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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 19.02.2026

Judgment pronounced on: 01 .07.2026

+ CRL.A. 1099/2016 & CRL.M.A. 20337/2022, CRL.M.A. 28669/2024

MAJOR GENERAL ANAND KUMAR KAPUR (RETD)

...Appellant

Through: Mr. Vivek Kohli, Sr Adv. with Mr. Shashank Dewan, Ms. Nikita Dewan, Mr. Ayush Kumar, Mr. Manan Kesar, Advs.

versus

CBI ... Respondent

Through:Mr. Rajesh Kumar, SPP-CBI with Mr. Changez Khan, Adv.

+ CRL.A. 86/2017 & CRL.M.A. 19559/2023, CRL.M.A. 21368/2023

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CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

CRL.M.A. 28669/2024 in CRL.A. 1099/2016

1. Mr. Kohli, learned senior counsel for the Appellant, on instructions does not press the present application in view of the Appeal, hence the same is dismissed as withdrawn.

CRL.A. 1099/2016

FACTUAL BACKGROUND

2. The present appeal has been preferred by the Appellant assailing the Judgment of Conviction dated 27.09.2016 and the Order on Sentence dated 29.09.2016 passed by the learned Special Judge, Patiala House Courts, New Delhi, (***"Trial Court"***) whereby the Appellant has been convicted under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (***"PCA"***) and sentenced to undergo rigorous imprisonment for one year along with fine of Rs. 50,000/-, coupled with confiscation of assets amounting to Rs. 2,22,04,290/-.

3. The Appellant joined the Indian Army in 1971. After undergoing the rigors of Special Selection Board (***"SSB"***) he was selected for promotion to the rank of Lieutenant General on 05.11.2007, but the result was withheld for over ten months, compelling the Appellant to file W.P.(C) No. 6856/2008 before the High Court of Delhi. During the proceedings, it emerged that merely 20 days prior to the

promotion board, the subject FIR had been registered by the CBI on the basis of an anonymous source complaint.

4. The Hon'ble High Court, *vide* orders dated 19.02.2009 and 07.10.2009, directed reconsideration of the matter and thereafter ordered promotion of the Appellant to the rank of Lieutenant General. Significantly, within 20 days of the order dated 07.10.2009, the CBI filed the chargesheet in RC AC-2/2007/A/0003/CBI/ACU-II/ND on 26.10.2009 alleging possession of disproportionate assets worth Rs. 3,37,02,592/- during the check period 14.11.1971 to 10.10.2007 against the Appellant and his wife, Ms. Mridula Kapur.

5. Aggrieved by the order dated 07.10.2009 passed by the Hon'ble High Court of Delhi, the Union of India preferred Civil Appeal No. 27 of 2016 arising out of SLP (C) No. 27107 of 2009 before the Hon'ble Supreme Court, pursuant whereto the promotion of the Appellant was stayed and he superannuated as a Major General on 30.11.2009.

6. The Hon'ble Supreme Court, *vide* order dated 05.01.2016, while disposing of the appeal on the plea of the Appellant, directed expeditious conclusion of the trial by September 2016 and observed that neither side shall seek any unnecessary adjournment before the Trial Court.

7. Thereafter pursuant to the direction of the Hon'ble Supreme Court, the Trial proceeded on a fast track basis, and the charges were framed on 22.02.2016 under Section 13(2) and 13(1)(e) of the PCA. From 02.03.2016 - 07.09.2016, the prosecution examined 80 witnesses and three days were allotted to the defence for recording of evidence, i.e., 14.09.2016 - 16.09.2016.

8. The case of the prosecution, in brief, was that an FIR dated 08.10.2007 came to be registered by the CBI on the basis of alleged

"oral source information", alleging that the Appellant, while serving in the Indian Army during the period 14.11.1971 to 31.05.2006, had amassed assets disproportionate to his known sources of income.

9. The trial culminated in conviction of the Appellant and acquittal of his wife, Accused No. 2. The Trial Court, while accepting certain computations of expenditure put forth by the defence, nonetheless concluded that the Appellant was in possession of disproportionate assets to the extent of Rs. 2,22,04,290/-. Aggrieved by the said findings, the Appellant has preferred the present appeal.

10. Further, *vide* Order on Sentence dated 29.09.2016, the Appellant was sentenced to undergo rigorous imprisonment for one year along with a fine of Rs. 50,000/- for the aforesaid offence. Subsequently, by order dated 30.09.2016, the Trial Court directed confiscation of assets equivalent to the alleged disproportionate assets amounting to Rs. 2,22,04,290/-. Aggrieved thereby, the Appellant has preferred the present Criminal Appeal No. 86/2017 challenging the confiscation order.

SUBMISSIONS ON BEHALF OF THE APPELLANT

11. Mr. Vivek Kohli, leaned senior counsel for the Appellant, submits that the impugned judgment is unsustainable in law and on facts, being founded on conjectures, surmises, and inadmissible evidence, and has resulted in a grave violation of the Appellant's right to a fair trial under Article 21 of the Constitution of India.

12. He states that the prosecution has failed to establish the ingredients of an offence under Section 13(1)(e) of the PCA being disproportionate assets. The Appellant had duly disclosed all his income, assets, and financial transactions through Income Tax Returns (***"ITRs"***) and

official declarations made to the Army authorities. It is further contended that all transactions were conducted through lawful banking channels.

Validity of Sanction Order

13. The first ground raised by Mr. Kohli is on validity of sanction order dated 29.09.2009.It is stated that despite a voluminous investigation spanning over two years, involving examination of numerous witnesses and documents, sanction was granted within a short period of approximately 20 days, rendering the exercise perfunctory.

14. He further states that the sanction for prosecution is vitiated due to non-application of mind and non-placement of relevant material before the sanctioning authority as mandated under Section 19 of the PCA (pre amendment) and para 22.16 of the CBI Manual (Crime), 2005, read with Circular No. 21/33/98-PD dated 06.05.1999. Reliance is placed on *Ashok Kumar Aggarwal v. CBI, 2016 SCC Online Del 214.*

15. The prosecution sought sanction on 30.08.2009, which was granted on 29.09.2009. However, it is an admitted case that the Appellant's explanation and complete witness testimonies particularly that of PW-149, recorded after the file was sent were not placed before the Sanctioning Authority. Additionally, the Investigating Officer (***"IO"***) (PW-76) acknowledged in his cross-examination that a letter dated 14.09.2008 (Ex. PW-76/DA), received on 15.09.2008, was neither considered by him nor forwarded to the Sanctioning Authority along with the explanations furnished by the Appellant in Annexures 1 to 6.

16. Additionally, many relevant documents and testimonies were considered irrelevant by IO and hence were not placed before the Sanctioning Authority. It is therefore contended that non-supply of all

the documents along with explanation of the Appellant to the Sanctioning Authority hits the foundation of the sanction order.

Defective Investigation

17. The second ground urged is that the investigation was biased, motivated, and conducted in a perfunctory manner with the object of obstructing Appellant's promotion to the rank of Lieutenant General. Several material witnesses, including the Appellant's mother, property owners, tenants, and other key transactional witnesses, were not examined, resulting in the suppression of crucial evidence concerning sources of income. The cross-examination of the IO further revealed multiple investigative lapses, including failure to consider the Appellant's explanations, verify income tax returns, banking and service records, examine relevant wills and witnesses, etc. These cumulative deficiencies rendered the investigation incomplete and unreliable, entitling the Appellant to the benefit of doubt and warranting the setting aside of the impugned judgment.

Mistrial

18. The next contention is that the trial stands vitiated due to the illegal closure of defence evidence, in violation of the Appellant's right to a fair trial under Article 21 of the Constitution of India and Section 386 Cr.P.C. It is submitted that the Trial Court committed a grave error in closing the Appellant's right to lead defence evidence on 16.09.2016 solely on account of a lawyers' strike, despite the Appellant being during present in Court on that day for his evidence.

19. It is submitted that out of nine defence witnesses, four were examined, while the remaining including the Appellant himself under Section 315 Cr.P.C. could not be examined due to circumstances beyond his control. The Trial Court granted only three consecutive

days for the recording of defence evidence in respect of nine defence witnesses. Pursuant thereto, four witnesses were examined and their testimonies were duly recorded on 14.09.2016 and 15.09.2016. However, on 16.09.2016, owing to a lawyers' strike, the Appellant was unable to adduce further evidence.

20. Despite the circumstances being beyond the Appellant's control, the Trial Court proceeded to close the defence evidence. Such closure effectively amounted to an impermissible review of its earlier order dated 09.09.2016, whereby the Appellant had been permitted to lead defence evidence, and resulted in a denial of the right guaranteed under Section 233 Cr.P.C and Right to fair trial under Article 21 of the Constitution of India. Reliance is placed on *Munshi Prasad v. State of Bihar (2002) 1 SCC 351, DSP, Chennai v. K. Inbasagaran (2006) 1 SCC 420.*

Affidavit of mother and will of the Father of the Appellant

21. It is submitted that the Trial Court erred in rejecting the affidavit of the Appellant's mother and the Will of his father, thereby disregarding the legitimate source of income. The record reflects that the mother was a person of sufficient means, with substantial assets and inheritance, which was neither investigated nor rebutted by the prosecution, despite the IO admitting that he neither considered her affidavits nor recorded her statement. Additionally, undue emphasis was placed on the Appellant receiving financial support from his mother without repayment, which, in the context of familial relations, cannot be a basis to discard such income. The impugned findings are thus contradictory, unsupported by evidence. Reliance is placed on *K.Dhanalakshmi v. CBI, 2023 SCC OnLine Del 105.*

Long Check Period of 36 years

22. The next ground urged is of excessive long check period of approximately 36 years, contending that the same is arbitrary and prejudicial. It is submitted that such a prolonged period renders it impossible to produce documentary evidence, particularly when statutory requirements mandate retention of records only for a limited duration.

Computation of Disproportionate Assets

23. Mr. Kohli submits that the computation of disproportionate assets is fundamentally flawed, as the prosecution has:(i) Overvalued assets without evidence; and (ii) Ignored legitimate income and receipts. It is argued that a correct computation based on evidence would demonstrate that the Appellant had surplus income rather than disproportionate assets.

24. **Half Basement, D-23, Defence Colony, New Delhi:** It is submitted that the Trial Court has gravely erred in its assessment of the value of the said property. The evidence on record, including the testimony of PW-33 (Sh. Pawan Kumar, EMCD), clearly establishes the sale consideration at Rs. 15,12,000/-, was duly corroborated by payment of stamp duty and reflected in municipal records. The same valuation is also substantiated by ITRs for AY 2008 - 2009 and the testimony of PW-41. Even the declaration made to Army Headquarters confirms the said valuation.

25. It is submitted that the reliance placed by the Trial Court on an unregistered, unattested, and unsigned document indicating a value of Rs. 41,12,000/- is misplaced. The said document, being merely a proposed agreement for commercial purposes (leasing to Lord Krishna Bank), lacks evidentiary value and cannot form the basis of

valuation. The non-examination of the alleged co-signatory further renders the document unreliable.

26. The Trial Court has also failed to appreciate the inherent improbability in valuing a basement at twice the value of a comparable ground floor property within the same premises. The accepted value of the ground floor unit at Rs. 20,54,000/- and sale of another basement portion at Rs. 10,00,000/- to another party demolishes the prosecution's valuation. Accordingly, the correct valuation of Rs. 15,12,000/- ought to be accepted, reducing the alleged disproportionate assets (***"DA"***) by Rs. 26,00,000/-.

27. **Property at Dauna Paula, Goa:** It is submitted that the inclusion of the property at House No. 506, Dauna Paula, Goa, in the assets of the Appellant is wholly erroneous. The registered Sale Deed (Ex. PW-75/A) clearly establishes that the property stands in the name of Mr. Dhruv Kapur, son of the Appellant, who is an independent income tax assessee. The property was willed by the grandfather to Mrs. Santosh Kapur (mother of the Appellant) who gifted it by gift deed to Dhruv Kapoor (son of the Appellant). The same is evident from affidavits (Ex. PW-76/DM-1) and (Ex. PW-76/DN) and the ITRs of Mr. Dhruv Kapur.

28. Learned senior counsel, further submits that the IO has admitted failure to verify bank transactions or examine relevant parties, including the donor and donee. There is no evidence implicating the Appellant in the acquisition. Accordingly, the inclusion of Rs. 30,21,000/- is unsustainable and liable to be excluded from the DA computation.

29. With respect to the movable assets, the Trial Court erred in disregarding the affidavit of mother, resulting in an incorrect assessment of the assets attributed to the Appellant. The findings relating to the movable properties are liable to be set aside for the following reasons:

(i) **PPF Account (SBI, Panipat):** The balance in the account was Rs. 6,68,552/-. Out of this, contributions amounting to Rs. 2,36,000/- were made by the Appellant's parents from known and disclosed sources of income.

(ii) **Post Office Investment (Lodhi Road):** The investment of Rs. 3,00,000/- was made to Mrs. Mridula Kapur from funds gifted by the Appellant's mother out of the sale proceeds of her properties. The same is substantiated by her affidavit.

(iii) **HDFC Standard Life Insurance Policy:** The premium amount of Rs. 4,75,000/- was paid by the Appellant's mother in the name of Accused No. 2. The inability of the insurance company to trace records cannot outweigh the affidavits establishing the source of funds.

(iv) **Jewellery:** The valuation of jewellery at Rs. 18,00,000/- is wholly unsupported by evidence. The prosecution neither proved any valuation report nor examined the valuer. On the contrary, the Appellant placed on record wealth tax returns to show the gold in possession. In the absence of reliable proof of valuation, no adverse inference could have been drawn.

(v) **Cash:** A sum of Rs. 5,00,000/- recovered during the search belonged to the Appellant's father-in-law, a fact which was accepted by the Court and was released. The balance amount was duly explained as contributions received from family members for medical treatment and is supported by affidavits and oral testimony.

(vi) **Foreign Currency:** The foreign currency recovered pertained to an advance received by the Appellant's wife in the course of her employment with Kimaya Store. The source of the amount is corroborated by independent witnesses and affidavits and cannot be attributed to the Appellant.

30. Agricultural Income: It is submitted that the Trial Court failed to correctly assess the agricultural income derived from approximately 34 bighas and 46 kanals of agricultural land situated in Panipat and Karnal. It is submitted that the land was cultivated through a tenant, Sh. Surjit, and the income was received by the Appellant's parents on his behalf and subsequently transferred to the Appellant. The same is supported by the tenant's affidavit, the Tehsildar's certificate, the testimony of DW-4, and the affidavits and testamentary documents of the Appellant's parents. The Appellant further submits that despite the tenant's affidavit having been furnished during investigation, he was neither examined by the IO nor permitted to testify due to the premature closure of defence evidence. It is therefore contended that the Trial Court erred in disregarding the evidence and fixing the agricultural income to a lower amount. Hence the value of income of Appellant would increase by Rs. 10,83,030/-.

31. **HUF Income:** It is submitted that the income of the Hindu Undivided Family (***"HUF"***) was incorrectly computed by the Trial Court. It is contended that the agricultural income received by the Appellant's parents through the tenant, as reflected in the affidavits and other documents, was not accounted for. The Appellant also challenges the treatment of rental income, arguing that the Trial Court wrongly adopted the income reflected after deduction under Section 24(a) of the Income Tax Act instead of considering the gross rental receipts. According to the Appellant, the statutory deduction under the Income Tax Act is merely a tax benefit and does not diminish the actual income received from the property which is supported by PW-61 cross examination. Hence, the value of income of the Appellant would increase by Rs. 14,59,389/-.

32. **Interest Income from HDFC and PNB Bank Accounts:** Mr. Kohli submits that the Trial Court erred in computing the interest earned from the savings bank accounts and fixed deposits maintained with HDFC Bank. It is contended that the actual interest accrued during the relevant period is reflected in the ITRs, Form-16 and TDS records issued by the bank, whereas the Trial Court relied only upon the net amounts credited in the bank statements without accounting for tax deducted at source. Consequently, the Appellant claims that the interest income was understated. The Appellant similarly challenges the computation of interest earned on fixed deposits maintained with Punjab National Bank. Hence, the value of income of the Appellant would increase by Rs. 4,07,083/- and Rs. 1,43,482/- respectively.

33. **Rental Income from Defence Colony Property:** The Appellant contends that the Trial Court wrongly assessed the rental income generated from the Defence Colony property by considering only the

net income remaining after the standard deduction permissible under Section 24(a) of the Income Tax Act. It is submitted that the gross rent received from tenants represents the actual income earned, whereas the statutory deduction is merely a tax concession granted by law. Therefore, according to the Appellant, the entire rental receipt ought to have been included while computing his income. Hence, the value of income of the Appellant would increase by Rs. 8,85,626/-.

34. Income from Mridula Contract Services: The Appellant further assails the computation of income derived from Mridula Contract Services. It is submitted that the Trial Court accepted the income figures after deducting contractual expenses, while simultaneously including the same expenses separately under the expenditure head. According to the Appellant, this resulted in a double deduction of the same amount and consequently an artificial reduction of the income attributable to the business. It is therefore contended that the full income received from the contractual services ought to have been considered while assessing the Appellant's financial resources. Hence the net income of the Appellant would increase by Rs. 9,71,587/-.

35. It is also submitted that the Trial Court has unjustifiably rejected the following legitimate sources of income, as these amounts, were transacted through legitimate channels and supported by evidence.

i. Friendly loans (Maj. A. Ganesan, Smt. L. Maira, Sh. H.N. Maira) duly supported by banking records;
ii. Substantial financial support from the Appellant's mother (Rs. 50,93,082/-), evidenced through bank transfers and sale proceeds;

iii. Gifts from parents and in-laws, supported by affidavits and financial capacity;

iv. Income from minor children's investments declared in ITRs;

v. Savings of Mrs. Mridula Kapur from employment in Oman;

vi. Transfers from parental accounts to HUF.

