BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	29.07.2024
Pronounced on	: :	04.03.2025 & 02.04.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No.297 of 2019

State represented by
Inspector of Police,
CBI, ACB, Chennai. ... Appellant

Vs.

1. S.Kasimayan (A1)

2. R.Selvaraj (A2)

3. R.Rajesh Kannan (A3)

4. R.Anitha (A4)

5. N.Vakeeswaran (A5) ... Respondent

PRAYER: This Criminal Appeal is filed under Section 378(4) of Cr.P.C., to set aside the Judgment and order dated 07.12.2016 passed by the learned II Additional District Court for CBI Cases, Madurai in C.C.No.05/2011.

For Appellant : Mr.C.Muthu Saravanan,
Special Public Prosecutor for CBI cases

For Respondents : Mr.R.Balasubramanian,
Senior Counsel
for Mr.M.O.Thevan Kumar for R1

: Mr.A.Robinson for R2

: Mr.D.Malaichamy for R3

: Mr.G.Bhagath Singh for R5

: Mr.R.Mathialagan for R4

JUDGMENT

The CBI had filed this appeal challenging the acquittal judgment passed in CC No. 5 of 2011 by the learned II Additional District Judge for CBI Cases, Madurai.

2.**Brief facts of the case:**

2.1. The respondent No.1 was the recovery officer of Debt Recovery Tribunal, Madurai. He was arrayed as A1 in the above C.C.No. 5 of 2011. The respondent No.2 was the upper division clerk of the said Recovery Tribunal and he was arrayed as A2. Respondent No.3 is relative of A1 and

he was arrayed as A3 in C.C.No.5 of 2011. The respondent No.4 is A2's wife and she was arrayed as A4. The respondent No.5 was the Branch Manager of Dhanalakshmi Bank, Madurai, and he was arrayed as A5 in the above C.C.No.5 of 2011. For brevity, and convenience and for better understanding of the case, the rank of the accused in C.C.No.5 of 2011 is used by this Court.

2.2. P.W.10 obtained loan in A5's bank by creating mortgage of his three properties. He suffered loss in his business and hence, he was unable to pay the borrowed loan amount and hence, recovery proceeding was initiated before Mumbai DRT under the R.D.B.I Act. After initiation of the recovery proceedings, OA was allowed. Thereafter, the same was transferred to Coimbatore DRT for continuation of the recovery proceedings. During the pendency of recovery proceeding at DRT Coimbatore, Madurai DRT was established. Therefore, the recovery proceedings of the said P.W.10’s property was transferred to Madurai DRT, where A1 was working as recovery officer,.On the basis of the order in OA, he initiated the recovery proceedings and in continuation of the recovery proceedings, he called for the valuation certificate from A5 for the property of P.W.10.

2.3. Thereafter P.W.10 filed an application before the recovery officer to stop the proceedings and also to fix higher upset price. Pending the OA, he also filed stay proceedings and in the stay application, he stated that he was going to initiate the proceedings before the jurisdictional DRT, Mumbai. Pending the said application, to furnish the valuation certificate on the basis of them, the proclamation of sale was issued in the Tamil daily newspaper as well as in the Hindu daily newspaper in English. After that, A4 and A3 participated in the said proceedings. A1 continued the auction proceedings. P.W.10, without getting the stay order copy, pleaded not to proceed with the auction proceedings and sought for fixation of higher upset price and his application was dismissed by A1 on the ground that he has no jurisdiction to stop the proceedings and further holding that DRAT also has given general instructions not to stall the proceedings without obtaining the stay order copy from the DRAT. In the said circumstances, he dismissed the application and proceeded with the auction purchase.

2.4. Totally there were three properties. Among them, A3 was declared as successful bidder for one property. A4 was declared as successful bidder for another property. The Mumbai bank officials sent a communication not to proceed with the auction proceedings as stay was

granted by DRAT. But A1 confirmed the auction and issued sale certificate even before the sale confirmation, without considering the stay order granted by the DRAT. From the above sequence of the events, according to the CBI, in order to cheat the bank, they conspired together and conducted auction and sold the property for a lesser price. All the above named accused conspired together and purchased P.W.10's immovable property, which was auctioned, by undervaluing the same without following the proper public auction procedure and thereby, they wrongfully gained and cheated P.W.10 and the bank, and confirmed the sale in spite of the order of the stay granted by the DRT and issued the sale certificate before order of the confirmation of sale. Thereby, they were said to have committed the offence under sections 169, 120B r/w 169, 420, 406 IPC and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988. In the said circumstances, the CBI registered the case in the RC number 15A of 2009 and for the offense under section U/s.120-B r/w 169, 420, 409 IPC and section 13 (2) r/w 13 (1)(d) of prevention of corruption Act, 1988.

2.5.Thereafter, the CBI conducted investigation and filed the final report before the Court below and the same was taken on file in CC number 5 of 2011. The learned trial judge summoned the accused and

served the copies under section 207 Cr.PC. Subsequently, the charge was framed and they were questioned and they pleaded not guilty and they stood for trial.

2.6.The prosecution, to prove the case, examined P.W.1 to 12 and marked Ex.P.1 to 78 and thereafter, the learned trial Judge called the accused and explained the incriminating materials available against them in the evidence of witnesses and documents under Section 313 Cr.P.C and they denied them as false and filed written submission. The accused also examined D.W.1 and marked Exs.D1 to 21 during the course of examination of D.W.1.

2.7. The learned trial judge considering all the evidence adduced on the side of both the prosecution and defence acquitted all the accused of the charged offences by passing the impugned judgment. Challenging the same, this appeal was preferred by the CBI.

3. **The learned Special Public Prosecutor appearing for the CBI made the following submission:**

It is a classic case of Bank fraud. The custodian of the Bank's property namely the recovery Officer of the DRT, Madurai has conspired with his subordinates to sell the property of the judgment debtor for a lesser price in favour of the wife of his subordinate by conducting public auction in a clandestine manner and thereby caused loss to the bank and the mortgagor/judgment debtor and allowed wrongful gain to A3 & A4. The valuation fixed by A5 was pertaining to the valuation of the year 2006. A5 has not fixed the valuation as on the date of the sale notification made by the recovery officer on 17.03.2008. On the basis of the valuation of the year 2006, the sale was notified and the public auction was conducted. As per the terms of the condition of the auction purchase, the officer involved in the recovery proceedings cannot participate in the said auction. In spite of that, A2's wife was allowed to participate as a bidder in the public auction and his brother-in-law was allowed to participate in the said auction process on behalf of his wife. Subsequently the sale was conducted in spite of the memo filed by the bank officer to stop the proceedings. Apart from that, the valuation was not properly fixed. The same was noted by P.W.10 in his application and the same was within the knowledge of A2.

In these circumstances, the auction was proposed and held on 24.04.2008. On that day the only bidder available was A2's wife and she was the only bidder to purchase one of the properties and for the remaining properties, four other bidders were available. Among the four bidders, she was declared as the successful bidder for the remaining properties. One of the bidders even quoted a higher price. Low upset price was fixed compared with the value of other properties. Above all, before confirmation of the sale, the DRAT Mumbai, granted stay. Both P.W.10 and the bank officials requested not to confirm the sale, orally representing that stay had been granted by DRAT. When there is knowledge about the stay order, the recovery proceedings cannot be proceeded. The provisions of Section 19 of the RDB Act, have to be followed. In the said circumstances, he proceeded with the auction and confirmed the sale in favour of A3 & A4 and hence, the conspiracy between them to cheat the bank by undervaluing the property and cheat P.W.10 by misusing and abusing the power is clearly established and hence they are liable for conviction for the charged offences. But, the learned trial Judge without considering the above evidence and also the material circumstances established through oral evidence, erroneously acquitted the appellant and hence, he seeks for interference in the acquittal judgment. It was also submitted that the

intention to cheat is clearly proved from the proceedings itself. Not obtaining the valuation certificate pertaining to the year 2008 for the auction conducted in the year 2008 and obtaining the valuation certificate relating to the year 2006 by A5 itself shows that they all conspired together to cheat the bank by conducting the auction by undervaluing the property in order to cause loss to P.W.10 and the bank. In all aspects the judgment of learned trial judge is erroneous and perverse and hence, he seeks for setting aside the said judgment. He further submitted that from the evidence of the prosecution, the only possible view is that all accused conspired together in order to cheat the bank and conspired together to conduct the sale for a lower value. In the said circumstances he seeks for setting aside the impugned judgment and seeks for allowing the appeal.

