The State Of Karnataka vs M.N.Marthandappa on 9 March, 2020

IN THE COURT OF LXXVIII ADDL.CITY CIVIL & SESSIONS JUDGE
& SPECIAL JUDGE (Prevention of Corruption Act), BENGALURU
(C.C.H.No.79)

Present: Sri.Gopalakrishna Rai.T, B.A.(Law), LL.B.,
LXXVIII Addl.City Civil & Sessions Judge
& Special Judge (P.C.Act.), Bengaluru.
Dated: 9th day of March 2020

Special C.C. No.134/2012

Complainant: The State of Karnataka,
represented by the Police Inspector,
Karnataka Lokayukta,
City Division, Bengaluru.
(By Public Prosecutor)

vs.

Accused: M.N.Marthandappa
S/o Late M.Neelappa
Assistant Engineer,
Office of Executive Engineer
(Planning), Central-1,
N.R.Square, BBMP,
Bengaluru.
R/at No.17,
2nd Cross, Bhagiratha Layout,
Behind Canara Bank,
Kengeri Satellite Town,
Bengaluru-560060.
(By Sri.S.P.Hegde-Advocate.)

Date of commission of offence	:	03.04.2009
Date of report of occurrence	:	03.04.2009
Date of arrest of accused	:	03.04.2009
Date of release of accused on bail	:	12.09.2012
Date of commencement of evidence	:	25.01.2016
Date of closure of evidence	:	10.10.2019
Name of the complainant	:	Sri.Prasanna.V.Raju
Offence complained of	:	Punishable under section 13(1)(e) r/w/s 13(2) of Prevention of Corruption Act.
Charge framed against Accused	:	Under Section 13(1)(e) r/w/s 13(2) of Prevention of Corruption Act.

Opinion of the Judge : Accused found not guilty

JUDGMENT

The above said accused has been prosecuted by the Police Inspector, Karnataka Lokayukta (City Division), Bengaluru, for the offence punishable under Section 13(1)(e) read with Section 13(2) of Prevention of Corruption Act, 1988.

Spl.CC.No.134/2012

1. The brief facts of the prosecution case are as under :+ 1.1. The accused was working as Assistant Engineer, in the Office of the Executive Engineer (Planning), Central□1, N.R.Square, BBMP, Bengaluru and as a public servant, during the check period commencing from 29.10.1987 to 03.04.2009, acquired properties and assets disproportionate to his known source of income. On 03.04.2009, when a search was conducted in the house of the accused he was found in possession of pecuniary resources and properties in his name and in the name of his family members to the tune of Rs.52,42,639.49. The investigation revealed the fact that the expenses of the accused and his family during that period was Rs.85,73,323.81. Hence, the total assets and expenditure of his family during the check period was Rs.1,38,15,963.30. The investigation did reveal the fact that during the check period the known source of income of the accused was Rs.43,57,873.25 and hence, accused was found in possession of the property disproportionate to his known source of income to the extent of Rs.94,58,090.05 which amounts to 217.03% for which he could not satisfactorily account for. Thereafter on securing Prosecution Sanction Order the Investigating Officer laid the charge sheet against Spl.CC.No.134/2012 the accused for the offence punishable under section 13(1)(e) r/w 13(2) of Prevention of Corruption Act.

1.2. This Court on taking the cognizance of the offence alleged, issued process of summons to the accused, he appeared before this Court and got enlarged on bail. The accused was provided with copy of charge sheet and its enclosures as provided under Section 207 of Cr.P.C. This Court has heard both the parties on framing charge and having found prima□facie materials, framed the charge against the accused for the offence punishable under Sec.13(1)(e) R/w Sec.13(2) of Prevention of Corruption Act. The accused pleaded not guilty and claimed to be tried.

2. Evidence of prosecution:

2.1. To bring home the guilt of the accused, prosecution has examined fifteen witnesses as PW.1 to PW.15 and got marked Ex.P.1 to Ex.P.135 documents. One S.S.Virakthamat, the then Under Secretary, Department of Public Works, Ports and Inland Water who issued Ex.P.1 Sanction Order is examined as PW.1. Mohammed Irshad who has conducted raid to the house of the accused is examined as PW.2. The Police Officer who has collected the information and submitted Source Report as per Ex.P.3 is examined as PW.3. The Investigating Officer who has conducted the Spl.CC.No.134/2012 investigation is examined as PW.4. The Assistant Statistical

Officer of Karnataka Lokayukta by name Chitra.R. who has issued Report as per Ex.P.75 with regard to domestic expenditure of the family of the accused is examined as PW.5.

Similarly, the prosecution has examined S.B.Rajashekarappa, Assistant Director of Agriculture, Davanagere who has issued Agricultural Income Report as per Ex.P.59 is examined as PW.6. The prosecution has examined Sri.G.S.Channaveerappa, Sr.Assistant Director of Horticulture, Davanagere as PW.7 and marked his Report as per Ex.P.60. Police Inspector by name Sudeer Hegde who has conducted raid to the house of Neelappa is examined as PW.8. The Dy.S.P. of Karnataka Lokayukta by name Abdul Ahad who has received Prosecution Sanction Order and filed the charge sheet is examined as PW.9. B.Nataraj, Amarnath, Mohan Reddy, M.K.Bhagawan, Haribabu, Venkatarama Reddy who alleged to have borrowed loan from the accused were examined as PW.10 to P.W.15 respectively.

2.2. This Court has recorded the statement of the accused as provided under Sec.313 of Cr.P.C and after further examination of PW.4 recorded further statement of the accused. The accused denied all the incriminating circumstances found in the evidence of prosecution witnesses Spl.CC.No.134/2012 appearing against him. He has filed his written□statement under section 313(5) of Cr.P.C.1973.

3. DEFENCE EVIDENCE :

3.1. The accused was thereafter called upon to give in writing the list of persons whom he propose to examine as witnesses and the documents on which he propose to rely as required u/sec.22 of Prevention of Corruption Act. To disprove the case of the prosecution and to substantiate his defence, the accused did examine his younger brothers by name M.N.Chikkappa and M.N.Ningappa as DW.1 and DW.2. The accused examined himself as DW.3 and examined one N.D.Bhat as DW.4 and got marked Ex.D.1 to Ex.D.8 documents.

4. ARGUMENTS :

4.1. I have heard the arguments of the learned Public Prosecutor for the State and Sri.S.P.H.Advocate appearing for the accused at length. In addition to it, the counsel for the accused has submitted written arguments.

4.2. I have bestowed my careful thought to the elaborate arguments canvassed and have carefully scrutinized the oral and documentary evidence Spl.CC.No.134/2012 produced by the prosecution and the accused in the backdrop of the defence set up by the accused as spelt□out in the written statement filed u/sec.313(5) of Cr.P.C. and have also referred to the proposition of law enunciated in the large number of decisions relied on.

5. The points, that are arisen for my consideration:

1. Whether the prosecution proves beyond reasonable doubt that, the accused being a public servant, working as Assistant Engineer, in the office of Executive Engineer (Planning), Central□1, N.R.Square, BBMP, Bengaluru, during the check period commencing from 29.10.1987 to 03.04.2009 was found in possession of pecuniary resources and properties in his name and in the name of his family members to the tune of Rs.52,42,639.49 and expenses of the accused and his family during that period was Rs.85,73,323.81 and the total assets and expenditure of his family was Rs.1,38,15,963.30 and during the check period the known source of his income was Rs.43,57,873.25 and hence he was found in possession of the property disproportionate to his known source of income to the extent of Rs.94,58,090.05 that amounts to 217.03% for which he could not satisfactorily account and thereby he has committed the offence punishable under Sec.13(1)(e) r /w Sec.13(2) of the Prevention of Corruption Act, 1988?

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2.What order?

6. My findings to the above points are as under :

Point No.1 : in the Negative Point No.2 : as per final order below for the following REASONS I. Point No.1 :

7. About Sanction:

7.1. The fact that the accused was working as Assistant Engineer in PWD/BBMP during raid and during the check period commencing from 29.10.1987 till 03.04.2009 is not in dispute. Therefore, accused is a public servant as defined under section 2(c) of Prevention of Corruption Act. Hence, it is for the prosecution to show that, it has obtained a valid sanction as required under section 19 of PC Act.

Similarly, it is incumbent for the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. That process can be established by the prosecution by producing original Sanction Order which contains the facts constituting the offence and the grounds of Spl.CC.No.134/2012 satisfaction and also by adducing the evidence of the author who has issued the Order of Prosecution Sanction.

7.2. Before adverting to the facts and evidence placed on record, it is just and necessary to place reliance on a decision reported in 2013 (8) SCC 119 in the case between State of Maharastra through CBI Vs. Mahesh.G.Jain. In the said decision the Apex Court has held that 'the adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order. An order of sanction should not be construed in a pedantic manner and there should not be a hyper□technical approach to test its validity. When there is an order of

sanction by the competent authority indicating application of mind, the same should not be lightly dealt with. The flimsy technicalities cannot be allowed to become tools in the hands of an accused'.

7.2. To substantiate the fact that it has obtained valid sanction to prosecute the accused, the prosecution has examined one S.S.Virakthamat as PW.1. It is his evidence that in the month of October 2011 he was Spl.CC.No.134/2012 working as Under Secretary to the Department of Public Works, Ports and Inland Water. The fact that PW.1 was working as Under Secretary to the Department of Public Works, Ports and Inland Water during October 2011 and was authorised to issue Prosecution Sanction Order is not at all denied by the accused.

7.3. It is the evidence of PW.1 that, on 17.06.2011 he received a letter from ADGP, Karnataka Lokayukta to issue an Order of Prosecution Sanction to prosecute M.N.Marthandappa. According to PW.1, the letter of ADGP was annexed with copy of FIR, copy of mahazars, copy of Final Report, copy of Source Report, copy of search warrant, copy of reply of the accused along with Schedules 1 to 23, copies of Statements of Assets and Liabilities of the accused, copies of the records including the list of the ancestral properties of the accused, copies of records noticed by the Investigating Officer during the check period, copies of records pertaining to the known source of income of the accused, copies of records pertaining to the expenditure of the accused during the check period and copies of statements of the witnesses. It is also his evidence that, since those documents are xerox copies, a letter was addressed to ADGP, Lokayukta to furnish original records Spl.CC.No.134/2012 and accordingly original records were received on 15.07.2011. According to him he has gone through the records and found that the matter is fit to accord sanction and accordingly the records were placed before the Deputy Secretary, Secretary to the Department and then to the Principal Secretary and thereafter before the Minister for Public Works, Ports and Inland Water. It is his definite evidence that, on examination of the records submitted by ADGP, Lokayukta, he found that it is a fit case to accord Sanction.

7.4. The evidence of PW.1 would show that, ultimately the Minister for Public Works, Ports and Inland Water has perused the records and approved the proposal for sanction and accordingly ordered for issuance of sanction and resultantly Prosecution Sanction Order is issued as per Ex.P.1. The evidence of PW.1 would inspire the confidence of this Court that, he has perused entire materials relating to the case registered against the accused. He has denied the suggestion that, he has not gone through any documents. However, in his cross-examination he has deposed that he has not separately assessed the income, expenditure and assets of the accused. But his evidence would reveal the fact that, he has examined the documents submitted by ADGP of Karnataka Lokayukta. Therefore, the Spl.CC.No.134/2012 evidence of PW.1 that he has not separately assessed the income, expenditure and assets of the accused will not enure to the benefit of the accused to contend that PW.1 has not applied his mind before making a recommendation to his higher officer by way of proposal for the issuance of Prosecution Sanction Order.

7.5. According to PW.1 he has considered rental income and income derived by the accused out of animal husbandry. That portion of evidence of PW.1 would show that, he has examined relevant documents including the reply of the accused shown in Schedule No.1 to 23. Thus, the evidence of PW.1 would show that he has applied his mind and has come to the conclusion that there are

sufficient materials to accord sanction to prosecute the accused.

7.6. In addition to the oral evidence of PW.1, the contents of Ex.P.1 Sanction Order consisting of 15 pages would show that, the Sanctioning Authority has examined the materials produced by the investigating agency in detail and has on recording its satisfaction issued Prosecution Sanction. Therefore, the evidence of PW.1 and the contents of Ex.P.1 is inconsonance with the ratio of the decision referred to above.

Spl.CC.No.134/2012 7.7. In addition to the above factual aspect of the matter, law presumes that until the contrary is established, the authority has acted fairly and objectively and recorded its satisfaction based on the materials placed before it. In the present case also the conjoint reading of the evidence of PW.1 and contents of Ex.P.1 would establish the fact that, on applying its mind the authority constituted under Karnataka Government (Transaction of Business), Rules 1977 has issued Ex.P.1 Sanction Order. Hence, there is no reason to accept the contention of the accused that P.W.1 has issued Ex.P.1 Sanction Order mechanically.

7.8. In 2014(14) SCC 295 in the case between CBI Vs. Ashok Kumar Agarwal, the Apex Court of this Nation has held that, "the prosecution has to satisfy the Court that at the time of sending the matter for grant of sanction by the competent authority, adequate material for such grant was made available to the said authority. This may also be evident from the sanction order, in case it is extremely comprehensive, as all the facts and circumstances of the case may be spelt out in the sanction order. However, in every individual case, the court has to find out whether there has been an application of mind on the part of the sanctioning Spl.CC.No.134/2012 authority concerned on the material placed before it. It is so necessary for the reason that there is an obligation on the sanctioning authority to discharge its duty to give or to withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and the protection available to the accused against whom the sanction is sought".

7.9. It is also to be kept in mind that sanction lifts the bar for prosecution. Therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the public servant against frivolous prosecution. Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the innocent, though not a shield for the guilty.

7.10. Consideration of the material implies application of mind. Therefore, the order of sanction must ex□facie disclose that the sanctioning authority had considered the evidence and other materials placed before it. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that those facts were placed before the sanctioning authority and the authority had Spl.CC.No.134/2012 applied its mind on the same. If the sanction order on its face indicates that all relevant materials i.e, FIR, disclosure statement, recovery memos, draft chargesheet and other materials on records were placed before the sanctioning authority and if it is further discernible from the recital of the sanction order that the sanctioning authority perused all the material, an inference may be drawn that the sanction had been granted in accordance with law. This becomes necessary in case the court is to examine the validity of the order of sanction inter□

alia on the ground that the order suffers from the vice of total non□application of mind.

7.11. There is an obligation on the Sanctioning Authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. The prosecution must therefore send the entire relevant record to the Sanctioning Authority including the FIR, disclosure Statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favor of the accused and on the basis of which, the Competent Authority may refuse action. The authority itself Spl.CC.No.134/2012 has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently by applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction. The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought. The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material. In every individual case, the prosecution has to establish and satisfy the Court by leading evidence that entire relevant facts had been placed before the Sanctioning Authority and the authority had applied its mind on the same and that sanction had been granted in accordance with law. From the study of the above decision it is clear that the prosecution is under obligation to place entire records before Sanctioning Authority and satisfy the Court that, the authority has applied its mind. Similarly, the Sanctioning Authority has to do complete and conscious scrutiny of whole record placed before it. The Sanction Order should show that the authority has considered all the relevant facts and applied its mind. The reading of Ex.P.1 Spl.CC.No.134/2012 would show that the prosecution has placed investigation materials before PW.1 and he has applied his mind.

7.12. The accused has contended that PW.1 had no occasion to consider the explanation of the accused as per Ex.P.126. In fact PW.1 in his evidence has stated that the sanctioning authority did receive the explanation of the accused before passing Ex.P.1 Order. Therefore, the contention of the accused that PW.1 did not consider the Schedules as per Ex.P.126 is cannot be accepted. On the other hand as per the discussions made supra, the prosecution has proved that Ex.P.1 Order is issued by the competent authority after due application of mind by placing reliance on the materials produced before it. Hence, the infirmities in respect of Ex.P.1 Sanction Order pointed out by the learned counsel for the accused is not sufficient to hold that the prosecution did not secure a valid sanction to prosecute the accused. Resultantly, it is held that the prosecution has secured valid sanction to prosecute the accused for the offence punishable under section 13(1)(e) r/w 13(2) of PC Act.

7.13. The main charge directed against accused as could be seen from the wordings of the charge is that, accused being a public servant, acquired and Spl.CC.No.134/2012 possessed in his name Rs.52,42,639.49 pecuniary resources and incurred expenditure of Rs.85,73,323.81 which is disproportionate to his known source of income to the extent of Rs.43,57,873.25 which he could not satisfactorily account. These allegations squarely fall within the definition of Sec. 13(1)(e) of the P.C.Act. Therefore, before scrutinizing the evidence produced before the Court, it is necessary to bear in mind the ingredients of the offence of criminal misconduct defined u/Sec.13(1)(e) of P.C.

Act, 1988.

7.14. Sec.13(1)(e) of the Act reads as under :

> A public servant is said to commit the offence of criminal misconduct ;□if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.
>
> Explanation: For the purposes of this section, "known sources of income" means, income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.
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> Spl.CC.No.134/2012 7.15. Sec. 13(1)(e) is a self□contained provision.

The first part of the Section casts a burden on the prosecution and the second part on the accused public servant. The extent of burden of proof on the prosecution in proving the existence of property and pecuniary resources in the possession of an accused public servant and the extent and nature of the burden on the part of the public servant to satisfactorily account the pecuniary resources or property disproportionate to his/her known source of income are now well settled by catena of decisions of the Hon'ble Supreme Court of India and the various High Courts of the country.

7.16. In State of Maharashtra vs. Wasudeo Ramchandra Kaidalwar, 1981 (3) SCC 319, it is held as under:

> "The expression 'burden of proof' has two distinct meanings (1) the legal burden, i.e., the burden of establishing the guilt, and (2) the evidential burden, i.e., the burden of leading evidence. In a criminal trial, the burden of proving everything essential to establish the charge against the accused lies upon the prosecution, and that burden never shifts. Notwithstanding the general rule that the burden of proof lies exclusively on the Spl.CC.No.134/2012 prosecution, in the case of certain offences, the burden of proving a particular fact in issue may be laid by law upon the accused. 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 ingredients of the offence of criminal misconduct u/Sec. 5(2) read with Section 5(1)
>
> (e) are the possession of pecuniary resources or property disproportionate to the known sources of income for which the public servant cannot satisfactorily account. To substantiate the charge, the prosecution must prove the following facts before it can bring a case u/Sec. 5(1)(e), namely, (1) it must establish that the accused is a public servant, (2) the nature and extent of the pecuniary resources or property which were found in his possession, (3) it must be proved as to what were his known

> sources of income i.e. known to the prosecution, and (4) it must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income. Once these four ingredients are established, the offence of criminal misconduct u/Sec. 5(1)(e) is complete, unless the accused is able to account for such resources or property. The burden then shifts to the accused to satisfactorily account for his possession of disproportionate assets. The extent and nature of burden of proof resting upon the public servant to be found in possession of disproportionate assets u/Sec.

5(1)(e) cannot be higher than the test laid by Spl.CC.No.134/2012 the Court in Jhingan case, i.e. to establish his case by a preponderance of probability." (Sec.5(1)(e)of the Old Act corresponds to Sec.13 (1)(e) of the P.C. Act, 1988)

a) In view of the addition of the Explanation to Sec. 13(1)(e), the source of income, in order to qualify as a "known source of income" for the purpose of Sec.13(1) (e) of the Act, it is essential that it should satisfy the following two conditions viz., It should be a 'lawful source of income' and The receipt of income from such a source should have been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

As a natural corollary of the above conditions, it follows that ;

(i) Any income received from a source which is not lawful cannot be considered for inclusion in the expression "known source of income" for the purposes of Sec. 13(1)(e) of the Act, even if such an income was actually received by the concerned public servant.

(ii) Any income, even though received from a lawful source, cannot likewise be considered for inclusion in the expression "known source of income" for the aforesaid purposes, if the receipt of such income has not been intimated in Spl.CC.No.134/2012 accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

From the above explanation it further follows that "if a property is acquired from out of the 'known source of income' of the accused, the income derived from such property can be added to the income of the accused.

But, if a particular property is acquired from out of the any 'unknown source of income', the income derived from such property cannot be shown as income of the accused."

7.17. Thus, in view of the explanation appended to Sec.13 (1) (e) of the Act of 1988, the prosecution is relieved of the burden of investigating into the "source of income" of an accused to a large extent, as it is stated in the Explanation that "known source of income"

> means income received from lawful source, the receipt of which has been intimated in accordance with the provisions of any law, rules, orders for the time being applicable to the public servant.

7.18. In P. Nallammal Vs. State, AIR 1999 S.C. 2556, the Hon'ble Supreme Court has held that u/Sec. 13(1)(e) of the Act, if a public servant is able to account Spl.CC.No.134/2012 for the excess wealth by showing some clear sources, though not legally permissible, he would be discharging the burden cast on him. It is held in the said decision that such a contention perhaps would have been advanced before the enactment of the Act, because Sec.5(1)(e) of the old Act of 1947 did not contain the "Explanation" as Sec.13(1)(e) of the Prevention of Corruption Act, 1988 now contains.

7.19. It is also equally settled that the terminology 'income' used in the above Section, so far as the public servant is concerned is understood as the 'income' attached to his office or post commonly known as remuneration or salary or other perquisites. It is explained that the term 'income' by itself is elastic and has a wide connotation. Whatever comes in or is received, is income. But, however, wide the import and connotation of the term 'income', it is incapable of being understood as meaning receipt having no nexus to one's labour, or expertise, or property, or investment and having further a source which may or may not yield a regular revenue. These essential characteristics are vital in the understanding the term "income." From the Spl.CC.No.134/2012 above, it follows that a receipt from a windfall or gains of graft, crime or immoral secretions by persons prima□facie would not be receipt from the "known source of income" of a public servant as held in the case of State of Madhya Pradesh v. Awadh Kishore Gupta, AIR 2004 S.C.517.

7.20. In the case of C.S.D. Swamy vs. State, 1960 (1) SCR 461, it is held that the source of a particular individual will depend upon his position in life with particular reference to his occupation or avocation in life. In the case of a public servant, the prosecution would, naturally, infer that his known source of income would be the salary earned by him during his active service. It is further held that, "legislature by using the expression 'satisfactorily account' in Sec.5(3) of the Act cast burden on the accused not only to offer a plausible explanation as to how he came by his large wealth disproportionate to his known source of income, but also to satisfy the Court that his explanation was worthy of credence". In the very same decision, it is observed that the expression known source of income must have reference to sources known to the Spl.CC.No.134/2012 prosecution on a thorough investigation of the case. It was not, and it could not be, contended that, 'known source of income' means, sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters 'specially within the knowledge' of the accused and within the meaning of Sec.106 of the Evidence Act.

7.21. It is argued by the learned counsel for the accused that the Investigating Officer ought to have called upon the accused to submit his explanation after the completion of his investigation. However, it is the evidence of PW.4 that during the course of his investigation he requested the accused to submit his explanation. According to him he issued notice on 9.4.2009, subsequently on 26.10.2010, 26.02.2011, 26.03.2011, 28.03.2011 and on 05.05.2011 through the Competent

Authority of the accused. Though the accused has contended that he filed his explanation through his Chief Engineer he did not produce any acceptable evidence to show that he submitted his explanation in response to the notices referred to above. It is not the contention of the accused that he did not receive the notices referred by the Investigating Officer. In fact during the Spl.CC.No.134/2012 course of cross□examination of PW.1 it is elicited that without knowing the check period accused will be not in a position to submit his explanation. In his explanation as per Ex.P.126, the accused has referred the letter of dated 09.04.2009. In Ex.P.126, the accused has also stated check period as 1985□86 to 2008□09. Therefore, it is clear that accused was aware of check period taken by the Investigating Officer for the purpose of estimating his disproportionate assets.

7.22. It is the contention of the accused that through his Chief Engineer he sent his explanation in Schedule 1 to

23. In fact during the course of the cross□examination of PW.4, the Schedules 1 to 23 in four volumes have been confronted to him. The entire four volumes are marked at Ex.P.126 subject to proof and keeping in mind the rule of law that mere marking of document does not dispense with proof. The covering letter annexed to Ex.P.126 would show that the letter was dispatched by the Chief Engineer (Communication and Building) South, Bengaluru on 28.06.2011 and received by the DIGP, Lokayukta on 29.06.2011 and by the Superintendent of Police, City Division on 01.07.2011. It is the evidence of PW.4 that accused submitted his explanation in the form of Schedules subsequent to the filing of Final Report and hence he did not take that schedules into Spl.CC.No.134/2012 consideration. The PW.1 being the Sanctioning Authority deposed that along with letter of ADGP Lokayukta, he did receive copy of reply of the accused touching schedule 1 to

23. Had the accused not filed his explanation prior to the filing of Final Report, the question of PW.1 deposing the fact that he received the reply of the accused along with Schedule 1 to 23 would not have arisen. However, there is no evidence on record to the effect that before completion of Final Report, the accused has submitted his explanation in spite of the issuance of notice dated 09.04.2009 (Referred by the accused in the explanation given by him through his Chief Engineer). According to PW.4 even after the receipt of schedules, though Section 173(8) of Cr.P.C. empowers him to conduct further investigation, he did not conduct further investigation. It is borne in mind that mere possessing assets disproportionate to known source of income is not an offence, but it is the failure on the part of the accused to explain the acquisition amounts to offence punishable under the provisions of PC Act. However, that explanation must be worthy of credence.

7.23. Learned counsel for the accused has contended that it is the statutory obligation for the Investigating Officer to call for the explanation from the accused for the possession of disproportionate assets. To substantiate his Spl.CC.No.134/2012 contention, he has placed reliance on a decision reported in LAWS(MAD) 2006 (8) 188 in a case between State Vs. K.Ponmudi. In the said decision it is held that "under section 5(1)(e) of the Act, it is not merely the possession of the property disproportionate to the known source of income that constitute an offence, but it is the failure to satisfactorily account for such possession that makes the possession objectionable and offending the law. In other words, two phases are contemplated in the investigation, firstly the discovery of the existence of property disproportionate to the source of income openly known to

investigation machinery, and secondly the scrutiny of the explanation that the public servant might offer in disclosing other source of legal income or in any other mannerxxxx. It is thus obvious that the Investigating Officer should give an opportunity to the person investigated against to explain the disproportionate found by him".

7.24. In addition to the above decision, in the context, the counsel for the accused has placed reliance on a decision reported in LAWS (MPH) 1996 (12) 51 in the case of K.N.Thapak Vs. Special Police Establishment Lok□Ayukt, Moti Mahal, Gwalior. In the said decision it is held that " it Spl.CC.No.134/2012 is very important to note that in a case for alleged offence under section 13(1)(e) of the Act, it is necessary as the section itself requires that the accused must be given an opportunity at the first hand to explain the assets alleged to have been acquired by him. Only, if he fails to explain, then the prosecuting agency may proceed to investigate the matter and prosecute him. Before giving opportunity for explanation, laying down raid and seizure of the household articles, the manner in which it was done in this case, is against provisions of law.

7.25. Further, the counsel for the accused has placed reliance on the decision reported in LAWS(MAD) 2007 (12) 547 in the case of R.Kannappan & Chandrashekaran Vs. State by Deputy Superintendent of Police. In the said decision it is held that " similarly after finding out that there is any disproportionate wealth in the hands of the public servant beyond his known source of income, the accused must be given an opportunity to explain the same. Failure to give an opportunity to the accused to explain the same is fatal to the case of prosecution".

7.26. In addition to the above decisions, the counsel for accused has also placed reliance on the decision reported in Spl.CC.No.134/2012 LAWS (MAD) 2006 (9) 143 in the case between G.Malligaselvaraj & Manimekalai and State and decision reported in AIR 2007 SC 1860 in the case between State Inspector of Police, Vishakapatnam and Suryashankaram Kari and the decision in the case between L.K.Advani and CBI, LAWS (MAD) 2007(12) 547 in the case between R.Kannappan & K.Chandrashekaran Vs. State by Deputy Superintendent of Police. By placing reliance on the above decisions, it is submitted that unless and until the prosecution does not call for explanation specifying the quantum of disproportionate assets, the accused will have no clue about the outcome of investigation and hence the accused will have no opportunity to explain the alleged disproportionate assets. In the case of R.Kannappan, by placing reliance on a decision reported in 1993 Crl.L.J 308, it is held that after finding out that there is any disproportionate wealth in the hands of the public servant beyond his known source of income, the accused must be given an opportunity to explain the same. Failure to give an opportunity to the accused to explain the same is fatal to the case of prosecution. In view of the above settled proposition of law it is incumbent upon the court to appreciate the facts Spl.CC.No.134/2012 and circumstances of the present case and to find out whether the accused had an opportunity to submit his explanation or not. In the present case the evidence of PW.4 that he issued notices to the accused on 26.10.2010, 26.02.2011, 26.03.2011, 28.03.2011 and on 05.05.2011, is not at all denied by the accused. Under section 106 of the Evidence Act it is for the accused to explain the facts which are within his special knowledge. Though the notices referred to above are received by the accused, he did not choose to issue any explanation. Since the accused kept quiet all along, the Investigating Officer without any option filed the Final Report. Therefore, the contention of the accused that there was no fairness in the

investigation cannot be accepted. On the other hand, it has to be held that the accused did not utilize the opportunity so offered by the Investigating Officer. Admittedly, the criminal case has been registered against the accused during 2009. However, till the date of filing of Final Report all along the accused has kept quiet. As discussed above, the notices were duly served on the accused. Hence it is crystal clear that the accused has adopted wait and watch tactics instead of filing his explanation as required under law. Thus, this court is of the considered view that the ratio of the above decisions relied by the counsel for the accused is not Spl.CC.No.134/2012 applicable to the facts and circumstances of the present case. Hence, the contention of the accused that the Investigating Officer did not give an opportunity for him to explain the source of income as required under section 13(1)(e) of Prevention of Corruption Act is cannot be accepted. However, it is the duty of this Court to appreciate the materials placed by the prosecution both by way of oral and documentary evidence and similar type of materials produced by the accused based on the settled proposition of law.

8. About Source Report :

8.1. The prosecution has examined one Prasanna.V.Raju, the then Police Inspector of Lokayukta as P.W.3. It is the evidence of PW.3 that he received credible information that the accused accumulated properties in corrupt manner, disproportionate to his assets and on collection of information confirmed the same. It is the evidence of PW.3 that the value of the house of the accused was about Rs.40,00,000.00, value of the vehicle, gold and other items was Rs.10,00,000.00, his approximate expenses was Rs.25,00,000.00 and approximate salary income was Rs.25,00,000.00 and income from agriculture and rent at Rs.10,00,000.00 and accordingly, he submitted Ex.P.3 Report to Superintendent of Police, Lokayukta. However, he has Spl.CC.No.134/2012 deposed that till preparing the Source Report, he did not make any entry in SHD or General Diary. It is his evidence that he came to know that the accused is coming from agricultural family and accordingly he has shown approximate agricultural income of the accused. He has deposed that with regard to collection of information from BBMP or from the Office of Sub□Registrar, he did not make any entry in Station House Diary. Admittedly, source information was collected secretly and if the same is mentioned in SHD, it would not be possible for the investigating agency to conduct fair investigation. The reading of cross□examination of PW.3 would show that the accused did not deny the factum of he (PW.3) preparing Source Report based on the credible information received by him. Thus the prosecution has proved that based on credible information, PW.3 prepared Source Report as per Ex.P.3.

9. About Registration of case :

9.1. To prove the registration of case based on Ex.P.3 □Source Report, the prosecution has placed reliance on the evidence of PW.2 □Mohammed Irshad, the then Police Inspector working at Karnataka Lokayukta. It is the definite evidence of PW.2 that based on the proceedings dated 02.04.2009 of Superintendent of Police as per Ex.P.2, he Spl.CC.No.134/2012 registered the case against the accused, who was working as Engineer at BBMP, Bengaluru and transmitted Ex.P.4 □

FIR to the Court. His evidence would also reveal the fact that he secured search warrant as per Ex.P.5. Though PW.2 is subjected to the test of cross□examination, nothing is suggested to him denying Ex.P.2 □proceedings or the process of registration of the case. Hence, the evidence of PW.2 that based upon Ex.P.2 □proceedings, he being authorised officer registered the case and transmitted Ex.P.4 □FIR to the Court remained unchallenged. Resultantly, the prosecution has proved the authority of PW.2 to register the case and to proceed further in the line of conducting investigation.

9.2. It is the evidence of PW.2 that after securing Ex.P.5 □search warrant on 03.04.2009 he along with his staff and panch witnesses searched the house bearing No.17, 2 nd Cross, Bhagiratha Layout, Behind Canara Bank, Kengeri Satellite Town of the accused and prepared search mahazar as per Ex.P.36. It is pertinent to note that the process of the task of search dated 03.04.2009 to the house of the accused is not denied by him. According to PW.2 he seized Ex.P.8 to Ex.P.35 documents from the house of the accused. According to the accused, P.W.2 did not mention the details such as year, mode and source of acquisition of the articles found in Spl.CC.No.134/2012 Ex.P.36. Though PW.2 has deposed with regard to conducting of search, he has not stated about the value of the articles found in the house of the accused. Similarly, his evidence is very much silent with regard to taking assistance of Experts to evaluate the articles found in the house of the accused. Thus, the reading of Ex.P.36 and the evidence of PW.2 makes it very clear that without considering make, year of manufacture and mode of acquisition the values of articles is mentioned in Ex.P.2. Hence, without those particulars the contents of the same cannot be accepted as gospel truth. On the other hand, it is for the prosecution to prove the value of the articles as provided under law with the assistance of evidence of Expert or atleast through the evidence of independent panchas to Ex.P.2. If prosecution fails to establish the contents of Ex.P.2 and the value of the movables mentioned therein, then the only option available for this court is to accept the explanation of the accused.

10. Assets of the accused :

> 10.1. The following items of assets are considered by the Investigating Officer for the purpose of considering value of the assets of the accused accumulated during the check period.

Spl.CC.No.134/2012 Sl. No. Assets Value (in Rupees.) Davanagere Taluk.

Bhagyanagar, Koppal.

Bhagyanagar, Koppal.

Bhagynagar, Koppal 5 Sy.No.35/1, Site No.17, Valgerehalli, 3,60,000.00 Kengeri Hobli, Bengaluru South Taluk in Katha No.35/1, measuring 60x40 feet 6 Value of the house built in Site 29,57,593.00 No.17 Valgerehalli, Kengeri Hobli, Bengaluru South Taluk in Katha No.35/1, measuring 60x40 feet 7 Amount found in SB Account 41,754.00 No.10562679928 at SBI, RPC Layout Branch, Bengaluru.