36. Further it is stated that the Trial Court has erroneously treated the Shimla property transaction as a loss. Evidence on record (Ex. P-102) establishes that the Appellant earned a profit of Rs. 12,33,000/-. The non-examination of the purchaser warrants an adverse inference against the prosecution. Consequently, instead of increasing expenditure, the said amount ought to reduce it, impacting the DA computation by Rs. 24,66,000/-.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

37. Mr. Kumar, learned Special Public Prosecutor for the Respondent has submitted that the present case was registered on the basis of source information received by the police, which disclosed that during the period from 14.11.1971 to 31.05.2006, the accused had amassed assets through corrupt and illegal means either in his own name or in the names of his family members, which were allegedly disproportionate to his known sources of income.

38. It is further submitted that, while adjudicating the present matter, the Trial Court has taken a lenient view and ignored minor expenditures while assessing the disproportionate assets of the accused. It is also stated that the prosecution has succeeded in proving its case beyond reasonable doubt and that the findings recorded by the Trial Court do not warrant any interference by this Hon'ble Court. With regard to

other aspects of the case, the following contentions have been put forth:

Validity Of Sanction

39. It is submitted that the sanction order was proved by the sanctioning authority, namely R.K. Gupta (PW-8). The said witness categorically deposed that, prior to according sanction for prosecution of the Appellant, he had carefully examined the relevant records and documents placed before him and, upon due application of mind, granted the sanction in accordance with law. Accordingly, the sanction accorded against the Appellant is valid in the eyes of law. Reliance is placed on *Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1, CBI v. Jagat Ram, 2024 SCC OnLine SC 3675.*

Effect of Closure of Defence Evidence

40. It is submitted that the Trial Court conducted the proceedings in a time-bound manner in compliance with the directions issued by the Hon'ble Supreme Court *vide* order dated 05.01.2016 in Civil Appeal No. 27 of 2016 arising out of SLP (C) No. 27107 of 2009. Despite sufficient opportunities having been granted to the Appellant to lead defence evidence, no such evidence was produced. Consequently, *vide* order dated 16.09.2016, the Trial Court rightly closed the defence evidence. Reliance is placed on *Harish Uppal v. Union of India, (2003) 2 SCC 45* wherein it was held that strikes or boycotts by advocates cannot obstruct judicial proceedings or impede the administration of justice.

41. It is further submitted that, despite alleging prejudice on account of closure of defence evidence, the Appellant neither availed the remedies available under Sections 311 and 315 Cr.P.C. before the

Trial Court nor filed any application under Section 391 Cr.P.C. at the time of preferring the present appeal on 17.11.2016. Significantly, the application under Section 391 Cr.P.C. came to be filed only in the year 2024, after an unexplained delay of nearly eight years, which itself demonstrates the absence of any genuine prejudice or urgency in seeking additional evidence. Hence the Appellant's right to adduce evidence was rightly closed.

Alleged Defect in Investigation

42. Mr. Kumar submits that the investigation in the present case was conducted in a fair and proper manner, with the IO collecting and proving all material oral and documentary evidence necessary to establish the guilt of the accused. In any event, even assuming the existence of any minor irregularity or defect in the investigation, the same would not vitiate the prosecution case or entitle the Appellant to acquittal in the absence of any demonstrated prejudice. Reliance is placed on *State of Karnataka v. K. Yarappa Reddy, (1999) 8 SCC 715 and Zindar Ali v. State of West Bengal, (2009) 3 SCC 761* to state that defects in investigation do not affect a conviction where the evidence on record otherwise proves the guilt of the accused beyond reasonable doubt.

Onus of Proof in DA cases

43. It is stated that in DA cases, the burden of proof is divisible into two distinct parts. The expression "known sources of income" occurring in the statute refers to the sources known to the prosecution, and the initial burden squarely rests upon the prosecution to establish the same. The second part of the provision, namely, "for which the public servant cannot satisfactorily account", casts a corresponding burden

upon the accused to furnish a satisfactory explanation regarding the assets found in his possession.

44. Reliance has been placed on *State of T.N. v. R. Soundirarasu, (2023) 6 SCC 768* wherein it has been held that, in order to bring home a charge under Criminal misconduct, the prosecution is required to establish the following foundational facts: (i) that the accused is a public servant; (ii) the nature and extent of the pecuniary resources or property found in his possession; (iii) the known sources of income of the accused, meaning thereby the sources known to the prosecution; and (iv) that the resources or property so found were disproportionate to his known sources of income. It has further been held that once the aforesaid ingredients stand established, the offence of criminal misconduct stands completed unless the accused is able to satisfactorily account for such disproportionate assets.

45. At that stage, the burden shifts upon the accused to explain the possession of such assets, though the standard of proof required on the part of the accused is not beyond reasonable doubt, but only that of preponderance of probabilities, as laid down in *V.D. Jhingan v. State of U.P., AIR 1966 SC 1762.*

Rejection of Affidavit of Mother and Will of the Father of Appellant

46. With respect to the affidavit of the mother of Appellant and the alleged will of his father, it is stated that the Trial Court has rightly rejected both documents as they lack credibility and evidentiary value. The affidavit of the mother, was executed on 28.03.2012, i.e., after filing of the charge-sheet, clearly rendering it an afterthought. Moreover, the affidavit neither discloses any particulars of bank accounts nor explains the source of the alleged substantial funds. Significantly, the registered will dated 27.10.2002 executed by the

mother does not contain any reference to possession of any large amount of money, which otherwise would have ordinarily found mention therein.

47. Similarly, it is stated that the alleged will of the father of Appellant, is merely a photocopy and remains unregistered. Considering that the father of Appellant was an advocate, the absence of registration and non-production of the original creates serious doubt regarding its genuineness and authenticity.

48. It has been contended on behalf of the Appellant that the Trial Court erred in law while assessing the assets held by the Appellant prior to the check period. In this regard, it has been submitted that the Investigating Agency assessed the pre-check period assets on the basis of certificate Ex. PW61/E dated 01.10.1971, allegedly written by Sh. Milkhi Ram, father of the Appellant.

49. The said document formed part of file D-229, which was seized by the IO from House No. 305, Forest Lane, Sainik Farm, New Delhi, belonging to Smt. Santosh Kapur, *vide* Search-cum-Seizure Memo Ex. PW1/A, wherein the file was reflected at Serial No. 44. It is further submitted that file Ex. P-31 (D-72), received by the CBI from the Army authorities, contained certified copies of the property returns filed by the Appellant, the first of which was filed on 29.12.1973.

50. The said return disclosed agricultural land at Panipat and Karnal as well as immovable property at Lohgarh, Amritsar, Punjab, all of which were duly considered by the IO in the charge-sheet. The returns further disclosed annual agricultural income of Rs.1,000/- each from the lands at Panipat and Karnal and Rs.310/- from the Lohgarh property. Though subsequent returns reflected increased agricultural

income, there was admittedly no disclosure of any NSCs, FDRs or similar investments.

51. It has also been submitted that the IO adopted a practical approach in accepting certificate Ex. PW61/E and that the Trial Court has observed that the IO had already assessed the pre-check period assets of the Appellant at a value higher than what stood disclosed in the property returns submitted by him to the Army authorities in the year 1973. It was further observed that had the valuation been confined strictly to the disclosed property returns, even the benefit of NSCs could not have been extended to the Appellant. Accordingly, it has been contended that the evidence on record sufficiently establishes that the assets held by the Appellant prior to the check period were to the extent of Rs.41,700/.

52. It has further been submitted that the Trial Court has returned a justified finding with regard to the non-disclosure of alleged assets received from the father and mother of the Appellant to the Indian Army. The record reflects that qua several movable and immovable assets, the Appellant did not dispute the valuation assessed by the prosecution and, accordingly, the Trial Court accepted the prosecution valuation with respect to such uncontested entries. However, insofar as the properties whose valuation was specifically challenged are concerned, the Trial Court has dealt with the same by assigning detailed and cogent reasons.

53. With regard to certain properties and assets, namely the calculation pertaining to Half Basement, D-23, Defence Colony, New Delhi; House No. 506, Dona Paula, Panjim, Goa; funds deposited in PPF A/c, SBI Panipat; deposits in Post Office, Lodhi Road; and HDFC Standard Life Insurance, the claim of the Appellant has been declined

primarily on the basis that the explanation furnished in support thereof rested upon the affidavit of the mother of the Appellant, which has rightly been discarded by the Trial Court for want of credibility as it does not disclose the sources of income and secondly it was prepared on 28.03.2012, i.e., after filing of the chargesheet.

54. It is further submitted that qua valuation of jewellery, the Trial Court relied upon the valuation reports and relevant documentary evidence including income tax and wealth tax returns, and after detailed examination thereof, rightly assessed the value of the jewellery.

55. Similarly, with respect to the cash amount of Rs.11,62,240/-, the Trial Court rightly disbelieved the testimony of DW-1, (Ms. Pratibha Sharma, sister in law of the Appellant) observing that the witness had deposed merely to protect close relatives and that no satisfactory details regarding expenditure incurred on treatment of M.M. Chibber were furnished. The foreign currency recovered from the locker was also rightly treated as belonging to A-2, wife of the Appellant. The addition of 2500 pounds to the assets of the Appellant was also rightly upheld, as the testimony of DW-2 (Mr. Kewal Krishan, accountant at Kimaya Store) failed to inspire confidence and no documentary proof or bill regarding the alleged transaction was produced.

56. The Trial Court has further rightly assessed the agricultural income, rental income and interest income after considering the documentary evidence on record and rejecting unsupported affidavits and unsubstantiated oral testimonies relied upon by the Appellant. The affidavits of alleged tenants and agriculturists were rightly discarded as the witnesses neither entered the witness box nor produced any documentary evidence in support of the alleged income. Likewise, while calculating HUF income, rental income from D-23, Defence

Colony, and interest earned through various bank accounts, the Trial Court rightly relied upon income tax returns and bank statements, being the best evidence available on record, and reasonably deducted expenditure towards repairs and maintenance.

57. The Trial Court has also rightly rejected the alleged friendly loans claimed to have been taken by the Appellant from DW-3 Major A. Ganesan, Smt. L. Maira and Sh. H.N. Maira, as no satisfactory explanation regarding the purpose, necessity or supporting documentation of such loans was furnished. Similarly, the alleged loan of Rs.50,93,082/- purportedly advanced by the mother of the Appellant was rightly disbelieved as the Appellant failed to establish the financial capacity or source of income of his mother through any cogent evidence such as income tax returns, bank accounts or other reliable documents. Accordingly, the findings recorded by the Trial Court on the aforesaid aspects do not suffer from any illegality or perversity warranting interference.

58. The Trial Court has rightly rejected the various claims raised by the Appellant with regard to alleged gifts, investments and savings, as the same were unsupported by reliable documentary evidence and failed to inspire confidence. The claim regarding income of Rs.6,16,631/- from investments in the accounts of minor children was based upon the alleged will dated 12.08.2000 of Late Sh. Milkhi Ram, Ex. PW76/DN (Colly.), which was admittedly an unregistered photocopy. The Trial Court rightly doubted its authenticity, particularly when the alleged testator was a practicing advocate and no plausible explanation was furnished for non-registration or non-production of the original will.

59. Similarly, the claim of gift of Rs.1,00,000/- from the mother of the Appellant was rightly rejected, as no material whatsoever was placed on record to establish the financial capacity or source of income of the mother. The alleged gift of Rs.10,00,000/- by the parents of Mrs. Mridula Kapur was also rightly disbelieved by the Trial Court, observing that it was improbable that such a substantial amount in the year 1986 would have been retained in cash without being deposited in any bank account, and no documentary evidence in support thereof was produced.

60. Further it is stated that the Trial Court rightly rejected the alleged savings of Rs.4,00,000/- of Mrs. Mridula Kapur from her employment in Oman prior to marriage, as no evidence regarding the nature of employment, duration of service, salary or source of income was produced except her passport, which by itself did not establish any earnings. Likewise, the claim regarding gift/loan of Rs.4,00,000/- from the mother of the Appellant was also rightly discarded, particularly when the amount had been reflected as a loan in the relevant records and no evidence was produced to establish the source from which the mother could advance such substantial amounts.

61. The Trial Court has also rightly rejected the alleged gifts of Rs.2,45,000/- to Dhruv and Dilkash by the father in law of the Appellant, as the same were never disclosed to the Army authorities. Similarly, the amount allegedly transferred to the HUF account from the parental bank account at Panipat was rightly disbelieved since the same was neither intimated to the Army authorities nor disclosed in the income tax returns. Thus, the findings recorded by the Trial Court are based upon proper appreciation of evidence and call for no interference.

ANALYSIS AND FINDINGS

62. I have heard the learned counsels for the parties and perused the record.

63. It is pertinent to note that while dealing with an appeal against conviction and sentence, the Appellate Court is required to independently reappreciate the entire evidence on record and arrive at its own conclusions. It is a settled principle of criminal jurisprudence that a conviction cannot rest on surmises or conjectures, and the burden lies squarely upon the prosecution to establish every ingredient of the alleged offence through cogent, reliable and credible evidence beyond reasonable doubt. This standard serves as a vital safeguard against wrongful conviction. Equally well settled is the principle that the prosecution must stand on its own legs and cannot derive support from any perceived weakness in the defence; consequently, where the prosecution case is beset with inconsistencies, contradictions or evidentiary gaps, the benefit of doubt must necessarily enure to the accused.

64. The following issues arise for my consideration:

(1) Whether the Trial conducted by the Special Judge violated principles of natural justice and fair hearing?

(2) Whether the sanction order dated 29.09.2009 is non est?

(3) Whether the Trial Court erred in calculating disproportionate assets of the Appellant?

65. Before adverting to the merits of the case, it is apposite to note the grave consequences that a criminal prosecution, particularly one under the PCA, entails for an accused person. A finding of corruption against a public servant carries far-reaching consequences, irreparably

tarnishing his reputation, credibility, and standing in society. These consequences are even more severe in the case of an officer of the Indian Army, where integrity, discipline, honour, and selfless service form the bedrock of his service. A person enters the armed forces only after undergoing a rigorous process of selection and thereafter earns promotion through years of dedicated and distinguished service.

66. Allegations of corruption not only expose such an individual to the rigours of criminal prosecution but also cast a lasting shadow upon the honour and reputation painstakingly built over the course of an entire career.

67. Having said that, it is also important to note that corruption is akin to termites which, though not always visible on the surface, silently and continuously erode the stability, strength and very fabric of the nation. Even a remote or stray incident of corruption should not be allowed to go unpunished.

68. In ***State of M.P. v. Ram Singh, (2000) 5 SCC 88*** it was observed as under:

> ***"8.*** *Corruption in a civilised society is a disease like cancer, which if not detected in time, is sure to maliganise (sic) the polity of the country leading to disastrous consequences. It is termed as a plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-*

people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence — shaking of the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society."

69. Findings of guilt under the PCA cannot be arrived at in a cursory or perfunctory manner, but only where the prosecution has established its case beyond reasonable doubt. In this view, it is important that the accused be afforded every reasonable opportunity to defend himself and establish his innocence. It is, therefore, incumbent upon the Court to closely scrutinise the prosecution case and the fairness of the trial before recording a finding that may permanently affect the life, and reputation, of the accused.

Issue 1: Mistrial

70. Dealing with the contentions urged on behalf of the Appellant, the first ground raised is that the trial stood vitiated on account of denial of adequate opportunity to lead defence evidence. It has been contended that while the prosecution was granted nearly six months, i.e., from 02.03.2016 till 07.09.2016, to establish its case, the defence evidence was abruptly closed by relying upon directions issued by the Hon'ble Supreme Court regarding expeditious disposal of the matter.

71. At this stage it is apposite to appreciate the law on fair trial, in ***Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158*** it was held as under:

"39. Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due

process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty, stage-managed, tailored and partisan trial.

40. The fair trial for a criminal offence consists not only in technical observance of the frame and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice."

(Emphasis added)

72. Similarly in ***J. Jayalalithaa v. State of Karnataka, (2014) 2 SCC 401*** it was held as under:

28. *Fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society. Thus, fair trial must be accorded to every accused in the spirit of the right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case. Any breach or violation of public rights and duties adversely affects the community as a whole and it becomes harmful to the society in general. In all circumstances, the courts have a duty to maintain public confidence in the administration of justice and such duty is to vindicate and*

uphold the "majesty of the law" and the courts cannot turn a blind eye to vexatious or oppressive conduct that occurs in relation to criminal proceedings.

29. *Denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial Judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty. Justice should not only be done but should be seem to have been done. Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right but a human right also. Therefore, any hindrance in a fair trial could be violative of Article 14 of the Constitution. "No trial can be allowed to prolong indefinitely due to the lethargy of the prosecuting agency or the State machinery and that is the raison d'être in prescribing the time frame" for conclusion of the trial.*

30. *Article 12 of the Universal Declaration of Human Rights provides for the right to a fair trial what is enshrined in Article 21 of our Constitution. Therefore, fair trial is the heart of criminal jurisprudence and, in a way, an important facet of a democratic polity and is governed by the rule of law. Denial of fair trial is crucifixion of human rights…"*

(Emphasis added)

73. A perusal of the aforesaid decisions leaves no manner of doubt that the concept of a fair trial occupies a central position in criminal jurisprudence and constitutes an inseparable facet of the Right to life and personal liberty under Article 21 of the Constitution. The Hon'ble Supreme Court has consistently held that fairness in a criminal trial is not confined merely to ensuring an opportunity to the prosecution to establish its case, but equally extends to safeguarding the rights of the accused to effectively defend himself.

74. A perusal of the order dated 09.09.2016 reveals that the Appellant intended to examine nine defence witnesses, out of whom five were to be produced by the Appellant himself and four were to be summoned through the Court. The matter was thereafter fixed for defence evidence on 14.09.2016, 15.09.2016 and 16.09.2016. On 14.09.2016, DW-1 Ms. Pratibha Sharma and DW-2 Sh. Kewal Krishan were examined and discharged. Thereafter, on 15.09.2016, DW-3 Maj. A. Ganesan and DW-4 Hari Maira were examined and discharged. The matter was then adjourned to 16.09.2016, on which date it was recorded that final arguments would be heard from 19.09.2016 to 21.09.2016 on a day-to-day basis and judgment would be pronounced on 27.09.2016.

