

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL APPEAL Nos.223, 429, 592, 593, 597,
621, 622, 623, 624, 625 and 626 of 2002

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DATED:30.08.2011

BETWEEN :

B.Shanker Rao & others

.. Appellants

and

The State of A.P. & others

..Respondents

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL APPEAL Nos.223, 429, 592, 593, 597,
621, 622, 623, 624, 625 and 626 of 2002

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COMMON JUDGMENT :

Since the judgment under challenge in all these appeals is one and same, they are being disposed of by this common judgment.

All these appeals are filed being aggrieved by the common judgment dated 28.02.2002 rendered in Calendar Case No.15 of 1996 and Crl.M.P.Nos.49 of 1994 to 58 of 1994 by the learned Principal Special Judge for SPE & ACB Cases at Hyderabad.

Brief facts of the Prosecution case are that:

The accused officer (for short 'AO'), who is the appellant in Crl.A.No.223 of 2002, joined in Government service as Sub-Inspector of Excise on 01.06.1966 and was promoted as Inspector on 31.07.1976, as Assistant Excise Superintendent on 24.07.1983 and as Excise Superintendent on 20.04.1987. He worked s Excise Superintendent, Medak District, till 28.12.1993.

On credible information that while discharging his duties as a public servant, AO acquired assets disproportionate to his known sources of income in the form of movable and immovable properties, a

case in crime No.16/ACB/Nizamabad/93 was registered against him on 14.12.1993 and simultaneously searches were conducted in his house at Hyderabad and Medak. The searches revealed that the AO was in possession of the following assets worth of Rs.29,67,851-72 ps. as on 14.12.1993:

ANNEXURE – I

Abstract of Assets :

1)	Net cash found in H.No.4-1-677, Jambagh, 00 Hyderabadon 14.12.1993	Rs. 21,77,296-
2)	Net cash found in Govt. cash chest in the 00 O/o.The Excise Supdt.Medak at Sangareddy un-accounted for on 14.12.93	Rs. 79,110-
3)	Net cash found on person of AO	Rs. 2,490-00
4)	Bank balances	Rs. 1,61,738-97
5)	Reinvestment Plan Deposit receipts of Indian Bank, Putlibowli Br. held in the name of AO & his family members	Rs. 79,000-00
6)	Post office savings A/c.No.225757 in 571-75 Begum Bazar held in the name of AO	Rs.
7)	National Savings Certificates in f/o AO	Rs. 25,000-00
8)	Contributions to LIC policies in f/o AO	Rs. 35,024-00
9)	Block 31 Flat 4 MIGH Baghlingampalli, Hyderabad	Rs. 75,000-00
10)	Purchase of H.No.12-1-5, Sitarambagh, Hyderabad	Rs. 20,012-00
11)	Purchase of H.No.14-2-34, Goshamahahal, 00 Hyderabad in the name of B.V.Raj S/o.A.O.	Rs. 58,541-
12)	Purchase of Hut No.11-60, Gaddiannaram, 00 Hyd. in the name of mother of AO	Rs. 1,115-
13)	Purchase of plot No.303, Vinayak nagar, 00 R.R. District in the name of AO's wife	Rs. 913-
14)	Purchase of gold jewellery	Rs. 1,12,320-
15)	Purchase of Fiat car No.ADR 612 in f/o. AO's wife	Rs. 28,000-00
16)	Purchase of Scooter No.ADR 5001 in the name of AO's brother	Rs. 5,000-00
17)	Earnest money deposit in Housing Board	Rs. 1,000-
18)	Household articles found at the house of AO at Hyderabad	Rs. 85,470-00
19)	Household articles found at AO's quarter 00	Rs. 18,710-

20)	at Sangareddy Deposit made for Telephone No.43179 by AO	Rs.	1,000-00
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Total :	Rs.	29,67,851-72
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The income of the AO from known sources was assessed at Rs.7,30,470-35 ps. the details of which are as follows:

ANNEXURE-II

Abstract of Income :

1)	Net salary income	Rs.	
5,27,794-00			
2)	Bank interests accrued:		
	a) S.B. A/c.No.3883 of Indian Bank	Rs.	5,203-37
	b) S.B. A/c.No.5890 of Indian Bank	Rs.	3,883-25
	c) S.B. A/c.No.6702 of Canara Bank	Rs.	6,752-92
	d) S.B. A/c.No.6763 of Indian Bank	Rs.	2-00
	e) S.B. A/c.No.3559 of Indian Bank	Rs.	21,662-81
	f) Post office A/c.No.225757 of Begum bazaar	Rs.	20-00
3)	Payment of Survival Benefit towards 12,500-00	Rs.	
	Policy No.640203007		
4)	Loan on LIC policy No.38180739	Rs.	14,760-00
5)	Matured amount of LIC policy No.37851039	Rs.	3,302-00
6)	Rental income from Flat 4 Block 31 of MIGH Baghlingampalli, Hyderabad	Rs.	1,00,100-00
7)	Rental income from H.No.12-1-5, Sitarambagh, Hyderabad	Rs.	22,550-00
8)	Rental income from H.No.13.3.1094/5/1 in Ziaguda, Hyderabad	Rs.	11,940-00
	Total :	Rs.	7,30,470-35

35

The total expenditure incurred by the AO was assessed at Rs.5,21,237.75 ps. the details of which are as follows:

ANNEXURE - III

Abstract of Expenditure :

1)	Household expenditure	Rs.	3,11,203-00
2)	Rentals paid for family members	Rs.	32,180-00
3)	Rentals paid by AO at his places of postings	Rs.	17,790-00
4)	Electrical charges for H.No.4.1.677	Rs.	6,716-75

	Jambagh, Hyderabad		
5)	Telephone rentals & charges	Rs.	
15,406-80			
6)	Membership & charges of Hyderabad Boats Club	Rs.	3,565-00
7)	Expenditure towards Credit Card of Rs. Vijaya Bank	200-00	
8)	Educational expenditure of AO and Rs. his four sons	1,09,712-00	
9)	Payment of municipal taxes	Rs.	1,466-00
10)	Weston Radio licence fee	Rs.	149-00
11)	Maintenance of Fiat Car ADR 612	Rs.	6,440-00
12)	Maintenance of Scooter	Rs.	
16,410-00			
	Total :	Rs.	5,21,237-00
75			

The likely savings of the AO after deduction of his expenditure from income came to Rs.2,09,232-60 ps but he was found in possession of assets worth Rs.27,58,619-12 ps. as on 14.12.1993. Thus, the assets of the AO were found disproportionate to his known sources of income. Though ample opportunity was given to the AO to satisfactorily account for the disproportionate assets, he failed to give any reply. The investigation officer after securing various documents by addressing letters to the government and to other private agencies sent final report to the government through the Director General ACB AP. The government of A.P. issued G.O.Ms.No.12 dated 03.01.1996 permitting prosecution of the AO for the offence punishable under the provisions of Corruption Act, 1988. Hence, the charge.

