

Crl.RC.Nos.265 to 269 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 06.01.2025

PRONOUNCED ON : 23.04.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.Nos.265 to 269 of 2013

State represented by
The Superintendent of Police
Vigilance & Anti Corruption
(City Special Unit-I), Chennai
(V & A.C. Chennai Crime No.9 of 2002)

... Petitioner in all Crl.RCs.

Vs.

Durai Murugan
D.Santhakumari
Kadir Anand
K.Sangeetha
Durai Singaram

... Respondent in Crl.RC.No.265 of 2013
... Respondent in Crl.RC.No.266 of 2013
... Respondent in Crl.RC.No.267 of 2013
... Respondent in Crl.RC.No.268 of 2013
... Respondent in Crl.RC.No.269 of 2013

Prayer in Crl.RC.No.265 of 2013: Criminal Revision Case filed under under
Section 397 & 401 of Cr.P.C. to set aside the order of discharge passed by the
Special Judge cum Chief Judicial Magistrate Court, Vellore in



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Crl.M.P.No.1674 of 2006 (Common order passed in Cr.M.P.Nos.1674/2006 to 1678/2006) in Special Case No.1 of 2004 dated 23.02.2007.

Prayer in Crl.RC.No.266 of 2013: Criminal Revision Case filed under under Section 397 & 401 of Cr.P.C. to set aside the order of discharge passed by the Special Judge cum Chief Judicial Magistrate Court, Vellore in Crl.M.P.No.1675 of 2006 (Common order passed in Cr.M.P.Nos.1674/2006 to 1678/2006) in Special Case No.1 of 2004 dated 23.02.2007.

Prayer in Crl.RC.No.267 of 2013: Criminal Revision Case filed under under Section 397 & 401 of Cr.P.C. to set aside the order of discharge passed by the Special Judge cum Chief Judicial Magistrate Court, Vellore in Crl.M.P.No.1676 of 2006 (Common order passed in Cr.M.P.Nos.1674/2006 to 1678/2006) in Special Case No.1 of 2004 dated 23.02.2007.

Prayer in Crl.RC.No.268 of 2013: Criminal Revision Case filed under under Section 397 & 401 of Cr.P.C. to set aside the order of discharge passed by the Special Judge cum Chief Judicial Magistrate Court, Vellore in Crl.M.P.No.1677 of 2006 (Common order passed in Cr.M.P.Nos.1674/2006 to 1678/2006) in Special Case No.1 of 2004 dated 23.02.2007.

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Prayer in Crl.RC.No.269 of 2013: Criminal Revision Case filed under under

Section 397 & 401 of Cr.P.C. to set aside the order of discharge passed by the Special Judge cum Chief Judicial Magistrate Court, Vellore in Crl.M.P.No.1678 of 2006 (Common order passed in Cr.M.P.Nos.1674/2006 to 1678/2006) in Special Case No.1 of 2004 dated 23.02.2007.

For Petitioner in all cases : Mr.J.Ravindran
Additional Advocate General
assisted by Mr.S.Vinoth Kumar
Government Advocate (Crl. Side)

For Respondent in
Crl.RC.No.265/2013 : Mr.Sidharth Luthra
Senior Advocate
Assisted by Mr.Richardson Wilson

For Respondents in
Crl.RC.Nos.266/2013 to 269/2013 :Mr.P.Wilson
Senior Advocate
Assisted by Mr.Richardson Wilson

COMMON ORDER

These Criminal Revision Cases have been filed by the State to set aside the order of discharge passed by the Special Judge cum Chief Judicial

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Magistrate Court, Vellore in Cr.M.P.Nos.1674/2006 to 1678/2006 in Special

Case No.1 of 2004, dated 23.02.2007.

Gist of the prosecution case:

2 Petitioner in Crl.RC.No.265 of 2013 namely D.Durai Murugan/A1 was the Minister of Public Works and Forest Department, Government of Tamil Nadu during the period between 13.05.1996 and 14.05.2001. He is a member of the Tamil Nadu Legislative Assembly elected from Katpadi Constituency from 15.05.2001 and he is a 'public servant' within the meaning of Section 2(C) of the Prevention of Corruption Act, 1988 (herein after referred to as "P.C. Act") from 13.05.1996.

2.1 Petitioner in Crl.RC.No.266 of 2013 namely D.Santhakumari/A2 is the wife of the Public Servant. Petitioner in Crl.RC.No.267 of 2013 namely Kadir Anand/A3 is the son of the Public Servant. Petitioner in Crl.RC.No.268

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of 2013 namely K.Sangeetha/A4 is the wife of A3. Petitioner in Crl.RC.No.269

of 2013 namely Durai Sinigaram/A5 is the brother of the Public Servant and he is a retired employee of a private company.

2.2 On the basis of information that A1/D.Durai Murugan during his tenure as a Minister for Public Works and Forest Department and as a Member of the Tamil Nadu Legislative Assembly, during the period between 1996-2001 had acquired and was in possession of pecuniary resources and properties in his name and in the names of his wife, son, daughter-in-law, brother and five others on his behalf as benamies, which were found disproportionate to his known sources of income, a case in Crime No.9 of 2002 was registered at Vellore Vigilance and Anti-Corruption Detachment on 11.10.2002 against D.Durai Murugan and his wife, son, daughter-in-law, brother and one B.G.Raghupaty, A.P. Nandhakumar, S.Narayanan, V.Radthagovindan and R.G.Dharmaraj for the offence under Sections 109, 471, 477-A read with 34 &

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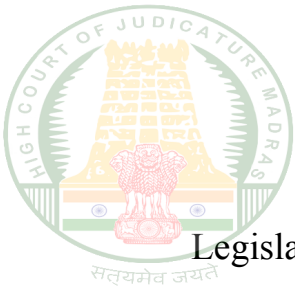


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201 IPC read with 13(2) read with 13(1)(d) and 13(1) (e) of P.C. Act and duly investigated.

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2.3 A1-D.Durai Murugan is a native of Kankuppam Village, Katpadi Taluk in Vellore District. He belongs to a middle class agriculturist family. His father Duraisamy Gounder was an agriculturist owning 3.99 acres of land at Kankuppam Village and 1.97 acres of land at Murugampattu Village besides as ancestral house measuring 800 sq.ft. His parents are no more now. A1 has two brothers and one sister. Durai Mahalingam is his eldest brother staying at his native place looking after agriculture. Durai Singaram/A5 is the younger brother of A1 and retired employee from a private Cement Company at Chennai. A1, after completing his education with Bachelor degree in law, joined D.M.K. Party and was elected to Tamil Nadu Legislative Assembly from Katpadi Assembly Constituency and held the post of M.L.A. During 1971-76, 1977-80 and 1980-84 and is presently a Member of Tamil Nadu

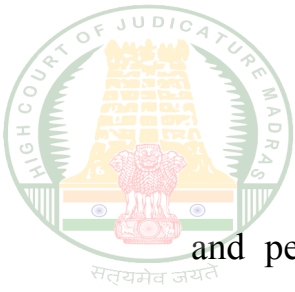


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Legislative Assembly. He held the post of Minister for Public Works and Forest

Department during 1989-91 and 1996-2001. He married A2, daughter of V.K.Elumalai, who was also an agriculturist and belonged to Kothakottai Village in Vaniyambadi Taluk. A1 and A2 have one son born on 19.01.1975. A2/wife of A1 is a housewife and has never been in any employment. A3/son of A1 completed his education by getting M.B.A. Degree from Baldwin University at Ohio in United States of America during the year 1997-98. A3 married A4 on 25.05.2000. A4 is a housewife and has never been in any employment.

