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HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 164 of 2019

Swetabh Suman

..... Appellant

Versus

Central Bureau of Investigation ….Respondent

Present:- Mr. Vikram Chaudhary, Senior Advocate assisted by Mr. Rishi Sehgal and Mr. Priyanshu Gairola, Advocates for the appellant.

Mr. Ejaz Khan, Special Public Prosecutor with Mr. Dara Singh and Ms. Monika Pant, Advocates for the CBI.

Criminal Appeal No. 115 of 2019

Dr. Arun Kumar Singh

..... Appellant

Versus

Central Bureau of Investigation ….Respondent

Present:- Mr. N. Hariharan, Senior Advocate assisted by Mr. Ramji Srivastava, Advocate for the appellant.

Mr. Ejaz Khan, Special Public Prosecutor with Mr. Dara Singh and Ms. Monika Pant, Advocates for the CBI.

Criminal Appeal No. 116 of 2019

Dr. Arun Kumar Singh

..... Appellant

Versus

Central Bureau of Investigation ….Respondent

Present:- Mr. N. Hariharan, Senior Advocate assisted by Mr. Ramji Srivastava, Advocate for the appellant.

Mr. Ejaz Khan, Special Public Prosecutor with Mr. Dara Singh and Ms. Monika Pant, Advocates for the CBI.

Criminal Appeal No. 125 of 2019

Rajendra Vikram Singh

..... Appellant

Versus

Central Bureau of Investigation ….Respondent

Present:- Mr. V.B.S. Negi, Senior Advocate assisted by Mr. Milind Raj, Advocate for the appellant.

Mr. Ejaz Khan, Special Public Prosecutor with Mr. Dara Singh and Ms. Monika Pant, Advocates for the CBI.

Criminal Appeal No. 138 of 2019

Gulab Devi

..... Appellant

Versus

Central Bureau of Investigation ….Respondent

Present:- Mr. Rajiv Duggal, Advocate for the appellant.

Mr. Ejaz Khan, Special Public Prosecutor with Mr. Dara Singh and Ms. Monika Pant, Advocates for the CBI.

Criminal Appeal No. 139 of 2019

Gulab Devi

..... Appellant

Versus

Central Bureau of Investigation ….Respondent

Present:- Mr. Rajiv Duggal, Advocate for the appellant.

Mr. Ejaz Khan, Special Public Prosecutor with Mr. Dara Singh and Ms. Monika Pant, Advocates for the CBI.

JUDGMENT

Hon'ble Ravindra Maithani, J.

Since common questions of facts and law are involved in all these appeals, they are heard together and being decided by this common judgment.

2. Present appealsare preferred against the judgment and order dated 13.02.2019 passed in CBI Case No. 12 of 2010, CBI v. Swetabh Suman and others ("the case"), and in Miscellaneous Case No. 09 of 2014, CBI v. Swetabh Suman and others, by the court of Special Judge/CBI, Dehradun ("the Miscellaneous Case").

3. By the impugned judgment and order, the appellant Swetabh Suman (hereinafter referred to as "A-1"), has been convicted under Section 11 and Section 13 (2) read with Section 13(1) (e) of the Prevention of Corruption Act, 1988 (for short, "the Act") and sentenced as hereunder:-

(i) Under Section 11 of the Act – Rigorous imprisonment for a period of 5 years and a fine of Rs. 10,000/-. In default of payment of fine, simple imprisonment for a further period of two months.

(ii) Under Section 13 (2) read with Section 13(1) (e) of the Act – Rigorous imprisonment for a period of 7 years and a fine of Rs. 3,50,70,414/-. In default of payment of fine, simple imprisonment for a further period of 18 months.

4. The appellant Gulab Devi (hereinafter referred to as "A-2) has been convicted under Section 109 IPC read with Section 13(2) read with Section 13(1)(e) and Section 11 of the Act, and sentenced to undergo rigorous imprisonment for a period of one year and a

fine of Rs. 10,000/-. In default of payment of fine, simple imprisonment for a further period of two months.

5. The appellant Arun Kumar Singh (hereinafter referred to as "A-3") has been convicted under Section 109 IPC read with Section 13(2) read with Section 13(1)(e) and Section 11 of the Act, and sentenced to undergo rigorous imprisonment for a period of 4 years and a fine of Rs. 20,000/-. In default of payment of fine, simple imprisonment for a further period of four months.

6. The appellant RajendraVikram Singh (hereinafter referred to as "A-4) has been convicted under Section 109 IPC read with Section 13(2) read with Section 13(1)(e) and Section 11 of the Act, and sentenced to rigorous imprisonment for a period of 4 years and a fine of Rs. 20,000/-. In default of payment of fine, simple imprisonment for a further period of four months.

7. By the impugned judgment and order, the following properties have been confiscated in favour of

the Government of India under the provisions of Criminal Law Amendment Ordinance (No. 38) of 1944("the Ordinance"), read with Section 5(6) of the Prevention of Corruption Act, 1988:-

(i) Rs. 1,00,000/- cash, which were recovered from the search of the house of A-1.

(ii) House No. 169/21, Rajpur Road, Dehradun, registered in the name of A-2.

(iii) Plot No. 10, Block C, Sector 50, Noida, registered in the name of A-2.

(iv) Honda City Car bearing registration No. DL 2C F 0021, registered in the name of A-2.

(v) Hotel Uruvela International, Bodhgaya, Bihar, registered in the name of A-3.

(vi) Flat No. B-122, Panchwati Apartment, Sector 62, Noida, registered in the name of A-4.

(vii) Flat No. 303, IRS, Officers Society, V-33, Vatayan Nehru Enclave, Gomtinagar, Lucknow.

(viii) Land situated at Village Pondha, which were purchased in the name of Abhay Kumar Singh by way of the following sale deeds:-

(a) Sale Deed No. 4069 dated 03.12.2002
(b) Sale Deed No. 721 dated 24.02.2003
(c) Sale Deed No. 722 dated 24.02.2003
(d) Sale Deed No. 75 dated 08.01.2003
(e) Sale Deed No. 723 dated 24.02.2003
(f) Sale Deed No. 1641 dated 14.05.2003
(g) Sale Deed No. 3343 dated 23.07.2004
(h) Sale Deed No. 429 dated 05.02.2004
(i) Sale Deed No. 3344 dated 23.07.2004

(ix) Land situated at Village Pondha, which were purchased in the name of Vinay Kumar by way of sale deeds as hereunder:-

(a) Sale Deed No. 2693 dated 09.08.2002
(b) Sale Deed No. 934 dated 19.03.2003
(c) Sale Deed No. 2753 dated 16.08.2002

8. Criminal Appeal No. 164 of 2019 has been preferred by A-1 against his conviction and sentence recorded in the case.

9. Criminal Appeal No. 115 of 2019 has been preferred by A-3 against the order of confiscation of Hotel Uruvela International Bodhgaya, Bihar, as recorded in the Miscellaneous Case. A-3 has also preferred Criminal Appeal No. 116 of 2019 against his conviction and sentence recorded in the case.

10. Criminal Appeal No. 125 of 2019 has been preferred by A-4 challenging the impugned judgment and order passed in the case as well as in the Miscellaneous Case.

11. Criminal Appeal No. 138 of 2019 has been preferred by A-2 against her conviction and sentence recorded in the case. In Criminal Appeal No. 139 of 2019, A-3 has challenged the order passed in the Miscellaneous Case, by which the properties have been confiscated.

FACTS

The Appellants:

12. Before the facts are narrated, it would be apt to first narrate about the status of the appellants, which is as hereunder:-

(i) A-1 was the Additional Commissioner of Income Tax, Jamshedpur, when the FIR was lodged against him. He is a permanent resident of Village Bara, Tehsil Nabinagar, District Aurangabad, Bihar. He joined Group "A" services on 09.01.1989.

(ii) A-2 is the mother of A-1. The details of her children are as hereunder:-

(a) Elder son is Amitabh Suman, a doctor settled in U.S.A.

(b) Second son is A-1.

(c) Youngest son Arunabh Suman, practicing as an Advocate in Delhi since 2000.

(d) Mrs. Suniti Suman, the daughter, who is married to

A-3. She was working as a Lecturer.

(e) Mrs. Supreeti Suman (daughter), working as a Lecturer.

(iii) A-3 is the husband of the sister of A-1. He at the relevant time was Reader in the Magadh University, Bodhgaya.

(iv) A-4 at the relevant time was working in the Education Department in Dehradun

Prosecution Case:

13. The CBI, Dehradun received a reliable source information that A-1, working as Additional Commissioner, Income Tax, Jamshedpur was leading a luxurious life and had amassed assets in his own name, in the names of A-2 and other family members and *benamis*between 1.4.1997 and31.03.2004, which *prima facie* appears to be disproportionate to his known source of income. The check period in the FIR was between 01.04.1997 and 31.03.2004. The properties, which were mentioned in the source information were:–

(i) Plot No. 169/21, Rajpur Road, Dehradun measuring 752.50 sq.mts. in the name of A-2 and sister Smt. Suniti Suman. A very

huge house was constructed on it in the year 2001-03 at the cost of more than Rs. one crore;

(ii) Agricultural land measuring 14.435 acres in village Pondha, Dehradun in the name of different persons purchased by A-1 during July, 2002 to March, 2003 for a total amount of Rs. 18,17,500/-, whereas the market value of the land was about Rs. one crore.

(iii) A-1 also purchased Plot No. 10, Block C, Sector 50, Noida, Gautam Buddha Nagar, U.P.in the name of A-2 for Rs. 15,20,640/-. The cost of the land was about Rs. 60,00,000/-.

(v) A-1 owns a hotel, namely, Uruvela International at Bodhgaya, Bihar about five years back since receipt of source information. Details of source information have been given in the FIR, which is as hereunder:-

"1. ASSETS/SAVINGS OF SWETABH SUMAN AND HIS MOTHER GULAB DEVI AS ON 31.3.97 (Before check period.)

S. No.	Description	Value (In Rs.)
1.	Likely savings of Swetabh Suman	4,02,722.00
2.	Likely savings of his mother Gulab Devi	42,75,000.00
3.	Total	46,77,722.00

2. INCOME OF SWETABH SUMAN AND HIS MOTHER GULAB DEVI DURING 1.4.97 TO 31.3.2004: (During Check Period)

S. No.	Description	Value (In Rs.)
1.	Salary of Shri Swetabh Suman	20,66,431.00
2.	Income of his mother Smt. Gulab Devi from agricultural land and family pension	35,77,000.00
	Total	56,43,431.00

3. EXPENDITURE OF SWETABH SUMAN DURING 1.4.97 TO 31.3.2004

S. No.	Description	Value (In Rs.)
1.	Kitchen expenditure 1/3 of the salary income of Shri Swetabh Suman	6,88,810.00

4. ASSETS OF SWETABH SUMAN AND HIS MOTHER GULAB DEVI AS ON 31.3.2004

Immovable properties

S. No.	Description of the property	Value (In Rs.)
1.	House No. 169/21, Rajpur Road, Dehradun, constructed during 2001 to 2003	1,03,30,000.00
2.	Land in Village Pondha, Dehradun purchased during 2002-03	22,24,400.00
3.	Plot No. 10, Block-C, sector-50, Noida	18,03,920.00
4.	Investment for Membership in Uttaranchal Services Housing	1,00,000.00

	Association, Dehradun during 2003	
5.	Investment for Membership in IRS Officers Coop. Housing Society, Lucknow during 2003	1,00,000.00
	Total	1,45,58,320.00

Moveable Properties:-

S. No.	Description	Value (In Rs.)
1.	Balance in SB A/c No. 2723 in Dena Bank, Balbir Road, Dehradun in the name of Smt. Gulab Devi	1,04,879.77
2.	Balance in SB A/C No. 22148 in Central Bank of India, Gaya Branch in the name of Dr Baijnath Kumar Singh and Smt. Gulab Devi	802.80
3.	Balance in SB A/c No. 2380 in Central Bank of India, Gaya Branch in the name of Dr. Baijnath Kumar Singh and Smt. Gulab Devi	8,188.08
4.	Balance in SB A/c No. 15252 in SBI, Nabhinager in the name of Gulab Devi and Suniti Suman	2,71,406.50
	Total	3,85,277.15
	Total value of Immovable + Movable Properties	**1,49,43,597.00**

The value of disproportionate assets (D.A.) computed on the basis of the above is summarized as under:-

S. No.	Description	Value (In Rs.)
1.	Assets/savings at the beginning of check period as on 31.3.97	46,77,722.00
2.	Assets at the end of the check period as on 31.3.2004	1,49,43,597.00

3.	Assets acquired during the check period	1,02,65,875.00
4.	Income during the check period of Shri Swetabh Suman and his mother Smt. Gulab Devi	56,43,431.00
5.	Expenditure during the check period (Kitchen expenses 1/3 of the income of Swetabh Suman)	6,88,810.00
6.	Likely savings during the check period of Swetabh Suman and his mother Smt. Gulab Devi	49,54,621.00
7.	**Disproportionate assets**	53,11,254.00

14. According to the FIR, the assets acquired by A-1 in his own name and in the names of his family members were disproportionate to the extent of Rs. 53,11,254/- to his known source of income, which he cannot satisfactorily account for.

15. Based on the source information, a regular case was lodged and investigation proceeded. The Investigating Officer ("the IO") recorded statements of various witnesses. During investigation, search was made at various places, including the house of A-1, A-2 and A-3; many documents were seized, which were examined by the forensic experts; the reports were received. The IO also got valuation of the properties done. After investigation, chargesheet was submitted against the appellants for the offences punishable

under Section 13(2) read with Section 13(1) (e) and Section 11 of the Act, and Section 109 IPC. A detailed description was given by the IO in the chargesheet, mainly disclosing as hereunder:-

(i) A number of complaints were received against A-1 while he was posted at Dehradun.

(ii) When these complaints were under scrutiny, the files relating to these complaints were removed/stolen by A-1 to avoid legal/disciplinary action against him.

(iii) During the search in the instant matter, these files were recovered from the residential premises of A-1. The files were handed over to the local police by the CBI. The police after investigation had submitted a chargesheet against A-1 under Section 380, 411 IPC.

(iv) A-1 had no immovable property in his name, except ancestral property.

16. The IO also made statements “A”, “B”, “C” and “D” of A-1. It is reproduced as hereunder:-

“Statement-‘A’ (Assets at the beginning of check period:01.04.97)

Immovable Properties:- Nil

Movable Properties:-

S. No.	Description	Amount (Rs.)
1.	Swetabh Suman (A-1) had invested Rs. 13,500/- in purchase of 300 shares of Bank of India, Rs. 19,000/- in the various UTI Schemes and Rs. 5100/- in the bond of M/s Tisco.	37600
2.	Swetabh Suman (A-1) opened a PPF A/c No. 9798/6 at SBI, Jamshedpur on 31.03.1997. Thereafter it was transferred to SBI, Main Branch, Dehradun and again transferred to SBI, Jamshedpur on 05.08.2005. Being old account, the bank could not provided the balance in the account as on 31.03.1997 as such as per the passbook of said A/c, the balance amounting to Rs. 83,704/- was taken as the balance on 31.03.1`997	83704
3.	Swetabh Suman (A-1) has a bank A/c No. 01190035817 at SBI, Jamshedpur which was opened prior to the check period. Being old account bank could not provide the balance as on 31.3.1997. However, on the basis of the bank pass book of the said A/c recovered from the house of Swetabh Suman (A-1), the balance shown in the pass book of said account of Rs. 9,129/-. Similarly, Swetabh Suman (A-1) opened a bank A/c No. C/1088 SBI, Jagjeevan Nagar, Dhanbad on 04.07.1991 and it was having balance of Rs. 4673/- as on 31.03.1997	13802
4.	Swetabh Suman (A-1) purchased a Revolver from Small Arms Factory, Kanpur on 18.06.1996 for Rs. 41,400/-.	46086

	He had also purchased a second hand .22 bore Rifle and firty.22 cartridges for Rs. 4686/- from M/s A.T. Daw& Co., Bistupur, Jamshedpur on 30.12.96	
	Total	181192

Statement-'B' (Assets at the end of check period: 05.08.2005

Immovable Properties:- Nil

Movable Properties:-

S. No.	**Description**	**Amount (Rs.)**
1.	Swetabh Suman opened a PPF Account No. P00909438 in the name of his son SiddharthNilabh at SBI, Main Branch, on 05.12.2000 which was subsequently got transferred to SBI, Jamshedpur on 27.07.2005. He himself has opened a PPF account no. 9798/6 in SBI, Asansol (West Bengal) which was opened on 18.01.1996. Subsequently this A/c was transferred to SBI, Jamshedpur and from here it was transferred to SBI, Main Branch, Dehradun on 30.08.2000 and thereafter it was again transferred to SBI, Jamshedpur on 03.08.2005. The balance as on 05.08.2005 emerged in both the accounts has emerged as Rs. 10,27,619/-	1027619
2.	Swetabh Suman (A-1) has been found to be maintaining various bank accounts during the check period i.e. SB A/c No. 01190035817 at SBI, Jamshedpur, opened on 22.08.1996, having amount of Rs. 1,44,580/-, a/c no. 01190/082495 at SBI, Mujafar Nagar Branch, opened on 22.06.1999, this a/c was subsequently transferred to SBI, Main Branch, Dehradun on 17.10.2000 where it was renumbered as a/c No. 0119114111. It was having amount of Rs. 2617/-. The A/c No. 01190006913 at SBI, Doranda, Ranchi was having an amount of Rs. 72,919/-. Account opened on 12.08.1998 was having balance of Rs. 185/- and a/c No. C-1088 at SBI, Dhanbad, opened on 04.07.1991 was having balance of Rs. 9030 as on 05.08.2005.	229331
3.	Swetabh Suman (A-1) has made investments in Tax Relief Bonds, SBI Mutual Funds, Bonds and shares of various companies. All the investments	768500

	have been verified, which emerged to the tune of Rs. 768500/-	
4.	Swetabh Suman (A-1) still possess the aforesaid revolver and Rifle as such the amount has been taken into account.	46086
5.	During search, an Inventory memo was prepared in the presence of independent witnesses of the house hold goods. The value as assessed was reflected in front of the article including an Ambassador car No. BR 17C-0021. Swetabh Suman has explained that said car was given to him by Sh. Ramadhar Singh, Ex-MLA of Gurua, Bihar. However, he did not produce any copy of the intimation, if any, given to his Department. Moreover, Sh. Ramadhar Singh has also denied to give such car to him. Hence, the cost of said car as assessed at the time of search i.e. Rs. 1,50,000/- has been included in his assets and total value of the house hold items was assessed to the tune of Rs. 13,86,060/-	1386060
6.	During search cash amount of Rs. 1,00,000/- was also recovered. However, out of the said amount Rs. 25,000/- was left in the house of Swetabh Suman to meet out day-to-day expenses.	100000
7.	The residential search of Swetabh Suman (A-1) also led to the recovery of gold ornaments which were valued from an approved jeweler Shashikant C. Adesara, of Jamshedpur on the date of search	736938
	Total	**4294534**

Statement-'C' (Income during check period)

S. No.	**Description**	**Amount (Rs.)**
1.	The details of net payments received by Swetabh Suman (A-1) from his office where he remained posted during the check period were collected.	1879115
2.	Swetabh Suman received survival banefit/refund of Rs. 20,000/- from LIC against Insurance Police No. 550378802.	20000
3.	The details of interest/dividends received by Swetabh Suman on various investment during the check period have been	227035

	collected which emerged as Rs. 227035/-	
4.	The PPF accounts Swetabh Suman has received total amount of Rs. 3,39,517/- as interest. Similarly, he received interests from his bank account i.e. Rs. 1246/- from A/c No. 01190035817 at SBI, Jamshedpur, Rs. 10349/- from A/c No. 01190035817 at SBI, Jamshedpur, Rs. 10349 from A/c No. 0119114111 at SBI, Main Branch, Dehradun, Rs. 710/- from A/c No. 10579 maintained at Central Bank of India, Bodhgaya, Bihar, Rs. 4357/- from A/c No. C/1088 at SBI, Dhanbad Branch, Ranchi and Rs. 8739/- from A/c No. 1190006913 at SBI, Doranda Branch, Ranchi.	364918
	Total	**2491068**

Statement-'D' (expenditure during the check period)

S. No.	**Description**	**Amount (Rs.)**
1.	Swetabh Suman (A-1) has received a total net salary of Rs. 18,79,115/- and gross salary of Rs. 21,00,992/- during the check period. Accordingly, the one third of the said amount i.e. Rs. 6,59,429/- of gross salary after income tax deduction of Rs. 1,22,703/- has been taken towards the kitchen expenses, as per the yardstick adopted in DA cases.	659429
2.	Swetabh Suman (A-1) had two insurance policies from M/s Max New York Life Insurance Company Limited, Dehradun in the name of his son and self. He paid a total of Rs. 50,000/-. He is also having three life insurance policies of LIC, Jamshedpur. So far he paid total premia of Rs. 2,49,176/-	249176
3.	Swetabh Suman (A-1) had paid Transport charges to M/s Maan Transport, Dehradun for transporting of household items from Dehradun to Jamshedpur	30000
4.	Swetabh Suman (A-1) had purchased ammunition of Rs. 7,891/- from M/s Ranchi Gun House, Ranchi	7891
5.	Swetabh Suman (A-1) paid donations to various organizations i.e. Rs. 5100/- to Shri Aurbindo Society, Dehradun, Rs. 21,000/- to Him Jyoti Foundation, Dehradun and Rs. 30,000/- through three separate receipts to SarveshreeSamuhu, Jamshedpur	56100
6.	Swetabh Suman (A-1) paid an amount of Rs. 33,755/- as fees charges of his son	39015

	Siddharth Nilabh to Riverdale Public School, Dehradun for the period from August 1999 to March, 2005 and Rs. 5260/- on 18.07.2005 as fees of his son to Loyola School, Jamshedpur	
7.	Swetabh Suman (A-1) paid accommodation charges of Rs. 3762/- to JUSCO, Jamshedpur.	3762
8.	Swetabh Suman (A-1) paid an amount of Rs. 10,000/- to M/s Dee Dee Motors, Dehradun for repair of his car No. BR-17-C-0021	10000
9.	Swetabh Suman (A-1) paid an amount of Rs. 72,000/- to M/s President Travels, Dehradun for getting air journey tickets.	72000
10.	Swetabh Suman (A-1) paid an amount of Rs. 4,798/- as food expenses to ITBP Mess, Dehradun	4798
11.	The approximate petrol expenses of Rs. 12,360/- worked out according to the meter reading i.e. 3094 recorded at the time of search has been taken as expenses	12360
12	As per the statement of Sh. Santosh Deep, a domestic help of Swetabh Suman (A-1), he received a sum of Rs. 37,500/- during the period from June 1999 to July 2005 @ Rs. 500/- per month as his salary from Sh. Swetabh Suman, hence it has been taken as his servant salary expenses.	37500
	Total	1182031

COMPUTATION OF DISPROPORTIONATE ASSETS OF SWETABH SUMAN (A-1)

S. No.	**Description**	**Amount (Rs.)**
1.	Assets at the end of the check period (Statement B)	4294534
2.	Assets at the beginning of check period (Statement A)	181192
3.	Assets acquired during the check period (B-A)	4113342
4.	Expenses during the check period (Statement D)	1182031
5.	Total assets & expenses during the check period (B-A+D)	5295373
6.	Income during the check period (Statement C)	2491068
7	**Disproportionate Assets (B-A+D-C =DA) 113%**	2804305

17. The IO also found that the following properties were purchased by A-1 in the name of others:-

(i) House No. 169/21, Rajpur Road, Dehradun, Uttarakhand

(ii) Agricultural land at Village Pondha, Dehradun, Uttarakhand

(iii) Plot No. 10, Block C, Sector 50, Noida, Gautam Buddha Nagar, U.P.

(iv) Hotel Uruvela International, Bodhgaya, Bihar

(v) Plot No. 12-A, Uttaranchal Services Housing Association ("USHA") Dehradun.

(vi) Flat No. 303, IRS, Officers Society, V-33, Vatayan Nehru Enclave, Gomtinagar, Lucknow

(vii) Flat No. B-122, Panchwati Apartment, Sector 62, Noida

(viii) Shop No. F-1, F-12 and F-24 in Medow Shopping Plaza Complex, Dehradun

(ix) Plots measuring 413 sq.mts and 530 sq.mts. at Village Bagral,

Mussoorie-Dehradun Diversion Road, Dehradun

18. The IO also prepared “A”, “B”, “C” and “D” statement of A-2 and revealed it in the chargesheet.

19. Based on the “A”, “B”, “C” and “D” statement, the IO made computation of disproportionate assets of A-2 as hereunder :-

“COMPUTATION OF DISPROPORTIONATE ASSETS

S. No.	**Description**	**Amount (Rs.)**
1.	Assets at the end of the check period (Statement B)	14010824
2.	Assets at the beginning of check period (Statement A)	633467
3.	Assets acquired during the check period (B-A)	13377357
4.	Expenses during the check period (Statement D)	1007877
5.	Total assets & expenses during the check period (B-A+D)	14385234
6.	Income during the check period (Statement C)	6826939
7	**Disproportionate Assets - (B-A+D-C =DA) 111%**	**7558295**

20. The IO also examined certain other properties, namely, (i) land at Jamshedpur (ii) Honda

City Car (iii) the relationship of A-1 with Arvind Society and thereafter concluded as hereunder:-

(i) It is established that during the check period i.e. 01.04.1997 to 05.08.2005 (it may be stated that initially the check period was fixed from 01.04.1997 to 31.03.2004. Subsequently, it was extended upto 05.08.2005, when house search of A-1, A-2 and A-3 and other places were made), A-2, A-3, A-4 and other accused against whom the case has already been abated, had abetted A-1 for acquiring the assets in their names. A-1 abused his official position being a public servant and acquired immovable and movable assets from his ill gotten money amounting to Rs. 3,13,90,408/- in his name and in the name of the appellants and others. The details have also been given in the chargesheet. It is as hereunder:-

S. No.	Description	Amount (Rs.)
1.	**(Statement B)** **Assets at the end of the check period** 1. Assets at the end of check period of Swetabh Suman (A-1) (As per Statement B) **Rs. 4294534** 2. Assets at the end of check period of Smt. Gulab Devi (A-2) (As per statement B) **Rs. 14010824** 3. Land at Pondha, Dehradun in the name of Abhay Kumar Singh and Vinay Kumar **Rs. 1842900** 4. Two shops at Dehradun in the name of Abhay Kumar Singh **Rs. 753400** 5. Land at Village Bagral at Dehradun in the name of Vinay Kumar **Rs. 156200** 6. Flat at Noida in the name of RajenderVikram Singh **Rs. 1025000** 7. Hotel Uruvela International in the name of Arun Kumar Singh **Rs. 17250308** **TotalRs. 39,333,166**	39333166
2.	Assets at the beginning of check period (Statement A) Swetabh Suman (A-1):- **Rs. 181192** Smt. Gulab Devi (A-2):-**Rs.633467/-**	814659
3.	Assets acquired during the check period (B-A)	38518507
4.	Expenses during the check period (Statement D) Swetabh Suman (A-1):- **Rs. 1182031**	2189908

	Smt. Gulab Devi (A-2):- **Rs. 1007877/-**	
5.	Total assets & expenses during the check period (B-A+D)	40708415
6.	Income during the check period (Statement C)	9318007
	Swetabh Suman (A-1):- **Rs. 2491068/-**	
	Smt. Gulab Devi (A-2):-**Rs. 6826939/-**	
7	**Disproportionate Assets (B-A+D-C =DA) 337%**	31390408

21. Chargesheet was submitted against the appellants, and against Vinay Kumar and Rajul Agarwal. Vinay Kumar and Rajul Agarwal died during trial, therefore, the case against them stood abated on 03.03.2011 and 18.02.2012, respectively.

The Trial

22. Cognizance was taken on the chargesheet and the appellants were summoned to answer the accusations.

23. A-1 was charged on 12.09.2012 for the offences punishable under Section 13(2) read with 13(1)(e) and Section 11 of the Act.

24. A-2 was charged on 21.11.1012 and A-3 and A-4 were charged on 11.09.2012 for the offences

punishable under Section 109 IPC read with Section 13(2) read with 13(1)(e) and Section 11 of the Act. The appellants denied the charge and claimed trial.

25. In order to prove its case, the prosecution examined as many as 255 witnesses. They may be categorized under different categories, which are as follows:-

(A) Witnesses with regard to salary of A-1 :- PW 68 Rajnish Rastogi, PW 112 Naveen Kumar, PW 113 Jageshwar Prasad, PW 141 Manoj Kumar, PW 151 G. Guruswami, PW 158 Rahul Gautam, PW 166 Srikant Prasad Singh, PW 171 Madan Mohan Prasad Sinha, PW 201 Harendra Kumar Verma, PW 214 Shashi Ranjan and PW 228 Balliram Rajak & PW 249 Asit Kumar Kanjilal.

(B) Witnesses with regard to account of A-1:- PW 72 Subodh Chandra, PW 73 Suresh Chand, PW 77 Satendra Nath Upadhyay, PW 80 Rajeev Ranjan, PW 111 Narendra Kumar, PW 120 S.P. Sarkar, PW 203

Samir Kumar Maiti and PW 213 Y.S. Bisht.

(C) Witnesses with regard to investment/expenses of A-1:-

PW 1 Harbhajan Maan, PW 3 Naveen Singh Rawat, PW 5 Bhagwan Singh Bisht, PW 7 Devendra Pal Singh Chadda, PW 9 Vijay Kumar, PW 10 Rakesh Oberoi, PW 15 Vikas Verma, PW 17 Kishan Ram, PW 18 L.B. Pahan, PW 28 D. Ganesh Dandpani, PW 29 Kalin Waaz, PW 30 A.P. Singh, PW 31 Somnath Mitra, PW 33 Ashok Kumar Rai, PW 34 Ruchi Girdhar, PW 44 Sushiba Alex, PW 45 Sipriyan Kerketta, PW 47 Smt. Cheri Namdevi, PW 48 Aarli Shridhar, PW 49 Milind Mahadev Kudkar, PW 51 Cruzin Goz, PW 52 Pradeep Kumar Kundu, PW 53 Ravindra Swaroop Gupta, PW 126 Raj Rishi Tiwari, PW 173 Jagbala Singh, PW 197 Shri Kant Vishnukane, PW 198 Subhashis Naag, PW 200 Suresh Narayan Singh & PW 205 Sanjeev Sinha.

(D) Witnesses with regard to income of A-2:-

PW 35 Rishikesh Tiwari and PW 36 Sri A.K. Singh

(E) Witnesses with regard to ancestral land of A-1:-

PW 82 Ramji Singh, PW 110 Manmohan Prasad, PW 122 Satendra Ram, PW 152 Pradhumna Pandey, PW 154 Ashok Kumar Pal, PW 192 Kamlesh Singh, PW 193 Dharmraj, PW 195 Shyam Sundar Prasad, PW 215 Uday Shankar Singh, PW 240 Chandrashekhar Singh, PW 241 Mohd. Altaf Ansari and PW 244 Sayyed Obedulla.

(F) Witnesses with regard to accounts of A-2 :-

PW 11 Abhay Kumar Shukla, PW 79 B.P. Kushwaha, PW 108 Manoj Kumar Sinha, PW 109 Pratap Ranjan Prasad, PW 167 Anil Kumar Srivastava, PW 168 Ajeet Kumar Prasad,PW 204 Amar Kumar, PW 210 Kamakhya Narayan Singh and PW 211 Prema Nand Yadav.

(G) Witnesses with regard to investment/expenses of A-2:-

PW 38 Suresh Kumar Singh, PW 39 Manoj Kumar Singh, PW 40 Neeru Raina, PW 41 B.K. Kachru, PW 42 Neeraj Nagendra, PW 54 Jitendra Singh Tadiyal, PW 55 Smt. Kanwaljeet Kaur, PW 67 Rajagopalan N.H., PW 90 Sudhir Chandra Manjhi, PW 96 Ravindra Kumar Singh, PW 227 Rajendra Prasad Singh and PW 248 Avtar Singh.

(H) PW 222 Dinesh Kumar Yadav has stated about salary of A-3.

(I) PW 76 Vijay Nandan Prasad and PW 143 Shravan Chaudhary have stated about the accounts of A-3.

(J) PW 121 Vijai Kumar Singh and PW 196 Piyush have stated about investment/expenses of A-3.

(K) PW 97 Anjani Kumar Verma has stated about salary and investment/expenses of Smt. Suniti Suman, who is the wife of A-3.

(L) Witnesses with regard to House No. 169/21, Rajpur Road, Dehradun:-

PW 14 Mohd. Iliyas, PW 32 Yashpal Singh, PW 37 Rajesh Naithani, PW 46 Smt. Neelima Garg, PW 50 Arun Kumar Sharma, PW 56 Som Prakash, PW 58 Awdhesh Kumar, PW 62 Arun Kumar, PW 66 Rajendra Singh, PW 69 Sunil Goyal, PW 85 Vinay Agarwal, PW 88 Ramesh Batta,PW 98 Avnish Kumar Deshwal, PW 99 Rakesh Sharma, PW 103 Pravin Gupta, PW 104 Pramod Kumar, PW 114 R.P. Ishwaran, PW 125 G.P. Singh, PW 128 Shivdev Singh Marya, PW 132 Santosh Deep, PW 136 Anil Goyal, PW 138 Ashok Kumar Singh, PW 149 A.K. Chaddha, PW 150 S.P. Garg, PW 153 Amrit Sain Gupta, PW 187 D.B. Gupta and PW 207 Vivek Kumar.

(M) Witnesses with regard to Noida Plot :-

PW 89 Sri Rajendra Singh, PW 157 Bhanu Pratap Singh, PW 162 Rajendra Kumar and PW 164 Sanjay Kumar Jain (he is witness to Noida flat also).

(N) Witnesses with regard to Noida Flat:-

PW 20 Vijay Keerti, PW 43 Vivek Pokhariyal, PW 70 KambarMurtaza, PW 78 Smt. Shashi Prabha Saxena, PW 86 Anil Jindal, PW 87 Akhil Mahajan, PW 102 Rajiv Mittal, PW 118 Rakesh Kumar Agarwal, PW 119 Trilok Singh, PW 123 Mahesh Garg, PW 124 Navin Chandra Kabadwal, PW 129 Surendra Kumar, PW 164 Sanjay Kumar Jain (he is witness to Noida plot also), PW 174 Deepak Mehta, PW 175 Dalip Kumar, PW 194 Suresh Kumar Adya, PW 202 Dharmendra Kumar Gupta and PW 236 Subhashish Chakravarti.

(O) Witnesses with regard to IRS, Lucknow Flat:-

PW 83 Prasenjeet Singh, PW 137 Sandeep Pandey, PW 161 Ram Mohan Tiwari.

(P) Witnesses with regard to Pondha Land :-

PW 2 Boondi Ram, PW 57 Virendra Kumar Gupta, PW 59 Vijay Singh Thapli,

PW 64 Dheeraj Singh Negi, PW 74 Prakash Upadhyaya, PW 75 Arjun Singh, PW 81 Anil Kumar Pandey, PW 91 Kamal Singh, PW 100 Gaurav Tripathi, PW 106 Mohan Singh, PW 107 S.C. Puri, PW 130 Babu Singh, PW 206 Vinay Gupta,PW 226 Shobhit Mathur and PW 250 Surendra Kumar Rohilla.

(Q) Witnesses with regard to Bagral land:-

PW 22 Surendra Singh, PW 23 Jaswant Singh, PW 24 Thakur Singh, PW 25 Lekhraj Singh, PW 26 Hukum Singh, PW 27 Vikram Singh, PW 63 Amit Bhatia, PW 84 Balbeer Singh, PW 144 Roop Narain Sonkar and PW 231 Charan Singh.

(R) Witnesses with regard to Hotel Uruvela International:-

PW 77 Satendra Nath Upadhyaya (he is also witness to the account of A-1, etc.), PW 93 Anand Kumar Singh, PW 94 R.N.P. J. Paul, PW 95 Sanjay Kumar, PW 105 Umakant Singh, PW 115 Shadan Ayubi, PW 159 Kumar Sarvjeet, PW 160

Jai Singh, PW 170 Dinesh Kumar Nigam, PW 183 Ramkrishna Singh, PW 184 Mohd. Karam Alam, PW 186 Amarnath Prasad, PW 189 Narendra Kumar, PW 190 Sushil Kumar, PW 191 Baidyanath Prasad Sharma, PW199 Sanjay Kumar, PW 216 Shashi Shekhar Chaudhary, PW 219 Dalip Ghosh, PW 229 Nand Kishore Sharma, PW 230 Rameshwar Sharma, PW 234 Sitaram Sahu,PW 238 Vijay Kumar Mandal, PW 239 Akhileshwar Prasad, PW 242 Mahfooz Alam, PW 245 Gopal Prasad and PW 255 Rajesh Tomar.

(S) Witnesses with regard to shops at Medow Shopping Plaza Complex:-

PW 65 Kamal Arora, PW 117 Ashish Thakur, PW 148 Vineet Jain and PW 163 Harish Arora.

(T) Witnesses with regard to USHA plot:-

PW 101 Satish Kumar Shukla and PW 142 S.S. Tomar.

(U) Witnesses with regard to search :-

PW 179 Vinod Kumar, PW 180 K.K. Das, PW 208 Mithileshwar Prasad, PW 209 S.K. Sharma, PW 212 Anil Kumar, PW 246 Manoj Pangarkar, PW 251 Naresh Talwar and PW 252 S.S. Kishore.

(V) Witnesses with regard to conduct of A-1:-

PW 4 N.P. Diwan, PW 6 Inder Kumar Batta, PW 8 Prashant Kochar, PW 60 Suresh, PW 61 P.S. Krishnamurti, PW 71 Mukesh Chand Arora, PW 92 Bharat Singh Negi, PW 145 Manoj Kumar.

(W) Witnesses with regard to Honda City Car:-

PW 16 Mukesh Nawani, PW 116 Yadram, PW 139 Sandeep Sharma, PW 140 Ashok Kumar, PW 147 Amardeep Singh, PW 185 Rajeev Kumar, PW 217 Gunveen Singh, PW 220 Anil Mal, PW 233 Sunil Kumar Upadhyaya and PW 253 Anil Kumar Singh.

(X) PW 169 Chandra Mohan Prasad and PW 247 Ramadhar Singh have stated about the Ambassador car.

(Y) PW 12 Narendra Rana has stated about the Arvind Society.

(Z) PW 21 Rajnish Mohan Singh has stated about the prosecution sanction.

(AA) Other witnesses:-

PW 13 Amarnath Ahuja, PW 19 Ashok Kashyap, PW 127 S.K. Sharma, PW 131 Uday Shankar Sharma, PW 133 Veerbhan, PW 134 B.P. Pandey, PW 135 Ram Vilas, PW 146 Vinod Kumar Singh, PW 155 Chandrashekhar, PW 156 Yogesh Tripathi, PW 165 P. Venugopal Rao, PW 172 Uday Shankar Tirkha, PW 176 Mohd. Hashmatulla, PW 177 Constable Ranveer Singh, PW 178 Santan Ram, PW 181 Amitabh Rawat, PW 182 Vinod Kumar Singh, PW 188 P.S. Kochar, PW 218 Kamal Kishore Singh, PW 221 Rajendra Prasad Singh, PW 223 Kailash Chand Mishra, PW 224 Shivaji A.B., PW 225 Vijay Kumar Sinha, PW 232 Anuradha Garg, PW 235 B.K. Todiwala, PW 237 Jagdish Singh, PW 243 Sridhar Ayyar, PW 250 Surendra

Kumar Rohilla (He is the IO; referred to earlier also under Pondha land head) and PW 254 Abhinitam Upadhyaya.

26. The appellants have been examined under Section 313 of the Code of Criminal Procedure, 1973 (for short, "the Code"). The examination is quite in detail. According to the appellants, the statement of the witnesses against them are false.

27. In his examination under Section 313 of the Code, A-1 has denied that from the search, his household articles worth Rs. 13,86,060/- was recovered. According to him, it includes articles belonging to A-2. According to him, Rs. 1,00,000/-, which the CBI recovered during search belongs to DW 5 Harinam Singh. A-1 has denied the evidence relating to *benami* properties and disproportionate assets. According to him, he had taken action against Awdhesh Chaudhary, a property dealer in Dehradun, therefore, credibility of the complaint made by Awdhesh Chaudhary, in itself, is doubtful. A-1 has stated that he is a victim of conspiracy, in which the senior officers of Income Tax Department were also involved.

28. A-2 in her examination under Section 313 of the Code has stated that she has income from agriculture, which was deposited in her account in Bihar. According to her, she acquired properties from her source of income; she had prepared balance sheets and submitted it with her ITR, which were accepted by the Income Tax Department. A-2 has categorically stated that she has no financial links with A-1. Her property cannot be said to be *benami* property of A-1. In fact, with regard to her income, A-2 has spoken quite extensively as to how she used to sell agricultural produce and get the money deposited in the account through *Adati (*wholesale dealer).

29. In his examination under Section 313 of the Code, A-3 has stated that the land for construction of hotel was purchased by him through cheques. He admitted his income from salary, as alleged by the prosecution, but according to him, he had income from agriculture and hotel also. According to him, he also took loan for constructing the hotel.

30. In his examination under Section 313 of the Code, A-4 has stated that he purchased the flat from

Dalip Kumar. According to him, certain shares were sold by his father to Sanjay Jain and this is how he got money to purchase the flat. A-4 has also stated that he did not know as to who was staying in the flat because it was rented out by a broker, but when raided, Arunabh Suman was staying in the Flat; he did not execute any power of attorney; he did not bring any material for the house constructed by A-1 from PW 69 Sunil Goyal. A-4 has expressed ignorance about the statements of PW 86 Anil Jindal, PW 87 Akhil Mahajan, PW 102 Rajeev Mital and PW 123 Mahesh Garg.

31. The examination of the appellants under Section 313 of the Code is quite extensive. They have been asked to explain the circumstances appearing against them in the evidence (despite that on behalf of A-2, it has been argued that with regard to partition of HUF, A-2 has not been examined under Section 313 of the Code, therefore, that part of material produced by the prosecution cannot be taken into consideration. This will be considered at an appropriate stage.)

32. In defence, the appellants examined eight witnesses, namely, DW 1 Alok Kumar Jain, DW 2 Dr.

P.V.K. Prasad, DW 3 Neeta Agarwal, DW 4 Rajesh Kumar, DW 5 Harinam Singh, DW 6 T.N. Singh, DW 7 Manoj Kumar and DW 8 Sachin Kumar Rathore.

33. DW1 Alok Kumar Jain and DW 6 T.N. Singh have stated about some documents relating to USHA property. DW 2 Dr. P.V.K. Prasad has stated about a communication received by him for conducting an inquiry with regard to the complaint made by I.K. Batta. DW 3 Neeta Agarwal is a senior Income Tax Officer. She has stated about the income tax return of A-2 submitted as HUF. DW4 Rajesh Kumar has proved a document, Ex. B1. He has stated about a complaint against Awdhesh Chaudhary. DW 5 Harinam Singh, DW 7 Manoj Kumar and DW 8 Sachin Kumar Rathore have been examined with regard to Rs. 1,00,000/-, which were recovered from the search of house of A-1 on 05.08.2005. DW 5 Harinam Singh has stated that he was staying in the house of A-2 for the treatment of his daughter, who was admitted in a hospital. He had kept Rs. 1,00,000/- in a room, which was opened by the CBI. DW 7 Manoj Kumar Singh is a photographer, who has stated that on 05.08.2005, he was taking photographs of the search made by CBI.

There this witness met DW 5 Harinam Singh. DW 8 Sachin Kumar Rathore has produced certain documents with regard to one Nishu, who according to the prosecution, is the daughter of DW 5 Harinam Singh.

34. It may be noted, at this stage, that the IO had also filed an application under Section 3 of the Ordinance, read with Section 5(6) of the Act for confiscation of certain properties. The application was registered as Miscellaneous Case. On 05.08.2015, an *ad interim* order of attachment was made on this application. By the order of the court passed on 07.04.2017, both the case and the Miscellaneous Case proceeded together.

