

Muthuraman vs State on 17 June, 2020

Author: P.Velmurugan

Bench: P.Velmurugan

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.12.2018

PRONOUNCED ON : 17.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.(MD)No.196 of 2011

Muthuraman

... Appellant/Accused

versus

State

Rep. by the Inspector of Police,
The Vigilance and Anti-Corruption
Department,

Nagercoil,

Kanyakumari District.

(Cr.No.3 of 2002)

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Cr.P.C. against judgment dated 30.06.2011 passed in Spl. Case No.6 of 2005 on the the Special Court Cum Chief Judicial Magistrate, Nagercoil.

For Appellant : Mr.V.Kathirvelu, Senior Counsel
for Mr.N.Sivakumar

For Respondent : Mr.M.Chandrasekaran,
Additional Public Prosecutor

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JUDGMENT

The sole accused, in S.C.No.6 of 2005 on the file of the learned Special Judge cum Chief Judicial Magistrate, Nagercoil, is the appellant herein. He stood charged for offences under Sections 13(2) r/w.13(1)(e) of Prevention of Corruption Act,1988. By judgment dated 30.06.2011, the trial Court convicted the accused under Sections 13(2) r/w.13(1)(e) of Prevention of Corruption Act,1988 and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for six months for the offences under sections 13(2)r/w.13(1)(e) of Prevention of Corruption Act,1988. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

2. The case of the prosecution in brief is as follows:

(i) The accused was an employee of the Tamil Nadu Police Department. The accused was joined as a Typist in the said Department on 01.02.1971 and now, he was working as a Personal Assistant to the Superintendent of Police, District Police Office, Virudhunagar District.

Thus, the accused was a public Servant within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988.

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(ii) When the accused was working as Superintendent in Ramanathapuram and Kanyakumari District from 01.02.1992 to 31.03.1997, the accused was found to have held properties and pecuniary resources in his name and in the name of his wife and sons as on 01.02.1992 worth about Rs.1,64,899/- and during that period, i.e. from 01.02.1992 to 31.03.1997, when the salary of the accused and his wife, namely, Tmt.K.Lakshmi, appears to be a sum of Rs.4,25,368/- and the total expenditure during that period appears to be a sum of Rs.2,28,674.32p, however, as on 31.03.1997, the accused was found to have the savings of Rs.1,96,693.68p and to have acquired and was in possession of properties and pecuniary resources in the name of himself and of his wife Tmt.K.Lakshmi to an extent of Rs.7,33,153.30p. and thereby, a sum of Rs.3,71,560.62p was found to be disproportionate to his known sources of income, for which, the accused had also not accounted satisfactorily and thereby, the accused had committed an offence punishable under Sections 13(2) r/w. 13(1)(e) of the Prevention of Corruption Act. 1988.

(iii) The respondent, after investigation, laid a charge sheet before the learned Chief Judicial Magistrate, Nagercoil. The learned Chief Judicial Magistrate, Nagercoil, who was designated to deal with Corruption Cases, <http://www.judis.nic.in> had taken the case on file as Special C.C.No.6 of 1995 and after completing the formalities, framed charges against the appellant/accused for the offence under Sections 13(2) r/w. 13(1)(e) of the Prevention of Corruption Act. 1988.

(iv) On the side of the respondent, as many as 30 witnesses have been examined as P.W.1 to P.W.30 and 45 documents have been marked as Ex.P1 to Ex.P45. When all the incriminating materials, that

appeared in the evidence let in by the prosecution witnesses were put to the appellant, he denied the same as false. On the side of the defence, five witnesses were examined as D.W.1 to D.W.5 and five documents were marked on his side as Ex.D1 to Ex.D5.

(vi) After the completion of trial and after hearing the arguments on either side, the learned Chief Judicial Magistrate, Nagercoil, found that the prosecution has proved its case beyond reasonable doubt and convicted the appellant/accused for the offence under Sections 13(2) r/w. 13(1)(e) of the Prevention of Corruption Act. 1988.

(vii) Challenging the said conviction and sentence passed by the learned Chief Judicial Magistrate, the accused has filed this Criminal <http://www.judis.nic.in> Appeal before this Court.

3. During the pendency of the appeal, the appellant filed two Criminal Miscellaneous Petitions in C.M.P.Nos.10283 of 2018 and 10490 of 2018 to receive the documents mentioned therein as additional evidence. Since both the petitions were filed only at the time of arguments, this Court took the petitions along with the main appeal and heard. On a perusal of the petitions, this Court found that the documents mentioned therein will not be helpful to decide the case of the appellant and even accepting the documents as additional evidence will not change the result of the appeal. Therefore, both the petitions are dismissed.

