

Crl.A.No.283 of 2017 & Crl.A.No.211 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 19.06.2024

Pronounced on: 05.07.2024

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.No.283 of 2017
& Crl.A.No.211 of 2018

Crl.A.No.283 of 2017

C.Aranganayagam (Deceased)**

C.R.Santhanapandian,

S/o.Late.C.Aranganayagam,

No.77, 1st Main Road,

Indira Nagar, Adyar,

Chennai – 600 020.

... Appellant/Accused No.1

** Substituted the petitioner in the place of deceased Appellant as per order
in Crl.M.P.No.7130 of 2021 in Crl.A.No.283 of 2017, dated 06.08.2021

/versus/

The State of Tamil Nadu,

Rep. by The Superintendent of Police,

Vigilance and Anti Corruption,

Western Range, Directorate of V & AC,

Chennai.

.... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., to set aside the order of conviction and sentence for a period of three years of Simple Imprisonment and a fine of Rs.50,000/- dated 17.04.2017 passed in Special Calendar Case No.2 of 2006 by the Special Judge/X Additional Judge, Chennai, against the Appellant/Accused No.1 and to consequently acquit the appellant/accused No.1 from the charges framed against him in Special Calendar Case No.2 of 2006 on the file of the Special Judge/X Additional Judge, Chennai.



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For Appellant : Mr.N.Muralikumar, Senior Counsel,
for M/s.Mogan Law Firm,
Assisted by Mr.R.Gopinath

For Respondent : Mr.K.M.D.Muhilan,
Government Advocate (Crl.Side)

Crl.A.No.211 of 2018

State Represented by:
The Public Prosecutor,
High Court, Madras.

(Crime No.11/AC/96/HQ/V&AC)

... Appellant/Complainant

/versus/

1. Tmt.Kalaiselvi.
2. A.Santhanapandian.
3. A.Murugan Athigaman.

All are residing at
No.37, 1st Main Road, Indira Nagar,
Adyar, Chennai – 600 020.

... Respondents/Accused 2 to 4

Prayer: Criminal Appeal has been filed under Section 378 (1)(b) of Cr.P.C., to allow this appeal and set aside the judgment in C.C.No.2 of 2006 passed by the Learned Special Judge/X Additional Judge, under Prevention of Corruption Act, Chennai and convict the A2 to A4 for the offence punishable under Section 109 of I.P.C r/w 13(2) r/w 13(1)(e) of the P.C Act, 1988 with maximum punishment with fine; direct to confiscate the properties standing in the names of A2 to A4 in the list of Statement-II annexed to the final report to the State Government and to impose fine commensurate with the quantum of disproportionate assets stood in the name of Accused A2 to A4.



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For Appellant : Mr.K.M.D.Muhilan,
Government Advocate (Crl.Side)

For Respondents : Mr.N.Muralikumar, Senior Counsel,
for M/s.Mogan Law Firm,
Assisted by Mr.R.Gopinath

COMMON JUDGMENT

The Deputy Superintendent of Police, Vigilance and Anti Corruption, Chennai, registered a case in Crime No.11/AC/96/HQ/V&AC on 05.09.1996 in connection with possession of disproportionate assets during the check period 24.06.1991 to 12.05.1996 by a public servant, namely, C.Aranganayagam Former Minister for Labour and Education, Government of Tamil Nadu and Member of Tamil Nadu Legislative Assembly. The Investigation conducted by the Superintendent of Police and Special Investigation Cell culminated in filing the final report against Tr.C.Aranganayagam, his wife Tmt.Kalaiselvi and two sons Tr.Santhanapandian and Dr.Murugan Athigaman.

2. The final report was taken on file by the Special Court for Prevention of Corruption Cases, Chennai in Special Calendar Case No.2 of 2006. Charges under Section 13(1)(e) r/w 13(2) of P.C Act as against A1 and



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under Section 13(1)(e) r/w 13(2) P.C Act r/w 109 of I.P.C against Accused 2 to

WEB 4 were framed and tried.

3. To substantiate the charges, the prosecution examined 118 witnesses (P.W.1 to P.W.118), marked 274 Exhibits (Ex.P.1 to Ex.P.274) besides one Court Exhibit (Ex.C.1) and one material object (M.O.1). In defence 17 witnesses (D.W.1 to D.W.17) were examined and one Exhibit was relied upon.

4. The trial Court, after appreciating the evidence held A1 guilty of offence under Section 13(1)(e) r/w 13(2) of P.C Act, he was sentenced to undergo three years S.I and a fine of Rs.50,000/- was imposed in default to undergo further imprisonment for a period of three months. Further, ordered confiscation of properties purchased by A-1 during the check period. Rest of the Accused A2 to A4 who are the family members of A1 were found not guilty and acquitted. The trial Court gave liberty to the Accused A2 to A4 to approach the Small Causes Court, Chennai to seek relief of raising the attachment of their properties.

5. Being aggrieved by conviction, 1st accused has preferred Criminal Appeal No.283 of 2017. The State had preferred appeal against



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acquittal of Accused A2 to A4 in Crl.A.No.211 of 2018.

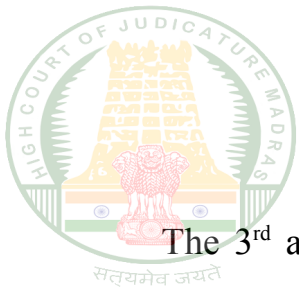
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6. During the pendency of the appeal, an application was filed to receive additional evidence on the side of the defence and the same was allowed by this Court in Crl.A.No.283 of 2017 dated 27.04.2019. Pursuant to that, on the side of the accused, three more witnesses were examined and 13 documents (Ex.D.2 to Ex.D.14) were marked. The first accused/appellant in Crl.A.No.283 of 2017 graced the witness box as D.W.20. He was cross examined by the prosecution. Subsequently, 1st accused died on 29.04.2021, his legal heirs got impleaded to continue the appeal, as per the order of this Court in Crl.M.P.No.7130 of 2021 *vide* order dated 06.08.2021.

7. The substance of the charges framed by the trial Court reads as below:-

Charge 1:-

The 1st accused C.Aranganayagam, Member of Thondamuthur Legislative Assembly between 24.06.1991 to 12.05.1996 and was Minister of Labour and Education Department between 24.06.1991 to 17.05.1993. The 2nd accused Tmt.Kalaiselvi is the wife of 1st accused who voluntarily retired as Teacher in the year 1986 and she is a house wife, having no source of income.



