000/-
32.	TAFE Ltd Tractor TN 32A 2878 in the name of the AO-1 Tr.K.Ponmudi.	2,35,000/-
33.	Trailor TN 32 1285(Local Siva Industries) in the name of the AO-1 Tr.K.Ponmudi.	50,000
34.	Royalty Received from Vishal Publishers, Villupuram by the AO-1 Tr.K.Ponmudi.	25,000
35.	122 grams gold jewels in the account of the AO-1 Tr.K.Ponmudi	Notional value
36.	2800 grams gold jewels in the account of AO-2 Tmt.P.Visalakshi.	Notional value
37.	50 Kg Silver articles in the account of AO-2 Tmt.P.Visalakshi.	Notional value
38.	Investments in Visha Expo.,Villupuram by the AO-2 Tmt.P.Visalakshi.	15,00,000
39.	Investments in Vishal Automobiles, Cuddalore by the AO-2 Tmt.P.Visalakshi.	25,00,000
40.	Investments in Vishal Publishers, Villupuram by the AO-2 Tmt.P.Visalakshi.	2,00,000
41	Investments in EVER SMILE ENTERPRISES PRIVATE LIMITED Chennai by the AO-2 Tmt.P.Visalakshi.	5,00,000
42.	Investments in PONNI KAYAL FILMS, Chennai by the AO-2, Tmt.P.Visalakshi.	5,00,000
43.	Cash on hand of the AO-1 Tr.K.Ponmudi (as per the Nomination Affidavit filed by the AO-1 on 13.04.2006)	11,15,000
44.	Cash on hand of AO-2 Tmt.P.Visalakshi (as per the Nomination Affidavit filed by the AO-1 on 13.04.2006).	10,50,000

Total	**2,71,75,011/-**

STATEMENT-II
Assets at the end of the check period as on 31.03.2010

S. No.	Details of Assets	Value Rs.
1.	Agricultural lands of 1.62 acres in Villupuram Taluk, Mathirimangalam Village S.No.39/1 and 3.25 Acres in S.No.41 in the name of AO-1 Tr.K.Ponmudi(Doc.No.82/1992)	5,00,000/-
2.	Agricultural lands of 0.68 cents in Villupuram Taluk, Mathirimangalam Village S.No.40 in the name of AO-1 Tr.K.Ponmudi (Doc.No.81/92)	68,000
3.	AO-1 Tr.K.Ponmudi has acquired 2400 sq.ft Plot at No.2, near EB colony lay out in Villupuram S.Nos.337/B, 339/B and 344 in his name.	1,20,000
4.	AO-1 Tr.K.Ponmudi has acquired 2085 sq.ft Plot in Villupuram Taluk, Ayyankoilpattu Village, S.No.82 in his name (Doc.No.1904/87)	1,00,000
5.	AO-1 Tr.K.Ponmudi has acquired 2000 sq.ft plot in Villupuram Taluk, V.Marudhur S.No.140/2 in his name (Doc.No.2538/91).	2,40,000
6.	AO-1 Tr.K.Ponmudi has acquired 2400 sq.ft plot in Villupuram Taluk V.Marudhur S.No.140/2 of Villupuram in his name (Doc.No.2133/91).	2,40,000
7.	AO-1 Tr.K.Ponmudi has obtained as gift from his mother measuring 6258 sq.ft - two plots in Villupuram Taluk, Kandamanadi Village S.No.355/7 in his name (Doc.No.2825/2005)	2,00,000
8.	AO-1 Tr.K.Ponmudi has constructed a commercial building at Villupuram Taluk, Kandamanadi Village in S.No.355/7 to an extent of 2400 sq.ft.	5,00,000
9.	Agricultural lands of 1.27.2 acres in Villupuram Taluk, Mathirimangalam Village S.No.34/C and 39/1 in the name of Tr.K.Ponmudi's wife AO-2 Tmt.P.Visalakshi(Doc.No.631/1997).	1,27,000
10.	Agricultural lands in Villupuram Taluk, Mathirimangalam Village S.No.39/1 0.95 acres, S.No.91-2.82 acres, S.No.121-1.12 acres, S.No.94-0.59 acres and S.No.92-0.49 acres totally 5.97 acres in the name of AO-2 Tmt.P.Visalakshi (Doc.No.270/97)	5,00,000
11.	Agricultural lands in Villupuram Taluk, Mathirimangalam Village S.No.34/C 0.33 acres and S.No.39/1 4.25 acres totally 4.58 acres in the name of AO-2 Tmt.P.Visalakshi (Doc.No.270/97)	3,05,000
12.	Agricultural lands in Villupuram Taluk, Mathirimangalam Village S.No.44/1 0.95 cents, S.No.39/1 0.05 cents, S.No.92/4 4.00 cents and S.No.94/4 0.59 cents totally 5.59 acres in the name of AO-2 Tmt.P.Visalakshi (Doc.No.633/1997).	5,60,000

13.	Agricultural lands in Villupuram Taluk, Karanai Village S.No.203/3A 0.30 cents in the name of AO-2 Tmt.P.Visalakshi (Doc.No.1543/2000)	30,000
14.	Agricultural lands in Villupuram Taluk, Karanai Village S.Nos.203/3D1, 205/1, 203/3D3, 203/3D4, 203/3DF, 204/4D, 204/5, 204/1, 204/4, 203/3E3, 205/1,204/4E,205/1C, 205/1A1, 203/1E4 and 203/1E, 5&6 totally 3.95 ½ acres in the name of AO-2 Tmt.P.Visalakshi (Doc.No.1544/2000).	4,00,000
15.	Agricultural lands in Adenepalle Village, Pakala Manda, Chittoor District and Andhra Pradesh State in S.No.193/B - 5.02 acres in the name of AO-2 Tmt.P.Visalakshi.	5,00,000
16.	AO-1 Tr.K.Ponmudi has acquired 4770 sq.ft plot in Villupuram Taluk, Salamedu Village S.No.278/4 in the name of his wife AO-2 Tmt.P.Visalakshi (Doc.No.959/87).	1,00,000
17.	AO-1 Tr.K.Ponmudi has acquired 1200 sq.ft Plot in Villupuram Taluk, V.Marudhur S.No.130 in the name of AO's wife Tmt.P.Visalakshi (Doc.No.433/90).	2,50,000
18.	AO-1 Tr.K.Ponmudi has acquired 5925 sq.ft Plot in Cuddalore District, Thiruppapuliyur Town S.No.1898 and 1909/4 in the name of his wife AO-2 Tmt.P.Visalakshi (Doc.No.2641/2000).	6,00,000
19.	AO-1 Tr.K.Ponmudi has acquired 6030 sq.ft Plot in Cuddalore District, Thiruppapuliyur Town S.No.1898 and 1909/4 in the name of his wife AO-2 Tmt.P.Visalakshi (Doc.2642/2000)	6,00,000
20.	AO-1 Tr.K.Ponmudi has acquired 2400 sq.ft at Trichy District, Plot in Shop No.12 at Tennur, Trichirapalli in the name of his wife AO-2 Tmt.P.Visalakshi.	6,00,000/-
21.	AO-1 Tr.K. Ponmudi has acquired a plot measuring 1897/70000 Sq.ft. in Chennai, Mylapore, Triplicane Tk., Plot No.4,5&6, No.20L Greenways Road, R.A.Puram, R.S.No. 4272 Block No.93 comprised in C.C.No.280 in the name of his wife AO-2 Tmt.P.Visalakshi (Doc.99/2000).	10,00,000/-
22.	AO-2 Tmt.P. Visalakshi has constructed a commercial building at Cuddalore District, Thiruppapuliyur Town S.No. 1898 and 1909/4 to an extent of 521.5 Sq.Mt.	45,00,000/-
23.	AO-1 Tr.K.Ponmudi has constructed a Residential building at Viluppuram Taluk, V. Marudhur Village, in Punjai S.No. 130 to an extent of 2400 Sq.ft., in the name of his wife AO-2 Tmt.P. Visalakshi.	20,00,000/-
24.	Flat in the ground floor bearing No. GD at 20L, Ramaniyam Towers, Greenways Road, R.A.Puram, Chennai-28 to an extent of 1897 Sq.ft. in the name of Tr.K.Ponmudi's' wife AO-2 Tmt.P.Visalakshi.	45,00,000/-

25.	Bank balance in SB A/C No.11720100000034 of the AO-1 Tr.K.Ponmudi at the Indian Overseas Bank branch, Chennai-9, as on 31.03.2010.	4,22,069/-
26.	Bank balance in SB A/C No. 3922 of the AO-1 Tr.K.Ponmudi at the Co-op Urban Bank, Viluppuram branch, as on 31.03.2010.	13,46,772/-
27.	Bank balance in SB A/C No. 877519755 of the AO-1 Tr.K.Ponmudi at Indian Bank, Viluppuram branch, as on 31.03.2010 (New Account).	10,000/-
28.	Bank balance in SB A/C No.09590100013358 of the AO-2 Tmt.P.Visalakshi at UCO Bank, Chennai Saidapet branch, as on 31.03.2010.	11,04,714/-
29.	Bank balance in SB A/C No.164302000000106 of PONNI KAYAL FILMS. (AO-2 Tmt.P.Visalakshi) at Indian Overseas Bank, Chennai Texco E.C. branch, Saidapet, as on 31.03.2010.	9,74,256/-
30.	Bank balance in SB A/C No.17072 of AO-2 Tmt.P.Visalakshi at Co-op Urban Bank, Villupuram Branch as on 31.03.2010.	10,66,143/-
31.	Bank Balance in SB A/C No.547701100050001 of Vishal Automobiles Cuddalore (AO-2) Tmt.P.Visalakshi) at Union Bank of Indian, Cuddalore Branch as on 31.03.2010 (New Account)	11,99,526/-
32	Bank Balance in SB A/C No.547702010002848 of AO-2 Tmt.P.Visalakshi at Union Bank of Indian, Cuddalore Branch as on 31.03.2010 (New Account)	38,653/-
33.	Bank Balance in FD A/C No.547703570000014 of AO-2 Tmt.P.Visalakshi at Union Bank of Indian, Cuddalore Branch as on 31.03.2010 (New Account)	7,33,169/-
34.	Bank Balance in FD A/C No.547703570000015 of AO-2 Tmt.P.Visalakshi at Union Bank of Indian, Cuddalore Branch as on 31.03.2010 (New Account).	8,55,364/-
35.	Bank Balance in FD A/C No.547703570000016 of AO-2 Tmt.P.Visalakshi at Union Bank of Indian, Cuddalore Branch, as on 31.03.2010 (New Account)	8,55,364/-
36.	Bank Balance in SB A/C No.100001 of AO-2 Tmt.P.Visalakshi at Villupuram District Central Co-operative Bank, Villupuram as on 31.03.2010 (New Account)	9,17,629/-
37.	Bank Balance in SB A/C No.10983138720 of AO-2 Tmt.P.Visalakshi (Visal Expo) at State Bank of India, Overseas Branch No.86, Rajaji Salai, Chennai, as on 31.03.2010. (New Account)	75,26,295/-
38.	Investments made by the AO-1 in the name of his wife AO-2 Tmt.P.Visalakshi in EVER SMILE ENTERPRISES (P) Ltd, Chennai – 10100 shares of Rs.10 each – (as mentioned in the Nomination Affidavit).	1,01,000/-
39.	Bajaj scooter TN 32 A 3589 in the name of the AO-1 Tr.K.Ponmudi.	3000/-
40.	TAFE Ltd. Tractor TN 32A 2878 in the name of the AO-1 Tr.K.	2,35,000/-

