

Bangalore District Court

The State Of Karnataka ... vs Mr.Prasanna Kumar R on 29 October, 2022

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Spl.C.C.No.496/2017

KABC010239792017

IN THE COURT OF THE XXIII ADDITIONAL CITY CIVIL AND
SESSIONS JUDGE, SPECIAL JUDGE, BENGALURU URBAN
DISTRICT, (C.C.H. 24), BENGALURU CITY.

Dated this the 29th day of October, 2022.

:PRESENT:

LAKSHMINARAYANA BHAT K.
XXIII Additional City Civil and Sessions Judge
Special Judge,
Bengaluru Urban District, Bengaluru City.

Spl.C.C. No.496/2017

Complainant: The State of Karnataka represented by
the Deputy Superintendent of Police,
Karnataka Lokayukta, City Division, Bengaluru.

(By the Public Prosecutor)

/Vs./

Accused: Mr.Prasanna Kumar R.
S/o.N.Raju,
Aged 56 years,
Value Assessor,
Bruhat Bengaluru Mahanagara Palike,
Office of the Assistant Revenue Officer,
H.S.R.Layout,
Bengaluru.

Presently working as Assistant Revenue
Officer, Arakere Sub-division,
BBMP, Bengaluru.

(By Sri Viswanath Sabarad, Advocate)

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JUDGMENT

The Police Inspector, Karnataka Lokayukta, City Division, Bengaluru has submitted the charge sheet against the accused for the offence punishable under Section 13(1)(e) read with Section 13(2) of The Prevention of Corruption Act, 1988 (in short the 'PC Act').

2. The short facts leading to the prosecution case are that the accused is working as the Assessor in the office of the Assistant Revenue Officer, BBMP, Bengaluru. He was appointed as an employee on 20.10.1994. The Karnataka Loakayukta police after collecting source information and registering the FIR against the accused, on 20.12.2013 conducted raid on the house of the accused. As per the prosecution case, during the check period from 21.10.1994 to 20.12.2013, the accused has acquired assets worth Rs. 26,39,239.21 (31.71%) disproportionate to his known sources of income. Therefore after completion of the investigation and on obtaining the required sanction, the prosecution has laid the charge sheet against the accused.

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3. In furtherance of filing of the charge sheet, cognizance of the offence was taken. After securing the presence of the accused, he was enlarged on bail and the copies of the prosecution documents were furnished to him. After hearing both sides, the charge was framed, the accused pleaded not guilty and claimed to be tried.

4. In order to bring home the guilt of the accused, the prosecution has examined Pw.1 to 23 witnesses and also produced and got marked Ex.P-1 to P-70 documents. After conclusion of the prosecution side evidence, questions were framed regarding the incriminating circumstances appearing in the prosecution evidence against the accused and he was examined under Section 313 (1)(b) of the Cr.P.C. The accused entered his defence got examined himself as D.W.1 and produced Ex.D1 to D- 10 documents. Four witnesses were examined on his behalf as Dw.2 to Dw.5.

5. Heard the arguments of both sides. The learned advocate appearing on behalf of the accused has also filed memorandum of written argument.

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6. After analyzing the oral and documentary evidence placed on record, facts and circumstances of the case and the arguments submitted by both the parties, at this stage the points that would arise for the determination of this court are;

1. Does the prosecution prove the fact that it has obtained a valid sanction to prosecute the accused as required under Section 19 of the PC Act?
2. Does the prosecution prove beyond reasonable doubt the fact that the accused being the public servant, during the check period from 21.10.1994 to 20.12.2013 was found in possession of disproportionate assets of worth Rs.22,40,850/- (31.71%) to his known sources of income in his name and in the name of his family members and he could not satisfactorily account for the said amount and thereby he has committed

the offence defined under Section 13(1)(e) and punishable under Section 13(2) of the PC Act, 1988?

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3. What order?

7. The aforesaid points are answered as follows::

Point No.1: In the affirmative Point No.2: In the affirmative Point No.3: As per final order, for the following:

REASONS

8. Point No.1:

8.1. A sanction for the prosecution of public servant within the contemplation of Section 19 of the PC Act is not an idle formality. It is intended to provide a safeguard to the public servant against frivolous and vexatious prosecutions. The accused is working as the Assessor in the office of the Assistant Revenue Officer, BBMP, Bengaluru. Therefore, he is a public servant within the ambit of Section 2(c) of the PC Act. Hence as provided under Section 19 of the said Act, the prosecution is required to obtain the valid sanction.

8.2. In discharge of the burden of proof, the prosecution has examined Mr.N.Manjunath Prasad as Pw- 1 and has produced Ex.P1 sanction order. In his evidence Pw-1 has deposed that he had received the requisition Spl.C.C.No.496/2017 from the Director General of Police, Karnataka Lokayukta Bengaluru along with FIR, search mahazar, final report, statement of witnesses and documents relating to the assets, expenditure and income of the accused during the check period. After verification of those documents, he found that the accused had acquired disproportionate assets and hence proceeded to accord the sanction to prosecute the accused by passing Ex.P-1 order.

8.3. During cross-examination, it is the defence of the accused that without verification of the documents, Pw-1 has mechanically proceeded to pass Ex.P-1 order and accorded the sanction. It is further contended that the accused has been falsely implicated at the instance of the persons who did not get tender. Pw.1 has not properly ascertained the rental income, valuation of the gold ornaments, schedule explanation submitted by the accused, income of wife of the accused etc. and mechanically passed the order by according the sanction.

8.4. It is proper to make note of the fact that during cross-examination, the accused has not challenged the Spl.C.C.No.496/2017 authority of Pw.1, as the Commissioner of BBMP is the authority competent to accord the sanction. Therefore, Pw.1 is the authority to accord the sanction to the officers who are working in the cadre of Assessors in BBMP is not disputed. Pw.1 during his cross-examination has specifically denied that without verifying the documents produced by the investigating agency, he had mechanically proceeded to pass Ex.P1 order by according the sanction.

8.5. In this regard, this Court finds it proper to refer the judgment reported (2013) 8 SCC 119 in the case of State of Maharastra Vs. Mahesh G.Jain. In the said case, the Hon'ble Supreme Court held that the adequacy of materials placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order. In another judgment reported in (2012) 3 SCC 64 in the case between Subramanian Swamy Vs. Dr.Manmohan Singh case the Hon'ble Supreme Court held that the grant or refusal of sanction is not a quasi -judicial function, the competent authority is required to ascertain whether the facts placed by the Spl.C.C.No.496/2017 investigating agency prima-facie disclose the commission of an offence by the public servant. The authority cannot undertake a detailed inquiry to decide whether the allegations made against the public servant are true. Therefore in the case on hand the contention of the accused that Pw-1 has not properly considered the assets, expenditure and income of the accused at the time of according the sanction is sustainable. Pw-1 being the competent authority was required to prima-facie satisfy himself regarding the allegations made against the accused. During cross-examination of Pw-1 the accused has failed to elicit any material admission in support of his defence.

8.6. The rule regarding grant or refusal of sanction must be preceded by an application of mind on the part of the appropriate authority. If the accused can demonstrate that the order is suffering from non- application of mind, the same may be called in question during the trial. In the case on hand, even though the accused has challenged Ex.P1 order, the evidence of Pw.1 reveals that after verification of all the documents placed Spl.C.C.No.496/2017 by the IO, he had proceeded to pass Ex. P-1 order by according the sanction.

8.7. From the oral and documentary evidence placed on record and on application of the well settled ratio laid down in the above referred judgments, the prosecution is able to prove that the investigating agency had placed all the material documents collected during the investigation before the disciplinary authority of the accused. It is further proved from the evidence of Pw.1 that after verifying all the documents he had proceeded to pass Ex.P1 order as the Commissioner of BBMP and accorded the sanction to prosecute the accused. The prosecution has further established that Pw.1 as the Commissioner of BBMP is empowered to dismiss the officials working in the cadre of Assessor and hence he is the competent authority to accord the sanction to prosecute the accused. As per Section 114(e) of Indian Evidence Act there is presumption that the official acts have been regularly performed. In the case when the competent authority has accorded the sanction, the burden is on the accused to show by rebutting the said Spl.C.C.No.496/2017 statutory presumption by placing sufficient evidence. However no such materials are placed on record by the accused. In the result, Ex.P1 order is in strict compliance with the mandatory requirements of Section 19(1)(c) of the PC Act.

8.8. Thus for the above reasons, this Court is of the definite opinion that Ex.P1 sanction order is valid and it is in accordance with law. The prosecution from the oral evidence of PW.1 and by producing Ex.P1 order has proved that it has obtained valid sanction as required under law. For the aforesaid reasons, point No.1 is answered in affirmative.

9. The compliance of Section 17 of the PC Act:-

9.1. The prosecution has produced Ex.P-11 order dated 13-3-2015, Ex.P-15 order dated 19-12-2013 , Ex. P-39 order dated 05-8-2016, and Ex.P-52 order dated 10- 4-2015 passed by the Superintendent of Police by invoking Section 17 of the PC Act. The proviso appended to Section 17 of the PC Act provides that an offence Spl.C.C.No.496/2017 referred to in clause (e) of Sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police. Therefore, there is a statutory requirement regarding authorization by the Superintendent of Police in favour of an officer to enable him to carry out the investigation in terms of Section 17 of the PC Act.

9.2. In the case on hand, Pw-3 Mr. Mohammed Mukaram, the Police Inspector, has submitted Ex.P-4 source report to the Superintendent of Police. The Superintendent of Police has made an endorsement dated 12-12-2013 and forwarded the source report to the Dy.S.P. Mr. Narayan to verify and report. Accordingly after verification, the report was again placed before the Superintendent of Police on 18-12-2013. Thereafter on 19-12-2013, the Superintendent of Police directed Pw-12 to register the case and simultaneously issued Ex.P-15 order. As per Ex.P15 on 19-12-2013, the Superintendent of Police had passed an order stating that prima-facie case is made out against the accused warranting Spl.C.C.No.496/2017 investigation for the offence under Section 13(1)(e) read with Section 13(2) of the PC Act.

9.3. The learned defence counsel has relied upon the judgment reported in (2006)7 SCC 172 in the case of State vs. Surya Sankaram Karri. As per the facts of the said judgment in violation of mandatory requirement of an order from the Superintendent of Police under Section 17 of the PC Act, the investigation was carried out. But in the case on hand there are no such violations and hence the ratio of the decision is not applicable to the facts of the case.

9.4. The Hon'ble High Court of Karnataka in the judgment reported in ILR 2009 KAR 2470 in L.C.Hussain Vs. State of Karnataka held that the Police Inspectors are authorized to conduct the investigation in respect of the offences prescribed under Section 17 of the PC Act. Therefore, in the case on hand, from the evidence of Pw- 12 and 13 the prosecution has proved that the investigation was conducted in compliance to the mandatory requirements as prescribed under Section 17 of the PC Act.

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10. Search and Seizure 10.1. Pw-12 the Police Inspector Dr. Anil Kumar P.G. in his evidence has deposed that after registering the case and on submission of Ex.P-16 FIR to the Hon'ble court, he had obtained Ex.P-2 search warrant, secured presence of two witnesses Pw-2 Mr. K.R Sanjeeva Murthy and Smt. Vanajakshi. The prosecution has examined Pw.2 Mr. K.R. Sanjeevamurthy and he deposed that on 20-12-2013 the Lokayukta police conducted the raid on the house of the accused situated at Arakere Layout Bengaluru. During the search in the house they had ascertained the value of the household articles, gold ornaments and silver articles etc. He further deposed regarding seizure of the documents found during house search and drawing of Ex.P-3 house search mahazar.

10.2. During the cross-examination of Pw-2 the presence of the witness at the time of the search was not disputed by the accused. From the evidence of Pw.2 and 12 the prosecution has proved the fact of drawing of Ex.P-3 house search mahazar. The accused during the Spl.C.C.No.496/2017 trial also has not denied the drawing of aforesaid mahazar but he has disputed the value of certain articles fixed by the IO and the panchas. Therefore the prosecution has proved drawing of Ex.P-3 house search mahazar from the evidence of Pw-2 and 12.

11. Points No.2 and 3: -

11.1. Before touching upon the merits of the case to substantiate the charge under Section 13(1)(e) of the PC Act, the ingredients to be established by the prosecution are;

a) The accused is a public servant.

b) The nature and the extent of pecuniary resources or property were found in his possession or any person on his behalf.

c) what were the known sources of income and

d) That the property/resources found in possession of the accused or in person on his behalf were disproportionate to his known source of income. After proving these requirements by the prosecution, the burden for satisfactory accounting for possession of such resources of property shifts to the accused.

11.2 In order to prove the case the prosecution has placed on record the following evidence:

Spl.C.C.No.496/2017 Pw.2 is the witness to Ex.P3 house search mahazar. P.w.3 the Police Inspector, Karnataka Lokayukta, Bengaluru has submitted Ex.P4 source information report.

Pw.4 the Deputy Director, Statistical Department, Karnataka Lokayukta, has submitted Ex.P-5 report regarding domestic expenditure of the accused. Pw.5 and Pw.6 are working as Principals of the college, deposed regarding the educational expenses of son of the accused.

Pw.7 the Assistant Director of Agricultural Department issued Ex.P-9 report regarding agricultural income of the accused.

Pw.8 Assistant Director of Horticulture, issued Ex.P10 report regarding income of the accused from horticulture.

Pw.10 has issued Ex.P12 report and deposed regarding CET training given to the son of the accused.

Pw.11 is the goldsmith deposed regarding Ex.P13 document and purchase of gold from the wife of the accused.

Pw.12 is the Police Inspector , Karnataka Lokayukta deposed regarding Ex.P15 order passed by the Superintendent of Police, registration of Ex.P16 FIR , drawing of house search mahazar as per Ex.P3, Spl.C.C.No.496/2017 seizure of the documents and initial part of investigation of the case.

Pw.13 the Police Inspector deposed regarding passing of Ex.P39 order by the Superintendent of Police, conducted further investigation of the case, collection of documents and filing of the final report. Pw.14 is the Police Inspector deposed in furtherance of Ex.P52 order passed by the Superintendent of Police conducting of further investigation of the case.