8 Amount found in SB Account No.42470001004017O6 at Punjab National Bank, Deepanjali Nagar Branch, Bengaluru. 42,648.53

9	Amount found in SB Account No.2850101002297 at Canara Bank, Kengeri Satellite Town Branch, Bengaluru	15,610.00

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10	Amount found in SB Account No.2850101001519 at Canara Bank, Kengeri Satellite Town Branch, Bengaluru	10,810.00
11	Amount found in SB Account No.632188 at ICICI Bank, Commissionerate Road, Bengaluru	61,417.00
12	Purchase Value of Hero Honda Splendor Plus bike bearing registration No.KA02 EX 4712	15,871.00
13	Maruthi Suzuki VDI Swift car No.KA 02 MC 4797 (In the benami name)	6,33,255.00
14	Cash found in house No.17 on 03.04.2009	1,20,000.00
15	Value of 278.100 grams of gold ornaments found in house No.17 on 03.04.2009	2,43,720.00
16	Value of 930 grams of silver articles found in house No.17 on 03.04.2009	21,390.00
17	Value of household articles found in house No.17 on 03.04.2009	5,00,318.00
18	Face value of NSC Certificate No.50CC895679 in the name of the accused	1,000.00
19	Face value of NSC Certificate No.19DD846561 in the name of the accused.	5,000.00

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20	Deposit made in respect of electricity meter No.WTP4953 of site No.17 near KHB Colony, Kengeri Satellite Town, Bengaluru.	5,880.00
21	Deposit made in respect of electricity meter No.W7EH10147 of site No.17 near KHB Colony, Kengeri Satellite Town, Bengaluru.	3,360.00
22	Deposit made in respect of electricity meter No.W7EH148 of site No.17 near KHB Colony, Kengeri Satellite Town, Bengaluru.	2,010.00
23	Deposit made in respect of electricity	2,010.00

	meter No.W7EH10149 of site No.17 near KHB Colony, Kengeri Satellite Town, Bengaluru.	
24	Deposit made in respect of electricity meter No.W7EH10150 of site No.17 near KHB Colony, Kengeri Satellite Town, Bengaluru.	2,010.00
25	Deposit made in respect of electricity meter No.W7EH10151 of site No.17 near KHB Colony, Kengeri Satellite Town, Bengaluru.	2,010.00
26	Deposit made in respect of electricity meter No.W7EH10152 of site No.17 near KHB Colony, Kengeri Satellite Town, Bengaluru.	2,010.00
27	Deposit towards Domestic gas connection	1,350.00

28	Value of the Mobile found in house No.17.	34,050.00
29	Investments made by the accused in Shares-India Info-line Limited	41,562.96
	Total Value	52,42,639.49

10.2. At the outset itself, it is relevant to note that the accused did not deny the value of assets at items No.1, 5, 7 to 12, 14, 16, 18 to 27 and 29. He did admit the value of items No.6, 17 and 28 in part. He did deny the value of asset at items No.2 to 4, 13 and 15. Now let me examine each item of assets based on material evidence placed on record keeping in mind the ratio of the decisions relied on.

10.3. Item No.1 site No.53, Shyabanur Village, Davanagere Taluk. The Prosecution has produced original Sale Deed dated 30.05.1996 at Ex.P.101 seized by the Investigating Officer at the time of raid. As per Ex.P.101, accused Marthandappa has purchased site No.35, Door No.4053 measuring 40x51 feet ad□measuring in 20x40 sq.ft from B.R.Jayadevappa for a sum of Rs.61,000.00. It is pertinent to note that, the accused did not deny the fact that he by paying Rs.61,000.00 has purchased site No.53 of Shyabanur Village, Davanagere Taluk. In respect of that Spl.CC.No.134/2012 property, the Investigating Officer during the course of his investigation has collected encumbrance certificate, copy of sale deed, copy of affidavit, copy of General Power of Attorney, copy of Conversion Order and copy of Settlement Deed. It is the evidence of PW.4 that he has taken value of site No.35, i.e, Rs.61,000.00 towards the assets of the accused. Since the accused has admitted the acquisition of this property for a sum of Rs.61,000.00 on 30.05.1996, much discussion is not required. Therefore, Investigating Officer is justified in considering Rs.61,000.00 i.e., the value of site No.53 towards the head of the assets of the accused.

10.4. Item No.2 property in Sy.No.679/2, Plot No.9 of Bhagynagar, Koppal Nagar, item No.3 property in Sy.No.98/1, Site No.46 of Bhagynagar, Koppal Nagar, item No.4 property in Sy.No.98/1, Site No.45 of Bhagynagar, Koppal Nagar. According to the prosecution, the accused has invested a sum of Rs.15,000.00 + Rs.20,000.00 + Rs.20,000.00= Rs.55,000.00 towards the acquisition of three sites in the name of his wife Smt.Kalpana. However, it is the contention of the accused that he married one Smt.Kalpana D/o Halappa.B.Kenchappagol and Mandakini on 10.11.1989. This fact is not disputed by the prosecution. In fact the Final Report of the Investigating Officer would show that the father Spl.CC.No.134/2012 in law of the accused was a retired Assistant Secretary of Zilla Panchayath. It is the explanation of the accused that out of love and affection his father in law acquired 3 sites in the name of Kalpana. According to him, he did not invest any amount for the acquisition of the same. The accused has contended that he declared the same in his Assets and Liability Statement.

10.5. It is the contention of the accused that the acquisition of site No.9 in Sy.No.679/2 of Bhagyanagar was declared by him in his APR for the year 1998 99. In fact the Investigating Officer during the course of his raid seized Annual Property Returns of the accused as per Ex.P.134. The reading of Ex.P.134 would show that three sites bearing in 9, 45 and 46 are acquired in the name of Kalpana the wife of the accused. The fact that the value of three sites was Rs.55,000.00 at the given point of time is not in dispute. From the evidence produced by the prosecution as per Ex.P.134 it is clear that, the accused has declared the acquisition of three sites in the name of his wife by her father. It is brought on record that through his Chief Engineer, accused has submitted his explanation as per Ex.P.126 on 28.06.2011. That explanation was received by ADGP, Lokayukta on 29.06.2011. The Prosecution Sanction Spl.CC.No.134/2012 Order as referred to above at Ex.P.1 would also show that the Sanctioning Authority had every opportunity to look into the explanation submitted by the accused. In his explanation at Volume No.IV page No.841 to 844, there is an affidavit of Smt.Mandakini, the mother of Kalpana. In that affidavit she has stated about the acquisition of three sites by Halappa.B.Kenchappagol in the name of his daughter Kalpana. In fact, the Assets and Liabilities at Ex.P.134 would demonstrately indicate that the accused has declared the acquisition of three sites in the name of his wife.

10.6. It is pertinent to note that the Investigating Officer has seized Ex.P.134 the Assets and Liabilities Statement of the accused. In his Assets and Liabilities Statement, accused has stated that site No.9, 45 and 46 are acquired in the name of his wife Kalpana by his father in law. In fact, PW.4 being the Investigating Officer has admitted that, in respect of site No.9, 45 and 46, the accused in his Assets and Liabilities Statement has shown Rs.15,000.00, Rs.20,000.00 and Rs.20,000.00 as the amount given by his father in law. The totality of evidence of PW.4 would reveal the fact that the accused has declared the value of three sites to the tune of Rs.55,000.00 as the amount given by the father of Smt.Kalpana.

Spl.CC.No.134/2012 10.7. The Sale Deed at Ex.P.27 would show that one Gurushanthappa and Chellappa are the witnesses to the Sale Deed. The evidence on record would show that PW.4 has not examined said Gurushanthappa, Chellappa or the wife of the accused. When admittedly, the accused has declared the acquisition of three sites in the name of his wife, that too at an undisputed point of time, the Investigating Officer ought to have examined the vendors or witnesses to the sale deed or

the wife of the accused but he has not chosen to do so. Therefore, in the absence of any material piece of evidence, based upon the interested testimony of PW.4 it cannot be said that it is the accused who has invested Rs.55,000.00 for the acquisition of three sites bearing No.9, 45 and 46 in the name of Smt.Kalpana. Accordingly, it is held that the Investigating Officer is not justified in considering the value of three sites to the tune of Rs.55,000.00 towards the assets of the accused. Therefore the value of the sites to the tune of Rs.55,000.00 shall have to be deducted from the value of the assets of the accused.

10.8. Another asset of the accused considered by the Investigating Officer is site No.17 formed in Sy.No.35/1 of Valgerehalli, Kengeri, Bengaluru South Taluk. The Investigating Officer has produced copy of Sale Deed dated Spl.CC.No.134/2012 18.04.2005 as per Ex.P.105. The reading of Ex.P.105 would show that the accused has purchased site No.17 in khata No.35/1, Assessment No.64/1 of Valgerahalli Village measuring 60x40 feet from one Smt.Hemavathi for a sum of Rs.3,65,000.00. According to the accused he has declared the same in his Annual Property Returns for the year 2004□05. The Annual Property Returns of the year for the year 2004□05 at Ex.P.134 would show that the accused has declared the acquisition of site No.17 to his higher officer stating that he has purchased site at Bengaluru for a sum of Rs.3,60,000.00 out of his salary savings. Therefore, the Investigating Officer is justified in considering value of site No.17 to the tune of Rs.3,60,000.00 as the asset of the accused.

10.9. Item No.6 is the value of the house constructed in site No.17, Bengaluru South Taluk, Valgerehalli, Kengeri. According to the Investigating Officer the value of the building is Rs.29,57,593.00. According to the accused the value of the building is Rs.20,70,315.00. It is the definite stand of the accused that he has constructed the house during 2005□06 by availing housing loan of Rs.10,00,000.00 from Punjab National Bank, BHEL Branch, Bengaluru, loan of Rs.1,00,800.00 from KGID and by borrowing hand loan of Spl.CC.No.134/2012 Rs.4,00,000.00 each from his four brothers and remaining expenditure was borne out of his salary savings and income from agriculture. However, in Ex.P.134, the Assets and Liabilities Statement for the year 2005□06 would show that the accused has received Rs.16,00,000.00 from his brothers in lieu of agricultural lands.

10.10. It is relevant to note that Ex.P.134 though produced by the prosecution is marked by the accused at the time of cross□examination of PW.4. Therefore, the accused is not expected to deny the contents of declaration made at an undisputed point of time as per Ex.P.134 at Page No.1. At the earliest point of time, the accused has declared that he has taken Rs.16,00,000.00 and 3 acres of dry land from his brothers in lieu of his share on agricultural lands. Hence, from the meaningful reading of admitted document at Ex.P.134 it is clear that the accused did not borrow a sum of Rs.16,00,000.00 from his brothers and on the other hand he has taken Rs.16,00,000.00 in lieu his share over agricultural lands. Thus, at any stretch of imagination it cannot be accepted that accused has borrowed loan of Rs.4,00,000.00 each from his four brothers at the time of construction of house over site No.17 or that four brothers have invested Rs.4,00,000.00 each. However, it can be safely said that Spl.CC.No.134/2012 accused has taken Rs.16,00,000.00 at the time of construction of house over site No.17 in lieu of his share over agricultural lands.

10.11. It is the contention of the Investigating Officer that, the value of the house was Rs.29,57,593.00. However, according to the accused its value was Rs.20,70,315.00. To prove the value of the house, the prosecution has placed reliance on Ex.P.63 the Valuation Report of the Engineer attached to the office of PWD. It is very relevant to note at the outset itself that, though the prosecution has secured Report as per Ex.P.63, it has not chosen to examine the author of the same. It is not in dispute that Ex.P.63 was issued by the Assistant Executive Engineer of PWD. At the time of cross□examination of PW.4 with regard to the valuation of house No.17, it was elicited that based upon Ex.P.63 Report, he has considered the valuation of the house to the tune of Rs.29,57,593.00, however, he has not conducted any separate investigation of his own. In appreciating the testimony of this witness, it is relevant to note that he was only Investigating Officer who has conducted the investigation and was not independently assessed the value of the building.

10.12. It is the submission of learned Counsel for the accused that an Expert must possess expertise in the field in Spl.CC.No.134/2012 which he is examined as a witness. An Expert must be in a position to support his reasoning with data verifiable by the Court and only then, he qualifies to be an expert witness and the testimony of such witness can be relied on by the Court for the purpose of arriving at a just decision in the matter in controversy. Admittedly, in the present case the author of Ex.P.63 has not been examined. In the case of White House Repellent and Jordan and another respondents (House of Lords), 1981□1 WLR 246, at page 10, it is observed :

> "While some degree of consultation between experts and legal advisors is entirely proper, it is necessary that expert evidence presented to the Court should be, and should be seen to be the independent product of the expert, uninfluenced as to form or content by the exigencies of litigation.
>
> To the extent that it is not, the evidence is likely to be not only incorrect but self□ defeating".

10.13. In State of H.P. vs. Jailal and others (1999) 7 SCC 280, it is observed:

> "An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of this criteria to the facts proved. The credibility of such witness depends on the reasons stated in support of his conclusions and the data and material Spl.CC.No.134/2012 furnished which form the basis of his conclusions."

10.14. In Ramesh Chandra Agarwal vs. Regency Hospital Ltd., and Ors. (2009) 9 SCC 709, it is held:

> "Mere assertion without mentioning the data or basis is not evidence, even if it comes from an expert, where the experts give no real data in support of their opinion, the evidence even though admissible may be excluded from consideration as affording no assistance in arriving at the correct value."

10.15. In the present case also the reading of Ex.P.63 Report would show that the author of the same has not stated as to what method he adopted to value the property situated in Site No.17.

10.16. In Magan Bihari Lal vs. The State of Punjab (1977) 2 SCC 210, wherein, dealing with the evidentiary value of the report of handwriting expert, the Hon'ble Supreme Court has held that, "...it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of the handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of the handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration."

Spl.CC.No.134/2012 10.17. In the case of Shashi Kumar vs. Subodh Kumar, AIR 1964 SC. 529 it is observed as under ;

> "before acting on such evidence, it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence".

But in the present case to consider as to whether the author of Ex.P.63 Report is Expert in the field or not the prosecution did not examine him. Therefore, the evidence of PW.4 that he collected the Report as per Ex.P.63 itself is not suffice to come to the conclusion that whatever stated in Ex.P.63 is corroborated by the evidence of PW.4.

10.18. In (1974) 3 SCC 388, wherein, at para 13, it is observed as under;

> "It is no doubt true that the prosecution is bound to produce witnesses who are essential to the unfolding of the narrative on which the prosecution is based. Apart from that, it cannot be laid down as a rule that, if a large number of persons are present at the time of the occurrence, the prosecution is bound to call and examine each and every one of these persons. The answer to the question as to what is the effect of the non□examination of a particular witness would depend upon the facts and circumstance of each case. In case enough number of witnesses have been examined with regard to the actual occurrence and their evidence is reliable and sufficient to base the conviction of the accused thereon, the prosecution may well decide to Spl.CC.No.134/2012 refrain from examining the other witnesses. Likewise, if any of the witnesses is won over by the accused party and as such is not likely to state the truth, the prosecution would have a valid ground for not examining him in Court. The prosecution would not, however, be justified in non□examining a witness on the ground that his evidence even though not untrue would go in favour of the accused."

10.19. In the present case the prosecution has not at all examined the Expert who has issued Ex.P.63 Valuation Report. In fact, PW.4 has deposed that he is not an Expert to assess the value of the building. It is his definite evidence that he has only adopted the Report given by the Expert and he has not further investigated regarding correctness of the Report as per Ex.P.63. Therefore, the

Report at Ex.P.63 is remained as a Report without any corroboration. Further the rule of law that mere marking of document in evidence does not dispense with proof is applicable to Ex.P.63.

10.20. In his statement filed under section 313(5) of Cr.P.C. the accused has contended that he has constructed the house in Bengaluru in which his brothers also have got share. That statement of the accused is apparently false because in Ex.P.134 page No.1 he has declared that his brothers have paid him Rs.16,00,000.00 in lieu of his share on agricultural lands. Therefore, the accused is not expected Spl.CC.No.134/2012 to take any stand contrary to the declaration made in his Assets and Liabilities Statement submitted for the year 2005 i.e., at an undisputed point of time. Therefore, the contention of the accused that his brothers have also got share in house No.17 is an invention made by the accused to disprove the case of the prosecution.

10.21. In his statement the accused has contended that the Valuation Report at Ex.P.63 is not correct. He has contended that, in the Report 10% of contractor's profit, 2% of curing, 1% of watch and ward, 10% loading and unloading charges, 5% of miscellaneous charges etc., are included and atleast 30% has to be deducted from the building value. Whereas in his evidence given on oath he has contended that, 10% of contractor's profit, 10% of maintenance charges, 2% of curing, 1% of watch and ward and 5% of miscellaneous charges totally 28% has to be deducted from the building valuation. Therefore it is clear that, the accused has claimed the deduction of 28% of building valuation.

10.22. To show that the cost of construction was Rs.20,73,713.00, the accused has placed reliance on his oral evidence as DW.3. It is his definite evidence that since he was working as a Civil Engineer, he spent Rs.20,00,000.00 and he himself constructed the house without the assistance of any Spl.CC.No.134/2012 Engineer. According to him, the Investigating Officer has not considered 10%+10%+2%+1%+5% i.e., 28% towards profit of contractor, maintenance expenses, curing and security. In the present case admittedly, the prosecution has not secured calculation sheet and measurement sheet. Even the prosecution has not taken pains to examine the author of Ex.P.63. The contention of the accused that electricity connection at 7.5% was considered by the Engineer of PWD without any calculation and measurement is to be accepted because there are no such particulars in Ex.P.63. According to him, the author of Ex.P.63 ought to have deducted 28% in respect of cost of construction of building over site No.17. The evidence of DW.3 would show that he has purchased cement, iron and other construction materials on a concession wholesale rate and hence it helped him to construct the house in a low budget. However, to substantiate the same, the accused did not examine any of the witnesses to satisfy the requirement of explanation as required under section 13(1)(e) of PC Act. It is relevant to note that the evidence of DW.3 is not seriously challenged by the prosecution. Had the prosecution examined the author of Ex.P.63 Report, the accused had every opportunity to subject him to the test of cross□examination. It is relevant to note that before valuing Spl.CC.No.134/2012 the house, the Expert has not secured Commencement Certificate, Completion Certificate, Sketch, Blue print, Structural design, sketch of water and electricity line. Even according to PW.4 those particulars are very much required to value the building. Even he has not furnished such particulars to the author of Ex.P.63. Therefore, the accused is justified in contending that the particulars referred to above are required for the purpose of assessing the value of the building.

10.23. It is relevant to note that according to the prosecution Ex.P.63 is formulated as per PWD Schedule Rates. But the prosecution did not furnish such Schedule Rates for the appreciation of this court. The reading of Ex.P.63 in a mathematical precision would show that the author has not stated as to which method he has adopted for estimating the value of the building. Undisputedly, the actual cost incurred for the construction is well within the knowledge of the accused. It has come in the evidence of DW.3 that he did not appoint any contractor or architect in connection with the construction. Under the circumstances, the accused could have produced the actual bills for having purchased the materials, for having transported the materials in proof of actual cost incurred for the construction.

Spl.CC.No.134/2012 10.24. It is relevant to note that the accused do not dispute the measurement of the building and nature of the construction. When the accused claimed deduction of 28% of cost of constructions, it is for him to produce such materials and examine the persons who have involved in the process of the construction. It should not be forgotten that the amount paid is specially within the knowledge of the accused. Having regard to the burden cast on the accused in view of the provisions of section 13(1)(e) of the PC Act, which requires the accused to offer satisfactory explanation when the existence of assets are proved by the prosecution, the accused is not prevented from adducing necessary evidence to show the actual cost of construction.

10.25. Though the accused in his evidence as DW.3 contended that the value of the house was Rs.20,70,315.00, at the earliest point of time i.e., at the time of filing his explanation as per Ex.P.126 in Vol.No.IV, Page No.779 to 789, he did produce Valuation Report of one B.M.Basavaraju. As per this Report, the cost of construction of the building as on the year 2005-06 was Rs.29,15,000.00. The Report also show that the Expert has verified Sanction Plan and Sale Deed and inspected the property on 10.08.2007 for assessing the cost of construction. Therefore, the evidence of DW.3 that he has put Spl.CC.No.134/2012 up construction by spending a sum of Rs.20,00,000.00 is contrary to his own explanation as per Ex.P.126. Thus, it is clear that the accused is going on changing his version with regard to the actual cost of construction and value of the building. In addition to the above, in his explanation as per Ex.P.126 at Vol.No.I Page No.4, the accused did explain that the actual cost of construction was Rs.33,11,100.00 including the value of the site to the tune of Rs.3.96 lakhs. He has further explained that he did construct the house measuring 2400 sqft in the year 2005-06 by investing Rs.29.15 lakhs. In his explanation as per Vol.No.I-Statement-13(A), the accused has declared that the cost of construction of the house was Rs.29,15,000.00. Therefore, the evidence of DW.3 that he did spent only Rs.20,00,000.00 for the construction of the house over site No.17 is cannot be accepted and accordingly not accepted.

10.26. The evidence of PW.4 would show that to get the correct cost of construction the Expert has to examine structural design including electricity line, water connection and other particulars. The reading of Ex.P.63 would show that the author of the same did not consider all those particulars. Therefore, in view of non-examining the author of Ex.P.63, the option available to this court is to accept the Report of Spl.CC.No.134/2012 B.M.Basavaraju relied by the accused. Hence, it is held that the actual cost of construction of building in site No.17 during 2005-06 was Rs.29,15,000.00.

10.27. The accused being DW.3 has deposed that 28% of the cost of construction has to be deducted from the original valuation. When admittedly, accused himself has deposed that he being a Civil Engineer has constructed the house, question of deducting 10% of contractor's profit and 10% of supervision expenses does not arise. Even otherwise to consider this aspect of the matter there is no convincing evidence before the court.

10.28. The learned counsel for the accused has produced notarised copy of Public Works and Irrigation Department Code and argued that the Assistant Executive Engineer is not authorised to value the building. According to him, it is for the Assistant Executive Engineer to prepare the valuation statement and submit the same to Executive Engineer. But it is relevant to note that in the present case the prosecution has failed to prove Ex.P.63. Since, the prosecution has failed to prove the contents of Ex.P.63, this court has considered the admitted cost of construction to the tune of Rs.29,15,000.00 i.e., the cost of construction declared by the accused in his explanation as per Ex.P.126. Under the Spl.CC.No.134/2012 circumstances in order to meet the ends of justice, it would be proper to reduce overall cost of construction by 10% of the total cost of construction i.e., Rs.29,15,000.00. Therefore, by reducing total cost of construction of 10%, the cost of construction of the building effected by the accused during the check period is determined at Rs.26,23,500.00. Accordingly, asset value of house built in site No.17 is determined at Rs.26,23,500.00.

10.29. Other items of assets at item No.7 is a sum of Rs.41,754.00 available in SB Account No.10562679928 of SBI, RPC Layout Branch, Bengaluru. Item No.8 is a sum of Rs.42,648.53 available in SB Account No.424730120401706 of Punjab National Bank, Deepanjali Nagar Branch, Bengaluru. Item No.9 is a sum of Rs.15,610.00 available in SB Account No.2850101002297 of Canara Bank, Kengeri Satellite Town Branch, Bengaluru. Item No.10 is a sum of Rs.10,810.00 available in SB Account No.2850101001519 of Canara Bank, Kengeri Satellite Town Branch, Bengaluru. Item No.11 is a sum of Rs.61,417.00 available in SB Account No.632188 of ICICI Bank, Commissionerate Road Branch, Bengaluru. PW.4 has also deposed that he has considered the amount found in different bank accounts. The accused has Spl.CC.No.134/2012 admitted the amounts referred to above as his assets. Therefore, the Investigating Officer is justified in considering Rs.1,72,239.53 as the assets of the accused.

10.30. The Investigating Officer has considered Hero Honda Splendor Plus two wheeler bearing Registration No.KA02□EX□4712 worth Rs.15,871.00 as the asset of the accused. It is contention of the prosecution that accused has purchased Motor Cycle No.KA02□EX□4712 by obtaining loan of Rs.33,000.00 from City Financial Consumer Finance Limited. The accused has admitted the value of two wheeler to the tune of Rs.15,871.00 as his asset. It is the evidence of PW.4 that he has secured a letter from City Financial Consumer Finance India Limited as per Ex.P.43. The reading of Ex.P.43 letter of the Manager (Legal), City Financial, dated 08.04.2011 would show that it is Marthandappa who has applied for loan of Rs.33,000.00 to purchase Splendor bike and he has agreed to repay the same with EMI of Rs.2075.00. The IO has considered the value of bike at Rs.15,871.00. In fact the accused has admitted that the value of the bike as on date of raid was Rs.15,871.00. Therefore, the IO is justified in considering the bike having value of Rs.15,871.00 as the asset of the accused.

Spl.CC.No.134/2012 10.31. Item No.13 Maruthi Suzuki Swift VDI car bearing registration No.KA02□ MC□4797. According to the prosecution the accused has invested a sum of Rs.6,33,255.00 and that transaction is benami transaction of the accused. However, it is the contention of the accused that car belongs to joint family and purchased out of joint family income.

10.32. What is required to prove benami character is now well settled. "The essence of Benami is the intention of the parties and not unofften; such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulty do not relieve the person asserting the transaction to be benami, of the serious onus that rest on him, nor justify the acceptance of the mere conjectures or surmises as a substitute for proof" - Krishnan and Agnihotri vs. State of M.P. AIR 1977 S.C.

796. 10.33. Dayal Poddar vs. Bibi Hajara AIR 1974 SC 171, the Supreme Court has laid down the following tests to determine whether a particular transaction is benami -

Spl.CC.No.134/2012

(i) The source from which the purchase money came.

(ii) The nature and possession of the property after purchase.

(iv) The position of the parties and the relationship, if any between the claimant and the alleged benamidar.

(v) The custody of the title deeds after the sale.

(vi) The conduct of the parties concerned in dealing with the properties after sale.

10.34. In the later decision reported in AIR 1980 SC 727, the Supreme Court once again reiterated the principles for determining the benami nature of a transaction and laid down the following guidelines:

> i) The burden of showing that a transfer is a benami transaction lies on the person who asserts that it is such a transaction.
>
> ii) If it is proved that the purchase money came from a person other than the person in whose favour the property is transferred, the purchase is prima facie assumed to be for the benefit of the person who supplied the purchase money unless there is evidence to the contrary.
>
> iii) The true character of the transaction is governed by the intention of the person who has contributed the purchase money.
>
> iv) The question as to what his intention was has to be decided on the basis of surrounding circumstances, the relationship of the parties, the motives governing

> their action Spl.CC.No.134/2012 in bringing about the transaction and their subsequent conduct etc., 10.35. What is the standard of proof that is required to prove the benami nature of transaction is explained by the Hon'ble Supreme Court in the aforesaid decision Krishnan and Agnihotri, wherein at para 26, it is held thus:
>
> "It is well settled that the burden of showing that a particular transaction is benami and the owner is not the real owner always rests on the person asserting it to be and 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."

Thus, in order to establish the transaction in question is benami, the prosecution could either prove the fact by direct evidence or by circumstantial evidence leading to the inference of that fact. If prosecution is able to prove that there could not have been any other source than the accused himself, offence can be brought home against him. Normal human conduct and presumptions can be utilized for this purpose. 10.36. In the back drop of the above principles, let me now proceed to consider the crucial question as to Spl.CC.No.134/2012 whether Maruthi Suzuki Swift VDI Car bearing registration No.KA02 MC 4797 registered in the name of M.N.Ningappa was purchased by the accused in the benami name of Ningappa or not.

10.37. The reading of Ex.P.36 mahazar dated 03.04.2009 would show that on search, Maruthi Suzuki Swift VDI car bearing registration No.KA02 MC 4797 was found in the car garage of house No.17. In addition to it, the reading of said mahazar would show that original RC of the car issued by RNS Motors Limited, Delivery Challan and Insurance Policy and the receipts issued by RNS Motors were also found in the house of the accused. The seizure of the documents referred to above under Ex.P.36 mahazar is not at all denied by the accused. It is the evidence of DW.2 M.N.Ningappa and D.W.3 M.N.Marthandappa that said car is the joint family property purchased in the name of N.Ningappa out of joint family agricultural income. It is the definite evidence of DW.3 that, since his younger brother M.N.Ningappa was staying at his native place and as there was no show room of Maruthi Car at Davanagere, the car was purchased in his name at Bengaluru. Admittedly, Davanagere is a district headquarters. Therefore, it is highly impossible to believe the evidence of Spl.CC.No.134/2012 DW.3 that as there was no maruthi car show room at Davanagere, the car was purchased at Bengaluru. According to DW.3, the car was purchased for the use of joint family members. Admittedly, DW.3 is residing at Bengaluru. Whereas his brothers were residing at Gangavathi and Hadadi which is admittedly 250 kms away from Bengaluru. Under the circumstances it is highly impossible for five brothers to use the car as joint family property and it is not believable story also. Thus, it is clear that, the evidence of DW.3 that the car was purchased for the use of the members of joint family is nothing but a theory invented by him. In fact, DW.2 in whose name car stands deposed that he does not know as to how much amount was invested for the purchase of car which stands in his name. Hence, it can be said that since the accused has purchased the car in his individual capacity, DW.2 does not know the quantum of investment so made to purchase the car.

10.38. Admittedly, the car was found in the garage of house of the accused at Bengaluru. If really, the evidence of DW.3 that the car has been considered as joint family car were to be true, question of availability of car in the garage of house No.17 at Bengaluru does not arise at all. Admittedly, DW.2 is residing at Hadadi Village of Davanagere District.

Spl.CC.No.134/2012 Had it was purchased in the name of M.N.Ningappa on behalf of the family he could have taken possession of the car. The contention that there was an urgent call to attend the son of DW.2 and hence he left the place and accused has signed on tax invoice and delivery receipt is not substantiated any convincing piece of evidence.

10.39. It is the contention of the accused that he has not at all invested any money for the purchase of car and on the other hand it is his brother has paid entire amount of Rs.6,33,255.00. The perusal of the documents especially invoice and delivery notes would show that it is the accused who has signed on the same. It is argued that mere signing on invoice and delivery note, does not mean that accused has paid the amount. That submission is cannot be accepted because of the simple reason that when M.N.Ningappa himself was present at the spot, there was no need or occasion for the accused to sign on invoice and delivery note. The contention of the accused that, on 23.11.2007, after the payment, M.N.Ningappa received a telephone call stating that his son fell down and hence he has to leave immediately to Davanagere by asking accused to take the delivery of the vehicle is not substantiated by any piece of evidence. In his evidence, DW.2 except saying that Maruthi Swift car was Spl.CC.No.134/2012 purchased out of joint family income for the use of joint family, no other evidence produced explaining the circumstances which made the accused to sign on the delivery note and invoice.

10.40. In his evidence DW.3 has deposed that, out of joint family agricultural income for the use of joint family one Maruthi Swift car was purchased in the name of M.N.Ningappa. Admittedly, all the four brothers were residing separately. The fact that accused is residing at Bengaluru is not in dispute. Admittedly, other four brothers of accused were residing separately at their native place at Davanagere and Gangavathi as well. Therefore, it is highly improbable to accept the evidence of DW.3 that Maruthi Swift car was purchased for the use of joint family members in the name of M.N.Ningappa.

10.41. It is the definite evidence of PW.4 that the insurance renewal premium in respect of the car was paid through the bank account of the accused. The Investigating Officer during the course of his investigation, has secured a Report from RNS Motors Ltd., as per Ex.P.26. The reading of Ex.P.26 would demonstrately indicate that the car was purchased in the name of M.N.Ningappa for a sum of Rs.6,33,255.00 and temporary registration was done on Spl.CC.No.134/2012 27.12.2007. The tax invoice annexed to Ex.P.26 bears signature of accused Marthandappa. Similarly, delivery challan also bears the signature of the accused. Therefore, the explanation given by the accused that, Swift Car was purchased in the name of M.N.Ningappa on behalf of joint family is cannot be accepted. Even the suggestions directed to PW.4 would show that it is the accused was paid the cost of servicing of the car twice. That suggestion and the documents referred to above would show that since the accused has purchased the car in the name of his brother M.N.Ningappa, it is the accused who has signed on tax invoice, deliver challan and remitted insurance Premium through his bank

i.e., SBI, RPC Layout Branch vide account No.10562679928 through cheque No.948012 dated 18.11.2008. Thus, absolutely, there are no reason much less good reason to accept the contention of the accused that car bearing registration No.KA02 MC 4797 belongs to joint family.

10.42. In the present case, the car bearing registration No.KA02 MC 4797 was found in the garage of the accused. It is borne out from the materials placed on record that it is the accused and his family members are only residing at Bengaluru and the brothers of the accused were residing at Davanagere and Gangavathi. Hence, only conclusion that can Spl.CC.No.134/2012 be arrived is that it is the accused who has been using the car. In fact, the original RC issued by the RNS Motors Ltd., delivery challans, insurance policy and receipts issued by RNS Motors found in the house of the accused. There is no evidence on record that M.N.Ningappa has paid money to RNS Motors. On the other hand, in the delivery challans it is the accused who has signed on the same. Therefore, the prosecution has proved that the possession of the car was with the accused after its purchase. Similarly, the title deeds were also found in the custody of the accused. As per the admitted documents it is the accused who has remitted money to RNS Motors and subsequently paid insurance policy premium. Added to it the RC owner M.N.Ningappa is none other than the brother of the accused. Further more the accused has not at all declared car bearing registration No.KA02 MC 4797 in his Annual Property Returns. Hence, it is clear that the ratio of the decisions reported in AIR 1980 SC 727 is squarely applicable to the present case. Hence, the circumstances brought out in the testimony of the witnesses coupled with the documentary evidence brought on record establishes that, the transaction in respect of car No. KA02 MC 4797 is benami transaction as it Spl.CC.No.134/2012 is complied with the ingredients of ratio laid down in the judgments referred to above. Therefore, the Investigating Officer is justified in considering the value of Maruthi Car No. KA02 MC 4797 to the tune of Rs.6,33,255.00 as the asset of the accused.

10.43. Item No.14□a sum of Rs.1,20,000.00 found in house No.17, at the time of raid. According to the accused that amount is the advance received by him from the tenant as per Rental Agreement. It is the evidence of PW.4 that, he has considered Rs.1,20,000.00 recovered in the house of the accused at the time of raid and seized under the mahazar dated 03.04.2009 as the asset of the accused. The recovery and seizure of a sum of Rs.1,20,000.00 as on 03.04.2009 is not denied by the accused. In his written statement as per Section 313(5) of Cr.P.C. accused has not stated anything about the money so seized. However, he being DW.3 has deposed the fact that a sum of Rs.1,20,000.00 was available with him as he has received the same from tenants towards advance in respect of rental agreement.

10.44. The accused in his Ex.P.126 explanation by way of schedules at page No.98 to 123 has produced the copy of rental agreements and affidavit. Admittedly, raid was conducted to the house of the accused on 03.04.2009. The Spl.CC.No.134/2012 xerox copy of affidavit of Surendrababu would show that accused Marthandappa has repaid a sum of Rs.65,000.00 on 10.04.2009. In respect of alleged rental agreement, the has produced xerox copy of rental agreement dated 24.08.2007 in respect of first floor front house of house No.17. As per this agreement the accused has inducted one S.Surendrababu as tenant on 24.08.2007 for a period of 11 months. The accused has produced copy of agreement of lease dated 01.11.2007 between himself and one Mrs.Vasanthi in respect of lease of house No.17 and she has agreed to pay rent of Rs.5,500.00 per month. She has

paid advance of Rs.45,000.00. That lease was for a period of 11 months. The accused has produced xerox copy of rental agreement dated 24.08.2007 between himself and Mr.Kushalkumar Chodary and others dated 24.08.2007 and 26.09.2008. As per these two documents, the lessees have paid security deposit of Rs.40,000.00. Those two lease are also for 11 months. The accused has produced xerox copy of rental agreement dated 24.08.2007 whereunder Mr.Sumithkumar and others have taken second floor rear house of house No.17 on lease for 7 months. They have paid security deposit of Rs.40,000.00. The accused has produced xerox copy of affidavit of one Akash S/o Lakshmishgowda for having taken the third floor of house No.17 for rent. As per Spl.CC.No.134/2012 this affidavit, he has paid Rs.10,000.00 deposit and rent of Rs.45,000.00 for 22 months. The accused has produced copy of rent agreement dated 06.04.2009 and as per this document one G.K.Mohan became the lessee under the accused for a period of 11 months from 01.04.2009. Throughout it is contended by accused that, he has kept advance amount and security deposit to the tune of Rs.1,20,000.00 with him and that amount was seized by the IO on 03.04.2009.

10.45. It is very pertinent to note that, Ex.P.126 is marked at the time of cross□examination of PW.4 for the purpose of identification only on the ground that he has identified that document as the explanation given by the accused after the submission of the Final Report. It is relevant to note that, the accused has not examined Surendrababu, Mrs.Vasanthi, Mr.Kushalkumar Choudary, Mr.Sumithkumar, Mr.Akash or G.K.Mohan to substantiate the contents of rental agreement or affidavits. Therefore, mere production of xerox copies of the documents without its proof will not enure to the benefit of the accused that as on 03.04.2009 he did possess a sum of Rs.1,20,000.00 as it was deposit amount received by him at the time of entering into rental/lease agreements. If really, the contention of the accused were to be true, there was no impediment for him to examine any one of the Spl.CC.No.134/2012 tenants. But he has not undertaken that exercise. Hence, in the absence of the evidence from the mouth of the so called tenants, it cannot be held that the accused was in possession of advance amount of Rs.1,20,000.00 as on 03.04.2009.