35. After hearing the parties, by the impugned judgment and order, the appellants have been convicted and sentenced, as stated hereinbefore. By the impugned order, the properties have also been confiscated under the provisions of the Ordinance.

36. Aggrieved by it, the appellants are before this Court in appeal.

37. Heard learned counsel for the parties and perused the record.

ARGUMENTS

On Behalf of A-1

38. Mr. VikramChaudhari, learned Senior Counsel appearing for A-1 would submit that the prosecution has utterly failed to prove the charges against A-1, therefore, the appeal filed by A-1 deserves to be allowed.

39. Learned Senior Counsel raised the following points in his arguments:-

(i) The investigation since inception has been flawed. In case of source information, preliminary inquiry has to be conducted, as provided under Chapter 9 of the CBI Manual. In the instant case, preliminary inquiry was not conducted. It vitiates the entire proceedings.

(ii) The registration of FIR without verification of the source information is actuated with malice both in law as well as fact. It took five years to file a chargesheet by enhancing the number of properties as well as the check period.

In support of his contention, learned Senior Counsel placed reliance on the principle of law as laid down in the case of P. Sirajuddin v. State of Madras, (1970) 1 SCC 595, Central Bureau of Investigation v. Ashok Kumar Aggarwal, (2014) 14 SCC 295 and Vineet Narain and others v. Union of India and another, (1998) 1 SCC 226.

In the case of P. Sirajuddin (*supra*), the Hon'ble Supreme Court observed "**Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a**

first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer."

In the case of Vineet Narain(*supra*), the Hon'ble Supreme Court, *inter alia,* observed that the CBI Manual requires strict compliance. The Hon'ble Supreme Court observed as hereunder:-

> "*58.* (*I*)(*12*) The CBI Manual based on statutory provisions of CrPC provides essential guidelines for the CBI's functioning. It is imperative that CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned."

In the case of Ashok Kumar Agrawal (*supra),* the Hon'ble Supreme Court followed the above principle of law laid down in the case of Vineet Narain (*supra)* and observed as hereunder:-

> **"24.** Thus from the above, it is evident that the CBI Manual, being based on statutory provisions of CrPC, provides for guidelines which require strict compliance. More so, in view of the fact that the ratio of the judgment of this Court in *M.M. Rajendran* [*State of T.N.* v. *M.M. Rajendran*, (1998) 9 SCC 268 : 1998 SCC (Cri) 1000] has been incorporated in the CBI Manual, the CBI

> Manual itself is the best authority to determine the issue at hand. The court has to read the relevant provisions of the CBI Manual alone and no judgment of this Court can be a better guiding factor under such a scenario."

(iii) The burden of proof is upon the prosecution in both the matters, namely, (i) where the transaction is *benami* and (ii) where the appellant has assets disproportionate to this known source of income. Prosecution has to prove its case beyond reasonable doubt, whereas the onus of the appellant can be discharged merely by standard of preponderance of probabilities.

(vi) A-1 has been charged and convicted not on the basis of the property recorded in his name, but based on the properties, which are recorded in the names of A-2, A-3, A-4 and others.

(v) The prosecution has to prove beyond reasonable doubt that the properties, which the co-accused were possessing, they were possessing them on behalf of

A-1. But, the prosecution has not been able to prove it.

(vi) If the properties are in the names of ostensible owners, A-1 cannot be connected with it. The IO has admitted that there is no financial link between A-1 and other appellants.

(vii) It is the case of the prosecution that the co-accused aided and abetted A-1. In such a case, firstly, the prosecution has to prove that any intentional aid was given. It is not a case of conspiracy. The trial court considered the aspect of conspiracy while convicting the appellant. It is argued that this approach is against the law.

In support of this contention, learned Senior Counsel placed reliance in the case of P. Nallamal and others v. State represented by Inspector of Police, (1999) 6 SCC 559.

In the case of P. Nallamal (*supra)*, the Hon'ble Supreme Court illustratively dealt with the provisions of Section 107 IPC and observed as hereunder:-

> "**24.** Shri Shanti Bhushan cited certain illustrations which, according to us, would amplify the cases of abetments fitting with each of the three clauses in Section 107 of the Penal Code vis-a-vis Section 13(1)(*e*) of the PC Act.
>
> The first illustration cited is this:
>
> If *A*, a close relative of the public servant tells him of how other public servants have become more wealthy by receiving bribes and *A* persuades the public servant to do the same in order to become rich and the public servant acts accordingly. If it is a proved position there cannot be any doubt that *A* has abetted the offence by instigation.
>
> Next illustration is this:
>
> Four persons including the public servant decide to raise a bulk amount through bribery and the remaining persons prompt the public servant to keep such money in their names. If this is a proved position then all the said persons are guilty of abetment through conspiracy.
>
> The last illustration is this:
>
> If a public servant tells *A*, a close friend of his, that he has acquired considerable wealth through bribery but he cannot keep them as he has no known source of income to account, he requests *A* to keep the said wealth in *A*'s name, and *A* obliges the public servant in doing so. If it is a proved position *A* is guilty of abetment falling under the "Thirdly" clause of Section 107 of the Penal Code."

(viii) Offence under Section 11 of the Act is not made out in the instant case. The charge under Section 11 of the Act has been framed on the allegations that A-1

purchased costly material goods from various persons, but he did not pay for it. The witnesses did not prove it. Moreover, none of the concerned vendors had any case/file pending before A-1, when the purchase of alleged goods were made.

(x) It is necessary, before invoking Section 11 of the Act, to establish that the public servant must be *in seision* of any proceeding or business to be carried out towards the part of his official duty from the concerned person from whom valuable things, etc. are obtained, but there is no evidence to that effect. In support of his submission, learned Senior Counsel placed reliance on the principle of law as laid down in the case of Delhi Administration v. S.N. Khosla (1971) 1 SCC 872.

In the case of S.N. Khosla (*supra),* the Hon'ble Supreme Court observed as hereunder:-

> **"6.** In our opinion the High Court was quite right in holding that no offence had been committed under Section 5(1)(*b*) of the Act. It seems to us that there was consideration for the obtaining of goods on credit and it cannot be said that an officer, if he obtains goods on credit, even if he does not intend to pay, is obtaining a valuable thing without consideration. The case may be different if it is proved that there was an agreement with the trader that the trader would not demand the money and the officer would not pay, and the bill and the reminders sent would be merely a formality. There is no evidence to sustain such an inference in this particular case.
>
> **7.** Coming to Section 5(1)(*d*), the question arises whether the respondent had obtained any pecuniary advantage. There is no doubt that the words "pecuniary advantage" are of wide amplitude but even so in the context of Section 5(1)(*d*) obtaining goods on credit cannot be held to amount to obtaining pecuniary advantage. As we have said, if there is an agreement between the officer and the trader that the officer is not expected to pay for the goods then there is no doubt that this would amount to obtaining pecuniary advantage, but if there is no such agreement and the officer does not pay it cannot be said that he has obtained any pecuniary advantage. He does not act in any manner different from a non-official who obtains things on credit and then refuses to pay……."

(x) The trial court had proceeded on the wrong assumption, when it observed that first and foremost the source of income of A-2 was to be examined. The trial

court decided the case on a wholly erroneous perspective, which had no relevance to the scope of the case set up by the CBI.

(xi) The Trial Court misjudged the issue and erroneously treated the assets of A-2, A-3 and A-4 and others as *benami* assets of A-1, whereas the scope of the charges was only as to whether A-1 siphoned the money to A-2, A-3, A-4 and other co-accused.

(xii) One of the ingredients of any *benami* assets is the source of money, which should come from the accused to the alleged *benamidar* to create the asset in question. The onus lies on the prosecution to prove that the asset in question is a *benami* property.

(xiii) The alleged case of *benami* property does not stand against A-1. None of the ingredients of any *benami* property stands proved against A-1 at all for the following reasons:-

(a) The ingredients of any *benami* property have not been proved against A-1.

(b) The IO had admitted that there has been no financial connection between A-1 and other appellants.

(c) The ostensible owners assert their ownership over their properties.

(d) All the original documents of the properties were recovered from the possession of the respective owners of those properties and not from A-1.

(e) A-1 never took any financial help/benefit from the alleged *benami* properties.

(f) All the alleged *benami* properties were duly reflected in the income tax returns of the respective owners of the said properties.

(g) Source of co-accused has nothing to do with the A-1.

In support of his contention, learned Senior Counsel for A-1 placed reliance on the principle of law as laid down in the case of Vasant Rao Guhe v. State of Madhya Pradesh, 2017 (14) SCC 442; K. Govardhan v. State of Andhra Pradesh 2001 (3) RCR (Criminal) 334.

In the case of Vasant Rao Guhe (*supra),* the Hon'ble Supreme Court discussed the law with regard to proof of *benami* property and in paragraphs 18 and 22 observed as hereunder:-

> **"18.** Apart therefrom, both the courts below indulged in voluntary exercises to quantify the pay of the appellant for the periods excluded by the prosecution as well as his agricultural income and that too premised on presumptions with regard to his possible expenditures/investments and his share in the agricultural receipts, having regard to the nature of the charge cast on the appellant and the inflexible burden on the prosecution to unfailingly prove all the ingredients constituting that same, there could have been no room whatsoever of any inference or speculation by the courts below. A person cannot be subjected to a criminal prosecution either for a charge which is amorphous and transitory and further on evidence that is conjectural or hypothetical. The appellant in the

> determinations before the courts below has been subjected to a trial in which both the charges and evidence on aspects with vital bearing thereon lacked certitude, precision and unambiguity.
>
> **22.** In view of the materials on record and the state of law as above, we are thus of the considered opinion that the prosecution has failed to prove beyond all reasonable doubt the charge of criminal misconduct under Section 13(1)(*e*) of the Act and punishable under Section 13(2) thereof against the appellant. He is thus entitled to the benefit of doubt. The prosecution to succeed in a criminal trial has to pitch its case beyond all reasonable doubt and lodge it in the realm of "must be true" category and not rest contended by leaving it in the domain of "may be true". We are thus left unpersuaded by the charge laid by the prosecution and the adjudications undertaken by the courts below. The conviction and sentence, thus is set aside. The appeal is allowed."

In the case of K. Goverdhan (*supra),* the Hon'ble Andhra Pradesh High Court, *inter alia,* observed that "**It is pertinent to mention here that even assuming that the ostensible owners in question do not have any known sources of income this in itself cannot be a conclusive circumstance for holding that the property held by them was *benami* on behalf of accused officer".**

(xiv) If there is absence of any source of income of the ostensible owners, it

cannot implicate A-1. The link has to be established, which is missing in the instant case.

Learned Senior Counsel for A-1 also placed reliance on the principle of law as laid down in the case of Jaydayal Poddar (Deceased) through L.Rs. and another v. Mst. Bibi Hazra and others, (1974) 1 SCC 3, to argue that to establish *benami* transaction, the prosecution has to prove that :- (i) the property is in the name of others (ii) funds were provided by the appellant to the ostensible owners (iii) the appellant manages the properties and (iv) the appellant invested in the property.

In the case of Jaydayal Poddar (*supra*), the Hon'ble Supreme Court observed as hereunder:-

> "**6.** It is well settled that the burden of proving that a particular sale is *benami* and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of *benami* or establish circumstances unerringly and reasonably raising an

> inference of that fact. The essence of a *benami* is the intention of the party or parties concerned; and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be *benami* of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation, and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs. Though the question, whether a particular sale is *benami* or not, is largely one of fact, and for determining this question, no absolute formulae or acid test, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the Courts are usually guided by these circumstances: (*1*) the source from which the purchase money came; (*2*) the nature and possession of the property, after the purchase; (*3*) motive, if any, for giving the transaction a *benami* colour; (4) the position of the parties and the relationship, it any, between the claimant and the alleged *benamidar*; (5) the custody of the title-deeds after the sale and (6) the conduct of the parties concerned in dealing with the property after the sale."

Learned Senior Counsel also referred to the judgment in the case of MangathaiAmmal (Died) through LRs and Others v. Rajeswari and others, 2019 SCC OnLine SC 717.In the case of Mangathai Ammal (*supra)*, the Hon'ble Supreme Court followed the principle of

law as laid down in the case of Jaydayal Poddar (*supra*) and held as hereunder:-

> **"28.** While considering the issue involved in the present appeal viz. whether the transactions/Sale Deeds in favour of defendant no. 1 can be said to be *benami* transactions or not, the law on the *benami* transactions is required to be considered and few decisions of this Court on the aforesaid are required to be referred to.
>
> **29.** In the case of *JaydayalPoddar* (Supra) it is specifically observed and held by this Court that the burden of proving that a particular sale is *benami* and the apparent purchaser is not the real owner, always rests on the person asserting it to be sold. It is further observed that this burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of the *benami* transaction or establish circumstances unerringly and reasonably raising an interference of that fact. ....."

30. In the case of *Thakur Bhim Singh* (Supra) this Court in paragraph 18 observed and held as under:

> "18. The principle governing the determination of the question whether a transfer is a *benami* transaction or not may be summed up thus: (1) the burden of showing that a transfer is a *benami* transaction lies on the person who asserts that it is such a transaction; (2) it is proved that the purchase money came from a person other than the person in whose favour the property is transferred, the purchase is prima facie assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary; (3) the true character of the transaction is governed by the intention of the person who has contributed the purchase money and (4) the question as to what his intention was has to be decided on the basis of the surrounding circumstances, the relationship of the parties, the motives governing their action in bringing about the

transaction and their subsequent conduct, etc."

31. In the case of *P. Leelavathi* (Supra) this Court held as under:

> "9.2 In *Binapani Paul case* (Supra), this Court again had an occasion to consider the nature of *benami* transactions. After considering a catena of decisions of this Court on the point, this Court in that judgment observed and held that the source of money had never been the sole consideration. It is merely one of the relevant considerations but not determinative in character. This Court ultimately concluded after considering its earlier judgment in the case of *Valliammal* v. *Subramaniam* (2004) 7 SCC 233 that while considering whether a particular transaction is *benami* in nature, the following six circumstances can be taken as a guide:
>
> "(1) the source from which the purchase money came;
>
> (2) the nature and possession of the property, after the purchase;
>
> (3) motive, if any, for giving the transaction a *benami*colour;
>
> (4) the position of the parties and the relationship, if any, between the claimant and the alleged *benamidar*;
>
> (5) the custody of the title deeds after the sale; and
>
> (6) the conduct of the parties concerned in dealing with the property after the sale. (*JaydayalPoddar* v. *Bibi Hazra* (supra), SCC p. 7, para6)"

(xv) In the instant case, nothing has been proved. There has been no financial link between A-1 and other appellants.

(xvi) A-2 is a rich lady. She purchased properties from her own source. She

revealed her source to the IO, who did not take them into consideration.

(xvii) A-3 has also submitted his income tax returns and balance sheet revealing the income, but it was not considered by the IO. A-3 had source of income and he explained it by preponderance of probabilities.

(xviii) A-2 and A-3 discharged their onus. Post sale, possession of the properties purchased by A-2 and A-3 was with them. There is no conduct as well, which could link A-1 with other co-accused.

(xix) A-4 sold his shares and purchased the property at Noida. A-1 in no manner whatsoever is related to it. It is prejudiced investigation, which prevailed during trial also to make the court believe that offences were committed.

(xx) The quality of evidence is too poor to prove the charges. In fact, irrelevant

material has been collected to prove the charges.

(xxi) The search carried out on 05.08.2005 turned out to be an utter failure.

In support of his contentions, learned Senior Counsel for A-1 also referred to the principle of law as laid down in the cases of Krishnanand Agnihotri v. State of Madhya Pradesh, (1977) 1 SCC 816; State of Maharashtra v. Wasudeo Ramchandran Kaidalwar, (1981) 3 SCC 199; Mohan Singh and another v. State of M.P., (1999) 2 SCC 428; State of Rajasthan v. Raja Ram, (2003) 8 SCC 180; Sunil Rai v. Union Territory, Chandigarh, (2011) 12 SCC 258; Vikramjit Singh @ Vicky v. State of Punjab, (2006) 12 SCC 306, V.K. Puri Vs. CBI, (2007) 6 SCC 91, Sh. Vishwa Vibhuti v. CBI, 2012 SCC OnLine Del 3452, Ramesh Baburao Devaskar and Others v. State of Maharashtra (2007) 13 SCC 501, M Krishna Reddy v. State DSP,

Hyderabad (1992) 4 SCC 45, State of Karnataka Vs. J. Jayalalitha, (2017) 6 SCC 263, Malay Kumar Ganguly v. Dr. Sukumar Mukharjee and Others, (2009) 9 SCC 221, Thulia Kali v. The State of Tamil Nadu, (1972) 3 SCC 393, Sujit Biswas v. State of Assam, (2013) 12 SCC 406, Kishor Chand v. Himachal Pradesh (1991) 1 SCC 286, DSP, Chennai Vs. K. Inbasagaran, (2006) 1 SCC 420 and Commissioner of Income Tax Vs. Smt. Nilofer I. Singh, (2009)309 ITR 233.

40. In the case of KrishnanandAgnihotri (*supra),* the Hon'ble Supreme Court followed the principle of law as laid down in the case of JaydayalPoddar (*supra)* and observed that "**It is not enough merely to show circumstances which might create suspicion, because the court cannot decide on the basis of suspicion. It has to act on legal grounds established by evidence**".

41. In the case of WasudeoRamchandraKaidalwar (*supra),* the Hon'ble Supreme Court discussed the expression "burden of proof" and in para 13 observed as hereunder :-

"13. .....The expression "burden of proof" has two distinct meanings (*1*) the legal burden i.e. the burden of establishing the guilt, and (*2*) the evidential burden i.e. the burden of leading evidence. In a criminal trial, the burden of proving everything essential to establish the charge against the accused lies upon the prosecution, and that burden never shifts. Notwithstanding the general rule that the burden of proof lies exclusively upon the prosecution, in the case of certain offences, the burden of proving a particular fact in issue may be laid by law upon the accused. The burden resting on the accused in such cases is, however, not so onerous as that which lies on the prosecution and is discharged by proof of a balance of probabilities. The ingredients of the offence of criminal misconduct under Section 5(2) read with Section 5(1)(*e*) are the possession of pecuniary resources or property disproportionate to the known sources of income for which the public servant cannot satisfactorily account. To substantiate the charge, the prosecution must prove the following facts before it can bring a case under Section 5(1)(*e*), namely, (*1*) it must establish that the accused is a public servant, (*2*) the nature and extent of the pecuniary resources or property which were found in his possession, (*3*) it must be proved as to what were his known sources of income i.e. known to the prosecution, and (*4*) it must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income. Once these four ingredients are established, the offence of criminal misconduct under Section 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 extent and nature of burden of proof resting upon the public servant to be found in possession of disproportionate assets under Section 5(1)(*e*) cannot be higher than the test laid by the Court in *Jhingan case* [AIR 1966 SC 1762 : (1966) 3 SCR 736 : 1966 Cri LJ 1357] i.e. to establish his case by a preponderance of probability. That test was laid down by the court following the dictum of Viscount Sankey, L.C., in *Woolmington* v. *Director of Public Prosecutions* [1935 AC 462] . The High Court has placed an impossible burden on the

> prosecution to disprove all possible sources of income which were within the special knowledge of the accused. As laid down in *Swamy case* [AIR 1960 SC 7 : (1960) 1 SCR 461 : 1960 Cri LJ 131] , the prosecution cannot, in the very nature of things, be expected to know the affairs of a public servant found in possession of resources or property disproportionate to his known sources of income i.e. his salary. Those will be matters specially within the knowledge of the public servant within the meaning of Section 106 of the Evidence Act, 1872. Section 106 reads:
>
> > "When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."
>
> In this connection, the phrase "burden of proof" is clearly used in the secondary sense, namely, the duty of introducing evidence. 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 need do is to bring out a preponderance of probability."

42. In the case of Mohan Singh (*supra),* the Hon'ble Supreme Court discussed the duty of the court to elicit truth and observed as hereunder:-

> "11. .....Mere variance of the prosecution story with the medical evidence, in all cases, should not lead to the conclusion, inevitably to reject the prosecution story. Efforts should be made to find the truth, this is the very object for which courts are created. To search it out, the courts have been removing the chaff from the grain. It has to disperse the suspicious cloud and dust out the smear of dust as all these things clog the very truth. So long as chaff, cloud and dust remain, the criminals are clothed with this protective layer to receive the benefit of doubt. So it is a solemn duty of the courts, not to merely conclude and leave the case the moment suspicions are created. It is the onerous duty of the court, within permissible limit, to find out the truth. It means on one hand, no innocent man should be punished but on the other hand, to see no

> person committing an offence should get scot-free. If in spite of such effort, suspicion is not dissolved, it remains writ at large, benefit of doubt has to be credited to the accused."

43. In the case of Raja Ram (*supra),* the Hon'ble Supreme Court observed that "**The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted**." In the case of Sunil Rai (*supra),* the Hon'ble Supreme Court, *inter alia,* observed that "**on the materials on record, there may be some suspicion against the accused, but as is often said, suspicion, however strong, cannot take place of proof"**. In the case of Vikramjit Singh (*supra),* the Hon'ble Supreme Court held that "**suspicion, however, grave may be, cannot be a substitute for proof"**.In the case of Ramesh BaburaoDevaskar (*supra),* the Hon'ble Supreme Court observed "**proof of motive by itself may not be a ground to hold the accused guilty".** In the case of Kishore Chand (*supra),* the Hon'ble Supreme Court discussed the provision with regard to extra-judicial confession and observed "**the**

court has to look into the surrounding circumstances and to find whether the extra-judicial confession is not inspired by any improper or collateral consideration or circumvention of the law suggesting that it may not be true one". In the case of K. Inbasagaran (*supra*), the Hon'ble Supreme Court observed that "**the initial burden was on the prosecution to establish whether the accused has acquired the property disproportionate to his known source of income or not. But at the same time, it has been held in State of M.P. v. Awadh Kishore Gupta [(2004) 1 SCC 691 : 2004 SCC (Cri) 353] that the accused has to account satisfactorily for the money received in his hand and satisfy the court that his explanation was worthy of acceptance**."

44. In the case of V.K. Puri (*supra)* also, the Hon'ble Supreme Court held that once the ingredients of the offence under Section 13(1) (e) of the Act are proved and established by the prosecution, the burden to proof would shift on the accused to show that the prosecution case is not correct.

45. In the case of VishwaVibhuti (*supra),* an order framing charge was challenged before the High Court. The Hon'ble Delhi High Court referring to the various case laws on the point observed as to what is to be considered at the time of framing of charge and held "**at the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage".**

46. In the case of M. Krishna Reddy (*supra),* certain income tax returns were not considered by the trial court on the ground that the persons who submitted those income tax returns had little experience during that period. In paragraph 13 of the judgment, the Hon'ble Supreme Court observed as hereunder:-

> **"13.** The trial court has brushed aside this piece of evidence on the ground that the daughter and son-in-law, Dr RavindraReddi had only little experience during that period; that they had submitted their income tax returns for a consolidated period of three years in 1982 and therefore the case of the appellant that he got a loan of Rs 20,000 from Dr RavindraReddi is not acceptable. This reasoning is based on mere conjunctures or surmise. As repeatedly pointed out earlier, the

> raid was in 1983 and so, there could not be any conceivable reason even to entertain any suspicion or surmise."

47. Reference is made to the case of J. Jayalalitha (*supra)* to argue that the facts in the case of J. Jayalalitha (*supra)* were quite different because in that case ITR was submitted post lodging of the FIR. Therefore, they were doubted. It is argued that even ITRs were not totally discarded in the case of J. Jayalalitha (*supra)*. Learned counsel appearing for the appellants would argue that the circumstances in the case of J. Jayalalitha (*supra)* were different because in that case there were witnesses to depose before the court that they deposited cash in the banks under the direction of the accused. It is argued that in the instant case, there is no financial link between A-1 and other appellants and even there is no such evidence.

48. Factual narration may not be identical in two cases, but the principles of law are general, which are applicable under the given facts. With regard to ITR, the Hon'ble Supreme Court in the case of J. Jayalalitha (*supra)* has observed that the income shown in the ITR by themselves cannot establish that such income had

been from some lawful source. In para 196 of the judgment, the Hon'ble Supreme Court observed as hereunder:-

> "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 accused persons in view of the allegation made by the prosecution 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**."
>
> (emphasis supplied)

49. In the case of Malay Kumar Ganguli (*supra),* the Hon'ble Supreme Court discussed as to how a document may be admissible in evidence. In para 37, the Hon'ble Supreme Court observed as hereunder:-

> **"**37. It is true that ordinarily if a party to an action does not object to a document being taken on record and the same is marked as an exhibit, he is estopped and precluded from questioning the admissibility thereof at a later stage. It is, however, trite that a document becomes inadmissible in evidence unless the author thereof is examined; the contents thereof cannot be held to have been proved unless he is examined and subjected to cross-examination in a court of law. The document which is otherwise

> inadmissible cannot be taken in evidence only because no objection to the admissibility thereof was taken."

50. In the case of Thulia Kali (*supra),* the Hon'ble Supreme Court, *inter alia,* observed "**First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial**".In the case of Sujit Biswas (*supra),* the Hon'ble Supreme Court discussed the provision of Section 313 of the Code and observed "**The circumstances which are not put to the accused in his examination under Section 313 CrPC, cannot be used against him and must be excluded from consideration**".

51. In the case of Smt. Nilofer I. Singh (*supra),* the issue was with regard to determination of fair market value for the purposes of Section 55-A of the Income Tax Act, 1961. The Hon'ble Delhi High Court observed that "**For the purposes of computing capital gains in such a case as the one before us, there is no necessity for computing the fair market value and, therefore, the Assessing Officer could not have referred the matter to the Valuation Officers"**. There

was another issue with regard to bad debts. On this point, the Hon'ble Delhi High Court, observed that "**section 36(1)(vii) of the said Act clearly stipulates that the said deduction is allowed provided the bad debt is written off as irrecoverable in the accounts of the assessee for the concerned previous year. This is, however, subject to the provision of sub-section (2) of section 36 of the Act.**"

52. Learned Senior Counsel for A-1 also argued with regard to each property. Those submissions would be considered while dealing with the individual properties.

On Behalf of A-2

53. Learned Counsel for A-2, Mr. Rajeev Duggal, would submit that A-2 cannot be connected in any manner in her financial activities with A-1. A-2 cannot be prosecuted and convicted. Learned Counsel raised the following points in his arguments:-

(i) There is no trail of money between A-1 and A-2. A-2 is the Manager of Hindu Undivided Family (HUF). She has huge agricultural properties. If

any amount was deposited in her account in Bihar, A-1 cannot be linked with it.

(ii) There is no entry in the name of A-1 in the record of A-2. Income and assets of A-2 are more than A-1. It is reflected in the FIR itself. The "A", "B", "C", "D" statements cannot be prepared of A-2. It has prejudiced her interest.

(iii) The income of A-2 of whole of her life should have been taken into consideration.

(iv) In order to establish a *benami* transaction, it has to be shown that the purchase money came from some third person and not from the ostensible owner.

(v) The properties held by A-2 are not *benami*.

54. Learned Counsel for A-2 has also argued with regard to the properties registered in the name of A-2.

Those submissions would be referred to at an appropriate place.

On Behalf of A-3

55. Learned Senior Counsel Mr. N. Hariharan argued on behalf of A-3. Most of the arguments are overlapping to the arguments as advanced on behalf of A-1. Leaned Senior Counsel would submit as follows:-

(i) The prosecution had to prove that A-3 held any property on behalf of A-1. This burden was on the prosecution, which the prosecution utterly failed to discharge. The burden has to be discharged by legal evidence and not by conjectures and surmises.

(ii) In the case of Jaydayal Poddar (*supra),* the circumstantial evidence has been elaborated, but those circumstances have not been established in the instant case. The source of purchase money, as a circumstances, in view of Jaydayal

Poddar (*supra)* refers to source of A-1 and not that of ostensible owners. The prosecution has to prove that the ostensible owners purchased the property from the source deriving from A-1.

(iii) Howsoever strong suspicion may be, suspicion and surmises cannot be made the basis for conviction.

(iv) The charge against A-3 is abetment by aiding, which falls in 3rd clause of Section 107 IPC.Learned Senior Counsel also referred to the principle of law as laid down in the case of P. Nallamal (*supra*), which has already been referred to, in the earlier part of this judgment.

(v) The trial court in para 1030 and 1031 wrongly took into notice the aspects of conspiracy. Conspiracy is not a charge against A-3.

56. Learned Senior Counsel also argued with regard to the individual property in the name of A-3.

Those arguments would be referred to at an appropriate place, when the property will be discussed.

On behalf of A-4

57. Learned Senior Counsel Mr. Vijay Bahadur Singh Negi argued on behalf of A-4. It is argued that A-4 is not named in the FIR. A power of attorney was recovered from the house where Arunabh Suman was the tenant. That is how A-4 was made an accused. Learned Senior Counsel would submit that no case is made out against A-4. He would raise the following arguments also in support of his contention:-

(i) A-4 purchased the property from its lawful owner, who has proved so.

(ii) Arunabh Suman was never examined by the CBI. He was neither made accused nor witness. The document, which the CBI alleged to be a power of attorney is, in fact, not a power of attorney. A-4 is owner of the Noida flat where Arunabh Suman was a tenant, therefore, a document was executed by A-4 in favour of Arunabh Suman

so that he may act on behalf of A-4 in the matters of society.

(iii) The alleged power of attorney does not bear any date. A-4 has never transferred the property to anyone.

(iv) A-4 had source of income to purchase the Noida flat. His father had purchased shares of SJ Capitals. A-4 received draft in connection with those shares, which he used to purchase the Noida flat.

(v) Prosecution has not been able to prove that the money of A-1 was used to purchase the Noida flat. There is no financial link.

58. Learned Senior Counsel also referred to the evidence on this aspect. It will be discussed at an appropriate place in the judgment.

On Behalf of the Prosecution

59. Learned Special Counsel for the CBI would submit that the offences under the Act are special kind of offences. The prosecution has been able to prove the

charges against the appellants and the court below righty convicted and sentenced the appellants. The prosecution witnesses have proved the case. There is no infirmity in the impugned judgment and order. Learned Special Counsel for the CBI raised the following points also in his arguments:-

(i) Preliminary inquiry is not mandatory in such cases when the information is accurate. Reference has been made to the judgment in the case of State of Telangana v. Managipet alias Managipet Sarveshwar Reddy, (2019) 19 SCC 87.

In the case of Managipet (*supra),* the Hon'ble Supreme Court observed "**the preliminary inquiry warranted in Lalita Kumara [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] is not required to be mandatorily conducted in all corruption cases. It has been reiterated by this Court in multiple instances that the type of**

preliminary inquiry to be conducted will depend on the facts and circumstances of each case. There are no fixed parameters on which such inquiry can be said to be conducted. Therefore, any formal and informal collection of information disclosing a cognizable offence to the satisfaction of the person recording the FIR is sufficient"

(ii) In the instant case the information was accurate. CBI Manual only guides CBI, it is not the law.

(iii) It is a complex case. The public servant and private individuals are being prosecuted. It is settled law that private persons may also be prosecuted under Section 109 IPC.

(iv) The check period may be fixed by the IO. In the instant case, check period was extended till the date when the search was carried out on 05.08.2005.

Many other properties also came to light during investigation. It is a complex case. IO had to examine witnesses, documents collected, forensic evidence was also obtained. Transactions relating to properties took place at various places, therefore, it took time to file the chargesheet. Even, it is argued that there is no time limit within which chargehseet is required to be submitted.

(v) In the case like the instant one, the word "**prove**" has different connotation because such offences are committed with great caution. The natural presumption, natural events and human conduct are to be taken into consideration by the court to raise permissible presumptions, as held by the Hon'ble Supreme Court in the case of K. Ponnuswamy v. State of T.N. by Inspector of Police, Directorate of Vigilance and Anti-Corruption,

South Range, Trichy, 2001 (6) SCC 674. Reference has been made to para 27 of the judgment, which is as hereunder:-

> **"27.** In support of his submission Mr Rao relied upon the authority of this Court in the case of *Krishnanand* v. *State of M.P.* [(1977) 1 SCC 816 : 1977 SCC (Cri) 190] In this case this Court has held as follows: (SCC pp. 830-31, para 26)
>
> "It is well settled that the burden of showing that a particular transaction is *benami* and the appellant owner is not the real owner always rests on the person asserting it to be so and this burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of *benami* or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of *benami* is the intention of the parties and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be *benami* of the serious onus that rests on him, nor justify the acceptance of mere conjectures or surmises as a substitute for proof. It is not enough merely to show circumstances which might create suspicion, because the court cannot decide on the basis of suspicion. It has to act on legal grounds established by evidence."

There can be no dispute with the legal proposition. However, let us see what is meant by "proved". Section 3 of the Evidence Act defines "proved" as follows:

> "**3. '*Proved*'**.—A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

Further, Section 114 of the Evidence Act reads as follows:

> "**114. *Court may presume existence of certain facts***.—The court may presume the existence of

> any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."
>
> Thus the fact is said to be proved when after considering the matters before it, the court believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. In coming to its belief the court may presume existence of any fact which it thinks likely to have happened having regard to the natural course of event, human conduct and public and private business, in relation to the facts of each case."

(vi) In the case of J. Jayalalitha (*supra)*, the Hon'ble Supreme Court relied on the principle of law as laid down in the case of K. Ponnuswamy (*supra*). While appreciating evidence in such cases, the attending circumstances are also to be seen.

(vii) A woman cannot be "*Karta*"of HUF because she could not have been a coparcener prior to 2005. Reliance has been placed to the judgment in the case of Commissioner of Income Tax v. Seth Govindram Sugar Mills, AIR 1966 SC 24.

(viii) A- 2 had no income as claimed by her.

(ix) The principle of law as laid down in the case of Jaydayal Poddar(*supra)* was in a civil case. In a criminal case, the principles as laid down in Jaydayal Poddar's case (*supra*) will not apply. Jaydayal Poddar's case (*supra*) has further been explained in the case of K. Ponnuswamy (*supra*).

(x) The appellants were charged under Section 109 IPC, which punishes for abetment as defined under Section 107 IPC. The appellants have not been charged for one part of abetment in isolation. It is an offence, which includes "intention". "Intention" is a state of mind and it can be collected to by overt act alone.

(xi) Even the property, which A-2 claims to be HUF had already been divided amongst the family members. Share of A-2 was not more than about nine acres.

(xii) Even if there was any income from the agricultural property, it was for all the coparceners.If the other coparceners had

given their shares to A-2, in that eventuality it could have been counted as her income independently and not an income arising out from HUF. But, A-2 did not declare her income as such, in any of the income tax returns.

(xiii) A-2 misled the IO with regard to agricultural income of Rs. 59,10,300.00 but A-2 cannot claim benefit of it. A-2 was not a coparcener in HUF. HUF had already been partitioned. A-2 gave an explanation in her examination under Section 313 of Code that she was "*Karta*", but it is not correct. A-2 has cross-examined witnesses with regard to her agricultural income, therefore, admission of the IO that A-2 had agricultural income of Rs. 59,10,300.00 has no relevance. A-2 had to prove this income, which she failed.

(xiv) The trial court rightly disbelieved the HUF concept.

60. Learned Special Counsel for CBI has also submitted with regard to individual properties. Such submissions would be discussed at an appropriate place in the judgment.

DISCUSSION

61. In the instant case, A-1 has been a public servant. He has been charged for the offences punishable under section 13 (2) read with 13(e) of the Act. Broadly, it is the allegations against A-1 that he, by abusing his official position, as public servant, acquired assets in the name of A-2, A-3, A-4 and others.He was found in possession of disproportionate assets. As stated, A-1 has also been charged for the offences punishable under Section 11 of the Act. The private individuals have been charged for the offences along with Section 109 IPC. A private individual may very well be prosecuted for such offences as held by the Hon'ble Supreme Court in the case of P. Nallamal (*supra),* which is as hereunder:-

> **"10.** Thus, clause (*b*) of the sub-section encompasses the offences committed in conspiracy with others or by abetment of "any of the offences" punishable under the PC Act. If such conspiracy or abetment of "any of the offences" punishable under the PC Act can be tried

> "only" by the Special Judge, it is inconceivable that the abettor or the conspirator can be delinked from the delinquent public servant for the purpose of trial of the offence. If a non-public servant is also a member of the criminal conspiracy for a public servant to commit any offence under the PC Act, or if such non-public servant has abetted any of the offences which the public servant commits, such non-public servant is also liable to be tried along with the public servant before the Court of a Special Judge having jurisdiction in the matter."

62. A few propositions of law have been argued on behalf of the appellants. It is argued that the prosecution has to prove its case beyond reasonable doubt and once the prosecution succeeds in doing so, the appellants may discharge the onus merely by the standard of preponderance of probabilities.

63. In a criminal case, it is a basic principle that it is the prosecution, which has to prove its case beyond reasonable doubt. The words "**beyond reasonable doubt**" have been interpreted umpteen times by the Hon'ble Supreme Court. Even in the case of "**presumption of guilt**", it is settled law that first and foremost, the prosecution has to prove its case beyond reasonable doubt and in such cases, an accused may secure his acquittal if he may create doubts by the standard of preponderance of probabilities.

64. In the case of circumstantial evidence, generally based on some facts, some inferences are drawn. To make a chain to prove a case beyond reasonable doubt, the words "proved", "disproved" or "not proved" have been defined in the Indian Evidence Act, 1872 ("the Evidence Act"). In the case of Vijayee Singh and others v. State of U.P., (1990) 3 SCC 190, the Hon'ble Supreme Court interpreted these words and the circumstances or conditions of probabilities or improbalities in the following words:-

> **"28.** It can be argued that the concept of 'reasonable doubt' is vague in nature and the standard of 'burden of proof' contemplated under Section 105 should be somewhat specific, therefore, it is difficult to reconcile both. But the general principles of criminal jurisprudence, namely, that the prosecution has to prove its case beyond reasonable doubt and that the accused is entitled to the benefit of a reasonable doubt, are to be borne in mind. The 'reasonable doubt' is one which occurs to a prudent and reasonable man. Section 3 while explaining the meaning of the words "proved", "disproved" and "not proved" lays down the standard of proof, namely, about the existence or non-existence of the circumstances from the point of view of a prudent man. The section is so worded as to provide for two conditions of mind, first, that in which a man feels absolutely certain of a fact, in other words, "believe it to exist" and secondly in which though he may not feel absolutely certain of a fact, he thinks it so extremely probable that a prudent man would under the circumstances act on the assumption of its existence. The Act while

> adopting the requirement of the prudent man as an appropriate concrete standard by which to measure proof at the same time contemplates of giving full effect to be given to circumstances or condition of probability or improbability. It is this degree of certainty to be arrived where the circumstances before a fact can be said to be proved. A fact is said to be disproved when the court believes that it does not exist or considers its non-existence so probable in the view of a prudent man and now we come to the third stage where in the view of a prudent man the fact is not proved i.e. neither proved nor disproved. It is this doubt which occurs to a reasonable man, has legal recognition in the field of criminal disputes. It is something different from moral conviction and it is also different from a suspicion. It is the result of a process of keen examination of the entire material on record by 'a prudent man'."

65. When interference from basic facts is not balanced orguided, it may lead to conjectures and surmises or speculations. In the case of Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi and others, (1991) 2 SCC 716, the Hon'ble Supreme Court observed " **In our considered view inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstantial**

to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish. In some cases the other facts can be inferred, as much as is practical, as if they had been actually observed. In other cases the inferences do not go beyond reasonable probability. If there are no positive proved facts, oral, documentary or circumstantial from which the inferences can be made the method of inference fails and what is left is mere speculation or conjecture."

66. Suspicion, howsoever strong cannot substitute for proof. Mere conjectures or suspicions cannot substitute the legal proof. In the case of Ashish Batham v. State of M.P., (2002) 7 SCC 317, the Hon'ble Supreme Court observed "**Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between "may be true" and "must be true" and this basic and golden rule only helps to**

maintain the vital distinction between "conjectures" and "sure conclusions" to be arrived at on the touchstone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record".

67. In the case of G. Parswanath v. State of Karnataka, (2010) 8 SCC 593, the Hon'ble Supreme Court observed "**circumstantial evidence is evidence of relevant facts from which, one can, by process of intuitive reasoning, infer about the existence of facts in issue or factum probandum. In dealing with circumstantial evidence there is always a danger that conjecture or suspicion lingering on mind may take place of proof. Suspicion, however, strong cannot be allowed to take place of proof and, therefore, the court has to be watchful and ensure that conjectures and suspicions do not take place of legal proof"**. In paragraph 23 and 24 of the judgment, in the case of G. Parswanath (*supra),* the Hon'ble Supreme Court further interpreted the law as hereunder:-

"23. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.

24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. There must be a chain of evidence so

> complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court."

68. In the case of Vijay Kumar Arora v. State (Government of NCT of Delhi), (2010) 2 SCC 353 also the Hon'ble Supreme Court cautioned the courts that "**the court has to be watchful and ensure that conjectures and suspicions do not take place of legal proof. However, it is no derogation of evidence to say that it is circumstantial. Human agency may be faulty in expressing picturisation of actual incident, but the circumstances cannot fail. Therefore, many a times it is aptly said that "men may tell lies, but circumstances do not**".

69. It is settled law that in the case of circumstantial evidence based on some foundational facts, the court draws inferences. When such inferences may be called legal inferences and when it falls in the realm of conjectures and surmises, the line may at times be blurred or dim. But in view of the settled law, it is bright and distinct.

70. The Evidence Act guides the court in appreciating the evidence. The word “proved” has been defined under Section 3 of the Evidence Act. The Evidence Act also permits the court to presume existence of certain facts, under Section 114 of the Evidence Act. These presumptions are definitely legal presumptions. They relate to common course of natural events, human conduct and public and private business in their relations to facts of a particular case. This sphere of “proof”, “presumptions”, “inferences” have been discussed by the Hon’ble Supreme Court in the case of K. Ponnuswamy (*supra).*

71. In view of the provisions of the Evidence Act and the law as laid down in the case of K. Ponnuswamy (*supra)*, the natural presumptions considering the common course of natural events and human conduct has a big role to play to make inferences by the court. It helps the court to believe existence or non-existence of any fact or to consider its existence so probable that a prudent man ought to act upon the situation that it exists. In the case of

J. Jayalalitha (*supra),* the Hon'ble Supreme Court referred to the judgment in the case of K. Ponnuswamy (*supra)* and observed as hereunder:-

> **"234.** In *K. Ponnuswamy* v. *State of T.N.* [*K. Ponnuswamy* v. *State of T.N.*, (2001) 6 SCC 674 : 2001 SCC (Cri) 1209] , this Court referred to the definition of the word "proved" in Section 3 of the Evidence Act, 1872 and also Section 114 thereof. While noting that in terms thereof, a fact is said to be proved when after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man, under the circumstances of the particular case, ought to act upon this supposition that it exists. It reflected also on the permissible presumption envisaged under the statute, with regard to the existence of any fact which a court is likely to think to have happened, regard being had to the common course of natural events, human conduct and public and private business in relation to the facts of a particular case.
>
> **235.** The significance of this decision is that while evaluating the evidence on record, the attendant facts and circumstances need be taken note of as well, to determine as to whether the materials available, having regard to the common course of natural events and human conduct do logically prove the point in issue."

72. The principle of law as laid down with regard to appreciation of evidence, particularly in cases of circumstantial evidence will definitely guide this Court in the present case also to make

inferences and avoid reaching the arena of conjectures and surmises.

Source of Income of Public Servant or Ostensible Owner

73. On behalf of the appellants, it has been argued that the source of income of the ostensible owners need not be examined at all. The court below, it is argued, proceeded on wholly erroneous perspective when it proceeded to examine the source of income of the non-public servants. It is argued that the source of purchase money as a circumstance, in view of JaydayalPoddar case (*supra),* refers to source of public servant and not that of ostensible owners. It has also been argued that there is no direct financial link between A-1 and other appellants and it in itself fails the prosecution case.

