Sri. E.Kenchegowda vs State Of Karnataka on 14 July, 2023

Author: Mohammad Nawaz

Bench: Mohammad Nawaz

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF JULY, 2023

BEFORE
THE HON'BLE MR JUSTICE MOHAMMAD NAWAZ
CRIMINAL APPEAL NO. 467 OF 2020

BETWEEN:

SRI.E.KENCHEGOWDA,
S/O. LATE EARAIAH,
AGED ABOUT 54 YEARS,
POLICE INSPECTOR,
YELAHANKA POLICE STATION,
BANGALORE CITY-560 001.
PRESENTLY WORKING IN PRC UNIT,
REGIONAL OFFICE,
NAGASANDRA POST, BANGALORE.

PERMANENT RESIDENT OF
NO.81, KADUGODI,
BODRAHALLI HOBLI,
BANGALORE SOUTH TALUK,
BANGALORE.

...APPELLANT

(BY SRI. PARAMESHWAR N. HEGDE, ADVOCATE)

AND:

STATE OF KARNATAKA
BY POLICE INSPECTOR
KARNATAKA LOKAYUKTA POLICE
WING CITY DIVISION
BANGALORE-560 001.
REP. BY SPECIAL PUBLIC PROSECUTORE

...RESPONDENT

(BY SRI. B.S.PRASAD, SPL.P.P.)

THIS CRL.A IS FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE JUDGEMENT OF CONVICTION AND ORDER OF

-2-

SENTENCE DATED 23.03.2020 PASSED BY THE LXXVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-77) IN SPL.C.NO.525/2014 CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 13(1)(E) R/W 13(2) OF PREVENTION OF CORRUPTION ACT AND SECTION 177 OF IPC.

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGEMENT, THIS DAY PRONOUNCED THE FOLLOWING:

DATE OF RESERVED THE ORDER : 23.06.2023
DATE OF PRONOUNCEMENT OF THE ORDER: 14.07.2023

JUDGMENT

The appellant/accused is before this Court in this appeal assailing the impugned judgment and order dated 23.03.2020 passed by the Court of LXXVI Additional City Civil and Sessions Judge and Special Judge, City Civil Court, Bengaluru (CCH-77) in Special C. No.525/2014, whereby the learned Sessions Judge has convicted and sentenced him for the offence punishable under Section 13(1)(e) r/w 13(2) of the Prevention of Corruption Act, 1988 and Section 177 of IPC.

2. Investigation was conducted by the Lokayukta Police, Bengaluru City Division on a credible information received that the accused has amassed assets and pecuniary resources disproportionate to his known source of income. After a discrete enquiry, source report was prepared and based on which a case was registered in CR. No.55/2012 for the offence punishable under Section 13(1)(e) r/w 13(2) of the P.C. Act, 1988. On completion of investigation the I.O. submitted the charge sheet for the offence punishable under Section 13(1)(e) r/w 13(2) of the P.C. Act and Section 177, 193 and 465 of IPC.

3. As per the final report, the accused who joined service as sub inspector of Police on 26.08.1996, promoted as Police inspector on 25.11.2002, during the check period between 26.08.1996 and 22.06.2012 possessed properties and pecuniary resources in his name and in the name of his family members to the tune of Rs.1,39,94,443-90, incurred expenditure to the extent of Rs.58,25,768-16 against his income from all sources at Rs.93,82,155-23 and thereby possessed properties disproportionate to his known sources of income to the extent of Rs.1,04,38,056-83 i.e., at 111.25%.

4. Further allegations are that the accused being a public servant who was legally bound to furnish correct information to the investigation officer knowingly furnished false information and

intentionally submitted fabricated and false APRs knowing fully well that they will be used as evidence in the judicial proceedings to be initiated against him and further he dishonestly and fraudulently fabricated false APRs (Annual property returns) for the years 2000- 01 and 2001-02 and submitted to his department declaring his agricultural income but without declaring income from the sheep rearing. Hence, Sections 177, 193 and 465 of IPC were invoked.

5. At the outset, it is to be mentioned that the learned Sessions Judge while convicting the accused for the offence punishable under Section 13(1)(e) r/w 13(2) of PC Act and Sec.177 of IPC, held him not guilty for the offence charged against him under Section 193 and 465 of IPC and acquitted him of the said charges.

6. Before the trial Court, the prosecution has got examined PWs.1-11 and got marked Exs.P1-P89(A). The defence has got examined DW1-DW12 and got marked Exs.D1-D18.

7. The learned Sessions Judge reassessed the claim of the prosecution and the defence and came to the following conclusion in respect of assets, expenditure and income of the accused.

i) Assets of the accused Rs.1,26,94,799-90

ii) Expenditure incurred Rs.57,39,829-16

iii) Income from all sources Rs.1,01,84,223-23

iv) Disproportionate assets Rs.82,48,405-83 Summary statement of assets, expenditure and income as per final report and the finding of the trial Court are as under:

Sl. Particulars As per I.O. As per court No

1. Total value of assets acquired 1,39,94.443.90 1,26.94.799.90 by accused during check period

2. Total expenditure incurred by 58,25,768.16 57,37,829.16 accused during check period

3. Gross total (Sl.No.1 and 2) 1,98,20,212.06 1,84,32,629.06

4. Total income of accused 93,82,155.23 1,01,84,223.23 during check period

5. Difference between 1,04,38,056.83 82,48,405.83

6. Excess Income X 100 111.25% 80.99% Total Income

8. Before the trial Court, out of 26 heads of assets, the defence has disputed the assets mentioned at Serial Nos.1, 2, 4, 5, 16, 17 and 18 and not disputed the remaining items. Infact, the trial Court has appreciated the accused for fairly conceding major part of the assets, expenditure and income. In the present appeal, the learned counsel for the appellant has strongly assailed the reasoning of the trial Court and its appreciation of the evidence in rejecting the claim of the defence in respect of assets at Sl. No. 1, 2, 4, 5, 16 and 17 and not disputed the finding with regard to the asset mentioned at Sl.No.18.

9. Item No.1 is a site bearing No.659 situated at HMT Layout, Nagasandra, Bengaluru. The Investigation Officer has considered the value of the said property as Rs.13,98,500-00. The said property was purchased by one Eraiah, father of the accused vide registered sale deed dated 10.11.2006 for Rs.13,98,500-00 from one G. Govindaiah as per Ex.P26. The said Eraiah vide gift deed dated 18.03.2008 bequeathed the said property to his daughter-in-law, T. Gangamma i.e., wife of the accused as per Ex.P27.