PW.15 the Secretary of National Education Society deposed regarding Ex.P35 certificate related to the educational expenses of son of the accused. Pw.16 Goldsmith deposed regarding ascertainment of value of the gold ornaments found during the house search mahazar.

P.w17 and 18 are the owners of the building deposed that the accused was occupying their premises as a tenant.

Pw.19 is the Assistant Engineer, assessed the value of the building and issued Ex.P23 report. Pw.20 is the retired RTO deposed regarding issuance of Ex.P45 Certificate regarding the fuel and maintenance expenses of vehicle belongs to the accused.

Pw.21 has deposed regarding issuance of Ex.P47 report relating to purchase of refilled LPG cylinders by the accused.

Spl.C.C.No.496/2017 Pw.22 is the Executive Engineer, BESCOM, issued Ex.P48 electricity consumption certificate. Pw.23 is the Executive Engineer, BWSSB, issued Ex.P51 Certificate regarding the water consumption expenses paid by the accused.

Accused examined as Dw.1, produced Ex.D1 to D9 documents.

Dw.2, 4 and 5 are the tenants under the accused deposed regarding payment of monthly rent. Dw.3 the Assistant Revenue Officer, BBMP deposed regarding Ex.D1 Certificate and salary drawn by the accused.

12.1 As per the charge sheet, the IO has taken into consideration in all 39 properties totally worth Rs. 67,88,561.18 as the assets of the accused. The accused in his defence during the trial and in his written argument has admitted the following are his assets.

Assets admitted by the accused

Sl. No	Property code	Description of assets	Documents	Value (in Rs.)
		Immovable properties		

No.332/6/1B, measuring Sale
40 x 90' acquired on deed
16.6.2012 in the name of
wife of accused

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Smt.Sudha, situated at
Hurali Chikkanahally
Grama Panchayat,
Hesaraghatta hobly,
Bengaluru North Taluk.
Site measuring 50 x 30'
acquired on 25.4.2005 in
the name of wife of

Ex.P-41

- | | | | | |
|---|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|------------|
| 2 | AI2 | accused Smt.Sudha,
situated at No.233, 8th
Main Road, 5th Cross, 1st
stage, Arakere, Mico
Layout, Bengaluru.
Site No.4 and 5A - Old
No.85/3 House list
Khaata No.665/5 & 544/2
measuring 45 x 40' (2
sites) acquired on | Sale
deed | 8,00,000/- |
| 3 | AI3 | 25.4.2005 in the name of

wife of accused
Smt.Sudha, situated at
Arakere village, Begur
hobly, Bengaluru South
Taluk. | Schedul

e 13B | 3,00,000/- |

Movable properties

- | | | | | |
|---|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|---------|
| 4 | ABA | Amount outstanding in
the S.B.Account No.632
in the name of accused
at Vaishnavi Souharda | Ex.P-24 | 1,235/- |
| 5 | ABA | 1 Credit Co-operative Bank,
RBI Colony, 3rd division
east, Jayanagara,
Bengaluru.
2 the S.B.Account
No.402226976 in the
name of accused at
Indian Bank, 4th Block, | Ex.P-25 | 5,077/- |

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		Jayanagara, Bengaluru. Amount outstanding in the S.B.Account ABA No.8401101029140 in		
6			Ex.P-26	90,509/-
	3	the name of accused at Canara BBMP Branch, JC Road, Bengaluru. Loan Account No.4346 in the name of accused		
7		ABA in The Bharathi Co-	Ex.P-27	500/-
	4	operative Credit Society Limited, Jayanagar, Bengaluru. Joint Account No.6635 in the name of accused and his wife at The		
8		ABA Comptrollers Office, Co-	Ex.P-42	1,102/-
	5	operative Bank Ltd., Mahalakshmi-Cubbonpet Main Road, Bengaluru. Balance amount found in S.B. Account No.025100101020205 in the name of wife accused		
9		ABA	Ex.P-43	83,138/-
	7	Smt.Sudha at Corporation Bank, Jayachamarajendra Road, Bengaluru. Amount kept in Joint Fixed Deposit Account No.6635 in the name of accused and his wife at		
10		AFD	Ex.P-42	49,000/-
	1	The Comptrollers Office, Co-operative Bank Ltd., Mahalakshmi-Cubbonpet Main Road, Bengaluru.		
11		AR Amount outstanding in D1 RD Account No.1/210 standing in the name of accused at Vaishnavi Souharda Credit Co- operative Bank, RBI	Ex.P-24	6,346/-

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		Colony, 3rd division east, Jayanagara, Bengaluru. Shares in the Account No.2328 in the name of			
12	AS1	accused at BBMP Sahakara Sangha Ltd., Bengaluru.	Ex.P-44		7,000/-
		Shares in the Account No.632 in the name of			
13	AS2	accused at Vaishnavi Souharda Credit Co-	Ex.P-24		4,000/-
		operative Bank, RBI Colony, 3 division east, rd			
		Jayanagara, Bengaluru. Skoda Fabia Car bearing No. KA-51 P-2394			
14	AV1	purchased in the name of wife of accused Smt.Sudha	Ex.P-28		7,15,066/-
		Honda Dio 2 wheeler bearing No. KA-01 EW-			
15	AV2		Ex.P-45		43,122/-
		7974 purchased in the name of the accused.			
		Cash on hand with the			
16	ALC		Ex.P-3		7,100/-
		accused			
		LIC Premium paid			
	ALI	towards policy			
17			Ex.P-29		3,76,465/-
	C1	No.614868604 in the name of accused			
		Quarterly LIC Premium			
	ALI	paid towards policy			
18			Ex.P-29		84,272/-
	C2	No.614469725 in the name of accused			
		Quarterly LIC Premium			
		paid towards policy			
	ALI				
	C3				
		name of wife of accused Sudha P. Kumar			
20	ALI	LIC Premium paid	Ex.P-29		92,966/-
	C4	towards policy			
		No.614477833 in the name of wife of accused			

	Sudha P. Kumar		
	LIC Premium	paid	
	towards	policy	
ALI			
	C5		
	name of wife of accused		
	Sudha P. Kumar		
	Deposit towards Gas		
	connection vide		
	consumer No.628239		
	AD paid at Sri Manjunatha		
22	G1 Enterprises, J.P.Nagar	Ex.P-47	3,050-00
	Bengaluru in the name of		
	wife of accused		
	Smt.Sudha P.Kumar.		
	Application fee,		
	Development fees paid		
	for getting electricity		
	ADE connection to the house		
23	1 situated at Arakere, Mico	Ex.P-48	25,290-00
	Layout, Bengaluru		
	standing in the name of		
	Smt.Sudha P.Kumar		
	Cable connection fees		
	AD		
24	paid to Sri Akash Star	Ex.P-49	500-00
	N1		
	Links		
	Deposit amount for		
	ADT getting Telephone		
25	1 connection No.080-	Ex.P-50	3,000-00
	26484296		
	Deposit amount paid for		
	getting water connection		
	to house situated at		
	AW		
26	Arakere, Mico Layout	Ex.P-51	10,000-00
	C1		
	Bengaluru standing in		
	the name of Smt.Sudha		
	P.Kumar.		
	Total		
			32,93,720/-
	amount		

12.2. The IO under the property code AILIC5 has considered the premium amount of Rs.62,181/- paid by the accused as the asset during the check period. As per the analysis of the facts in the final report, it is stated that the LIC policy No.611578746 was obtained in the name of Smt. Sudha and up to 20.12.2013 the accused had deposited Rs.62,181/- premium amount.

12.3. The IO during investigation had secured Ex.P29 document from the Manager, LIC, JC road, Bengaluru. Pw.13 in para-40 of his evidence has specifically admitted that the aforesaid premium amount was deducted from the salary of the accused and due to inadvertence, the said amount was considered as the asset of the accused. In view of the explanation of Pw.13 in para-40 of his evidence, Rs.62,181/- inadvertently considered by the IO under the property Code ALIC5 as the asset of the accused deserves to be deducted and Spl.C.C.No.496/2017 accordingly excluded in the above table from the head of assets.

13.1. The IO in the final report under the property code AI-2 has considered Rs.18,92,488/- as the value of the residential building constructed in Arakere, Mico Layout, Bengaluru as the asset value of the accused acquired during the check period. The accused in his evidence and during cross-examination of Pw.13 has not disputed the ownership of the said property and the building. The purchase of the said property as per Ex.P41 registered sale deed for a valuable consideration of Rs.8 lakhs is not in dispute and already considered as asset of the accused.

13.2. In order to prove the valuation of the building, the prosecution has examined Pw.19 Smt.Saira Nazeem, the Assistant Executive Engineer and also produced the valuation report as per Ex.P-23. As per the evidence of Pw.19, the value of the building is Rs.18,92,488/-.

13.3. It is the evidence of Pw.19 that she had visited the property for inspection on 17.12.2014 in order Spl.C.C.No.496/2017 to assess the valuation of the building. The building was constructed in 2006-07 consists ground floor measuring 753.13 square feet + three floors totally measuring 2300.60 square feet with granite flooring and teak wood was used in the building. In order to ascertain the valuation of the building she has stated that considered the schedule of rates dtd.17.4.2007 published by the Government of Karnataka.

13.4. During cross-examination, Pw.19 has admitted that the plan for the construction of the building was approved in the year 2004. The accused in his evidence has produced the copy of the approved plan and it is marked as per Ex.D9. Pw.19 in her evidence has also admitted that the Karnataka Lokayukta police had provided her with the copy of Ex.D-9 the approved plan at the time of assessing the valuation of the building.

13.5. According to the defence of the accused, he had completed the construction of the residential building in the year 2006 and the cost of construction was around Rs.13,50,000/-. Dw.1 in his evidence has deposed that in Spl.C.C.No.496/2017 the end of year 2006 he had completed the construction, performed the house warming ceremony and for the construction he had spent nearly

Rs.13.50 - Rs.15 lakhs. However, in order to prove the fact that the construction of the building was completed in the year 2006, he has not produced any documents such as completion certificate.

13.6. The evidence of accused and Pw.13 show that Ex.D-9 approved blue print plan was obtained in the name of Abdul Razaq. In order to appreciate the defence of the accused that he had spent Rs.13.50 - Rs.15 lakhs to construct the building, there is no cogent documentary evidence.

13.7. The accused could have assessed the value of the property through any competent civil engineer to rebut the oral evidence of Pw.19 and Ex.P23 documentary evidence produced by the prosecution. The accused had constructed the building and the documents regarding expenses incurred for the said construction are in his custody. During the trial except Ex.D9 blue print Spl.C.C.No.496/2017 plan he has not produced any other documentary evidence.

13.8. The total expenses incurred for the construction of the building is exclusively within the knowledge of the accused. The prosecution has discharged its burden by producing Ex.P23 documentary evidence and also by examining Pw.19 the Assistant Executive Engineer. In the above circumstances, there is no reason to appreciate the contention of the accused in his defence. In the case except the oral evidence of Dw.1 and Ex.D-9 plan, the accused has failed to produce any documentary evidence in support of his defence.

13.9. The testimony of Pw.19 and Ex.P23 report shows that building consists of ground with three upper floors. The evidence of Pw.19 and Ex.P23 report reflects that she did conduct inspection of the building and arrived to a reasonable conclusion that the valuation of the building is Rs.18,92,488/-. The accused during cross- examination of Pw.1 has failed to establish that Ex.P23 report and the procedure adopted to assess the value of the building by Pw.19 is unscientific. The accused and his Spl.C.C.No.496/2017 wife have constructed the building and they could have produced documents to prove the valuation of the building, approximate expenses they had incurred to construct the building. For the aforesaid reasons there are no reasons to disbelieve the evidence of Pw.19 and Ex.P23 report as unscientific. Accordingly, oral evidence of Pw.19 and Ex.P23 report are accepted and the approach of the IO in considering the value of the building as Rs.18,92,488/- requires no interference. In the result, the said amount is considered as the asset value of the residential building constructed by the accused.

14.1. The IO in the final report under the property code AJ-1 to 9 has considered the gold jewels and purchase bills found during the house search mahazar total value worth Rs.10,30,360/- as the asset of the accused. Among the aforesaid assets in the property code AJ2 to 9 during the house search mahazar bills for having purchased gold ornaments were found in the house of the accused.

Spl.C.C.No.496/2017 14.2. Ex.P3 is the house search mahazar and during the house search total 214 gm. of gold was found in the house and person of the wife of the accused Smt. Sujatha P. Kumar. The IO has assessed the value of the gold at the rate of Rs.2,000/- per gram and total value is considered as Rs.4,28,000/- under the property code AJ-1. The accused in his written argument para-15 has not disputed the 214 gms. of gold was found during the house search mahazar.

14.3. The prosecution in order to prove the value of the gold has examined the goldsmith Pw.16 Mr.Malagachari. He deposed having examined the gold ornaments found at the time of drawing of the house search mahazar. During cross-examination the witness has admitted that the gold ornaments found in the house were old ornaments. It is his evidence that at the time of drawing Ex.P3 mahazar he has valued the gold ornaments as per the market value as on the date of drawing of the mahazar 20.12.2013.

14.4. Pw.13 in his evidence para-24 has stated that at the time of house search he found totally 214 gms. of Spl.C.C.No.496/2017 gold in the house of the accused more fully described in the house search mahazar and with the assistance of P.w.16 he had assessed the market value of those ornaments.

14.5 In the final report, the IO has stated that the accused has not submitted his annual property returns to the department. Moreover, the accused in his evidence has also not forwarded any explanation in this regard. Therefore, in the event the accused had declared the gold ornaments found in his house at the time of house search mahazar in the APR, he is having every opportunity to defend himself and also to claim the benefit regarding those assets, its value as on the date of purchase.

14.6. In the above circumstances, the grievance of the accused that Pw.13 in the final report has assessed the value of the gold ornaments as on the date of drawing of the house search mahazar cannot be faulted. The accused has failed to submit annual property returns during the check period (in short APR) to the department as required under Rule 23 of Karnataka Civil Services Spl.C.C.No.496/2017 (Conduct) Rules 1966 (in short KCS Rules). Therefore, the method adopted by the IO in considering the gold ornaments found during the house search mahazar under the property head AJ-1 Rs.4,28,000 is accepted and value of the gold ornaments is considered as asset of the accused.