AO was examined under Section 239 Cr.P.C. wherein he denied the allegations leveled against him. Charge under Section 13 (1) (e) read with 13 (2) of P.C. Act was framed, read over and explained to AO, to which he pleaded not guilty and claimed for trial.

In order to prove its case, Prosecution examined PWs 1 to 10 and marked Exs.P.1 to P.84. On behalf of AO DWs 1 to 23 were examined and Exs.D.1 to D.36 were marked. After closure of Prosecution evidence, AO was examined under Section 313 Cr.P.C. wherein he denied the incriminating evidence put to him. AO also filed

a written statement.

Further, Crl.M.P.Nos.49 to 58 of 1994 were filed by the respective petitioners claiming refund of their respective amounts out of the cash seized from the house of the AO.

After evaluating the entire evidence both oral and documentary available on record, the learned trial Judge rendered the impugned judgment convicting the AO as stated above and also dismissing the miscellaneous petitions filed for refund of the amounts seized from the house of the AO.

The evidence of P.W.1, the Senior Assistant, is that on 10.12.1993 AO called him to his chambers and handed over a sum of Rs.79,110/- and asked him to keep the same in safe custody. He placed the same in the Cash Chest of the Office. On 14.12.1993 ACB officers conducted search in the offence room of the AO and also searched the cash chest of the office. He informed the ACB officers that cash of Rs.79,110/- available in the Cash Chest belongs to A.O. A.O. did not inform him any particulars about the said amount. One Balaraju, Sub-Inspector Excise, died about two months prior to the date of raid. They did not pool up any money from their staff or from any other persons to help the family members of said Balaraju. The salary pass book of AO from the year 1983 onwards is being maintained by this witness. Ex.P.1 is the personal note book of A.O. containing salary particulars and Ex.P.2 is personal note book of A.O.

The evidence of P.W.2, the Assistant District Registrar, goes to show that the licence of one Stamp Vendor by name Vishal Ahmed Naqvi was cancelled vide Ex.P.4 proceedings for not maintaining the required records, not selling at the authorized place etc. The said stamp vendor was asked to surrender the original licence and register by 31.08.1993 and accordingly he surrendered the stamps, registers for the year 1993 with a letter dated 30.09.1993. According to the Sales Register of the above said stamp vendor for the year 1993 he has maintained the Register upto 22.06.1993 ending with serial

No.2171. According to this witness, there was no entry in Ex.P.8, the sale register of Non-judicial stamps for the year 1993, showing the sale of stamp papers bearing Nos.4113 and 4114 with dates 06.04.1993 and the said sale register is ending upto 22.06.1993 only.

P.W.3 K.Purushotham Reddy, independent witness, deposed that on 14.12.1993 he along with one Sekhar Reddy, Rama Goud-complainant, and the DSP ACB with his staff went in a jeep to Sangareddy to the office of the Excise Superintendent wherein a trap was laid and mediators report was drafted and the raid was concluded at about 1 p.m. He further deposed that the Cash Chest available in the chambers of AO was also checked wherein a cash of Rs.1,60,250/- was found. In addition to the above cash, Rs.5,400/- was also found in the table drawer of Accountant by name Vittaiah. According to him, time was given to the Accountant to update the cash book. The Accountant updated the cash and adjusted Rs.42,579.67 ps and a difference of Rs.79,110/- was found for which the Accountant informed them that the AO has given him Rs.80,000/- for safe custody. The DSP seized the said amount in their presence and all the details were incorporated in mediators report.

P.W.4 also deposed in the same lines of P.W.3. He further deposed that on the date of raid between 3 p.m. to 6.00 p.m. they also searched the house of one S.A. Paul, Excise Inspector. Further at about 9.30 p.m. they also went to the house of brother of AO by name Kankyalal and enquired with him and observatory proceedings were drafted.

P.W.5 is the independent witness participated in the search conducted on 14.12.1993 at house of AO situated in Hyderabad. He deposed all the details about the manner in which the raid was taken place and the articles and cash found during the search. He further deposed that the gold items were returned to the wife of the AO at the time of concluding the inventory. The house search and drafting of inventory and search list was commenced at about 12.30 p.m. and

concluded by 8.45 p.m. When they were concluding the inventory report, AO came from Sangareddy and the ACB officers enquired him about the cash of Rs.21,77,000/- and odd which was found in the raid. As the AO did not give any explanation, the DSP, ACB, seized the same. Ex.P.12 is the search list written by the Inspector, ACB, and Ex.P.13 is the inventory report written by this witness. According to this witness, on the next day i.e. on 15.12.1993 again he was taken by the ACB officers for searching the house owned by the AO at Gosha Mahal, but nothing incriminating was found there. Ex.P.14 is the inventory proceedings written by him at the house situated in Gosha Mahal.

P.W.6 deposed that on 14.12.1993 at about 1 or 1.15 p.m. ACB officers took him to the house of the AO at PWD Quarters, Sangareddy, where room-wise inventory was made and the inventory was concluded by 2.00 p.m. Ex.P.15 is the inventory proceedings written by the Inspector, ACB, and signed by his witness.

P.Ws.7, 8 and 10 are the officers, who participated in the searches made on 14.12.1993 and they deposed the manner in which the raids were conducted and the inventory seized by them during such raids.