10.46. It is argued by the learned counsel for the accused while appreciating the evidence of the prosecution where author of the documents has not been examined that, mere marking of documents does not dispense proof. Therefore, same rule of law is applicable to the accused also. Accordingly, it is held that, mere producing xerox copy of documents, will not absolve the accused from explaining the circumstances in which he came into possession of Rs.1,20,000.00. Throughout it is contended by the accused that by virtue of Section 269SS of Income Tax Act any transaction for more than Rs.20,000.00 shall have to be done through cheque only. There is no two view with regard to that proposition of law. In the present case, the accused has not produced any receipts for having received advance amount or for having repaid the same. Even the so called tenants have not paid the advance amount through cheque. As referred to above, the accused in his statement as required under section 313(5) of Cr.P.C. has not whispered anything about he possessing advance amount of Rs.1,20,000.00 as on Spl.CC.No.134/2012 03.04.2009. Thus, absolutely there are no reasons and grounds to consider that, a sum of Rs.1,20,000.00 found in the house of accused was the amount received by him as advance amount. Therefore, it is held that, the Investigating Officer is justified in considering a sum of Rs.1,20,000.00 as asset of the accused.

10.47. Item No.15 - 278.100 grams of Gold ornaments worth Rs.2,43,720.00 found in house No.17 at the time of raid. It is the explanation of the accused that, those gold ornaments were received by his wife Kalpana as gift at the time of marriage and subsequently on various occasions. He has further contended that he has declared 75 grams of gold in his Annual Property Returns for the year 1993□ 94 and regarding purchase of remaining gold ornaments, he has produced receipts and affidavit of Smt.Mandakini, the mother of Smt.Kalpana. Hence, he has requested the court to deduct value of gold i.e., Rs.2,43,720.00 from the head of his assets.

10.48. It is admitted fact that, the accused married Smt.Kalpana on 10.11.1989. The accused contended that, he has declared 75 grams of gold in his Annual Property Returns for the year 1993□ 94. That contention of the accused is true because of the fact that in Ex.P.134 at ink page No.18 in the Annual Property Return for the year 1993 he has declared Spl.CC.No.134/2012 that he do possess 75 grams of gold. In addition to it, the Investigating Officer during the course of his investigation received the Annual Property Returns of the accused from the Chief Engineer as per Ex.P.21. In that document Annual Property Returns of the accused for the year 1993 is available. The reading of the Annual Property Return for the year 1993 would reveal the fact that as on 15.01.1994 the accused has declared 75 grams of gold. In the year 1989, the accused has declared 75 grams of gold. According to him, the value of the same was Rs.21,000.00. In the year 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998 and 1999 also he has repeated the same declaration. This declaration made by the accused is within the meaning of explanation attached to section 13(1)(e) of Prevention of Corruption Act. Hence, declaration of 75 grams of gold during 1993 and subsequent to it stands proved.

10.49. It is relevant to note that the Investigating Officer as on the date of raid seized the Annual Property Returns of the accused as per Ex.P.134. As per Ex.P.134 at page No.31, the accused has declared 20 grams of jewels worth Rs.6,000.00 on 31.08.1988. The genuineness or otherwise of the Annual Property Returns as per Ex.P.134 is not denied by the prosecution. Hence, declaration of 20 grams Spl.CC.No.134/2012 of gold in the Annual Property Return of the year 1987 is also stands proved.

10.50. In his Annual Property Return for the year 2006, available in Ex.P.126 Vol.No.III, page No.406□407, the accused has declared 80 grams of gold ornaments. Similar declaration is made by him during 2007. This declaration though produced by the accused, the prosecution has not denied the same. At the time of cross□examination of DW.3 (accused), nothing is suggested to him that he did not declare 80 grams of gold during 2006□07 in his Annual Property Returns. Thus, the declaration of 80 grams of gold during 2006□07 by the accused is also stands proved.

10.51. The prosecution during the course of the evidence of PW.2 Mohammed Irshad marked search mahazar dated 03.04.2009 as per Ex.P.36. So far as this search is concerned, one N.V.Lingegowda and H.C.Gangadhar Rao are the panchas. But prosecution has not examined these two independent panchas who have participated in the valuation of gold ornaments found in house No.17 of Bhagiratha Layout. However, it is to be noted that, non examination of independent panchas is not fatal to the case of the prosecution if other evidence and the evidence of Investigating Officer inspire confidence of the Court.

Spl.CC.No.134/2012 10.52. It is pertinent to note that, as on the date of raid, the accused was found in possession of 278.100 grams of gold ornaments and Goldsmith by name Krishnamurthy (CW.6) valued the ornaments at Rs.1,200.00 per gram. From the consideration of the evidence on record it emerges that, said Krishnamurthy valued the gold ornaments by considering the value of the gold as on 03.04.2009. However, the prosecution has not examined said Goldsmith. It is very relevant to note that in Ex.P.36 mahazar the Investigating Officer has not taken atleast signature of said goldsmith for having he subjected the golden ornaments to the process of appraisal. Had the prosecution examined CW.6, the accused would have an opportunity to subject him to the test of cross-examination with regard to purity, wastage and separation of stones and beats found in the gold ornaments at the time of valuation of the same. There is no evidence on record to the effect that CW.6 has valued the gold by separating stones and beats found in the ornaments. Further more the evidence of PW.2 Mohammed Irshad is also very much silent with regard to the manner in which CW.6 has subjected gold ornaments to the process of valuation. There is no material to show the basis on which the prosecution claimed that the entire gold was in Spl.CC.No.134/2012 acquisition made during the check period. Similarly, there is nothing on record to show as to what was the basis for arriving the value of gold ornaments. If the valuation was on the basis of value of gold at the time when investigation was launched against the accused, it would still not give the real value of the said gold ornaments in the possession of the accused and his family. If they were acquired at different points of times, prior to such investigation, the value of the gold would depend on the points in time when they were acquired. Mere valuation by a Jeweller of the value of the gold at the time when they were seized would not be enough to prove the value of the same.

10.53. As discussed above, at an undisputed point of time, i.e., during 1988 the accused has declared 20 grams of gold, during 1993 to 2005 75 grams of gold and 80 grams of gold during 2006-07. Hence, he has declared 175 grams of gold as required in explanation attached to section 13(1)(e) of Prevention of Corruption Act. Therefore, the value of 175 grams of gold has to be deducted from 278.100 grams of gold found at the time of raid more precisely on 03.04.2009.

10.54. The Investigating Officer has deducted 75 grams of gold and taken the value of only 203.100 grams of gold at the rate of Rs.1,200.00 per gram i.e., Rs.2,43,720.00 as the Spl.CC.No.134/2012 asset of the accused. It is the contention of the accused that, his in-laws have gifted gold ornaments to him and his wife on various occasions. No doubt, the mother-in-law of the accused by name Smt.Mandakini has filed an affidavit stating that, she has given gold ornaments to her daughter. That statement made by the mother-in-law of the accused by name Smt.Mandakini by way of affidavit is not substantiated by way of her oral evidence. Therefore, un-testified affidavit of Mandakini itself is not sufficient to come to the conclusion that she has given 203.100 grams of gold ornaments worth Rs.2,43,720.00 to the accused and Kalpana.

10.55. The Investigating Officer has seized one bill of POTDR BROTHERS JEWELLERS, Khade Bazar, Belagaum. Which would show that, H.B.Kenchappagol has purchased a necklace of 56.100 grams on 16.05.1996 for a sum of Rs.33,000.00. The genuineness of this document is not denied by the prosecution. However, the prosecution has not marked said receipt at least in the evidence of PW.4. Therefore, a sum of Rs.33,000.00, the value of 56.100 grams of gold necklace shall have to be deducted from the value of gold ornaments so seized by the Investigating Officer at the time of raid.

Spl.CC.No.134/2012 10.56. Thus, from the discussions made above, it is established that accused has declared 175 grams of gold in his Annual Property Returns. As per the receipt of POTDR BROTHERS JEWELLERS, Khade Bazar, Belagaum the father in□law of the accused has purchased 56.100 grams of gold. Hence, the accused has given explanation in respect of 231.100 grams of gold. Therefore, 231.100 grams shall have to be deducted from 278.100 grams. That comes of 47 grams.

10.57. It is relevant to note that, the goldsmith has considered the value of gold as on 03.04.2009. To consider the value of gold as on 03.04.2009, the goldsmith required necessary particulars like date of purchase, its purity and its receipt. But the accused has not furnished such particulars to the Investigating Officer on 03.04.2009 or subsequent to it. Hence, the goldsmith is justified in considering the value of gold at Rs.1,200 per gram as on 03.04.2009. Therefore, this court is of the opinion that the only option available for the Investigating Officer to take into consideration the value arrived by the gold smith.

10.58. Thus, for the reasons given herein above this court is of the opinion that, the valuation made by the goldsmith considering the value of the gold as on 03.04.2009 is proper. Hence, the value of 47 grams of gold comes to Spl.CC.No.134/2012 Rs.56,400.00. The Investigating Officer has considered a sum of Rs.2,40,720.00. Now as per the discussions, the accused has not furnished explanation in respect of 47 grams of gold worth Rs.56,400.00. Thus, it is held that a sum of Rs.56,400.00 shall have to be considered as the assets of the accused.

10.59. Item No.16 - Rs.21,390.00 the value of 930 grams of silver articles found in house No.17 at the time of raid. The accused has admitted the same. The accused has admitted the value of silver articles worth Rs.21,390.00 as his asset. Even otherwise the accused has not declared the acquisition of silver articles. Hence, value of 930 grams of silver articles at Rs.21,390.00 is considered as the asset of the accused.

10.60. Item No.17 - Value of the household articles found in House No.17 of the accused to the tune of Rs.5,00,318.00. According to accused the value of the household articles was Rs.1,50,000.00. The learned counsel for the accused has placed reliance on a decision reported in 1997 (99) BOMLR 176. In the said decision at para No.34 it is held that "I think the learned trial Judge has clearly fallen into an error in placing such burden on the appellant because Spl.CC.No.134/2012 it is needless to say that there is no sound reason for one to maintain record of purchase of such household articles. It is true that the public servant is to satisfactorily account for the disproportionate assets and not to prove the claim with mathematical exactitude beyond all possibility of doubt. One may might be keeping accounts of expenditure for his satisfaction but why should he procure and preserve supporting bills and vouchers?. These are not the government cash to be audited. Besides why should one keep them from the beginning of his carrier till his superannuation anticipating to be require in a court of law? Even for certain expenditure supporting vouchers are not feasible for which audit accepts a flat rate".

10.61. Similarly, the counsel for the accused has placed reliance on a decision reported in LAWS (KR) 2017 (3) 139 . In the said decision at para 17 it is held that "it is seen that PW.2 has merely drawn up an inventory, specifying the rates of articles. After that the accused was summoned to

submit his explanation and rates of articles. Once the accused submits its explanation, the Investigating Agency should investigate and either accept or deny the explanation". Thus, it is for this Court to appreciate the evidence produced by the prosecution in the light of ratio laid down in the above Spl.CC.No.134/2012 decisions. It is the contention of the accused that the Expert has not given any Report with regard to value of those articles. It is contended by the accused that, Rs.3,50,318.00 shall have to be deducted from Rs.5,00,318.00.

10.62. In fact to prove the value of household articles, the prosecution has placed reliance on Ex.P.36 Panchanama drawn at the earliest point of time. It is not in dispute that PW.2 Mohammed Irshad has conducted raid to the house of the accused bearing No.17, 2nd Cross, Byraghatta Layout, Behind Canara Bank, Kengeri Satellite Town, Bengaluru. But he has not whispered anything about the value of the articles found in the house of the accused. His evidence is very much silent with regard to the assistance taken by him from the panchas to value the household articles to the tune of Rs.5,00,318.00. Therefore, at the initial stage itself it can be safely held that the evidence of PW.2 is not at all helpful to the prosecution to prove the value of household articles found in house No.17 and narrated in Ex.P.36 mahazar.

10.63. The reading of Ex.P.36 mahazar would show that one M.Ningappa and H.C.Gangadhar Rao working in Veterinary Department are the panchas. But those two independent panchas were not been examined. In Ex.P.36, the panchas and PW.2 valued each and every item of Spl.CC.No.134/2012 household articles. But the evidence of PW.2 is very much silent with regard to he taking the assistance of any Expert to assess the value of household articles so found. Therefore, the contents of Ex.P.36 with regard to value of the household articles is not substantiated by the prosecution through the evidence of independent witnesses or by adducing evidence of any Experts.

10.64. It is the evidence of PW.4 that except in respect of IFB Washing machine, Sharp TV of 25 inches and Bicycle, he has taken approximate value of household articles. To prove the value of the household articles at the time of raid, it is for the prosecution to place reliance on the evidence of panchas to Ex.P.36 Mahazar. But the prosecution has not examined panchas to Ex.P.36 mahazar. Whatever the evidence of PW.4 is based upon the contents of Ex.P.36. The evidence of PW.2 Mohammed Irshad/ Police Inspector of Lokayukta who has conducted raid is very much silent with regard to value of the household articles. Therefore, the evidence of PW.4 that he has considered the value of household articles based upon mahazar is not supported by the evidence of panchas to Ex.P.36 or atleast the evidence of PW.2.

Spl.CC.No.134/2012 10.65. It is the definite evidence of PW.4 that he did not visit the house and verify the inscriptions made in those household articles. According to him he has not conducted independent investigation with respect of household articles found in the mahazar dated 03.04.2009 except IFB Washing machine, Sharp TV of 25 inches and Bicycle. Therefore, it is clear that in respect of household articles referred to in Ex.P.36, PW.4 has not conducted independent investigation. Admittedly, panchas to Ex.P.36 are not Experts. It is settled proposition law as referred to above that mere marking of a document does not dispense with proof. In the present case also except marking Ex.P.36, nothing is placed on record to show the actual value of the household articles as on the date of its acquisition. It is the definite evidence of PW.4 that without ascertaining

the year of manufacture and purchase one cannot ascertain the exact value of household articles. That evidence of PW.4 is nothing but outcome of commonsense. So far as the household articles narrated in Ex.P.36 is concerned except IFB Washing machine, Sharp TV of 25 inches and Bicycle, there is no cogent evidence to show that the value of the household articles was Rs.5,00,318.00 as on 03.04.2009.

Spl.CC.No.134/2012 10.66. It is the evidence of PW.4 that he during the course of his investigation collected details of purchase of IFB washing machine from Mr.Suraj, Branch Manager, IFB Industries, Bengaluru as per Ex.P.52. However, the author of Ex.P.52 has not been examined by the prosecution. Therefore, based upon mere a letter as per Ex.P.52, the value of washing machine cannot be ascertained. In fact, the reading of Ex.P.36 mahazar would show that at the time of raid washing machine manufactured by Senetor Company was found in the house of the accused. There is reference in Ex.P.36 at Sl.No.99 and the value of the washing machine is shown as Rs.20,278.00. Therefore, the document at Ex.P.52 is not helpful to prosecution to prove the value of the washing machine. In Ex.P.36 at the earliest point of time PW.2 has valued one Sharpline 25 inches Colour TV at Rs.8,000.00. However, in respect of value of the television or collection of evidence, the evidence of PW.2 and 4 is very silent.

10.67. In his evidence PW.4 has deposed that he does not know whether those articles came to the possession of accused by way of inheritance, partition, gift, has been purchased or pre□owned. Therefore, the valuation of the household articles at Rs.5,00,318.00 by PW.4 is without any basis. It is the specific contention of the accused that the Spl.CC.No.134/2012 value of the household articles was Rs.1,50,000.00. His contention that one Yogendra has gifted washing machine is substantiated by him by an affidavit available in Ex.P.126. Since, the prosecution has failed to substantiate the value of household articles by producing cogent evidence, the only recourse available for the Court is to accept the contention of the accused that the value of household articles was Rs.1,50,000.00. Accordingly, it is held that the value of the household articles found in the house of the accused was Rs.1,50,000.00. Accordingly, household articles worth Rs.1,50,000.00 is considered as the asset of the accused.

10.68. Item No.19 - NSC Certificate No.50CC895679 in the name of the accused for Rs.1,000.00, Item No.19 - NSC Certificate No.19D846561 in the name of the accused for Rs.5,000.00, item No.20□Rs.5,880.00 towards deposit for electricity meter No.WTP4953 installed in house constructed in site No.17, item No.21□Rs.3,360.00 towards deposit for electricity meter No.W7EH10147 installed in house constructed in site No.17, item No.22□Rs.2,010.00 towards deposit for electricity meter No.W7EH10148 installed in house constructed in site No.17, item No.23□Rs.2,010.00 towards deposit for electricity meter No.W7EH10149 installed in house constructed in site No.17, item No.24□Rs.2,010.00 towards Spl.CC.No.134/2012 deposit for electricity meter No.W7 EH 10150 installed in house constructed in site No.17, item No.25□ Rs.2,010.00 towards deposit for electricity meter No.W7 EH 10151 installed in house constructed in site No.17, item No.26□Rs.2,010.00 towards deposit for electricity meter No.W7 EH 10152 installed in house constructed in site No.17. Similarly item No.27 is deposit paid in respect of domestic gas connection to the tune of Rs.1,350.00. The accused has not denied these assets. Hence much discussion is not required.

10.69. Item No.28 is Rs.34,050.00 towards the value of Sony Ericson Mobile (W5801) worth Rs.10,050.00, value of Samsung Mobile (SGHD780) worth Rs.12,000.00, value of Nokia Mobile (6600) worth Rs.8,000.00 and Samsung Mobile (CE0168) worth Rs.4,000.00. According to the Investigating Officer those mobiles are worth Rs.34,050.00 and he has taken that amount to the head of the assets of the accused. However the accused has contended that those mobiles are not worth to use and same has been used as toys and the value of the same is Rs.6,000.00 and hence he has sought for deduction of Rs.28,050.00.

10.70. It is relevant to note that the Investigating Officer though collected a cash bill issued by Omsai Electricals, he has not considered the actual value of mobiles Spl.CC.No.134/2012 so seized. It is pertinent to note that the Investigating Officer has seized one Sony Ericson Mobile model W580I. According to him, the daughter of the accused by name Swetha has been using that mobile with SIM No.9742701608 and value of that mobile set was Rs.10,050.00, accused has been using Samsung mobile Model No.SGHD780 with dual SIM 9480683179 and 9743446772 and the value of the mobile set was Rs.12,000.00, the wife of the accused by name Smt.M.Kalpana has been using Nokia Mobile 6600 with SIM No.9448783102 and the value of said set was Rs.8,000.00 and in addition to it another Samsung mobile CE0168 worth Rs.4,000.00 found in the house of the accused.

10.71. Admittedly, the panchas to seizure mahazar are not the Experts to decide the value of mobile phones. To prove the true value of the mobiles or to show that, the mobiles were in working condition, the Investigating Officer has not secured any Report from the Experts. In fact, DW.3 has deposed that, he has been using one mobile and its value was Rs.6,000.00. To show the actual value of four mobiles, there is no satisfactory evidence before this Court. PW.4 being the Investigating Officer has deposed that he has not verified as to whether four mobiles were in working condition or not. He has categorically admitted that, without ascertaining the Spl.CC.No.134/2012 working condition of the mobiles, one will not be in a position to ascertain the value of the mobiles. Under circumstances, based upon self serving interested testimony of PW.4 it cannot be said that the value of mobiles was Rs.34,050.00. On the other hand the contention of the accused that he has been using one mobile worth Rs.6,000.00 appears to be probable. Hence, the value of the mobile for the purpose of considering the assets of the accused is taken as Rs.6,000.00.

10.72. Item No.29 - Rs.41,562.96 the investment made by the accused in Shares. That investment is admitted by the accused as his assets. Hence, the Investigating Officer is justified in considering the value of the Shares at Rs.41,562.96 as the assets of the accused.

10.73. Hence, for the foregoing reasons and discussions, this Court is of the opinion that the following are the assets acquired by the accused during the check period and its value :

Sl. No.	Assets	Value (in Rs.)
1.	Site No.35, Shyabhanur Village, Davanagere Taluk.	61,000.00

2. Sy.No.35/1, Site No.17, Valgerehalli, Kengeri 3,60,000.00 Hobli, Bengaluru South Taluk in Katha No.35/1, measuring 60x40 feet Spl.CC.No.134/2012

3. Value of the house built in Site No.17 26,23,500.00 Valgerehalli, Kengeri Hobli, Bengaluru South Taluk in Katha No.35/1, measuring 60x40 feet

4. Amount found in SB Account 41,754.00 No.10562679928 at SBI, RPC Layout Branch, Bengaluru.

5. Amount found in SB Account 42,648.53 No.42470001004017O6 at Punjab National Bank, Deepanjali Nagar Branch, Bengaluru.

6. Amount found in SB Account 15,610.00 No.2850101002297 at Canara Bank, Kengeri Satellite Town Branch, Bengaluru

7. Amount found in SB Account 10,810.00 No.2850101001519 at Canara Bank, Kengeri Satellite Town Branch, Bengaluru

8. Amount found in SB Account No.632188 61,417.00 at ICICI Bank, Commissionerate Road, Bengaluru

9. Purchase Value of Hero Honda Splendor 15,871.00 Plus bike bearing registration No.KA02 EX 4712

10. Maruthi Suzuki VDI Swift car No.KA 02 6,33,255.00 MC 4797 (benami transaction)

11. Cash found in house No.17 on 1,20,000.00 03.04.2009

12. Value of 47 grams of gold ornaments 56,400.00 found in house No.17 on 03.04.2009 Spl.CC.No.134/2012

13. Value of 930 grams of silver articles 21,390.00 found in house No.17 on 03.04.2009

14. Value of household articles found in 1,50,000.00 house No.17 on 03.04.2009

15. Face value of NSC Certificate 1,000.00 No.50CC895679 in the name of the accused

16. Face value of NSC Certificate 5,000.00 No.19DD846561 in the name of the accused.

17. Deposit made in respect of electricity 5,880.00 meter No.WTP4953 of site No.17 near KHB Colony, Kengeri Satellite Town, Bengaluru.

18. Deposit made in respect of electricity 3,360.00 meter No.W7EH10147 of site No.17 near KHB Colony, Kengeri Satellite Town, Bengaluru.

19. Deposit made in respect of electricity 2,010.00 meter No.W7EH148 of site No.17 near KHB Colony, Kengeri Satellite Town, Bengaluru.

20. Deposit made in respect of electricity 2,010.00 meter No.W7EH10149 of site No.17 near KHB Colony, Kengeri Satellite Town, Bengaluru.

21. Deposit made in respect of electricity 2,010.00 meter No.W7EH10150 of site No.17 near KHB Colony, Kengeri Satellite Town, Bengaluru.

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22. Deposit made in respect of electricity 2,010.00 meter No.W7EH10151 of site No.17 near KHB Colony, Kengeri Satellite Town, Bengaluru.

23. Deposit made in respect of electricity 2,010.00 meter No.W7EH10152 of site No.17 near KHB Colony, Kengeri Satellite Town, Bengaluru.

24. Deposit towards Domestic gas connection 1,350.00

25. Value of the Mobile purchased by the 6,000.00 accused

26. Investments made by the accused in 41,562.96 Shares□India Info□line Limited Total Value 42,87,858.49

11. Expenditure of the accused:

11.1. The Investigating Officer has taken into consideration the following expenditure of the accused for the check period commencing from 29.10.1987 to 03.04.2009.

Sl. No.	Expenditure	Amount (in Rs.)
1	Registration fee and stamp duty paid at the time of purchase of site No.35, Shyabhanur Village, Davanagere Taluk.	7.950.00
2	Registration fee and stamp duty paid at the time of purchase of Sy.No.679/2, Plot No.9, Bhagyanagar, Koppal.	4,214.00
3	Registration fee and stamp duty paid at the time of purchase of Sy.No.98/1, Plot No.46, Bhagyanagar, Koppal.	8,130.00

Spl.CC.No.134/2012 4 Registration fee and stamp duty paid at the 8,130.00 time of purchase of Sy.No.98/1, Plot No.45, Bhagynagar, Koppal 5 Registration fee and stamp duty paid at the 36,100.00 time of purchase of Sy.No.35/1, Site No.17, Valgerehalli, Kengeri Hobli, Bengaluru South Taluk in Katha No.35/1, measuring 60x40 feet 6 Tax paid in respect of site No.17, Bengaluru

12,683.00 South Taluk, Valagerehalli, Kengeri 7 Expenditure towards payment of water bill for 1,540.00 the House No.202/1, 4th Cross, RPC Layout, Viajayanagar, Bengaluru 8 Expenditure towards payment of water bill for 3,400.00 rented House No.3097, 14th Main, 8th Cross, Attiguppe, RPC Layout, Vijayanagar 2nd Stage, Bengaluru 9 Expenditure towards payment of Electricity 18,409.00 Bill for Meter No.WTP 4953 of Site No.17, Near KHB Colony, Valagerhalli, K.S.Town, Bengaluru 10 Expenditure towards payment of Electricity 5,393.00 Bill for Meter No.W7EH10147 of Site No.17, Near KHB Colony, Valagerehalli, K.S.Town, Bengaluru.

11 Expenditure towards payment of Electricity 2,663.99 Bill for Meter No.W7EH10148 of Site No.17, Near KHB Colony, Valagerehalli, K.S.Town, Bengaluru Spl.CC.No.134/2012 12 Expenditure towards payment of Electricity 4,816.00 Bill for Meter No.W7EH10149 of Site No.17, Near KHB Colony, Valagerehalli, K.S.Town, Bengaluru 13 Expenditure towards payment of Electricity 15,396.00 Bill for Meter No.W7EH10150 of Site No.17, Near KHB Colony, Valagerehalli, K.S.Town, Bengaluru 14 Expenditure towards payment of Electricity 21,100.00 Bill for Meter No.W7EH10151 of Site No.17, Near KHB Colony, Valagerhalli, K.S.Town, Bengaluru 15 Expenditure towards payment of Electricity 1,783.00 Bill for Meter No.W7EH10152 of Site No.17, Near KHB Colony, Valagerhalli, K.S.Town, Bengaluru 16 Expenditure towards payment of Electricity 1,877.00 Bill for RR No.N2EH44457 of House No.202/1, 4th Cross, RPC Layout, Vijayanagar, Bengaluru□40 17 Expenditure towards payment of Electricity 16,525.00 Bill for rented house No.3097, 14 th Main, 8th Cross, Attiguppe, RPC Layout, Vijayanagar 2nd Stage, Bengaluru□40 18 Expenditure towards Investigation Report for 600.00 ground floor water 19 Expenditure towards payment of EMI for Hero 936.00 Honda Splendor Plus bearing Registration No.KA□02□EX□4712 Spl.CC.No.134/2012 20 Expenditure towards mobility expenses for 3,291.00 Hero Honda Splendor Plus bearing Registration No.KA□02□EX□4712 21 Expenditure towards mobility expenses for 1,55,457.50 Maruthi Suzuki Swift VDI car bearing Registration No.KA□02□MC□4797 22 Expenditure towards Mobile Connectivity 26,442.19 Charges of TATA Indicom Landline vide No.080□65619086 23 Expenditure towards repayment of housing 3,25,781.00 loan from Punjab National Bank, Deepanjali Nagar Branch, Bengaluru 24 Expenditure towards repayment of loan amount from City Financial for the purpose of 38,357.00 purchase of Hero Honda Splendor Plus bearing Registration No.KA□02□EX□4712 25 Expenditure towards repayment of loan from 25,352.00 SREI Equipment Finance Limited for fixing Solar Water Heater to House No.17 26 Expenditure towards loan given to Private persons on Interest:

1. Amarnath □Rs.7,00,000.00

2. Mohan Reddy □Rs.3,00,000.00

3. B.Nataraj □Rs.7,00,000.00

4.M.K.Bhagwan □Rs.3,50,000.00

5. Dhanaraj □Rs.19,00,000.00

6.Venkataramreddy□Rs.13,00,000.00

7. L.Tammanna □Rs.1,00,000.00

8. Haribabu □Rs.5,00,000.00 58,50,000.00 Spl.CC.No.134/2012

27 Premium amount paid for Life Insurance 22,748.00 policy No.No.623729639 in the name of Sri.M.N.Marthandappa 28 Premium amount paid for Life Insurance 49,735.00 policy No.614723838 in the name of Sri.M.N.Marthandappa 29 Premium amount paid for Life Insurance 60,750.00 policy No.661956255 in the name of Sri.M.N.Marthandappa 30 Premium amount paid for Life Insurance 46,816.00.

policy No.661999493 in the name of Sri.M.N.Marthandappa 31 Premium amount paid for Life Insurance 16,352.00.

policy No.661999734 in the name of Sri.M.N.Marthandappa 32 Premium amount paid for Bajaj Aliyanz Life 1,00,000.00.

Insurance in the name of Accused 33 Insurance Policy of Site No.17, 6,314.00 Sy.No.35/1/t7/, Bengaluru South Taluk, Valagerhalli, Kengeri.

34 Life Insurance Policy in Post office of Accused. 63,960.00 35 Expenditure towards income tax payment by 4,915.00 the accused.

36 Family domestic expenditure of the accused 7,77,259.00 37 Amount paid for Deccan Herald News paper 1,001.00 38 Expenses incurred to take care of Pomeranian 29,000.00 dog Spl.CC.No.134/2012 39 Gas Cylinder expenses paid by the accused in 16,200.00 respect of consumer No.31132 40 Cable connection expenditure in the name of 1,000.00 the accused 41 Amount spent for daughter's education by the 35,800.00 accused 42 Amount spent for son's education by the 69,480.00 accused 43 Membership fee paid to Karnataka Engineer's 25,000.00 Academy towards registration 44 Agricultural expenses paid by the accused 32,000.00 45 Cash withdrawal from SB Account 1,00,000.00 No.10562679928 of SBI in the name of the accused 46 Cash withdrawal from SB Account 2,00,000.00 No.4247000100401706 of Punjab National Bank, Deepanjali Nagar, Bengaluru in the name of the accused 47 Rent paid for house No.202/1, 4 th Cross, RPC 44,000.00 Layout, Vijayanagara, Bengaluru 48 Rent paid for house No.3097, 8 th Cross, 1,43,000.00 Athiguppe, RPC Layout, Vijayanagara, Bengaluru 49 Donation paid to temples and other religious 68,254.00 institutions Spl.CC.No.134/2012 50 Amount paid for the purchase of electric 5,017.00 meter 51 Shares in Co□operative Bank Society, 10,015.00 Bengaluru 52 Amount paid for the membership of Kannada 1,000.00 monthly paper 53 Amount paid for membership of Co□operative 5,157.00 Society in Bengaluru 54 Amount deposited to Unit Trust of India, 1,332.09 Children Gift Growth Fund 55 Share amount received from India Info□line 30,667.04 shares 56 Amount paid towards cheque bounce charges 225.00 to Punjab National Bank, Deepanjali Nagar Branch, Bengaluru.

57	Stamp duty and processing fee paid by the accused	10,000.00

Total Value	85,73,323.81

11.2. It is relevant to note that, accused has admitted the expenditure at Sl.No.1, 5, 6, 8, 9, 10, 14, 17, 18, 19, 20, 21, 24 to 26, 35, 40, 41, 42, 43, 45, 48, 50, 51, 55 to 61, 63 to 65. The accused has admitted expenditure at 11, 44 and 49 in part and he has denied the expenditure at Sl.No.2, 3, 4, 12, 13, 15, 16, 22, 23, 27 to 34, 36 to 39, 46, 47, 52, 53, 54 and 62.

Spl.CC.No.134/2012 11.3. Item No.1 expenditure is registration fee and stamp duty of sale deed in respect of site No.35, Shyabanur Village, Davanagere Taluk, Davanagere is Rs.7950.00. It is the contention of the prosecution that accused has purchased site No.35 under the Sale Deed dated 30.05.1996 from one Siddaveerappa for a sum of Rs.61,000.00 and has paid Rs.7,950.00 towards registration and stamp duty. It is an admitted fact that, the accused has declared the purchase of site No.35 under the registered Sale Deed dated 30.05.1996. The fact that, it is the accused who has paid registration and stamp duty of Rs.7,950.00 is not in dispute. In fact, the accused has admitted the fact that, he has paid Rs.7,950.00 towards the registration and stamp duty in respect of Sale Deed dated 30.05.1996. Hence, the amount of Rs.7,950.00 is taken under the head of the expenditure of the accused.

11.4. Item No.2 expenditure is registration fee and stamp duty of sale deed in respect of Sy.No.679/2, Plot No.9, Bhagyanagar, Koppalnagar to the tune of Rs.4,214.00. Item No.3 expenditure is registration fee and stamp duty of sale deed in respect of Sy.No.98/1, site No.46, Bhagyanagar, Koppalnagar to the tune of Rs.8,130.00. Item No.4 expenditure is registration fee and stamp duty of sale deed in Spl.CC.No.134/2012 respect of Sy.No.98/1, site No.45, Bhagyanagar, Koppalnagar to the tune of Rs.8,130.00. The acquisition of these three sites in the name of the wife of accused is declared by him in his Annual Property Returns. This court has already held that, the property at site No.9, 45 and 46 of Bhagyanagar are acquired by the in-laws of the accused in the name of Smt.Kalpana. Therefore, the accused is justified in contending that, the registration fee and stamp duty of Rs.4,214.00 + Rs.8,130.00 + Rs.8,130.00 was borne by his father-in-law. It is not in dispute that the accused declared the acquisition of these three sites in his Annual Property Returns as per Ex.P.134. Even to that effect Smt.Mandakini, the mother-in-law of the accused has filed affidavit. To show that actual registration fee and stamp duty was paid by the accused alone, there is no clinching evidence before the Court.

11.5. In the present case to dislodge the theory of the prosecution, the accused has stepped into witness box as DW.3. The fact that the above referred three sites are purchased in the name of Smt.Kalpana on 15.04.1998, 22.07.2000 and on 22.07.2000 is not in dispute. The vendors of Smt.Kalpana by name Sri.Siddaveerappa, Gurushanthappa and N.Challappa have not been examined by the Investigating Spl.CC.No.134/2012 Officer. The evidence of DW.3 would inspire confidence of the Court that he has deposed as to who has acquired site No.9, 45 and 46 in the name of his wife. Added to the above, at the time of cross-examination of DW.3, the prosecution has not taken any contention that, the father-in-law of the accused was not financially sound enough to get the registration of sale deeds. The specific suggestion that, it is the accused who has purchased three sites in the name of his wife is categorically denied by DW.3. It is settled proposition of law that, denied suggestion is not evidence at all. The learned counsel for the accused has placed reliance on

the decisions reported in 2015 (1) ALT 125 in the case of Gopalkrishna Surapaneni Vs. Anuradha Surapaneni, (ii) India Lawlib 125□6900□2017 in the case of Legal Heirs of Deed Umedmiya R Rathod Vs. State of Guajarat (iii) In the case of Khimji Kurjibhai Vs. State of Gujarat. In the said decision it is held that as a principle of law it is to be remembered that suggestions in cross□ examination are no evidence. This proposition of law is good both in the case of prosecution and the defense. Mere hurling of some such suggestions, which are denied, can hardly take the place of proof or evidence. The ratio of the above decisions is squarely applicable to the Spl.CC.No.134/2012 present case because of the reason that except suggestions directed to DW.3, nothing worthwhile is elicited to the effect that three sites are acquired by the accused in the name of his wife.