2.4 During the year 1993, A1 started a business under the name and style of M/s.Rajama Exports at Kotturpuram, Chennai, and later shifted to Keelakottaiyur Village in Chengalpet Taluk in a newly constructed factory premises in the year 2001, dealing in export of spices and A2/wife of A1 was shown as Sole Proprietrix of M/s.Rajama Exports and thereby held properties



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and pecuniary resources in the name of M/s.Rajama Exports. A1/D.Durai

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Murugan is found to be the real proprietor of M/s.Rajamma Exports.

2.5 In the year 1998, A-1 D.Durai Murugan, started a business in the name and style of M/s.Kadhir Info-Tech Pvt. Ltd., and Kadhir Agencies at No.6, 1st Main Road, Gandhi Nagar, Adayar, Chennai-20 in the premises belonging to A-1, dealing in Computer Software and Chemicals respectively with A-3 D.S.Kadhir Anand as it's proprietor. A-3 D.S. Kadhir Anand is found to have been merely purporting to be the sole proprietor of M/s.Kadhir Infor-Tech. Pvt. Ltd., and Kadhir Agencies and thereby he has been intentionally aiding A-1 D.Durai Murugan in acquiring and holding properties and pecuniary resources in the names of M/s Kadhir Info-Tech Pvt.Ltd. And Kadhir Agencies.

2.6 Similarly, in the year 1999, A-1 D.Durai Murugan has started

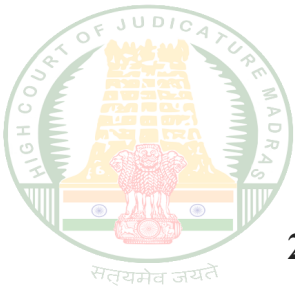


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another business in the name and style of Cybase Browsing Centre at No.1/1C,

Baba Toweres, Sterling Road, Nungambakkam, Chennai and L.V. Press at No.111, Long Bazaar Road, Vellore, with A-3 D.S.Kadhir Anand as it's sole proprietor. A-3 D.S. Kadhir Anand is found to have been merely purporting to be the sole proprietor of M/s.Cybase Browsing Centre and L.V. Press, thereby has been intentionally aiding A-1 D. Durai Murugan in acquiring and holding properties and pecuniary resources in the names of M/s.Cybase Browsing Centre and L.V. Press (Lakshmi Vilasam Press].

2.7 In the year 2001, A-1 D. Durai Murugan started a business under the name and style of Tidel water Supply at Kandipedu Village, Katpadi Taluk, Vellore District dealing with the manufacture of mineral water with A-4 K.Sangeetha as it's sole proprietrix and thereby she has been intentionally aiding A-1 D.Durai Murugan in the acquisition of assets.

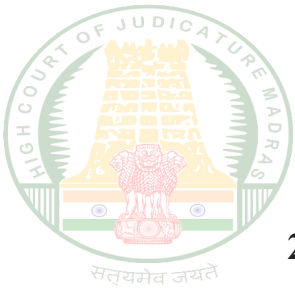


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2.8 M/s.Rajamma Exports, Kadhir Info-Tech Pvt. Ltd., Kadhir

Agencies, L.V.Press, M/s.Cybase Browsing Centre and Tidel Water Supply are found to be merely devices invested by A-1 D.Durai Murugan for investigating and laundering his ill-gotton money and adopted by his for the said illegal exercise with the active assistance of A-2 to A-5 as afore stated. The properties and pecuniary resources acquired in the name of M/s. Rajamma Exports, Kadhi Info-Tech. Pvt. Ltd., Kadhir Agencies, L.V. Press, Cybase Browsing Centre and Tidel Water Supply are found to have been acquired by A-1 D.Durai Murugan and are found to be in his possession.

2.9 The period between 13.5.1996 and 18.10.2002 was taken as the cheek period for investigation as it was the period when substantial portion of properties and pecuniary resources are found to have been acquired by A-1 D.Durai Murugan in his name and in the name of his family members.



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2.10 As on 13.5.1996, A-1 D.Durai Murugan is found to have been in

possession of pecuniary resources and properties in his name and in the name of his wife D.Shantha Kumari (A-2), his son D.S.Kadhir Anand [A-3] and his brother Durai Singaram (A-5) of a total value of Rs.38,28,928/-.

2.11 As on 18.10.2002, A-1 D.Durrai Murugan is found to have acquired and was in possession of pecuniary resources and properties in his name and in the name of his wife D.Shantha Kumari [A-2], in the name of his son D.S.Kadhir Anand [A-3], in the name of his daughter-in-law K.Sangeetha [A-4], in the name of his younger brother D.Durai Singaram [A-5] and in the names of M/s Rajamma Exports, Kadhir Info-Tech Pvt. Ltd., Kadhir Agencies, L.V. Press, M/s. Cybase Browsing Centre and Tidel Water Supply of a total value of Rs.5,11,60,123/-.

2.12 Hence, during the check period, A-1 D.Durai Murugan is found



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to have acquired pecuniary resources and properties in his name and in the

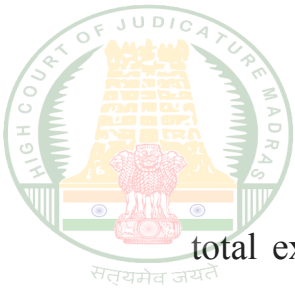
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name his family members and in the names aforesaid firms viz., M/s.Rajamma Exports, Kadhir Info-Tech Pvt. Ltd., Kadhir Agencies, M/s Cybase Browsing Centre, L.V. Press, and Tidel Water Supply of a total value of Rs.4,73,31,195/-.

2.13 During investigation, D.Durai Murugan, D.Shanthakumari, D.S.Kadhir Anand, K. Sangeetha and D.Durai Singaram had come up with similar claims of having received huge income through agriculture and the business run under the name and style of M/s.Rajamma Exports, Kadhir Infor-Tech Pvt. Ltd., Kadhir Agencies, M/s. Cybase Browsing Centre, L.V. Press and Tidel Water Supply. These claims were verified and were accepted to the extent to which they were found true.

2.14 During the check period, A-1 D.Durai Murugan is found to have had a total income of Rs.3,05,13,153/- from his known sources of income. The

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total expenditure incurred by A-1 D.Durai Murugan during the check period

has been assessed as Rs.2,26,49,268/-. Hence, the likely savings of A-1 D.Durai Murugan at the end of the check period i.e. as on 18.10.2002, are Rs.78,63,885/- [i.e. Rs.3,05,13,153 (Statement-III) - Rs.2,26,49,268/- (Statement-IV) + Rs.78,63,885/-).