10. Item No.4 is also a site bearing No.54/9/137/2 situated at Saneguruvenahalli, Kamakshipalya, Bengaluru. The value of the said property has been taken as Rs.2,00,000-00. The said property as per the registered sale deed dated 29.08.2005 marked as Ex.P25, was purchased by father of the accused vide registered gift deed dated 18.03.2008. The said property was bequeathed to his daughter-in-law T. Gangamma, under a registered gift deed-Ex.P27.

11. The I.O. has taken the value of the above properties as purchased by the accused on the ground that his father Eraiah had no sufficient income to purchase those properties and therefore, the sale consideration was paid by the accused and later he got gifted the said property to his wife.

12. The trial Court has found fault with the defence for not examining the father and wife of the accused. An adverse inference was taken for non-examination of his father. The submission made on behalf of the defence that Eraiah is suffering from cancer and he is taking treatment in New BIO, Sampangiramnagar, Bengaluru was accepted by the trial Court but it was of the opinion that the same will not be a disability to give evidence before the Court. It was contended on behalf of the defence that the prosecution could have examined Eraiah but the trial Court disagreed with the same.

13. It is contended by the learned counsel for appellant that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. The said burden has to be discharged strictly by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly or reasonably raising an inference of that fact. It is contended that the burden of proof in disproportionate cases is always on the prosecution and the same has to be discharged beyond reasonable doubt.

14. The learned counsel has placed reliance on the judgments of the Hon'ble Apex Court in support of the above contention, relevant are: (i) (1974) 1 SCC 3 (Jaydayal Poddar and another v. Bibi Hazra and others) (ii) (1981) 3 SCC 199 (State of Maharashtra v. Wasudeo Ramchandra Kaidalwar) (iii)

(2017) 14 SCC 442 (Vasant Rao Guhe v. State of Madhya Pradesh.

In 'Jaydayal Poddar and another v. Bibi Hazra and others' it is held at Para 6 as under:

> 6. It is well settled that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of Benami or establish circumstances, unerringly and reasonably raising an inference of that fact. The essence of a benami is the intention of the party or parties concerned; and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on

- 10 -

him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation, and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs. Though the question, whether a particular sale is Benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid tests, uniformally applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the courts are usually guided by these circumstances:(1) the source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami color; (4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar; (5) the custody of the title-deeds after the sale and (6) the conduct of the parties concerned in dealing with the property after the sale. In 'State of Maharashtra vs. Wasudeo Ramchandra Kaidalwar', while discussing the question as to the nature and extent of the burden of proof under the prevention of Corruption Act, it is held that the burden of proving everything essential to establish the charge against the accused lies upon the prosecution and that burden never

- 11 -

shifts. The burden resting on the accused in such cases is, however, not so onerous as that which lies on the prosecution and is discharged by proof of a balance of probabilities. The accused can establish his case by a preponderance of probability.

In 'Vasant Rao Guhe vs. State of M.P', the relevant para 21 is extracted hereunder:

> 21. From the design and purport of clause (e) of sub-clause (1) to Section 13, it is apparent that the primary burden to bring home the charge of criminal misconduct thereunder would be indubitably on the prosecution to establish beyond reasonable doubt that the public servant either himself or through anyone else had at any time

> during the period of his office been in possession of pecuniary resources or property disproportionate to his known sources of income and it is only on the discharge of such burden by the prosecution, if he fails to satisfactorily account for the same, he would be in law held guilty of such offence. In other words, in case the prosecution fails to prove that the public servant either by himself or through anyone else had at any time during the period of his office been in possession of pecuniary resources or property disproportionate to his known sources of income, he would not be required in law to offer any explanation to satisfactorily account therefor. A public servant facing such charge, cannot be comprehended to furnish any explanation in absence of the proof of the allegation of
>
> - 12 -

being in possession by himself or through someone else, pecuniary resources or property disproportionate to his known sources of income. As has been held by this Court amongst others in State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede even in a case when the burden is on the accused, the prosecution must first prove the foundational facts. Incidentally, this decision was rendered in a case involving a charge under Sections 7, 13 and 20 of the Act.

15. The learned counsel for respondent has contended that the term "known sources of income" would mean the sources known to the prosecution and not to the accused. It is therefore, for the accused to account satisfactorily for the money/assets, which is in possession. He has relied on a decision reported in 2022 Live Law (SC) 741 (State through Deputy Superintendent of Police Vs. R. Soundirarasu), para 80 of the said judgment is extracted hereunder:

> 80. Section 13(1)(e) of the Act 1988 makes a departure from the principle of criminal jurisprudence that the burden will always lie on the prosecution to prove the ingredients of the offences charged and never shifts on the accused to disprove the charge framed against him. The legal effect of Section 13(1)(e) is that it is for the prosecution to establish that the accused was in possession of properties
>
> - 13 -

disproportionate to his known sources of income but the term "known sources of income" would mean the sources known to the prosecution and not the sources known to the accused and within the knowledge of the accused. It is for the accused to account satisfactorily for the money/assets in his hands. The onus in this regard is on the accused to give satisfactory explanation. The accused cannot make an attempt to discharge this onus upon him at the stage of Section 239 of the Cr.P.C. At the stage of Section 239 of the Cr.P.C, the Court has to only look into the prima facie case and decide whether the case put up by the prosecution is groundless.

16. It is contended by the learned counsel for respondent that the trial Court has held that the properties at Sl.Nos.1 and 4 are purchased by the accused, as his father Eraiah did not have financial resources to purchase the properties in question and the said Eraiah was also not examined. He has

contended that the trial Court has rightly come to the conclusion, Eraiah who had a large family could not have saved the considerable sum to purchase the above two properties. Hence, he has contended that those properties are benami properties purchased by the accused in the name of his father and then transferred to his wife vide gift deeds. He has

- 14 -

justified the report submitted by the investigation officer, relying on a decision of the Hon'ble Apex court in case of K. Veeraswamy Vs. Union of India and others, reported in (1993) 3 Sec 655; The relevant para 75 is extracted here under In the view that we have taken as to the nature of the offence created under clause (e), it may not be necessary to examine the contention relating to ingredient of the offence. But since the legality of the charge-sheet has been impeached, we will deal with that contention also. Counsel laid great emphasis on the expression "for which he account satisfactorily account" used in clause (e) of Section 5(1) of the Act. He argued that term means that the public servant is entitled to an opportunity before the Investigating Officer to explain the alleged disproportionality between assets and the known sources of income. The Investigating Officer is required to consider his expla nation and the charge-sheet filed by him must contain such averment. The failure to mention that requirement would vitiate the charge-sheet and renders it invalid. This submission, if we may say so, completely overlooks the powers of the Investigating Officer. The Investigating Officer is only required to collect material to find out whether the offence alleged appears to have been committed. In the course of the investigation, he may examine the accused. He may seek his clarification and if necessary he may cross check with him about his known sources of income and assets possessed by him. Indeed, fair investigation

- 15 -

requires as rightly stated by Mr. A.D. Giri learned Solicitor General, that the accused should not be kept in darkness. He should be taken into confidence if he is willing to cooperate. But to state that after collection of all material the Investigating Officer must give an opportunity to the accused and call upon him to account for the excess of the assets over the known sources of income and then decide whether the accounting is satisfactory or not, would be elevating the Investigating Officer to the position of an enquiry officer or a judge. The investigating officer is not holding an enquiry against the conduct of the public servant or determining the disputed issues regarding the disproportionality between the assets and the income of the accused. He just collects material from all sides and prepares a report which he files in the Court as charge-sheet.