15.1. The IO under the property code AJ-2 has considered Rs.3,98,384/- as the asset of the accused. In order to arrive the said conclusion Pw.-13 has stated the reasons that during the house search mahazar he found Ex.P19 (page-32) appraiser report issued by M/s.Manjuantha Jewelers, Turuvekere dtd.17.6.2003. As per the contents of the said document, the value of the gold pledged before the bank is shown as Rs.3,98,384/-. Therefore the IO has considered the said value as the asset of the accused.

15.2. The IO has produced Ex.P-46 letter issued by the Chief Manager SBM, Turuvekere dtd.16.6.2016. As per the said document, father of the accused Mr.Chaluvaraj had borrowed loan of Rs.2,41,000/- from the bank on 17.6.2013 by pledging the gold ornaments Spl.C.C.No.496/2017 referred in Ex.P19 appraiser report. As per the contents of the said document further reveal that the loan amount with interest Rs.2,79,123/- was repaid by cash on 22.1.2015.

15.3. The accused in his evidence para-20 has deposed that his father had agricultural income, he had pledged the gold ornaments in the bank and borrowed the loan. According to the accused, he is nothing to do with the aforesaid loan transaction and stated that the pledged gold exclusively

belonged to his father. Hence he submitted that the method adopted by the IO in considering the value of the gold ornaments as his assets acquired during the check period is totally incorrect.

15.4. During cross-examination Pw.13 in para-128 of his evidence has admitted that the father of the accused Mr. Chaluvvaraju is an agriculturist and he had borrowed the loan in his name by pledging the gold ornaments. According to the evidence of Pw.13, the borrower Chaluvvaraju was not financially capable to own the above referred pledged gold ornaments. Therefore, as per his contention, the accused had pledged 142 gms.

Spl.C.C.No.496/2017 of gold ornaments in the name of his father and borrowed the loan from the bank. Therefore, he had proceeded to consider the said gold ornaments as assets of the accused.

15.5. The accused in his evidence in para-19 has specifically deposed that his father is an agriculturist holding 6.00 acres of agricultural land situated at Sulekere village of Turuvekere Taluk. During evidence the accused has failed to forward explanation how Ex.P19 (page 32) appraiser report found in his house at Bengaluru at the time of drawing the house search mahazar on 20.12.2013. But even by producing Ex.P19 document, the prosecution is either able to prove the accused himself had borrowed the loan or that the gold ornaments referred in the application belongs to him. The borrower Chaluvvaraju being the father of the accused and on mere availability of Ex.P19 document at the time of house search mahazar itself is not sufficient to arrive to the conclusion that the gold ornaments belongs to the accused. From Ex.P-19 the prosecution is able to prove that the father of the accused Chaluvvaraju had borrowed Spl.C.C.No.496/2017 the loan from SBM Turuvekere by pledging the gold ornaments and the appraiser report was found in the possession of the accused.

15.6. Therefore, in the absence of any other circumstantial evidence, the prosecution has failed to prove the gold ornaments referred in Ex.P-19 appraiser report belongs to the accused. Hence the method adopted by the IO in considering Rs.3,98,384/- under the head AJ-2 as the asset of the accused is not correct. Hence, the aforesaid amount has to be excluded from the assets in the final report.

16.1. The IO has considered under the property code AJ-3 Rs.19,750/- as the asset of the accused. During the house search he had seized the original bill dtd.24.10.2003 appearing in the name of Mrs. Sudha P.Kumar for Rs.19,750/- issued by Abhushan Jewelers, Jayanagar, Bengaluru. As per the description of the gold is shown as one necklace with back chain weighing 30.55 gms. and Ex.P19 (page 33) is the document produced by the prosecution.

Spl.C.C.No.496/2017 16.2. The IO under the property AJ-4 has considered Rs.81,788/- as the asset of the accused. During the house search he had seized original tax invoice dtd.24.3.2013 appearing in the name of son of the accused Mr. Vinay Kumar for Rs.81,788/- issued by GRT Jewelers, Jayanagar, Bengaluru. Ex.P19 (page 34) is the document produced by the prosecution in support of its contention.

16.3. The IO under the property code AJ-5 has considered Rs.7,450/- as the asset of the accused. During the house search mahazar he had seized Ex.P19 (page 35) the original bill issued by M/s Lakshmi Jewelers Arakere Bengaluru, dtd.12.4.2010.

16.4. The IO under the property code AJ-6 has considered Rs.4,968/- as the asset of the accused. During the house search mahazar he had seized Ex.P19 (page 36) the original invoice issued in the name of wife of accused Mrs. Sudha P. Kumar by M/s Lakshmi Jewelers, Arakere, Bengaluru.

16.5. The IO under the property AJ-7 has considered Rs.21,600/- as the asset of the accused.

Spl.C.C.No.496/2017 During the house search mahazar he had seized Ex.P19 (page 37 and 38) estimate and tax invoice issued by M/s Lakshmi Jewelers, Arakere, Bengaluru in the name of wife of accused Mrs. Sudha P. Kumar for Rs.21,600/-.

16.6. The IO under the property code AJ-8 has considered Rs.67,680/- as the asset of the accused. During the house search mahazar he had seized Ex.P-19 (page 40) issued by Abhushan Jewelers, Jayanagar, Bengaluru in the name of wife of the accused Mrs. Sudha P. Kumar for 28 gms. gold ornaments for Rs.67,680/-.

16.7. The IO under the property code AJ-9 has considered Rs.750/- as the asset of the accused. During the house search mahazar he had seized Ex.P19 (page

41) receipt issued by M/s Bhima Jewelers, Jayanagar, Bengaluru in the name of wife of accused Mrs. Sudha P Kumar. Therefore, he has considered Rs.750/- as the asset of the accused. The contents of the document reveals that the wife of the accused was a member in 'Suvarnadhara Akshaya' group JB-1 and her membership number is 125,126, and 127. The document found during the house search is regarding payment of monthly Spl.C.C.No.496/2017 installment of Rs. 250/-per each group dated 13-6-2006. The IO ought to have collected the documents from Bhima Jewellery shop to ascertain the total amount deposited by the accused relating to the said account. But he has not proceeded the investigation in this direction.

16.8. Pw.13 in his evidence para-26 to 33 has specifically deposed regarding the seizure of Ex.P19 above referred original documents issued by the jewelery shop appearing in the name of wife of accused Mrs. Sudha and their son Mr. Vinay Kumar. Dw.1 in his evidence para-21 has deposed that the gold ornaments pertaining to the above referred Ex.P19 documents were not found during the house search mahazar and therefore the method adopted by the IO in considering the value of the property as the assets is not correct. The accused further submitted that the gold ornaments weighing 214 gms. found during the house search mahazar includes the gold purchased as per Ex.P19 under different bills. It is contended that the purchased ornaments have been melted and converted to other ornaments.

Spl.C.C.No.496/2017 16.9. During cross-examination of Pw-13 in para- 129 and 130 the accused has not disputed Ex.P-19 original documents were found during the search in his house at the time of drawing the mahazar. The accused except forwarding the aforesaid explanation has not produced

any other documents in support of his defence. The evidence of the accused and from the tenor of cross-examination of Pw.13, this court can infer that there is no dispute regarding purchase of the gold ornaments on different dates as referred in Ex.P19 by the family members of the accused.

16.10. The prosecution in these types of cases cannot in the very nature of things be expected to know the affairs of the accused. Those matters will be specially within the knowledge of the accused within the meaning of Section 106 of Indian Evidence Act. The accused is having knowledge from what source of income the assets were acquired. Hence he has to prove the source of acquisition and satisfactorily account for the same. In this regard, this court referred the judgment Spl.C.C.No.496/2017 reported in AIR 2005 SC 1406 in the case of Hindustan Petroleum Corporation Ltd. Vs. Sarvesh Berry.

16.11. Therefore, in the case on hand, from the evidence of Pw.13 and Ex.P-19 documentary evidence pertaining to property code AJ-3 to 9, the prosecution has proved that during the check period the accused and his family members had purchased the gold ornaments on different dates. However during the house search mahazar those gold ornaments were not found in the possession of the accused. The prosecution is not expected to prove the custody of those valuables are with the accused. Those aspects are exclusively within the knowledge of the accused and it is for him to forward satisfactory explanation. In the absence of such explanation, the inference to be drawn is that the accused and his family members during the check period had purchased the gold ornaments. There is nothing wrong in the procedure adopted by the IO in considering the amount as shown in the Ex.P-19 documents as the asset value of the accused during the check period. The explanation forwarded by the accused in para-15 and 16 Spl.C.C.No.496/2017 of his written arguments regarding those bills is not acceptable. In the result, the value of the gold ornaments pertaining to AJ-3 to 9 are considered as the asset of the accused acquired during the check period.

17.1. The IO in the final report under the property code ASA-1 has considered Rs.4,550/- as the asset value of the accused acquired during the check period. As per the analysis and narration of the facts in the final report, during house search mahazar, the IO has secured Ex.P- 19 (page 39) tax invoice issued by M/s Abhushan Jewelers for purchase of two silver glass.

17.2. The IO in the final report under the property code ASA-2 has considered Rs.1,24,410/- as the asset value of the silver articles found during the house search mahazar as the asset of the accused. In Ex.P-3 mahazar, there is description of total 4.147 kg. of silver articles found in the house during the search. The prosecution in order to prove the value of the silver Spl.C.C.No.496/2017 articles has examined the appraiser Pw.16 Mr. Malagachari S.B.

17.3. Pw.13 in his evidence para-33 and 34 has deposed regarding consideration of the value of the silver articles as the asset of the accused. During cross- examination, Pw.13 in para-131 of his evidence has admitted that there are chances of two silver glass value is considered twice in the final report. In page No.6 of Ex.P-3 mahazar there is reference regarding 6 silver glass totally weighing 330 gms. In Ex.P-19 page 39, the wife of the accused had purchased two silver glasses totally weighing 99 gms.

17.4. After considering Ex.P3 mahazar and evidence of Pw.13 as referred herein above in para-131, there is possibility of value of 2 silver glasses considered in ASA-1 Rs.4,550/- is included in Ex.P-3 mahazar in the asset value of the property under ASA-2. In a criminal trial the accused is entitled to avail the benefit of all reasonable doubts emerging in the prosecution case.

Spl.C.C.No.496/2017 Therefore on account of absence of specific description and weight of 6 glasses found at the time of drawing Ex.P-3 house search mahazar, this Court finds it proper to extend the benefit to the accused by excluding Rs.4,550/- considered by the IO in the property code ASA- 1 as asset of the accused. Accordingly the said amount is excluded from the head of assets of the accused.

17.5. During cross-examination of Pw.13 in para- 132 it is the contention of the accused that the gold ornaments and silver articles found at the time of house search mahazar were purchased during the period of 10 to 15 years. Dw-1 in his evidence para 26 deposed that his wife as a LIC agent had received gift of silver articles from the department. During his marriage he had received the silver articles as gifts in connection with 'vara pooja'. Therefore, it is his contention that the value assessed by Pw-16 gold smith and Pw.13 regarding those articles are excessive and exorbitant. However the accused has failed to comply Rule 14(2) of KCS (conduct) Rules. But in order to prove the defence taken during the cross-examination of Pw.13, the accused has not Spl.C.C.No.496/2017 produced any documentary evidence including the copy of the APR. In the event the accused had declared the acquisition of the assets in different years he had the opportunity to claim the benefit of the above defence regarding gifts. But in the case on hand, on account of failure to submit his APR to his department, the aforesaid opportunity is not available to him. Therefore, the contention of the accused in this regard is liable to be rejected. Accordingly the value of the silver articles considered by the IO in view of evidence of Pw-16 as Rs.1,24,410/- is accepted as asset value of the accused acquired during the check period.

18.1. The IO under property code AHA has considered Rs.3,67,255/- as the value of the house hold articles found during the house search mahazar. Pw.13 in his evidence para-35 has deposed that the value of the articles was fixed by the panchas.

18.2. Pw-2 Mr.K.R.Sanjeeva Murthy in his evidence para-3 has deposed regarding the procedures followed by them at the time of drawing the house search mahazar.

Spl.C.C.No.496/2017 During cross-examination, Pw.2 has admitted that the IO has fixed the value of the property. The accused in his evidence para-23 has deposed that the value of the household property found during the house search mahazar is around Rs.1.50 to 2 lakhs.

18.3. In order to prove the contention taken by the accused, he has not produced any documentary evidence. Moreover, it is impracticable for any public servant when he is charged under section 13(1) (e) of the PC Act, to produce documents to prove the purchase of more particularly all the household articles over a long period. As per Ex.P-3 house search mahazar, the total value of the house hold articles comes to Rs.3,51,255/-. In the above circumstances after considering oral evidence of Pw.13 and Dw.1, contents of Ex.P3 house search mahazar it appears that the valuation assessed by the panchas and the IO is just and reasonable. Pw-12 is not an expert to fix valuation of all the

household articles. Hence it is proper to give 10% benefit to the accused in the valuation of household articles. Therefore, Rs.3,51,255/- minus 35,125/- (10%) = Spl.C.C.No.496/2017 Rs.3,16,130/- is considered as the asset value of the household articles found during the house search mahazar.

19. In view of the aforesaid discussion of facts, ocular and documentary evidence regarding the disputed assets, the prosecution has proved following are the assets of the accused acquired during the check period.