11.6. From the careful reading of the explanation offered by DW.3 in his evidence on oath coupled with explanation given by him in his Annual Property Returns as per Ex.P.134 for the year 1998, this Court is of the opinion that the accused has declared the acquisition of site No.9, 45 and 46 in the name of his wife by his father□in□law at an undisputed point of time. Therefore, the above explanation and declaration is within the meaning of 13(1)(e) of PC Act 1988. Resultantly, it is held that, a sum of Rs.4214.00 + Rs.8,130.00 + Rs.8,130.00 = Rs.20,474.00 shall have to be deducted from the head of the expenditure of the accused.

11.7. Item No.5 - Expenditure towards Sy.No.35/1, site No.17, Bengaluru South Taluk, Valagerehalli, Kengeri is Rs.36,100.00. The accused has admitted that, he did pay registration fee and stamp duty of Rs.36,100.00 towards the registration of Sale Deed dated 18.04.2005. Since, the accused has admitted the expenses of Rs.36,100.00, much discussion is not required.

Spl.CC.No.134/2012 11.8. Item No.6 - Expenditure towards payment of tax in respect of Site No.17, Bengaluru South Taluk, Valagerehalli, Kengeri is Rs.12,683.00. It is the contention of the prosecution that, the accused has paid tax of Rs.12683.00 to site No.17. The accused admitted this expenditure. This Court has already held that site No.17 was acquired by the accused for a sum of Rs.3,60,000.00 and he has declared the same in his Annual Property Returns. Therefore, a sum of Rs.12,683.00 is taken under the head of expenditure of the accused.

11.9. Item No.7 - Expenditure towards payment of water bill for house No.202/1, 4th Cross, RPC Layout, Viajayanagar, Bengaluru is Rs.1,540.00. The accused did admit a sum of Rs.1,540.00 as the water bill paid in respect of house No.202/1. Therefore, a sum of Rs.1,540.00 is taken under the head of expenditure of the accused.

11.10. Item No.8 - Expenditure towards payment of water bill for rented House No.3097, 14 th Main, 8th Cross, Attiguppe, RPC Layout, Vijayanagar 2nd Stage, Bengaluru is Rs.3,400.00. The accused did admit a sum of Rs.3,400.00 as the water bill paid in respect of house No.202/1. Therefore, a Spl.CC.No.134/2012 sum of Rs.3,400.00 is taken under the head of expenditure of the accused.

11.11. Item No.9 - Expenditure towards payment of electricity bill for meter No.WTP4953 of site No.17, Near KHB Colony, Valagerhalli, K.S.Town, Bengaluru is Rs.18,409. The accused admitted a sum of Rs.18,409 as the electricity bill paid in respect of house No.202/1. Therefore, a sum of Rs.18,409.00 is taken under the head of expenditure of the accused.

11.12. Item No.10 - Expenditure towards payment of electricity bill for meter No.W7EH10147 of site No.17, near KHB Colony, Valagerehalli, K.S.Town, Bengaluru is Rs.5,393.00. However, the accused has contended that, he has paid only Rs.899.00 in respect of electricity bill for meter No.W7EH10147. The fact that, this meter was used for lifting of borewell water to the overhead tank is not in dispute. Admittedly, there were as many as five tenants. In fact, the prosecution itself has produced rental agreement as per Ex.P.95 to Ex.P.98. As per this document it is for lessees to pay electricity charges. Hence, the accused is justified in requesting the court to consider his expenditure only to the extent of 1/6th. Therefore, the accused is justified in Spl.CC.No.134/2012 contending that he has paid his 1/6 th to the tune of Rs.899.00.

11.13. Item No.11 - Expenditure towards payment of electricity bill for meter No.W7EH10148 of site No.17, near KHB Colony, Valagerehalli, K.S.Town, Bengaluru is Rs.2,663.99. It is the contention of the accused that, meter No.W7EH10148 was used by the tenant Kushal Choudary in respect of second floor front house. The Investigating Officer during the course of his investigation has seized the rent agreement as per Ex.P.95. The reading Ex.P.95 would indicate that, it is for the tenant to pay electrical charges. Since, Ex.P.95 is produced by the prosecution itself, it cannot dispute the contents of the same.

11.14. To prove the electric charges of Rs.2,663.99, the Investigating Officer has secured a letter from AEE and electricity bill paid particulars. That document is not denied by the accused. The explanation given by the accused that, it is tenant Kushal Choudary who has paid electricity bill in respect of electricity meter No.W7EH10148 is appears to be probable.

11.15. It is the evidence of PW.4 that by virtue of the documents collected in respect of electricity meter Spl.CC.No.134/2012 No.W7EH10148, he has taken a sum of Rs.2,663.99 as expenditure of the accused. PW.4 has deposed that, he has recorded the statement of the tenants who were tenants at the time of raid, but he does not know who are all the tenants in respect of that house prior to the date of raid. The evidence of PW.4 in cross□examination would show that he during the course of his investigation came to know that the accused has lent out five portions of house on rent. As per Ex.P.95, it is for the tenant to pay electricity charges. There is no evidence of Kushal Choudary to the effect that though in Ex.P.95 he has agreed to pay electricity charges, in fact it is the accused who has paid electricity charges of Rs.2,663.99. When admitted document show that it is the obligation on the part of the tenant to pay the electricity charges, no other conclusion than what is admitted can be arrived. The evidence of DW.3, the explanation offered by him and the contents of Ex.P.95 is sufficient to hold that it is the tenant who has paid electric charges of Rs.2,663.99. Hence, the contention of the accused that, Rs.2,663.99 shall have to be deducted from his expenditure is to be accepted.

11.16. Item No.12 - Expenditure towards payment of electricity bill for meter No.W7EH10149 of site No.17, near KHB Colony, Valagerehalli, K.S.Town, Bengaluru is Spl.CC.No.134/2012 Rs.4,816.00. The evidence of PW.4 would show that he has taken Rs.4,816.00 as the expenditure of the accused. The accused has contended that, electricity meter No. W7EH10149 is pertaining to second floor rear house. The Investigating Officer at the time of raid has seized rental agreement as per Ex.P.96. The genuineness of Ex.P.96 is not denied by the prosecution. The reading of Ex.P.96 would show that, it

is the obligation on the part of the tenant to pay electricity charges. Therefore, the contention of the accused that, he has not paid electricity charges of Rs.4,816.00 in respect of electricity meter No. W7EH10149 is appears true. Hence, accepted.

11.17. The evidence of PW.4 in cross-examination would show that, he during the course of his investigation came to know that accused Marthandappa has lent out five portions of house on rent. There is no evidence of the tenant by name Sumithkumar to the effect that as agreed in Ex.P.96 he has not paid electricity charges and on the other hand the same was remitted by the accused to the concerned department. In the absence of such evidence, when admittedly under Ex.P.96 it was the duty of the tenant to pay electricity charges, only conclusion that can be arrived is that it is the tenant who has paid electricity charges of Spl.CC.No.134/2012 Rs.4,816.00 in respect of meter No. W7EH10149. Hence, a sum of Rs.4,816.00 shall have to be deducted from the head of the expenditure of the accused.

11.18. Item No.13 - Expenditure towards payment of electricity bill for meter No.W7EH10150 of site No.17, near KHB Colony, Valagerehalli, K.S.Town, Bengaluru is Rs.15,396.00. The payment of electricity charges of Rs.15,396.00 to electricity meter No. W7EH10150 is admitted by the accused. Hence, the Investigating Officer is right in considering this amount towards the expenditure of the accused.

11.19. Item No.14 - Expenditure towards payment of electricity bill for meter No.W7EH10151 of site No.17, near KHB Colony, Valagerhalli, K.S.Town, Bengaluru is Rs.21,100.00. It is contention of the accused that, that meter is pertaining to first floor front house for which one S.Surendrababu was the tenant at the given point of time. It is pertinent to note that, at the time of raid, the raid team has seized rental agreement as per Ex.P.98. The reading of this document would show that, it is the obligation on the part of the tenant by name S.Surendrababu to pay electricity charges to the concerned department. The letting out the first floor Spl.CC.No.134/2012 front house to S.Surendrababu and his responsibility to remit electricity charges is proved by producing Ex.P.98.

11.20. The Investigating Officer has in categorical terms admitted that electricity meter No. W7EH10151 is pertaining to the house lent to S.Surendrababu. No doubt regarding the payment of electricity charges Rs.21,100.00, the Investigating Officer has collected the documents from concerned department. However, the facts discussed above would show that it was the responsibility of the tenant to remit electricity charges of Rs.21,100.00. When document of undisputed point of time establish that it is the obligation of the tenant to pay electricity charges, in the absence of any evidence to the contrary no other conclusion than it is tenant who has paid electricity charges can be drawn. Thus, it is held that, it is tenant S.Surendrababu has remitted a sum of Rs.21,100.00 towards electricity charges in respect of electricity meter No. W7EH10151. Hence, that amount shall have to be deducted from the head of the expenditure of the accused.

11.21. Item No.15 - Expenditure towards payment of electricity bill for meter No.W7EH10152 of site No.17, near KHB Colony, Valagerhalli, K.S.Town, Bengaluru is Rs.1,783.00. It is contention of the prosecution that the accused has paid Rs.1,783.00 towards electricity Spl.CC.No.134/2012 consumption charges of meter No. W7EH10152. However, the accused by placing reliance on

Ex.P.97 rental agreement has contended that it is tenant Vasanthi who has paid electricity consumption charges of Rs.1,783.00. In fact PW.4 has also deposed that, electricity meter No. W7EH10152 is pertaining to house in which Smt.Vasanthi was tenant at the given point of time. He has also deposed that, it was the individual responsibility of Smt.Vasanthi to pay electricity charges in respect of meter No. W7EH10152. Therefore, this Court is of the opinion that, the explanation given by the accused that it is Smt.Vasanthi who has remitted Rs.1,783.00 towards electricity charges in respect of meter No.W7EH10152 requires acceptance and accordingly accepted. Therefore, a sum of Rs.1,783.00 shall have to be deducted from the head of the expenditure of the accused.

11.22. Item No.16 - Expenditure towards payment of electricity bill for RR No.N2EH44457 of house No.202/1, 4 th Cross, RPC Layout, Vijayanagar, Bengaluru□40 is Rs.1,877.00. Item No.17 - Expenditure towards payment of electricity bill for rented house No.3097, 14 th Main, 8th Cross, Attiguppe, RPC Layout, Vijayanagar 2nd Stage, Bengaluru□40 is Rs.16,525.00. The accused has admitted that, he has remitted electricity consumption charges to the concerned Spl.CC.No.134/2012 department to the tune of Rs.1,877.00 + Rs.16,525.00 = Rs.18,402.00. Therefore, the Investigating Officer is proper in his wisdom in considering Rs.18,402.00 under the head of expenditure of the accused during the check period.

11.23. Item No.18- Expenditure towards Investigation Report for ground floor water is Rs.600.00. It is the contention of the prosecution that the accused has spent a sum of Rs.600.00 for securing Investigation Report in respect of ground floor water investigation. The accused has admitted the same. Therefore, a sum of Rs.600.00 shall have to be considered as expenditure of the accused.

11.24. Item No.19 - Expenditure towards payment of EMI for Hero Honda Splendor Plus bearing registration No.KA□02□EX□4712 is Rs.936.00. It is the contention of the prosecution that the accused has paid insurance premium of Rs.936.00 in respect of Hero Honda Splendor Plus bearing registration No.KA□02□EX□4712. The accused has admitted that he is the registered owner of Hero Honda Splendor Plus bearing registration No.KA□02□EX□4712. The Investigating Officer has secured a policy from National Insurance Company. When accused himself has admitted that he did remit Rs.936.00 towards EMI of Insurance Policy in respect Spl.CC.No.134/2012 of Hero Honda Splendor Plus bearing Registration No.KA□02□EX□4712, that sum shall have to be taken under the head of the expenditure of the accused.

11.25. Item No.20 - Expenditure towards mobility expenses for Hero Honda Splendor Plus bearing registration No.KA□02□EX□4712 is Rs.3,291.00. The fact that the accused has purchased Hero Honda Splendor Plus bearing registration No.KA□02□EX□4712 on 25.12.2006 from M/s.Prakash Motors, Lalbhagh Road, Bengaluru is not in dispute. It is not in dispute that the accused has availed loan of Rs.33,000.00 from City Financial Consumer's Finance India Ltd. According to Investigating Officer accused paid Rs.3,131.00 as life tax and EMI agreement fee of Rs.160.00. Therefore, the Investigating Officer has considered a sum of Rs.3,291.00 as the expenditure of the accused. The accused has not denied the said fact. Hence, a sum of Rs.3,291.00 shall have to be considered as the expenditure of the accused.

11.26. Item No.21 - Expenditure towards mobility expenses for Maruthi Suzuki Swift VDI car bearing Registration No.KA□02□MC□4797 is Rs.1,55,457.00. This Court has already held that it is the accused who has purchased Maruthi Suzuki Swift VDI car bearing registration No.KA□02□MC□ 4797 in the benami name of his brother Spl.CC.No.134/2012 M.N.Ningappa. At one breath the accused has contended that Maruthi Suzuki Swift VDI car bearing registration No.KA□02□MC□ 4797 was purchased for the use of family members of joint family. Whereas in his explanation he has contended that, that car was used by his brother M.N.Ningappa. Had M.N.Ningappa was using the car, there was no occasion for him to park the same in the garage of house No.17. The explanation offerred by the accused with regard to parking of car in the garage of house N.17 is appears not probable to accept. Accused cannot approbate and reprobate at the same time.

11.27. It is pertinent to note that, though the accused has contended that Maruthi Suzuki Swift VDI car bearing registration No.KA□02□MC□4797 was purchased for the use of joint family members out of joint family income, he has not reported the same to his higher officer in his Annual Property Returns. The non□declaration is one of the strong circumstances to believe that since that car was purchased in the benami name of M.N.Ningappa the accused has not declared the same in his Annual Property Returns.

11.28. It is the contention of the prosecution that the accused has paid life tax, registration charges and borne fuel expenses and repair charges in respect of Maruthi Suzuki Spl.CC.No.134/2012 Swift VDI car bearing registration No.KA□02□MC□4797 to the tune of Rs.1,55,457.00. No doubt, the Investigating Officer being PW.4 has given certain admission to the effect that, there are no documents or oral evidence to show that a sum of Rs,1,55,457.00 was paid by the accused. Similarly, he has admitted that as per the documents it is M.N.Ningappa who has paid Rs.1,55,457.00. Thus, from the above evidence it is clear that the accused has admitted that at the time of purchase of car a sum of Rs.1,55,457.00 was paid by M.N.Ningappa.

11.29. This Court while considering the assets of the accused has held that it is the accused who has purchased Maruthi Suzuki Swift VDI car bearing registration No.KA□02□MC□4797 in the name of his brother M.N.Ningappa. Obviously, all the documents relating to the car shall stand in the name of M.N.Ningappa. Just because documents are in the name of M.N.Ningappa it does not mean to say that he has paid a sum of Rs.1,55,457.00. Under the circumstance, this Court is of the view that it is the accused who has remitted a sum of Rs.1,55,457.00 and hence Investigating Officer is justified in considering a sum of Rs.1,55,457.00 under the head of the expenditure of the accused.

11.30. Item No.22 - Expenditure towards Mobile Spl.CC.No.134/2012 Connectivity Charges of TATA Indicom land line vide No.080□65619086 is Rs.26,442.19. To substantiate this contention the prosecution has produced Ex.P.49. The reading of Ex.P.49 would show that there is mention in it to the effect that Marthandappa was the consumer in respect of telephone No.65619086. As per this document accused has deposited a sum of Rs.1,000.00 at the time of activation of land line to his house. It is relevant to note that Ex.P.49 is marked by the prosecution at the time of evidence of PW.4. Admittedly, Ex.P.49 is a letter dated 14.04.2011 given by TATA Tele Services Ltd. However, to substantiate the contents of Ex.P.49, the prosecution has not admitted any other corroborative document.

11.31. Though Investigating Officer collected copy of consumer application form, Pan Card, Gas bill and collected amount paid particulars, those documents are not marked by the prosecution at the time of evidence of PW.4. Mere production of documents without getting the same admitted in the evidence as required under law, will not come to the aid of prosecution to prove that the accused has remitted a sum of Rs.26,442.19 towards telephone charges. Therefore, that amount shall have to be deducted from the head of expenditure of the accused.

Spl.CC.No.134/2012 11.32. Item No.23 - Expenditure towards repayment of housing loan from Punjab National Bank, Deepanjali Nagar Branch, Bengaluru is Rs.3,25,781.00. Item No.24 - Expenditure towards repayment of loan amount from City Financial for the purpose of purchase of Hero Honda Splendor Plus bearing registration No.KA□02□EX□4712 is Rs.38,357.00. Item No.25 - Expenditure towards repayment of loan from SREI Equipment Finance Limited for fixing solar water heater to house No.17 is Rs.25,352.00. The accused did admit that he has remitted a sum of Rs.3,25,781.00 towards the repayment of housing loan to Punjab National Bank, Rs.38,357.00 towards the repayment of loan to City Financial Ltd., and Rs.25,352.00 towards loan taken from SREI Equipment Finance Ltd. Therefore, Rs.3,25,781.00 + Rs.38,357.00 + Rs.25,352.00 = Rs.3,89,490.00 shall have to be taken under the head of the expenditure of the accused.

11.33. Item No.26 - Expenditure towards loan lent given to private persons on interest:

a) Amarnath – Rs.7,00,000.00
b) Mohan Reddy – Rs.3,00,000.00
c) B.Nataraj – Rs.7,00,000.00
d) M.K.Bhagwan – Rs.3,50,000.00
e) Dhanaraj – Rs.19,00,000.00

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f) Venkataramanreddy – Rs.13,00,000.00
g) L.Tammanna – Rs.1,00,000.00
h) Haribabu – Rs.5,00,000.00

11.34. It is the evidence of PW.4 that the accused had advanced loan to several persons totally amounting to Rs.58,50,000.00. It is also his evidence that at the time of raid to the house of the accused the Investigating Officer has seized the cheques, one Note Book as per Ex.P.100 and receipts as per Ex.P.47(a). According to PW.4 the accused has lent a sum of Rs.7,00,000.00 to one Amarnath and that in respect of said transaction, he has seized three cheques as per Ex.P.111 and collected account details of Amarnath as per Ex.P.8 and hence he has taken Rs.7,00,000.00 as the expenditure of the accused. It is relevant to note that, the prosecution did examine said Amaranath as PW.11, but he has turned hostile to the case of prosecution. In the present case the accused has taken a specific contention that there was no transaction between himself and Amarnath. It is the definite evidence of the accused being DW.3 that only to show the financial capacity of DW.1, PW.11 Amarnath has issued Ex.P.111 three blank cheques and as he is the Kartha of the joint family he written the same in Ex.P.100 Note Book.

Spl.CC.No.134/2012 11.35. It is relevant to note that said Amarnath being PW.11 has deposed that he does not know accused Marthandappa. According to him he has issued Ex.P.111 three cheques of Union Bank of India to one M.N.Chikkappa. The fact that M.N.Chikkappa referred by PW.11 is none other than the brother of the accused is not in dispute. No doubt the evidence of PW.11 that he has issued Ex.P.111 to M.N.Chikkappa would corroborate the stand taken by the accused. But, it is for the court to examine oral evidence placed on record.

11.36. Though PW.11 has admitted that he has issued Ex.P.111 three cheques of Union bank to M.N.Chikkappa, he has totally denied the case of the prosecution. Though PW.11 is subjected to the test of cross-examination, nothing worthwhile is elicited by the prosecution from his mouth to prove the alleged transaction. In fact during the course of the evidence of PW.4, the learned counsel for the accused has confronted the Schedule submitted by the accused in the form of explanation and as PW.4 has admitted the same the explanation is marked as Ex.P.126. The reading of Ex.P.126 Volume No.III, page No.521 to 523 would show that PW.11 has given an affidavit wherein he has deposed that, to show the financial capacity of M.N.Chikkappa, and enable him to Spl.CC.No.134/2012 borrow loan from private persons, he (PW.11) has issued Ex.P.111. The contents of the affidavit is entirely contrary to the statement recorded by the Investigating Officer under section 161 of Cr.P.C. Since, PW.11 has deposed contrary to the theory of the prosecution, it can be gathered that for obvious reasons he has turned hostile to the case of the prosecution. However, from the evidence of PW.11 one thing is clear that he has admitted the issuance of cheques as per Ex.P.111.

11.37. As discussed above, the fact that Ex.P.100 seized from the house of the accused and that the entries found in the same are in the handwriting of the accused is not in dispute. It is argued that as Kartha of the family it is the accused who has maintained the document as per Ex.P.100. The reading of Ex.P.100 at print page No.117 it makes it very clear that M.N.Chikkappa of Hadadi given the following amount to N.Amarnath with interest @ 2½%, i.e., Rs.1,00,000.00 on 11.10.2005, Rs.2,00,000.00 on 16.04.2006, Rs.1,00,000.00 on 29.04.2006, Rs.1,00,000.00 on 30.09.2006, Rs.2,00,000.00 on 01.03.2007 and Rs.3,00,000.00 on 03.01.2009 totally amounting to Rs.10,00,000.00. It is argued by the learned counsel for the accused that if court accepts Ex.P.100 as the book Spl.CC.No.134/2012 maintained by the accused, then the court has to consider the document in its entirety and it cannot choose a part of the document which is favorable to the prosecution. That submission is probable to accept. It is contended by the accused that if the amount mentioned in Ex.P.100 is taken as the expenditure of the accused then it is for the court to consider the interest received as the income of the accused. This submission is well founded. In the same page there is mention regarding payment of interest.

11.38. With regard to payment of interest the following entries are found Rs.5,000.00 interest upto 11.12.2005 given on 22.12.2005, Rs.2,500.00 interest upto 11.1.2006 paid on 20.01.2006, Rs.5,000.00 interest upto 11.03.2006 given on 15.03.2006, Rs.2,500.00 interest upto 11.04.2006 given on 16.04.2006, Rs.4,000.00 interest cleared for full amount upto 30.04.2006, Rs.15,000.00 interest paid on 21.06.2006 at office, Rs.10,000.00 interest paid on 12.08.2006 at office, Rs.15,000.00 interest paid on 09.09.2006 cleared upto August 2006, Rs.10,000.00 interest paid on 30.09.2006 for September 2006, Rs.12,500.00 interest paid on 17.11.2006, for October 2006

Rs.12,500.00 interest paid on 11.12.2006, for November 2006 Rs.12,500.00 interest paid on 11.01.2007, for December 2006 Rs.12,500.00 interest paid on 09.02.2007 Spl.CC.No.134/2012 for January 2007 Rs.12,500.00 interest paid on 01.03.2007, for February 2007, Rs.17,500.00 interest paid on 12.04.2007 for March 2007, Rs.15,000.00 interest paid on 16.05.2007 through SBI Bank, Rs.20,000.00 interest paid on 12.06.2007 through SBI Bank, Rs.15,000.00 interest paid on 14.07.2007 through SBI Bank, Rs.15,000.00 interest paid on 20.08.2007 through SBI Bank, Rs.15,000.00 interest paid on 19.09.2007 through SBI Bank, Rs.22,500.00 interest paid on 15.10.2007 paid in cash at BBMP Office, Rs.17,500.00 interest paid on 20.11.2007 through SBI Bank, Rs.30,000.00 interest paid 05.01.2008 through SBI Bank, Rs.17,500.00 interest paid through SBI Bank on 22.02.2008, Rs.17,500.00 interest paid through SBI Bank 28.03.2008, Rs.17,500 interest paid on 06 or 07/05/2008 for the month of March 2008, Rs.17,500 interest paid on 06.06.2008 for the month of April 2008, Rs.17,500.00 interest paid on 08.06.2008 for the month of May 2008, Rs.17500 interest paid on 12.07.2008 for the month of June 2008, Rs.17,500.00 interest paid on 21.08.2008 for the month of July 2008 through SBI, Rs.17,500.00 interest paid on 18.09.2008 in cash at Mosque Road Site. Rs.17,500.00 interest paid on 22.10.2008 through SBI Account. Rs.17,500.00 interest paid on 12.11.2008 in cash and Amarnath gave Rs.50,000.00 at Mosque Road, Spl.CC.No.134/2012 Rs.17500.00 interest paid on 17.12.2008 in cash and Rs.17500.00 interest paid on 03.01.2009 through Shanmugha at BBMP. Thus, from the reading of above entries it is crystal clear that the entries are made with respect of lending money and receipt of interest not only in the office of accused and but also in other places. Therefore, even an ordinary prudent man also by looking into the document can easily say that the entries found in Ex.P.100 would depict the financial transactions. However, the reading of said page at the beginning makes it very clear that a sum of Rs.10.00 lakhs was lent by M.Chikkappa of Hadadi in favor of Amarnath Reddy with interest of 2½%. Therefore, it is highly improbable to accept the contention of the accused that only to show the financial capacity of M.N.Chikkappa those entries were made in Ex.P.100. If really, those entries were made only for the purpose of showing financial capacity of M.N.Chikkappa then there was no need or necessity for the accused to receive the interest through his bank account as per Ex.P.39 or by cash in his office or other places. Thus, from the perusal of admitted document at Ex.P.100 only conclusion that can be arrived is that accused and his brother M.N.Chikkappa were involved in money lending business. The involvement of a public servant in money lending business is Spl.CC.No.134/2012 not an offence punishable under the provisions of PC Act of 1988. It may amount to disobedience of Rule 16 of KCS (Conduct) Rules, 1966.

11.39. It is relevant to note that to prove the fact that accused has lent Rs.7,00,000.00 to N.Amaranath, the prosecution has also placed reliance on a receipt marked as QW1 by the Expert available in Ex.P.47(a). As per this receipt, N.Amarnath received Rs.1,00,000.00 on 11.10.2005, Rs.2,00,000.00 on 16.04.2006 from M.N.Marthandappa. Similarly, this receipt would also show that Amarnath Reddy received Rs.1,00,000.00 on 29.04.2006 and Rs.1,00,000.00 on 30.09.2006 and Rs.2,00,000.00 on 01.03.2007. It is relevant to note that when PW.11 is subjected to the test of cross□examination, the signatures found on the said receipts has not been confronted to him. When accused has disputed the contents of Ex.P.47(a) by contending that only for the purpose of showing the financial capacity of his brother he has created the receipt, it is for the prosecution to prove the same in the evidence of alleged author of the receipt. But the prosecution did not confront the signature found on the receipt to PW.11.

11.40. It is pertinent to note that PW.2 being the Police Officer who has seized Ex.P.47(a) receipt did not whisper Spl.CC.No.134/2012 anything about the contents of Ex.P.47(a). The evidence of PW.4 is also very much silent with regard to the contents of Ex.P.47(a) or Ex.P.100. It is settled proposition of law that mere marking of a document does not dispense with proof. Admittedly, the evidence of PW.4 is interested one. No doubt it is true that accused did not dispute the fact that Ex.P.47(a) is in his handwriting. The explanation offered by the accused that to show the financial capacity of his brother he made entry in Ex.P.100 and receipts as per Ex.P.47(a) is not probable to accept. It is relevant to note that the incriminating circumstances found on Ex.P.47(a) and Ex.P.100 were not brought into the notice of the accused while recording his statement under section 313 of Cr.P.C as PW.2 and PW.4 have not whispered the contents of the same. Since, accused himself has admitted his handwriting both in Ex.P.47(a) and Ex.P.100, further proof is not required. The explanation offered by the accused is not probable to accept. Thus, only conclusion that can be arrived is that at the time of lending a sum of Rs.7,00,000.00 to Amarnath, it is the accused who has made entry in Ex.P.100 and prepare the receipt as per Ex.P.47(a) and taken the signature of the Amarnath.

11.41. As discussed supra, as per the document of the prosecution at Ex.P.100 it is M.Chikkappa of Hadadi who is Spl.CC.No.134/2012 the uncle of the accused paid Rs.10,00,000.00 to N.Amarnath Reddy. There is no evidence on record to show that Rs.10,00,000.00 was acquired by the accused through corrupt practices. The reading of Ex.P.100 the document relied by the prosecution would show that M.Chikkappa did pay a sum of Rs.10,00,000.00 to N.Amarnath and it is the accused who has maintained the account. If the contents of Ex.P.100 is considered as it is, it is M.Chikkappa who has paid the amount to N.Amarnath. If the contention of the prosecution is taken into consideration, at the most it can be said that the accused by taking Rs.10,00,000.00 from M.Chikkappa paid the same to N.Amarnath. If this concept is adopted then a sum of Rs.10,00,000.00 shall have to be considered as the income of the accused. But accused did not claim the same. Under circumstances only conclusion that can be arrived is that it is M.Chikkappa who paid Rs.10,00,000.00 to Amarnath and not the accused. Therefore, a sum of Rs.7,00,000.00 claimed by the prosecution cannot be taken into the account of the expenditure of the accused.

11.42. It is the evidence of PW.4 that the accused has lent a sum of Rs.3,00,000.00 to one Mohan Reddy and that amount was taken towards the expenditure of the accused. Said Mohan Reddy is examined by the prosecution as PW.12.

Spl.CC.No.134/2012 It is his evidence that he issued cheques to one M.N.Chikkappa so as to show his financial status in order to enable him to borrow loan. This witness has denied entire theory of the prosecution and his statement recorded under section 161 of Cr.P.C. is marked as Ex.P.129. According to him he has given one affidavit stating that he issued cheques to one M.N.Chikkappa to show his financial status. In the present case DW.1 and DW.3 have categorically stated that Mohan Reddy has issued blank cheques to show the financial capacity of M.N.Chikkappa. The oral evidence of PW.12 is not helpful to the case of prosecution to prove the fact that accused has lent loan of Rs.3,00,000.00 to Mohan Reddy.

11.43. During the course of the evidence of PW.4 the prosecution has marked a Note Book as per Ex.P.100. Similarly, 13 receipts are marked as per Ex.P.47(a). The receipt at ink page No.7 would

show that one S.Mohan Reddy has executed that receipt at the time of receiving a sum of Rs.3,00,000.00. The fact that, this receipt is in the handwriting of the accused is not in dispute. It is the contention of the prosecution that the transaction done by the accused is mentioned by him in Ex.P.100 Note Book. The reading of Ex.P.100 would show that the same is a book maintained by the accused mentioning the investment made Spl.CC.No.134/2012 by several persons including himself. However, from the careful scan of Ex.P.100 it is crystal clear that there is no entry with regard to lending a sum of Rs.3,00,000.00 to S.Mohan Reddy.

11.44. It is pertinent to note that though the Police Inspector who conducted raid to the house of the accused had seized 13 receipts including one receipt alleged to have executed by Mohan Reddy that receipt was not marked by the prosecution through him. The independent panchas to the seizure mahazar were also not examined by the prosecution. Said Mohan Reddy is examined as PW.12. At the time of his evidence also, the prosecution has not taken little pains to confront the signature found on the receipt to him. At the time of the examination of the accused as provided under section 313 of Cr.P.C, he has denied the seizure of 13 receipts. The contention taken by the accused itself is sufficient to hold that it is the accused who has written Ex.P.47(a). Therefore, the prosecution has proved that Ex.P.47(a) receipts including one receipt executed by Mohan Reddy is written by the accused and seized from his house. However, just because of the fact that there is no mention in Ex.P.100 with regard to lending a sum of Rs.3,00,000.00 to Spl.CC.No.134/2012 Mohan Reddy, itself is not a ground to discard the document at Ex.P.47(a).

15.45. It is the settled proposition of law that mere production and marking of document as an exhibit is not sufficient, execution has to be proved by admissible evidence i.e., by the evidence of those persons who can vouch□safe for truth of the contents appearing therein. Similarly, in 2003 (8) SCC 745 it is held that the legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be due proof of its contents. Its execution has to be proved by admissible evidence. In the present case at the time of marking of Ex.P.47(a), the accused did not dispute the same. It is pertinent to note the Investigating Officer secured a Report from the Expert as per Ex.P.91. From the reading of Ex.P.91 it is clear that Ex.P.47(a) is in the handwriting of the accused. Therefore, it is for the accused to explain the circumstances which made him to scribe Ex.P.47(a). The explanation of the accused that to show financial capacity of his brother, he did write Ex.P.47(a) is not satisfactory. If the explanation offered by the accused is not satisfactory, only other conclusion that can be arrived is that at the time of lending loan of Rs.3,00,000.00 Spl.CC.No.134/2012 the accused has obtained receipt as per Ex.P.47(a) and the cheque as per Ex.P.112.

11.46. No doubt the said Mohan Reddy being PW.12 has turned hostile to the case of the prosecution. The fact that Ex.P.112 is pertaining to the account of Mohan Reddy is not in dispute. In the present case Section 91 of Evidence Act comes into play. When document itself proves the fact that Ex.P.112 is pertaining to the account of Mohan Reddy and that same was seized from the house of the accused, it is for the accused to explain the circumstances which is well within section 106 of the Evidence Act. As narrated above, the explanation is not satisfactory. The receipt at Ex.P.47(a) which is in the handwriting of the accused itself is sufficient to hold that at the time of borrowing loan of Rs.3,00,000.00 accused obtained receipt as per Ex.47(a) and cheque as per Ex.P.112. Hence,

this court is of the opinion that the prosecution has proved that the accused has lent loan of Rs.3,00,000.00 to Mohan Reddy. This amount shall have to be considered as the expenditure of the accused during the check period.

11.47. It is the allegation of the prosecution that accused lent Rs.7,00,000.00 to one B.Nataraj. According to the prosecution the Investigating Officer has seized eight Spl.CC.No.134/2012 cheques as per Ex.P.113 issued by B.Nataraj in favor of accused Marthandappa. PW.4 being the Investigating Officer into the crime deposed that since eight cheques were seized from the possession of the accused, he has taken a sum of Rs.7,00,000.00 towards the expenditure of the accused. To substantiate the contention of the prosecution, it has examined said Nataraj as PW.10. It is the definite evidence of PW.10 that he has not seen accused Marthandappa and never had any financial transaction with him. The evidence of PW.10 in cross-examination would show that the brother of the accused by name N.Chikkappa asked him to issue cheques so as to show that he (N.Chikkappa) had bank transactions. This evidence of PW.10 in cross-examination is contrary to the contention taken by the accused in his explanation as per Ex.P.126 and in the evidence of DW.1 and DW.3. Throughout it is the defense of the accused that only to show the financial status of M.N.Chikkappa, B.Nataraj has issued cheques marked as per Ex.P.113. Whereas PW.10 being the author of Ex.P.113 has deposed that he has issued Ex.P.113 to show that N.Chikkappa had bank transactions. Therefore, the contention of the accused is not worthy to accept.

Spl.CC.No.134/2012 11.48. The prosecution to prove the transaction has relied on Ex.P.100 Note Book at print page No.126. As per this document a sum of Rs.7,00,000.00 was given to Nataraju of Maruthi Motors. The meaningful reading of Ex.P.100 would show that M.N.Chikkappa has given Rs.7,00,000.00 to Nataraj. The prosecution also marked the receipts at Ex.P.47(a) including the receipt alleged to have executed by Nataraj. According to the prosecution the receipt executed by Nataraj is available at ink page No.9 of Ex.P.47(a) and marked by the Expert as per Q3. As per this receipt, B.Nataraj borrowed a sum of Rs.7,00,000.00 agreeing to pay interest at 3% per month. The contents of receipt at Ex.P.47(a) is inconsonance with the entry found in Ex.P.100 at print page No.126.

11.49. As discussed above, mere marking of a document does not dispense with proof. However, when the signature found in the receipt and the signature found in the deposition is compared by invoking section 73 of Evidence Act it inspires the confidence in the mind of the court that the signatures are similar in nature. When Nataraj is examined as PW.10, the prosecution has not chosen to confront the signature found on the receipt as per Ex.P.47(a) to him. In that line of the matter, even no cross-examination was Spl.CC.No.134/2012 directed to him. However, the accused did admit that Ex.P.47(a) is in his handwriting. The fact that Ex.P.113 eight cheques were pertaining to the account of B.Nataraj is not in dispute. Just because PW.10 has turned hostile to the case of the prosecution it does not mean to say that other evidence produced by the prosecution is not worthy to accept.