74. Reference has been made to the judgment in the case of JaydayalPoddar (*supra)* to argue that the circumstances as given in para 6 of the judgment are not established in the instant case. At the cost of repetition, the Court would like to

reproduce as to what was held by the Hon'ble Supreme Court in the case of JaydayalPoddar (*supra)* on this aspect. The Hon'ble Supreme Court observed that "**Though the question, whether a particular sale is *benami* or not, is largely one of fact, and for determining this question, no absolute formulae or acid test, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the Courts are usually guided by these circumstances: (1) the source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a *benami* colour; (4) the position of the parties and the relationship, it any, between the claimant and the alleged *benamidar*; (5) the custody of the title-deeds after the sale and (6) the conduct of the parties concerned in dealing with the property after the sale**."

75. The Hon'ble Supreme Court further observed that the above indicia are not exhaustive. Nevertheless, the source, whence the purchase

money came is by far the most important test for determining whether the sale standing in the name of one person is for the benefit of another.

76. It is true that the court below investigated the source of money of the ostensible owners. This has been termed as erroneous approach by the learned counsel appearing for the appellants. It has been so argued at the strength that the source of public servant has to be seen to connect the property in the name of ostensible owner.

77. On behalf of the appellants, reference has been made to the judgment in the case of K. Govardhan (*supra).* In para 21 of its judgment, the Hon'ble Andhra Pradesh High Court has observed (a part of it has also been quoted hereinbefore) "**Mere fact that the ostensible owner had no source of income in itself would not lead to any inference that the property in question was purchased with the income of a particular person. The absence of any source of income to the ostensible owner would merely indicate that the property might**

have been acquired with the income flowing from some one else. As to who that some one else is a matter of evidence and proof. The circumstance cannot lead to an inference that the property in question was acquired with the income from the accused".

78. Even in the case of K. Goverdhan (*supra),* the Hon'ble Andhra Pradesh High Court did not rule out the investigation with regard to the source of income of the ostensible owner. What the Hon'ble Andhra Pradesh High Court has observed is that no source of income with the ostensible owner in itself is not sufficient to lead any inference that the property in question was purchased with the income of some other person. This proposition of law may not be doubted. The ostensible owner did not have source of income to purchase a particular property, in itself, cannot connect the property with some other person. There should be some other evidence, attending factors or circumstances, which may connect a public servant with a non public servant in cases when the property has been purchased in

the name of a non-public servant, who did not have source of income to acquire such property.

79. Subsequent to it, in the case of M. Kishan v. State of Andhra Pradesh, 2005 (1) APLJ 171, the Hon'ble Andhra Pradesh High Court has held that if the circumstances lead to an inference that the ostensible owner has no source of income to purchase such property and if they lead to an inference that the circumstances placed by the prosecution would establish that the money of the government employee was utilized to purchase the property, it is sufficient to establish the guilt of such government employee. In the case of M. Kishan (*supra),* the Hon'ble Andhra Pradesh High Court also referred to the judgment in the case of K. Goverdhan*(supra).*

80. It cannot be said that the source of income with the non-public servants cannot be seen. This argument does not merit any acceptance for the various reasons, namely, in the case of JaydayalPoddar (*supra),* the first circumstance which is referred in para 6 of the judgment is "**the source**

from which the purchase money came". The word used is "**source**". Now, if a property is in the name of some non public servant, which at the first instance reflects that the source of income must have been derived from such non public servant. In such case, firstly, it has to be analyzed whether such non public servant had any source of income to acquire such property. In case it is found that such non public servant had enough source of income to acquire such property, there remains less to investigate further. But, if it is found that such non public servant did not have enough source of income to acquire such property, then the matter needs further investigation and if it is connected with the public servant, such public servant may be held guilty for holding property in the name of others.

81. In fact, in the case of JaydayalPoddar (*supra),* in paragraph 7, the Hon'ble Supreme Court has categorically held that the source "**whence**" the purchase money came is most important test. Not only this, in para 8 of the judgment, in the case of JaydayalPoddar (*supra),* the Hon'ble Supreme Court discussed the source of income with the ostensible

owner to record a conclusion with regard to *benami*transactions.

82. On behalf of the CBI, it is argued that the principle of law as laid down in the case of JaydayalPoddar (*supra)* are not applicable in the instant case because the principles were laid down in a civil case. This argument has less force. The principles have been laid down in the case of JaydayalPoddar (*supra)* with regard to *benami*transactions as to how it can be concluded that a person holds property in his name, which, in fact, was acquired by some other person. The principles of law may be made applicable to all proceedings, be it civil or criminal.

83. In the case of K. Ponnuswamy (*supra),* some properties were acquired in the name of a student. The Hon'ble Supreme Court investigated the source of income of such student to record a conclusion as to whether such student held that property on behalf of a public servant. In paragraph 23, last lines, the Hon'ble Supreme Court observed "**Thus the daughter of the Appellant (i.e. Accused**

No. 3) was merely a student and had no source of income had purchased properties, paid for the stamp duty and other costs. When this fact was put to her, Accused No. 3, she admitted that the purchases were made in her name. But she failed to explain the source of income from which the properties were purchased".

84. If this proposition is accepted that in the absence of direct financial links, the source of income of ostensible owner is not to be examined, it would defeat the very purpose of enacting the Act. If a public servant by any means avoids any direct financial link and acquires property in the name of others, in such cases, if the source of income of ostensible owner is not examined, the matter cannot be investigated any further. Therefore, in such cases, where the public servant is charged with disproportionate assets along with non public servant and it is alleged that the properties were acquired in the name of non public servant, the court must examine the source of purchase money. It means as to how the ostensible owner acquired the money to purchase the property. The court below did

not adopt any erroneous approach. The court below while examining the source of income of ostensible owner did proceed in accordance with law.

Income Tax Returns & Trial under the Act

85. In the instant case, reference has been made to income tax returns submitted by some of the non public servants and it is so argued that since the income shown in the respective income tax returns have already been accepted by the income tax department, it would be sufficient proof of the source of income. This argument has less merit for acceptance.

86. This is a criminal trial. The income as shown in the income tax return has different connotations for the purposes of collecting taxes and for no other purpose. In the criminal proceeding under the Act, the public servant has to account for the property. If a non public servant is also prosecuted with the aid of Section 109 IPC along with the public servant, such non public servant has

also to account for the properties held by him in the criminal trial.

87. On behalf of the appellants, reference has been made to the judgment in the case of M. Krishna Reddy (*supra).* In that case, ITRs were not considered on the ground that the person who submitted the ITRs had little experience. The Hon'ble Supreme Court, under the facts and circumstances of the case held that such finding was based on mere conjectures and surmises. It may be noted that in the case of J. Jayalalitha (*supra)* also relying on the principles as laid down in the case of M. Krishna Reddy (*supra),* it was argued (paras 70, 71 and 92) that ITR, being public documents, are admissible in evidence. But, as stated, the Hon'ble Supreme Court in the case of J. Jayalalitha (*supra)* held that in a trial under the Act, an accused has to account for the assets independently. The Hon'ble Supreme Court has categorically held on this aspect as hereunder:-

> **"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, centringaround 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 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. 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."

88. To re-iterate, the Hon'ble Supreme Court in para 196 of the judgment in the case of J. Jayalalitha (*supra)* has observed that "**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**".

Investigation without Preliminary Inquiry

89. An argument has been advanced that the investigation in the instant case has been faulty since its inception because no preliminary inquiry was conducted, as provided under Chapter 9 of the CBI Manual; chargesheet has been filed after 5 years while expanding the properties and the check period.

90. On behalf of the CBI, it is argued that preliminary inquiry is not necessary in the cases when the information is accurate.It is also argued on behalf

of the CBI that it was a huge matter which took time in completion of the investigation.

91. Chapter 9 of the CBI Manual prescribes for preliminary inquiry and its para 9.1, *inter alia,* provides "**when information available is adequate to indicate commission of cognizable offence or its discrete verification leads to similar conclusion, a regular case must be registered instead of preliminary inquiry. It is, therefore, necessary that the SP must carefully analyze material available at the time of evaluating report submitted by the verifying officer so that the registration of PE is not resorted to where a regular case can be registered**".

92. In fact, Chapter 9 of the CBI Manual does not mandatorily require for a preliminary inquiry. It gives discretion to the authorities either to register a regular case or to proceed with the preliminary inquiry. As quoted hereinbefore, in case of accurate information, a regular case straightway may be registered.

93. On behalf of the CBI, reference has been made of a judgment in the case of Managipet (*supra),* in

which the Hon'ble Supreme Court has categorically held that preliminary inquiry is not warranted in all corruption cases. Therefore, it cannot be said that the investigation was faulty in the instant case. The FIR is categorical with fine details. The CBI authorities proceeded to register a regular case, which they would have registered even in view of CBI Manual. Under the Code, they were not mandatorily required to register preliminary inquiry.

Abetment by aiding or abetment simpliciter.

94. On behalf of the appellants, it is also argued that the instant is a case of abetment by intentional aid but the court below considered the aspect of conspiracy while convicting the appellants and this is a gross mistake in law. In this context, the principles of law as laid down in the case of P. Nallamal (*supra)* has been referred to. In fact, on behalf of the A-3, reference has been made to para 1030 and 1031 of the impugned judgment. In para 1030 and 1031 of its judgment, the court below concluded that "**it cannot be said that in the case of abetment by aiding, the circumstantial evidence is not important**". The court also observed

that "**criminal conspiracy is also a part of abetment**". These propositions may not be doubted. But what is required to be examined is as to whether it is a case of abetment by "**intentional aid**" alone as argued on behalf of the appellants.

95. Section 107 IPC defines "abetment". It is as hereunder:-

> "**107. Abetment of a thing**.—A person abets the doing of a thing, who—
>
> *First*.—Instigates any person to do that thing; or
>
> *Secondly*.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
>
> *Thirdly*.—Intentionally aids, by any act or illegal omission, the doing of that thing.
>
> *Explanation 1*.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. "

96. A bare perusal of the above definition reveals that abetment may be by any of the modes as given under Section 107 IPC. It may be by "**instigation**", "**conspiracy**" or "**intentional aid**".

97. In the case of P. Nallamal (*supra)*, the Hon'ble Supreme Court has quoted the illustrations with regard to each of these three modes of abetment.

98. In the case of State of Andhra Pradesh v. KandimallaSubbaiah and others, AIR 1961 SC 1241, the Hon'ble Supreme Court observed that "**there may be an element of abetment in a conspiracy...**"

99. In the case of ParmathaNathTalukdar and another v. SarojRanjan Sarkar, AIR 1962 SC 876, the Hon'ble Supreme Court referred to the distinction between the "**abetment**" under second clause of Section 107 IPC and "**criminal conspiracy**" and observed "**An act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing conspired for; in the latter offence the mere agreement is enough, if the agreement is to commit an offence.**"

100. The question is as to whether in the instant case, the appellants have been distinctly charged for abetment by "**intentional aid**" alone. On behalf of the appellants, arguments were advanced at the time of

framing of charge. On 02.07.2012, the court below found that there are sufficient grounds to frame charge against the appellants and this order records that the non public servants may be charged with the help of Section 109 IPC. This order does not speak that the non public servants were to be charged for "**intentional aid**" of the offences under the Act. All the non public servant appellants have been charged for "**intentionally aided and abetted the public servant**". The charge does not speak that the non public servant "**intentionally aided and thereby abetted**". In fact, the non public servant appellants have beencharged for abetment of the offences under the Act and the abetment includes all, namely, "**instigation**", "**conspiracy**" and "**intentional aid**".

DISPROPORTIONATE ASSETS OF A-1.

101. A-1 has been charged for having in possession of disproportionate assets to the extent of Rs.3,13,90,408/-. It includes disproportionate assets of Rs.28,04,305/- in the name of A-1 and the other properties held by non public servants for A-1.

102. The Court first proceeds to individually examine the assets in the name of A-1.

103. In the earlier part of this judgment, this Court has reproduced the averments made in the chargesheet with regard to the statements A, B, C and D of A-1 and disproportionate assets held by him in his name.

104. Under certain heads A-1 has objections. According to A-1, he did not have any assets disproportionate to his known source of income tax. The calculation made by CBI for evaluating the assets of A-1 has been questioned.

105. The following chart reveals the statements of “A”, “B”, “C” and “D” with computation of disproportionate asset as per the court below, the CBI and as per A-1.

COMPUTATION OF DISPROPORTIONATE ASSETS OF SWETABH SUMAN (A-1)

STATEMENT 'A'(ASSETS AT THE BEGINNING OF CHECK PERIOD 01.04.1997)

SR. NO.	DESCRIPTION	AMOUNT AS PER CBI CALCULATION	AMOUNT AS PER A-1	TRIAL COURT CALCULATION
1.	Investments	37,600	37,600	37,600
2.	PPF Account	83,704	83,704	83,704
3.	**Bank Accounts**	13,802	**2,35,332**	13,802
4.	Purchase of Revolver	46,086	46,086	46,086
5.		1,81,192	4,02,722	1,81,192

STATEMENT 'B'(ASSETS AT THE END OF CHECK PERIOD 05.08.2005)

SR. NO.	DESCRIPTION	AMOUNT AS PER CBI CALCULATION	AMOUNT AS PER A-1	TRIAL COURT CALCULATION
1.	PPF Account	10,27,619	1027619	1027619
2.	Bank Accounts	2,29,331	2,29,331	2,29,331
3.	Investment in tax relief bonds and shares	7,68,500	7,68,500	7,68,500
4.	Revolver	46,086	46,086	46,086
5.	**Household Goods including Car 1992 make**	13,86,060	**0**	13,11,060
6.	**Cash in hand**	1,00,000	**25000**	1,00,000
7.	**Gold Ornaments/Jewellery**	7,36,938	**0**	7,36,938
		42,94,534	20,96,536	42,19,535

Statement 'C' (INCOME DURING THE CHECK PERIOD)

SR. NO.	DESCRIPTION	AMOUNT AS PER CBI CALCULATION	AMOUNT AS PER A-1	TRIAL COURT CALCULATION
1.	Salary	18,79,115	18,79,115	18,79,115
2.	**LIC Survival Benefits recd**	20,000	**40,000**	20,000
3.	**Interest and Dividends recd from various investments**	2,27,035	**6,49,193**	5,80,001
4.	Interest from Bank and PPF	3,64,918	3,64,918	3,64,918
		24,91,068	29,33,226	28,44,034

STATEMENT 'D'(EXPENDITURE DURING THE CHECK PERIOD)

SR. NO.	DESCRIPTION	AMOUNT AS PER CBI CALCULATION	AMOUNT AS PER A-1	TRIAL COURT CALCULATION
1.	**Kitchen expenses**	6,59,429	**3,30,000**	6,59,429
2.	Insurance Policy premium	2,49,176	2,49,176	2,49,176
3.	**Transport Charges**	30,000	**0**	30,000
4.	Ammunition purchases	7,891	7,891	7,891
5.	Donation	56,100	56,100	56,100
6.	School Fee of son	39,015	39,015	39,015
7.	Accommodation charges	3,762	3,762	3,762
8.	**Repair of Car BR17C0021**	10,000	**0**	10,000

9.	**Travel Charges**	72,000	**0**	10,000
10.	**Mess and Food Charges**	4,798	**0**	4,798
11.	Petrol Expenses	12,360	0	0
12.	Servant Salary	37,500	0	0
		11,82,031	6,85,944	11,32,171

COMPUTATION OF DISPROPORTIONATE ASSETS OF A-1

SR. NO.	DESCRIPTION	AMOUNT AS PER CBI CALCULATION	AMOUNT AS PER A-1	TRIAL COURT CALCULATION
1.	ASSETS AT THE END OF CHECK PERIOD (Statement B)	42,94,534	20,96,536	42,19,535
2.	ASSETS AT THE BEGINNING OF CHECK PERIOD (Statement A)	1,81,192	4,02,722	1,81,192
3.	ASSETS ACQUIRED DURING THE CHECK PERIOD (B-A)	41,13,342	16,93,814	40,38,343
4.	EXPENSES DURING THE CHECK PERIOD (Statement D)	11,82,031	6,85,944	11,32,171
5.	TOTAL ASSETS AND EXPENSES DURING THE CHECK PERIOD (B-A+D)	52,95,373	23,79,758	51,70,514
6.	INCOME DURING THE CHECK PERIOD (STATEMENT C)	24,91,068	29,33,226	2,844,034
7.	DISPROPORTIONATE ASSETS (B-A+D-C)	**28,04,305**	**-5,53,468**	**23,26,480**

Statement "A" of A-1

106. There are four heads in the statement A of A-1. Objections have been raised with regard to item at Sr. no. 3 bank accounts. In the chargesheet, CBI has recorded this amount as Rs.13,802/-. In the FIR, the likely savings of A-1 has been recorded as Rs.4,02,722/-.

107. On behalf of A-1, there are following objections;

(1) A-1 had received salary Rs. 5,36,311/- till 01.04.1997.

(2) The savings could have been assessed by deducting 1/3 of total salary which comes around Rs. 4 Lakhs.This should have been taken as the savings of A-1 in the banks accounts at Sr. No. 3 of the statement A.

(3) The IOwrongly reduced this amount to Rs.13802/-.

(4) In fact, in the written arguments on behalf of A-1, it is also recorded that the FIR is an extremely valuable document and valuable piece of evidence.In support of it, reference has been made to the judgment in the case of Thulia Kali (*supra*).

(5) The IO never tried to ascertain as to what was total balance in the account no. 01190035817 and he has admitted it in his evidence.

(6) The IO also did not ascertain as to what was the actual amount balance in account no. 01190006913 as on 01.04.1997.

108. The Court below discussed these arguments in quite detail, took into consideration the documents filed by CBI on these points and held that, in fact, on 01.04.1997, the savings of A-1 was Rs. 13802/-.

109. PW72 Subodh Chandra has stated about account no. 01190035817 of A-1. He proved the statements. According to him, the transactions of this

account prior to 01.04.2004 was not available in the bank. This witness has proved the document to that effect.

110. PW 203 Samir Kumar Maiti has also stated about this account and has also stated that there was no record of this account in the bank for the period prior to 01.04.2004.

111. PW 80 Rajiv Ranjan has stated about account no. 1088.

112. The investigating officer has admitted that he took into consideration the amount recorded as balance in the passbook of the account maintained by A-1. The investigating officer did not reveal as to when was the last entry made in those passbook. But, if there was any other amount balance on 01.04.1997 in the account of A-1, A-1 had always been free to prove it before the court, which he did not.

113. The balance cannot be calculated on the basis of salary received by A-1. On behalf of A-1, it is also argued that A-1 had received more than 5 lakh

salary prior to 01.04.1997, therefore, after deducting 1/3 of it, approximate Rs. 4,00,000/- could have been shown as saving of A-1 on that date. This argument does not have any weight behind it. Having received salary is one thing and making savings is quite distinct. The investigating officer calculated amount under this head as per available record. It has not been disproved. As stated, if there was any variation in the amount balance in the account of A-1 on 01.04.1997, he could have shown and proved it, which he did not. Therefore, the finding recorded on this point by the court below is as per law, based on evidence.

Statement "B" of A-1

114. In the statement B of A-1, items at Sr. no. 5, 6 and 7, there are objections on behalf of A-1. These items are;

(i) household goods including a car

(ii) Cash in hand

(iii) Gold ornaments

115. According to the prosecution, these articles were recovered when the house of A-1 was raided at Jamshedpur on 05.08.2005. There are multiple objections to it on behalf of A-1. They are as hereunder;

(i) Search was conducted in the absence of A-1 or his family members. A-1 was sick.

(ii) The house where search was conducted at Jamshedpur was taken on rent by A-2. The house did not belong to A-1.

(iii) PW248 Avtaar Singh has categorically stated that the house was taken on rent by A-2 and not by A-1.

(iv) PW248 Avtar Singh is a neutral witness and he is reliable.

(v) The inventory which was allegedly prepared on 5.8.2005 is not in accordance with law.

(vi) The CBI circular requires that the value of the articles received has to be estimated based on the year of acquisition. In the instant case, year

of acquisition of most of the articles have not been recorded.

(vii) PW 246 Manoj Pangarkar has stated that the value of the articles seized was recorded on the basis of the statements given by independent witnesses but PW179 Vinod Kumar and PW180 K.K. Das, who were members of the search team did not support the statement of PW 246 Manoj Pangarkar with regard to the value of the articles seized at the time of search. According to them, they did not reveal either year of acquisition or the value of the articles seized.

(viii) The household goods belong to A-2 and not A-1.

(ix) The car which was allegedly recovered at the time of search did not belong to A-1. It was purchased prior to the check period and belongs to PW 247 Ramadhar Singh. PW247 Ramadhar Singh had given the car for a short

period to A-1. A-1 does not become its owner.

(x) PW 177 Ranveer Singh, PW 132 Santosh Deep did not support the prosecution case.

(xi) The inventory reflects gross non application of mind.

116. On the other hand, on behalf of the CBI, it is argued that the inventory was prepared at the time of search of the house belonging to A-1 in Jamshedpur. The value of the articles has been recorded as was told to the raiding team.

Household Goods

117. PW246 Manoj Pangarkar conducted search in the house of A-1 on 05.08.2005, (although, it is disputed on behalf of A-1 on the ground that the house did not belong to A-1). According to PW246 Manoj Pangarkar when they reached in the house, they found A-1, his wife and son alongwith other staff in the house. Search was conducted initially in the presence of A-1 and his family members.

Subsequently, two lawyers also joined the search but at about 03:00 p.m., A-1 complained of sickness. A doctor examined and found his blood pressure high, therefore, he was sent to hospital. His family members joined him. The lawyers remained there till 11:00 in the night, but, then they also left. The search continued till 10:30 next morning. Next morning, at about 09:00 a.m., the wife of A-1 returned to the house. She was handed over the jewellery and Rs. 25000/- out of Rs.100000/- which was recovered during the search. This witness proved inventory Ex.A-423 as well as the jewellery valuation recorded Ex.A-545 and other documents. He also proved other documents including original registration of an ambassador car.

118. It is true that during the entire search, neither A-1 nor his family members remained present. But, then CBI did not conduct search in the absence of A-1. CBI was permitted to conduct search in the morning. It is at about 03:00 p.m. when A-1 was shifted to the hospital. His family members could have continued with the search but they also left. Most importantly, according to the search witnesses, A-2

was not present in the house at all. The search cannot be termed as in violation to rules in the absence of A-1 because the circumstances compelled A-1 to be shifted and willingly the other family members of A-1 did not join the search.

119. Ex.A-423 is the inventory prepared during search. PW 179 Vinod Kumar and PW 180 K.K. Das were also members of search team. They have also proved various documents and have spoken about the search. Both these witnesses have not stated about the value of the articles seized. PW246 Manoj Pangarkar was questioned about the value recorded in the inventory, particularly, item number no. 49 and 85. At item number 49, there are 73 sweaters and their value is assessed as Rs. 30,000/-. But, how could it be said to be unreasonable? Similarly at item no. 85, in the inventory 37 sarees, 45 blouse and 60 petticoats are recorded with a value of Rs.55,000/-. How is it unreasonable? A suggestion was given to PW246 Manoj Pangarkar that a synthetic saree costs Rs. 150-450 also to which this witness expressed ignorance. The articles belong to A-1, who was a senior

officer at the taxation department. A-1 could have produced receipts or other evidence to prove otherwise.

120. It is true that in the inventory Ex.A-423, the year of acquisition has been recorded up till item no. 17 but not thereafter. But, it *per se* does not vitiate the inventory and the price mentioned therein. The arguments raised on these points does not merit any acceptance. The court below has rightly accepted this inventory.

121. It is also argued on behalf of A-1 that the articles received during search did not belong to A-1 instead they were articles of A-2.

122. Appreciation of evidence cannot be done in isolation. Even direct evidence has to be appreciated in a given context and under facts and circumstances of each case. When cases like instant one are to be examined, the appreciation of evidence heavily depends on the attending factors. A-1, as stated, at the relevant time was a senior officer at the taxation department. According to A-1, he did not take the house on rent either in Dehradun or Jamshedpur. A-1

was posted in Dehradun earlier. There also, he was staying with his mother. A-1 was also staying with his wife and child. A-2 was 85 years of age when examined under section 313 of the Code in the year 2018. In the year 2005, she was 72 years of age. Does it mean that a woman of 72 years of age was hiring rooms for his son, who himself was a senior central government officer staying with his wife and child. An inference has to be drawn. The Court is cautious of drawing any inference. The Court is afraid that the inferences should not cross the limit and join the realm of conjecture and surmises. But, in the instant case, the reference is bright and shining. The reference is that A-1 avoided any dealing with any person. He himself did not take a house on rent. On paper, in Jamshedpur, the house was taken on rent in the name of A-2, but, in fact, it was taken on rent by A-1. A-1 was found present in the house when the search was made. A-2 was not present there.

123. The court further proceeds to examine the inventory. There are school bags, boys dresses, many other articles belonging to the games. Does it mean

that it belonged to A-2. In the inventory, there are 68 shirts/T shirts at Sr. No. 83, there are boys dresses at Sr. No. 55. There are various other articles, which cannot belong to A-2 at all. The court below has rightly concluded that the articles belonged to A-1 and not A-2. The value assessed by the court below is also based on evidence.

124. There is another aspect of the matter. PW1 Harbhajan Singh Mann is the person who transported the household articles of A-1 from Dehradun to Jamshedpur and he took Rs.30,000/- as charges for that.

125. The articles which was searched on 05.08.2005 by the CBI in the Jamshedpur house of A-1 was transported by PW1 Harbhajan Singh Mann at the instance of A-1 from Dehradun. It also confirms that those articles belong to A-1.

126. The native village Bara of A-1 was also searched on the same day. PW208 Mithileshwar Prasad has stated about the inventory prepared after search made in the house of A-1 and A-2 situated in

village Bara. He proved the inventory Ex. A-481. The court below rightly took into consideration the articles recorded in this inventory Ex. A-481. It has old double bed, table fans, tables, old crockery, old fridge, kitchen articles and various other household articles. The court below rightly held that the household articles of A-2, if any, were found by PW208 Mithileshwar Prasad, in the house search of A-1 and A-2 at village Bara, the inventory of which, is Ex. A-481.

The Car

127. A car was also found in the search on 05.08.2005 from the house of A-1 in Jamshedpur. There have been objections with regard to the car that it did not belong to A-1.

128. It is true that PW169 Chandra Mohan Prasad has stated about his car registration no. DR 17 C 0021, which was sold to Ramadhar Singh who was then an MLA. The registration was in the name of Ramadhar Singh, even when it was found in the search. There are two more witnesses who have spoken about this car. One is PW132 Santosh Deep. He also has stated that A-1 had an ambassador car

ending with digit 21. A-1 was given a gunner PW177 Ranveer Singh. He has also, in paragraph 5, of his statement confirmed that he told it to the CBI that A-1 has an ambassador car ending with digit 21. A-1 declined ownership of the car.

129. PW 10 Rakesh Obero has stated that he is authorized dealer of Hindustan Motors. According to him, the CBI had collected from him the invoice/statement of account of the Ambassador car, which was in the name of A-1. He has proved ledger account Ex. A-34. Although PW 10 Rakesh Oberoi has told that the car registration number was BR13C 0033, but it is not as per Ex. A-34, which he has proved. In the vouchers, which are part of Ex. A-34, the car registration number is recorded as BR 17C 0021. It is the car, which as per PW 247 Ramadhar Singh, was given to A-1 by him.

130. A-1 in his examination under Section 313 denied all these averments. The registered owner of the car is Ramadhar Singh. He himself has stated that he had given this car to A-1 in the year 1993 for some time. He has stated that the car was out of use

sometimes two years after 1993-94. As stated, PW10 Rakesh Oberoi has categorically stated that this car was repaired in his workshop in the year 2004-05. The other witnesses have also stated about the use of the car by A-1. These all facts conclude that, in fact, although the car in question was registered in the name of PW247 Ramadhar Singh, but, A-1 was its owner, who had been using it for a long. CBI has valued this car at Rs.1,50,000/-, but, the Court below rightly reviewed it to Rs.75,000/-. There appears to be no reason to doubt this valuation.

Recovery of Rs. One Lakh Cash

131. According to the prosecution, Rs. One Lakh was recovered in cash in the search. On behalf of A-1, it is being argued that in fact, DW5 Harinam Singh had come to Jamshedpur for the treatment of his daughter Nishu Kumari. He was staying in the rented house of A-2 where the search was conducted and Rs. One Lakh which the CBI received on that date, did belong to DW5 Harinam Singh.

132. On behalf of A-1, three witnesses have been examined for this purpose. DW5 Harinam Singh, DW7 Manoj Kumar Singh and DW8 Sachin Kumar Rathour. DW5 Harinam Singh has stated that on 05.08.2005, his daughter was admitted in the hospital. He was staying with A-2 in the rented house. On that date, in the morning, when he reached in the house, CBI stopped him and took Rs. One Lakh from the house, which he had collected for the purpose of the treatment of his daughter.

133. DW7 Manoj Kumar Singh is a photographer. According to him, on the date of search, he has taken photographs. He found DW5 Harinam Singh there, who told it to him that CBI had broken the door of his room.

134. DW8 Sachin Kumar Rathore at the relevant time was working as a pharmacist with a hospital. He has submitted a few documents with regard to a patient Nishu. The Court below did not believe, DW5 Harinam Singh and other witnesses who have supported his case for various reasons including

the source of money and the credibility of DW5 Harinam Singh.

135. The court below has rightly disbelieved DW5 Harinam Singh and his story with regard to Rs. One Lakh. In his examination in paragraph 19, DW5 Harinam Singh has stated that in the night, he had come to sleep in the room, where search was conducted. He states that on 06.08.2005 in the morning he found A-2, A-1's wife and other family members in the house, but, A-1 was not there. He also states in the same paragraph of his statement, that on 06.08.2005, CBI was not in the house. He did not see CBI at 05:30 in the morning. This is wrong statement. CBI has conducted search till 10:30 on 06.08.2005 as told by PW246 Manoj Pangarkar and other witnesses. It has been told by the witnesses that in fact, after 3:00 p.m. on 05.08.2005, A-1 and his family members had left the house. They did not return. Only wife of A-1 had returned at 09:00 next morning when she was handed over jewellery and Rs.75,000/- out of Rs. One Lakh recovered from the search.

136. The court below rightly took into notice that in fact, DW5 Harinam Singh was not able to tell the specification of the house. (paragraph 13 of his statement). In fact, in his statement at paragraph 13, DW5 Harinam Singh could not reveal exactly as to whether the house was single storied or double storied house. The reading of the statement of DW5 Harinam Singh reveals that he is not truthful witness. His statement is not transpiring confidence. A-1 could not even show that Rs.1 Lakh which was recovered during the search belong to any other person. In fact, Rs. 1 Lakh which was recovered during search belonged to A-1. Prosecution has proved it beyond reasonable doubt.

Gold Jewellery

137. Certain gold jewellerywere also recovered during the search. On behalf of A-1, it is argued that the valuation of jewellery should have been done according to the date of its acquisition and not when it is valued. Reference has been made to the statement of PW 250 Sri Surendra Kumar Rohilla, the IO. The jewellery was recovered at the time of search. It was

valued and a report prepared. The court below has taken into consideration the statement of the witnesses. The best person to reveal the year of acquisition and its cost would have been A-1 from whose house, these articles were recovered. But, he did not reveal anything. CBI had no other option, but, to value it as per the existing rate and that is what the CBI has done. It does not vitiate the valuation. The court below rightly concluded that the valuation done by the CBI cannot be doubted.

138. In view of the above, this Court is of the view that the court below has rightly reviewed the value of car and has also rightly rejected the other objections raised on behalf of A-1 with regard to statement B of his property.

Statement 'C' of A-1

139. This statement has four sub-heads. On behalf of A-1 objections have been raised on item at Sr. nos. 2 and 3. One is LIC survival benefits and the other is interest and dividends.

140. Under the LIC survival benefits, Rs. 20,000/- have been calculated by the CBI, which was received by A-1 in the year 2004. It is argued that in fact, it was a money back policy taken in the year 1994, therefore, A-1 could have also received Rs.20,000/- in the year 1999. If A-1 had received this money, he could have produced any document, which he did not. Therefore, the objections raised on behalf of A-1 has rightly been rejected on this point by the court below.

141. At Sr. no. 3 in statement C under the head interest and dividend etc., the CBI had given benefit of Rs. 2,27,035/-but the court below found this amount at Rs.5,80,001/-. On behalf of A-1, it is submitted that this amount ought to have been calculated at Rs. 6,49,193/-. But, how could it be calculated at Rs. 6,49,193/-. There is no averment made on behalf of A-1. The court below has taken into consideration each and every document on record to calculate the amount of interest and dividends under statement C of A-1. CBI has claimed this amount as Rs. 2,27,035/- but the court below had found that this amount should be Rs.5,80,001/- and this has been calculated in

paragraph 381 to 383 of the impugned judgment. How is this amount not correct? How and why this amount should be increased to Rs.6,49,193/-? It has not even been shown by A-1. Mere assertion does not establish the case of A-1. It is not something, which the prosecution alone could have proved. It is a benefit given to A-1 with regard to his income during the check period. If A-1 had received some income, he would have included it, he would have shown documents but, as stated, A-1 did not adduce any evidence. Therefore, the finding recorded by the court below does not warrant any interference on this point.

Statement 'D' of A-1

142. With regard to statement D of A-1, on various heads, objections have been raised by A-1. They are under the head of Sr. no. (1) kitchen expenses, (3) transport charges (8) repair of a car, (9) travel charges; and (10) Mess and food charges.

143. With regard to kitchen expenses, it is argued on behalf of A-1 that, mother of A-1 was an agriculturist having large property in the State of

Bihar. All the eatables were brought by her from her village. Therefore, this amount could have been reduced to half.

144. A-1 was staying with his wife and son. He was a senior officer. The court below took into consideration every aspect of the matter and rightly concluded that the amount of kitchen expenses cannot be reduced to Rs. 3,30,000/-, instead, it is rightly fixed at 6,59,429/-. This Court is of the view that the finding recorded by the court below is based on evidence.

145. At Serial no. 3 for transport charges, Rs. 30,000/- have been recorded. In fact, on his transfer from Dehradun to Jamshedpur, the household articles of A-1 were transported by PW1 Harbhajan Singh Mann and he charged Rs. 30,000/- for it. He has proved all the documents. On behalf of A-1, it is argued that on his transfer, A-1 could have got reimbursement for it. But, A-1 did not prove it. He did not show that he, in fact, had received Rs. 30,000/- as reimbursement. For the want of such

documents, it cannot be said that this amount was received by A-1.

146. At Sr. no. 8, in the statement 'D', under the head of repair of car, Rs. 10,000/- expenses have been shown. It has been proved by PW10 Rakesh Oberoi. This is with regard to the car, which was found during search on 05.08.2005. The car was though registered in the name of PW247 Ramadhar Singh, but, this Court has already concluded that in fact, A-1 was owner to it. Therefore, expenses on repair has rightly been included under this subhead.

147. On behalf of A-1, it is also argued that the travel charges of Rs.72,000/- cannot be shown as expenses because whatever journey A-1 undertook by way of air travel, that was with regard to official business and he must have been reimbursed for it. In fact, PW3 Naveen Singh Rawat and PW5 Bhagwan Singh Bisht have stated about the air travel charges of Rs.72,000/- in the name of A-1. This is not disputed that A-1 undertook this journey and spent Rs. 72,000/- on it. But, what is being argued is that A-1 must have been reimbursed this amount. But, A-1

has not proved it. This remains in the area of expenses alone and it cannot be deducted mere on assumption.

148. Lastly, objections have been raised with regard to mess and food charges of Rs. 4,798/-. A-1 has denied of having made this payment.

149. PW9 Vijay Kumar is Assistant Sub-Inspector, ITBP Dehradun. He received this payment. According to him, he received this amount in cash and his Commandant had told it to him that the booking is for the guest of Income Tax Commissioner. A-1 in his examination under Section 313 of the Code, in answer to question 143 has stated that he stayed in the guesthouse, but, according to him, he did not make the payment. If A-1 himself had stayed in the guesthouse, who had made payment for him. He could have revealed it, but, he did not reveal it. PW9 Vijay Kumar has categorically stated that he had received the amount in cash from the guest. Therefore, it is right to conclude that A-1 spent Rs.4,798/- for mess and food charges in ITBP guesthouse, as stated and proved by PW9 Vijay Kumar.

150. In view of the foregoing discussion, this Court is of the view that with regard to the disproportionate assets, the court below has rightly concluded that the A-1 was in possession of assets amounting to Rs.**23,26,480/-** more than his known source of income. The finding recorded by the court below is in accordance with law. There is no infirmity, which may warrant any interference by this Court.

DISPROPORTIONATE ASSETS OF A-2

151. A-2 is mother of A-1. As stated, she was 85 years of age when examined under section 313 of the Code, in the year 2018. The CBI also prepared A, B, C and D statements of A-2. On behalf of A-2, it is argued that ABCD statements are prepared for public servant. The income of A-2 pertaining to whole of her life should have been taken into consideration because ABCD statements of A-2 were prepared it vitiates the right to fair trial to A-2.

152. On the other hand, on behalf of the CBI, it is argued that merely because ABCD statements of A-2

have been prepared, it does not affect the right to fair trial of A-2 at all. It is argued that A-2 has all the time been free to plead her case and bring on record any evidence that was not produced by the CBI with regard to her income and expenditure.

153. As stated, the trial has been initiated against a public servant and non-public servants. The non-public servants have been charged for abetting the commission of the offences by the public servant under the Act.

154. In the case of Jaydayal Poddar (*supra*), the Hon'ble Supreme Court has categorically observed that in cases of *benami* transactions, generally direct evidence is not found. The circumstances are taken into consideration. One of the important circumstances is source of the purchase money. In paragraph 7 of the judgment in the case of Jaydayal Poddar (*supra*), the Hon'ble Supreme Court, in fact, used the expression **"whence the purchase money came, is by far the most important test for determining whether the sale standing in the name**

of one person, is in reality for the benefit of another".

155. The source of income of the ostensible owner, it also required to be seen. In the case of Jaydayal Poddar (*supra*), K. Ponnuswamy(*supra*), this proposition has already been upheld by the Hon'ble Supreme Court. In the case of J. Jayalalitha (supra) also, the proposition as laid down in the case of K. Ponnuswamy(*supra*) has been referred to and upheld. Therefore, if ABCD statements of a non public servant(in the instant case of A-2) is prepared, it does not, in any manner, adversely affect or prejudice the right of fair trial of A-2. In fact, if ABCD statement of a non public servantis also prepared in such cases, it would facilitate and help the non public servant also to know as to what is the case against him and what he has to defend. At the same time, it also helps the court in arriving at a just conclusion.

Statement 'A' of A-2

156. No objections have been raised on behalf of A-2 or any other appellants with regard to statement A and finding on it by the trial court with regard to A-2.

In fact, in the charge sheet, as per statement 'A' of Gulab Devi, the total cost of the property was Rs. 6,33,467/-, but, the court below enhanced this amount to Rs. 6,81,889/-. Each and every document have been taken into consideration alongwith the statements of the witnesses by the court below while recording the finding on the statement of 'A' of A-2. As stated, on behalf of appellants, these findings on statement 'A' have not been challenged. No objections have been raised, therefore, this Court has no reason to make any inference in the finding recorded on statement 'A' of A-2.

Statement 'B' of A-2

157. Statement 'B' of A-2 is with regard to assets at the end of the check period. The cost of first three properties in this statement is zero as per prosecution. It has been accepted as such by the court below. This finding has not been challenged before this Court.

Rajpur Road House

158. At Sr. no. 4 of it, a property house no. 169/21, Rajpur Road, Dehradun (for short 'Rajpur Road house') is recorded and its value is claimed by the prosecution as Rs. 79,75,606/-.It is heavily objected to by A-1 and A-2.

159. On behalf of A-1, the following objections have been raised with regard to valuation of Rajpur Road House:-

i. The prosecution showed the valuation of the house for Rs. 1.03 crores in the FIR. The CPWDvalued the house at Rs. 94 Lacs and revised it to Rs. 79.75Lacs. This shows the arbitrariness of the prosecution.

ii. Valuation by CPWD is an estimation and far from perfect. PW66 Rajendra Singh, CPWD Engineer deposed that valuation can change up to 20 to 25%.

iii. PW66Rajendra Singh had deposed that the items were valued at the market rate.

iv. Valuation by CPWD is not binding on the Income Tax Officer as per section 142(7) of the Income Tax Act.A-2 got constructed her house through contractor and a family friend Ranvir Singh whose son PW104 Pramod Kumar has statedabout it. The house was valued by PW153 A.S. Gupta. He has correctly valued the house. This valuation should have been accepted.

v. A-2 got her house valued by registered valuer. Shri A.S. Gupta, who valued the house at Rs. 39.5 Lakhs. Shri A.S. Gupta, admits that valuation done on 30.03.2003 and 30.12.2003 after proper measurement of building was correct.

vi. Valuation of any house is always estimation. So, it can never be perfect. Reference has been made to the principle of law as laid down in the case of Bholanath Majumdar v. ITO & Ors., (1996) 221 ITR 608 Gauhati. In the case of Bholanath Majumdar

(*supra),* the Hon'ble Supreme Court held that "**A valuation report is only an opinion of a valuer**".

160. On behalf of A-2, following objections have been raised on the valuation of the Rajpur Road house;

(i) Rough notes were not attached with the report by PW66 Rajendra Singh. It makes the report incomplete.

(ii) Report of a valuer in an expert opinion only and without rough notes, such reports cannot be accepted. In fact, on behalf of A-3, certain arguments were raised with regard to a valuation report. These arguments have beenimpliedly adopted by learned counsel appearing for A-2.

(iii) The grounds of opinion of an expert are also relevant under section 51 of the Evidence Act. In the absence of rough notes, the report given by PW66

Rajendra Singh cannot be accepted, as such.

(iv) The statement of PW104 Pramod Kumar needs deeper appreciation.It is his father who got the Rajpur Road house constructed for A-2. Electric work valuation, furniture valuation and horticulture valuation is also guess work.It is not established as to how this valuation has been done.

(v) The valuation submitted by A-2 has to be accepted. The report given by PW153 A.S. Gupta is contemporary.It was prepared when the house was under construction, therefore, it is most reliable.

161. On behalf of the CBI, it is submitted that in fact, the valuation was done by PW66 Rajendra Singh on the basis of CPWD rates. It was done by a team of experts and it is in great detail, whereas the report submitted on behalf of defence is not reliable.The report submitted by PW123 A.S. Gupta is unbelievable

report because the first report was prepared by this witness without inspecting the house. He has also admitted that he prepared the report,under the instructions of A-1.

162. The prosecution did not hide anything. Prosecution examined PW66 Rajendra Singh who prepared valuation report of the Rajpur Road house at the instance of the CBI. The prosecution has also examined PW 153 A.S. Gupta who prepared valuation of the Rajpur Road house at the instance of A-1. Rival submissions have been made on behalf of the parties on this issue. Which report is to be accepted? What would be the valuation or cost of the house? Undoubtedly, a valuer report with regard to the valuation of the property is definitely an opinion which would fall for scrutiny of the court. It is also true that the basis of the opinion also helps the Court to appreciate an opinion of the expert. It can also not be doubted that whatever be the opinion with regard to the valuation of the house, it may never be the exact cost of the house. The best opinion may reach close to the actual valuation. The actual valuation may be told

by the person who constructed the house. The person who constructed the house can produce each and every bill and receipts by which the materials were purchased in constructing the house. Who constructed the house, is another issue, which is examined at other place in this judgement. At this moment, this Court is concerned about cost of the Rajpur Road house.