ASSETS OF THE ACCUSED Properly

Asset Description of assets Value (in Rs.) No.

code			
		Immovable properties	
1	AI2	Valuation of the House constructed over the above said site during 2006-07	18,92,488 -00
		Movable properties	
2	AJ1	Gold ornaments worn by the wife of accused ie. 40 gms. 'Mangala sutra' 20 gms. each 2 gold bangles and 5 gms. weighing earring; totally weighing 65 gms. and gold ornaments 149 gms. Total 214 gms.	4,28,000-00
3	AJ2	Bill found for purchasing	
			Spl.C.C.No.496/2017
4	AJ3	178.690 gms. of gold ornaments from M/s.Manjunatha Jewellery works, Turuvekere in the name of father of accused Sri Chaluvvaraju Bill found for purchasing 33.55 gms. of gold ornaments from M/s.Abhushan, Jayanagara, Bengaluru in the name of wife of	19,750-00

		accused Smt.Sudha P.Kumar Bill found for purchasing 28.790 gms. of gold ornaments from M/s.GRT	
5	AJ4	Jewelers, Jayanagara Bengaluru in the name of son of accused Mr.Vinaykumar Bill found for purchasing gold ring from M/s.Lakshmi Jewelers, Arakere, Mico Layout,	81,778-00
6	AJ5	Bannerughatta road, Bengaluru in the name of wife of accused Smt.Sudha P.Kumar. Bill found for purchasing gold ornaments weighing 3.680 gms. from M/s.Lakshmi Jewelers, Arakere, Mico Layout, Bannerughatta road, Bengaluru in the name of wife of accused Smt.Sudha P.Kumar.	7,450-00
7	AJ6	Bill found for purchasing gold ornaments weighing 8.700 gms. from M/s.Lakshmi Jewelers,	4,968-00
8	AJ7	Arakere, Mico Layout, Bannerughatta road, Bengaluru in the name of wife of accused Smt.Sudha P.Kumar. Bill found for purchasing gold ornaments weighing 8.700 gms. from M/s.Lakshmi Jewelers,	21,600-00

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		Arakere, Mico Layout, Bannerughatta road, Bengaluru in the name of wife of accused Smt.Sudha P.Kumar. Bill found for purchasing 28.180 gms. of gold chain from M/s.Abhushan, Jayanagara, Bengaluru in the name of wife of accused Smt.Sudha P.Kumar `Bill found for purchasing 3 items from M/s.Bheema Jewelers, Jayanagara,	
9	AJ8	Bengaluru in the name of wife of accused Smt.Sudha P.Kumar	67,680-00
10	AJ9	Bengaluru in the name of wife of accused Smt.Sudha P.Kumar	750-00

11	ASA1	Two silver cups weighing 99.00 gms. purchased by the accused. Silver items 4147 gms. in	
12	ASA2	the name of accused	1,24,410-00
13	AHA	Household articles	3,16,130-00
		Total	29,65,004-00
		Admitted assets	32,93,720-00
		Grand Total	62,58,724.00

20. In the final report the IO has considered the total expenditure of the accused during the check period in 40 components amounting to Rs. 41,73,430/-. However the accused during the trial in his defence has admitted the certain heads of expenditure shown in the table herein below.

Spl.C.C.No.496/2017 Expenditures admitted by the accused.

Sl. No.	Proper ty code	Particulars of expenditure	Releva nt docum ents	Value (in Rs.)
1	EASR1	Registration and Stamp fees for site No.12 measuring 40 x 90 feet standing in the name of wife of accused Smt.Sudha situated at Huralichikkanahalli village, Hesaraghatta hobly, Bengaluru North Taluk. Registration and Stamp fees paid for open site No.233, Sy.No.935/D standing	Ex.P-41	29,060-00
2	EASR2	in the name of wife of accused Smt.Sudha situated at Arakere village. Registration and Stamp fees for Open site No.4 and 5A,	Ex.P-41	79,970-00

		measuring 45 x 40 (2 sites) House List		
3	EASR3	Khata No.665/3 & 544/2 standing in the name of wife of accused Smt.Sudha, 2 sites situated at Arakere village, Beguru hobly, Bengaluru South Dist. House Tax paid for house No.233, Khata No.238/23/233, PID	Ex.P-41	28,800-00
		standing in the name of wife of accused Smt.Sudha P.Kumar		
			Spl.C.C.No.496/2017	
5	EWCl	Water Tax paid for 3 storey building bearing house No.233, Arakere, Mico Layout, Bengaluru, standing in the name of wife of accused Smt.Sudha P.kumar Electricity charges paid for 3 storey building bearing house No.233, Arakere, Mico Layout, Bengaluru, standing in the name of wife of accused Smt.Sudha P. Kumar	Ex.P-51	5,161-00
6	EEC1	Advance amount paid for purchasing Site at Suryanagara extension, Kengeri, Bengaluru. Vehicle insurance incurred for Skoda	Ex.P-48	33,719-00
7	EA01	P-2394 registered in the name of wife of accused Smt.Sudha P. Kumar	Ex.P-30	60,500-00
8	EMI1	Vehicle insurance incurred for for Honda Dio Bike	Ex.P-31	10,579-00

9	EMI2	No.KA-01 EW 7974 registered in the name of accused Telephone bill amount paid towards	Ex.P-45	882-00
10	ECT1	Telephone No.080- 26481296 standing in the name accused Mobile bill amount paid for 1.11.2003 to 31.12.2003	Ex.P-50	22,590.00
Spl.C.C.No.496/2017				
13	ERB1	Mobile bill amount paid for 1.11.2003 to 31.12.2003 Repayment of Loan to The Bharathi Co- operative Credit Society Limited, Jayanagar, Bengaluru for Khata No.27/5. Repayment of Loan of The Bharathi Co- operative Credit	Ex.P-27	21,715-00
14	ERB2	Society Limited, Jayanagar, Bengaluru for Khata No.1273. Repayment of Loan of Corporation Bank, Jayachamarajendra Road, Bengaluru, on Loan Account No.CHOME/01/06000	Ex.P-27	33,164-00
15	ERB3	Repayment of Loan amount obtained from BBMP Employees Co- operative Society, Bengaluru vide Khata No.7002 Repayment of Loan amount obtained from HDFC Bank,	Ex.P-43	5,76,063-00
16	ERB4		Ex.P-44	78,311-00

17	ERB5	Sahakara Nagara, Bengaluru on Site No.43 vide Loan Account No.20306094.	Ex.P-63	2,94,960-00
18	EBS1	Bank Charges for the account maintained in Indian Bank, Jayanagar Bengaluru on SB Account No.7483/24 (New	Ex.P-25	112-00
Spl.C.C.No.496/2017				
19	EIT1	Account No.402226976 Income Tax paid by wife of accused Smt.Sudha P.Kumar (Pan Card No.AIGBP 0002M)	Ex.P-32	1,42,632-00
20	EIT2	Income Tax paid by the accused R.Prasanna Kumar (Pan Card No.AGUPR 9496 B)	Ex.P-33	4,530-00
21	ED1	Cable connection charges from May- 2007 to Dec-2013 Statement given by the accused for occupying the house on rent at No.55, Krishnappa Garden,	Ex.P-49	18,900-00
22	EHR1	th 4 Cross, Thilak Nagara, Jayanagara post, Bengaluru-21 from March-2001 to Dec-2005. Statement given by the accused for occupying the house on rent at No.4, 2nd	Ex.P-38	46,400-00
23	EHR2	Road, Byrasandra, Jayanagara 1st block, Bengaluru -11 from Jan-1994 to Dec-2008 Statement given by the accused for	Ex.P-38	33,000-00

		occupying the house		
		on rent at		
		C/o.Prabhakar S.C.		
24	EHR3	s/o.S.P.Chinnappa,	Ex.P-38	21,600-00
		No.29, 1st A Main		
		Road, Byrasandra,		
		Jayanagara,		
		Bengaluru -11 from		
		Mar-1999 to Feb-2001		

Spl.C.C.No.496/2017

		Statement given by		
		accused for		
		occupying the house		
		on rent at No.235, 8th		
25	EHR4		Ex.P-38	39,000-00
		Main Road, 1st Stage,		
		Arakere, Bengaluru		
		from Mar-2006 to		
		Mar-2007		
		Donation paid to		
		Arakere Mico Layout		
26	ERC1	Residence Welfare	Ex.P-64	5,600-00
		Association, Temple		
		Complex,		
		Bannerghatta road,		
		Bengaluru.		
		Membership fees paid		
		to BBMP Employees		
		Co-operate Society		
27	ERC2		Ex.P-44	5,000-00
		Ltd., Bengaluru		
		(Membership		
		No.2528)		
		Total		16,63,587/-

21. Disputed Expenditures.

21.1. The IO, under the head of expenses property code EBW1 has considered Rs.85,401/- as the expenses incurred by the accused to drill the bore well in the site property situated at Arakere, Mico Layout, Bengaluru. Pw.14 during investigation has collected Ex.P-60 estimate report from the Assistant Executive Engineer, Bengaluru. During cross-examination Pw.14 deposed that since the bore well is in the property of the accused, he has Spl.C.C.No.496/2017 considered the accused had spent the amount for the purpose of drilling the bore well.

21.2. Pw.13 the IO in his evidence para-51 has deposed that in furtherance of Ex.P-60 report, he has considered the accused himself had spent for drilling the bore well in the property. During cross-examination of Pw.13, the accused has not challenged the decision of the IO to consider the aforesaid amount as his expense. At the time of spot inspection, the Assistant Executive Engineer has taken four photos regarding inspection of the bore well and enclosed it with the report. The accused in his evidence para-24 has deposed that his vendor Mr.Abdul Razaq had drilled the bore well in the said property. Therefore, it is his contention that considering the expenses incurred for drilling the bore well under the head of expenses is not correct.

21.3. However, in Ex.P-41 certified copy of the sale deed dtd.25.4.2005 executed by Mr. Abdul Razak and another in favour of Mrs. Sudha P.Kumar there is absolutely no reference in the schedule description of the property regarding existence of any bore well in the said Spl.C.C.No.496/2017 property. The accused has also not examined his vendor Mr. Abdul Razaq to prove digging of the bore well in the property or produced any documents to prove payment of expenses incurred by his vendor. Even in Ex.D-10 blueprint plan also there is no reference regarding existence of the bore well.

21.4. Hence, from the aforesaid evidence, facts and circumstances of the case only inference to be drawn is that the accused himself had borne the expenses to dig the bore well in his property but in order to minimize the expenses has taken a false defence during the trial. Therefore, there is no error/irregularity in the procedure adopted by Pw.13 in considering Rs.85,401/- as the expenses incurred by the accused to dug the bore well under the head of expenses. Accordingly, Rs.85,401/- is considered as the expenses of the accused during the check period.

22.1. The IO under the head of expenses property code EBW2 and EBW3 has considered Rs.1,29,266/- and Rs.1,41,731/- as the expenses incurred by the accused to drill two bore wells in the agricultural property Spl.C.C.No.496/2017 situated at Sulekere Village, Turuvekere taluk. Pw.13 in his evidence para-52 has deposed regarding this fact. Pw.14 in his evidence para-17 has deposed that during investigation he has collected Ex.P-61 estimation report from the Assistant Executive Engineer, Sub-division, Tumakuru.

22.2. The accused in his evidence para-28 has specifically deposed that in the year 1983 itself his father had spent his earnings to dig the said bore wells in the property. During cross-examination of Pw.13 in para-145 and 146 the accused has disputed the method adopted by the IO in considering the amount spent for drilling the bore wells under the head of his expenses. Pw.13 during his cross-examination has admitted that the accused has produced Ex.P-38 schedule explanation (page-137) and claimed that his father had borrowed loan for agricultural purpose from the Karnataka Bank in the year 2005.

22.3. It is the specific defence of the accused that his father is doing agriculture at Sulekere village of Turuvekere taluk. The prosecution has also not disputed this aspect. As per Ex.P38 (page-137) father of the Spl.C.C.No.496/2017 accused Mr. M.Chalurvaraj and brother of the accused by name Mr. Muralidhar had borrowed loan from the Karnataka Bank, Turuvekere Branch. The evidence placed on record shows that the property is situated at Sulekere village, Turuvekere Taluk and it is

appearing in the name of father of the accused.

22.4. During investigation, in order to prove that the accused had spent his money for digging the bore wells in the said property, Pw.13 has not collected any documentary evidence. Pw-13 further admitted that he has either conducted any investigation or inquired with the father of the accused regarding this aspect or ascertained the year of drilling those two bore wells. Therefore, except the oral evidence of Pw.13 and 14 and Ex.P-61 report of the Assistant Executive Engineer, the prosecution has not produced any documents to prove that the accused had spent his amount for digging the bore wells. By producing Ex.P-61 report, the prosecution is only able to prove the approximate expenses incurred for drilling the bore wells as on the date of valuation is Rs.1,29,266/- and Rs.1,41,731/-.

Spl.C.C.No.496/2017 22.5. Therefore, the prosecution has failed to prove that the accused had spent his money for drilling two bore wells in the property situated at Soolekere village. Pw.13 has also not collected any documents such as bank account statement of Mr. Chaluvarej, the father of the accused to prove that he had no financial capacity to invest for drilling the bore wells. In the absence of cogent and acceptable evidence, the inference to be drawn from the evidence of the prosecution is that the father of the accused had dug two bore wells in the property out of his income. In the result, the conclusion arrived by the IO in considering Rs.1,29,266/- and Rs.1,41,731/- under the property code EBW2 and EBW3 as the expenses of the accused is not correct. Accordingly, the aforesaid amounts are excluded from the head of expenses of the accused during the check period.

23.1. The IO under the property code EMF-1, EMM-1 and EMO-1 in Ex.P-69 final report has considered Rs.2,03,500/- as the fuel expenses, Rs.22,000/- towards maintenance expenses and Rs.86,523/- as the tax Spl.C.C.No.496/2017 amount in respect of vehicle appearing in the name of Smt. Sudha Kumar bearing registration No.KA 51 P 2394. Pw.13 in his evidence para-56 has deposed regarding this aspect. During investigation Pw.12 has secured Ex.P-28 report issued by the Assistant Regional Transport Officer, Electronic city, Bengaluru and deposed in para-18 of his evidence regarding this aspect.

23.2. During cross-examination of Pw.12, the accused has not challenged Ex.P-28 report produced by the prosecution. The accused in his defence under the head of assets has admitted the purchase of the aforesaid vehicle in the name of his wife Mrs. Sudha P Kumar. Ex.P-28 document also contains the report of the Senior Motor Vehicle Inspector by name Mr. K.Manjunath. As per the said report the vehicle had been driven for 48,845 kms. as on 20.12.2013 and hence he is of the opinion that the approximate fuel expenses incurred would be around Rs.2,03,500/-, maintenance expenses of Rs.22,000/- and Rs.86,523/- towards the tax amount. The prosecution has produced document regarding payment of the tax of Rs. 86523/- as per Ex.P-28 report.