11.50. The prosecution has placed reliance on Ex.P.100. No doubt a reading of print page No.126 would show that a sum of Rs.7,00,000.00 was lent to Nataraj. However, the careful scan of the same would show that M.N.Chikkappa has given that amount to Nataraj. The prosecution did not dispute

this entry. Therefore, from the close reading of entry found in Ex.P.100 at ink page No.126 even an ordinary prudent man has to believe that a sum of Rs.7,00,000.00 was lent by M.N.Chikkappa to Nataraj. It is proved that contents of Ex.P.47(a) and entry in Ex.P.100 is made by the accused. The entries available therein is further substantiated by the seizure of Ex.P.113 from the house of the accused. The explanation offered by the accused within the meaning of section 106 of the Evidence Act is not satisfactory. As per admitted document this amount was given by M.N.Chikkappa. Just because Ex.P.100 and Ex.P.47(a) are in the handwriting of the accused, it does not Spl.CC.No.134/2012 lead to the presumption that Rs.7,00,000.00 belonged to the accused. It is the duty of the court to read the contents of admitted document as it is. Hence, only conclusion that can be arrived is that M.N.Chikkappa lent loan of Rs.7,00,000.00 to Nataraj through the accused. Under the circumstances a sum of Rs.7,00,000.00 cannot be taken as the expenditure of the accused.

11.51. It is the allegation of the prosecution that the accused has lent a sum of Rs.3,50,000.00 to one M.K.Bhagawan. PW.4 being the Investigating Officer has deposed that at the time of raid, one cheque was seized as per Ex.P.114 from the house of the accused and based on this document a sum of Rs.3,50,000.00 was taken as the expenditure of the accused. The prosecution to prove the alleged transaction of Rs.3,50,000.00, examined said M.K.Bhagawan as PW.13. The evidence of PW.13 would show that he never had any financial transaction with accused. The evidence of DW.1 and DW.3 would also show that there was no loan transaction between the accused and PW.13 M.K.Bhagawan.

11.52. It is relevant to note that PW.13 in his evidence has deposed that he has given one blank cheque to Chikkappa. Though this evidence of PW.13 is totally Spl.CC.No.134/2012 contradictory to the theory of the prosecution, the prosecution did not choose to cross□examine him. Therefore, the evidence of PW.13 is not helpful to the prosecution to prove alleged transaction. However, it is relevant to note that so far as alleged transaction is concerned the prosecution has relied on admitted documentary evidence.

11.53. The investigating agency has seized Ex.P.100 Note Book from the house of the accused at the time of search. The fact that Ex.P.100 is in the handwriting of the accused is not in dispute. The reading of Ex.P.100 at print page No.98 would show that a sum of Rs.3,00,000.00, Rs.1,00,000.00 and Rs.3,50,000.00 was lent to M.K.Bhagawan on 17.10.2001, 01.05.2003 and on 15.02.2004 respectively. Similarly, as per print page No.100 a sum of Rs.3,00,000.00 was given to M.K.Bhagawan on 01.03.2003 and this amount was taken from M.Chikkappa of Hadadi. Similarly, this entry would also show that a sum of Rs.3,00,000.00 was given to M.K.Bhagawan by M.Chikkappa of Hadadi on 01.03.2003 and a sum of Rs.2,00,000.00 was taken from M.N.Chikkappa as finance on 01.03.2003 and a sum of Rs.1,26,000.00 was given to M.K.Bhagawan at Modi Site, Bengaluru on 30.11.2004. From the evidence placed on record it is crystal clear that the Investigating Officer has not Spl.CC.No.134/2012 at all gone through the entries found in Ex.P.100. Had the Investigating Officer conducted proper investigation, whatever amount received by the accused from the persons referred in Ex.P.100 shall have to be considered as the income of the accused. It is the duty of the court to find out as to whether the entries found in Ex.P.100 is relating to the financial transactions done by the accused or not. But the admitted document as per

Ex.P.100 would show that one M.N.Chikkappa of Hadadi had paid amount to M.K.Bhagawan. It is not the case of prosecution that the lenders name in Ex.P.100 is manufactured by the accused. When the prosecution itself relies on Ex.P.100 it is not expected to deny other entries found therein which is not favorable to it.

11.54. The reading of Ex.P.100 at print page No.98 would show that a sum of Rs.13.20 lakhs was received upto the end of April 2005 as interest. Similarly, in print page No.100 also there is clear mention about the receipt of interest periodically. But the Investigating Officer did not consider the interest so received as the income of the accused. As discussed above, in the present case section 91 of the Evidence Act comes into play. In the present case the seizure of Ex.P.47(a), Ex.P.114 and Ex.P.100 from the house of the Spl.CC.No.134/2012 accused is proved. Similarly, the prosecution has proved that Ex.P.47(a) is written by the accused. From the reading of Ex.P.100 it is clear that same is the register maintained by the accused showing the expenditure. The entries found in Ex.P.100 is inconsonance with the provisions of section 34 of the Evidence. Act. This observation is made because Ex.P.100 not only speaks about the expenditure of the accused but also receipt of loan amount by him from his brothers and also from third parties. In addition to it Ex.P.100 speaks about the cost of construction of house also. Therefore, the accused is estoped from denying the contents of Ex.P.100 as not genuine.

11.55. The Investigating Officer did not consider the fact that one M.Chikkappa has lent a sum of Rs.5,00,000.00 to M.K.Bhagawan. When Ex.P.100 makes it very clear that it is M.Chikkappa has lent a sum of Rs.5,00,000.00, the Investigating Officer atleast should have considered a sum of Rs.5,00,000.00 as the income of the accused. But he has not chosen to do so. It is settled proposition of law that in a criminal case the theory which is favorable to the accused is to be accepted. Thus, from the meticulous scrutiny of the documents referred to above this court is of the opinion that it is M.Chikkappa who did lent a sum of Rs.5,00,000.00 to Spl.CC.No.134/2012 M.K.Bhagawan through the accused. Resultantly, it is held that a sum of Rs.3,50,000.00 cannot be considered as the expenditure of the accused during the check period.

11.56. It is the contention of the prosecution that one Dhanaraj had borrowed loan of Rs.19,00,000.00 from the accused. It is the evidence of Investigating Officer/PW.4 that at the time of raid, seven cheques were seized as per Ex.P.115. The accused being DW.3 has deposed that he did not lent any loan to Dhanaraj as contended by the prosecution. The accused is justified in contending that just because a mention is made in Note Book as per Ex.P.100, it does not lead to the presumption that seven cheques were issued by Dhanaraj at the time of borrowing a loan of Rs.19,00,000.00. However, it is the duty of the court to consider other admissible evidence available before the court.

11.57. Though said Dhanaraj being CW.19 appeared before the court, the prosecution did not examine him. However, in the present case section 91 of the Evidence Act comes into play. In the present case PW.4 has deposed that the investigating team has seized the receipts and accordingly receipts are marked at Ex.P.47(a). Similarly, during the course of the evidence of PW.4 Ex.P.100 Note Book was marked. The reading of Ex.P.100 at print page No.119 would Spl.CC.No.134/2012 show that a sum of Rs.2,00,000.00, Rs.1,00,000.00, Rs.1,00,000.00, Rs.1,000,00.00 and

Rs.2,00,000.00 was lent to N.Dhanaraj on 07.07.2006, 26.11.2006, 02.12.2006, 13.06.2007 and on 16.01.2008 respectively. Similarly, further study of Ex.P.100 would show that those amounts were given by M.N.Chikkappa Contractor i.e., the brother of the accused. But the Investigating Officer did not examine the entries found in print page No.119 of Ex.P.100. From the study of the entries found in print page No.119 of Ex.P.100 it is clear that the amount mentioned therein was given by M.N.Chikkappa the brother of the accused. This aspect of the matter is not at all considered by the Investigating Officer.

11.58. No doubt it is true that the accused did not dispute the fact that the entry at print page No.119 of Ex.P.100 is in his handwriting. Similarly, the fact that Ex.P.115 cheques are relating to the account of N.Dhanaraj is not in dispute. The meaningful reading of Ex.P.100 would show that same is a books of accounts within the meaning of section 34 of the Evidence Act. The prosecution by securing Ex.P.91 Report of the Expert has proved that Ex.P.47(a) and Ex.P.100 is written by the accused. The seizure of the same from the house of the accused is also proved. However, as per contents of Ex.P.100 at print page No.119 it is Spl.CC.No.134/2012 M.N.Chikkappa who paid Rs.19,00,000.00 to N.Dhanraj through accused. If the amount shown in print page No.119 is considered as the amount given by M.N.Chikkappa then that amount shall have to be considered as the income of the accused. Now it is proved that it is M.N.Chikkappa paid Rs.19,00,000.00 to Dhanraj. Therefore, at any stretch of imagination a sum of Rs.19,00,000.00 cannot be termed as the expenditure of the accused during the check period.

11.59. The prosecution alleged that accused has lent loan of Rs.13,00,000.00 to one Venkatarama Reddy. To prove that fact, the prosecution has examined said Venkatarama Reddy as PW.15. The evidence of PW.15 would show that he has denied entire transaction alleged by the prosecution. It is true that to prove the alleged transaction, the prosecution has placed reliance on the evidence of the Investigating Officer/PW.4. It is the definite evidence of PW.4 that at the time of raid, Ex.P.116 cheques were seized from the house of the accused. In fact PW.15 being the author of Ex.P.116 has admitted that it is he who has issued the cheques in favor of Chikkappa but not in favor of the accused. Hence, the evidence of PW.15 is not helpful to the prosecution.

11.60. So far as the alleged transaction is concerned, the prosecution has also placed reliance on receipts as per Spl.CC.No.134/2012 Ex.P.47(a). The seizure of receipts at Ex.P.47(a) from the house of the accused is not in dispute. In addition to it the prosecution by securing Ex.P.91 Report of the Expert proved that the receipt at Ex.P.47(a) is in the handwriting of the accused. The receipts pertaining to this transaction is marked by the Expert as Q10, Q11 and Q12. The reading of the receipts would show that a sum of Rs.5,00,000.00 was taken on 12.07.2008, a sum of Rs.6,00,000.00 was taken on 14.06.2008, a sum of Rs.5,00,000.00 was taken on 19.05.2005, a sum of Rs.1,00,000.00 was taken on 25.05.2005 and a sum of Rs.2,00,000.00 was taken on 10.06.2005. The author of the alleged receipts by name Venkatarama Reddy is examined as PW.15. His evidence would show that he did receive a notice as per Ex.P.133 from the Police Inspector of Karnataka Lokayukta. However, the perusal of his evidence in chief examination would show that he did not whisper anything about borrowing a loan of Rs.13,00,000.00 from the accused. The evidence of PW.2 and PW.4 is also very much silent with regard to the contents of the receipts as per Ex.P.47(a) and Note Book as per Ex.P.100 with reference to lending of a sum of Rs.13,00,000.00 to

Venkatarama Reddy.

11.61. The reading of Ex.P.100 at print page No.114 Spl.CC.No.134/2012 would show that Venkatarama Reddy Class□ Contractor did borrow loan of Rs.3,00,000.00, Rs.1,50,000.00 from Anand Rajeshwari, Rs.50,000.00 from the account of the accused, Rs.1,00,000.00 from the accused in cash, Rs.2,00,000.00 on 10.06.2005 from M.N.Chikkappa. There are several entries in Ex.P.100 at page No.114 with regard to receipt of interest periodically. Similarly, in print page No.124 of Ex.P.100 there is a reference with regard to lending a sum of Rs.6,00,000.00 on 14.06.2008 and Rs.5,00,000.00 on 12.07.2008. The reading of this page would show that a sum of Rs.11,00,000.00 was given by M.C.Ramesh of Hadadi. The evidence of PW.4 is very much silent with regard to the transactions found in Ex.P.100. If the entries that are found in print page No.124 is taken into consideration, a sum of Rs.11,00,000.00 shall have to be considered as the income of the accused.

11.62. It is pertinent to note that the seizure of Ex.P.116, Ex.P.47(a) and Ex.P.100 from the house of the accused is proved. The meaningful reading of Ex.P.100 would show that out of Rs.13,00,000.00 accused has paid only Rs.1,50,000.00 and remaining amount was paid by Anand Rajeshwari and M.C.Ramesh. The amount paid by Anand Rajeshwari and M.C.Ramesh cannot be termed as the amount Spl.CC.No.134/2012 of the accused. Since, the document relied by the prosecution itself indicate that the accused has lent only a sum of Rs.1,50,000.00 in his individual capacity, this amount can only be considered as the expenditure of the accused. The amount lent by Anand Rajeshwari and M.C.Ramesh cannot be termed as the amount of the accused. Therefore, it is held that the prosecution has proved that the accused has lent loan of Rs.1,50,000.00 to Venkatarama Reddy.

11.63. It is contended by the prosecution that accused has lent loan of Rs.1,00,000.00 to one L.Thammanna. But the Investigating Officer did not cite said Thammanna as chargesheet witness for the reasons best known to him. According to the Investigating Officer/PW.4 four cheques as per Ex.P.117 were seized from the house of the accused at the time of raid. The seizure of four cheques at Ex.P.117 and that these cheques were issued in respect of the account of L.Thammanna is not denied. It is the evidence of PW.4 that based on four cheques, he has concluded that accused has advanced loan of Rs.1,00,000.00 to Thammanna. Therefore, it is for the accused to explain as to how he came into possession four cheques as per Ex.P.117 pertaining to the Spl.CC.No.134/2012 account of L.Thammanna. As discussed above, the explanation offered by the accused is not worthy to accept.

11.64. It is not in dispute that at the time of raid PW.2 did seize receipts as per Ex.P.47(a). The receipt at Q13 would show that one L.Thammanna borrowed a loan of Rs.40,000.00 from M.N.Marthandappa on 09.02.2004. Similarly, the fact that PW.2 has seized Ex.P.100 at the time of raid to the house of the accused is not in dispute. The perusal of print page No.103 of Ex.P.100 would reveal the fact that the accused did advance a sum of Rs.1,00,000.00 and subsequently received the same and the balance amount was only Rs.6,000.00. The reading of this page on the left side would demonstrately indicate the receipt of interest periodically. However, the Investigating Officer did not choose to consider the interest so received by the accused as his income. The court is not in a position to consider Ex.P.100 in part which suits the case of the

prosecution. It is the duty of the court to consider Ex.P.100 as it is.

11.65. The fact that the receipt at Q13 in Ex.P.47(a) is in the handwriting of the accused and that it was seized from the house of the accused is not in dispute. It is settled proposition of law that mere marking of a document does not dispense with proof. The fact that narration made in print Spl.CC.No.134/2012 page No.103 of Ex.P.100 is in the handwriting of the accused is not in dispute. However, PW.2 or PW.4 have not whispered anything about the contents of print page No.103 of Ex.P.100. In the present case the theory of the exclusion of oral by documentary evidence as contemplated in Chapter VI of the Indian Evidence Act comes into play. Any amount of oral evidence which is contrary to admitted documentary evidence is of no avail to the defense of the accused.

11.66. The receipt at Ex.P.47(a) only show that L.Thammanna borrowed loan of Rs.40,000.00. The reading of Ex.P.100 would show that L.Thammanna borrowed loan of Rs.1,00,000.00 from the accused and repaid the same with interest. The interest so received by the accused is not taken into consideration as the income of the accused. As per print page No.103 of Ex.P.100, the accused did receive following interest: Rs.1,200.00, Rs.1,400.00, Rs.2,000.00, Rs.2,400.00, Rs.2,400.00, Rs.2,400.00, Rs.2,400.00, Rs.3,000.00, Rs.3,000.00, Rs.3,000.00, Rs.3,000.00, Rs.3,000.00, Rs.3,000.00, Rs.4,000.00 Rs.500.00, Rs.31,500.00, Rs.9,000.00, Rs.3,000.00, Rs.3,000.00, Rs.6,000.00, Rs.3,000.00, Rs.3,000.00, Rs.3,000.00, Rs.3,000.00, Rs.6,000.00, Rs.3,000.00, Rs.3,000.00, Rs.9,000.00. Thus, totally accused did receive interest of Rs.1,22,200.00. Hence, Spl.CC.No.134/2012 the above discussion makes it very clear that accused received interest of Rs.1,22,200.00 which is much more than that of amount lent by him. Therefore, a sum of Rs.1,00,000.00 lent to Thammanna as the expenditure of the accused during the check period.

11.67. It is the case of the prosecution that the accused has lent loan of Rs.5,00,000.00 to PW.14 Haribabu. It is the evidence of PW.4 that the raid team has seized one cheque as per Ex.P.118 from the house of the accused. The seizure of Ex.P.118 from the house of the accused is not in dispute. The evidence of P.W.14 Haribabu shows that it is he who has issued Ex.P.118 cheque to Chikkappa. Hence, the prosecution has proved that it is PW.14 who has issued Ex.P.118 and the raid team has seized the same from the house of the accused. However, the evidence of PW.14 would show that he has issued Ex.P.118 to Chikkappa to show his financial capacity. This evidence of PW.14 is inaccordance with the stand taken by the accused and contrary to the theory of the prosecution.

11.68. In fact the prosecution has also relied on Ex.P.100 a Ledger Book alleged to have maintained by the accused. The reading of Ex.P.100 at print page No.105 would show that a sum of Rs.2,00,000.00 and Rs.3,00,000.00 was lent to Haribabu on 28.01.2004 and 05.11.2004 respectively.

Spl.CC.No.134/2012 Similarly, another entry is available at print page No.128, which shows that a sum of Rs.5,00,000.00 was lent to Haribabu on 19.01.2009 with interest at 2%. In fact the Expert to compare the handwriting of the accused with that of disputed signature available in Ex.P.47(a) and Ex.P.100, has taken into consideration the entry available in Ex.P.100 at print page No.128. Therefore, this court is of the opinion that for the purpose of discussion in the instance case it is

proper to place reliance on the entries available in print page No.128 of Ex.P.100 which disclose the fact that expenditure of Rs.5,00,000.00 i.e., amount paid to Haribabu.G. Contractor of Gangavathi with interest at 2% per month.

11.69. It is the definite evidence of PW.14 that Ex.P.118 cheque bears his signature and that he has issued the same to one Chikkappa to show his financial capacity. It is pertinent to note that PW.14 is treated as hostile witness. At the time of cross□examination of PW.14 nothing worthwhile is elicited to prove the contents of Ex.P.100. Based on mere say of PW.4 it cannot be said that the contents of Ex.P.100 at print page No.128 is stands proved.

11.70. The contents of Ex.P.100 is not at all deposed by PW.2 or PW.4. The narration made in Page No.128 is not at all brought to the notice of the accused while recording his Spl.CC.No.134/2012 statement as required under section 313 of Cr.P.C. The court is not expected to consider only the portion which is favorable to the prosecution. However, the fact remains that the narration made in admitted documentary evidence shall have to be considered as it is.

11.71. In the present case the fact that Ex.P.118 is relating to the account of Haribabu is not in dispute. The prosecution has proved that Ex.P.118 was seized from the house of the accused. By placing reliance on Ex.P.91 the prosecution has proved that the entry in Ex.P.100 at print page No.128 marked at QW26 is in the handwriting of the accused. The conjoint reading of Ex.P.118 and the contents of Ex.P.100 at print page No.128 makes it very clear that G.Haribabu borrowed loan of Rs.5,00,000.00 from the accused on 19.01.2009. This observation is made because of the fact that Ex.P.100 not only speaks about lending of money by the accused but also borrowing of amount from his brother, hand loan from third party and receipt of Rs.16,00,000.00 from brothers. Thus, it is clear that Ex.P.100 is the document which speaks itself. Since, the genuineness of Ex.P.100 is not denied by the accused, it has to be said that genuine entries are available in Ex.P.100. Hence, it is Spl.CC.No.134/2012 held that accused did lent loan of Rs.5,00,000.00 to Haribabu during the check period.

11.72. Learned Prosecutor has submitted that since cheques as per Ex.P.8, Ex.P.112, Ex.P.113, Ex.P.114, Ex.P.115, Ex.P.116, Ex.P.117 and Ex.P.118 were recovered from the possession of the accused, it is for the accused to explain the transaction as required under section 106 of Evidence Act. It is settled proposition of law that in a criminal case it is the duty of the prosecution to prove its case beyond reasonable doubts. But in the present case it is for the accused to explain the circumstances with regard to assets, expenditure and income during the check period. It is relevant to note that accused did not dispute the seizure of cheques, receipts at Ex.P.47(a) and the Note Book as per Ex.P.100 from his house. Similarly he did not dispute the fact that Ex.P.47(a) and Ex.P.100 are in his handwriting. Therefore, it is for the accused to explain the circumstances which are in his special knowledge. However, his explanation should be worthy to accept. Hence, the Prosecutor is justified in contending that it is for the accused to explain the transactions mentioned in Ex.P.47(a) and Ex.P.100 as required under section 106 of Evidence Act.

Spl.CC.No.134/2012 11.73. In 2016(4) KCCR 3453 in the case of State by Lokayukta police, Mysore Vs. Gurumallappa it is held that mere production and marking of the document as an exhibit is not

enough. The execution has to be proved by admissible evidence i.e., by the evidence of those persons who can vouch-safe for truth of the contents appearing therein. But in the present case PW.10 to PW.15 have in categorical terms denied the transactions alleged by the prosecution. However, PW.10 to PW.15 have admitted that they have issued Ex.P.8, Ex.P.112, Ex.P.113, Ex.P.114, Ex.P.115, Ex.P.116, Ex.P.117 and Ex.P.118. It is relevant to note that prosecution to prove the transaction has not only relied on cheques as referred to above but also relied on Ex.P.47(a) 13 receipts and Note Book as per Ex.P.100.

11.74. In CDJ 1996 DHC 468 in the case of Gunjith Singh Vs. State of Delhi it is held that, the cardinal principle of criminal jurisprudence are (i) that the onus lies affirmatively on the prosecution to prove its case beyond reasonable doubt and it cannot derive any benefit from correctness or falsity of the defense version by proving its case, (ii) in a criminal case accused must be presumed to be innocent unless proved guilty; and (iii) that the onus of the Spl.CC.No.134/2012 prosecution never shifts. In view of the ratio of the above decision, it is incumbent upon the prosecution to prove that Ex.P.8, Ex.P.112, Ex.P.113, Ex.P.114, Ex.P.115, Ex.P.116, Ex.P.117 and Ex.P.118 are issued by the borrowers at the time of borrowing loan. But in the present case except the interested testimony of PW.4 there is no oral evidence to prove the alleged loan transaction. However, the authors of Ex.P.8, Ex.P.112, Ex.P.113, Ex.P.114, Ex.P.115, Ex.P.116, Ex.P.117 and Ex.P.118 have admitted that they have issued the same.

11.75. Learned PP has submitted that, since PW.10 to 15 have admitted the issuance of cheques, the court has to draw the presumption contemplated under section 139 of Negotiable Instruments Act. Admittedly, Ex.P.8, 112, 113, 114, 115, 116, 117 and 118 blank cheques were issued by PW.10 to 15. It is pertinent to note that, PW.10 to 15 have deposed that they have issued cheques. Therefore, issuance of cheques is proved. In addition to the above cheques, the prosecution has also placed reliance on receipts and Note Book as well. Thus, the conjoint reading of the documents referred to above directs the courts to draw one and only inference that towards discharge of loan so borrowed and narrated in Ex.P.100, the cheques referred to above have been Spl.CC.No.134/2012 issued by the borrowers. Accordingly, presumption contemplated under section 139 of NI Act is drawn.

11.76. It is contended by the accused that to prove the transaction, the prosecution did not produce any agreement, Promissory Note or Acknowledgment of Debt executed by the borrowers. This is a strange submission because it is the accused who has authored Ex.P.47(a) and Ex.P.100 and these documents were seized from his custody. Hence, question of prosecution producing any evidence to prove the transaction does not arise at all. It is for the accused to explain the circumstances which is in his special knowledge. But the facts explained by him is not worthy to accept. Had PW.10 to PW.15 have supported the case of the prosecution, their evidence and the contents of Ex.P.47(a), Ex.P.8, Ex.P.112, Ex.P.113, Ex.P.114, Ex.P.115, Ex.P.116, Ex.P.117 and Ex.P.118 itself is sufficient to prove the alleged transaction. But in the present case admitted documents as per Ex.P.47(a) and Ex.P.100 demonstrately establish the loan transaction but not alleged by the prosecution. Hence, question of prosecution producing the documents relating loan transaction does not arise.

11.77. Since, the receipts as per Ex.P.47(a) were seized from the house of the accused and as he has admitted his Spl.CC.No.134/2012 signature on the same, only presumption that can be drawn is that

the receipts as per Ex.P.47(a) were executed by the borrowers at the time of borrowing loan from the accused. In AIR 2002 SC 3206 in the case of Ashish Batham Vs. State of MP it is held that "mere suspicion, however, strong or probable it may be, is no effect to substitute for the legal proof required to substantiate the charge of commission of a crime. Graver the charge, greater has to be the standard of proof. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between may be true and must be true." But in the present case in addition to receipts as per Ex.P.47(a) there is another clinching piece of documentary evidence i.e., Ex.P.100 Note Book. The reading of Ex.P.100 speaks itself that same is a Register maintained by the accused showing his expenditure. In the present case the prosecution case is not based upon mere suspicion but based on substantiative piece of evidence. Hence, this court is of the opinion that the ratio of the above decision is not applicable to present case.

11.78. It is the contention of the accused that as DW.1 was doing contract business, to show his financial capacity he has taken signed blank cheques from PW.10 to PW.15. If Spl.CC.No.134/2012 really, this contention of the accused and evidence of PW.10 to PW.15, DW.1 and DW.3 were to be true, PW.10 to PW.15 ought to have remitted the amount to the account of DW.1 M.N.Chikkappa. Mere handing over of signed blank cheques will in no way help M.N.Chikkappa to show his financial capacity. Therefore, the defense of the accused that, to show the financial capacity of M.N.Chikkappa, PW.10 to PW.15, L.Thammanna and Dhanaraj have issued Ex.P.8, Ex.P.112, Ex.P.113, Ex.P.114, Ex.P.115, Ex.P.116, Ex.P.117 and Ex.P.118, is not probable to accept.

11.79. It is the evidence of DW.3 that his younger brother Chikkappa had to participate in a tender for a sum of Rs.3 to 5 crores and hence to show his financial capacity, he (DW.3) has taken signed blank cheques from Dhanaraj, Bhagawan, Nataraj, Mohan Reddy, Amarnath, Thammanna, Haribabu and Venkatarama Reddy. Whereas in his written statement filed under section 313(5) of Cr.P.C he has stated that the transaction was created by M.N.Chikkappa only for the purpose of raising money from private people for the proposed business of real estate. This statement of the accused is quite contrary to his evidence on oath and the evidence of DW.1 M.N.Ningappa. Hence, the contention of the Spl.CC.No.134/2012 accused that the transaction for Rs.58,50,000.00 was a pseudo transaction is cannot be accepted.

11.80. In his evidence the accused as DW.3, deposed that since his brother M.N.Chikkappa had no knowledge he (accused) made entries in the notebook as per Ex.P.100. This evidence of DW.3/accused is apparently false because, admittedly DW.1 M.N.Chikkappa is working as Class□I Contractor in PWD. In addition to it, he has deposed that he is BE (Civil) graduate and an income tax assessee. Therefore, it is clear that the accused has created a story as if his younger brother M.N.Chikkappa is a rustic villager who does not know how to maintain a notebook with regard to financial transactions. This is one of the circumstances to hold that the explanation offered by the accused is not worthy to accept.

11.81. Learned counsel for the accused has placed reliance on the decision reported in 1997 (4) Crimes 1 and argued that diary entries are not sufficient to prove the transactions conclusively. But in the present case the prosecution has not only placed reliance on admitted writings found in Ex.P.100, receipts as per Ex.P.47(a) but also admitted signatures found on Ex.P.8, Ex.P.112,

Ex.P.113, Ex.P.114, Ex.P.115, Ex.P.116, Ex.P.117 and Ex.P.118. Further, the reading of Ex.P.100 makes it very clear that the Spl.CC.No.134/2012 accused has not only lent money to the borrowers but also received interest periodically. From the reading of Ex.P.100 it is crystal clear that the same is written by the accused showing his expenditure. Hence, this Court is of the opinion that the ratio of the decision relied by the learned counsel for the accused is cannot be made applicable to the present case.

11.82. In addition to the above, the learned counsel for the accused has placed reliance on Section 269SS of Income Tax Act and argued that every transaction in cash of more than Rs.20,000.00 shall have to be dealt with cheque only. Hence, it is just and necessary to go through section 269SS of Income Tax Act. Section 269SS reads as follows:

> No person shall take or accept from any other person (herein referred to as the depositor), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed], if,--
>
> a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or
>
> b) on the date of taking or accepting such loan or deposit or specified any loan or deposit or specified sum taken or accepted earlier by such person from the Spl.CC.No.134/2012 depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or
>
> c) The amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is twenty thousand rupees or more:
>
> 11.83. It is the evidence of PW.4 that there is a clear bar for lending cash of more than Rs.20,000.00 in cash. But his evidence would show that section 269SS is applicable to the transactions of the accused also. The bar under section 269SS of Income Tax Act will not come in the way of the prosecution in proving the transaction as required under law.

This observation of mine is based upon the fact that the prosecution has proved that the transaction mentioned in Ex.P.100 is not pseudo transaction. Section 269SS comes into play while explaining expenditure before the income tax authority to seek exemptions. In the present case Ex.P.100 clearly narrates the financial transactions that were taken place between the accused and so called borrowers. Hence, the accused cannot take shelter under section 269SS Income Tax Act for he not following the provision of law.

Spl.CC.No.134/2012 11.84. The materials collected by the Investigating Officer would show that he has sent admitted handwriting of the accused as per page No.19 to 107 available at Ex.P.47 to the Expert at FSL, Bengaluru. The Expert has filed his Report as per Ex.P.91. It is pertinent to note that the learned counsel for the accused has given consent for marking of Report of the Expert as per Ex.P.91. When the counsel for the accused has consented for marking of the Report of Expert, accused is not expected to deny the genuineness of the Report as per Ex.P.91 in a later stage i.e., to say at the time of argument.

11.85. It is true that by virtue of section 45 of Evidence Act, the opinion of the Expert who is specially skilled is relevant fact. As has been held in 2016(4) KCCR 3453, mere production and marking of any document as exhibit is not enough, it is for the party relies on the document to prove its execution by admissible evidence. However, in view of the consent given by the counsel for the accused to mark the Report at Ex.P.91, at the stage of argument, the accused is not expected to deny the genuineness or otherwise of Ex.P.91.

11.86. The counsel for the accused has placed reliance on the decision reported in 2010(1) GLH 293 in the case between Rameshchandra Agarwal Vs. Regency Hospitals Spl.CC.No.134/2012 Limited and others, 2013(4) CPR (SC) 639 in a case between Malia Kumar Ganguly Vs. Dr.Sukumar Mukharji and others, LAWS(SC) 1977 10 18 in a case between Piara Singh Vs. State of Punjab and 2014 134 AIC 720 in a case between Pozir Uddin Ahmed Vs. Union of India and argued that when author has not been examined, no value can be attached to the Report as per Ex.P.91. But in the present case the fact remains that the accused did not dispute the genuineness or otherwise of Ex.P.91. Therefore, in view of the consent given at the time of marking of Ex.P.91, the accused is estopped from denying the genuineness of the same on the ground that the author has not been examined. Hence, the ratio of the decisions relied by the learned counsel for the accused is not applicable to the facts and circumstances of the present case.

11.87. Thus, for the reasons stated herein above and on appreciation of evidence on record this court is of the opinion that the prosecution has proved that during the check period the accused has lent loan of Rs.3,00,000.00 (to Mohan Reddy) + Rs.1,50,000 (to Venkatarama Reddy) + Rs.5,00,000.00 (to Haribabu) in his individual capacity. Therefore, a sum of Spl.CC.No.134/2012 Rs.9,50,000.00 is considered as the expenditure of the accused during the check period.

11.88. Item No.27 - Expenditure towards payment of premium for LIC Policies:

> i) Life Insurance No.623729639 in the name of Sri.M.N.Marthandappa is Rs.22,748.00. It is the contention of the prosecution that, the accused has paid insurance premium of Rs.22,748.00 in respect of policy No.623729639.

To substantiate the same the prosecution has produced Ex.P.23. In fact the accused has admitted that, he has paid insurance premium of Rs.22,748.00. Therefore that amount shall have to be taken to the head of expenditure of the accused.

ii) Life Insurance No.614723838 in the name of Sri.M.N.Marthandappa is Rs.49,735.00. Life Insurance No.661956255 in the name of Sri.M.N.Marthandappa is Rs.60,750.00. Life Insurance No.661999493 in the name of Sri.M.N.Marthandappa is Rs.46,816.00. Life Insurance No.661999734 in the name of Sri.M.N.Marthandappa is Rs.16,352.00. To substantiate that contention, the prosecution has placed reliance on Ex.P.67 and Ex.P.119. In addition to it, it has placed reliance on the evidence of PW.4.

Spl.CC.No.134/2012 However, PW.4 in his cross□examination has deposed that he has not considered premium amount in respect of LIC policies under the expenditure of the accused. This evidence is given by PW.4 with reference to the policies referred to above. It is the contention of the accused that, he has paid insurance premium through his salary deduction. Therefore, once again premium amount cannot be considered as expenditure of the accused. Even according to PW.4, he has not considered LIC premium amount as expenditure of the accused. Under the above circumstances, the LIC premium of Rs.49,735.00 + Rs.60,750.00+ Rs.46,816.00+ Rs.16,352.00 = Rs.1,73,653.00 paid through salary deduction shall have to be deducted from the head of the expenditure of the accused.

iii). Bajaj Alliance Life Insurance Policy in the name of the accused is Rs.1,00,000.00. Insurance Policy of site No.17, Bengaluru South Taluk, Valagerhalli, Kengeri, is Rs.6,314.00. Life Insurance Policy in Post Office of accused is Rs.63,960.00. The accused has admitted that he did pay Rs.1,00,000.00 to Bajaj Alliance Life Insurance. However, the prosecution has produced Ex.P.68. The accused did admit that he has paid Rs.6,314.00 in respect of insurance policy of building constructed in site No.17. However, the prosecution Spl.CC.No.134/2012 has produced Ex.P.69. Similarly, the accused has paid Postal Life Insurance premium of Rs.63,960.00. The prosecution has produced Ex.P.35. Since the accused has admitted above referred payments, Rs.1,00,000.00+ Rs.6,314.00+ Rs.63,960.00 a total sum of Rs.1,70,274.00 shall have to be taken under the head of the expenditure of the accused.

11.89. Item No.28 - Expenditure towards income tax payment by the accused is Rs.4,915.00. The accused has admitted the payment of income tax of Rs.4,915.00. In fact the Investigating Officer during the course of his evidence received particulars from the office of Income Tax Officer as per Ex.P.37. The genuineness or otherwise is not denied by the accused. When admittedly, accused has paid Rs.4,915.00 towards income tax that amount shall have to be considered as the expenditure of the accused.