163. PW66 is Rajendra Singh. He with the help of PW 98 Avneesh Kumar Deshwal , PW149 A.K. Chaddha, PW150 S.P. Garg, and PW187 D.D. Gupta, prepared the valuation report which is Ex. A-116. In fact, PW98 Avneesh Kumar Deshwal did horticulture valuation. PW149 A.K. Chaddha and PW150 S.P. Garg did electric valuation. According to PW66 Rajendra Singh, he construed a team of experts for valuation of the Rajpur Road house. The team with the help of CBI Officers, inspected the house, took measurements and based on rates of CPWD valued the house and accordingly the report was prepared. He proved the report Ex.A-116. According to this report, the valuation of the Rajpur Road house is hereunder:-

"**ABSTRACT OF COST**

Assessment of House No. 169/21, Rajpur Road, Dehradun

A.	Cost of Civil Work	Rs. 70,49,280.00
B.	Cost of Horticulture	Rs. 1,46,364.00
C.	Land Cost (As per actual Measurement of land)	Rs. 17,70,747.00

{Actual measurement of land = 1539.78 Sqm.
As per Registry =752.50 Sqm.}

D.	Electrical Provision	Rs. 4,49,962.00
	Total	Rs.94,16,353.00

Say Rs. 94,16,400.00

Sd./	Sd./
Executive Engineer	Executive Engineer (Elect.)
Dehradun Central Division No. 1	Dehradun Central Elect. Divn.
C.P.W.D., Dehradun	C.P.W.D., Dehradun"

164. The court below examined this valuation report and found that the cost of land is Rs. Three Lakhs. In fact, in the instant case, sale deed of the land was executed in the name of A-2 by PW207 Vivek Kumar. There are other witnesses also who have stated about the sale deed which includes PW14 Iliyas, PW58 Avdesh Kumar. Some of these witnesses have stated that the deal was finalised for Rs. Twenty Lakhs but A-1 only paid Rs. Three Lakhs through bank draft. As stated, the court below concluded that

the cost of the land is Rs. Three Lakhs which is not challenged. Therefore, there is no reason to examine the evidence with regard to cost of the land. It shall be taken at Rs. Three Lakhs.

165. Ex.A-116 is not only one page report. Fact remains this report is quite in detail. It gives each and every measurement and thereafter it deduces the cost of the construction. This report runs in many pages. It has estimations, it has corrections.

166. In the original record of this case, this report is in D153. Its reading is quite extensive. This report cannot be doubted on the ground that it is without basis of its opinion. PW66 Rajendra Singh has stated that based on CPWD plinth rate, report has been prepared, measurement have been taken. Report A-116 is an expert opinion report, which deserves acceptance. There is no doubt about it. The report is almost in 50 pages beginning with D153/2 to D153/51. The exhibit has been marked on D153/2. Although it is argued on behalf of the appellants that rough notes have not been preserved. Reference has

been made to the statement of PW66 Rajendra Singh at paragraph 8, where, he has stated that he did not check rough notes while examining the actual report. In paragraph 9, he denied the suggestion that they destroyed rough notes. In fact, some of the parts of Ex.A-116 appears to be rough notes. They are D153/33 to D153/39, which are bare measurements alone. Again, D153/45 is also a sketch. They are rough notes. This report Ex.A-116 is based on opinion and there is no reason to discard this report.

167. A report prepared by PW153 A.S. Gupta has been put into service on behalf of the appellants. It requires examination. PW153 A.S. Gupta has stated that he met A-1 through Alok Jain. According to him, Alok Jain requested him that he should prepare valuation report of a house, which was being constructed by A-1 and he prepared a report Ex.A-347. According to this report, the total valuation of the property is Rs.21,30,000/- This witness PW153 A.S. Gupta prepared another report which is Ex.A-361. It is dated 06.02.2006 and according to it,

the extra work in the building was done of Rs. 8,55,000/-.

168. This report has not been believed by the court below and it has rightly been done so. PW153 A.S. Gupta has stated that he had given the original valuation report to CBI. A reading of the statement of PW153 A.S. Gupta reveals that this witness is totally unreliable and not credible at all. He did not act professionally. In paragraph 11 of his statement, PW153 has admitted that he told it to the IO that A-1 had requested him in the year 2005 to make the valuation report of Rajpur road house fixing the valuation at around Rs.20,00,000/- Lakhs. According to him, he prepared the report of the year 2005, but, put the date of 30.03.2003 on it.

169. PW153 A.S. Gupta has also confirmed that he told it to the Magistrate in his examination under section 164 of the Code that the valuation was done by him in the year 2005 and it was dated 30.03.2003, as required by A-1.

170. PW153 A.S. Gupta has also stated that he told it to CBI that in the year 2006, A-1 had requested him to revise the valuation report and fix it at about Rs.30 Lakhs. He accordingly prepared another report. In fact, the arguments which have been raised on behalf of the appellants to assail the valuation report which was proved by PW66 Rajendra Singh applies to the case of the valuation report prepared by PW153 A.S. Gupta. Two reports have been proved by this witness, Ex.A-347 which is dated 30.03.2003 and Ex.361, which is dated 06.02.2006. Both these reports are without any measurements, sketch and rough notes.

171. In report Ex.A-347, PW153 A.S. Gupta has written under the caption “part II valuation” that the marble stone was procured from Rajasthan at a very cheap rates and the steel required was also procured from a family friend from Jamshedpur at a very cheap rates. How could PW153 A.S. Gupta write like this? Who told him? How did he get the information of bringing steel from Jamshedpur and marble from Rajasthan? But, PW153 A.S. Gupta has stated before the court that he wrote all these things

under the instructions of A-1. In fact, when this report Ex.A-347 was prepared by PW153 A.S. Gupta, according to him, he had not inspected the house. Based on a map, he simply prepared the valuation report. This valuation report Ex.A-347 which is proved by PW153 A.S. Gupta, is in fact, a waste paper. It cannot be termed as a valuation report. It is a false document prepared by PW153 A.S. Gupta at the behest of A-1. Another report was prepared by PW153 in the year 2006, which is Ex.A-361. It also does not have any basis. It was also prepared by PW153 A.S. Gupta under the instruction of A-1. This report is also not reliable at all.

172. It is argued on behalf of the appellants that, in fact, A-2 had got the house constructed through one of the family friends. Reference has been made to the statement of PW104 Pramod Kumar. This witness has stated that his father had constructed the house of A-2. His father was 73 years of age in the year 2003. It is also argued that there may be variation of the cost, if the house is constructed by some person on his own. But, then, it was to be proved by the

person who constructed the house. The statement of PW104 Pramod Kumar is not reliable. There is no document which would show that father of PW104 Pramod Kumar did undertake the construction of Rajpur Road house at the behest of A-2. There is no record, which would reveal that the material was brought at the cheaper rate, from the place where it could found in abundance. The court below rightly discarded the statement of PW104 Pramod Kumar.

173. Therefore, this court is of the view that the court below has rightly concluded that the cost of the Rajpur Road house is Rs.79,75,606/-. It does not require any interference. The court below rightly accepted the report Ex.A-116 except the cost of land, which was taken at Rs. Three Lakhs based on the registered sale deed. Therefore, the cost of the Rajpur Road house has rightly been assessed by the court below at Rs.79,75,606/-. This does not require any interference.

174. In the statement 'B' of A-2, there are total 11 immovable properties and 5 movable assets as shown in the chargesheet.

Other Properties

175. Grave objections were taken on behalf of the appellants with regard to the valuation of the Rajpur Road house, as accepted by the court below. This part has already been discussed. With regard to other properties under statement 'B', as such no objections have been raised on behalf of the appellants. The court below discussed each of the properties in statement 'B' of A-2, as recorded in the chargesheet. The valuation as given by the prosecution has been accepted except the property at Serial No. 8 of the statement 'B' of A-2 in the chargesheet. It is land at Jamshedpur, which is valued at Rs. 2,05,350/-. In fact, it was neither proved by the prosecution nor accepted by the defence. Therefore, the court below concluded that the prosecution could not prove that the property at Sr. No. 8 in the statement 'B' of A-2, as shown in the chargesheet, was available with A-2. The total value of the property at the end of the check period at the hands of A-2, as per prosecution as

shown in the chargesheet, is 1,40,10,824/- The court below accepted the total value at Rs. 1,38,05,478/-. This Court is not going into the detail analysis of this property in statement 'B' of A-2 because, as stated, there has been no objections on any of the findings with regard to these properties, except the Rajpur Road House, which has already been discussed. This Court has found that the valuation of the Rajpur Road house as accepted by the court below is lawful. The court below righly concluded that the assets at the end of check period with A-2 was at Rs. 1,38,05,470/-.

Statement 'C' of A-2

176. Statement 'C' pertains to the income during the check period. There are in all seven items under statement 'C' of A-2 as shown in the chargesheet.

Income from Agriculture and Rent

177. At Sr. No. 1 of it is the income of A-2 from agricultural land and rental income. It is taken at Rs. 59,10,300/-. The court below did not accept the income of A-2 from agricultural land at Rs. 59,10,300/- as shown by the CBI in its

chargesheet. The court below found that, in fact, A-2 had annual income of Rs. 45,000/- from agriculture. For the 8 years of check period this total value was calculated at Rs. 3,60,000/- and Rs. 45,000/- as the rental income of Rajpur Road house has been added to it. Accordingly, the court below found that the income of A-2 from agricultural land and rental income during the check period was Rs. 4,05,000/-. The court below also did not take into consideration the HUF income of A-2 as claimed by her and considered that, in fact, the HUF had already been partitioned.

178. On behalf of A-1, it is argued that the income of A-2 is as follows:

(A) Agricultural income for the check period – Rs. 75,10,300/- (Rs. 59,10,300/- upto March, 2004 and Rs. 12,0,000/- for financial year 2004-05 and Rs. 4,00,000/- from April, 2005 to August, 2005).

(B) The rental income as per income tax return from Patna House – Rs. 4,06,910/-

(C) Misc. Income (GPF and Gratuity of A-2's late husband, not considered by the IO – Rs. 7,54,600/-

(D) Sale of Palio car -Rs. 3,50,000/-

(E) Loan from Ajay Kumar Singh – Rs. 5,00,000/-

(F) Loan for Honda City car – Rs. 3,53,000/-

(G) Loan from SBI, Dehradun for plot in USHA - Rs. 6,00,000/-

(H) Likely savings on 1.4.1997 - Rs. 42,74,000/-

179. It is argued that after adding these incomes with the other incomes, which the court below took into consideration, the total income of A-2 for the check period is Rs. 1,58,66,447/-.

180. On behalf of A-2 also, it is argued that, in fact, the total income of A-2 during the check period was Rs. 1,58,66,447/-, as above.

181. Learned Senior Counsel for A-1 would challenge the impugned judgement on the following points:-

i. The concept of HUF has wrongly been considered by the court below. It treats the HUF of A-2 as dissolved. The fact is that it was not physical division of entire property, but only arrangement on paper for convenience.

ii. The issue of partition had not been brought to the notice of A-2 in the examination made under Section 313 of the Code. Therefore, it could not have been taken into consideration.

iii. Even if the HUF does not carry its PAN, it carries its Code, which is reflected in the ITR.

iv. The concept of HUF ITR is basically governed by Section 171 of the Income Tax Act, 1961. Reference has been made to the judgment in

the case of Income Tax Officer, Calicut v. N.K. Sarada Thampatty (Smt.), 1991 (supp) (2) SCC 737.

In the case of N.K. Sarada Thampatty (*supra),* a member of HUF filed ITR on the ground that HUF had been partitioned by a registered deed and by a preliminary decree of the court. Under such circumstances, the Hon'ble Supreme Court observed "**Section 171 of the Act and the Explanation to it, prescribes a special meaning to partition which is different from the general principles of Hindu law. It contains a deeming provision under which partition of the property of HUF is accepted only if there has been actual physical division of the property, in the absence of any such proof, the HUF shall be deemed to continue**

for the purpose of assessment of tax"..

v. The court below did not appreciate that A-2 was under control and possession of the agricultural land and agricultural income.

182. Learned counsel for A-2 also argued with regard to HUF of A-2. He would also argue that the court below has wrongly taken into consideration that HUF property had been partitioned because, it is argued that, this fact has not been brought to the notice of A-2 under Section 313 of the Code. A fact which has not been brought to the notice of the accused under Section 313 of the Code, according to the learned counsel for A-2, cannot be taken into consideration. It cannot be read against such accused. Learned counsel for A-2 has also raised the following points:-

i. HUF issue was not raised by CBI. HUF was not a point for determination formulated under Section 354 of the Code.

ii. Under Section 171 of the Income Tax Act, HUF continues to remain HUF until dissolved and such satisfaction was recorded by the Income Tax Officer.

iii. The partition of HUF property cannot be taken into consideration because such partition deed required registration under the Registration Act. Such document is also hit by the provisions of the Registration Act.

183. First and foremost, the income of A-2 from agriculture has to be examined.

184. Learned counsel for the CBI at various stages has argued that, in fact, the charge under Section 13 of the Act which has been framed against all the appellants (on non public servants read with 109 IPC) gives opportunity to the person charged under such offence, to explain the source of income. Section 13(1)(e) has been read in this context, which is as hereunder:-

> "**13 Criminal misconduct by a public servant. –** (1) A public servant is said to commit the offence of criminal misconduct, -

> (a).....
> (b).....
> (c).....
> (d).....
> (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 source of income."
>
> (emphasis supplied)

185. Referring to Section 13 (1) (e) of the Act, learned counsel for the CBI would submit that once the income of the person charged is revealed, such person is required to explain the source of it. Such person is required to satisfactorily account for such income. It may be done at the stage of investigation and subsequently such person gets another opportunity to satisfactorily account for the assets during trial.

186. In the instant case, in the chargesheet, the IO has taken income of A-2 from agricultural land and rental income at Rs. 59,10,300/- for the check period. The IO writes in the chargesheet that since A-2 had disclosed this income in the ITR, therefore her income is accepted as such. The Court proceeds to appreciate

the arguments with regard to the agricultural income and rental income of A-2.

187. The question is as to whether A-2 had any agricultural income and if so what was it? In fact, there are two documents with regard to agricultural income of A-2. One is Ex. A-199, which is agricultural income certificate from the year 1996-97 to the year 2003-04 of the agricultural land of A-1 and A-2. It was prepared in the year 2006. The second document is Ex. A-348. It is a certificate given by an Administrative Officer. According to it, the annual income from agriculture of A-2 is Rs. 12,70,702/-. Both of these documents have not been relied on by the court below and has rightly been so done.

188. PW 82 Ramji Singh is the person, who has given the certificate Ex. A-199 and other certificates with regard to agricultural income of A-2. He has proved all those documents Ex. A-192 to A-205. Ex. A-200 is a certificate with regard to income from fisheries. Ex. A-202 is details of the income from agriculture from 1996-97 to 2003. There are other

certificates for different years, which are part of this exhibit.

189. According to PW 82 Ramji Singh, he along with PW 110 Manmohan Prasad prepared the report Ex. A-199. He admits that he did not see any poultry farm running. This witness was declared hostile by the prosecution and he has been cross-examined. In paragraph 12 of his statement, PW 82 Ramji Singh admits that he prepared the reports Ex. A-199 based on a report of Agricultural Officer. They did not see any crop on the field. They did not collect information with regard to income from any person, who may have purchased the crops from A-1 and A-2. They just prepared the report. According to PW 82 Ramji Singh, he inquired from local people with regard to the crops and thereafter they made their report. How can such report be relied on?

190. PW 110 Manmohan Prasad was also a member of the team, who prepared the reports as proved by PW 82 Ramji Singh. In his examination-in-chief, PW 110 Manmohan Prasad corroborates the statement of PW 82 Ramji Singh. PW 110 Manmohan

Prasad also admits that based on the report of Agricultural Officer, they prepared the report Ex. A-199. They did not see any crop, though at one stage he submits that he had seen certain crops at the land in question. He has been extensively cross-examined and it reveals that, in fact, report Ex. A-199 is nothing but a report without any basis.

191. PW 152 Pradhumna Pandey was also signatory to the reports proved by PW 82 Ramji Singh. According to him also, he prepared the report Ex. A-202, which is with regard to break-up of the crops based on the report of the District Agricultural Officer. PW 215 Udai Shankar Singh has stated about the tubewell, which was non-functional. PW 240 Chandra Shekhar Singh has also stated about Ex. A-202. According to him, they prepared the report based on the rates fixed by the Central Government or the State Government. PW 240 Chandrashekhar Singh was District Agriculture Officer at the relevant time. He gave details of income from crops. He proved Ex. A-542.

192. Ex. A-199 gives details of crops area-wise. It also records the expenditure incurred in harvesting such crops and income out of it. But, how can it be made in the year 2006? How could somebody estimate in the year 2006, as to what crop and in which area was grown in the year 1996-97, 1997-98, 1998-99, 1999-2000, 2000-01, 2001-02, 2002-03, 2003-04? How could expenditure be estimated? Similarly, in Ex. 202, there are details of fertilizers, labour charges, irrigation, storage with regard to the crops for many years, but how could such detail be ascertained by someone? There is no basis to this report. The court below rightly discarded these documents to ascertain the income of A-2 from agriculture.

193. There is another document with regard to agricultural income of A-2. It is Ex. A-348 and 349. These are certificates issued by PW 154 Ashok Kumar Pal and PW 193 Dharmraj, respectively.

194. PW 154 Ashok Kumar Pal has stated that he issued a certificate Ex. A-348 on 5.4.2005 with regard to agricultural income of A-2. According to this

certificate, the annual agricultural income of A-2 was Rs. 12,50,750/-.

195. According to PW 154 Ashok Kumar Pal, he gave certificate Ex. A-348 on the basis of certificate given by PW 193 Dharmraj, who was working under him. The certificate given by PW 193 is Ex. A-349.

196. PW 193 Dharmraj Singh has stated that he had issued certificate Ex. A-349. According to this report, the joint family property of A-1, A-2 and others had annual agricultural income of Rs. 12,50,750/-. This witness has stated that based on his estimation, he had given this certificate. This report is dated 23.03.2005. It may be noted that the report subsequently given by PW 154 Ashok Kumar Pal, which is Ex. A-348 is dated 05.04.2005. Why did they prepare these reports?

197. PW 241 Altaf Ansari has stated that certain documents were given by him to CBI by seizure memo Ex. A-543. It includes a letter Ex. A-350. It is a letter given by A-2 to the Administrative officer for agricultural income certificate. PW 241 Altaf Ansari

was the Assistant Regional Officer, Nabinagar Office at the relevant time. It means that on an application of A-2, PW 193 Dharmraj Singh and PW 154 Ashok Kumar gave reports Ex. A-349 and Ex. A-348, respectively, without any basis.

198. The reports Ex. A-348 and A-349 are without any basis. Two Government Officers have without any reason given reports that the agricultural income of A-2 is Rs. 12,50,750/- annually. These both reports are also most unreliable documents.

199. As stated, with regard to the agricultural income of A-2, there have been three documents. One the report proved by PW 82 Ramji Singh Ex. A-199 and the others and Ex. A-348 and Ex. A-349 given by PW 154 Ashok Kumar Pal and PW 193 Dharmraj, respectively. All these reports cannot be considered "any opinion given". Therefore, they cannot be taken into consideration to ascertain the income of A-2 and the court below has rightly discarded them.

200. The best proof of agricultural income would have been the income received by A-2. To whom, the

agricultural produce were sold? How amount was received? In which account, it was deposited, etc.? But, it has not been even filed by the A-2.

201. The question still remains as to whether A-2 had any income from agriculture?

202. An argument has been advanced on behalf of A-2 that A-2 had HUF property, which she had shown in the income tax return. It is argued that HUF remains HUF until dissolved.

203. On the other, on behalf of the CBI, it is argued that prior to the year 2005, a woman could not have been a coparcener in a HUF. A woman could not have been a *Karta*. On this argument, on behalf of A-2, it is argued that, in fact, A-2 was Manager of the HUF.

204. First and foremost, this Court would like to clarify that, in fact, whatever income was shown in the income tax return cannot be taken as a valid source of income for the purposes of prosecution under Section 13 of the Act. As stated, income tax returns are submitted for the purposes of assessing and

submitting income tax. In so far as the prosecution under Section 13 of the Act is concerned, the question involved is with regard to disproportionate assets. A person charged under Section13 of the Act is required to account for the sources of income. As held in the case of J. Jayalalitha (supra), the income tax return does not absolve a person charged to subsequently account for the assets owned by him by the standard of preponderance of probabilities.

205. On behalf of the CBI, reliance has been placed on the principle of law as laid down in the case of Commissioner of Income Tax v. Seth Govindram Sugar Mills, AIR 1966 SC 24. In paragraph 10 of it, the Hon'ble Supreme Court discussed the concept of HUF and a role of woman in it. Different High Courts had different views taken then. The Hon'ble Supreme Court observed "**...The said two decisions did not recognise the widow as a karta of the family, but treated her as the guardian of the minors for the purpose of income-tax assessment. The said decisions, therefore, do not touch the question now raised. The Madras and Orissa High Courts held that coparcenership is a necessary**

qualification for the managership of a joint Hindu family and as a widow is not admittedly a coparcener, she has no legal qualification to become the manager of a joint Hindu family". The Hon'ble Supreme Court affirmed the judgment of Hon'ble Madras High Court given in the case of Radha Ammal v. Commissioner of Income Tax, Madras, (1950) 18 ITR 225, in which the Hon'ble Madras High Court had held as under:-

> "The right to become a manager depends upon the fundamental fact that the person on whom the right devolved was a coparcener of the joint family.....Further, the right is confined to the male members of the family as the female members were not treated as coparceners though they may be members of joint family."
>
> "the managership of a joint Hindu family is a creature of law and in certain circumstances, could be created by an agreement among the coparceners of the joint family. Coparcenershp is a necessary qualification for managership of a joint Hindu family."
>
> "It will be revolutionary of all accepted principles of Hindu law to suppose that the seniormost female member of a joint Hindu family, even though she has adult sons who are entitled as coparceners to the absolute ownership of the property, could be the manager of the family.....She would be the guardian of her minor sons till the eldest of them attains majority but she would not be the manager of the joint family for she is not a coparcener."

206. In fact, the concept of HUF is created by a fiction of law. The joint Hindu family concept is something different than HUF.

207. The issue which has been raised is with regard to devolution of interest of the coparcenary property. The question which is being discussed is as to whether A-1 was ever part of any HUF? Section 6 of the Hindu Succession Act, 1956 ("the HS Act, 1956") is relevant for this purpose. This Section was amended in the year 2005. Prior to amendment, it was as hereunder:-

> **"6. *Devolution of interest in coparcenary property*.**—When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:
>
> Provided that, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative specified in that Class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.
>
> *Explanation I.*—For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately

> before his death, irrespective of whether he was entitled to claim partition or not."

208. A coparcener, under Section 6 of the HS Act, 1956, could have got right by birth. Such right is called "**unobstructed heritage**". The concept of coparcener and the provisions of the HS Act, 1956 have been discussed by the Hon'ble Supreme Court in the case of Vineeta Sharma v. Rakesh Sharma and others, (2020) 9 SCC 1. The Hon'ble Supreme Court observed "**A joint Hindu family is a larger body than a Hindu coparcenary.....Hindu coparcenary is a much narrower body. It consists of propositus and three lineal descendants. Before 2005, it included only those persons like sons, grandsons and great-grandsons who are the holders of joint property**".

209. In the case of Vineeta Sharma (*supra),* in paragraph 24, the Hon'ble Supreme Court further observed as hereunder:-

> **"24.** Coparcenary property is the one which is inherited by a Hindu from his father, grandfather, or great-grandfather. Property inherited from others is held in his rights and cannot be treated as forming part of the coparcenary. The property in coparcenary is held as joint owners."

210. The Hon'ble Court further observed "**Coparcener heirs get right by birth. Another method to be a coparcener is by way of adoption. As earlier, a woman could not be a coparcener, but she could still be a joint family member**".

211. Section 6 of the HS Act, 1956 was substituted in the year 2005. Post amendment, this Section is as hereunder:-

> "**6. *Devolution of interest in coparcenary property***.—(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall—
>
> (*a*) by birth become a coparcener in her own right in the same manner as the son;
>
> (*b*) have the same rights in the coparcenary property as she would have had if she had been a son;
>
> (*c*) be subject to the same liabilities in respect of the said coparcenary property as that of a son,
>
> and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:
>
> Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before 20th day of December, 2004.
>
> (2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as

property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and—

(*a*) the daughter is allotted the same share as is allotted to a son;

(*b*) the share of the predeceased son or a predeceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such predeceased son or of such predeceased daughter; and

(*c*) the share of the predeceased child of a predeceased son or of a predeceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such predeceased child of the predeceased son or a predeceased daughter, as the case may be.

Explanation.—For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt : Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005,

> nothing contained in this sub-section shall affect—
>
> (*a*) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or
>
> (*b*) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.
>
> *Explanation.*—For the purposes of clause (*a*), the expressions "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.
>
> (5) Nothing contained in this section shall apply to a partition, which has been effected before 20th day of December, 2004.
>
> *Explanation.*—For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court."

212. How a female could have got share in the coparcenary property prior to amendment incorporated under Section 6 of the HS Act, 1956, is discussed by the Hon'ble Supreme Court in the case of Vineeta Sharma (*supra)* as hereunder:-

> **"53.** Section 6 deals with devolution of interest in coparcenary property of a joint Hindu family governed by the Mitakshara law. The originally enacted provision of Section 6 excluded the rule of succession concerning Mitakshara coparcenary property. It provided that the

> interest of a coparcener male Hindu who died after the commencement of the 1956 Act shall be governed by survivorship upon the surviving members of the coparcenary. The exception was provided that **if the deceased had left surviving a female relative specified in Class I of the Schedule or a male relative specified in that Class who claims through such female relative, the interest of such coparcener shall devolve by testamentary or intestate succession, as the case may be, in order to ascertain the share of deceased coparcener, the partition has to be deemed before his death. Explanation 2 disentitled the separated person to make any claim in case of intestate succession.**"
>
> (emphasis supplied)

213. It has also been held in the case of Vineeta Sharma (*supra)* "**Though the widow or daughter could claim a share, being a Class I heir in the property left by the deceased coparcener, and a widow was entitled, having a right to claim a share in the event of partition daughter was not treated as a coparcener**".

214. Admittedly, husband of A-2 had died in the year 1994. Coparcener at that time included only male lineal descendants upto the third generation. A-2 could not have been part of HUF. She could not have any income as such from HUF. She could have claimed

her share in the property as per the proviso to Section 6 of the HS Act, 1956 after the demise of her husband. Even if A-2 has shown some income in the income tax return, it cannot be presumed her income from HUF. If she was paid some remuneration out from HUF property, she could have revealed it.

215. What is the income of A-2? During the check period, A 2 had applied for a flat in IRS Society, Lucknow. A-2 filed an affidavit also along with the application revealing her income. The stamp on which the affidavit was recorded as per the court below is dated 07.10.2002. It was issued from Treasury, Dehradun. In the impugned order, it has been observed that in this affidavit, A-2 had disclosed here income approximately Rs. 5,00,000/- (individual + HUF + Pension + Agriculture). As per forensic report, this affidavit was filled in by A-1.

216. There is another document, Ex. A-118, an application of A-2 given for obtaining Reliance Petrol Pump. It has been proved by PW 67 Rajagopalan N.H. Ex. A-118 is bunch of papers from paper No. 154 A/1 to 154 A/30. PW 67 Rajagopalan N.H. has stated

about these documents. Signature and writing on this application, Ex. A-118 have also been examined forensically. The forensic report Ex. A-362 proves that this application form was also filled in by A-1. It bears signature of A-2. Income of A-2 has been stated in this application form and from agriculture, it has been shown at Rs. 5,00,000/-, Rs. 5,80,000/- and Rs. 6,67,000/- in the year 2000-01, 2001-02 and 2002-03, respectively. Along with this application, A-2 had also filed her income tax returns, which are paper no. 154 A/28 to paper no. 154 A/29. It is so stated by PW 67 Rajagopalan N.H. These ITRs are for the year 2002-03, 2003-04 and 2004-05. According to these ITRs, agricultural income of A-2 is Rs. 6,75,300/-, Rs. 10,00,000/- and Rs. 12,00,000/-, respectively.

217. The court below took into consideration the different income written by A-2 at different stages. The court below also took into notice the fact that, in fact, the application for Reliance Petrol Pump Ex. A-118 has been filled in by A-1.

218. On the question of receiving of an affidavit in evidence, on behalf of A-1, it is argued that an

affidavit is not evidence. Reference has been made to the judgment in the case of Sudha Devi v. M.P. Narayanan, AIR 1988 SC 1381 and Ayaaubkhan Noorkhan Pathan v. State of Maharashtra and others, AIR 2013 SC 58.

219. In the case of Sudha Devi (*supra),* an affidavit was filed in evidence by a party without any order of the court under Order 19 Rule 1 or 2 of the Code of Civil Procedure, 1908. Under such facts the Hon'ble Supreme Court held that "**affidavits are not indeed in the definition of "evidence" in S. 3 of the Evidence Act**". It has been followed in the case of Ayaaubkhan (*supra).*

220. It is true that the affidavit is not evidence, but if a person gives an affidavit and records something in it, it is admission of such person. A-2 in her application form and in her affidavit had revealed her income. The court below took into consideration the income recorded by A-2 in the affidavit filed for obtaining IRS Society Flat, which was approximately Rs. 5,00,000/- from all sources. This cannot be termed as wrong appreciation of evidence. The court below

took into consideration the material on record to assess the income of A-2. In fact the affidavit of A-2 is her admission of income. There cannot be any evidence better than own admission.

221. This Court has already held that, in fact, prior to amendment in Section 6 of the HS Act, 1956, A-2 could not have been part of HUF. She could have claimed her share in the coparcenary property after the death of her husband, as per the proviso to Section 6 of the HS Act, 1956 (Un-amended). Had A-2 claimed her share in the HUF after the death of her husband? It is not revealed.

222. PW 82 Ramji Singh has proved a letter Ex. A-193. According to this witness, in Ex. A-193 (which is an official communication by one public servant to another), the details of property of ten persons, including A-1 have been given. This witness has stated in detail about Ex. A-193. He has also proved Ex. A-194. It is detail of 90 acres of land of A-1 and his family members. It is Tenant Ledger (a public document). PW 82 has also proved a document Ex. A-195 relating to partition.

223. On behalf of A-1 and A-2, it is argued that the factum of partition has not been put to A-2 in her examination under Section 313 of the Code, therefore, it could not be read into evidence. In support of their contention, learned Senior Counsel placed reliance on the principle of law as laid down in the case of Sujit Biswas (*supra).*

224. It is true that in the case of Sujit Biswas (*supra),* the Hon'ble Supreme Court has held that the circumstances, which are not put to the accused, cannot be used against him. The question is whether the factum of partition of the properties of A-1 and A-2 has ever been put to A-2 in her examination under Section 313 of the Code?

225. Before proceeding further, it would be apt to discuss Ex. A-193 in a little more detail, which is proved by PW 82 Ramji Singh and PW 110 Manmohan Prasad. As stated, this is an official communication between two public servants. It has two enclosures, which have separately been exhibited as Ex. A-194 and Ex. A-195. Ex. A-194 is Tenant Ledger and

Ex. A-195 is a certified copy of the Mutation Register. These documents were duly attested and have been proved as per law, in evidence.

226. According to Ex. A-193, A-1, A-2 and their other family members had partitioned their property situated in Village Bara and Village Bharaundi. Ex. A-193 records that the property has been divided amongst 10 family members of A-1 and A-2 in Mutation Case No. 23/2002-03. Partition has been recorded in the mutation proceedings. Separate shares of the family members of A-1 and A-2 have been shown in Ex. A-194. They are in eleven pages. The first page is with regard to A-1. Ex. A-195 is two-sheets, which, according to PW 82 Ramji Singh is Mutation Register. In it, the shares of A-1, A-2 and other family members have been recorded. The property, according to this document, was partitioned and recorded in the Mutation Register on 15.07.2002.

227. It may be re-iterated that Ex. A-194 and Ex. A-195 are part of Ex. A-193. To be precise, Ex. A-193, according to PW 82 Ramji Singh, is a letter written by PW 110 Manmohan Prasad, the then

"*Anchal Adhikari*" addressed to "*Zila Padadhikari*". In question, 166, in her examination under Section 313 of the Code, A-2 was put to explain this letter, Ex. A-193. A-2 was categorically asked that PW 82 Ramji Singh has stated that Manmohan Prasad, the then "*Anchal Adhikari*" had written a letter to "*Zila Padadhikari*", in which he had given the details of 10 persons, including A-1 and the estimated cost, income from the year 1996 to 2005 has been written in this communication. PW 110 Manmohan Prasad is author of Ex. A-193. He has proved it. He had attested Ex. A-194 and Ex. A-195 from the public documents. He has proved them also.

228. A-2 in her examination under Section 313 of the Code (in answer to Question 166) has admitted Ex. A-193. According to her, the document reveals that her annual income from agriculture was in lakhs. According to her, she used to keep entire agricultural income with her as "*Karta*" of HUF, which she had shown in her ITR. Document Ex. A-193 speaks of partition amongst A-1 and A-2 and other family members. Tenant Ledger Ex. A-194 and Mutation Register Ex. A-195 are part of it. In Question Nos. 221

and 222, A-2 has been asked to explain about the statement given by PW 110 Manmohan Prasad about Ex. A-193. In Ex. A-193, the share of A-2 is shown as 8.34 acres. In Question No. 221, A-2 was asked that according to PW 110 Manmohan Prasad, in her name 8.34 acre land is recorded. A-2 simply repeated the story of HUF (As stated, it has already been held that A-2 had no been part of HUF). In Question No. 222, she was asked about the details of income and expenditure from the year 1996-97 to 2004-05. In reply to it, she says that it is a matter of record. She tried to explain it further. Therefore, it cannot be said that the factum of partition was not put to A-2 in her examination under Section 313 Code.

229. In Ex. A-193, the factum of partition has been recorded. Shares of each individual family member have also been lodged in it. In fact, according to it, in the share of A-1, the total land was 8.34 acres (6.95 in village Bharaundi and 1.39 in village Bara). It is the lowest share amongst the family members.

230. This Court has already held that prior to amendment in Section 6 of the HS Act, 1956 in the

year 2005, a female could not have been a coparcener. A widow could have claimed her share in the coparcenary property after the demise of her husband. The question is as to whether had A-2 ever claimed her share in the HUF long after demise of her husband? A-2 could not have been part of HUF. She could not have been "*Karta*" of HUF. If she has shown herself as "*Karta*" and submitted ITR as HUF, it does not give any right to her. It does not make her coparcener then when she could not have been a coparcener in HUF. Prior to amendment in Section 6 of the HS Act, 1956 in the year 2005, A-2 did not have income from entire agricultural land of the family. She could have claimed the share to the extent of the share of her husband after his demise.

231. This exercise is undertaken to assess the agricultural income of A-2. From all sources, she has written her income at Rs. 5,00,000/- per year in the affidavit given for obtaining the flat. It includes, according to affidavit, the HUF income. This may be treated as income of the joint family.

232. On behalf of the appellants, it has been argued that the partition was not actual partition.

233. In the instant case the partition has been effected by way of a Mutation Case as revealed in Ex. A-193. It is a public document. Such partition cannot be brushed aside on the ground that it is for the convenience and not actual partition. In the case of Vineeta Sharma (*supra),* the Hon'ble Supreme Court has observed as hereunder:-

> **"130.** Earlier, an oral partition was permissible, and at the same time, the burden of proof remained on the person who asserted that there was a partition. It is also settled law that cesser of commonality is not conclusive proof of partition, merely by the reason that the members are separated in food and residence for the convenience, and separate residence at different places due to service or otherwise does not show separation. Several acts, though not conclusive proof of partition, may lead to that conclusion in conjunction with various other facts. Such as separate occupation of portions, division of the income of the joint property, definement of shares in the joint property in the revenue or land registration records, mutual transactions, as observed in *Bhagwani Kunwar* v. *Mohan Singh* [*Bhagwani Kunwar* v. *Mohan Singh*, 1925 SCC OnLine PC 27 : AIR 1925 PC 132] and *Digambar Adhar Patil* v. *Devram Girdhar Patil* [*Digambar Adhar Patil* v. *Devram Girdhar Patil*, 1995 Supp (2) SCC 428 : AIR 1995 SC 1728]."
>
> (emphasis supplied)

234. It has been admitted on behalf of A-2 that agricultural land belongs to ten persons. A-2 was not

part of HUF. The court below held that she had 1/10th share in it. Though, it is observed on the basis of HUF partition. Since A-2 was not part of HUF, there is no question of her getting any share in HUF out from partition, except her share after demise of husband as per proviso to Section6 of the HS Act, 1956 (unamended). But, based on share of A-2, the conclusion arrived at by the court below cannot be doubted. This Court is of the view that the court below rightly observed that agricultural income of A-2 was Rs. 45,000/- per year. For eight years, which is the check period, the total income has rightly been assessed as Rs. 3,60,000/-. Rs. 45,000/- rent from Rajpur Road house has also been added to it and the court below concluded that the income from agriculture as well as rent of A-2 for the check period is Rs. **4,05,000/-**. This finding is based on evidence. It does not warrant any interference.

Non Framing of Specific Charge

235. In the chargesheet, the IO has admitted the income from agriculture and rent of A 2 during the check period at Rs. 59,10,300/-. It has been so done

on the basis of the income tax return submitted by A-2 as written in the chargesheet itself.

236. As per the chargesheet, the total income during the check period was Rs. 68,26,939/-. In paragraph 16 of the chargesheet, the IO computed the disproportionate assets of A-2 and while doing so, he has taken into consideration the income of A-2 during check period at Rs. 68,26,939/-. Thereafter after computation, the IO held that A 2 had disproportionate assets to the extent of Rs. 75,58,295/-.

237. A-2 has been charged that she held disproportionate assets of A-1 to the extent of Rs. 75,58,295/-. This amount has been ascertained while believing the income of A-2 from agriculture and rental at Rs. 59,10,300/-The prosecution had admitted it in the chargesheet that the income from agriculture and rental of A-2 was Rs. 59,10,300/-. Accordingly, charge was framed. A-2 was told in advance that she had disproportionate assets of A-1 to the tune of Rs. 75,58,295/-. A-2 was told in advance that her agriculture income and rental income have been

accepted as Rs. 59,10,300/-. How can A-2 be asked to prove that she had this income because it was accepted by the prosecution? A-2 was not specifically charged that she did not have any agriculture income. A 2 was not specifically charged that she had no HUF income. As stated, IO admitted the ITR submitted by A 2. This is the question which definitely requires deliberation.

238. Learned counsel for the CBI would submit that if there is any irregularity in framing of the charge, it does not make any difference unless it has "prejudiced the accused" and resulted in "failure of justice". On behalf of the CBI following arguments have been raised on this aspect:-

i. Any irregularity in the charge may not vitiate the conviction unless it is shown that it has caused prejudice to the accused and is resulted in failure of justice. Reference has been made to the judgment in the case of

Kamil v. State of UP, AIR 2019 SC 45.

ii. All the documents were given at the initial stage to A-2 under Section 207 of the Code. A plain reading of prosecution case along with accompanying documents clearly conveyed that the prosecution has not accepted and seriously disputed that there was any income of A-2 from agriculture. A 2 fully joined the issue and participated and never raised any objection and cross examined various witnesses. The documents brought on record show that the alleged agricultural income was HUF and not the personal income of the accused.

iii. A-2 herself has taken a specific stand that she has agriculture income of HUF and she was*karta* of HUF.

iv. A-2 furnished documents during investigation with regard to her income from HUF.

v. A-2 herself admitted under Section 313 of the Code that she is *Karta* of HUF. Her statement is sufficient to show that A-2 had complete knowledge that she has to satisfy and prove that the alleged agricultural income of HUF was her own income.

vi. Even if the question of partition is not put to A-2, it does not make any difference because A-2 herself has claimed HUF rights.

vii. In view of Hindu Succession Act, 1956, by operation of law A-2 can have only 4.16% share and interest in 9 acre joint family property.

viii. Prior to amendment made in the Hindu Succession Act, 1956, in the year 2005 a woman could not have been a coparcener of HUF.

ix. As per sub-section (2) of Section 30 of the Income Tax Act, 1961, an HUF is a separate entity or legal person for the purposes of income tax.

239. Undoubtedly, any irregularity in the framing of charge may not vitiate conviction. What the Court is discussing is the charge and evidence on it.

240. What the documents under Section 207 of the Code had revealed? They had revealed as follows:-

i. The income Tax return with regard to agriculture income of A-2 was accepted by the IO.

ii. The IO had accepted that the agriculture and rental income of A-2 was Rs. 59,10,300/-

241. The prosecution is with regard to disproportionate assets, which A-2 held for A-1. The prosecution has taken into consideration the agricultural and rental income of Rs. 59,10,300/- of A-

2. As per prosecution and charge framed on A-2, she had disproportionate assets for A-1 to the extent of Rs. 75,58,295/-. There is no omission or absence or error in the charge. Section 464 of the Code provides with regard to the effect of omission, etc. in framing of charge. It is as hereunder:-

> "**464. Effect of omission to frame, or absence of, or error in, charge**.—(1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.
>
> (2) If the Court of appeal, confirmation or revision, is of opinion that a failure of justice has in fact been occasioned, it may,—
>
> (a) in the case of an omission to frame a charge, order that a charge be framed, and that the trial be recommended from the point immediately after the framing of the charge;
>
> (b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:
>
> Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction."

242. Reference has been made on behalf of the CBI to the judgment in the case of Kamil (supra). In

the case of Kamil (supra) accused were charged for killing a person. To understand the principles laid down in the case of Kamil (supra), it would be apt to reproduce the charge. In para 17, it is as hereunder:-

> **"17.** The charges framed against the accused are as under:
>
> "Charges
>
> I, C.P. Singh, Special Judge (EC Act), Budaun hereby charge you
>
> 1. Nasir, s/o Wali Mohammad, r/o Oopar Para PS Kotwali, Badaun
>
> 2. Adil r/o
>
> 3. Kamil, s/o Banney Min as follows:
>
> *Firstly* : That you Rashid on 3-1-1986 at about 4.00 p.m. in Mohalla Oopar Para near Lalpul Budaun, PS Kotwali, Badaun, formed common intention to make murderous assault on Akhlaq and anyone else who came to his rescue and in furtherance of said common intention Rashid did commit murder by intentionally causing the death of aforesaid Akhlaq and you thereby committed an offence punishable under Sections 302/34 of the Indian Penal Code and within my cognizance.
>
> *Secondly* : That you Adil on aforesaid date, time and place voluntarily caused Adil and thereby committed an offence punishable under Section 323 of the Indian Penal Code and within my cognizance.
>
> *Thirdly* : That on aforesaid date, time and place you Kamil and Nasir along with Rashid and Adil formed common intention to cause hurt to Adil and anyone else and in furtherance of said common intention Adil voluntarily caused hurt to Adil and you thereby committed an offence punishable under Sections 323/34 of the Indian Penal Code and within my cognizance.
>
> And I hereby direct that you be tried by this court on the said charges.
>
> .....
> ....."

243. The above charges categorically reveal that Kamil was charged for the offence under Section 323 read with 34 IPC.

244. One of the accused in the case of Kamil (supra) was charged for the offence under Section 302 read with 34 IPC. Kamil was also charged that he along with person charged under Section 302 read with 34 IPC assaulted and caused harm to a person. Under those facts and circumstances, the Hon'ble Supreme Court observed that the appellant Kamil had clearly understood that the charge has been framed against him under section 302 read with 34 IPC. The conviction of Kamil under Section 302 read with 34 IPC upheld by the Hon'ble Supreme Court observing that no prejudice has been caused to the accused nor failure of justice has been shown to have been occasioned warranting interference in the impugned judgment.

245. A person charged under Section 13 of the Act is required to satisfactorily account for the assets held by him. In the instant case, A 2 was asked to

explain the excess amount of Rs. 75,58,295/-, which she held for A-1.

246. As stated, initially the IO and the court while framing charge accepted the agricultural and rental income of A-2 at Rs. 59,10,300/-. The question is as to whether the prosecution doubted the agricultural income of A-2? And, more importantly, the question is as to whether A-2 was aware that the prosecution, after initial acceptance of her agricultural income at Rs. 59,10,300/-, adduced evidence to the effect that A-2 did not have any agricultural income? The broad proposition to be answered is as to whether any prejudice has been caused to A-2 and it resulted into the failure of justice?

247. There are three certificates with regard to agricultural income of A-2. They are Ex. A-199, proved by PW 82 Ramji Singh, Ex. A-348 and Ex. A-349 issued by PW 154 Ashok Kumar Pal and PW 193 Dharmraj Singh, respectively. All these certificate are most unreliable documents. It has already been held by this Court.