Spl.C.C.No.496/2017 23.3. The prosecution has not examined the author of Ex.P28 report and the Senior Motor Vehicle Inspector to prove the contents of the report. However the accused has admitted the ownership of the vehicle. As per Ex.P3 house search mahazar, there is reference in page-2 of the document that as on 20.12.2013 the vehicle had been driven and the meter showing 48,845 kms. is not disputed. The accused in his oral evidence has failed challenge the evidence of

the prosecution or to give any explanation regarding the evidence produced by the prosecution. In para-140 of the evidence Pw.13 has admitted that in the report the Motor Vehicle inspector has not shown how he has calculated the approximate fuel consumption required for the said vehicle. He further admitted that for every 2-3 months the price of the fuel fluctuates.

23.4. The accused has not examined his wife Smt. Sudha to rebut the oral evidence of Pw.13 and Ex.P28 document produced by the prosecution. It is for the accused to place contra evidence in order to prove the actual expenses incurred by him or his wife for Spl.C.C.No.496/2017 maintenance of the said car. Moreover, the accused has not produced any documents to show the actual expenses incurred by them towards the fuel expenses and maintenance of the vehicle. The aforesaid facts are exclusively within the knowledge of the accused. Since the accused has not disputed the ownership of the car and failed to produce the documents regarding the actual expenses incurred by them towards the maintenance, fuel expenses of the vehicle, the report produced by the prosecution as per Ex.P28 deserves to be accepted. Accordingly, the expenses considered by the IO under the head EMF1, EMM1 and EMO1 the total amount of Rs.3,12,023/- are accepted as the expenses of the accused during the check period.

24.1. The IO, under the property code EMM2 has considered Rs.15,860/- as the expenses incurred towards the fuel and maintenance expenses of two wheeler bearing Reg.No.KA 01 EW 7974 appearing in the name of the accused. The accused under head of assets property code AV2 has admitted he is the registered owner of the said vehicle. Pw.13 in his evidence para-57 has deposed Spl.C.C.No.496/2017 regarding securing of Ex.P-45 document to prove the fuel and maintenance expenses appears to have been incurred by the accused during the check period.

24.2. In Ex.P45 report the RTO Koramangala has opined that the vehicle bearing registration No.KA 01 EW 7974 being used to run 5585 kms. from the date of purchase 22.3.2012 to 19.1.2016. As per the said report, the average maintenance and fuel expenses of the said vehicle comes to Rs.15,860/-. The accused has not cross- examined Pw.13 regarding this aspect. Hence, evidence of Pw.13 and Ex.45 report of the Regional Transport Officer remains unchallenged. In the result the oral evidence of the IO and Ex.P.45 report are accepted. Accordingly, the amount of Rs.15,860/- is considered as expenses of the accused during the check period.

25.1. The IO under the property code ELIC-1, ELIC- 2 has considered Rs.1,50,000/- each as the premium paid by the accused and his wife relating to two insurance policy as the expense during the check period. Pw.13 during investigation has collected Ex.P-65 document from Spl.C.C.No.496/2017 the Sr. Branch Manager, LIC of India, JC Road Branch, Bengaluru and in his evidence para-70-71 and 89 has deposed regarding these aspects. Ex.P-19B and Ex.P-19- C are the notices seized during house search mahazar issued by the Insurance Company addressed to the accused and his wife to make payment of the premium amount.

25.2. During cross-examination of Pw.13 in para- 136 and 137 and in his evidence it is the contention of the accused that his wife is working as the LIC agent, she is having independent source of income and hence she had paid the premium amount out of her income. The accused has not disputed the payment of premium amount to the LIC of India in respect of the above referred two insurance

policies. The IO under the head of income has considered the amount received by the accused and his wife as income during the check period. Therefore there is no irregularity committed by the IO in considering the premium amount paid as the expenses of the accused during the check period. Hence, the premium amount of Rs.3,00,000/- paid by the accused Spl.C.C.No.496/2017 and his wife in respect of two unit linked policy are considered as the expense during the check period.

26.1. The IO under the head of domestic expenditure has considered Rs.6,47,470/- as the expenses of the accused during the check period. In support of the said charge, the IO has collected Ex.P-5 report from the Statistical Department, Karnataka Lokayukta, Bengaluru. The prosecution has examined Pw-4 Mr. K.N.Kantaharaju, the Deputy Director, Statistics Section, Karnataka Lokayukta, Bengaluru to prove the contents of the report. Pw.4 in his evidence has deposed that he has ascertained the year-wise domestic expenses of the accused on the basis of required information furnished by the IO. As per his evidence in order to arrive to the appropriate conclusion, he has referred the pay commission report, year wise inflation index and has given Ex.P5 report.

26.2. Pw.4 during his cross-examination has admitted that the accused and his family members are vegetarians, in the event the accused had received food grains from the family there is possibility of changes in Spl.C.C.No.496/2017 the domestic expenditure. It is the submission of the accused that he was receiving food grains from his father out of their family agricultural property. As per the evidence Dw-1 in para-29 deposed that the approximate expenses incurred by him for domestic expenditure during the check period around Rs.3-00 to 3.50 lakhs. Accordingly he prayed for rejection of Ex.P5 report and evidence of Pw.4 and 13.

26.3. As per the contents of Ex.P5 report, Pw4 has considered per capita monthly expenditure assessed by referring the General Family Income and Expenditure Survey report 2009, All India Consumer Price Index to arrive at the consumption expenditure for respective years, total number of members in the family etc. 26.4. Pw.4 is a public servant and in discharge of his official duty he has submitted Ex.P5 report. Therefore, inference can be drawn as provided under Section 114(e) of Indian Evidence Act. The accused has not placed any documentary evidence in support of his defence except the bare denial during cross-examination of Pw-4 and in his oral evidence. The family of the accused consists of Spl.C.C.No.496/2017 himself, his wife and a son. Pw.4 has enclosed with Ex.P-5 report estimate of average domestic food items, expenditure statement, working sheet for estimation of family foods expenditure, year wise expenditure statement.

26.5. In this regard, in AIR 1964 SC 464 in the case of Sajjan Singh Vs. State of Punjab, the Hon'ble Supreme court held that while calculating the domestic expenditure, 1/3rd income of the accused is to be taken into consideration. The IO has considered the net salary income of the accused is Rs.24,70,232/- and has considered the domestic expenditure as Rs.6,47,470/-. If the aforesaid method is adopted, the 1/3rd of the said salary amount comes to Rs.8,23,410/-. It is settled law in criminal jurisprudence that if two views are possible, the view which is more beneficial to the accused has to be accepted.

26.6. In the case on hand as per the evidence of Pw.4 and Ex.P-5 report, the domestic expenditure assessed by the Deputy Director, Statistics Department, Karnataka Lokayukta is Rs.6,47,470/- and

it is on the lower side.

Spl.C.C.No.496/2017 Moreover, the total check period is 19 years 2 months comes to total 230 months. The accused throughout the service during the check period has worked in Bengaluru. The average monthly expenses for the aforesaid period comes to Rs.6,47,470/- / 230 = Rs.2,815/-. The son of the accused was born on 27.1.1995. Therefore in a metropolitan city like Bengaluru, the accused his wife and their son had spent an average monthly expense of Rs.2,815/- is very reasonable. During cross-examination of Pw.4, the accused has failed to elicit any material admission in support of his defence and to dislodge Ex.P5 documentary evidence.

26.7. In the above circumstances the conclusion arrived by the IO from the evidence of Pw.4 and Ex.P-5 report regarding domestic expenditure of the accused as Rs.6,47,470/- is reasonable. Accordingly, Rs.6,47,470/- is accepted as the domestic expenditure of the accused.

27.1. The IO under the property code EE-1 has considered Rs.8,54,444/- as the educational expenses of Spl.C.C.No.496/2017 the son of the accused during the check period. In support of the said charge the prosecution has produced Ex.P-6 the certificate issued by the Principal, National Pre-University College, Jayanagar, Bengaluru. As per the said document for I and II PUC education of his son Mr. Vinaya Kumar in the year 2011-12 and 2012-13, the accused had deposited total amount of Rs.30,487/- as tuition fees and admission fee. The prosecution got examined Pw.5 Sri. Ashwatha Narayanappa, the Principal of the college to prove Ex.P-6 document. As per the evidence Pw-5, he has issued Ex.P-6 certificate and Ex.P- 7 is the copy of the receipt issued for having paid the fees.

27.2. During cross-examination Pw.5 has admitted that in the year 2011-12 he was not working in the said college and he has issued Ex.P6 certificate on the basis of the records maintained in the college. The accused has not specifically disputed the payment of Rs. 30,487/- as admission and tuition fee to the college on behalf of his son Mr. Vinaya Kumar.

Spl.C.C.No.496/2017 27.3. In the event the accused claims that he has not deposited Rs. 30,487/- as tuition fee, he could have produced the original receipts issued by the college authorities. The original documents regarding payment of the college fee are naturally in his custody. On account of failure of the accused to produce the original documents available in his possession, adverse inference is required to be drawn against him. Therefore, from the evidence of Pw.5 and Ex.P-6 documentary evidence, it is proved by the prosecution that the accused towards the admission and tuition fee of his son had deposited Rs.30,487/-. Hence Rs. 30,487/- the education fee paid to National Pre-University College Jayanagar Bengaluru is considered as the expenses incurred by the accused during the check period.

27.4. The prosecution has examined Pw.6 Dr. Mallikarjuna Babu working as the Principal, BMS College of Engineering, Bengaluru. As per his evidence, in the year 2013, son of the accused Mr. Vinay Kumar was studying Civil Engineering and at the time of his admission, through demand draft he had paid Rs.4 lakhs Spl.C.C.No.496/2017 in favour of BMS Education trust and deposited Rs.20,040/- towards college fee and examination fee. The prosecution has produced Ex.P-8 document issued by Pw.6 along with duplicate copy of the receipt dtd.3.7.2013 issued in the name of

Vinay kumar for payment of Rs.4 lakhs through DD drawn on Corporation Bank, JC Road Branch, Bengaluru.

27.5. During cross-examination of Pw.6, the accused has contended that BMS Trust had collected the amount and Pw.6 working as the Principal in BMS College is not having knowledge of those facts. But the witness has specifically denied the aforesaid contention of the accused. The accused has not disputed that his son got an admission for BE Civil Engineering course in BMS College of Engineering, Bengaluru. The accused could not elicit any contrary admission during cross-examination of Pw.6 regarding payment of admission and tuition fee as shown in Ex.P-8. Therefore, from the evidence of Pw.6 and Ex.P-8 documentary evidence the prosecution has proved that the accused in connection with admission of his son for I year BE Civil Engineering in Spl.C.C.No.496/2017 the year 2013-14 had deposited Rs.4,20,040/- towards the tuition fee, miscellaneous fee and examination fee.

27.6. The prosecution has examined Pw.10 Mr.Vallish N. Herur, Director Base Educational Services Pvt.Ltd., Bengaluru. As per his evidence in the aforesaid BASE institution son of the accused Mr. Vinay Kumar had undergone PU + CET training and in this regard deposited fee of Rs.61,217/-. The accused did not choose to cross-examine Pw.10. Hence the oral evidence of Pw.10 and Ex.P10 documentary evidence remains unchallenged. Therefore, the prosecution has proved that the accused in connection with the CET coaching of his son had spent Rs.61,217/- by making payment to Base Educational Services Pvt. Ltd.

27.7. The prosecution through Pw.12 has produced Ex.P34 certificate issued by Principal Innisfree House School, JP Nagar, Bengaluru. As per the said document, the School authorities had collected total amount of Rs.2,88,500/- from Master Vinaya Kumar P. from the year 2006-07 to 2010-11 towards his education from class 6 to 10. During cross-examination of Pw.13, the accused Spl.C.C.No.496/2017 has not disputed oral as well as the documentary evidence produced by the prosecution marked as Ex.P-34 regarding educational expenses of Master Vinay Kumar. Moreover, the accused in his defence evidence also has not whispered regarding this aspect.

27.8. Therefore, in view of the above referred documentary and oral evidence, it is clear that there is no error or irregularity in the method adopted by the IO in considering Rs. 2,88,500/- as the expenses of the accused during the check period. Therefore, the accused during the check period had incurred Rs.8,54,444/- as the expenses towards the education of his son is accepted. Accordingly, Rs.8,54,444/- is considered as the expense of the accused during the check period.

28.1. The IO in the final report under the property code ERC-2 has considered Rs.5,000/- the membership fee deposited by the accused in BBMP Employees Co- Operative Society Ltd. as expense during the check period. According to the evidence of Pw.13 the accused is a member of BBMP Employees Co-operative Society Spl.C.C.No.496/2017 Ltd. and he has secured Ex.P-44 document during investigation.

28.2. However as per Ex.P-44 the statement of accounts produced by the prosecution, there is nil balance in the account of the accused. Even in Ex.P44 the Chief Executive officer has stated that on

26.6.2009 the accused had already withdrawn Rs.5,000/- deposit amount. The said deposit was not available as on 20-12- 2013. In the result the IO has inadvertently considered Rs.5,000/- as the expense of the accused during the check period. Therefore the aforesaid amount of Rs.5,000/- considered as expense under the check period is deserves to be excluded and accordingly excluded under the head of expenses.

29.1. The IO under the property code EG-1 has considered Rs.51,552/- as the expenses incurred by the accused during the check period for purchasing/refilling the LPG cylinders. Pw.13 in his evidence para-41 has deposed regarding this aspect and secured of Ex.P47 document from the concerned Distributor. Ex.P47 contains the details of purchase of LPG Cylinders by the Spl.C.C.No.496/2017 accused. The IO has stated that the accused had been using on an average one LPG Cylinder for every 8 months and hence considered Rs.51,552/- as the expenses incurred to purchase the cylinders during the check period.

29.2. Ex.P-47 document includes the price index from 1.4.1995 to 23.10.2014. During cross-examination of Pw..13, the accused has not disputed Ex.P47 document. In his evidence also Dw.1 has not challenged the aforesaid head of expense considered by the accused. Therefore, Rs.51,552/- as the expenses incurred by the accused to refill LPG cylinders is reasonable and accordingly the said amount is considered as the expense during the check period.