11.90. Item No.28 - Rs.7,77,259.00 the family Expenditure of the accused during the check period. According to the prosecution during the check period the accused has incurred domestic expenditure of Rs.7,77,259.00. However, according to the accused during the check period he has incurred Rs.2,50,000.00 of domestic Spl.CC.No.134/2012 expenses. To substantiate its contention, the prosecution has examined Assistant Statistical Officer, Karnataka Lokayukta by name Chitra.R. as PW.5. According to her the Joint Director of Statistical Cell has directed her to assess the domestic expenditure of the accused in Cr.No.32/2009 and his family members. Its her evidence that the Joint Director has furnished General Family Income and Expenditure Survey Report of 2009 of the State of Karnataka. It is her definite evidence that she has calculated the expenditure of

the accused and his family members as per the Survey Report. But along with Ex.P.75, she did not produce the Survey Report in which she has placed reliance to calculate the domestic expenditure of the accused and his family members during the check period. In her cross-examination she has deposed that Ex.P.75 Report does not contain calculation sheet. It is also her evidence that in Ex.P.75, the year-wise expenditure break up is not shown. Her evidence would also reveal that without looking into year-wise break up of the expenditure it is not possible to say about the correctness of the amount mentioned in the Report at Ex.P.75. From this portion of evidence of PW.5 it is clear that year-wise expenditure break up is required to find out the correctness or otherwise of Report at Ex.P.75. Admittedly, Spl.CC.No.134/2012 prosecution has not produced year-wise expenditure break up. Therefore, without year-wise expenditure and calculation sheet, this court is not in a position to examine the correctness of the figures mentioned in Ex.P.75.

11.91. It is the definite evidence of PW.5 that to assess the domestic expenditure of any person one has to see his life style and food habits. PW.5 has deposed that before assessing the domestic expenditure of the accused and his family members, she has not ascertained the food habits and life style of the accused. If really PW.5 had an intention to make a true Report, she ought to have ascertained the food habits and life style of the accused and his family members. But she has not chosen to undertake that exercise.

11.92. It is also the evidence of PW.5 in cross-examination that she submitted a Report as per Ex.P.75 based on Survey Report. This portion of the evidence would also show that based only on the survey statistics available in the Report of the year 2009, she has prepared Ex.P.75 without ascertaining the food habits and life style of the family of the accused. In her evidence PW.5 has deposed that in Ex.P.75 she has not mentioned the items actually used by the accused and his family members.

Spl.CC.No.134/2012 11.93. In fact PW.5 has deposed that if accused is having agricultural land and receives agricultural products, then his domestic expenditure would be less. It is her evidence that she has not verified whether the accused was receiving any agricultural products from his agricultural land. The voluminous documentary evidence produced by the prosecution and accused would show that the joint family of the accused possess immovable agricultural properties both in the name of the mother of the accused and brothers. Thus, from the admitted fact it is clear that the family of the accused possess agricultural lands. In fact DW.3 in categorical terms deposed that he used to receive agricultural products from his agricultural lands for his domestic use. The evidence of PW.5 would show that without ascertaining the receipt of agricultural product, the Expert will be not in a position to give a true Report. But in the present case the accused did not produce any document to show that all along from Gangavathi and Davanagere the agricultural food products were transported to Bengaluru. Though the contention of the accused that he use to receive agricultural products appears to be probable, there is no cogent evidence to show that actually accused did receive agricultural produce from his agricultural lands for his domestic use.

Spl.CC.No.134/2012 11.94. It is relevant to note that in his explanation as per Ex.P.126 at page No.4, the accused has explained that the domestic expenditure of his family from the date of joining service till the date of filing explanation was only Rs.1,00,000.00. He has further explained that he

has got joint family agricultural land and part of the agricultural produce and horticulture produce are used by him and his family members for food and non-food expenses. For the items not grown in his lands, the same are procured under barter system and therefore the expenditure on this count has been minimum. This explanation of the accused is apparently false because of the reason that except his self serving testimony he did not produce any evidence to show that he use to receive agricultural produce for the purpose of domestic use.

11.95. Admittedly, the family of the accused consisting himself, his wife and a daughter by name Swetha and son by name Ketansagar. Therefore, it is highly improbable to accept the contention of the accused that his domestic expenditure during the expenditure was only Rs.1,00,000.00 as has been explained in Ex.P.126.

11.96. The Investigating Officer has considered the domestic expenditure of the accused from 29.10.1987 to Spl.CC.No.134/2012 03.04.2009 i.e., approximately 22 years. It is the evidence of the accused that he did incur domestic expenditure of Rs.2,50,000.00. However, his interested testimony is not substantiated by any other piece of evidence. The evidence of DW.3 with regard to his domestic expenditure is contrary to the explanation given by him at the earliest point of time. Therefore it is clear that the act of the accused is not trustworthy. No doubt in a criminal case the court is not expected to take into consideration the weakness of the evidence of the accused. However, in the present case it is for the accused to explain the actual domestic expenditure during the check period to the satisfaction of this court. But the evidence of DW.3 does not inspire the confidence of the court that he has placed true figures before the court for its appreciation.

11.97. The learned counsel for the accused placed reliance on a decision reported in 1996 (4) Crimes 1 in the case between Gunjit Singh Vs.State. In the said decision it is held that the cardinal principles of criminal jurisprudence are (i) the onus lies affirmatively on the prosecution to prove its case beyond reasonable doubt and it cannot derive any benefit from correctness or falsity of the defense version by Spl.CC.No.134/2012 proving its case, (ii) that in a criminal case accused must be presumed to be innocent unless proved guilty and, (iii) that the onus of the prosecution never shifts. The ratio of the above decision is applicable to the present case. But the fact remains that in the present case the offence alleged against the accused is punishable under section 13(1)(e) r/w 13(2) and hence it is for the accused to offer explanation to the satisfaction of this court.

11.98. The learned counsel for the accused has placed reliance on the decision reported in Crl.Appeal.No.1279/2017 decided on 09.08.2017 in the case between Vasanthrao Guhe Vs. State of Madhya Pradesh, LAWS (SC) 2013-5-67 in the case between Sujith Biswas Vs. State of Assam, 2010 (2) KCCR 1010 in the case between Babappa Vs. State by Lokayukta Police, 2013 Supreme (Karnataka) 642 in the case between Tirakappa Vs.State of Karnataka and the decision of the Hon'ble High Court of Kerala at Ernakulam in the case between Muralimohan Nayak Vs. V.S.Kurup in Crl.Appeal No.1225/2002 and argued that it is for the prosecution to prove the actual domestic expenditure of the accused and when the evidence given by the prosecution is not worthy to Spl.CC.No.134/2012 accept, the explanation given by the accused is to be accepted. While coming to just conclusion in the matter this court has carefully followed the ratio of the above decisions.

11.99. In AIR 1964 SC 464 in the case between Sajjan Singh Vs. State of Punjab it has been stipulated for calculation of disproportionate assets, one third of the income of the accused is to be taken into consideration while estimating domestic expenditure. It is settled position of law that one third of the income of the accused is to be taken into account for estimating household expenditure. This criteria of taking one third income as household expenditure has been consistently followed by the courts as well as investigation agencies.

11.100. The estimated income of the accused during the check period was Rs.51,86,746.08. To find out the net income of the accused, the taxes paid, expenses incurred by payment of rent, electricity charges, educational expenses and other household expenditures shall have to be deducted. The accused has incurred following domestic expenses i.e.,

(i).payment of water bill Rs.3,400.00, (ii).electricity bill payment Rs.18,409.00, Rs.899.00, Rs.15,396.00, Rs.1,877.00 and Rs.16,525.00, (iii).payment made towards Spl.CC.No.134/2012 tax Rs.4,915.00, (iv).payment made towards news paper Rs.1,001.00, (v).payment made towards gas connection Rs.16,200.00, (vi).payment made towards cable connection Rs.1,000.00, (vi).payment made towards daughter's education Rs.35,800.00, (vii).payment made towards son's education Rs.47,020.00, (viii).Rs.1,43,000.00 and Rs.44,000.00 amount paid towards rent, (ix).purchase of electricity meter Rs.5,017.00, (x).amount paid to membership of Kannada monthly Rs.1,000.00. Total amounting to Rs.3,55,459.00. To get net income, a sum of Rs.3,55,459.00 shall have to be deducted from the gross income of Rs.51,86,746.08 i.e., Rs.51,86,746.08 □ Rs.3,55,459.00=Rs.48,31,287.08. As discussed above, by virtue of the decision of the Apex Court in Sajjan Singh's case, there is no legal bar for adopting the principles laid down therein and to consider one third of the net income of the accused as household expenditure during the check period. One third of Rs.48,31,287.08 comes to Rs.16,10,429.03.

11.101. As discussed above, one third of net income comes to Rs.16,10,429.03. As per Ex.P.75 Report, the Investigating Officer has considered the domestic expenditure of the accused during the check period was only Rs.7,77,259.00. It is settled proposition of law that the Spl.CC.No.134/2012 particulars which is favorable to the accused is to be accepted while deciding a criminal case. The one third of net income estimated by this court is Rs.16,10,429.03. Whereas based on Ex.P.75 the Investigating Officer has considered a sum of Rs.7,77,259.00 as the domestic expenditure of the accused during the check period. Hence, this calculation is favorable and beneficial to the accused. Therefore, a sum of Rs.7,77,259.00 is estimated as the domestic expenditure of the accused during the check period.

11.102. Item No.29 - Expenditure towards the payment of Deccan Herald News paper by the accused was Rs.1,001.00. The accused did admit that he has paid Rs.1,001.00 towards the subscription of Deccan Herald Newspaper. The prosecution has produced Ex.P.121 to evidence the same. Therefore, a sum of Rs.1,001.00 is considered as the expenditure of the accused.

11.103. Item No.30. □Expenditure of the accused incurred for rearing Pomeranian dog was Rs.29,000.00. However, the accused has denied with the same. To substantiate the contention of prosecution, it has placed reliance on the evidence of PW.4. It is the evidence of PW.4 that he has

received Ex.P.48 Report from Dr.H.A.Upendra, Spl.CC.No.134/2012 Professor of Karnataka Veterinary Animal and Fisheries Sciences University. It is pertinent to note that, at the time of marking of Ex.P.48, the accused did not raise any objection. Therefore, at the time of arguments on main, the accused cannot take a contention that Ex.P.48 Report is not a genuine document. No doubt it is true that the author of Ex.P.48 has not been examined by the prosecution.

11.104. It is the definite case of the prosecution that PW.2 did conduct raid to the house No.17 on 03.04.2009. The prosecution has proved the search of house No.17 by producing Ex.P.36 Search Mahazar. The fact that house No.17 of Bhagiratha Layout is the house of the accused is not in dispute. It is the evidence of DW.3/accused that it is his son who has brought one Pomeranian dog to his house. Thus, from that evidence of DW.3 it is clear that the family of the accused was rearing a Pomeranian dog.

11.105. It is the contention of the prosecution that the cost of rearing Pomeranian dog was Rs.29,000.00. As per Ex.P.48 Dr.H.A.Upendra of Karnataka Veterinary, Animnal and Fisheries Science University, the cost of maintaining a Pomeranian dog upto the age of 3 years depending upon different factors including type of dog□registered or non□registered dog, type of food, commercial or home made food Spl.CC.No.134/2012 and level of management practices followed. As per Ex.P.48, the cost furnished is only approximate estimate based on the prevailing market cost and management practices generally followed. It is not at all the case of the accused that Ex.P.48 is a concocted report. Under such circumstances there are no reasons much less good reasons to disbelieve the data furnished in Ex.P.48.

11.106. It is the evidence of PW.4 that to show that Pomeranian dog is belonging to the accused, he has not recorded the statement of witnesses. It is the evidence of DW.3 that he used to rear Pomeranian dog out of left out food in the family. This evidence of DW.3 cannot be taken as gospel truth. In his explanation also the accused did not deny the cost of rearing of Pomeranian dog. Therefore, absolutely there are no reasons to disbelieve the contention of the prosecution that the accused did spend a sum of Rs.29,000.00 towards the cost of rearing of Pomeranian dog. Accordingly, it is held that accused did incur Rs.29,000.00 towards the cost of rearing of Pomeranian dog during the check period.

11.107. Item No.31 □Expenditure of the accused towards gas connection vide consumer No.31132 is Rs.16,200.00. It is the contention of the prosecution that Spl.CC.No.134/2012 accused has incurred expense of Rs.16,200.00 towards domestic gas connection in consumer No.31132 which stands in the name of accused. To substantiate the same the prosecution has placed reliance on evidence of PW.4. It is the definite evidence of PW.4 that in respect of domestic gas expenses of the accused, he collected documents at Ex.P.73. The reading of Ex.P.73 would show that the accused has deposited Rs.1,350.00 towards supply of two gas cylinders and approximate value of cylinders supplied from April 2010 to April 2011 was Rs.3,605.00. Similarly, the letter dated 28.04.2011 would show that the approximate average amount spent towards the supply of gas cylinders from June 2002 to April 2009 was Rs.16,200.00. The Investigating Officer has deposed that the accused has spent Rs.16,200.00 towards the supply of domestic gas. In fact at the time of cross□examination of PW.4 nothing is suggested to him that accused has not spent Rs.16,200.00 towards supply of domestic gas

cylinders to his house.

11.108. It is true that the Investigating Officer has not collected any vouchers, bills or acknowledgements in proof of supply of domestic gas cylinders to the house of accused. However, the fact remains that the accused did not deny that the domestic gas consumer No.31132 is belonging to him. In Spl.CC.No.134/2012 fact the reading of Ex.P.73 would show that domestic gas cylinder was supplied to house No.17 of Bhagiratha Badavane of M.N.Marthandappa. The accused has not explained what was the other mode of connectivity he has got to his domestic purpose other than gas connectivity found in Ex.P.73. Therefore, absolutely there is nothing on record to disbelieve the contents of Ex.P.73. It is relevant to note that at the time of marking Ex.P.73, the accused has not raised any objection. The figures found in Ex.P.73 appears to be true. Therefore, there is no meaning in accused contending that the Report as per Ex.P.73 is imaginary. On the other hand, considering the totality of the circumstances, this Court is of the opinion that a sum of Rs.16,200.00 is not exorbitant as contended by the accused. Hence, a sum of Rs.16,200.00 shall have to be considered as the expenses of the accused.

11.109. Item No.32 □Expenditure towards cable connection by the accused is Rs.1,000.00. The accused did admit the expense of Rs.1,000.00 towards cable connection. Hence Rs.1,000.00 shall have to be considered as the expenditure of the accused during the check period.

Spl.CC.No.134/2012 11.110. Item No.33 □Expenditure towards Children Education:

a) Daughter – Rs.35,800.00
b) Son – Rs.69,480.00

11.111. It is the evidence of PW.4 that the accused has spent a sum of Rs.35,800.00 towards the educational expenses of his daughter. According to him, during the course of investigation he has collected the documents as per Ex.P.55 and Ex.P.55(a). The reading of Ex.P.55 would show that Swetha, daughter of M.N.Marthandappa studied PUC (PCMB) during the academic year 2007□09. It is very relevant to note that at the time of marking the letter of Sheshadripuram Pre□University College as per Ex.P.55 the accused has not raised any objection. Therefore, at the stage of argument, the accused cannot contend that the author of Ex.P.55 has not been examined and hence the contents of the same cannot be taken into consideration.

11.112. As per Ex.P.55, the said letter is annexed with the copy of application form, copy of four receipts. As per these receipts, a sum of Rs.1,300, Rs.6,600.00, Rs.1,005.00 and Rs.8,895.00 is remitted to Sheshadripuram Pre□University College pertaining to the educational fee of Kum.Swetha, daughter of the accused. It is the contention of Spl.CC.No.134/2012 the accused that he has spent only a sum of Rs.17,800.00. So far as the educational expenses for the study of Kum.Swetha at MES Gurukula Coaching Centre, the Investigating Officer has collected the letter of MES Gurukula Coaching Centre as per Ex.P.55(a). No doubt, except the letter at Ex.P.55(a), the Investigating Officer has not collected any receipts evidencing the payment of Rs.18,000.00. It is relevant to note that, either at the time of marking or at the time of cross□examination of PW.4, the genuineness or otherwise of Ex.P.55(a) is not at all disputed by the accused. Therefore, at this stage absolutely there is nothing on record to disbelieve the evidence of PW.4 that the accused has spent a

sum of Rs.35,800.00 towards the educational expenses of his daughter. Hence, the Investigating Officer is justified in considering Rs.35,800.00 as educational expenses of the daughter of the accused. Hence, it is held that a sum of Rs.35,800.00 shall have to be taken under the head of the expenditure of the accused.

11.113. It is the contention of the prosecution that the accused has spent Rs.69,480.00 towards the educational expenses of his son Kethan Sagar. The Final Report would show that the Investigating Officer has collected a letter from the Principal Beena Teetas, Bethesda International School Spl.CC.No.134/2012 dated 12.03.2011 and copies of payment receipts. However, with regard to payment of fee of Rs.69,480.00, PW.4 has not given any evidence either oral or documentary. In his explanation as per Ex.P.126, statement 17, annexure 24, the accused has contended that, he has spent Rs.47,020.00 towards the educational expenses of his son M.Kethan Sagar. Therefore, there is no impediment for the Court to consider a sum of Rs.47,020.00 as educational expenses of his son M.Kethan Sagar. Hence, a sum of Rs.47,020.00 shall have to be considered as expenditure of the accused towards the educational expenses of his son. Accordingly, a sum of Rs.47,020.00 is taken under the head of expenditure of the accused.

11.114. Item No.34 ☐Expenditure towards payment of fee for membership in Karnataka Engineer's Academy is Rs.25,000.00. The accused has admitted that, he has paid Rs.25,000.00 towards membership fee to Karnataka Engineer's Academy. Hence, Investigating Officer is justified in taking a sum of Rs.25,000.00 towards the head of expenditure of the accused.

11.115. Item No.35 - It is the contention of the prosecution that the accused has incurred agricultural Spl.CC.No.134/2012 expenses of Rs.32,000.00 during the check period. To show that, accused has spent Rs.32,000.00 towards agricultural expenses, the Investigating Officer has not produced any evidence. The accused did not admit that he has spent Rs.32,000.00 towards agricultural expenses. In this context of the matter, it is relevant to point out that while explaining his income from agriculture, the accused has contended that the family possesses 64 acres of agricultural land and he being the Kartha of the family has received Rs.2.5 crores of agricultural income. However, strangely he has denied the contention of the prosecution that he has incurred agricultural expenses of Rs.32,000.00. In fact, the counsel for the accused has placed reliance on a decision reported in AIR 2017 (3) 825 in the case of Vasanthrao Guhe Vs. State of Madhyapradesh wherein it is held that even in a case when the burden is on the accused, the prosecution must first prove the foundational facts. But in the present case to prove the agricultural expenditure incurred by the accused except the self serving testimony of PW.4, the prosecution did not produce any evidence of credit worthy. However, it is relevant to note that in his APR accused did declare agricultural income of Rs.65,00,000.00+Rs.2,00,000.00 (individual Spl.CC.No.134/2012 agricultural income). This declaration is not denied by the accused at trial. Therefore, it is highly improbable to accept the contention of the accused that he did not incur agricultural expenditure of Rs.32,000.00. When accused himself has declared agricultural income of Rs.65,00,000.00 +Rs.2,00,000.00 (individual agricultural income), even an ordinary prudent man will have to presume that there should be some expenditure to do agricultural operations. The amount claimed by the prosecution is not exorbitant. Thus, by applying commonsense this court is of the opinion that the accused did incur agricultural expenditure of Rs.32,000.00 during the check period. Therefore, Investigating Officer is justified in

considering a sum of Rs.32,000.00 towards agricultural expenses of the accused. Hence, a sum of Rs.32,000.00 shall have to be considered as the expenditure of the accused during the check period.

11.116. Item No.36 - Cash withdrawals of the accused from SBI vide SB A/c No.10562679928 is Rs.1,00,000.00 and from Punjab National Bank, Deepanjali Nagar Branch, Bengaluru vide SB A/c No.4247000100401706 is Rs.2,00,000.00. The Investigating Officer has considered various expenditures of the accused. In fact PW.4 during the course of his cross-examination has deposed that for the Spl.CC.No.134/2012 purpose of domestic expenses and for acquiring property one can withdraw money from his bank account. Admittedly, the amount deposited in the bank becomes income. Absolutely there is no evidence on record to show that as to for what purpose accused has utilized Rs.3,00,000.00. The evidence of PW.4 would show that he has not issued notice to the accused calling upon him to explain for what purpose he has utilized Rs.3,00,000.00. Therefore, the accused is justified in contending that mere withdrawal of money from the bank account cannot be termed as expenditure. If money is withdrawn for acquiring assets or incurring the expenditure, once again it cannot be considered as expenditure as the same will amount to duplication. Therefore, a sum of Rs.3,00,000.00 shall have to be deducted from the head of expenditure of the accused.

11.117. Item No.36 - Expenses towards payment for rented houses by the accused for house No.202/1, 4 th Cross, RPC Layout, Vijayanagar, Bengaluru is Rs.44,000.00 and for the house No.3097, 14th Main, 8th Cross, Attiguppe, RPC Layout, Vijayanagar 2nd Stage, Bengaluru is Rs.1,43,000.00. The accused has admitted the payment of rent of Rs.44,000 and Rs.1,43,000.00 respectively. Therefore that amount Spl.CC.No.134/2012 shall have to be added to the head of expenditure of the accused.

11.118. Item No.37 - Expenditure towards payment of donations to temples and other religious institutions by the accused is R.68,254.00. The payment of donation of Rs.68,254.00 is admitted by the accused. Hence, that amount shall have to be added to the head of expenditure of the accused.

11.119. Item No.38 - Expenses towards purchase of electricity meter by the accused is Rs.5,017.20. The accused has admitted that, he has spent Rs.5,017.20 for the purchase of electric meter. Therefore, that amount shall have to be added to the head of expenditure of the accused.

11.120. Item No.39 - Expenditure towards purchase of shares in Co-operative Society in Bengaluru by the accused is Rs.10,015.00. The accused has admitted this expenditure. Therefore that amount shall have to be added to the head of expenditure of the accused.

11.121. Item No.40 Expenditure towards payment of membership for Kannada monthly paper is Rs.1,000.00 and for Co-operative Society in Bengaluru is Rs.5,157.00. The accused has admitted these two expenditures. Hence, that Spl.CC.No.134/2012 amount shall have to be added to the head of expenditure of the accused.

11.122. Item No.41 - Expenditure towards the amount deposited to UTI Children Gift Growth Fund 1986 is Rs.1,332.09. The investment of this amount in UTI Children Gift Growth Fund is not denied

by the accused. However, it is his contention that said policy is obtained by his in□laws in the name of his daughter during 1994. In fact, the Investigating Officer has seized the document as per Ex.P.125. That document stands in the name of Swetha.M.M. C/o Smt.Mandakini.H.Kenchappagol. The document stands in the name of Swetha.M.M. and her grandmother Mandakini is shown as guardian. Therefore, it can be inferred from the contents of Ex.P.125 that it is not the accused who has obtained policy in the name of his daughter. On the other hand, it can be safely held that, that amount was invested by the mother□in□law of the accused. Hence, the contention of the accused that, that policy was obtained by his in□laws is probable and accordingly, require acceptance. Resultantly, accepted. Hence, a sum of Rs.1,332.09 shall have to be deducted from the head of expenditure of the accused.

11.123. It is the contention of the prosecution that, the accused has purchased shares from India Info□line Shares to Spl.CC.No.134/2012 the tune of Rs.30,660.30. It is also contention of the prosecution that, the accused has spent a sum of Rs.225.00 towards cheque bounce charges from Punjab National Bank, Deepanjali Nagar Branch, Bengaluru vide SB A/c No.4247000100401706 and stamp duty and processing fee paid by the accused is Rs.10,000.00. These three expenditures are admitted by the accused. Hence, that amount shall have to be taken under the head of the expenditure of the accused.

11.124. Hence, for the foregoing reasons and discussions, this Court is of the opinion that the following are the expenditures of the accused during the check period.

Sl. No.	Expenditure	Amount (in Rs.)
1	Registration fee and stamp duty paid at the time of purchase of site No.35,	7,950.00

Shyabhanur Village, Davanagere Taluk.

2 Registration fee and stamp duty paid at 36,100.00 the time of purchase of Sy.No.35/1, Site No.17, Valgerehalli, Kengeri Hobli, Bengaluru South Taluk in Katha No.35/1, measuring 60x40 feet 3 Tax paid in respect of site No.17, 12,683.00 Bengaluru South Taluk, Valagerehalli, Kengeri Spl.CC.No.134/2012 4 Expenditure towards payment of water 1,540.00 bill for the House No.202/1, 4 th Cross, RPC Layout, Viajayanagar, Bengaluru 5 Expenditure towards payment of water 3,400.00 bill for rented House No.3097, 14th Main, 8th Cross, Attiguppe, RPC Layout, Vijayanagar 2nd Stage, Bengaluru 6 Expenditure towards payment of 18,409.00 Electricity Bill for Meter No.WTP 4953 of Site No.17, Near KHB Colony, Valagerhalli, K.S.Town, Bengaluru 7 Expenditure towards payment of 899.00 electricity bill for meter No.W7EH10147 of site No.17, near KHB Colony, Valagerehalli, K.S.Town, Bengaluru.

8 Expenditure towards payment of 15,396.00 electricity bill for meter No.W7EH10150 of site No.17, near KHB Colony, Valagerehalli, K.S.Town, Bengaluru 9 Expenditure towards payment of 1,877.00 electricity bill for RR No.N2EH44457 of house No.202/1, 4th Cross, RPC Layout, Vijayanagar, Bengaluru□40 10 Expenditure towards payment of 16,525.00 electricity bill for rented house No.3097, 14th Main, 8th Cross, Attiguppe, RPC Layout, Vijayanagar 2nd Stage, Bengaluru□40 11

Expenditure towards Investigation Report 600.00 for ground floor water Spl.CC.No.134/2012 12 Expenditure towards payment of EMI for 936.00 Hero Honda Splendor Plus bearing registration No.KA□02□EX□4712 13 Expenditure towards mobility expenses 3,291.00 for Hero Honda Splendor Plus bearing registration No.KA□02□EX□4712 14 Expenditure towards mobility expenses for Maruthi Suzuki Swift VDI car bearing 1,55,457.00 registration No.KA□02□MC□4797 15 Expenditure towards repayment of 3,25,781.00.

housing loan from Punjab National Bank, Deepanjali Nagar Branch, Bengaluru 16 Expenditure towards repayment of loan amount from City Financial for the 38,357.00.

purpose of purchase of Hero Honda Splendor Plus bearing Registration No.KA□02□EX□4712 17 Expenditure towards repayment of loan 25,352.00 from SREI Equipment Finance Limited for fixing Solar Water Heater to House No.17 18 Premium amount paid for Life Insurance 22,748.00.

policy No.No.623729639 in the name of Sri.M.N.Marthandappa 19 Premium amount paid for Bajaj Aliyanz 1,00,000.00 Life Insurance in the name of Accused 20 Insurance Policy of site No.17, 6,314.00 Sy.No.35/1/t7/, Bengaluru South Taluk, Valagerhalli, Kengeri.

Spl.CC.No.134/2012 21 Loan lent to Mohan Reddy, Venkatarama 9,50,000.00 Reddy and Haribabu 22 Life Insurance Policy in Post Office of 63,960.00 accused.

23 Expenditure towards tax payment by the 4,915.00 accused.

24 Expenditure towards family of the 7,77,259.00 accused 25 Amount paid for Deccan Herald news 1,001.00 paper 26 Expenditure towards rearing of 29,000.00 Pomeranian dog 27 Gas Cylinder expenses paid by the 16,200.00 accused in respect of consumer No.31132 28 Cable connection expenditure in the 1,000.00 name of the accused 29 Amount spent for daughter's education by 35,800.00 the accused 30 Amount spent for son's eduction by the 47,020.00 accused 31 Membership fee paid to Karnataka 25,000.00 Engineer's Academy towards registration 32 Agricultural expenditure 32,000.00 33 Rent paid for house No.202/1, 4th Cross, 44,000.00 RPC Layout, Vijayanagara, Bengaluru Spl.CC.No.134/2012 34 Rent paid for house No.3097, 8 th Cross, 1,43,000.00 Athiguppe, RPC Layout, Vijayanagara, Bengaluru 35 Donation paid to temples and other 68,254.00 religious institutions 36 Amount paid for the purchase of electric 5,017.20 meter 37 Shares in Co□operative Bank Society, 10,015.00 Bengaluru 38 Amount paid for the membership of 1,000.00 Kannada monthly paper 39 Amount paid for membership of Co□5,157.00 operative Society in Bengaluru 40 Share amount received from India Info□30,660.30 line shares 41 Amount paid towards cheque bounce 225.00 charges to Punjab National Bank, Deepanjali Nagar Branch, Bengaluru.

42	Stamp duty and processing fee paid by the accused	10,000.00
	Total Expenditure	30,94,098.50

12. The income of the accused :

12.1. The following are the head of income of the accused during the check period which has been considered by the Investigating Officer.

Spl.CC.No.134/2012

Sl. No.	Income	Amount (in Rs.)
1	Details of Salary drawn during 29/10/1987 to 03/04/2009	20,01,723.00
2	Rental income of the house No.17, 2nd Cross, Bhagirat Layout behind Canara	87,250.00

Bank, Kengeri Satellite Town, Bengaluru□60 3 Income from part of the house let out for 87,250.00 rent in respect of house No.17, 2 nd Cross, Bhagirat Layout behind Canara Bank, Kengeri Satellite Town, Bengaluru□60.

4 Income from part of the house let out for 1,38,000.00 rent in respect of house No.17, 2 nd Cross, Bhagirat layout behind Canara Bank, Kengeri Satellite Town, Bengaluru□60.

5 Income from part of the house let out for 55,000.00 rent house No.17, 2nd Cross, Bhagirat layout behind Canara Bank, Kengeri Satellite Town, Bengaluru□60 6 Income from agricultural land in the name 3,55,523.50 of family of accused 7 Income from farming in the name of family 1,65,297.75 of the accused 8 Housing loan from Punjab National Bank, 10,00,000.00 Deepanjali Nagar Branch, Bengaluru.

9 Loan amount from City Financial for 33,000.00 purchase of Hero Honda Splendor Plus, Reg No.KA□02□Ex□4712 10 Loan amount taken from SREI Equipment 24,700.00 Finance Limited for fixing solar water heater to house No.17.

Spl.CC.No.134/2012 11 Interest received from SBI Bank, RPC 1,971.00 Layout branch, in respect of SB A/c No.:

10562679928

12 Interest received from Punjab National 2,968.00 Bank, Deepanjali Nagar Branch, Bengaluru, in respect of SB A/c No.42470001004017O6 13 Loan amount taken from Canara Bank, 2,101.00 Kengeri Satellite town branch, SB A/c No.2850101002297 14 Interest received from Canara Bank, 872.00 Kengeri Satellite Town branch, in respect of SB A/c No.2850101001519 15 Interest received from ICICI Bank, 1,006.00 Bengaluru branch, No.1, Commissionarate Road, in respect of SB A/c No.632188 16 Income from interest received from private 2,80,000.00 persons 17 Survival benefit from LIC Policy 20,411.00 No.661956255 in the name of accused 18 Loan from K.G.I.D 1,00,800.00 Total 43,57,873.25 12.2. The learned counsel for the accused has contended that the prosecution has never doubted the source of income mentioned by the accused as there were sufficient materials by way of documentary evidence to prove the source of income. He has placed reliance on the decision

Spl.CC.No.134/2012 reported in AIR 1986 SC 250 in the case of State (Delhi Administration) Vs. Laxmankumar and others. In that decision it is held that "this court pointed out in Poddanarayana Vs. State of Andrapradesh 1975 (4) SCC 153 that a statement recorded by the Police Officer during the investigation is inadmissible in evidence and the proper procedure is to confront the witness with the contradictions when they are examined and then ask the Investigating Officer regarding the contradiction. He has also placed reliance on the decision reported in AIR 2011 SC 1363 in the case of Ashok Tshering Bhutia Vs. State of Sikkim. Wherein it is held that any information or statement made before the IO under section 161 of Cr.P.C requires corroboration by sufficient evidence. It is argued that during investigation PW.4 has not examined important witnesses like the brothers of the accused to know their source of income. Just because PW.4 has not recorded the statements of the brothers of the accused it does not mean to say that the other evidence collected by the IO is not admissible in law. However by keeping in mind the above proposition of law, it is just and proper to appreciate the admissible Spl.CC.No.134/2012 evidence placed by the prosecution and then to evaluate the income of the accused during the check period.

13. Salary Income:

> 13.1. According to the Investigating Officer, from 29.10.1987 till 03.04.2009 the accused has drawn salary income of Rs.20,01,723.00. In fact accused has contended that he has drawn salary of Rs.21,27,786.00 and therefore there is difference of Rs.1,26,063.00. The PW.4 being the Investigating Officer has deposed that, the accused had joined service as Assistant Engineer of PWD on 29.10.1987. The Investigating Officer has taken the period from 29.10.1987 to 03.04.2009 as check period. It is borne out from the evidence of PW.4 that on considering salary details as per Ex.P.17, 19 and 57, the accused has received gross salary income Rs.27,48,581.00. It is also his evidence that after deduction made from the salary towards GPF etc., net take home salary is considered as salary income of the accused. According to him the net take home salary of the accused is calculated at Rs.20,01.723.00.
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> 13.2. The Investigating Officer has secured the salary particulars of the accused for the period from 29.10.1987 to 10.09.1992 at Ex.P.57. It is very pertinent to note that Ex.P.19 the extract of salary bill of the accused from Spl.CC.No.134/2012 08.10.1992 to 22.05.1999. In addition to it, the Investigating Officer has produced the extract of salary bill of the accused from 22.05.1999 to 07.06.2003 as per Ex.P.56. The evidence of PW.4 that, the net take home salary of the accused was Rs.20,01,723.00 is in accordance with the entries found in Ex.P.19, 56 and 57. However, it is the contention of the accused that the Investigating Officer has left out 15 years time bound arrears of Rs.6,951.00, 20 years time bound arrears of Rs.11,015.00, revised pay scale arrears from April 2006 to March 2007, April 2007 to September 2009 to the tune of Rs.37,014.00 and Rs.26,640.00 respectively.

According to him, he has drawn a sum of Rs.44,443.00 by way of EL surrender encashment. To substantiate his contention, the accused has produced relevant portions of Acquittance Roll as per Ex.P.126 and he has also produced true copies of Acquittance Roll as per Ex.D.9 and 10.

13.3. It is the evidence of DW.3/accused that, in respect of his salary income when he has come to BBMP on lien basis, he has received 15 years time bound arrears at Rs.6,951.00, 20 years time bound arrears of Rs.11,015.00. In fact Ex.D.10 is the particulars issued by the Executive Engineer of PWD. As per Ex.D.10, the accused has drawn Rs.6,951.00 towards time bound arrears for 15 years in the Spl.CC.No.134/2012 month of January 2004. The reading of Ex.D.9 at ink page No.87 would show that, the accused has received 20 years time bound arrears of Rs.11,015.00. The evidence of PW.4 would show that he has not taken into consideration a sum of Rs.6,951.00 and Rs.11,015.00 which accused has received as time bound arrears. The conjoint reading of Ex.D.9 and Ex.D.10 would clearly establish that the accused has received Rs.6,951.00 and Rs.11,015.00 towards time bound arrears. Therefore, this amount shall have to be taken under the head of salary income of the accused.

13.4. The reading of Ex.D.10 the undisputed document would show that the accused has drawn Rs.37,014.00 towards the arrears of revised pay scale for the period commencing from April 2006 to March 2007 and Rs.26,640.00 for the period commencing from April 2007 to September 2007. The reading of Ex.D.9 at ink page No.88 would show that the accused has drawn pay arrears of Rs.37,164.00. Similarly, the reading of Ex.D.9 at ink page No.89 would show that the accused has drawn pay arrears of Rs.26,640.00. The evidence of PW.4 would show that he has not taken arrears of revised pay scale while determining the salary income of the accused. Therefore, a sum of Spl.CC.No.134/2012 Rs.37,014.00 + Rs.26,640.00 = Rs.63,654.00 shall have to be added to the head of salary income of the accused.