	Ponmudi.	
41.	Traitor TN 32 1285 (Local Siva Industries) in the name of the AO-1 Tr.K. Ponmudi	50,000/-
42.	Royalty Received from Vishal Publishers,Viluppuram by the AO-1 Tr.K.Ponmudi.	25,000/-
43.	122 grams gold jewels in the account of the AO-1 Tr.K. Ponmudi.	Notional Value
44.	2800 grams gold jewels in the account of AO-2 Trnt.P. Visalakshi.	Notional Value
45.	50 Kg Silver articles in the account of AO-2 Tmt.P. Visalakshi.	Notional Value
46.	Investments in Vishal Expo, Viluppuram in the name of AO-2 Tmt.P.Visalakshi.	15,00,000/-
47.	Investmernts in Vishal Automobiles, Cuddalore in the name of AO-2 Tmt.P. Visalakshi.	25,00,000/-
48.	Investments in Vishal Publishers, Viluppuram in the name of AO-2 Tmt.P. Visalakshi.	2,00,000/-
49.	Investments in EVER SMILE ENTERPRISES PRIVATE LIMITED, Chennai in the name of AO-2 Tmt.P. Visalakshi.	5,00,000/-
50.	Investments in PONNI KAYAL FILMS, Chennai in the name of AO-2 Tmt.P. Visalakshi.	5,00,000/-
51.	AO-1 Tr.K.Ponmudi has purchased a Plot to an extent of 2700 Sq.ft. at Plot No. 16 in Thiruppathiripuliyur, Cuddalore District S.No.1898/1C 3B in the name of his wife AO-2 Tmt.P.Visalakshi from K.Iyappan S/o.Kannan, No.12, Mettu Street, Madura Soorappanayakkan Savadi Thiruppapuliur, Cuddalore for a consideration of Rs. 3,78,000/- + stamp duty Rs.25,400/- + Registration fees 4840) = Rs.4,08,240/- (vide Doc.No.2348/2008 of the Joint-II SRO, Cuddalore).	4,08,240/-
52.	AO-1 Tr.K.Ponmudi has purchased a Plot to an extent of 13125 Sq.ft. at Plot No.15 in Thiruppapuliyur, Cuddlaore District T.S.No.1898/4 & 1909/4 in the name of his wife AO-2 Tmt. Vishlakshi from S.Giridhaprasath S/o.Seralathan, No.17/8, Sankaranaidu Street, Thiurppapurliyur, Cuddatore for a consideration of Rs.10,00,000/- + stamp duty Rs.85,000/- + Registration fees 1103) = Rs.10,86,103/- (Vide Doc.No.1426/07 of the Joint - II SRO, Cuddalore).	10,86,103/-
53.	AO-1 Tr.K.Ponmudi has purchased a Plot to an extent of 9600 Sq.ft. at Thiruppapulyiur, Cuddlaore District in T.S.No.1909/4 & 18798/1C in the name of his wife AO-2 Tmt.P.Vishalakshi from M. Anandakumar S/o Mahaveermal, No.51-A, Theradi Street, Thiurppapuliyur, Cuddalore for a consideration of Rs.13,42,000/- + stamp duty Rs.1,07,500/- + Registration fees 13,625) = Rs.14,63,125/- (Vide Doc.No.5448/2009 of the Joint.-II SRO, Cuddalore).	14,63,125/-
54.	AO-1 Tr.K.Ponmudi has purchased Agricultural land to an. extent of 1.01 Acre at Viluppuram Taluk, Panayapuram Village S.No. 229/8B & 228/3	68,039/-

	in the name of his wife AO-2 Tmt.P. Vishlakshi from L.Bhuvanasundaram, S/o.Lakshmana Gounder, No.1/41, West Street, Viluppuram for a consideration of Rs.60,000/- + stamp duty Rs.700/- + Registration fees 7339) = Rs.68,039/- (Vide Doc.No.4029/2008 of the SRO, Vikravandi).	
55.	AO-1 Tr.K.Ponmudi has purchased a Plot to an extent of 3822 Sq.ft., at Viluppuram Taluk, V.Marudhur Village S.No.130 in the name of his wife AO-2 Tmt.P.Visalakshi from R.Meenakshi W/o.Ramakrishnan, No.34/B1-5th cross, Virugampakkam, Chennai for a consideration of Rs.18,00,000/-+ stamp duty Rs.55,000/- + Registration fees 89,000) = Rs.19,44,000/- (vide Doc.No.5729/07 of the Jt-II SRO, Viluppuram).	19,44,000/-
56.	Investments by means of – 534900 Shares x Rs.10/- each - in EVER SMILE ENTERPRISES LTD., Greenways Road, R.A.Puram, Chennai-28 in the name of AO-2 Tmt.P. Visalakshi	53,49,000/-
57.	Loan amount given to EVER SMILE ENTERPRISES LTD, Greenways Road, R.A.Puram, Chennai-28 by AO-2 Tmt.P. Visalakshi.	33,65,336/-
58.	AO-1 Tr.K.Ponmudi has purchased a Tractor bearing Regn.No.TN 32 E 2062 in the name of his wife AO-2 Tmt.P.Visalakshi.	5,28,370/-
59.	Investment made on the property situated at Plot No.13, & 14, Ramakrishna Avenue, Thiruppathiripuliyur, Cuddalore Taluk, Ward No.5, block No.50 (Vishal Automobiles,. Commercial building).	42,19,204/-
60.	Investment made on the property situated at Plot Nos.28 & 29, Kalaignar Karunanidhi Nagar, Kandamanadi Village, Viluppuram Taluk - Punjai Survey No.355/7 (commercial building).	23,35,324/-
61.	Investment made on the property situated at Punjai Survey No.130 at V.Marudhur, East Shanmughapuram colony, Thirupanalwar Street, Viluppuram (residence).	86,057/-
62.	Investment made on the property at the Plot in RS No.4272/4 Block No.93, comprised in C.C.No.280 situated in Mylapore, Triplicane Taluk-present Door No.12/17, Old No.20L, Greenways Road, Chennai (Ever Smile Enterprises, Chennai).	6,67,000/-
	Total	**6,27,23,752/-**

STATEMENT NO. III

INCOME DURING THE CHECK PERIOD FROM 13.04.2006 TO 31.03.2010

Sl. No.	Description of Source of Income	Value
1.	Pay and Allowances drawn by the AO-1 – Tr.K.Ponmudi. 2006-2007 Rs. 2,01,515/- 2007-2008 Rs. 2,37,179/- 2008-2009 Rs. 3,04,683/- 2009-2010 Rs. 3,31,125/-	10,74,502/-
2.	Income from Agriculture of the AO-1 Tr.K.Ponmudi	5,75,000/-
3.	Income from Agriculture of the AO-2 Tmt.P. Visalakshi	13,81,182/-
4.	Income of the AO-1-Tr.K.Ponmudi -Rent received from Gautham Traders & commercial building at Trichy Trunk Road, Viluppuram as per IT returns.	9,60,000/-
5.	Interest received from Co-op. Urban Bank, Viluppuram & Indian Overseas Bank, Chennai - as per IT returns of AO-1.	2,25,053/-
6.	Loan raised by AO-1 Tr.K.Ponmudi at City Union Bank, Viluppuram.	15,00,000/-
7.	Estimated income drawn by the AO-2 Tmt.P. Visalakshi. 2006-2007 Rs.2,95,940/- 2007-2008 Rs.33,03,740/- 2008-2009 Rs.83,63,503/- 2009-2010 Rs.89,17,640/-	2,08,80,823/-
	Total	**2,65,96,560/-**

STATEMENT NO. IV
EXPENDITURE INCURRED BY THE ACCUSED AND HIS DEPENDANTS DURING THE CHECK PERIOD FROM 13.04.2006 TO 31.03.2010.

Sl.No.	Description of Property	Value (Rs.)
1.	Family consumption expenditure for the AO and his wife, during the check period	1,97,396/-
2.	Income Tax paid by the AO-1, during the check period.	2,31,399/-
3.	Repaymeit of loan by A0-1 Tr.K.Ponmudi at City Union Bank, Viluppuram.	13,20,750/-
4.	Income Tax paid by the AO-2, during the check period	60,69,207/-

5.	2006 - Assembly Elections Expenditure of the AO-1	3,20,883/-
6.	Gautham Traders building & commercial building at Trichy Trunk Road, Viluppuram - Repair charges as per IT returns of AO-1.	2,88,000/-
7.	House Tax & Water Tax paid for the residence of AOs situated at No.6-A&B, Thirupanalwar St., East Shanmugapuram Colony, Viluppuram.	12,962/-
8.	EB charges paid for the residence of AOs situated at No.6-A&B, Thirupanalwar St., East Shanmugapuram colony, Viluppuram.	1,39,386/-
9.	Telephone charges paid by the AO-1 Tr.K. Ponmudi for the land line Telephone No.04146-240364.	19,304/-
	Total	**85,99,287/-**

STATEMENT NO-V
VALUE OF ASSETS ACQUIRED BY THE A.O. DURING THE CHECK PERIOD FROM 13.04.2006 TO 31.03.2010

1.	Value of assets that stood to the credit of the AO and his wife at the end of the check period as on 31.03.2010 (Statement No. II).	Rs.6,27,23,752/-
2.	Value of assets that stood to the credit of the AO and his wife at the beginning of the check period 13.04.2006 **(Statement-I).**	Rs.2,71,75,011/-
3.	Value of assets acquired during the check period from 13.04.2006 to 31.03.2010 (statement- II (–) statement - I).	Rs.3,55,48,741/-

STATEMENT NO-VI
KNOWN SOURCES OF INCOME OF THE A.O. BY WAY OF SAVINGS DURING THE CHECK PERIOD FROM 13.04.2006 TO 31.03.2010.