17. The trial Court has come to the conclusion that Eraiah got 3 acres 15 guntas of land in the family partition of 1970 and purchased 6 acre 23 guntas of land from 1970 till 1996 and therefore disbelieved that he could purchase 9 acre 3 guntas additional agricultural land, construct houses and purchase the disputed sites.

18. The learned counsel for appellant has strongly placed reliance on the observations made by the Hon'ble Apex Court in Jayadal Poddar (supra). The Apex Court has

- 16 -

held therein that burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so and the said burden has to be discharged by adducing legal evidence of a definite character.

19. The investigation officer who laid charge sheet is PW.10. The prosecution would rely on his evidence to prove that the properties at Sl.Nos.1 and 4 are benami properties. However, he has not stated anything about the reason for considering the properties purchased by the father of accused as benami properties. Undisputedly, Eraiah has been shown as the purchaser in the registered sale deed. Hence, the initial presumption lies in favour of the defence. The prosecution has neither examined the vendor of the said two properties to prove as to payment of sale consideration by the accused. Further, Eraiah has not been enquired during investigation to find out his source of income to purchase the two properties in question. The witnesses who attested the documents were also not enquired nor examined by the prosecution. The

- 17 -

Investigation Officer-PW.10 during cross-examination has admitted that father of the accused had inherited agricultural property measuring 3 acres 15 guntas and he has also purchased 6 acres 23 guntas of agricultural land before the accused joined service. Further, he acquired agricultural properties measuring 9 acres 3 guntas apart from the above mentioned land. It is also relevant to mention that the accused has submitted during investigation, schedule 1-23 disclosing the properties having gifted in favour of his daughter-in-law by his father Eraiah.

20. As per the defence, in order to balance between the two sons, Eraiah executed gift deed in respect of the two items. The trial Court has raised doubt about the genuinity of the will under which two house properties were bequeathed to the second daughter-in-law, on the ground that the original Will was not produced and gift deed were not executed in respect of those properties and his younger brother has not been examined. The trial Court has observed that the will is a tailored document

- 18 -

and rejected the contention of the defence that the items at Sl.No.1 and 4 were self acquired properties of Eraiah or that they were acquired out of the joint family funds.

21. The trial Court has failed to take into consideration that the original Will was not in possession of the accused, as admittedly the accused was not the executor of the Will. The Will has been produced along with the charge sheet. The I.O. has not taken any pain to seek the original Will during investigation. The said document was introduced by the prosecution and also marked through prosecution witnesses. The prosecution had an opportunity to raise an objection regarding admissibility of the will before the Court. In such circumstances, the accused would have an opportunity to cure the defect. Hence, the Court having accepted the document during the evidence

was not proper in raising doubt about the genuinity of the will.

22. It is relevant to refer to the judgment of the Hon'ble Apex Court relied by the learned counsel for the appellant in the case of R.V.E Venkatachala Goundar vs.

- 19 -

Arulmigu Viswesaraswamy and V.P temple and another (2003)8 SCC 752. Para 20 of the judgment is extracted here under:

20. The learned counsel for the defendant-

respondent has relied on Roman Catholic Mission Vs. The State of Madras in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and

(ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as

- 20 -

an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case,

failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court.

23. In view of the above discussion and in the absence of any other contra evidence adduced by the prosecution, the finding recorded by the trial Court that

- 21 -

the assets mentioned at Sl.Nos.1 and 4 are benami properties purchased by the accused does not stand and cannot be accepted. The reasons assigned are more illusory and on the basis of surmises, which are disproved by the Apex Court. At the cost of repetition it has to be mentioned that the burden of proof in a case of this nature lies exclusively upon the prosecution and a burden resting on the accused in such cases is not so onerous as that which lies on prosecution. The burden will shift to the accused unless he is able to account for such resources or property and he can establish his case by preponderance of probability. Hence, the value of the two assets i.e., a sum of Rs.13,98,500-00 at Sl.No.1 and a sum of Rs.2,00,000-00 at Sl.No.4 cannot be taken as the amount spent by the accused to purchase the said two properties.

24. In so far as item No.2 is concerned, in respect of the construction cost of the building in site No.659 of HMT Layout, Nagasandra, Bengaluru, according to the Investigation Officer the value of the building is Rs.57,50,903-00-00 which is as per the valuation

- 22 -

ascertained by PW.5-Assistant Executive Engineer. It was admitted during the cross-examination that if the construction is personally supervised then the cost will be reduced by 20%. Hence, the trial Court has reduced the cost of construction and recalculated the value as Rs.46,00,723-00-00.

25. It is contended by the learned counsel for appellant that payment of certain building materials to the suppliers under credit bill amounting to Rs.10,04,459-00 were made subsequent to the cheque period and therefore, the said amount has to be given deduction in the value of the building. The defence has examined DWs.10-12, namely the suppliers of the building materials.

26. The trial Court has come to the conclusion that the original bill produced by the accused at D16 are got up for the purpose of the case. To arrive at the said conclusion, the trial Court has found that all those bills are very new bills and they were obtained subsequent to the raid.

- 23 -

27. The learned counsel for the respondent has supported the finding of the trial Court contending that the learned Judge has thoroughly examined the bills produced at Ex.D16 and compared the different invoices before coming to the said conclusion. He would therefore contend that the trial Court has rightly come to the conclusion that no deduction can be given that the purchase of

construction materials and payments in relation to them were made subsequent to the cheque period.

28. As already noted supra the trial Court has reduced the cost of construction by 20% on an admission made by PW.5 that the cost would be reduced to that extent, if the construction is personally supervised. Hence the construction cost was reduced from Rs.57,50,903-00 to Rs.46,00,723-00. A deduction of Rs.11,50,080-00 was given out of the total cost of construction, accepting that the building was made under self supervision of the accused and his family members. As rightly contended by the learned counsel for respondent, the trial Court has personally examined Ex.D16 and different invoices before

- 24 -

refusing to accept that the payments were made to the suppliers of certain building materials, to the tune of Rs.10,04,459-00 subsequent to the cheque period. Though it is admitted by PW.10 that the bills/invoices are pertaining to the construction of building, he has stated that he did not deduct the amount contained in them from the total cost of construction since he did not believe those bills/invoices. Having gone through the reasons assigned by the learned Sessions Judge, I am of the considered opinion that the reasons are just and valid and therefore no deduction can be given to the tune of Rs.10,04,459-00 as claimed by the appellant.