248. In the instant case, in fact, CBI produced all the materials collected by it during investigation. For example, with regard to the valuation of Rajpur Road house, two reports, one prepared by CBI valuer and another given by defence, have been produced in evidence by the CBI. Similarly, with regard to valuation of Uruvela International Hotel also, two reports, one procured by CBI and another by the appellants, have been adduced in evidence. Although, the prosecution assailed the valuation reports, which were given by the defence, ultimately, the CBI has left it to the Court to adjudicate as to which of the reports is to be accepted.

249. PW 82 Ramji Singh, PW 110 Manmohan Prasad, PW 152 Pradhumna Pandey, PW 215 Uday Shankar Singh and PW 240 Chandrashekhar have stated about Ex. A-199, which is agricultural income certificate prepared by them.

250. PW 82 Ramji Singh has been cross-examined by CBI declaring him hostile. In paragraph 14 of his examination, the CBI gave a suggestion to PW 82 Ramji Singh that he prepared forged report, to

which this witness denied. He also denied the suggestion of the CBI that he prepared report in order to help A-1 and A-2. The moment, PW 82 Ramji Singh was declared hostile and cross-examined by the CBI and given the suggestions assailing the report submitted by him, it was clear by the prosecution that the prosecution was not relying on the reports with regard to agricultural income of A-2, as proved by PW 82 Ramji Singh. PW 82 Ramji Singh has been cross-examined by the appellants.

251. PW 110 Manmohan Prasad has also been declared hostile by the prosecution and he has been cross-examined. In paragraphs 25, 26 and 27 of his examination, suggestions were given to PW 110 Manmohan Prasad that he prepared forged report. This witness has denied this suggestion. It has further been made clear by the prosecution that prosecution does not rely the report submitted and proved by this witness. This witness has not been cross-examined by A-2, although he has been cross-examined on behalf of other appellants.

252. PW 152 Pradhumna Pandey, has also stated about the valuation report, Ex. A-202, which is with regard to details of crops from the year 1996-97 to 2004-05. He has also been declared hostile by the prosecution and has been cross-examined. In paragraphs 9 and 11 of his statement, this witness was suggested that he has prepared the report to save A-1 and he gave false evidence. This witness PW 152 Pradhumna Pandey also denied these suggestions. He was cross-examined by the appellants.

253. PW 215 Uday Shankar Singh has stated about a tubewell. He has not stated anything about the income of A-2.

254. PW 240 Chandrashekhar has also proved Ex. A-202 with regard to details of the crops. He has also been declared hostile by the prosecution and cross-examined. In paragraphs 10 and 11, PW 240 Chandrashekhar has also been given suggestion that he prepared forged report to save A-1 and A-2. This witness denied these suggestions.

255. Apart from it, with regard to agricultural income of A-2, there are two more witnesses, namely, PW 154 Ashok Kumar Pal and PW 193 Dharmraj Singh. This Court has already held that both these reports are without any basis and unreliable.

256. PW 154 Ashok Kumar Pal and PW 193 Dharmraj Singh both have been declared hostile by the prosecution and they have been cross-examined. In paragraphs 8 and 9 of the statement of PW 154 Ashok Kumar Pal, he was suggested that without any basis, he issued the certificate and he is giving false evidence. He denied these suggestions. This witness was cross-examined by the appellants.

257. PW 193 Dharmraj Singh was given a suggestion in paragraph 10 of his statement that he gave report to help A-2. He denied this suggestion. This witness was also cross-examined by the appellants.

258. In her examination under Section 313 of the Code, A-2 was asked about her agricultural income. She has tried to explain about it.

259. The examination of above witnesses and their cross-examination by the prosecution, particularly the suggestions, which were given to them by the prosecution, clearly indicated during the course of the trial that the prosecution is not relying on the income certificates, Ex. A-199, Ex. A-348 and Ex. A-349. Therefore, it is abundantly clear that during the course of trial, A-2 was made aware that the certificates with regard to her agricultural income have been doubted by the prosecution. The defence cross-examined the witnesses. A-2 knew as to what is the issue she is facing. A-2 knew during the course of the trial that, according to the prosecution, she had no agricultural income. She defended the case. Therefore, this Court is of the view that merely because initially A-2 was not told that the prosecution did not rely on her agricultural income, will have no effect in the trial of A-2. No prejudice has been caused to A-2 and it has not resulted in any failure of justice. The court below has rightly assessed the agricultural income and rental income of A-2 at Rs. 4,05,000/-. It does not warrant any interference.

Other Properties

260. In statement 'C' of A-2 at Sr. No. 2 and 7, there are other articles recorded. The court below accepted the case of IO with regard to items at Sr. No. 2 to 6.

261. In statement 'C' at Sr. No. 7 with regard to the loan taken from S.S. Marya, the IO had recorded it 2.75 lakh but the court below concluded that, in fact, this amount is Rs. 2.50 lakh. There have been no objections on this point. The court below has quite in detail made discussion on it.

262. The following chart reveals as to what was found by the court below in the statement 'C', and as to what this court has upheld:

Sr. No.	Description	Amount		
		In the chargesheet	Held by court below	Held by this Court
1.	Agricultural and rental income	59,10,300/-	4,05,000/-	4,05,000/-
2.	Pension and likely savings	3,95,176/-	3,99,419/-	3,99,419/-
3.	Interests	75,032/-	75,032/-	75,032/-
4.	Interest on fixed deposits	25,800/-	25,800/-	25,800/-
5.	Dividends	1,41,631/-	1,41,631/-	1,41,631/-
6.	Sale proceeds of land	4,000/-	4,000/-	4,000/-
7.	Loan from S.S. Marya	2,75,000/-	2,50,000/-	2,50,000/-
	Total	68,26,939/-	13,00,882/-	13,00,82/-

Income from Other Sources

263. On behalf of A-1 and A-2 with regard to income of A-2, certain objections have been raised, which are discussed as hereunder:

264. Rental income from Patna is claimed at Rs. 4,06,910/- by A-2, but there is no evidence to it. It is argued that A-2 has shown it in the income tax return but the income tax return is no evidence to prove a fact in a criminal trial. A-2 would have produced documents as to who paid this amount? How was it paid? And, where was it deposited? It is not done so.

265. Proceeds from sale of Palio car - Rs. 3,50,000/-. This income cannot be added because PW 250 Surendra Kumar Rohilla, the IO, has stated that the car was purchased and sold during the check period, therefore, it has not been considered by him. According to PW 250 Surendra Kumar Rohilla, even he was not told by A-2 as to at which price it was purchased by her (statement of PW 250 at paras 39 & 186).

266. Loan from Ajay Kumar Singh – This amount cannot be added in the income. There is no evidence to it that it was loan.

267. Loan from City Bank for Honda City car of Rs. 3,53,000/-. This amount can also not be added in the income of A-2 because while assessing her assets at statement 'B', the bank loan has already been deducted.

268. Loan from SBI, Dehradun for plot in USHA. This can also not be added because in statement 'B', the amount after deducting the loan has been added.

269. Rs. 7,54,600/- for GPF and gratuity of A-2's late husband. In this regard, reference has been made to the statement of the IO Surendra Kumar Rohila recorded in the Miscellaneous, as PW 1 Surendra Kumar Rohilla. In his statement recorded on 5.1.2015, as PW 1, Surendra Kumar Rohila has stated that, in fact, in the account of A-2, Rs. 2.75 lakh were deposited on 14.06.2001 and Rs. 39,600/- were also deposited. The IO has also admitted that in one account No. 9625 of A-2, Rs. 2 lakh were received by

transfer. The IO has also stated about the other amount deposited in the account of A-2, namely, Rs. 1,30,000/- deposited on 08.09.2002, Rs. 1,30,000/- deposited on 20.09.2002. The IO in his statement has stated that he did not inquire about this amount as to how it came. He also expressed ignorance as to whether the amount so received in the account of A-2 is gratuity or GPF of her late husband. Since it is a specific case of A-2 that this amount was deposited in her account and IO has not denied as such, therefore, this Court is of the view that A-2 is entitled to claim this amount of Rs. 7,54,600/- in her income. Therefore, this Court is of the view that A-2 should be given benefit of this total amount of Rs. 7,54,600/-. Therefore, the total income of A-2 during the check period is Rs. 20,55,482/-.

Statement 'D' of A-2

270. Statement 'D' is with regard to the expenditure of A-2. In the chargesheet there are 15 sub heads under this statement 'D' and the total expenditure has been assessed at Rs. 10,07,877/-. At Sr. No. 1 of statement 'D', Rs. 1,99,757/- has been

shown as an expenses met by A-2 with regard to marriage of her son. But, this has not been accepted by the court below. There has been no argument on this point. At Sr. No. 6 of it, the electricity charges for Rajpur Road house has been shown at Rs. 18,075/- in the chargesheet, but the court below based on calculation took it at Rs. 12,792/-. It has not also been objected to. In fact, on behalf of A-2, arguments have been made that A-2 did not incur any expenditure with regard to her treatment in Fortis Hospital. At Sr. No. 4 of statement 'D', Rs. 2,42,053/- has been shown as expenses of A-2 on her knee treatment at Fortis Hospital. It is argued that, in fact, A-2 had gone for treatment with her son Arunabh Suman and address of A-2 has been recorded in the hospital record. The amount was not paid by her.

271. A-2 has claimed that she is an independent lady. She is receiving money from pension. The Court cannot presume that any other person would have paid for her treatment. The court below widely discussed this point and held that it is A-2 herself, who had paid this amount. The total expenditure was taken by the court below at Rs. 8,02,999/- against

Rs. 10,07,877/- as claimed by the prosecution. This Court is of the view that the court below has not committed any error in assessing the expenses of A-2 during the check period.

272. In view of foregoing discussion, the income calculation of A-2 is as hereunder:-

i. Income at the end of check period with A-2 (Statement 'B') - Rs. 1,38,05,478/-

ii. Income at the beginning of check period with A-2 (Statement 'A') – Rs. 6,81,869/-

iii. Property acquired by A-2 during check period (statement 'B'–'A')- Rs. 1,31,23,609/-

iv. Expenditure during check period of A-2 (Statement 'D') – Rs. 8,02,999/-

v. Total assets and expenditure of A-2 during check period (Statement 'B'-'A'+'D') -Rs. 1,39,26,608/-

vi. Income of A-2 during check period (Statement 'C') - Rs. 20,55,482/-

vii. Disproportionate assets at the hands of A-2 – Rs. 1,18,71,126/-

PROPERTIES

Flat No. B-122, Panchvati Apartment in Sector 62, Noida

273. Flat No. B-122, Panchvati Apartment in Sector 62, Noida ("the Flat") has been purchased in the name of A-4 in the month of August, 2002. According to the prosecution case, A-1 purchased the flat in the name of A-4. Accordingly, A-1 and A-4 have been charged. The court below has accepted the prosecution case.

Arguments

274. On behalf of A-4 arguments have been advanced that it is A-4 who purchased it from its lawful owner. A-4 had source of income to purchase the flat. His father had purchased shares and received draft in connection with those shares. It is also argued that, in fact, the prosecution has not been able to prove that the money of A-1 was used to purchase the flat. On behalf of A-4, learned Senior Counsel raised the following points on this aspect:-

(i) A-4 in his examination under Section 313 of the Code has stated that his father Abhay Kumar Singh sold 12100 shares of Mini Soft Company to the Director of SJ Capitals and he made a draft of Rs. 9.75 lakh in favour of Dalip Kumar for the purchase of the flat.

(ii) The IO has admitted that sale proceeds of said shares were shown in the ITR of A-4.

(iii) PW 102 Rajeev Mittal did not support the prosecution case.

(iv) The flat of A-4 was under his ownership and possession.

275. On behalf of A-1, the findings of the court below with regard to the flat has been assailed on the ground that the observations made by the court below are based on suspicion, conjectures and speculations only. The following points have also been raised on behalf of A-1:-

(i) PW 202 Dharmendra Gupta did not support the prosecution case.

(ii) PW 86 Anil Jindal did not name A-1. The source of income of A-4 cannot be seen or examined.

(iii) The power of attorney, which A-4 allegedly gave to Arunabh Suman is not a power of attorney, as it is not registered.

(iv) The flat was let out to Arunabh Suman, through property dealer PW 164 Sanjay Kumar Jain. The power of attorney was given on the suggestion of Sanjay Kumar Jain so that Arunabh Suman can do anything for maintenance and repair of the flat.

(v) The observation that A-1 misplaced the ITR of A-4 is without any basis.

(vi) A-4 had no financial connection with A-1. So, the flat of A-4 cannot be treated as *benami* of A-1.

(vii) A-4 always remained in control and possession of the flat.

276. Learned Special Counsel for the CBI would submit that A-1 used the name of A-4 for purchasing the flat. A-1 provided money to CAs for arranging the draft. There is no proof that Rs. 10 lakh was arranged by A-4 for procuring the draft. The chain of CA's involved in preparing the draft originates in Dehradun. A-1 had close links with A-4 in many ways. The flat was possessed by Arunabh Suman with full rights.

Discussion

277. This Court has already concluded that in the cases under the Act, when the public servants are prosecuted together with the non public servants, the source of income is most important determining factor. In cases where the property is purchased in the name of a non public servant, the source of income of such non public servants also require to be examined by the court.

Ownership of the flat and its transfer

278. According to the prosecution, PW 164 Sanjay Kumar Jain was instrumental in purchase of the flat. PW 164 Sanjay Kumar Jain knew A-1 as well

as his brother Arunabh Suman. It may be noted here that it is PW 164, Sanjay Kumar Jain who was instrumental in purchase of a plot at Noida in the name of A-2. Is it a co-incidence or a design? The Court is examining this aspect also.

279. According to PW 164 Sanjay Kumar Jain, A-4 approached him in the year 2002-03 and he referred him to a Buniyadi Property Dealer, from where the plot was purchased. PW 236 is Subhashish Chakravarti, who was working as Buniyad Real Estate at Noida at the relevant time. According to him, A-4 was referred to him by PW 164 Sanjay Kumar Jain. This witness introduced A-4 to the owner of the flat PW 175 Dalip Kumar and the deal was done. This witness has proved the documents.

280. PW 175 Dalip Kumar is the owner of the flat. He has supported the statement of PW 236 Subhashish Chakravarti. According to him, in the year 2002, he sold the flat to A-4 for Rs. 10.25 lakhs. Out of sale proceeds, Rs. 50,000/- was received in cash and Rs. 9.75 lakh was by a bank draft. This witness also proved the agreement and other documents. In fact,

the flat was in a society and PW 175 Dalip Kumar had to inform the society also.

281. PW 174 Deepak Mehta was the Secretary of the society. He has also corroborated the statement of PW 175 Dalip Kumar. The documents Ex. A-409 and 410 reveal that on 21.08.2002, PW 175 informed the society that he had sold the flat to A-4 and received the money. Ex. A-409 is the communication of PW 175 Dalip Kumar to the Secretary PW 174 Deepak Mehta. It is dated 21.08.2002. It records that the vendor had received the full and final payment.

282. How consideration was paid? PW175 Dalip Kumar has stated that he received Rs. 50,000/- in cash and Rs. 9.75 lakh by way of bank draft. A-4 has his account in Oriental Bank of Commerce, Dehradun.

283. PW 20 Vijay Keerti and PW 43 Vivek Pokhariyal have stated about the bank details of A-4. The account details have been given by the bank officials, which is Ex. A-42. It reveals that on 24.08.2002, Rs. 9,75,877/- were deposited in the account of A-4 by clearance and the draft for Rs. 9.75

lakh was prepared on 27.08.2002. It may be noted here only that according to the communication given by PW 175 Dalip Kumar to the Secretary of the society PW 174 Deepak Mehta (Ex. A-409), on 21.08.2002 the vendor had received the full and final payment. How was it so, when the draft itself was prepared on 27.08.2002? The Court leaves it at it.

284. In his examination under Section 313 of the Code, in answer to question no. 10, A-4 has admitted that he had prepared the bank draft for Rs. 9.75 lakh on 27.08.2002. In answer to question no. 7, A-4 has stated that the draft for Rs. 9,75,877/- was received by his father by sale of some shares.

285. It is proved by the prosecution that in the account maintained by A-4, with the Oriental Bank of Commerce, Dehradun, on 24.08.2002 Rs. 9,75,877/- was deposited by clearance and from this account alone a draft of Rs. 9.75 lakh was prepared on 27.08.2002. How A-4 got this money?

286. It is the case of the prosecution that A-1 has been instrumental in preparing the demand draft

of Rs. 9,75,877/- through Chartered Accountants in the name of A-4. It is A-1 alone, who got an account of A-4 opened for the purpose of purchase of the flat. The draft so prepared was deposited in the account of A-4 and thereafter another draft of Rs. 9.75 lakh was prepared in the name of PW 175 Dalip Kumar as consideration for the flat.

287. The chain of witnesses is quite long. It begins with PW 102 Rajeev Mittal. He admits that he knows A-1.

288. PW 202 Dharmendra Kumar Gupta has stated that he knew PW 102 Rajeev Mital, a Chartered Accountant in Dehradun. According to PW 202 Dharmendara Kumar Gupta, in the year 2002, he was telephonically contacted by PW 102 Rajeev Mittal and on his request, this witness revealed the telephone number of PW 86 Anil Jindal to him, who was also a Chartered Accountant in Delhi. In fact, PW 202 Dharmendra Kumar Gupta has not supported the prosecution case beyond it and he was cross-examined by the CBI.

289. PW 86 Anil Jindal, PW 87 Akhil Mahajan and PW 123 Mahesh Garg are important witnesses, who have proved as to how the draft for Rs. 9,75,877/- was prepared in the name of A-4.

290. According to PW 86 Anil Jindal, he was telephonically contacted by PW 202 Dharmendra Kumar Gupta with the request that he needs a draft of Rs. 10 lakh through cash. Thereafter, this witness inquired from PW 87 Akhil Mahajan and told it to PW 202 Dharmendra Kumar Gupta that draft can be prepared. PW 202 Dharmendra Kumar Gupta gave Rs. 10 lakh to this witness. Thereafter this witness gave Rs. 10 lakh to PW 87Akhil Mahajan. PW 87 Akhil Mahajan gave a draft in the name of A-4. This witness has also spoken about the draft on record.

291. It may be noted that PW 202 Dharmendra Kumar Gupta did not say that he gave Rs. 10 lakh to PW 86 Anil Jindal, but the fact remains that PW 202 Dharmendra Kumar Gupta has spoken about the telephone call, which he received from PW 102 Rajeev Mittal, a Chartered Accountant in Dehradun to whom he gave telephone number of PW 86 Anil Jindal.

292. PW 87 Akhil Mahajan has supported the statement of PW 86 Anil Jindal. According to him, PW 123 Mahesh Garg used to prepare draft on cash. This witness was approached by PW 86 Anil Jindal to prepare a draft in the name of A-4, which he prepared through PW 123 Mahesh Garg. This witness has also stated that he received Rs. 10,000,00/- in cash through PW 86 Anil Jindal. He also proved the documents.

293. PW 123 Mahesh Garg is the person, who prepared the draft. He has supported the statement of PW 86 Anil Jindal and PW 87 Akhil Mahajan. He took the money from PW 87 Akhil Mahajan and prepared a draft of Rs. 9,75,877/- in the name of A-4. This witness has proved the voucher Ex. A-301, which he filled up to prepare the draft and also proved his bank statement. The statements of PW 86 Anil Jindal, PW 87 Akhil Mahajan and PW 123 Mahesh Garg proved the prosecution case. It is PW 202 Dharmendra Kumar Gupta, who gave money for preparing the draft in the name of A-4.Why Dharmendra Kumar Gupta did so, he has revealed that he was contacted by PW 102

Rajeev Mittal, who is a Chartered Accountant in Dehradun. He knows A-1.

294. The Court has to make inferences now. The Court has not based its opinion on the basis of any conjecture or surmises. In fact, PW 123 Mahesh Garg has also stated that he had given a cheque for preparing a draft and on the back of the cheque he mentioned the name of A-4 and PW 87 Akhil Mahajan. There is no doubt that A-4 was nowhere in picture for preparing the bank draft of Rs. 9,75,877/-. It was prepared by a chain of Chartered Accountants. At the core of it was PW 102 Rajeev Mittal, who knew A-1. Is it enough to connect A-1 with that draft? Perhaps this fact alone is not enough. The Court proceeds to examine the other circumstances.

295. Did A-4 ever know A-1? PW 132 Santosh Deep had been working as a domestic help with A-1. He has not fully supported the prosecution case.He was cross-examined by the CBI.He has stated that he knew A-4 as well as his father Abhay Kumar Singh. In fact, PW 132 Santosh was a witness to sale deed executed by the father of A-4. In para 11 of his

statement, PW 132 Santosh Deep has categorically stated that A-4 used to visit Income Tax Department. Why did A-4 use to visit Income Tax Department? What was his connection? Is he connected with A-1? Was he very close to A-1?

296. A land was purchased in Rajpur Road, Dehradun in the name of A-2. A house was constructed on it. It is the prosecution case that the house was constructed by A-1 in the name of A-2. Who constructed the house? How the materials were purchased? PW 69 Sunil Goyal is the owner of a hardware shop. According to him, A-1 had contacted him and asked him that some of his acquaintance would take building material. Thereafter, according to PW 69 Sunil Goyal, Mr. Marya had approached and took building material from him. This witness PW 69 Sunil Goyal did not support the prosecution case in full initially, but in his cross-examination by the CBI, when he was confronted with the documents taken from his possession during investigation, he has admitted that A-4 also collected articles from his shop.

297. On behalf of A-1, it is argued that a signed statement of a witness given to the IO during investigation is inadmissible in view of Section 162 of the Code. This has broadly been referred to in context with the observation of the court below when Ex. A-120 proved by PW 69 Sunil Goyal has been read into evidence. Ex. A-120 is a communication made by PW 69 Sunil Goyal to the IO during investigation. It is quite in detail. Along with this communication, certain documents were also handed over to the IO by PW 69 Sunil Goyal, but certain statements are also contained in this annexure A-120.

298. In support of his submission, learned Senior Counsel for A-1 has referred to the principle of law as laid down in the cases of Tori Singh and another v. State of Uttar Pradesh, AIR 1962 SC 399; Jagdish Narain and another v. State of U.P. (1996) 8 SCC 199; Public Interest Foundation and others v. Union of India and another, (2019) 3 SCC 224 and Girish Kumar Suneja v. Central Bureau of Investigation, (2017) 14 SCC 809.

299. Before proceeding further, it would be apt to reproduce Section 162 of the Code. It is as hereunder:-

> "**162. Statements to police not to be signed: Use of statements in evidence**.—(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:
>
> Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act , 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.
>
> (2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872); or to affect the provisions of section 27 of that Act.
>
> *Explanation*.—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact."

300. A bare perusal of Section 162 of the Code makes it abundantly clear that any statement given to

the IO during investigation shall not be signed by the person making it. Proviso to Section 162 of the Code prescribes for use of statement recorded by the IO during investigation.

301. In the case of Tori Singh (supra), the Hon'ble Supreme Court neatly interpreted the provision of Section 162 of the Code as hereunder:-

> **"8.** This Court had occasion to consider the admissibility of a plan drawn to scale by a draftsman in which after ascertaining from the witnesses where exactly the assailants and the victims stood at the time of the commission of offence, the draftsman put down the places in the map, in *Santa Singh* v. *State of Punjab* [AIR 1956 S.C. 526] . It was held that such a plan drawn to scale was admissible if the witnesses corroborated the statement of the draftsman that they showed him the places and would not be hit by Section 162 of the Code of Criminal Procedure. In that case there was another sketch prepared by the Sub-Inspector which was ruled out as inadmissible under Section 162. The sketch-map in the present case has been prepared by the Sub-Inspector and the place where the deceased was hit and also the places where the witnesses were at the time of the incident were obviously marked by him on the map on the basis of the statements made to him by the witnesses. In the circumstances these marks on the map based on the statements made to the Sub-Inspector are inadmissible under Section 162 of the Code of Criminal Procedure and cannot be used to found any argument as to the improbability of the deceased being hit on that part of the body where he was actually injured, if he was standing at the spot marked on the sketch-map."

302. In the case of Jagdish Narain (supra), the principle of law as laid down in the case of Tori Singh (supra) has been followed.

303. In the case of Girish Kumar Suneja (supra), in fact, the Hon'ble Supreme Court discussed the provisions of appeal, revision, Article 226 and Article 227 of the Constitution of India. In the case of Public Interest Foundation (supra), the Hon'ble Supreme Court dealt with the provisions of election.

304. How a statement recorded during investigation can be used during trial, it has been discussed quite in detail by the Hon'ble Supreme Court in the case of Tahsildar Singh and another v. State of U.P., AIR 1959 SC 1012.

305. In the case of Tahsildar Singh (supra), the Hon'ble Supreme Court discussed the object of the legislature in enacting these provisions. The Hon'ble Supreme Court referred to the judgment in the case of Emperor v. Aftab Mohd. Khan, AIR 1940 Allahabad 291 and in para 12 observed as hereunder:-

> **"12.** Braund, J. in *Emperor* v. *Aftab Mohd. Khan* [AIR (1940) All 291] gave the purpose of Section 162 thus at p. 299:
>
> > "As it seems to us it is to protect accused persons from being prejudiced by statements made to police officers who by reason of the fact that an investigation is known to be on foot at the time the statement is made, may be in a position to influence the maker of it and, on the other hand, to protect accused persons from the prejudice at the hands of persons who in the knowledge that an investigation has already started, are prepared to tell untruths."
>
> A Division Bench of the Nagpur High Court in *Baliram Tikaram Marathe* v. *Emperor* [AIR (1945) Nag 1] expressed a similar idea in regard to the object underlying the section, at p. 5, thus:
>
> > "The object of the section is to protect the accused both against overzealous police officers and untruthful witnesses."
>
> The Judicial Committee in *Pakala Narayana Swami* v. *King Emperor* [(1939) LR 66 IA 66] found another object underlying the section when they said at p. 78:
>
> > "If one had to guess at the intention of the legislature in framing a section in the words used, one would suppose that they had in mind to encourage the free disclosure of information or to protect the person making the statement from a supposed unreliability of police testimony as to alleged statements or both."
>
> Section 162 with its proviso, if construed in the manner which we will indicate at the later stage of the judgment, clearly achieves the said objects."

306. In the case of Aftab Mohd. Khan (supra), it has categorically been observed that the statement made during investigation to the IO may be used to a certain extent so as to protect the interest of the accused. It has been observed that a police officer may be in a position to influence the maker of a statement. Perhaps it is with this in mind, Section 162 of the Code provides that the statement made during

investigation by a witness to the IO shall not be signed.

307. PW 69 Sunil Goyal has stated that during investigation, he made a communication to the IO along with which he gave certain documents to the IO. This communication is Ex. A-120. If during investigation, an IO takes into custody certain documents from a witness and prepares a seizure memo, to that extent the seizure memo may be proved and read into evidence. But, if the seizure memo also records some statement of a witness and signed by such witness, such statement cannot be read into evidence. It is inadmissible. It cannot be looked into. It is against the intent of the legislature. In Ex. A-120 there are certain statements given by PW 69 Sunil Goyal to the IO. It is particularly recoded in the last page of this document. (This document runs in three pages). Therefore, the statement of PW 69 Sunil Goyal as contained in Ex. A-120 may not be read into evidence for any purpose whatsoever.

308. It may be noted that PW 69 Sunil Goyal has not supported the prosecution case in full. He was

cross-examined by the CBI. As stated hereinbefore, along with his communication Ex. A-120, PW 69 Sunil Goyal has also given certain documents to the IO. These documents have also been proved by PW 69 Sunil Goyal in his evidence. They are Ex. A-122 to Ex. A-128. These are basically bills and vouchers of the goods, which were supplied from his shop. They are in the name of A-1. These exhibits are dated 05.04.2004, 07.04.2004, 19.04.2004, 24.04.2004, 04.05.2004, 01.01.2005 and 15.01.2005, respectively. These documents can definitely be read into evidence. They are not hit with the provision of Section 162 of the Code.

309. PW 69 Sunil Goyal has, at various places, told that he had demanded money from Mr. Marya and Rajendra (Paragraphs 9 and 21 specifically). This witness has stated that A-4 used to come along with Mr. Marya to collect the goods. He did not remember as to how many times A-4 had visited his shop. In his statement at Para 21, PW 69 Sunil Goyal has categorically stated that he had demanded money from A-4. He had given goods to A-4 under assumption that he was taking it for A-1.

310. In all these bills and vouchers, the name of A-1 is recorded. Not only this, in fact, in Ex. A-125 and Ex. A-127, the address of Rajpur Road house has also been written. It is pertinent to record here that it is the prosecution case that at the relevant time, A-1 was constructing a house at 169/21 Rajpur Road, Dehradun. It connects A-1 with these purchase. It connects the link between A-1 and A-4. PW 69 Sunil Goyal has stated that A-4 had collected goods from his shop. The prosecution has further proved it. Some of the vouchers have the signature of A-4. Particularly, Ex. A-122 has signature of A-4. They have been marked by PW 165 P. Venugopal Rao with the letter/figure “Q 179” and “Q 180”. According to forensic report Ex. A-362, these signatures on Ex. A-122 are that of A-4. The prosecution has conclusively established that A-4 was taking building materials from the shop of PW 69 Sunil Goyal for the house, which was being constructed by A-1. The vouchers bear signature of A-4.

311. PW 69 Sunil Goyal has also proved his statement recorded under Section 164 of the Code. On behalf of A-1, it is argued that statement of a hostile

witness under Section 164 of the Code, even if proved by the author, cannot be used as a substantive evidence. In support of his contention, learned counsel for A-1 has referred to the principle of law as laid down in the case of Audumbar Digambar Jagdane v. State of Maharashtra, 1999 Cri LJ 1936.

312. In the case of Audumbar Digambar Jagdane (supra), the Hon'ble Bombay High Court discussed the evidentiary value of a statement of a witness recorded under Section 164 of the Code, who during trial did not support the prosecution case. The Hon'ble Court held as hereunder:-

> **"12.** ……. In our opinion once Narayan has not supported the prosecution, the statement given under 164, even if proved, can never be accepted as substantive evidence. In that behalf reference to the decision of the Privy Council reported in AIR 1946 PC 38 : (1946 (47) Cri LJ 336) is extremely fruitful. The Committee of the Privy Council speaking through Sir John Beaumont, J. in the aforesaid decision on page 41 (of AIR) : (atp. 338 of Cri LJ) of the report has observed as under:
>
> > ".....The learned Judges discussed in great detail the statements made by Haliman and Mahabir under S. 164 and gave reasons for accepting the fagts, or most of the facts, deposed to in those statements, in preference to the evidence given by the witnesses in Court, which in no way helped the prosecution. This was an improper use of such statements. A statement under S. 164 can be used to cross-examine the person who made it, and the result may be to show that the evidence of the witness is

> false. But that does not establish that what he stated out of Court under S. 164 is true."

313. The statement recorded under Section 164 of the Code can be used for the purposes of corroborations as well as for contradictions. In the case of R. Shaji v. State of Kerala, (2013) 14 SCC 266, the Hon'ble Supreme Court discussed the evidentiary value of statement given under Section 164 of the Code and observed as hereunder:-

> **"26.** Evidence given in a court under oath has great sanctity, which is why the same is called substantive evidence. Statements under Section 161 CrPC can be used only for the purpose of contradiction and statements under Section 164 CrPC can be used for both corroboration and contradiction. In a case where the Magistrate has to perform the duty of recording a statement under Section 164 CrPC, he is under an obligation to elicit all information which the witness wishes to disclose, as a witness who may be an illiterate, rustic villager may not be aware of the purpose for which he has been brought, and what he must disclose in his statements under Section 164 CrPC. Hence, the Magistrate should ask the witness explanatory questions and obtain all possible information in relation to the said case.
>
> **29.** During the investigation, the police officer may sometimes feel that it is expedient to record the statement of a witness under Section 164 CrPC. This usually happens when the witnesses to a crime are clearly connected to the accused, or where the accused is very influential, owing to which the witnesses may be influenced. (Vide Mamand v. Emperor [(1946) 59

LW 138 : AIR 1946 PC 45] , *BhuboniSahu* v. *R.* [(1948-49) 76 IA 147 : AIR 1949 PC 257] , *Ram Charan* v. *State of U.P.* [AIR 1968 SC 1270 : 1968 Cri LJ 1473] and *Dhanabal* v. *State of T.N.* [(1980) 2 SCC 84 : 1980 SCC (Cri) 340 : AIR 1980 SC 628])"

314. The statements of PW 69 Sunil Goyal recorded under Section 164 of the Code are Ex.A-129. PW69 did not deny his statement given under Section 164 of the Code. In court also, he has categorically stated that A-4 took material from his shop along with Mr. Marya. PW 69 Sunil Goyal has proved the vouchers Ex. A-122 to Ex. A-128. He told it during examination under Section 164 of the Code that A-1 introduced him to A-4 and Mr. Marya. The vouchers by which building material was taken by A-4 for A-1 were sent for forensic examination. PW 165 P.Venugopal Rao has proved that in the vouchers there are signatures of A-4. It is A-4, who was taking material for construction of the house of A-1 from the shop of PW 69 Sunil Goyal. A-4 has very close relations with A-1. A-4 was closely associated with aiding A-1.

315. There is another aspect of the matter. A-4 did file income tax return for the year 2003-04, but they were not traceable in the income tax department.

PW 70 Kambar Murtaza and PW 78 Shashi Prabha have categorically stated that it is A-1 who gave the income tax return of A-4 to PW 17 Kambar Murtaza and after obtaining receipt of it, A-1 took the returns back and did not submit further to the department.

316. PW 132 Santosh Deep has stated that A-4 used to visit in the income tax department. The prosecution has proved beyond reasonable doubt that A-4 was taking building materials from the shop of PW 69 Sunil Goyal for the house that was being constructed by A-1 at Rajpur Road, Dehradun. The vouchers bear the signature of A-4. The income tax return of 2003-04 of A-4 was given to PW 70 Kambar Murtaza by A-1 and after obtaining receipt, the ITR was taken back by A-1. A-1 never gave the ITR of A-4 back to the income tax department. In fact, the prosecution has also alleged that the income tax return of the father of A-4 was also taken back by A-1. It is also the prosecution case that certain properties were also purchased by A-1 in the name of father of A-4, Abhay Kumar Singh.

317. The bank draft of Rs. 9,75,877/- was prepared by PW 123 Mahesh Garg at the instance of

various Chartered Accountants and it originates from PW 102 Rajeev Mittal, an acquaintance of A-1. A-4 had been nowhere in the picture for preparing the bank draft by PW 123. A-4 has been in much close relations with A-1. He was assisting A-1 in construction of the house by A-1 at Rajpur Road, Dehradun. The ITR of A-4 was submitted and taken back by A-1. These circumstances establish close proximity between A-4 and A-1. There are other circumstances also. They need to be examined.

318. According to A-4, his father had sold some shares to Sanjay Jain and in return thereof, draft of Rs. 9.75 was given. This has been proved false by the statement of PW 86 Anil Jindal, PW 87 Akhil Mahajan and PW 123 Mahesh Garg because the draft was not prepared by sale of any shares. But, even otherwise as per PW 194 Suresh Kumar Adya, the Managing Director of Mini Soft Limited Company, on 14.05.2001, 12100 shares of his company were transferred in the name of A-4 at the cost of Rs. 10 per share. This witness has proved those certificates. According to this witness, till 29.11.2006, the shares were in the nameof A-4. It also falsifies the statement of A-4 that by sale

of shares he received some money in the year 2002 because the shares were in his name till 2006. According to PW 194, Suresh Kumar Adya, the value of shares never rose. In fact, according to this witness, in the year 2006, it came below Re. 1 per share. There is no question of getting a draft of Rs. 9.75 lakh by sale of such shares. The statement given by A-4 is false. A-4 did not have the source of income to purchase the flat.

319. A-4 was working in the education department at the relevant time. PW 124 Sri Naveen Chandra Kabadwal has stated about his salary. The court below has observed that even the entire salary of A-4 was not enough to purchase the flat. A-4 did not inform the department when he purchased the flat. He informed it much later. Why?

Possession of flat

320. The flat was never been in the possession of A-4. A search was conducted on 05.08.2005 of the flat. PW 209, S.K. Sharma and PW 252 S.S. Kishore were part of search team. They have proved the

inventory as well as the power of attorney also (Ex. A-485 and Ex. 486). At the time of search on 05.08.2005, Arunabh Suman, the younger brother of A-1 was found occupying the flat. It is A-1's possession, not A-4's possession. When A-4 was asked about the possession of the flat by Arunabh Suman, in answer to question no. 18, in examination under Section 313 of the Code, A-4 would submit that he had given the flat on rent through a broker and he did not know as to who was residing in the flat. But, Arunabh Suman was staying there when search was made on 5.8.2005. In answer to Question No. 20, A-4 has stated that he did not execute any power of attorney in favour of Arunabh Suman.

321. During the course of arguments, on behalf of A-4, it is argued that Ex. A-486 is not a power of attorney as such because it has no date or witness (es). It is argued that, in fact, in order to run day to day business of the society, A-4 had authorized Arunabh Suman and therefore the document was written. This is a false explanation. Ex. A-486 reveals that A-4 had allegedly authorized Arunabh Suman to act on his behalf in respect of everything relating to

the flat. In his examination under Section 313 of the Code, A-4 denied of having executed any power of attorney, but forensic examination report confirms that it has been signed by A-4. A-4 executed the power of attorney in favour of Arunabh Suman, the younger brother of A-1.

322. A-4 did not have any source of income to purchase the flat. The source of income, which A-4 tries to reveal is false. He did not sell any share. His father did not sell any share. The shares, which were in the name of A-4 remained in his name till 2006. They were 12100 in number of Rs. 10 each when purchased, but subsequently the value of the share reduced to Re. 1 per share. A-4 did not have enough salary for purchasing the flat. A-4 did not inform the education department about the purchase of the flat. A draft of Rs. 9,75,877/- was prepared by A-1 through many Chartered Accountants, which was finally prepared by PW 123 Mahesh Garg. A-4 had no role in preparing the bank draft but this bank draft was deposited in the account of A-4. A-4 was having very close relations with A-1. He was regular visitor of A-1. A-4 was assisting A-1 in construction of house at

Rajpur Road. A-4 was collecting material, as stated by PW 69 Sunil Goyal. These all circumstances lead to one and only conclusion that the flat was purchased by the money provided by A-1. The flat was in the name of A-4, but, in fact, it was purchased by A-1. It is Benami property of A-1. The court below has rightly drawn its conclusion on this aspect. The finding does not warrant any interference.

HOUSE AND PLOT NO. 169/21, RAJPUR ROAD, DEHRADUN

323. The land on which Rajpur Road House is situated was purchased in the name of A-2 for Rs. 3 lakh. The cost of the house has already been examined by this Court in this judgement. The court has concluded that the house was constructed at the cost of Rs. 79,75,606/-. The valuation report as given by PW 66 Rajendra Singh has been accepted by this Court. It is also the prosecution case that, in fact, the house was not constructed by A-2. A-2 is only a face, but it was constructed by A-1 from the income which he derived illegally. The court below accepted the prosecution case and held that the Rajpur Road house

is a *benami* property of A-1, which A-1 acquired in the name of A-2.

Arguments

324. On behalf of A-1, it is argued that Rajpur Road house belongs to A-2. The following points have been raised by the learned Senior Counsel for A-1 on this aspect:-

i. There is no financial link between A-1 and A-2.

ii. Dehradun Municipality records A-2 as the owner of Rajpur Road house.

iii. A-2 has shown the house in her ITR along with the valuation report.

iv. The IO was aware of the valuation report prepared by PW 153 A.S. Gupta, but he did not consider it.

v. A-2 had sent representation to the IO regarding her assets during investigation.

vi. A-2 had told it to the IO that she got the house constructed with the help

of a family friend Ranvir Singh and the cost was shown in her balance sheet, attached with the ITR.

vii. PW 4 Pramod S/o Ranvir Singh has stated that his father helped A-2 in building the Rajpur Road house.

viii. Mutation of house is in the name of A-2.

325. Learned Senior Counsel for A-1 would challenge the finding rendered by the court below, on this aspect, as below:-

i. The observation that A-1 played role in purchase of the plot and fixation of its case is not based on facts on record.

ii. It is wrong to say that A-1 purchased material for construction of the Rajpur Road house and payment of it was not made.

iii. Ex. A-120 is signed statement of PW 69 Sunil Goyal, which is not

admissible in evidence in view of Section 162 of the Code.

iv. The court below appears absolutely biased and prejudiced because it tried to implicate A-1 at the cost of settled legal principle.

v. Prosecution case can raise suspicion, but suspicion cannot be a reason for conviction.

vi. The observations that PW 99 Rakesh Sharma and PW 138 Ashok Kumar Singh have been won over by the defence is against the weight of evidence.

326. Learned Counsel for A-2 would submit that there is not a single evidence on record to prove any financial connection between A-1 and A-2. A-2 claimed ownership, control and possession of all her assets, therefore, the entire case of prosecution automatically crushes.

327. On the other hand, the learned counsel for the CBI would submit that it is A-1, who got the house constructed. A-1 has been instrumental. He purchased the property. He got his house constructed through his associates. He bought the building material. It is he, who through PW 128 S.S. Marya wanted to lease out the house. A-2 was nowhere associated. Rajpur Road house was *benami* property of A-1. The court below has rightly concluded so.

Discussion

328. There are two persons, who are also related to the transactions with regard to Rajpur Road house. They are PW 19 Ashok Kashyap, PW 128 S.S. Marya.

329. PW 19 Ashok Kashyap has been neighbour of A-1. It has been stated by PW 114 R.P. Ishwaran. According to R.P. Ishwaran, A-1 and Ashok Kashyap were very close. PW 114 R.P. Ishwaran was also their neighbour.

330. PW 54 Jitendra Singh Tadiyal has stated that he leased out one of his houses to A-2 at the

behest of Ashok Kashyap. PW 54 Jitendra Singh Tadiyal has proved the agreement. PW 19 Ashok Kashyap was instrumental to get the house available to A-1 through PW 54 Jitendra Singh Tadiyal. PW19 Ashok Kashyap is also a witness to the sale deed executed in favour of A-2 by PW 207 Vivek Kumar.

331. PW 58 Awdhesh Kumar has categorically stated thatPW 128 S.S. Marya had called him and introduced him to A-1, who wanted to purchase a property and sale deed was prepared in the presence of PW 19 Ashok Kashyap. In his examination PW 19 Ashok Kashyap has admitted that his firm had issued the property certificate to A-2 (It is part of Ex. A-118).

332. PW 6 I.K. Batta and PW 58 Awdhesh Kumar have levelled various allegations against A-1. PW 6 I.K. Batta is also a Chartered Accountant. According to him, some illegal demand was made by A-1 from him, which he declined. Thereafter, his client Ramesh Batta, who is PW 88, was called by A-1. Thereafter PW 88 Ramesh Batta changed his CA and appointed PW 19, Ashok Kashyap, CA. PW 6 I.K. Batta has categorically stated thatafter PW 88 Ramesh

Batta met A-1, he revealed it to him that A-1 wanted that PW 88 Ramesh Batta should appoint Ashok Kashyap as his CA, which he did. PW 88 Ramesh Batta did not support the prosecution case fully, but in his cross-examination, he has admitted that I.K. Batta was his CA, which he changed and appointed Ashok Kashyap Company as CA.

333. These all circumstances connect Ashok Kashyap with the purchase of land for Rajpur Road house. It connects A-1 with Ashok Kashyap and thereafter PW 58 Awdhesh Kumar and PW 207 Vivek Kumar, who finally executed the sale deed. It connects the whole chain that PW 19 Ashok Kashyap was in the close association with A-1.

334. There is another person who is PW 128 Shivdev Singh Marya. He was also instrumental in the purchase of the property. This person had called PW 58 Awdhesh Kumar and introduced him to A-1. PW 58 Awdhesh Kumar has categorically stated about it. PW 128 Shivdev Singh Marya was present when the sale deed was executed. It has been stated by the witnesses.