2.15 Thus, A-1 D.Durai Murugan is found to have had in his possession of pecuniary resources and properties disproportionate to his known sources of income to the extent of Rs.3,94,67,310/- [i.e. Rs.4,73,31,195/- (Statement-V)- Rs.78,63,885/- (Statement-VI) = Rs.3,94,67,310/-)vide Statement- VII.

2.16 According to prosecution there is impregnable evidence to prove the commission of the offence by 1st respondent/A1 punishable under Sections 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988, and the

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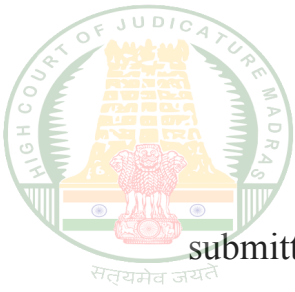
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commission of the offence by the respondents/A2 to A5 punishable under

Sections 109 IPC r/w 13(2) r/w 13(1)(e) of the P.C. Act.

2.17 The Special Court took the case on file in Special Case No.1 of 2004 on 23.02.2007. Pending case, the respondents/A1 to A5 filed petitions in C.M.P.Nos.1674 of 2006 to 1678 of 2006 under Section 239 Cr.P.C. before the Special Judge cum Chief Judicial Magistrate Court, Vellore, for their discharge. On hearing both sides, the trial Court passed order on 23.02.2007 allowing the petitions filed by the respondents/A1 to A5 and discharged them from the said case. Hence, challenging the same, the present revision petitions have been filed by the State.

3 The contention of the learned Additional Advocate General appearing for the petitioner/State is that the order of the trial Court in discharging the respondents/A1 to A5 is against the law and weight of evidence

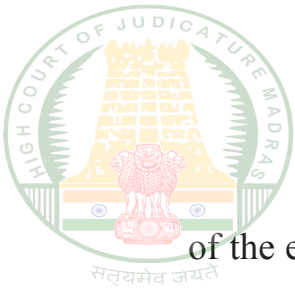


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submitted by the prosecution under Section 173 Cr.P.C. The Special Court has

failed to consider the statements recorded under Section 161 (3) Cr.P.C and also the documents collected during investigation in a proper perspective. The learned Special Judge has failed to consider that the accused A-2 to A-5 have no sufficient sources of income to acquire the properties in their names during the check period and failed to understand that there is no illegality in calculating the assets acquired by the other accused during the check period when they were found to be no adequate sources of income to purchase the properties. The Special Court failed to consider that though the accused A-2 to A-5 were income tax assesseees, but their incomes were not sufficient to acquire the properties in their names during the check period and erred in holding that some of the documents said to have been seized by the Inspector of Police were not authorized by the Superintendent of Police under Section 17 of the Prevention of Corruption Act, 1988. The Special Court has erred in discharging the respondents/A1 to A5 by wrongly weighing the reliability and sustainability

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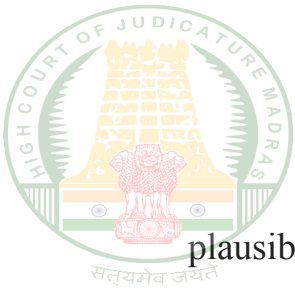
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of the evidence produced in the form of documents by the prosecution and also

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erred in holding that the Investigating Officer did not consider the income tax returns filed by the respondents/A2 to A5, even for the period prior to the registration of FIR and prior to the check period.

3.1 Further, the Special Court has erred in holding that the Investigating Officer ought to have issued notice and obtained explanation from the respondents/A2 to A5, prior to the registration of F.I.R and that the F.I.R. was registered against the respondents/A1 to A4 hurriedly after an efflux of time and the final report under Section 173 Cr.P.C. was also hastily filed. The Special Court has erred in holding that the Investigating Officer has not alluded any direct or indirect evidence to connect the properties held in the names of the respondents/A2 to A5, to the first respondent/A1 and the prosecution has not explained the delay in registering the F.I.R. six years after the end of the check period. The Special Court has erred in holding that it is



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plausible to accept that the case was filed against the respondents/A1 to A5 due

to political vendetta and that the Investigating Officer has not mentioned and considered the income received by the respondents/A1 to A5 prior to the check period and that the properties of the Trust had no nexus with the respondents/A1 to A5.

3.2 The Special Court has misapplied to the instant case, the ratio laid down by the Honourable Supreme Court in "Krishnananth Agnihothri Vs. State of Madhyapradesh" (AIR 1977 SCC 796) wherein, it has been held that the disproportionate assets below 10% would not make out a case, but in the present case, disproportionate asset has been quantified as 82.64% in the instant case.

3.3 The Special Court failed to consider the decision of the Honourable Supreme Court in "***K.Rajendra Babu Vs. State of Tamil Nadu***" (2008-1-MLJ-Crl.) wherein it has been laid down that no complaint need be



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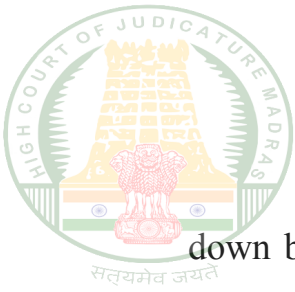
given by the aggrieved person to set the criminal law in motion and on coming

to know of the commission of cognizable offences, a police officer has every authority to set the law in motion by registering the First Information Report.

3.4 The Special Court has erred in holding that the Investigating Officer has not cited the Superintendent of Police (who issued authorization u/s 17 of the Act to the Investigating Officer) as a witness in the list of witnesses and that the searches were conducted by other police officers who were not authorized to do so. The Special Court wrongly came to the conclusion without any evidence on record that the respondents/A1 to A5 would have earned more income than that shown in the documents produced by the Investigating Officer and that the Special Court has not followed the principles laid down by the Honourable Supreme Court of India in *"Superintendent and Remembrance of legal affairs, West Bengal-Vs-Anilkumar Bhunja" (1979 SCC (Crl) 1038)*.

3.5 The Special Court failed to consider the following principles laid

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down by the Honourable Supreme Court of India in "***State of Maharashtra-***

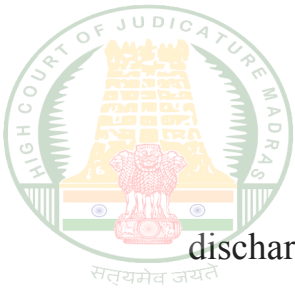
Vs-Somnath Thapa" (AIR 1996 SC Page 1744).

"It is apparent that at the stage of framing the charges, probative value of the materials on record cannot be gone into and the material brought on records by the prosecution has to be accepted as true at that stage".

3.6 The Special Court went wrong in discharging the respondents/A1 to A5 against law and contrary to the following dictum issued by the Honourable Supreme Court of India in "***State of Tamil Nadu-Vs-Narayanan and another***" (2000 SAR (Crl) Page 100 (SC)).