30.1. The IO in the final report under the property code EMIC-1 has considered Rs.1,190/- spent for purchasing the water meter and Rs.21,200/- expense incurred by the accused as pro-rata charges paid to the office of the BWSSB as expense during the check period. Pw.13 in his evidence para-45 has deposed regarding this Spl.C.C.No.496/2017 aspect and also secured Ex.P51 document issued by the Assistant Executive Engineer, BWSSB, Bengaluru.

30.2. During cross-examination of Pw.13, the accused has not disputed the evidence regarding considering it under the head of expense. Moreover, the accused has also not produced any documents in support of his defence regarding this aspect. Therefore, there is no necessity to interfere in the conclusion arrived by the IO in considering Rs. 22,390/- as expenses incurred to purchase water meter and payment of pro-rata water consumption charges. Accordingly the conclusion of the IO regarding the said aspect is accepted.

31. After considering the above referred evidence and defence, this court arrived to the conclusion that the prosecution has proved following are the expenses incurred by the accused during the check period. Prop-

Sl.

erty Particulars of expenditure Value (in Rs.) No.

code

Bore well drilling
expenses for house
No.233, Arakere, Mico

1	EBW1	Layout, Bengaluru, standing in the name of wife of accused Smt.Sudha P.kumar	85,401-00
2	EBW2	Bore well drilling expenses-1 in the land bearing Sy.No.24, 28 and 176 standing in the name of accused situated at Soolekere village, Kasaba Hobly, Turuvekere taluk. Borewell drilling expenses-2 in the land bearing Sy.No.24, 28 and 176 standing in the name of accused situated at Soolekere village, Kasaba Hobly, Turuvekere taluk.	
3	EBW3	Fuel expenses for Vehicle No.KA 51 P-2394 Skoda Fobia Car registered in the name of wife of accused Smt.Sudha P. Maintenance expenses of Vehicle No.KA 51 P-2394 Skoda Fobia Car	2,03,500-00
4	EMF1		
5	EMM1	registered in the name of wife of accused Smt.Sudha P. Other Vehicle insurance incurred for Skoda Fobia Car No.KA 51 P-2394	22,000-00
6	EM01	registered in the name of wife of accused Smt.Sudha P. Fuel and maintenance expenses incurred for Honda Dio Bike No.KA-01 EW 7974 registered in the name of accused LIC Premium paid on Policy No.615693565	86,523-00
7	EMM2	standing in the name of wife of accused Smt.Sudha P.Kumar	15,860-00
8	ELIC1		1,50,000-00

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9	ELIC2	LIC Premium paid on Policy No.515693566 standing in the name of wife of accused Smt.Sudha P.Kumar	1,50,000-00
10	Dom-estic	Expenses incurred by the accused and his family members towards domestic purpose Education expenses incurred towards study of	6,47,470-00
11	EE1	son of accused Vinay Kumar P. Gas consumption charges	8,54,444-00
12	EG1	(Consumer No.628239) Water Meter purchased charge for House No.233, 8th Main Road, 5th Cross,	51,552-00
13	EMIC1	1st Stage, Arakere, Mico Layout, Bengaluru-76. (No.S-200426/S-50)	1,190-00
		21,200-00	
		Total	22,89,140/-
		Admitted Expenditure	16,63,587/-
		Grand total	39,52,727/-

32. The IO in the final report has considered in all 33 items the accused and his wife have received lawful income of Rs. 83,22,752.97 during the check period. The accused has admitted all the heads of income considered by the IO. In addition to the above total income, he has Spl.C.C.No.496/2017 claimed additional source of his income and also relating to his wife acquired during the check period.

33.1. The IO under the property code IS-1 has considered Rs.24,70,232/- the salary drawn by the accused during the check period as his income. In this regard, he has collected Ex.P33, 36, 56, 57, 58 and 66 documents during the investigation. According to the evidence of Pw-13, the accused has drawn net salary of Rs.24,70,232/- during the check period.

33.2. The accused in his defence and Ex.P-38 schedule explanation has contended that he has drawn net salary of Rs. 26,29,613/- for the period 1986 to 2013. In the written argument he contended that his gross salary drawn during the check period is Rs.32,75,153/- and after deductions his net salary is Rs. 31,22,153/-.

33.3. The accused in his defence evidence has produced Ex.D-1 document and examined Dw.3. But Ex.D-1 does not contain any information regarding the net salary drawn by him during the check period. The document contains the details of regularization of his Spl.C.C.No.496/2017 appointment and revised salary/pay scale fixed by the authority.

33.4. The accused during cross-examination of Pw.13 in para-127 has contended that he was working as a temporary employee in BBMP from 1978 till 1994. However the IO has deliberately left the salary drawn during the said period in the final report. But the aforesaid contention is not tenable because there is no scope for Pw-13 to consider the salary drawn by the accused before the commencement of the check period.

33.5. Dw.1 in his evidence para-2 has deposed that during 1.1.1990 to 20.10.2013 he has drawn salary of Rs.32,75,153/- but the IO has wrongly considered only Rs.24,70,232/- as his salary. The accused got examined Dw.3 the Assistant Revenue Officer but he is not the author of Ex.D1 document. Moreover, Ex.D1 document does not contain the details of entire salary drawn by the accused during the check period. During the evidence Dw.1 in para-1 deposed that 1.1.1990 to 20.10.2013 he has drawn salary of Rs.32,75,153/-. But as per the prosecution case the IO has chosen the check period to Spl.C.C.No.496/2017 commence from 21.10.1994. The accused has failed to place any documentary evidence to prove his net salary drawn during the check period is Rs.26,29,613/-. Therefore the prosecution from the documents produced has proved during the check period the accused has drawn Rs.24,70,232/- as his net salary. Hence the contention of the accused in his defence evidence is rejected and Rs. 24,70,232/- is accepted as the lawful income of the accused.

34.1. The IO in the final report has considered Rs.9,13,515/- building rent collected by the wife of the accused Smt.Sudha P. Kumar as lawful income of the accused during the check period. He has secured Ex.P32 document from the department of income tax. Pw.13 in his evidence para-93 has deposed that as per Ex.P-32 from 2007 to 2013 the wife of the accused has declared that she has received income of Rs.3,90,745/- from building rent. However the IO after verification of the Corporation bank savings account statement of Mrs. Sudha P. Kumar, ascertained that she has received Spl.C.C.No.496/2017 Rs.7,13,515/- building rent from the tenants. Hence, he has proceeded to consider Rs.2 lakh as advance amount and rent up to December -2013 Rs.7,13,515/- total amount of Rs.9,13,915/- building rent as the income of the accused during the check period.

34.2. During cross-examination of Pw.13, in para- 141 of his evidence the accused has contended that his wife Smt.Sudha P. Kumar has received rental income of Rs.22 lakhs during the check period. The accused got examined Dw.2, 4 and 5 the alleged tenants and produced Ex.D6 to 8 unregistered rent agreement in support of his defence.

34.3. In the background of above rival contentions now the question to be decided is whether in the absence of declaration of income to the income tax department or failure of the accused to submit APR to the department whether he is entitled to claim the rental income. As per Rule 2 (c) of KCS (Conduct) Rules wife and son of the public servants falls within the definition of members of the family.

Spl.C.C.No.496/2017 34.4. As per Ex.P-32, the document produced by the prosecution Smt.Sudha P. kumar had declared her total rental income for the year 2008-2009, 2009-2010 and 2013-2014 during the check period is only Rs.3,31,834/-. However, Pw.13 has also calculated the amount alleged to have been deposited by the tenants to the bank account of wife of the accused towards rent and proceeded consider Rs.9,13,515/- as the lawful income.

34.5. However Smt. Sudha P. Kumar has not declared Rs. 9,13,515/- as her rental income before the department of income tax or paid income tax. The wife of the accused ought to have declared her income to the income tax department in order enable the accused to claim legitimacy of the said income. The accused in his evidence or during cross-examination of Pw-13 has not forwarded any explanation regarding the failure of his wife to declare her income before the income tax department. The accused has not disputed the correctness of the entries appearing in Ex.P-32 document produced by the prosecution.

Spl.C.C.No.496/2017 34.6. In this connection, it is necessary to refer the decision reported in (2019) 7 SCC 515 in the case of State of Tamilnadu Vs. N. Suresh Rajan, the Hon'ble Supreme Court held that the payment of income tax would not by themselves establish that such income had been from lawful source as contemplated in Explanation to Section 13(1)(e) and independent evidence would be required to account for the same. But in the case the wife of the accused has failed to declare her income to the department of income tax. Therefore the accused for the purpose of this case cannot claim excess rental income in the absence of declaration before the income tax department and without payment of income tax.

34.7. In the case on hand from the facts and circumstances, there is sufficient evidence to show that the wife of the accused is the owner of the building and she had let out the premises in favour of the tenants. The accused has also not submitted his APR to the department declaring the rental income received by his wife during the check period. Therefore, the approach of the IO in considering Rs.9,13,515/- as rental income of Spl.C.C.No.496/2017 the wife of the accused is apparently incorrect. Therefore in this proceeding the accused is only entitled to claim Rs.3,31,834/- as the income received from building rent. In the result Rs.3,31,834/- amount declared before the department of income tax is considered as the rental income of wife of the accused during the check period.

35.1. The IO under the property code IA-1 to 3 has considered Rs.20,400/-, Rs.11,339/- and Rs.5,033/- as the income from agriculture and horticulture received by the accused from the lands situated at Sulekere village, Turuvekere Taluk. In support of the aforesaid income, Pw.13 has secured Ex.P-9 report of the Assistant Agricultural Director, Turuvekere dtd.20.1.2015. The prosecution has also examined Pw.7 Mr. D.Hanumathahrayappa, author of Ex.P-9 report. In his evidence Pw-7 deposed that he has assessed the agricultural income of the accused from 1984-85 to 2005- 2007 from the property comprised in Sy.no.24 of Sulekere village.

Spl.C.C.No.496/2017 35.2. In support of the aforesaid head of income, the prosecution has produced Ex.P-9 report. As per Ex.P- 37 RTC relating to property comprised in Sy. No. 24 of Soolekere village measuring 1.26 acres is jointly appearing in the name of the accused and his

brother Mr. R Muralidhar. The accused has not declared his income from other sources including agriculture in Ex.P-33 income tax returns. He has not filed APR declaring his agricultural income received during the check period.

35.3. As per Ex.P-37, the property comprised in Sy. No. 28 and Sy.No.24/1 of Soolekere village are appearing in the name of father of the accused Mr. Cheluvaraju. As per the copy of the mutation order in MR H18/2012-13, father of the accused appears to have alienated the property measuring 1.00 acres in Sy. No. 24/2 in favour of Smt. Kempamma as per registered sale deed 14-12-2012. Accordingly mutation was entered in her name and remaining extent of 1.26 acres in Sy. No. 24/1 is jointly appearing in the name of the accused and his brother Muralidhar. The mutation order in MR 33/200-01 shows Spl.C.C.No.496/2017 that the accused and his brother Muralidhar entered into an unregistered partition deed dated 10-8-1995.

35.4. The IO under the property code IH-1, IH-2 and IH-3 has considered Rs.54,492/-, Rs.18,137 and Rs.44,707/- as the income received by the accused from horticulture from the agricultural lands situated at Sulekere village, Turuvekere taluk. Pw.13 has collected Ex.P-10 report from Pw.8 the Assistant Director of Horticulture, Turuvekere. As per Ex.P-10 report property measuring 1.26 acres comprised in Sy.No.24 is appearing in the name of the accused. Similarly Sy. No. 28 and 176 are appearing in the name of father of the accused Mr. Chaluvaraju.

35.5. As already observed the accused has not declared receipt of income from the agriculture and horticulture in the returns submitted to the department of income tax marked as per Ex.P33. The father of the accused owns agricultural land is proved from the documentary and oral evidence placed on record.

35.6. After considering the properties in Sy.No. 28, 24/1, 176 are appearing in the name of father of the Spl.C.C.No.496/2017 accused and there was a partition in the family is prima- facie made out from the copy of the mutation order the accused is not entitled to claim agricultural income as lawful income. Hence Pw13 considering the accused has received lawful income from agriculture and horticulture towards his share in the family property under the property code IA No.1 to 3 Rs. 20,400/-, Rs. 11,339/-, Rs. 5033/- and IH NO.1 to 3 Rs. 54,492/- 18,137/-, 44,707 are apparently false and erroneous. Therefore the accused is not entitled to claim any income under the property code IA-1 to 3 and IH -1 to 3. Accordingly the income considered by the IO under these heads are excluded.

36. The IO under the property code IIP-1 and IIP-2 has considered Rs.1,69,046/- and Rs.1,69,535/- as the income received by the accused by surrendering the two unit linked insurance policy. In this connection, he has collected Ex.P-65 document during investigation. As per the contents of the said document, under IIP-1 the wife of the accused had received Rs.1,69,046/- but the Spl.C.C.No.496/2017 accused has received Rs.1,67,535/-. It appears due to typographical error the IO has considered under IIP-2 Rs.1,69,535/- instead of Rs.1,67,535/-. Therefore, the income received by surrendering the policy under IIP-1 is accepted and under IIP-2 the amount is rectified as Rs.1,67,535/-.

37.1. The IO under the property code ISA-1 and 2 has considered Rs.6,30,000/- each as the income received by the wife of the accused from the sale of two site property comprised No.4 and 5A situated at Arakere village, Bengaluru South Taluk. As per the documentary evidence collected during the investigation Mrs. Smt.Sudha P. kumar has executed the registered sale deed dated 20.4.2006 in favour of Mr.Thafzal Ahmed and another. The IO has collected and relied upon Ex.P41 copy of the sale deed in order to arrive at the aforesaid conclusion.

37.2. As per the recitals of Ex.P-41 sale deed dtd.20.12.2003 Mr. B.M. Indudar and Smt.Anitha Indudar have executed the sale deed in favour of Smt.Sudha P Spl.C.C.No.496/2017 Kumar for a consideration of Rs.3 lakhs in respect of site No.4 and 5A (old S.No.85/3) measuring 45 x 40 feet. Thereafter, on 20.4.2006 Smt.Sudha P. kumar has executed the sale deed in favour of Mr. Thafazul Ahmed for Rs.6,30,000/- in respect of site No.4 and 5A measuring east west 22.5 and north-south 40 feet. Similarly on 20.4.2006 Smt.Sudha P.kumar has executed another sale deed in favour of Mr. Khalid Pasha Shariff for a consideration of Rs.6,30,000/- in respect of site property measuring east-west 22.5 feet and north south 40 feet.