1.	Income of the A.O and his wife during the check period from 13.04.2006 to 31.03.2010 (Statement – III).	2,65,96,560/-
2.	Expenditure of the A.O. and his wife during the check period from 13.04.2006 to 31.03.2010 (IV).	85,99,287/-
3.	Likely Savings of the A.O. during the check period (III — IV)	1,79,97,273/-

STATEMENT NO-VII

DISPROPORTIONATE ASSETS ACQUIRED BY THE A.O. DURING THE CHECK PERIOD FROM 13.04.2006 TO 31.03.2010

1.	Value of assets acquired by the A.O during the check period from 13.04,2006 to 31.03.2010 (V).	Rs.3,55,46,741/-
2.	Likely Savings during the check period from 13.04.2006 to 31.03.2010 (VI)	Rs.1,79,97,273/-
3.	Disproportionate Assets (V — VI)	Rs.1,75,51,468/-

Percentage of Disproportionate Assets $\frac{\text{Rs.1,75,51,468/-}}{\text{Rs. 2,65,96,560/-}}$ X 100 = 65.99 %

10. For easy reference, the abstract of details in Statements 1 to VII is extracted below:-

Details of Statement I to VII		
Statement (i)	Assets that stood to the credit at the beginning of the check period as on 26.08.1991	Rs.2,71,75,011/-
Statement (ii)	Total Value of Assets at the end of the check period on 13.05.1996	Rs.6,27,23,752/-
Statement (iii)	Total Income of the accused during the check period	Rs.2,65,96,560/-
Statement (iv)	Total Expenditure of the accused during the check period	Rs.85,99,287/-
Statement (v)	Value of Assets acquired by the accused during the check period **(Statement II – Statement I)**	Rs.3,55,48,741/-
Statement (vi)	Likely savings**(Statement III - Statement IV)**	Rs.1,79,97,273/-
Statement (vii)	DP Assets **(Statement V -Statement-VI)**	Rs.1,75,51,468/-
	% of Disproportion = $\frac{3,55,48,741 \times 100}{1,79,97,273}$	65.99%

11. The trial Court, in order to appreciate the charges framed

against A1 & A2 had segregated the 44 items of property mentioned in Annexure – I into two parts, Item Nos.1 to 8, 25, 26, 31 to 35 and 43 which stood in the name of A1 as one part and the remaining properties as another part. The trial Court accepted the value of those properties held by A-1 as Rs.41,22,110/- relying upon the witnesses for prosecution who had spoken the respective properties and its value. Similarly, under Statement-II, segregated the properties which stood in the name of A1 at the end of the check period i.e., 31.03.2010 and held that the property mentioned in Item Nos.1 to 8 is worth Rs.19,68,000/-; the worth of the property mentioned in Item Nos.25 to 27 is Rs.17,78,841/-, the worth of property in item Nos.39 to 43 as Rs.3,13,000/- and the worth of the property in item No.60 as Rs.20,00,000/-.[as against the cost of Rs.23,35,324/- estimated by the prosecution]. Further, the trial Court concluded that A1 the public servant is bound to explain sources only to these properties which stand in A-1 name and for rest of the properties which are in the name of his wife A-2, the public servant-A-1 need not account for its source.

12. While discussing the value of the property shown in item

No.60, the trial Court had stated that, prosecution claims the construction costs of the building mentioned as item No.60 constructed at Plot Nos.28 & 29, Kalaignar Karunanidhi Street, Kandamanadi Village, Villupuram Taluk, is estimated as Rs.23,35,324/- and relied on P.W.33 evidence and his report. While appreciating the value of the building and report marked as Ex.P.64 given by P.W.33. Also taking note of the P.W.33 admission in cross that to ascertain the age of the building he did not conduct any special test and also not ascertained the quality of material used for putting up the construction and few other admissions declined to accept the valuation report relied by the prosecution and has assessed its value as Rs.20,00,000/- instead of Rs.23,35,324/-.

13. Ultimately, the trial Court held A-1 and A-2 are separate entities. Their assets cannot be clubbed together. After seggregating, at the end of the check period holding of the public servant (A-1) is totally worth Rs.60,59,841/- as under:-

Item Nos.1 to 8	Rs.19,68,000/-.
Item Nos.25 to 27	Rs.17,78,841/-.
Item Nos.39 to 43	Rs.3,13,000/-.
Item No.60	Rs.20,00,000/-.
Total	**Rs.60,59,841/-**

14. Similarly, the income during the check period of A1 and A2 been segregated from Statement – III. The trial Court has held that income towards pay and allowance of A1 during the check period is Rs.10,74,502/-; the agricultural income of A1 during the check period is Rs.5,75,000/-; rental income is Rs.9,60,000/-; interest Rs.2,25,053/-; loan raised during the check period is Rs.15,00,000/-, thus the total income received is Rs.43,34,555/-.

15. The expenditure during the relevant period for A1 & A2 as a family clubbed by the prosecution and was arrived at Rs.85,99,267/-. Whereas, the trial Court had split the expenditure statement also between A1 and A2. The Statement – IV (expenditure) filed by prosecution is the consolidated expenditure of Al and A2 jointly as a family including their children. The trial Court taken the expenditure of Rs.2,31,399/- mentioned in S.No.2; Rs.13,20,750/- mentioned in S.No.3; Rs.3,20,883/- mentioned in S.No.5, Rs.2,88,000/- mentioned in S.No.6; Rs.12,962/- mentioned in S.No.7;

Rs.1,39,386/- mentioned in S.No.8 & Rs.19,304/- mentioned in S.No.9. Accepted the prosecution version in respect of all these items except item No.6.[The repair charges of Rs.2,88,000/- for the building rented]. This amount is a permissible deduction as per Income Act and not an actual expenditure. The trial court based on the evidence of P.W.4 and P.W.39 excluded the expenditure of Rs.2,88,000/- as shown in S.No.6 in statement IV. Therefore, Rs.2,88,000/- reduced from Rs.23,32,684/-and the total expenditure made by Al during the check period fixed as Rs.20,44,684/-.

16. Finally, The trial Court concluded that the offence under Section 13(2) r/w 13(1)(e) of P.C Act not proved against A1 for the reason that the value of assets which stood in the name of A1 at the end of the check period is Rs.60,59,841/-, out of which the properties worth Rs.19,37,731/- alone was acquired in his name during the check period and rest of the properties were acquired by him prior to the check period or by his wife. Therefore, from out of income of Rs.43,34,555/- during the check period, after defraying expenses of Rs.20,44,684/- with the saving he had acquiring the wealth worth Rs.19,37,731/-. This cannot be considered as disproportionate assets acquired without satisfactory explanation of the source of income.

17. As far as A2 is concerned, who was tried for the charge of abetting A1 to acquire disproportionate asset, the trial Court held that, the value of the asset held by A2 at the beginning of the check period as on 13.04.2006 was Rs.2,30,52,901/-, out of total worth of Rs.2,71,75,011/- as per Statement-I. While the value of the 62 assets at the end of the check period jointly by A1 & A2 is Rs.6,27,23,752/- as per Statement-II. The value of the property which stood in the name of A2 alone at the end of the check period is Rs.5,63,28,584/- (Rs.6,27,23,752/- (–) Rs.63,95,168/-). This is not disproportionate to her income since she had declared her income to the Income Tax Department.

18. The trial Court declined to accept the prosecution case that, during the check period both A-1 and A-2 totally had income of Rs.2,65,96,560/- and they held the properties as one unit. Contrarily, the trial court held that the income of A1 the public servant is Rs.43,34,555/- and the income of A2 as Rs.2,22,62,005/-. A2 is an independent person having income of her own through business and properties. Her income and property is multi-fold than the property and income of A-1 her husband, who happen to be a public servant. There is no evidence on the side of the prosecution to show the

income of A1 from unknown source flow into the account of A2. Taking note of the fact that, A2 is an Income Tax Assessee and had declared her income by filing returns disclosing her income, the trial court has held that, there is no proof that A2 aided A1 to acquire property beyond his known source of income.

19. The trial Court had also relied upon the evidence of P.W.25 the Branch Manager of SBI, Overseas Branch, Chennai in respect of Vishal Expo for which A2 is the owner. Court had taken into consideration the turnover of the business run by A2 as an individual and the advance tax and TDS paid by her during the relevant period. Accepting Ex.P.85, dated 09.06.2012 and the income tax returns(Ex D-1 to Ex D-5) filed after the check period and launching of prosecution, the trial court has held that though the returns was filed after the check period, the payment of TDS and advance tax was well before that and returns same cannot be rejected just because they were filed subsequent to the check period. The trial Court has also made an observation that there is no proposition in law which says that if balance income tax is paid belatedly after filing of income tax returns, having paid advance tax and TDS in the respective assessment year, is not reliable.

20. The trial Judge has held that, in the case under consideration, there is evidence on record through P.W.25 and P.W.27 the Bank Officials that A2 was running business and huge turnover from her business. She has already remitted advance Tax and TDS prior to initiation of investigation. Her payment of balance Tax after registering the case on 26.06.2011 and after receiving FON on 14.05.2012 by itself would not be sufficient to hold that the explanations marked as Ex.P.85 and the ITR marked as (Ex.D.1 to Ex.D.5) are unacceptable and filed to escape from the criminal prosecution.

21. Distinguishing the dictum laid by the Hon'ble Supreme Court in ***State of Tamil Nadu -vs- V. Suresh Rajan*** reported in ***(2014) 11 SCC 709***, the trial Court has observed that the income Tax returns filed subsequent to registering of case may not be relevant for consideration before framing charge in a petition for discharge. However, it should be taken into consideration in the trial while appreciating the evidence to test the charges. Even if there is suspicion about the income declared by A2, same cannot be multed with the income of A1 who is a public servant, to attract offence under Prevention of Corruption Act, 1988.

22. Regarding A2, the trial Court has concluded that, it has been already seen that the properties held by Al alone at the beginning of the check period was Rs.41,22,110/-. If that is excluded from the total value of assets (held by A-1 and A-2) at the beginning of the check period then the properties held by A2 alone at the beginning of the check period would be worth Rs.2,30,52,901/-. At the end of the check period the value of the properties held by Al is Rs.63,95,168/- If this is deducted from the total value of assets held by both Al and A2 at the end of check period which is Rs.6,27,23,752/-. Then the worth of A-2 properties alone would be Rs.5,56,61,587/-. The value of assets held by A2 at the beginning of check period subtracted from the value of assets held by her at the end of check period is the value of the properties acquired by A-2 in her name during the check period. That is Rs.3,26,08,686/-.Accepting her individual income during the check period as Rs.5,10,18,715/- and expenditure during the same period as Rs.62,66,603/-, The trial court arrived at the likely savings of A-2 as Rs. 4,47,53,112/- after deducting the expenditure from the income.

23. The trial Court had specifically observed that the properties acquired by A2 on her own income during the check period from out of her

savings derived from the known source of income during the check period. She even after acquiring properties worth of Rs.3,26,08,686/- holds a surplus of Rs.1,21,43,476/-.

24. The above finding and conclusion of the trial Court is the challenged in the Criminal Appeal No.53 of 2017 filed by the State on the following grounds:-

(a). The splitting up of the assets held by A1 and A2 is contrary to law and evidence. The very fulcrum of the prosecution case is that, A1 the public servant abusing his office had acquired wealth disproportionate to the known source of income with the aid and assistance of his wife- A 2. The trial Court failed to note by floating Shell Firms by A1 through A2 in various names had layered the ill-gotten money into those name-sake Firms to show the source of income. The assets whether in the name of A1 or his wife A2, were mostly acquired only from undisclosed source of A1 the public servant holding the post of Minister for Higher Education and Mines, during the relevant point of time. As per ***Nallammal and another -vs- State*** reported in ***1999 (6) SCC 559***, clubbing of spouse assets along with the assets of the public servant is

permissible.