4. Learned Senior Counsel appearing for the appellant/accused submitted that P.W.30-Inspector of Police, who investigated the matter, has no authority to investigate the same. Further, there is no authorization from the State Government. Ex.P40 marked on the side of the prosecution is only an order and it does not indicate any authorization to investigate the matter. Unless the authorization is produced, the entire investigation done by the Inspector of Police (P.W.30) is vitiated for want of authorization from the State Government. Further, during the check period, the appellant/accused worked at Ramanathapuram, the respondent Police had no territorial <http://www.judis.nic.in> jurisdiction to investigate the matter.

4.1. Learned Senior Counsel for the appellant/accused also submitted that the sanctioning authority, before issuing the order of sanction, without conducting any preliminary departmental enquiry and without applying its mind, accorded sanction for prosecution. Therefore, Ex.P1-sanction order is not valid document.

4.2. Learned Senior Counsel for the appellant further submitted that the prosecution has not proved the essential ingredients of the Prevention of Corruption Act. Further, there was no complaint as against the accused by anyone during the entire service period of the appellant/accused alleging that he has taken gratification other than the remuneration.

4.3. Learned Senior Counsel for the appellant/accused further submitted that though the accused had accounted satisfactorily, the respondent has not properly appreciated the same. If the accounts of the appellant is properly verified, there will not be pecuniary resources for property disproportionate to the known sources of income. It is further submitted that Ex.P45-explanation was given by the appellant/accused on 05.10.2003, while the charge sheet was laid on 16.11.2005,

which led the <http://www.judis.nic.in> prosecution to fabricate the documents and records.

4.4. With regard to the assets/properties, the learned Senior Counsel for the appellant/accused submitted that the appellant/accused, at the time of his marriage, was given 197 grams of sovereign as seethanam and the same has been mentioned in the property statement which was submitted to the department.

4.4.1. Apart from this, the mother-in-law of the appellant/accused executed a sale deed under Ex.D1 for a sum of Rs.1,25,000/- and the said amount was given to the appellant/accused to take care of his father-in-law and mother-in-law. D.W.1—Mr.Murugesan, who is the brother of the appellant, in his evidence, has clearly deposed that the mother-in-law of the appellant/accused had more properties and on 14.12.1994, the mother-in-law of the appellant/accused sold a house, which situated at Vadiveeswaram, for a sum of Rs.1,25,000/- to one Subramanian and the said amount was also handed over to the wife of the appellant. D.W.1 further deposed that the appellant/accused and his wife had taken care of father-in-law and mother-in-law till their life time. It clearly proves that the mother-in-law of the accused had given the sum of Rs.1,25,000/- for taking care of her life by the accused and his wife. However, the same has not <http://www.judis.nic.in> been taken into consideration by the respondent as well as by the Special Court.

4.5. The learned Senior Counsel appearing for the appellant/accused further submitted that the wife of the appellant has also taken tuition and earned income. From and out of the said income, the property was purchased and the same was also used for construction of the building. In order to prove the said fact, D.W.1, in his cross examination, stated that his brother's wife had taken tuition and also earned income. But the same has not been considered by the prosecution.

4.6. It is further submitted that the appellant sold the property situated at Mogappair, Chennai, in the year 2002, from and out of the said amount, the appellant/accused has completed the construction of building and purchased an agricultural land, through which, the appellant got the income of Rs.1,06,300/-. To prove the same, the appellant/accused examined one Kannan as D.W.4, who took the paddy for sale. Further, the appellant/accused has explained about the agricultural income in Ex.P45. However, the Special Court has not believed the agricultural income of Rs.1,06,300/- as his known sources of income and failed to appreciate the fact that the paddy sale is only a seasonable business and that too only <http://www.judis.nic.in> during the harvest season and further, the retail vendors do not have any licence and the local paddy vendors would purchase the paddy from the land owners and other lessees and they would sell it in the nearest market in the town, therefore, they cannot be expected to maintain the records. According to the Village Administrative Officer (P.W.20), there was a drought in the Village, however, there was no document produced by the Village Administrative Officer (P.W.20). Though there was no document to show that there was a drought in the Village, the Special Court has erred in accepting the evidence of P.W.20.

4.7. The learned Senior Counsel appearing for the appellant/accused further submitted that the building was not properly valued by a competent Civil Engineer and the value has been assessed without deducting any depreciation of the building. If the building is valued after deducting

depreciation, the value of building will be less. The Special Court failed to appreciate the evidence of P.W.8, who admits that only on the basis of the tax receipt, it cannot be decided that construction work is completed within a prescribed period. Therefore, the assessment of building tax is not an authority for coming to a conclusion that the entire work of the building is completed at the time of assessing building.

<http://www.judis.nic.in> 4.8. The learned Senior Counsel appearing for the appellant further submitted that the appellant/accused had also leased out his house, which is in the name of the his wife, to the Land Development Bank for a period of four years and also received a sum of Rs.23,950/- towards rent for the said period. D.W.2 – Thiru.Mani, who is the employee of the Land Development Bank, has also deposed in his evidence that the Land Development Bank during the period of 13.06.1993 to 14.06.1997 was functioning at Door No.64-D, Mela Ratha Road, Boothapandi and had given a sum of Rs.23,950/- as rent for the said period. Since the Land Development Bank is under the control of NABARD Bank, the evidence of D.W.2, who is the employee of the said Bank cannot be said to be unacceptable. However, the trial Court has not considered the said evidence and has also not taken the said amount as known source of income of the accused.