3.1. The Learned Special Public Prosecutor has relied the following precedents:

Sl.No.	***Cause tile***	***Citation***
1	In Re Ganapathia Pillai Vs State	1953 AIR (MAD) 936
2	Mukhesh Ramachandra Reddy Vs State	1958 Crl LJ 343
3	Kalias Sizing works Vs Municipality of Bhivndi & Nizampur	1969 AIR (Bom) 127
4	In Re Vs S.K. Sundaram	2001 AIR SC 2374
5	Harihar Prasad Etc Vs State of Bihar	1972 (3) SCC 89
6	State of Kerala Vs V.Padmanabhan Nair	1999 (5) SCC 690
7	Rajib Ranjan and others Vs R.Vijaykumar	2015 (1) SCC 513

8	Kunal Singh Vs CBI	2016 Crl. L.J. 3973
9	Station House Officer CBI/ACB Vs B.A. Srinivasan and another	2020 (2) SCC 153
10	State by police InspectorVs T.Venkatesh Murthy	2004 (SCC) (Cri) 2140
11	Ashok Tsherning Bhutia Vs State of Sikkim	2011 (4) SCC 402
12	Shivaji Sahabrao Bobade and another Vs state of MH	1973 (2) SCC 793
13	K.Gopal Reddy Vs State of AP	1979 (1) SCC 355

4.**The Learned Senior Counsel Thiru.R.Balasubramanian appearing for the respondent No.1 made the following detailed submissions:**

4.1. The Learned Senior Counsel opened the argument with a prelude that an unwarranted prosecution had been initiated based on illegitimate investigation against the honest recovery officer of the DRT when there was no criminality in his action, while discharging his official duty of conducting the auction of the property mentioned in the DRC No. EXH.52 & 53-RP No.352/07 on the file of the DRT, Madurai. Therefore, at the outset, the Learned Senior counsel wants to dismiss the appeal either with cost or compensation.

4.2. The Learned Senior Counsel submitted his argument under various heads and this court also heard the Learned Senior Counsel for a

couple of days. The sum and substance of the Learned Senior Counsel's argument is on three legal grounds and other factual aspects which has been appreciated by the Learned Trial Judge while acquitting the respondent No.1. The legal grounds are as follows :

(i). Lack of sanction under section 197 of Cr.P.C.

(ii). Fixing the upset price and conducting the auction in accordance with RDBI Act r/w. Auction Rules of Income Tax is a Judicial act and hence the respondent No. 1 is entitled to protection under Judges Protection Act.

(iii). After the finding of this court in the earlier quash proceedings that act of fixing upset price is a Judicial act, the sanctioning authority has no right to overlook the said finding and grant sanction to prosecute the respondent under section 13 (2) r/w. 13 (1) (d) of the Prevention of Corruption Act.

4.3. The counsel argued whether the submission of the public prosecutor that the charge against the respondents under the various I.P.C. offences and prevention of corruption Act are made out just because A4 wife of A2 purchased the property participating in the closed tender public auction, by giving wide interpretation to the following clause mentioned in

the tender condition and also the following provision of the Income Tax Auction Rules.

Provision of the Act	***Tender condition***
17. No officer or other person having any duty to perform in connection with any sale under this Schedule shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the *property sold.*	No officer or other person having any duty to perform in connection with any sale under this Schedule shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the *property bid*.

4.4. P.W.1 sanctioning authority holding the post of *"additional secretary"* has no jurisdiction to accord sanction to prosecute respondent No.1.

4.5. When DW1 refused to accord sanction to prosecute A2 under section 13 (1) (d) r/w. 13 (2) of the Prevention and Corruption Act, the special court has no jurisdiction to take cognizance on the basis of the final report filed by the CBI.

4.6. When the RDBI Act and rules, and the income tax rules and instruction given by the appropriate high level officers provide powers for proceeding with the auction when stay order was not produced, the submission of the Learned Public Prosecutor that the auction was

conducted despite of the knowledge of the stay order is to be rejected.

4.7. When the Learned Trial Judge considered the above legal aspect on the basis of the material adduced by the prosecuting agency and found that the prosecution has not proved its case beyond reasonable doubt, this court has no power to set aside the well merited acquittal judgment when there is no other possible view, as held by the Hon'ble Supreme Court in various judicial pronouncements.

4.8.The Learned Senior counsel to substantiate his arguments relied on the following precedents :-

Sl.No.	***Cause tile***	***Citation***
1	Subbaro Vs Advocate General Andhra Pradesh	AIR 1981 SC 755
2	S.Kasimayan Vs CBI	2012 (2) MLJ (Crl) 226
3	National Capital Territory of Delhi Vs Bhupinder Sigh Chowdhary	1997 (4) Crimes 37 (Delhi)
4	A.Srinivasulu Vs State	SCC online 2023 SC 900
5	State of MP V Sheetla Sahai& ors	2009 (8) SCC 617
6	NK Ganguly Vs CBI	2016 (2) SCC 143
7	R.S. Nayak VAR Antulay	AIR 1984 SC 684
8	CBI Vs Ashok Kumar Aggarwal	2014 (14) SCC 295
9	Mansukhlal Vithaldas Chauhan Vs State of Gujarat	1997 (7) SCC 622
10	CK Jaffer Sherif Vs State	2013 (1) SCC 205
11	Sivaprakash Vs State Kerala	2016 (12) SCC 273
12	C.Chenga Reddy Vs State of Andrapradesh	1996 (10) SCC 193
13	Anil Kumar Srivastava Vs State of Uttrapradesh	2004 (8) SCC 671

14	Samir K Shan Vs Union of India & all ors	AIR 2005 SC 4111
15	S.Kasimayan Vs CBI	2023 SCC 17 online Mad 2012
16	R.Ramachandra Nair Vs The Dy.SP.Vigilance of Police and another	2011 (4) MLJ Crl.687 (SC)
17	Desh Bandhu Gupta Vs N.L.Anand and Rajinder Singh	1993 AIR SCW 3458
18	Agni Casting Ltd Vs Punjab Financial corporation and ors	2007 (137) Comp-case 813
19	Shri Radhy Shyam Vs Shyam Behari Singh	AIR 1971 SC 2337
20	K.Virupaksha and anotherVs State of Karnataka and another	2020(4) SCC 440
21	Mallappa Vs State of Karnataka	2024 (3) SCC 544
22	Vineet Narain Vs UOI	AIR 1996 SC 889
23	Dr.Ram Lakhan Singh Vs State of UP	2015 (16) SCC 715

5. **Thiru.Baghat Singh the Learned counsel for R5 the bank manager, Madurai reiterated the above submission of the Learned Senior counsel in respect of his role and specifically made the following submissions**:

5.1. G.S.Raman from Mumbai head office himself came along with valuation report and submitted the valuation report before A1 recovery officer. He is in no way connected with fixing of the upset price and the properties were mortgaged with the Mumbai branch and he worked only in Madurai Branch and therefore he was not liable for fixing the low upset price. Sending the communication dated 21.11.2007 to *"ascertain the current value of the three properties and also find suitable buyers and help*

us in the early sale of this properties" is not an incriminating circumstance to frame a charge against the petitioner under the alleged offence. Without any other evidence to prove his involvement in the conspiracy other than the above said allegation, this court can not upset the well merited acquittal judgment.

6.**Thiru.A.Robinson, Learned counsel for R2 after adopting the argument of the learned senior counsel appearing for A1 made the following submission:**

He was the upper division clerk of Debt recovery Tribunal, Madurai and during the relevant point of time, he was entrusted only with the duty to verify and receive all the OA., SA, PA/OD's Vakalat counter, Memo's etc., Maintenance of valuale register and to hand over the IPO's/DD's to the Accounts Asst. The duty of maintenance of inward register, application fee register, vakalat fee register and to maintain inspection/ perusal of records and the duty relating to the recovery was entrusted with P.W.3. Hence, the allegation of the prosecution that he has direct and indirect role in the auction process commencing from fixing the upset price, is against the prosecution record and the same was properly considered by the Learned Trial Judge in rendering the well considered acquittal judgment.

The entire documents and the statement of the witnesses recorded by the CBI under 161 of Cr.P.C. were placed before the sanctioning authority namely DW1. He refused to grant sanction, by applying his mind to the materials. He also subjected himself to cross examination and specifically reiterated the stand that this respondent/A2 has no role in the process of the auction and hence there was no material to accord sanction against this respondent and therefore the acquittal judgment passed by the Learned Trial Judge need not be interfered.

6.1.He further submitted that there is no evidence to prove the conspiracy between A2 ,A3 and A4. Even though A3 is his wife and A4 is his relative and though A3 in her communication furnished the address of the DRT official quarters as residence, the same is not a circumstance to presume conspiracy.

6.2.He also further submitted that the word mentioned in the tender condition i.e., "*either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property bid"* can not be extended to the extent of framing criminal charge against him and his family members when there is no evidence to show that he has not discharged the duty in the recovery proceedings as per the official order dated 06.09.2007.

6.3.The Learned counsel also submitted that the request of the public prosecutor to invoke section 73 of the Evidence Act to compare the handwriting of the A2 in Ex.P7, Ex.P8 with Ex.P20 can not be entertained at this stage. In fact no question was put to A2 relating to the hand writing in Ex.P20 and Ex.P7, Ex.P8. In said circumstances the request of the public prosecutor cannot be accepted.

7. **Thiru.R.Mathiyalagan, the learned counsel for A4 after reiterating above elaborate argument of the learned counsel for A1 and A2 has specifically made the following submission** :

Merely because she was the wife of A2, the conspiracy between the accused cannot be presumed without any legal evidence.

7.1.There is no provision barring participation in the auction either in the RDBI Act or in the income tax rules. Therefore, she participated with all good intention in the auction and purchased the property paying more than the upset price fixed by the recovery officer. No contra evidence was produced by the prosecution to prove higher upset price. He also submitted that among the number of bidders who participated, she was the successful bidder and hence without challenging the auction in manner known to law, initiation of criminal proceedings against the officials and

the auction purchaser amounts to abuse of process of law. She purchased the property using her own income and no evidence was adduced that A2 contributed the said amount. Therefore he seeks for confirmation of the acquittal judgment.