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The 3rd accused is the son of Accused 1 & 2 was an Actor and Cameraman,

whereas, the 4th accused is Doctor by Profession employed in Primary Health Centre, Poonamallee between 04.11.1991 to 17.06.1992 and thereafter, he resigned from the job. While so, as on 24.06.1991, the total assets in the hands of A1 and A2 to A4 was Rs.5,27,880/-. At the end of the check period i.e., 12.05.1996 the assets held by A1 and A2 to A4 was worth about Rs.1,66,30,069/-. The income earned by the accused 1 to 4 during the check period is tentatively Rs.98,05,835/-, whereas, the expenditure incurred by A1 to A4 during the check period is tentatively Rs.29,24,557/-. The likelihood of savings during the check period for A1 is Rs.68,81,278/-. Whereas, the assets held by him is found in excess that is Rs.92,20,911/-. The accused 2 to 4 had no self income during the check period, while A1 was a public servant as M.L.A and Minister. While so, the assets worth Rs.92,20,911/- is acquired at various places, such as, Chennai, Coimbatore, Devarayapuram village, Sankaran kottai Village, Odanthurai Village, Pallipakkam village in the name of 1st accused and other accused. Explanation was called from A-1 to explain the possession of assets worth Rs.92,20,911/- held by him and his family over and above the known source of income. The 1st accused's explanation to the notice was not satisfactory and therefore, for accumulating wealth beyond the known source of income in his name and in the names of A2 to A4 is liable to be punished for the



offence under Section 13(1)(e) r/w 13(2) of P.C Act.

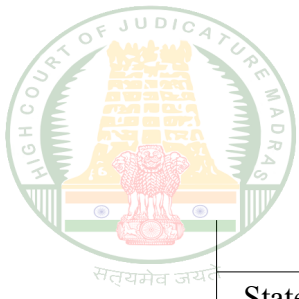
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Charge 2:-

While the 1st accused was a public servant viz., M.L.A and Minister, A2 to A4 abated A1 to accumulate assets beyond the known source of income and thereby, committed an offence punishable under Section 13(1)(e) r/w 13(2) of P.C Act r/w 109 of I.P.C.

8. The charges were on the basis of Statements I to VII annexed to the final report listing out the properties and its value. The Statements I to VII annexed to the final report is marked separately as Ex.P.254 which provides details of assets and its value under respective head. Ex.P.254 reveals the case of the prosecution against the accused persons in short. For easy reference the substance of the statements is given under:-

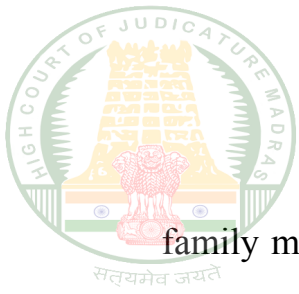
Statement - I	Assets held by A1 and A2 to A4 at the beginning of the check period i.e., on 24.06.1991.	Rs.1,65,880.00
Statement - II	Assets held by A1 and A2 to A4 at the end of the check period i.e., on 12.05.1996.	Rs.1,66,35,486.65
Statement - III	Income earned by A1 and A2 to A4 during the check period from 24.06.1991 to	Rs.92,87,185.00



	12.05.1996	
Statement – IV	Expenditure incurred by A1 and A2 to A4 during the check period between 24.06.1991 to 12.05.1996	Rs.29,26,627
Statement – V	Value of assets acquired by A1 and A2 to A4 during the check period between 24.06.1991 to 12.05.1996	Rs.1,64,69,607.00
Statement - VI	Likely Savings held by A1 to A4 during the check period between 24.06.1991 to 12.05.1996	Rs. 63,60,558.00
Statement - VII	Disproportionate Assets during the check period (24.06.1991 to 12.05.1996)	Rs.1,01,09,049.00

9. After appreciating the evidences, the trial Court segregated the income details, value of assets and expenditure of each of the accused and arrived at a conclusion that, the income of A1 during the check period as Rs.24,16,028/- and the expenditure as Rs.21,97,733/-. The value of the assets held by A1 at the end of the check period as Rs.19,22,316/-. Hence, held that while A1 likely savings during the check period was Rs.2,18,296 [Rs.24,16,028 (-) Rs.21,97,733]. He was holding assets worth Rs.17,03,020/- for which source unexplained. As far as A2 to A4 similar scrutiny was done and concluded, A2 to A4 cannot be held for abetting the public servant.

10. In short, the final conclusion of the trial Court, on appreciating the evidence let in on either side and after giving due concession to the defence explanation is that the value of assets of A-1 being a public servant and his



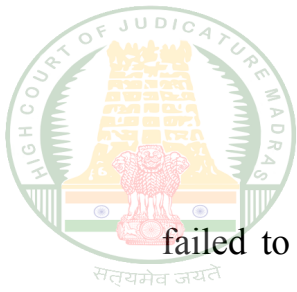
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family members A2 to A4 acquired in excess to their known source of income

WEB during the check period as on 12.05.1996 was:-

	<i>A1</i>	<i>A2</i>	<i>A3</i>	<i>A4</i>
Value of the assets at the end of the check period	19,22,316	64,35,256	28,87,979	28,65,941
Savings during the check period	2,18,296	63,58,672	32,45,881	28,18,069
Disproportionate asset	17,04,020	76,584	(+) 3,57,903	47,872

11. Further, the trial Court after holding that A-1 is in possession of 9.51% of assets disproportionate to his known source of income, rejected the case of the prosecution that his family members acted as benami to A1. It held, the prosecution has failed to give breakup particulars of assets acquired by A-2 to A-4, their source of income and expenditures. Considering the income of A-2 to A-4 independently, their expenditure and the value of assets in hand at the end of check period, the trial Court concluded that assets in hand of A-2 at the end of the check period is only 1.16% disproportionate to her known source of income. As far as A-3 is concerned, the trial Court has concluded that he had surplus income than the assets in his hand. As far as A4 is concerned, the disproportionate was assessed as only 1.63% more than the known source of income. Therefore, the charge against A-2 to A-4 for abetting public servant was held not proved. The trial Court has observed that the prosecution has



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failed to prove that the properties purchased by A-2 to A-4 during the check

period were made on behalf of A-1 and from source of A-1 to attract offence of

abetment. Finally, the trial Court concluded as below:-

“Thus, the Prosecution has proved beyond reasonable doubt that A-1 being a public servant during the check period 24.6.1991 to 12.05.1996, as against the income of Rs.24,16,028/- and the expenditure of Rs.21,97,733/-, acquired and possessed immovable properties and pecuniary resources of the value of Rs.17,04,020/- which he could not satisfactorily account. Hence this Court held that u/s.248(2) of Cr.P.C., A-1 is hereby found guilty and convicted for the offence punishable u/s.13(1) (e) r/w 13(2) of the Prevention of Corruption Act.