P.W.9 deposed about the sanction accorded to prosecute the AO in a Court of law for the offence under Sections 13 (2) read with 13 (1) (e) of P.C. Act.

In order to rebut the above said prosecution evidence, AO has examined DWs 1 to 23.

DWs 1 to 7 and 9 were examined by the defence to prove the fact that in order to help the wife and children of one Balraj, who died on 01.12.1993 while working as Excise S.I., contributions were collected from various staff members of Excise Department and also some contractors and those contributions were kept with P.W.1, Accountant in Excise Department. Some of these witnesses also stated that by way of contributions the total amount accumulated is about Rs.80,000/-

as informed by P.W.1.

DWs 8, 10 to 12 were examined by the defence in order to prove that the wife of AO received certain amounts towards rents.

DW.13 deposed that AO and his brother Kannaiahlah offered him to sell their mother's house situated at Seetarambagh and he agreed to purchase the same for Rs.4,25,000/- and paid token advance of Rs.601/- on 01.12.1993. He further deposed that he went to Afzalgunj and purchased two non-judicial stamps of Rs.50/- each from the stamp vendor Vishal Ahmed Naqvi for preparing agreement of sale and on 05.12.1993 he paid advance of Rs.3,25,000/- to the AO and himself, AO and his brother signed on agreement of sale. He also deposed that since the original documents pertaining to the said house and the advance amount paid by him were seized by the ACB officials, AO promised him either to register the house in his name after getting the original documents or to return the advance amount taken from him after the same is received by him from the Court.

D.W.14, who is the immediate neighbour of the AO house at Jambagh, deposed that on 14.12.1993 at about 12.30 noon ACB officials came to the house of AO and sought his help to search the house of AO. At about 4.45 p.m. the ACB officials came out of the house of AO with suit cases and told him that total cash found in the house of AO came to Rs.21,77,296/-. By the time they completed the search it was about 8.30 p.m. and when they were about to leave, AO came and he stated that it is an accounted money belonging to Lathur Earth Quake victims, who are his relatives. He also deposed about the agreement of sale entered into between Jaipal-D.W.13 and the AO and this witness himself drafted the said agreement and also signed as witness to the said agreement along with one Bhushan. This witness further stated that on 06.12.1993 the father-in-law of AO by name Vanam Rao came to the house of AO at about 6.30 or 7.00 p.m. along with 8 to 10 persons in a Maruthi Van and stayed in the house of AO for about 45 mnts. and went away.

D.W.15 deposed that he is the tenant of house bearing Municipal No.4-1-677, Jambagh, Hyderabad. In the year 1985 AO approached him and requested him to permit him (AO) to stay in the said house to which he permitted on an understanding that he should pay the electricity and water charges. He also stated that in the said room, he kept certain articles belonging to him and he handed over those articles to AO under receipt.

DWs 16 to 23 are the residents of Lathur. These witnesses were examined by the defence in order to prove that these witnesses kept certain amounts with the wife of AO for safe custody in view of earthquake in Lathur. D.W.23 is none other than the father of the wife of AO. DWs 16 to 22 also stated that initially the wife of AO refused to take the amounts for safe custody, but at the request of DW.23 she took the amounts and issued receipts to that effect. These witnesses also stated that on coming to know about the raids in the house of AO by the ACB officials, they came down to Hyderabad and enquired with AO and contacted the ACB DSP by name Sri Sai Baba over telephone with a request to return their amounts for which the DSP stated that the amount was already deposited in the Court and advised them to approach the Court for return of amounts and accordingly they filed petitions before the Court seeking return of amounts.

On the basis of the above said evidence adduced by both the Prosecution and AO and after evaluating the same in detail, the learned trial Judge held that the disproportionate income of AO is to the tune of Rs.24,63,364/-. The learned trial Judge prepared Annexure-I after admitting some of the assets shown by the Prosecution and rejecting some of them to be treated as assets of the AO. Further, he modified Annexure-II by calculating the income of the AO from known sources of income and likewise modifying Annexure-III, the statement showing the expenditure incurred by the AO, which are listed below:

THE ABSTRACT OF ASSETS OF THE AO
AS DETERMINED BY THE LEARNED TRIAL JUDGE

00	1)	Net cash found in H.No.4-1-677, Jambagh, Hyderabadon 14.12.1993	Rs. 21,77,296-
00	2)	Net cash found in Govt. cash chest in the O/o.The Excise Supdt.Medak at Sangareddy un-accounted for on 14.12.93	Rs. 79,110-
	3)	Net cash found on person of AO	Rs. 2,940-00
	4)	Bank balances	Rs. 1,61,738-97
	5)	Reinvestment Plan Deposit receipts of Indian Bank, Putlibowli Br. held in the name of AO & his family members	Rs. 79,000-00
75	6)	Post office savings A/c.No.225757 in Begum Bazar held in the name of AO	Rs. 571-
	7)	National Savings Certificates in f/o AO	Rs. 25,000-00
	8)	Contributions to LIC policies in f/o AO (deleted) to be added in the expenditure schedule	Rs. ----
	9)	Flat 4 MIG Phase II Plot No.31 Baghlingampalli, Hyderabad	Rs. 75,000-00
	10)	Purchase of H.No.12-1-5, Sitarambagh, Hyderabad (deleted)	Rs. ----
00	11)	Purchase of H.No.14-2-34, Goshamahal, Hyderabad in the name of B.V.Raj S/o.A.O.	Rs. 58,541-
	12)	Purchase of Hut No.11-60, Gaddiannaram, Hyd. in the name of mother of AO (deleted)	Rs. ---
	13)	Purchase of plot No.303, Vinayak nagar, R.R. District in the name of AO's wife	Rs. 913-00
	14)	Purchase of gold jewellery (modified)	Rs. 50,000-00
	15)	Purchase of Fiat car No.ADR 612 in f/o. AO's wife	Rs. 28,000-00
	16)	Purchase of Scooter No.ADR 5001 in the name of AO's brother	Rs. ----
00	17)	Earnest money deposit in Housing Board	Rs. 1,000-
	18)	Household articles found at the house of AO at Hyderabad (modified)	Rs. 50,000-00
	19)	Household articles found at AO's quarter at Sangareddy	Rs. 18,710-00
00	20)	Deposit made for Telephone No.43179 by AO	Rs. 1,000-
		Total :	Rs. 28,08,820-72

THE ABSTRACT OF INCOME OF A.O.
AS DETERMINED BY THE LEARNED TRIAL JUDGE

Abstract of Income :

6,08,488-00	1)	Net salary income	Rs.
	2)	Bank interests	Rs.

