

(1996) 06 AP CK 0042

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 34 of 1992

Vemulakonda Anjaneyulu

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 21-06-1996

Acts Referred:

Prevention of Corruption Act, 1988 — Section 5(1), 5(2)

Citation : (1996) 2 ALT(Cri) 494 : (1996) CriLJ 3897

Hon'ble Judges : K.B. Siddappa, J

Bench : Single Bench

Advocate : C. Padmanabha Reddy and G. Ramachandra Reddy, for the Appellant; Hari Sessa Reddy for ACB, for the Respondent

Judgement

1. This appeal is filed against the judgment and sentence passed in C.C.No.61 of 1988 on the file of Additional Chief Judge-cum-Principal Special Judge for SPE & ACB cases, City Civil Court, Hyderabad. The brief allegations in the charge sheet are as follows :-

The Inspector of Police, A.C.B., Vijayawada Range filed a charge sheet against the sole accused, for an offence punishable u/s 5(2) r/w. Section 5(1)(e) of the Prevention of Corruption Act. The accused while working as Assistant Manager (Technical), A.P. State Civil Supplies Corporation, Vijag, being a public servant, acquired total assets valued at Rs. 14,10,617/- during the check period between 2-1-76 to 4-3-87. The total income during the said period from all known sources of income was Rs. 14,22,145/-. During the said period, his total expenditure comes to Rs. 8,08,426-15ps. Therefore, he is in possession of the disproportionate assets whether in his name or in the name of his dependents, to the value of Rs. 7,96,897-65 ps. as on 4-3-1987. The accused was not able to account satisfactorily these disproportionate assets. Therefore, he is liable for the offence punishable u/s 5(2) r/w. Section 5(1)(e) of the P.C. Act.

2. The learned Special Judge framed a charge u/s 5(2) r/w. Section 5(1)(e) of the Act. When read over, the accused denied the charge and claimed to be tried.

3. The prosecution examined 24 witnesses and marked Exs. P-1 to P-33.

4. After considering the oral and documentary evidence, the learned Special Judge held that the prosecution could bring home the guilt of the accused beyond reasonable doubt for the offence punishable u/s 5(2) r/w. Section 5(1)(e) of the P.C. Act and sentenced the accused to undergo R.I. for two years and to pay a fine of Rs. 50,000/-, in default, to suffer S.I. for six months. Aggrieved by the said judgment and sentence, the present appeal is filed by the accused.

5. The prosecution briefly is as follows :-

The appellant herein was working as Assistant Manager (Technical), A.P. State Civil Supplies Corporation at Vijag. Therefore, he is a public servant, within the meaning of Prevention of Corruption Act. The check period in this case is from 2-1-76 to 4-3-87. The prosecution estimated the assets of the accused at Rs. 14,10,617/-. The income is estimated at Rs. 14,22,145-50 ps. The expenditure is estimated at Rs. 8,08,426-15 ps. Therefore, the savings come to Rs. 6,13,719-35 ps. But the assets were found to a tune of Rs. 14 lakhs and odd, as indicated above. Therefore, the disproportionate assets come to Rs. 7,97,897-65 ps. The accused has to give plausible explanation and satisfactorily explain for possession of these disproportionate assets to the extent shown above.

6. The law on this point is quite clear. The ingredients of the offence of criminal misconduct u/S. 5(2) r/w. 5(1)(e) of the P.C. Act are, the possession of pecuniary resources disproportionate to the known source of income for which the public servant cannot satisfactorily account. To substantiate this charge, the prosecution must prove the following facts :-

i) It must establish that the accused is a public servant.

ii) The nature and extent of the pecuniary resources of property which were found in his possession.

iii) It must be proved as to what were his known sources of income that is known to the prosecution.

iv) It must prove quite objectively that such resources or property found in the possession of the accused were disproportionate to the known source of his income.

Once these four ingredients are established, the offence of criminal misconduct u/ S. 5(1)(e) is complete, unless the accused is able to account for such resources or property. The burden then shifts to the accused to satisfactorily account for his possession of disproportionate assets. The nature and extent of the burden cast on the accused is well settled. The accused is not bound to prove his innocence beyond all reasonable doubt. All that he needs to do is to bring out the preponderance of probability. Therefore, in this case it has to be seen whether the four ingredients required to establish the misconduct are proved by the prosecution. It is also to be seen whether the accused satisfactorily accounted for

the possession of disproportionate assets, if any, even by bringing out preponderance probability.