13.5. It is the contention of the accused that, by way of earned leave encashment he has drawn a sum of Rs.44,443.00. To substantiate that contention, he has placed reliance on Ex.D.10. The genuineness or otherwise of Ex.D.10 or the fact that accused has drawn a sum of Rs.44,443.00 by way of EL encashment has not been disputed by the prosecution. The reading of Ex.D.10 coupled with the contents of Ex.D.9 would show that the accused has drawn a sum of Rs.18,305.00 and Rs.26,138.00 by way of EL encashment. Therefore, a sum of Rs.18,305.00 +Rs.26,138.00=Rs.44,443.00 shall have to be added to the salary income of the accused.

13.6. It is definite evidence of PW.4 that while calculating the salary income of the accused he has not taken into consideration time bound arrears, arrears of revised pay scale and amount drawn by the accused by way of EL encashment to the tune of Rs.1,26,063.00. Therefore, for the discussions made supra, a sum of Rs.1,26,063.00 shall have to be included to the head of salary income of the accused. The Investigating Officer has taken a sum of Rs.20,01,723.00 as the salary income of the accused. That amounts to Spl.CC.No.134/2012 Rs.20,01,723.00 + Rs.1,26,063.00 = Rs.21,27,786.00. Accordingly, the salary income of the accused is considered as Rs.21,27,786.00.

14. Rental Income :

14.1. According to the Investigating Officer the accused has received Rs.87,250.00 as house rent in respect of portion of house No.17, 2nd Cross, Bhagirath Layout, behind Canara Bank, Kengeri Satellite Town, Bengaluru-60. Similarly, it is contended by the Investigating Officer that the accused has received rental income of Rs.87,250.00 in

respect of part of the house No.17 let out for rent. It is also contended by the Investigating Officer that the accused has received rental income of Rs.1,38,000.00 in respect of part of the house No.17 let out for rent. It is further contended by the Investigating Officer that the accused has received rental income of Rs.55,000.00 in respect of part of the house No.17 let out for rent. Hence, according to the prosecution, the total rental income received by the accused during the check period was Rs.3,67,500.00. However, it is the contention of the accused in his statement under section 313(5) of Cr.P.C., that he had received Rs.1,02,500.00 +Rs.1,02,500.00+ Rs.1,38,000.00+ Rs.1,25,500.00 = Rs.4,68,500.00 as rent.

Spl.CC.No.134/2012 Surprisingly, in the memo filed by the accused on 18.12.2019 to consider the documents as part and parcel of his arguments, it is contended that the accused has received Rs.1,47,500.00 + Rs.1,47,250.00 + Rs.1,96,800.00 + Rs.1,80,500.00 + Rs.55,000.00 totally amounting to Rs.7,27,050.00 as rental income in respect of house No.17. Thus, it is clear that the accused is going on changing his version with regard to the rental income received by him.

14.2. In his explanation as per Ex.P.126, at annexure No.2, the accused has furnished the tabulation regarding rents received by him. As per this document, he had received total sum of Rs.7,77,050.00. The explanation is consisting of affidavit of Surendrababu and the copy of rental agreement dated 24.08.2007, rental agreement dated 24.08.2007 executed by one Mr.Kushalkumar Choudary, xerox copy of rental agreement dated 26.09.2008 executed by Mr.Sumithkumar and others, xerox copy of affidavit of Akash S/o Lakshmish Gowda and the xerox copy of rental agreement executed by G.K.Mohana on 06.04.2009. Even in the xerox copy of affidavit, certain corrections were with regard to quantum of rent. Added to the above, the accused in his 313 statement has contended that he has received Rs.4,68,500.00 as rent. However, at the time of argument, Spl.CC.No.134/2012 the accused has contended that he has received Rs.7,77,050.00. Thus it is clear that the accused is not definite about the quantum of rental income which he has received during the check period.

14.3. It is the contention of the accused that he has declared rental income of Rs.55,000.00 in the year 2007□08 and furnished copy of Income Tax Returns in Ex.P.126 as per Vol.No.III at page No.460 to 463. The fact that, the document referred by the accused is the copy of Income Tax Returns submitted by him is not in dispute. As per this document, the accused had gross annual value of Rs.1,67,500.00 in respect of income from let out properties. However, a sum of Rs.55,000.00 as contended by the accused does not find place in the Income Tax Returns for the year 2008□09. As per this document, net income from the property was Rs.1,11,580.00. However, accused has restricted his income to Rs.55,000.00. Therefore, that amount has to be taken into consideration while calculating the rental income of the accused.

14.4. It is the contention of the accused that in his Annual Property Returns he has declared rental income of Rs.2,40,000.00. The reading of Ex.P.126 at Vol.No.III, at page No.398 to 400 would show that the accused has Spl.CC.No.134/2012 received Rs.2,40,000.00 rent from the tenants. However, this declaration is cannot accepted as true because it is for the accused to produce documents in support of his declaration. It is not out of place to mention here itself that the accused has not at all declared his rental income in his Annual Property Returns.

14.5. The evidence of PW.4 would show that, during the course of investigation he came to know that the accused has lent out five portions of house on rent and that the house was inaugurated on 20.04.2007. The evidence of PW.4 would show that he has not taken into consideration of a sum of Rs.55,000.00 towards advance for one portion of the house. His evidence would also show that at the time of recording statements of the tenants, he has not enquired as to who were all the tenants prior to his recording of statements in respect of five portions of the house.

14.6. It is relevant to note that, at the time of search of house No.17, the Investigating Officer has seized rental agreement dated 26.09.2008 executed by Kushalkumar Chodary and others as per Ex.P.95. The reading of Ex.P.95 would show that the lease period was for 11 months and the lessee has agreed to pay rent of Rs.5,250.00. Similarly, the Investigating Officer has seized rental agreement dated Spl.CC.No.134/2012 26.09.2008 executed by Sumithkumar in favor of the accused as per Ex.P.96. The reading of Ex.P.96 would show that the lease period was for 11 months and the lessee has agreed to pay rent of Rs.5,250.00. Similarly, the Investigating Officer has seized rental agreement dated 01.11.2007 executed by Smt.Vasanthi in favor of the accused as per Ex.P.97. The reading of Ex.P.97 would show that the lease period was for 11 months and the lessee has agreed to pay rent of Rs.5,500.00. In addition to it, the Investigating Officer has seized a copy of Rent Agreement dated 24.08.2007 at Ex.P.98. The reading of Ex.P.98 would show that the lease period was for 11 months and the lessee has agreed to pay rent of Rs.5,000.00. Thus, from the reading of undisputed documents referred to above as per Ex.P.95 to Ex.P.98 it would show that the rent was not exceeding Rs.6,000.00 per month. Under the circumstances, it is crystal clear that the accused exaggerated the quantum of rental income. Even the accused is not definite about his rental income. Under the circumstances, the only option available to the Court is to accept the rental income shown by the Investigating Officer. Resultantly, it is held that the accused has received total rental income of Rs.3,67,500.00 + Rs.55,000.00 = Rs.4,22,500.00. Hence, Investigating Officer is justified in Spl.CC.No.134/2012 holding that the accused had rental income of Rs.4,22,500.00 during the check period.

15. Agricultural income :

> 15.1. According to the Investigating Officer during the check period the accused had agricultural income of Rs.3,55,523.50. To substantiate the same, the Investigating Officer has produced the Report of Assistant Director of Agriculture, Davanagere at Ex.P.59. Reputing the same, the accused in his written statement filed under section 313(5) Cr.P.C has contended that, he had agricultural income of Rs.2,41,13,122.00 during the check period and hence, there is difference of Rs.2,37,55,398.50. In his notes of arguments, the counsel for the accused has contended that the accused had agriculture and farming income of Rs.2,57,66,464.00 and hence, there is difference of Rs.2,52,43,442.00. Based on this figure it is contended that the Investigating Officer has intentionally not considered the actual agricultural income of the accused only to falsely implicate him in the case.

Therefore, it is for this Court to appreciate the rival contentions based upon admitted documents and evidence produced and proved before this Court and to arrive at a just Spl.CC.No.134/2012

conclusion in calculating the agricultural income of the accused during the check period.

15.2. In his 313(5) statement accused has contended that he is having 44 acres 33.5 guntas joint family agricultural land in different survey numbers. According to him maize, cotton, ragi, paddy, groundnut, sugarcane, paddy grass, jowar, navane, chilli, coconut, banana, tomato, beetle nut and halasande were grown in those lands. It is also contended by him that all the brothers are not well educated and are not employed and hence, they are looking after the agriculture of the joint family. He has further contended that, since the brothers are not much educated, he being a engineer in the family, all the affairs of family agriculture was looked after by him since 1985. According to him, during the check period he has declared total agricultural income of Rs.67,00,000.00.

15.3. It is relevant to note that, based upon the declarations made in the Annual Property Returns of the accused for the year 1998-99 and 1999-2000 and on the fact that accused is one of the member of the joint family having 1/6th share and based upon the Report as per Ex.P.59 the Investigating Officer has arrived at a conclusion that during the check period the accused had agricultural income of Spl.CC.No.134/2012 Rs.3,55,523.50. The reading of the Report of Assistant Director of Agriculture, Davanagere as per Ex.P.59 would show that, out of agricultural land, the family of Smt.Hanumavva (mother of the accused) had net income of Rs.21,34,341.00. It is pertinent to note that, at the time of marking of Ex.P.59, the accused has not raised any objection. However, it is settled proposition of law that mere marking of a document does not dispense with proof.

15.4. In Ex.P.59 Report, the Assistant Director of Agriculture, Davanagere has considered Ragi, Sugarcane and Jowar grown in Sy.No.78/2P measuring 3 acres 2 guntas, Sugarcane and Paddy grown in Sy.No.45 measuring 7 acres 5 guntas of Hadadi village stood in the name of Smt.Hanumavva. Similarly, the Expert taken into consideration of Sugarcane, Jowar, Cotton, Groundnut, Toordal grown in Sy.No.21/2A2 of Jawalaghatta village, Ragi, Sugarcane and Jowar grown in Sy.No.60/P measuring 2 acres 8 guntas of Hadadi village, Ragi grown in Sy.No.60P measuring 2 acres 19 guntas of Hadadi village, Sugarcane grown in Sy.No.56/1 measuring 3 acres 27 guntas of land in Hadadi village and Sugarcane and Paddy grown in Sy.No.23/P measuring 3 acres 32 guntas of Hadadi village. Thus, it is clear that, the Assistant Director of Agriculture Spl.CC.No.134/2012 has considered the crops grown in total extent of 25 acres 36 guntas of land while assessing the agricultural income of the family of the accused.

15.5. As per the Report at Ex.P.59, the Officer of Department of Agriculture has considered the crop grown in the land of Smt.Hanumavva. But it has not examined the author of Ex.P.59. Even the accused also not raised any objected for the marking of the same. Had the prosecution has undertaken the task of examination of the author of Ex.P.59, the accused had every opportunity to cross-examine him. In the absence of oral evidence of the author of Ex.P.59, its contents cannot be accepted as gospel truth.

15.6. In the explanation of the accused as per Ex.P.126 in Vol.No.IV page No.636 to 715, there is a Report of one M.R.Delvi, Deputy Director of Agriculture (Retired). As per this Report, the net income from agricultural lands situated at Jawalaghatta and Hadadi was Rs.1,40,07,894.00. The Report would also show that the net income from property stood in the name of Mahesh @

Maheshwarappa was Rs.36,14,271.00. Similarly, the income of the property stands in the name of M.N.Chikkappa was Rs.2,91,118.00. As per the said Report the net income from the property stood in the name of M.N.Guddappa was Rs.2,06,08,452.00.

Spl.CC.No.134/2012 15.7. In fact, in his Report M.R.Delvi at the earliest point of time considered property bearing Sy.No.21/2P2 measuring 2 acre 33 guntas of Jawalaghatta village standing in the name of Smt.Hanumavva. Similarly, he has considered Sy.No.23/P1 measuring 3 acres 33 guntas, Sy.No.45 measuring 7 acres 5 guntas, Sy.No.56/1 measuring 3 acres 27 guntas, Sy.No.60/P6 measuring 2 acres 19 guntas, Sy.No.60/P8 measuring 31.5 guntas, Sy.No.60/P10 measuring 2 acres 8 guntas and Sy.No.78/2P4 measuring 4 acres 1 gunta of Hadadi village as joint family property as the same stood in the name of Smt.Hanumavva. As per this Report total extent of property stood in the name of mother Hanumavva was 26 acres 36 guntas. Mr.M.R.Delvi has considered net income of Rs.1,40,07,894.00.

15.8. In his Report, at the earliest point of time, Mr.M.R.Delvi has considered property bearing Sy.No.23/P2 measuring 2 acres 36 guntas and Sy.No.51/1P measuring 3 acres 3 guntas of Hadadi village standing in the name of Mahesh @ Maheshwarappa. Similarly, he has taken into consideration property bearing Sy.No.302/P1 measuring 3 acres 8 guntas of Hadadi village standing in the name of M.N.Chikkappa. He has also considered Sy.No.51/1P2 measuring 3 acres 3 guntas of Hadadi village standing in the Spl.CC.No.134/2012 name of M.N.Guddappa. However, to substantiate that Report the accused has not examined M.R.Delvi the author of the same. Further more, that document is xerox copy. Hence, much reliance cannot be attached to that Report.

15.9. The accused to substantiate his contention that he had sufficient agricultural income during the check period has produced Report as per Ex.D.6, Ex.D.7 and Ex.D.8. The author of the Report by name Nagaraja Datthathreya Bhatta is examined as DW.4. The Report as per Ex.D.6 would show that the net Returns from the agricultural properties was Rs.2,57,66,464.00. The income shown in the Report is contrary to the statement filed by the accused under section 313(5) of Cr.P.C, because in his statement the accused has stated that he had total agricultural income of Rs.2,41,13,122.00. Thus, it is clear that, the accused is not definite about his income from agriculture. Hence, one thing can be gathered that the accused is going on inflating his agricultural income so as to suit his defense.

15.10. It is contended by the accused that, PW.4 should have considered the fact that accused has declared in his Annual Property Returns about the agricultural income derived by him to the tune of Rs.67,00,000.00. It is also contended that, though the joint family agricultural income is Spl.CC.No.134/2012 more than 2 crores, the accused has declared only Rs.67,00,000.00 as an amount held by him. In his explanation Ex.P.126, the accused has furnished xerox copies of Annual Property Returns for the year 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006 and 2007 in Vol.No.III page No.404 to 459.

15.11. As per the particulars in Ex.P.126 at page No.127, Sy.No.21/2P2, measuring 2.33 acres, Sy.No.23/P1, measuring 3.32 acres, Sy.No.45, measuring 7.05 acres, Sy.No.56/1, measuring 3.27 acres, Sy.No.60/P6, measuring 2.19 acres, Sy.No.60/P8, measuring 0.31 1/2 acres, Sy.No.60/P10,

measuring 2.08 acres, Sy.No.78/2P4, measuring 4.1 acres of Hadadi, Kasaba Hobli, Davanagere District are standing in the name of Late. Smt.Hanumavva w/o M.Neelappa.

15.12. As per Ex.P.126 at page No.128, Sy.No.23/P2, measuring 2.36 acres, Sy.No.51/1P, measuring 3.03 acres of Hadadi village, Kasaba Hobli, Davanagere District is standing in the name of Mahesh @ Maheshwarappa.

15.13. As per Ex.P.126 at page No.128, Sy.No.302/P1, measuring 3.08 acres Hadadi village, Kasaba Hobli, Spl.CC.No.134/2012 Davanagere District are standing in the name of M.N.Chikkappa s/o M.Neelappa.

15.14. As per Ex.P.126 at page No.128, Sy.No.51/1P2, measuring 3.30 acres Hadadi village, Kasaba Hobli, Davanagere District are standing in the name of M.N.Guddappa s/o M.Neelappa. However, the name of the accused does not finds place in the RTCs. On the other hand the properties stands in the name of mother and four brothers of the accused. There is no explanation from the side of the accused as to why his name is not included in the RTCs relied by him.

15.15. It is argued by the learned counsel for the accused that it is relevant to test the opinion of DW.4 N.D.Bhat based on legal proposition laid down in the case of Ramesh Chandra Agarwal Vs. Regency Hospital Ltd., and others in Civil Appeal No.5991/2002. In that decision it is held that "it is not the province of the expert to act as a Judge or Jury. It is stated in Titli Vs. Jons (AIR 1934 All 237) that the real function of the expert is to put before the court all the materials, together with reasons which induce him to come to the conclusion, so that the court, although not an expert may form its own judgment by its own observation of Spl.CC.No.134/2012 those materials". He has also placed reliance on the decision reported in Malaikumar Ganguly Vs. Dr.Sukumar Mukharji and others. In this ruling it is held that, an expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved in evidence. By virtue of the ratio of the above decision it is the duty of this court to appreciate the evidence of DW.4 with the assistance of facts which are proved in evidence.

15.16. The learned counsel for the accused has placed reliance on the decision reported in AIR 1977 SC 2274 in the case of Piara Singh and others Vs. State of Punjab. In the said decision it is held that "it seems to us that where there is conflict between the opinion of two experts, the court should normally accept the evidence of the expert whose evidence is corroborated by direct evidence of the case which according to the court is reliable". According to the accused the evidence of DW.4 and his Report sufficiently proves the ingredients required to constitute acceptable Report.

Spl.CC.No.134/2012 However, the opinion of the expert itself is not sole criteria to appreciate the agricultural income of the accused. On the other hand it is the duty of the court to consider other materials available in the file which would throw much light on the contention urged by the rival side. Similarly, it is true that mere filing of explanation is not sufficient, on the other hand the explanation should be worthy to accept.

15.17. The accused in his statement of Assets and Liabilities at ink page No.400 in Vol.No.III as per Ex.P.126, while mentioning mode of acquisition of residential building at Bhagiratha Layout has stated that, in lieu of his share over agricultural properties he has taken a sum of Rs.16,00,000.00 and 3 acres of dry land. The Investigating Officer during the course of raid, has seized Annual Property Returns of the accused as per Ex.P.134. The documents at Ex.P.126 and Ex.P.134 are one and the same. The meaningful reading of the above declaration would clearly indicate that the accused has taken Rs.16,00,000.00 at the time of construction of house in house No.17 in lieu of his share over agricultural properties. It is forthcoming from the contents of Ex.P.126, Vol.No.I, ink page No.7 that, one time settlement of Rs.16.00 lakh paid to the accused by the major HUF for partially foregoing agricultural land. The careful Spl.CC.No.134/2012 reading of above admitted facts would show that, accused has taken Rs.16.00 lakh in lieu of his share over joint family properties.

15.18. It is the evidence of DW.1 M.N.Chikkappa, the younger brother of the accused that, the joint family do possess 54 acres of land at Hadadi, Jawalaghatta and Gangavathi. It is also his evidence that still he, accused and other brothers were remained as the members of joint family. In the similar line, DW.2 M.N.Ningappa being another younger brother of the accused has deposed that the joint family is in possession of 54 acres of land at Hadadi, Jawalaghatta, Harapanahalli and Thogarikatte. In the same line DW.3 M.N.Marthandappa has also deposed that, he and his brothers were cultivating 50 acres of land as the members of joint family. In fact, PW.4 being the Investigating Officer has deposed that, there was no partition in the joint family of the accused consisting of mother and five sons. If that portion of evidence of PW.4 which was admitted by him at the time of his cross□examination is taken into consideration then the joint family property shall have to be divided into six shares including mother and five sons.

15.19. In fact, in Ex.D.6 DW.4 N.D.Bhat has taken into consideration Sy.No.21/2P2 measuring 1 acre 7 guntas of Spl.CC.No.134/2012 Jawalaghatta village, Sy.No.45 measuring 7 acres 5 guntas, Sy.No.60/p6 measuring 2 acres 19 guntas, Sy.No.78/2P4 measuring 3 acres 20 guntas, Sy.No.60/P8 measuring 31.8 guntas, Sy.No.60/P10 measuring 2 acres 8 guntas, Sy.No.56/1 measuring 3 acres 27 gutnas and Sy.No.23/P1 measuring 3 acres 32 guntas as the property standing in the name of Smt.Hanumavva w/o Late.Neelappa. As per Ex.D.6 Report of DW.4 the net income from the above referred agricultural land was Rs.1,44,44,898.00. Therefore, it is clear that in the first Report the accused has contended that the net income from the agricultural properties standing in the name of mother Hanumavva was Rs.1,40,07,894.00, whereas in subsequent Report as per Ex.D.6, the accused has taken contention that, the net income from the agricultural properties standing in the name of Hanumavva was Rs.1,44,44,898.00. Thus, it is clear that, accused is in the habit of going on inflating his agricultural income.

15.20. DW.4 has contended that, he is Expert in evaluating agricultural income. However, to show his expertise he has not produced any material before the Court. In (2017) 6 SCC 263 in the case of State of Karnataka Vs. J.Jayalalitha it is held that "an expert is not a witness of fact Spl.CC.No.134/2012 and his evidence is really of an advisory character and his duty is to furnish scientific test criteria to the Court to test accuracy of conclusions. Based on such expert opinion on appreciating facts of each case, Court must give its independent judgment. The Court should not

subjugate its own judgment to that of expert or delegate its authority to third party but to access evidence of expert like any other evidence". As per this decision it is for this court to form its own judgment by its own observation of those materials made available for its scrutiny. The Report of DW.4 is contrary to the Report of M.R.Delvi which is part and parcel of the explanation of the accused at Ex.P.126. Therefore, where the Expert has not furnished real data in support of his opinion, the evidence even though admissible may be excluded from consideration as affording no assistance to the Court in arriving right conclusion while evaluating the actual agricultural income of the accused. The evidence of DW.4 would show that he has given evidence in several cases in which the present counsel for the accused was the counsel for the accused in those cases. From the above portion of evidence of DW.4 it is clear that, he is very much interested in the case of the accused. Hence, this Court is of the opinion that the evidence of DW.4 is interested one.

Spl.CC.No.134/2012 15.21. It is the evidence of DW.1 that, in respect of his contract business he has filed Income Tax Returns. Those documents are available in Ex.P.126 Vol.No.I page No.527 to

630. The study of this document would show that DW.1 has submitted Income Tax Returns as Proprietor i.e., in his individual capacity. Even in Form No.3CD at ink page No.537 also he has shown his status as individual. If really, there exist as joint family, DW.1 could have filed his returns as Kartha of joint family.

15.22. In Ex.P.134, Annual Property Returns for the year 1994, the accused did declare that, the joint family possess 12 acres of land situated at Hadadi. In the year 1995, he has declared that joint family is in possession of 25 acres of land at Hadadi Village, similar declaration was made in the year 1996. In the year 1997 he has declared that the joint family is in possession of 35 acres of land at Hadadi village. Similar declaration was made for the year 1998 and 1999. In his Annual Property Returns for the year 2000 he has declared that 36 acres of land at Hadadi village is joint family property. Similar declaration was made in the Annual Property Returns of the year 2001, 2002, 2003, 2004 and 2005. However, to prove the acquisition of those properties no supporting documents are produced.

Spl.CC.No.134/2012 15.23. The evidence placed on record would demonstrately indicate that the accused has taken Rs.16.00 lakh towards his share over the joint family properties. Therefore, the accused is estopped from taking any contention contrary to his own declaration as per Ex.P.134 of undisputed point of time. As referred to above, in his explanation at Vol.No.I, Statement No.4, accused has contended that one time settlement of Rs.16.00 lakhs was paid by the major HUF for partially foregoing of agricultural land. As per his own declaration, he has got 1/6 th share over the income of the joint family.

15.24. No doubt, it is true that PW.4 being the Investigating Officer deposed that, there was no partition in the joint family of the accused. His evidence would also reveals that, he has not subjected brothers of the accused to the process of investigation to find out as to whether the properties which stood in their name is joint family property or individual property. His evidence would also show that, he has not collected any oral evidence to show that 29 acres 9 guntas of land is not the joint family property. It is to be noted that mere existence of joint family does not lead to the

presumption that the property held by individual coparceners is joint family property or that, the property was acquired out Spl.CC.No.134/2012 of joint family funds. Thus, heavy burden is cast upon the accused to prove that the properties held by Mahesh @ Maheshwarappa, M.N.Chikkappa and M.N.Guddappa are also the properties acquired out of joint family income.

15.25. It is pertinent to note that, though the accused has declared 36 acres of land held by the joint family in his Annual Property Returns, he has not produced any proof for the acquisition of the same. The accused has requested to the Court to consider the agricultural income from 54 acres 6 guntas of land. However, in his Annual Property Returns for the year 2005, he has declared only 36 acres of land and its value. Had four brothers of the accused have acquired the properties out of joint family agricultural income, the accused ought to have declared 54 acres 6 guntas of land as the property of joint family, but Ex.P.134 is very much silent with regard to that aspect of the matter.

15.26. The evidence of DW.4 is contrary to the declaration made by the accused as per Ex.P.126 and Ex.P.134. As discussed above, the evidence of DW.4 is interested one. In addition to it his evidence is not based upon any scientific analysis. He has not secured soil test Report. A Report like Ex.D.6 can be prepared by anybody like DW.4 as he has got experience in attending the Courts in Spl.CC.No.134/2012 disproportionate assets cases as a witness. The evidence of DW.4 and his Report as per Ex.D.6 is contrary to the the Report of Delvi on which the accused has placed reliance at the earliest point of time. There is no evidence on record to show that the knowledge of DW.4 is within the recognized field of expertise. An Expert is not a witness of facts and his evidence is advisory in character. An Expert not only must possess necessary special skills and experience in his discipline but also backed by reason. But in the present case the evidence of DW.4 is relating to facts of the case and not relating to expertise in evaluating the agricultural income. Added to it, the Report of Delvi and DW.4 were irreconcilable.

15.27. It is true that, the Investigating Officer/PW.4 during the course of his cross□examination has admitted that there was no partition in the joint family. It is also his evidence that some of the properties are in the individual names of the brothers of the accused. The evidence of PW.4 would also show that, instead of total extent of 24 acres 37 guntas, in his Final Report the total extent of property is shown as 22.57 acres due to mistake. The evidence of PW.4 would show that, he has not collected the particulars in respect of the properties purchased in the individual names of the brothers of the accused. It is contended by the accused Spl.CC.No.134/2012 that those properties are purchased in the individual names of his brothers when they were minors. But to substantiate that aspect of the matter, he has not produced any evidence before the Court.

15.28. The evidence of DW.4 and his Report at Ex.D.6 is contrary to the explanation given by the accused at the earliest point of time. Though it is contended that the accused and his four brothers were the members of joint family, there is no evidence on record which establish the existence of joint family. The Report of M.R.Delvi would show that, the accused has got 1/6th share over the agricultural income. It is pertinent to note that, when Investigating Officer has shown agricultural expenditure of Rs.32,000.00, the accused has denied the same. It is submitted that while filing Report of Asst.Director of Agriculture, the expenditure of agriculture is deducted and hence expenditure of agriculture is to be deducted. The Report relied by the accused is quiet contrary to

the Report produced by the prosecution with regard to income received from agriculture.

15.29. The witness of the accused i.e., DW.4 has produced his Report as per Ex.D.2 and Certificate as per Ex.D.6. As per his Report the total agricultural income of the joint family of accused Marthandappa is Rs.2,57,66,464.00.

Spl.CC.No.134/2012 It is argued by the learned counsel for the accused that there was no partition in the family of the accused and hence the Investigating Officer is not justified in considering the share of accused in the joint family agricultural income to the tune of 1/6th share. This submission is cannot be accepted because of the simple reason that in his schedule submitted at the earliest point of time as per Ex.P.126, the accused himself has calculated his 1/6th share at Rs.40,18,854.00.

15.30. In his explanation, the accused did contend that his father M.Neelappa was an agriculturist having about 50 acres of fertile agricultural land in and around Davanagere and Koppal Districts. In fact, it is also contended that the joint family income exceeds Rs.2.50 crores from 1985□86 to 2008□09. It is very pertinent to note that the Investigating Officer for the purpose of investigation has considered the period commencing from 29.10.1987 to 03.04.2009 as check period. Throughout it is contended by the accused that, since, the Investigating Officer has not called upon him to submit explanation, he was not in a position to explain the source of income as required under section 13(1)(e) of Prevention of Corruption Act. However, the evidence placed on record would show that despite of repeated letters, the accused did not submit his explanation. Therefore, it is for Spl.CC.No.134/2012 the accused to explain has to how he came to know the check period to consider the agricultural income of joint family as Rs.2.50 crores from 1985□86 to 2009. But such an explanation is not forthcoming from the side of the accused. Hence, it can be inferred that all the while the accused has been watching the process of investigation. This observation is made because of the simple fact that in his explanation he has produced xerox copies of the documents seized by the Investigating Officer on 03.04.2009. He has failed to explain the Court as to how he came into possession of the xerox copies of the documents which was in the possession of Investigating Officer.

15.31. As per Ex.P.126, accused has stated that his agricultural income was Rs.40,18,854.00. The Report of Mr.M.R.Delvi would show that the total net income from the properties was Rs.2,06,08,452.00. In his statement as required under section 313(5) of Cr.P.C., the accused has contended that, the total agricultural income was Rs.2,41,13,122.00. The Report of DW.4 would show that the agricultural income of the accused during the check period was Rs.Rs.2,57,66,464.00. Therefore, it is clear that, the accused has not at all placed true figures before the Court. Hence, the explanation offered by the accused with regard to Spl.CC.No.134/2012 his agricultural income is not worthy to trust.

15.32. It is the contention of the Investigating Officer that, the share of the accused in agricultural income was Rs.3,55,523.50. However, to prove the Report as per Ex.P.59, the author of the same has not been examined by the prosecution. Hence, the Report produced by the prosecution as per Ex.P.59 is without any substance. When the prosecution has not proved the contents of Ex.P.59, no reliance can be attached to that Report. Hence, the theory of the prosecution that during the check

period, the accused had agricultural income to the tune of Rs.3,55,523.50 is cannot be accepted and accordingly not accepted.

15.33. Admittedly, the accused belongs to Hindu Joint Family. Under Hindu Law oral partition is also recognized. In the present case Ex.P.134 is got marked by the accused at the time of cross examination of PW.4. Therefore, learned Prosecutor is justified in contending that, the accused is estopped from taking any stand contrary to the contents of Ex.P.134.

15.34. It is contended that the father and mother of the accused have purchased agricultural lands in the name of his brothers. However, to substantiate that contention, the accused has not produced any material document before this Spl.CC.No.134/2012 Court. It is borne out from the evidence of PW.4 that, some of the properties are standing in the name of the brothers of the accused. As has been discussed above, there is no bar under law for one of the family member to acquire property in his individual capacity. Therefore, just because the fact that some of the properties standing in the individual names of the brothers of the accused, it cannot be held that those properties were also the joint family properties based upon a mere declaration made in the Annual Property Returns of the accused.

15.35. In the Annual Property Returns at Ex.P.134 as referred to above, the accused has declared the income received from 36 acres of agricultural land. In the Annual Property Returns for the year 1998, the accused has declared agricultural income of Rs.1.50 lakhs. In the Annual Property Returns for the year 1999, the accused has declared agricultural income of Rs.2.00 lakhs. In the Annual Property Returns for the year 2000, the accused has declared agricultural income of Rs.2.50 lakhs. In the Annual Property Returns for the year 2001, the accused has declared agricultural income of Rs.2.00 lakhs. In the Annual Property Returns for the year 2002, the accused has declared agricultural income of Rs.3.00 lakhs. In the Annual Property Spl.CC.No.134/2012 Returns for the year 2003, the accused has declared agricultural income of Rs.10.00 lakhs. In the Annual Property Returns for the year 2004, the accused has declared agricultural income of Rs.10.00 lakhs. In the Annual Property Returns for the year 2005, the accused has declared agricultural income of Rs.10.00 lakhs. Those declarations have not been denied by the prosecution. Hence, the declarations of undisputed point of time so referred to above remained unchallenged.

15.36. As per Ex.P.126 Vol.No.III Page No.404 to 406, the accused has declared agricultural income of Rs.10.00 lakhs during 2006 and Rs.14.00 lakhs during 2007. Similarly, in the year 2008 while filing his Annual Property Returns on 31.03.2009, the accused has declared a sum of Rs.2.00 lakhs as agricultural income received by him towards his share in the joint family properties. The prosecution did not deny the contention of the accused that he has declared his income from agriculture to the tune of Rs.10.00 lakhs during 2006, Rs.14.00 lakhs during 2007 and Rs.2.00 lakhs (individual share of the accused) during 2008. Though, the Annual Property Returns for the year 2005 reveal the fact that accused has taken a sum of Rs.16.00 lakhs from his brothers in lieu of land, it is the definite case of the Spl.CC.No.134/2012 prosecution that there was no partition in the joint family of the accused. When the Investigating Officer/PW.4 has categorically admitted in his cross examination that, there was no partition in the joint family of the accused, the contention of the accused that he did derive agricultural income of Rs.10.00 lakhs during 2006, Rs.14.00 lakhs

during 2007 and Rs.2.00 lakhs (individual share of the accused) during 2008 is to be accepted. The explanation attached to sub-section (e) of 13(1) of Prevention of Corruption Act reads as follows: " for the purpose of this section, known source of income means income received from any lawful source and such receipt has been intimated in accordance with the provisions of law, rules or orders for the time being applicable to a public servant" . In the present case the reading of Annual Property Returns available in Vol.No.III, page No.404 to 407 of the explanation of the accused would demonstrately indicate that he has filed his Annual Property Returns as required under the provisions of Karnataka Civil Service Rules. It is not the contention of the prosecution that the Annual Property Returns of the accused for the year 2006 and 2007 has not been accepted by the Authority empowered to accept. At the time of cross-examination of DW.3 also, the prosecution has not denied the genuineness of Annual Spl.CC.No.134/2012 Property Returns available in the explanation of the accused. Therefore, one and only conclusion that can be arrived is that the Annual Property Returns submitted by the accused was accepted by the authority i.e., Executive Engineer (Central), BBMP, Bengaluru. Therefore, it is proved that the declaration of agricultural income of Rs.10.00 lakhs during 2006, Rs.14.00 lakhs during 2007 and Rs.2.00 lakhs (individual share of the accused) during 2008 was accepted by the Authority empowered to accept. Hence, the declaration made by the accused is in accordance with explanation attached to Section 13(1)(e) of Prevention of Corruption Act. Thus, the agricultural income declared by the accused in his Annual Property Returns has to be taken into consideration while calculating the agricultural income of the accused including his family as admittedly there was no partition. Therefore, it is incumbent upon the Court to consider the agricultural income declared by the accused at an undisputed point of time. Hence, from the declaration made at the earliest point of time, it is proved that the family of the accused derived agricultural income of Rs.65.00 lakhs.

15.37. To show that the accused had agricultural income more than what is declared in his Annual Property Returns as per Ex.P.134, he did not produce any trustworthy Spl.CC.No.134/2012 evidence before the Court. The Report of Assistant Director of Agriculture, Davanagere at Ex.P.59 has not been proved by the prosecution to the satisfaction of this court. The accused, at the time of trial did not place reliance on the Report of Delvi. The evidence of DW.4 would show that he is interested in the case of the accused. His evidence would show that he has given evidence in several cases before various courts and he has been appointed as Court Commissioner. This evidence is remained as mere say of DW.4 without any substance. The Report of DW.4 as per Ex.D.6 is without any scientific investigation. Added to it, to show that DW.4 is an Expert to evaluate agricultural income, he did not produce any material before the court except his self serving testimony. No doubt it is true that the Report with more particulars and which is advantageous to the accused is to be accepted. Similarly, it is settled proposition of law that mere filing of explanation is not sufficient, but such explanation should have the requirement of acceptance. In the present case, the evidence of DW.4 and the Report at Ex.D.6 are without any trustworthy materials. Under the circumstances, the only option available for the Court is to consider the agricultural income declared by the accused in his Annual Property Returns at the undisputed point of time.