"It appears that the Court went on elaborate examination of statements recorded during investigation and formed an opinion after scanning and shaping of the same which was not warranted under law".

3.7 The Special Court has exceeded its jurisdiction in ordering the



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discharge of the respondents/A1 to A4, as if, sitting in the appeal against the

order of conviction. The Special Court went wrong in discharging the respondents/A1 to A5 against the principles laid down by Honourable Supreme Court of India, New Delhi reported in **"State of Madhya Pradesh-Vs-Mohanlal Soni" (2001 MLJ Crl.60)**.

"At the stage of framing of charges, the Court has to prima-facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence to conclude whether the materials produced are sufficient or not to convict the accused. If the Court is satisfied that prima facie case is made out for proceeding further, then charges have to be framed".

3.8 The actual assets possessed in the names of respondents/A2 to A5 and the income derived in their names during the check period were fully and duly taken into consideration by the Investigating Officer while assessing the proportionality of the assets and that the trial Court failed to consider the

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following principles laid down in ***"P.Nallammal & Others-Vs-State of Tamil***

Nadu" (1999 SAR 804).

"Legislative intent is manifest that abettors of all the difference offences u/s. 13(1)(e) of the P.C. Act-1988 should also be dealt along with the public servant in the same trial held by the Special Judge".

3.9 The Special Court failed to consider that Section 13(1)(e) of the Prevention of Corruption Act, 1988, ordains in its explanation that "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

3.10 The Special Court failed to consider the principles laid down by the Honourable Supreme Court in the case of ***"State of Madhya Pradesh-Vs-Awad Kishore Gupta and others"*** reported in ***2004 Cr.L.J 598*** that the



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expression "known sources of income" employed in the text of Section 13(1)(e)

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of the Prevention of Corruption Act, 1988 has reference to the income known to the prosecution after thorough investigation.

3.11 The Special Court gravely erred in discharging the respondents/A1 to A5 by not appreciating and considering the connecting links of circumstantial evidence which would prove that the respondents/A2 to A5 had been aware of the income, expenditure, etc., of the first respondent/A1 and that they had intentionally aided and thereby abetted A1 in the commission of offence of the possession of disproportionate assets by the first respondent/A1 by allowing him to acquire assets in their names, by utilizing the money derived by the first respondent/A1 through un-explainable sources. Based on the evidence produced by the prosecution, the trial Court ought to have drawn a reasonable and plausible presumption that the first respondent/A1 transferred the major portion of the assets acquired by him while he was such Minister

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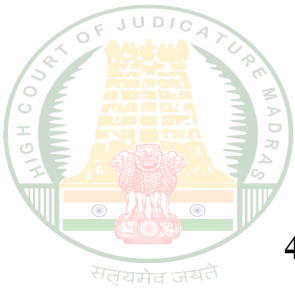
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through unknown sources, to the respondents/A2 to A5 who, in turn, acquired

the assets in their names, on behalf of the first respondent/A1, far beyond their known sources of income. The statements recorded under Section 161 (3) Cr.P.C and the documents collected during investigation were sufficient to frame charges against the respondents/A1 to A5. Therefore, the impugned order is liable to be set aside.

4 The learned Senior Counsel for the respondents/accused contended that during the check period he had not acquired any property and the case was registered against him and his wife only due to political motive.

4.1 In the present case the accused hail from a very rich family and whatever the properties that stand in the name of other accused and also monies are their individual assets, which were derived from individual source of income and not from the source of A1.

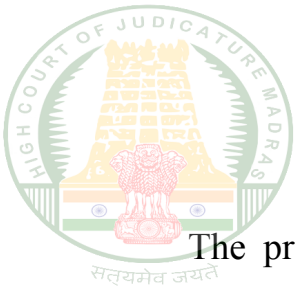


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4.2 The inclusion of assets standing in the name of other accused,

who are family members of A1 as the assets of A1 is illegal. The assets of other accused do not belong to A1 and they have independent source of income. The methodology adopted by the prosecution to establish the possession of disproportionate assets by the accused with reference to their known source of income is absolutely erroneous. The clubbing of the properties of other accused with A1 is absolutely not sustainable. A1 cannot be asked to explain the source of income of others for the properties standing in their names, over which, A1 has no claim or control. A1 has nothing to do with the properties standing in the name of his family members, who are having independent source of income. The Investigating Officer failed to consider the same and wrongly clubbed the properties standing in the name of other accused with the assets of A1. In the absence of any evidence showing that the properties standing in the name of other accused have been purchased out of the income of A1, the clubbing of assets held by others with A1 is absolutely erroneous.

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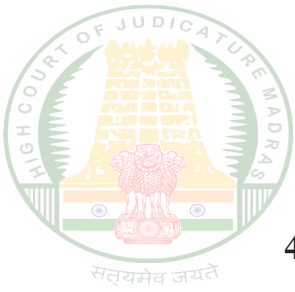


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The prosecution failed to consider all these aspects and in order to wreak vengeance on the political party, false case was foisted and unfortunately prosecution also carried out the assignment given by the then Ruling Party.

4.3 Further the non designated officer, who is not clothed with the power of authorization shall not investigate into the matter without prior sanction by not below the rank of Superintendent of Police and hence in the present case, the sanction obtained by the prosecution is not valid. Therefore the learned Magistrate considering the facts and evaluating the materials, rightly discharged the respondents/accused, which does not call for any interference by this Court.

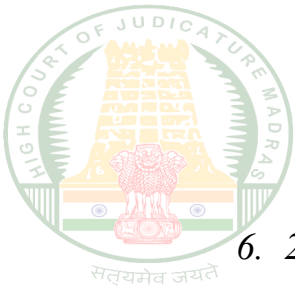
4.4 Even though, A1 has offered his reply and had sufficient sources to account the alleged disproportionate assets, the prosecution has failed to consider the same and shown exaggerated figures in the statements.



4.5 Further they would submit that the accused have properly filed

income tax returns and duly accounted for the assets and liabilities. Even though the Investigating Officer failed to consider the same, the learned Magistrate rightly appreciated the materials and also found that there is no *prima facie* case against the accused and rightly discharged them and there is no merit in the revisions and the same are liable to be dismissed. To support the contentions, the learned Senior Counsel placed reliance on many of the decisions of various High Courts and the Hon'ble Supreme Court and the decisions of the Hon'ble Supreme Court are as follows:

1. 2002 (2) SCC 135 (*Dilawar Balu Kurane Vs. State of Maharashtra*)
2. 2006 (7) SCC 172 (*State Inspector of Police Vs. Surya Sankaram Karri*)
3. 2015 (14) SCC 505 (*Kedari Lal Vs. State of M.P*)
4. 2020 (3) SCC 240 (*Sushil Sethi Vs. State of Arunachal Pradesh*)
5. 2011 (12) SCC 658 (*Vimaleshwar Nagappa Shet Vs. Noor Ahmed Shariff*)



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6. 2012 (9) SCC 460 (*Amit Kapoor Vs. Ramesh Chander*)

7. 2019 (20) SCC 539 (*State of Gujarat Vs. Afroz Mohammed Hasanfatta*)