7. First of all, let us discuss about the assets possessed by the accused. There are 17 items under the said clause. Item No. 1 is acquisition of R.C.C. roofed house in Technical Nagar, Vijayawada. The lower Court accepted the amount suggested by the prosecution at Rs. 81,000/-. There is no dispute with regard to this item. Item No. 2 is acquisition of 8 acres 14 cents of Mango garden at Kuntamukkala village in the name of the wife of the accused Officer (AO). The prosecution estimated the value at Rs. 31,930/-. This was accepted by the lower Court. The learned defence counsel submitted that this property belonged to the wife of the accused officer and this has to be excluded from the assets of the accused. He submitted that PW-13, who is the father-in-law of A.O. (accused officer) had gifted 3 1/2 acres of wet land to the 2nd daughter at the time of marriage, which took place in the year 1968. However, Ex.D-6, which is the marriage wedding card, shows that the marriage took place on 4-9-1969. According to PW-13, at the instance of his daughter (A.O.'s wife), he arranged the sale of this property. PW 13 stated that she sold 2 acres out of the gifted land of 3 acres 50 cents. For the remaining land, an agreement of sale was executed. However, the sale did not take place till now. According to him, the entire land is in the possession of the purchaser. However, he did not produce any gift deed. He also did not produce any sale deed in respect of the sale of two acres. In the absence of this, it is highly difficult to believe that Jhansi Rani (A.O.'s wife) sold the gifted land. First of all, there is any amount of doubt in respect of this aspect in the deposition of PW-13 that he gifted 3 1/2 acres of wet land to his daughter. Admittedly, PW-13 is having four daughters. There is no iota of evidence to show that he gave similar extent of lands to other daughters. He says that it is a oral gift. Nobody is examined to prove even oral gift. Admittedly, the land was sold in the year 1980 and with the sale proceeds, mango garden, item No.2 is purchased for Rs. 32,000/-. The gift admittedly has taken place in the year 1969. There should be revenue record to prove the possession of Jhansi Rani for the entire period. The revenue mutation is not produced. There is no scrap of paper to show that Jhansi Rani was in possession of 3 1/2 acres of wet land, alleged to have been gifted by PW-13. Therefore, the self serving and interested testimony of PW-13 was rightly brushed aside by the lower Court. Further, PW-13 was working as Teacher. His financial resources are not brought on record. He admitted that he did not maintain accounts in respect of other daughters. He maintained only the accounts in respect of his second daughter. PW-4 is a vendor of these 8 acres of mango garden for a consideration of Rs. 32,000/-. He denied the suggestion that PW.13 gave the sale consideration. He stated that Jhansi Rani was in the Registrar's office at the time of registration and she alone dealt with him with regard to the sale transaction. By the time of sale, the entire sale consideration was paid in three instalments. At the time of sale deed, there were 100 to 105 mango trees. Further, that the mango garden is said to have been purchased in the year 1980, it is not known

why this was purchased in that year after 11 years when the marriage took place in the year 1969. He did not show this kind of love and affection to other daughters. It is pertinent to note that PW. 13 is shown to have invested Rs. 60,000/- in Vijag Stone Crushing Unit. G. Konduru village. When confronted with this fact, PW-13 clearly stated that he did not invest any amount in the Stone Crushing Unit run by his son-in-law. (A.O.). This shows his financial status and he cannot be expected to give 3 1/2 acres of wet land only to his second daughter, leaving his other three daughters. Certainly, this item should be included in the assets of the accused.