335. PW 69 Sunil Goyal and PW 88 Ramesh Batta have stated that material for building was taken for A-1 by PW 128 Mr. Marya. PW 50 Arun Kumar Sharma has stated that it is PW 128 Shivdev Singh Marya, who approached the ONGC that the house constructed in the name of A-2 be taken on rent by the ONGC for guest house. PW 50 Arun Kumar Sharma in quite detail has stated that A-1 had pressurized the ONGC officers and called this witness also so that the house constructed in the name of A-2 be taken on rent by the ONGC.

336. PW 128 Shivdev Singh Marya has admitted that his name plate was placed at the outer gate of Rajpur Road house. Even if PW 128 Shivdev Singh Marya had taken a portion of the Rajpur Road house on rent, how could he place his name plate on whole of the premises? There was no name plate of either A-2 or A-1. Had it been a design framed by A-1 to conceal the presence of real owner i.e. A-1? The circumstances reply it in AFFIRMATIVE. Although, in his examination, he has not supported much of the

prosecution case, but bare facts have been proved by him.

337. The above facts categorically reveal that, in fact, the whole purchase of land for construction of Rajpur Road house was done by A-1. A-2 was nowhere. She was behind the curtain. The land was procured by A-1 in the name of A-2. A-1 had been instrumental.

338. The question is as to who constructed the house? If a person constructs a house, he must possess receipts of the goods, which he had purchased. He must have records to refer as to how the payment was made either to the contractor, or to any other person associated with the construction of house. Here, in the instant case, despite knowing what the prosecution case is, neither A-2 nor any of the appellants has come forward to prove that A-2 made payments for construction of the house.

339. PW 69 Sunil Goyal runs his business as “Quality Hardware”. During investigation, various documents were taken into possession by the CBI from

this witness. It includes bills, which were prepared in the name of A-1. There are vouchers also, which were taken into custody by the CBI. The Court had already concluded that A-4 took materials from PW 69 Sunil Goyal for construction of the house by A-1.

340. PW 69 Sunil Goyal has stated that A-1 had told it to him that some of his relatives would come, and he should provide the articles to him at reasonable rate. This Court in quite detail discussed the evidence of PW 69 Sunil Goyal, while examining the nature of Flat No. B-122, Panchvati Apartment, Sector 62, Noida, which was purchased in the name of A-4. Admissibility of Ex. A-120 has also been discussed by this Court. In fact, the portion of Ex. A-120 cannot be read into evidence, which is in the nature of the statement of PW 69 Sunil Goyal. But, PW 69 Sunil Goyal has proved vouchers/bills in the name of A-1. They are Ex. A 122 to Ex. 128. PW 69 Sunil Goyal has stated that he gave materials under the assumption that it is taken by PW 128 Mr. Marya and A-4 for A-1. In his statement before the court, this witness has stated that A-4 was introduced to him by

PW 128 S.S. Marya. The Bills/vouchers are in the name of A-1.

341. The statement of PW 69 Sunil Goyal categorically confirms that the building materials for construction of Rajpur Road house were procured by A-1 through S.S. Marya and A-4.

342. PW 85 Vinay Agarwal runs sanitary business in Dehradun. The IO also had taken into custody various documents from his possession, including his bill books. Bills for sanitary items were prepared in the name of A-1. These bills have been proved by this witness. In his cross-examination by the CBI, PW 85 Vinay Kumar has categorically proved those bills of his shop, which were prepared some in the name of A-1 and some in the name of Mrs. Romi Marya. It also refers that, in fact, the goods were taken by A-1 for construction of his house.

343. PW 99 Rakesh Sharma runs an electrical goods shop in Dehradun. According to him, A-1 purchased various electrical goods from his shop and he had sent a person, namely, A.K. Singh to collect

goods from him. An electrician Anoop Singh also accompanied A.K. Singh. This witness has proved various challans by which articles were given to A.K. Singh. They are Exs. A-239 to 249. On certain points this witness has also been cross-examined by the CBI.But this witness has proved thatA-1 had purchased the electrical goods from his shop, like wires, pipes, switches, etc. Where was those articles taken by A-1? Rajpur Road house was under construction at the relevant time.

344. PW 138 is Ashok Kumar Singh. He has not supported the prosecution case, but admitted that A-1 had constructed a house in Rajpur Road, Dehradun. He has been shown the challans/bills proved by PW 99 Rakesh Sharma. He denied his signatures.

345. It is important to note that PW 138 Ashok Kumar Singh has admitted that A-4 is his relative. This Court has already held thatA-4 was most instrumental in procuring the building material for construction at Rajpur Road house. To certain extent, PW 138 Ashok Kumar also supports the prosecution case.

346. PW 103 Pravin Gupta is a person, who runs furniture business in Dehradun. Initially, he did not support the prosecution case. During investigation, certain drawings and record of this witness were taken into custody by the IO. It records the name of A-1 with the drawings of the proposed furniture. It supports the prosecution case. A-1 definitely approached this witness for manufacturing the furnitures.

347. There are allegations against A-1 that he did not pay for the material, which he procured for construction of the Rajpur Road house. This aspect will be discussed at a later stage of this judgment, while appreciating the evidence for the offence under Section 11 of the Act.

348. The court below has, in para 829 of the impugned judgment, observed that PW 138 Ashok Kumar Singh had been won over by the accused. It may be noted that PW 99 Rakesh Sharma has proved certain documents and stated that the electric goods were taken by A.K. Singh. But, PW 138 Ashok Kumar

Singh did not corroborate the statement of PW 99 Rakesh Sharma. He also denied his signature on the vouchers proved by PW 99 Rakesh Sharma. Under these circumstances, the statement of PW 99 Rakesh Sharma transpires confidence and is reliable to the extent that A-1 had taken electric goods from his shop. The prosecution could have got the signature of PW 138 Ashok Kumar Singh on Ex. A-239 to A-249, examined by any forensic expert, but it has not been done. PW 138 Ashok Kumar Singh has not corroborated the statement of PW 99 Rakesh Sharma. It may be for varied reasons.

349. If A-2 had constructed the house, she could have come forward to reveal as to how did she procure the articles for construction of house. She has not done it. In fact, it is A-1, who was instrumental in the construction of the Rajpur Road house. The finding recorded by the court below on this point is based on evidence on record.

350. It is argued on behalf of A-1 and A-2 thatfather of PW 104 Pramod Kumar had helped A-2 to construct the house. PW 104 Pramod Kumar has

stated that his father was an acquaintance to the husband of A-2, therefore, he helped her in construction of Rajpur Road house. PW 104 Pramod Kumar has admitted that his father was 72 years of age in the year 2003-04. In his cross-examination, PW 104 Pramod Kumar revealed that his father got the house constructed at a very low cost. He got steel from Jamshedpur and Marble from Rajasthan. How was the money paid to the father of PW 104 Pramod Kumar by A-2? There is no record to it. Merely some person comes and says that his father had helped A-2 to construct the house, cannot be believed. It was a multi storeyed house, not of one or two rooms. It must have taken a lot of time, labour and resources to construct the house. There is no basis for PW 104 Pramod Kumar to say that his father had brought articles from Jamshedpur and Rajasthan. He was an old aged person then also. Had it been so done, there would have been some documents also. But, the documents are missing. The defence, which the A-1 and A-2 tried to put forward is really a false story, which is totally unreliable. Everything has been concealed by A-2 and A-1. They have not come up with the case as to how the house was constructed. On the other hand, the

prosecution has beyond reasonable doubt proved that the Rajpur Road house was constructed by A-1.

351. This Court has already concluded that A-1 was fully instrumental in purchase of the property. The building materials were procured at the instance of A-1 by various persons for construction of the house. A-2 was nowhere connected to it. In fact, A-1 was also trying to manufacture furniture through PW 103 Pravin Gupta, from whose possession the drawings of the Rajpur Road house were recovered during investigation.

352. The most important thing is that A-2 has not come forward to say as to how the payment has been made by her and to whom did she make the payment?

353. These circumstances lead only one conclusion that A-2 did not construct the house. A-2 was staying with A-1. As held by this Court, A-2 did not have the income as alleged by her from HUF. A-1 was senior officer in taxation department in Dehradun. There is no direct financial link, but there are multiple

circumstances, as stated hereinabove, which connect A-2 with A-1. They do not connect A-2 with any other person in the universe, in so far as the construction of Rajpur Road house is concerned. Therefore, this Court is of the view thatRajpur Road house was constructed by A-1 from his income, which was not known and in order to conceal his design, it was purchased by A-1 in the name of A-2. The court below has rightly drawn its conclusion on this point. The finding does not warrant any interference.

HOTEL URUVELA INTERNATIONAL, BODHGAYA

354. According to the prosecution, this hotel is situated in district Gaya. The land was purchased in the name of A-3. He happens to be the brother-in-law of A-1. It is the prosecution case that Hotel was constructed on this land by A-1 and it was done in the name of A-3.

355. According to the chargesheet, the valuation of the hotel is Rs. 1,72,50,308/-. There are two valuations reports of the hotel, one procured by the CBI and another by the appellants. The court below

did accept the valuation done by the CBI and valued the hotel at Rs. 1,72,50,308/-.

356. The court below extensively discussed the evidence and held thatA-3 did not have source of income to construct the hotel. It was done by A-1. Various aspects have been considered to arrive at this conclusion and finally the court below did conclude that A-1 by abusing his position as a public servant constructed the hotel in the name of A-3. It is *benami* property of A-1. A-3 aided A-1 in his design to invest in the construction of the hotel.

Arguments

357. On behalf of A-3, learned Senior Counsel would submit that A-3 is owner in possession of the hotel. A-1 has nothing to do with the hotel. The court below has drawn the conclusion on wrong appreciation of the fact and based on conjuncture and surmises. Learned senior counsel has raised the following points in his submissions;

i. The income tax return submitted by A-3 was not taken into

consideration by the Investigating Officer.

ii. Jeewach Mahto had given a certificate to the effect that A-3 had submitted ITR. The IO got signature of Jeewach Mahto also identified but did not produce Jeewach Mahto as a witness. Therefore, an adverse inference has to be drawn that had Jeewach Mahto been examined, it would have been adverse to the prosecution case.

iii. PW95 Sanjay Kumar has submitted valuation report of the hotel, which is contemporary because it was prepared at each stage of the construction. Therefore, it is reliable. The court below wrongly discarded the report submitted by PW95 Sanjay Kumar.

iv. PW95 Sanjay Kumar was a fellow member from the Indian Institute of Valuer. He has been authorized to value a building.

v. The court below wrongly drawn the inference that as to how A-1 could deliver the valuation report of the hotel to the IO. In fact, pursuant to an order of the Delhi High Court, the report was submitted to the IO by A-1.

vi. A-3 had got valuation of his property for the purpose of submitting income tax.

vii. The valuation report submitted by CBI is faulty. It is not expert opinion. It is not contemporary report. CBI valuer has taken the CPWD standard parameters, which are different from the parameters adopted by PWD. CPWD standards are applicable in Delhi, but, in the city like Gaya, such parameters cannot be made applicable.

viii. PW255 Rajesh Tomar is not an expert. It was his first valuation report. He even did not know the thickness of the wall or depth of the

foundation. He did not submit rough notes of the measurements.

ix. Opinion of an expert can be relied on if it has its basis. The CBI valuer has not submitted the rough notes. The valuation done by PW94 R.N.P.J. Paul as well as PW170 Dinesh Kumar Nigam have also been challenged on the same grounds.

x. PW 234 Sitaram Sahu, PW 242 Mehfooz Alam, PW 245 Gopal Prasad and many other witnesses have not supported the prosecution case. They have stated that the hotel was constructed by A-3. The hotel is mutated in the name of A-3. Electricity and water connections are in the name of A-3. Since, A-3 was ill with cardiac problem, PW 190 Sushil Kumar and PW 105 Umakant Singh helped him and opened the account for the hotel, but, it was operated by A-3.

xi. The CBI valuer has not submitted documents to reveal the cost, which they assessed. The cash memo and other details have not been filed. The court below wrongly shifted the onus on defence to prove the cost. It is wrong appreciation of the fact.

xii. PW 190 Sushil Kumar Singh has accounts with A-3 since 1999. The court below has wrongly drawn the conclusion that PW 105 Umakant Singh is close associate of A-1. The finding is baseless. The court below has also wrongly concluded that A-1 controlled the hotel through his confidential persons. A-3 operated the hotel throughout.

xiii. Mere suspicion, howsoever grave, may not substitute proof.

xiv. A-3 was not required to inform the university about the construction of the hotel.

xv. The court below wrongly took inference that A-1 constructed the

hotel on the ground that a registration certificate of the car or of a gypsy were found during search from the hotel. It is argued that merely if some documents are found from some place, the owner of the documents does not become owner of the place. It is argued that it is nothing but conjecture and surmises.

358. In support of his submission, learned Senior Counsel referred to the principle of law as laid down in the cases of Ramesh Chandra Agrawal v. Regency Hospital Limited and another, (2009) 9 SCC 709; State of H.P. v. Jai Lal and others, (1999) 7 SCC 280 and Mahmad Hanif Shaikh Ibrahim v. State of Gujarat, (1994) SCC OnLine Gujarat 293.

359. In the case of Ramesh Chandra Agrawal (*supra),* the Hon'ble Supreme Court discussed the evidentiary value of an expert report as hereunder:-

> **"20.** An expert is not a witness of fact and his evidence is really of an advisory

character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions. (See *Malay Kumar Ganguly* v. *Dr. Sukumar Mukherjee* [(2009) 9 SCC 221 : (2009) 10 Scale 675] , SCC p. 249, para 34.)

22. In the article "Relevancy of Expert's Opinion" it has been opined that the value of expert opinion rests on the facts on which it is based and his competency for forming a reliable opinion. The evidentiary value of the opinion of an expert depends on the facts upon which it is based and also the validity of the process by which the conclusion is reached. Thus the idea that is proposed in its crux means that the importance of an opinion is decided on the basis of the credibility of the expert and the relevant facts supporting the opinion so that its accuracy can be crosschecked. Therefore, the emphasis has been on the data on the basis of which opinion is formed. The same is clear from the following inference:

> "Mere assertion without mentioning the data or basis is not evidence, even if it comes from an expert. Where the experts give no real data in support of their opinion, the evidence even though admissible, may be excluded from consideration as affording no assistance in arriving at the correct value."

360. In the case of Jai Lal (*supra),* the Hon'ble Supreme Court observed as hereunder:-

> "18. An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions."

361. In the case of Mahmad Hanif (*supra)*, the Hon'ble Gujarat High Court observed as to how to accept public analyst's report as expert opinion, as hereunder:-

> "**7.** All these as far as possible should be meticulously reflected in the Analyst's report itself for the simple reason that these material particulars are very much necessary in order to compare and establish the identity of the muddamal sample with the one seized and sealed from the accused under Panchnama, and thereafter forwarded by the Investigating Agency to the Public Analyst and ultimately despatched back to be produced before the Court as the very same only and none other. Secondly, while analysing muddamal sample, he must specifically mention the scientific tests conducted and the results derived therefrom. If by chance in hurry or haste or through oversight, the scientific tests are not mentioned in the report, that is fatal to the prosecution as

any *ipse-dixit* way of reporting cannot be accepted in criminal trial as it has no probative evidentiary value in the eye of Law. Thirdly, even after carefully discharging the aforesaid two duties, the Public Analyst has further still to discharge one more duty, viz, to send the report of his analysis to the Investigating Agency under its official seal.
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Before the evidence of Public Analyst can be safely accepted and relied upon to base the order of conviction and sentence, the Court must have an opportunity of its own to independently asses and appreciate the same on the basis of scientific tests, etc. Instead, if the Court is to surrender to any bare opinion of the Public Analyst, that can amount to abdication of its judicial function, relegating itself to mechanically record the order of conviction and sentence without doing anything else. The view that we are taking is duly supported by the observations made by Mr. Justice P.N. Bhagwati, as he men was, in case of *Suleman Usman Memon* v. *State of Gujarat*, reported in 1961 GLR 402, wherein at page No. 410, it has been observed as under:

> "It is not enough for the Chemical Examiner merely to state his opinion as to what was the concentration of alcohol in the sample of the blood analysed by him. The report of the Chemical Examiner must show the tests or experiments performed by him, the factual data revealed by such tests or experiments and the reasons leading to the formation of the opinion from such factual data. This legal proposition emerges clearly and unmistakably if one bears in mind the true nature of the evidence furnished by the report.....
> .....
> The report of the Chemical Examiner containing his opinion must, therefore, disclose the factual data on which the opinion is based and the reasons in support of the

> opinion. Opinion is no evidence unless the reasons in support of the opinion are given, for it is then only that the Court can scrutinize the reasons and decide for itself as to what weight should be attached to opinion."

362. On behalf of A-1, learned Senior Counsel assailed the finding of the court below as follows:-

i. The joint account from which the cost of the land was paid does not have any connection with A-1.

ii. The observation that PW 105 Umakant Singh and PW 190 Sushil Kumar were close to A-1 is not based on facts on record.

iii. The observation that A-3 did not figure in any bank account of the Hotel is absolutely wrong. An Account No. 0119009541 was in the name of A-3 and Sushil Kumar Singh, it was operated between 13.02.1999 and 23.07.2005.

iv. The prosecution did not investigate the ITR, HUF of A-3. Even if no PAN is written on HUF ITR of A-3, the

court forgot to see that either it's Code (03) or the word HUF is written on the ITR. And in this column of PAN, it is written that it is applied for.

v. It is wrong to observe that PW 95 Sanjay Kumar was not authorized for valuation.

vi. The court below has wrongly drawn inference from the fact that A-1 had given the valuation report to CBI because pursuant to the order passed by the Delhi High Court, A-1 had collected the valuation report from A-3 and gave it to the CBI.

363. Reference has been made to the certificate given by Jeewach Mahto to argue that, in fact, A-3 had given computation of income as HUF and proof of the income, balance sheet and valuation report of the hotel.

364. Learned Special Counsel for the CBI would submit that A-3 did not have resources to construct a Hotel with 34 rooms. A-3 failed to prove his any source of income other than salary. The Hotel was not operated by A-3. It was operated by A-1 through his close associates PW 105 Umakant Singh and PW 190 Sushil Kumar Singh. The circumstances prove beyond reasonable doubt that the Hotel was constructed by A-1.

Discussion

365. There are two persons involved with regard to the affairs of the hotel. They would require a brief introduction. They are as hereunder-

PW105 Umakant Singh

366. This person is a resident of the village of A-1. The account of the hotel was opened in his name. He has been shown proprietor of the hotel in the bank account. His father Ajay Kumar Singh runs an Arvind society in village Bara. It is the case of the prosecution that A-1 by abusing his official positions, got huge amount deposited in the account of Arvind Society

through chartered accountants. It is also the prosecution case that in a joint account number 15252 of A-2 and the wife of A-3 (She is Suniti Suman, the daughter of A-2), huge amount was deposited in cash by Ajay Kumar Singh. This amount is more than Rs. 67 Lakhs. According to the CBI, Ajay Kumar Singh deposited cash in the account of A-2 and Suniti Suman, the wife of A-3 after having received it from A-1. According to the prosecution, it was money earned by A-1 by the illegal means.

PW190 Sushil Kumar Singh

367. This person is a childhood acquaintance of A-1. His father was also working in the Magadh University where father of A-1 was also working at the relevant time. They were residing in the same campus. The hotel has been registered in the name of this person. He has been shown as the proprietor/MD of the hotel. In the hotel, there is a Sneh Pointrestaurant. It has also been registered in the name of this person. It is the case of the prosecution that A-1 was operating his business through PW105 Umakant Singh and PW190 Sushil Kumar. They both were,

according to the prosecution, the confidential men of A-1.

Establishment of the hotel

368. The land on which the hotel has been constructed was purchased in the name of A-3 from PW160 Jai Singh. He has stated about it. Three cheques were given for consideration money of Rs. 2,10,000/-. These cheques checks were drawn from the joint account of A-2 and A-3. The account number was 6766, Bank of Baroda, Gaya Branch.

369. PW225 Vijay Kumar Sinha has stated about the sale deed. PW216 Shashi Shekhar Chaudhary has proved that the land was mutated in the name of A-3. The hotel was constructed on it.

370. PW 239 Akhileshwar Prasad has stated about electricity connection of the hotel. PW199 Sanjay Kumar has also stated about electricity connection of the hotel, which was given in the name of A-3. This witness has also proved the documents relating to it.

371. PW 189 Narendra Kumar was working in the Regional Development Authority at the relevant time. He has stated thatthe map of the hotel was not approved by the authority. During investigation, it appears that the CBI got certain photographs of the hotel taken. PW 219 Dalip Ghosh has stated about the photographs and the negatives.

372. It is proved that the land on which the hotel is constructed was purchased in the name of A-3. Electricity connection, water connection, etc. were taken in the name of A-3. This is one part of the story.

373. PW105 Umakant Singh opened bank account in the name of hotel. He proved the application form Ex. A-161 and other documents. In fact, there were two accounts. According to him, he was in search of a job and A-3 engaged him in the hotel at a salary of Rs. 3,500/- per month. In paragraph 4 of his statement, in the last line, PW105 Umakant Singh has categorically stated that in the application for opening the account, he has been shown as the proprietor of the hotel. In paragraph 6, this witness has stated that he wanted to write **'for**

Proprietor' but inadvertently it was written as '**proprietor**'. He has stated that A-3 had accompanied him to open the account. This witness has also admitted that his father Ajay Kumar Singh was Secretary of the Arvind Society. He proved signatures of his father on various vouchers. Ex. A-261, by which money was deposited in the account No. 15252 of A-2 and Suniti Suman, the wife of A-3. In these vouchers, the signatures of Ajay Kumar Singh have been marked with the letter "C". This witness has identified signature of Ajay Kumar Singh.

374. According to the PW105 Umakant Singh, since A-3 was a heart patient, he opened account for the hotel. PW77 Satyendra Nath Upadhyay has also stated that the account of the hotel was opened by PW 105 Umakant Singh. This witness had identified PW 105 Umakant Singh at the time of opening of the account. This witness was Assistant Manager of the Bank at the relevant time.

375. PW229 Nand Kishore Sharma has also stated about the bank account of the hotel opened in the name of Umakant Singh.

376. PW190 Sushil Kumar Singh has also admitted that he opened an account of Sneh Point Restaurant of the hotel in his own name showing himself as the proprietor. According to him, since A-3 was unwell, he was asked to open the account.

377. PW186 Amarnath Prasad was working in the office of the Labour Department at the relevant time. According to him, the hotel was registered in the name of PW190 Sushil Kumar.

378. PW191 VaidyaNath Prasad deposed that A-3 did not inform the university about construction of the hotel.

379. PW184 Mohammad Akram Alam is the witness of the search of the hotel. He has stated about it and proved certain documents.

380. There are two more important witnesses, they are PW93 Anand Kumar Singh and PW115 Shadan Ayubi. Both are Income Tax Officers. They have stated that the income tax return of A-3 was not traceable in their department. PW93 Anand Kumar Singh has stated that the record would confirm

processing of ITR of A-3 for the year 2000-2001 and 2003-2004.

381. The proposition of law need not be reiterated. Source of income of ostensible owner also required to be seen. Merely because ostensible owner has no source of income, it may not connect the property acquired by such ostensible owner with any other person unconnected with the ostensible owner. There are various other factors, which have to be kept in mind while appreciating evidence in such matters.

382. Arguments have been raised with regard to the wrong appreciation of evidence. This has been raised with regard to the observation of the court below when the court held that if the cost as assessed by CBI was not correct, the accused could have produced the actual proof of the Purchase. This cannot be termed as wrong appreciation of the fact. If an accused has acquired a property and constructed some building, the prosecution may only get its valuation done through some expert. As stated, the assessment of the expert in all cases may not be 100 percent correct. It is based on reasons and on guidelines, but, in fact, the accused who raised the

construction is the best person to tell the actual cost of it. So if an accused claims that a particular item is overvalued by the CBI, such accused is always at liberty to file documents and proof to show that what is the actual cost of such item and if court make such observation, it is not wrong appreciation of fact. After all, the fact within the special knowledge of a person may be proved by such person as required under section 106 of the Evidence Act.

383. It is true that merely because some of the documents of A-1 or A-2 were recovered from the hotel, they may not be connected with the ownership of the hotel. The question is if only documents are recovered then this assumption may arise. But if there are other circumstances which otherwise connect A-1 with the hotel, in such situation, if any important document of A-1 is also found during the search of the hotel, it adds another link to connect A-1 with the hotel. The court first proceeds to assess the valuation of the hotel. There are report versus report, there are oral evidence versus oral evidence on this point.

Valuation of the Hotel

384. On behalf of CBI, PW94 R.N.P.J. Paul, PW 170 Dinesh Kumar Nigam and PW255 Rajesh Tomar

have proved their valuation reports, which relate to electric valuation, horticulture valuation and civil plus furniture assessment respectively. On behalf of A-3, PW95 Sanjay Kumar's report has been relied on.

385. PW95 Sanjay Kumar has stated that he prepared various valuation reports of the hotel. He proved them as Ex. A-231. The oldest report is dated 24.6.1999. The details of reports are as hereunder:

i. Report dated 22.06.2003. It is for the period till 31.03.2003; date of inspection is 16.06.2003. According to this report, inspection of property was done on 16.06.2003. If it is so, how could this valuation report be for the period ending on 31.03.2003. Does it mean that after 31.03.2003 till the date of inspection i.e. 16.06.2003, no construction was raised?

ii. Abstract of estimate dated 20.06.2003.

iii. Report dated 02.07.2002. – It is also upto 31.03.2002. According to this report, date of inspection is 25.06.2002. Again the same question, as to how on 25.06.2002, it could be recorded that

this report is for the period ending on 31.03.2002? Had no work been carried out from 31.03.2002 to 25.06.2002 when the inspection was carried out? If so, who told it to PW 95 Sanjay Kumar?

iv. Report dated 28.06.2001. It is for the period ending on 31.03.2001. The date of inspection is 25.06.2001. The same question arises that if inspection was done on 25.06.2001, how could this report be for a period ending on 31.03.2001? Does it mean that from 31.03.2001 to 25.06.2001, no construction was done in the premises?

v. Abstract of estimate dated 25.06.2001.

vii. Report dated 26.06.2000 of the ground floor for the period ending on 31.03.2000. The date of inspection is 15.06.2000. The question again arises as to how on 15.06.2000 after inspection, the valuer could report that this report is for a period ending on 31.03.2000? Does it mean that from 31.03.2000 to

15.06.2000, no construction was carried out in the premises?

viii. Report dated 05.06.2000 of the first floor for the period ending on 31.03.2000. The date of inspection is 25.05.2000. How on an inspection done on 25.05.2000, valuation report could be given upto 31.03.2000?

ix. Abstract of estimate dated 22.05.2000.

x. Report dated 24.06.1999 for the period ending on 31.03.1999. The date of inspection is 18.06.1999. How based on inspection carried on 18.06.1999, the valuer could say that this report pertains to period ending 31.03.1999?

386. The above reports leave many questions unanswered, as stated hereinbefore. These reports will be discussed further.

387. PW95 Sanjay Kumar is an engineer. He was not registered at the particular time in the year 1999, when he gave the report. He was approved by the Income Tax Department in the year 2006-07. He

has proved his report Ex.A-231 and a communication given by him to the CBI which is Ex.A-232. The letter Ex.A-232 reveals that PW95 Sanjay Kumar holds the license of surveyor/assessors since 1995. He is a professional valuer since 1995. The Court proceeds to examine this report. It is argued that the valuation reports were filed by A-3 alongwith the income tax ITR when they were prepared. Ex.A-231 ismultiple reports. As stated, the oldest report is dated 24.06.1999.

388. The court below has made a reference to this report Ex.A-231 in the context as to how A-1 got in possession of this report and how and under what circumstances, did he hand over it to the IO. On this aspect, it is argued on behalf of A-1 that pursuant to an order passed by the Hon'ble Delhi High Court, A-1 collected this report from A-3 and handed over it to the IO.

389. Learned Senior Counsel has made reference to a communication dated 25.04.2008 of A-1, made to CBI which is D54/1 on record. In paragraph 4, it records thatA-1 collected this report from A-3. On 05.08.2005 search were made at various

places including the house of A-1 and A-3. These reports were not found then. The record definitely reveals that pursuant to directions of High Court Delhi, A-1 handed over this valuation report Ex.A-231, prepared by PW95 Sanjay Kumar, to the IO. But, where was this report kept till it was taken by A-1 from A-3?PW95 Sanjay Kumar has stated that he had no computer, therefore, he had no record of the reports prepared by him.

390. There is no communication made by A-3 to PW95 Sanjay Kumar with regard to the preparation of the reports. How and under what circumstances, at regular intervals, PW95 Sanjay Kumar did prepare such reports? What was the fee he charged and how did he was paid the fees?

391. This report is really much in doubt. It does not inspire any confidence. This valuation report does not meet the requirement of an expert report. It has rightly been not relied on by the learned court below. The author of it has no record of it. It was not found during searches made. There is no communication on record, which may indicate that PW95 Sanjay Kumar

prepared it at the instance of A-3. There is no document with regard to fee, etc. charged by PW95 Sanjay Kumar Jain for preparing such reports. There are no rough notes with this. These are neatly typed documents. How these measurements were recorded? When were they recorded at the spot? How they were recorded at the spot? Therefore, this Court is of the view that the report prepared by PW95 Sanjay Kumar is much in doubt. In fact, its origin itself is doubtful. The court below rightly discarded this report.

392. PW 255 Rajesh Tomar has valued the hotel on the request of CBI. This witness has proved as communication Ex.A-397, Ex. A-398 and valuation report Ex. A-594. The civil construction valuation report Ex. A-594 is in 60 pages. According to PW255 Rajesh Tomar, the total valuation of the hotel is Rs.1,46,14,106/-. This witness proved this report and stated that it is in his hand-writing.

393. According to PW 255 Rajesh Tomar, they did valuation by separately analysing (i) abstract of cost, (ii) analysis of rates and (iii) plinth area calculation. This witness has indicated these

documents in Ex. A-594 (stated at para 6). He has also stated that the report also contains measurement details (Paper No. 241A/22 to 241A/59; which are part of Ex. A-594). These measurement details are notes prepared at the time when measurements were taken. It has rough sketches and notes, a well.

394. PW 255 Rajesh Tomar has also proved the furniture estimation report Ex. A-400. According to it, the furniture which was found in the hotel was of the value Rs. 5,75,200/-.

395. PW94 R.N.P.J. Paul has done electric work valuation of the hotel and valued it at Rs. 18,38,155/-. He proved his report Ex. A-228 and Ex. A-229. PW170 Dinesh Kumar Nigam has done valuation for horticulture articles. He proved his report Ex. A-394. According to him, the valuation of the horticulture articles was Rs. 12,847/-.

396. The valuation reports relied by the CBI have been challenged on multiple counts as stated hereinbefore. Ex. A-594 is the civil work valuation report proved by PW255 Rajesh Tomar. This witness has been cross-examined at a length. He has

categorically stated that though they assessed the value as per CPWD rates but area-wise cost index is applied by them.

397. It is argued that the report did not have rough notes with it but it is not true. There are large number of notes with this report. There are measurements, which were apparently were done at the spot. There are calculations. As stated, this report runs in about 60 pages. Report Ex. A-594 is a report with its basis. The opinion is not simpliciter. It is based on measurement (notes are part of the report). It has basis of analysis, like analysis of rates and plinth area calculation. It is thereafter the abstract of cost has been done.

398. It is true that PW255 Rajesh Tomar could not tell about the width of the wall as well and the depth of the foundation. But, it does notvitiate the report. This report Ex. A-594 and horticultural and agricultural report as well Ex. A-400 the report with regard to furniture has rightly been relied on by the court below. In view of it, this Court is of the view that the electric valuation at Rs.18,38,155/-, horticultural

valuation Rs.12,847/-, civil valuation at Rs.1,46,14,106/- and the furniture valuation at Rs. 5,75,200/- has to be accepted. Therefore, the total valuation of the hotel is Rs.1,72,50,306/- (It also included cost of land i.e. Rs. 2,10,000/-). The court below has rightly accepted this valuation.

Source of income of A-3

399. Repeatedly, it is being argued that A-3 had submitted his income tax return showing his property from HUF and agriculture. Reference has been made to Ex.A-570 a certificate given by Jeewach Mahto, according to which A-3 had submitted income tax return for the year 2000-01, alongwith the following documents; computation of income, proof of agricultural income, balance sheet, valuation report of monastery.

400. PW 250 Surendra Kumar Rohilla, the IO, has proved the report Ex. A-570. It is a certificate given by Jeewach Mahto, Deputy Commissioner of Income Tax, Gaya. According to this document, A-3 had deposited his ITR for the year 2000-01 along with (i) computation of income; (ii) proof of agricultural

income; (iii) balance sheet; and (iv) valuation report of monastery. It is dated 22.02.2005.

401. PW 250 Surendra Kumar Rohilla has stated that Ex. A-570 was given to him by A-1. He proved Ex. A-569, the seizure memo.

402. Much argument has been laid on Ex. A-570 by A-1 and A-2. On behalf of the appellants, it is argued that the IO got signature of Jeewach Mahto examined by forensic expert. The forensic expert confirmed signature of Jeewach Mahto on Ex. A-570, but despite that Jeewach Mahto has not been examined by the prosecution. Therefore, it is argued that an adverse inference has to be drawn that had Jeewach Mahto been examined, it would have been adverse to the interest of the prosecution.

403. It is true that in para 216 of his statement, PW 250 Surendra Kumar Rohilla has stated that he got signatures of Jeewach Mahto examined by the expert, but, according to PW 250 Surendra Kumar Rohilla, Jeewach Mahto had told it to him that he did not remember as to whether he had given Ex. A-570 or

not. The prosecution would definitely have examined Jeewach Mahto to ascertain the truthfulness of Ex. A-570. But, the prosecution did not examine him. The question is as to whether an adverse inference may be drawn on this ground?

404. PW 212 Anil Kumar has stated that a search was conducted in the house of A-3 on 05.08.2005. He proved the search memo Ex. A-491. According to him, an income tax file was also recovered during the course of search, which this witness has proved as Ex. A-497. In search memo Ex. A-491, at Sr. No. 5, income tax return file is recorded. It is argued on behalf of A-3 that ITR HUF of A-3 has not been considered by the IO. It has also been argued that the valuation report Ex. A-231 was got prepared by A-3 for the purposes of income tax return.

405. As discussed, the valuation report Ex. A-231 is not reliable. First of its report was prepared on 24.06.1999. Ex, A-497 contains 81 papers. PW 212 Anil Kumar has stated about all these papers (43A/1 to 43A/81). It is jointly marked as Ex. A-497. The details of ITRs of A-3 are as hereunder:-

“ITR of A-3

As HUF				As Individual		
Sr. No.	Assessment Year	Income	Documents	Assessment Year	Income	Document
1. (43A/1)	2000-01	48,500- House Property (Monastery) 75,000-Agriculture	- Calculation of total income -proof of agricultural land -balance sheet -valuation receipt of monastery	2000-01 (43A/63)	1,30,478 –salary + 1,500 – Examination remuneration	i. Form 16 ii. LIC receipt iii. ULIP receipt
				2000-01 (43A/71)	1.17,660 – Salary	i. LIC receipt ii. ULIP receipt iii. Form 16
				2000-01 (43A/69)	1,37,660 –salary	i. LIC receipt ii. ULIP receipt iii. Form 16
2. (43A/2)	2001-02	51,750 – House Property (Monastery) 80,000-Agriculture	--	--	--	--
3. (43A/3)	2003-04	70,000- House Property Monastery Nil- Agriculture	Calculation sheet of tax + IT Challan	2003-04 (43A/45)	1,36,000 – salary	i. Form 16 ii. receipt of rebate under Section 80G iii. LIC receipt iv. infrastructure photocopy
4. (43A/6)	2002-03	52,000- House Property (monastery) 85,000-Agriculture	Computation of total income; proof of agricultural land	2002-03 (43A/51)	1,31,093 – salary 1,000- examination remuneration	i. Form 16 ii. LIC receipt iii. ULIP receipt
5. (43A/ 15)	2004-05	52,500- House Property Nil –Agriculture	Statement of computation of tax; balance sheet	2004-05 (43A/35)	2,65,069-salary and 23,253 – Jeevan Siralsja	i. Form 16 ii. Receipt of Jeevan Suraksha iii. LIC receipt
6.				1999-2000 (43A/66)	1,12,999 – salary	i. Form 16 ii. LIC receipt iii. ULIP receipt

406. According to the certificate, Ex. A-570, in his ITR for the year 2000-01, certain documents were enclosed by A-3. Heavy stress has been laid that the balance sheet was submitted by A-3 with his HUF ITR, but it was not considered.

407. The ITRs submitted by A-3 are in Ex. A-497. The first document is ITR for the year 2000-01. It is paper no. 43 A/1. In this ITR, "computation of total income" and "proof of agricultural income" has been written with one ink and "balance sheet" and "valuation receipt from monastery in ground floor" is written with another ink. Document No. 4 is not as such valuation report written in this ITR. Instead, it is recorded as valuation receipt of monastery of ground floor. What is this valuation receipt?

408. ITR for the assessment year 2003-04 is another document in Ex. A-497 (paper no. 43A/3), but in this ITR neither balance sheet nor valuation report of monastery is enclosed.

409. It may be noted that with Ex. A-231, there is a valuation report of dated 22.06.2003 (which

speaks that it is till 31.03.2003), which fall for the assessment year 2003-04. If A-3 had obtained valuation report dated 22.06.2003, why he did not enclose the valuation report with his ITR for the assessment year 2003-04?

410. For the assessment year 2002-03, the ITR is in Ex. A-497 (Paper No. 43A/6). In it also, there is no balance sheet or valuation report of monastery attached. If for the previous financial year, on 02.07.2002 (upto 31.03.2002), a valuation report was allegedly procured from PW 95 Sanjay Kumar, which was for the period ending on 31.03.2002 why this valuation report was not filed in the ITR for the Assessment Year 2002-03?

411. Similarly, if A-3 had obtained valuation report dated 28.06.2001 (part of Ex. A-231) for the period ending on 31.03.2001, why it was not filed in his ITR for the Assessment Year 2001-02?

412. Ex. A-570 does not support the defence case in any manner. In view of what is discussed hereinbefore, non-examination of Jeewach Mahto has

no effect on the prosecution case. Why and how A-1 got Ex. A-570? Why Jeewach Mahto gave such certificate? Who asked it? Income tax return filed with the status "03" by A-3 (Ex. A-497 – paper no. 43 A/1) records that four documents are attached with it, including balance sheet and valuation report of monastery. But, as stated, in the subsequent yearsITRs neither balance sheet nor any valuation report of monastery was attached. Why it was done for one year only? This ITR has been filed in HUF capacity by A-3. How was HUF constituted? Who were the members of HUF? Who were the family members of A-3, those formed HUF? What is the agricultural income of A-3? There is no evidence except ITR entries. It definitely appears that A-3 under some design submitted his ITR under HUF category since 2000 onwards only. Had he filed any ITR prior to it, he would have proved it. These ITRs, in fact, do not show or establish any agricultural income of A-3, either in his individual capacity or as HUF.

413. In the case of J. Jayalalitha (*supra*), the Hon'ble Supreme Court has categorically held that

merely recording of income in the ITR does not prove income of a person in the proceedings under the Act.

414. A-3 could have shown his income in this trial. He could come up with the case as to what was his income from agriculture? How did he get that income? How money was deposited in his account? In which account, money was deposited? It is not done. A-3 cannot take shelter of ITRs to show that he had income.

415. It is argued on behalf of the appellants that A-3 had an account with PW 190 Sushil Kumar Singh, which was operated between 13.02.1999 to 27.02.2005. Therefore, it is argued that PW 190 Sushil Kumar Singh was known to A-3, hence, he worked with A-3. This argument has less merit for acceptance. Even if PW 190 Sushil Kumar Singh had an account with A-3 since the year 1999, it makes no difference. In the instant case, the connection between PW 190 Sushil Kumar Singh and A-1 is well established. The design is explicit. The presence of A-1 has been concealed with regard to the Hotel. Even A-3 concealed

his presence in official record e.g. registration, bank accounts of the hotel, etc.

416. In his examination under section 313 of the Code, A-3 has stated that he had income to construct the hotel. A-3 and his wife both were working in the university. The net salary of A-3 was Rs. 21,03,355/-. The net salary of his wife was Rs.13,29,509/-. They have spent Rs. 10,95,495/- on LIC policies, etc. The investment in the policies was done by A-3 and his wife for more than 30 % of their earnings. They were left with about Rs. 23 Lakhs. Their expenses, their children expenses, were to be incurred by them.

417. A-3 has also stated in his statement under section 313 of the Code that he had taken loan for the purpose of hotel but no documents have been filed or proved. He had also stated that his father-in-law has given him Rs. 12 Lakhs long back, but, there is no record of it. So, these income cannot be included in the income of A-3.

418. After making payment for LIC policies and other policies, as stated, A-3 had merely about Rs. 23 Lakhs with them. They had to run their day to day business, children schooling, etc. with this money. The cost of the hotel is Rs. 1,72,50,308/-. It categorically establishes that, in fact, A-3 did not have any source of income to construct the hotel? A-3 did not have any money.

419. This may be examined from another aspect. Prosecution has proved that A-3 did not have any source of income for constructing the hotel. A-3 did not construct the hotel. Since beginning it is the prosecution case that the hotel was constructed by A-1 in the name of A-3. If A-3 had constructed the hotel, he would have come up and produce documents to show as to how he got the money to construct the hotel. Whom did he pay money for construction? How did he brought articles, building materials, etc.?

420. A-3 has not informed the university. It is argued that it was not required under the university regulations. But, the question is as to what made A-3 afraid that he did not open the account of hotel in his

own name? Why did he not get the hotel registered in his own name? It is argued that he was sick. This argument has no legs to stand on.

421. PW 105 Umakant Singh has stated that A-3 had accompanied him to open the bank account. PW 105 Umakant Singh has been shown the proprietor of the hotel. Why? PW105 Umakant Singh has definitely close bonds with A-1. His father Ajay Kumar Singh had deposited huge amount in cash in the account of A-2 and A-3. The nexus is explicitly clear. To conclude that A-1 was close to PW105 Umakant Singh is not any conjecture or surmise. It is a presumption, which the Court can draw under Section 114 of the Evidence Act. PW190 Sushil Kumar got the hotel registered in his own name. In his application, Ex.A-447, he has shown himself Managing Director. The registration certificate of the hotel Ex. A-448 reveals PW-190 Sushil Kumar as the Managing Director. The connection of A-1 with PW 105 Umakant Singh and PW 190 Sushil Kumar makes it explicit that it is A-1 who made these arrangements. A-1 did conceal the name of A-3 in bank accounts, etc. The court below has rightly concluded that A-1 controlled the hotel

through PW105 Umakant Singh and PW190 Sushil Kumar.

422. It is true that some of the witnesses have stated that A-3 constructed the Hotel. They did not support the prosecution case. It does not doubt the prosecution case. The prosecution has proved its case beyond reasonable doubt.

423. Therefore, having considered the entirety of the fact, this Court is of the view thatthe hotel was constructed by A-1 in the name of A-3. A-1 is owner of the hotel. This is *benami* property of A-1.

Agricultural land at Village Pondha in Dehradun

424. According to the prosecution, A-1 purchased 54.83 bigha land in the name of Abhay Kumar Singh and Vinay Kumar (34.74 bigha in the name of Abhay Kumar Singh for a sale consideration of Rs. 12,49,100/- including stamp duty and 20.09 bigha in the name of Vinay Kumar for sale consideration of Rs. 5,93,800/-, including stamp duty). These purchases were done by executing 12 sale

deeds between 2002 and 2004. It is also the case of the prosecution that both Abhay Kumar Singh and Vinay Kumar did not have source of income to purchase the property. Both were close to A-1. The property dealer Rajul Agarwal and PW 100 Gaurav Tripathi assisted A-1 in procuring these land. It is also the case of the prosecution that the income tax returns of Abhay Kumar Singh were filled up by A-1. It is he, who gave those income tax returns in the Income Tax Department, but took them back and never returned to the Department.

425. The Court below discussed the evidence and concluded that A-1 purchased land in village Pondha by way of these 12 sale deeds in the name of Abhay Kumar Singh and Vinay Kumar. This land was *benami* property of A-1.