4.9. The appellant/accused had also borrowed a sum of Rs.75,000/- from a private Financier for the purpose of construction of the building. To substantiate the same, the said Financier was also examined as D.W.3 before the trial Court. He has also deposed in his examination that on 08.02.1997, he lent a sum of Rs.75,000/- to the wife of the accused/appellant and he also charged 1% interest for the said amount and <http://www.judis.nic.in> he has also received a chain weighing 10 sovereigns towards security and thereafter, on 20.01.1998, the wife of the accused repaid the said amount and got the debit sheet, which was prepared for the said borrowal. The said debit sheet was marked as Ex.D3. When D.W.3 clearly deposed about the borrowed amount, which was given to the wife of the accused, the Special Court did not consider the evidence of D.W.3.

4.10. It is further submitted by the learned Senior Counsel for the appellant/accused that though the appellant/accused had given his explanation under Ex.P45, the respondent has rejected the explanation without applying its mind, which is not legally sustainable. Therefore, the prosecution has to prove its case beyond reasonable doubt. Hence, the accused is liable to be acquitted.

4.11. In support of his submission, the learned Senior Counsel relied upon the following Judgments:

(i) 1979 (4) SCC 172 (Mohd. Iqbal Ahmed vs. State of Andhra Pradesh)

(ii) 1981 (3) SCC 199 (State of Maharashtra vs. Wasudeo Ramchandra Kaidalwar)
<http://www.judis.nic.in>

(iii) 1991 (3) SCC 655 (K.Veerarwami vs. Union of India and others)

(iv) 1998 (9) SCC 268 (State of T.N. vs. M.M.Rajendran)

(v) 2001 (4) SCC 759 (Rambhau and another vs. State of Maharashtra)

(vi) 2011 (2) SCC (Cri) 258 (Ashok Tshering Bhutia vs. State of Sikkim)

(vii) AIR 2017 Supreme Court 3713 (Vasant Rao Guhe vs. State of Madhya Pradesh)

(viii) 2018 (1) MLJ (Crl) 745 (N.Pasupathy vs. State, Rep. by the Inspector of Police, Vigilance and Anti-Corruption, Chennai City – II, Nandanam, Chennai – 600 035).

(ix) 2018 (3) MLJ (Crl) 360 (Hamsa Manoharan and another vs. State, rep. by Inspector of Police, SPE/CBI/ACB, Chennai)

5. The learned Additional Public Prosecutor appearing for the respondent submitted that after investigation, a charge sheet was filed and in order to prove the case of the respondent, as many as 30 witnesses were examined on the side of the respondent and 45 documents were marked. It is further submitted that the prosecution has also proved its case beyond reasonable doubt through oral and documentary evidence. Even before laying the charge sheet after investigation, explanation was called for from the appellant/accused, for which, the appellant/accused has also submitted <http://www.judis.nic.in> in his explanation and the same was marked as Ex.P45. However, the explanation given by the appellant/accused was not satisfactory and he has not proved his defence through oral and documentary evidence. Therefore, the trial Court, after considering the oral and documentary evidence, held that the appellant was guilty of offence punishable under Sections 13(2) r/w. 13(1)(e) of the Prevention of Corruption Act, 1988 and convicted for the same.

5.1. Replying to the contention of the learned counsel appearing for the appellant/accused with regard to the sanction for prosecution, the learned Additional Public Prosecutor submitted that P.W.1, who is the sanctioning authority for prosecution, after going through all the contents and after having obtained recommendations/opinions of three officers/Department, namely, Public Prosecutor, the Department of Personal and Administrative Reforms and Law Department and after having satisfied himself on the said case, he passed the orders. Further, after getting the explanation from the accused with regard to the disproportionate income and not being satisfied with the same, P.W.1 passed the order for prosecution.

<http://www.judis.nic.in> 5.2. With the regard to the contention made by the learned counsel appearing for the appellant/accused that the mother-in-law of the accused/appellant had given a sum of Rs.1,25,000/- to the wife of the appellant/accused, the learned Additional Public Prosecutor submitted that D.W.1-brother of the accused was examined to prove the said fact. However, he did not say about the said date of transaction. Except the brother of the accused, who was examined as D.W.1, neither the mother-in-law of the appellant/accused, who sold the property and gave the said amount to her daughter/wife of the accused nor the wife of the accused came forward to give evidence in this regard. Therefore, the evidence of D.W.1 cannot be acceptable.