29. The next contention raised by the learned counsel for appellant is that the entire construction value of Rs.36,86,143-00 of the building/assets at Sl.No.5 has been wrongly taken. It is contended that the mortgage/lease deed was executed by the wife of the accused in favour of one M.G.Ravi Kumar (DW.6) against the refundable deposit of Rs.15,00,000-00 on 30.07.2011, with one of the conditions that the tenant has the right to raise ground and first floor at his cost and to use the

- 25 -

building for a period of 10 years and thereafter to handover the building. It was therefore contended that since the building was not constructed by the accused or his wife, the value of the building cannot be treated as the asset of the accused.

30. The trial Court has disagreed with the above contention raised by the defence. The cost of the construction was taken as Rs.36,86,143-00, as quantified by PW.6, PWD Engineer. The learned counsel for respondent in support of the findings recorded by the trial Court, has contended that the mortgage deed dated 30.07.2011 and the stamp papers are dated 07.11.2006. Therefore, the same cannot be accepted. He has further contended that the rental agreement is dated 17.08.2011 and therefore it is humanly impossible to construct the building within such a short period.

31. The learned Sessions Judge has held that the deed which is marked as Ex.D5 is totally inadmissible in evidence and did not accept the contents of the deed that Rs.15,00,000/- refundable security deposit was paid to

- 26 -

Smt.Gangamma, wife of the accused. It is observed that mere marking of document is not sufficient and Ex.P5 is not a registered instrument. It is further observed that the requisite stamp duty payable on the said instrument was Rs.1,13,700-00 and further penalty has to be paid and since the accused has not paid the deficit stamp duty and penalty as required under the Stamp Act the said document cannot be looked into.

32. The document at Ex.D5 is executed in favour of M.G.Ravi Kumar examined as DW.6. The mortgage deed and other documents were seized by the police during investigation, collectively marked as Ex.P14. The defence has got marked the original as Ex.D5. The I.O. has recorded the statement of DW.6 - M.G.Ravi Kumar and produced the rental agreement which he had entered into in terms of the mortgage deed. The transaction has been declared in the income tax returns of the wife of the accused. The same is also declared by the accused in his assets and liability statement and same is also intimated to his department.

- 27 -

33. Admittedly the mortgage deed has been seized during the search and produced by the prosecution. It is contended by the learned counsel for appellant that the said document has been introduced before the trial Court by the prosecution itself and once the endorsement is signed or initialled by the Judge, the same amounts to admission. In support of the said contention, the decision of the Hon'ble Apex Court in R.V.E Venkatachala Goundar (supra) has been relied upon.

34. The learned counsel has also placed reliance on a decision of the Hon'ble Apex Court in the case of Korukonda Chalapathi Rao v. Korukonda Annapurna Sampath Kumar. Para Nos.27 and 36 of the said judgment are extracted hereunder:

> 27. The proviso carves out two exceptions. We are only concerned, in this case, with only one of them and that is contained in the last limb of the proviso. The unregistered document can be used as evidence of any collateral transaction. This is however subject to the condition that the said collateral transaction should not itself be one which must be effected by a registered document. It is this expression contained in the proviso which leads us to
>
> - 28 -

ask the question as to what would constitute a collateral transaction. If it were collateral transaction, then an unregistered document can indeed be used as evidence to prove the same. Would possession being enjoyed or the nature of the possession on the basis of the unregistered document, be a transaction and further would it be a collateral transaction? We pose this question as the contention of the appellants is that even if the Khararunama dated 15.4.1986 cannot be used as evidence to prove the factum of relinquishment of right which took place in the past, the Khararunama can be looked into to prove the conduct of the parties and the nature of the possession which was enjoyed

by the parties.

36. As far as Section 49(1)(c) of the Registration Act is concerned, it provides for the other consequence of a compulsorily registrable document not being so registered. That is, under Section 49(1)(a), a compulsorily registrable document, which is not registered, cannot produce any effect on the rights in immovable property by way of creation, declaration, assignment, limiting or extinguishment. Section 49(1)(c) in effect, reinforces and safeguards against the dilution of the mandate of Section 49(1)(a). Thus, it prevents an unregistered document being used 'as' evidence of the transaction, which 'affects' immovable property. If the Khararunama by itself, does not 'affect' immovable property, as already explained, being a record of the alleged past

- 29 -

transaction, though relating to immovable property, there would be no breach of Section 49(1)(c), as it is not being used as evidence of a transaction effecting such property. However, being let in evidence, being different from being used as evidence of the transaction is pertinent [See Muruga Mudallar (supra)]. Thus, the transaction or the past transactions cannot be proved by using the Khararunama as evidence of the transaction. That is, it is to be noted that, merely admitting the Khararunama containing record of the alleged past transaction, is not to be, however, understood as meaning that if those past transactions require registration, then, the mere admission, in evidence of the Khararunama and the receipt would produce any legal effect on the immovable properties in question.

35. It is the duty of the Court before admitting any document in evidence to find out whether the particular document requires compulsory registration or whether it is sufficiently stamped or not. If it comes to the conclusion that the document is insufficiently stamped the concerned party has to be called upon to remit the deficit stamp duty together with the penalty. The document has to be forwarded to the Collector for the purpose of adjudicating on the

- 30 -

question of deficiency of the stamp duty, if the party is unwilling to remit the amount.

36. The accused is facing criminal charge of amassing disproportionate assets against his known source of income. At the cost of repetition it has to be stated that the primary duty is on the prosecution to establish its case and the accused can discharge his liability by preponderance of probability. The learned counsel for appellant has invited the attention of the Court to the decision of the Apex Court reported in (2001) 4 SCC 197 (Chilakuri Gangulappa Vs. Revenue Divisional Officer) regarding the procedure to be adopted by the Court if any document is insufficiently stamped. Such procedure was not adopted. Further, in Korukonda Chalapathi Rao (supra) it is held that an unregistered document can be used as evidence to prove any collateral transaction. The trial Court has failed to take into consideration that the case before it was not in reference to dispute between the parties in respect of the mortgage deed. The document was introduced in evidence for collateral purpose.