8. 2023 (8) SCC 410 (*Manik Majumder Vs. Dipak Kumar Saha*)

9. 2006 (8) SCC 279 (*BSNL Vs. Subash Chandra Kanchan*)

10.2022 (16) SCC 663 (*State Vs. Uttamchand Bhora*)

11.1977 (1) SCC 816 (*Krishnanand Agnihotri Vs. State of M.P*)

12.2006 (1) SCC 420 (*DSP Vs. K.Inbasagaran*)

13.1954 (2) SCC 934 (*H.N.Rishbud Vs. State (Delhi Admn))*

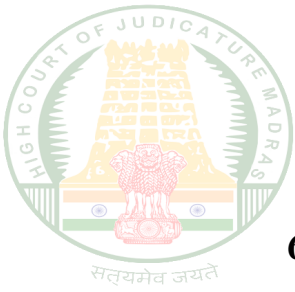
14.2015 (4) SCC 609 (*Sunil Bharti Mittal VS. CBI*)

15.2020 (2) SCC 338 (*Yashwant Sinha Vs. CBI*)

16.2003 (6) SCC 195 (*Union of India Vs. Prakash P. Hinduja*)

17.2022 (15) SCC 430 (*Ravindranath Bajpe Vs. Mangalore Special Economic Zone Ltd*)

5 Heard both sides and perused the materials available on record.



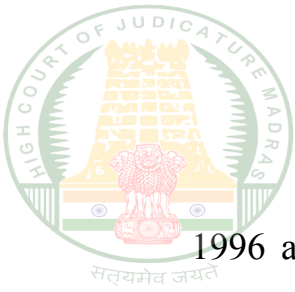
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6 The specific case of the prosecution is that the first respondent

was serving as Minister for Public Works and Forest Department during the years 1989-91 and 1996-2001. During the period between 1996 and 2001, he allegedly had acquired properties in his name and also in the names of A2 to A5. The petitioner/State after investigating the matter laid the charge sheet. Though sufficient opportunity was given to A1 to offer his explanation, he did not give any satisfactory explanation. Therefore, the petitioner/State, based on the documents collected during the investigation and the statements recorded under Section 161 Cr.P.C., formed an opinion that A1 had acquired assets, which are disproportionate to his known source of income and A2 to A5 abetted A1 for acquiring the properties. Therefore, there are enough materials available to frame charges against the accused and to proceed with the case further.

7 Admittedly, A1 was a Minister during the check period between

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1996 and 2001. The investigation report filed under Section 173 (3) Cr.P.C.

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along with the statements recorded under Section 161(3) Cr.P.C. as well as the documents collected during investigation and the statements shown in the charge sheet (schedule statement 1 to 7) reveal that there is *prima facie* material to substantiate the allegations of disproportionate assets. However, when the respondents/accused filed discharge petitions, the same were allowed and the Special Court discharged them.

8 The contention of the learned Senior Counsel is that the prosecution's methodology in establishing disproportionate assets is flawed. The clubbing of properties belonging to other accused with A1's assets is unsustainable. A1 cannot be held responsible for properties in the names of individuals with whom he has no claim or control, especially when these properties were acquired from their independent income. The Investigating Officer wrongly linked these assets to A1 without any evidence that they were



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purchased from his income. The Trial Court held that the prosecution, only to

inflation the expenses and to add to the value of the disproportionate income, clubbed the assets of other accused with A1. At this juncture, it is useful to refer Section 13(1)(e) of the Prevention of Corruption Act, 1988 including explanation, which is extracted hereunder:

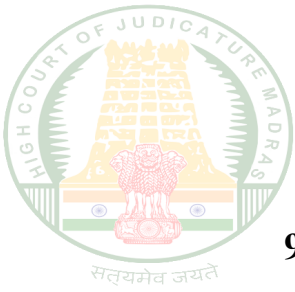
"Section 13: Criminal misconduct by a public servant:-

(1) ...

(a) ...

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income."

Explanation - For the purpose of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant."

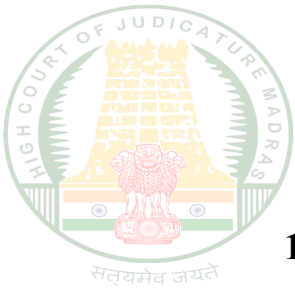


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9 In the Explanation to Section 13(1)(e) of the Prevention of

Corruption Act, the term known source of income has been discussed and as per which, "known source of income" means income received from any lawful sources and the public servant should intimate such receipt in accordance with the provisions of any law, rules or orders for the time being. In this context, it is pertinent to refer to the meaning of the expression "known sources of income," as explained by the Hon'ble Apex Court in the case of *C.S.D. Swami v. State* [AIR 1960 SC 7], wherein it has been observed as follows:

" Now, the expression 'known sources of income' must have reference to sources known to the prosecution on a thorough investigation of the case. It was not, and it could not be, contended that 'known sources of income' means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters 'specially within the knowledge' of the accused, within the meaning of Section 106 of the Evidence Act."



10 Further, recently, the Hon'ble Supreme Court in the case of ***State***

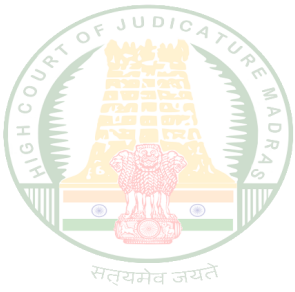
of Tamil Naud Vs. Soundirarasu reported in ***2023 (6) SCC 768***, elaborately

discussed about the known source including the explanation to Section 13

(1)(e) of the P.C. Act,1988 and the relevant paragraph of the decision is

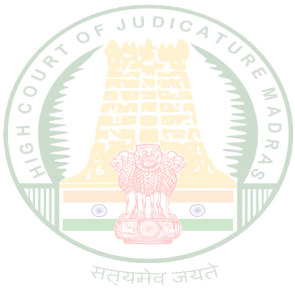
extracted herein under:

41. While the expression “known sources of income” refers to the sources known to the prosecution, the expression “for which the public servant cannot satisfactorily account” refers to the onus or burden on the accused to satisfactorily explain and account for the assets found to be possessed by the public servant. This burden is on the accused as the said facts are within his special knowledge. Section 106 of the Evidence Act applies. The Explanation to Section 13(1)(e) is a procedural section which seeks to define the expression “known sources of income” as sources known to the prosecution and not to the accused. The Explanation applies and relates to the mode and manner of investigation to be conducted by the prosecution, it does away with the requirement and necessity of the prosecution



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to have an open, wide and roving investigation and enquire into the alleged sources of income which the accused may have. It curtails the need and necessity of the prosecution to go into the alleged sources of income which a public servant may or possibly have but are not legal or have not been declared. The undeclared alleged sources are by their very nature are expected to be known to the accused only and are within his special knowledge. (emphasis supplied) The effect of the Explanation is to clarify and reinforce the existing position and understanding of the expression “known sources of income” i.e. the expression refers to sources known to the prosecution and not sources known to the accused. The second part of the Explanation does away with the need and requirement for the prosecution to conduct an open ended or roving enquiry or investigation to find out all alleged/claimed known sources of income of an accused who is investigated under the PC Act, 1988. The prosecution can rely upon the information furnished by the accused to the authorities under law, rules and orders for the time being applicable to a public servant. No further investigation is required by the prosecution to find out the known sources of

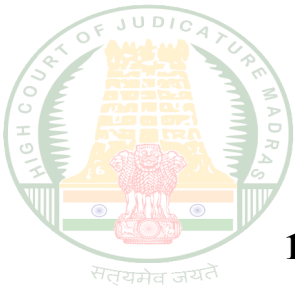


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income of the accused public servant. As noticed above, the first part of the Explanation refers to income received from legal/lawful sources. This first part of the expression states the obvious as is clear from the judgment of this Court in N. Ramakrishnaiah [N. Ramakrishnaiah v. State of A.P., (2008) 17 SCC 83 : (2010) 4 SCC (Cri) 454] .