	37,524-35		
3)	Payment of Survival benefit under	Rs.	
	12,500-00		
	LIC policy No.640203007		
4)	Loan on LIC policies	Rs.	
	23,200-00		
5)	Maturity amount on LIC policy	Rs.	3,302-00
6)	Rental income on MIG flat of	Rs.	
	1,00,100-00		
7)	Rental income from house in Ziaguda	Rs.	11,940-00
	Bagh Lingampalli		
	Total :	Rs.	7,97,054-

THE ABSTRACT OF EXPENDITURE OF THE AO
AS DETERMINED BY THE LEARNED TRIAL JUDGE

Abstract of Expenditure :

1)	Household expenditure	Rs.	2,50,000-00
2)	Rentals paid by family members of AO	Rs.	32,180-00
3)	Rentals paid by AO at his places	Rs.	15,000-00
	of postings		
4)	Telephone rental and charges	Rs.	15,406-80
5)	Hyderabad Boats Club Membership	Rs.	3,565-00
	charges		
6)	Credit Card charges	Rs.	200-00
7)	Educational expenditure of AO's sons	Rs.	87,210-00
	his four sons		
8)	Car maintenance charges	Rs.	
	6,440-00		
9)	Premium paid to LIC policies	Rs.	
	41,596-36		
	Total :	Rs.	4,51,598-

This Court carefully considered the evidence adduced by both sides and also heard the arguments of either side.

DETERMINATION OF ASSETS OF THE AO

Item No.1: Net cash found in H.No.4-1-677, Jambagh, Hyderabad, as on 14-12-1993 to the tune of Rs.21,77,296/-:

Learned counsel for the AO contends that the cash of Rs.21,77,296/- recovered from the house of the AO cannot be included

as asset of the AO since the same was received by his wife from her relatives, who are the victims of earth quake in Lathur prior to the date of search. Further, it is argued that even in Ex.P.13, the inventory report, the mediator also recorded the said amount as 'an accounted money'. The learned counsel for the appellants argued that when it is recorded by the mediator as per the version of the wife of AO, the same cannot be treated as an asset of the AO. On perusal of Ex.P.13 it is true that the said amount was recorded as 'an accounted money', but the witness to the said mediator report i.e. P.W.5 deposed before the Court and clarified that the said amount is 'unaccounted money' but not 'an account money'. Considering this evidence, the learned trial Judge proceeded in this case taking into consideration the said words as 'unaccounted money'.

Learned counsel for the appellants wants to take advantage of the mistake committed by the mediator while recording the said amount as 'an accounted money' instead of 'unaccounted money'.

Even assuming for a moment that it is stated by the wife of the AO that it is an accounted money, that itself cannot be an explanation to the huge money recovered by the prosecution to prove that the said amount does not belong to AO. If the said amount is taken into account as 'an accounted money' it is the duty of the AO to prove that the said amount was accounted before the Statutory Authority. In the absence of the same, the version of the wife of AO that it is 'an accounted money' cannot be accepted.

Further, in support of his contention in this regard the AO examined DWs 16 to 23, who in one voice stated before the Court that they came to the house of the AO after the earthquake occurred in their place i.e. Lathur and they handed over the said amounts to the wife of AO for safe custody being afraid to have the same in their place. It is further stated by these witnesses that the wife of AO was hesitant to accept the same, but on persuasion of her father i.e. DW.23 she accepted the money. But, in their evidence, these witnesses have

stated that the wife of AO gave receipts for the amounts received by her. When the wife of AO was hesitant to receive the money, the question of issuance of receipts by her does not arise. Further, the said defence is feeble in nature and also improbable. AO got filed applications before the trial Court through the said witnesses seeking return of amount by invoking provision under Section 451 Cr.P.C. only after lapse of long time.

Further, in the instant case, AO was given opportunity to explain about the possession of such a huge amount, for which he has not chosen to give any explanation. As far as petitions filed under Section 451 Cr.P.C. are concerned, it is not necessary that those applications should be filed by the owner of property. Since it is the case of the AO that the said money was received by his wife from her relatives, she being the custodian of the said money ought to have application under Section 451 Cr.P.C. stating the reasons for possessing such huge money.

The wife of AO has not even stated the reasons before the investigation officer or the mediators, who prepared mediator report, for which AO submitted the argument that she was ill and she could not be able to inform the reasons due to the fact that she does not understand the language known to the investigation officer and to the mediators. But, on perusal of the mediators report it is evident that on information given by the wife of AO regarding the jewellery, which is found in the house during the search, the same was returned to her on the date of search itself. So, the said contention that she could not be able to convey the reasons due to language problem is totally unacceptable. Further, said search was conducted in the presence of an Advocate, who was also examined as defence witness i.e. D.W.14, who is their immediate neighbour and known to her. So, she should have taken the assistance of the said witness in explaining the reasons.

Apart from that, at the time of conclusion of search, the AO was also present when the officers left the place after getting the signatures

in the mediators report. Even at that time also AO has not taken the said plea.

It is further argued that the evidence of DWs 16 to 23 is not taken into account by the learned trial Judge. But the evidence of the said witnesses certainly not inspired the confidence of the Court as they deposed like parrot in one voice that they handed over the money to the wife of AO. AO also has not taken any efforts to examine himself as a witness or to examine his wife who claims to have received the said money from DWs 16 to 23. Hence, rejecting the contention of AO, the learned Sessions Judge has rightly included the said amount as an asset acquired by the AO, which is against the known sources of income of AO.