- 31 -

37. It is not in dispute that the transaction has been declared by the wife of the accused in her income tax returns and also the accused in his assets and liability statement, marked as Ex.D3. The same is dated 31.03.2012. DW.6 has also produced the ledger extract disclosing the investment made by him for construction, marked as Exs.D7 and D8. He has deposed that he has started constructing the building prior to formerly entering into mortgage deed and the mortgage deed was executed after a tenant - DW.2 who was on the basement area was vacated. The witnesses have started that the construction work was started in the month of April 2011 itself, much prior to the date of formal execution of the mortgage deed. The evidence of DW.2 and DW.6 would strengthen the defence of the accused. As per DW.6 a sum of Rs.20,000-00 was paid by cash and another sum of Rs.14,80,000-00 was paid through cheques. The bank account extract marked as Ex.P19 indicates the receipt of the said amount through cheques. Hence the trial Court was not justified in rejecting the claim of the defence in

- 32 -

this regard. There is no other material placed by the prosecution to disbelieve the above documents. As such the value of the construction amounting to Rs.36,86,143-00 cannot be considered as the asset of the accused.

38. The next disputed items is the value of gold and silver ornaments found during the search of the house of the accused, mentioned at item Nos.16 and 17 under the head of assets. The I.O. has calculated the value of gold ornaments at Item No.16 as Rs.9,12,750-00 and value of silver ornaments at Item No.17 as Rs.1,19,050-00.

39. The learned counsel for appellant has contended that, he is restricting his defence only in respect of weight and time of purchase and unscientific fixation of the price of the gold and silver articles. He has contended that PW.3 namely the appraiser of the gold ornaments has not supported the case of prosecution in so far as fixing the price of the articles and as such he was treated as hostile and admitted in the cross-examination that he has not verified the purity of the gold, age of the

- 33 -

gold etc. Further, the stone, beads, wax etc were not separated while weighing the ornaments. It is therefore contended that the possibility of escalation of gold price is not ruled out. Relying on a decision reported in '1999 Crl.L.J 1026' (G.V.S lingam vs. State of UP), it is contended that in similar circumstances it is held therein that the average rate during the check period needs to be fixed. The learned counsel has therefore sought to reduce the value of the gold and silver articles to an extent of 10%.

40. At Para 21 of the judgment noted supra (G.V.S lingam), the Apex Court has observed that "working out the value of the assets (gold) on the basis of the market value as on the date of search would imply that it is presumed the said assets were acquired on the date of search or in the vicinity

of that date. In the absence of any evidence as to the date or the period of acquisition of such assets, the question is what would be the date or period which could be ascribed for the acquisition of those assets. At any rate the assumption that they were

- 34 -

acquired on the date of check does not appear justified. In the absence of any evidence as to the period during which the gold was acquired, it appears more reasonable to presume that the gold might have been acquired periodically every now and then". The Apex Court has taken the market value prevailing in the relevant years by assuming that the gold might have been acquired proportionally in every year through out the check period.

41. The learned counsel for respondent has contended in reply that in all 1442.75 grams of gold ornaments were found during search of the residence of the accused, out of which gold ornaments weighing about 10.60 grams consisting of small rings of children etc were returned and remaining 1432.15 grams were seized under a mahazar Ex.P1. The said gold ornaments were weighed and valued by PW.3 and deducting 53 tolas of gold which was mentioned in the APR for the year 1998-99 and 2002- 03, the remaining 912.75 grams were valued at the average rate of Rs.1,000/- per gram as such Rs.9,12,750-00 was rightly considered as the asset of the

- 35 -

appellant. Further, 4762 grams of silver articles were seized and weighed with the help of PW.3 and the value was fixed at Rs.25-00 per gram and Rs.1,19,050-00 is taken as his asset.

42. The trial Court has observed that the mahazar- Ex.P1 prepared in the house of accused contains his signature and also of witnesses. Coming to the valuation by PW.3, the trial Court has observed that he has been won over by the accused. Further that the accused has not produced any document to show his wife and parents possessed ornaments long back as claimed by him. Concurring with the finding with the I.O., the trial Court went on to observe by its own calculation that the value of the gold as on the date of search was more than the price fixed by the I.O.

43. As rightly pointed out by the learned counsel for appellant it is not forthcoming from the evidence of PW.3 and the mahazar at Ex.P1 as to whether the wastage was removed while weighing the articles. The same is

- 36 -

essential in the background that the learned counsel for appellant is only disputing the purity and age of the articles. It is relevant to see that PW.9 who has conducted the raid has admitted during cross-examination that he has not obtained any information from the appraiser about the age of the gold articles and he has not collected the chart disclosing the rate of the gold articles. The possibility of escalation in the value of the gold and silver cannot be ruled out. However, this Court cannot undertake the exercise of re-fixing the value of the gold and silver articles. At the same time, the

claim of the accused for reduction of 10% in the value of the gold and silver articles is not unreasonable. Hence, the value of the gold works out to be Rs.8,21,475-00 as against Rs.9,12,750-00, a difference of Rs.91,275-00 (Rs.9,12,750-00 - Rs.8,21,475-00) and the value of silver articles would be Rs.1,07,145-00 as against Rs.1,19,050-00, a difference of Rs.11,905-00 (Rs.1,19,050 - Rs.1,07,145).

- 37 -

44. Hence, the recalculated value of the assets at Sl.Nos.1, 2, 4, 5, 16 and 17 are as under:

> Sl.No. As per trial As per this Amount to be Court Court deducted 1 13,98,500-00 Nil 13,98,500-00 2 46,00,723-00 46,00,723-00 Nil 4 2,00,000-00 Nil 2,00,000-00 5 36,86,143-00 Nil 36,86,143-00 16 9,12,750-00 8,21,475-00 91,275-00 17 1,19,050-00 1,07,145-00 11,905-00 Total - 53,87,823-00

45. Under the 42 heads of expenditures, the accused has disputed the value mentioned at Sl.Nos.1, 5 and 6 in this appeal and not disputed the remaining items. In so far as item No.27 i.e., invisible/per capita monthly expenditure, the trial Court has reduced the same from Rs.8,79,393-00 to Rs.7,91,454-00. Hence, the trial Court has recalculated the expenditure of the accused as Rs.57,37,829-16 against the assessment of Rs.58,25,768- 16 made by the I.O. in his final report.

- 38 -

46. It is contended by the learned counsel for appellant that the reasoning and appreciation of the evidence by the trial Court in rejecting the claim in respect of item Nos.1, 5 and 6 are not proper. It is contended that the trial Court has mechanically went on to subscribe its personal opinion rather than the evidence available on record.

47. Item No.1 is the registration charges of Rs.1,31,755-00 of site No.659. Item No.5 is the property tax of Rs.8,591-00 paid in respect of the said site and item No.6 is the registration charges of Rs.20,360-00 paid in respect of site No.54/9/137/2.

48. According to the appellant the properties are purchased by his father Eraiah and therefore the cost incurred towards registration charges and stamp duty cannot be treated as expenditure of the accused. The trial Court was of the view that the said properties are benami properties and therefore the expenditure incurred towards the same needs to be taken as expenditure of the

- 39 -

accused/appellant. The learned counsel for respondent has supported the finding recorded by the trial Court.