75. On 16.09.2016, the Trial Court proceeded to close the defence evidence by observing as under:

"

IN THE COURT OF SPECIAL JUDGE-03,
(P.C. ACT) (CBI) PHC, NEW DELHI

CC No. 17/2013
CBI Vs. Maj. Gen. Anand Kumar Kapur etc.

Lawyers are on strike today
16.9.2016
Present: Sh. Manoj Shukla, Ld. Sr. B P for CBI.
Accused Maj. Gen. Anand Kumar Kapur (A-1) is present on bail.
Accused Ms. Mridula Kapur (A-2) is absent.
Ms Alka Sharma and Sh. Bhavesh Verma, proxy counsels for the accused persons.

Presence of accused Mr. Mridula Kapur (A-2) is exempted through proxy counsel on an application only for today.

The accused submits that due to strike of lawyers, he is unable to examine witnesses and seeks adjournment. I am not inclined to grant any adjournment because it is a time bound case. Already sufficient opportunity to examine defence witnesses have been given by this court. By the order of Hon'ble Supreme Court of India, this case has to be decided by the end of September 2016. Strike of lawyers cannot be any ground for any adjournment in light of aforesaid directions of Hon'ble Supreme Court of India. Accordingly, I close defence evidence by this order.
The final arguments will be heard from 19.9.2016 to 21.9.2016 on day to day basis. The judgement will be announced on 27.9.2016.

(Sd/-)
Special Judge-03, CBI
P.C. Act, PHC, New Delhi
16.9.2016"

76. The order dated 05.01.2016 of the Hon'ble Supreme Court reads as under:

"At this juncture, Ms. Jyoti Mendiratta, learned counsel appearing for the respondent, submitted that the trial may take long time and, therefore, there should be a direction by

this Court for expeditious disposal of the criminal trial forming the subject matter of CC No.17/2013 (CBI Case RCAC-2-2007 A0003). Regard being had to the factual matrix, it is directed that the trial shall be completed by the end of September, 2016. Neither the prosecution nor the accused shall seek unnecessary adjournment before the trial Court. The disposal of the trial shall be intimated to the Registry of this Court by the concerned trial Judge.

With the aforesaid observations and directions, the appeal stands disposed of. There shall be no order as to costs."

77. The Respondent has placed reliance on ***Harish Uppal (supra)*** to state that closing of evidence by the trial court was in consonance with the said judgment.

78. There can be no quarrel with the proposition laid down in ***Harish Uppal (supra)*** that strikes or boycotts by lawyers are illegal and that Courts are not expected to adjourn matters merely because advocates have abstained from work. The said judgment was rendered to ensure that the administration of justice is not held hostage to calls for strike and that litigants do not suffer on account of professional abstention by members of the Bar. However, the observations made therein cannot be construed to mean that in every case where a litigant seeks a short accommodation due to disruption of court work, the Court is mandatorily required to shut out the defence altogether, irrespective of the stage of the proceedings and the consequences involved.

79. In the present case, the Appellant was facing serious charges under PCA carrying grave penal and reputational consequences. The

prosecution had already taken nearly six months to lead its evidence, whereas the defence was effectively confined to three dates for examination of all its 9 witnesses. The record further reveals that out of nine cited defence witnesses, four had been examined before the defence evidence was abruptly closed. The request made on behalf of the Appellant was not for an indefinite adjournment intended to delay the proceedings, but for a limited accommodation on account of the prevailing lawyers' strike.

80. The Appellant had diligently availed the opportunity granted by the Trial Court and examined two defence witnesses each on 14.09.2016 and 15.09.2016. The remaining witnesses could not be examined on 16.09.2016 solely on account of the lawyers' strike, a circumstance entirely beyond the Appellant's control. Significantly, the Appellant himself, whose name figured in the list of defence witnesses, was present before the Court and could have been examined even on that date. However, the Trial Court proceeded with undue haste to close the Appellant's evidence without granting any further opportunity, thereby causing serious prejudice to the defence.

81. In such circumstances, the Trial Court was required to balance two competing considerations, the obligation to comply with the directions of the Hon'ble Supreme Court for expeditious disposal, and the equally sacrosanct obligation to ensure a fair and meaningful opportunity to the accused to defend himself. Unfortunately, the impugned order reflects that the Trial Court proceeded solely with the objective of adhering to the timeline fixed for conclusion of the case, without examining whether denial of further opportunity would occasion prejudice to the defence.

82. The anxiety of the Trial Court to comply with the directions of the Hon'ble Supreme Court is understandable and indeed justified. However, procedural timelines cannot eclipse the constitutional guarantee of a fair trial under Article 21 of the Constitution of India. The right of an accused to effectively present his defence is not an empty formality but a substantive safeguard forming part of the principles of natural justice. A criminal trial cannot be reduced to a race against time which overrides the duty to ensure fairness.

83. I am therefore of the opinion that the Trial Court adopted an unduly technical and hurried approach in closing the defence evidence without granting a reasonable opportunity to the Appellant to conclude the examination of his remaining witnesses. While the Court was justified in discouraging unnecessary adjournments, the facts of the present case warranted a more calibrated approach so that the mandate of speedy trial could coexist with the equally important requirement of a fair trial. No doubt after the passing of the order dated 16.09.2016 wherein the evidence of Appellant was closed it was open to the Appellant to challenge the order or file an application under Section 311 Cr.P.C. Even though the petitioner has not exercised those rights but the facts enumerated above clearly show that the Appellant did not get a fair opportunity to prove its case. The denial of a fair opportunity to defend oneself forms the bedrock of criminal jurisprudence and cannot be waived/curtailed.

Issue 2: Whether the Sanction Order is non est?

84. Now dealing with the second issue that the sanction order was invalid/ non est.

85. The law governing sanction for prosecution under Section 19 of the PCA is no longer *res integra.* In ***Ashok Kumar (supra)***, after an exhaustive analysis of precedents it was held that sanction is a sacrosanct safeguard intended to protect public servants against frivolous and vexatious prosecution, and that the sanctioning authority must independently apply its mind to the entire material collected during investigation before according sanction. The relevant paras read as under:

> *"51. The decision of the Hon'ble Supreme Court in State of Maharashtra v. Mahesh G. Jain (supra) does not come to the aid of the official respondents as the Supreme Court has categorically observed that the application of mind of the sanctioning authority must be apparent on the face of the sanction order and it is for the prosecution to prove that a valid sanction has been granted. In the instant case, the sanction order dated 21.06.2002 does not show that the sanctioning authority had perused all the relevant documents before granting the said sanction order and the official respondents have failed to show that the relevant documents were placed before the sanctioning authority.*
>
> *52. It is trite to state that a sanction is a precursory sacrosanct step to initiate criminal proceedings against public officer, and the lack of a valid sanction precludes the court from taking cognizance of the an offence under section 19(1) POCA. Section 19(1)*

POCA affords protection to those public servants, who could get trapped in vexatious proceedings while discharge of their official functions. If this protection is not afforded to a public servant then the cognizance taken under section 19(1) POCA also stands vitiated.

…

The CBI Manual at para 22.16 stipulates that on completion of investigation, the entire record of the same must be sent to the sanctioning authority in view of the decision of the Supreme Court in State of Tamil Nadu v. M.M. Rajendran, reported as (1998) 9 SCC 268.

…

59. There is yet another issue that the paramount consideration for a valid sanction is 'due application of mind' by the sanctioning authority, which has been Summarized by the Hon'ble Supreme Court in the case of Mansukhlal Vithaldas Chauhan v. State of Gujarat, reported as (1997) 7 SCC 622 in the following words: "19. Since the validity of "Sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows, that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any

external force be acting upon it to take decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be had for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution."

62. For the grant of sanction the Supreme Court has clearly laid down the process to be followed in the case of CBI v. Ashok Kumar Aggarwal, reported as (2014) 14 SCC 295 in the following words:

"16. In view of the above, the legal propositions can be Summarized as under:

16.1 The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

16.2 The authority itself has to do complete and conscious scrutiny of the whole record so produced by

the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

16.3 The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

16.4 The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

16.5 In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had beengranted in accordance with law.

…

67. In the case of Mohd. Iqbal Ahmed v. State of Andhra Pradesh, (1979) 4 SCC 172 the Hon'ble Supreme Court has held that the onus of proving that a valid sanction has been obtained is on the prosecution. It has been held:

"3 .....It is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. This should

be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show that the facts placed before the Sanctioning Authority and the satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest difficult (sic-defect) in the prosecution, the entire proceedings are rendered void ab initio.

…

69. Considering the conspectus of decisions above-referred the following legal propositions can be culled out:

a) Grant of sanction is a sacrosanct act and is intended to provide safeguard to a public servant against frivolous and vexatious litigation.

b) The sanctioning authority after being apprised of all the facts, must be of an opinion that prima-facie a case is made out against the public servant.

c) Thus, for a valid sanction the sanctioning authority must be apprised of all the relevant material and relevant facts in relation to the commission of the offence.

d) This application of mind by the sanctioning authority is a sine qua non for a valid sanction.

e) The ratio of the sanction order must speak for itself and should enunciate that the sanctioning authority

has gone through the entire record of the investigation. Thus, the sanction order must expressly show that the sanctioning authority has perused the material placed before it, and after considering the circumstances in the case against the public servant, has granted sanction.

f) If the application of mind by the sanctioning authority is not apparent from the sanction order itself then the burden of proving that the entire relevant record was placed before the sanctioning authority rests on the prosecution. The prosecution must establish and satisfy the court by leading evidence that the entire record of investigation was placed before the sanctioning authority.

...

79. The Special Judge in its order dated 24.05.2014 lost sight of the established position of law that if the entire material of investigation is not sent to the sanctioning authority, the consequent sanction order becomes invalid on account of non-application of mind by the sanctioning authority. As observed above, a valid sanction is a sine qua non for initiating proceedings under POCA against a public officer. The Special Judge, CBI misdirected himself by taking recourse to section 19 (3) POCA. The Special Judge overlooked the mandate that an order is bad in law if it is based on irrelevant material, or if it has failed to consider relevant material. And owing to the fact that

the relevant material, (in the instant case, the entire material collected during investigation) was not placed before the Sanctioning Authority, the sanction order dated 26.11.2002 is invalid and the proceedings before the Special Judge are vitiated for want of a valid sanction as per the provisions of section 19(1) POCA.

80. In view of the foregoing, the issue raised in Criminal Revision Petition No. 338/2014 regarding the validity of the sanction order dated 26.11.2002 is invalid, void ab-initio and non-est. Consequently, the order of the Special Judge (CBI) dated 24.05.2014, impugned herein, is set aside and quashed.

81. A proper investigation into crime is one of the essentials of the criminal justice system and an integral facet of rule of law. The investigation by the police under the Code has to be fair, impartial and uninfluenced by external influences. Where investigation into crime is handled by the CBI under the Delhi Special Police Establishment Act, 1946 (hereinafter referred to as 'the DSPE Act'), the same principles apply and the CBI as a premier investigating agency is supposed to discharge its responsibility with competence, promptness, fairness, uninfluenced and unhindered by external influences…

…

96. The petitioner has suffered great prejudice since 1998 on account of the prolonged litigation between him and the official respondents. He has endured

suffering, humiliation and considerable trauma. A sense of dubiety has persisted qua the petitioner since long which reminds one of the lyrics in the famous song by Bob Dylan: "How many roads must a man walk down Before you call him a man?"

97. Normally, the case would have been remitted back to the sanctioning authority for reconsideration on a fresh order of sanction. However, in the circumstance that the instant case commenced as far back as in 1998 and eighteen years have since lapsed; and in the light of the decision of the Supreme Court in Mansukhlal Vithaldas Chauhan v. State of Gujarat (supra), in my opinion it would be unfair, unjust and contrary to the interests of justice to expose the petitioner to another round of litigation and keep him on trial for an indefinitely long period. It would also offend the principle enshrined in the provisions of Article 21 of the Constitution of India. A quietus must be applied to the present proceedings. Thus, in the interest of justice, finality is given to these proceedings and it is directed that no further proceedings in relation to the subject sanction orders be initiated against the petitioner."

Similarly in State Inspr. of Police, Vishakhapattanam v. Surya Sankaran Kari [(2006) 7 SCO 172] it was held as under:

"20. The courts are obliged to go into the question of prejudice of the accused when the main investigation is concluded without a valid sanction. (See State of

Andhra Pradesh vs. P.V. Narayana [(1971) 1 SCO 483: AIR 1971 SO 811]. }

21. It is true that only on the basis of the illegal investigation- a proceeding may not be quashed unless miscarriage ofjustice is shown, but, in this case, as we have noticed hereinbefore, the respondent had suffered miscarriage of justice as the investigation made by P.W.41 was not fair."

(Emphasis added)

86. At the outset, it is to be noted that sanction under Section 19 of the PCA is not merely a procedural formality but a statutory safeguard conceived by the legislature to protect public servants against frivolous and vexatious prosecution in matters arising out of discharge of official functions. Thus, sanction serves as an important check against arbitrary prosecution. An invalid sanction order strikes at the root of criminal trial and any conviction on invalid sanction order vitiates the trial as well as the conviction.

87. In view of the above law, the evidence on record reveals serious infirmities in the process by which sanction was obtained in the present case. The most significant aspect emerges from the testimony of PW-76, the IO himself. During cross-examination dated 03.08.2016, PW-76 admitted that Annexures 1 to 6, which had been sought from the Appellant during investigation, were not forwarded to the sanctioning authority. The IO specifically stated as under:

"Question : Is it a fact that various files including MR631 of 2007 MR640, MR641, MR650, MR652, MR659, MR692, MR792, MR629 besides the loose pages (6 pages), which were duly numbered and signed had relevant information

with regard to the financial position of the accused no.1 and income from various sources but you did not send the same to the sanctioning authority or before this court for vested interest for showing lesser income and financial position of the accused no.1 so as to frame in the present case. What have you to say?

Answer : I calculated the income on basis of the income tax returns seized during the search and due benefits of income was given as per the income tax returns found during search.

Question : Is it a fact that after sifting and selectively choosing files, you returned the above said files to the accused by stating then to be unrelied upon documents even though the said files contained material information with regard to the financial position, sources of income and deposits etc. What you have to say?

Answer : After examining all the files, I returned all files, which were not relied upon.

At this stage, the witness has been shown the file no. MR631 of 2007 and he admits the same to have been returned to accused no.1. The said file contains the pages no.1 to 157 as mentioned on the cover page of the file.

Question : Please see the pages nos. 6, 7, 15, 21, 22, 46, 65, 66, 83, 84, 107, 114 & 122 and inform whether these relate to the income from other sources than salary reported to GHO (ITO Pune) by the accused for the years 1992-93 to 1999-2000 (7 years)?

Answer : It is correct. But I gave the benefit of income tax returns filed in this court."

…

Question : Did you inquire from the accused persons as to what were the sources of income for purchasing the assets that were subject matter of the charge-sheet and stated to the disproportionate to his known sources of income?

Answer : Yes.

Question : Have you placed the said information on record of the present case?

Answer : I have not placed on record any such information.

It is incorrect to suggest that despite being satisfied that there was no anomaly in disclosure of assets either to the Army or to the Income Tax Authority, I deliberately at the behest of the vested interest of the accused continued with the investigation and filed the charge-sheet contrary to the acceptable norms.

Question : Is it a fact that the accused had given detailed explanations to the assets owned by him and the income sources,etc., but the same were withheld from the court for suppressing important facts?

Answer : The accused had given detailed explanation, but the same has not been filed on judicial record.

It is incorrect to suggest that the same have been deliberately withheld.

…

Question: Did you send the comments given by accused no. 1 and duly received by you at the time of sanction to the sanctioning authority?

Answer: I had sent the explanation given by accused no. 1 to me during investigation to the sanctioning authority.

Question: Is it correct that you sought the information from the accused in the proforma of Annexure 1 to 6, as per CBI rules?
Answer: I had done so.

I have not placed the same on judicial file. I did not send Annexure 1 to 6 to sanctioning authority. It is incorrect to suggest that I had deliberately withheld Annexure 1 to 6 and the explanation of the accused from the sanctioning authority as well as from this court. I had not got any questionnaire from the sanctioning authority with regard to the explanation, if any, given by the accused. I do not remember as to for how many times I had visited the office of sanctioning authority. It is incorrect to suggest that I had come to know about the observation of the Hon'ble High Court and that is why I rushed to seek sanction.

I had filed the charge-sheet on 26.10.2009 in the court.

…

Question : Please see the pages no. 81, 84, 139, 141, 147 and 148. Did you send these documents to the sanctioning authority or filed the same before this court as a part of charge sheet. What you have to say?

Answer : I did not file the same before the sanctioning authority or before this court as these were considered not relevant.

…

Question : Please see file no. MR650 of 2007, which is tagged and has endorsement on the first and last page and contains pages 1 to 70 as per the endorsement. What you have to say?

Answer : It is correct. The said file is exhibited as Ex.PW76/DH (colly).

Question : Please see pages no. 14, 15, 33, 34, 35-38, 41, 42-44, 55, 56 and inform whether you had given the said files with the above relevant pages showing incomes, other benefits and transactions to the sanctioning authority and filed before this court. What you have to say?

Answer : I did not consider the said documents relevant and so did not send the same to the sanctioning authority nor filed before this court.

…

Question : Please see file no. MR659 of 2007 having pages 1 to 18 and inform whether you had returned the said file to the accused as unrelied documents. What you have to say?

Answer : It is correct. It is the same file. The said file is exhibited as Ex.PW76/DK (colly).

Question : Please inform the court whether you had send the said file Ex.PW76/DK (colly) to the sanctioning authority or filed before this court along with the charge sheet. What you have to say?

Answer : I did not consider the same relevant. Hence it is not sent to the sanctioning authority or filed before this court."