Item No.2: Net cash found in Govt. Cash chest in the office of the Excise Superintendent Medak at Sangareddy unaccounted on 14-12-1993 to the tune of Rs.79,110/-:

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Admittedly, a sum of Rs.79,110/- is recovered from the cash chest kept in the office of AO. The contention of the AO is that the said amount does not belong to him and further he adduced the evidence to that effect by examining DWs 1 to 7 and 9, who deposed before the Court that one Excise Inspector by name Balraj expired during his tenure, for which, staff members and some excise contractors contributed some amounts in order to be paid to the deceased family. Further, the cash chest was not only handled by AO but also by P.W.1, the Accountant of the said office. The material on record reveals that when the said amount was seized from the cash chest of the office, P.W.1 was asked to update the accounts of the office by calculating the amounts belonging to the office and the prosecution claims the remaining amount to be of the AO. The AO has not claimed the said amount by way of filing any petition under Section 451 Cr.P.C. and further the reason assigned by the AO may be probable in view of the evidence adduced by DWs 1 to 7 and 9 who deposed before the Court the reasons for collection of the amounts and also their contribution

towards the same.

Further, the evidence of P.W.1 coupled with the evidence of investigation officer clearly indicates that the said amount was handled not only by the AO but also by P.W.1. Hence, this Court is of the view that the said amount can be deleted from the assets of the AO.

Item No.3: Net cash found on person of AO to the tune of Rs.2,940/-:

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Since the AO has not denied the possession of the cash received from his person, the learned trial Judge has rightly included the said amount as the asset of the AO.

Item No.4: Bank balance to the tune of Rs.1,61,738-97/-

Three passbooks were seized from the house of AO during the search. One in the name of AO, second in the name of Raj, the son of the AO and the third in the name of D.Kannayya Lal, the elder brother of the AO. There was a balance of Rs.66,617-26/- in the account standing in the name of said Kannayya Lal.

Learned counsel for the AO contends that the learned trial Judge ought not have held that the said amount of Rs.66,617-26/- belongs to AO only.

AO claims that even though said Kannaiah Lal is his brother, he happens to be his tenant and he opened an SB account in which he deposited the rent amounts, which cannot be treated as asset in the name of the AO. The said Kannaiah Lal was not examined by the Prosecution, but whereas it is argued by the Prosecution that the said Kannaiah Lal was not examined even by the AO and the challans by which the amounts were deposited into the account are in the handwriting of AO. Hence, the same is added as an asset of the AO.

Item No.5: Reinvestment plan deposit receipts to the tune of Rs.79,000/-

Initially an amount of Rs.30,000/- was deposited and after maturity it yielded Rs.49,000/- as interest and the same was re-deposited. AO claimed that only Rs.30,000/- has to be added as an asset and the balance amount has to be shown as income. The

learned Public Prosecutor raised an objection stating that they have not withdrawn the said amount of Rs.49,000/- and spent it for family expenses. Hence, the entire amount should be added as an asset. But, this Court is of the view that only Rs.30,000/- has to be added as an asset to the account of the AO and the remaining amount of Rs.49,000/- be treated as income through known sources of income of the AO.

Item No.6: Post Office savings to the tune of Rs.571-75/-

The said amount is also to be added as an asset of the AO since there is no evidence that the said amount is accrued as interest.

Item No.7: National Savings Certificate in the name of AO to the tune of Rs.25,000/-

There is no dispute that the said certificate stands in the name of the AO. Hence, the same is also to be added as an asset of the AO.

Item No.8: Contributions to LIC policies (deleted by the learned trial Judge)

After assigning appropriate reasons, the learned trial Judge has rightly deleted this item from the assets of the AO and there is no objection by the prosecution also for the same. Hence, the same is also added as an asset of the AO.

Item No.9: Flat No.4 MIG Phase II Plot No.31, Bagh Lingampalli, Hyderabad, to the tune of Rs.75,000/-

The said flat was purchased in the year 1986 and the same stands in the name of the wife of AO. AO disputed that the said property was purchased by his wife out of Stridhana property. Admittedly, the wife of the AO is not an income-tax assessee and not having any sources of income. Except the self-serving statement, nothing is placed on record to show that the said property was acquired by her own income. Hence, the learned trial Judge has rightly added the said property in the assets of the AO.

Item No.10: Purchase of H.No.12-1-5, Sitaram Bagh (deleted by the learned

trial Judge)

The above said property stands in the name of the mother of the AO. The father of the AO worked as Archaka and he was also having some income. As such, nothing is improbable that the mother of the AO has purchased the same from her own funds. Hence, the learned trial Judge has rightly deleted the said property from the assets of the AO.

Item No.11: Purchase of H.No.14-2-34, Goshamahal, in the name of B.V.Raj S/o.Accused to the tune of Rs.58,541-00/-

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The above said property stands in the name of the son of the AO. Admittedly, the son of the AO was not having any individual income during that period. Hence, the said property is also to be added as asset of the AO as held by the trial Judge.

Item No.12: Purchase of hut No.11-60, Gaddiannaram, Hyderabad, in the name of the mother of the accused (deleted by the learned trial Judge)

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As discussed earlier, the father of the AO worked as Archaka. As such, it is probable that the mother of AO has her own sources of income, out of which, she might have purchased the present property. Hence, the learned trial Judge has rightly deleted the present item from the assets of the AO.

Item No.13: Purchase of plot No.303, Vinayaka Nagar, R.R.District, in the name of the wife of accused to the tune of Rs.913/-

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As stated in the earlier paragraphs, the wife of the AO is not having any individual income. Hence, the present property is also to be added in the assets of the AO as rightly held by the trial Judge.

Item No.14: Purchase of gold jewellery assessed at Rs.50,000-00/-

The learned trial Judge after adducing reasons added only Rs.50,000/- in the assets of the AO leaving the remaining amount taking into consideration the possibility of having jewels during the long period as Stridhana property. The same is also not disputed by both the parties. Hence, Rs.50,000/- be added as asset of the AO.

Item No.15: Purchase of Fiat Car No.ADR 612 in the name of the wife of accused assessed at Rs.28,000-00/-

The said car is purchased in the name of wife of AO. As discussed earlier, the wife of AO is not having any individual income. Hence, the value of the car is added as asset of the AO by the learned trial Judge and the same needs no interference of this Court.