Arguments

426. On behalf of A-1, it is argued that Pondha land does not belong to A-1. This land has been purchased in the name of Abhay Kumar Singh and Vinay Kumar. A-1 had no financial dealings with Abhay Kumar Singh. Abhay Kumar Singh is not an

accused. The vendors have categorically stated that they sold the land to Abhay Kumar Singh and Vinay Kumar. There has been no financial connection between A-1 and purchaser of the land.

427. The finding of the court below has been assailed by the learned Senior Counsel appearing for A-1 as follows.

i. The trial court seriously erred in appreciating the facts on record that there cannot be any case of *benami* property if the *benamidar* is neither a witness nor an accused in the case. In the instant case, Abhay Kumar Singh is neither an accused nor a witness.

ii. The prosecution has admitted that it has not considered the representation of Vinod Kumar Singh of Dhanbad, who had given money to Vinay Kumar Singh for purchase of land at village Pondha.

iii. None of the witnesses support the prosecution case to prove that A-1 purchased the land at village Pondha.

iv. Once it is established that Abhay Kumar Singh is neither an accused nor a witness, it is absolutely irrelevant to anyhow connect A-1 with Abhay Kumar Singh.

v. If A-1 had helped Abhay Kumar Singhin filing his ITRs, there is nothing wrong in it. Moreover, the misplacement of ITRs of Abhay Kumar Singh and Vinay Kumar is baseless.

vi. The trial court in its observations tried to use conjecture and speculation to connect A-1 with the buyer without any conclusive proof.

428. On the other hand, on behalf of the CBI, it is argued that it is A-1, who purchased the property in the name of Abhay Kumar Singh and Vinay Kumar.

The prosecution witnesses have established the links, which have conclusively established this fact.

Discussion

429. The connect has to be appreciated first. Rajul Agarwal, according to the prosecution, was a property dealer in Dehradun at the relevant time. He was close to A-1. With him was PW 100 Gaurav Tripathi; they both got the sale deeds executed at the instance of A-1 after taking money from it.

430. The vendors are PW 2 Boondi Ram, PW 91 Kamal Singh, PW 57 Virendra Kumar Gupta, PW 59 Vijay Singh Thapli, PW 106 Mohan Singh, PW 206 Vinay Gupta and PW 226 Shobhit Mathur.

431. PW 2 Boondi Ram has stated that he and his brother Megha Ram were not interested in selling their land, but Rajul Agarwal and PW 100 Gaurav Tripathi pressurized them to sell the land. PW 91 Kamal Singh is the nephew of PW 2 Boondi Ram. He has also stated that in the year 2002, Rajul Agarwal and PW 100 Gaurav Tripathi contacted them with regard to purchase of land. This witness declined to

sell their land because it was their only source of livelihood. But, according to this witness, he was asked by PW 100 Gaurav Tripathi and Rajul Agarwal as to what this witness wants.In reply to it, this witness told that he wants some job. He was assured job in the income tax department by Rajul Agarwal and PW 100 Gaurav Tripathi. This witness has also stated that his uncle Boondi Ram was also summoned in the income tax office, where A-1indulged in an argument with him and pressurized him to sell his land. Thereafter, they sold their land.

432. PW 57 Virendra Kumar Gupta has stated that Rajul Agarwal introduced this witness to A-1. A-1 discussed purchase of land with this witness and finally the deal was finalized at the rate of Rs. 35,000/- per bigha. According to this witness, he executed sale deed Ex. A-94.

433. PW 59 Vijay Singh Thapli has stated that he had contested the Zila Panchayat election in the year 2003-04. He was summoned from the income tax office. A-1 questioned him about the source of money, which this witness spent on his election. According to

this witness, A-1 then inquired from this witness as to whether he wants to sell his land. He declined. But, subsequently, Rajul Agarwal approached his father and got the sale deed executed and this witness also executed sale deed thereafter. He proved those sale deeds, which are Ex. A-98, Ex. A-99 and Ex.A-100.

434. PW 226 Shobhit Mathur is another vendor. According to him, Rajul Agarwal got the sale deed executed from him in the name of Abhay Kumar Singh, which is Ex. A-189.

435. PW 64 Dhiraj Singh Negi is an Advocate. He authored the sale deeds. According to him, the following 11 sale deeds were prepared by him and were executed in his presence. He has not stated about the sale deed Ex. A-189, executed by PW 226 Shobhit Mathur in favour of Abhay Kumar Singh) :-

i. Sale deed dated 24.02.2003 in favour of Abhay Kumr Singh, Ex. A-107.

ii. Sale deed dated 24.02.2003 executed in favour of Abhay Kumar Singh, Ex. A-94.

iii. Sale deed dated 7.1.2003 (it is dated 08.01.2003) executed in favour of Abhay Kumar Singh, Ex. A-108. PW 206 Vinay Gupta has also stated that this sale deed was executed by his father Nand Kishore Gupta.

iv. Sale deed dated 24.02.2003 executed in favour of Abhay Kumar Singh , Ex. A-109.

v. Sale deed dated 14.05.2003 executed in favour of Abhay Kumar Singh, Ex. A-98 (It has been signed by Rajul Agarwal also).This sale deed has also been proved by PW 59 Vijay Singh Thapli.

vi. Sale deed dated 23.07.2004 executed in favour of Abhay Kumar Singh, Ex. A-99. This sale deed has also been proved

by P'W 59 Vijay Singh Thapli. As a representative of the buyer Abhay Kumar Singh, it has been signed by Rajul Agarwal.

vii. Sale deed dated 5.6.2004 executed in favour of Abhay Kumar Singh, Ex. A-110. It is signed by Ranjan Kumar Gupta as a representative of Abhay Kumar Singh.

viii. Sale deed dated 23.07.2004 executed in favour of Abhay Kumar Singh, Ex. A-100. (PW 59 Vijay Singh Thapli has also proved it). This sale deed has been signed by Rajul Agarwal as buyer.

ix. Sale deed dated 09.08.2002 executed in favour of Vinay Kumar, Ex.A-111. Rajul Agarwal signed it as a witness. PW 226 Vinay Gupta has also stated that the sale deed was

executed by his father Nand Kishore Gupta.

x. Sale deed dated 19.03.2003 executed in favour of Vinay Kumar, Ex. A-112. Rajul Agarwal signed this sale deed as a representative of the buyer. PW 206 Vinay Gupta has also proved this sale deed stating that it has been executed by his father.

xi. Sale deed dated 16.08.2002 executed in favour of Vinay Kumar, Ex. A-113. It has also been signed by Rajul Agarwal.

436. PW 100 Gaurav Tripathi has also stated that he along with Rajul Agarwal had approached various vendors in village Pondha. The sale deeds were executed in the name of different persons. Rajul Agarwal had told this witness that he had been paying money from the actual buyer. The sale consideration was paid in cash. According to this witness, he did not know as to who gave the money for such purchase.

437. PW 130 Babu Singh has also stated that, in fact, in his village Pondha, Rajul Agarwal and PW 100 Gaurav Tripathi visited on multiple occasions along with A-1 and his gunner.

438. From the statement of PW 2 Boondi Ram, PW 91 Kamal Singh, PW 57 Virendra Kumar Singh, PW 59 Vijay Singh Thapli, PW 226 Shobhit Mathur, PW 130 Babu Singh and PW 100 Gaurav Tripathi, it is abundantly clear that, in fact, A-1 was the actual buyer and he was operating through Rajul Agarwal and PW 100 Gaurav Tripathi. PW 91 Kamal Singh has stated that A-1 had an argument with his uncle in his office. PW 57 Virendra Kumar Gupta is categorical that it was A-1, who was dealing with the property. This witness also met A-1 in his office in the presence of Rajul Agarwal, where a deal was finalized for purchase of land. Even A-1 along with his gunner was seen in the vicinity by PW 130 Babu Singh. This is one circumstance.

439. There is another aspect in this matter. In all the above sale deeds, which are 12 in numbers, the

buyers never appeared at the time of execution of sale deed. As stated, most of the times, Rajul Agarwal signed those sale deeds. If really Abhay Kumar Singh and Vinay Kumar were purchasing the property, they would have appeared to execute the sale deeds.

440. PW 81 Anil Kumar Pandey has stated that after the year 2001, both the buyer & vendors are required to appear for registration of the sale deed. In fact, the court below has discussed every issue in quite detail. It has been discussed by the court below that in the absence of buyer sale deed could not have been executed as per law, but under the influence of A-1, those sale deeds were executed even in the absence of the buyers.

441. The sale consideration in all these sale deeds were paid in cash. PW 100 Gaurav Tripathi has supported the prosecution case to a greater extent when he says that money was paid in cash by Rajul Agarwal. Rajul Agarwal had told it to PW 100 Gaurav Tripathi that he received the money from the actual buyers. As stated, many witnesses have stated that A-1 was directly dealing with the buyers also. It

connects A-1 with the purchase. This inference is not conjecture or surmise. It is a lawfully derived inference.

442. There is another witness, namely, PW 164 Sanjay Kumar Jain. He connects Vinay Kumar with A-1. This witness Sanjay Kumar Jain has been instrumental in purchase of certain properties in Noida in the name of A-2 and A-4. He has admitted that he is a friend of Arunabh Suman, the younger brother of A-1. He knew Arunabh Suman through Vinay Kumar. Both were from Bihar. This witness admits that he also knew A-1. Vinay Kumar was studying CA at the relevant time.

443. Vinay Kumar did file one income tax return on 17.03.2006. It is Ex. A-264 proved by PW 107 S.C. Puri. Except it, according to this witness, other ITRs of Vinay Kumar were not traceable. This ITR, Ex. A-264 is for the assessment year 2005-06. In it, the address of Vinay Kumar is of Laxmi Nagar, Delhi. His income from salary is Rs. 84,000/- and some profits at Rs. 16,500/-. The total income, according to this ITR, is 1,00,800/-. Interestingly, in all the three sale deeds

executed in the name of Vinay Kumar, which are Ex. A-111, A-112 and A-1113 dated 09.08.2002, 19.03.2003 and 16.08.2002, respectively, the address of Vinay Kumar is 26, DL, Road, Dehradun. This address, according to the prosecution, is the address of Rajul Agarwal.

444. As stated, at the time of execution of the sale deeds, neither Abhay Kumar Singh nor Vinay Kumar was present. Rajul Agarwal and PW 100 Gaurav Tripahi were managing those affairs for A-1. The income of Vinay Kumar, as per the ITR Ex. A-264, was about Rs. 1,00,000/- in the year 2004-05. How did he purchase those properties in the year 2002 and 2003 for a huge sum of money? How did he get the money?

445. An argument has been raised on behalf of the appellants that one Vinod Kumar, who happened to be a relative of Vinay Kumar had sold one of his vehicles and given Rs. 5,00,000/- to Vinay Kumar to purchase the property. How this money came from Vinod Kumar Singh to Vinay Kumar Singh and thereafter to the vendors? Vinay Kumar Singh was

never present at the time of execution of sale deeds. PW 100 Gaurav Tripahi has categorically stated that the sale consideration was paid by Rajul Agarwal, which according to him, he received from the actual buyer. As stated, A-1 had been dealing with the vendors directly. A-1 was involved in it. Vinay Kumar Singh did not have resources to purchase the land.

446. In all the three sale deeds, Ex. A-111, A-112 and A-113, the address of Vinay Kumar Singh is shown as 56, DL Road, Dehradun. In fact, in sale deed, Ex. A-112, his address has been shown as DL Road, Dehradun through representative Rajul Agarwal, R/o 56A, DL Road, Dehradun and Rajul Agarwal signed it.

447. It is also very interesting to connect because the house of Rajul Agarwal was also searched by the CBI. PW56 Som Prakash has proved the search memo, which is Ex. A-92. In this Ex. A-92, there are two interesting facts, they are as follows:-

i. The address of Rajul Agarwal is 56A, DL Road, Dehradun, and

ii. A photocopy of life insurance policy of A-1 was found in the search from the bedroom of Rajul Agarwal.

448. Rajul Agarwal was closely associated with A-1. So much so that life insurance policy of A-1 was found from the house of Rajul Agarwal. This policy was effective from 23.06.2005 and it was done through Rajul Agarwal. It is in the record as Ex. A-93.

449. In view of the foregoing discussions, the following are established:-

i. A-1 was interested in purchase of agricultural land in village Pondha. He contacted the vendors thorough Rajul Agarwal and PW 100 Gaurav Tripathi.

ii. A-1 met some of the vendors. A-1 pressurized them to sell their land.

iii. The buyers were even offered job in the Income Tax Department.

iv. Rajul Agarwal was closely associated with A-1. From the

house search of Rajul Agarwal, a photo copy of life insurance policy of A-1 was also found.

v. Abhay Kumar Singh and Vinay Kumar were never present at the time of execution of sale deed.

vi. Vinay Kumar did not have the source of income to purchase the land.

vii. In some of the sale deeds, Rajul Agarwal signed for the buyers.

viii. In all the sale deeds of Vinay Kumar, the house address of Rajul Agarwal has been written as the address of the buyer.

450. Another buyer is Abhay Kumar Singh. He also never appeared for execution of the sale deeds. He is father of A-4, in whose name a flat was purchased in Noida by A-1. This has already been discussed by this Court. In fact, A-4 has been very close of A-1. A-4 assisted A-1 in construction of the Rajpur Road house.

451. PW 74 Prakash Upadhyaya and PW 75 Arjun Singh are two important witnesses. They have stated that the income tax return of Abhay Kumar Singh was given by A-1 and thereafter it was taken back by A-1. A photo copy of that ITR was retained by PW 74 Prakash Upadhyaya, which is paper no. 329A/5.

452. Why was A-1 interested in the income tax return of Abhay Kumar Singh? This ITR was for the year 2005-06. The IO had given a notice to Abhay Kumar Singh. He gave a reply, which is Ex. A-606 proved by Surendra Kumar Rohilla, the IO. In his reply, Abhay Kumar Singh has stated that he is ill. He enclosed 3 ITRs pertaining to the year 2003-04, 2004-05 and 2005-06. His total income in these three years was Rs. 62,300/-, 65,500/- and 65,800/-, respectively, with agricultural income of Rs. 90,000/-, Rs.1,00,000/- and Rs. 1,00,000/- respectively. He also did not have source of income to purchase the land in village Pondha through 9 sale deeds, as stated hereinabove. This is one part of it.

453. The another part of the income tax return of Abhay Kumar Singh is more revealing. In fact, they connect A-1 with Abhay Kumar Singh in clear terms. This Court has no doubt to disbelieve the statement of PW 74 Prakash Upadhyaya and PW 75 Arjun Singh, who have stated that ITR for the year 2005-06 of Abhay Kumar Singh was given by A-1 to PW 74 Prakash Upadhyaya and thereafter it was taken back by him.

454. The income tax returns, which Abhay Kumar Singh forwarded to the IO through his letter Ex. A 606 were examined by Forensic Science Laboratory. Forensic Science Laboratory Report, which has been proved by PW 165 P. Venugopal clearly establishes that, in fact, the ITRs of Abhay Kumar Singh for the year 2003-04, 2004-05 and 2005-06 were filled in the handwritings of A-1. The forensic science experts have also concluded that these ITRs also bear signature of Abhay Kumar Singh.

455. Interestingly, in his examination under Section 313 of the Code, in answer to question 548, A-1 has admitted his handwritings in the ITRs of Abhay

Kumar Singh. What was the occasion for A-1 to fill in the ITRs of Abhay Kumar Singh? Not for one year but for many years. A-1 has been a very senior officer in the taxation department. This further shows the nexus between A-1, Abhay Kumar Singh and Rajul Agarwal. The vendors were pressurized by A-1 through various means.

456. An argument has been raised that Abhay Kumar Singh is not an accused. This Court is of a view that it does not make any difference. Abhay Kumar Singh did not sign the sale deeds. The buyer was never present. A-1 managed the whole affairs. It is A-1, who had paid money to Rajul Agarwal, so that it may be given to the vendors. PW 100 Gaurav Tripathi has established and proved it. According to PW 100 Gaurav Tripathi, the actual buyer has paid money to Rajul Agarwal. The witnesses have stated that it was A-1, who was talking to them with regard to purchase of the land. So, if Abhay Kumar Singh is not made an accused, it does not affect the trial of A-1 for holding property in the name of Abhay Kumar Singh and Vinay Kumar.

457. Having considered, the entirety of facts and circumstances, this Court is of the view that, in fact, the Pondha land, through 12 sale deeds was purchased by A-1 in the name of Abhay Kumar Singh and Vinay Kumar. The Pondha land is *benami* property of A-1. The court below has rightly concluded on this aspect. The finding of the court below does not warrant any interference.

Plot number 10, block C Sector 50 Noida, Gautam Buddh Nagar, Uttar Pradesh

458. This plot has been purchased in the name of A-2 on 15.11.2003. It is the case of the prosecution that infact A-2 did not purchase it. It was purchased by A-1 through his younger brother Arunabh Suman and PW164 Sanjay Kumar Jain. Total cost of the plot as per prosecution was Rs. 21,91,500/-.

459. The court below after extensively examining the evidence found thatthe plot is a *benami* property of A-1. A-1 purchased it, in the name of A-2.

Arguments

460. On behalf of A-2, it is argued that the property has been purchased by A-2 from her own source of income. She is a rich lady and an agriculturist. She paid the money out from her bank accounts. A-1 has no connection with A-2 in her financial dealings. Reference has been made to the accounts of A-2 to argue that from her account A-2 took money to purchase the plot.

461. On behalf of A-1, learned Senior Counsel would submit that the entire payment was made by A-2 as proved by PW164 Sanjay Kumar Jain. The investigating officer also confirmed that payment was made by A-2. PW 157 Bhanu Pratap Singh has also proved that he sold the plot to A-2 and not to A-1. A-1 is nowhere connected with the purchase of the plot.

462. On behalf of A-1, the finding recorded by the court below has been assailed on the following grounds:-

(i) The court below wrongly tried to implicate A-1 on the ground

that PW164 Sanjay Kumar Jain was friend of Arunabh Suman. PW164 Sanjay Kumar has categorically stated that through Arunabh Suman, he met A-2 and it is A-2 who purchased the plot. The observations in the impugned judgement is absolutely wrong because it is based on wild conjectures.

(ii) The plot was purchased by A-2 through payment from her own bank account no. 15252 SBI, Nabinagar and Dena Bank, Dehradun account no. 2723. The draft of Rs. 10 lakhs was made from account no. 15252 on 15.07.2003. On 10.10. 2003, Rs. 4 lakhs were withdrawn by A-2 from her account number 2723 which was used for preparation of a

bank draft by PW164 Sanjay Kumar Jain.

(iii) The record proves that the sale consideration was paid by A-2.

463. Learned Senior Counsel would submit that the plot was purchased by A-2 from her income. Records have established it. There is no financial link to connect A-2 with A-1.

464. On the other hand, learned counsel for the CBI would submit that the plot had been purchased by A-1 through A-2.A-2 did not have source of income to purchase the plot. At the relevant time, various properties were purchased by A-1 in the name of A-2 and others. It is argued that the court below rightly concluded that the plot was purchased by A-1 in the name of A-2.

Discussion

465. Basic facts are not in dispute The plot was allotted to PW157 Bhanu Pratap Singh by the new Okhla Industrial Development Authority (Noida).In his statement, PW157 Bhanu Pratap Singh, has stated

that he had received Rs. 4 Lakhs through draft and remaining amount of the plot had already been paid by A-2 to the authority. This witness has proved the transfer deed Ex.A-356. There is a contradiction between the statement made in the transfer deed Ex.A-356 and in the statement of PW157 Bhanu Pratap Singh.

466. As a witness, PW157 Bhanu Pratap Singh has stated, in the last sentence of paragraph 1 of his statement, that the remaining amount had already been paid by A-2 to the authority. It means that when the transfer deed was executed till then, all the dues of the authority had been paid by A-2 and on that date a draft of Rs. 4 Lakhs was given to PW157 Bhanu Pratap Singh.

467. In contrast to it, in the transfer deed Ex. A-356, PW157 Bhanu Pratap Singh and A-2 agreed that on that date, a draft of Rs. 4 Lakhs was given to PW157 Bhanu Pratap Singh and in paragraph 3 of the transfer deed, it is recorded that the remaining balance of Rs.11,20,640/- shall be paid by A-2 to the authority alongwith the interest. The

difference in the statement of PW157 Bhanu Pratap Singh and the transfer deed Ex.A-356 is clear. This is not minor variation. It is significant.It will be discussed in a detail at a later stage.

468. PW164 Sanjay Kumar Jain is an acquaintance of A-1 also. He knew Vinay Kumar in Delhi. Through Vinay Kumar, this witnesses was introduced to Arunabh Suman, the younger brother of A-1. A flat was also purchased in the name of A-4 through PW164 Sanjay Kumar Jain. This Court has already held that the flat was purchased by A-1 in the name of A-4. A-4 was nowhere in the purchase of that flat. This person PW164 Sanjay Kumar Jain has not been involved in the purchase of plot in the name of A-2 and the flat in the name of A-4 by any coincidence, but, the circumstances which are prevailing in the instant case leads to only one conclusion that PW164 Sanjay Kumar Jain, under a design, has got the transfer deed executed in the name of A-2. Some of the reasons have already been stated and some are to follow.

469. According to the transfer deed and the statement of PW164 Sanjay Kumar Jain, a draft of Rs. 4 Lakhs was given by A-2 to PW157 Bhanu Pratap Singh at the time of execution of the transfer of the deed on 15.10.2003. How did A-2 prepare the draft?

470. PW164 Sanjay Kumar Jain has stated that, in fact, A-2 had got some cash and some demand drafts, which were in the name of the authority. Since, PW157 Bhanu Pratap Singh declined to accept cash, according to this witness PW164 Sanjay Kumar Jain, he took the money from A-2, deposited this amount in his account and prepared one demand draft in the name of PW157 Bhanu Pratap Singh. The account from which the demand draft of Rs. 4 Lakhs was prepared in the name of PW157 Bhanu Pratap Singh was a joint account of PW164 Sanjay Kumar Jain and PW 162 Rajendra Kumar.

471. If A-2 had gone to purchase flat through her son Arunabh Suman with cash and demand drafts in the name of the authority, why did she gave Rs. 4 Lakhs in cash to PW164 Sanjay Kumar Jain for preparing a draft in the name of PW157 Bhanu Pratap

Singh? A-2 could have prepared the draft on her own or at least through her son Arunabh Suman, who admittedly was present at the time when the deed was executed.

472. This Court is cautious at every stage that, any presumption or inference may not be in the realm of conjecture and surmises. The court is cautious as to what could be presumed legally regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. A mother wants to purchase a property and she is with her son, if the vendor wants a demand draft, the common course of natural events suggests, and, in fact, human conduct also indicate that the mother would either make the draft from her own account on her own or would ask her son to make a draft. Where is the question of giving Rs. Four Lakhs in cash to PW164 Sanjay Kumar Jain so that he may prepare draft? In his cross-examination, PW164 Sanjay Kumar Jain has tried to justify preparation of draft when he said that A-2 had given money to Arunabh Suman and Arunabh Suman gave money to this witness for preparing draft.

This is not reliable. Fact remains, draft for sale consideration of Rs. Four Lakhs was given from the joint account of PW162 Rajendra Kumar and PW164 Sanjay Kumar Jain. Why did Sanjay Kumar Jain prepare the draft? Who gave this Rs. Four Lakhs to him? The statement of PW164 Sanjay Kumar Jain is not reliable to the extent when he says that he prepared draft of Rs. Four Lakhs out from the amount given to him by A-2.

473. PW164 Sanjay Kumar Jain has also stated that A-2 had come along with some drafts in favour of the authority and cash. Where are those drafts, which A-2 had prepared in the name of authority? The transfer deed Ex.A-356 records that A-2 was to deposit remaining balance of Rs. 11,20,640/- in the authority. It means that the remaining amount was to be deposited by A-2 subsequent to execution of transfer deed. It further means that the remaining account of Rs. 11,20,640/- was to be deposited by A-2 either on 15.10.2003 subsequent to transfer of the deed or any date thereafter.

474. As stated, PW157 Bhanu Pratap Singh has stated in paragraph one last sentence of his statement

that A-2 had already deposited the remaining amount with the authority.

475. PW89 Rajendra Singh is the person who was working with the authority at the relevant time. He had given the original file of the plot to the CBI. He identified the seizure memo Ex.A-212 by which he gave the file relating to the plot to the IO. The file has jointly been proved by this witness as Ex. A-213. This witness has stated about the documents in that file.

476. On behalf of A-1, reference has been made to a document D209/8 in Ex. A-213. It is a statement of payment made to the authority with regard to the plot. This document D209/8 is part of the file of the plot. According to this document, on 15.10.2003, Rs. 2,03,000/- were deposited with the authority with regard to the transfer and process fee. Thereafter, no amount was deposited with the authority. On 15.10.2003, according to this document D209/8, entire payment of Rs.21,00,981/- was made with regard to the plot. This document of the payment made to the authority, as referred to on behalf of A-1, falsifies the statement of PW157 Bhanu Pratap Singh

as well as the contents of transfer deed Ex.356 for the following reasons:-

(i) According to PW 157 Bhanu Pratap Singh before execution of the deed, entire payment had already been made with the authority by A-2. But, there is no document to show as to how A-2 would make payment prior to transfer of deed in her name.

(ii) The transfer deed Ex. A-356 reveals that Rs. Four Lakhs draft was given to PW 157 Bhanu Pratap Singh on 15.10.2003 and Rs. 11,20,640/- was to be deposited with the authority. But, this document D209/8 does not reveal that any payment of Rs. 11,20,640/- was made either on 14.10.2003 or on 15.10.2003 or any date thereafter.

(iii) A-2 did not have any opportunity to deposit the amount prior to transfer of the plot in her name which was mutated in her name on 04.11.2003. This is also

part of the document with seizure memo Ex. A-212.

(iv) If A-2 was to pay Rs. 11,20,640/- to the authority, it was never paid as per D209/8 (it is part of Ex. A-213).

477. On behalf of A-1, it is also argued that the sale consideration for the plot was withdrawn by A-2 from her two bank accounts. One account no. 15252 in the name of A-2 and Suniti, the daughter of A-2 at State Bank of India Nabinagar, Bihar and another Dena Bank account no. 2723 of Dehradun. The Court, at this stage, would like to discuss in a little detail about the account no. 15252 of Nabinagar, Bihar in the name of A-2 and Suniti Suman.

478. PW211 Premanand Yadav has proved the joint account opening form (Ex. A-267) of this account by which the account was opened in the name of A-2 and her daughter Suniti Suman, who is wife of A-3. This account was opened on 24.04.1997 by Suniti Suman for Rs. 500. Interestingly, according to this witness, thereafter, various amounts were deposited in this account. The details are hereunder (it is tallied

with Ex. A-261, the vouchers by which the money was deposited in this account):-

Sr. No.	Date	Amount	Deposited by
1.	23.05.2007	1,80,000/-	Ajay Kumar Singh
2.	19.07.1997	2,95,000/-	Ajay Kumar Singh
3.	03.08.1998	40,000/-	Ajay Kumar Singh
4.	16.03.1999	30,000/-	Sharvan Kumar Agarwal
5.	16.4.1999	90,000/-	Ajay Kumar Singh
6.	05.09.2000	30,000/-	Ajay Kumar Singh
7.	04.01.2001	1,00,000/-	Ajay Kumar Singh
8.	16.02.2001	2,00,000/-	Ajay Kumar Singh
9.	11.12.2001	50,000/-	Ajay Kumar Singh
10.	23.12.2002	20,000/-	Ram Chandra Singh
11.	28.05.2002	31,000/-	Ajay Kumar Singh
12.	22.02.2003	1,00,000/-	Ajay Kumar Singh
13.	24.02.2003	40,000/-	Ajay Kumar Singh
14.	24.02.2003	1,10,000/-	Ajay Kumar Singh
15.	22.04.2003	50,000/-	Ajay Kumar Singh
16.	03.06.2003	1,50,000/-	Ajay Kumar Singh
17.	15.07.2003	15,00,000/-	Ajay Kumar Singh
18.	14.11.2003	7,00,000/-	Ajay Kumar Singh
19.	25.02.2004	3,00,000/-	Ajay Kumar Singh
20.	09.06.2004	11,99,000/-	Ajay Kumar Singh
21.	20.04.2005	7,00,000/-	Ajay Kumar Singh
22.	21.05.2005	50,000/-	Ajay Kumar Singh
23.	30.05.2005	3,00,000/-	Ajay Kumar Singh

479. According to PW211 Premanand Yadav, till 30.06.2005, in this account no. 15252, Rs. 67,85,000/- were deposited in cash. These all vouchers have been exhibited as Ex. A261. It is important to note thatAjay Kumar Singh is father of PW105 Umakant Singh in whose name, the account of Uruvella International hotel was opened. PW105 Umakant Singh has identified signatures of his father on these vouchers, Ex. A-261. Not only this, PW211 Premanand Yadav has stated about the cheques issued from this account by A-2. Most of the cheques

have been issued in the name of Ajay Kumar Singh. They are for varied amounts Rs. 50,000/-, 40,000/-, 20,000/-, 15,000/- 10,000/-, etc.

480. One thing is clear that in this account no. 15252, which was opened in the month of April, 1997 by A-2 alongwith his daughter Suniti Suman, huge amounts were deposited, in cash, mainly by Ajay Kumar Singh. In her statement recorded under Section 313 of the Code, A-2 was confronted to the amount deposited in her account. In answer to question 46, A-2 has stated that, in fact, the amount which was deposited in the account no. 15252 was her income from agriculture. According to her, they would deliver the agriculture produce to *Aadati* (wholesale dealer) who would sell it at the higher price and then gave sale proceeds in cash.

481. There is no record filed or proved on behalf of A-2 or any of the appellants that A-2 ever sold any agriculture produce. There is no document to indicate that A-2 deposited her agricultural produce with any *Aadati*. A-2 has not produced any evidence that she was maintaining her agricultural fields. There is no

document to show that even a small amount was ever paid to any labourer for seeds, for irrigation, for any other activity related to agriculture.

482. This Court has already concluded while examining the income of A-2 (Statement 'C') in the earlier part of the judgment that A-2 was not part of HUF. The income from agriculture was Rs. 45,000/- per year. A-2 could not have deposited such a huge amount in her account No. 15252. Her total income from agriculture is only Rs. 3,60,000/- (45,000/- x 8) for the check period.

483. Mere submission of income tax return is not proof of source of income in the proceedings under the Act as held in the case of J. Jayalalitha (*supra*). The account no.15252 is not sole account of A-2. It is a joint account. How the money was deposited in this account? The source has not been established. The source is not known.

484. What is argued on behalf of A-1 is that on 15.07.2003, a draft of Rs. 10 Lakhs was prepared from this account and it is argued to connect that from this

draft, sale consideration of the flat was given. The record of authority which has been taken alongwith seizure memo Ex.A-212 does not reveal it. On 15.10.2003 when the plot was transferred in the name of A-2, a draft of Rs. Four Lakhs was given to PW157 Bhanu Pratap Singh. That draft was also not prepared by A-2. The transfer deed Ex.A-356 reveals that remaining amount of Rs. 11,20,640/- was to be paid by A-2, But the record of authority does not reveal that on any date Rs. 11,20,640/- was deposited by anyone.

485. It is also argued that Rs. Four Lakhs was withdrawn by A-2 on 10.10.2003 from her Dena Bank account. It does not also connect with the purchase of this plot.

486. This Court has not found the statement of the PW164 Sanjay Kumar Jain reliable when he has stated that Rs. Four Lakhs cash was given by A-2 to him for preparing the draft. The link in the instant case are much connected. A-1 is the source of all activities. An account of A-2 and Suniti Suman was opened at Nabinagar, Bihar. Ajay Kumar Singh was depositing huge amounts on that account. The source

of that money is not disclosed. PW105 Umakant Singh is son of Ajay Kumar Singh. He was also working for A-1 in running the Uruvella International Hotel. As discussed hereinbefore, PW164 Sanjay Kumar Jain is another instrument in the process. He was instrumental in getting the flat registered in the name of A-4 which, in fact, was purchased by A-1 as held by this Court. PW 164 Sanjay Kumar Jain was instrumental in transferring the deed of the plot in the name of A-2. He himself made a draft from the joint account for Rs. Four Lakhs. Why he did so? Money was not deposited with the authority as per the transfer deed. A-2 could not have deposited money with the authority prior to transfer of the plot in her name on 15.10.2003. After 15.10.2003, no amount was deposited in the authority as per the record enclosed with seizure memo Ex.A-213, as proved by PW89 Rajendra Singh.

487. It is also the prosecution case that A-1 was found in possession of the signed blank cheques of A-2 which he has used. Having considered all the facts and circumstances, this Court is of the view that the prosecution has been able to prove the case beyond

reasonable doubt that the plot was purchased by A-1 in the name of A-2. The plot is *benami* property of A-1. The court below has rightly concluded that the plot is *benami* property of A-1. The finding does not require any interference.

Flat No. 303, IRS Officers Society, V-33 Vatayan Nehru Enclave Gomati Nagar, Lucknow.

488. According to the prosecution, A-1 acquired this flat in the name of A-2 in the year 2002. Total amount of Rs. 17,50,000/- was deposited with the society. In the computer ledger account, name of A-1 was recorded. An affidavit was filed by A-2, but, it was prepared by A-1 and hand writing expert has established it. The court below accepted the prosecution case.

Arguments

489. Learned counsel for A-2 would submit that A-2 in her independent capacity purchased the flat.

She is owner of it. The following points have been raised by the learned counsel for A-2:-

(i) Investigating Officer has admitted that A-2 had more income than A-1.

(ii) All the transactions with regard to the flat was made through cheques except Rs. Four Lakhs, which was taken as loan by A-2 from Ajay Kumar Singh. This amount was straightaway transferred from the account of Ajay Kumar Singh to the society.

(iii) The Investigating Officer did not inquire from A-2 about the loan of Rs. Four Lakhs which she took from Ajay Kumar Singh.

(iv) The court below wrongly held that A-2 gave any false declaration alongwith her

application for allotment of the flat.

(v) The court below wrongly held that HUF was partitioned.

(vi) If HUF property was divided, the coparceners held it as *Karta* of the other HUF.

(vii) A-2 has not been questioned on the question of partition of HUF in her examination under section 313 of the Code. Hence, that part cannot be taken into consideration.

490. Learned Senior Counsel for A-1 would submit that the prosecution witnesses have stated that A-2 was member of the society. He would submit that the following points have also been proved by the witnesses:-

(i) Payments were received through cheques or drafts.

(ii) The flat was allotted to A-1 and Rs. 17.50 Lakhs were paid by her.

(iii) Original allottee was A-2 and name of A-1 was only for the purpose of reference. (reference has been made to the statement of PW 83 Parsenjeet, PW 161 Ram Mohan Tiwari and PW 137 Sandeep Pandey.)

491. Learned Senior Counsel for A-1 has challenged the finding of the court below on the following grounds:-

(i) The court below gave its observation on the basis of conjecture and speculation without appreciating the facts.

(ii) It is a matter of record that prosecution has already admitted huge agriculture income shown in the ITR HUF of A-2.

(iii) A-2 has categorically explained her stand about the cash deposit in account no. 15252 SBI Nabinagar, Bihar.

(iv) Loan taken from Ajay Kumar Singh by A-2 is a matter of record, which cannot be denied.

(v) The court below wrongly concluded that as to why A-2 did not produce Ajay Kumar Singh as defence witness ignoring the principles of law that it is the prosecution to examine witnesses with regard to the amount, which he gave as a loan to A-2.

(vi) A-2 had explained that the blank cheques recovered from her house at Jamshedpur were related to some account in which there were very less money.

(vii) There is nothing wrong if affidavit is filled up by A-1 to assist A-2.

(viii) The affidavit of A-2 submitted with the society to get the flat has no

evidentiary value because it is not properly stamped.

(ix) It has wrongly been observed that A-2 being a private person cannot become a member of the IRS society.

(x) It has also been wrongly concluded that since name of A-1 was written at one of the pages of ledger, it is *benami* property of A-1.

492. On the other hand, on behalf of the CBI, it is argued that A-2 did not have source of income to purchase the flat; A-2 could not have been a part of HUF, which is created by fiction of law. A-2 may be a member of joint family; she had no income from agriculture; at the relevant time, a house was being constructed in the name of A-2 at Dehradun. Various other properties were also purchased in her name. These all are *benami* properties. The court below after extensively discussing the evidence has rightly concluded that the flat was purchased by A-1 in the name of A-2.

Discussion

493. PW 83 Parsenjeet is the secretary of the society. According to him, as per by-laws of the society, the flats were constructed for the members, their family members and some outsiders also. According to this witness, A-1 was not member of the society, instead, A-2 was the member of the society. In paragraph 8 of his examination, PW 83 Parsenjeet has admitted that whatever amount was deposited by A-2 in the society was deposited through cheques or drafts. Money was not deposited in cash. In paragraph 9 of his statement, PW 83 Parsenjeet has admitted that four times the amount was deposited from the account of A-2 in Nabinagar branch of SBI and Rs. 2 Lakhs were deposited from Central Bank of India, Gaya.

494. PW 161 Ram Mohan Tiwari was working as a secretary of the IRS Officers Cooperative Society, Lucknow. According to him, the flat was allotted to A-2. She had already deposited Rs. 17,50,000/- till 02.05.2006. He has stated that they would contact A-1 with regard to payments of the flat. And, as soon as

they would make the telephone call to A-1, they would receive the payment.

495. PW 137 Sandeep Pandey was also a member of the society. He has proved the bylaws, seizure memo, by which, documents were taken by CBI. According to him, in the ledger, name of A-1 is printed and thereafter, name of A-2 has been recorded on it.

496. It is true that as per witnesses, the flat was allotted to A-2. It is also true that as per the prosecution witnesses also, the payment was made from the account of A-2 or from some other account. It was not in cash.

497. The question of affidavit having been filled up by A-1 will also be considered. PW 83 Parsenjeet has proved Ex. A-206 by which the details were given to the investigating officer with regard to the payment made in the flat.

498. On behalf of A-2, it is being argued that Rs. Four Lakhs was transferred in the account of the

society from the account of Ajay Kumar Singh, which was taken by A-2 as loan. This Court has discussed the role of Ajay Kumar Singh in his dealings with A-1 at various occasions earlier. He has been close associate of A-1. He has been depositing huge amounts in the account no. 15252 of SBI, Nabinagar. This account was in the name of A-2 and Suniti Suman, the wife of A-3. Ex. A-206 reveals that three amounts were transferred from the account of Nabinagar. This Court had already concluded that how amount was deposited in this SBI account no. 15252 of Nabinagar Branch, Bihar is not known. This Court had disbelieved the story of A-1 and A-2 that money which was deposited in the account no. 15252 of Nabinagar SBI Branch was agricultural income of A-2. Even otherwise, this account was in the name of Suniti Suman also. A-2 did not have income from agriculture to deposit such huge amount in the account No. 15252.

499. Ajay Kumar Singh was given various cheques by A-2, as proved by PW 211 Premanand Yadav. These cheques were amounting to Rs.10,000/-, Rs. 15,000/- and Rs. 20,000/-. He was, in fact, a man

working for A-1. There is no question of any loan having been taken from this man by A-2. It clearly establishes that some money was deposited through him. It is not loan taken by A-2.

500. Admittedly the affidavit, which was given on behalf of A-1 in the society was filled up by A-1. The human conduct has to be seen. A-1 is a senior IRS officer. He has not been purchasing property in his own name. He was purchasing property in the name of his mother A-2, an old aged lady. The society was for IRS service personnel. He fills affidavit for A-2. It has also come in the evidence that, in fact, whenever, payment became due, A1 was to be contacted and as soon as it is done, payments were received in the society. A-2 did not have source of income to purchase the flat. In her name various properties were purchased during this period.

501. In view of the foregoing discussion, this Court is of the view that the prosecution has been able to prove beyond reasonable doubt that the flat was purchased by A-1 in the name of A-2. The court below

has rightly concluded that the flat is *Benami* property of A-1. The finding does not require any interference.

Plot No. 12-A in Uttaranchal Service Housing Association, Dehradun

502. It is the case of the prosecution that USHA was formed in the year 2003. A-1 booked a plot for him, but subsequently he took loan against the plot in the name of A-2, in which A-1 stood as a guarantor. It is revealed during investigation that it is A-1, who used to maintain the loan account. According to the prosecution, it is the property purchased and owned by A-1 in the name of A-2.

503. The court below accepted the prosecution case. It was held that allotment of plot was done in the name of A-1. A-2 wanted that the plot be transferred in her name, but it was denied repeatedly at many occasions. A-1 was maintaining the loan account. A-1 was in possession of various blank cheques of A-2. Certain amount was paid by A-1 against the plot. The transaction sheet of cheque no. 571724, which was

issued in the name of USHA, was in the handwriting of A-1. It is A-1, who was acting on behalf of A-2. A-1 was the guarantor for the loan taken by A-2. Thereby the court concluded, that A-1 concealed his presence in the records. He deliberately took loan in the name of A-2. It is *Benami* property of A-1.

Arguments

504. On behalf of A-2, learned counsel would submit that the plot was allotted to A-1, who with the permission of the Society transferred it to A-2 by a resolution of USHA. Reference has been made to resolution dated 14.02.2004. Learned counsel also raised the following points in his arguments:-

i. A-2 had taken loan from SBI, Dehradun for which USHA had no objections.

ii. A family member of the Services may also be a member of USHA. Reference has been made to the statement of DW 6 T.N. Singh.

iii. Rs. 1,00,000/- for USHA property was transferred from the account of A-2 of Dena Bank.

505. Learned counsel for A-2 would submit that the plot was purchased and owned for all the times by A-2 and A-1 has nothing to do with it.

506. On behalf of A-1, learned Senior Counsel would argue that the observation of the court below is absolutely wrong and totally based on conjecture, without any substantial evidence. Learned Senior Counsel raised the following points in his argument:-

i. The Executive Committee of USHA had resolved that a family member of the member of Services can also hold registration of any plot.

ii. The USHA made provisions for loan for the members and family members from SBI, Rajpur Road, Dehradun. Pursuant to it, A-2 obtained loan against the plot. Apart from the bank loan, an initial amount of Rs. 1,00,000/- was paid by A-2 from Dena Bank account No. 2724.

iii. The entire payment was made by A-2 for allotment of the plot.

iv. The court below should have appreciated the deposition of DW 6 T.N. Singh. The court below took into consideration the documents, which were not legally proved by PW 101 Satish Kumar Shukla.

v. The USHA committed some errors and wrongly issued some shares in the name of A-1 on 29.01.2007. Against this a complaint was lodged by A-2/A-1 in the Society, which rectified the mistake. On 27.11.2020,the mistake has been rectified and now the plot stands in the joint name of A-1 and A-2.

507. It is also argued on behalf of A-1 that both the share certificates issued in the year 2007 and the year 2019 are irrelevant in the present case because they have been prepared beyond the check period.

508. On behalf of the CBI, it is argued that the plot stood in the name of A-1. It was allotted to him. He was a member of the Services. It is A-1, who managed all the transactions, including the loan transactions in the name of A-2. It is A-1, who maintained the loan. It is *Benami* property of A-1.

Discussion

509. The USHA was a society registered under the Uttarakhand Cooperative Societies Act, 2003. It was registered on 12.09.2003 (the registration certificate is first document taken into custody by the CBI along with seizure memo Ex. A-250). The registration certificate of the USHA was seized during investigation. The seizure memo has been proved by PW 101 Satish Kumar Shukla.

510. According to PW 101 Satish Kumar Shukla, he was the Honorary Secretary at the relevant time. He gave documents pertaining to the USHA to the IO with his communication, Ex. A-250. He has proved Ex. 251. It is an application of A-2. By means of this application, A-2 had requested the Secretary, USHA that her son A-1 is the Income Tax

Commissioner, who is member USHA. Since A-2 is the mother of A-1, the USHA got loan sanctioned from SBI, Rajpur Road, Dehradun. On 14.02.2004, a decision has been taken that a family member may also obtain a plot. According to the communication Ex. A-251, A-2 was given the plot, therefore, she be handed over the documents. According to this witness, the plots were allotted by a draw on 10.09.2006. Plot No. 82 was allotted to A-1. This witness has proved this allotment list, Ex. A-252.