88. Annexures 1 to 6 were important documents which included detailed explanations furnished by the Appellant regarding his assets, income, expenditure and financial transactions. In a Section 13(1)(e) case, the central issue is whether the assets allegedly found in possession of the public servant are disproportionate to his known sources of income

and whether the public servant is able to satisfactorily account for the same. Therefore, explanations furnished by the accused regarding his lawful income and expenditure are not peripheral material; rather, they go to the very root of the allegation. Once such explanations were admittedly available with the investigating agency, the same were required to be placed before the sanctioning authority so that the authority could independently assess whether a *prima facie* case for prosecution was made out. The IO could not have assumed the role of adjudicator by unilaterally deciding that such material was "not relevant".

89. The IO is merely an investigating authority and is not required to adjudicate upon the relevance or evidentiary value of documents furnished by the accused. His duty is to place all material collected during the investigation, including the explanations and documents submitted by the accused, before the sanctioning authority to enable it to take an independent and informed decision.

90. In the present case, it is an admitted position that certain material documents furnished by the Appellant were not forwarded to the sanctioning authority, as the IO, in his own assessment, considered them to be irrelevant. Such an approach effectively resulted in the IO substituting his judgment for that of the sanctioning authority and deprived the latter of the opportunity to consider the complete material before arriving at its decision.

91. This concern becomes more serious in view of further admissions made by PW-76 during cross-examination dated 12.08.2016. The witness admitted that several files containing documents pertaining to the financial position, income and transactions of the Appellant were

neither sent to the sanctioning authority nor filed before the Court. Specifically, PW-76 admitted that files bearing numbers MR-631, 640, 641, 650, 652, 659, 692, 792 and 629 of 2007, along with loose pages relating to the Appellant's financial transactions and income from various sources, were not forwarded because he considered them "not relevant". Likewise, with respect to another file Ex. PW-76/DK (colly), the witness admitted that those documents were not relevant.

92. These admissions clearly establish that the sanctioning authority was not furnished with the complete investigative record. The authority was shown only such material as the IO subjectively chose to forward. This approach is directly contrary to the law laid down in ***CBI v. Ashok Kumar Aggarwal***, ***(2014) 14 SCC 295*** wherein the Hon'ble Supreme Court expressly held that even material favourable to the accused must be placed before the sanctioning authority.

93. Further it is an admitted fact that the statement of PW-149 (Mr. Pradeep Hirani) under Section 161 Cr.P.C. was recorded only on 23.09.2009, whereas the request for sanction had already been sent to the competent authority in August 2009 or September first week. The relevant question to PW 76 reads as under:

> *"Question: When did you apply for sanction for prosecution of the accused?*
>
> *Answer: May be in the last week of August or first week of September 2009."*

94. The statement of PW-149 recorded after application for sanction reads as under:

> *"Case No.RC AC 22007 A0003 Dated 23.09.2009*

Statement of Shri. Pradeep Hirani, Chairman M/S Kirmaya Fashion Pvt. Ltd., Age 46 years 1, Asha Colony Juhu Tara Road Juhu Mumbai-400049, S/o Shri Kishan Hirani R/o 2, Betty Apartments, 146, Perry Road, Bandra, Mumbai 400050 Mob No. 9821020003. Tel No. 022- 26605575

-----x----x----x----

On being asked stated that:-

I launched M/S Kimaya Fashion in 2002 and opened a show room. I visited Haridwar/Rishikesh alongwith my family in connection with picnic sometime in 2004, where I came into contact with Major Gen. Anand Kumar Kapur. He also visited there alongwith his family for picnic. At that time I was learning to open a shop at 1 style Mill Mehrauli and looking for a person who could look after the work of the same shop. Major Genl. Kapur proposed that his wife Smt. Mridula Kapur can do the work. On this I appointed her as incharge of the shop on the salary of Rs. 30,000/- P.M. She was appointed in October 2004. Our company paid her Rs. 1,67,000/- for the period October, 2004 to March, 2006 and 3,60,000/- for the period April, 2005 to March,2006. During search conducted on 10.10.2007, at my shop by CBI, some documents were seized including the salary details of Smt. Mridula Kapur on being shown the salary details of Smt. Mridula Kapur at Page 4 and 5 , I state that, it contained the details of payment made from my company M/S Kimaya Fashion Pvt. Ltd., Delhi. The --- details retrieved from the

computer installed in our office and signed by Sh. Sudesh Naik, my Chief Accountant. I identify his signatures. As per the details our company paid Rs. 1,67,000/- for the payment Oct 2004- March 2005 and Rs. 3,60,000/- for the payment April,2005 to March, 2006 to Smt. Mridula Kapur. Later on due to ---the services of Smt. Kapur were terminated.

Before me

Sd/-"

95. Therefore, even the entirety of the prosecution evidence had not crystallized when the proposal for sanction was forwarded. This further demonstrates that the sanctioning authority was not in possession of the complete investigative record at the time sanction was accorded on 29.09.2009.

96. The Respondent has strongly relied upon the testimony of PW-8 Shri R.K. Gupta to contend that sanction was granted after due application of mind. PW-8 indeed stated during cross-examination that he had gone through all the documents submitted by the CBI and that approximately two weeks were consumed in examining the files before preparing notes.

97. However, the testimony of PW-8 does not cure the fundamental defect pointed out by the Appellant. The issue is not whether PW-8 examined the documents that were forwarded by the CBI; rather, the issue is whether the complete and relevant material was forwarded at all. Once the IO himself admits that explanations furnished by the Appellant and several financial documents were withheld from the

sanctioning authority, the testimony of PW-8 merely establishes that he examined an incomplete and filtered record. The contention of the respondent that the sanction took approximately twenty-two days and therefore cannot be termed mechanical also does not impress me. The legality of sanction cannot be determined merely on the basis of time consumed in processing the file. The real test is whether the authority had before it the complete material necessary to form an informed opinion. Even prolonged consideration would not validate a sanction if the authority was denied access to relevant documents.

98. Equally, the recital in the sanction order that statements and documents were considered cannot by itself establish valid application of mind when the prosecution's own evidence demonstrates that substantial material was withheld. It is well settled that where application of mind is not apparent from the record, the prosecution must affirmatively establish that all relevant material was placed before the sanctioning authority. In the present case, the prosecution has failed to discharge that burden.

99. Learned counsel for the Respondent has placed reliance on ***Parkash Singh Badal (supra)*** to state that mere error, omission or irregularity in sanction order will not lead to acquittal or reversing the finding of conviction. The reliance is misplaced as can be seen from ***State of Karnataka v. Ameerjan, (2007) 11 SCC 273*** wherein the Court differentiated the ratio laid down in ***Parkash Singh Badal (supra)***. The relevant findings read as under:

> ***"15.*** *Our attention, however, was drawn to a recent decision of this Court in Parkash Singh Badal v. State of Punjab [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] by Mr*

Hegde to contend that having regard to sub-sections (3) and (4) of Section 19 of the Act, only because an order of sanction contains certain irregularities, the court would not set aside an order of conviction.

16. *In Parkash Singh Badal [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] the question which arose for consideration before this Court was as to whether an order of sanction is required to be passed in terms of Section 197 of the Code of Criminal Procedure in relation to an accused who has ceased to be a public servant. It was in that context a question arose before this Court as to whether the act alleged to be performed under the colour of office is for the benefit of the officer or for his own pleasure. In the context of question as to whether the public servant concerned should receive continuous protection, it was opined: (SCC p. 25, para 29)*

> *"29. The effect of sub-sections (3) and (4) of Section 19 of the Act are of considerable significance. In sub-section (3) the stress is on 'failure of justice' and that too 'in the opinion of the court'. In sub-section (4), the stress is on raising the plea at the appropriate time. Significantly, the 'failure of justice' is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is (sic not) considered fatal unless it has resulted in failure of justice or has been occasioned thereby. Section 19(1) is a matter of procedure and does not go to the root of jurisdiction as observed in*

para 95 of Narasimha Rao case [P.V. Narasimha Rao v. State (CBI/SPE), (1998) 4 SCC 626 : 1998 SCC (Cri) 1108] . Sub-section (3)(c) of Section 19 reduces the rigour of prohibition. In Section 6(2) of the old Act [Section 19(2) of the Act] question relates to doubt about authority to grant sanction and not whether sanction is necessary."

…

17.*Parkash Singh Badal [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] , therefore, is not an authority for the proposition that even when an order of sanction is held to be wholly invalid inter alia on the premise that the order is a nullity having been suffering from the vice of total non-application of mind. We, therefore, are of the opinion that the said decision cannot be said to have any application in the instant case.*

…

19. *In this case, the High Court called for the original records. It had gone thereinto. It was found that except the report, no other record was made available before the sanctioning authority. The order of sanction also stated so. PW 8 also did not have the occasion to consider the records except the purported report."*

100. Thus, ***Ameerjan (supra)*** clearly distinguishes between a mere irregularity in sanction and a sanction vitiated by total non-application of mind. While Section 19(3) may cure procedural defects, it does not save a sanction that is fundamentally invalid for want of due

consideration of the relevant material. Consequently, the reliance placed by the Respondent on ***Parkash Singh Badal (supra)*** is misplaced.

101. Similarly reliance on ***Jagat Ram (supra)*** does not aid the Respondent's case as firstly, there is no quarrel with the settled legal position that a finding, sentence or order is not liable to be reversed merely on account of any error, omission or irregularity in the grant of sanction, unless such defect has occasioned a failure of justice. Equally, it is well established that every irregularity in the sanctioning process does not *ipso facto* vitiate the sanction. Secondly, in ***Jagat Ram (supra)*** the Court permitted the Respondent to contest the issue of failure of justice before the High Court and remanded the matter back with respect to the issue of legality of sanction.

102. The reliance on ***P.I. Babu (supra)*** is equally misplaced. In that case, the Special Court had acquitted the accused solely on the ground of invalid sanction without recording any findings on the merits of the charges. It was in those peculiar circumstances that the Hon'ble Supreme Court remanded the matter for a fresh decision on merits.

103. In my opinion, the admitted suppression of Annexures 1 to 6 and the financial documents relating to the Appellant's lawful income and transactions strikes at the very foundation of the sanction process. The sanctioning authority was denied the opportunity to consider material which was directly relevant to the core issue in the case, namely whether the Appellant had satisfactorily explained the disproportionate assets attributed to him.

104. The requirement of sanction under Section 19 of the PCA is intended to ensure independent scrutiny by the competent authority before a

public servant is exposed to criminal prosecution. That safeguard stands rendered illusory if the investigating agency is permitted to selectively withhold material favourable to the accused and present only incriminating circumstances before the sanctioning authority.

105. It is also difficult to understand how the Trial Court rejected the arguments of Appellant especially when it is clear from the records and the cross examination that important documents proving the side of the defense were ignored. The relevant findings read as under:

> *"I disagree with this submission. Whether the Government machinery acted in efficient manner or in lethargic manner is not an issue before this court. If the process of according sanction is taken about more than 22 days, it does not mean that the Government had granted sanction to prosecute the accused under Section 19 of PC Act in great haste. PW8 P. K. Gupta, the then Director (Vigilance) in Ministry of Defence testified that the competent authority examined the material including statement of witnesses and documents sent by CBI. Perusal of the sanction order Ex.PW8/A shows that it mentions the material which was considered by the competent authority for according the sanction. P. K. Gupta (PW8) only authenticated the sanction order, which is Ex.PW8/A (D236).*
>
> *I do not find any material on record to show that the sanction order suffers from nonapplication of mind or that the entire material was not considered by the sanctioning authority."*

106. Accordingly, I am constrained to hold that the prosecution has failed to establish that the entire relevant material collected during investigation was placed before the sanctioning authority prior to grant of sanction dated 29.09.2009. The sanction therefore suffers from non-application of mind and stands vitiated in law.

107. I am of the view that the record demonstrates that the entirety of the defence evidence was not duly taken into account by the learned Special Judge. Ordinarily, such a deficiency may have warranted a remand of the matter for retrial from the stage of defence evidence. However, having regard to the peculiar facts and circumstances of the present case, particularly the fact that the proceedings have remained pending for over two decades, I am of the view that directing a retrial at this stage would neither serve the ends of justice nor comport with the constitutional mandate of a fair and expeditious trial.

108. The prolonged pendency of the matter and the prejudice inherently occasioned by subjecting the Appellant to another round of criminal proceedings cannot be overlooked. Guided by the principles enunciated by the Hon'ble Supreme Court in ***Mansukhlal Vithaldas Chauhan v. State of Gujarat, (1997) 7 SCC 622***, this Court is satisfied that it would be unfair, unjust and contrary to the interests of justice to compel the Appellant to undergo a fresh trial after such an inordinate lapse of time. Such a course would effectively perpetuate the ordeal of prosecution and would run afoul of the guarantee of life and personal liberty under Article 21 of the Constitution of India, which encompasses the right to a fair and speedy trial.

109. In view of the findings recorded above that the Appellant was denied a fair opportunity to lead evidence and that the sanction order is

invalid, the present appeals deserve to be allowed on these grounds alone. However, since submissions have also been addressed on the merits of the matter, I deem it appropriate to examine and deal with the contentions on merits as well.

110. Before examining the merits of the case, it is necessary to bear in mind that in a disproportionate assets case, although the accused is required to account for the assets alleged to be disproportionate to his known sources of income, the burden upon him is not as onerous as that resting on the prosecution. The standard applicable to the accused is one of preponderance of probabilities and not proof beyond reasonable doubt. After all in words of Sir William Blackstone, "*It is better that ten guilty persons escape, than that one innocent suffer.*"

111. In ***P. Satyanarayana Murthy v. State of A.P., (2015) 10 SCC 152*** it was held as under:

> *"20. This Court in A. Subair v. State of Kerala [(2009) 6 SCC 587 : (2009) 3 SCC (Cri) 85] , while dwelling on the purport of the statutory prescription of Sections 7 and 13(1)(d) of the Act ruled that (at SCC p. 593, para 28) the prosecution has to prove the charge thereunder beyond reasonable doubt like any other criminal offence and that the accused should be considered to be innocent till it is established otherwise by proper proof of demand and acceptance of illegal gratification, which are vital ingredients necessary to be proved to record a conviction.*
>
> …

26. In reiteration of the golden principle which runs through the web of administration of justice in criminal cases, this Court in Sujit Biswas v. State of Assam [(2013) 12 SCC 406 : (2014) 1 SCC (Cri) 677] had held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "may be" true but has to upgrade it in the domain of "must be" true in order to steer clear of any possible surmise or conjecture. It was held, that the court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused."

(Emphasis added)

112. Now dealing with merits of the case, the first asset which requires consideration is the half basement portion of property bearing No. D-23, Defence Colony, New Delhi. The prosecution has valued the said property at Rs.41,12,000/-, whereas according to the registered sale documents and evidence relied upon by the defence, the acquisition cost was Rs.15,52,000/- inclusive of stamp duty and registration charges.

113. The Trial Court observed as follows:

"I have considered the submissions of Ld. Defence counsel, which appear to be specious. It is a known fact that the actual sale amount of immovable property, specially if it is situated in posh areas of Delhi, is much higher than the

actual sale deed. Unfortunately, this situation is so common in this country that it is almost a rule. Where there is no evidence of higher value, the courts have no option but to accept the value mentioned in the sale deeds, which is the situation in case of the property at Item No. 01. However, if specific evidence is coming of the higher consideration value, the court cannot close its eyes to the ground reality. In case of the property at Item No. 2, hand written agreement to sell, dated 31.03.2001 was recovered from the file D64 [Ex.PW72/D (colly.)], which shows the total consideration amount of Rs.43 lacs, out of which Rs.5 lacs had already been paid and remaining amount of Rs.38 lacs was to be paid subsequently. In my opinion, the realistic approach to accept the real value of this property as Rs.43 lacs and not the sale deed value of Rs. 14 lacs. It is a well known fact that properties are shown of much lesser value than the actual value for various reasons e.g. for the purpose of saving stamp duty etc. It is argued by Ld. Defence counsel that prosecution should have examined M. L. Chandan to prove the agreement to sell dated 31.03.2001 and to prove that the actual transaction was for Rs.43 lacs. I may point out that summons were issued to M. L. Chandan but he could not be served because he is out of country. Therefore, it is not a deliberate withholding of the evidence. However, it does not make \ any difference because this agreement to sell has been seized from A1 himself. A1 does not state that it is a false document. Therefore, I am not inclined to accept the submissions of Ld. Defence counsel. I

am of the opinion that this document shows the real value of the property and the sale deed is showing a highly low value of the same. The Investigating Officer should have taken the value as Rs.43 lacs but since he has taken a lower value of Rs.41,12,000/, I accept the same as the true value of the property."

114. The foundation of the prosecution's valuation and Trial Court's finding is a handwritten Agreement to Sell dated 31.03.2001, recovered during the search of locker No.325, HDFC Bank, Defence Colony, and exhibited as Ex.PW-72/D. According to the prosecution, the said document reflected a total sale consideration of Rs.43 Lakhs and therefore constituted evidence that the actual purchase price of the property was substantially higher than the amount disclosed in the registered sale deed.

115. The Trial Court substituted proof with a generalized assumption that immovable properties in Delhi are ordinarily transacted at values higher than those reflected in registered conveyances. Such a finding is contrary to the settled principle that criminal liability cannot rest upon conjectures, suspicion or presumed market practices. As observed by in ***K. Dhanalakshmi (supra)*** adverse findings in a disproportionate assets case cannot be founded upon assumptions while disregarding the documentary record and the absence of supporting evidence.

116. The prosecution has principally relied upon the recovery of Ex.PW-72/D. However, mere recovery of a document does not prove the truth of its contents. The prosecution was required to establish the

authorship, execution of the said document and further demonstrate its connection with the eventual sale/ purchase of the property. No such evidence has been brought on record.