5.3. So far as the tuition income is concerned, the learned Additional Public Prosecutor submitted that though D.W.1 was examined in this regard, he did not know to say, on what subject, she had

completed her M.Sc. Degree and she had passed and failed in the said degree course. Further, when P.W.24 – Village Administrative Officer of Boothapandi, was questioned by the Vigilance and Anti-Corruption Department with regard to the tuition taken by the wife of the accused during the period from 1991 to 1994, he issued a certificate (Ex.36) stating that no tuition was taken by the wife of the accused. Therefore, the income derived from the tuition taken <http://www.judis.nic.in> by the wife of the accused cannot be believable.

5.4. As far as the rental income is concerned, though D.W.2 stated that during the period from 13.06.1993 to 14.06.1997, a sum of Rs.23,950/- was given to the wife of the accused towards rent, he was not in a position to depose about the rental agreement executed between the Bank and the accused. Further, since the Land Development Bank is under the control of NABARD Bank, the said Bank is supposed to have executed a rental agreement between the tenant and landlord, which has to be necessarily approved by the concerned authority. When there being no such rental agreement, such income cannot be said to be the known sources of income of the accused.

5.5. With regard to the loan availed from the private financier, the learned Additional Public Prosecutor submitted that D.W.3 in his cross examination deposed that he has not known, before whom, the Debit Slip was executed and who has executed the said Debit Slip, which proves that the Debit Slip was fabricated by the accused.

5.6. So far as the agricultural income is concerned, the learned Additional Public Prosecutor submitted that Ex.D4 does not indicate about <http://www.judis.nic.in> the type of paddy purchased by D.W.4 from the accused. Further, there was no payment of Commercial Tax, Sales Tax and Income Tax, with regard to the same, which was admitted by D.W.4. Further, P.W.20-Village Administrative Officer in his evidence stated that there was no income from the agricultural land of the accused. Therefore, the evidence of D.W.4 was not corroborated with the evidence of P.W.20. Hence, the said income cannot be acceptable.

5.7. The learned Additional Public Prosecutor further submitted that though the accused has stated that from those income, he had the amount of Rs.3,87,550/-, he does not indicate the same in the schedule of asset (Ex.P3). Thereafter, he has also given the schedule of asset (Ex.P45) by including certain assets, which does not include in the Ex.P3. Further, the accused has not given any satisfactory explanation to the disproportionate assets. After carefully considering all the details and explanation given by the accused, P.W.30 had given sanction for prosecution against the accused and passed an order. Therefore, the contention of the learned counsel appearing for the appellant/accused that the sanctioning authority, without applying its mind, passed an order, does not merit acceptance. <http://www.judis.nic.in> 5.8. The learned Additional Public Prosecutor also submitted that the appellant was duty bound to explain and account for the assets/savings satisfactorily, how he amassed wealth to such extent, but, he did not give any satisfactory explanation. Therefore, the trial Court found him guilty of offence and convicted and sentenced him as stated above. Further, the trial Court has given proper reasons to convict the appellant/accused and it does not require any interference.

5.9. It is further submitted by the learned Additional Public Prosecutor that since the prosecution has established the disproportionate assets, the burden has been shifted to the appellant/accused and they have to rebut the presumption. But, in this case, no documents have been filed by the accused and no satisfactory explanation has been offered by the accused. Further, the appellant has not satisfactorily rebutted the presumption. In these circumstances, there is no perversity in the findings arrived at by the trial Court. Therefore, the appeal is liable to be dismissed.

6. Heard the arguments of both sides and perused the records.

7. The allegation against the appellant/accused is that when he was working as Office Superintendent in Ramanathapuram and Kanyakumari <http://www.judis.nic.in> District from 01.02.1992 to 31.03.1997, the appellant was found to have held properties and pecuniary resources in his name and in the name of his wife and sons as on 01.02.1992 worth about Rs.1,64,899/- and during that period, i.e. from 01.02.1992 to 31.03.1997, when the salary of the accused and the salary of the wife of the accused, namely, Tmt.K.Lakshmi appears to be a sum of Rs.4,25,368/- and the total expenditure during that period appears to be a sum of Rs.2,28,674.32p, however, as on 31.03.1997, the accused was found to have the savings of Rs.1,96,693.68p and to have acquired and was in possession of properties and pecuniary resources in the name of himself and of his wife Tmt.K.Lakshmi to the extent of Rs. 7,33,153.30p. and thereby, a sum of Rs.3,71,560.62p was found to be disproportionate to his known sources of income, for which, the accused has not accounted satisfactorily and thereby, the accused had committed an offence punishable under Sections 13(2) r/w. 13(1)(e) of the Prevention of Corruption Act. 1988.

8. After the investigation, the Investigating Officer has arrived at a conclusion that the appellant was in possession of both movable and immovable assets. For better understanding, it would be appropriate to extract the statement of properties:-

<http://www.judis.nic.in> STATEMENT – I Assets that stood to the credit of the accused officer as on 01.02.1992 S. Property Value No. (Rs.)

