D.S.P., Chennai vs K. Inbasagaran on 7 December, 2005

Equivalent citations: AIR 2006 SUPREME COURT 552, 2006 (1) SCC 420, 2005 AIR SCW 6208, 2005 CRI LJ (NOC) 279, 2006 (1) AIR JHAR R 400, 2005 (8) SLT 683, (2005) 10 JT 332 (SC), 2005 (10) SCALE 1, 2005 (10) JT 332, 2006 ALL MR(CRI) 304, (2006) 37 ALLINDCAS 111 (SC), 2006 (1) SCC(CRI) 325, 2006 (37) ALLINDCAS 111, 2006 CRILR(SC MAH GUJ) 55, 2006 (2) SRJ 25, 2006 (8) SUPREME 782, 2006 CRILR(SC&MP) 55, 2006 (1) BLJR 523, (2005) 3 JAB LJ 395, (2005) 4 MPLJ 316, (2006) 1 MPHT 34, (2006) 39 ALLINDCAS 861 (JHA), (2006) SC CR R 1128, (2006) 1 CHANDCRIC 1, (2006) 1 JLJR 200, (2006) 2 CURCRIR 339, (2006) 1 EASTCRIC 222, (2006) 33 OCR 300, (2006) 1 ALLCRIR 210, (2006) 54 ALLCRIC 291, (2006) 1 ALLCRILR 593, (2006) 1 CRIMES 68, (2006) 38 ALLINDCAS 806 (MPG), (2006) 153 TAXMAN 326, (2005) 10 SCALE 1, (2005) 4 CURCRIR 329, (2006) 282 ITR 435, (2006) 2 MADLW(CRI) 523, (2006) 1 MAD LJ(CRI) 293, (2006) 2 MAH LJ 399, (2006) 1 MPLJ 512, (2006) 1 RAJ CRI C 107, (2006) 1 RAJ LW 434, (2006) 1 RECCRIR 107, (2006) 2 SCJ 104, (2006) 200 CURTAXREP 624, 2006 (1) ALD(CRL) 293, 2006 (1) ANDHLT(CRI) 286 SC, 2006 (54) ACC (SOC) 73 (MP), 2006 (54) ACC (SOC) 88 (JHA)

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Bench: B.N.Agrawal, A.K. Mathur

CASE NO.:
Appeal (crl.) 480 of 2002

PETITIONER:
D.S.P., Chennai

RESPONDENT:
K. Inbasagaran

DATE OF JUDGMENT: 07/12/2005

BENCH:
B.N.Agrawal & A.K. Mathur

JUDGMENT:

J U D G M E N T A.K. MATHUR, J.

This appeal is directed against an order of the Madras High Court whereby the Single Bench of the High Court has acquitted the accused by its order dated 11th July, 2001 passed in Criminal Appeal No.231/2000. Hence the present appeal has been filed against the order of acquittal by the Deputy Superintendent of Police, Chennai.

Brief facts which are necessary for disposal of this appeal are that the accused-respondent, Mr. K. Inbasagaran was a senior I.A.S. Officer of the Government of Tamil Nadu who stood charged for offence punishable under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 (hereinafter to be referred as an "Act") and was found guilty, convicted and sentenced by the learned Special Judge (XIth Additional Judge, City Civil Court) at Madras to undergo rigorous imprisonment for one year and also to pay a fine of Rs. 5,000/-, in default to undergo Rigorous Imprisonment for three months.

Aggrieved against this Order, the accused preferred an appeal before the Madras High Court at Chennai and the learned Single Judge of the Madras High Court acquitted the accused of the aforesaid charges. Hence, the present appeal filed by the State of Tamil Nadu through the Deputy Superintendent of Police, Directorate of Vigilance and Anti-Corruption, Chennai.