The prosecution has failed to prove beyond reasonable doubt that A-2 to A-4 abetted the commission of the above offence by intentionally aiding A-1 in the acquisition and possession of pecuniary resources and properties disproportionate to his known source of income as above and held that A-2 to A-4 are not found guilty and punishable u/s.13(e) r/w 13(2) of the Prevention of Corruption Act r/w 109 IPC.”

12. The Learned Senior Counsel appearing for the appellant



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submitted that the calculation of the trial Court bristles with infirmity and the

observation and finding does not correlate with the actual value of the assets.

He further submitted that when the trial Court in paragraph No.507 of the judgment has specifically stated that A-1 had in his possession of assets in excess of Rs.17,04,020/-; had concluded that the disproportionality is Rs.14,70,574/-. The actual income of the A-1 during the check period which includes agricultural income and other sources through movie distribution and subsidy received were not taken into the account. Particularly, the subsidy of Rs.2,50,000/- received from the Government of Karnataka for the movie “Eka Nagaranth” is the income of M/s.Chenniappa Enterprises, for which A-1 is the Proprietor. However, this amount been credited to the income of A-3.

13. Further, the Learned Senior Counsel for the appellant submitted that during the check period, A-1 been cultivating tamarind and teak wood trees in his land along with other cross crop which was yielding income. However, the prosecution relying upon the evidence of V.A.O and other official witnesses had lower estimated the income from the agricultural land. The trial Court erred in giving credit only for part of the land under cultivation and not the entire land. The income derived from agricultural land at Kangarakottai and Thondamuthur village been estimated lower than the income declared to the Income Tax department.



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14. Ex.P.250 and Ex.P.251 given by the VAO and Tahsildar are not conclusive proof for income. The income derived by M/s.Chenniappa Enterprises by screening movies not been given due credit. A sum of Rs.9,32,052/- as income by screening films in the theater of Tamil Nadu been omitted by the prosecution. In the explanation dated 19.09.2000 given by the accused in reply to the notice, there was some oversight in declaring the actual income by A-1 which was about Rs.23,34,687/-. The subsequent evidence let in by the accused to substantiate the income not been taken note by the trial Court in view of undue weightage given to the income declared in the explanation letter. The trial Court ought to have taken note of the fact that the case was registered in the year 1996 and the explanation was called from A1 alone after four years. By that time, the accused was not in his possession of all particulars. After granting two extensions to submit the explanation, he was forced to give explanation hurriedly. The explanation will not estop the accused from relying upon the evidence which could show that the accused had adequate income through various sources to acquire assets.

15. The Learned Senior Counsel for the appellant states that the Income Tax Appellate Tribunal, Chennai, *vide* its order dated 30.10.2003, has



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observed that M/s.Chenniappa Enterprises, viz., the 1st Accused/Appellant,

Proprietary concern, earned a sum of Rs.22,08,916/- during the assessment year 1995-1996 from and out the total collection and sale of the leasehold rights of the film “Muthal Amaichar” distributed by it and Rs.28,99,651/- from and out of the total collection and sale of the leasehold rights of its film “Sevvanthi” during the assessment year 1995-1996. The income derived by A-1 from the sale of leasehold rights of movies “Muthal Amaichar” and "Sevvanthi," is Rs.51,08,567/- and if it is duly given credit to his known source of income, there will not be any disproportionality in the asset held by the A-1. For the said purpose, the evidence of D.W.8, D.W.13, D.W.15 and Income Tax returns are relied to show that the accused had substantial income through M/s.Chenniappa enterprises and the same was not duly given credit.

16. The Learned Senior Counsel for the appellant submitted that the value of the property at Indra Nagar, Adyar, Chennai, after its renovation was not properly estimated. A sum of Rs.2,00,000/- for renovation of the house is excessive. The house was already semi-finished while purchasing it and 50% of the estimation made by the prosecution for renovation was also excessive. A sum of Rs.41,605/- towards fuel expenditure incurred by A-1 is questioned as excessive, citing the fact that as Minister and M.L.A., A-1 was provided with



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government vehicle and he had no necessity to spend Rs.41,605/- for fuel

expenses. Likewise, under the head of expenditure towards marriage of his two sons, it was contended that A-1 spent only Rs.2,00,000/-, as per the prosecution version A1 spent Rs.4,50,000/-.

17. Comparing Ex.P.254, the statement of assets, expenditure and income relied by the prosecution and Ex.P.256, the assets, income and expenditure given by the accused by way of explanation, the Learned Senior Counsel appearing for the appellant submitted that the trial Court has not properly reconciled the accounts, which has led to miscarriage of justice.

18. Contradictions in arriving at the disproportionality also highlighted by the Learned Senior Counsel for the appellant. He submitted that the confusion in the mind of the Trial Judge, regarding the percentage of disproportionality would be found from the discussion in paragraph No.508 of the judgment, wherein at one contest, the trial Court has asserted that the disproportionality of A1 asset is 9.51% and in another contest it stated as 70.52%. The trial Court failed to take note of the gift received by A-1 during his 60th birthday, which was celebrated on 25.04.1991 and the same been explained



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in the explanation, Ex.P.256.

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19. The Learned Senior Counsel for the appellant would submit that even assuming the disproportionality is only 9.51% it is very marginal. Relying upon the judgment of the Hon'ble Supreme Court in *Sahabuddin & Another -vs- State of Assam* reported in (2012) 13 SCC 213 contended that the benefit of doubt has to be given to the accused who died, pending appeal.

20. Further, the Learned Senior Counsel for the appellant also submitted that the trial Court has not taken note of the fact that the prosecution has failed to complete the trial within a reasonable time by marshalling his witnesses. The case was registered in the year 1996, culminating in the final report only in the year 2005. The trial commences on 10.08.2015. The witnesses were examined and were asked to depose about the incident, which took place more than 20 years ago. The efface of memory as well as records to show the source due to efflux of time ought to be taken note and the case of the prosecution ought to be disbelieved.

21. The Learned Government Advocate (Crl.Side) appearing for the respondent/DVAC submitted that it is correct that the F.I.R. was registered

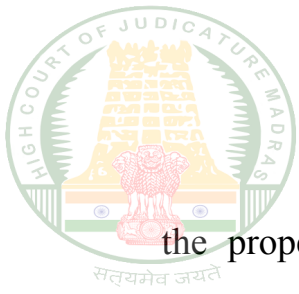


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only against A-1, the public servant, on 05/09/1996. The search of the A-1

premises led to the seizure of records and evidence that he, along with his wife and two married sons with their spouse living in the same house and his money derived from unknown sources were invested in A1's name and in the names of his family members (A2 to A4). The Investigating Officer issued notice to A-1 to explain the sources of income to the properties acquired during the check period, i.e., 24/06/1991 to 12/05/1996. The explanation was not satisfactory. Since A-2 to A-4 had knowingly lent their names for accumulating wealth using the money derived from the sources not known, they were arrayed as accused for aiding and abetting.