8. **Thiru.D.Malaisamy, the learned Counsel for A3 made the following submission :**

There was no evidence against him either for conspiracy or for any other offence. He was successful bidder and he was correctly declared as a successful bidder and no circumstances established on record to infer the criminal conspiracy. He was the only person participated in the auction and he quoted more than the upset price. Therefore, A1 issued a sale certificate in his name relating to one of the property. Therefore the learned Trial Judge correctly acquitted him and there is no ground to interfere with the same. Hence, he seeks for the dismissal of this appeal.

9. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record and the precedents relied upon by them.

10.Now the question which arises in this appeal is *whether the Court below is correct in acquitting the respondents for the charged offences?*

11.**Discussion on protection under the judges protection Act:-**

A1 was the recovery officer and he had discharged the duty of conducting the auction process as per law. Therefore he seeks the protection under the judges protection Act. He relied the judgment of this court in Crl.O.P.(MD).No. 2520 of 2009. According to the Learned senior counsel appearing for A1, this court in the said quash petition gave a finding that his act of fixing the upset price is a judicial act and hence he can ensconce himself under the judges protection Act. At the outset, this court is unable to accept the said argument. The above Crl.O.P.(MD).No. 2520 of 2009 was filed by A1 before this court to quash the FIR in the present case. During the pendency of the said quash petition, the investigation was pending. Now this court inclines to make a detailed discussion relating to the entitlement of the protection of the petitioner under the judges protection Act. To decide the applicability of protection under the Act, this court has extracted below section 29 of the RDBI Act and the rule 82 to the part (6) of the II schedule to the Income Tax Act

1961.

Section 29 RDBI Act	*Rule 89*
29. Application of certain provisions of Income-tax Act. - The provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the income-tax:Provided that any reference under the said provisions and the rules to the assessee shall be construed as a reference to the defendant under this Act.	**Prohibition against bidding or purchase by officer:** No officer or other person having any duty to perform in connection with any sale under this Schedule shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

11.1.On appreciation of the above provision, this court had held that since he has been entrusted with the role of recovery proceedings commencing from attachment of the property, fixing the upset price by calling the report from the bank officials, conducting the auction, confirming the sale and issuing the sale certificate and handing over possession to the auction purchaser, his act should be taken as judicial function and he is protected by the judges protection Act 1985. But this court had left the question of the applicability of the Act, to the decision of the sanctioning authority.

11.1.1.In the case of ***S.Kasimayan Vs CBI*** reported in ***2012 2 MLJ Crl 226***

62.I tis quite clear that now as stated by the learned Special Public Prosecutor, the matter is already before the

Sanctioning authority under Section 19 of P.C.Act, for granting sanction. The sanctioning authority unambiguously is the highest authority having control over A.1 and in such a case, it would be a futile exercise to quash the FIR and direct the C.B.I to once again probe into it after getting permission. Since the case has reached the stage of obtaining the permission from the sanctioning authority which is the highest authority having the control over A.1, I instead of quashing the FIR, issue direction that the sanctioning authority shall consider the finding of this Court and also the relevant acts and take a decision as to whether in the facts and circumstances of this case, sanction could be granted or not.

*11.1.2.*In the case of ***S.Kasimayan v. Inspector of Police,*** reported in ***2013 SCC OnLine Mad 2012***

29. From the perusal of the records, it appears that this Court directed the sanctioning authority, to consider certain observation made by this Court, at that time of according sanction. Any how, the sanctioning authority has accorded sanction against the accused on 25.05.2011 and he has been discharged from his official duty.thereafter, the trial Court has considered this aspect and later on passed the impugned order. Hence, at this juncture, I am not expressing any view upon this aspect and whatever this Court has observed is only with regard to the disposal of the present petitions. The findings given in these petitions will not in any way be binding

at the time of trial, the trial Court is directed to proceed with the trial and at that time of trial, the trial Courts is directed to consider all the above aspects and specific finding has to be given. With these observation, the revision petition and the criminal original petition are disposed of."

11.2.Thereafter the sanctioning authority has applied his mind and accorded sanction in accordance with the provision of the prevention of Corruption Act. He has specifically applied his mind to the improper fixing of the upset price, illegality in the process of conducting the auction and conducting sale for very low price and in the result the bank suffered loss and illegal gain was made by all the accused in conspiracy with A1. The sanctioning authority also got into the witness box and deposed before the court.

11.3.Judicial Act must be done with good faith as per the law and Then only, the protection under the Act can be claimed. In this case, right from the beginning, from attachment of property till the issuance of the sale certificate, this court finds culpability in the course of fixing the upset price, calling the public auction, accepting the tender, issuing the sale certificate before the confirmation of sale. Therefore, the appellant had

betrayed the trust cast upon him. A1 is the protector and guardian of the property entrusted with him. He is legally expected to bring the said property for auction for a maximum price. He is expected to act as if his own property is set out for auction. Judicial act is to be done judicially without any shadow of suspicion. "*Caesar's wife should be above suspicion"* is the quote. Then only the protection under judges protection Act is applicable. Therefore, the Hon'ble Supreme Court in the ***K.Veeraswami v. Union of India*** reported in ***1991 (3) SCC 655*** has held as follows:

> *79... From the standpoint of justice the size of the bribe or scope of corruption cannot be the scale for measuring a Judge's dishonour. A single dishonest Judge not only dishonours himself and disgraces his office but jeopardizes the integrity of the entire judicial system.*
>
> *80. A judicial scandal has always been regarded as far more deplorable than a scandal involving either the executive or a member of the legislature. The slightest hint of irregularity or impropriety in the Court is a cause for great anxiety and alarm. "A Legislator or an administrator may be found guilty of corruption without apparently endangering the foundation of the State. But a Judge must keep himself absolutely above suspicion" to preserve the impartiality and independence of the*

judiciary and to have the public confidence thereof.

11.4. To test whether the act of A1 is under good faith, it would be relevant to extract the following definition of good faith :

Section 52 of the Indian Penal Code	**52. "Good faith".—** Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.
AIR 1966 SC 97	The element of honest which is introduced by the definition prescribed by the General Clauses Act is not introduced by the definition of the Penal Code; and we are governed by the deginition prescribed by Section 52 of that Code. So, in considering the question as to whether the appellant acted in good faith in publishing his impugned statement, we have to enquire whether he acted with due care and attention.
2000 S.K.Sundaram	Thus, a contemnor, if he is to establish "good faith" has to say that he conducted a reasonable and proper enquiry before making an imputation that Dr.Justice A.S.Anand has usurped the office of CJI as his year of birth was definitely 1934 and that was the reason which actuated him to venture for launching the acts which he perpetrated.

Good faith means that a thing has been done honestly. Honesty should be doing an act with due care and attention. Good faith implies both upright mental attitude and clear conscience of a person in doing an act with honest determination precluding pretence or deceit. In this case A1 himself has sent a communication to Dhanalakshmi bank, Mumbai office under Ex.P12 to submit the *"latest encumbrance certificate and the valuation report of the secured immovable properties"*. But, without obtaining the latest valuation report of the secured immovable properties,

he fixed the upset price on the basis of the market value certificate produced by accused No.5 pertaining to the year 2006. In all fairness a honest officer has to generate maximum price out of sale of the properties. He is duty bound to ascertain the value of the property as on the date of the proclamation i.e., he has to ascertain the value of the property relating to the year 2008.

11.5.He has allowed the wife of A2, who is his own subordinate to participate. As per the following rules and tender condition, he ought not to have allowed A2's wife to participate in the auction tender.

Provision of the Act	***Tender condition***
17. No officer or other person having any duty to perform in connection with any sale under this Schedule shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the *property sold.*	No officer or other person having any duty to perform in connection with any sale under this Schedule shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the *property bid*.

11.6.The learned senior counsel vehemently and strenuously contented that A2 is neither directly nor indirectly connected with the recovery proceedings and P.W.3 alone participated in the recovery proceedings. Therefore, the above stated rule and tender condition is not

applicable and in the result, the prosecution case that there was conspiracy with A2 and A1 acted to favour A2's wife, against the above rule and condition, has to be rejected. This court is unable to accept the said argument. The following paragraph of Ex.P5, clearly demonstrated A2's role in the said proceedings.