(b). Mere production of Income Tax Returns and assessment orders which has emanated subsequent to the registration of criminal complaint or the presumptive income through one or two firms which stands in the name of A2, cannot take away the gravity of amassing wealth by the public servant beyond his known source of income. The investments to those assets in the name of A2 are from A1's ill-gotten money. Without satisfactorily explaining how she got money to invest in those five business firms namely Vishal Expo, Vishal Automobilies, Vishal publishers, Ever Smile Enterprises and Ponni Kayal Films and what was the income derived from these business, its yearly statements of profit and loss, simply by filing advance tax and TDS alone the income declared cannot be presumed to be from known source. The evidence of Income Tax Officials without any piece of documentary evidence for the source of income been relied upon by the trial Court. Further, the Bank statements and income tax return are not proof for legal source of income but the trial Court had taken it as conclusive proof of income.

(c). The decision of the trial Court in this regard is contrary to the judgment of the Hon'ble Supreme Court in ***State of M.P. -vs- Awadh Kishore***

reported in ***2004 (1) SCC 691***, which has held that every receipt will not take the character of income under the explanation to Section 13(1)(e) of the Prevention of Corruption Act.

(d). The trial Court erred in holding that reply to the Final opportunity Notice (FoN) given by the accused not considered by the Investigating Agency. In fact, the reply was taken into consideration item wise. Wherever there was adequate proof, same was accepted and reflected in the statement annexed. Only those incomes which are not satisfactorily explained were rejected.

(e). The trial court while relying upon the payment of TDS and Advance tax paid by A-2 miscerable failed to consider that the advance tax and TDS were paid by A-2 without filing income tax returns subsequently in time for the respective assessment years. This ommission had led to grave miscarriage of justice. The advance tax and TDS in fact unduly misproportionate to the income declared in the returns filed after registration of the complaint. The investigation regarding disproportionate assets commenced in the month of July 2011, Whereas the income tax returns for a block period of

4 years filed only in the year 2012 declaring blotted income. Just because portion of the tax already been paid as advance Tax or under TDS, it will not sanctify the blotted income tax returns filed by A2 after registration of the complaint.

(f). Without any basis, the trial Court had reduced the construction value from Rs.23,35,324/- to Rs.20,00,000/-. for the property shown in Item No.60 under Statement-II. The year of construction and details of the material used are mentioned in the valuation report. Further, the valuation is based on P.W.D. Guidelines and measurements.

(g). The trial Court erred in excluding Rs.2,88,000/- shown in Serial No.6 of Statement-IV (expenditure incurred toward repair of building rented by A-1 during the check period). A-1 has disclosed the amount as repair charges in the Income Tax Returns. Hence based on the admission Rs 2,88,000/- is taken into account as expenditure, but the trial Court has declined to include this amount under the head of expenditure accepting the explanation of A-1that the said money was not actually spent.

(h). The income Tax returns filed by A2 after issuance of Final Opportunity Notice (FoN) is a tailored document. The accused persons did not file their explanation in time. They sought extension of time, then prepared the income tax returns to suit them. After filing the returns, both the accused responded to the FoN.

(i). The income of A2 been scientifically arrived as Rs.2,65,96,560/- by the prosecution with the help of experts and evidence to support there opinion. Whereas, the trial Court erroneously relied upon the assessment order of the Income Tax Department based on the self serving returns filed in bulk disclosing the income of A2 as over and above Rs.5 crores.

(j). The agricultural income of A2 during the check period from the properties held by her was only Rs.13,81,182/-. This assessment is based on the evidence of P.W.13 to P.W.15 and P.W.36. Contrarily, the trial Court has recorded A2's agricultural income during the check period as Rs.54,15,481/-. The trial Judge ignoring the evidence of reliable witnesses who are field experts, had solely relied on the self declaratory statements of the accused without any material evidence on the side of the accused. To accept the boosted

agricultural income of A2 from Rs.13,81,182/- to Rs.54,15,481/-, the trial Court had deliberately ignored the substantive evidence of P.W.13, P.W.14, P.W.15 and P.W.36 regarding the agricultural income of A2.

(k). After arriving at a tentative conclusion that the accused A1 and A2 have properties disproportionate to the declared known source of income the Final opportunity Notice (FoN) was issued to the accused. On receipt of the reply to the Final Opportunity Notice wherever the explanation was satisfactory, same was accepted and wherever the explanation was not satisfactory that was rejected for want of supporting documents. The Tax records produced by A2 along with reply to Final Opportunity Notice did not carry any corroboration hence rejected by the Investigating Officer. The Trial Court contrary to the dictum laid by the Hon'ble Supreme Court about the probative value of income tax returns had brushed aside the dictum of the Hon'ble Supreme Court and had accepted the self serving documents Ex D-1 to Ex D-5.

(l). Item Nos.51, 52, 54 and 55 shown under Statement – II were purchased in the name of A2 during the year 2007 & 2008. The value of these four assets alone is worth about Rs.35,06,382/-, In fact the sale price for this

properties was paid by A-1. Neither A-1 nor A-2 produced evidence to show that from the exclusive income of A-2 these properties were acquired.

(m). The turnover of any business is based on purchase and sale. Income is not based on the deposits and withdrawal in the Bank Accounts. The total money handled in a particular account cannot even be an indicator for the income of that account holder. The probability of handling others money cannot be ruled out. In this case, the trial Court miserably failed to understand this basic principle and been carried away by the turnover of the business of the two firms run by A2 to infer income.

(n). The Bank Officials examined as P.W.22 to P.W.28 are competent person to speak only about deposits, withdrawals and balance but not about the income of their customers. The prosecution under Section 13(1)(e) of Prevention of Corruption Act cannot be decided on conjectures and surmises by discrediting the prosecution evidence which are worthy of reliance. Without any rebuttal or contra evidence worth referring and relying, the trial Court has acquitted the accused. The judgment of the trial Court is not based on the possible view but on an erroneous and wrong view which requires to be

interfered.

25. Response by the Learned Senior Counsels appearing for the Respondents 1 & 2.

Mr.N.R.Elango, Senior Counsel appearing for the first respondent/first accused Thiru.K.Ponmudi submitted that, there is no error in the trial court judgment considering A-1 and A-2 as two different entities for the purpose of the criminal prosecution under Prevention of Corruption Act . The case registered against this respondnet with malafide intention. Case launched by the States due to political vendetta. The investigation was lopsided and biased for obvious reasons. The explanations regarding the income and its source though given, were ignored by the Investigating Officer. The trial Court, on considering the materials had rightly concluded that the charges are not proved. This is not a mere possible view or probable view but the correct view based on the evidence. Hence, needs no interference.

26. The attempt made by the prosecution to project that A-1 by abusing of his office amassed wealth by clubbing A-1 properties with A-2's property rightly rejected by the trial court and same is in tune with the dictum

laid by the Hon'ble Surpeme Court in ***P.Nallammal and another -vs- State, Rep. by its Inspector of Police*** reported in ***[1999 (6) SCC 559]*** and ***Deputy Superintendent of Police, Chennai -vs- K.Inbasagaran*** reported in ***[2006 (1) SCC 420]***. It is not legally permissible to club the income of the public servant with the income of the spouse (A-2), who is holding agricultural land measuring nearly 26 acres and businesses with several crores of rupees turnover earning independently and deriving income out of it.

27. Regarding the valuation of the building in item No.60 of the Annexure-II, questioning the reliability of the opinion given by the prosecution witness as Rs.23,35,324/- as against the value admitted by the first accused as Rs.20,00,000/- the Learned Senior Counsel submitted that, the opinion of an expert under section 45 of the Indian Evidence Act is admissible but it is not a conclusive proof. The person who gives the opinion must be the field expert and the opinion must be a complete opinion not a truncated opinion. In this case the prosecution witness P.W.33 who had spoken about the value of the property in his report Ex.P.64 for the building shown as item 60 under Annexure-II is the Executive Engineer, Buildings of the PWD. He has estimated the construction cost as Rs.23,35,324/-. Contrarily, the accused had valued the construction cost

as Rs.20,00,000/-. The trial court has accepted the value declared by the accused since PW-33 in the cross examination had admitted that he did not ascertain the age of the building. He did not ascertain the quality of the materials used for putting up the construction. He did not ascertain the value of the construction materials at the time of construction. Also had admitted that if the construction is done directly without engaging contractor, then the costs of the construction will be 10% less. Therefore, the acceptance of the declared value by the accused is neither perverse nor illegal. The judgment in ***Ramesh Chandra Agrawal -vs- Regency Hospital Ltd: [2009 (9) SCC 709]*** is relied for the preposition that, the credibility of expert depends on the reasons stated in support of his conclusions and data and material furnished which form the basis of his conclusions. According to the Learned Counsel for the first respondent in the valuation report of PW-33 data and acceptable reasons is absence hence its credibility is doubtful.

28. Yet other submission made on behalf of the first appellant in support of acquittal order is in respect of expenditure of Rs.2,88,000/- mentioned in Serial No:6 of Annexure IV, According to the defence,

Rs.2,88,000/- was wrongly taken as expenditure by the prosecution. This amount is not the money actually spent. It is the 30% deduction from the rental income declared in the income tax returns of the first appellant as repair charges. This is permissible under Sections 23 and 24 of the Income Tax Act. While Section 24 (a) of the Income Tax Act permits the owner of the premises to deduct a sum equal to 30% of the annual rent, same is not an expenditure, but a tax concession for the notional expenses for maintaining the building. In support of this argument the judgments rendered in ***FL Smidth Mineral Pvt Limited -vs- The Deputy Commissioner of Income Tax, Chennai – II [2017 SCC OnLine Mad 29823 and Commissioner of Income Tax -vs- K.Rajagopalan [1999 SCC OnLine Mad 1042]*** are relied.

29. The Learned Senior Counsel for the first appellant thus summed up his submission that, if the value of the property in item No.60 of the Annexure-II is taken as Rs.20,00,000/- instead of Rs.23,35,324/- and the expenditure of Rs.2,88,000/- in serial No.6 of the Annexure IV is excluded, then this appellant will in fact be holding a saving of Rs.3,52,140/- after acquiring the properties shown under Annexure-V and not assets disproportionate to the known source of income as projected by the prosecution.