1. Value of 3 cents 125 Sq. link of vacant land in R.S.No. 3,200.00 202/18 of Boothapandy Village in the name of A.O.Tr.K.Muthuraman vide document No.1408/84 dated 4.12.84 of Boothapandy Sub-Registrar's Office.

2. Value of 2 cents of vacant land in R.S.No.202/18 of 3,000.00 Boothapandy Village in the name of A.O's wife Tmt.K.Lakshmi, vide document No.1508/85 and Boothapandy Sub-Registrar's Office.

3. Value of 194 grams of gold jewels gifted to A.O's wife Nil Tmt.Lakshmi at the time of her marriage took place on 06.06.1975 and his sons Tr.M.L.Selvakumar and Tr.M.L.Krishnakumar at the time their birth day function during 1976 and 1978.

4. Value of one bicycle purchased by A.O. 180.00 Tr.K.Muthuraman during 1971

5. Value of two ceiling fans purchased by A.O. 400.00 Tr.K.Muthuraman during 1976.

6. Value of one Keltrone Table Fan gifted at the time of Nil his marriage of A.O. Tr.K.Muthuraman took place on 06.06.1975.

7. Value of one Telerad Radio purchased in the name of 430.00 A.O. - Tr.K.Muthuraman during 1975.

8. Value of one Philips AR-135 Tape recorder purchased 980.00 by A.O.-Tr.K.Muthuraman during 1982.

<http://www.judis.nic.in> S. Property Value No. (Rs.)

9. Value of 1 cent of vacant land in R.S.No.202/18 1800.00 (770/839) of Boothapandy Village in the name of A.O- Tr.K.Muthuraman vide document No.405/87, dated 10.04.87 of Boothapandy Sub-Registrar Office.

10. Value of New Enfield Colour T.V. Purchased from 9,600.00 J.Electronics, Nagercoil in the name of A.O. -

Tr.K.Muthuraman after 24.06.1987.

11. Tr.K.Muthuraman constructed a house with a plinth 1,17,759.00 area of 1134 sq.ft. in R.S.No.202/18 of Boothapandy Village in Door No.69 (Old No.64-C) West Car Street, Boothapandy, Kanyakumari District in his name during the period between March 1987 and Sep. 1987

12. Value of New Hero Honda CD-100 Motorcycle 26,000.00 bearing Registration No.TN-74-7191 in the name of A.O. - Tr.K.Muthuraman during October 1991.

13. Value of Gas Stove with two Cylinders and Regulators 1,550.00 purchased by A.O. During 1982.

Total

STATEMENT – II

The assets that stood to the credit of the accused officer at the end of the Check period (i.e.) 31.03.1997.

S. No.	Property
1.	Value of 3 cents 125 Sq. link of vacant land in R.S.No. 202/18 of Boothapandy Village in the name of

A.O.Tr.K.Muthuraman vide document No.1408/84 dated 04.12.84 of Boothapandy Sub-Registrar's Office <http://www.judis.nic.in> S. Property Value No. (Rs.)

2. Value of 2 cents of vacant land in R.S.No.202/18 of 3,000.00 Boothapandy Village in the name of A.O's wife Tmt.K.Lakshmi, vide document No.1508/85 of Boothapandy Sub-Registrar's Office

3. Value of 194 grams of gold jewels gifted to A.O's wife Nil Tmt.Lakshmi at the time of her marriage took place on 06.06.1975 and his sons Tr.M.L.Selvakumar and Tr.M.L.Krishnakumar at the time their birth day function during 1976 and 1978.

4. Value of one bicycle purchased by 180.00 A.O.Tr.K.Muthuraman during 1971

5. Value of two ceiling fans purchased by A.O. - 400.00 Tr.K.Muthuraman during 1976

6. Value of one Keltrone Table Fan gifted at the time of Nil his marriage of A.O.-Tr.K.Muthuraman took place on 06.06.1975

7. Value of one Telerad Radio purchased in the name of 430.00 A.O.-Tr.K.Muthuraman during 1975

8. Value of one Philips AR-135 Tape recorder purchased 980.00 by A.O.-Tr.K.Muturaman during 1982

9. Value of 1 cent of vacant land in R.S.No.202/18 1,800.00 (770/839) of Boothapandy Village in the name of A.O.-Tr.K.Muthuraman vide document No.405/87, dated 10.04.'87 of Boothapandy Sub-Registrar Office.

10. Value of New Enfield Colour T.V. Purchased from 9,600.00 J.Electronics, Nagarcoil in the name of A.O.-

Tr.Muthuraman dated 24.06.1987

11. Tr.K.Muthuraman constructed a house with a plinth 1,17,759.00 area of 1134 Sq.ft in R.S.No.202/18 of Boothapandy Village in Door No.69 (Old No.64-C) West Car Street, Boothapandy, Kanyakumari District in his name during the period between March 1987 and September 1987.