22. As per the Vigilance Manual, the explanation for the assets held has to be sought only from the public servant. In this case, A-1, on receipt of the notice calling for explanation, had given the explanation for each and every property shown in the Statement-II, which consist of about 36 items. It includes properties in the joint name of the accused and exclusively in the names of A1 to A-4. The public servant gave his explanation Ex.P-256 for all the properties. He did not claim ignorance about the sources for purchasing properties that stood in the name of the other accused or requested the investigating Officer to get explanation from the other accused in whose name



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the properties stand. All the accused living under the same roof and had

knowledge of the accumulation of the assets and their source. They also did not come forward to offer their explanation satisfactorily before the Investigating Officer.

23. The Learned Government Advocate (CrI.Side) for the respondent states that the trial Court, while rightly convicted A-1, erred in acquitting others by erroneously holding that the prosecution has failed to prove that A-2 to A-4 are benami's of A-1. The Court below believed the belated explanations offered by A-2 to A-4. M/s.Kalaivani Publications in the name of A-2 and M/s.Cheran Classic Constructions are shell firms created by the public servant in the name of his family members to screen the ill-gotten money. The trial Court failed to note that the accused were not able to produce documents to prove they are the genuine transactions. Contrarily, the trial Court has held that, merely because the accused has not produced any documents to show that they transacted business during the check period and earned income thereon, it cannot be presumed that there was no business carried on by the said firms.

24. In response to the contention of the appellant's counsel



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regarding not including Rs.10,000/- the tentative cash in hand at the beginning

of the check period, the Learned Government Advocate (Crl.Side), referring paragraph Nos.242 to 245 of the trial Court judgment submitted that, taking into consideration of the fact that in Ex.P-256, the explanation given by A-1, he had declared only Rs.5,000/- as cash in his hand at the beginning of the check period. The claim of the accused that A-2, a retired teacher and pensioner, had agricultural income and had Rs.5,50,000/- as cash in the hand, besides that his two sons, had cash of Rs. 2,500 each, was accepted by the trial court.

25. In respect of income from the M/s.Chenniappa Enterprises, the Learned Government Advocate (Crl.Side) for the State referring the trial Court judgment submitted that A-1, who is the proprietor of M/s.Chenniappa Enterprises, in his explanation Ex.P-256 had stated that, from movie distribution, production and release, he earned net cash profit of Rs.2,65,892/-. The trial Court had dealt in detail with the credit and withdrawal from the bank accounts maintained by M/s.Chenniappa Enterprises and has held that out of Rs.13,50,000/- deposited on various dates in the Current Account No. SIB/190 at State Bank of India, Mahalingapuram Branch, Chennai, in the name of M/s.Chenniappa Enterprise, there is no explanation for the deposit to the tune of Rs.13,50,000/-. From out of Rs.13,50,000/-, Rs.75,000/- was withdrawn by



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P.Chandran and balance Rs.12,75,000/-, A-3 had withdrawn Rs.1,26,000/- and

WEB A-4 had withdrawn Rs.3,25,000/-.

26. The trial Court has rightly found that the amount of Rs.12,75,000/- in the bank account of M/s. Chenniappa Enterprises, SBI, Mahalingapuram Branch as unexplained and Rs.1,26,000/- and Rs.3,25,000/- drawn by A-3 and A-4 respectively from that account. It ought to have held that the nexus between the other accused in screening the ill-gotten money proved and convicted the other accused also. Further, the Learned Government Advocate (Crl.Side) submitted that, A-1 had another account in the name of M/s.Chenniappa Films and Enterprises Ltd at the State Bank of India, Race Course Branch, Coimbatore, in that account, a sum of Rs. 2,25,000/- was deposited by cheque on 19/11/1994 during the cheque period. A-1 had not explained the source of this deposit.

27. As far as A-2/wife of A-1, after retirement, she had no notable income. However, during the tenure of A-1 as Minister, she had amassed wealth 10 times more than what she was possessing at the beginning of the check period. To prove her claim that she had income from the printing press by name M/s.Kalaivani Publications, no evidence placed by her. The trial Court



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erred in accepting the defence explanation that A-2 had income from

WEB M/s.Kalaivani Enterprises and during the check period, she sold the printing machines for Rs.20 lakhs through P.W-36. The Learned Government Advocate (Crl.Side) further submitted that, the trial Court ought not to have relied on the Income Tax returns filed by A-3 and A-4, a day before registration of F.I.R. For the assessment period of 1992 to 1996, the accused by exaggerating their income filed IT returns for a period of 4 years in a block. The flow of money from unknown source to the account of A-1 and from Kolalampur to the account of A-2 not been explained by the accused. The withdrawal of amount from A-1's account by A-3 and A-4 also not explained.

28. The Learned Government Advocate (Crl.Side) by furnishing the chart comparing the prosecution version and the trial Court finding on the Statements-I to VII, emphasised that the income, expenditure, value of the assets at the beginning of the check period and at the end of the check period if taken into consideration properly, the case against A-2 to A-4 also would have ended in conviction. Hence, prayed to dismiss the Crl.A.No.283 of 2017 filed by A-1 and allow the appeal Crl.A.No.211/2018 filed by the State against the order of acquittal.



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29. For quick reference, the comparative chart provided by the

Government Advocate in his written submission regarding the assets acquired during the check period by each accused, their income, expenditure, likely savings and disproportion is given below:-

Statement-I: Assets at the beginning of the check period: (01/01/1991)

<i>Accused name and rank</i>	<i>Prosecution version</i>	<i>Trial Court finding</i>
C.Aranganayagam (A1)	45,964.80	45,964.80
Tmt.Kalaiarasi (A2)	4,81,399.72	8,61,399.72
Mr.Santhanapandian (A3)	265.05	265.05
Athigaman (A4)	250.85	250.85
Total	5,27,880.42	9,10,880.42

Statement-II: Assets at the end of the check period (12/05/1996)

<i>Accused name and rank</i>	<i>Prosecution version</i>	<i>Trial Court finding</i>
C.Aranganayagam (A1)	22,98,143.44	19,68,280.00
Tmt.Kalaiarasi (A2)	85,71,838.84	72,99,656.00
Mr.Santhanapandian (A3)	28,88,243.72	28,88,244.00
Athigaman (A4)	28,71,842.65	28,66,192.00
Total	1,66,30,068.65	1,50,22,372.00

Statement-III: Income earned during the check period (24.06.1991 to 12.05.1996)