30. Mr.Basand, Learned Senior Counsel on behalf of the second appellant, submitted that the second appellant Tmt.Visalakshi w/o of Ponmudi was not holding any property on behalf of her husband. There is no evidence to prove this allegation. The second appellant hails from an affluent family, well educated, possess M.A.,M.Phil degree and proprietorix of five business concern with sufficient investments, huge turnover and proportionate income. She also holds agricultural land in Tamil Nadu and Andhra Pradesh totally measuring about 26 acres and deriving sizeable income from it. She is an Income Tax assessee as individual. Her annual income declared and assessed by the Income Tax Department. The prosecution failed to take these facts into consideration, even after brought to its notice in the reply to Final Opportunity Notice. Therefore, the same was marked as Ex.D-1 to Ex.D-5 during the cross examination of prosecution witness PW-6. By way of affidavit A-2 had declared her assets and liability (Ex.P.3) to the Election Commissioner when she filed her nomination in the general election held in the year 2006. (It may be appropriate at this juncture to record that, A-2 as a substitute candidate for A-1 filed nomination in that election and later withdrawn to pave way for her husband A-2 to contest. In that election A-1 got elected and the party to which

he belongs came to power. Then A-1 became the Minster for Higher Education and Mines. The case of disproportionate asset is for period while A-1 was holding the post of Minister. A-1 was a Minister earlier during 1996 to 2001 and some of the properties which A2 declared as her properties are subject matter of the earlier disproportionate case against A1 and his family members for the check period 1996-2001).

31. The onus to prove that the assets in the name of A-2 is held by her on behalf of the public servant is on the prosecution and this primary burden of proof not discharged by the prosecution. The prosecution had also not proved that A-2 is not the real owner of the properties shown in the annexure. The prosecution failure to prove the primary facts and the absence of evidence to prove the charges, warranted the trial Court to render the acquittal judgment. The reasoning of the trial court for acquittal is just, proper and in accordance with law. The possible view of the trial court not to be jettisoned in the Appeal against acquittal.

32. To buttress the above submissions, the following judgments are relied:-

i). ***State of Maharashtra -vs- Wasudeo Ram Chandra Kaidalwar*** reported in ***[1981 (3) SCC 199].***

ii). ***Krishnanand Agnihotri -vs- State of Madhya Pradesh*** reported in ***[1977 (1) SCC 816].***

iii). ***K.Ponnusamy -vs- State of Tamilnadu*** reported in ***[2001(6) SCC 674].***

33. Along with their respective written submissions, a comparative chart containing details about the prosecution version, defence version and the court finding about the entries found in the Statements I to VII also provided by the respondents counsels for the convenience and easy reference. On hearing the counsels and the perusal of the chart, the contentious points which had emanates and required to be addressed are narrowed to:-

a). Is, the trial Court judgment considering A-1 and A-2 as two separate individuals and the properties in the name of A-2 not held on behalf of A-1 is a possible view or an erroneous/wrong view?

b). Is, the opinion of PW-33 regarding the value of the property shown in Serial No.60 of Statement-II is reliable and credible ?

c). Whether, 30% deduction for the rental income permitted under the Income Tax Act for the purpose of assessing tax to be considered as expenditure or not ?

d). What is the probative value of the income tax returns filed as block assessments for 4 assessment years after the registration of the case for disproportionate assets and issuance of Final Opportunity Notice (FON)?

34. The trial Court, while appreciating the evidence, had first split A1 and A2 stating that, though A1 and A2 are husband and wife, they are separate entities having their own source of income which is assessed to income tax independently. After splitting A1 and A2 as two different independent entities, proceeded further to test the evidence. The assets details of A-1 and A-2 separately after the splitting found as below:-

Sl.No.	Description	Amount	A1	A2
Statement (i)	Assets at the beginning of the check period	Rs.2,71,75,011/-	41,22,110/-	2,30,52,901/-
Statement (ii)	Assets at the end of the check period	Rs.6,27,23,752/-	63,95,165/-	5,63,28,584/-

Sl.No.	Description	Amount	A1	A2
Statement (iii)	Income earned during the check period	Rs.2,65,96,560/-	43,34,555/-	2,22,62,005/-
Statement (iv)	Expenditure incurred during the check period	Rs.85,99,287/-	23,32,684/-	62,66,603/-
Statement (v)	Assets acquired during the check period **(Statement II – Statement I)**	Rs.3,55,48,741/-	22,73,055/-	3,32,75,683/-
Statement (vi)	Likely savings during the check period **(Statement III - Statement IV)**	Rs.1,79,97,273/-	20,01,871/-	1,59,95,402/-
Annexure (vii)	Disproportionate Assets acquired during the check period **(Statement V - Statement-VI)**	Rs.1,75,51,468/-	2,71,184/-	1,72,80,281/-

35. While accepting the statement of assets at the beginning of check period and its value as shown in Statement-I, the first accused contested the value of the property mentioned in Serial No.60 of the Annexure-II claiming that the construction cost of the building is only Rs.20 lakhs. The trial Court has accepted the defence version rejecting the opinion of P.W.33 and his report Ex.P.64 who assessed the construction costs of the building as Rs.23,35,324/-.

36. According to the respondent, the reasoning of the trial Court accepting the defence version is a possible view.The accuracy of construction cost of the building assessed few years after the completion of construction may vary by margin of about 12% to 15% for various reasons and same to be taken in favour of the accused.

37. Item No.60 in Annexure-II is a commercial building at Plot No.28 and 29, K.K.Nagar, Trichy Truck Road, Villupuram. The building was rented out by A-1**.** At the time of inspection by the team of experts from P.W.D, they found the building was in occupation of M/s.Ever Smile Enterprises, stockist for standard tractors. Tracing still further, this property been gifted to A1 by his mother under document No.2825 of 2005 and the plots value is declared as Rs.2,00,000/- under Annexure-I as property held by A1 at the beginning of check period (item No.7 in Annexure – I). Upon this two plots, A1 has put up construction during the year 2007-2008. The Inspection-cum-Valuation Report Ex.P.64 provides details like plinth area of the building as Ground Floor RCC roof – 235.96 m^2, Ground Floor AC Sheet Roof 614.33 m^2, First Floor RCC roof – 235.96 m^2 also the value of the building, value of the water supply arrangements, value of Sanitary arrangements, value of amenities, the year of construction, age of the building and depreciation. This valuation report is given by the team consisting of experts from the State Public Works Department. To disbelieve there opinion and to accept the value suggested by the defence, there must be a better reasonable and intelligible opinion from the field experts. Such opinion is conspicuously absent in this case.

38. Section 45 of the Indian Evidence Act accepts Expert opinion as an admissible piece of evidence. In ***Ramesh Chandra Agrawal -vs- Regency Hospital case*** cited supra, the Hon'ble Supreme Court emphasises that evidence of expert is admissible when i). Evidence based on reliable principles ii). The reporter must have the required expertise in the filed. iii). The credibility of the experts depends on the material and data furnished in support of his opinion.

39. In this case, perusal of Ex.P.64 satisfied all the above criteria to accept the said building constructed at the cost of Rs.23,35,324/-. Contrarily, without any material except relying on the self serving declaration of A-1 in his explanation Ex.P.84, the trial Court has fixed the construction cost as Rs.20 lakhs. Obviously, the trial Court has erred in ignoring Ex.P.64 which contains data and details subscribed by field experts and by accepting unscientific vague statement of the accused made in his reply to Final Opportunity Notice the perversity in the judgment gets exposed.

40. Unlike A2, A-2 had filed his Income Tax Returns regularly at

the end of the assessment years. A-1 for the check period has declared the total rental income from the his buildings as Rs.9,60,000/- and from this rental income deduction of Rs.2,88,000/- as repair charges been claimed. The respondent case is that, he claimed deduction under the Income Tax Act declaring Rs.2,88,000/- as expenditure but is was not actually spent.

41. The judgments in ***Commissioner of Income Tax -vs- K.Rajagopalan*** reported in ***1999 SCC Online Mad 1042*** and ***FL.Smidth Minerals P. Ltd -vs- The Deputy Commissioner of Income Tax, Chennai Circle-II (1), Chennai*** reported in ***2017 SCC OnLine Mad 29823*** are relied by the respondent counsel. The first judgment is in respect of applying Section 24(a) of I.T, which permits deduction of 30% from the annual value of the property as explained under Section 23 of the Act. Precisely in *K.Rajagopalan case*, the Division Bench of this Court has held;

> *"**7.** The deductions provided for in section 24 are required to be made from out of the amount ascertained as the annual value under section 23(1)(a) or 23(1)(b) as reduced by the amounts referred to in the second proviso. Section 24 itself does not provide that the result of the computation can never be a loss or that the loss is*

to' be ignored. Section 24 is not made subject to the second proviso to section 23(1). The words of limitation referred to in that proviso are not to be regarded as being part of Section 24."

42. The second judgment is ***FL.Smidth Minerals P. Ltd -vs- The Deputy Commissioner of Income Tax, Chennai Circle-II (1), Chennai*** reported in ***2017 SCC OnLine Mad 29823.*** In this case, the Division Bench of this Court, while considering whether an assessee can have the advantage of double deduction of his rental income derived from a residential building one under Section 24(a) for repair and another under Section 32 as depreciation, this Court has held in negative in the following terms:-

3.*We have carefully gone through the order passed by the Tribunal, more particularly paragraph 5, wherein the following finding has been rendered by the Tribunal:*

> *"....it is clear that the assessee, on one hand, by admitting the rental income under the head income from house property, has claimed deduction of 30% of the rentals under Section 24(a). At the same time, it has also claimed depreciation on the same let out buildings under Section 32. Thus, there is a double deduction claim, which is not permitted in the Act.*

Further, the fact of claiming depreciation on the let out buildings has come to the notice of the Assessing Officer only during the course of assessment proceedings. Thus, there is a clear concealment of taxable income, by furnishing inaccurate particulars, on account of claiming depreciation of Rs. 4,32,251/- on the let out buildings."

43. The above two judgments does not provided any answer whether the deduction given under the IT Act under Section 24(a) to be treated as expense. Also, it is noted that the buildings from which the accused has declared rental income are commercial buildings and not house property Section 24 of Income Tax Act appears to be in respect of house properties. Be it as it may, for the purpose of this case, whether the acceptance of deduction of 30% from the rental income as repair charges to be taken as it is, since A1 having declared he has spent the money towards repair of the building is a debatable point.

44. Ex.P.4 is the covering letter of the IT Department sent in response to the Investigating Officer (P.W.39) queries about the IT returns filed by A1 and A2 for the Assessment Years 2007-2008 to 2010-2011 and if filed the copies of the returns were sought by the Investigating Officer. The reply

reveals, A1 alone had filed his return for these assessment years as on 07.09.2011. A2 had not filed her returns though she is an assessee. From the IT returns of A1, we find totally he had claimed Rs.2,88,000/- deduction from the rental income as below:-

less - 30% for repairs by Gautam Traders - Rs.36,000 for AY 2008 09

less - 30% for repairs by Gautam Traders - Rs.36,000 AY 2009 - 10

less 30% for repairs by Gautam Traders Rs.36,000 AY 2010- 11

less - 30% for repairs - Rs. 18,000 AY 2007-08

less - 30% for repairs - Rs.54,000 AY 2008-09

less - 30% for repairs Rs.54,000 AY 2009-10

less - 30% repairs - Rs.54,000 AY 2010-11."