117. Significantly, none of the prosecution witnesses have stated that Ex.PW-72/D constituted the basis of the transaction by which the Appellant acquired the property. It has not been stated by any witness that the terms contained therein were ever acted upon or that the consideration mentioned therein was actually paid or that the document culminated into the registered sale deed executed in favour of the Appellant.

118. A perusal of Ex.PW-72/D itself reveals that it was a conditional arrangement linked to the proposed leasing of the premises to a particular bank. The prosecution has not led any evidence to establish that the condition contemplated therein was ever fulfilled. In the absence of proof regarding fulfilment of the condition and implementation of the arrangement, the document remains at best a proposed transaction and not evidence of a concluded sale for the consideration mentioned therein. The onus of proof on the prosecution to establish that the Agreement to Sell was valid was not discharged.

119. The failure of the prosecution to examine Shri M.L. Chandan, is also fatal. He was cited as a prosecution witness but was ultimately not produced on the ground that summons could not be served and that he was abroad. The vendor was the most material witness for establishing whether the consideration reflected in Ex.PW-72/D was ever paid and whether the registered sale deed reflected the true

consideration. In the absence of his testimony, the prosecution's case remains unsupported by any direct evidence.

120. The testimony of PW-65 Rajinder Sharma also does not advance the prosecution case. On the contrary, he acknowledged that the valuation adopted by the municipal authorities for assessment purposes was approximately Rs.14 lakhs. Though municipal valuation may not be determinative of market value, it nevertheless lends support to the value reflected in the registered documents and does not corroborate the prosecution's theory of a transaction worth Rs.43 lakhs.

121. The evidence of PW-76, the IO, is equally inadequate. During his examination-in-chief, he nowhere stated that the investigation had revealed Ex.PW-72/D to be the actual agreement pursuant to which the property was purchased. He nowhere deposed that the registered sale deed undervalued the property or that the Appellant had paid Rs.43 lakhs towards its acquisition. There is also no evidence from him that any witness examined during investigation disclosed payment of any undisclosed consideration.

122. I am also unable to overlook the fact that the prosecution and the Trial Court accepted the value of the ground floor portion of the same property at Rs.20,54,000/- while calculating another asset in the charge-sheet. No satisfactory explanation has been furnished as to how the basement portion of the same property could command a value exceeding Rs.41 lakhs, which is more than twice the value accepted by the prosecution for the ground floor. No valuation report, or any other evidence has been produced to justify such a conclusion.

123. The settled position of law is that suspicion, however strong, cannot take the place of proof. Before an asset can be included in the computation of disproportionate assets at a particular value, the prosecution must establish such value through evidence. The burden cannot be discharged on the basis of assumptions, conjectures or unproved documents.

124. In the present case, the prosecution has failed to prove that the Appellant paid any amount over and above the consideration reflected in the registered sale deed. The execution and operative effect of Ex.PW-72/D have not been established. No witness to the transaction has been examined. No evidence of actual payment has been produced. The IO's assumptions, unsupported by independent evidence, cannot form the basis of a criminal finding.

125. Accordingly, I am of the view that the prosecution has failed to establish that the acquisition cost of the basement portion of property No. D-23, Defence Colony was Rs.41,12,000/-. The valuation adopted by the Trial Court is therefore not supported by legally admissible evidence and could not have been relied upon for computing the alleged disproportionate assets of the Appellant. Under Section 50 of the Registration Act, 1908, a registered document will override an unregistered document.

Asset No. 9 – House No. 506, Dona Paula, Panjim, Goa

126. The next asset which falls for consideration is House No. 506, Dona Paula, Panjim, Goa, valued by the prosecution and accepted by the Trial Court at Rs.30,21,000/-. The Trial Court included the said property in the assets of the Appellant principally on the ground that

Mr. Dhruv Kapur, in whose name the property stood recorded, was a student and allegedly dependent upon the Appellant at the relevant time. The Trial Court further observed that the explanation regarding the source of funds, namely the financial assistance allegedly provided by Smt. Santosh Kapur, mother of the Appellant, was not satisfactorily established through documentary evidence and therefore could not be accepted. The Trial Court's finding with respect to this property reads as under:

> *"It is true that the purchase of the house was declared to the ITO by Dhruv Kapur in Income Tax Returns. However, it is not the case of the accused that Dhruv Kapur was having an independent earning at that time. Ld. Defence counsel is relying upon the affidavit of his mother and will of his father dated 12.08.2000 to prove that money for purchase of this house was gifted to Dhruv Kapur by Smt. Santosh Kapur (i.e. mother of A1 and grandmother of Dhruv Kapur). However, to my mind it is not a convincing explanation. It is required to be shown by A1 as to what was the financial condition and source of income of Smt Santosh Kapur. The affidavit of Smt. Santosh Kapur is dated 28.03.2012. In para 16 of this affidavit, she stated that her husband left behind deposits and investments worth Rs.40 lacs and she looked after that amount till 2005, when Dhruv's 18th birthday occurred. It is further stated in the affidavit that on her asking, Dhruv purchased a house in Goa and that she (i.e. Smt. Santosh Kapur) gave Rs.28,50,000/in bank drafts to him in December 2005. Although, in her affidavit she has*

stated that her husband Diwan Milkhi Ram Kapur was a wealthy and renowned landlord, but she has not explained in this affidavit as to what was her bank accounts and how she was having such a huge amount of money. Merely her affidavit will not amount to a sufficient explanation by A1. Something more is to be shown by him. The accused could have shown the statements of bank accounts of Smt. Santosh Kapur, he could have filed her income tax returns, because if such a huge is kept with her, she should be paying some income tax also. The affidavit is dated 28.3.2012, which was prepared much after filing of the charge sheet. It is pertinent to note that a Will of Smt. Santosh Kapur dated 27.10.2002, which is duly registered is Ex.PW76/DN (colly) in which she has referred to the property in Panipat, house in Model Town, Panipat and House No. D23, Defence Colony only. If she was having such huge amounts with her, she would have also mentioned the same in her will."

127. At the outset, it is necessary to note that the property admittedly stands in the name of Mr. Dhruv Kapur. The registered title documents do not reflect the Appellant as purchaser or a co-owner. The prosecution has not disputed the existence or authenticity of the title documents. Equally, there is no allegation in the charge-sheet that the property was acquired through a benami transaction in the name of Mr. Dhruv Kapur or that the sale deed was a sham transaction intended to conceal the ownership of the Appellant.

128. PW-41, Shri Akarsh Kashyap, Chartered Accountant, deposed that Mr. Dhruv Kapur had disclosed the purchase of the property in his

ITRs for the FYs 2005-06 and 2006-07. He further deposed that the documents relating to ownership of the property and the source of funds utilised for its acquisition had been furnished before the Income Tax Department in the ordinary course. These disclosures were made much prior to the culmination of investigation in the present case. The relevant portion of the cross examination reads as under:

> *"I have brought the photocopy of income tax return of Mr. Dhruv Kapur for the assessment year 2006-2007 and 2007-2008, respectively. Same are as per information given to me by Dhruv Kapur. Income tax returns are Ex.PW41/DE (03 pages) and Ex.PW41/DF (02 pages). (These documents have been objected to by Ld. Sr. PP on the ground that the same are not admissible in evidence being the photocopy). I had filed said two returns on behalf of Dhruv Kapur on his instructions."*

129. The Respondent has placed reliance on ***Jayalalithaa (supra)*** which is misconceived. Though in this case the Hon'ble Supreme Court held that returns and orders in IT proceedings would not themselves establish that income had been received from lawful sources but it was also clarified that returns and orders do not ipso facto either conclusively prove or disprove the charges under PCA and at best are pieces of evidence which need to be evaluated with other materials on record.

130. Significantly, the prosecution neither challenged the genuineness of the ITRs nor produced any evidence to establish that the disclosures contained therein were false or misleading. No witness from the Income Tax Department was examined to dispute the returns or the

accompanying documents. The same is evident from the following cross of the IO:

> *"Question : Is it a fact that the statement of 70 witnesses was recorded between January 2009 and August 2009 in a chaste haste after the proceedings of the Hon'ble High Court of Delhi?*
>
> *Answer : I examined them in a routine manner not in haste.*
>
> *Question : Did you examine any Income Tax Officer with regard to the declaration of assets, sources of income and filing of Income Tax Returns and Wealth Tax Returns, etc. by the accused and his family separately for the entire check period i.e. from 1971 to 2007?*
>
> *Answer : I did not examine any Income Tax Officer, but collected the documents, however, I can give the date only after examining the record."*

131. During cross-examination, the IO admitted that as per the ITRs, Mr. Dhruv Kapur was the recorded owner and purchaser of the property.

> *"Question : Did you verify who was the owner of property no. 506, Dona Paula Goa?*
>
> *Answer : Yes, the said property was purchased in the name of Dhruv Kapur son of the accused.*
>
> *Question : Did you verify from the ITR as to who was the recorded owner and purchaser of the said property?*
>
> *Answer : Dhruv Kapur.*
>
> *Question : Did you check that the source of funding of the above said purchase of property was by way of bank drafts from the account of Mr. Dhruv Kapur?*

Answer : Dhruv Kapur was the student and dependent on accused. I did not check the source of bank drafts by virtue of which the said property was purchased.

Question : I put it to you that ITRs of Mr. Dhruv Kapur were submitted to you for purchase of the above said property and the affidavit of Mrs. Santosh Kapur also categorically mentioned the amounts given by her as gift to Mr. Dhruv Kapur but you deliberately ignored all this. What you have to say?

Answer : I did not recall.

It is incorrect to suggest that despite submission of documents and actual proof of purchase of the property by Mr. Dhruv Kapur, I wrongly attributed the purchase of the same to the accused to fix him. It is wrong to suggest that I deliberately did not take the statement of Mr. Dhruv Kapur or Mrs. Santosh Kapur as that would have brought out the truth."

132. It is also noteworthy that the prosecution did not examine Mr. Dhruv Kapur, the recorded owner of the property, despite being the person in whose name the property stood purchased and despite the ITRs forming part of the record, no attempt was made to confront him with the documents or to ascertain the source of funds disclosed by him. The prosecution also did not examine the vendor of the property or any person connected with the transaction who could have shed light on the source of consideration.

133. Further, Smt. Santosh Kapur, mother of the Appellant, was never examined by the prosecution despite her affidavit asserting that she had provided funds for the purchase of the property. The prosecution, therefore, failed to test or rebut this explanation through evidence. As

held in ***M. Krishna Reddy v. State Deputy Superintendent of Police, Hyderabad, (1992) 4 SCC 45***, in a prosecution for disproportionate assets, the initial burden lies upon the prosecution to establish the foundational facts constituting the offence, and only thereafter does the onus shift upon the accused to satisfactorily account for the assets. In the present case, the prosecution failed to discharge its initial burden through a fair and complete investigation and consequently cannot derive any benefit from the alleged inability of the Appellant to explain the assets in question.

134. The relevant portion of the cross of the IO reads as under:

> *"**Question:** Did you examine any witness from Panipat to know the assets of parents and background of accused no.1 at Panipat?*
>
> ***Answer:** Yes, I examined one witness namely Mr. K. C. Aneja.*
>
> *It is correct that Mr. K. C. Aneja used to file income tax returns of the accused.*
>
> ***Question:** Did you take the statement of mother of accused with regard to the assets owned by her and the various declarations made by her to various authorities?*
>
> ***Answer:** No. I did not examine."*

135. The Trial Court drew an adverse inference against the Appellant on the ground that sufficient material had not been produced to establish the financial capacity of Smt. Santosh Kapur. However, the record reveals that the investigation itself remained incomplete on this aspect. The prosecution, despite being aware of the claim made by Smt. Santosh Kapur, chose not to investigate the same. An omission

on the part of the investigating agency cannot subsequently be converted into a circumstance adverse to the accused.

136. The burden in a prosecution under Section 13(1)(e) of the PCA initially lies upon the prosecution to establish that a particular asset is owned, possessed or acquired by the public servant. Before an asset standing in the name of another person can be attributed to the accused, the prosecution must place on record evidence demonstrating a nexus between the accused and the acquisition of that asset. Mere relationship between the accused and the recorded owner cannot by itself constitute such proof.

137. In this regard, the observations in ***K. Dhanalaxmi (supra)*** upheld by the Hon'ble Supreme Court are relevant. The Court observed that where there is no material connecting properties standing in the name of a private individual with the public servant concerned, such properties cannot be included in the assets of the public servant merely on the basis of conjecture or assumption. The relevant paras reads as under:

> *"72. Similarly, the mother who was also financially secure and was living with the petitioner would have contributed to the household assets.*
>
> *73. Moreover, too much emphasis has been laid on petitioner borrowing from her mother and not returning the same. The ld. Special judge failed to appreciate that borrowing from a parent does not mandate that the petitioner will be required to keeps receipts of the same. Borrowing from a parent, without returning, is plausible*

explanation and should be not have been considered in calculating disproportionate income/assets of the Petitioner especially since the mother was staying with Petitioner and the Petitioner was taking care of the mother's needs.

74. The special judge, while computing the assets also adjudged the amount recovered from the house, the amount in the joint account of the Petitioner and her mother, the household items as all belonging to the Petitioner especially when the Petitioner gave explanation that the said amount belongs to her mother. To equate the relationship of the petitioner and her mother to that of borrower and creditor where every penny will have to be accounted for and has to be satisfactorily explained is not possible, neither, will failure to give documentary proof of the same should lead to an adverse inference. It is not too much of a stretch to think that the mother would help her own daughter especially when the mother was staying with the daughter.

…

76. It is clear that the Special Judge in passing the order has only looked into the material adduced by the CBI, compared it with the information provided by the CBI in the chargesheet and then pronounced a verdict on the merits of each individual allegation. It has not considered the material contradictions, but relied on some conjectures and miscalculations."

138. The law is equally well settled that where a property stands in the name of a person under a valid registered conveyance, the title reflected therein must prevail unless displaced by cogent evidence. Sections 54 and 55 of the Transfer of Property Act and Sections 17 and 49 of the Registration Act recognise the legal sanctity of a registered instrument. In the absence of evidence demonstrating that the transaction was benami or that the consideration emanated from the public servant, the recorded owner must be treated as the owner of the property. It was incumbent upon the prosecution to verify the source of funds in the hands of the mother of the Appellant which the prosecution failed to even examine.

139. In the present case, the prosecution has not produced any bank record, statement of the vendor or any other documentary evidence showing that the consideration for the property originated from the Appellant. The conclusion reached by the Trial Court is therefore founded primarily on the circumstance that Mr. Dhruv Kapur was the son of the Appellant and was allegedly dependent upon him.

140. Such a circumstance, by itself, is insufficient to establish ownership or financial contribution especially in view of the affidavit of Mrs. Santosh Kapur stating to the contrary. Criminal liability must rest upon evidence and not upon presumptions arising from status or relationship.

Asset 3 – Investments

141. The next issue concerns the inclusion of investments made in the Post Office, Lodhi Road, New Delhi and HDFC Standard Life Insurance Policy, which have been valued by the prosecution at Rs.9,60,000/-

and Rs.7,75,000/- respectively and treated as assets attributable to the Appellant.

142. With regard to these, the Trial Court has recorded findings as under:

> *"My view*
>
> *The defence is solely based upon the affidavit of the mother dated 28.3.2012, which I have already rejected, therefore, I accept the full amount as Rs.9.60,000/.*
>
> *…*
>
> *My view*
>
> *I have already rejected the affidavit of the mother of A1, which is the sole basis of reliance by A1. Hence, I accept the value at Rs.7,75,000/."*

143. The evidence on record reveals that PW-6, Shri Ashok Kumar Lohmod, proved the statement of account pertaining to SBI Account No. 18105 standing in the name of Smt. Santosh Kapur. His testimony establishes that the account was originally maintained by Smt. Santosh Kapur and that the name of the Appellant was added subsequently. The witness further confirmed that records prior to the year 2005 were not called for during investigation. Further it is not beyond plausible explanation that the Grandmother was providing sums to Grandson for purchasing the property situated at Goa.

144. Even PW-61, Shri K.C. Aneja, Chartered Accountant, stated that he had examined documents relating to the bank accounts and financial

affairs of Smt. Santosh Kapur, which disclosed that she possessed substantial assets of her own. The existence of independent financial resources in the hands of Smt. Santosh Kapur therefore stands borne out from the prosecution evidence itself.

145. The record further discloses that Smt. Santosh Kapur had specifically stated that she had contributed a sum of Rs.3,00,000/- towards the purchase of KVPs/NSCs and a further sum of Rs.4,75,000/- towards the HDFC Life Insurance Policy standing in the name of Mrs. Mridula Kapur.

146. What is important is the admission of PW-76 that an amount of Rs.50,93,082/- stood transferred from the account of Smt. Santosh Kapur to the account of the Appellant on 25.09.2004. Despite acknowledging the existence of this transaction, the IO did not examine its implications while computing the financial resources available to the family. Likewise, he admitted that the Appellant had disclosed a loan of Rs.1 lakh from his mother in documents submitted to the Income Tax Department, yet the same was not considered while assessing the financial position of the Appellant.

147. The cumulative effect of these admissions demonstrates that the investigation proceeded without examining the most material witness, namely Smt. Santosh Kapur, despite the existence of documentary material suggesting that she possessed substantial independent means and had contributed funds towards the disputed investments. The prosecution neither disproved her financial capacity nor established that the investments emanated from the income of the Appellant.

148. In a prosecution for disproportionate assets, the burden undoubtedly rests upon the prosecution to establish that a particular asset belongs to, or has been acquired from the resources of, the public servant. Such burden cannot be discharged by ignoring material evidence pointing towards ownership or contribution by another person. Once contemporaneous documents and financial records indicating contribution by a third party are brought on record, it becomes incumbent upon the investigating agency to examine and verify the same before attributing the asset to the accused.

149. In the present case, the prosecution has failed to produce any evidence demonstrating that the funds invested in the Post Office instruments or the HDFC Life Insurance Policy originated from the Appellant. Equally, it has failed to rebut the material indicating contribution by Smt. Santosh Kapur. The omission to investigate the claims of the contributor herself, despite her availability and despite the existence of supporting documents, constitutes a serious lacuna in the prosecution case.