<i>Accused name and rank</i>	<i>Prosecution version</i>	<i>Trial Court finding</i>
C.Aranganayagam (A1)	11,39,841.90	24,16,029.00
Tmt.Kalaiarasi (A2)	35,45,589.00	65,93,363.00
Mr.Santhanapandian (A3)	25,31,626.12	35,14,516.00
Athigaman (A4)	24,87,777.80	29,28,423.00
Total	97,04,834.82	1,54,52,331.00



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Statement-IV: Expenditure incurred during the check period (24.06.1991 to 12.05.1996)

<i>Accused name and rank</i>	<i>Prosecution version</i>	<i>Trial Court finding</i>
C.Aranganayagam (A1)	21,91,334.00	21,97,733.00
Tmt.Kalaiarasi (A2)	3,46,926.20	2,34,691.00
Mr.Santhanapandian (A3)	2,62,236.00	2,68,635.00
Athigaman (A4)	1,03,955.00	1,10,354.00
Total	29,04,451.30	28,11,413.00

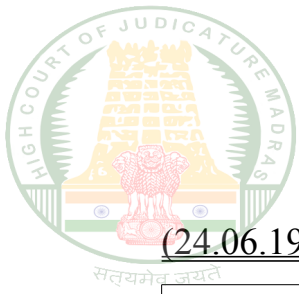
Statement-V: Value of assets acquired during the check period (24.06.1991 to 12.05.1996)

<i>Accused name and rank</i>	<i>Prosecution version</i>	<i>Trial Court finding</i>
C.Aranganayagam (A1)	22,52,178.64	19,22,316.00
Tmt.Kalaiarasi (A2)	80,90,439.12	64,35,256.28
Mr.Santhanapandian (A3)	28,87,978.67	28,87,978.95
Athigaman (A4)	28,71,591.80	28,65,941.15
Total	1,61,02,189	1,41,11,492

Statement-VI: Likely Savings during the check period (24.06.1991 to 12.05.1996)

<i>Accused name and rank</i>	<i>Prosecution version</i>	<i>Trial Court finding</i>
C.Aranganayagam (A1)	(-) 10,51,492.10	2,18,346.00
Tmt.Kalaiarasi (A2)	31,98,662.70	63,58,672.00
Mr.Santhanapandian (A3)	22,69,390.12	32,45,881.00
Athigaman (A4)	23,83,822.80	28,18,069.00
Total	68,00,383.52	1,26,40,918.00

Statement-VII: Disproportionate Assets during the check period



(24.06.1991 to 12.05.1996)

<i>Accused name and rank</i>	<i>Prosecution version</i>	<i>Trial Court finding</i>
C.Aranganayagam (A1)	33,03,670.74	17,03,969.20 (70.52%)
Tmt.Kalaiarasi (A2)	48,91,776.42	76,584.28 (1.16%)
Mr.Santhanapandian (A3)	6,18,588.55	(-) 3,57,902.05
Athigaman (A4)	4,87,769.00	47,872.15 (1.63%)
Total	93,01,804.71	14,70,573.58
Percentage of Disproportion	95.85%	9.51%

30. The Learned Senior Counsel appearing for the appellant/A-1, at the outset claims that the trial Court judgment suffers patent error leading to failure of justice. According to him, the trial Court having held that the prosecution failed to prove their case against A-2 to A-4 and had suppressed material facts that they all had their own independent source of income and the properties held by them at the end of the check period is very negligible, the same reasoning ought to have been applied to the public servant A-1 also. Further, the infirmities in fixing the value of the assets and the income during the check period has led to erroneous judgment. The method of calculating disproportionality by the trial Court was not in terms of the DVAC guideline and the judgments of the High Court and Supreme Court.

31. The Learned Senior Counsel appearing for the appellants



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particularly argued that, the trial Court after segregating the other accused from

WEB A-1, the Statements-1 to VII ought to have been reworked and Statements-I to

VII for A-1 individually ought to have been prepared. In this case, such

exercise not properly done. For determining, whether the accused possessed

assets disproportionate to his known source of income, first the Court should

have ascertained whether the prosecution had placed all the income of the

accused without any omission. In this case, some of the income of the A-1 been

taken into account of other accused or totally ignored. Next, after deducting the

value of the assets, at the beginning of the check period from the value of the

asset held at the end of the check period, it should have been compared with the

estimated savings during the check period. In this case, even the value of the

asset held by A-1 at the beginning of the check period. He not been properly

considered. Particularly, A-1 who had been a Teacher for a long years and

resigned from service as Head Master and entered Politics was elected as a

Member of Legislative Assembly in 1974 and he was M.L.A and Minister

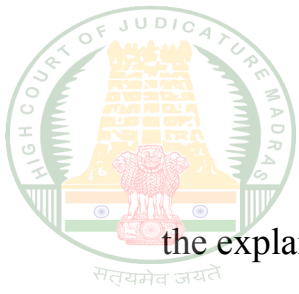
between 1977 to 1986. He was again elected to the Legislative Assembly in the

year 1991 and was holding the portfolio of Education Minister for three years.

While so, the prosecution has shown A-1 had asset worth only Rs.45,984/-.

Further, Rs.5000/- declared as cash in hand at the beginning of the check period,

not taken into the account of A-1. Contrarily, the trial Court though accepted



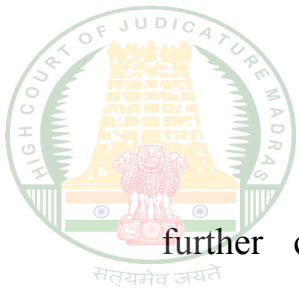
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the explanation given by the accused that his family had cash of Rs.5,60,000/- at

the beginning of check period, had erroneously given it to the credit of A-2 account in entirety, instead of segregating it to each accused as explained in Ex.P-256.

32. Under the head of expenditure, the Learned Senior Counsel appearing for the appellant submitted that, the fuel expenses of Rs.41,605/- for the car used by A-1 ought to have been disallowed since A-1 as a Minister been using the Official car given by the Government and the expenses including fuel was met by the Government. Likewise, he claims that the marriage expenses for A-3 and A-4, the two sons of the public servant was only Rs.1,00,000/-each but the prosecution has exaggerated the expense as if Rs.2,00,000/- spend for Murugan Athigaman (A-4) marriage held on 10/09/1991 and Rs.2,00,000/- for A.Santhanapandiayan (A-3) marriage held on 02/06/1993.

33. Under the head, income during the check period, the learned Senior Counsel for the appellant contended that the income from agricultural land, film distribution business under the name M/s.Chenniyappa Enterprises, the subsidy received from the Karnataka Government for the Konkani film, “Eka Nagaranth”, not given due credit to the account of the accused A-1. It is



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further contended that, during the 60th birthday of A-1, he received

Rs.1,57,000/- as gift and same proved through D.W-8, D.W-9, D.W-10 and D.W-14. While so, the trial Court erred in rejecting this income as illegal.

