



THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

J U D G M E N T

S.B. CrI.A. No.03 of 2013

M. Amratha Kumar,
S/o Madhavan Kunju Paniker,
R/o 32/2156A 'Souparnika',
P. J. Antony Road, Mamangalam,
P.O. Edappally,
District - Ernakulam,
Kerala – 682 024. ... **Appellant**

versus

State of Sikkim ... **Respondent**

CORAM

HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE

DATE OF JUDGMENT : 21-04-2014

For Appellant : Mr. John S. Ralph, Advocate
with Ms. Sabina Chettri and Ms.
Babita Rai, Advocates.

Mr. M. Amratha Kumar in
person.

For Respondent : Mr. J. B. Pradhan, Public
Prosecutor with Mr. Karma
Thinlay Namgyal, Additional
Public Prosecutor, Mr. S. K.
Chettri, Mrs. Pollin Rai,
Assistant Public Prosecutors and
Ms. Prathana Ghataney,
Advocate.

Wangdi, J.

This Appeal is directed against the judgment dated 31-12-2012 passed by the Special Judge, Prevention of Corruption Act, 1988, East and North Sikkim at Gangtok in S. T. (Vig.) Case No.1 of 2002 by which the Appellant was convicted and sentenced for offence under Section 13(1)(e) of the Prevention of Corruption Act, 1988 (in short the 'Act of 1988') punishable under Section 13(2) thereof.

2. The Appellant was a Junior Engineer in the erstwhile Gangtok Municipal Corporation since the month of November, 1976, later in the Urban Development & Housing Department and the Education Department of the Government of Sikkim. At the time when the charge-sheet was filed, he was working in the Irrigation Department.

3. The genesis of the case against the Appellant is an information received by the Vigilance Police of the Government of Sikkim that the Appellant by misusing his position as a Government servant had accumulated movable and immovable assets either in his name or

benami in the name of his family members which were highly disproportionate to his known sources of income. The value of such disproportionate assets which consisted of movable and immovable properties, as per the information, amounted to Rs.71,86,890/-. It was also alleged that the Appellant had made substantial investments in various financial institutions. Considering that the total income of the Appellant and his wife from all known sources was about Rs.17.60 lakhs, the assets worth Rs.71,86,890/- acquired by the Appellant was substantially disproportionate to his known sources of income. Accordingly, a regular case was registered against the Appellant and investigation taken up.

4(i). During the course of the investigation, it was revealed that the Appellant was initially appointed in the then Gangtok Municipal Corporation in the post of Supervisor on a fixed pay of Rs.230/- per month on 01-11-1976 and later got into regular service with effect from 06-10-1977 in the pay scale of Rs.270-405. He was promoted as Overseer on 09-03-1982. He was granted advancement scale of Rs.1820-3200 with effect from 29-06-1995. On the abolition of the Gangtok Municipal

Corporation in 1985 its functions, powers and duties stood transferred to and vested in the State Government. As a consequence every regular employee in the Corporation became an employee of the State Government and by virtue of this the Appellant continued to be a public servant as defined under Section 2(c)(i) of the Prevention of Corruption Act, 1947 (in short the 'Act of 1947') read with Clause Twelfth (a) of Section 21 of the Indian Penal Code, 1860 (in short the 'IPC') and under Section 2(c)(i) of the Act of 1988. The inference about the financial background of the Appellant could be drawn from the fact that on 17-11-1976 he had applied for a cash loan of Rs.100/- on account of some domestic problem and had applied for an advance of Rs.500/- on 03-02-1977 for the marriage of his sister. The start of the check period was fixed at 01-01-1984 and the end of it taken as 31-08-1997.

(ii). The investigation commenced with a search conducted in the residence of the Appellant at his home town Cochin, Kerala, on 08-01-1999 during which a large number of incriminating documents were recovered and seized and a list of household items found during the



search was prepared. Searches were also conducted in the Office room of the Appellant located in his shopping complex at Nedumudy, Alleppey district, Kerala on 19-09-2000 and at room no.3 of UD&HD shopping Complex at Development Area, Gangtok, Sikkim. The total salary drawn by the Appellant during the check period was Rs.2,26,011.60. Assets of the Appellant at the beginning of the period of check, assets at the close of the period of check, income during the period of check and the items of expenditure during the period of check as revealed during the investigation have been found set out in Statements 'A', 'B', 'C' and 'D' respectively. On the basis of the above, the summary of statements and their final outcome were worked out as under: -

(a)	Assets held at the close of the period of check as on 31-08-1997	Statement 'B'	Rs. 78,63,761.65
(b)	Less: Assets held at the beginning of the period of check as on 01-01-1984	Statement 'A'	<u>Rs. 2,889.75</u>
(c)	Assets acquired during the period of check	=	Rs. 78,60,871.90
(d)	Add: Expenses during the period of check	Statement 'D'	<u>Rs. 7,73,392.35</u>
(e)	Total assets and expenses during the period of check	=	Rs. 86,34,264.25
(f)	Less: Income during the period of check	Statement 'C'	<u>Rs. 10,68,211.44</u>
(g)	Extent of disproportionate assets during the check period	=	<u>Rs. 75,66,052.81</u>
SAY -			<u>Rs.75,66,000.00</u>

5. The Appellant was thus found to be in possession of disproportionate assets worth Rs.75,66,000/- which was 708.29% more than the total income of the Appellant and his family members from all sources. Charge-sheet was accordingly filed against him in the Court of the Special Judge, Prevention of Corruption Act, 1988, East and North Sikkim at Gangtok and upon charge framed against him under Sections 13(2) read with 13(1)(e) of the Act of 1988 corresponding to Section 5(2) read with Section 5(1)(e) of the Act of 1947 and read out, he pleaded not guilty and claimed trial.

6. Out of the 74 witnesses mentioned in the charge-sheet only 53 witnesses were examined and the rest were either dropped or abandoned. As many as 122 documents were exhibited by the prosecution during the course of the trial and, upon consideration of the evidence on record, the Special Court found the Appellant guilty of the offences charged against him and accordingly convicted and sentenced him by the impugned judgment.

7. It is relevant to note that on 21-11-2013 this Appeal was finally heard and the arguments concluded.

However, it was listed again on 02-12-2013 on being mentioned as certain issues that had cropped up required further consideration. The case was again taken up on 13-03-2014 for being spoken to and on that date the parties were again heard on a number of issues which had not been taken up earlier by either of the parties, but considered by this Court as serious having a bearing on the outcome of the case.

8. During the arguments, Mr. John S. Ralph, Learned Advocate, appearing on behalf of the Appellant, essentially raised the following contentions:

- (i) The charge framed by the Trial Court was defective as being in conflict with Section 13(1)(e) of the Act of 1988;
- (ii) Much of the assets which have been assumed as the assets of the Appellant in fact were those of his wife which was also the case in respect of a number of bank accounts;
- (iii) The residential house named 'Souparnika' situated at Mamangalam, Edappally, District Ernakulam, Kerala, was in fact the property of the wife of the Appellant. Similarly, half of the commercial building situated at Kainakary

Village, Nedumudy, District Alleppey, Kerala was a property gifted to the wife of the Appellant by her father and the other half received by the Appellant as a gift from his father and was not acquired by the Appellant. That those were purchased by the respective fathers from one Scaria Poppally and the buildings also constructed by them before gifting them to the Appellant and his wife. These properties which form the bulk of the assets value of which was said to be disproportionate to the known sources of income of the Appellant, were wrongly considered as the assets of the Appellant when it was always his case that those either belonged to his wife or had been received by them in gift;

- (iv) Even assuming that the properties did belong to the Appellant, the valuation arrived at was unreliable in view of a large number of errors in the valuation and for want of clarity as to the Scheduled of Rates (in short the 'SOR') applied in arriving at such valuation;
- (v) Neither the wife of the Appellant nor the sellers of the land upon which the buildings were constructed nor the Investigating Officer (in short the 'I.O.') was examined thereby depriving the Appellant of the opportunity of

cross-examining them resulting in causing grave prejudice to him.