49. This Court has already considered while appreciating the evidence and material on record with regard to the assets of the accused and taken a view that the findings recorded by the trial Court that

the assets mentioned in Sl.Nos.1 and 4 are benami properties does not stand and cannot be accepted. Therefore, when this Court has held that the prosecution has failed to prove the properties are benami, the expenditure incurred towards the registration, stamp duty and property tax in respect of the said properties cannot be taken as the expenditure of the accused. Hence, a total sum of Rs.1,60,706-00 (Rs.1,31,755 + 8,591 + 20,360) has to be deducted from the expenditure of the accused. In view of the same, the amount mentioned under the head of expenditure shall have to be reduced from Rs.57,37,829-16 to Rs.55,77,123-16.

50. Hence, the recalculated value of expenditures mentioned at Sl.Nos.1, 5 and 6 are as under:

- 40 -

Sl.No.	As per trial Court	As per this Court	Amount to be deducted
1	1,31,755-00	Nil	1,31,755-00
5	8,591-00	Nil	8,591-00
6	20,360-00	Nil	20,360-00
	Total		1,60,706-00

51. The investigation Officer while preparing the final report has calculated the income of the accused under 15 heads and arrived at Rs.96,93,102-23. The accused has disputed the value in respect of the income mentioned at Sl.Nos.3, 4 and 5 i.e., rental income, agricultural income and income from sheep rearing and not disputed the remaining items. The trial Court, after discussing the evidence of the prosecution, enhanced the value of item No.4 from Rs.10,69,680-00 to Rs.13,38,956-00 and enhanced the value of item No.5 from Rs.2,91,666-00 to Rs.3,33,333-00. The claim in respect of item No.3 has been rejected in toto.

52. The learned counsel for appellant has submitted that he is not disputing the observation and finding of the trial Court in so far as item No.3 is concerned. However,

- 41 -

he has contended that partly accepting the claim of the accused by the trial Court in respect of item No.4 and 5 are not proper and it is against the evidence available on record.

53. In so far as the item No.4 i.e., the agricultural income declared by the accused is concerned, he has claimed an income of Rs.53,25,000-00 during the check period, contending that the said amount has been declared in his assets and liabilities statements from 1998-2012. Further, a report of one Mr.Delvi, a retired Deputy Director of agriculture, marked as Ex.D14 has been relied upon. It is vehemently contended that the I.O. has not secured any independent valuation from an expert and only considered the APR declaration from 1998-99 to 2008-09 and not considered for the remaining period.

54. The Investigation Officer has calculated the agricultural income of the accused as Rs.10,69,680-00. The trial Court, taking into consideration that the income of Rs.2,69,276-00 received by the accused has been left out from post March 2012 till the last date of the check

- 42 -

period, has enhanced the income of the accused from agriculture to Rs.13,38,956-00.

55. For the year 1998-99 to 2008-09, the I.O. has calculated the entire agricultural and horticultural income at Rs.26,25,000-00 and taken 1/3rd of the same i.e., Rs.8,75,000-00 as income of the accused on the ground that the said income is joint family income and the accused, his father and brother have equal share in the same. In addition, a sum of Rs.1,94,680-00 is taken on the ground that the said income is declared by the accused in his ITR for the year 2011-12. Hence the total income is taken as Rs.10,69,680-00. As already observed the trial Court assessed the agricultural income at Rs.13,38,956-00 taking note that the income from 01.04.2012 till the date of raid i.e., a sum of Rs.2,69,276-00 has not been considered by the I.O. However, the contention taken by the defence has been rejected.

56. The learned counsel for respondent has contended that the assets and liability statement are not a

- 43 -

conclusive proof and as such, the declaration cannot be taken on its face value unless the declarant produces material in support of the claim. The APRs of the accused obtained from the office of the Police Commissioner, Bengaluru marked as Ex.D3 has been disputed contending that the accused has tried to mislead with enhanced agricultural income.

57. The trial Court with the aid of Ex.P82 (D) made an observation that the agricultural income of Rs.53,25,000-00 declared by the accused is totally inconsistent with the affidavit filed by his father, wherein it is stated that in all Rs.84,60,000-00 was paid to the accused. The report at Ex.D3 submitted by one Mr.Delvi, retired Deputy Director of agriculture was not accepted and refused the claim that during the check period from 1995-2012, the agriculture and horticulture income with 19 acres of the joint family lands was to the tune of Rs.1,49,01,935-00. The trial Court has also doubted the receipts of HOPCOMS.

- 44 -

58. The trial Court is justified in rejecting the report of one Mr.Delvi, a retired Deputy Director of agriculture, as he was not in service of the Government when the report was prepared and the report was not prepared in the routine course of his office duty. Mr.Delvi was not examined. In the absence of examination of the author of the report at Ex.D14, the said report was rightly not accepted by the trial Court. The decision relied by the learned counsel for respondent, reported in AIR 1971 SC 1865 (Sait Tarajee Khimchand and others vs. Yelamarti Satyam and others) is relevant to be taken note of, wherein at para 15 it is observed as under:

> 15. The plaintiffs wanted to rely on Exhibits A-12 and A-13, the day book and the ledger respectively. The plaintiffs did not prove these books. There is no reference to these books in the judgments. The mere marking of an exhibit does not dispense with the proof of documents. It is common place to say that the negative cannot be proved. The proof of the plaintiffs' books of account became important because the plaintiffs' accounts were impeached and falsified by the defendants' case of larger payments than those admitted by the plaintiffs. The irresistible inference arises that the
>
> - 45 -

plaintiff's books would not have supported the plaintiffs.

59. The contention raised by the learned counsel for appellant that he had an agricultural income of Rs.53,25,000-00 cannot be accepted. But whether the declarations made in the assets and liability statement could be ignored is a question, particularly in the absence of any challenge. The assets and liability statements are marked as Ex.D3. It is not in dispute that the said statements are made during an undisputed point of time. They will have the initial presumptive value in favour of the declarant unless contrary is proved. The Investigation Officer has mentioned about the details of assets and liability statements submitted by the accused to the department and so also his declaration regarding his agricultural income. The accused has declared an income of Rs.32,75,000-00 from 1998-99 to 2011-12. PW.10- Investigation Officer has admitted in the cross-examination that the father of the accused had inherited agricultural property measuring 3 acres 15 guntas and also purchased 6 acres 23 guntas of agricultural land

- 46 -

before the accused joined the service. It is also admitted that he has acquired agricultural properties in all measuring 9 acres 3 guntas apart from the aforesaid 9 acres 38 guntas of land. Therefore, the joint family of the accused consisting of his father, brother and himself have in all 19 acres 1 gunta of land. The joint family consisting of the accused were cultivating the said lands as is evident from the material placed on record.