34. To consider these submission, it is profitable to take note of the fact that, after the judgment of conviction, the appellant/A-1 along with the appeal filed an application under Section 391 Cr.P.C to permit him to record additional evidence on the ground that the investigation was not done properly and he was not given adequate opportunity to put forth his defence. It was submitted that four years after registering the FIR against him, explanation for assets in hand was sought by DVAC. Due to efflux of time, he was not able to produce supporting documents. In this petition, A-1 sought leave to adduce additional witnesses and mark documents such as, the order passed by C.I.T (Appeals), Income Tax Appellate Tribunal and lease deeds to show his income earned through distribution, production, exhibition of movies like “Mudhalaamichar”, “Eka Nagaranth”, “Sevvanthi”. On 27/04/2019, the petition to adduce additional evidence in the pending appeal was allowed. As a consequence, the appellant had marked Ex.D-2 to Ex.D-14. He graced the witness box to give evidence, apart from two more additional defence witnesses.



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35. First to ascertain whether the facts introduced through the

WEB additional documents Ex.D-2 to Ex.D-14 and the testimony of D.W-18 to D.W-20, anyway improve the case of the appellant, the origin of the documents and the evidence of the witnesses who had spoken about those documents has to be examined.

36. Ex.D-2 is the order dated 28/02/2002, passed by the Commissioner of Income Tax, (Appeals), Chennai. This order is in respect of the appellant /A-1 for the assessment year 1995-1996. This document reveals that A-1 had filed his return of income for the assessment year 1995-1996 declaring his income for that period as Rs.49,100/-. The Assessing Officer (AO), completed the assessment under Section 143(3) of the Income Tax Act, and determined the income of the assessee/A-1 as Rs.15,62,976/- *vide* order dated 31/03/1998 imposed additional tax and also penalty of Rs.8,31,650/-. The payment of Rs.13,52,007/- in cash was disallowed by the assessing authority since it was in violation of Section 40(A)(3) of the IT Act. The Assessee/A-1 preferred appeal against this order and the assessment order was set aside by the CIT (Appeals) observing that payment in cash done outside the bank hours does not attract Section 40 (A) (3) of IT Act. The Appellant Authority remanded the matter back to Assessing Officer to afford opportunity to the assessee to



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establish the availability of cash balance on the particular day. The Assessing

WEB OFFICE

Officer on remand, reassessed the returns and held that the assessee failed to establish that he had sufficient cash to make payment on the relevant day. On appeal against this order, the assessee had produced source of cash from different bank accounts starting from 04/04/1994 and the lease deeds entered by the assessee/A-1. The CIT (Appeals) *vide* order dated 28/02/2002 (Ex.D-2) allowed the appeal and held that there shall not be any additional tax for Rs.11,52,007/-. In other words, the CIT (Appeals) had accepted, A-1 income for the assessment year 1995-1996 as Rs.49,100/- and the cash payments towards expenditures accepted. To be noted that further appeal by the Department to the ITAT got dismissed on 22/06/2007 and the dismissal order of ITAT is marked as Ex.D-3.

37. In view of this Court, Ex.D-2 and Ex.D-3 in fact strengthen the case of the prosecution. The income what A-1 claim to have been earned during the financial year 1994-1995 is corresponding to the assessment year 1995-1996. Even if the statements about the earning for that year is to be taken on its face value, his declared income is only Rs.49,100/-. This income cannot be taken as the source for purchasing the properties in the previous financial year i.e., 1993-1994. The properties at Thondamuthur shown in Statement-II in Serial Nos:17 (i) to 17(vi) were purchased between 17/11/1993 to 29/11/1993



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through 6 registered sale deeds for total sale consideration of Rs.2,39,230/-

WEB COPY (inclusive of stamp duty). In or about same period, the other family members of the public servant had also purchased properties in that village. Nearly about 100 acres of land been purchased by A-1 and his family members (A-2 to A-4) during that period. The public servant had failed to explain the source to purchased these land between 17/11/1993 to 29/11/1993. (Ex.P.47, Ex.P.48, Ex.P.50, Ex.P.51 and Ex.P.52) even after giving an opportunity, pending appeal.

38. As far as the income of M/s.Chenniappa Enterprises earned through distribution, production and selling the lease hold right in the three movies, the trial Court has held that the accused failed to produce documents to substantiate the explanation given. At paragraph Nos.336 to 338 while discussing the credits in the bank account of M/s.Chenniyappa Enterprises, the trial Court has held that the accused has not accounted for a sum of Rs.13,50,000/- except for Rs.75,000/- which was paid back to one P.Chandran (paragraph No.404 of the judgment).

39. A-1, in his explanation has admitted his income from M/s.Chenniappa Enterprises as Rs.2,65,892/-. In the absence of evidence to show income more and above from movie distribution than what voluntarily



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declared and admitted in the explanation Ex.P.256, the trial Court held that the

amount found in the two bank accounts M/s.Chenniappa Enterprises, SBI, Mahalingapuram Branch, Chennai and M/s.Chenniappa Films and Enterprises Ltd, SBI, Race Course Branch, Coimbatore remains un-accounted for its sources. To get over this finding, the accused/appellant had filed petition under Section 391 Cr.P.C and graced the witness box as D.W-20 and spoken about his sources of income including the income he got from his business under the trade name M/s.Chenniappa Enterprises. Ex.D-4 to Ex.D-14 marked through him.

40. Ex.D-14 is the order passed by ITAT, Chennai on 30/10/2003 in the appeal preferred by A-1. This proceedings relates to assessment year 1997-1998. A-1 had filed his IT returns on 31/12/1997 declaring his agricultural income for the financial year 1996-1997 as Rs.74,221/- and his income from the proprietary concern M/s.Chenniappa Enterprises as Rs.1,04,780/-. The Assessing Officer (AO) disallowed the business expenditure of Rs.2,28,098/- stating that the business was not at all in existence during the relevant financial year. On appeal preferred by the assessee (A-1), the CIT (appeals) confirmed the view of the Assessing Officer *vide* order dated 30/03/2001. On further appeal before the ITAT, Chennai, the assessee (A-1) succeeded partly. Income Tax Appellate Tribunal held that the business of the assessee being exploitation of the right in screening movies for a period of five



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years from 1994, it is a continuous business. Any cessation of business is only

temporary. Regarding agricultural income, ITAT held that going by previous year Income Tax assessment order, the assessee's agricultural income could be only Rs.50,000/-. To that extent exemption granted and balance Rs.24,221/- disallowed.