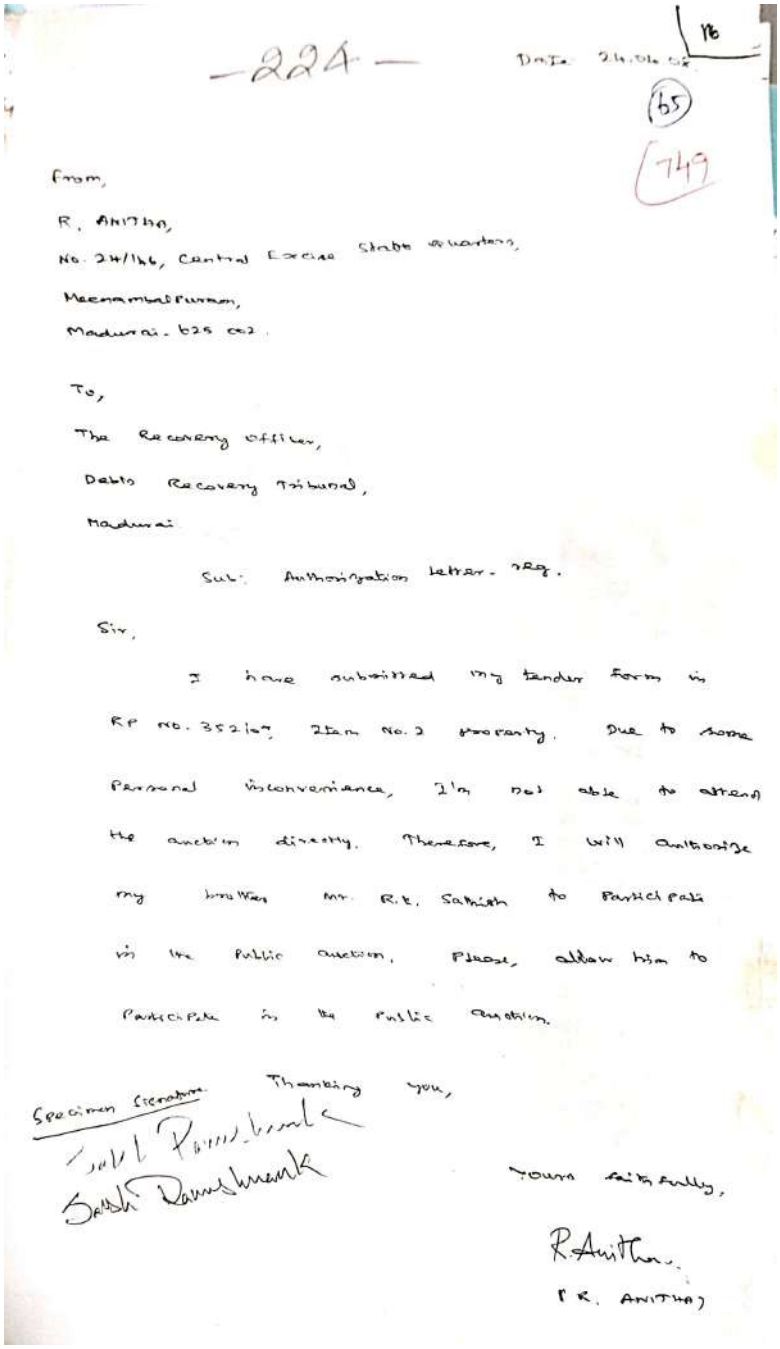
Name & Designation	***Allocation of Work***
Shri.R.Selvaraj, UDC/Cashier	To verify and receive all the OA, SA, PA/OD's, IA's, Vakalat, Counter, Memo's etc. Maintenance of Valuable register and to hand over the IPO's/DD's to the Accounts Asst. Maintenance of Inward Register, Application Free Register, Vakalat Fee Register and to maintain inspection/perusal of records.

11.7.A2 received the following application, memo from P.W.10 and Bank officials attached with Mumbai Branch.

Exs.22, 23, 34, 35, 47, 48 & 49.

11.8. From the above documents, it can be easily presumed that A2 has a definite role in the recovery proceedings. Without perusing the above memo and application he cannot number the same. From that it is clear that he has actively participated in the conspiracy in completing the sale for a lesser price in his wife's name.

11.9. A1 has taken a unacceptable stand that he was not aware that A4 is A2's wife, till the opening of the tender form i.e., according to him, the tender process is a closed tender and only on opening the tender form, the names of the participants in the tender would come to his knowledge. The said stand of A1 cannot be accepted for the reason that A3 has already sent the following communication to A1 before the opening of tender:



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Date 24.04.24

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From,

R. ANITHA,
No. 24/166, Central Excise Staff Quarters,
Meenambalpuram,
Madurai - 625 002.

To,

The Recovery Officer,
Debts Recovery Tribunal,
Madurai

Sub: Authorization letter - Reg.

Sir,

I have submitted my tender form in RP No. 352/24, Item No. 2 property. Due to some Personal inconvenience, I'm not able to attend the auction directly. Therefore, I will authorize my brother Mr. R.K. Sathish to Participate in the Public auction. Please, allow him to Participate in the Public auction.

Thanking you,

Specimen signature

Yours faithfully,

R. Anitha

(R. ANITHA)

11.10.In the said application it is stated that she was residing in the DRT officers quarters. In the said circumstances any ordinary prudent man could enquire about the person residing at the DRT quarters. The same has not been done.

11.11. The bank officials and P.W.10 have officially submitted through a memo and application that the upset price was not properly fixed and the value of the upset price is very low and therefore they sought the postponement of the auction but A1 conducted the auction and confirmed the sale in favour of A2's wife namely A4.

11.12.Issuance of the sale certificate on 27.06.2008 before affirmation of the sale confirmation itself is a strong circumstance to presume the conspired act of all the respondents to cheat the bank and cause loss to the bank. After the confirmation of the sale only, the sale certificate can be issued with the receipt of the entire consideration. In this case, in order to thwart the stay order of the DRAT, the sale certificate was issued immediately and the sale confirmation was issued later.

11.13. In the tender process of three properties, for two properties only one person had participated and one property was purchased by A2's wife. Even for those properties there are circumstances to presume that a cartel has been formed. If there was only one participant was available, in all fairness, A1 has a duty to cancel the auction. Therefore, this court finds fault with the act of A1 in the manner of conducting auction.

11.14. Recovery officer is a public officer and a trustee for public. He is duty bound to protect, preserve the property entrusted with him. Absolute disinterestedness being indispensable and therefore, he should not have any vested interest to make any profit for himself or on behalf of any person. Here, conspiracy was made by A1 with the remaining accused to commit cheating by doing offence of breach of trust. Offence of breach of trust will be established when the prosecution proved beyond reasonable doubt the following elements:

1.The accused is an official;

2.The accused was acting in connection with the duties of his or her office;

3.The accused breached the standard of responsibility and conduct demanded of him or her by the nature of the office.;

4.The conduct of the accused represented a serious and marked departure from the standards expected of an individual in the accused's position of public trust; and

5.The accused acted with the intention to use his or her public office for a purpose other than the public good, for example, for a dishonest, partial corrupt, or oppressive purpose.

11.15.In this case, A1 had flagrantly violated all the norms and legal requirements and acted contrary to the norms and conducted the auction without fixing the proper upset price, with knowledge of the relationship of A4 with A2 by allowing brother-in-law of A2 to be a participant in the auction on behalf of A4, and declared A4 as a successful bidder and issuing the sale certificate before the sale confirmation and all these acts are not at all considered as judicial acts. Hence, he is guilty of conscious misconduct. The misconduct is probably an offence defined by conduct rather than outcome, so that the actuality of risk of harmful consequences serve only as base for inferring the relevant degree of seriousness. The Santhanam Committee in its reports termed similar type of misuse of official position as a misconduct, with the following words:

"*misuse of the position by public servant making the*

contract and dispose the public property, issue of license and permits and similar other matters".

Further, the same was dealt by the Law Commission in its 29th report which held that the said misuse, amounts to offence under the Prevention of Corruption Act, under the term of misconduct and the same was punishable under Section 13(2) of the Act, 1988. Therefore the Honourable constitution bench of the Supreme court in M.Narayana nambiar case reported in AIR1963SC1116, which has held that a public servant for himself, or for any other person, abuses his position as a public servant, falls within the mischief of the said clause of misconduct under section 13(1) d R/wSection 13(2) of the Act, 1988.

11.16.The Hon'ble Supreme Court in the case of ***S.P.Goel Vs. Collector of Stamps, Delhi*** reported in ***1996 1 SCC 573*** has held that action which is not *bona fide* or which is malicious will not be protected.

11.17.The Hon'ble Divison Bench of Madhya Pradesh in the case of ***Smt.Meena Mehra vs. The Lokayukta Organization*** has held that protection does not extend to acts purely alien to the Judicial Duty.

These acts, in the considered opinion of this court are intentional, mischievous, deliberate and calculated acts done to defraud the bank's property and hence, "*A1 is not entitled to protection under the Judges Protection Act*".