Item No.16: Purchase of scooter in the name of brother of accused (deleted by the learned trial Judge)

After adducing proper reasons, the learned trial Judge has deleted the value of the present item from the assets of the AO and the same is also not disputed by the Prosecution. Hence, the same is confirmed.

Item No.17: Earnest money deposit in housing Board to the tune of Rs.1,000-00/-

Since the AO has disputed this item, the same should be added in the assets of the AO.

Item No.18: House hold articles at AO house in Hyderabad assessed at Rs.50,000-00/-

During investigation, some of the articles found in the house of AO in Hyderabad were deleted by the investigation officer himself on the basis of the information given by the wife of AO and the investigation officer valued the household articles at Rs.85,470/-. The learned trial Judge after adducing reasons, reduced the value of the household articles to the tune of Rs.50,000/-. But, this Court is of the view that considering the check period from 1966 to 1993 and on the basis of the evidence adduced by the defence witnesses, it can be held that the said articles can be treated as property belonging to the wife of AO and hence the same is deleted from the credit of the AO.

Item No.19: Household articles at AO house at Sangareddy assessed at Rs.18,710-00/-

Admittedly, the said house is a quarter allotted to the AO. AO contends that most of the articles mentioned in Ex.P.15-inventory belong to Central Excise Department and the value of the same cannot be added to his credit. There is no evidence on record as to what are the articles taken into account as the assets of the AO out of the inventory mentioned in Ex.P.15. Hence, this Court is of the view that the said sum of Rs.18,710/- should be deleted from the assets of the AO and the same is accordingly deleted.

Item No.20: Deposit for telephone No.43179 by AO to the tune of Rs.1,000-00/-

It is a deposit for obtaining a telephone connection, which necessarily to be added as asset of the AO and the learned trial Judge has rightly added the same to the credit of the AO.

ABSTRACT OF ASSETS OF THE AO
AS DETERMINED BY THIS COURT

00	1)	Net cash found in H.No.4-1-677, Jambagh, Hyderabad on 14.12.1993	Rs.	21,77,296-
--	2)	Net cash found in Govt. cash chest in the O/o.The Excise Supdt.Medak at Sangareddy un-accounted for on 14.12.93	Rs.	-
	3)	Net cash found on person of AO	Rs.	2,940-00
	4)	Bank balances	Rs.	1,61,738-97
	5)	Reinvestment Plan Deposit receipts of Indian Bank, Putlibowli Br. held in the name of AO & his family members	Rs.	30,000-00
75	6)	Post office savings A/c.No.225757 in Begum Bazar held in the name of AO	Rs.	571-
	7)	National Savings Certificates in f/o AO	Rs.	25,000-00
	8)	Contributions to LIC policies in f/o AO	Rs.	----
	9)	Flat 4 MIG Phase II Plot No.31 Baghlingampalli, Hyderabad	Rs.	75,000-00
	10)	Purchase of H.No.12-1-5, Sitarambagh, Hyderabad	Rs.	----
00	11)	Purchase of H.No.14-2-34, Goshamahall, Hyderabad in the name of B.V.Raj S/o.A.O.	Rs.	58,541-
	12)	Purchase of Hut No.11-60, Gaddiannaram, Hyd. in the name of mother of AO	Rs.	---
	13)	Purchase of plot No.303, Vinayak nagar,	Rs.	913-00

	R.R. District in the name of AO's wife		
00	14) Purchase of gold jewellery	Rs.	50,000-
	15) Purchase of Fiat car No.ADR 612 in f/o. AO's wife	Rs.	28,000-00
	16) Purchase of Scooter No.ADR 5001 in the name of AO's brother	Rs.	----
00	17) Earnest money deposit in Housing Board	Rs.	1,000-
	18) Household articles found at the house of AO at Hyderabad	Rs.	----
	20) Household articles found at AO's quarter at Sangareddy	Rs.	----
00	20) Deposit made for Telephone No.43179	Rs.	1,000-
	by AO		
	Total :	Rs.	26,12,000-72

DETERMINATION OF INCOME OF THE AO

Item No.1: Net salary income Rs.6,08,488/-

The investigation officer taking into consideration the check period from 01.06.1966 to 14.12.1993, arrived the total salary received by the AO at Rs.5,27,794/- and the same was modified by the learned trial Judge to 6,08,488/-. The contention raised by the AO is that the Prosecution has not established his monthly income based on any documents that too the check period fixed by the investigation officer from 1966 to 1993. On perusal of the evidence and also the judgment of the lower Court it is evident that the AO himself urged to take his average monthly salary @ Rs.500/- for the period from 01.06.1966 to 01.09.1975 and @ Rs.1,235/- for the period from 20.07.1979 to 30.04.1980 and from 01.05.1982 to 31.03.1983. When AO himself accepted for the same, now he cannot raise the objection that the same is not fixed properly by the learned trial Judge. Hence, the calculation arrived at by the learned trial Judge is hereby confirmed.

Item No.2: Bank interest of Rs.37,524-35 p.s.

Since the said amount of Rs.37,524-35 ps is accrued by way of interest on the bank balance, the same is rightly added by the learned trial Judge to the income of the AO.

Item No.3: Payment of survival benefit towards LIC policy No.640203007 of Rs.12,500/-.

Since both sides have not disputed this item of income, the learned trial Judge has treated the same as income of the AO and the same is hereby confirmed.

Item No.4: Loan taken by the AO on LIC policy No.38180738 of Rs.23,200/-.

Though in income statement of the AO, the investigation officer had shown a sum of Rs.14,760/- derived from loan taken on LIC policy, but since the material on record reveals that the AO has obtained loan of Rs.23,200/- as evident from Ex.P.48, letter received from LIC, the learned trial Judge had rightly held that Rs.23,200/- shall be added to the income of the AO.

Item No.5: Maturity amount on LIC policy No.37851039 of Rs.3,302/-.

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Since the said amount is not disputed by both the parties, the said amount was added to the income of the AO by the learned trial Judge.