11 In the present case, it is seen that after the investigation and prior to the filing of the charge sheet, A1 was called for explanation by the Investigating Officer and the same was also acknowledged by A1. Though A1 sent a letter seeking further time to offer his explanation and at last, did not give any satisfactory explanation. Whether the properties in question were acquired from the first accused or are the independent properties of the other respondents is also an issue that can be determined only upon full appreciation of evidence during trial and not at the stage of discharge.



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12 It is settled proposition of law that at the time of framing of

charges, the probative value of the materials on record cannot be gone into and the materials brought on record by the prosecution has to be accepted as true at the stage of framing of charges. (*State of Maharashtra-Vs-Somnath Thapa"* (AIR 1996 SC Page 1744). The veracity and validity of the documents collected during investigation also cannot be gone into at the stage of framing of charges. Further at the time of framing of charges, the Court has to prima facie consider whether there are sufficient materials to frame charges against the accused. The Court is not required to appreciate the evidence to conclude whether the materials produced are sufficient to convict the accused. If the Court is satisfied that *prima facie* case is made out to proceed further, then the charges have to be confirmed. Further, the Court cannot go into elaborate examination of statements recorded during investigation and form an opinion after scanning and shaping of the same which is not permissible under law. Therefore the finding of the trial Court that the accused has accounted the

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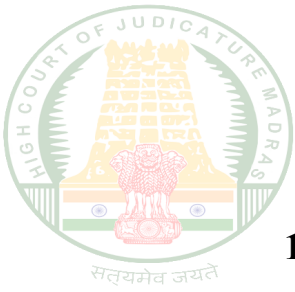
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disproportionate asset with his known source of income is not sustainable.

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13 At the time of framing of charges, the Court has to look into the final report filed by the Investigating Officer and also the materials produced by the Investigating Officer and if it reveals that *prima facie* materials are available, the Court has to frame charges and proceed the case further against the accused and equally it is settled proposition of law that at the time of framing charges, the Court cannot look into the defence of the accused or documents filed by the accused. But in the present case it is seen that the Special Judge has traversed beyond the scope of Section 239 Cr.P.C, which eventually ended in discharging the accused.

14 Once the Court finds that the materials produced by the Investigating Officer reveal *prima facie* case, then the Court has to frame charges and proceed further.

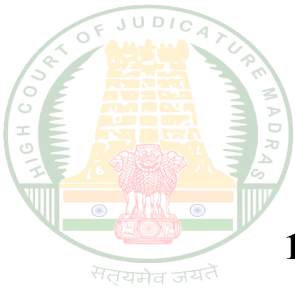


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15 Furthermore, the prosecution has to be given an opportunity to

substantiate its charges levelled against the accused in the final report. The Court itself cannot interpret in its own way and form an opinion that the materials are not sufficient to convict the accused.

16 The next contention of the learned Senior Counsel for the respondents/accused with regard to the income tax returns filed by the respondents/accused shows that they are maintaining proper accounts. But, it is settled proposition of law that the income tax returns submitted by the accused before the income tax authorities are not a conclusive one and the same must be testified and decided only during trial by examining the competent witness. Further, mere filing of income tax returns before the income tax authority, cannot be held that the respondents/accused earned such income from a lawful source.

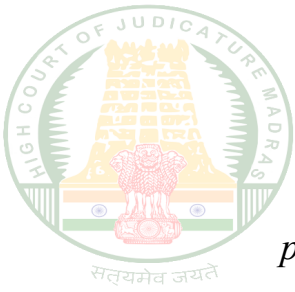


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17 One of the grounds taken by the learned Senior Counsel for the

respondents is that the ITR filed by the accused are legal documents and assessed and accepted by the Income Tax Department and that the prosecution has neither challenged these returns nor presented any conclusive evidence to demonstrate the exaggeration and to support this contention, reliance was also placed on the decision of the Hon'ble Supreme Court in the case of ***Krishnanad Agnihotri vs. State of Madhya Pradesh*** reported in ***1977 (1) SCC 816***. In this regard it is pertinent to note that subsequently the Hon'ble Supreme Court has rendered its judgment in the case of ***State of Tamil Nadu vs. N.Suresh Rajan and Others*** reported in ***(2014) 11 SCC 709*** and the relevant portion is extracted hereunder:

“The property in the name of an income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee. In case this proposition is accepted, in our opinion, it will lead to disastrous consequences. It will give opportunity to the corrupt public servants to amass property in the name of known



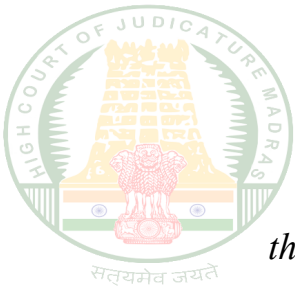
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WEB COPY persons, pay income tax on their behalf and then be out from the mischief of law.”

18 Further, the Hon'ble Supreme Court in the case of ***State of Karnataka Vs. J.Jayalalitha*** reported in (2017) 6 SCC 263 has held that:

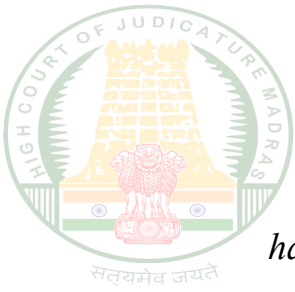
“190. The decision is to convey that though the IT returns and the orders passed in the IT proceedings in the instant case recorded the income of the accused concerned as disclosed in their returns, in view of the charge levelled against them, such returns and the orders in the IT proceedings would not by themselves establish that such income had been from lawful source as contemplated in the Explanation to Section 13(1)(e) of the PC Act, 1988 and that independent evidence would be required to account for the same.