60. The accused has declared his agricultural income to the tune of Rs.32,75,000-00 from 1998-99 to 2011-12. The accused who was examined as DW.9 has deposed that the declaration made by him

in the assets and liability statement is his individual share of income. The said statement has been uncontraverted and not further challenged. The declaration regarding the receipt of income cannot be considered as the income received by joint family. "Known source of income" as per the proviso to Section 13(1)(e) of the PC Act means income received by the public servant from the lawful sources and such income declared to his department in terms of rules and

- 47 -

regulations applicable to such public servant. Hence his declaration made to the department by way of assets and liability statement requires to be considered.

61. In the light of the above discussion, this Court is of the considered opinion that the accused cannot claim income under the head agriculture to the tune of Rs.53,25,000-00, however, his agricultural income has to be taken as Rs.32,75,000-00 as against the income arrived under the said head by the trial Court at Rs.13,38,956-00 (Rs.32,75,000 - 13,38,956 = 19,36,044).

62. The next item under the head of income is item No.5 i.e., income from sheep rearing. The investigation Officer has calculated the income of the accused as Rs.2,91,666-00, taking into account the declarations made from the year 1998-99 to 2007-08 as Rs.8,75,000-00. Out of the same he has considered the income of the accused as Rs.2,91,666-00 on the ground that the accused is entitled for 1/3rd of the total income.

- 48 -

63. The trial Court has observed that the prosecution concedes the accused and his family engaged in sheep rearing in their native village, but it was of the view that as per the APRs filed by the accused to his department (Ex.D3) and the copies of the APRs made available by the accused, there is inconsistency in the income declared by him from sheep rearing and he did not declare such kind of income in his APR for the year 2000- 01 and 2001-02 etc. The learned Sessions Judge has come to the conclusion that the income from sheep rearing which is left out for the year 2008-09 in the table furnished by the I.O. and by including Rs.2,00,000-00 each for the year 2003-04 and 2006-07, the total amount would be Rs.10,00,000-00 for the check period and if 1/3rd is calculated it will come to Rs.3,33,333-00.

64. Admittedly, the accused has declared the income of Rs.8,75,000-00 for the year 1998-99 to 2007-

08. He has declared Rs,1,25,000-00 for the year 2009-

10. The contention of the learned counsel for accused is that, in all the accused has received a sum of

- 49 -

Rs.13,50,000-00 from sheep rearing and the receipt of such income has been declared by him in his assets and liability statement from 1998 - 2012. A report submitted by one Dr.Harsha, a veterinary doctor as per Ex.P82(C) and the original which is marked as Ex.D14 shows that the total income received by the accused and his family members as Rs.47,97,160-00. It is contended that by not taking into the said report, the trial Court has committed a grave error while calculating the income from sheep rearing.

65. The trial Court has refused to accept the certificate issued by one Dr.Harsha as per Ex.82(C) on the ground that he is not a Government official discharging his function of evaluation of income from the said source in his routine of his office business and the accused has not examined the said witness. However, the trial Court has accepted that the accused and his family were engaged in sheep rearing. What is relevant to be seen is that the accused has declared the income in his assets and liability statement from the year 1998 - 2012, which is in respect

- 50 -

of his individual income. The reasons assigned by the trial Court for not considering Ex.82(C) cannot be found fault with and therefore it cannot be said that the family of the accused have received an income of Rs.47,97,160-00 from sheep rearing. The claim of the accused that he has received an income of Rs.13,50,000-00 from the sheep rearing also cannot be accepted. However, as per the details of declarations made by the accused in his assets and liability statement, the accused has declared a total amount of Rs.6,00,000-00 from the year 1998-2012, which has to be given credit to his income. Hence, it is proper to take Rs.6,00,000-00 as the income of the accused from sheep rearing as against Rs.3,33,333-00 calculated by the trial Court (Rs.6,00,000 - Rs.3,33,333 = Rs.2,66,667).

66. Hence, the recalculated income of the accused under the head of income at Sl.Nos.4 and 5 are as under:

Sl.No. As per trial As per this Difference Court Court amount to be added 4 13,38,956-00 32,75,000-00 19,36,044-00

- 51 -

5	3,33,333-00	6,00,000-00	2,66,667-00
	Total		22,02,711-00

67. It is contended by the learned counsel for appellant that the I.O. has left out without any reason, certain income of the accused and his wife such as arrears of dearness allowances, encashment of leave of the accused and the refundable deposit received by the wife, rental income and income from agriculture and centering business of the wife declared under ITR. The trial Court while discussing the evidence, has accepted the claim of the accused in respect of arrears of the DA, encashment of leave salary and rental income. A sum of Rs.1,31,121-00 was treated as additional income of the accused from salary and Rs.3,60,000-00 as rental income from cellar portion of the building. However, in so far as the lease cum mortgage amount of Rs.15,00,000-00 received by Smt.Gangamma, wife of the accused and a sum of Rs.15,50,480-00 received by her from agricultural and centering income, the same has been rejected.

- 52 -

68. It is the specific case of the accused that his wife had executed the mortgage deed in favour of one M.G.Ravi Kumar as against the refundable deposit of Rs.15,00,000-00. One of the conditions is that, the tenant has the right to raise ground and first floor and lease it to any person or use it for his business for ten years. The investigation Officer has recorded his statement and confirmed about advancing a sum of Rs.15,00,000-00 to Smt.Gangamma under the mortgage deed. The said amount has been declared by the accused in his assets and liability statement and in the income tax returns of Smt.Gangamma. It is contended by the learned counsel that the trial Court has erroneously omitted the said income, without noticing that the entire amount has been transferred from the account of M.G.Ravi Kumar to the account of Smt.Gangamma.

69. Sri M.G.Ravi Kumar has been examined by the defence as DW.6. He has specifically stated about advancing a sum of Rs.15,00,000-00 to Smt.Gangamma under the mortgage deed and also produced the accounts

- 53 -

ledger. A sum of Rs.20,000-00 is paid by cash and remaining amount of Rs.14,80,000-00 has been paid through cheques and it is pointed out that the same is reflected in the bank account extract of Smt.Gangamma. Nothing is elicited in the cross-examination of the said witness to disbelieve his version. The accused has declared the said transaction in his annual property returns and his wife has made the declaration in her income tax returns for the financial year 2011-12. Infact the statement of DW.6 was recorded during investigation and he has confirmed the transaction. The bank account extract of Smt.Gangamma has been marked as Ex.P19. The relevant entries reveal that three cheques for a total sum of Rs.14,80,000-00 have been credited to her account. The cumulative reading of the mortgage deed, statement of DW.6, ledger extract-Exs.D7 and D8 of Indo Gas owned by M.G.Ravi Kumar, Ex.D2 ITR of Smt.Gangamma, Ex.P19 her bank account extract, assets and liability statement of accused at Ex.D3 and the evidence of M.G.Ravi Kumar - DW.6 establishes the fact that Smt.Gangamma, wife of the accused has received a sum of Rs.15,00,000-00. It is

- 54 -

relevant to mention that I.O.-PW.10 has admitted during cross-examination that M.G.Ravi Kumar has paid Rs.15,00,000-00 under the mortgage deed. Hence, the trial Court was not justified in rejecting the said refundable deposit. The said amount of Rs.15,00,000-00 is therefore required to be taken as income of the accused.