150. Accordingly, I am of the view that the prosecution has failed to establish that the entirety of the investments in the Post Office and HDFC Life Insurance Policy represented assets acquired from the resources of the Appellant. The inclusion of the said amounts in the computation of disproportionate assets is therefore not supported by satisfactory evidence and cannot be sustained to the extent attributed by the prosecution.

Cash

151. The next asset under consideration is the cash amount of Rs.11,62,240/, which has been included by the prosecution and accepted by the Trial Court as an unexplained asset attributable to the Appellant. The findings of the Trial Court with respect to this read as under:

> *"I have carefully gone through the testimony of Pratibha Sharma (DW1) and the application Ex.PW76/DR. Although there is nothing abnormal in brothers and sisters contributing for treatment of the old aged father. However, accused persons did not bring on record as to how much money was being spent on the treatment of Sh. M. M. Chhibber. In absence of such evidence, I am not inclined to accept the testimony of DW1. It is clear that she is just testifying with a view to save her close relatives. The application Ex.PW76/DR is also an afterthought. As per D-23 (Ex.PW4/A), in this locker, apart from Rs.5 lacs, foreign currency of 2560 pounds was also found. This foreign currency is admittedly of A2. Therefore, this locker is not only of A-2 but also is being used by her to put her own money. Hence, I take the value of Rs. 11,62,240/."*

152. The approach adopted by the Trial Court cannot be sustained. The issue before the Court was not whether the entire amount contributed by the family members had actually been expended on medical treatment. The relevant question was whether the prosecution had established that the recovered cash represented money belonging to

the Appellant and constituted an unexplained asset acquired by him during the check period.

153. DW-1, Mrs. Pratibha Sharma, clearly stated in her testimony that she and her sisters had contributed funds for the treatment and care of their father, who was residing with Mrs. Mridula Kapur. She specifically stated that she had contributed Rs.1.5 lakhs, while two of her sisters had contributed Rs.3 lakhs each. She further stated that Dr. S.N. Bakshi had also contributed approximately Rs.60,000/-. The witness identified the affidavits executed by the contributors, which were exhibited as Ex. PW-76/DT-1 to Ex. PW-76/DT-4.

154. The testimony of DW-1 was not discredited in cross-examination. No evidence was led by the prosecution to establish that the contributors lacked the financial means to make such contributions. The Trial Court rejected the testimony merely on the assumption that the witness was attempting to protect her relatives. Such a conclusion, unsupported by any evidence on record, is impermissible in criminal law.

155. Equally unsustainable is the finding that the explanation should be discarded because the defence did not prove the exact amount spent on medical treatment. The defence case was that the money had been collected and retained for the treatment and care of an aged and ailing parent. Whether the entire amount had eventually been spent, partly spent or remained unutilised does not determine the source from which the money originated. The source of the funds and the subsequent utilisation thereof are distinct questions. The absence of evidence regarding expenditure cannot by itself establish that the money belonged to the Appellant.

156. The Trial Court also characterised Ex. PW-76/DR as an afterthought. However, the record reveals that the relevant affidavits and supporting material had been brought before the investigating agency during the course of proceedings. More importantly, the IO did not undertake any investigation to verify or disprove the assertions contained therein. No material was collected to establish that the explanation was false. An explanation cannot be rejected merely by describing it as an afterthought unless there exists evidence demonstrating its falsity.

157. It is also material to note that the defence evidence was curtailed before all relevant witnesses could be examined. Consequently, the defence was deprived of the opportunity to place additional material regarding the contributions made by family members and the circumstances in which the funds were retained. The resulting evidentiary gap cannot be used to relieve the prosecution of its burden of proving ownership of the cash.

158. The prosecution was required to establish, by cogent and reliable evidence, that the recovered cash belonged to the Appellant and represented an asset acquired by him during the check period from undisclosed sources. That burden never shifted and was not discharged. The defence, on the other hand, furnished a plausible and supported explanation regarding the source and ownership of the money, which remained unrefuted. It is well settled that suspicion, however strong, cannot substitute proof and that the weakness of the defence cannot be treated as evidence in favour of the prosecution. In these circumstances, the sum of Rs.11,62,240/- could not have been included as an unexplained asset of the Appellant.

Foreign Currency

159. The next item under challenge is the foreign exchange valued at Rs.2,13,632/-, which has been included by the prosecution and accepted by the Trial Court as an asset of the Appellant.

160. The Trial Court rejected the explanation furnished by the defence by observing that the version put forward through DW-2, Shri Kewal Krishan, was a "cock and bull story". The relevant findings read as under:

> *"It is clearly cock and bull story woven by DW-2 Kewal Krishan. He is an Accountant at Kimaya Store. It is strange that he does not issue any bill relating to the sale of goods to Mr. Chetlani. Even if, Mr. Chetlani, the buyer of articles from Kimaya Store, did not have Indian currency, no one prevented DW-2 to issue a bill in the name of said Mr. Chetlani. I have already reproduced the testimony of DW-2 and I have no hesitation to say that version of DW-2 is not acceptable. Accordingly, I take full value at Rs.2,13,632/."*

161. The reasoning adopted by the Trial Court, however, does not address the foundational question, namely, whether the prosecution had established that the foreign exchange belonged to the Appellant. The mere rejection of a defence explanation does not automatically establish the prosecution case. The burden always remains upon the prosecution to prove that the asset sought to be included in the disproportionate assets statement belonged to the public servant concerned.

162. On the contrary, the record discloses material indicating that the amount was connected with Mrs. Mridula Kapur. The affidavit of Shri Ram Chetlani, exhibited as Ex. PW-76/DN, specifically records that the money had been left with Mrs. Mridula Kapur as an advance towards a proposed future purchase. The existence of this document is not disputed.

163. DW-2, Shri Kewal Krishan, also explained the circumstances in which no bill had been issued. His testimony was that the transaction had not culminated in a completed sale and that the bill would have been generated only upon finalisation of the purchase and delivery of the goods. Whether such explanation ultimately inspires confidence or not, the fact remains that it constituted evidence on record which required evaluation in light of the entirety of the material available.

164. Even assuming that the explanation furnished by DW-2 was open to doubt, the prosecution was still required to establish that the foreign exchange belonged to the Appellant. The Trial Court appears to have proceeded on the premise that once the defence explanation was disbelieved, the prosecution case automatically stood proved. Such an approach is contrary to law.

165. It is equally significant that the evidence on record indicates that Mrs. Mridula Kapur possessed an independent source of income and was gainfully employed at Kimaya store separate from those of the Appellant. The prosecution itself did not dispute this position. In such circumstances, recovery of foreign currency connected with her business dealings could not, without further evidence, be treated as an asset of the Appellant.

166. In the absence of any evidence connecting the foreign exchange amounting to Rs.2,13,632/- with the Appellant, and having regard to the material on record indicating its connection with Mrs. Mridula Kapur, the inclusion of the said amount in the assets of the Appellant cannot be sustained and is liable to be excluded from consideration. Most importantly Mrs. Mridula Kapur, wife of the Appellant, has already been acquitted. The relevant para of the impugned judgment reads as under:

> *"So far as A-2 is concerned, she is the wife of A-1 and it is argued on her behalf that there is no evidence that she abetted A1 in amassing the said properties. It is true that there cannot be any direct evidence but the manner in which properties have been purchased and jewellery was found in her lockers, there may appear to be reasons to believe that she abetted this crime. However, the court cannot be oblivious of the social realities. In this unequal society, wife has to stand with her husband and she might even not know as to what is being got done through her. Therefore, I give benefit of doubt to A-2 and acquit her."*

Assets prior to check period

167. The Appellant has further assailed the computation of assets held prior to the commencement of the check period. The prosecution and the Trial Court assessed the value of such assets at Rs.41,700/-, whereas the defence contends that the value was substantially higher and stood proved through documentary evidence.

168. The Trial Court appears to have placed considerable reliance upon the property return submitted by the Appellant on 29.12.1973. While accepting the figures mentioned therein, the Trial Court failed to consider other contemporaneous material available on record, including the affidavit dated 10.09.1987 and the Will dated 12.08.2000 executed by Late Shri Milkhi Ram Kapur, father of the Appellant, which were recovered during investigation and exhibited through the prosecution witnesses themselves.

169. The aforesaid documents indicate that substantial amounts, including bank deposits, National Savings Certificates and recurring deposits, had been provided to the Appellant during the period between 1957 and 1963. These documents pre-date the registration of the FIR by several years and therefore cannot be dismissed as documents brought into existence to meet the prosecution case.

170. The evidence of PW-61, Chartered Accountant, is also relevant. During cross-examination he accepted that assets acquired during the late 1950s and early 1960s would have appreciated substantially by the year 1971. Despite such evidence, the Trial Court adopted the figures reflected in the earliest return without undertaking any realistic assessment of the value of the assets available to the Appellant at the commencement of the check period.

171. The purpose of determining opening assets is to ascertain the actual financial position of the accused at the beginning of the check period. If assets legitimately acquired prior to the check period are undervalued or ignored, the entire computation of disproportionate assets becomes distorted.

172. In the present case, the contemporaneous documents executed by the Appellant's father, and the admissions of the prosecution witnesses, show that the Appellant possessed assets and financial resources substantially in excess of those taken into account by the prosecution. The failure to consider such material has resulted in an understatement of the opening assets available to the Appellant and has consequently inflated the alleged disproportion.

173. The computation adopted by the Trial Court on this aspect therefore cannot be relied upon.

Computation of Jewellery

174. The next asset requiring consideration is the jewellery valued by the prosecution at Rs.18,51,215/-, which has been treated as an unexplained asset acquired during the check period. The Trial Court held as under:

> *"As per the declaration of both A1 and A2, they had total jewellery weighing 1632.490 gram + 1458 gram + 3090.490 gram. As per the declaration in Wealth Tax Return dt 31.3.2000, A1 had 139.960 gram whereas his wife had 1805.75 gram. Total comes to 1945.710 gram. It means that A1 acquired/purchased 1144.78 gram (3090.490 gram – 1945.710 gram) during 1-4-2000 to 31-3-2006.*
>
> *On the date of search i.e. 10-10-2007, Major General had 3345 gram Gold jewellery which were found at her residence and in various lockers. As per Wealth Tax Returns dt 31.3.2007, they had 3090.490 gram gold jewellery. It is obvious that they purchased 254.510 gram (3345 – 3090.490 gram). A-1 and A-2 declared in their respective Wealth Tax Returns about Gold jewellery. But during search, the diamond jewellery were also found and got evaluated through the Government Valuer namely Sh. Om Prakash Malhotra. The prosecution could not examine the*

valuer due to his old age but Investigating Officer has proved the said valuation of the jewellery as under:

…

From the above it is found that Major General Kapur purchased diamond and stone jewellery weighing 697.900 gram for Rs.15,35,640/during 1-4-2000 to 10-10- 2007. Whereas he purchased 1399.290 gram during 1-4-2000 to 10-10-2007. Hence Shri Kapur purchased 701.390 gram gold ornaments during the said period. The rates of gold were obtained for the period 2000-2007as per the said rate list provided by Sh. O. P. Malhotra, Government approved Valuer, the rates of gold was Rs.4,380 on 31.3.2000, Rs.4,210/ on 31.3.2001, Rs. 5050/ on 31.3.2002, Rs.5310/ on 31.3.2003, Rs.6065 on 31.3.2004, Rs.6150 on 31.3.2005, Rs.8500/ on 31.3.2006, Rs.8500/ on 31.3.2007.

Considering the average rate of gold ornament during 2000 to 2007 as Rs.4500/- per10 gram, the cost of the said gold ornament would be Rs.3,15,575/ As such the cost of gold and diamond jewellery to be acquired by Major General Kapur during 2000 to 10-10-2007 is come to Rs.15,25,640 + 3,15,575 + 18,41,265/.

It is true that O. P. Malhotra has not been examined but Investigating Officer has placed on record the said valuation reports, which are Ex.PW1/C, Ex.PW71/A,Ex.PW76/C, Ex.PW76/D, Ex.PW76/E, Ex.PW76/F andEx.PW76/G. If the valuation is incorrect, the accused was at liberty to prove by examining a valuer in the defence to show that actual value is much less. I am not inclined to give any benefit of mistake of tola and grams as pointed out by Ld. Defence Counsel simply because the difference between the two cannot be better understood than by a person like A1, who is from the wealthy family as per his own submissions.

It is argued by Ld. Defence counsel that the jewellery of mother of A-1 has also been calculated. I disagree with this submission. If A-1 & A-2 have kept such large amount of jewellery in their lockers, they will keep some part of

jewellery at residence also so that the same are readily available for social functions. Hence, prosecution has rightly attributed the aforesaid jewellery to A1.

…"

175. The prosecution case proceeded on the assumption that the jewellery recovered during the course of investigation represented acquisitions made by the Appellant and his family during the check period. However, a careful scrutiny of the evidence shows that the prosecution has failed to properly account for the substantial quantity of jewellery already disclosed by the Appellant and his wife long before commencement of the check period.

176. The relevant portions of the cross examination of the IO read as under:

*"Question**:** Did you obtain any second opinion from any jeweller with regard to valuation of jewellery seized from the house of mother of accused and the locker?*

Answer: No.

It is incorrect to suggest that valuation of the jewellery was done in cursory manner through a stock valuer of CBI so that accused can be fixed for a higher value of assets i.e. jewllery. It is incorrect to suggest that I deliberately did not produce Mr. O. P. Malhotra valuer of the jewellery as that would have brought the cat out of the bag.

Question: Did you examine the age of the jewellery from recognized jewellery valuation companies?

Answer: I did not.

It is incorrect to suggest that I carried out the search and seizure and registration of the present case against the accused based upon my own notional understanding at the behest of vested interest and did not place the relevant material before this court and misrepresented various facts to this court with malice and sole objective of denial of promotion of accused. It is incorrect to suggest that I am deposing falsely.

Vol. *I want to explain that I have given benefit of Rs. 5 lacs earned by selling the land at Panipat against agreement to sale."*

177. The charge-sheet itself acknowledges that the Appellant possessed approximately 87.5 tolas of gold prior to the commencement of the check period. The record further reveals that such jewellery had been consistently disclosed in Income Tax and Wealth Tax Returns filed over the years. Further, during cross-examination, PW-61, Shri Kailash Chand Aneja admitted that the Income Tax Return for Assessment Year 1998-99 specifically recorded that Mrs. Mridula Kapur had acquired substantial quantities of gold jewellery as stridhan at the time of her marriage, including jewellery received from her parents and in-laws. He further admitted that such jewellery was distinct from the assets of the Hindu Undivided Family. The cross of PW – 61 reads as under:

"Now I have been shown documents at page no. 8 to 15, which pertain of D-77. I say that I have seen these documents earlier as I have the copies of the said documents also. The same are exhibited as ***Ex. PW61/DD (colly)****. These documents are the statement of accounts of Smt. Santosh Kapur for issuing of bank drafts. The said*

documents also show the bank deposits of Ms. Santosh Kapur along with the FDR numbers.

I have seen the document at page no. 17 & 18 of D-77, which is exhibited as ***Ex. PW61/DE (colly)****. The same relates to the certificate issued by the father of Mrs. Mridula Kapur.*

It is correct that as per the income tax return for the assessment year 1998-99, it is mentioned that the assessee except gold jewellery ornaments acquired as "stridhan" at the occasion of marriage in 1986 from parents about 80 tolas and 75 tolas from in-laws. It is also correct that the said gold acquired by Mrs. Mridula Kapur is distinct from Anand Kumar Kapur HUF."

178. The evidence of PW-41, Shri Akarsh Kashyap, Chartered Accountant, further establishes that Mrs. Mridula Kapur had declared approximately 1458 grams of gold jewellery in her Income Tax Returns for Financial Years 2005-06 and 2006-07. Likewise, the Appellant had disclosed possession of approximately 1632.49 grams of jewellery during the same period. These declarations were made much prior to registration of the present case and were available with the Income Tax Department in the ordinary course. The ITR records are reproduced as under:

Ms. Mridula Kapur's ITR for 1998-99

1998-99 Asstt. Year.

Name of assessee : SMT. MRIDULA KAPOOR d/o Shri Madan Mohan Bakshi
H.No. 64-R Model Town, PANIPAT.

Status : Individual.

Business/

Profession : Computer Coaching Teaching etc.

A/c year : 1997-98 (F. Year)

A/c No. : APPLIED FOR PAN No. on 19.8.1998/ward-4, PPT.

DATE OF BIRTH: 12.7.1959.

DETAILS & COMPUTATION OF INCOME :-

Net income by computer-coaching-teaching etc.

During the year…. Rs.42,000/-

TOTAL INCOME Rs.42,000/-

INCOME TAK COMPUTED: Rs. 200/-

Tax paid Under Section 140/A RS. 200/- on __-11-1998.

(receipt attached).

2.) CAPITAL ACCOUNT :-

To Drawings	10,000.00	By 0. Balance 1.4.97.	20,000.00
to B.C.O. 31.3.98.	52,000.00	by Net income during	
	_____	the year.	42,000.00
	62,000/-		62,000/-

NOTE: Household expenses of the family are also net by the salary income of the husband, who is serving in Defence Services. Family consists of self, husband and two minor children, age 11 & 6 years. No individually valuable assets owned by the assessee except gold jewellery ornaments acquired as 'ISTRI DHAN' at the occasion of marriage in 1986 from parents about eighty tolas and seventy five tolas from in-laws. This fact has also been declared in the wealth statement of the husband HUF IN 1988-89 in Ward No. 1, Panipat.

(SMT. MRIDULA KAPOOR)

ASSESSEE.