9. Mr. J. B. Pradhan, Learned Public Prosecutor, on the other hand, countered the aforesaid contentions in the manner as set out below: -

- (i) The defect in the charge as pointed out by the Appellant is not so grave as to vitiate the entire trial. No prejudice had been caused to the Appellant by the defect;
- (ii) While conceding that the shopping complex appears to have been gifted to the Appellant and his wife by their respective fathers which, *prima facie*, is borne out by the existence of the gift deeds, this by itself did not establish that the properties were not acquired by the Appellant as it has not been shown by reliable evidence that the fathers had the capacity to acquire such valuable properties;
- (iii) Similarly, in respect of the residential building also the Appellant failed to establish that his wife had the financial capacity to acquire the land and to construct the residential house. It is, however, conceded by him that neither the sellers of the property nor the wife of the Appellant in whose name the residential house



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stood and who is said to have owned half the commercial building, were examined. Above all, the prosecution was unable to produce and examine the I.O. whose evidence was crucial.

10. On careful examination of the records, several seriously disturbing features have been noticed in the conduct and trial of the case. From the very inception commencing from 23-03-2002, the case appears to have proceeded in a most casual and lackadaisical manner grossly lacking in diligence on the part of both the prosecution and the Appellant. Adjournments appear to have been granted most routinely. Prime witnesses were not been examined and dropped on the mere plea that either they were medically unfit to travel to Sikkim or had failed to appear repeatedly.

11. Prosecution witnesses P.W.60, K. K. Gayatri and P.W.64, K. M. Panicker in the charge-sheet relevant for rendering evidence in respect of several of the bank drafts for varying amounts which in total amounted to Rs.15 lakhs and odd, were dropped because P.W.60 was physically unfit to appear in Court and P.W.64 was found untraceable. The allegation in respect of the bank drafts

is serious in as much as it is the case of the prosecution that those were purchased in Sikkim by different persons including P.W.64 at the instance of the Appellant or his wife at Gangtok and encashed in Kerala by the kith and kin of the Appellant including P.W.60 in whose favour the drafts were drawn and the proceeds handed over to the Appellant or his wife at Kerala.

12(i). P.W.36, Scaria Poppally also a vital witness to the transaction of the land upon which the multi-storied shopping complex was constructed and purportedly said to have been entered between him and the father of the Appellant's wife and his own father, did not at all appear to render his evidence. On 24-08-2009 it was recorded by the Trial Court as under: -

".....
PW. Scaria absent since unserved with the report that the " Addressee abolished".
....."

(ii) Almost two years later, i.e., 19-07-2011, the witness was reported to have died. Proceedings of the Court reveal as the following: -

".....
..... Summons issued to PW 36 returned with the report that the witness has expired.
....."

(iii) It was crucial for the prosecution to have examined this witness to shed light on the transaction of land at Nedumudy between him and the fathers of the Appellant and his wife upon which the multi-storied commercial complex had been built.

13. Reason for dropping P.W.62, R. Shivanandan and P.W. 64, K. M. Panicker as witnesses is said have been on account of the fact that H/C Ashok Kumar Pradhan detailed to serve summons was unable to trace out the addressee and that the addresses that had been furnished were wrong.

14(i). P.I. P. K. Einstein, the I.O., arrayed as P.W.74 in the charge-sheet was dropped by Order dated 03-12-2012 as the prosecution had failed to produce him for the four months preceding that date. Records reveal that he had appeared only once on 07-09-2009 when the case was adjourned to 10-09-2009 after which he never appeared until he was dropped as a witness by Order dated 03-12-2012. Order dated 30-09-2002 reflects that the I.O. had been transferred to Kerala on deputation but, there is no record to indicate that he had been repatriated back to his

parent Department, i.e., the Sikkim Vigilance Police. There is, of course, the Order dated 09-11-2012 which reads as under: -

"

Today is the date fixed for examination of I.O Shri P.K.Enstein.

Seen the report filed by the O/C Vigilance P.S. through Ld.Special P.P. submitting therein that said witness had been retired from service since April,2012 and since then he has moved out from Sikkim. The H/C Governdhan Subba has been detailed to serve the summons on his native home town at Kerala, however it is found that the said witness has left Kerala and shifted to Bangalore. Efforts is being made to trace him in Bangalore and also trying to verify the address from his bank account at ICICI Bank at Gangtok.

Ld. Special P.P.prays for time to take steps with regard to I.O.of the case on 19.11.12.

....."

(ii) The need for examination of the I.O. in a case of the present kind cannot be over emphasised. It was also vital for the prosecution to have examined him when considerable number of key witnesses had failed to depose. It was also in the interest of the Appellant that the I.O. ought to have been cross-examined by him.

15. In *Hazari Choubey and Others* vs. *State of Bihar* : **1988 CRI.L.J. 1390** (Patna), a Division Bench of the Hon'ble Patna High Court held that non-examination of investigating officer may not necessarily be fatal to the

prosecution case but, a Court has to see whether the evidence of the investigating officer is essential for the case of the prosecution to succeed or not. In a case where the defence can legitimately complain of denial of opportunity of non-examination of investigating officer, the situation may provide to the defence the benefit of doubt as to the veracity of the prosecution case.

16. P.Ws 62 and 64 in the charge-sheet were dropped because the witnesses were not found traceable in the given address. H/C Ashok Kumar Pradhan deputed for the purpose also was not examined which was necessary to arrive at the reason as to why the summons were not served and as to whether he had made any attempt at all to effect its service upon the witnesses. In ***James Basnett vs. T. N. Dhakal : 1991 Sikkim Law Journal 1***, under similar circumstance pertaining to issuance of summons and its non-service upon the witnesses, a Coordinate Bench of this Court observed as under:-

“5. It is also submitted by Shri Kharga that though the informant stated in his application that the victims were residing in Goa, the addresses given by the process server were of Uttar Pradesh and if the summonses had been sent to them on



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these addresses, they could not have been served on the witnesses and therefore, the failure to send the summonses on these addresses was of no consequence. In my view, this submission is also without merit. The question is not to speculate whether or not the summonses sent on these addresses would have been served on the witnesses, but whether the Court performed its duty enjoined upon it by the statute. If the summonses had been sent on the addresses given, at least the correct addresses could in all probability have been known from there. Failure to send the summonses on these addresses, in the absence of anything on record to show that any serious attempt was made to trace the whereabouts of the witnesses indicates the lack of seriousness to the recording of the evidence of these witnesses.”

17. Mrs. M. P. Shailaja, wife of the Appellant, arrayed as P.W.61 in the charge-sheet was dropped by Order dated 19-12-2012 ostensibly due to ill health and her inability to attend the Court proceedings at Gangtok. Her evidence was vital for the prosecution as she would have shed light on the large number of bank drafts, the land transactions in her name, construction of the multi-storied shopping complex, etc., and on her sources of income. These are only some of the instances amongst many others.

18. As observed earlier, the reason for the witnesses being dropped was either the difficulty of the witnesses in attending the Court proceedings due to their

ill-health or advanced age or their failure to appear repeatedly. Under these circumstances, the Court was not helpless. It is for the purpose of overcoming the very situation that Section 284 of the Code of Criminal Procedure, 1973 (in short the "Cr.P.C.") has been provided enabling it to dispense with the attendance of a witness and issue commission for his examination. Discretion vested in the Court under Section 284 Cr.P.C. is required to be exercised in consideration of the gravity of the evidence to be rendered by such witnesses. In the present case, undeniably the evidence to be rendered by most of the witnesses, particularly, the wife of the Appellant, witnesses to the bank drafts, Scaria Poppally, the seller of the land upon which the commercial building was constructed and the I.O., were vital on the outcome of the case.