8. Item No. 3 pertains to the acquisition of house site 0-05 cents at G. Konduru Village, in the name of the accused officer. The prosecution estimated the value at Rs. 3,650/-. The lower Court also accepted the same and the accused did not dispute this amount. Item No. 4 pertains to acquisition of one acre of dry land in the name of the accused at G. Konduru village. The prosecution estimated the value at Rs. 8,500/-. This was accepted by the lower Court and there is no dispute about this amount also. The 5th item pertains to Vijaya Stone Crushing Unit, G. Konduru village. According to the prosecution, the project estimate is Rs. 8,91,500/-. The lower Court accepted the value of this unit at Rs. 5,70,500/-. The learned defence counsel relying upon the evidence of PW-17 submitted that the Indian Bank sanctioned the loan of 5 lakhs in instalments. The last instalment of Rs. 20,000/- was paid on 16-2-1985. One lakh was also paid towards working capital on 6-11-1984. The accused paid interest of Rupees 28,975/- after March 1986. The loan of five lakhs was yet to be paid. According to Ex. P-33, the debt balance is Rs. 5,36,260-85 ps. Therefore, the difference of Rs. 36,260-85 ps. is only to be taken as the value. This contention cannot be accepted. It is true that by the evidence of PW-17, it can be made out that Rs. 5,00,000/- is outstanding. However, this is shown as income in item No. 15 at page 5 of the record. PW-24, the Investigating Officer, stated that there should be investment of Rs. 2,58,000/- as a condition precedent to obtain loan of Five lakhs from Indian Bank. An amount of Rs. 1,20,000/- was invested by Jhansi Laxmi Bai w/o Accused Officer. PW-5, who is admittedly a concubine of the A.O. invested Rs. 60,000/-, Another Rs. 60,000/- was invested by Mahalaxmi, who is said to be another wife of A.O. Another amount of Rs. 60,000/- was invested in the name of PW-13, making a capital of 3 lakhs. The amounts invested in the name of wife etc., cannot be their individual amounts. I have already observed that PW-13 denied that he invested any amount to Crushing Unit. Likewise, there cannot be any independent income to PW-15, Mahalaxmi, and also wife of A.O. The entire 3 lakhs belong to the accused. In view of this, no reduction in the value of the Stone Crushing Unit can be granted. The estimate of the lower Court at Rupees 5,70,500/- is correct. The 6th item pertains to purchase of Tipper, bearing No. ABB 9990. The prosecution estimated its value at Rs. 2,50,000/-. The lower Court accepted the value at Rs. 2,25,000/-. There is no dispute with regard to this item. Item Nos. 7 to 17 pertain to Fiat Car, T.V., Scooter etc. They are estimated by the lower court at Rupees 60,000/-, Rs. 9,236/- Rs. 5,000/-,

Rs. 11,800/-, Rs. 8,600/-, Rs. 11,000/-, Rs. 4,800/-, Rs. 426/-, Rs. 14,235/-, Rs. 14,340/-, Rs. 4,600/- respectively. The defence did not dispute their values. Therefore, the value of the total assets comes to Rupees 10,64,617/- during the check period between 2-1-1976 to 4-3-1987 is correct.

9. Now we shall consider the income of the A.O. during the check period. The prosecution estimated on the strength of evidence the salary income of A.O. at Rs. 1,43,115-50 ps. The lower Court accepted the amount and there is no dispute from the defence on this item. 2nd item pertains to agricultural income. The prosecution estimated the income from agricultural sources at Rs. 57,200/-. The said amount was accepted by the Lower Court, but the defence counsel estimated the income at Rupees 2,88,000/- including Rs. 79,000/- covered under Ex. D-2 to D-5 and Rs. 60,000/- for three years, for which the lower Court did not calculate. PW-12 is the elder brother of the accused. He stated that he and his five brothers got divided their ancestral properties in their village. Accused got 4 or 5 acres towards his share. He stated that in the year 1980, he sold 3 acres 90 cents to three others, including PW-11. The accused did not obtain registered sale deeds from him. He has not executed any sale deed in favour of the accused for the purchase of land. His evidence in respect of sale of 3 acres 90 cents is highly doubtful. There is no registered sale deed. Further, the accused himself sold his land to PW-11, who said that he purchased 1 acre of land for Rs. 16,000/- six years ago, under an agreement of sale and he obtained the registered sale deed, recently. No sale deed is also filed to substantiate this claim. However, we can take this sale, because this is a positive evidence in the evidence of prosecution. Again, PW-14 purchased 90 cents of land from A.O. for Rs. 11,000/- under an agreement of sale, Ex.P-14, in the year 1985. He paid the entire consideration by the date of agreement. Therefore, there is no dispute from 1985 onwards there is no income on this land to A.O. Similarly, there is no income also from 1 acre purchased by PW-11 from 1984. PW-13 is the father-in-law of the accused officer. He stated that he gave 3 1/2 acres to his daughter. I have already held that there is no truth in this assertion. For 5 acres of ancestral land, the lower Court calculated the income from 1972 to 1985. He took the income at Rs. 300/ per year on the basis of statement of Akkaiah, who is not examined. The total income from ancestral land is shown as Rs. 19,500/-. The lower Court also took the income into consideration from 1 acre 31 cents purchased by the A.O. in his name and the income from 2 acres 31 cents purchased by the A.O. in the names of his minor sons and also the income from 1 acre purchased from Nagi Reddy in his own name. The annual income was estimated at Rupees 300/- for two years from the date of sale till the end of that period. The income calculated is somewhat on lower side. The defence calculated the annual income at Rs. 2,000/- per acre. Akkaiah is not examined. But we can take the net income per year at Rs. 600/- per acre, i.e., double the amount calculated by prosecution. At this rate, it comes to Rs. 3,000/- per year and for the check period, the amount comes to Rs. 33,000/- even after taking into consideration the above purchases of the land. It is pertinent to note that the