511. There is another important document, which has been proved by PW 101 Satish Kumar Shukla. It is Ex. A-253, the minutes of meeting of Executive Committee of USHA held on 22.07.2017. According to this witness, at Agenda no. 3, the request of A-2 was not accepted. After re-examination, it was found that, in fact, A-1 is the original share holder of the plot. This was also examined in the year 2011-2015. This witness has spoken about a number of other documents pertaining to the correspondence of the plot made by A-2 and some other persons. A paper no. 1310-B is a receipt of payment of Rs. 1,10,000/- issued by USHA to A-1. This witness has stated about

it, but it was not exhibited because it was not proved, as per the court's observation noted while recording the statement of PW 101 Satish Kumar Shukla.

512. PW 142 S.S. Tomar was, at the relevant time, working in the SBI, Rajpur Road Branch, Dehradun. He gave the documents pertaining to the loan to the IO during investigation. He proved this communication, Ex. A-333. The loan documents, which have been handed over by this witness to IO are jointly exhibited as Ex. A-334. Ex. A-334 is the loan application of A-2. This witness has also stated about the documents pertaining to loan taken by A-2.

513. On behalf of the appellants, arguments have been raised with regard to appreciation of the evidence that the court below had taken into consideration certain documents, which had, in fact, not been proved by PW101 Satish Kumar Shukla.

514. It is true that paper no. 1310-B, which appears to be a receipt issued in the name of A-1 by the USHA has been taken into consideration by the court below, but this document has not been proved. It

could not have been taken into consideration. The documents, which have not been proved can definitely be not read into evidence.

515. Interestingly, on behalf of the appellants also, reference has been made to certain documents, which have not been proved. On behalf of A-2, DW 1 Alok Kumar Jain and DW 6 T.N. Singh have been examined on this point. DW 1 Alok Kumar Jain has stated that he was an auditor of USHA which was formed in the year 2003. According to him, an account of USHA was also maintained. This witness has also tried to identify the signature of N. Ravishankar on a document, which is paper no. 1301-B/2. But, this has not been proved as such. According to him, he had a written a letter to A-2 with regard to default in payment, which is paper no. 1298/2. He has identified his signature on it.

516. In his cross-examination DW1 Alok Kumar Jain has accepted that the communication, which he had made to A-2, was with regard to the loan and not membership of A-2 in USHA.

517. DW6 T.N. Singh has also stated that USHA was registered in the year 2003. According to him, 92 members were issued shares. Most of the members had taken plots in the name of their family members. According to this witness, he had also taken plot jointly with his wife. This witness has also not proved any document. He has stated about the documents. The court below did not believe this witness. This witness was shown the allotment list of the plots. He has admitted that in the list, a plot was issued in his name and not in his wife's name, as told by him in his examination-in-chief. The evidence of DW 6 T.N. Singh does not, in any manner, support the defence case.

518. Reference has been made by the learned Senior Counsel for A-1, to Ex. 336, which is proved by PW142 S.S. Tomar. It is an information by the bank that the loan has been sanctioned in favour of A-2. The loan application of A-2 is Ex. 334. The loan has been applied on behalf of A-2. A-1 is a guarantor in it. In this application, A-1 has given his address as 169/21, Rajpur Road, Dehradun. It is Rajpur Road house. In the loan application, initially the address of A-2 was

written of Bihar and subsequently her office address was written as 169/21, Rajpur Road, Dehradun opposite Ramakrishna Temple. What office was A-2 running then? Or after filing the loan application, A-1 realized that he has written his address of Rajpur Road house, which he had purchased in the name of A-2, then he subsequently included the Rajpur Road house address for A-2 as her office address? Initially, A-2's address in this application is of Bihar. A-1 stood as a guarantor to obtain loan for A-2.

519. On behalf of A-1 and A-2, reference has been made a Dena Bank voucher, which is document no. D352/64 [paper no 4447 (Supplementary Paper Book Part 12)]. This voucher is dated 21.03.2003. The Court is reading it as argued, but the fact remains that the USHA Society itself was registered in September, 2003, how on 21.03.2003, transaction was done in the name of USHA? How can it be said that this document, paper no. 4447 in Part 12 of supplementary paper book relates to any transaction made by A-2 to USHA? It cannot be assumed even.

520. PW 101 Satish Kumar Shukla is a very important witness and most reliable witness on this aspect. Three documents categorically he has proved. Ex. A-250, by which he handed over documents to the IO. Ex. A-251 which is dated 19.07.2017. On that date, according to this communication, A-1 was seeking documents of plot no. 82. Though she writes in this communication that the plot was given to her, but the question is as to how the plot no. 82 was given to her? According to Ex. A-252, which is proved by PW 101 Satish Kumar Shukla, on 10.09.2006, in a draw, plot no. 82 was allotted to A-1 and his name finds mention at Sr. No. 41. Where is the question of plot having been given to A-2, if the plot was allotted in the name of A-1? A-1 was the member of services for which USHA was formed.

521. There is another document, Ex. A-253 proved by PW 101 Satish Kumar Shukla. Arguments have been raised that this document should not be taken into consideration because it is beyond the check period.

522. This argument has no force at all. The check period is with regard to assets. This document Ex. A-253 deals with an asset, which was acquired during the check period. Ex. A-253 is minutes of meeting of USHA dated 22.07.2017. Under Agenda no. 3, an issue raised by A-1 has been discussed to conclude that original share of the plot is not in the name of A-2, but A-1 is the original share holder. This agenda also records that similar requests had already been decided in the year 2011 and 2015. Those resolutions have also been filed, but they have not been proved as such because the original records were not placed before the court below. The Court leaves it at it.

523. Ex. A-252 and Ex. A-253 prove in abundance that the plot was allotted in the name of A-1. Loan was taken by A-2, but she was not a member, when she applied for loan. Member was A-1. A-1 is guarantor for the loan taken by A-2. This Court has concluded earlier that A-2 had no source of income to purchase huge property at the relevant time. It is the period, when the property at Noida was being purchased. It is the time when property at Lucknow

was being purchased and a house at Rajpur Road, Dehradun was being constructed.

524. The court below has taken into consideration the blank cheque books of A-2, which were found from the possession of A-1. What is important to note is that in the transaction sheet of the cheque no. 571724, entries were made in the handwriting of A-1. By this cheque, Rs. 20,000/- were paid to USHA.

525. A-1 has put the face of A-2 in bank transaction. In reality, it was A-1, who was dealing with the property. The plot was allotted in his name. He was the guarantor to the loan taken in the name of A-2. In view of this and all the other facts and circumstances, this Court is of the view that the prosecution has been able to prove beyond reasonable doubt that the plot was purchased by A-1. It is a property of A-1. The court below has considered all the attending factors and has rightly concluded that the plot in USHA is a property of A-1. This Court does not see any reason to make any interference on this finding.

Honda City Car No. DL 2 FAZ 0021

526. It is the case of the prosecution that A-1 purchased the Honda City Car bearing registration No. DL 2FAZ 0021 ("the Car") in the name of A-2. Temporary registration of the car was done at Agra. Subsequently, A-1 by a forged document got the car registered in Delhi. For this purpose, a forged ration card of PW 185 Rajeev Kumar was presented. A-2 also gave a false affidavit showing her address of D-64, Gulmohar Park, New Delhi. She was not resident of that address. It is case that A-1 purchased the car. The court below accepted the prosecution case and held that the Car is *Benami* property of A-1 purchased in the name of A-2.

Arguments

527. Learned Senior Counsel for A-1 would submit that the finding of the court below are wrong because they are against the facts of court record. Learned Senior Counsel raised the following points in his arguments:-

i. The Car was purchased out of the sale proceeds of A-2's Palio car (Rs. 3,50,000/-), which were deposited in the bank account of A-2. This amount was paid to PW 217 Gunveen Singh. The Car was subsequently sold to one Vipul Chaudhary.

ii. A-2 had taken a loan of Rs. 3,53,000/- from the City Bank.

iii. There is nothing on record to link A-1 the Car.

iv. The payment of Palio car was done by A-2 to Prema Marya after the check period.

v. As far as issue of taking Delhi number is concerned, A-1 has nothing to do with it. He has no role in manipulation of anyone's ration card. Precisely, there is no role of A-2 also.

528. Learned counsel for A-2 would submit that A-2 had purchased Palio car from Prema Arya, which she sold for Rs. 3,50,000/-. The proceeds were deposited in her account. A-2 purchased the Car by taking a loan and by making the remaining payment from the account of Dena Bank in which the sale

proceeds of Palio car were received. A-2 had source of income; she purchased the Car; A-1 has nothing to do with the Car.

529. Learned Senior Counsel for the CBI would submit that A1 enquired from PW 102 Rajeev Mittal for purchase of Palio car. Then Palio car was purchased in the name of Prema Marya with a registration number 0006. A-2 had not made any payment of car to Prema Marya. A-1 wanted a fancy number of Delhi for the Honda City car, therefore, he used ration card of PW 185 Rajeev Kumar for registration. Three cars were used by A-1, viz., Ambassador, Palio and Honda City. All had fancy numbers. All was playing with the documents in the way he designed. It is argued that the Car was purchased by A-1 in the name of A-2.

Discussion

530. This Court is cautious of the fact that merely because two persons have some links, property purchased by one may not be termed as the property purchased by another. There should be something more than that. There should be some legally admissible evidence, clinching evidence to conclude

that the property owned in the name of 'A', in fact, belongs to 'B'.

531. In the instant case, this Court has held with regard to various properties that, in fact, A-1 had procured properties in the name of A-2. A-2 is an old lady. She is mother of A-1. A-1 is a senior officer in the Indian Revenue Services. It has been established and proved beyond reasonable doubt with regard to various properties, as discussed hereinbefore, that A-1 purchased property in the name of A-2 for ulterior motives. A-1 did not purchase any property in his own name. But, this factor also may not *per se* make A-1 liable to any criminal action. Circumstances are being examined. The guiding principles have been laid down in the cases of Jaydayal Poddar, K. Ponnuswamy and J. Jayalalitha (*supra).*

532. In the instant case, the Car was purchased from Agra. It is purchased through some agent. It is registered in Delhi. A forged ration car was produced for registration so as to secure a Delhi number. Not only Delhi number, but a fancy Delhi number was procured. A witness has stated that he was told that a

senior Revenue Officer needs the number. What is interesting is the number of the Car.

533. A-1 had an Ambassador car, which was registered in the name of PW 247 Ramadhar Singh. While discussing the assets of A-1, this Court has concluded about the Ambassador car. This Ambassador car also had the last two digits as "21". The Honda City Car purchased in the name of A-2 also has the last two digits as "21". Has A-1 been instrumental to get this number?

534. The legal presumptions as permissible under the Evidence Act may very well be drawn. Human conduct, natural events should be taken into consideration. Should this Court presume and believe that A-2, an old lady, staying in Dehradun, purchased a car from Agra and got it registered from Delhi; got a fancy number; filed false affidavit independently? Should this Court not take into consideration the other clinching evidence, which make it evident that it is A-1, who was instrumental in procuring the Car? It is Car purchased by A-1. The court below has widely discussed the evidence on this aspect.

535. PW 116 Yadram has stated about a ration card, which was issued in the name of Rajeev Kumar. This witness has proved the application of PW 185 Rajeev Kumar for obtaining ration card at his D-64, Gulmohar Park, Delhi address (Ex. A-295). The ration card no. 2864 was issued in the name of PW 185 Rajeev Kumar. This witness has also proved other documents.

536. PW 185 Rajeev Kumar has stated that he was developing USHA, a Housing Association. A-1 was having a plot in this society. This witness knew him. He did not support the prosecution case, but he has proved the seizure memo Ex. A-444 and his ration card Ex. A-445.

537. PW 233 Sunil Kumar Upadhyaya was working in the Regional Transport Office, Agra at the relevant time. He handed over the documents to the IO during investigation. He proved the seizure memo Ex. A-536 and application of A-2 for change of address, Ex. A-537 and a ration card, which was given for change of address of A-2. It is Ex. A-538.

538. The link is more than established. A-1 and PW 185 Rajeev Kumar were acquaintance. A-1 had a plot in USHA. PW 185 Rajeev Kumar was the developer. A car was to be purchased at Delhi number. The ration card of PW 185 Rajeev Kumar had been forged and instead of PW 185 Rajeev Kumar and his family member, in the forged ration card, the name of Arunabh Suman, the younger brother of A-1, and his family members, including A'2 name were included. Who had done it?

539. PW 147 Amardeep Singh was an authorized agent of City Bank at the relevant time. According to him, in the year 2005, PW 217 Gunveen Singh approached him and forwarded the documents for registration of a car. Gunveen Singh had told to this witness that the car belongs to some Government officer, who is a Revenue Officer. He wants number of his choice. This witness has proved the temporary registration document, which reveals that the car was registered temporarily in the name of A-2 at her address 169/21, Rajpur Road, Dehradun. According to

him, these documents were forwarded to him by PW 217 Gunveen Singh.

540. PW 217 Gunveen Singh has stated that he knew A-1. His mother wanted to purchase a Honda City Car. She wanted to sell old Palio car. This witness purchased the Palio car for Rs. 3,50,000/- and the car was financed from City Bank. The car was purchased from MGR Automobiles and handed over to A-2.

541. Interestingly, the documents, which were forwarded for registration had a FAX No. of 2711611 from Dehradun. In para 9 of his statement, PW 217 Gunveen Singh has admitted that this FAX machine was installed in his office compound. According to this witness, he did not forward any ration card for registration. If it was not forwarded by this witness, how PW 147 Amardeep Singh received this document through a FAX machine installed in the office of PW 217 Gunveen Singh? PW 147 Amardeep Singh has categorically stated that he had received the documents from PW 217 Gunveen Singh. He has proved that PW 217 Gunveen Singh had forwarded

ration card Ex. A-538 to PW 147 Amardeep Singh. This was a forged ration card.

542. PW 139 Sandeep Sharma has stated about certain documents with regard to statement of account of A-2 pertaining to City Bank. According to him, on 31.08.2004 in the name of A-2, loan of Rs. 3,53,376/- was disbursed. She had deposited Rs. 1,36,860/- till August, 2005.

543. PW 140 Ashok Kumar was Motor Vehicle Inspector, New Delhi at the relevant time. He has proved various documents with regard to the Car. He has proved his communication, Ex. A-327 made to the IO by which certain documents were forwarded to CBI during investigation. The registration application Ex. A-328 has been proved by this witness, which has mark of Q 31 at the signature of A-2. It, according to forensic report was signature of A-2, which means A-2 gave her wrong address of D-64, Gulmohar Park, Delhi for registration of the Car. As stated, ration card, Ex. A-538 had been submitted along with it, which was also forged.

544. PW 217 Gunveen Singh has stated in para 10 of his statement that he did not tell it to the IO that the car was delivered to Ranvir Singh, who was Gunner of A-1. PW177 constable Ranvir Singh has though not supported the prosecution case, but in his cross-examination, he has admitted in para 13 that he took delivery of the Car on 26.11.2004 and he signed on it, which is Ex. A-443. Though, according to him, he was not instructed by A-1 to take delivery of the Car. According to him, a boy had come to leave the vehicle and he signed it. This statement of PW 177 Ranvir Singh to the extent that under nobody's instruction he took the delivery, is not reliable. He was Gunner of A-1. It can very well be presumed that he took the delivery of Car under the instruction of A-1.

545. It is the defence that a Palio car was sold and with its sale proceeds and with the car loan, the Car was purchased. The Palio car was registered in the name of Prema Marya, who is the wife of PW 128 Shivdev Singh Marya. This Court has already discussed the role of PW 128 Shivdev Singh Marya with A-1. He was very close to A-1. The sale of Palio

car has been shown. But, how did Palio car purchased by A-2? How did she pay money to Prema Marya?

546. During the course of argument, it is argued that after the check period, this payment was made. It makes this dealing more doubtful. It also doubts the fairness in the transactions. The car was delivered on 26.11.2004 and it is being argued, on behalf of the appellants, that the price of Palio car was paid after the check period, which means after 05.08.2005.

547. It is also the case of the prosecution that a false affidavit was given by A-2 with regard to her address so as to get the Car registered from Delhi. The court below has discussed various aspects pertaining to it.

548. How the Palio car was purchased by A-2? How the money was paid to Prema Marya is not even shown by the defence? In fact, the Honda City Car was delivered on 26.11.2004. How prior to it, Palio car was procured by A-2 when she paid price for it after the check period (after 05.08.2005)? At the cost of repetition, the Court would like to observe that it is

admitted on behalf of the appellants during arguments that the money was paid post check period. The Palio car was in the name of wife of PW 128 Shivdev Singh Marya. It is this man, who has been dealing for A-1. PW 128 Shivdev Singh Marya is the man, who, was closely associated with A-1 in the construction of his Rajpur Road house. It is this man, who was procuring building materials for construction of Rajpur Road house. It is this man, who was dealing with ONGC for letting out the Rajpur Road house of A-1. It is this man, who has put his name plate at Rajpur Road house. This is not a coincidence. It is a design that that the Palio car was in the name of wife of PW 128 Shivdev Singh Marya.

549. PW 185 Rajeev Kumar was an acquaintance of A-1. He was a developer in USHA, where A-1 had a plot. It is PW 185 Rajeev Kumar, whose ration card of Delhi was forged. A-1 had earlier an Ambassador car made with the last digits “21”, though it was registered in the name of some other person. The Court has already held that A-1 was owner of it. Fancy number was sought and the same number “0021” was obtained for the Honda City Car.

(Fancy number allotment slip is D 221/6, which is part of Ex. A-329, as proved by PW 140 Ashok Kumar). PW 147 Amardeep Singh has categorically stated that it is PW 217 Gunveen Singh, who had forwarded the documents including the forged ration card saying that the car belongs to a senior Revenue Officer.

550. These all points connect A-1 with the car. In fact, according to the invoices, Rs.1,00,000/- was deposited from some IDBI Bank of Agra in the name of A-2. Who did it? Who deposited money in the name of A-2?

551. Having considered all the attending circumstances and evidence on record, this Court is of the view that the prosecution has been able to prove that it is A-1 alone, who has done all these things. It is A-1 alone, who had obtained a car number of his choice from Delhi on some forged documents. A-1 is owner of the Honda City Car. He got it registered in the name of A-2. It is *Benami* property of A-1. The court below has rightly concluded that the Honda City Car is the *benami* property of A-1. There is no reason to interfere.

Section 11 of the Act

552. A-1 has also been convicted under Section 11 of the Act. The other appellants have also been convicted under Section 11 of the Act read with Section 109 IPC.

553. According to the prosecution, A-1 extorted money from a number of persons. In the chargesheet, the IO, in paragraph 23 has given details of it. It is as hereunder:-

i. A-1 demanded Rs. 40,00,000/- bribe from PW 71 Mukesh Chandra Arora, but he paid Rs. 16,00,000/- for the release of his families' bank accounts and fixed deposits.

ii. A-1 demanded Rs. 10,00,000/- from PW 14 Mohd. Iliyas, which he paid after mortgaging the house.

iii. A-1 demanded Rs. 5,00,000/- from PW 8 Prashant Kochar. He paid Rs. 3,80,000/- to A-1.

iv. A-1 demanded Rs. 1,00,000/- from PW 13 Amarnath Ahuja, which he paid.

v. A-1 got his car repaired from the garage of PW 10 Rakesh Oberoi, but did not pay repair charges of Rs. 63,540/-.

vi. A-1 purchased electronic items from PW 8 Prashant Kochar's shop, but did not pay for it.

vii. A-1 demanded money from PW 6 I.K. Batta, but he did not accede to the demand.

viii. A-1 hired vehicle from PW 7 Devendra Pal Singh Chaddha, but did not make any payment.

ix. A-1 constructed the Rajpur Road house and used name of PW 128 S.S. Marya for the purchase of construction materials, etc.

x. PW 177 Ranvir Singh has stated that he visited with A-1 at various places and met Vinay Kumar in Delhi.

xi. PW 16 Mohd. Hashmatulla, PW 233 Kailash Chandra Mohan and PW 235 B.K. Todiwala have stated that A-1 pressurized them to issue false cancer patient certificate for A-2.

554. The court below dealt with these allegations under the caption 'Conduct of A-1' and in some of the cases accepted the prosecution case.

Arguments

555. Learned Senior Counsel for A-1 would submit that the charge under Section 11 of the Act has been framed against A-1 that he purchased costly material goods from shop and did not make payment for those materials. It is argued that merely taking goods from some person does not make a public servant guilty under Section 11 of the Act. Learned Senior Counsel has argued that, in fact, the witnesses did not support the prosecution case. Even otherwise, it is argued that the prosecution has also to be shown that the person from whom valuable things were taken had some transaction with such public servant, which

according to the learned Senior Counsel is missing in the instant case.

556. Reference has been made to the judgment in the case ofS.N. Khosla (*supra* - Relevant paras 6 & 7 of the judgment have been quoted hereinbefore).

557. Learned Senior Counsel for A-1 has also argued that the trial court forgot to appreciate that the "conduct", "morality" and "bribe" are issues different from disproportionate assets. Reference has been made to the case of V.K. Puri (*supra)* and Vishwa Vibhuti (*supra).*

558. In the case of V.K. Puri, the Hon'ble Supreme Court has also observed that "**In a case involving Section 13(1)(e) of the 1988 Act, what is necessary is as to whether keeping in view the period in question, commonly known as check period, the public servant has acquired wealth which is disproportionate to his known sources of income. It has nothing to do with individual case of bribery. It has nothing to do with a series of acts culminated into an offence"**.

559. In the case of Vishwa Vibhuti (*supra),* as stated, the Hon'ble Delhi High Court, *inter alia,* laid

down the principle as to what material may be looked into at the time of framing of charges.

DISCUSSION

560. At the relevant time, Section 11 of the Act was as hereunder*:-

> "**11. Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant**.—Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine."

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*After amendment (w.e.f. 26.07.2018), Section 11 of the Act is as hereunder:-

"**11. Public servant obtaining undue advantage, without consideration from person concerned in proceeding or business transacted by such public servant**.—Whoever, being a public servant, accepts or obtains or attempts to obtain for himself, or for any other person, any undue advantage without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions or public duty of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine."

561. Section 11 of the Act speaks of "**valuable thing"** without consideration and for inadequate consideration from a person, who have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant.

562. Purchase on credit from some shopkeeper unconnected with official dealing by a public servant may not fall under Section 11 of the Act.

563. It is true that for the offence under Section 13(1)(e) of the Act, including case of bribery is not material. But, in the instant case, the appellants have also been convicted under Section 11 of the Act. Offence under Section 11 of the Act is quite distinct from the offence under Section 13(1)(e) of the Act. Individual instances of demand are also relevant consideration for offence under Section 11 of the Act.

564. PW 7 Devendra Pal Singh Chaddha runs a business of Travels and Tours. He has stated that he provided vehicle to Nagia & Company. He proved certain documents. He has been declared hostile by the prosecution. He has categorically stated that he

had no transaction with A-1. This witness has not supported the prosecution case in his examination before the court below. The court below also did not accept the prosecution case with regard to PW 7 Devendra Pal Singh Chaddha.

565. PW 8 Prashant Kochar also runs a business of the Indian Store. He deals with Godrej and L.G. products. He has proved a few documents. He has also not supported the prosecution case. He has been cross-examined by the CBI and confronted with certain documents, particularly challans for transporting the goods, which are in the name of A-1. He proved the documents, Ex. A-28 to Ex. A-31.

566. This witness has not stated that he did not receive consideration for the articles sent to A-1. Merely because some articles were sent from his shop, the court cannot presume that A-1 did not pay for it. The court below did not appreciate the evidence in correct perspective on this account. The fact remains that PW 8 Prashant Kochar has not stated that A-1 did take

any valuable thing without consideration from him. Even otherwise, prosecution has not even shown that there were any official link or any business pending before A-1 pertaining to PW 8 Prashant Kochar at any point of time.

567. PW 10 Rakesh Oberoi has stated that a car belonging to A-1 was repaired in his garage, but he has not stated that A-1 did not pay for it. As also, the prosecution has not established that PW 10 Rakesh Oberoi had any proceeding pending before A-1 at any point of time.

568. PW 13 Amarnath Ahuja has not supported the prosecution case. He has been declared hostile.

569. PW 14 Mohd. Iliyas has stated that A-1 had demanded Rs. 10,00,000/- from him and he paid Rs. 5,00,000/-. When was the demand made? How was the demand made? In what connection, it was made and what was the occasion for A-1 to make such demand? PW 14 Mohd. Iliyas did not reveal anything. PW 14 is an income tax assessee. Mere statements against any public servant cannot prove the allegations unless there are some attending

circumstances. Therefore, this Court is of the view that the statement of PW 14 Mohd. Iliyas cannot be believed that A-1 demanded Rs. 10,00,000/- from him and he paid Rs. 5,00,000/-. The court below has wrongly concluded that PW 14 Mohd. Iliyas proved the prosecution case.

570. PW 71 Mukesh Chandra Arora has stated that his two Chartered Accountants Jaideep Dutta and Pradeep Nath threatened him that his fixed deposit receipts had been attached under the instructions of A-1. If this witness pays one half of the amount of F.D., they would be released. According to PW 71 Mukesh Chandra Arora, he arranged for Rs. 16,00,000/- and followed the car of Jaideep Datta and Pradeep Nath. The car was stopped in front of a house. This witness insisted that he himself would pay the money, but Jaideep Dutta and Pradeep Nath did not agree for it. According to this witness, he had told to the “Commissioner Saheb” that since he acceded to his request, his problem may be solved now. This witness has been declared hostile by the prosecution. He was confronted with his statement given during investigation under Section 161 and Section 164 of the

Code. This witness has not stated that he paid money to A-1. He declined the suggestion that in order to save A-1, he is not revealing the true state of affairs.

571. Jaideep Dutta and Pradeep Nath have not been examined by the prosecution. They are the person, who, according to PW 71, Mukesh Chandra Arora, took Rs. 16,00,000/- from him to give it to A-1. In view of it, this Court is of the view that the statement of PW 71 does not support the prosecution case. Based on the statement of PW 71 Mukesh Chandra Arora, it cannot be said that any demand was made by A-1 from this witness and it can also not be believed that PW 71 Mukesh Chandra Arora paid Rs. 16,00,000/- to A-1.

572. The finding recorded by the court below with regard to PW 71 Mukesh Chandra Arora on this point is not in accordance with law.

573. PW 188 P.S. Kochar has also not supported the prosecution case. He has categorically denied that A-1 ever demanded anything from him. This witness has been declared hostile by the CBI and he has been cross-examined. Nothing has been elicited in the

cross-examination of this witness, which may, in any manner, support the prosecution case.

574. This Court has concluded that, in fact, the Rajpur Road house was constructed by A-1 and building materials and other construction materials were procured by A-1 through various persons, including PW 128 Shivdev Singh Marya and A-4. This has already been discussed in the earlier part of this judgment. But, merely because A-1 has procured building materials and other articles for construction of the Rajpur Road house, it cannot be presumed that he did not pay for it.

575. PW 176 Mohd. Hasamtulla, PW 223 Kailash Chand Mishra and PW 235 B.K. Todiwala have stated about certain documents. The prosecution has examined these witnesses with regard to a cancer patient certificate in the name of A-2. In order to attract the provision of Section 11 of the Act, as stated, it has to be also shown that the person, from whom valuable thing was taken by a public servant, has had any proceeding or business pending before the public servant. The statement of PW 176 Mohd. Hasamtulla,

PW 223 Kailash Chand Mishra and PW 235 B.K. Todiwala do not support the prosecution case on this aspect.

576. PW 6 I.K. Batta has stated against A-1. According to him, he was a Chartered Accountant. He had many clients, including Windlas Steel Crafts, Windlas Cutlery, Sardari Lal Oberoi Company Private Ltd., M/s Ramesh Batta, Etc. This witness has stated specifically about the income tax assessment cases pertaining to Ramesh Batta Brothers, R.B. Enterprises, etc. According to him, when this witness met A-1 with regard to these assessment, A-1 asked this witness that this witness should fix a meeting with assessee. Later on, A-1 called this witness in his house and demanded Rs. 5,00,000/-. This witness expressed his inability to pay this amount. He informed the partner/proprietor Ramesh Batta, who is PW 88. According to PW 6 I.K. Batta, thereafter, PW 88 Ramesh Batta met A-1. Later on, PW 88 Ramesh Batta told this witness that A-1 asked PW 88 Ramesh Batta to get his work done through Ashok Kashyap, Charted Accountant instead of PW 6 I.K. Batta. PW6 I.K. Batta

has stated that thereafter PW 88 Ramesh Batta and A-1 had good relations. A-1 constructed a house in which bricks were supplied by PW 88 Ramesh Batta.

577. PW 6 I.K. Batta has also stated that on one occasion, in the assessment of Windlas Steel Crafts, A-1 demanded Rs.10,00,000/- from this witness, which he did not pay. A-1 threatened this witness of which a report was lodged by the father of this witness to the police. This witness thereafter filed complaint against A-1. He has proved Ex. A-16, the seizure memo as well as the complaint, Ex. A-17.

578. PW 88 Ramesh Batta did not support the prosecution case. He was declared hostile and cross-examined. It may be noted that it has been the prosecution case that the building materials were collected by A-1 for construction of the Rajpur Road house through PW 128 Shivdev Singh Marya, A-4 and other persons. It was the case of A-1 and A-2 that Rajpur Road house was constructed by A-2 and not by A-1. PW 88 Ramesh Batta has stated that during investigation he has told that through PW 128 Shivdev

Singh Marya, he had supplied bricks to A-2 and received payment. This Court had already concluded that the Rajpur Road house was constructed by A-1. It categorically means that PW 88 Ramesh Batta had provided bricks to A-1. Initially this witness was not truthful to the Court. PW 88 Ramesh Batta also denied that PW 6 I.K. Batta told it to him that A-1 demanded Rs.5,00,000/-.

579. PW 88 Ramesh Batta has, in his cross-examination, admitted that he had changed his CA. In his cross-examination by the appellants, PW 88 Ramesh Batta has stated that he changed PW 6 I.K. Batta as his CA because he was not handling his case professionally. He denied the suggestion that at the instance of A-1, he changed his CA PW 6 I.K. Batta.

580. PW 60 Suresh and PW 61 P.S. Krishnamurti were working in the Vigilance Department of Income Tax. They have proved Ex. A-101 and Ex. A-102. Ex. A-102 is a seizure memo by which certain complaints against A-1 were given to

CBI. At Sr. No. 'D' of it, there is a complaint of PW 6 I.K. Batta. It has been proved by PW 6 I.K. Batta as Ex. A-17. It supports the statement of PW 6 I.K. Batta.

581. The statement of PW 6 I.K. Batta is transpiring confidence. He was Chartered Accountant to PW 88 Ramesh Batta. PW 6 I.K. Batta has stated that A-1 demanded money from him. When he did not pay, A-1 met PW 88 Ramesh Batta and advised him to change his CA. Thereafter, PW 88 changed his CA. PW 88 Ramesh Batta has admitted it, though he had given different reasons for changing CA. PW 6 I.K. Batta had complained against A-1. Those complaints were handed over to the CBI by the Vigilance Department of Income Tax.

582. Interestingly, in his cross-examination conducted on 25.10.2013 on behalf of A-1, at page 11, PW 6 I.K. Batta Batta was given a suggestion that when PW 88 met A-1, A-1 informed him that he did not demand Rs. 5,00,000/-. This witness has denied this suggestion. What was the occasion for A-1 to meet

PW 88 Ramesh Batta and tell him that he did not demand any money? It supports the statement of PW 6 I.K. Batta Batta that A-1 demanded money from him on two occasions. His statement is reliable.

583. In view of the foregoing discussions, on this sub head, this Court is of the view that the prosecution has not been able to prove that any "**valuable things**" were obtained by A-1. But, the prosecution has been able to prove beyond reasonable doubt that A-1 demanded gratification other than legal remuneration from PW 6 I.K. Batta with regard to assessment of the clients of PW 6 I.K. Batta.

584. The appellants have been charged under Section 11 of the Act.

585. Prior to 2018, in Section 11 of the Act, the words used were "**valuable things**", which have been changed as "**undue advantage**" by amendment w.e.f. 26.07.2018. In the instant case, it was the charge against A-1 that he obtained or attempted to obtain

valuable things without consideration. This was then falling under Section 11 of the Act. The prosecution, in the instant case, could not prove that A-1 obtained any valuable things without consideration. But, as stated, the prosecution has been able to prove beyond reasonable doubt that A-1 attempted to obtain gratification other than legal remuneration from PW 6 I.K. Batta. This offence at that relevant time was under Section 7 of the Act, which is as hereunder prior to amendment made in the year 2018:-

> "7. **Public servant taking gratification other than legal remuneration in respect of an official act. –** Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extend to seven years and shall also be liable to fine.
>
> *Explanations.* – (a) "Expecting to be a public servant". If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

> (b) "Gratification". The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.
>
> (c) "Legal remuneration". The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.
>
> (d) "A motive or reward of doing". A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.
>
> (e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a little for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section."

586. The prosecution has been able to prove offence under Section 7 of the Act against A-1 and offence under Section 7 of the Act read with Section 109 IPC against other appellants*. But the question again is that the appellants were not charged under Section 7 of the Act, can they be convicted under this Section?

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*(In fact, prior to amendment in the year 2018, Section 7 and 11 of the Act were playing in different fields. Section 7 of the Act was dealing with "gratification other than legal remuneration" in respect of official act taken by public servants and Section 11 of the Act was dealing with regard to public servant obtaining "valuable things". In Section 11 of the Act, prior to amendment in the year 2018, the words used were "valuable things" and under Section 7, the word used was "gratification other than legal remuneration". After 2018, the situation has changed, both under Sections 7 and 11 of the Act. Now, in Section 7 as well as Section 11 of the Act, the words used are "undue advantage". But since the case pertains to the year 2012, the instant case will be governed by the pre-amended provision.)

587. This Court while discussing the assets of A-2 has adverted to the scope of non-framing of charge. The Court took into consideration the provision of Section 464 of the Code and the principle of law as laid down in the case of Kamil (*supra).* The determining factor is as to whether the appellants were aware that they are also facing charge under Section 7 of the Act. The determining factors are "**prejudice**" and "**failure of justice**".

588. In the chargesheet, it is specific case of the prosecution that A-1 demanded money from various persons as named in the chargesheet. According to the allegations, some of whom had paid it to A-1 and some did not. These documents were given to A-1 and other appellants before the trial commenced. The prosecution adduced evidence with regard to gratification other than legal remuneration demanded by A-1. A-1 and other appellants defended their case. Therefore, this Court is of the view that, in fact, A-1 knew since inception of the trial that it has also been alleged against him that he demanded gratification other than legal remuneration in respect of official

acts. The prosecution adduced evidence on this point and it has been defended by the appellants also. Therefore, this Court is of the view that even if charge under Section 7 of the Act has not been framed against A-1, he is liable to be convicted thereunder.

589. A-1 has been sentenced to 5 years of rigorous imprisonment and a fine of Rs. 10,000/- under Section 11 of the Act. While convicting A-1 under Section 7 of the Act, the same sentence may be imposed on him. Similarly, A-2, A-3 and A-4 are liable to be convicted under Section 109 IPC read with Section 13(2) read with Section 13(1) (e) and Section 7 of the Prevention of Corruption Act, 1988. The sentence imposed on appellants A-2, A-3 and A-4 may remain unaltered.

OTHER LANDS

590. The prosecution has also levelled allegations against the appellants with regard to property situated in Village Bagral, Mussoorie-Dehradun Diversion Road, Dehradun as well as shops in Medow Shopping Complex, Dehradun, but the court below has held that the prosecution could not prove its

case with regard to these properties. It is not challenged. Therefore, it does not require any deliberations.

CONFISCATION OF PROPERTIES

591. In the instant case, the IO also filed an application for attachment of the properties under Section 3 of the Ordinance, read with Section 5(6) of the Prevention of Corruption Act, 1988 for confiscation of certain properties. The court on 08.10.2014 directed that the application filed under Section 3 of the Ordinance read with Section 5(6) of the Act be registered separately. It was registered as Miscellaneous Case in the court of Special Judge, CBI/3rd Additional District Judge, Dehradun. As stated on it, on 05.08.2015 an *ad interim* attachment order was passed. By an order dated 07.04.2017, the proceedings of the Miscellaneous Case and the case proceeded together.

592. The Miscellaneous Case has also been decided by the impugned judgment and order. The court below attached and confiscated the properties.

The details of the properties attached have been given in the impugned judgment and order, as stated hereinbefore.

593. No arguments have been advanced on behalf of either of the parties on this aspect. Therefore, this Court has no reason to make any interference on this finding of the court below.

594. In view of the foregoing discussion, this Court is of the view that the prosecution has been able to prove beyond reasonable doubt that A-1 had been in possession for which A-1 could not satisfactorily account, of pecuniary resources or properties disproportionate to his known source of income. A-1 purchased various properties in the name of A-2, A-3 and A-4 and others. Those properties are *benami* properties of A-1 (Details of the properties have already been disclosed hereinbefore).

595. The prosecution has also been able to prove beyond reasonable doubt that A-1 attempted to obtain gratification other than legal remuneration from

PW 6 I.K. Batta, for the purposes as disclosed in the earlier part of this judgment.

596. Accordingly, this Court is of the view that the prosecution has been able to prove beyond reasonable doubt the offence punishable under Section 13(2) read with Section 13(1)(e) of the Act and Section 7 of the Act against A-1.

597. The court below has sentenced A-1 under Section 13(2) read with Section 13(1)(e) of the Act. The sentence is in accordance with law. It is also liable to be confirmed.

598. Having considered the entirety of the facts, this Court is of the view that interest of justice would be served if A-1 is sentenced to rigorous imprisonment for a period of 5 years with a fine of Rs. 10,000/- under Section 7 of the Act.

599. Criminal Appeal No. 164 of 2019 is liable to be disposed of with the above modification in the conviction and sentence.

600. When these appeals were fixed for delivery of judgment on 08.02.2022, it was informed by A-1 by way of filing Misc. Application No. 14551 of 2022 that A-2 has died on 25.01.2022. On the death of an appellant, the appeal abates unless it is continued by the relatives of the appellant.

601. Section 394 of the Code provides for the procedure. It is as hereunder:-

> "**394. Abatement of appeals.** – (1) Every appeal under Section 377 or Section 378 shall finally abate on the death of the accused.
>
> (2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant:
>
> Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate.
>
> *Explanation.* – In this section, "near relative" means a parent, spouse, lineal descendant, brother or sister."

602. The information of death of A-2 was placed before the Court on the date of delievery of the judgment on 08.02.2022. On that date, learned counsel for the CBI submitted that although, he does not doubt the information given by A1, but still learned counsel argued that the factum of death of A-2 was to be verified. The CBI was given time to file the verification report on 08.02.2022. The CBI did not file any verification report till 24.02.2022 or till 02.03.2022, when the case was adjourned. On 02.03.2022, this Court directed the Senior

Supereintendent of Police, Aurangabad to verify the factum of death of A-2. The Senior Superintendent of Police, Aurangabad by his Communication No. 82 dated 04.03.2022 confirmed the death of A-2. He has also forwarded the death certificate of A-2. Today, learned counsel for the CBI has also confirmed the death of A-2. According to learned counsel for the CBI, the CBI has also verified the death of A-2 and a report has been prepared by the CBI also. A-1 or no other person has sought leave to continue the appeal. Therefore, the appeals filed by A-2 shall stand abated.

603. The Court has, in the judgment, discussed the arguments as advanced on behalf of A-2. The Court has also examined the disproportionate assets of A-2 as well as the properties held in her name by A-1. It is the case of the prosecution that the disproportionate assets in the name of A-2 are, in fact, disproportionate assets of A-1. Therefore, despite the appeals filed by A-2 having been abated on her death, the discussion on her disproportionate assets and properties held in her name by A-1, have relevance and bearing in the decision of appeals filed by other appellants.

604. This Court is also of the view that the prosecution has been able to prove beyond reasonable doubt that A-3 and A-4 abetted A-1, in the commission of offence punishable under Section 13(2) read with Section 13(1) (e) and Section 7 of the Act.

605. A-3 is liable to be convicted under Section 109 IPC read with Section 13(2) read with Section 13(1)(e) read with Section 7 of the Act. A-3 may be sentenced to undergo rigorous imprisonment for a period of 4 years and a fine of Rs. 20,000/- under Section 109 IPC read with Section 13(2) read with Section 13(1)(e) read with Section 7 of the Act. In default of payment of fine, simple imprisonment for a further period of four months.

606. A-4 is liable to be convicted under Section 109 IPC read with Section 13(2) read with Section 13(1)(e) read with Section 7 of the Act. A-4 may be sentenced to undergo rigorous imprisonment for a period of 4 years and a fine of Rs. 20,000/- under Section 109 IPC read with Section 13(2) read with Section 13(1)(e) read with Section 7 of the Act. In default of payment of fine, simple imprisonment for a further period of four months.

607. Criminal Appeal Nos. 116 of 2019 and125 of 2019 are liable to be disposed of with the above modification in the conviction and sentence.

608. In Miscellaneous Case No. 09 of 2014, the court below has attached and confiscated the

properties under the provisions of the Ordinance. This order is in accordance with law. This order is liable to be upheld and confirmed.

CONCLUSION

609. The conviction of the appellant Swetabh Suman for the offence punishable under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 is upheld and confirmed. The sentence imposed on the appellant Swetabh Suman under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 is also upheld and confirmed.

610. The appellant Swetabh Suman is convicted under Section 7 of the Prevention of Corruption Act, 1988 and is sentenced to rigorous imprisonment for a period of five years with a fine of Rs. 10,000/-. In default of payment of fine, the appellant Swetabh Suman shall undergo simple imprisonment for a further period of two months.

611. Criminal Appeal No. 164 of 2019 is disposed of with the above modification in the

conviction and sentence of the appellant Swetabh Suman.

612. On the death of the appellant Gulab Devi, the appeals filed by her, namely, Criminal Appeal Nos. 138 of 2019 and 139 of 2019 are abated.

613. The appellantsDr. Arun Kumar Singh and Rajendra Vikram Singh are convicted under Section 109 IPC read with Section 13(2) read with Section 13(1)(e) read with Section 7 of the Prevention of Corruption Act, 1988.

614. The appellant Dr. Arun Kumar Singh is sentenced under Section 109 IPC read with Section 13(2) read with Section 13(1)(e) read with Section 7 of the Prevention of Corruption Act, 1988 to undergo rigorous imprisonment for a period of 4 years and a fine of Rs. 20,000/-. In default of payment of fine, the appellant Dr. Arun Kumar Singh shall undergo simple imprisonment for a further period of four months.

615. The appellant Rajendra Vikram Singh is sentenced under Section 109 IPC read with Section

13(2) read with Section 13(1)(e) read with Section 7 of the Prevention of Corruption Act, 1988 to undergo rigorous imprisonment for a period of 4 years and a fine of Rs. 20,000/-. In default of payment of fine, the appellant Rajendra Vikram Singh shall undergo simple imprisonment for a further period of four months.

616. Criminal Appeal Nos. 116 of 2019 and 125 of 2019 are disposed of with the above modification in the conviction and sentence.

617. The order passed in Miscellaneous Case No. 09 of 2014 on the application under Section 3 of Criminal Law Amendment Ordinance (No. 38) of 1944, read with Section 5(6) of the Prevention of Corruption Act, 1988 is upheld and confirmed.

618. Criminal Appeal Nos. 115 of 2019 is dismissed accordingly. Criminal Appeal No. 125 of 2019 is dismissed to the extent it challenged the judgment and order dated 13.02.2019 passed in the Miscellaneous Case. The other directions given in the impugned judgment and order shall remain unaltered.

619. The appellants Shwetabh Suman, Dr. Arun Kumar Singh and Rajendra Vikram Singh are on bail. Their bail bonds are cancelled and sureties are discharged of their liability.They be taken into custody to serve out the sentence imposed on them.

620. Let a copy of this judgment along with the lower court record be forwarded to the court below for compliance.

(**Ravindra Maithani, J.**)
05.03.2022

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