19. Records reveal the leisurely manner in which the case had proceeded. In a span of almost 10 years adjournments were sought for at least 80 times by the prosecution, 19 by the Appellant and 11 times by the Court. It appears to have picked some speed only from 31-07-2012 onwards albeit at some haste. One of the



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reasons for the speed with which it was taken up as per the Learned Special Judge, was the direction of this Court for expeditious disposal of cases which were five years old or more. While the anxiety of the Learned Special Judge is well-appreciated, expeditious disposal of cases, however, cannot be at the cost of justice. If for unavoidable reasons and for the ends of securing justice, it was not possible to comply with the directions of this Court, it was expected of the Learned Special Judge to have sought for extension of time giving reasons therefor.

20. In the above circumstances, this Court was quite inclined to remand the case for re-trial but, considering that the case was first registered against the Appellant as far back as on 12-10-1998 and the trial commenced on 23-03-2002, it would have been a travesty of justice to take that recourse and, therefore, in the larger interest of justice, proceeded to decide the Appeal on the basis of the evidence already on record.

21(i). This Court has been persuaded to take this recourse in view of the law laid down in **Abinash Chandra**



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Bose vs. Bimal Krishna Sen and Another : AIR 1963 SC

316 where it has been held as under: -

“(4) But it should not have put the accused to the botheration and expense of a second trial simply because the prosecution did not adduce all the evidence that should, and could, have been brought before the Court of first instance. It is not a case where it is open to the Court of Appeal, against an order of acquittal, to order a retrial for the reasons that the trial Court has not given the prosecution full opportunity to adduce all available evidence in support of the prosecution case. It has nowhere been suggested that the trial Magistrate had unreasonably refused any opportunity to the prosecution to adduce all the evidence that it was ready and willing to produce.”

(ii) We may also refer to ***Manchander vs. The State of Hyderabad: AIR 1955 SC 792*** in which it was observed as follows: -

“(20). We were asked to reopen the question and, if necessary, to remand the case. But we decline to do that. Judges and magistrates must realise the importance of the examination under S. 342, Criminal P. C. and this Court has repeatedly warned them of the consequences that might ensue in certain cases. The appellant was arrested in December 1950 and has been on his trial one way and another ever since, that is to say, for over 4½ years.

We are not prepared to keep persons who are on trial for their lives under indefinite suspense because trial judges omit to do their duty. Justice is not one-sided. It has many facets and we have to draw a nice balance between conflicting rights and duties. While it is incumbent on us to see that the guilty do not escape it is even more necessary to see that persons accused of crime are not indefinitely harassed. They must be given a fair and impartial trial and while every reasonable latitude must be given to those concerned with the



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detections of crime and entrusted with the administration of justice, limits must be placed on the lengths to which they may go.

....."

22. In the light of the above, we may now proceed to take up the Appeal on its merits on the basis of the available materials and the oral submissions of the Learned Counsel for the respective parties.

23(i). At the inception of his arguments, Mr. John S. Ralph, Learned Counsel for the Appellant, submitted that the charge framed against the Appellant was defective and incurable. It was pointed out that the charge laid against the Appellant in the charge-sheet was that he "by misusing his position as a Govt. servant, accumulated movable and immovable assets in his name and/ or in the name of his family members as well as benami, which are highly disproportionate to his known source of income". The charge framed by the Trial Court against the Appellant under Section 211 Cr.P.C., however, reads as follows: -

"....."

That during 1.1.1984 to 31.8.1997 at Gangtok, East Sikkim your being a public servant posted as Sub-overseer and Junior Engineer in the various departments like U.D and H.D and Education Department, Government of Sikkim was found in possession of Rs.86,34,264.25 to which your known sources of income are



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disproportionate whence constituted an offence Under Sections 13(2) r/w 13(1)(e), Prevention of Corruption Act, 1988 read with Section 5(2) r/w 5(1)(e) of the Prevention of Corruption Act, 1947 and within my cognizance.

....."

(ii) The Learned Counsel submitted that the aforesaid charge is in conflict with Section 13(1)(e) of the Act of 1988 and the allegations in the charge-sheet and, therefore, contrary to and in conflict with Section 211 Cr.P.C. as the Appellant was deprived of the notice of the offence for which the entire trial was conducted thereby causing a failure of justice.

(iii) I, however, am not able to be convinced by the submissions. The discrepancies pointed out as regards the charge can at best be considered as an error or an irregularity. It is no doubt true that while the charge-sheet alleges the Appellant having accumulated movable and immovable assets disproportionate to his known sources of income, the charge on the other hand alleges of him being in possession of Rs.86,34,264.25. However, this would hardly have any effect on the trial as Section 13(1)(e) of the Act of 1988 provides for "possession for which the public servant cannot satisfactorily account, of pecuniary

resources or property disproportionate to his known sources of income". The Special Judge has quite obviously mentioned only the value of the assets while framing the charge.

(iv) Even during the entire proceedings of the trial the Appellant appears to have been conscious of the nature of charges framed against him and had accordingly defended himself. No prejudice was at all caused to the Appellant because of such error or irregularity and, therefore, there was no failure of justice that had been occasioned thereby. Section 464 Cr.P.C. protects findings, sentence or order by a Court arising out of, *inter alia*, any error, omission or irregularity in the charge. We may, for convenience, reproduce below Section 464 Cr.P.C.: -

"464. Effect of omission to frame, or absence of, or error in, charge.— (1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may—

- (a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge.



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- (b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction."

(v) In my view, the facts and circumstances falls clearly under Sub-Section (1) of Section 464 Cr.P.C. and, therefore, the contention of Mr. Ralph stands rejected.

24. On the question as regards the assets in the possession of the Appellant at the close of check period which as per the Trial Court amounts to Rs.73,04,836.84 as per Statement 'B', we find that there are a number of bank deposits held in various bank accounts in the State of Kerala which are either in the name of the Appellant himself or in the name of his wife or his sons. Similarly, there are also landed properties and buildings either in his own name or in the name of his wife in the State of Kerala. On a perusal of the Statement 'B' of the charge-sheet and the findings of the Learned Special Judge, it is revealed that irrespective of whether the bank accounts are held in the name of the wife of the Appellant or his sons, the properties have been presumed as that of the



Appellant. The reason for this, as per the Learned Special Judge, was because the Appellant had failed to prove that his wife had her own income which was sufficient for her to have acquired those credits and assets.

25(i). Taking the bank accounts first, the following accounts were found to have been held in the name of Shailaja, wife of the Appellant: -

(i)	Account No.10896 in the State Bank of Travancore, Kerala	Rs. 807.00
(ii)	Account No.733 in Nedumudy Co-operative Bank, Kerala	Rs.1027.00

(ii) The two bank accounts, on the very face of it, is found to be standing in the name of the wife of the Appellant. The Trial Court has assumed those as the accounts of the Appellant only on the ground that no documents were furnished to show that the wife of the Appellant had her own income at the relevant time.

26(i). As regards the landed properties, we find that the following having been purchased in the name of Shailaja, wife of the Appellant: -



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(i)	Land measuring 17.5 cents purchased from one Gouri K. at Nedumudy village, Kerala. (This amount is the cumulative sum of the consideration value for the land at Rs.1,500/-, cost of stamp paper of Rs.135/- and registration fee of Rs.16/-)	Rs. 1,651.00
(ii)	Land measuring 2 acres 40 cents purchased from one V. Namboodiri at Nedumudy village Kerala. (This amount is the cumulative sum of the consideration value for the land at Rs.20,000/-, cost of stamp paper of Rs.1,800/- and registration fee of Rs.201/-)	Rs. 22,001.00
(iii)	Land measuring 8.160 cents purchased from one Kairali & Others at Edappally, South. (This amount is the cumulative sum of the consideration value for the land at Rs.65,000/-, cost of stamp paper of Rs.8,125/- and registration fee of Rs.656/-)	Rs. 73,781.00
(iv)	Land measuring 12.5 cents purchased from one G. Gopinathan at Edappally, South. (This amount is the cumulative sum of the consideration value for the land at Rs.1,40,000/-, cost of stamp paper of Rs.18,900/- and registration fee of Rs.1,405/-)	Rs.1,60,305.00
(v)	Land measuring 11 cents purchased from one Raja S. Menon at Edappally, South. (This amount is the cumulative sum of the consideration value for the land at Rs.1,60,000/-, cost of stamp paper of Rs.21,600/- and registration fee of Rs.1,605/-)	Rs.1,83,205.00

(ii) The plea of the Appellant that the above landed properties were purchased by his wife from her own income, was rejected by the Learned Special Judge also on



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the ground that the wife of the Appellant had failed to show any document to prove her separate income.