45. In the Income Tax Returns, A-1 had consistently claimed deduction of 30% for repair. As per his IT Returns for the assessment year 2007-2008, returns filed on 29.10.2007, the income from house properties declared as Rs.17,038/- and income from other sources declared as Rs.51,095/- in addition to his salary income of Rs.1,91,260/-. The statement of account for

the assessment year 2007-2008 discloses that he received rent from the property near Aavin at Trichy Trunk Road, Villupuram for four months at the rate of Rs.15,000/- p.m. Out of this income 30% i.e., Rs.1800/- deducted for repair and Rs.24,962/- towards interest paid to City Union Bank, Villupuram for the loan of Rs.15 lakhs availed. Similarly, for assessment year 2008-2009, he had declared rental income from the said property as Rs.1,80,000/- (Rs.15,000 x 12) and deducted Rs.54,000/- for repair and Rs.2,09,304/- for interest. Apart from this, he had also declared rental income from Gautham Traders a sum of Rs.1,20,000/- (Rs.10,000 x 12) and deducted 30% for repair. Likewise, for the assessment year 2009-2010, similar to the previous year rental income and deduction of 30% for repair claimed. TDS of Rs.27,810/- paid is referred to Ever Smile Enterprises. This Ever Smile is the proprietary firm owned by A-2. That apart, the 'Note' to this statement, A-1 has also declared payment of Rs.10 lakhs to his son Dr.P.Gautham Sigamani through cheque. For the assessment year 2010-2011 filed on 20.11.2010 identical income from rent deduction and TDS by Ever Smile as Rs.23,175/- is declared.

46. From the above material evidence, two facts emanates. First, 30% deduction from rental income as repair is only to avoid income tax but not

an expenditure actually spent. Second, the said rental income is not from any third party but from A-2.

47. As far as A1 is concerned, the trial Court view to reject the cost of construction as Rs.23,35,321/- in respect of item No.60 in Annexure – II is not a correct view since it is contrary to the material evidence with data and reasoning. In so far as accepting the plea that, Rs.2,88,000/- show as repair is not real expenditure spent on repair is a possible view, because any declaration before the Income Tax Authority regarding income, expenditure and Tax payable in the course of self assessment is only for the purpose of payment of Tax and not a conclusive proof for either income/expenditure or the source of income.

48. The claim of the first appellant that the construction cost of the building on Plot Nos.28 and 29 at K.K.Nagar is Rs.20 lakhs is not supported by evidence or data. There is no evidence to rebut Ex.P.64 relied by the prosecution. Hence, the cost of construction accepted by the trial court is wrong and same to be reversed. Whereas, in respect of expenditure the claims that, he

did not spent any money for repair of a newly constructed commercial building is a probable and possible view. The trial Court acceptance of the probable view in the absence of contra evidence to prove that the accused spend that money for repair/reconstruction or improvement of that building, must be left undisturbed.

49. As a result, in so far as the assets, income, expenditure and saving of A-1, as per the records and evidence, this Court holds the opinion of P.W.33 regarding the value of the property shown in serial No.60 of Statement-II is reliable and credible.

Point (b):

Answered in affirmative. Ex.P.64 is relied and accepted. The cost of the construction of the building mentioned is serial No: 60 is fixed as Rs.23,35,324/-.

Point (c):

Answer in negative. Rs.2,88,000/- cannot be brought under the head of expenditure in the absence of evidence, just because A-1 has declared this amount as repair cost for the building for the purpose of tax avoidance. The prosecution ought to have collected evidence how the said

money spent on repair. This Court find that, even the Statutory expenses like building Tax, Water Tax not paid by A-1 for this building, probably the local body staff had thought M.L.A's and Ministers properties are exempted from property Tax.

50. Adverting to the remaining contentious issues (a) and (d), having thought fit to segregate A1 and A2 in respect of income and assets. the trial Court ought to have also fairly segregated the expenditure of A-1 and A-2 in all aspects. This is one of the fallacy in the trial Court judgment leading to miscarriage of justice. When considering the expenditures mentioned in Annexure-IV, the trial Court has conveniently left the expenditure of Rs.1,97,000/- during the check period of A1 & A2 and their family members without splitting and assessing the personal expenditure of A-1, his gift of Rs.10 lakhs given to his son declared in the Income Tax Returns. By this omission, the perversity in the trial Court judgment could be manifestly seen.

51. The case of the prosecution is that, the statements of property and the charge framed by the trial Court all indicate that the assets, liability, income of both A1 and A2 to be considered as one entity, since there was flow

of fund on either side and adjustment of accounts though they both were individual income tax assessee. At the same time, while A1 was regularly filing his annual returns to the Income Tax Department, A-2 never bothered to file her Income Tax Returns and she filed her returns only after she received Final Opportunity Notice (FoN)..

52. The specific defence taken by A-2 is , the properties held by her are her own properties acquired from her own source of income and she is not holding anything on behalf of A-1 the public servant. Further, her defence is that, she had received Sridhana from her parent home, both as jewels and lands. That apart, she had been engaged in various businesses. Her specific claim is that, she holds 350 sovereigns of gold and 50 kg of Silver. She run the following five firms with investments shown as under:-

Sl.No.	***Name***	***Investment amount***
1.	Vishal Expo	15,00,000/-
2.	Vishal Authomobiles	25,00,000/-
3.	Vishal Publishers	2,00,000/-
4.	Ever Smile Enterprises	5,00,000/- 1,01,000/-
5.	Ponni Kayal Films	5,00,000/-

53. On 09.06.2012, the block assessment for the Assessment years starting from 2006-2011 filed by A-2. By that time, the investigation against her husband for disproportionate assets had reached the final stage and Final Opportunity Notice (FON) the assets in their hands were mentioned and informations about the source was sought. Taking advantage of advance tax and TDS paid during the relevant period for the assessment years 2006-2007, 2009-2010. An attempt is made to give seal of authenticity to this belated Income Tax Returns. A-2 has paid only Rs.74,81,247/- as advance Tax and TDS. After being caught by DV&AC for possessing around 60% of assets more than the known source of income, A-2 had filed the Income Tax Returns declaring her agricultural income as Rs.55,36,488/- as against Rs.13,81,182/- assessed by the prosecution and Rs.5,23,76,618/- as income from other sources as against Rs.2,22,62,005/- assessed by prosecution.

54. The trial Court, without any material had accepted the four fold blotted income from agricultural land, just by relying upon the Income Tax Returns filed by A-2 much after been caught in the net of DV & AC. While the prosecution through expert had established that from out of the agricultural holding, the probable income during the check period could only be less than

Rs.14,00,000/-. Without any piece of evidence, the trial Court has accepted the case of the defence that the Agricultural income of A-2 must be construed as Rs.55,36,488/-.

55. On analysis of the statement of properties mentioned in Annexure-I, which discloses the properties held by A1 & A2, at the beginning of the check period. Item Nos.9 to 24, 27 to 30, 36 to 42 and 44 are properties in the name of A-2. The value of those properties assessed as Rs.2,30,52,901/- by the prosecution and A-2 admits the said value. Similarly, the value of the assets by A-2 at the end of the check period is Rs.5,63,28,584/- as per prosecution and same is also admitted by A-2. While the prosecution had estimated the income of A-2 during the relevant period of time from those properties as Rs.2,22,62,005/-. The claim of the A-2 is that her income from these properties during the relevant of time is about Rs.5,23,76,618/-.

56. On the side of the prosecution, experts in the Agricultural Field, VAO and other Revenue Officials been examined to ascertain the income derived from the agricultural land which stood in the name of A-2. The Adangal and oral evidence of VAO indicates that, substantial portion of the A-2's land were not under cultivation but remained barren. The tentative income

from cultivation of these lands been taken into account and the estimation of the prosecution is not without basis.

57. The evidence of P.W.11 Tmt.Rajalakshmi, VAO Mathirimangalam, P.W.12 Tr.Kaliyaperumal, VAO, Kaspa Karanai Kundalapuliyur and P.W.13 Tr.K.Harikrishnan, Assistant Director of Agriculture, Koliyanoor, had deposed about the land holding and income. PW-13 given a report Ex.P.19 with reasoning. This witness a field expert had stated that the income of P.Vislakshi from her land for the Fasli year - 1416 is Rs.1,71,292, Fasli year - 1417 is Rs.3,43,593/-, Fasli year 1418 is Rs.3,70,809/-, Fasli year - 1419 is Rs.3,75,474/-.

58. The prosecution had examined Assistant Director of Horticulture, Villupuram, Mr.K.Veerasamy as P.W.14 and his report Ex.P.20 is relied to ascertain the income of A-1 and A-2, from the lands owned by them at Mathirimangalam Village in different survey numbers. Further, P.W.15 Tr.N.Paneerselvam, Joint Director of Horticulture, Villupuram, had corroborated the evidence of PW.14. The Sub-Registrars of various Sub-Registrar Office where the accused have purchased properties have deposed

about the documents purchased in their name and the value declared in the document. Ex.P.27 to Ex.P.42 are the certified copy of the sale deeds of various properties purchased from various persons in the name of A-2 before and during the check period. About these transaction P.W.17 to P.W.21 had deposed.

59. For accumulation of all these properties, A-2 declares the source as the income derived from five business firms mentioned earlier and the Agricultural lands. To prove that, A-2 had derived income from all these five business firms. she ought to have filed the sale tax return of the respective years for all these business concern. To prove, A-2's turn over and the presumptive income or margin derived from the business, she has not filed any document. To prove A-2's agricultural income, from out of the agricultural land as claimed, there is no evidence.

60. The trial Court has conveniently taken the Income Tax Returns and the explanation of Ex.P.84 and Ex.P.85 for ascertaining the income and assests held by them. The inherent falsehood in the self serving statement of the accused not at all been considered or tested with the touchstone of supportive documents. The Income Tax Returns filed belatedly by A-2 after initiating the Criminal Investigation ought to have been tested by the guidelines laid by the

Hon'ble Supreme Court unfortunately, the trial failed even to follow the guidelines of the Supreme Court. .

61. This Court finds that the trial Court had wantonly brushed aside the dictum laid down by the Hon'ble Supreme Court in ***State of Tamil Nadu -vs- V. Suresh Rajan*** *cited supra,* which was brought to its notice. Subsequent to the *V.Suresh Rajan* Case, also the Hon'ble Supreme Court had render several other judgments repeatedly holding that the Income Tax Returns cannot be held as proof for the legal source of income. It is only a declaration of income by assessee for the purpose of payment of Tax. The legality of the source of income is to be tested independently. While doing so, the phrase "known source of income" found in Section 13(1)(e) of P.C Act, primarily to be considered as income that would be earned by a public servant from the office of post his attached. This is commonly known as remuneration or salary. The term "income" by itself, is elastic and has a wide connotation. Whatever comes in or is received, is income. But, however wide the import and connotation of the term "income", it is incapable of being understood as meaning receipt having no nexus to one's labour, or expertise, or property, or investment, and having further a source which may or may not yield a regular revenue. These

essential characteristics are vital in understanding the term "income"

62. ***Section 13(1)(e) of the Prevention of Corruption Act, 1988 reads as below:-***

> ***(1).*** *A public servant is said to commit the offence of criminal misconduct,—*
>
> *(a).*
>
> *(b).*
>
> .
>
> ***(e).*** *if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.*

63. As per the prosecution, the properties held in the name of A1 & A2 are inseparable, intrinsically interconnected. The income of A-1 derived by abusing his Public Office invested in the name of A-2 and the investment which stands in the name of A-2 *per se* not proportionate to her income as declared from her individual property. Precisely, for that reason, even the common expenditure of the family not been split up between A-1 and A-2 but had shown under one head of domestic expenses for the family.