The accused, Inbasagaran obtained B.E. Hons. Degree and joined Indian Navy as an Officer during 1965. Later on he entered the Indian Administrative Service during 1970 and was allotted the Tamil Nadu Cadre. During 1982 he went to America for studies alongwith his wife and children. He worked in various capacities under the Government of Tamil Nadu, like Managing Director of Tamil Nadu Chemical Products, Chairman of Tamil Nadu Leather Corporation and lastly he was appointed as a Secretary to the Health Department. According to prosecution on 13th September, 1993 and on 14th September, 1993 there was a raid by the Income-tax Authorities in the house of the accused. The raid by Income-tax Department yielded a huge amount of cash amounting to Rs. 30 lakhs, 7 gold biscuits weighing 819 grams, $1118 and certain documents regarding purchase of immovable properties and also fixed deposit receipts of the Bank for Rs. 25,000/- in the name of third parties. The Income-tax Authorities registered the case but subsequently they referred the matter on 15.2.1994 to the State Government to take departmental action against the accused. The Government of Tamil Nadu initiated the disciplinary proceedings against the accused during February, 1994. A parallel criminal proceedings was also taken by the Department regarding the assets unearthed at the time of raid by the Income-tax Department. However, the charges against the accused were dropped with a warning to the accused in disciplinary proceedings and the criminal case was also closed on mistake of facts. P.W. 51 S. Ganapathy Iyer an Assistant Commissioner of Income-tax, Chennai Circle-1 (II), held an inquiry regarding the huge amount of cash unearthed for the purpose of Income-tax assessment and came to the conclusion that the said assets belonged to the accused. On the basis of the inquiry by PW-51, the criminal case against the accused was reopened as per the Order of the Special Judge passed in Crl. M.P. No. 7453/1996 on 9.12.1996. PW-53 Vishwanathan, Deputy Superintendent of Police, V&AC, Chennai City-1, continued investigation at the instance of the Special Judge, Madras. This reopening of the case was challenged by the accused-petitioner by filing Crl. M.P. 6812/1997 before the Madras High Court but it was dismissed by the Court on 24.2.1998. After the permission by the Special Judge to reopen the case, the investigation was taken up by the PW-53, Viswanathan, he issued notice to the accused, his

wife and children to appear before him but they did not appear. After closing of the investigation, a charge-sheet was filed before the Special Judge that the accused had committed offence under Section 13(2) read with Section 13(1)(e) of the Act on 4.11.1997.

The prosecution examined 53 witnesses as PWs 1 to 53 and marked & executed documents as Exs. P.1 to P.185. The accused denied the charges and according to the accused the assets which had been unearthed during the raid by the Income tax department was not his assets but they were the assets of his wife who was running certain companies. According to him, his wife accompanied him when he went to America where she worked in a pharmaceutical company and also as a clerk in State Bank of India and she earned salaries and was also assessed by Income tax Department in America. At the time of her return from America, she brought cash, video camera and a computer. Video camera and computer were revenue earning assets, his wife leased out the video camera for marriage coverage and earned sufficient monies. She had started a computer concern under the name and style of Tamil Nadu Computer Service by incurring a loan of Rs. 2,00,000/- by Punjab National Bank. The computer centre also generated funds. It was also stated that apart from this, his wife had floated three concerns one in the name and style of A.V.J., Marketing Service, a proprietory concerned of her own which was having franchise for sale of hypo-dermic needles in Tamil Nadu and Andhra Pradesh, another in the name and style of M/s Southern Rims (P) Ltd. which was manufacturing cycle rims and another company in the name of M/s Silver Shoes (P) Ltd. which was manufacturing shoe uppers It was alleged that she was Director of two companies and amounts of the two companies were in her possession which she kept in her house. Out of $1118, $800 belonged to his wife which she had earned as salary in U.S.A. and $ 318 belonged to his son-in-law, S. Rajasankar who went to Europe in September, 1988 for which he obtained F.T.S. of $500 out of which he saved $318. Regarding the purchase of immovable properties, he stated that for the purpose of a factory for M/s Silver Shoes (P) Limited, land was purchased at Vannagaram in the name of Rajasankar who happened to be the Managing Director of the company with the funds of the company. Regarding cash of Rs. 30 lakhs recovered from his house, it was urged that a sum of Rs. 29 lakhs was unaccounted money obtained by sale of cycle rims and shoe uppers by the two companies without bill and that money belonged to her companies. Regarding Rs. 1 lakh, it was stated that amount belonged to PW-46 Girish A. Darvey.