(iii). In my view, the approach of the Learned Special Judge is clearly inconsistent with the one adopted while dealing with the question on the credits and assets standing in the name of the wife and those purchased in the name of the sons, father and father-in-law of the Appellant. When in these cases it had been accepted that the land measuring 14 cents at Kainakary Village, Nedumudy standing in the name of the father and, 16 cents also at Kainakary, Nedumudy in the name of the father-in-law, were their own on the basis of the sale deed documents Exhibits 156 and 157 corresponding to its English translation Exhibits 164 and 165 respectively, and the evidence of the registration authority, P.W.10, it is not understood as to why the same principle should not have been made applicable also to the properties standing in the name of the Appellant's wife.


(iv). The registered sale deed documents, Exhibits 152 and 153 corresponding to its English translation Exhibits 160 and 161 respectively and statement of



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registration of documents, Exhibit 149, pertaining to these landed properties, on the face of it, establish the fact that the purchaser was the wife of the Appellant. There was no obligation on the wife to prove her income as she was not an accused and evidently, when no investigation has been conducted to find out her purchasing capacity.

(v). We find a clear dichotomy in the approach of the Learned Special Judge as regards the transactions pertaining to the purchase of the landed properties. While it has been disbelieved that the properties registered in the name of the wife had been purchased by her, the purchase of 1.80 cents land vide sale deed Exhibit 154 (Exhibit 162 being its English translation) in the name of Amratha Kumar, the Appellant, purportedly for the benefit of his two minor children has been accepted. The Learned Special Judge appears to have presumed that the aforesaid properties were purchased benami by the Appellant in the name of his wife. Such presumption could have held good if the prosecution had been able to establish this by adducing legal evidence of a definite character. This would have been consistent with the law laid down in ***Krishnandan Agnihotri vs. State of M. P.*** :



AIR 1977 SCC 796 which is found cited by the Learned Special Judge at paragraph 47 of the impugned judgment while dealing with the various other landed properties standing either in the name of father of the Appellant or in the name of his father-in-law which were alleged to have been purchased benami by the Appellant. This burden, however, does not appear to have been discharged by the prosecution. A strong suspicion no doubt exists as to the veracity of the claims made by the Appellant but, considering the trite position that suspicion cannot take place of proof, the law constrains us to give him the benefit of the doubt.

27. For the aforesaid reasons, the bank accounts and the landed properties standing in the name of the wife of the Appellant also require to be deleted from the income of the Appellant contained in Statement 'B' of the charge-sheet.

28(i). Let us now deal with the two buildings, namely, residential house 'Souparnika' at Edappally and the other a multi-storied shopping complex at Nedumudy.

(ii) In so far as the residential building 'Souparnika' at Edappally is concerned, relying upon the evidence of P.W.18, K. G. Suresh, the Executive Engineer, Buildings Division (PWD), Ernakulam, Kerala and, P.W.28, Mrs. Elizabeth Thomas, the Assistant Engineer, Buildings Section, Mattanchery, District Ernakulam, Kerala, Mr. John S. Ralph, on behalf of the Appellant, submits that the property is owned by the Appellant's wife as it stands recorded in her name. However, on a careful perusal of the evidence, the Appellant in his own deposition as D.W.1 has stated the following: -

".....

The assessment of the building Soupernika owned by me in Ernakulam where the construction started in 1988 and was completed in 1989.

.....

....." [underlining mine]

(iii) This deposition appears in his statement-in-chief and clearly contradicts the evidence of P.Ws 18 and 28. It is, therefore, an admitted position on the part of the Appellant that the residential house 'Souparnika' is owned by him thereby belying the contentions placed by Mr. Ralph.

(iv) There is another reason which renders his contention doubtful. Shailaja M. P., wife of the Appellant, had been cited as defence witness also but, by Order dated 19-12-2012, she had been abandoned by the Appellant on the plea that she was unable to appear due to ill health. When she was the best witness to depose on the question, steps under Section 284 Cr.P.C. ought to have been taken by the Appellant to ensure that she rendered her evidence. This having not been done, an adverse presumption would naturally be drawn against the Appellant for withholding the best witness.

(v) We, therefore, shall proceed in the premises that the building is the asset of the Appellant. The only question that would then arise would be the correctness of the valuation certificate, Exhibit 205 and detailed valuation, Exhibit 206 (collectively) which were prepared by P.W.18 and P.W.28 respectively. The valuation certificate, Exhibit 205 was prepared by P.W.18 based upon the detailed valuation carried out and measurement of the building Exhibit 206 taken by P.W.28 and P.R. Vijayan Babu, the Assistant Executive Engineer (who was not examined and dropped).



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(vi) On a careful scrutiny of his evidence, I do not find anything that would render the correctness of the valuation certificate, Exhibit 205, and the detailed valuation, Exhibit 206 suspect. No doubt, statements of a general kind have been found extracted in the cross-examination of P.W.18 but, for want of specifics pertaining to the building in question, the generality of the statements do not appear to have any effect at all on the value of his evidence.

(vii) We find consistency even in the evidence of P.W.28, the Assistant Engineer. Much has been made out to discredit this witness by extracting the following statement: -

"..... It is true that the building in question was constructed in the year 1989. It is correct to say that when a house is constructed in the year 1989 the Schedule Rate of construction of 1988 or before is applicable unless there is a revision of it."

(viii) However, the following evidence that follows in her cross-examination clarifies the position.

"..... We have calculated the depreciation of the building as per our Engineering Books prevalent in Kerala during that period but I cannot say what was the actual rate since I do not have the said book with me today. It is



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correct that Exbt. 206 was prepared in the year 2000 as such I have used the Schedule Rates of the year 1999." [underlining mine]

(ix) From the above, it stands established that although the house was admittedly found to have been constructed in 1989, it was the SOR for the year 1999 that had been applied as the valuation was prepared in the year 2000 and, that while doing so, depreciation of the building as per Engineering Books prevalent in Kerala during that period had been allowed. There is no contradiction or controversy on this account.

(x) The other facts extracted in the evidence of this witness do not appear to be of any consequence as those do not in any manner diminish the value of the evidence rendered by her. P.W.28 is found to have corroborated the evidence of P.W.18 in full measure.

(xi) I find that the Learned Special Judge also has arrived at this very conclusion upon consideration of the facts alluded to above.

(xii) The Learned Counsel sought to rely upon the decisions of this Court in ***Nar Bahadur Bhandari*** vs. ***State of Sikkim*** : ***2011 Sikkim Law Journal Volume 34 Part II***



8; Padam Lall Gurung vs. State of Sikkim : 2011 Sikkim Law Journal Volume 34 Part II 69 and in Crl. A. No.02 of 2013 in the matter of **Dhan Subba vs. State of Sikkim**. However, the facts in those cases are quite different and clearly distinguishable from the ones in the present case as in those cases there were serious contradictions in the valuations and confusion as regards SORs that were applied and, therefore, are of no assistance to the Appellant in any manner. The value of the residential building 'Souparnika' arrived at Rs.10,97,011/- by the Learned Special Judge thus stands upheld and added to the value of the assets of the Appellant in view of his admitted position that the building is his.