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S.	Property
No.	
12.	Value of New Hero Honda CD-100 Motorcycle

bearing Registration No.TN-74-7191 in the name of A.O.-Tr.K.Muthuraman during October 1991.

13. Value of Gas Stove with two Cylinders and Regulators 1,550.00 purchased by A.O. during 1982.
14. Value of 1.17 acres wet land in R.S.No261/2, 261/3 72,450.00 and 247/10 of Boothapandy Village in the name of A.O.-Tr.K.Muthuraman vide document No.469/92, dated 30.03.1992 of Boothapandy Sub-Registrar
15. Tr.K.Muthuraman constructed a house with plinth area 1,34,868.00 780 Sq. ft. in R.S.No.202/18 of Boothapandy Village in Door No.70 (old No.64-D) at West Car Street.
- Boothapandy, Kanyakumari District in the name of his wife Tmt.K.Lakshmi during the period between 1992 September and May 1993.
16. Tr.K.Muthuraman constructed a house with plinth area 3,59,640.00 1063 Sq. ft. in R.S.No.202/18 of Boothapandy Village at the first floor of Door No.69 and 70 (Old No.64-C, 64-D) at West Car Street, Boothapandy, Kanyakumari District in the name of his wife Tmt.K.Lakshmi during the period between June 1996 and March 1997.
17. Value of National Savings Certificate No. 1,000.00 6NS-12CC-456777 purchased on 21.08.1996.
18. Cash Balance on credit in S.B.A/c.No.5231, Canara 296.30 Bank, Boothapandy in the name of A.O.'s wife Tmt.K.Lakshmi as on 31.03.1997.

Total 7

<http://www.judis.nic.in>

STATEMENT – III

The income of the accused officer during the check period (i.e.) 01.03.1992 to 31.03.1997.

- | S. | Property |
|-----|--|
| No. | |
| 1. | Income received through the sale proceeds of |

Ambathur (Chennai) Plot in Mogappair Village Survey No.150/2, document No.4814/79 dated 24.12.79 and document No.3265/92 dated 05.02.1992 of Sub-

Registrar's Office, Ambattur.

2. Total net pay drawn by the A.O.-Tr.K.Muthuraman 2,37,226.00 during the check period House Building Advance, including arrears, Surrender leave salary, G.P.F., Loan, Festival Advance etc. from 01.01.87 to 31.03.1997 from District Police Office, Ramnad and District Police Office, Nagercoil.

3. Amount received in respect of Chit No.49/96 NB.3/18 21,000.00 in the name of A.O.-Tr.K.Muthuraman conducted by Sree Visalam Chit Fund, Nagercoil (Amount received on 20.02.1997).

4. Interest received from Canara Bank during the check 142.00 i.e. 01.03.1992 to 31.03.1997 vide SB A/c.No. Total 4,25,368.00 <http://www.judis.nic.in> STATEMENT – IV The expenditure of Accused Officer Tr.K.Muthuraman during the period of check 01.02.1992 to 31.03.1997 as revealed during investigation is furnished below.

S.	Property
No.	

1. Family Consumption Expenditure of Tr.K.Muthuraman 1,68,377.32p (AO) and his family members during the check period (i.e.) from 01.02.1992 to 31.03.1997.

2. Amount paid towards stamp duty and Registration fees 9,503.00 paid by A.O. for the execution of the Document No. 469/92 dated 30.03.1982 at the Sub-Registrar's Office, Boothapandi.

3. Amount paid as deposit to the Tele Communication 5941.00 Department, Nagercoil for the Telephone No.282184 on 05.02.1995 is Rs.900/- and Telephone Rent and charges paid upto 31.03.1997 i.e. during the check period Rs.5041/-.

(Total 900 + 5041 = 5941.00)

4. Amount paid towards Chit No.49/96 of Sree Visalam 8,000.00 Chit Fund Ltd., Nagercoil during the period between 21.06.96 and 31.03.97.

5. Land tax paid by A.O. for the land in R.S.No.261/2, 940.00 261/3 and 247/10 of Boothapandy Village in his name for the period from 01.02.1992 and 31.03.1997.

6. House Tax paid by A.O. for the house in the name of 1,838.00 A.O.-Tr.K.Muthuraman and in the name of his wife Tmt.K.Lakshmi in Door No.69 & 70, West Car Street, Boothapandy, K.K.District for the period from 01.02.92 to 31.09.97.

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S. No.	Property
7.	Amount paid towards Electricity connection at Door No.68, 70, West Car Street, Boothapandy,

Kanyakumari District vide service No.B-234, B-390 and B-393.

8. Amount paid towards Fuel expenses, Repair charges 26,186.00 and Service charges of TN 74 7191.

9. Amount paid towards College Fees for the A.O.'s sons, 6,249.00

1) Tr.M.L.Krishnakumar and 2) Tr.M.L.Selvakumar at Mohammed Sathak Polytechnic, Keelakarai, Ramnad District and S.T.Hindu College, Nagercoil, Kanyakumari District respectively during the check period.