Ms. Mridula Kapur's Wealth Tax Return for 2006-2007

Name	**KAPUR MRIDULA**
Father's Name	**MADAN MOHAN BAKSHI**
Addressoffice	**SAINIK FARMS, NEW DELHI, 110068**
Address Residence	**305 FOREST LANE, NEB SARAI EXTENTION, SAINIK FARMS, NEW DELHI, 110068**

Status	**01**	Assessment Year	**2006-2007**
Ward	**CIR 24 (1)**	Valuation Date	**31/03/2006**
PAN	**ACUPK0209M**	Date of Birth	**12/07/1959**

Computation of Net Wealth

Immovable Property			1400000
Building(s)S.2(ea)(i)			
House at Mashobtra Shimla	1400000		
Less: Debt	0	1400000	
Movable Property			**1064340**
Jewellery, etc., S.2(ea)(iii)			
Gold Jewellary 125 Tola i.e 125*11.664=1458 gm @ 730/- per gm	1064340		
Less: Debt:	0	1064340	
Net wealth			**2464300**
Net wealth Rounded off u/s 44C			**2464340**
Tax on Net wealth	9643		
Add: Interest on late filing of return	482		
Total tax and interest payable	10125		
Less: Prepaid tax	0		
Tax payable	10125		

Assets claimed exampt:			**0**
1/2 Share 407A Unitech park New Delhi		0	
Less: Debt		0	0
1/2 Share K-8 Jangpura Extention, New Delhi		0	
Less: Debt		0	0

Ms. Mridula Kapur's Wealth Tax Return for 2007-2008

Name	**KAPUR MRIDULA**
Father's Name	**MADAN MOHAN BAKSHI**
Address Office	**SAINIK FARMS, NEW DELHI, NEW DELHI, 110068**
Address Residence	**305 FOREST LANE, NEB SARAI EXTENTION, SAINIK FARMS, NEW DELHI, 110068**

Status	**01**	Assessment Year	**2007-2008**
ward	**CIR 24 (1)**	Valuation Date	**31/03/2007**
PAN	**ACUPK0209M**	Date of Birth	**12/07/1959**

Computation of Net Wealth

Immovable Property				**2000000**
Building(s)S.2(ea)(i)				
House at Mashobra Shimla		2000000		
Less:Debt		0	2000000	
Movable Property				**1239300**
Jewellery.etc.,S.2(ea)(iii)				
Gold Jewellary 125 Tola i.e 125*11.664=1458gm@850/- per gm		1239300		
Less:Debt:		0	1239300	
Net wealth				**3239300**
Net wealth Rounded off u/s 44C				**3239300**
Tax on Net wealth	17393			
Add: Interest on late filing of return	0			
Total tax and interest payable	17393			
Less:Prepaid tax	0			
Tax payable	17393			

Due date of filing of return 31/07/2007

Assets claimed exempt:			**0**
1/2 Share K-8, Jungpura Extension New Delhi	0		
Less:Debt	0	0	
1/2 Share 407A Unitech Park	0		
Less:Debt	0	0	
1/2 Share 408A Vatika Tower	0		

Less:Debt	0	0

Appellant's Wealth Tax Return for 2007-2008

Name	ANAND KUMAR KAPOOR (HUF)		
Address office	NEW DEKHI, NEW DELHI		
Address residence	305 FOREST LANE, NEB SARAI EXTENSION, SAINIK FARMS, NEW DELHI, 110068		
Status	02	Assessment Year	2007-2008
Ward	Circle 24(1)	Valuation Date	31/03/2007
PAN	AAEHA0696L	Date of Incorporation	15/09/1986

Computation of Net Wealth

Immovable Property				990000
Building(s)S.2(ea)(i)				
PI		0		
Less Debt		0	0	
Urban Land S.2(ea)(v)				
Plot No 32/52 HUDA Gurgaon		475000		
Less Debt		0	475000	
Plot No 33P/52, HUDA, Gurgaon		515000		
Less Debt		0	515000	
Movable Property				**1387616**
Jewellery, etc., S.2(ea)(iii)				
Gold Jewellary 139.96 tola		1387616		
i.e 139.96*11.664-1632.49 gm @850/-gm				
Less Debt		0	1387616	
Net wealth				**2377616**
Net wealth Rounded off u/s 44C				**2377600**
Tax on Net wealth	8776		0	
Add: Interest on late filing of return	0			
Total tax and interest payable	8776			
Less: Prepaid tax	0			
Tax payable	8776			

Due date of filling of return 31/07/2007

Assets claimed exempt:			**0**
1/2 Share Basement & 1/2 Share GF at D-23Defence Colony	0		
Less: Debt	0	0	
B111, Ansal Plaza New Delhi	0		
Less: Debt	0	0	
1/2 Share 407A Unitech Park	0		
Less Debt	0	0	
102 LSC Munirka	0		
Less: Debt	0	0	
1/2 Share 408A Vatika Trade Tower	0		
Less Debt	0	0	
1/2 Share k-B, JangpuraExtention N Delhi	0		
Less Debt	0	0	
Agriculture land	0		
Less Debt	0	0	

Appellant's Wealth Tax Return for 2006-2007

Name	**ANAND KUMAR KAPUR (HUF)**		
Address Office	**NEW DELHI, NEW DELHI**		
Address Residence	**305 FOREST LANE, NEB SARAI EXTENTION, SAINIK FARMS, NEW DELHI, 110068**		
Status	**02**	**Assessment Year**	**2006-2007**
Ward	**Circle 24(1)**	**Valuation date**	**31/03/2006**
PAN	**AAEHA0696L**	**Date of incorporation**	**15/09/1996**

Computation of Net Wealth

Immovable property			**990000**
Urban land S.2 (ea) (v)			
Plot No. 32/52 HUDA, Gurgaon	475000		
Less Debt	0	475000	
Plot No. 33P/52 HUDA, Gurgaon	515000		
Less Debt	0	515000	
Movable Property			**1191717**
Jewellery, etc. , S.2 (ea) (iii)			
Gold Jewellery 139.96 tola i.e.			
139-96*11.664= 1632.49 gm @730/- per gm	**1191717**		
Less Debt	0	**1191717**	
	0		
	0	0	
Net Wealth			**2181717**
Net Wealth Rounded off under Section 44C			**2181700**
Tax on Net Wealth	6817		
Add: Interest on late filing of return	341		
Total tax and interest payable	7158		
Less : Prepaid tax	0		
Tax payable	7158		
Details of Prepaid Tax			**0**

Date	Name of Bank and Branch	Branch Code	Amount		
				0	
Assets claimed exempt:					**0**
1/2 Share Basement & 1/2 Share GF at D-23		0			
Defence Colony, New Delhi			0		
Less: Debt			0	0	
B-111 Ansal Plaza, New Delhi		0			
Less: Debt			0	0	
1/2 Share 407A Unitech Park, New Delhi			0		
Less: Debt			0	0	
102 LSC Munirka			0		
Less: Debt			0	0	
1/2 Share K-8, Jangpura Extension New Delhi		0			
Less: Debt			0	0	

179. The evidence on record therefore demonstrates that substantial quantities of jewellery stood disclosed by the Appellant and his wife long before initiation of criminal proceedings. Significantly, the prosecution had not produced any evidence to show that the declarations made before the Income Tax Department were rejected, or found to be false.

180. The prosecution has also failed to appreciate that jewellery received by way of inheritance, gifts or stridhan cannot automatically be treated as assets acquired during the check period. The evidence on record indicates that a substantial portion of the jewellery was inherited or received on ceremonial occasions much prior to the relevant period. No investigation appears to have been conducted to ascertain the age of the jewellery, the dates of acquisition, or the circumstances under which the same came into possession of the family.

181. The prosecution has also not satisfactorily addressed the fact that certain articles contained diamonds and precious stones embedded in gold ornaments. The absence of separate declarations regarding the weight of stones in wealth tax records cannot automatically lead to an inference of concealment, particularly when such stones formed an integral part of the jewellery itself.

182. Further, the prosecution sought to establish the value, purity and age of the alleged recovered gold and precious stones through valuation reports marked as Ex. PW-1/C; however, the author of the said reports, Sh. O.P. Malhotra, though cited as a witness, was never examined during trial. It is settled law that a document does not stand proved merely because it is exhibited, and the contents of a valuation report can only be proved through its maker, who alone is competent to depose regarding the basis and methodology of valuation and be subjected to cross-examination. Even, the prosecution's request to summon an alternative witness was declined by the Trial Court vide order dated 24.05.2016, resulting in the reports remaining unproved.

183. In these circumstances, the prosecution has failed to discharge its burden of proving that jewellery valued at Rs.18,51,215/- constituted an unexplained asset acquired during the check period.

Agricultural Income

184. The next head pertains to the computation of income under the head "Agricultural Income, Rent and Interest". The prosecution and the Trial Court have taken the income under this head at Rs.1,19,078/-, whereas according to the Appellant, the income established on record is Rs.12,02,108/-. The principal dispute concerns the agricultural income derived from approximately 34 bighas and 46 kanals of

agricultural land situated in Panipat and Karnal during the check period. The Trial Court findings read as under:

> *"In this application he has prayed that an income certificate may be issued. Below this application, there is a certificate that "Prarthi ki mutabik shapath patra anusar varshik aaye 1,77,000 rupay sahi hai. Report paish hai." I may mention that the word "sahi" i.e "correct" appears to bean interpolation. Even if this certificate is not interpolated, it is clear from the language that it has been issued on the basis of the application and not on the basis of actual income. I may mention here that A-1 has not examined Tehsildar as a defence witness and therefore, the certificate in question is of no value.*
>
> *Similarly, the tenant Sukhbir has not been examined in defence and therefore, the affidavit of Sukhbir cannot be accepted. So far as the testimony of DW-4 is concerned, I would say that he claims himself to be an agriculturist and he testifies that land of A-1 was given on contract for three years to one Surjit and annual income per acre was around Rs.3000/ to Rs.3500/ per acre and that the income had increased to Rs.30,000/acre per annum. He testified that said Surjit used to give money directly to the father of A-1. As per his testimony, DW-4 is having agricultural land in Panipat itself. He could have brought his own receipts of income from the sale of agriculture produce to prove his version about the income from the agriculture. He has not*

produced any documentary evidence as to how much he used to earn from the agricultural income. Therefore, I am not inclined to accept his testimony.

...

Now, I will refer to the property return of A-1, filed in the year 1973, which is placed at page 150 of D-78 (Ex.P-31). It mentions the income of Rs. 1,000/ from each of the agricultural land per annum and an income of Rs.310/ from the property at Lohgarh, Amritsar. It means that earnings from the aforesaid properties was Rs.2,310/ per year. The Investigating Officer has calculated income from 1971 to 1974. Thereafter, he has relied upon the income tax returns filed by A-1 through PW-61. However, these income tax returns (placed in D-76) are not proved, though, it was seized by the Investigating Officer. Defence has also neither admitted this document nor has taken any benefit from it. Since after 1976, A-1 has not shown agricultural income in his property returns to his department nor the income tax returns in D-76 have been proved by any party, one way to appreciate evidence would be to presume that A-1 had no agricultural income after 1976. But that would not be a good approach. There has to be some agricultural income of A1. Therefore, I would like to leave it aside and see as to how had income from agriculture has been shown by A-1 in his property returns after 1973.I have already stated that income of A-1 from rent and agriculture was Rs.2310/ in

1973. The returns filed by him dated 28.09.1976 shows agricultural income @ Rs.1,500/ +Rs. 1,000/ +RS.310/ = Rs.2,810/. Thus it shows that in 5 years income from agricultural and rent increased by a small fraction of Rs.500/. In view of above trend, I take the income from agricultural and rent to be around Rs.3500/ in 1986. Similarly, interest on the fixed deposit of Rs.21,700/ and NSCs of Rs.20,000 in the year 1971 had been calculated by Investigating Officer to be Rs.77.003/.This has been calculated from the income tax returns filed by A1 in D-76, which has not been proved. However, it can be fairly accepted that roughly this calculation is correct. I have already discussed above regarding the agricultural income, which is supported by the documentary evidence. On the other hand, the defence is relying upon the testimony of DW-4, who has given a vague evidence without bringing on record any documentary evidence as to what was being produced in the farms of A-1 and what is the value of agricultural produce. In such a situation, I would like to see D-76 to ascertain as to whether my assessment of the income as above is correct or not. Interestingly, the income tax returns of the year 1986, do not help the accused in any manner. Therefore, I accept the value of agricultural income, rent and interest at Rs. 1,19,078/."

185. The Trial Court rejected the agricultural income claimed by the Appellant primarily on the ground that the tenant, Surjit, was not examined as a defence witness and that the certificate issued by the

Tehsildar, Panipat was not formally proved through its author. In doing so, however, the Court overlooked the fact that both these materials had been furnished to the IO during the course of investigation itself. The affidavit of the tenant detailing the amounts paid by him towards cultivation of the land and remitted to the Appellant's family was admittedly available with the prosecution. Despite possessing such material, the IO chose neither to examine the tenant nor to undertake any inquiry to verify or disprove the assertions contained therein.

186. Once specific material explaining the source and extent of agricultural income had been placed before the investigating agency, it was incumbent upon the prosecution to investigate the same fairly and objectively. The prosecution could not simply ignore material favourable to the defence and thereafter contend that the claim remained unproved. The omission to verify the affidavit of the tenant, despite its availability during investigation, reflects a selective approach which materially affected the assessment of the Appellant's income.

187. The adverse inference drawn by the Trial Court on account of the non-examination of Surjit is also unsustainable for an additional reason. The record demonstrates that Surjit had been cited as a defence witness and the defence intended to examine him. However, before all defence witnesses could be produced, the defence evidence was closed. Having curtailed the defence evidence, it was not open to the Court to subsequently reject the defence case on the ground that the very witness who was sought to be examined had not entered the witness box.

188. Equally significant is the fact that the agricultural income claimed by the Appellant was not based solely upon the affidavit of the tenant. The claim stood corroborated by multiple independent pieces of evidence. The affidavit of the Appellant's mother, the Will executed by the Appellant's father, and the testimony of DW-4 (Mr. Hari Maira) all state that the agricultural lands were being cultivated through a tenant and that the agricultural proceeds were received by the parents of the Appellant during the period when he was posted elsewhere in service. The evidence of DW-4, who was himself engaged in agriculture and familiar with the cultivation practices and yields in the area, lends further support to the defence version regarding the income generated from the land. The examination in chief reads as under:

> *"I am an agriculturist, but now I have retired from the vocation. My lands are located in Panipat. Maj. Gen. Anand Kapur also has land in Panipat. The lands are reasonably adjacent. The land of A-1 was given on the contract for three years at a time to one Surjeet. As on date, the annual income from the cultivation to the land owner is about Rs. 50,000/- per acre and the cultivator/contractor earns about Rs. 30,000/- per acre as his net profit per year. My family had been very close to the family of A-1 and as the father of A-1 late Mikhi Ram Kapur also known as 'Diwan Saheb' used to tell me to oversee the agricultural activities from time to time, so I was involved in looking after the land of A-1.*
>
> *In the year 1971, as I recalled, the annual income per acre to the land owner was in the domain of Rs. 3,000/- to Rs. 3,500/- . In the next 30 years, the income had increased to Rs. 30,000/- per acre, per annum for the land owner. A-1 had owned approximately, 7.5 acres of land in Patti*

Rajputan Village in Panipat. Surjeet used to give the money directly to late Diwan Saheb, Surjeet continued to be the cultivator of the said land from 1971 to 1999-2000, when A-1 sold the land."

189. The reasons assigned by the Trial Court for discarding the testimony of DW-4 are likewise not persuasive. The witness was not produced to establish his own agricultural income but to depose regarding the nature of cultivation, prevailing agricultural yields and the income generated from similarly situated lands in the locality.

190. The Trial Court further discarded the certificate issued by the Tehsildar, Panipat on the assumption that it was based only upon the information supplied by the Appellant. However, the certificate constituted an official assessment regarding the average agricultural income generated from land of the relevant nature and extent within the area. Even if the Court was not inclined to accept the certificate as conclusive proof of income, it nevertheless constituted corroborative material which could not have been completely ignored, particularly when read together with the affidavit of the tenant, the statements of the family members and the testimony of DW-4.

191. It is also material that PW-61, the Chartered Accountant, admitted that the income claimed by the Appellant was broadly consistent with the average agricultural income that could be expected from agricultural land of the size and nature owned by the Appellant.

192. In contrast, the figure ultimately adopted by the Trial Court is not founded upon any positive evidence regarding actual agricultural yields or market returns. The Court effectively discarded the defence evidence and proceeded to estimate the agricultural income on the

basis of assumptions drawn from certain property returns and tax records.

193. The cumulative effect of the affidavit of the tenant, the affidavit of the Appellant's mother, the Will of the Appellant's father, the certificate of the Tehsildar, the testimony of DW-4 and the admissions of PW-61 raises a credible and probable explanation regarding the agricultural income earned from the land holdings of the Appellant. At the very least, this material created a substantial doubt regarding the correctness of the restricted figure adopted by the prosecution and accepted by the Trial Court.

194. In these circumstances, the Trial Court was not justified in restricting the income from agriculture to Rs.1,19,078/-.

HUF Income

195. The Appellant further challenges the finding of the Trial Court whereby the income of the HUF was restricted to Rs.21,89,538/-. It is submitted that the evidence on record demonstrates that the HUF income was substantially higher and ought to have been assessed at Rs.36,48,927/.

196. The principal dispute under this head relates to two components of income, namely, agricultural income derived from the agricultural lands owned by the family and rental income from immovable properties. The Trial Court rejected a substantial portion of the agricultural income and further reduced the rental income by treating the statutory deduction available under the Income Tax Act as an actual expenditure. Both findings, it is submitted, are unsustainable. The findings of the Trial Court read as under:

"My view

I have already discussed the agricultural and rent income up to 1986 in discussion of item no. 4. Now, I take up the HUF income, which is contained in the file D- 75 [Ex.PW-61/A (Colly.)]. In these income tax returns, 1/6th of the income was deducted for repairs of the flat etc. Ld. Defence counsel is relying upon the testimony of PW- 61 that it is not an actual expenditure but only a tax benefit. I have considered this testimony and I am of the opinion that this deduction is done because after all, immovable property requires repairs, etc. from time to time and it is reasonable to believe that at least 1/6th of the income is spent on repairs etc. of the property. Hence, I am not inclined to accept that it is not an actual expenditure. I have perused the balance sheets filed by A-1 and I am not inclined to leave 1/6 deduction aside. Accordingly, I accept the HUF income to be Rs.21,89,538/-."