(xiii) The next is the multi-storied shopping complex at Nedumudy. The Trial Court upon consideration of the various documentary and oral evidence, has arrived at the conclusion that the value of the property would be Rs.31,17,789/- against Rs.33,17,789/- as placed by the prosecution. This has been arrived at by deducting Rs.2,00,000/- on the basis of the admission made by P.W.16, James Joseph, Assistant Executive Engineer (PWD), Roads Sub-Division, Kuttanadu (Moncombu),

Kerala, who had inspected the building and prepared the report Exhibit 201, that there was a mistake in the valuation of the plinth area of the ground floor.

(xiv) Before embarking upon the valuation, it would be essential to first ascertain as to whether the property belongs to the Appellant and as to whether he had acquired it during the check period. The only prosecution witness who has thrown light on this question is P.W.7, P. M. Radhakrishnan, the then Secretary of Nedumudy Gram Panchayat since 08-01-2005. As per him, the post of Secretary was earlier known as Executive Officer but was changed to Secretary in the year 1992-93. Since the evidence of this witness is pivotal in the context of the matter under consideration it would be convenient to reproduce his evidence and deal with it at some length. The following are the relevant portions of the evidence of this witness: -

“I am the Secretary of Nedumudy Gram Panchayat since 8.11.2005. The post of Secretary was earlier is known as Executive Officer and this change took place some time in the year 1992-93. I have brought with me the records of the Panchayat as directed by the court for the purpose of my reference today. Our office records revealed that it had received one requisition dated: 13.3.2000 from Sikkim Vigilance Police requesting for details of building tax paid by M.A. Kumar and Smt. Shailaja Kumjamma wife of Shri



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M.A. Kumar. Accordingly our office had sent a reply dated: 19.8.2000 in response to the said requisition . Exbt. 142 is the same reply sent by the office of my panchayat. Exbt. 142(a) is the signature of U. Asashraf the then Secretary, Nedumudy Gram Panchayat which I can identify as I verified the same from the records of my panchayat office. Exbt.143 is the statement of building tax paid which was enclosed to the letter exbt.142. (Objected to) . Exbt.143(a) and exbt.143(b) are the signatures of U. Asashraf the then Secretary, Nedumudy Gram Panchayat. I have verified the statements contained in exbt.143 from my office records and I have found the same to be correct and as per our office records. I have brought with me today the assessment register maintained by my Panchayat where from the ownership of the two buildings in reference can be verified . (Objected to)

XXX- by the accused through
Ld.counsel Shri N. Rai

..... The building No. 486 to 496 belonged to Madhavan Kunju Panicker and 497 to 523 belonged to Damodara Kurup N. D. till 2.4.98. Mr. Madhavan Kunju Panicker is the father of Mr. M. A. Kumar and Mr. Damodara Kurup N. D. is the father of Mrs. Shailuja M. P. Exbt.143 is the statement of remetaince (sic) of building tax.

The statement shows the 6% of the annual building rent. I do not know as to who assess the building rent i.e. whether it is the owner of the building or Gram Panchayat. I can not say whether the building No. 52 and 53 were constructed in the year 1927. I can say this much that my record shows that the said buildings were existing before 1993-94. I have no records prior to the year 1992-93 here with me. It is true that the building Nos. shown in exbt. 143 were transferred to Shri M. A. Kumar and Mrs. Shailuja M. P. by their respective fathers in the year 1998. It is true that no survey number has been mentioned in exbt. 143."

(xv) As would appear from the above, P.W.7 who was the Secretary of Nedumudy Gram Panchayat at the

material time, has stated in most unequivocal terms that the building in question belonged to Madhavan Kunju Panicker and N. S. Damodara Kurup until 02-04-1998 as found in the records of the Panchayat Office. That Mr. Madhavan is the father of M. A. Kumar, the Appellant and Mr. Kurup is the father of Shailaja M. P., wife of the Appellant. On a careful examination we find that Exhibit 143 sets out the details of building tax received from various owners of the properties mentioned in the records of Gram Panchayat and carries the following endorsement in the form of a note appearing on its right hand side: -

- “(1) During 96-97, 97-98 the building numbers 486 to 496 in ward No III owner of these buildings was Madhavan Kunju Panicker, Mohanavilasam, Thottuvathala, Nedumudy.
- (2) During 96-97, 97-98 the building numbers 497 to 523 in ward No III owner of these building was Damodara Kurup N. D., Mathoor Rohibi, thottuvathala, Nedumudy.
- (3) 98-99 onwards the owner of buildings number 486 to 496 in Ward No III was changed to M. A. Kumar, M. S. S. Complex
- (4) 98-99 onwards the owner of buildings number 497 to 523 and 486-A was changed to Smt. M. P. Shylaja Kunjamma, M. S. S. Complex
- (5) 97-98 onward the owner of building number 52, 53 in Ward No III was changed to M. A. Kumar, M. S. S. Complex.”



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(xvi) Undeniably, therefore, from the entries at serial nos.(3) and (4) reproduced above, the ownership of the building in question stood transferred in two portions from the year 1998-99 onwards to the Appellant and his wife while that of the others bearing nos.52 and 53 (with which we are not concerned), were changed to the name of the Appellant in the year 1997-98. To be precise, the ownership of the questioned building got transferred in the name of the Appellant and his wife in two portions only with effect from 03-04-1998 as has been categorically stated by P.W.7. As per the prosecution case, the check period has been fixed at 01-01-1984 and ending at 31-08-1997. There is no dispute on this as would appear from the following in the charge-sheet: -

"6. The start of the check period has been fixed at 1-1-84 the end of the check period has been taken as 31-8-97"

(xvii) It, therefore, follows undoubtedly that commercial building was acquired by the Appellant and his wife after the check period and, therefore, not at all material for consideration in the case against the Appellant. Although, the prosecution has alleged that

these properties were purchased by the Appellant benami in the names of his father and father-in-law, no evidence has been produced at all to substantiate this and thus failed to pass the test laid down in ***Krishnandan Agnihotri (supra)***. On a perusal of the impugned judgment, I find that the Learned Special Judge has not at all considered this aspect other than making a passing reference and proceeded to give a detailed finding only on the correctness of the valuation. In my view, this exercise was purely academic, redundant and of no consequence. The entire aspect as regards the commercial building and its value arrived at Rs.33,17,789/- would thus stand deleted from Statement 'B' that pertains to the alleged assets acquired by the Appellant during the check period by giving him the benefit of doubt.

(xviii) However, for the sake of setting at rest any question that may arise on this and subject to the foregoing findings, we may also deal with the other questions including the one on valuation. It was submitted on behalf of the Appellant that the inspection report, Exhibit 201, is unreliable in view of the various errors in the measurement. Much has been sought to be

made out on the difference in the ratio of concrete in the super structure which was shown as 1:1½:3 and 1:2:4 for the first floor. This, as per the Appellant, was a glaring mistake as there cannot be two different ratios of concrete in one building. Reliance was placed upon the statement of P.W.16 to the effect that "It is true that the RCC structure of the columns in our State in the year 1994-96 used to be in the proportion of 1:2:4." Even assuming that the prescribed ratio for RCC building applicable to building columns in the State of Kerala in year 1994, 1995 and 1996 had been 1:2:4, the fact that the engineers had actually found it as recorded in the report, Exhibit 201, stands established. If the prescribed ratio had not been adhered to in the case of the building in question, it would not necessarily mean that the report is incorrect but would at best tantamount to violation of the prescribed ratio for which the consequences would be something else.

In any case, the measurement having been taken by expert Engineers, on examination of the structure as it existed, it is beyond the capacity of this Court to examine the correctness of such measurement unless clearly proven otherwise on behalf of the Appellant.