12.Discussion on the upset price:-

12.1. Duty of 1st respondent is to get the maximum price for the property entrusted with him as a protector of the interest of both the bank and the judgment debtor and this is clear from the provisions of the RBDI Act and Income tax rules. He is equivalent to the official receiver, appointed in the case of the insolvency proceedings to sell the property to get the maximum price, as a trustee of the insolvent. In this case as stated earlier the 1st accused called the bank officials to furnish the latest valuation report by the communication dated 02.01.2008 under Ex.P12. In the said communication it is stated that mortgaged properties need to be attached and brought to sale under section 25 of the RDBI Act r/w 2nd Schedule to the Income Tax Act, 1961. A5 also was required to ascertain the current value of the properties under Ex.P55 dated 21.11.2007. The circular also demands obtaining the updated valuation report for every year from the approved valuer in the case of the irregular accounts. But A1 fixed the upset price on the basis of the valuation certificate taken in the

year 2006. The 1st respondent passed the order of the attachment under Ex.P44 DRC No. EXH.52 & 53-RP No.352/07 with direction to the judgment debtor to pay a sum of Rs.19,50,118/- for the following properties:

Property	***Upset price***
Item No. 22, in survey No. 4245/2020 and4247/4 situated in Krishnapuram colony, second street, at Krishnapuram Bus Terminus), Madurai	Rs.631000/-
Item No. 7 in survey No. 22/2, BibikulamVillage, Near Dhanabai School, LIC colony, Madurai	Rs.150000/-
Plot bearing.S.No.2738/2A and7A, New T.S.No.4245/20 and 4274/4 situate at No.6, Krishnapuram Colony, 2nd Street, Madurai	Rs.8,67,000/-

12.2. On the same day i.e., on 15.02.2008 itself he issued the "notice for drawing proclamation of sale" and informed that 17.03.2008/ 11.00 a.m., was fixed for drawing up the proclamation of sale and setting the terms thereof, requesting to bring to the notice of A1 any encumbrances charges, claims or liabilities attached to the said properties or any portion thereof and also the revenue, if any, assessed upon the property or any part thereof. On 17.03.2008 under Ex.P46 A1 issued the tender cum auction notice for the following upset price:

Property	***Upset price***
Item No. 22, in survey No. 4245/2020 and4247/4 situated in Krishnapuram colony, second street, at Krishnapuram Bus Terminus), Madurai	Rs.631000/-
Item No. 7 in survey No. 22/2, BibikulamVillage, Near Dhanabai School, LIC colony, Madurai	Rs.1,50,000/-
Plot bearing.S.No.2738/2A and7A, New T.S.No.4245/20 and 4274/4 situate at No.6, Krishnapuram Colony, 2nd Street, Madurai	Rs.8,67,000/-

12.3. Prior to the same on 07.03.2008 P.W.10 filed the interlocutory application in I.A.No. 257 of 2008 in R.P.No. 352 of 2007 to stay the recovery proceedings till the filing of the appeal before the DRAT, Mumbai. He specifically averred that the order of attachment and notice for drawing proclamation of sale was served upon him without valuation report. Therefore he was unable to file his objection for the value to be fixed for the sale of schedule property. The said application was numbered by A2.

12.4.On 18.04.2008 P.W.10 filed another I.A.No.518 of 2008, I.A.No.257 of 2008 and the same was dismissed on 24.04.2008 and auction sale was conducted on 24.04.2008. I.A. No. 518 of 2008 was filed to refix the value with supporting valuation report by the approved valuer. In the valuation report the following valuation was furnished:

Property	***Upset price fixed by the recovery officer***	***Valuation by the approved valuer A.T.Baskar***
Item No. 22, in survey No. 4245/2020 and4247/4 situated in Krishnapuram colony, second street, at Krishnapuram Bus Terminus), Madurai	Rs.631000/-	Rs.14,83,500/-
Item No. 7 in survey No. 22/2, BibikulamVillage, Near Dhanabai School, LIC colony, Madurai	Rs.1,50,000/-	Rs.8,40,500/-
Plot bearing.S.No.2738/2A and7A, New T.S.No.4245/20 and 4274/4 situate at No.6, Krishnapuram Colony, 2nd Street, Madurai	Rs.8,67,000/-	Rs.21,73,000/-

The said application was numbered by A2 and disposed by A1 on 24.04.2008 and the low upset price was fixed. From the above it is clear

that A1, A2 and other accused fixed the low upset price even though sufficient materials were available to reconsider the upset price and therefore this court holds that low upset price was fixed in order to cause loss to the bank and the judgment debtor.

13.Discussion on continuation of the auction proceedings in spite of the knowledge of the stay :

Under Ex.P51 the bank officials sent a mail communication to the Branch Manager, Madurai Branch (A2) and informed that the DRAT Mumbai, directed not to confirm the same until the next hearing date on 27.05.2008 and therefore to inform the same to the Recovery Officer, DRT, Madurai. On the basis of the said mail under Ex.P.23, the bank officials filed the memo with the following contents :

> *"It is submitted that the copy of mail sent by our Mumbai Branch is produced for your perusal. It is submitted that the case is adjourned to 25.05.2008 and D.R.A.T. directed to accept the amount but not to confirm the sale till 27.05.2008".*

13.1. A1 recovery officer of DRT recorded the same on 22.05.2008 and directed to produce the DRAT order within 10 days from 22.05.2008 which reads as follows :

"*The appellant bank is directed is produce the copy of Hon'ble DRAT Mumbai direction dated 16.05.2008 within 10 days from today*".

13.2. On 22.05.2008 Mumbai Branch further directed the recovery officer to inform the bank to furnish the latest value of three properties. On 24.05.2008 the reply mail was sent with higher value. On 28.05.2008 A5 was directed to file memo before the DRT recovery officer not to confirm the same till 17.06.2008. On 30.07.2008 P.W.10 filed I.A.No. 826 of 2008 along with stay extension order copy dated 16.07.2008. The said I.A. was returned on the same day. In the meantime, the sale was confirmed and the sale certificate was issued by A1. On receipt of the application I.A.No. 826 of 2008, the sale was confirmed by A1. Therefore, from the above events, the acts of conspiracy between A1, A2, A4 and A5 is clearly established. The act of the accused in receiving the sale certificate before the sale confirmation *inspite* of I.A. being filed for extension of the stay order, clearly demonstrates the conspired act of all the accused. Therefore, this court without any hesitation holds that there was a planned, calculated exercise of the conspiracy to usurp the property of the bank for a least value *inspite* of the stay order granted by DRAT. The contention of the counsel that as per the Act and the DRAT circular, auction proceedings

could not be stayed till the production of the order copy, in the peculiar circumstances of the case cannot be accepted, for the reason that the accused had not considered the specific plea of the bank officials that the value is very low and also made a request to furnish the latest valuation report from the officials even after the auction and all these show that they had conspired together and acted in such a manner to favour A4 who was none other than the wife of A2. Further, they also confirmed the sale in favour of A3.

14.The discussion on sanction :-

The Learned senior counsel appearing for A1 attacked the sanction order on two grounds :

14.1. P.W.1, sanctioning authority has no power to accord sanction. P.W.1 was in-charge officer holding the post of additional secretary and therefore he was not competent person to accord sanction under Ex.P1. To address the issue this court went through the entire cross examination of P.W.1. The defense produced the documents to show that he was holding the post of Additional Secretary. According to the special public prosecutor, under Ex.P2, additional secretary is the competent person. Further, the learned trial judge relied the division bench judgment of this court in this aspect that the additional charge holder has no jurisdiction to

pass the order. In the considered opinion of this court the said judgment was subsequently over ruled by the Hon'ble full bench of this Court. Even though, the said judgment was revised by the supreme court on facts, the legal principle that the in-charge officer has power to grant sanction is not over ruled. Therefore, the submission of the accused that the Hon'ble President of India alone has power to accord sanction to prosecute A1 cannot be accepted. Next contention to test the validity of the sanction order is that of "non application of mind".

14.2. Before further elaboration on the submission of respondent regarding non application of mind while according sanction, this Court has a duty to find out the meaning of "sanction" and precedents relating to the accord of sanction. The word 'sanction' has not been defined in the Code of Criminal Procedure or in Prevention of Corruption Act.

Dictionary	***Meaning***
Webster's Third New Internal Dictionary	*Explicit permission or recognition by one in authority that gives validity to the act of another person or body; something that authorizes, confirms, or countenances.*
The New Lexicon Webster's Dictionary	*Explicit permission given by some one in authority.*
The Concise Oxford Dictionary.	*Encouragement given to an action etc., by custom or tradition; express permission, confirmation or ratification of a law etc; authorize, countenance, or agree to (an action etc.)*
Stroud's Judicial Dictionary	*Sanction not only means prior approval; generally it also means ratification.*
Words and Phrases—	*The verb 'sanction' has a distinct shade of meaning from 'authorize' and means to assent, concur, confirm or ratify. The word conveys the idea of sacredness or of authority.*
The Law Lexicon by Ramanath Iyer	*Prior approval or ratification.*
Rameshwar Bhartia Vs. State of Assam reported in 1952 2 SCC 203, the Hon'ble Supreme Court has stated that	*Sanction is in the nature of permission.*

14.3.In ***Om Prakash v. State of U.P.*, 2001 SCC OnLine All 818** at page 1248. Hon'ble Mr.Justice G.P.Mathur (as he then was) made a detailed discussion on this aspect and finally has held that

> ***6.**.... The word 'sanction' has been used as a "verb" and therefore it will mean to assent, to concur or approval.*

14.4. Therefore, in the considered opinion of this Court, sanction is the independent act of sanctioning authority with due application of mind over the material forwarded by the investigating agency to prosecute the accused before the Court of law under the penal provision constituting the offence.

14.5.The Hon'ble Supreme Court in ***State of Maharashtra v. Mahesh G. Jain*, (2013) 8 SCC 119,** after considering the earlier various decisions of the Hon'ble Supreme Court reported in ***AIR 1958 SC 124***, ***AIR 1979 SC 677***, ***1995 6 SCC 225***, ***2005 4 SCC 81***, ***2006 12 SCC 749***, ***2007 11 SCC 273***, ***2011 1 SCC 491***, has expounded the following detailed principles of law governing the validity of sanction:

> *"14.1. It is incumbent on the prosecution to prove that the valid sanction has been granted by the*

sanctioning authority after being satisfied that a case for sanction has been made out.

14.2. The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.

14.3. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.