41. From Ex.D-14, at the most, one can safely conclude that, for the financial year 1996-97, A-1 had income of Rs.1,04,780/- from his business and his agricultural income assessed by the IT Department for that period as Rs.50,000/-. One cannot lose sight that the case of disproportionate assets is for the check period 24/06/1991 to 12/05/1996. Ex-D-14 speaks about income from 01/04/1996 to 31/03/1997. The overlapping is hardly 42 days. Therefore, the belated introduction of these documents which are not substantially relevant to the check period, carries no merit for consideration.

42. Regarding expenditure over fuel for the cars, this Court finds that, apart from the Government vehicle allotted to him, while he was serving as Minister, A-1 had purchased a TATA ESTATE Car bearing registration No:TN-37-J-0505 on 14/07/1994 for Rs.1,76,878/- under Hire Purchase Scheme and a



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Maruthi Car bearing registration No:TN-07-B-2311 on 23/12/1991. The trial

WEB COPY Court has given 50% depreciation for the car. The fuel cost been added under the head of expenditure. These two vehicles are not Government vehicles. Therefore, the plea that the expenditure of Rs.41,605/- has to be deleted, cannot sustain.

43. Several tall claims about his income during the check period does not reflect in his Income Tax Return or in the explanation. Except these two records, there is no other evidence worth considering. At the appellate stage, the appellant/A-1 was given an opportunity to explain the source for purchase of properties. He, through Ex.D-4 to Ex.D-14 attempted to make out a case. Unfortunately, those documents introduced after several years by D.W-20 (accused/A-1) at the appellate stage fail to inspire any confidence for the reasons explained above. Particularly, regarding Rs.2,50,000/- received as subsidy from Karnataka Government for the movie “Eka Nagarantha”, the accused rely on Ex.D-4 and Ex.D-6. The censor certificate dated 20/06/1991 issued by Central Board of Film Certification (Ex.D-4) is to prove A-1 is the producer of that film. As per this certificate, the producer of the film is M/s.Chenniappa Enterprises, Bangalore. Ex.D-6 is the Lease Agreement dated 10/11/1993 entered between A-1 as proprietor of M/s.Chenniappa Enterprises,



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having its office at Chennai. The lessee in this deed is one

WEB Mr.G.Gopalakrishnan, proprietor of M/s.G.K.Movie Land. In Ex.D-6 lease deed, both parties have agreed Rs.12,50,002/- as consideration. A-1 has acknowledged receipt of Rs.50,000/- cash on 11/11/1993. In the cross examination D.W-20 admits that he have no document to prove M/s.Chenniappa Enterprises, Bangalore is the branch of M/s.Chenniappa Enterprises, Chennai. The appellant had not produced any evidence to show a sum of Rs.2,50,000/- was given by the Karnataka Government as Subsidy to the movie “Eka Nagarantha” and he received it as a producer of the movie.

44. The prosecution had proceeded against the public servant (A-1) and his family members (A-2 to A-4) on the premise that his family members had no independent income and all that was purchased in their name were sourced from A-1. However, after appreciating the evidence, the trial Court had taken note of the fact that A-2 a pensioner and owner of agricultural land was also running a printing press at the relevant point of time. A-3, Former Agent of Hindustan Unilever Company own a newspaper by name 'Namadu India' at Coimbatore, he is also a professional cinema actor and his wife was also an actress having independent source of income. A-4 a doctor by Profession worked in the Government Hospital for few years, prior to the check period.



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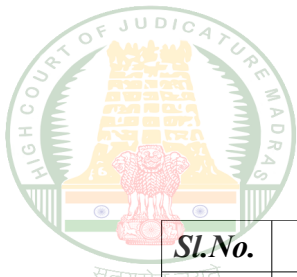
After resigning, he is carrying on private practise along with his wife, who is

also a doctor by Profession. In view of the said facts, the allegation of the prosecution that A-2 to A-4 had no independent source of income and what are all purchased in their names was from the funding of A-1 was found to be not proved.

45. The above finding of the trial Court in respect of A-2 to A-4 leading to their acquittal is a possible view and backed by reasons. Therefore, the finding of the trial Court acquitting A-2 to A-4 has to be confirmed. Accordingly, the order passed by the Learned Special Judge/X Additional Judge, Chennai in Special CC.No.2 of 2006 is confirmed. In the result, the Crl.No.211 of 2018 filed by the State stands dismissed.

46. Having confirmed the acquittal of A-2 to A-4, it is the duty of this Court to find out whether the source for the properties held by A-1 at the end of the check period satisfactorily explained by the accused or was disproportionate to his known source of income.

47. As per the prosecution case, at the beginning of the check period, A-1 held in his name, the following assets:- (Ex.P-254)



<i>Sl.No.</i>	<i>Assets</i>	<i>Value</i>
1.	9.58 Acres of land at Kangarakottai village, Sathur Taluk, Purchased during the year 1989 by Tr.C.Aranganayagam	31,950.00
2.	Amount standing in the S.B.A/C.No.2274 of Tr.C.Aranganayagam at IOB, Sriram Nagar Branch, Chennai – 18 as on 24.06.1991	8,059.80
3.	Amount standing in the current account No.SIB/190 of M/s.Chenniappa Enterprises, State Bank of India, Mahalingapuram Branch, Chennai as on 24.06.1991.	955.00
4.	Cash on hand (Tentative)	10,000.00
	Total	50,964.80

48. In his explanation, Ex.P.256, A-1 had stated that his opening

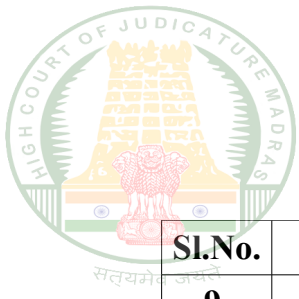
balance at the beginning of check period as under: -

<i>Sl.No.</i>	<i>Assets</i>	<i>Value</i>
1.	Land at Kangarakottai Village	31,950.00
2.	IOB, SB A/C	8059.80
3.	SBI Mahalingapuram	955.00
4.	Cash on hand	5,000.00
	Total	45,965.80

49. According to the explanation (Ex.P-256) given by A-1 the

worth of the properties in his name:-

<i>Sl.No.</i>	<i>Assets</i>	<i>Value</i>
1.	Land at Kangarkottai village	31,950.00
2.	IOB, Sriram Nagar, SB A/c.	43,900.25
3.	SBI, Mahalingapuram	1,542.04
4.	Land Thondamuthur	3,40,730.00
5.	Land Coimbatore	2,23,460.00
6.	Property at Big Bazaar Street, Coimbatore	4,56,000.00
7.	Property at Big Bazaar Street, Coimbatore	4,56,000.00
8.	SBI Race Course Road, Coimbatore	12,773.00

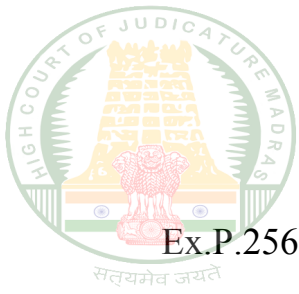


Sl.No.	Assets	Value
9.	SBI Race Course Road, Coimbatore	5.569.00
10.	Payments for car (Tata Estate)	4,47,778.00
11.	Payment of Car (Maruti)	2,11,932.15
12.	Cash on hand	10,000.00
	Totally	Rs.22,41,634.44

50. As per the trial Court finding, his assets at the end of the check period is Rs.19,68,280/- and the value of the assets acquired by A1 during the check period is Rs.19,22,316/-. If the argument of the appellant's Counsel regarding cash in the hands of A1 at the beginning of the check period not included is accepted, then a sum of Rs.5000/- as declared in Ex.P.256 has to be added in schedule-I. This minuscule addition does not make much difference in the final conclusion.