(xix) The other is as regards the foundation of the building which has been indicated as 'raft foundation' and, that the deductions allowed on the ground floor for 4 different measurements which measured an area of 18.47 meter square, had not been allowed for the first floor when the first floor was of the same dimension as the ground floor. Mr. John S. Ralph, Learned Counsel, drew the attention of this Court to Exhibit 202, a rough sketch of the ground floor of the building, which indeed showed that on the left of the building there are 4 serrated portions each measuring 3.05 x 1.65, 1.45 x 1.50 and 1.45 x 1.65 and a stair case measuring 3.70 x 2.40 which in total measured 18.47 meter square. However, the claim that this measurement also ought to have been applied to the first floor appears to be incorrect as the sketch of the first floor, Exhibit 203, shows that such serrations do not exist but are fully covered thereby resulting in the entire floor being measured. The submission, therefore, stands rejected. This also belies the assertion on behalf of the Appellant of the building being of trapism shape thereby confirming the shape as indicated in the single line sketch of the building, Exhibit



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202. There is a presumption of correctness of this sketch as it was prepared on the basis of the actual measurement taken on the spot.

Similarly, the other purported errors in the measurements pointed out by the Learned Counsel for the Appellant do not appear to be so substantial so as to affect the correctness of the inspection report, Exhibit 201. The only admitted mistake in the measurement, i.e., in the area of the building valued at Rs.2 lakhs, in any case, was allowed by the Trial Court. In this regard, we may refer to the following portions of the evidence of P.W.16 which appear in his cross-examination: -

“..... There is only a mistake in the recording and evaluating the ground floor plinth area because the corner portion comprising of 8.65 x 7.35 on the northern corner of the building has been calculated twice.

Re-examination by Id. P.P. Shri N. P. Sharma.

If the mistake in the calculation of the plinth area of the ground floor is corrected, the valuation of the building in question will come down by about Rs.2,00,000/-.

**Re-cross-examination by the accused
through Id. Counsel Shri N. Rai.**

It is true that the amount said by me is not the exact amount. Sometimes we need to give the approximate valuation if situation demands but that is not my habit. The value would be less than Rs.2,00,000/- if it is to be calculated



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properly. It is not a fact that there are other mistakes also in respect of the ground floor."

We find that the Trial Court has given due consideration to the above by arriving at the following finding: -

"64. There is further no reason to doubt the valuation arrive at, of course deducting Rs: 2,00,000/- on the basis of the admission made by PW 16 to the effect that there was a mistake in evaluating the ground floor plinth area and if such mistake is rectified the valuation of the building would come down by Rs: 2 lakhs, the amount of Rs.31,17,789/- is found to be the correct assessment of the building as against the amount of Rs.33,17,789.00 placed by the Prosecution and is found to be the asset of the accused."

(xx) The next is the doubt expressed on the correctness of valuation and/or the Inspection Report, Exhibit 201, on the ground that there was no reliable evidence of the valuers having applied the Government Approved Scheduled of Rate 1996 as indicated in the said inspection report. Upon a close examination of the report and the oral evidence pertaining to it, I do not find any reason not to disbelieve this. Admittedly, the measurements and valuation were done by experienced engineers working under the Public Works Department and, therefore, public servants who, as rightly pointed out

by the Learned Special Judge, have no personal interest in the matter. Nothing has been shown that would give rise to any doubt as regards the application of SOR of 1996. Although the SOR was not produced but, in the facts and circumstances of the present case, this does not in any manner appear to affect the credibility of the report, Exhibit 201. The report, Exhibit 201 appears clear, precise and unambiguous. No doubt, as observed earlier, a controversy has been raised in respect of the application of the SOR of 1996 by stressing upon the following portions of the cross-examination of P.W.16: -

"..... We have the government approved schedule of rates of building constructions and materials in our State. I do not remember which years schedule of rates we used in the year 1990-1992. However, I remember there is a schedule of rate approved by the Govt. of Kerala in the year 1994. I do not have the copy of the said schedule of rates. After 1994, the next schedule of rates was approved by the Govt. of Kerala in the year 1999. It is not a fact that there was the schedule of rates approved by the Govt. of Kerala in the year 1996 also.
The plinth area of the building was valued as per the Government Approved Schedule of Rate of 1996. The same is wrong. In fact that is based on Technical Circular issued by the Chief Engineer brought into effect from 01.07.1996."

[underlining mine]

(xxi) From the above, we find the witness very clear and categorical in stating that the rates applied were of

the year 1996. Be it as per SOR of 1996 or the technical circular issued by the Chief Engineer which was brought into effect from 01-07-1996, the rate clearly pertains to the ones prevalent in that year. Although the witness states there was a Government Approved SOR in 1994 and that after the year 1994 the next SOR was approved by the Government of Kerala in the year 1999, there is no contradiction on the existence of 1996 rates and the application of those rates for preparing the inspection report, Exhibit 201 and the rough sketch, Exhibit 202 of the building and, that the building was completed in the year 1996. Reliance on ***Nar Bahadur Bhandari (supra)***, ***Padam Lall Gurung (supra)*** and ***Dhan Subba (supra)*** is clearly misplaced in the facts and circumstances of the case. I am, therefore, inclined to agree with the Learned Special Judge and hold that the inspection report, Exhibit 201 is correct and valid but subject to the finding that the building and its value shall stand deleted from Statement 'B', i.e., the assets acquired by the Appellant during the check period.

29(i). Since there are no questions raised on the valuations of the assets at the beginning of the check



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period (Statement ‘A’) and expenditure during the check period (Statement ‘D’) as arrived at by the Learned Special Judge, we may not delay ourselves on those and proceed to work out the detailed calculations in the premises discussed above: -

STATEMENT - A

ASSETS AT THE BEGINNING OF THE PERIOD OF CHECK

1.	Balance in Savings Bank A/c No.410 of M. A. Kumar at Champakulam Service Co-operative Bank, Nedumudy	+	249.75
2.	Cash in hand equivalent to 3 months’ net salary which M. A. Kumar was drawing at the onset of the check period	+	18,600.00
Total		=	<u>18,849-75</u>

STATEMENT – B

ASSETS AT THE CLOSE OF THE PERIOD OF CHECK

1.	Balance in Savings Bank Accounts		
	(a) State Bank of Travancore, Palarivatoom - A/c No.10746 of M. A. Kumar	+	727.00
	(b) State Bank of Travancore, Palarivatoom - A/c No,10896 Shailaja, Wife of M. A. Kumar	-	807.06
	(c) State Bank of Travancore, Palarivatoom - A/c No.11116 of A. Varun, Son of M. A. Kumar	+	393.00
	(d) State Bank of Travancore, Palarivatoom - A/c No.11416 of Arun, Son of M. A. Kumar	+	259.00
	(e) Corporation Bank, Alleppey - A/c No.4036 of M. A. Kumar and Shailaja	+	4,311.00
	(f) Champakulam Co-operative Bank, Nedumudy - A/c No. 410 of M. A. Kumar	+	556.00
	(g) Nedumudy Co-operative Bank, Nedumudy - A/c No.733 of Shailaja	-	1,027.00