Item No.6: Rental income on flat No.4, block 31 of MIGH, Bagh Lingampally, Hyderabad, of Rs.1,00,100/-.

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Though the investigation officer arrived at the rental income of the AO from the said property @ Rs.1,00,100/-, AO disputed the same claiming Rs.1,33,400/-. But, in order to support his contention, AO has not produced any documentary evidence except the oral evidence of his tenant. As such, the same was rightly disbelieved by the learned trial Judge confirming the rental income of the AO at Rs.1,00,100/-.

Item No.7: Rental income from house situated at Sitarambagh of Rs.22,550/-.

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Since the mother of the AO is the owner of the above said house,

the rental income derived from this property was rightly excluded from the salary of the AO.

Item No.8: Rental income from house at Ziaquda of Rs.11,940/-

Though the investigation officer arrived at the rental income of the AO from the said property @ Rs.11,940/-, AO disputed the same claiming Rs.1,94,000/-. But, except the self serving statement of the tenant of the AO by name Narsimha, who is examined as DW.10, no documentary evidence was adduced to prove that the AO has derived a sum of Rs.1,94,000/- towards rent from the said property. Hence, the learned trial Judge has rightly rejected the contention of the AO.

Apart from the above income, AO has also put forth some additional income before the trial Court. But, after adducing sufficient and proper reasons, the learned trial Judge has rightly rejected the contentions of the AO and this Court is also in agreement with the reasoning adopted by the learned trial Judge in that regard.

THE ABSTRACT OF INCOME OF A.O.
AS DETERMINED BY THIS COURT

Abstract of Income :

1)	Net salary income	Rs.
6,08,488-00		
2)	Bank interests	Rs. 37,524-35
3)	Payment of Survival benefit under LIC policy No.640203007	Rs. 12,500-00
4)	Loan on LIC policies	Rs.
23,200-00		
5)	Maturity amount on LIC policy	Rs. 3,302-00
6)	Rental income on MIG flat of	Rs.
1,00,100-00		
7)	Rental income from house in Ziaguda Bagh Lingampalli	Rs. 11,940-00
8)	Interest accrued on re-investment Plan deposit	 Rs.
	Total :	----- Rs. 8,46,054-35

DETERMINATION OF EXPENDITURE INCURRED BY THE AO

Item No.1: Household expenditure at Rs.2.50,000/-

As against the assessment of household expenditure of the AO

by the Prosecution at Rs.3,11,203/-, the AO urged the learned trial Judge to take the same at Rs.2,10,000/-. After considering the rival contentions in a proper perspective, the learned trial Judge held the expenditure incurred by the AO at Rs.2,50,000/-. On careful perusal of the discussion given by the learned trial Judge, this Court is of the view that there is no necessity to interfere with the conclusion of the trial Judge in this regard.

Item No.2: Rents paid by the AO at Rs.32,180/-:

The learned trial Judge confirmed the assessment of the Prosecution under this head disbelieving the version of the AO that he was allowed by DW.15 to reside in the house on free of rent on the ground that DW.15 being a stranger to AO his allowing the AO to reside in the said house without there being any rent is unacceptable. This Court is also not able to see any force in the contention of the AO.

Item No.3: Rental expenditure of AO at the places of his postings at Rs.17,790/-.

AO contended that since he used to move on tours for a period of 20 days in every month, he used to pay very negligible rents. However, irrespective of his tours, he has to pay rents for through out of the month. Moreover, he has not filed any documentary evidence evidencing the total rents paid by him. In any event, the learned trial Judge held that the total rents paid by the AO can be taken at Rs.15,000/- and the same is hereby confirmed.

Item No.4: Electrical charges at Rs.6,716-75 ps.

Relying on Exs.D.1 and D.2, the learned trial Judge rejected the calculation arrived at by the Prosecution under this head and this Court is also in agreement with the learned trial Judge in this regard.

Item No.5: Telephone charges of Rs.15,406-80 ps :

Basing on Ex.P.57, letter from Telephone Department, the learned trial Judge confirmed the calculation of the investigation officer and the same is hereby confirmed.

Item No.6: Expenditure on membership of Hyderabad Boats Club of Rs.3,565/-:

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Even though AO admits his membership in Boats Club, however, he contends that the same be treated as part of household expenditure. But, since the same was spent for his personal entertainment, the learned trial Judge rejected his contention and this Court is also not able to see any force in the contention of the AO.

Item No.7: Credit card expenditure of Rs.200/-.

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The conclusion of the learned trial Judge needs no interference in this regard.

Item No.8: Educational expenditure of children of AO of Rs.1,09,712/-:

After taking into consideration the rival contentions of both sides, the learned Magistrate the educational expenditure incurred by the AO for his children at Rs.87,210/- and he also adduced proper reasons for the same and there is no need to interfere with the view taken by the learned trial Judge in this regard.

Item Nos.9 and 10: Payment of municipal taxes of Rs.1,466-20 p.s. and Radio licence fee Rs.149/-:

Treating the above said expenditure as part of household expenditure, the learned trial Judge has rightly deleted the said amounts from the expenditure incurred by the AO.

Item No.11: Maintenance of Car of Rs.6,440/-:

After appreciating the contentions of both sides, the learned trial Judge has rightly confirmed the calculation arrived by the investigation officer under this head.

Item No.12: Expenditure towards maintenance of scooter:

Since the scooter was standing in the name of Kannayya Lal, the brother of the AO, the learned trial Judge rightly held that this expenditure cannot be tagged to AO.