values of the agricultural produce were not so high as on today, during the check period i.e., between 2-1-1976 to 4-3-1987.

10. The income of the mango garden is shown as Rs. 36,000/- by the prosecution for the period from 1981 to 1987. The defence calculated at the rate of Rs. 20,000/- per year for the three years from 1983 to 1987 and Rs. 79,000/- as covered under Ex. D-2 to D-5. The lower Court relied upon the evidence of PW-4 and Ex.P-13, PW-4 stated that he was getting Rs. 5,000/- to 6,000/- per year. According to him, there were 100 to 105 mango trees of the age of 10 years on the date of sale i.e., in the year 1980. The learned defence counsel submitted that due to the growth of mango trees, there will be increase in the yield and this fact is not taken into consideration by the lower Court. PW-13 in Ex. P-13, which is his statement, stated that his daughter was getting Rupees 7,000/- per year from the mango garden, but he gave a go-by to his earlier statement. Even though PW-13 stated that the net income was ranging from Rs. 20,000/- to Rs. 25,000/- per year, no proof whatsoever for this is forthcoming from this witness. The defence marked Ex.D-2 to D-5 on its behalf. D-2 shows that the mango garden was leased for Rs. 25,000/- on 1-6-1984. Ex. D-2 shows that Rs. 18,000/- was realised as an income from the mango garden under this document, which is dated 1-6-1983. An amount of Rs. 19,000/- was realised from mango garden under Ex.D-4. This is dated 15-6-1982. Ex. D-5 shows that an amount of Rs. 17,000/- was paid for the mango garden. This is dated 15-6-1981. The learned Public Prosecutor dealing with these documents submitted that they are got up documents and nobody would give advance of so much amounts for a mango garden. Therefore, these documents cannot be taken into consideration. I see considerable force in the submission. A close examination of these documents shows that they are written by a same man on the same day as observed by the lower Court. Moreover, it is common knowledge that nobody gives advance of the entire amount. The income all of a sudden cannot jump from Rupees 7,000/- to Rs. 25,000/- etc. It is again common experience that there will not be any income for some years from mango garden. It is true that there will be some increase in income when the trees grow. This can be fairly estimated at Rs. 10,000/- per year. So, the total comes to Rs. 60,000/-. Therefore, the total agricultural income comes to Rs. 93,000/-. The 3rd item of income pertains to the income from disposal of inherited property. The prosecution estimated this income at Rs. 97,215/-. Item No. 4 pertains to income from disposal of Ac. 1-31 cents of land at G. Kondur village at Rs. 12,650/-. The total of these two items come to Rs. 1,34,365/-. The lower Court accepted Rs. 1,09,865/-. The defence relied upon the sale deeds which are not marked in this case. Even though they were on record neither the prosecution nor the defence tried to mark them. However, Investigating Officer, PW-24, admitted the existence of sale deeds. The defence counsel submitted that the value of the sale deed bearing No. 974/96 is shown as Rs. 4,907/-. According to him this is not correct. The true copy of the sale deed is produced before me. The value shown in the said sale deed is Rs. 24,557/-. This is a sheer

arithmetical mistake committed by the Investigating Officer in estimating the sale deed. Therefore, Rs. 20,000/- can be added to the total value of items 3 and 4 i.e., Rs. 1,09,865/- + Rs. 20,000/-. The total of both items comes to Rs. 1,29,865/-.