37.3. While considering the head of assets under the property code AI-3, the accused has admitted the sale transaction and the purchase of the aforesaid property by his wife is already considered as the asset of the accused. As per Rule 23 of KCS (Conduct) Rules, 1966 the accused is having an obligation to submit the assets and liabilities to the department including the assets acquired by any member of his family. The accused has not intimated to the office regarding acquisition of the property by his wife as per sale deed Spl.C.C.No.496/2017 dtd.20.12.2003 and income received from the alienation as per two sale deeds dated 20-04-2006.

37.4. In order to prove that Smt. Sudha P. Kumar had independent source of income of Rs.3 lakhs as on 20.12.2003 the date of purchase of the aforesaid property, the accused has failed to lead any evidence. Moreover, he has not chosen to examine his wife Smt. Sudha P. Kumar to prove that the property was purchased by her own income. It is true under Rule 23 the accused is exempted from reporting acquisition of the property to his department if the transactions entered into by the member of the family of the government servant out of his or her own funds. However in the case on hand, it is the burden of the accused to prove as on 20.12.2003 his wife out of her individual income of Rs.3 lakhs had purchased the property from her vendors Mr. B.M.Indudar and another. It is necessary to make note of distinction under Rule 23(1)(a) that the accused is not exempted from submitting his annual property statement including the details of the property acquired by any of his family members. In the event the accused had Spl.C.C.No.496/2017 submitted his APR disclosing the property transactions of his wife, he could have sought an opportunity to prove the source of income.

37.5. As per Ex.P62, in the year 2003 the wife of the accused Smt.Sudha P Kumar had received income by way of commission from LIC of India is only Rs.18,460/-. Hence from the evidence on record, Smt. Sudha P. Kumar was also not having sufficient income to purchase the property is made out. Therefore, the possibility of the accused has made payment of his money and purchased the property in the name of his wife cannot be totally ruled out. In this regard, the accused has failed to place sufficient evidence regarding source of income of his wife to purchase the property in

discharge of his burden of proof.

37.6. For the aforesaid reasons, the conclusion arrived by the IO under the property code ISA-1 and ISA-2 by considering the sale consideration of Rs.6,30,000/- each as the lawful income of the wife of the accused is not correct and it requires interference by this court. In the result, under the property code ISA-1 and ISA-2 Rs.

Spl.C.C.No.496/2017 6,30,000/- each sale consideration amounts are excluded as the lawful income of the accused acquired during the check period.

38. For the aforesaid reasons the prosecution has proved following are the heads of lawful income of the accused and his wife acquired during the check period.

Table III Sl. prope rty Particulars of income (in Rs.) No code Net salary income of the 1 IS-1 accused for the check 24,70,232-00 period Rent received from the house situated at No.233, 8th Main Road, 5th Cross, 1st Stage, Arakere, Mico Layout, 2 IR-1 Bengaluru standing in the 3,31,834.00 name of wife of accused Smt.Sudha P.Kumar for the period 2008-09, 2009-10 and 2013-14 Agricultural income received from the landed property measuring 1 acre 26 guntas comprised in Sy.No.24, 3 IA-1 Sulekere village, Kasaba Hobly, Turuvekere Taluk, Tumkur Dist.

4 IA-2 Agricultural income from the landed property measuring 2 acre 23 guntas comprised Spl.C.C.No.496/2017 in Sy.No.28, Sulekere village, Kasaba Hobly, Turuvekere Taluk, Tumkur Dist. Standing in the name of father of accused Sri Chaluvvaraju Agricultural income from the landed property comprised in Sy.No.24/1, Sulekere village, Kasaba Hobly, 5 IA-3 Turuvekere Taluk, Tumkur Dist. Standing in the name of father of accused Sri Chaluvvaraju and his brother Muralidhar Agricultural income ie. from coconut trees received comprised in Sy.No.24, 6 IH-1 Sulekere village, Kasaba Hobly, Turuvekere Taluk, Tumkur Dist. Standing in the name of accused Horticulture income of the landed property measuring 2 acre 23 guntas comprised 7 IH-2 in Sy.No.28, Sulekere village, Kasaba Hobly, Turuvekere Taluk, Tumkur Dist.

Horticulture income of the landed property comprised in Sy.No.176, Sulekere 8 IH-3 village, Kasaba Hobly, Turuvekere Taluk, Tumkur Dist.

Sale deed proceeds of Site measuring 45 x 40' Old No.85/3, Site No.4 & 5A ,House List Khata No.665/3 9 ISA-1 and 544/2 of Arakere village, Beguru hobly, Bengaluru, standing in the name of wife of accused Smt.Sudha.

Spl.C.C.No.496/2017 Sale deed proceeds of Site measuring 45 x 40' Old No.85/3, Site No.4 & 5A ,House List Khata No.665/3 10 ISA-2 and 544/2 of Arakere village, Beguru hobly, Bengaluru, standing in the name of wife of accused Smt.Sudha.

Total 28,02,066.00

39. The accused during the trial and in his defence has not disputed the following heads of income considered by the IO in Ex.P69 final report. Moreover the prosecution has proved the heads of income by producing necessary documentary evidence.

Sl.No.	Property code	Source of income	Docu-ment	Amount (in Rs.)
1	IS-2	Commission amount received by the wife of the accused during 2003-2013 from LIC of India	Ex.P62	14,22,937.00
2	IBL-1	Loan borrowed by the accused from the Bharathi Credit co-operative Society Ltd., Bengaluru	Ex.P27	15,000.00
3	IBL-2	Loan borrowed by the accused from the	Ex.P27	25,000.00

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		Bharathi Credit co-operative Society Ltd., Bengaluru		
4	IBL-3	Home loan borrowed by the wife of the accused from Corporation Bank, JC Road branch, Bengaluru	Ex.P43	6,00,000.00
5	IBL-4	Loan borrowed by the wife of the accused from HDFC Bank, Sahakara Nagara branch, Bengaluru	Ex.P63	4,09,143.00
6	IOL-1	Loan borrowed by the accused from the BBMP, Employees Credit co-operative Society Ltd.,	Ex.P44	60,000.00

		Bengaluru		
7	IIBL-1	Interest amount Ex.P25 deposited to the savings account of the accused in Indian Bank, Jayanagar branch	3,435.00	
8	IIBL-2	Interest amount Ex.P26 deposited to the savings account of the accused in Canara Bank, JC Road branch	16,297.00	
9	IIBL-3	Interest Ex.P42 deposited to the	3,561.00	
				Spl.C.C.No.496/2017
		joint account in the name of the accused and his wife in The Comptrollers office Co- operative Bank Ltd., Bengaluru		
10	IIBL-4	Interest Ex.P53 deposited to the account in the name of the accused in HDFC Bank, V.V.Puram, Bengaluru	1,843.00	
11	IIBL-5	Interest Ex.P68 deposited to the account in the name of the wife of the accused in Corporation Bank, JC Road, Bengaluru	24,803.00	
12	ILICI-1	Loan borrowed Ex.P29 by the accused from LIC of India,	2,34,500.00	
13	ILICI-2	Loan borrowed Ex.P29 by the accused from LIC of India,	72,750.00	

14	ILICI-3	Loan borrowed by the accused from LIC of India,	Ex.P29	67,500.00
15	ILICI-4	Loan borrowed by the accused from LIC of India,	Ex.P29	73,000.00
16	ID-1	Fixed deposit	Ex.P42	50,125.00

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		with interest matured during the check period jointly in the name of the accused and his wife in The Comptrollers office Co-operative Society ltd, Bengaluru		
17	IIP-1	Amount received by surrender of insurance policy in the name of Sudha P Kumar	Ex.P65	1,69,046.00
18	IIP-2	Amount received by surrender of insurance policy in the name of the accused	Ex.P65	1,67,535.00
19	IO-1	Amount received from BBMP Employees credit co-operative Society Ltd., Bengaluru	Ex.P44	15,000.00
20	IO-2	Amount received by wife and 14 of the accused Sudha P Kumar by sale of gold ornaments in M/s Lakshmi Jewelers, Bengaluru	Ex.P13	21,600.00

21 IO-3 Amount Ex.P30 60,000.00
received by the

Spl.C.C.No.496/2017

accused from
Karnataka
Housing board,
Bengaluru

Total amount	35,13,075/- +
	28,02,066/-
Grand total	63,15,141.00

40.1. The accused in his evidence para-17 has deposed that his wife has borrowed loan of Rs.5,20,000/- from Mr. Srikanta through cheque and repaid Rs.10 lakhs loan amount with interest in the year 2018 after the check period. The grievance of the accused is that the IO has not considered the said amount received during the check period as his lawful income. Therefore, he has prayed for considering the said amount as his income during the check period.

40.2. The IO in the final report under the head of income IPL-1 has not considered the said amount as the income of the accused. Pw.13 in his evidence para-115 has stated that during investigation it is revealed in order to purchase the site property Mr. Srikanta had deposited Rs.5,20,000/- to the bank account of Smt. Spl.C.C.No.496/2017 Sudha P Kumar. He had intended to purchase the site to be allotted in favour of the accused from SLN Developers. The accused had assured to sell the said site in his favour. But the site was not allotted to the accused and hence the said transaction failed. Therefore, it is the evidence of Pw.13 that during the check period the accused has made repayment of said amount of Rs.5,20,000/- in favour of Srikanta in installments.

40.3. In order to prove the aforesaid loan transaction, the accused has not examined his wife Smt.Sudha P. kumar or above referred Mr. Srikanta. In the absence mere production of the bank account statement marked as per Ex.P-43 is not sufficient to prove the loan transaction. It is true in the transaction dtd.6.7.2006 through cheque No.0180127 a sum of Rs.5,20,000/- came to be credited to the bank account of Smt. Sudha P.Kumar. The aforesaid Srikanta was having financial capacity to make the payment has also to be proved. The possibility of the accused depositing the amount through Srikanta in order to claim lawful source of income cannot be totally ruled out. The burden of Spl.C.C.No.496/2017 proving acquisition of the lawful income by hand loan is on the accused.

40.4. In order to prove the repayment of the loan in favour of Srikanta, the accused has produced Ex.D-10 document. However no importance can be attached to the said document and execution of the document is not proved. Hence the accused has failed to prove the alleged loan transaction.

41.1. The accused in his defence evidence para-16 has deposed that his relative by name Mr. Srinath has paid Rs.5 lakhs in the year 2006 as gift in favour of Smt. Sudha P Kumar. It is submitted that the aforesaid transaction dtd.27.11.2006 finds place in Ex.D-2 pass book. In order to prove the aforesaid gift also the accused has not examined Mr.Srinath or his mother Sumithramma.

41.2. It is the further contention of the accused that his wife had declared receipt of gift of Rs.5 lakhs in her income tax returns submitted for the year 2006-07. In support of the aforesaid contention the accused has Spl.C.C.No.496/2017 relied upon the schedule explanation and statement of account. As per Ex.P-32 for the year 2006-07 the declared income of wife of the accused Mrs. Sudha P. Kumar is only Rs.1,26,036/-. Therefore the accused has also failed to prove the alleged gift.

42.1 In the judgment relied by the accused refereed supra in Suryasankaram Kari case the Hon'ble Supreme Court considering the facts of the said case observed that there was unfair and illegal investigation, non-consideration of relevant documentary evidence to ascertain the correctness of status of the accused and his wife before income tax department. However, in the case on hand, the IO has considered payment of the income tax by the accused and his wife and the accused has failed to make out any part of investigation is unfair against him. Hence, the ratio laid down in the said judgment is not applicable to the case on hand.

42.2. In the unreported judgment of the Hon'ble High Court of Karnataka dtd.21.3.2017 relied by the accused in Crl.Appeal No.388/2011 in Siddappa Poojari Spl.C.C.No.496/2017 case as per the facts benami transaction was alleged and the prosecution has filed to prove the charge beyond reasonable doubt and hence the Hon'ble court observed without the prosecution establishing its contention the burden cannot be shifted to the accused. In the case on hand, from the documentary and oral evidence the prosecution has proved the charge beyond reasonable doubt and secondly, there is no benami transaction alleged against the accused. Hence, ratio of the said decision is not applicable to the facts of the case.

42.3. In the judgment reported in (1977) 1 SCC 816 in the case of Krishnananda Agnihotry vs. The State, the Hon'ble Supreme Court held that if the excess surplus assets of the accused is less than 10% and if it is comparatively small do not justify the prosecution. In the case on hand from the proved facts the disproportionate income of the accused is exceeding 10%.

42.4. In the judgment reported in (2017) 14 SCC 442 in Vasantharao Guhe vs. State of Madhya Pradesh relied by the accused the Hon'ble Court held that the charge of criminal misconduct, possession of assets Spl.C.C.No.496/2017 disproportionate to the known sources of income has to be proved by the prosecution and after such discharge if the accused cannot satisfactorily account disproportionate pecuniary resources or property from lawful source of income, he would be held guilty. The prosecution has to prove foundational facts and thereafter, the burden shifts to the accused and he has to prove he is not guilty of the offence. In the case on hand the prosecution has proved foundational facts in respect of charge against the accused.

42.5. In the judgment reported in (2016) 4 KCCR 3453 in the case of State Vs. Gurumallappa the Hon'ble High Court of Karnataka on the facts of the said case arrived to the conclusion that the

excess value of the assets possessed by the accused comparatively small and less than 10% of the total income proceeded to record the judgment of acquittal.

43.1. After considering the evidence let in by the prosecution from the analytical reading of Section 13(1)

(e) of the PC Act transpires that mere acquisition of property does not constitute an offence but the failure Spl.C.C.No.496/2017 of the accused to satisfactorily account for such possession, makes the possession objectionable and amounts an offence punishable under the law. For the purpose of the charge against the accused the known sources of income means income must be received from lawful source and the receipt of such income must have been intimated in accordance with the provisions of law, rules or orders applicable to the public servant. In the case on hand, the accused has not declared his agricultural income to the Income Tax Department. He has failed to submit his APR to the department from the date of his appointment and also to declare the acquisition of immovable property by his family members. The wife of the accused Smt. Sudha P. Kumar has not reported the acquisition of entire rental income appears to have been received by her to the department of Income Tax.