It was submitted that he had no proprietary control over sum of Rs. 30 lakh seized by the Income-tax Department as it belonged to the unaccounted money of his wife. Regarding Rs. 19 lakhs deposited in various branches of Punjab National Bank in Karnataka State, it was submitted that all these monies belonged to the companies owned by his wife and the same was deposited at the instance of his wife. The accused justified these unaccounted money by examining himself as D.W.13 alongwith other witnesses as D.Ws. 1 t o 12. including his wife and had also got the documents exhibited as D.1 to D.99 to substantiate his allegation.

The Special Judge discussed the evidence on record and found that the purchase of gold biscuits, US dollars and cash recovered from the house of the accused belonged the accused and source of money for the purchase of land also traceable to the accused. Learned trial court also found that deposit of Rs. 19 lakhs made in various banks in Punjab National Bank at Bangalore was that of the accused and it was deposited in benami names. The learned trial court held that assets worth Rs. 54,50,510/-

was found in the possession of accused and accordingly held him guilty as aforesaid.

On appeal by accused, learned Single Judge of the Madras High Court examined the findings as well as the judgment of the learned trial Court and came to the conclusion that the recovery of sum of Rs. 29 lakhs at the house of the accused was not in exclusive possession of the accused. So far as Rs.1 lakh found on the dining table is concerned, it belonged to one Girish Davey who appeared in the witness box as PW 46 and was representative of pharmaceutical company, Ranbaxy and the learned Single Judge of the High Court also held that Rs. 1 lakh kept in plastic bag and two packets of sweets found on the dining table at the time of raid, belonged to Girish and it does not belong to the accused. Learned Single Judge also found that since the entire money has been admitted by his wife who had come in witness box as DW-12 & admitted that she earned this money by selling cycle rims and leather shoe uppers without any bill and this money belonged to her and she had made a clean breast before the Income tax authority and thereby she had accepted this unaccounted money being belonging to her. Therefore, learned Single Judge held that this unaccounted money did not belong to the accused. So far as the recovery of the $1118 is concerned, the learned Single Judge found the explanation satisfactory and his son-in-law has been found to be guilty by foreign exchange authorities and fined. Likewise, the learned Single Judge also found the purchase of gold biscuits by his wife has been properly explained and likewise, the purchase of the property by the wife from her unaccounted money and also found that the money belonged to his wife and she has made a clean breast before the Income-tax Officer. Hence, after hearing both the parties the learned Single Judge acquitted the accused and held that the money was not found from the possession of the accused and it was unaccounted money belonged to his wife who was dealing with various business and it was also pointed out that Income-tax authorities had assessed the money in her account, it was also held that no unaccounted money has been recovered from the exclusive possession of the accused, hence learned Single Judge acquitted the accused. Aggrieved against this, the present appeal was filed by the State, through Deputy Superintendent of Police, Vigilance.

We have heard learned counsel for the State as well as the Respondent-in-person and his counsel. Learned counsel for the State has taken us through the entire evidence and has tried to emphasize that the plea taken by the wife of the accused that the money belonged to her was with a view to shield her husband and his wife is only a decoy to protect her husband. She has owned the entire money being the black money, from her business. And she has accepted that all the money which had been recovered from her house, the money which has found deposited in the banks and the immovable properties which were purchased, was done by her and she owes the entire responsibility and she had disclosed to the Income-tax department. The Income-tax department has assessed all this money in her hands and assessment order has been passed by the Income-tax Officer and in the appeal it has been affirmed. In short, in fact all the money which has been recovered at the house of the accused in cash, in kind and the documents of properties purchased at various parts in Karnataka and Tamil Nadu she has owned it. Therefore, the wife has taken the full responsibility of this black money and owned the same.

Learned counsel for the State states that the money belongs to the accused since he was a Secretary to the Government of Tamil Nadu in the Medical Health Department and it is alleged that on the relevant date Girish Davay came with the cash and sweets which were lying on the dining table and

it was recovered from the dining table. In fact this money was brought for gratification to raise the purchase price of the medicine, 'Fortwin' which was manufactured by the company of which Girish Davey was one of the Senior Representative. Learned counsel for the appellant invited our attention to the following decisions of this Court.

i. AIR 1960 SC 7 [C.S.D.Swami v. The State] ii. (1981) 3 SCC 199 [State of Maharashtra v.