70. Hence, out of the additional income claimed by the accused, a sum of Rs.15,00,000-00 has to be added towards his income. Hence the recalculated income of the accused required to be added is Rs. 22,02,711-00 + Rs.15,00,000-00 = 37,02,711-00.

71. In so far as the agricultural income of Smt.Gangamma is concerned, the learned counsel for accused has contended that one Mr.Delvi, a retired Director of Agriculture has furnished a report as per Ex.D17 and also the brother of his wife has tendered his evidence as DW.8, showing that there was income from 3 acres of land in Survey No.107/9a and 107/9b of Nargunahalli Village. It is also contended that she has been declaring her income in the ITR and therefore the

- 55 -

trial Court has committed an error in refusing to accept the agricultural income and income from centering business of Rs.17,78,342-00 declared by Smt.Gangamma from 2008-09 to 2012-13.

72. The learned counsel for respondent has contended that Smt.Gangamma has received the property in a compromise decree and the said decree is passed after registration of the case and therefore, it cannot be considered that she is the owner of the property or she was receiving the agricultural income as claimed. He has supported the findings of the trial Court in this regard.

73. There is much force in the contention raised by the learned counsel for respondent. Admittedly, the compromise decree is passed after registration of the case and after the check period. Further, Mr.Delvi who is said to have given a report regarding her agricultural income was also not examined. Hence, it is not conclusively proved that Smt.Gangamma was having agricultural income as claimed.

- 56 -

74. The second component, income from the centering business is concerned, it is the contention of the learned counsel that in the year 1992 his wife has entered into an agreement with one Venkatesh in respect of a shop premises for running the centering material business, which she was running from two years and thereafter she has let out the business to one Veeranna in the year 1994. He has contended that Venkatesh and Veeranna are examined as DW.1 and DW.7 respectively and also relied the rental agreements contained in Ex.P82(D).

75. The trial Court has disbelieved the contention raised with regard to the income of Smt.Gangamma from centering business holding that there are no credible documents to believe the

same. The trial Court has examined the passbook entries and doubted as to whether with such few entries in the bank account, the business could be carried on. The trade license was also not produced but only the agreements entered with DW.1 and DW.7 are relied upon. The said agreements which are part of Ex.P82(D) have been examined by the learned Sessions

- 57 -

Judge. It is observed that there is no document to believe that DW.1 held the industrial shed in his name so as to let it out to Smt.Gangamma and he did not whisper that it was sublet to DW.7 and he consented for it. It is also observed that in his cross-examination he has replied that she herself was running the business in that premises, which is against the rental agreement dated 04.06.1994. Further, DW.7 has not corroborated his version with any credible document to prove payment of rent by him except the sale deed. The reasons put forth by the defence for non-examination of Smt.Gangamma was also considered by the trial Court. There are no acceptable evidence in support of the claim of the accused with regard to the income from centering business. The trial Court has rightly held that the IT returns are not supported by corresponding income generating documents and therefore they cannot be accepted on their face. Hence, accused is not entitled to claim the agricultural income of his wife Smt.Gangamma and her income from centering business.

- 58 -

76. Hence, the additional income of the accused at Sl.Nos.2 and 4 is recalculated as under:

Sl.No.	As per accused	As per trial Court	As per this Court
2	15,00,000-00	rejected	15,00,000-00
4	15,50,480-00	rejected	rejected

77. In the light of the above discussion, the recalculated assets, expenditure and income of the accused and his family members are as under:

Sl.No.	Particulars	As per the findings of trial Court	As per this Court
1	Total value of assets acquired by accused during check period.	1,26,94,799-90	73,06,976-00
2	Total expenditure incurred by accused during check period.	57,37,829-16	55,77,123-00
3	Gross Total	1,84,32,629-06	1,28,84,099-00
4	Total income of the accused during check period.	1,01,84,223-23	1,38,86,934-23

78. On evaluation and re-appreciation of the entire evidence and material on record, this Court finds that there is no excess income possessed by the accused during the check period and therefore, it cannot be held that the accused has possessed the properties and

- 59 -

pecuniary resources disproportionate to his known sources of income in his name and in the names of his family members, during the check period.

79. Another aspect is that, accused was subjected to departmental enquiry with regard to the charge of disproportionate assets. It is brought to the notice of the Court that after conclusion of the enquiry, the charges were held not proved. The contents of the report dated 14.01.2020 submitted by the learned counsel for appellant indicates that the enquiry was conducted in reference to the same charge on the basis of the final report submitted by the I.O.

80. It is not in dispute that the accused has been exonerated in the departmental enquiry conducted on the same charges. The learned counsel for appellant has relied on a decision of the Hon'ble Apex Court in the case of 'Ashoo Surendranath Tewari Vs. Dy.SP, EOW, CBI and another' reported in (2020) 9 SCC 636, wherein it is held that "in case of exoneration on merits, where the allegation is found to be not sustainable at all and the

- 60 -

person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases".

81. In so far as the conviction and sentence passed against the accused for the offence punishable under Section 177 of IPC is concerned, the trial Court has totally misguided itself and failed to see that there is a clear bar under Section 195 Cr.P.C. for taking cognizance of the said offence in the absence of a complaint as defined under Section 2(d) of Cr.P.C. by a public servant. Hence, the conviction and sentence passed against the accused for the said offence is also liable to be set aside.

82. For the foregoing reasons, I proceed to pass the following:

ORDER Appeal is allowed.

The judgment and order dated 23.03.2020 passed in Spl.C.No.525/2014 by the Court of the LXXVI Additional City Civil and Sessions Judge and Special Judge, City Civil

- 61 -

Court, Bengaluru (CCH-77), convicting and sentencing the accused/appellant for the offence punishable under Section 13(1)(e) r/w 13(2) of PC Act and under Section 177 of IPC, is hereby set aside.

Accused/appellant is acquitted of the above charges levelled against him.

Bail bonds executed by the accused/appellant is hereby discharged.

If any amount has been deposited towards fine, the same shall be refunded to the accused.

Sd/-

JUDGE HB