11. The 5th item pertains to sale of 2 acre 31 cents of land at Kondapalli village. This was not considered by the Prosecution nor the Court. The document was filed along with the charge sheet and it was referred in the S. 313, Cr.P.C. examination. However, this sale deed is not marked. Having mentioned while examined u/S. 313, Cr.P.C., it is not known why the accused did not get this document marked through his witness. PW-24 did not admit this sale deed. Therefore, this cannot be taken into consideration. With regard to item Nos. 6 to 15, the lower Court granted Rs. 25,000/-, Rs. 30,000/-, Rupees 25,000/-, Rs. 25,000/-, Rs. 9,000/-, Rs. 1,75,000/-, Rs. 50,000/-, Rs. 5,000/-, Rs. 40,000/- and Rupees 5,00,000/-. These amounts were not disputed by the defence. Item No. 16 pertains to the income from Vijaya Stone Crushing Unit, for the years 1984-85 and 1985-86. The prosecution estimated the value at Rs. 8,765/-. The lower Court accepted the same. The defence estimated it at Rs. 31,200/-. The learned defence counsel submitted that in the year 1984-85, the unit worked for two months. As the application for loan is on 18-9-1984 for 1985-86, the account was not finalised. Even if we take the average turnover, for the year 1984-85, it comes to Rupees 13,000/- per month. Therefore, the net income if taken at 10% comes to Rs. 1,300/- per month. In their submission for two years, the amount comes to Rupees 31,200/-. All these particulars are not substantiated. It is only a guess work of defence. Even though the unit worked on the turnover etc., we can round up the figure to Rs. 10,000/- for two years. Item No. 17 pertains to the loan obtained from L.I.C. The lower Court granted Rs. 76,000/- and the defence did not dispute the same. Item No. 18 pertains to the loan taken from Elamanchali Sathyanarayana (PW-23) of Konduru village. The prosecution estimated the same at Rs. 50,000/- and the lower Court accepted the same at Rs. 50,000/-. The defence, relying upon the evidence of PW-23 and Ex.D-8, estimates the loan at Rs. 1,50,000/-. PW-23 stated that he advanced a loan of Rs. 50,000/- to the accused on the mortgage of the house situated in Technical Nagar at Vijayawada. Ex.P-28 is the registration extract for the mortgage deed dt. 14-6-1985. The accused repaid the loan in the year 1988. In the cross-examination, he stated that the son also paid one lakh under Ex.D-8, PW-23 says that he and his sons are divided, however, they are living together, as the wife of PW-23 has passed away. He says that his son purchased the house which was mortgaged to him on 3-10-1986 under an agreement of sale, Ex.D-8. He stated that he and his son did not collect any interest on the loan as they themselves backed out from the transaction. This version of PW-23 in respect of advance of loan by his son cannot be accepted. The lower Court rightly rejected Ex.D-8 which is not a registered document. The amount granted under this head is correct. The 19th item is in respect of disposal of 25% share in Shantisri Theatre at G. Konduru village. The prosecution estimated the income at Rs. 37,000/-.

The lower Court accepted the same. But, however, the defence estimated the same at Rs. 63,375/-. The defence counsel submitted that the lower Court did not consider the evidence of PW-5 and also the document No. 1034, which was filed along with the charge sheet. The sale consideration under the said document is Rs. 2,53,500/-. Under this item, PW-5 received Rs. 37,000/- which was added as expenditure in Item No. 6. It is not shown as assets. In such case, the estimation of the prosecution at Rs. 37,000/- is correct. Moreover, document No. 1034 is not marked in this case and it is not admitted by PW-24. If the calculation of the prosecution is wrong, the accused ought to have brought this document on record. Obviously, it is not done in this case. If it is seized at the time of filing charge sheet, it is not known why PW-24 was not confronted with this document. Therefore, no reliance can be placed on document No. 1034. Item No. 20 pertains to the rental income. The prosecution estimated the rents at Rs. 7,200/- and the lower Court accepted the same. It seems, the lower Court miscalculated this amount. The evidence of PW-10 reveals that he stayed in the house for one year seven months and was paying Rs. 600/- per month. The I.O. PW-24, calculated the rent for one year. Therefore, the rent has to be calculated for seven months also. If calculated, the amount comes to Rs. 11,400/-. The income from Item Nos. 21, 22 and 23 are allowed by the lower Court as Rs. 27,000/-, Rs. 10,000/- and Rupees 7,000/- respectively. There is no dispute about these amounts. The 24th item pertains to the income on the tractor. The lower Court granted Rs. 23,000/-. The defence estimated the same at Rs. 48,000/-. The Investigating Officer calculated the income on the basis of the statement of the driver, who is not examined. He calculated the monthly income at Rs. 10,000/-. For 23 months, the amount was estimated at Rs. 23,000/-, PW-13, in his evidence, stated that the yearly income from the tractor was between Rs. 25,000/- and Rs. 35,000/-. PW-13 was declared as hostile. There is no proof for these incomes. The estimation of the Investigating Officer based on the statement of the driver who is not hostile to his master, cannot be called unreasonable. He made proper estimates on major items. Therefore, the amount arrived at by the Lower Court is correct.