Wasudeo Ramchandra Kaidalwar] iii. AIR 1988 SC 88 [State of Maharashtra v.

Pollonji DarabshawDaruwalla] iv. (1991) 3 SCC 655 [K.Veeraswami v. Union of India & Ors.] v. (1999) 6 SCC 559 [P.Nallammal & Anr. V. State represented by Inspector of Police] As against this, learned counsel for the respondent as well as the respondent in person have submitted that the act of recovery of the money, the deposits in the bank and purchase of the property is not disputed but the question is whether it was in the possession of the accused or not?

It was pointed out that in fact all the money belonged to his wife as she was running three companies and she had admitted that out of the unaccounted sale of rims of cycle as well as the leather shoe uppers without bills she earned this huge wealth and she had owned it. Therefore, recovery in this raid by Income-tax department cannot be considered to be from exclusive possession of the accused. Specially when the wife who has come in witness box as DW-12 and accepts it that she has earned all this money by sale of goods without bill.

Learned counsel for the respondent also submitted that under Section 132(4) of the Income-tax Act, the order of the Income Tax Officer has been confirmed in appeal and all money owned by the wife has been assessed against her. It was also submitted that finding of Income Tax authority and confession of DW-12 Vijaya Inbasgaran have been accepted. Therefore, it is a judicial finding and on the same a criminal prosecution cannot be lodged. In support thereof learned counsel for the respondent invited out attention in the case of K.C. Builders and another Vs. Assistant Commissioner of Income Tax Reported in (2004) 2 SCC 731.

We have heard both the learned counsel at length. The basic question that emerges in the present case is whether the accused could be saddled with all the unaccounted money at his hand or not. It is the admitted position that both the husband and wife were living together. The wife was running three concerns though those concerns were running in loss. Yet she could manage to earn black money by selling goods without bills and amassed this wealth without disclosing the same to the Income-tax authority and when the raid was conducted she disclosed the unaccounted money and accepted herself for being assessed by the Income-tax Department. Therefore, in this context, the question arises whether the joint possession of the premises by the husband and wife and the unaccounted money which has been recovered from the house could be said to be in exclusive possession of the accused. There is no two opinion in the matter that the initial burden has to be discharged by the prosecution. The prosecution in order to discharge that burden has examined the Investigating Officer, P.W.53- Shri Viswanathan, D.S.P. (Investigation). P.W.53- Viswanathan has collected all the materials from various places and he has given the details of his investigation. He has also supported the recoveries which have been made by the Income-tax Department. He in his

statement, has also deposed that some money was deposited at various branches of Punjab National Bank at Bangalore and he has examined all the Senior Managers of Punjab National Bank to show that various amounts were deposited in their Banks and the prosecution has also produced them in the witness box to substantiate their allegation as P.Ws.22, 23, 24, 25, 26 and 32. He has also examined the persons against whose names those amounts were deposited in the witness box. He has also examined the Income-tax Officer as P.W.14, P.W.44 Assistant Director of Income-tax (Investigation) and P.W.51- S. Ganapathy Iyer. By this evidence the prosecution has established that the money was recovered at the house of the accused as well as various purchases of immovable properties made by the wife of the accused. The prosecution has tried to establish that all the moneys which had been recovered from the house of the accused, various deposits in the Punjab National Bank at various places through the influence of the Regional Manager of Punjab National Bank and the recovery of the gold ornaments as well as the recovery of foreign exchange i.e. dollars belong to accused. Thus, the prosecution has tried to establish that all the moneys belonged to the accused and after taking sanction, prosecution was launched against the accused. There is no two opinion in the matter that the initial burden lies on the prosecution. In the case of C.S.D.Swami v. The State reported in AIR 1960 SC 7, this Court has taken the view that in Section 5(3) of the Prevention of Corruption Act, 1947 a complete departure has made from the criminal jurisprudence still initial burden lies on the prosecution and in that context it has been observed as follows :