64. The trial Court misadventure to split up A1 and A2 as two different is the cause for the miscarriage of justice. The trial court instead of pre-concluding A-1 and A-2 are distinct and different entities, ought to have assessed and determined whether A-2 left alone could have amassed wealth which stands in her name. Whether A-2 had provided any material acceptable and reliable to show she had wherewithal to invest in all these businesses and to acquire properties worth around Rs.3,32,75,683/-. The uncorroborated claim of A-2 that, she had derived agricultural income of Rs.55,36,488/- and business income of Rs.4,68,40,130/- during the relevant point of time is accepted without possible explanation from the accused that the property which stood in the name of A2 were purchased or acquired from the unknown source.

65. To accept the explanation found in Ex.P.85 and the Income Tax Returns, there must be documents and evidence lending support to that explanation and declaration. This Court finds not even a piece of evidence produce to lend support and substantiate the claim of A-2 that, from out of the agricultural land she holds, she was able to derive income to tune of

Rs.55,36,488/-. Her claim of income comparing to extend of the property is astronomically high contrary to the scientific data provided by the prosecution witnesses, regarding the presumable income from the agricultural land held by A-2.

66. Similarly, her declaration of income from the five proprietary concern, the trial Court strangely rely upon the bank statements which reveals only the quantum of money transacted in that account and nothing more. The money came in and went out from the bank account cannot be a criteria to assess the income of a person. There are business firms which may have multiple crores of rupees turnover but not yielding any profit. Equally, there are firms or Company which may have very less turnover but with very high profit margin. The income of respective Company/Firm/Individual, cannot be determined by the quantum of transaction or turnover. Unfortunately, in this case, the trial Court has relied upon the statements of bank officials and the accounts statements to believe the version of the accused that, she was earning income from her business.

67. This Court put a very basic question to itself whether a person,

who claims who have income around Rs.5 crores during the check period of four years and income tax assessee, will not file Income Tax returns regularly apart from paying advance tax and TDS.? More so, when A-2's husband the public servant and Income Tax assessee had filed his returns regularly.

68. The only reason for not filing the assessment for all these years could be to adjust the account and legalise the ill-gotten money accumulated, Unfortunately, the trial Court contrary to the law of evidence and the decisions of the Hon'ble Supreme Court and the High Courts, without any reasoning had accepted the explanation and Income Tax Returns shown by A-2.

69. The trial Court, ought not to have relied on the bank statements marked as Ex.P.49, Ex.P.50, Ex.P.54, Ex.P.55 and Ex.P.56, for the purpose of assessing the income, since the statement of bank account is irrelevant document for assessing income.

70. The trial Court carried away by the statement that, A-2 is a multi degree graduate and therefore, she is capable of getting income on her own. Unless, there is evidence to show that, A-2 had utilised her skill to derive

income, mere holding degree is not a proof for income or source for income. The trial Court also erred in accepting the income declared to the Income Tax Authority as income derived from the legal source. The declaration to the Income Tax Authority about the income will not sanctify the source of income. A-1 having failed to explain with the supportive document how the income declared to the Income Tax Authority was derived by A-2. Therefore in the absence of explanation for the source, it is to be held that by holding the ill-gotten properties on behalf of the public servant, she is guilty of abetting a public servant to acquire wealth beyond the known source of income.

71. The Leaned Counsel for the appellants relying upon the judgments of the Hon'ble Supreme Court submitted that, judgment of acquittal should rarely be interfered and it can be interfered only if it shakes the conscious of the Court and totally perverse.

72. In ***Murugesan & Ors. v. State through Inspector of Police reported in (2012) 10 SCC 383***, has held that, if the view taken by the trial court is a "possible view", High Court not to reverse the acquittal to that of the conviction.

73. He also contented that even if A-2 could not properly explain the source of income or not properly declared her income, it is for the Income Tax Authority to proceed against her in accordance with law. As an individual, A-2 cannot be her omission or commission cannot be clubbed with the A-1.

74. While reading Section 13(1)(e) of P.C Act 1988, it is not only the properties held by the public servant should be accounted of the source, the person, who hold the properties on behalf of the public servant, should also liable to explain the source. Though, conveniently it is argued that the property is in the name of A-2 are all her own holding, the documents and materials clearly show that, A-2 though holds multiple Degree, she is not gainfully employed or a salaried person. She refers five firms which stands in her name and the Agricultural lands which are in her name, as her source of income. Though some of the properties were purchased prior to the check period, substantial properties purchased during the check period. The five firms which she refers also have capital investment which is mentioned in the earlier part of the judgment and for capital investment also she should have explained. Merely referring the properties which could yield income is not sufficient to satisfy the source of income. There must be evidence to show those properties were really

yielding income. The burden of proof as far as offence under Section 13(1)(e) of P.C Act is initially on the prosecution to show that properties are held by the public servant or others on his behalf. It should also *prima faciely* establish that for holding those properties or acquiring those properties, the public servant had no sufficient income. If the prosecution able to establish this fundamental fact, then the burden shifts on the accused to explain the source of income.

75. In this case, the list of properties held by A-1 and A-2 at the end of the check period as stated by the prosecution is admitted by A-1 and A-2.In respect of expenditures, except a sum of Rs.2,88,000/- (deduction from rental income) as expenditure claimed by the prosecution, there is no dispute about the total expenditure of A-1 and A-2 during the check period. So, the burden shift on A-1 and A-2 to prove the source of income for acquiring these properties.

76. A-1 had offered his explanation by way of reply Ex P-84 and A-2 had come forward to rely on her explanation marked as Ex.P.85 and documents Ex.D.1 to Ex.D.5. The explanations found in Ex.P.84 and Ex.P.85 are not a probable or possible explanation supported by evidence. The

documents relied by A-2 which are marked as Ex.D.1 to Ex.D.5 are purely self serving documents for the purpose of payment of income tax. The claim of A-2 that, she derived Agricultural Income of about Rs.55,36,488/- during the check period is contrary to the document and ocular evidence let in by the prosecution. The said evidence for prosecution can be dislodged only by equally or more reliable ocular or documentary evidence. To prove her income from the business, A-2 ought to have furnished her sale tax returns declaring turn over, purchase, sale and margin during the respective years. It is easy for any person to open a Shell company or firm and pay Income Tax, declaring income even without real earning. For the Income Tax Department, it is the tax paid for the declared income requires scrutiny but not the source of income. Scrutinising the source of income is not within the domain of the Income Tax Department.

77. The pronouncement of the Hon'ble Supreme Court is loud and clear that the Income Tax returns filed cannot be taken as a gospel truth while deciding a case of disproportionate assets. In this case, the block assessment filed by A-2 after initiating the prosecution has to be rejected intoto. because except the assessment, there is no other evidence filed lending support to the assessment.

78. As per the prosecution case A-1 as public servant has amassed wealth illegally and some of his ill-gotten wealth are held by A-2. The assets acquired is 65.99% disproportionate to the known source. Particularly, in Statement-II (Assets at the end of the check period i.e., 31/03/2010) item Nos.51 to 55 are said to have been purchased by A1 in the name of his wife A2. These 5 properties are purchased under sale deeds duly registered and marked as Ex.P-38 (dated 05/06/2008), Ex.P.36 (dated 13/04/2007), Ex.P.37 (dated 18/12/2009), Ex.P-39 (28/08/2008) and Ex.P.32 (dated 06/12/207) respectively. The total value for these properties including registration charge and stamp duty is Rs.49,69,507/-. These properties stands in the name of A-2. For investing such a huge money in properties within a span of 32 months, there must be a reasonable and acceptable legal source.

79. It is contented by the Learned Senior Counsels for the respondents/accused that, the above explanations were not considered by the Investigating Officer, the trial Court however had rightly considered it and accepted. Whereas, the case of the prosecution is that, whatever satisfactorily explained and appeal to prudence same were accepted.

80. On scrutiny of the explanations we find A-2, in her explanation

marked as Ex.P-85 dated 25/06/2012 by enclosing the four numbers of Income Tax Saral forms had stated that, she is a separate legal entity. She possess properties on her own and not on behalf of anybody. Therefore, clubbing of the holdings of her husband with her holding is absolutely incorrect, illegal and motivated. Since, she is not a public servant, she is not answerable to the DV&AC.

81. Ex.P-84 is the explanation given by A1(the public servant) stating that, he is different and independent entity. He will not be able to account for the income and holdings of his wife, who has been running several business organizations.

82. Thus, both A-1 and A-2 were not willing to explain how these properties came to them. A-2 instead of explaining the source with details, harp on the self declaration made in the income tax returns and assessment of the Assistant Commissioner of Income Tax.

88. Traders involved in purchase and sale of goods or products are supposed to maintain accounts about the purchase and the sale, details about

sales tax paid or payable, expenditure towards establishments. These accounts are to be audited and submitted to the respective departments like Sale Tax Department or Customs if the business is across the Country. The explanation of A-1 and A-2 is that, A-2 is involved in several businesses including trading in Tractors, two wheelers, Film production and exports under five different banners. Yet, not a piece of document filed to prove the annual turnover of those business concerns or the commercial Tax/Excise duty paid if any. If really any goods exported, what was the product and its value, the bill of lading, custom clearance, foreign exchange received must have been produced to justify the income declared. San these particulars, just by declaring her gross turnover in the business was Rs.52,11,43,131/- and her income during the check period was Rs.5,66,58,381/- *per se* cannot be an explanation worth to consider. Like any other man of ordinary prudence, the Investigating Officer had rightly declined to accept this story spinned in air as an explanation for the source of income.

84. Aiding a Public Servant to hold his ill-gotten money will not fall within the true sense of benami transaction but an illegal act / understanding between the parties to hide the ill-gotten money, from the scrutiny of Law

Enforcing Agency. Whether the spouse to be treated as separate entity or part and parcel of public servant depends upon the facts of each case. Even if effective business is done by the firms in the name of his spouse, but evidence indicates that, she is only a name lender for the operations done by the public servant, then the judgments of Hon'ble Supreme Court in ***Nallammal and others -vs- State of Tamil Nadu and D.S.P, Chennai -vs- K.Inbasagaran*** will not apply.