THE ABSTRACT OF EXPENDITURE OF THE AO
AS DETERMINED BY THIS COURT

Abstract of Expenditure :

1)	Household expenditure	Rs.	2,50,000-00
2)	Rentals paid by family members of AO	Rs.	32,180-00
3)	Rentals paid by AO at his places of postings	Rs.	15,000-00
4)	Telephone rental and charges	Rs.	15,406-80
6)	Hyderabad Boats Club Membership Rs. charges		3,565-00
6)	Credit Card charges	Rs.	200-00
7)	Educational expenditure of AO's sons his four sons	Rs.	87,210-00
8)	Car maintenance charges	Rs.	
6,440-00			
9)	Premium paid to LIC policies	Rs.	
41,596-36			
		Total :	Rs. 4,51,598-

16

DISPROPORTIONATE ASSETS POSSESSED BY THE AO
AS DETERMINED BY THIS COURT

Total assets of the AO	Rs.	26,12,000-72
Total expenditure of the AO	Rs.	4,51,598-16

	Rs.	30,63,598-88
(-) Total income of the AO	Rs.	8,46,054-35

	Rs.	22,17,544-53

In view of the foregoing discussion and appreciation of the evidence, this Court is of the view that the AO is in possession of disproportionate assets to the tune of Rs.22,17,544-53/- and the AO has not satisfactorily explained for the same. Hence, the conviction imposed by the learned trial Judge is hereby confirmed dismissing the Criminal Appeal No.223 of 2002 filed by the AO.

As far as Criminal Appeal No.429 of 2002 arising out of order in Crl.M.P.No.53 of 1994 is concerned, the AO filed the impugned petition claiming return of Rs.3,25,000/- out of the amount seized from H.No.4-1-677, Jambagh, Hyderabad, shown in item No.1 of Assets,

contending that the said amount was received by himself and his brother Kannayyalal from one B.Jaypal, who is examined as D.W.3, towards advance sale consideration for their ancestral house under Ex.D.3-agreement of sale dated 03.12.1993. As per the prosecution said Ex.D.3 is a fabricated document brought into existence long after the raid in the house of the AO with a view to explain the huge cash found in his house. D.W.13, the alleged purchaser, supported Ex.D.3-the agreement for sale deposing that he paid Rs.3,25,000/-, but interestingly said D.W.13 has not filed any case either for specific performance or return of the amount from the AO. Further, the Prosecution has taken effort to prove the fact that the document under Ex.D.3 filed by the AO is a fabricated one by examining P.W.2, the Assistant District Registrar, who deposed before the Court that the licence of the concerned Stamp Vendor, from whom the stamp paper under Ex.D.3 was purchased, was cancelled by the Assistant Inspector of Stamps and Registrations, Hyderabad, for not maintaining required records and notice dated 21.09.1993 was also issued to the said Stamp Vendor to surrender his original licence and stamp register. To substantiate the same, prosecution got marked Exs.P.4 and P.5. It is the further evidence of P.W.2 that in pursuance of the said direction, the said Stamp Vendor surrendered the stamp register for the year 1993 along with the available stamps on 13.09.1993. Ex.P.7 is the statement of stamps maintained by the stamp vendor, which reveals that he maintained the same upto 22.06.1993. The serial number of the last stamp sold by him is 2171. In Ex.P.9, the letter addressed by the Stamp Vendor, it is stated that the said Stamp Vendor had no stock of stamps and he discontinued his business. Further, the said Stamp Vendor died on 15.08.1994. Whereas, Ex.D.3-agreement of sale indicates that they were purchased on 03.12.1993 by D.W.13. The said facts in the light of the evidence of P.W.2 shows that the Stamp Vendor had no stock of stamps with him and he surrendered the remaining stamps and licence on 13.09.1993 itself.

The register submitted by the said stamp vendor under Ex.P.8 also does not contain the Sl.Nos.4113 and 4114 appearing in Ex.D.3. The said facts clearly establish that the document under Ex.D.3 is introduced by the AO, which is a fabricated one. Hence, this Court is of the view that the learned trial Judge has rightly rejected the claim of the AO dismissing Crl.M.P.No.53 of 1994. Therefore, the present appeal in Crl.A.No.591 of 2002 is also dismissed.

Coming to Criminal Appeal Nos.592, 593, 597, 621 to 626 of 2002 filed challenging the orders passed in Crl.M.P.Nos.49 to 52 and 54 to 58 of 1994 before the trial Court, the evidence available on record is that of the oral evidence of DWs 16 to 23 and the affidavits filed by the respective claimants in said criminal petitions. On perusal of the said affidavits, they are all in the same line informing that the claimants deposited money with the wife of the AO, but they could not substantiate the fact as to how they came into possession of such huge amounts. Further, none of them are income-tax assesses. Their explanation for depositing the amounts with the wife of the AO is highly improbable and unbelievable. Really, if they want to save their money, they could have obtained the help of the AO in opening a bank account and ought to have deposited the amounts therein. Further, even though it is the case of the claimants that they handed over the money to the wife of the AO, she has not examined herself and admitted the fact in the Court. In the absence of any evidence to show that the said amounts were accepted by her through the claimants, the defence taken by the AO through the claimants in these criminal petitions totally fails and their contentions are not in mere acceptance. Hence, this Court finds no ground to entertain the claim of the claimants and, therefore, Criminal Appeal Nos.592, 593, 597, 621 to 626 of 2002 are hereby dismissed.

In the result, all the appeals are dismissed confirming the common judgment dated 28.02.2002 passed by the learned Principal Special

Judge For SPE & ACB Cases at Hyderabad in Calendar Case No.15 of 1996 and Crl.M.P.Nos.49 of 1994 to 58 of 1994. However, taking into consideration the age of the AO and long lapse of time and to meet the ends of justice the sentence imposed on the AO is hereby reduced from five years to one year. The fine amount imposed by the learned trial Judge is not interfered with. The AO is directed to surrender before the trial Court on or before 17.10.2011 to serve the remaining sentence, on his failure, the trial Court is at liberty to issue warrant to secure him to serve the remaining sentence.

As far as confiscation of properties is concerned, in view of the above discussion, this Court hold that Item No.1 i.e. net cash of Rs.21,77,296/- alone is directed to be confiscated, to meet the ends of justice.

As far as item No.2 i.e. net cash of Rs.79,110/- found in Government Cash Chest in the office of the Excise Superintendent, Medak at Sangareddy is concerned, since the AO has not claimed the said money and it is his case that the said amount was collected in order to be paid to the family members of one Bal Raj, who died while working as Excise Sub-Inspector, the said amount is also ordered to be confiscated to the State.

JUSTICE RAJA ELANGO

Dated :30.08.2011

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