> " Section 5 (3) does not create a new offence but only lays down a rule of evidence, enabling the court to raise a presumption of guilt in certain circumstances- a rule which is a complete departure from the established principle of criminal jurisprudence that the burden always lies on the prosecution to prove all the ingredients of the offence charged, and that the burden never shifts on to the accused to disprove the charge framed against him.
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> Therefore, the initial burden was on the prosecution to establish whether the accused has acquired the property disproportionate to his known source of income or not. But at the same time it has been held in a case of State of M.P. Vs. Awadh Kishore Gupta and Others reported in (2004) 1 SCC 691 that accused has to account satisfactorily the money received in his hand and satisfy the court that his explanation was worthy of acceptance. In order to substantiate the plea taken by the accused that all the moneys which had been received belonged to his wife and in support thereof he has examined as many as 13 witnesses including himself, his wife and his son-in-law. D.W. 12 is the wife of the accused. She has deposed that the entire money belonged to her. She has admitted the raid on her house and she has also admitted that she has amassed the wealth by selling cycle rims and leather products without any bill and out of the money amassed by her she had persuaded her husband to deposit the same at various Banks. She has come forward and admitted the recovery of the foreign exchange at her house and she has accounted for the same. She has also admitted the recovery of the gold ornaments at her house and she has explained that she has purchased those gold ornaments. She has also submitted that some real estate was purchased out of self earning as well as the loan from the mother of the son-in-law and some contribution was made by the son-in-law and the son-in-law has also

admitted. Likewise, D.W.8 - her son-in-law, Thiru S.Rajasankar also appeared in the witness box and admitted that he has also saved certain foreign exchange when he had gone on various visits abroad. He has also admitted to have carried some money to be deposited in the Bank. The accused has also come forward in the witness box as D.W.13 and has deposed that all the moneys belonged to his wife and when he came to know about the unaccounted money at his house, he gave his piece of mind to her. He has admitted that on one or two occasions money was carried by himself to be deposited in the account in Punjab National Bank and some money was also deposited on account of some of the members of the family by P.W.8, S. Rajasankar, son-in-law. Therefore, under these circumstances, the respondent has explained the possession of unaccounted money. Now, in this background, when the accused has come forward with the plea that all the money which has been recovered from his house and purchase of real estate or the recovery of the gold and other deposits in the Bank, all have been owned by his wife, then in that situation how can all these recoveries of unaccounted money could be laid in his hands. The question is when the accused has provided satisfactorily explanation that all the money belonged to his wife and she has owned it and the Income-tax Department has assessed in her hand, then in that case, whether he could be charged under the Prevention of Corruption Act. It is true that when there is joint possession between the wife and husband, or father and son and if some of the members of the family are involved in amassing illegal wealth, then unless there is categorical evidence to believe, that this can be read in the hands of the husband or as the case may be, it cannot be fastened on the husband or head of family. It is true that the prosecution in the present case has tried its best to lead the evidence to show that all these moneys belonged to the accused but when the wife has fully owned the entire money and the other wealth earned by her by not showing in the Income-tax return and she has accepted the whole responsibilities, in that case, it is very difficult to hold the accused guilty of the charge. It is very difficult to segregate that how much of wealth belonged to the husband and how much belonged to the wife. The prosecution has not been able to lead evidence to establish that some of the money could be held in the hands of the accused. In case of joint possession it is very difficult when one of the persons accepted the entire responsibility. The wife of the accused has not been prosecuted and it is only the husband who has been charged being the public servant. In view of the explanation given by the husband and when it has been substantiated by the evidence of the wife, the other witnesses who have been produced on behalf of the accused coupled with the fact that the entire money has been treated in the hands of the wife and she has owned it and she has been assessed by the Income-tax Department, it will not be proper to hold the accused guilty under the prevention of Corruption Act as his explanation appears to be plausible and justifiable. The burden is on the accused to offer plausible explanation and in the present case, he has satisfactorily explained that the whole money which has been recovered from his house does not belong to him and it belonged to his wife. Therefore, he has satisfactorily accounted for the recovery of the unaccounted money. Since the crucial question in this case was of the possession and the premises in question was jointly

shared by the wife and the husband and the wife having accepted the entire recovery at her hand, it will not be proper to hold husband guilty. Therefore, in these circumstances, we are of the opinion that the view taken by the High Court appears to be justified and there are no compelling circumstances to reverse the order of acquittal. Hence, we do not find any merit in this appeal and the same is dismissed.