12. According to defence, there are some additional items not shown in the schedule. One such item is loan of Rs. 25,000/- taken from Auto finance. PW-24 admits this loan. However, interest is shown as expenditure, but the principal amount was not shown as income in Item No.27 of the list. Therefore, this has to be allowed towards income. Item No. 2 pertains to gold, sold for Rs. 30,000/-. PW-13 speaks about it. The evidence of PW-13, who is declared as hostile, cannot be accepted on this item. The 3rd item is income from tipper. The I.O. admitted that he has not shown this item as income. This is covered by item No. 6 of the assets and Item No. 11 of the income and Item No.2 of the expenses and also Ex.P-24 and P-25. This income is shown as Rs. 4,000/- p.m. There is no basis for this. We can safely estimate this income at the rate of Rupees 2,000/- per month. So, for 23 months it comes to Rs. 46,000/-. Thus, the total income comes to Rs. 15,72,380-50 ps, say Rs. 15,72,500/-.

13. Now, let us come to the expenditure. The 1st item pertains to the family maintenance expenditure. The prosecution estimated the same at Rs. 1,46,241-80 ps. Though the lower Court accepted the same, the learned defence counsel submitted that the family of the accused consists of two sons and there are no daughters. Therefore, the entire evidence of PW-15 and the estimates shown in Ex. P-15 are not correct. It is true, PW-15 calculated the expenditure on the basis that the accused has two sons and two daughters. Obviously, PW-5 is the concubine of the accused. She herself admitted in her evidence about this fact. She stated, there is another keep of accused by name Anuradha. PW-15 took them as daughters. There will be lot of expenditure for daughters for education etc., though no such expenditure is to be incurred for PW-5 and Anuradha. The lower Court justified in holding that the expenditure calculated for two daughters by PW-15 can be taken as expenditure for PW-5 and Anuradha. PW-15 gave cogent reasons for estimating the expenditure. Therefore, the amount estimated by the lower Court is correct. 2nd item pertains to the repayment of loan obtained on the Leyland tipper, ADB-9990. The prosecution estimated it at Rs. 1,19,850/- and the same was accepted by the lower Court. The prosecution admitted the written arguments that the loan obtained is only Rs. 1,14,000/-. Therefore, the expenditure should be estimated as this amount. There is no dispute with regard to Item No. 3(a) which is estimated at Rs. 49,050/- 3(b) item pertains to the maintenance of expenditure of car bearing No. ABK-234. The prosecution estimated the same at Rs. 45,150/-. This was accepted by the lower Court. PW-24 estimated the expenditure of Car on the statement of the driver, who is not examined. The learned defence counsel submitted that the car was purchased on 8-7-1985 and the accused was in possession of the car for 19 months. The expenses have to be reduced by 15%. He did not adduce any evidence to show the actual expenditure. There is no scrap of paper or bill. In the absence of that, the statement of the driver who is not hostile to his master can be accepted. There is no dispute with regard to Item Nos. 4 to 15. The accepted expenditure is shown as Rs. 28,675/-, Rs. 28,975/-, Rs. 35,000/-, Rs. 38,652-10 ps., Rupees 3,140/-, Rs. 5,050/-, Rs. 3,000/-, Rs. 645/-, Rupees 16,000/-, Rs. 480/-, Rs. 1,080/- and Rs. 1500/-. 16th item pertains to the expenditure in vigilance case. The prosecution estimated it at Rs. 2,000/- which was accepted by the lower Court. PW-24 based this estimation on the letter addressed by the Advocate to accused officer. The learned defence counsel submitted that there was no proof that this amount was not paid by the I.O. The accused ought to have produced a letter from the Advocate stating that no fees was received by him. In the absence of that, the estimation by the Court at Rs. 2,000/- is correct. There is no dispute with regard to Item Nos. 17 to 23. The respective expenditures are, Rs. 1,300/-, Rupees 46,389/-, Rs. 7,354/-, Rs. 17,681-50 ps., Rs. 131-10 ps., Rs. 28/- and Rs. 18-65 ps. Item No. 24 pertains to the expenditure towards school education of children. The prosecution estimated it at Rupees 15,230/-. This was accepted by the lower Court. The learned defence counsel submitted that PW-15 in his report, Ex.P-15, already included this item in item No. 1 towards family expenditure. Therefore,