Total 2,28,674.32p According to the respondent, following are the assets acquired during the check period either in the name of the appellant or his family members, likely savings and the quantum of disproportionate assets:

STATEMENT – V The assets that stood to the credit of the accused officer at the end of the check period (i.e.) 31.03.1997 Rs.7,33,153.30 Value of assets that stood to the credit of the accused officer as on 01.02.1992 Rs.1,64,899.00 _____
Assets acquired by the accused during the check period 01.02.1992 to 31.03.1997 = Rs.5,68,254.30 (Statement II) – (Statement I) _____
<http://www.judis.nic.in> STATEMENT – VI The income of the accused officer during the check period (i.e.) 01.03.1992 to 31.03.1997 Rs.4,25,368.00 The expenditure of accused during the period of check 01.02.1992 to 31.03.1997 as revealed during investigation is furnished below. Rs.2,28,674.32p Likely savings of the accused during the _____ check period (i.e.) 01.03.1992 to 31.03.1997. = Rs.1,96,693.68p (Statement III) – (Statement IV) _____ STATEMENT – VII Assets acquired by the accused during the check period 01.02.1992 to 31.03.1997. Rs.5,68,254.30 Likely savings of the accused during the check period (i.e.) 01.02.1992 to 31.03.1997 Rs.1,96,693.68 Disproportionate assets acquired during _____ the check period (i.e.) 01.02.1992 to 31.03.1997 = Rs.3,71,560.62 (Statement V) – (Statement VI) _____
DISPROPORTIONATE ASSETS : Rs.3,71,560.62 Percentage of Disproportionate Assets : Statement – VII <http://www.judis.nic.in>

----- x 100 Statement – III : 3,71,560.62p

----- x 100 4,25,366 = 87.35%

9. It is seen that there are no documentary evidence on the side of the appellant to prove the fact that the above movable and immovable properties were acquired through the legal sources of income. Further, the appellant being a public servant should have obtained permission before entering into any negotiation for acquisition or disposition of any property or must have informed about the transaction as soon as the same was completed. But, the appellant neither obtained permission from the department before entering into any transaction nor intimated the same after the transaction was over.

10. On the side of the prosecution, in order to prove the allegation as against the appellant/accused, the Sanctioning Authority was examined as P.W.1. He has clearly deposed that after going through the entire materials placed before him, he accorded the sanction for prosecution. The explanation submitted by the appellant was not satisfactory and the appellant had also not accounted for the disproportionate assets. Therefore, the contention raised by the learned counsel for the appellant that Ex.P1-

<http://www.judis.nic.in> sanction order is an inadmissible in evidence cannot be acceptable. Further, in order to prove the land stand in the name of the appellant, witnesses have been examined. However, there was no sufficient explanation from the appellant with regard to the same.

11. According to the appellant, he has offered his explanation in Ex.P45 and also examined five witnesses and marked four documents on his side to substantiate the case. Further, the construction of building has not been completed within the check period. But, the same had gone beyond the check period that was not taken into consideration by the trial Court. Further, the gift of Rs.1,25,000/- given by mother-in-law to his wife and the income of the wife from tuition taken by her have not been taken into consideration by the trial Court. Moreover, the value of construction has been taken without giving any depreciation. If all the facts are taken into consideration, there are no disproportionate assets. However, the trial Court has failed to consider the same.

12. The appellant/accused claimed that 197 gram jewellery was gifted to his wife as seethanam. If at all the asset comes through the wife, intimation has to be given to the Department. But the appellant has not established that in the assets and liabilities statements submitted before the <http://www.judis.nic.in> department he has accounted for the same.

13. So far as the agricultural income is concerned, P.W.20 Village Administrative Officer has clearly stated that during the relevant period, there could be no income from the said land. Though the appellant has submitted some receipts to show the agricultural income, the trial Court has rightly held that those receipts have been concocted for the purpose of this case.

14. So far as the income of Rs.1,25,000/- said to have been donated by the mother-in-law of the appellant is concerned, though the appellant has stated in his explanation, however, the appellant has not examined his wife as defence side witness to establish that his mother-in-law donated a sum of Rs.1,25,000/- to his wife and his wife invested the money to construct the building. Further, the wife of the appellant was examined by the Investigating Officer and recorded statement under

Section 161(3) of Cr.P.C, wherein, she has not stated that his mother donated a sum of Rs. 1,25,000/- to her.

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15. When the appellant contended that even after the check period, construction was going on, there must be some evidence to show that after the check period, construction of the building was going on and what was the amount spent for the said period. Though the appellant has taken loan for construction, but on seeing the records, with regard to the value of building, the Engineer, Public Works Department clearly says that it is beyond the amount which was specified by the appellant/accused. Therefore, it is for the appellant to explain the same.