43.2. In view of the above facts while considering the commission of an offence under section 13(1)(e) of the PC Act, it is relevant to note that the initial burden to prove that either the accused or any member of his Spl.C.C.No.496/2017 family during the check period has been in possession of the property disproportionate to his known source of income, lies on the prosecution. If the initial burden is not discharged by the prosecution, the onus does not shift to the accused to offer his explanation as to how he could acquire either directly or through some other members of his family possession of the property disproportionate to the known source of income. In the case on hand, the prosecution has discharged its initial burden of proof by foundational facts and proved that the accused has acquired property in his name and in the name of his wife.

43.3. From the above facts, reasons, and on proper appreciation of the evidence this Court arrived to the conclusion that the assets, expenditure, income and the disproportionate assets of the accused is calculated as under :

Sl.

No.	Heads	Amount (in Rs.)
1.	Assets acquired during the check period	62,58,724.00
2.	Expenses incurred during check period	39,52,727.00
3.	Total assets and expenditure	1,02,11,451.00
		Spl.C.C.No.496/2017
	Income earned during the	

4.	63,15,141.00
check period	
5. Assets disproportionate	38,96,310.00

Disproportionate assets in percentage $38,96,310 \times 100 = 61.69 \%$

63,15,141 Therefore, point No.2 is answered in affirmative.

44. Point No 3: In view of the findings on point No.2 the accused is liable to be convicted for the charges framed against him. In the result, this Court proceeds to pass the following:

ORDER Acting under section 248(2) of the Cr.P.C, the accused is convicted for the offence defined under Section 13(1)(e) punishable under section 13(2) of the Prevention of Corruption Act, 1988.

The bail bond and surety bond of the accused and his surety are stands discharged.

(Dictated to the Judgment Writer directly on computer, printout taken, corrected, signed and then pronounced by me in open Court on this the 29th day of October, 2022) sd/-

[LAKSHMINARAYAN BHAT K.] XXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE SPECIAL JUDGE, BENGALURU URBAN DISTRICT, BENGALURU Spl.C.C.No.496/2017 The judgment is pronounced by finding the offender is guilty of the offence punishable under Section 13(1)(e) read with Section 13(2) of The Prevention of Corruption Act, 1988.

2. Heard the learned Sri. VS advocate for the defence on the point of quantum of sentence proposed to be passed against the offender. He submits that the offender is the bread earning member of the family and he is having only son. As per the judgment even though the wife of the offender had received the rental income is proved from the documents, on account of her failure to pay the income tax, it was not considered as lawful income. Therefore the learned counsel has submitted that the Court may be pleased to take lenient view and to pass minimum sentence of imprisonment and thereby enable the accused to prefer an appeal by challenging the judgment.

3. As per the judgment of the Hon'ble Supreme Court reported in AIR 2004 SC 2317 in N Bhargavan Spl.C.C.No.496/2017 Pillai vs State of Kerala and in 2006 AIR SCW 5267 The State V/s A Parthiban the provisions of The Probation of Offenders Act to the cases covered under the PC Act is not applicable.

4. The offender at the time of filing of the charge sheet was working as the Assessor in BBMP and he was appointed as permanent employee on 21-10-1994. In the light of the facts and circumstances of

the case, with particular reference to the nature and conduct of the offender in committing the offence, the quantum of sentence to be imposed has to be determined. By acquiring the disproportionate assets the offender has invited the risk and now he cannot plead for leniency in the sentence to be imposed against him. The facts and circumstances of the case, the conduct of the offender in accumulating the disproportionate assets do demand appropriate sentence of imprisonment.

5. In the judgment reported in (2006)8 SCC 693 State of M.P. Vs. Shambhu Dayal Nagar the Hon'ble Supreme court while responding to the plea for a lenient Spl.C.C.No.496/2017 view for a charge of corruption expressed its concern against rampant venality by public servant and observed that the public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post.

6. In the case on hand, the offence was committed during the check period from 21-10-1994 to 20-12-2013. Thus, the offence under Section 13(1)(e) of the PC Act as on the date of offence was punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and fine. Therefore the minimum punishment prescribed is imprisonment for one year and fine. As per section 16 of the P.C. Act where a sentence of fine is to be imposed under subsection (2) of Section 13, the court shall take into consideration the pecuniary resources or property for which the offender is unable to account satisfactorily.

Spl.C.C.No.496/2017

7. After considering the facts and circumstances of the case and for the reasons stated herein above, it is necessary to strike the balance between the maximum and minimum sentence prescribed under the above referred provision of law. Therefore this court is the firm opinion that it is not a fit case to pass a flee bite sentence and moreover the offender has not made out any exceptional circumstances to pass the minimum sentence provided under the law. After considering the age of the offender, nature of the offence, this court finds it proper to sentence the offender to undergo rigorous imprisonment for four years and to pay fine of Rs.40 lakhs. Accordingly this Court proceeds to pass the following:

ORDER The offender Mr. Prasanna Kumar R is sentenced to undergo rigorous imprisonment for a period of four years and also to pay fine of Rs.40,00,000/- (forty lakhs only) for the offence defined under Section 13(1)(e) punishable under Section 13(2) of The Prevention of Corruption Act 1988. In default of payment fine, he shall undergo simple Spl.C.C.No.496/2017 imprisonment for further period of four months.

Office is directed that the free copy of the judgment be furnished to the offender forthwith.

(Dictated to the judgment writer directly on computer, typed by him, corrected, signed and pronounced by me in the open Court on this the 29th day of October 2022.) sd/-

[LAKSHMINARAYAN BHAT K.] XXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE SPECIAL JUDGE, BENGALURU URBAN DISTRICT, BENGALURU ANNEXURE List of witnesses examined on behalf of the prosecution:

PW 1 : N.Manjunatha Prasad PW 2 : K.R.Sanjeev Murthy PW 3 : Mohammad Mukharam PW 4 : K.N.Kantharaju PW 5 : Aswatha Narayanappa PW 6 : Dr.Mallikarjuna Babu PW 7 : D.Hanumantharayappa Spl.C.C.No.496/2017 PW 8 : Gangadharan PW 9 : V.P.M. Swamy PW 10: Vallish N.Heruru PW 11: Rajesh PW 12: Dr.Anil Kumar P.G.

PW 13: Chandrappa Barki PW 14: M.N.Ravishankar PW 15: S.N.Nagaraja Reddy PW 16: Malagachari S.B.

PW 17: N.H.Anjanappa PW 18: Venkatesh Murthy PW 19: Smt.Sayira Naseem PW 20: N. Balakrishna PW 21: Murthy PW 22: Dhananjaya C.

PW 23: Pradeep B.K.

List of documents marked on behalf of prosecution:

Ex P1 : Sanction order Ex P1(a): Signature of PW 1 Ex P2 : Search warrant Ex P2(a): Signature of PW 2 Spl.C.C.No.496/2017 Ex P3 : House search mahazar 20.12.2013 Ex P3(a): Signature of PW 2 Ex P3(b): Signature of PW 12 Ex P4 : Source report Ex P4(a): Signature of PW 8 Ex P5 : Food expenditure report Ex P5(a): Signature of PW 4 Ex P6 : Letter of National Pre-university college Ex P6(a): Signature of PW 5 Ex P7 : Xerox copy of fee receipts (two) Ex P8 : Letter of BMS College of Engineering/ Education expenses Ex P8(a): Signature of PW 6 Ex P9 : Asst. Director of Agriculture Report and enclosure Ex P9(a): Signature of PW 7 Ex P10 : Asst. Director of Horticulture Report and enclosures Ex P10(a): Signature of PW 8 Ex P11 : Proceedings u/Sec.165 of Cr.P.C. dtd.13.3.2015 Ex P11(a): Signature of PW 9 Ex P12 : BASE Educational Services P.Ltd.with documents Ex P12(a): Signature of PW 10 Ex P13 : Xerox copy of Laxmi Jewellers Report dt.13.11.13 Ex P14 : Letter head of Lakshmi Jewellers Ex P15 : Proceedings under Section 165 of Cr.P.C.

of S.P., KLA.

Ex P16 : FIR in Crime No.70/2013 Ex P16(a): Signature of PW 2 Spl.C.C.No.496/2017 Ex P17 : Requisition of search warrant Ex P18 : Witness securing letter of I/O. Ex P19 : Entire file of Vol.No.8 Ex P19(a): LIC Inland letter P.119 of Vol.8 Ex P19(b): LIC Inland letter P.116 of Vol.8 Ex P20 : Entire file of Vol.No.9 Ex P21 : P.F.No.133/2013 dt.20.12.2013 Ex P22 : Letter of Sub-Registrar & certified copy of Sale deed of Khata No.332/6/1B Ex P23 : Building Valuation Report dt.17.1.2015 Ex P24 : Vyshnavi Souharda Credit Co-operative Membership account details Ex P25 : Indian Bank A/c.7483/24 A/c.details Ex P26 : Canara Bank AGO SB A/c....29140 details Ex P27 : The Bharathi Credit Co-op. Society AGO and family members details Ex P28 : KA 51 P-2394 Skoda Car documents

RTO Ex P29 : LIC of India policy details of AGO Ex P30 : KHB Surety deposit details Ex P31 : SKODA car Insurance details Ex P32 : Income Tax details of AGO's wife Ex P33 : Income Tax details of AGO Ex P34 : Innisfree House school education details Ex P35 : National Education Society Ltd. 17.12.2014 Spl.C.C.No.496/2017 Ex P36 : Salary details of AGO (HSR Range) Ex P37 : Letter of Tahsildar, Turuvekere 26.12.2014 Ex P38 : Schedules filed by AGO - Vol-7 Ex P39 : Proceedings of KLA, Bengaluru dtd.5.8.2016 Ex P40 : Service particulars of accused Ex P41 : Letter with property documents of SRO, Bommanahally.

Ex P42 : Comptrollers office Co-op.Bank SB A/c. details Ex P43 : Corporation Bank JC Road Branch A/c. details Ex P44 : BBMP Co-operative Society Membership details Ex P45 : RTO (Central) B'lore KA 01 EN 797 vehicle details Ex P46 : SBM Turuvekere Branch Gold loan details Ex P47 : Gas consumption details of Manjunatha Enterprises, Bengaluru.

Ex P48 : BESCO letter dtd.23.11.2015 deposit details Ex P49 : Akash Cable connection details Ex P50 : BSNL connection details Ex P51 : BWSSB water connection details Ex P52 : Proceedings of KLA dtd.10.4.2015 Ex P53 : HDFC Bank account details Ex P54 : Letter and Arakere Mico Layout Residence Association membership details Spl.C.C.No.496/2017 Ex P55 : Letter of ARO, Arakere dtd.25.11.2015 Ex P56 : Salary details of accused / BBMP Ex P57 : AEE, HSR Layout office salary details of accused Ex P58 : Salary details of accused / BBMP, Gandhinagara, Bengaluru.

Ex P59 : BSNL connection details of AGO Ex P60 : Letter of AEO, Rural Drinking Water Supply and Sanitation Department details Ex P61 : AEE, Rural Drinking Water Supply and Sanitation Department, Turuvekere borewell details Ex P62 : Wife of the AGO's LIC Payments Ex P63 : HDFC Bank A/c.No.20306094 details Ex P64 : Arakere Mico Layout Residence Association monthly script details.

Ex P65 : LIC Policy surrender details dtd.22.12.2015 Ex P66 : BBMP - AGO's salary details 2002 to 2007 Ex P67 : HDFC Bank account details Ex P68 : Corporation Bank account details Ex P69 : Final report of I/O.

Ex P70 : Documents regarding payment of school fees List of material objects marked on behalf of the prosecution:

- NIL -

Spl.C.C.No.496/2017 List of witnesses examined on behalf of accused:

D.w.1 - R.Prasanna Kumar D.w.2 - Suresh Babu D.w.3 - Purushothama B.

D.w.4 - N.M.Sonne Gowda D.w.5 - Mangesh Khagale List of documents marked on behalf of accused: Ex D1 : Documents relating to salary of Dw.1 Ex D2 : 04 pass books in the name of Sudha P.Kumar to Ex.D5 Ex D6 : Original lease agreement dt.10.4.2007 Ex D7 : Rental agreement dt.1.4.2008 Ex D8 : Rental agreement dt.4.5.2011 Ex D9 : Sanctioned plan issued by CMC, Bommanahally Ex D10 : Loan document for Rs.5,20,000/-

XXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE SPECIAL JUDGE,
PREVENTION OF CORRUPTION ACT, BANGALORE URBAN DISTRICT,
BANGALORE CITY.

Spl.C.C.No.496/2017 Judgment pronounced in the open Court vide separate Judgment. The final order portion reads as under:

ORDER Acting under section 248(2) of the Cr.P.C, the accused is convicted for the offence defined under Section 13(1)(e) punishable under section 13(2) of the Prevention of Corruption Act, 1988.

The bail bond and surety bond of the accused and his surety are stands discharged.

(LAKSHMINARAYANA BHAT K.), XXIII Addl.City Civil & Sessions Judge & Special Judge (PCA), Bengaluru.

Heard Sri VS Advocate, appearing for offender on quantum of sentence.

For orders on sentence by 2.45 p.m.

XXIII Addl.City Civil & Sessions Judge & Special Judge (PCA), Bengaluru.

Spl.C.C.No.496/2017 ORDER The offender Mr. Prasanna Kumar R is sentenced to undergo rigorous imprisonment for a period of four years and also to pay fine of Rs.40,00,000/- (forty lakhs only) for the offence defined under Section 13(1)(e) punishable under Section 13(2) of The Prevention of Corruption Act 1988. In default of payment fine, he shall undergo simple imprisonment for further period of four months.

Office is directed that the free copy of the judgment be furnished to the offender forthwith.

XXIII Addl.City Civil & Sessions Judge & Special Judge (PCA), Bengaluru.