51. To test whether, the assets estimated as Rs.19,22,316/- backed by satisfactory explanation and the expenditure during the check period has to be taken into consideration.

52. From Ex.P.254, under Statement-III (income during the check period), the prosecution has alleged that the first accused had income of Rs.92,87,185/- through the known sources. Whereas, in his explanation



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Ex.P.256, A-1 had claimed that his income from known source as

Rs.28,38,787.90. This includes, income of Rs.2,00,000/- from agricultural lands, interest on deposits, income from film distribution. The trial Court, after considering the evidence of VAO and Assistant Director of Agricultural department, added 50% to the prosecution estimate and assessed the agricultural income from the land in Kangarakottai village as Rs.10,071/- (Item No: 11 in Statement-III) and from the agricultural lands in Thondamuthur village (Item No.12 in Statement- III) as Rs.41,660/- For lack of proof, the claim of Rs.2,50,000/- subsidy to the film “Eka Nagarantha” declined by the trial Court.

53. The trial Court by assigning reasons, giving due credit to the explanation and evidence has concluded that the individual income of A-1 during the check period as Rs.24,16,028.90/- rounded off to Rs 24,16,029/-. The claim of the accused that he was star platform Speaker for his party and earned Rs.15,00,000/- as remuneration during the check period are claims without evidence. Hence, the trial Court has rightly discarded it

54. There is no major dispute regarding the expenditure during the check period shown in Statement-IV, except the fuel cost and marriage



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expenses of two sons. The claim of fuel cost disallowance is made on the

ground that A-1 used Government vehicle and he did not incur any fuel

expenses for his car. This contention failed to carry merit, since A-1 was

Minister for less than three years. He had three more cars purchased in his

name during the check period. A-1 to A-4 were sharing common household and

living under one roof during the check period. Regarding the marriage

expenses, the trial Court has accepted the prosecution version that the accused

incurred expense of Rs.2,50,000/- and Rs.2,00,000/- respectively for his sons

marriage held during the check period. The accused claims that A-1 spend only

Rs.1,00,000/- each for his sons marriage. For neither of A-1 assertions, no

documentary proof available. Even assuming, that A-1 spend only Rupees One

lakh each for his two sons marriage, then his likely savings will increase by

Rs.2,50,000/-.

55. The trial Court has taken note of the fact that all the accused were living together under same roof, the common expenses for the family were divided among them and the expenditure of A-1 been ascertained as Rs.21,97,733/-

56. Even assuming that A-1 spend only Rs.2,00,000/- and not



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Rs.4,50,000/- in total for his two sons marriage, then his expenditure will reduce

to Rs.19,47,733/-. In such event, his likely savings (income– expenditure)

would be (Rs.24,16,029 – 19,47,733) =Rs.4,68,296/-.

57. The Statement I to VII after adding Rs.5000/- to asset in hand at the beginning of the check period in Statement – I and reducing the expenditure of Rs.2,50,000/- in Statement – IV, the excess in asset in hand at the end of check period and the percentage of disproportion is as below:-

Sl.No.	Description	Amount	
Statement-I	Assets at the beginning of the check period	Rs.45,964.80 (+) Rs. 5,000	
		Rs. 50,964.80	
Statement-II	Assets at the end of the check period	Rs.19,68,280/-	
Statement-III	Income earned during the check period	Rs.24,16,029/-	
Statement-IV	Expenditure incurred during the check period	Rs.21,97,733/- (-) Rs.2,50,000/-	19,47,733/-
Statement-V	Value of Assets acquired during the check period (Statement II – Statement I)	Rs.19,68,280/- (-) Rs.50,965/-	19,17,316/-
Statement-VI	Likely savings during the check period (Statement III – Statement-IV)	Rs.24,16,029/- (-) Rs.19,47,733/-	Rs.4,68,296/-
Statement-VII	Disproportionate Assets acquired during the check period (Statement-V – Statement -VI)	Rs.19,17,316/- (-) Rs.4,68,296/-	14,49,020/-

58. From out his of savings of Rs.4,68,296/-, A-1 had added wealth worth Rs.19,17,316. From the evidence as discussed above, the prosecution has proved that A-1 not able to explain satisfactorily the source for Rs.14,49,020/-



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Thus, the disproportionate assets to the known source of income of a public

servant well proved. The percentage of disproportion is $(Rs.14,49,020 \times 100/24,16,029) = 59.5\%$ approximately. Since, the prosecution has proved that A1 had in his possession assets worth about 59.5% more and above his explained source of income, the conviction against A1 stands confirmed.

59. In fine, the *Crl.A.No.283 of 2017 stands dismissed*. In so far as the order of confiscation of properties of A-1 same stands confirmed, subject to modification order passed by this Court in Crl.A.No.982 of 1998, Crl.A.No.33 of 1999 dated 24.06.2015 confirming the order of the Chief Small Cause Court, Chennai passed in Crl.M.P.Nos.863/1998 and Crl.M.P.No.785/1997 in Crl.O.P.No.7/1997, dated 11.08.1998 for the attachment of items 1 to 9 and 12 under the Criminal Law Amendment Act, 1952.

05.07.2024

Index :Yes.

Internet :Yes.

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Copy To:-

1. The Special Judge/X Additional Judge, Chennai.
2. The Superintendent of Police, Vigilance and Anti Corruption, Western Range, Directorate of V & AC, Chennai.
3. The Public Prosecutor, High Court, Madras.



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Crl.A.No.283 of 2017 & Crl.A.No.211 of 2018



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Crl.A.No.283 of 2017 & Crl.A.No.211 of 2018

DR.G.JAYACHANDRAN,J.

bsm

Delivery common judgment made in
Crl.A.No.283 of 2017
& Crl.A.No.211 of 2018

05.07.2024