16. So far as the income from the rent is concerned, though the Land Development Bank is a Public Sector Undertaking, the appellant cannot lease out the building without any valid document. With regard to the income from tuition, the wife of the appellant/accused was not examined and when the wife of the appellant/accused gave a statement before the investigating Officer, she has not specified any amount/income towards tuition fees. Further, neither anyone of the students nor parents of the students was examined and there was no specific details about the number of students, who were all availed the tuition. Therefore, the income from tuition has not been proved by the appellant in the manner known to law. Moreover, the evidence of D.W.1, who is the brother of the accused/appellant does not indicate the details of course completed by the <http://www.judis.nic.in> wife of the accused and does not speak about the number of students being taught by the wife of the appellant. In this case, the wife of the accused should have been examined as defence side witness to speak about the income from the tuition. But, it has not been done so. Therefore, the income from tuition as claimed by the appellant is not acceptable.

17. So far as the value of building is concerned, the competent Engineer has assessed the value of the building. But, according to the appellant/accused, the construction of building had gone beyond the check period and it has been valued without deducting the depreciation of the building. When that being the case, it is for the appellant should prove the same in the manner known to law. However, he has not established the fact that beyond the check period, the construction was going on and the value of the building was not calculated after reducing the depreciation value.

18. It is needless to say that as per Section 13(1)(e) of the Prevention of Corruption Act, 1988, the initial burden to bring home the charge of criminal misconduct thereunder would be indisputably on the prosecution to establish beyond reasonable doubt, once the prosecution established the charges levelled against the public servant, it is for the accused to rebut the presumption under Section 20 of the Act and onus is on the public servant <http://www.judis.nic.in> to account for and satisfactorily explain the assets, if he fails to satisfactorily account of the same, he would liable to be held guilty of such offence.

19. In this case, the respondent has established through oral and documentary evidence beyond reasonable doubt that during the check period, the appellant was in possession of pecuniary resources or property disproportionate to his known sources of income. But, the appellant has not

produced any documentary evidence in the manner known to law to show that the income received from all lawful sources were intimated in accordance with the provisions of law, rules, orders for the time being applicable to public servant. Assuming that the appellant/accused is supposed to have acquired any assets either in his name or in his wife's name, he is expected to get necessary permission from the concerned authority or intimation to the Department. In this case, the appellant/accused has not done so. It clearly proves that the income/assets mentioned in the schedule as above has not derived from the lawful sources. Even otherwise, he has not stated as to whether the entire assets acquired by him during the check period, has been shown in the assets and liabilities statement submitted before the department.

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20. After having carefully gone through the oral and documentary evidence, the trial Court has rightly rejected the defence taken by the appellant. Being a public servant, had he lent or borrowed any amount or disposed or acquired any movable or immovable property in his name or in any of his family members, necessarily, he ought to have intimated the same to the department by way of prescribed form or obtained prior permission. The appellant has not done so. The explanations offered by the appellant were not substantiated and all such explanations were bald in nature and not admissible in the eye of law. Certainly it is not necessary to accept those statements or explanations when they are without any substances. Therefore, this Court finds that the rejection of the defence of the appellant by the trial Court is perfectly correct and does not find any perversity in appreciation of the evidence.

21. In a case of this nature, though the initial burden is on the prosecution to prove the possession of property or resources disproportionate to the known sources of income of public servant and the inability of the public servant to account for them, once it has been discharged by the prosecution, then the onus is on the accused to prove that the assets were possessed from known sources of income. <http://www.judis.nic.in>

22. As discussed above, the appellant being a public servant has not satisfactorily explained along with valid documentary proof to the satisfaction of the Court, in the manner known to law. There is no ground with the legal proposition as held in the referred cases. The citations referred to by the learned Senior Counsel for the appellant are not applicable to the present case on hand.

23. Therefore, this Court is of the view that the prosecution has proved its case beyond reasonable doubt. The trial Court has rightly come to the conclusion that the appellant was guilty of offence under Sections 13(2) r/w. 13(1)(e) of Prevention of Corruption Act, 1988 and viewing from any angle, this Court finds no reason to interfere with the judgment of conviction and sentence passed by the trial Court.

24. In the result, the criminal appeal is hereby dismissed and judgment of conviction and sentence dated 30.06.2011 recorded in Special Case No.6 of 2005 by the learned Special Judge and Chief Judicial Magistrate, Nagercoil, stands confirmed.

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25. The trial Court is directed to secure the appellant/accused to undergo the period of sentence imposed to him. The competent authority is directed to take appropriate steps against the disproportionate assets in accordance with law.

17.06.2020 ogy To

1. The Inspector of Police, The Vigilance and Anti-Corruption Department, Nagercoil, Kanyakumari District.

2. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

<http://www.judis.nic.in> P.VELMURUGAN, J.

ogy Pre-delivery Judgment made in 17.06.2020 <http://www.judis.nic.in>