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	(h) Federal Bank, Kalarcode - A/c No.8090 of M.A. Kumar	+	522.00
	(i) State Bank of India, Deorali - A/c No.2/pc-189 (now 01190/00586) of M. A. Kumar	+	373.00
	(j) Central Bank of India, Gangtok - A/c No.6462 of M. A. Kumar	-	10,907.85
2.	Cost of Maruti Car (No. KL-7C/5931) purchased in the name of Shailaja from Popular Vehicles & Services, Mamangalam	-	1,74,901.30
3.	Cost of Bajaj Super Scooter (SK-01/0036) purchased by M. A. Kumar from Shri R. Shivanandan	-	6,000.00
4.	Cost borne by M. A. Kumar, i.e., excluding the loan granted by State Bank of Travancore, Pararivatoom for purchase of Tata truck no. KL-7J/0684.	-	1,07,881.84
	(a) In addition, Shailaja had made cash payment to MFG (India) for purchasing this truck.	-	3,757.00
	(b) Assumed expenditure on body building of the truck :	-	17,625.00
5.	Cost borne by M. A. Kumar (i.e., excluding the loan granted by SBT Palarivattom) for purchase of Tata truck no. KL-7F/5283: -	-	1,00,250.00
	(b) Expense on body building of the truck	-	25,125.00
6.	Loan payment : The amounts shown against Sl. Nos. 4 and 5 above are only the 25% of the actual costs of the two trucks, borne by Shailaja. The balance 75% advanced, and also insurance premium paid for the trucks by SVT Palarivatoom were later paid back by her with interest	-	6,94,784.00
7.	Expense on account of purchase of Tata truck No. KL-7E/7596	-	3,87,051.60
8.	Body building charge of truck no. KL-7E/7596	-	90,450.00
9.	Land 17.5 cents purchased from Gouri K. in the name of Shailaja at Nedumudy Village	-	1,651.00
10.	Land 2 acres 40 cents purchased from V. Namboodiri in the name of Shailaja at Nedumudy Village	-	22,001.00
11.	Land 1 acre 80 cents purchased from M. Panicker in the name of the sons of M. A. Kumar at Nedumudy Village.	-	19,895.00
12.	Land 8.160 cents purchased from Kairali & others in the name of Shailaja at Edappally, South.	-	73,781.00
13.	Land 1 acre 20 cents purchased from M. Panicker in the names of Arun and Varun, sons of M. A. Kumar at Nedumudy Village.	-	12,105.00
14.	Land 12.5 cents purchased from G. Gopinathan in the name of Shailaja at Edappally South.	-	1,60,305.00

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15.	Land 12.5 cents purchased from G. Gopinathan in the name of M. A. Kumar at Edappally, south	+	1,60,305.00
16.	Land 40.200 cents purchased from Gopalakrishna Pillai in the name of NSD Kurup, father-in-law of M. A. Kumar at Edappally South	-	1,94,655.00
17.	Land 15 cents purchased from Krishna Pillai & Others in the name of M. A. Kumar at Vazhappally West Village	+	51,080.00
18.	Land 11 cents purchased from Raja S. Menon in the name of Shailaja at Edappally South	-	1,83,205.00
19.	Land 14 cents purchased from Pooppally Scaria in the name of Madhavan Kunju Panicker (father of the accused) at Kainakary Village	-	2,19,785.00
20.	Land 16 cents purchased from Pooppally Scaria in the name of N. S. Damodara Kurup, (father-in-law of the accused) at Kainakary Village	-	2,16,455.00
21.	Land 1.800 cents purchased from Gopalakrishna Pillai in the name of Shailaja at Edappally South	-	923.00
22.	Land 97 cents purchased from Pooppally Scaria in the name of M. A. Kumar at Kainakary Village	+	1,90,405.00
23.	Land 40.200 cents (see Sl. No. 16) and 16 cents (see Sl. No.20) transferred to Shailaja, wife of M. A. Kumar by N.S.D. Kurup, father-in-law of M. A. Kumar.	-	18,068.00
24.	Land 5 acres and 50 sqr. metres (see Sl. No. 19) at Kainakary village shown as received by M. A. Kumar from his father	-	14,005.00
25.	Cost of construction of residential building 32/2156 "Souparnika" at P. J. Antony Road, Mamangalam, Edappally, Cochin, Kerala, in the name of Shailaja	+	10,97,011.00
26.	Cost of construction of shopping complex in the name of M.A. Kumar and Shailaja at Nedumudy (M. C. Road/Nedumudy P.S. junction)	-	33,17,789.00
27.	Cost of acquisition of articles found in the residence of the accused at Mamangalam, Kerala during search vide list of items prepared on the spot	-	2,38,150.00
28.	Acquisition value of articles found in room no. 3 of UD&HD shopping complex building at Development Area Gangtok	-	44,515.00
TOTAL			= 15,05,942.00

NOTE : The figures in bold in the last columns have been deleted from the account of the Appellant as those stand in the name of the wife of the Appellant, Shailaja. The amount of Rs.15,05,942/- shown at the end of the statement is the total of the rest only, those being credits standing either in the name of the Appellant or in the name of his minor sons.



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(ii) As observed earlier, there is no dispute on the expenditure of the Appellant worked out for the check period and is, therefore, retained as indicated in the impugned judgment at Rs.2,29,809/-, the details of which are as under: -

STATEMENT – D

ITEMS OF EXPENDITURE DURING THE PERIOD OF CHECK

1.	Education of children		
	(a) Paid to Marthoma Public School on account of fees, books and building fund for son A. Varun	-	17,977.00
	(b) Paid to Hill Valley School on account of fees, books etc. for son A. Arun, vide school letter no.nil dated 07-04-2000	-	20,450.00
2.	Building Tax		
	(a) For shopping complex under Nedumudy Panchayat	-	11,303.60
	(b) For the residential building at Mamangalam, Palarivatoom – tax paid to the Corporation of Cochin	-	13,514.00
3.	Telephone/mobile phone charges		
	(a) Deposit/payment of bills made in respect of phone no. 343008 vide AO (TR/IT) Ernakulam Telephones	-	31,909.00
	(b) Deposits/payments of bills made in respect of phone no. 23636 vide AO(TR), Office of the TDM/Gangtok	+	51,280.00
	(c) Deposit made on 18-04-1996 for telephone no.762112 installed in the office room of the accused at Nedumudy Shopping Complex.	-	5,600.00
	(d) Deposit made on 16-6-95 for telephone no. 762174 installed in the office room of the accused at Nedumudy Shopping Complex	-	1,200.00
	(e) Security deposit made for ESCOTEL mobile phone no.34308 on 15-02-1997 vide ESCOTEL payment chart and statement of Shri Cherian Peter.	-	3,000.00
4.	Electricity charges for the residential building at Mamangalam, Palarivatoom	+	49,432.00

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5.	Vehicle taxes -		
	(a) Paid for Maruti Car No. KL-7C/5391	-	3,630.00
	(b) Paid in respect of three trucks owned by Shailaja	-	1,06,005.00
6.	Membership fee paid to Regional Sports Centre, Cochin on 04-09-1993	-	10,000.00
7.	Repayment of Sikkim Housing Development Board loan (see item no. 7 in statement-C)	-	60,000.00
8.	Subscription to KSFE chit funds :-		
	(a) Paid on 30-07-1997 to KSFE Alleppey-II Branch for Chit Fund No.38/97	+	20,000.00
	(b) Paid to KSFE Palarivattom Branch for Chit Fund	+	35,999.00
	(c) Paid to KSFE Palarivattom Branch for Chit Fund No. 34/94-A	+	12,500.00
	(d) Paid to KSFE Palarivattom Branch for Chit Fund No. 32/94-49	+	52,000.00
9.	Subscription to UTI's US-64 Scheme, Certificate Nos.305940010010910 and 305950140015147	-	6,736.00
10.	Purchase of 60 units of UTI's GCGIP-94 Scheme on 25-04-1994 in the name of Shailaja - Membership Advice No. 346941550000389.	-	6,000.00
11.	Paid to National Savings Organisation, Mahila Pradhan K. B. Yojana	-	11,500.00
12.	Interest/processing charge paid to SBT Palarivattom for Loan Account (Cash Key) No.7/93 of Shailaja	-	8,672.00
13.	Interest paid to SBT Palarivattom for loans taken by mortgaging gold (A/c in the name of Shailaja)	+	8,598.00
14.	Interest paid to Champakulam Co-operative Bank, Nedumudy for loans taken mortgaging fixed deposits	-	3,723.75*
15.	Water revenue paid to PHED, Gangtok Division	-	846.00
16.	Expenditure on travel – Gangtok to home town & back – on leave	-	2,900.00
17.	Maintenance of Maruti Car KL-7C/5931 during the period July 1992 to August, 1997	-	33,844.00
18.	Assumed expenditure on marriage of brother/sisters/ brothers-in-law/sisters-in-law and other social obligations	-	5,000.00
19.	Maintenance of residential building at Mamangalam painting/whitewashing etc. for 7 years, i.e., 1991-97 only.	-	8,000.00
20.	School transport for children (1990 to 1997) Rs.50/- per month x 9 months a year x 2 children.	-	6,300.00



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21.	Expenses on food and fuel (4-member family)	-	1,30,780.00
22.	Entertainment of casual guests at home (Rs.30/- per month x 164 months)	-	4,920.00
23.	Cosmetics items	-	4,080.00
24.	Toiletries	-	4,080.00
25.	Washing of clothes/linens	-	4,080.00
26.	School uniforms/shoes/bag	-	4,700.00
27.	Dress/linen material/shoes/slippers/socks (other than school items mentioned above) for 4 family members	-	10,500-.00
TOTAL :			<u>2,29,809.00</u>

* wrongly mentioned as Rs.9,723.75 in paragraph 82 of the impugned judgment.