Spl.CC.No.134/2012 15.38. Through out it is contended by the accused that, still he is a member of joint family and there was no division of the properties belonging to the joint family. It is argued as if the agricultural income declared in the Annual Property Returns of the accused is his individual

agricultural income. But the reading of Ex.P.134 would show that the accused has declared agricultural income derived from 36 acres of land. In his Annual Property Returns for the year 2008 he did declare a sum of Rs.2.00 lakhs as his individual agricultural income received towards his share. Hence, it is clear that the accused is declared agricultural income till 2007 derived from entire 36 acres of land belonging to the joint family. Therefore, at this stage accused cannot take a stand that the agricultural income declared in Ex.P.134 to the tune of Rs.65.00 lakhs is his individual agricultural income. However, a sum of Rs.2.00 lakhs declared in the year 2008 is to be considered as the individual agricultural income of the accused.

15.39. Admittedly, mother of the accused has died in the year 2009. It is not in dispute that the accused has four brothers by name M.N.Guddappa, M.N.Chikkappa, Mahesh and M.N.Ningappa. As per Ex.P.126 and Ex.P.134 the agricultural income of the family of the accused was Rs.65.00 Spl.CC.No.134/2012 lakhs which is more than what is stated in Ex.P.59 Report of the Assistant Director of Agriculture, Davanagere. Hence, a sum of Rs.65.00 lakhs shall have to be taken as the agricultural income of the accused during the check period which includes the share of his mother and four brothers as well. Therefore, accused is entitled for 1/6 th share in Rs.65.00 lakhs. The 1/6th share of the accused if calculated□i.e., Rs.65,00,000.00/6, that comes to Rs.10,83,333.33. A sum of Rs.2.00 lakhs declared by the accused in his Annual Property Returns for the year 2008 is to be considered as his individual income. Hence, it is held that during the check period the agricultural income of the accused was Rs.10,83,333.33+Rs.2,00,000.00= Rs.12,83,333.33.

16. Horticulture Income :

> 16.1. According to prosecution, income derived by the accused from horticulture was Rs. 1,65,297.75. To substantiate the same, the prosecution has produced the Report of the Deputy Director of Horticulture, Davanagere as per Ex.P.60. The reading Ex.P.60 would show that the author of the same has visited Sy.No.56/1, Sy.No.78/2 and Sy.No.60/P6 of Hadadi village and has accordingly submitted Annexure□I. It is also borne out from Ex.P.60 that he has Spl.CC.No.134/2012 considered 50% of actual net income based upon the Circular No.35/2009□10. It is pertinent to note that at the time of marking Ex.P.60 the accused has not raised any objection.

The reading of Ex.P.134, the Annual Property Returns of the accused for the year 1987 to 2005 would show that the accused has not declared his income from horticulture. However, the accused has contended that, he has got income of Rs.2,57,66,464.00 from agriculture and farming/horticulture. The contention of the prosecution is based upon the Report as per Ex.P.60.

16.2. It is relevant to note that, DW.1 and DW.2 have not deposed anything about the horticulture income out of joint family agricultural property. Accused being DW.3 has deposed that he has been rearing buffaloes, cows and sheep in their agricultural land and he did derive income of Rs.17,51,000.00. The testimony of DW.3 is interested one. If really, the accused had horticulture income to the tune of Rs.17,51,000.00, DW.1 and DW.2 ought to have deposed that fact. But they have not stated about the same. Further more even in his Annual Property Returns, the accused did not declare his income out of horticulture. Therefore, based upon the sole evidence of DW.3 unaided

by the evidence of Expert/author of the Report, it cannot be held that accused Spl.CC.No.134/2012 had horticulture income of Rs.17,51,000.00. Accordingly, accused has failed to prove horticulture income to the tune of Rs.17,51,000.00. Under the circumstances the option available for the Court is to accept the contention of the prosecution that the accused had horticulture income of Rs.1,65,297.75 during the check period.

16.3. Housing loan from Punjab National Bank, Deepanjali Nagar Branch, Bengaluru was Rs.10,00,000.00. The borrowal of loan of Rs.10,00,000.00 from Punjab National Bank at the time of construction of House No.17 is admitted by the accused.

16.4. Loan amount from City Financial for purchase of Hero Honda Splendor Plus, Reg No.KA□02□ EX□4712 was Rs.33,000.00. The accused has admitted that he has purchased Hero Honda Splendor Plus Bike bearing registration No. KA□02□EX□4712 for a sum of Rs.33,000.00.

16.5. Loan amount taken from SREI Equipment Finance Limited for fixing solar water heater to house No.17 was Rs.24,700.00. The purchase of solar water heater is admitted by the accused.

Spl.CC.No.134/2012 16.6. Loan amount taken from SBI Bank, RPC Layout branch, SB A/c No.10562679928 was Rs.1,971.00. The borrowal of loan of Rs.1,971.00 is admitted by the accused.

16.7. Amount available in Punjab National Bank, Deepanjali Nagar Branch, Bengaluru, SB A/c No.4247000100401706 was Rs.2,968.00. The borrowal of loan of Rs.2,968.00 is admitted by the accused.

16.8. Loan amount taken from Canara Bank, Kengeri Satellite Town branch, SB A/c No.2850101002297 was Rs.2,101.00. The borrowal of loan of Rs.2,101.00 is admitted by the accused.

16.9. Loan amount taken from Canara Bank, Kengeri Satellite Town branch, SB A/c No.2850101001519 was Rs.872.00. The borrowal of loan of Rs.872.00 is admitted by the accused.

16.10. Loan amount taken from ICICI Bank, Bengaluru branch, No.1, Commissionerate Road, SB A/c No.632188 was Rs.1,006.00. The borrowal of loan of Rs.1,006.00 is admitted by the accused. Income from interest received from private persons was Rs.2,80,000.00. The accused has denied that he has not at all lent money to anybody and hence, he has not derived any interest to the tune of Rs.2,80,000.00 as claimed Spl.CC.No.134/2012 by the prosecution. Though the prosecution has produced cheques and relevant receipts as discussed above as per Ex.P.47, it has not proved the same as required under law. Therefore, based upon the evidence of PW.4 it cannot be said that the accused had received a sum of Rs.2,80,000.00.

16.11. Survival benefit from LIC Policy No.661956255 in the name of accused was Rs.20,411.00. The accused has contended that, he has received a sum of Rs.33,750.00 from Survival benefit Policy No.661956255. To get the information, the Investigating Officer has written the letter to the Branch Manager, LIC as per Ex.P.28. In response to his letter, LIC of India has written the letter dated

05.06.2009. As per its letter, Policy No.661956255, Policy No.661999493 and Policy No.661999734 survived by CBO□3, Branch at Bengaluru. The prosecution has produced the letter of LIC of India as per Ex.P.119. According to accused, he has received survival benefit of Rs.33,750.00 in respect of LIC Policies referred to above. The reading of Ex.P.119 dated 18.06.2009 would show that the accused has received survival benefit of Rs.9,510+ Rs.10,901.00 = Rs.20,411.00 as on 18.06.2009. However, it is contended by the accused that totally he has received survival benefit of Rs.33,750.00. According to him LIC survival benefit is deposited to his bank account. No doubt, Spl.CC.No.134/2012 as per Ex.P.119, the survival benefit in respect of policies No.661956255, 661999493 and 661999734 was Rs.75,000, Rs.2,00,000.00 and Rs.1,00,000.00 respectively. However, as per Ex.P.119, the accused has received Rs.20,411.00. To substantiate the contention of the accused that, he has received survival benefit of Rs.33,750.00 there is no evidence on record. Hence, it is held that, the Investigating Officer is justified in considering a sum of Rs.20,411.00 as the income of the accused.

16.12. It is the contention of the accused that he has received income from animal husbandry to the tune of Rs.17,51,000.00. He has contended that the Investigating Officer has deliberately not considered the animal husbandry income. It is contended by the accused that as per Ex.P.58, the Report of Tahasildar of Davanagere Taluk wherein there is a Report of Village Accountant of Hadadi Circle which would show that a baseless Report is made. It is relevant to note that, in the same document at page No.108 there is mahazar drawn on 28.04.2011 which would show that the Village Accountant has drawn a mahazar in the presence of H.G.Basavarajappa and G.B.Yuvaraja. Therefore, the contention of the accused that no mahazar was drawn by the Village Accountant is cannot be accepted.

Spl.CC.No.134/2012 16.13. It is contention of the accused that to show that the family of the accused had income from animal husbandry he has produced a Report as per Vol.No.III, page No.391 to 393 from the Government Veterinary Hospital, Davanagere. Throughout it is contended by the accused that, mere marking of a Report unaided by the evidence of Expert, no sanctity can be attached to that Report. There is no dispute with regard to the proposition of law that mere marking of a document does not dispense proof. Similarly, in the absence of oral evidence of an Expert, his Report cannot be considered as relevant fact. In the present case also, the accused has not examined the author, the Veterinary Doctor who has issued the Report. Therefore, no credence can be attached to the un□exhibited xerox copy of the Report of the Veterinary Doctor of Davanagere.

16.14. The Investigating Officer during the course of raid, has seized the Annual Property Returns of the accused as per Ex.P.134 which commences from the year 1987 to 2005. Now let us examine as to whether the accused has declared his income from animal husbandry in that Annual Property Returns or not. In the Annual Property Returns of the years 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, Spl.CC.No.134/2012 2004 and 2005 he has not declared income from animal husbandry. Therefore to show the income of the accused from animal husbandry there is no documentary evidence before the Court.

16.15. It is the evidence of DW.3/accused that, his brothers have been involved in doing animal husbandry. According to him, he has produced documents at page No.482 to 630 in Vol.No.III. In

fact, the accused has got examined his brother M.N.Chikkappa as DW.1. He has not whispered anything about the income from animal husbandry. Similarly, DW.2 M.N.Ningappa has also not stated anything about income from animal husbandry. It may be true to state that the brothers of the accused are involved in animal husbandry. However, it does not lead to the presumption that even the accused who has been residing at Bengaluru along with his family derived any income out of animal husbandry. Therefore, except the self serving evidence of DW.3 there is no evidence to come to the conclusion that the accused had income of Rs.17,51,000.00 from animal husbandry.

16.16. The counsel for the accused has placed reliance on evidence of PW.4 to the effect that he has not collected any Report from the Department of Animal Husbandry. It is also Spl.CC.No.134/2012 borne out from the evidence of PW.4 that regarding rearing of animals, Animal Husbandry Census Report will be available in the office of Veterinary Hospital of that jurisdiction. It is not the prosecution which has contended that the accused or his family members were rearing animals. It is the accused who has taken the contention that the family was rearing animals and out of that process he had income of Rs.17,51,000.00. Therefore it is for the accused to secure such a Animal Census Report from the Veterinary Hospital of that jurisdiction. What can be gathered from the suggestions directed to PW.4 is that the accused is aware of availability of Animal Census Report in the Veterinary Hospital of that jurisdiction. However he has not chosen to produce the same. Hence, only conclusion that can be arrived is that since the family members were not rearing any animals, the accused has not produced Animal Census Report from the Veterinary Hospital of that jurisdiction. Thus, based upon the self serving interested testimony of DW.3, Court cannot imagine that the accused had income from animal husbandry to the tune of Rs.17,51,000.00.

16.17. Along with memo dated 18.12.2019, the accused has produced comparative table of assets, expenditure and income of the accused. In that table, the Spl.CC.No.134/2012 accused has contended that he had income of Rs.17,94,500.00 from animal husbandry. It is relevant to note that the Investigating Officer has not conducted any individual investigation. It is the accused who has contended that he has got income of Rs.17,94,500.00 out of animal husbandry. Therefore, it is for him to prove that fact. But to prove that fact though the accused has produced a xerox copy of Report of Veterinary Doctor, the author has not been examined. At one point of time, based upon the Report of Veterinary Doctor, the accused has contended that the total income derived by him from animal husbandry was Rs.17,51,000.00. However, in the comparative table he has contended that, he has got income of Rs.17,94,500.00 from animal husbandry. Thus, it is clear that, the accused is not definite about his own stand. Even otherwise as discussed supra, the accused has failed to prove his income from animal husbandry. Accordingly, it is held that the accused has failed to prove that he has derived income of Rs.17,51,000.00 or 17,94,500.00 from animal husbandry.

16.18. The accused in his statement under section 313(5) of Cr.P.C. has contended that his wife has borrowed loan of Rs.20,25,000.00 from private persons. The Annexure□IO□3 would show that the wife of the accused availed loan of Spl.CC.No.134/2012 Rs.5,25,000.00 from M.Chikkappa for the purchase of immovable property. Similarly, it is contended that she has borrowed a loan of Rs.4,50,000.00 from Jayamma. It is contended that, the wife of the accused has borrowed loan of Rs.5,50,000.00 from Puttaswamaiah and Rs.4,50,000.00 from Boramma. It is the contention of the accused that he has filed the affidavit of so called lenders. If really, the contention of the accused

were to be true there was no impediment for him to declare the same in his Annual Property Returns. Mere filing of an affidavit is not sufficient to prove the transaction. While dealing with the aspect of lending money by the accused, it is argued that, Section 269SS of Income Tax Act is applicable to prove the transaction. The same rule is applicable to the case of the accused also. Hence, the accused has failed to prove that his wife borrowed loan of Rs.20,25,000.00 from private persons.

16.19. Loan from KGID was Rs.1,00,800.00. The borrowal of loan of Rs.1,00,800.00 is admitted by the accused.

16.20. It is relevant to note that the prosecution has considered Ex.P.100 in part to calculate the expenditure of the accused. It is pertinent to note that in print page No.165, accused did receive a sum of Rs.1,00,000.00 from Spl.CC.No.134/2012 M.N.Guddappa during May 2006, Rs.2,00,000.00 during October 2006, Rs.2,00,000.00 from M.N.Mahesh during April 2006 and Rs.2,00,000.00 during November 2006. Rs.1,00,000.00 from M.N.Guddappa during December 2006, Rs.1,00,000.00, Rs.1,00,000.00 and Rs.2,00,000.00 from M.N.Ningappa during January 2007, March 2007 and April 2007. Similarly, a sum of Rs.4,00,000.00 was received from M.N.Chikkappa during 2007. It is not the case of the prosecution that the entries found in page No.165 is concocted by the accused. When prosecution has relied the document as per Ex.P.100, it is the duty of the court to consider the document in its entirety. If entry found in page No.165 is taken into consideration, a sum of Rs.16,00,000.00 shall have to be considered as the income of the accused. The Investigating Officer did not take into consideration this aspect of the matter.

16.21. The reading of Ex.P.100 print page No.166 would show that the accused did receive Rs.1,00,000.00 + Rs.48,000.00+Rs.2,45,000.00 from M.N.Chikkappa. Similarly, he did borrow a sum of Rs.48,000.00 from M.C.Mahesh and Rs.1,00,000.00 from M.N.Ningappa. It is not at all the contention of the prosecution that the entry found in this page is concocted. This court has already held that Spl.CC.No.134/2012 Ex.P.100 is a register maintained by the accused and same do fall within the purview of 34 of the Evidence Act. Since, the entries found in Ex.P.100 the document relied by the prosecution is proved, a sum of Rs.5,41,000.00 shall have to considered as the income of the accused during the check period.

16.22. Learned counsel for the accused has argued that if court considers entries found in Ex.P.100 as genuine, it has to consider the document as a whole. Similarly, it is submitted that a part which is favorable only to the prosecution shall not be considered. This submission is probable to accept. This court has already held that Ex.P.100 is a Register maintained by the accused showing his expenditure. Similarly, Ex.P.100 would also disclose the amount borrowed by the accused from his brothers. Any amount received by the public servant during his tenure is his income. Hence, a sum of Rs.16,00,000.00+ Rs.5,41,000.00=Rs.21,41,000.00 is considered as the income of the accused.

16.23. Hence, for the foregoing reasons and discussions, this Court is of the opinion that the following are the income of the accused.

Sl. No.	Income	Amount (in Rs.)
1	Details of Salary drawn during 29/10/1987 to 03/04/2009	21,27,786.00
2	Rental income from house No.17, 2 nd	4,22,500.00

Cross, Bhagiratha Layout behind Canara Bank, Kengeri Satellite Town, Bengaluru□60 3 Income from agricultural land in the name 12,83,333.33 of family of the accused 4 Income from farming in the name of family 1,65,297.75 of the accused 5 Housing loan from Punjab National Bank, 10,00,000.00 Deepanjali Nagar Branch, Bengaluru.

6 Loan borrowed from City Financial for 33,000.00 purchase of Hero Honda Splendor Plus, Reg No.KA□02□Ex□4712 7 Loan borrowed from SREI Equipment 24,700.00 Finance Limited for fixing Solar Water Heater to House No.17.

8	Interest received from SBI Bank, RPC Layout branch, in respect of SB A/c No. 10562679928	1,971.00
9	Interest received from Punjab National Bank, Deepanjali Nagar Branch, Bengaluru, in respect of SB A/c No.4247000100401706	2,968.00
10	Interest received from Canara Bank,	2,101.00

Kengeri Satellite Town branch, in respect of SB A/c No.2850101002297 11 Interest received from Canara Bank, 872.00 Spl.CC.No.134/2012 Kengeri Satellite Town branch, in respect of SB A/c No.2850101001519 12 Interest received from from ICICI Bank, 1,006.00 Bengaluru branch,No.1, Commissionerate Road, in respect of SB A/c No.632188 13 Survival benefit from LIC policy 20,411.00 No.661956255 in the name of accused 14 Loan from K.G.I.D 1,00,800.00 15 Amount received by the accused from his 21,41,000.00 brothers Total Income Rs.73,27,746.08

17. Conclusion:

17.1. To sum up, the prosecution has proved the following facts beyond reasonable doubt i.e., the assets of the accused during check period was Rs.42,87,858.49, his expenditure was Rs.30,94,098.50 and his income was Rs.73,27,746.08. Hence, the total disproportionate asset accumulated during the check period was Rs.54,210.91= 0.74% Sl. Particulars Amount No. (in Rupees) I Assets of the accused during the check 42,87,858.49 period II Expenditure of the accused during the check period 30,94,098.50 Spl.CC.No.134/2012 III Total assets and expenditure of the 73,81,956.99 accused during the check period (I+II) IV Income during the check period 73,27,746.08 Disproportionate Asset of the 54,210.91 accused during the check period DA Percentage 0.74% Rs.54210.99 / Rs.7327746.08 x 100 = 0.74% 17.2. In view of my above findings, during the check period the accused found to be in possession of 0.74% of assets disproportionate to his known source of income during the check period. When the disproportionate assets found to be in possession of the

accused is only 0.74%, conviction of the accused is not desirable. This view of mine is based upon the three Judges Bench decision of Hon'ble Supreme Court in Krishnananda Agnihothri Vs. State of Madhya Pradesh reported in 1977(1) SCC 816. The Hon'ble Supreme Court has held that when the excess property or assets found in possession of accused was comparatively small i.e. if it is less than 10% of the total income in that case, it would be right to hold that assets found in possession of the accused were not disproportionate to his known source of income, by raising presumption U/s 5(3) of the Prevention of Corruption Act 1947, which is corresponding to Sec.13(1)(e) of the Prevention Spl.CC.No.134/2012 of Corruption Act 1988. The Hon'ble Supreme Court further observed in the said judgment that the said principle was evolved to extend the benefit of doubt to the accused is due to inflationary trend in the appreciation of value of assets. It was also held by the Hon'ble Supreme Court that the benefit thereof appears to be maximum and the reason being, if the percentage begins to raise in each case, it gets extended till it reaches the level of incredulity to give the benefit of doubt.

17.4. By relying on the ratio and principles laid down by the Hon'ble Supreme Court in the above decision, similar view was expressed in a subsequent decision reported in AIR 1996 SC 484 in the case of B.C. Chaturvedi Vs. Union of India. Wherein it was permitted to allow the disproportionate assets less than 10% of the total source of income as the margin to be allowed. So on this score also, this accused cannot be convicted in this case, since the disproportionate assets found in his possession is only 0.74%.

17.5. More over, for some of the expenditures like domestic expenditure, cost of construction of house, value of house hold articles, only approximate figures were considered, since the actual figures were not available.

Because of this reason and also because of the reason of Spl.CC.No.134/2012 there being differences between the person to person in leading the life and incurring the expenditures and also cost of the inflationary trend, the Hon'ble Supreme Court laid down the law allowing the margin of 10%. Similar view was expressed by the Apex Court of this Nation in the case of Kedarlal Vs. State of MP & Others in Crl.A.No.782/11 reported in 2015 (14) SCC 505 and in the case of M.Krishnareddy Vs. State Deputy Superintendent of Police, Hyderabad reported in 1992 (4) SCC 45 decided on 17.07.1992. The ratio laid down in the above decisions is squarely applicable to the present case where proved disproportionate asset of the accused during the check period was only 0.74%.

17.6. By considering all these aspects, I hold that the guilt of the accused regarding criminal misconduct, so as to convict him for the offence punishable U/sec.13(1)(e) r/w Sec.13(2) of the Prevention of Corruption Act 1988 is not proved. Therefore, he has to be acquitted.

17.7. However, the Report of the Chief Engineer (Communication & Buildings) South, Bengaluru as per Ex.P.64 would show that accused Marthandapppa did not obtain any permission for the purchase of movable or Spl.CC.No.134/2012 immovable assets. This Report is not challenged by the

accused. Admittedly, accused joined the service on 29.10.1987. It is not in dispute that Site No.35 of Shyabanur was purchased by the accused on 30.05.1996, similarly, site No.9 of Bhagynagar was purchased in the name of his wife on 15.04.1998, sites No.45 & 46 of Bhagyanagar was purchased in the name of his wife on 22.07.2000 under two registered sale deeds. Similarly site No.17 of Valagerehalli village was purchased in the name of the accused on 22.07.2000. Sub□Rule (2) of Rule 23 of KCS (Conduct) Rules, 1966 reads as follows:

> 'No Government Servant or any member of his family shall, except with the previous knowledge of the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name of any member of his family'.
>
> 17.8. In the present case there is no evidence from the side of the accused that he has obtained prior sanction from the competent authority to acquire immovable properties. Per contra the evidence produced by the prosecution as per Ex.P.64 would demonstrately indicate that the accused did not obtain prior sanction to acquire the properties as Spl.CC.No.134/2012 required under law. Hence, as observed above, by virtue of Ex.P.64 it is proved that the accused did not obtain any permission from the competent authority.
>
> 17.9. In addition to the above the reading of Ex.P.100 Note Book seized from the house of the accused would show that the accused was indulged in money lending business.

Rule 16(1) of KCS (Conduct) Rules, 1966 reads as follows:

> 'No Government Servant shall except with the previous sanction of the Government engage directly or indirectly in any trade or business xxxx '.
>
> 17.10. Thus, it is proved to the satisfaction of this court that the accused being a public servant totally disregarded the rules contemplated under KCS (Conduct) Rules, 1966. The above discussed act of the accused amounts to unbecoming of a public servant as defined under the relevant rules of KCS (Conduct) Rules 1966. However, it is the domain of concerned department to look into the matter. But in the present case by virtue of settled proposition of law as discussed supra, accused is entitled for the benefit of acquittal as disproportionate asset is only 0.74%. Accordingly, I answer the point No.1 in the Negative.
>
> Spl.CC.No.134/2012
>
> 18. POINT No.2: In view of my findings on point No.1 in the Negative, accused deserves for the order of acquittal.

Accordingly, I proceed to pass the following ORDER The accused found not guilty.

Acting under Sec.235(1) of Cr.P.C., accused is acquitted from the charges leveled against him for the offence punishable under Sec.13(1)(e) r/w Sec.13(2) of the Prevention of Corruption Act 1988.

The bail bond executed by the accused and that of his surety stands cancelled.

He is set at liberty.

(Dictated to the Stenographer on computer, typed by her, corrected, signed and then pronounced by me in the open court on 9th day of March 2020).

(GOPALAKRISHNA RAI.T) LXXVIII Addl.City Civil & Sessions Judge & Special Judge (P.C.Act), Bengaluru Spl.CC.No.134/2012 ANNEXURES List of witnesses examined for the prosecution:

P.W.1 - S.S.Virakthamath
P.W.2 - Mohammed Irshed
P.W.3 - Prasanna.V.Raju
P.W.4 - S.Sureshbabu
P.W.5 - Chitra.R
P.W.6 - S.B.Rajashekarappa
P.W.7 - G.S.Chennaveerappa
P.W.8 - Sudeer Hegde
P.W.9 - Abdul Ahad
P.W.10 - B.Nataraj
P.W.11 - Amarnath
P.W.12 - S.Mohan Reddy
P.W.13 - M.K.Bhagawan
P.W.14 - Haribabu
P.W.15 - Venkatarama Reddy

List of documents exhibited for the prosecution:

Exhibit No. Description of the document Ex.P.1 ☐Sanction Order Ex.P.1(a) ☐Sign of P.W.1 Ex.P.2 ☐Proceedings dated 02.04.2009 Ex.P.3 ☐Source Report Ex.P.3(a) ☐ Sign of P.W.3 Ex.P.4 ☐F.I.R.

Ex.P.4(a) - Sign of P.W.2

Spl.CC.No.134/2012

Ex.P.5 - Search Warrant
Ex.P.6 - P.F.No.45/2009 dated 4.4.2009
Ex.P7 - Notice to submit schedule Statement to AGO
Ex.P8 - A/c details of Amarnath
Ex.P9 - A/c details of SBM in respect of A/c No.64014577431
Ex.P10 - A/c details of Venkatarama Reddy
Ex.P11 - A/c details of HDFC Bank

Ex.P12	–	PNB Bank A/c details of accused
Ex.P13	–	SBI Bank A/c details of accused
Ex.P14	–	Service details of AGO
Ex.P15	–	A/c details of Mohan Reddy
Ex.P16	–	Canara Bank A/c details of Smt.Kalpana w/o AGO
Ex.P17	–	Salary particulars of accused for the period from 24.05.99 to 07.06.2003
Ex.P18	–	A/c details of SBI Bank
Ex.P19	–	Salary particulars of accused for the period from 08.10.92 to 22.05.99
Ex.P.20	–	ACR and APR for the year 2003 to 2009 of the accused not submitted Report.
Ex.P21	–	ACR and APR for the years 1993-94 to 1998-99 of the accused
Ex.P22	–	Details of Maruthi Suzuku Swift car bearing No.KA 02 MC 4797
Ex.P23	–	Details of LIC Policy No.623729639
Ex.P24	–	Details of maintenance cost of Vehicle bearing No.KA02 HB 0972 and B Extract
Ex.P25	–	Property registration, stamp duty and tax paid details of site No.17, Valgerahall South Khata No.35/1,

		Bhagiratha Layout, Kengeri, Bengaluru
Ex.P26	–	Details of purchase and mode of payment for Vehicle No.KA 02 MC 4797 Maruthi Suzuku Swift VDI
Ex.P27	–	Property registration, stamp duty and tax paid details of site No.9, 46, 98/1, Bhagyanagar Koppal.
Ex.P28	–	Details of 3 LIC Policies
Ex.P29	–	Property registration charges, Stamp duty and tax paid details of site No.4053, Site No.35, Shamnur Grama Panchayath.
Ex.P30	–	Details of GPF Policy No.PW 17131
Ex.P31	–	Details of solar water installation
Ex.P32	–	Details of SB A/c No.000201632188 of accused
Ex.P33	–	Client No.12044700-00611672 online trading details
Ex.P34	–	Payment details to Purushotham Bhat, Hydrologist Ground Water investigation
Ex.P35	–	Details of PIL No.KTCC 0008095
Ex.P36	–	Search Mahazar
Ex.P.36(a)	–	Sign of P.W.2
Ex.P37	–	PAN No.AGSPM0649M of the accused

Ex.P38 – Letter from Executive Engineer, PWD
Ex.P39 – Details of SB A/c No.1056267998 of AGO

EX 4712
Ex.P41 – Details of insurance of the motor cycle bearing No.KA 02 EX 4712

Spl.CC.No.134/2012
Ex.P42 – Details of the motor cycle bearing No.KA 02 EX 4712
Ex.P43 – Loan details of the motor cycle bearing No.KA 02 EX 4712

Ex.P44 ☐Details of SB A/c No.10562679928 of AGO Ex.P45 ☐A/c opening details of SB a/c No.424700NC0099700386 of accused Ex.P46 ☐Details of home loan A/c bearing No.424700NC0099700386 of accused Ex.P47 ☐Sample handwriting of accused Ex.P48 ☐Estimated expenses of maintaining dog of the accused Ex.P49 ☐ Details of land line bearing No.65619086 of accused Ex.P50 ☐Details of expenses on mobile No.9480683179 and 9448783102 Ex.P51 ☐Details of SB A/c bearing No.4247000100401706 of accused Ex.P52 ☐Details of purchase of washing machine by AGO Ex.P53 ☐Details of membership obtained by the accused in the academy Ex.P54 ☐Details of purchase of the Maruthi Suzuku Swift car bearing No.KA 02 MC 4797 which is in the name of M.N.Ningappa.

Ex.P55 ☐Details of college expenses of the daughter of accused Kum.Swetha Ex.P56 ☐Salary details of the accused from 22.05.99 to 7.6.2003 Ex.P57 ☐Salary details of the accused from 29.10.87 to 10.09.92 Spl.CC.No.134/2012 Ex.P58 ☐RTC's and other documents in respect of land in Hadadi village including Family Tree Ex.P59 ☐The details of agricultural income of the accused and his relatives.

Ex.P.59(a)☐Sign of PW.6 Ex.P60 ☐The details of the Horticulture income of the accused Ex.P61 ☐ The details of the application given by the accused for site in BDA Ex.P62 ☐The details of accused working as Lecturer in Govt.Polytechnic College, Karwar Ex.P63 ☐The building valuation Report in respect of house No.17, 2nd cross, Bhagiratha layout, Kengeri Satellite, Bengaluru Ex.P64 ☐The information given by Chief Engineer, Transport and Building (South Bengaluru) stating that accused is not given permission for purchasing movable and immovable properties.

Ex.P65 ☐The information about tax and development charges in respect of site No.17, Valegerahalli, behind Canara Bank, Kengeri Ex.P66 ☐The letter given by BBMP stating that building license in respect of site No.17 is not given to the accused along with copy of three building licenses given to different persons Ex.P67 ☐The details of LIC police No.614723838 Ex.P68 ☐The details of LIC No.0114342740 and details of loan from Bajaj Allianz Insurance Company Spl.CC.No.134/2012 Ex.P69 ☐The details of insurance obtained by the accused to his house No.17, Valegerehalli, Kengeri Ex.P70 ☐The details of shares allotted to the accused in Reliance Power Ltd., Ex.P71 ☐Details of Electrical meter No.N1 EH14669 Ex.P72 ☐Details of Electrical meter No.N2 EH44457 Ex.P73 ☐

Details of Indian gas connection Ex.P74 ☐The details of loan taken by the accused for Solar Water heater Ex.P75 ☐The Report about visible and invisible expenses of the accused and his family members Ex.P.75(a)☐Sign of PW5 Ex.P76 ☐The donation given by accused to Kalikamba Temple and other temples and religious places Ex.P77 ☐The details of education expenses of Ketan Sagar s/o accused Ex.P78 ☐The details of school fee of son of accused Ex.P79 ☐Notice to the accused Ex.P80 ☐Reply to the Notice by the accused Ex.P81 ☐Other Notice dated 26.10.2010 Ex.P82 ☐ Reply to the Notice dated 26.10.2010 by the accused Ex.P83 ☐Notice to accused dated 20.2.2011 Ex.P84 ☐Reply to the Notice by the accused dated 05.3.11 Ex.P85 ☐Receipt of document dated 8.3.11 Ex.P86 ☐Two notices to accused dated 28.3.11 Ex.P87 ☐Notice to accused dated 28.3.11 Ex.P88 ☐Two notices to accused dated 5.5.11 Ex.P89 ☐Notice to accused dated 5.5.11 Ex.P90 ☐ Reply to the Notice by the accused Spl.CC.No.134/2012 dated 13.5.11 Ex.P91 ☐FSL Report Ex.P92 ☐ Search warrant Ex.P.92(a)☐Sign of P.W.8 Ex.P.93 ☐Mahazar Ex.P.93(a)☐Sign of P.W.8 Ex.P94 ☐ Investigating Officer Report Ex.P.93(a)☐Sign of P.W.8 Ex.P95 ☐Rental agreement Ex.P96 ☐Rental agreement Ex.P97 ☐Rental agreement Ex.P98 ☐Rental agreement Ex.P99 ☐Mahazar dated 28.03.2011 Ex.P.99(a)☐Sign of P.W.4 Ex.P100 ☐Note Book Ex.P101 ☐Sale Deed and Endorsement of Senior Sub☐Registrar Ex.P102 ☐Sale Deed Ex.P103 ☐Sale Deed Ex.P104 ☐Sale Deed Ex.P105 ☐ Copy of Sale Deed Ex.P106 ☐Property Tax Receipt Ex.P107 ☐Documents collected from BESCOM Ex.P108 ☐Electricity Bill Ex.P109 ☐Entire File No.4 Ex.P110 ☐Statement of P.W.10 Ex.P111 ☐Three cheques Ex.P.111

(a) to (c) ☐Sign of P.W.11 Ex.P112 ☐10 cheques Ex.P113 ☐8 cheques Ex.P114 ☐1 cheque Ex.P115 ☐7 cheques Ex.P116 ☐1 cheque Spl.CC.No.134/2012 Ex.P.116(a)☐Sign of P.W.15 Ex.P117 ☐4 Cheques Ex.P118 ☐1 cheque Ex.P.118(a)☐Sign of P.W.14 Ex.P119 ☐LIC letter dated 18.6.2009 Ex.P120 ☐ Document towards News paper expenditure of the accused Ex.P121 ☐Details of cable connection Ex.P122 ☐Details of shares Ex.P123 ☐Details of expenditure towards Kannada monthly paper Ex.P124 ☐Document showing expenditure towards membership of Co☐operative Society Ex.P125 ☐ Document showing deposit in UTI☐Children Gift Growth Fund Ex.P126 ☐All 4 volumes (Schedules) Ex.P.126(a)☐Covering letter of 4 volumes Ex.P127 ☐Police Notice to Amarnath Ex.P.127(a)☐Sign of P.W.4 Ex.P128 ☐Statement of PW.11 Ex.P129 ☐Statement of PW.12 Ex.P130 ☐Police Notice to M.K.Bhagawan Ex.P131 ☐Police Notice to P.W.14 Ex.P.131(a)☐Sign of P.W.14 Ex.P132 ☐Statement of P.W.14 Ex.P133 ☐Police Notice to P.W.15 Ex.P134 ☐APR's filed by accused Ex.P134(a)☐Sheet No.119 of Ex.P.134 Ex.P.134(b)☐Sheet No.115 of Ex.P.134 Ex.P135 ☐LIC Bond No.661956255 Spl.CC.No.134/2012 Evidence adduced on behalf of the defense:

D.W.1	–	M.N.Chikkappa
D.W.2	–	M.N.Ningappa
D.W.3	–	M.N.Marthandappa
D.W.4	–	N.D.Bhat

Documents marked on behalf of the defense :

Ex.D.1	–	True copy of the Identity Card of D.W.1
Ex.D.2	–	Requisition letter of D.W.2
Ex.D.2(a)	–	Sign of D.W.4

Ex.D.3 - Mahazar dated 12.04.2009
Ex.D.3(a)- Sign of D.W.4
Ex.D.4 - Mahazar dated 13.04.2009
Ex.D.4(a) - Sign of D.W.4
Ex.D.5 - 14 photos
Ex.D.6 - Report of D.W.4
Ex.D.6(a) - Sign of D.W.4
Ex.D.7 - Report of APMC Market
Ex.D.7(a) - Sign of D.W.4
Ex.D.8 - Statement Report of D.W.4
Ex.D.8(a) - Sign of D.W.4

(Gopalakrishna Rai.T),

LXXVIII Addl. City Civil & Sessions Judge & Special Judge (P.C.Act), Bengaluru