191. Though considerable exchanges had been made in course of the arguments, centring around Section 43 of the Evidence Act, 1872, we are of the comprehension that those need not be expatiated in details. Suffice it to state that even assuming that the income tax returns, the proceedings in connection



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therewith and the decisions rendered therein are relevant and admissible in evidence as well, nothing as such, turns thereon definitively as those do not furnish any guarantee or authentication of the lawfulness of the source(s) of income, the pith of the charge levelled against the respondents. It is the plea of the defence that the income tax returns and orders, while proved by the accused persons had not been objected to by the prosecution and further it (prosecution) as well had called in evidence the income tax returns/orders and thus, it cannot object to the admissibility of the records produced by the defence. To reiterate, even if such returns and orders are admissible, the probative value would depend on the nature of the information furnished, the findings recorded in the orders and having a bearing on the charge levelled. In any view of the matter, however, such returns and orders would not ipso facto either conclusively prove or disprove the charge and can at best be pieces of evidence which have to be evaluated along with the other materials on record. Noticeably, none of the respondents has been examined on oath in the case in hand. Further, the income tax returns relied upon by the defence as well as the orders passed in the proceedings pertaining thereto



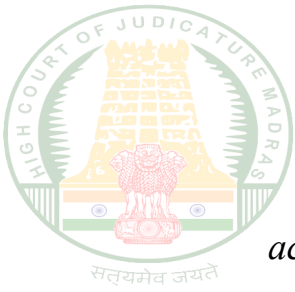
have been filed/passed after the charge-sheet had been submitted.

WEB COPY *Significantly, there is a charge of conspiracy and abetment against the accused persons. In the overall perspective therefore neither the income tax returns nor the orders passed in the proceedings relatable thereto, either definitively attest the lawfulness of the sources of income of the accused persons or are of any avail to them to satisfactorily account the disproportionateness of their pecuniary resources and properties as mandated by Section 13(1)(e) of the Act.*

192. *A Constitution Bench of this Court in Iqbal Singh Marwah v. Meenakshi Marwah [Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370 : 2005 SCC (Cri) 1101] in this context had ruled that there is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding on the other as both the cases have to be decided on the basis of the evidence adduced therein.*

.....

196. *This Court ruled that the fact that the accused, other than the two Ministers, had been assessed to income tax and had paid income tax could not have been relied upon to discharge the*

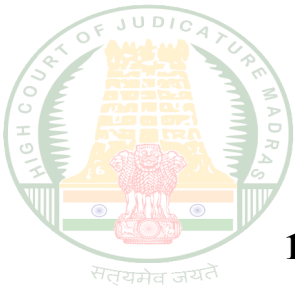


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accused persons in view of the allegation made by the prosecution

WEB COPY *that there was no separate income to amass such huge property. It was underlined that the property in the name of the income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee and that if this proposition was accepted, it would lead to disastrous consequences. This Court reflected that in such an eventuality it will give opportunities to the corrupt public servant to amass property in the name of known person, pay income tax on their behalf and then be out from the mischief of law.*

The discussions and the categorical pronouncement rendered by the Hon'ble Supreme Court would show that mere filing of income tax returns by the accused cannot be a ground to escape from the clutches of law, unless the same is proved with sufficient materials in the manner known to law, and such determination can be made only after trial.

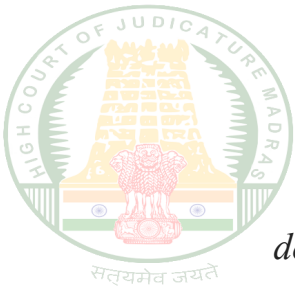


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19 As far as the allegation against A2 to A5 that they abetted A1 to

amass wealth is concerned, the learned Senior Counsel for the respondents/accused contended that there is no abetment on the part of A2 to A5 and they all have separate independent source of income and that the learned Special Judge has also made an observation that the prosecution has not proved that A2 to A5 abetted A1 to acquire assets which are disproportionate to his known source of income. However, the allegation is that A1 being a public servant had acquired properties in his name and also in the names of A2 to A5. A2 to A5 abetted A1 for acquiring the properties which is disproportionate to known sources. Therefore, A1 to A5 have to be tried together. In this regard it is useful to refer the decisions of the Hon'ble Supreme Court in the case of *"P.Nallammal & Others-Vs-State of Tamil Nadu"* (1999 **SAR 804**), wherein it is held as follows:

"Legislative intent is manifest that abettors of all the difference offences u/s. 13(1)(e) of the P.C. Act-1988 should also be



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dealt along with the public servant in the same trial held by the

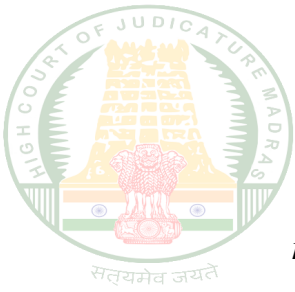
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20 In view of the above principles, the abettors of all the offence under the P.C. Act, should be dealt along with the public servant in the same trial held by the Special Judge. Therefore the reason cited by the learned Special Judge to discharge A2 to A5 is not sustainable.

21 As far as the contention regarding the validity of sanction is concerned, mere defect in sanction would not affect the case of the prosecution and in this regard it is useful to refer the decision of the Hon'ble Supreme Court reported *in (2009) 15 SCC 537* in the case of *V.Padmanabham vs. Government of Andhra Pradesh and Ors* and the relevant portion is extracted hereunder:

"8. So far as the defect in sanction aspect is concerned, the circular on which the High Court has placed reliance needs to be

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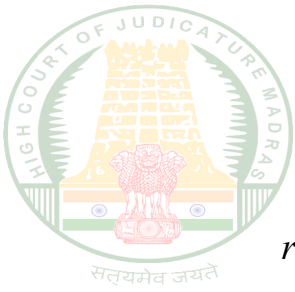
noted. The Circular in question is dated 9-2-1988 the relevant

WEB COPY *portion reads as follows:*

The Government also decided that before giving approval of prosecutions, the Principal Secretary, Law and Legal Department will obtain the advice of department concerned.”

A bare perusal of the paragraph shows that before giving approval for prosecution, advice of the department concerned was necessary. The question arises whether the absence of advice renders the sanction inoperative. Undisputedly the sanction has been given by the Department of Law and Legislative Affairs. The State Government had granted approval of the prosecution. As noted above, the sanction was granted in the name of the Governor of the State by the Additional Secretary, Department of Law and Legislative Affairs. The advice at the most is an interdepartmental matter.

9. Further, the High Court has failed to consider the effect of Section 19(3) of the Act. The said provision makes it clear that no finding, sentence or order passed by a Special Judge shall be

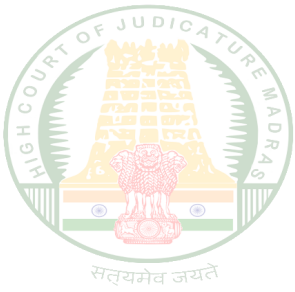


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reversed or altered by a court of appeal on the ground of absence of/ or any error, omission or irregularity in sanction required under sub-section (1) of Section 19 unless in the opinion of the court a failure of justice has in fact been occasioned thereby.

10. In the instant case there was not even a whisper or pleading about any failure of justice. The stage when this failure is to be established is yet to be reached since the case is at the stage of framing of charge whether or not failure has in fact been occasioned was to be determined once the trial commenced and evidence was led. In this connection the decisions of this Court in State v. T. Venkatesh Murthy [(2004) 7 SCC 763 : 2004 SCC (Cri) 2140] and in Parkash Singh Badal v. State of Punjab [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] need to be noted. That being so the High Court's view quashing the proceedings cannot be sustained and the State's appeal deserves to be allowed which we direct.