85. As a consequence of the above discussion, this Court holds that segregating the income of A1 & A2 by the trial Court is patently erroneous contrary to the evidence on record. Just because a person have separate income tax accounts and some business, segregating the accounts and properties of the person who has aided the public servant to hold his ill-gotten property will lead to miscarriage of justice. Therefore, **Point (a) held in negative.**

86. The explanation Ex.P-84 and Ex.P-85 and Ex.D-1 to Ex.D-6 which were marked in the course of cross examination of P.W-6 are the only material for the accused which is claimed to be the explanation to the source of income. It is demonstrated have and why the self declaration of income to the

Income Tax Department without any supporting documents for the income from business or Agriculture will be insufficient, even by preponderance of probability, to dislodge the strong material evidence proved.

87. In a case of disproportionate asset, without supporting and independent evidence, accepting Income Tax Returns that too filed after commencement of investigation been reprimanded and commented by the Hon'ble Supreme Court as below in ***State of Karnataka vs. Selvi Jayalalithaa and others*** reported in ***2017 (7) SCC 263***:-

> *"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 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/-.*
>
> *255). The High Court thus had proceeded not only in disregard of the evidence as a whole but also*

being oblivious of the legal postulations enunciated by this Court that income tax returns/orders passed thereon are not binding on criminal Court and that the facts involved are to be proved on the basis of independent evidence and that the income tax returns/orders are only relevant and nothing further."

88. The trial Court in this case has acquittal the accused solely by accepting the Income Tax Returns filed by A-2 after the registration of the complaint. This is in violation of the dictum laid by the Hon'ble Supreme Court. Hence, for **Point (d).** what is the probative value of the income tax returns filed as block assessments for 4 assessment years after the registration of the case for disproportionate assets and issuance of Final Opportunity Notice (FON)? ***Court for the reasons stated above, holds that in the facts and circumstances of this case, the probative value of Ex.D-1 to Ex.D-5 is Nil.***

89. Before concluding, this Court is duty bound to explain the scope and limits of the Appellate Court under Section 378 of Cr.P.C while dealing appeal against acquittal. This attempt is to dispel the erroneous impression percolated deeply in the minds of few that the Appellate Court cannot or will not interfere the judgment of acquittal even if it is absurd, perverse or erroneous, ignoring the material evidence.

90. In ***Chandrappa Vs. State of Karnataka*** reported in ***(2007) 4 SCC 415***, the Hon'ble Supreme Court, after considering the earlier judgments on this aspect, postulated the following guidelines:-

> *(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.*
>
> *(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*
>
> *(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasis the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

91. The Hon'ble Supreme Court, in all its judgements rendered either pre or post Chandrappa's case is consistently emphasizing, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to

ensure that miscarriage of justice is prevented.

92. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence for the purpose of ascertaining as to whether any of the accused really committed any offence or not. The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and if relevant and convincing materials have been unjustifiably eliminated in the process, it shall be a reason sufficient for interference.

93. In this context, it is also relevant to quote Hon'ble Justice Krishna Iyer, who while emphasizing balance between individual liberty and evil of acquitting guilty person had said;

"Even at this stage we may remind ourselves of a necessary social perspective in criminal cases which

suffers from insufficient forensic appreciation. The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs thro' the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light heartedly as a learned author (Glanville Williams : 'Proof of Guilt') has saliently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted 'persons' and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding

the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that 'a miscarriage of justice may arise from the acquittal of the guilty no less than from, the conviction of innocent..' In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents".

94. Few more judgements of the Hon'ble Supreme Court regarding the power of the Appellate Court under Section 378 of the Criminal Procedure Court requires reference to emphasis, the view of Hon'ble Justice Krishna Iyer, "***the excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma".***

In K. Gopal Reddy v. State of Andhra Pradesh, reported in AIR 1979 SC 387*, the Supreme Court through Justice Chinnappa Reddy, said, "The principles are now well settled. At one time it was thought that an order of acquittal could be set aside for 'substantial and*

compelling reasons' only and Courts used to launch on a search to discover those 'substantial and compelling reasons'. However, the 'formulae' of 'substantial and compelling reasons', 'good and sufficiently cogent reasons' and 'strong reasons' and the search for them were abandoned as a result of the pronouncement of this Court in Sanwat Singh & Ors. v. State of Rajasthan. In Sanwat Singh's case, this Court harked back to the principles enunciated by the Privy Council in Sheo Swamp v. Emperor and re-affirmed those principles. After Sanwat Singh v. State of Rajasthan, this Court has consistently recognised the right of the Appellate Court to review the entire evidence and to come to its own conclusion, bearing in mind the considerations mentioned by the Privy Council in Sheo Swarup's case. Occasionally phrases like 'manifestly illegal', 'grossly unjust', have been used to describe the orders of acquittal which warrant interference. But, such expressions have been used more, as flourishes of language, to emphasise the reluctance of the Appellate Court to interfere with an order of acquittal than to curtail the power of the Appellate Court to review the entire evidence and to come to its own conclusion. In some cases (Ramabhupala Reddy & Ors. v. State of A.P. AIR 1971 SC 460, Bhim Singh Rup Singh v. State of Maharashtra, AIR 1974 SC 286), it has been said that to the principles laid down in Sanwat Singh's case may be

added the further principle that "if two reasonable conclusions can be reached on the basis of the evidence on record, the Appellate Court should not disturb the finding of the Trial Court". This, of course, is not a new principle. It stems out of the fundamental principle of our criminal jurisprudence that the accused is entitled to the benefit of any reasonable doubt. If two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of a reasonable doubt. But, fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt. It is, therefore, essential that any view of the evidence in favour of the accused must be reasonable even as any doubt, the benefit of which an accused person may claim, must be reasonable".

In Ramesh Babulal Doshi v. State of Gujarat, reported in ***(1996) 9 SCC 225****, Apex Court said; "While setting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably*

wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only-reappraise the evidence to arrive at its own conclusions".

In Alarakha K. Mansuri v. State of Gujarat, reported in ***(2002) 3 SCC 57****, referring to earlier decisions, the Court stated; "The paramount consideration of the court should be to avoid miscarriage of justice. A miscarriage of justice which may arise from the acquittal of guilty is no less than from the conviction of an innocent. In a case where the trial court has taken a view based upon conjectures and hypothesis and not on the legal evidence, a duty is cast upon the High Court to re- appreciate the evidence in acquittal appeal for the purposes of ascertaining as to whether the accused has committed any offence or not. Probable view taken by the trial court which may not be disturbed in the appeal is such a view which is based upon legal and admissible evidence. Only because the accused has been acquitted by the trial court, cannot be made a basis to urge that the High Court under all circumstances should not disturb such a finding."*

95. Conclusion:-

In the light of the above observations, the dictum and principles postulated by the Apex Court, applied to the case in hand, this Court find that, the trial Court on superficial reading of the evidence had proceeded with the process of decision making on the premise that A-1 and A-2 are separate entities and they both cannot be clubbed together. This is basically a fallacious approach by the trial Court. The trial Court has failed to understand that, the substance of charge against A-2 is that, she being the wife of A-1 (Public Servant) holding the assets of A-1 which he had acquired through unknown source. Whether, the lack of capital/source to yield income proportionate to the properties acquired in the name of A-2 during the check period is the point which ought to have been first examined by the trial Court instead, ignoring all the material evidence placed by the prosecution to show that the business and the agricultural land of A-2 had not yielded income sufficient to acquire the wealth held in her name and most of those properties itself suspected to be purchased by A-1 in her name and she holds it for A-1, The trial Court, without assigning any plausible reasons for any man of prudence to believe, had first segregated A-2 from A-1, then relied on the Income Tax returns/block

assessment filed by A-2 after receipt of Final opportunity Notice (FON). without any corroboration or supporting evidence.

96. The readily acceptance of Income Tax Returns of A-2 by the trial Court without any independent evidence is palpably wrong and manifestly erroneous. The trial Court, before jumping into the said conclusion ought to have searched for supportive and independent evidence. In the absence of independent evidence, accepting the fanciful claim of agricultural income to a tune of Rs.55,36,488/- as against the estimated agricultural income of Rs.13,81,182/- is infirm and demonstrably unsustainable.

97. Ignoring the first principle of law and the judicial pronouncements, acceptance of the self serving declaration of income to the Income Tax Authority, by an accused in a disproportionate assets case is not a possible view but an erroneous view conceived due to misconception. It is a conclusion arrived by ignoring the most reliable evidence let in by the prosecution regarding the income of A-1 and A-2. The trial Judge has also misinterpreted Ex.P.49 and Ex.P.56 Bank Account Statements as proof of income. A complete miscarriage of justice had occurred by the omission of

reliable evidence and by mis-interpretation of the evidence.

98. This Court considering the overwhelming evidence against the respondents and the unsustainable reasons given by the trial Court for acquittal by ignore those evidence compel this court to declare the judgment of the trial Court is palpably wrong, manifestly erroneous and demonstrably unsustainable. Hence, this is a fit case for the Appellate Court to interfere and set it aside.

99. In fine, the property Statements of the accused A1 & A2 taken consolidately after re-appreciating evidence is as below:-

Sl.No.	Description	Amount	
Annexure (i)	Assets at the beginning of the check period	Rs.2,71,75,011/-	
Annexure (ii)	Assets at the end of the check period	Rs.6,27,23,752/-	
Annexure (iii)	Income earned during the check period	Rs.2,65,96,560/-	
Annexure (iv)	Expenditure incurred during the check period	**Rs.85,99,287/- (-) Rs.2,88,000/-**	83,11,287/-
Annexure (v)	Assets acquired during the check period **(Statement II – Statement I)**	Rs.3,55,48,741/-	
Annexure (vi)	Likely savings during the check period **(Statement III – Statement-IV)**	**Rs.2,65,96,560/- (-) 83,11,287/-**	1,82,85,273/-

Sl.No.	Description	Amount	
Annexure (vii)	Disproportionate Assets acquired during the check period **(Statement-V - Statement-VI)**	**Rs.3,55,48,741/- (-) 1,82,85,273/-**	1,72,63,468/-

Percentage of Disproportionate Assets <u>Rs.1,72,63,468/-</u> x 100 = 64.90%
Rs.2,65,96,560/-

100. As a result, the ***Criminal Appeal No.53/2017 is allowed.*** The trial Court judgment of acquittal passed in Special Case No.44/2014, dated 18/04/2016, on the file of Special Court for Prevention of Corruption Act cases, Villupuram, is set aside. The charge of offence punishable under section 13(2) r/w13(1)(e) of P.C Act framed against A-1 stands proved. The charge of offence punishable under Section 13(2) r/w 13(1)(e) of PC Act r/w 109 of I.P.C against A-2 stands proved.

101. Registry is directed to cause notice to the respondents A1 and A2, through their Counsels for their appearance before this Court on

21.12.2023 at 10.30 a.m to answer the question about sentence. List the case on 21.12.2023.

19.12.2023

Index :Yes.
Internet :Yes.
bsm

Note: Issue order copy on 19.12.2023

Copy To:-
1. The Special Court, Prevention of Corruption Act Cases, Villupuram District.
2. The Deputy Superintendent of Police, DV & AC, Villupuram.
3. The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN, J.

bsm

Pre-delivery judgment made in
Crl.A.No.53 of 2017

19.12.2023