14.4. Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.

14.5. The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.

14.6. If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.

14.7. The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity."

14.6.In this case, P.W.1 has accorded sanction for the prosecution of appellant. Ex.P.1 is the sanctioning order and the operative portion of the sanction order is as follows:

> *" 29.Thus, the accused persons A-1 to A-5, committed the offences punishable under Sections 120B r/w 169, 420 and 409 of IPC and Section 1392) r/w 13(1)(d) of P.C.Act, 1988.*
>
> *Whereas Shri S.Kasimayan, Section Officer filed an application in Hon'ble Madras High Court under Section 482 of Cr.P.C through Crl.O.P.(MD).No.2520 of 2009 7 MP (MD).No.1 of 2009 praying to call for the records and quashing the FIR in RC No.15 of 2009. The Hon'ble Madras High Court in its order dated 18 Nov 2010 on the issue whether previous permission should have been obtained before registering the FIR, directed the prosecution Sanctioning authority to consider as per the mandate of the said Court as to whether the previous permission would have been granted by the Sanctioning Authority for registering the FIR had it been brought to its knowledge by the CBI before registering FIR. As directed by the Hon'ble Madras High Court the issue of previous permission for registering FIR has been considered.*
>
> *Whereas, the issue whether the duties of*

Recovery Officer in DRTfalls under the 'Judicial Duties (protection) Act, 1850, or not, has been examined.

Whereas, the Presiding Officer, DRT, Madurai, Deptt of Financial Services, Min of Finance and Legal Advisor (Defence) have also been consulted and all evidences adduced by CBI have been examined.

Whereas, it is observed that the above acts of Shri.S.Kasimayan, Section Officer of Armed Forces Headquarters Civil Service, and the then Recovery Officer, on deputation, with Debts Recovery Tribunal, Madurai, constitute the offences punishable under Sections 120 B r/w169, 420and 409 of IPC and Section 13(2) r/w 13(1)(d) of P.C.Act, 1988.

And, Whereas I, Shekhar Agarwak, Spl.Secy (A), Min of Def, being the authority competent to remove the said Shri.S.Kasimayan, Section Officer of Armed Forces Headquarters Civil Service and the then Recovery Officer, on deputation with Debts Recovery Tribunal, Madurai, from service, as empowered vide Schedule-V of the CCS (CC&A) Rules, 1965, after fully and carefully examining the materials such as the copy of the FIR, copies of documents, copies of Statements of witnesses and other evidences in this case which were placed before me with regard to the said facts and circumstances of the case, and after due consideration and by applying my mind, I am satisfied that a case is

made out prima facie against Shri.S.Kasimayan, the then Recovery Officer, Debts Recovery Tribunal Madurai under Section 120 B r/w 169, 420 and 409 of IPC and Section 13(2) r/w 13(1)(d) of P.C.Act, 1988 and that he should be prosecuted in a Court of Law for the commission of offences punishable thereof.

Now, therefore, I, Shekhar Agarwal, Spl. Secy (A), Ministry of Defence do hereby accord sanction under Section 19(1) (c) of Prevention of Corruption Act, 1988 to prosecute Shri.S.Kasimayan, Section Officer of Armed Forces Headquarters Civil Service and the then Recovery Officer, on deputation with Debts Recovery Tribunal, Madurai for the said offences under Section 120 B r/w 169, 420 and 409 of IPC and Section 13(2) r/w 13(1) (d) of P.C. Act, 1988, for taking cognizance of the said offences by competent Court of Law having jurisdiction."

14.7.A bare perusal of Ex.P1, would show that P.W.1 has applied his mind regarding the illegal acts of the accused. P.W.1 sanctioning authority deposed before the Court, that he granted sanction after applying his mind and the material portion of the evidence is as follows:

"After perusing the relevant documents such as, FIR, copies of documents, copies of statement of witnesses

and other evidences which were placed before me and after consultation with Presiding Officer, DRT, Madurai, Ministry of Finance and Legal Advisor of Defence Ministry and after satisfying myself that primafacie case is made out against Sri.S.Kasimayan, I accorded sanction for prosecution against him. I also satisfied myself that as per provisions of Schedule-V of CCS (CCA) Rules,I am the authority competent to sanction the prosecution. The sanction order dated 25.05.2011 is marked as Ex.P1(12 sheets). The schedule of power is marked as Ex.P2.

14.8.From the above, this Court finds that the sanction order itself is eloquent about the fact that the accused flouted all the rules in order to make wrongful gain. The sanctioning authority also came into the witness box and deposed that he accorded sanction for prosecution after due application of mind. Therefore, this Court finds that the sanctioning authority has applied his mind to the fact that the appellant flagrantly violated the Rules to favour the other accused.

14.9. Further, Section 19 of the Prevention of Corruption Act 1988 and Section 465 of Cr.P.C., specifically state that the conviction cannot be

set aside on the ground that there was an error in granting sanction unless accused established failure of justice. For better appreciation, the relevant portion of the Sections are extracted hereunder:

Section 19 of the Prevention of Corruption act 1988	***Under Section 465 of Cr.P.C.***
19.3...(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),— (*a*) no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;	465. *Finding or sentence when reversible by reason of error, omission or irregularity.*—(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered by a court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that court, a failure of justice has in fact been occasioned thereby.

14.10.The Hon'ble Supreme Court has held as follows in ***State v. T. Venkatesh Murthy*, (2004) 7 SCC 763 at page 765,**

> *14. In the instant case neither the trial court nor the High Court appear to have kept in view the requirements of sub-section (3) relating to question regarding "failure of justice". Merely because there is*

any omission, error or irregularity in the matter of according sanction, that does not affect the validity of the proceeding unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice.

14.11. ***In State of M.P. v. Virender Kumar Tripathi*****, (2009) 15 SCC 533** at page 536

9. *Further, the High Court has failed to consider the effect of Section 19(3) of the Act. The said provision makes it clear that no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court of appeal on the ground of absence of/or any error, omission or irregularity in sanction required under sub-section (1) of Section 19 unless in the opinion of the court a failure of justice has in fact been occasioned thereby.*

29.3.The Hon'ble Supreme Court in Tshering Bhutia v. State of Sikkim [Ashok Tshering Bhutia v. State of Sikkim, (2011) 4 SCC 402 referring to the earlier precedents has observed that

...A mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in a failure of justice or has been occasioned thereby...

14.12. Foundational facts *for taking cognizance of the* offence under section *120 B r/w 169, 420 and 409 of IPC and Section 13(2) r/w 13(1) (d) of P.C. Act, 1988,* are found in the sanctioning order/Ex.P1 and in P.W.1's deposition to prosecute the appellant under 13(1)(d) r/w 13(2) of the Prevention of Corruption Act 1988. When the sanctioning authority accorded sanction, the presumption under Section 114(e) of the Indian Evidence Act comes into play and it can be taken that the sanctioning authority properly discharged his duty. The accused is duty bound to establish failure of justice. In this case, the accused never established the failure of justice. Therefore, the argument of the learned Senior Counsel that conviction is liable to be set aside on the ground of non-application of mind on the part of the sanctioning authority while granting sanction cannot be accepted.

14.13. In this case Ex.P1 itself clearly demonstrates the application of mind to accord sanction. Apart from that P.W.1 came into the witness box and deposed that he applied his mind to the facts of the case and accorded the sanction. As per the principle laid down by the Hon'ble Supreme Court, when the sanctioning authority came and deposed before this court that he had applied his mind to the materials collected by the

investigating agency and prima facie was satisfied to continue the prosecution, this court has no jurisdiction to substitute his view by over ruling his application of mind, as an appellate authority and the same is not permissible under the law.

14.14. A1's counsel would submit that no sanction under Section 197 Cr.P.C., was obtained to charge A1for the offence under sections 120 (B) r/w. 169, 420, 409 of I.P.C and hence the entire trial is vitiated.

14.15.It is well settled principle that Section 197 Cr.P.C is not a shield for the corrupt officials. In this case, all the accused conspired together in the entire course of public auction, from fixing the upset price till the stage of getting sale certificate even before issuing sale confirmation order and knocked away the property for a lower prize in the name of A2's wife. Therefore, the respondents are involved in the conspiracy to commit cheating and criminal breach of trust and unlawfully buying the property as a public servant in the contravention of the rules, circulars and tender conditions and hence, their acts do not come under the umbrella *"while acting or purporting to act in discharge of their official duty"*. The Hon'ble Supreme Court in the following cases held that in the

case of the offence under Section 120B r/w 420 IPC, 169 & 409 of IPC, the protection under Section 197 Cr.P.C is not available to the public servant.