inclusion of this item as No.24 amounts to double entry. Item No. 1, which pertains to family expenditure, is only towards food and other articles. The school expenditure of the children (Admittedly, there are two sons to the accused) is a separate expenditure. This cannot be called as double entry. Therefore, the amount arrived at by the Lower Court is correct. The expenditure shown as item No.s. 25 to 28 are not disputed. The respective amounts are Rs. 17,250/-, Rs. 22,500/-, Rs. 10,600/- and Rs. 5,455/-. 29th item pertains to the missing of Rs. 70,000/- and embezzlement of Rs. 70,000/- by clerk and partner of Vijaya Stone Crusher. The prosecution estimated it at Rs. 1,40,000/-. This was accepted by the lower Court. The learned defence counsel submitted that the I.O. did not believe the embezzlement. He submitted that this amount was subsequently recovered, if it is not recovered he would have filed a criminal case etc. The embezzlement was disbelieved by the I.O. himself. Therefore, only Rs. 70,000/- can be taken under this item. So, the total expenditure comes to Rs. 7,32,576-15 ps. say Rs. 7,32,580/-.

14. Learned counsel for the accused-appellant submitted that as per Govt. Memo No. 700/SC D/88-4 dated 13-2-1989, while calculating the assets and expenditure etc, for considering disproportionate assets of a particular person, it is desirable to take a liberal view and allow reasonable margin of 20% of the total income of the Government servant. In support of his contention, he relied upon a judgment of this Court, rendered in Criminal Appeal No.450 of 1989, dated 10-8-1990. In this case, my learned brother Justice Y. Bhaskara Rao, only referred the Memo. This memo is an inter departmental instruction for guidance of departmental authorities. This did not receive any judicial recognition. Justice Bhaskara Rao only observed "having regard to the above memo, this amount of Rs. 9,080-83 ps. cannot be said to be excess compared to the income of the accused for over 17 years in the Public Works Department, as Supervisor". It is a passing remark. It does not amount recognising the memo and making the same as a rule of the Court.

15. The learned Public Prosecutor on the other hand relied upon a judgment of this Court, rendered in Criminal Appeal No. 144 of 1983, dated 18-12-1985. In this case, it was held that a margin of 10% of the income of the appellant should be given for the purpose of determination of disproportionate assets held by the appellant. The learned judge relied upon the judgment of the Supreme Court, reported in Krishnanand Vs. The State of Madhya Pradesh, . This is a judicial pronouncement, which is binding on me. Therefore, I propose to add 10% of the total income to the income actually arrived at. If we calculate 10% of total income of Rs. 15,72,500/-, we get the amount of Rs. 1,57,250/-. If we add this amount to the total income, it comes to Rs. 17,29,750/-.

16. Now, let us calculate the value of disproportionate assets, if any. The total income comes to Rs. 17,29,750/-. The total expenditure came to Rs. 7,32,580/-. If we deduct this amount from the total income, the saving comes to Rs. 9,97,170/-. The value of the assets is estimated at Rupees 10,64,617/-.

Therefore, there is unexplained excess of assets to the tune of Rs. 67,447/- even after adding 10% of the total income to income as per the decision of this Court. There is no explanation forthcoming from the accused with regard to this disproportionate value of the assets. Therefore, the accused should be held guilty for the offence punishable u/s 5(2) r/w. Section 5(1)(e) of the Prevention of Corruption Act. However, the sentence passed is somewhat excessive. In the circumstances of the case, I reduce the sentence to nine months rigorous imprisonment. However, the sentence of fine is maintained.

17. With the above modification, the Criminal Appeal is dismissed.

18. Appeal dismissed.