(iii). Similarly, on the question of income of the Appellant during the check period, it necessarily calls for deletion of all the savings accounts of the wife of the Appellant and her incomes from other sources. Accordingly, the income during the check period, discounting the interests earned in the various accounts of the wife of the Appellant and her income from other sources, is as under: -

STATEMENT – C

INCOME DURING THE PERIOD OF CHECK

1.	Interest from Savings Bank Accounts -		
	(a) SBT Palarivatoom A/c No.10896 - Shailaja	-	1,040.00
	(b) SBT Palarivatoom A/c No.10746 - M. A. Kumar	+	836.00
	(c) SBT Palarivatoom A/c No.11116 - A. Varun	+	26.00

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	(d) SBT Palarivatoom A/c No.11416 - A. Arun	+	9.00
	(e) SBT Palarivatoom A/c No.7584 - M.A. Kumar & Shailaja	-	1,775.93
	(f) Corporation Bank Alleppey A/c No.4036 - M. A. Kumar & Shailaja	-	297.00
	(g) Champakulam Service Co-Operative Bank A/c No.401 - M. A. Kumar	+	2,654.00
	(h) Nedumudy Co-operative Bank A/c No.733 - Shailaja	-	2,696.40
	(i) Federal Bank Kalarcode A/c No.8090 - M. A. Kumar	+	22.00
	(j) SBI Deorali A/c No.2/P/C-189 (now 01190/005826) - M. A. Kumar	+	486.00
	(k) UCO Bank Gangtok A/c No. 1419/11 - Shailaja	-	21.70
	(l) Central Bank of India Gangtok A/c No. 6462 - M. A. Kumar & Shailaja	-	2,208.00
2.	Interest from Fixed deposits -		
	(a) SBT Palarivattom F.D. dated 12-11-1991 credited in SB A/c No.7584 on 14-05-1992	+	4,247.00*
	(b) SBT Palarivattom F.D. of Rs.1 lakh credited in SB A/c No. 10746 on 14-01-1994.	-	6,646.00
	(c) Corporation Bank Alleppey F.D. No.399/95 dt. 06-12-1995 credited in SB A/c No.4036 on 20-04-1995.	+	2,582.00
	(d) Champakulam Co-operative Bank – fifteen F.Ds	+	46,107.00
	(e) Nedumudy Co-operative Bank – ten F.Ds	+	24,199.00
	(f) Interest from the four numbers of F.Ds credited in Cash Key (CK) loan A/c No.7/93 of Shailaja at SBT Palarivattom	-	11,105.00
	(g) Kerala State Financial Enterprise (KSFE) Palarivattom FD No. 1542 of Shailaja	-	556.00
3.	Payment received in respect of KSFE Palarivattom Chitty (chit fund) No. 30/91-A was credited in SB A/c No.10896 of Shailaja at SBT Palarivattom on 29-10-1994	-	35,999.00
4.	Dividend received in respect of UTI's GCGIP-94 Scheme Membership Advice No. 34694155-0000389 (Shailaja)	-	1,560.00
5.	Profit component (assumed) in respect of work executed by Shailaja (construction of 'bund' from Tathery to AC Road at Nedumudy under JRY-93/94.	-	5,000.00
6.	Income from salary of M. A. Kumar during the period from 01-01-1984 to 30-09-1995 (all drawn from GMC/UD&HD).	+	2,26,011.60
7.	Loan received from Sikkim Housing Dev. Board vide SHDB letter No. 460/SHDB/99 dated 10-02-2000.	-	1,99,843.00



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8(1)	<u>Trucks</u> : Shailaja, wife of the accused, had owned three trucks - purchased in the months of September, 1993, January, 1994 and February, 1995 respectively. In the absence of her filing any Income Tax Return or paying any I.T. under the Income Tax Act, 1961 it is to be taken into account that her total income from all sources was below the ceiling exempted from payment of I.T.	+	1,64,167.00
8(2)	<u>Rent</u> :		
	(a) Rent from the 1st floor of residential building at Mamangalam	+	1,92,000.00
	(b) Rent from shopping complex, Nedumudy	+	19,880.00
	(c) Agriculture income from wet land	+	1,02,685.00
9.	Income by way of commission earned by Shailaja as an LIC agent at Gangtok	-	13,551.46
TOTAL			= <u>7,85,911.60</u>

* wrongly mentioned as Rs.9,247/- in paragraph 97 of the impugned judgment.

NOTE : The figures in bold in the last columns have been deleted from the account of the Appellant as those stand in the name of the wife of the Appellant, Shailaja. The amount of Rs.7,85,911/- shown at the end of the statement is the total of the rest only, those being credits standing either in the name of the Appellant or in the name of his minor sons.

(iv) The aforesaid values are summed up to ascertain the disproportionate assets as follows: -

(a)	Assets held at the close of the period of check as on 31-08-1997)	Statement 'B'		15,05,942.00
(b)	Less : Assets held at the beginning of the period of check as on 01-01-1984	Statement 'A'	-	<u>18,849.75</u>
(c)	Assets acquired during the period of check		=	14,87,092.25
(d)	Add: Expenses during the period of check	Statement 'D'	+	<u>2,29,809.00</u>
(e)	Total assets and expenses during the period of check		=	17,16,901.25
(f)	Less: Income from known sources	Statement 'C'	-	<u>7,85,911.60</u>
(g)	Extent of disproportionate assets during the check period	TOTAL	=	<u>9,30,989.65</u>



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30. For the aforesaid reasons, the Appellant is found to have been in possession of disproportionate of assets of Rs.9,30,989.65 (Rupees nine lakhs thirty thousand nine hundred eighty nine and paisa sixty five) as against Rs.44,53,336.65 (Rupees forty four lakhs fifty three thousand three hundred thirty six and paisa sixty five) as found by the Learned Special Judge, Prevention of Corruption Act, 1988, East and North Sikkim at Gangtok vide impugned judgment dated 31-12-2012 in S.T. (Vig.) Case No.1 of 2002.

31. In the result, The Appeal is dismissed.

32. On the question of sentence, I have considered the rival submissions made before the Learned Special Judge on behalf of the parties. The case having first been registered against the Appellant in the year 1998 by the Investigating Agency and the trial having commenced in the year 2002, the Appellant has no doubt been subjected to prolonged trial and has suffered both in body and mind. He is now about 57 years. Under these circumstances, interest of justice would be met if the sentence is reduced to the minimum permissible simple imprisonment of one



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year from one year and six months imposed by the Learned Special Judge, the fine remaining the same at Rs.10,000/- (Rupees ten thousand) only. In default of payment of the fine he shall undergo further simple imprisonment for six months.

33. No order as to costs.

34. The Appellant shall appear before the Learned Special Judge, Prevention of Corruption Act, 1988, East and North Sikkim at Gangtok on 22-04-2014 at 10.30 a.m. to face the process of execution of the sentence.

35. Let a copy of this judgment along with the original records of the case be transmitted to the Special Judge, Prevention of Corruption Act, 1988, East and North Sikkim at Gangtok forthwith for its due compliance.

(S. P. Wangdi)
Judge
 21-04-2013

Approved for reporting : **Yes**

Internet : **Yes**