14.15.1. The Privy Council in the case of H.H.B. Gill and another Vs. The King reported in AIR 1948 PC 128 has held as follows:

> *"....a Judge neither acts nor purports to act as a Judge in receiving a bribe, though the judgments which he delivers may be such an act: nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act."*

14.15.2. The Hon'ble Constitution Bench of the Supreme Court in ***AIR 1960 SC 266*** **[**has held as follows***:***

> ***"16.*** *Under Section 197 no Court shall take cognizance of an offence committed by a public servant who is removable from his office by the Governor-General-in-Council or a Provincial Government, save upon a sanction by one or the other as the case may be, when such offence is committed by him while acting or purporting to act in the discharge of his official duty. Henderson was charged with intentionally aiding the appellant in the commission of an offence punishable under Section 420 of the Indian Penal Code by falsely stating as a fact, in his reports that the appellants claims were true and that statement had been made knowing all the while that the claims in question were false and fraudulent and that he had accordingly committed an offence under Section 420/109 of the Indian Penal Code.*

It appears to us to be clear that some offences cannot by their very nature be regarded as having been committed by public servants while acting or purporting to act in the discharge of their official duty. For instance, acceptance of a bribe, an offence punishable under Section 161 of the Indian Penal Code, is one of them and offence of cheating or abetment thereof is another. We have no hesitation in saying that where a public servant commits the offence of cheating or abets another so to cheat, the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty, as such offences have no necessary connection between them and the performance of the duties of a public servant, the official status furnishing only the occasion or opportunity for the commission of the offences (vide Amrik Singh case [(1955) 1 SCR 1302] . The Act of cheating or abetment thereof has no reasonable connection with the discharge of official duty. The act must bear such relation to the duty that the public servant could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of his duty (vide Matajog Dobey case [(1955) 2 SCR 925] . It was urged, however, that in the present case the act of Henderson in certifying the appellant's claims as true was an official act because it was his duty either to certify or not to certify a claim as true and that if he falsely certified the claim as true he was acting or purporting to act in the discharge of his official duty. It is, however, to be remembered that Henderson was not prosecuted for any offence concerning his act of certification. He was prosecuted for abetting the appellant to cheat. We are firmly of the opinion that Henderson's offence was not one committed by him while acting or purporting to act in the discharge of his official duty. Such being the position the provisions of Section 197 of the Code are inapplicable even if Henderson be regarded as a public servant who was removable from his office by the Governor-General-in-Council or a Provincial Government."

14.15.3.In the case of ***Inspector of Police v. Battenapatla Venkata Ratnam reported in*** 2015(13)SCC 87, it is held that,

> *"11. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. Their official duty is not to fabricate records or permit evasion of payment of duty and cause loss to the Revenue."*

14.15.4.In the case of **Indra Devi v. State of Rajasthan, (2021) 8 SCC 768,** it is held that,

> ***"10.****The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty."*

14.15.5.In the case of ***Baijnath and another Vs. State of Madhya Pradesh reported in AIR 1966 SC 220*** paragraph No.17, it is held that,

> *17.Applying the principle to the present case, we are of opinion that sanction of the State Government was not necessary for the prosecution of Gupta under Section 409 of IPC because the act of criminal misappropriation was not committed by the appellant while he was acting or purporting to act in the discharge*

of his official duties and that offence has no direct connection with the duties of the appellant as a public servant, and the official status of the appellant only furnished the appellant with an occasion or an opportunity of committing the offence.

The same was also followed and reiterated by the Hon'ble Supreme Court in the case of ***P.Arulswani vs. State of Madras*** reported in ***AIR 1967 SCC 776*** and it is held that the sanction of the State Government was not necessary for prosecution of the appellant under Section 409 of IPC and it rejected the argument of the learned counsel for the appellant for protection. Therefore, there is no legal necessity to obtain sanction under section 197 Cr.P.C. Hence, this court is not inclined to accept the argument of the learned senior counsel appearing for A1 that without sanction under section 197 Cr.P.C. the prosecution is not valid.

15.**The discussion on the offence under section 420 of I.P.C:**

According to the prosecution the accused conspired together to purchase the property for the least value and thereby they made wrongful gain. To execute the same they fixed the upset price without obtaining the latest valuation certificate and issued the sale certificate in spite of the stay

order, without confirmation of sale and subsequently confirmed the auction after issuance of the sale certificate, against the rule and returned the application with intention to confirm the sale on 30.07.2008 and confirmed the sale on 30.07.2008, these facts clearly proved that they had the intention to cheat from inception till the end namely, from fixing the upset price to the issuance of the sale certificate and confirmation of the sale. The deception is not in the express term and both fraudulent and dishonest intention at the inception is usually made out from entire circumstances of each case. Here, both fraudulent and dishonest intention from the inception is clearly made out from the entire circumstances of the case. Hence, this Court is unable to accept the argument of the learned senior counsel and other counsel that offence under section 420 was not made out. Therefore, this Court holds that all the accused are liable to be convicted under Sections 120(B) r/w 420 IPC, 420 IPC.

16.Discussion on the offence under Section 13(1)(d) of the prevention of the Corruption Act:

A1 recovery officer is entrusted with the statutory duty of selling the properties of the judgment debtor to the maximum amount in order to settle the due to the Bank and pay the remaining amount. A5 bank manager is

also entrusted with the same responsibility. But, in this case, they failed to discharge their duties, in violation of all the procedures, from the fixing of the upset price to the confirmation of the sale as discussed earlier and thereby they committed misconduct of conduction fictitious auction and fictitious sale in favour of A3 and A4 and thereby, caused wrongful loss to the bank and P.W.10 and obtained illegal gain among themselves. Therefore, offence under section 13(1)(d) is clearly made out against A1 and A5.

17.Discussion on the offence under section 409 of I.P.C.

Entrustment of the property with the recovery officer either in fiduciary capacity or as a trustee of the property mortgaged with the bank is with the object to act fairly and conduct the public auction in a lawful manner. In this case, A1 betrayed all the confidence and trust and fixed a low upset price without obtaining the latest valuation certificate, continued the auction proceedings in spite of the knowledge of the stay of the auction by the DRAT and issued the sale certificate before the confirmation of the sale and confirmed the sale, despite production of the certified stay order copy of the DRAT on 30.07.2008, by returning the application filed by the P.W.10 judgment debtor to stop the further confirmation of the sale. This

conduct, clearly establishes that A1 acted contrary to the Act and hence he has committed the offence under section 409 of I.P.C. All the accused have played their part at various stages, namely A2 allowed his wife to participate in the auction and A3 sought the confirmation inspite of the stay order issued by DRAT, Mumbai and A5 acted against the interest of the bank and the debtor, inspite of the request made by the Mumbai Head office to fix the value and stay further auction. The property was transferred to A2 by issuing official certificate which clearly shows that all the accused conspired together and hence all are liable be convicted under section 120 (b) r/w. 409, 420, 13 (1)(d) of the prevention of Corruption Act.

18. **Discussion on offence under Section 120(b) r/w 169 of IPC**:-

A1/Recovery Officer, was a Public Servant. He is in fiduciary obligation to protect the interest of the attached property. He cannot purchase the bankrupt's estate sold under the Act, either in his name or in the name of another. Refraining from stealing, embezzling and converting another property is the foremost duty that one has by virtue of occupying a fiduciary position. Duties of goodfaith, care are often associated with fiduciary position i.e., Fiduciary duties are restricted proscriptive

duties. The proscriptive duties are based on two main Rules:-

i) the non-profit Rule and,

ii) no conflict Rule

18.1.Law expects that his act is far away from exercising opportunity mischief. In this case, this Court already held that there is conspiracy among all the accused to purchase the property in the name of A2's wife. As per Section 169 of IPC, the word '*legally bound to do*' demands '*there must be a prohibition under the statute or statutory rules or regulations*'. In this case, this Court already made a discussion about the expressed prohibition under R.D.B.I. Act, and tender condition from participating the tender process. At the cost of the repetition, this Court extracts the following clause of prohibition:-

Provision of the Act	***Tender condition***
17. No officer or other person having any duty to perform in connection with any sale under this Schedule shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the *property sold.*	No officer or other person having any duty to perform in connection with any sale under this Schedule shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the *property bid*.

From the above, it is clear that there is a statutory obligation on the part of the official respondents not to allow A2's wife to participate in the

auction proceedings and to entertain the tender from A2's wife. A1 allowed A2's brother-in-law to participate in the tender process on behalf of A4. In the tender process, A4 was declared as a successful bidder and Sale Certificate was issued before the Sale Confirmation. It is seen from the records A4 quoted Rs.1,55,000/- and other bidder also quoted same price. A4 is said to have raised her rate to Rs.1,60,000/- in auction. This Court is unable to find any reason from the records on what basis the said observation was made in the auction proceedings. In the event of the claim of two persons for same value, without A4 participation, how A1 noted that A4 raised Rs,1,60,000/- in the auction is a crucial circumstance to legally infer that he purchased the property in the name of A2's wife. The same was further strengthened from the absence of the evidence on record that the sale consideration was deposited by A4. Even in her answer to the 313 Cr.P.C questioning, she never disclosed that she alone paid the sale consideration. Similarly, A3 also furnished no material to substantiate his plea of purchase. He also never disclose that he alone paid the sale consideration during his 313 Cr.P.C questioning. Hence, A1 and A2 being public servant unlawfully conducted fictitious auction and bid for property in the name of A3 and A4 and therefore, they come under umbrella of "*any person*" as stated in Section 169 IPC. Therefore, the charge under

Section 120(b) r/w 169 of CPC is clearly made out.