11. Coming to the appeal filed by the accused one of the

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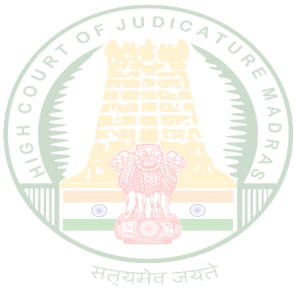
questions is whether the investigating officer was authorised to conduct the investigation. The investigation was carried on by the duly authorised officer, namely, the Deputy Superintendent of Police under Section 17(c) of the Act. The broader issues raised need not be looked into. The function of investigation was merely to collect evidence and any irregularity and illegality in the course of collection of evidence can hardly be considered by itself to affect the legality of trial by a competent court of the offence so investigated.”

22 The Hon'ble Supreme Court, in the decision reported in **(2004) 7**

SCC 763 in the case of ***State by Police Inspector vs. T.Venkatesh Murthy,***

further held as follows:

7. A combined reading of sub-sections (3) and (4) makes the position clear that notwithstanding anything contained in the Code no finding, sentence and order passed by a Special Judge shall be reversed or altered by a court in



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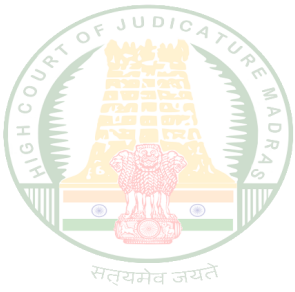
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appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in the sanction required under sub-section (1), unless in the opinion of that court a failure of justice has in fact been occasioned thereby.

8. Clause (b) of sub-section (3) is also relevant. It shows that no court shall stay the proceedings under the Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice.

9. Sub-section (4) postulates that in determining under sub-section (3) whether the absence of, or any error, omission or irregularity in the sanction has occasioned or resulted in a failure of justice, the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

10. Explanation appended to the section is also of significance. It provides, that for the purpose of Section 19,



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error includes competency of the authority to grant sanction.

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23 Yet another decision reported in **(2023) 1 SCC 329** in the case of

Vijay Rajmohan vs CBI (Anti Corruption Branch) held as follows:

22. Statutory provisions requiring sanction before prosecution either under Section 197CrPC or under Section 97 of the PC Act also intend to serve the very same purpose of protecting a public servant. These protections are not available to other citizens because of the inherent vulnerabilities of a public servant and the need to protect them. However, the said protection is neither a shield against dereliction of duty nor an absolute immunity against corrupt practices. The limited immunity or bar is only subject to a sanction by the appointing authority.

24 The Hon'ble Apex Court, in the recent judgment in the case of

State vs. Easwaran (2025 INSC 397) held that the High Court committed an



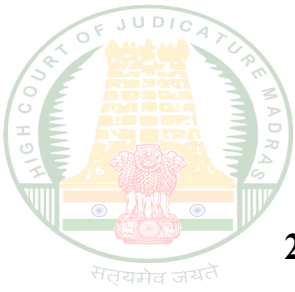
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error in quashing the prosecution on the grounds that the sanction to prosecute

was illegal and invalid. The Hon'ble Apex Court has reiterated that the validity of a sanction is an issue that must be examined during the course of trial. Since the case is now at the stage of framing charges, the respondents are free to raise all their defences before the trial Court. A challenge on a mere technical ground at this stage is untenable. Hence, the contention regarding defect in sanction is rejected.

25 A careful reading of the charge sheet filed by the petitioner/State, this Court prima facie finds that there are sufficient materials to prosecute the accused/respondents and especially in the absence of any satisfactory explanation, accounting for the disproportionate assets held by the respondents/accused, the Court cannot jump into the conclusion that the materials produced by the prosecution are not sufficient to frame charges against the accused. Therefore, the findings of the Special Court is perverse.

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26 The Hon'ble Supreme Court in the case of *State of*

Madhyapradesh Vs. Mohanalal Soni reported in *2001 MLJ Crl. 60*, held that at the stage of framing of charge, the Court has to prima facie consider whether there is sufficient materials available to proceed the case further as against the accused and the Court is not required to appreciate the evidence to conclude whether the materials produced by the prosecution are sufficient to convict the accused. If the Court is satisfied that prima facie case is made out for proceeding further, then charges have to be framed.

27 In the present case, the Special Court without framing of charges and giving an opportunity to the prosecution to substantiate their charges, simply discharged the respondents/accused on the ground of technicality and also interpreted the facts in its own way, which warrants interference.

28 There is no quarrel with the decisions relied upon by the learned



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Senior Counsel for the respondents/accused, but the facts of those cases are

distinguishable, which are not applicable to the facts of the present case on hand, rather the decisions relied upon by the prosecution are squarely applicable to the present case.

29 Therefore, this Court finds that the reasons given by the Special Court to discharge the respondents/accused are perverse and hence the order of discharge passed by the Special Court is liable to be set aside.

30 Accordingly, these Criminal Revision Cases are allowed. The order passed by the Special Judge cum Chief Judicial Magistrate Court, Vellore in Cr.M.P.Nos.1674/2006 to 1678/2006 in Special Case No.1 of 2004, dated 23.02.2007 is set aside.

31 The Special Court is directed to frame charges and proceed with



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the case further in accordance with law. Further since the cheque period is

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between 1996 and 2001 and considering the scope and object of constitution of

Special Court for dealing the cases of MP and MLAs, the Special Court is

directed to dispose of the case within a period of six months from the date of

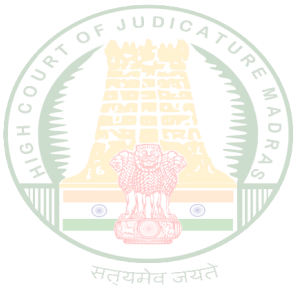
receipt of a copy of this order by conducting trial on day to day basis.

23.04.2025

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

ksa-2/cgi



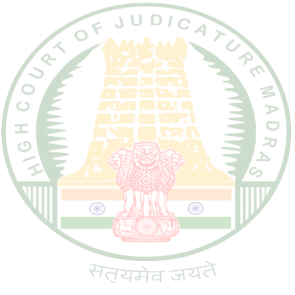
Crl.RC.Nos.265 to 269 of 2013

WEB COPY
To

1. The Special Judge cum Chief Judicial Magistrate Court, Vellore
2. The Superintendent of Police, Vigilance & Anti Corruption
(City Special Unit-I), Chennai.
3. The Public Prosecutor, High Court of Madras.

Copy to:

1. The Section Officer, ER Section, Madras High Court.
2. The Section Officer, Criminal Section, Madras High Court.



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Crl.RC.Nos.265 to 269 of 2013

P.VELMURUGAN. J.

Ksa-2

Pre-Delivery Order in
Crl.RC.Nos.265 to 269 of 2013

23.04.2025