197. Insofar as the agricultural income component of the HUF income is concerned, the same arises out of the very agricultural lands and receipts which have already been dealt with while considering Item No. 4. The findings recorded above while dealing with Item No. 4 shall equally govern the determination of agricultural income forming part of the HUF income and are not being repeated herein for the sake of brevity.

198. The surviving dispute under this head relates to the treatment of rental income. The Trial Court accepted only the net income reflected in the income-tax returns after deducting the statutory allowance available

under the Income Tax Act and treated such deduction as representing actual expenditure incurred on repairs and maintenance. The reasoning adopted by the Court is contrary to the evidence on record.

199. PW-61 stated during cross-examination that the deduction allowed from rental income was a statutory deduction available for tax purposes and did not necessarily represent actual expenditure incurred by the owner. The purpose of such deduction is to arrive at taxable income under the Income Tax Act. It does not establish that an equivalent amount was actually spent on repairs, maintenance or renovation of the property. The burden to prove the amount lies squarely on the Prosecution and cannot be discharged through assumptions or conjectures. The Court must remain conscious that, in a corruption case, income and expenditure cannot be determined on presumptions. The Prosecution is required to establish both the income in the hands of the accused and the expenditure incurred by him through reliable and cogent evidence.

200. It is well settled that taxable income and actual income are distinct concepts. Deductions and allowances available under fiscal statutes are legislative concessions for tax computation and cannot automatically be treated as expenditure actually incurred. Therefore, while determining the actual income available to an accused in disproportionate assets proceedings, the statutory deduction under the Income Tax Act cannot be excluded unless supported by evidence of actual expenditure.

201. The Trial Court, therefore, erred in reducing the rental income by Rs.83,270/- solely on account of the statutory deduction claimed in the income-tax returns. The said amount ought to have been included while computing the actual income of the Appellant.

Loans from Family

202. The Appellant challenges the rejection of three loan transactions, namely, Rs.3,50,000/- from Maj. A. Ganesan, Rs.10,00,000/- from Smt. L. Maira and Rs.3,00,000/- from Sh. Hari N. Maira.

203. The Trial Court rejected these amounts solely on the ground that it was not satisfied as to why the lenders had advanced the loans. The relevant findings read as under:

> *"Loan Maj A Ganesan 3,50,000*
>
> *Note: Friendly Loan taken by A1 shown in Bank Statement Ex. P9(D36).Ch No. 0067545 dt 10/01/2007.PW 41, Ex. PW41/DC also confirm. DW3 has stated this and placed his bank statement at Ex. DW3/1.*
>
> *My view*
>
> *I have perused the testimony of DW- 3Maj. A. Ganesan, but I am not convinced as to for what purpose he had given loan of Rs.3.5 lacs to A1 in the month of January 2007. I am not inclined to accept this plea and the explanation is not satisfactory.*
>
> *6. Loan Smt L Maira 10,00,000*
>
> *Note: Friendly Loan taken by A-2 shown in Bank Statement at Ex. P8 (D-35).Ch. No. 488037 dt 26/10/2005 for 5.00 L and Ch. No.488042 dt 06/12/05 for 5.00 L of ING Vysya Bank Panchsheel. PW41, Ex. PW41/DD also confirm. DW4 has stated this and placed her bank statement at Ex. DW4/1.*

My view

Defence has examined DW-4 Hari Maira, who testified that his mother Mrs. Lalti Maira had given a loan of Rs.10 lacs to A-2 through two cheques. This is highly suspicious transaction. I am not convinced as to why this huge loan was given by the mother of DW4. The explanation is not satisfactory.

7. Loan Sh. H.N. Maira 3,00,000

Note: Friendly Loan taken by A-2 shown in Bank Statement at Ex. P8(D35)vide ch no.0806611 dt. 06/07/2006. PW 41, Ex.PW41/DD also confirm DW-4 has stated this and placed his bank statement atEx.DW4/2.

My view

No explanation is coming as to for what this loan was given by DW4 to A2. I do not accept this income."

204. Such an approach is unsustainable. In the present case, all three loans were advanced through identifiable banking channels and stood corroborated by the bank statements of both the lenders and the recipient. Maj. A. Ganesan (DW-3) and Hari Maira (DW-4) testimonies support the same. The relevant bank records were also exhibited on record.

205. Significantly, the prosecution did not dispute the identity or financial capacity of the lenders, nor did it lead any evidence to establish that the transactions were sham, fictitious or that the funds actually

belonged to the Appellant. The genuineness of the banking transactions remained uncontroverted. The testimonies of DW-3 and DW-4 read as under:

> *"CC No. 17/13*
> *RC No. AC-2/2007/A0003/CBI/ACU-II/ND*
> ***CBI Vs. Maj. Gen. Anand Kumar Kapur etc.***
> ***DW-3***
>
> *15.09.2016*
> ***DW-3: Maj. A. Ganesan, son of Sh. G.S. Annaswamy aged 68 years, r/o Flat 2A, Sundaram Apartment, No. 2 Fifth Avenue, Basant Nagar, Chennai-600090.***
>
> *On S.A.*
>
> *I have received summons in the above matter and in compliance of the same I have come to this court.*
>
> *Maj. Gen. Anand Kapur and myself were batch mates since 1971. I had given a loan of Rs. 3.5 lacs in the month of January 2007. I have brought the statement of account, which is duly signed by the bank i.e. Indian Overseas Bank, Yusuf Sarai Bank, Green Park, New Delhi. The relevant entry is at Serial No. 11 and the statement is marked as* ***Ex. DW3/1****(objected to). After a few months of having taken the loan, the mother of A-1 returned the said amount to me.*
>
> *I had a Bose Wave Portable radio system. I have seen* ***Ex. PW50/E,*** *which pertains to the abovesaid Bose Wave Portable Radio system. Maj. Gen. Anand Kapur was moving to Jaipur and wanted to have a small system, I had lent the same to him and later on the returned it to me.*

XXXXX BY Sh. Manoj Shukla, Ld. Senior Public Prosecutor for CBI.

It is correct that in the bank statement ***Ex. DW3/1,*** *it is not reflected as to in whose bank account, the aforesaid amount has been transferred. I cannot remember the date, month or year on which the mother of A-1 had returned the money to me.* ***Volunteered :*** *I do not remember due to lapse of long time. I do not recollect the mode of payment made to me by the mother of A-1.*

It is incorrect to suggest that no payment was made by me as a loan to Maj.Gen. Anand Kumar Kapur nor any money was returned to me as stated by me above. It is incorrect to suggest that I have testified with a view to help A1, being my close friend and batch-mate.

It is incorrect to suggest that the Bose Wave music system was purchased by A-1 and was not lent by me to him and the retail invoice ***Ex. PW50/E*** *was actually issued to A-1, it is further incorrect to suggest that A-1 got issued the said invoice in my name. It is correct that the said invoice was seized from the house of A-1.* ***Volunteered :*** *I had given the complete box alongwith the invoice to A-1.*

It is incorrect to suggest that I have deposed today at behest of and at tutoring of A-1.

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DW-4

15.09.2016

DW-4: Sh. Hari Maira, son of late Sh. S.N. Maira, aged 61 years, r/o S-234, Panchsheel Park, New Delhi-110017.

On S.A.

I have known A-1 since my childhood and our relationship goes back to three generations.

I had given a loan of about Rs. 3 lacs to Mrs. Mridula Kapur in 2006. She had also requested for a loan from my mother Mrs. Lalti Maira in 2005 for a total amount of Rs. 10 lacs, which was given to A-2 through two cheques of Rs. 5 lacs each.

I have brought the statement of account of my mother, wherein the entry comes on page 03 dated 27.10.2005 and 08.12.2005. The said statement is ***Ex. DW4/1*** *(objected to) and the relevant portion is highlighted at* ***portions A and B,*** *respectively. I have also brought my statement of account of Kotak Mahindra Bank, wherein the entry is figuring as date of 07.07.2006. The said statement of account is* ***Ex. DW4/2*** *(objected to) and the relevant entry is highlighted as* ***portion A.***

I do not remember the date, but I received the money back from A-2 in the year 2008.

I am an agriculturist, but now I have retired from the vocation. My lands are located in Panipat. Maj. Gen. Anand Kapur also has land in Panipat. The lands are reasonably adjacent. The land of A-1 was given on the contract for three years at a time to one Surjeet. As on date, the annual income from the cultivation to the land owner is about Rs.

50,000/- per acre and the cultivator/contractor earns about Rs. 30,000/- per acre as his net profit per year. My family had been very close to the family of A-1 and as the father of A-1 late Mikhi Ram Kapur also known as 'Diwan Saheb' used to tell me to oversee the agricultural activities from time to time, so I was involved in looking after the land of A-1.

In the year 1971, as I recalled, the annual income per acre to the land owner was in the domain of Rs. 3,000/- to Rs. 3,500/- . In the next 30 years, the income had increased to Rs. 30,000/- per acre, per annum for the land owner. A-1 had owned approximately, 7.5 acres of land in Patti Rajputan Village in Panipat. Surjeet used to give the money directly to late Diwan Saheb, Surjeet continued to be the cultivator of the said land from 1971 to 1999-2000, when A-1 sold the land.

XXXXX By Sh. Manoj Shukla, Ld. Senior Public Prosecutor for CBI.

Question: *You have stated that in the year 1971, the annual per acre to the land owner was in the domain of Rs. 3,000/- to Rs. 3,500/- . I put it to you that it was only your assumption and you do not have any documentary evidence to prove it. What do you say?*

Answer: *It is correct that I do not have any documentary evidence in support of my evidence. But, I was handling agricultural operations even during 1971 and therefore, I am testifying as above.*

Question: *I put it to you that the income from cultivation from a land is dependent on the crop which is grown and measures of agriculture adopted and so the income may vary what do you say?*

Answer: *It is correct.*

I cannot produce any lease agreement between Diwan Saheb and Sh. Surjeet, at this juncture. It is incorrect to suggest that no such lease agreement exists and therefore I cannot produce the same. It is incorrect to suggest that no agricultural land of A-1 was never leased out to Sh. Surjeet by father of A-1.

It is incorrect to suggest that I or my mother never gave any loan to Smt. Mridula Kapur.

Question: *I put it to you that actually A-1 had given you amount in cash and asked from you to provide cheques of the same amount. What do you say?*

Answer: *It is incorrect.*

It is incorrect to suggest that I have deposed falsely today at the behest of A-1 due to my old and good relationship with A-1. It is further incorrect to suggest that I have deposed on the tutoring of A-1."

206. In these circumstances, the loans could not have been rejected merely because the Trial Court was not convinced about the reasons for which they were advanced. Suspicion cannot substitute proof. Once the transactions were supported by oral and documentary evidence, the burden was upon the prosecution to establish their falsity, which it failed to do.

207. Additionally no questions were asked to DW 3 and DW 4 their capacity to advance the loan to the Appellant and his wife. In fact the loan of Rs. 13 lakhs was not even advanced to the Appellant but his wife. Accordingly, the exclusion of the loan amounts of Rs.3,50,000/- , Rs.10,00,000/- and Rs.3,00,000/- is unsustainable and the said sum of Rs.16,50,000/- is liable to be included in the income of the Appellant.

Transfer of Rs. 50,93,082/- from Smt. Santosh Kapur

208. The Appellant also assails the rejection of the sum of Rs.50,93,082/- transferred by his mother. The Trial Court discarded the transaction on the ground that the source of funds available with the mother had not been established. The relevant findings read as under:

> *"My view*
>
> *Such big amounts are coming from the mother of A-land during trial, A-1 had been unable to show as to what were the sources of mother of A-1 through which she was getting so much money. No income tax returns nor any bank account of mother of A-1 has been shown to this court. The receipt of these amounts are highly suspicious."*

209. Suffice it to note that the transfer admittedly originated from the bank account of the Appellant's mother and was reflected in the corresponding bank records. The defence had also relied upon the affidavit of the mother explaining the source of funds and the circumstances under which the amount was transferred. Significantly, the IO admitted during cross-examination that he had neither considered the said affidavit nor undertaken any investigation

regarding the transaction. Even the Trial Court closed the defence evidence in haste, therefore the findings related to Appellant's mother cannot be sustained.

Gifts

210. The Appellant further assails the rejection of the gifts received from his mother and the parents of his wife, as well as the amounts received by his children from their maternal grandfather.

211. Insofar as the gifts from the Appellant's mother are concerned, the Trial Court rejected the same on the ground that the source of funds available with the mother had not been established. This issue has already been dealt with while considering the financial resources and transfers made by the mother of the Appellant and is not being repeated for the sake of brevity. For the reasons recorded therein, the exclusion of the gifts of Rs.1,00,000/- and Rs.4,00,000/- cannot be sustained.

212. With respect to the gift of Rs.10,00,000/- made by the parents of Mrs. Mridula Kapur at the time of her marriage, the Trial Court rejected the claim primarily on the ground that it was difficult to believe that such an amount would have been retained in cash and because no income-tax record was produced. However, the defence relied upon the affidavit of the father of Mrs. Mridula Kapur and the testimony of DW-1 in support of the said gift. The father was stated to be employed as a telecom engineer in Oman and the prosecution did not lead any evidence to show that he lacked the financial capacity to make such a gift.

213. Similar views apply to the sum of Rs.4,00,000/- claimed to represent the savings of Mrs. Mridula Kapur from her employment in Oman

prior to her marriage. The defence relied upon the affidavit of her father and the testimony of DW-1.

214. The gifts received by Dhruv and Dilkash from their maternal grandfather amounting to Rs.2,45,000/- stand on an even stronger footing as the same were reflected in the records relied upon by the defence and supported by the affidavit of the donor. No evidence was led by the prosecution to establish that the gifts were fictitious or that the donor lacked the means to make them.

215. The Trial Court's conclusions in respect of these amounts are founded largely upon suspicion and assumptions rather than any evidence establishing falsity of the defence case. Accordingly, the exclusion of the gifts and savings amounting to Rs.17,45,000/- is liable to be rejected and the said amounts deserve to be included in the income available to the Appellant during the check period.

216. The Appellant further challenges the exclusion of Rs.23,30,000/- transferred from the parental bank account at Panipat to the HUF account. It is the specific case of the Appellant that the relevant bank records evidencing the transfer formed part of the material collected during investigation.

217. The omission goes to the root of the matter as the sanctioning authority was thereby deprived of the opportunity to consider material which was directly relevant to the source of funds and the explanation offered by the Appellant.

218. In these circumstances, when material supporting the Appellant's explanation was admittedly not placed before the sanctioning authority and was consequently not considered at the relevant stage, the benefit of doubt arising therefrom must necessarily be given to the

Appellant. Accordingly, the exclusion of the sum of Rs.23,30,000/- cannot be sustained.

Interest PNB and HDFC Savings Bank Accounts

219. The Appellant further challenges the computation of interest income under the heads relating to the HDFC Bank accounts and the PNB account.

220. Insofar as the interest credited in the HDFC Bank accounts is concerned, the Trial Court preferred the amounts reflected in the bank statements over the figures disclosed in the Income Tax Returns and TDS records on the premise that the bank statements constituted the best evidence. However, the Trial Court failed to appreciate that the amounts reflected as credits in the savings accounts do not necessarily represent the total interest accrued or paid by the bank, particularly where tax is deducted at source. The complete interest earned is reflected in the TDS certificates and corresponding income-tax records relied upon by the defence and proved through PW-41. Consequently, the interest income could not have been restricted merely to the net amounts reflected in the bank statements.

221. Similarly, while considering the interest earned from the PNB account and fixed deposits, the Trial Court accepted only the amount reflected in the income-tax records and declined to consider the interest credited on the FDRs during the check period, despite the relevant bank records having been placed on record. In doing so, the Trial Court adopted an approach directly contrary to the one employed while determining the HDFC Bank interest, where the bank statements were treated as the best evidence.

222. The calculation of income cannot be based on two different standards depending upon whether the result favours or prejudices the

Appellant. Once the documentary record evidencing accrual of interest on the FDRs during the check period was available, the same was required to be taken into consideration while computing the income of the Appellant.

223. Accordingly, the treatment of the interest income by the Trial Court is incorrect and should have been computed on the basis of the complete record, including the TDS certificates, income-tax records and bank statements, and the benefit thereof ought to have been given to the Appellant.

224. Insofar as the rental income from the Defence Colony property is concerned, the deduction under Section 24(a) of the Income Tax Act is a statutory allowance for tax computation and does not reduce the actual rental receipts earned by the owner. The evidence on record, including the Income Tax Returns, reflects gross rental receipts and the entire amount has to be included the income of the Appellant.

225. Similarly, with regard to the income from Mridula Contract Services, the Trial Court has committed a clear error by effectively deducting the maintenance expenses twice, first while computing the net business income and again by separately treating the same amount as expenditure. Such duplication resulted in an artificial reduction of income and distortion of the financial position of the Appellant. Consequently, the difference of Rs. 9,71,587/- is liable to be restored to the income side. Accordingly, the income of the Appellant should have been enhanced by a further sum of Rs. 9,71,587/-.

CONCLUSION

226. For the reasons stated above, I am of the view that the sanction accorded for prosecution was invalid in law, the Appellant was denied

a fair and adequate opportunity to lead defence evidence, and the prosecution has failed to discharge its burden of proving that the Appellant had amassed assets disproportionate to his known sources of income during the check period.

227. Consequently, the conviction recorded against the Appellant cannot be sustained and the appeals are allowed.

228. Hence, the judgment of conviction dated 27.09.2016 along with the order of sentence dated 29.09.2016 are hereby set aside.

229. The appeals along with pending applications, if any, are disposed of.

JASMEET SINGH, J

JULY 1st , 2026/DE