19.Discussion on the prosecution against A2 in the absence of the sanction:

DW1 was examined and he deposed that he refused to accord sanction under section 19 of the prevention of Corruption Act. The Learned Special Public Prosecutor rightly submitted that the denial of sanction under section 19 of the prevention Corruption Act is not a bar to prosecute A2 under section 120 (b) r/w. 409, 420, r/w. 13 (1)(d) of the prevention of Corruption Act along with the A1 as he has colluded with A1 in doing the illegal Act. As already discussed above, the protection under the section 197 of Cr.P.C. is not available to the accused who conspired together to commit the offence under section 409, 420 of I.P.C and committed the said Act. In this case as discussed above, there is a planned execution of the auction sale and same was executed by conducting the sale contrary to the procedures and norms and violation of the stay order. Therefore, the prosecution against A2 is well founded and the argument of the counsel for A2 cannot be accepted.

20. Discussion on Trial Court Judgment:-

The discussion on the appreciation of the evidence by the learned trial judge:

The learned trial Judge, in paragraph No.46 has not properly considered the principle laid down by the Hon'ble Supreme Court to test the validity of the sanction order to prosecute the public servant. As discussed earlier, P.W.1 accorded sanction by applying his mind and also deposed that he applied his mind and accorded sanction. The observation of the learned trial Judge that P.W.1 acted as a puppet of the investigating agency is not correct. Sufficient materials are noted in the sanctioning order which prima facie disclosed the cause for initiating the criminal proceedings. The observation of the learned Judge in paragraph No.44 that once the sanction to prosecute under Section 19 of the Prevention of Corruption Act, 1988 in respect of the one of the accused is not granted, the CBI should refer the cases to other department as per the manual is not legally valid. In this case, even though sanction was declined under Section 19 of the Prevention of Corruption Act, 1988 by D.W.1, CBI has found materials to prosecute A2 under the relevant IPC Sections. Sufficient materials are available to prosecute the accused under the IPC. Apart from that, sufficient materials are available to prosecute A1 Kasimayan both

under the Prevention of Corruption Act and IPC. Therefore, the finding of the learned trial Judge, that P.W.1 accorded sanction without application of mind is perverse.

20.1.The learned trial Judge, has also found in paragraph No.44, that there is no legal bar to purchase the property by A2's wife from her individual source. The said finding is not correct. As discussed supra, there is a specific bar under the DRT Rules and the auction notice, that any person dealing with the auction of the property of judgment debtor has no right to participate in the public auction in the name of their family members. This Court also finds that A2 was sufficiently involved in the auction process, from numbering the application filed by the judgment debtor and from other circumstances. In view of the above factual and legal aspect, the finding of the learned trial Judge that even though the 4th accused is the wife of A2, there is no legal bar for her to purchase the property from her individual source, cannot be accepted and no documents and no acceptable oral evidence were adduced, to prove her independent source of income. Therefore, the learned trial Judge's finding that the purchase made by A4, wife of A2 was with her independent source is not correct.

20.2.Further, the finding of the learned trial Judge in paragraph No. 42 of the judgment that there is no criminal misconduct on the part of A1, is not in accordance with the principle laid down by the Hon'ble Supreme Court and is also against the facts of this case. A1 himself in his communication dated 02.01.2008 observed as follows:

> *3.The mortgaged/hypothecated properties needs to be attached and brought to sale under the provisions of Section 25 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (Act 51 of 1993) read with second schedule to the Income-Tax Act, 1961. therefore, the latest Encumbrance Certificate and the Valuation Report of the secured immovable properties, if any is required to be sent to the Recovery Officer immediately. A certificate to the effect that the valuation confirms to the scheduled property in O.A. May specifically be given in the forwarding letter.*

20.3.Thereafter, without obtaining the current valuation certificate, he had fixed the upset price on the basis of the earlier valuation certificate obtained from A5/N.Vakeeshwaran and conducted auction in spite of the knowledge about the stay order of DRAT Mumbai and declared A2 as a

successful bidder without deciding the request of the judgment debtor to fix the correct upset price and issued the sale certificate before even passing the order of confirmation of the sale. Therefore, the sequence of the acts, clearly demonstrated the conspiracy between the accused and A1 has not discharged his function of conducting the sale in accordance with law. Therefore, the learned trial Judge's finding that A1 acted in good faith is not legally correct. Further finding of the learned trial Judge that since the stay order of the DRAT, was not communicated, A1 had conducted the auction, is also not correct. The CBI collected lot of materials to prove the knowledge about the stay. Therefore, A1's shelter under Section 20(5) of the RDBI Act, 1993 and the circular issued by the authorities will be of no avail. Therefore, in view of the discussion made earlier, all the findings of the learned trial Judge to acquit the accused are perverse, and the same are liable to be set aside.

20.4.The learned trial Judge erroneously acquitted the accused, when the available evidence leans towards the only possible view of conviction. The learned trial Judge has stated that there were lot of loopholes in the case of the prosecution. The loopholes assumed by the learned trial Judge are not at all material to be considered in these type of cases, more

particularly, when the examination of witnesses took place after number of years from the date of occurrence. It is the duty of the Criminal Court to plug the said immaterial loopholes to ensure that the criminal justice system is vibrant, as held by the Hon'ble Supreme Court in ***Dinubhai Boghabhai Solanki v. State of Gujarat***, reported in ***(2018) 11 SCC 129*** at page 154:

> ***36.****That apart, it is in the larger interest of the society that actual perpetrator of the crime gets convicted and is suitably punished. Those persons who have committed the crime, if allowed to go unpunished, this also leads to weakening of the criminal justice system and the society starts losing faith therein. Therefore, the first part of the celebrated dictum "ten criminals may go unpunished but one innocent should not be convicted" has not to be taken routinely. No doubt, latter part of the aforesaid phrase i.e. "innocent person should not be convicted" remains still valid. However, that does not mean that in the process "ten persons may go unpunished" and law becomes a mute spectator to this scenario, showing its helplessness. In order to ensure that criminal justice system is vibrant and effective, perpetrators of the crime should not go unpunished and* ***all efforts are to be made to plug the loopholes which may give rise to the aforesaid situation****.*

20.5. The CBI has produced all material documents to prove the conspiracy. The sale of the property in favour of A2's wife and A3 in a calculated tender cum auction for a lesser value without obtaining a proper valuation certificate, by fixing an improper upset price and continuing the sale proceedings in spite of the knowledge of the stay order of DRAT, Mumbai and issuance of the sale certificate before issuance of the sale confirmation, clearly proved the conspiracy and hence, the view taken by the learned trial Judge is not a "possible view" and the narration of the proved events clearly establish the fact that the prosecution proved the charged offence beyond reasonable doubt without any room for any other view.

20.6.This Court, in view of the above discussion finds that the impugned judgment of the trial Court is perverse and there is every substantial and compelling reason to interfere with the impugned acquittal Judgement. Further, the Hon'ble Supreme Court has also held that in the case of the appeal against acquittal, this Court has jurisdiction to appreciate the evidence. Therefore, this Court has jurisdiction to appreciate the evidence, for which there is no legal impediment.

20.7. The Hon'ble Constitution Bench of the Supreme Court", in the case of ***M.G. Agarwal v. State of Maharashtra,*** reported in ***1962 SCC OnLine SC 22*** has upheld the same in the following paragraph:

> *16....But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused.*
>
> ***17.*** *In some of the earlier decisions of this Court, however, in emphasising the importance of adopting a cautious approach in dealing with appeals against acquittals, it was observed that the presumption of innocence is reinforced by the order of acquittal and so, "the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons" : vide Surajpal Singh v. State [1951 SCC 1207 : (1952) SCR 193 at p. 201] . Similarly in Ajmer Singh v. State of Punjab [(1952) 2 SCC 709 : (1953) SCR 418] it was observed that the interference of the High Court in an appeal against the order of acquittal would be*

justified only if there are "very substantial and compelling reasons to do so". In some other decisions, it has been stated that an order of acquittal can be reversed only for "good and sufficiently cogent reasons" or for "strong reasons". In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended to introduce an additional condition in clause (a) of Section 423(1) of the Code. All that the said observations are intended to emphasise is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in the case of Sheo Swarup, the presumption of innocence in favour of the accused "is not certainly weakened by the fact that he has been acquitted at his trial". Therefore, the test suggested by the expression "substantial and compelling reasons" should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in Sanwat Singh v. State of Rajasthan [AIR 1961 SC 715] and Harbans Singh v. State of

Punjab [AIR 1962 SC 439] and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse.

20.8. Hon'ble Three Bench of the Supreme Court in case of ***Ashok Kumar Singh Chandel Vs. State of U.P*** reported in ***2022 SCC OnLine SC 1525*** has crystallized the following principles;

> ***70.*** *In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:*
>
> *1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.*
>
> *A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:*
>
> *i. The trial court's conclusion with regard to the facts is palpably wrong;*
>
> *ii. The trial court's decision was based on an erroneous view of law;*
>
> *iii. The trial court's judgment is likely to result in "grave miscarriage of justice";*
>
> *iv. The entire approach of the trial court in dealing with the evidence was patently illegal;*
>
> *v. The trial court's judgment was manifestly unjust and unreasonable;*

vi. The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

vii. This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/Appellate Courts must rule in favor of the accused."

20.9.In the case of ***Geeta Devi v. State of U.P***., reported in ***(2023) 12 SCC 741***

.*Against an order of acquittal passed by the trial court the High Court would be justified on re-appreciation of the entire evidence independently and come to its own conclusion that acquittal is perverse and manifestly erroneous.*

20.10.In the case of ***Rajesh Prasad v. State of Bihar*****,** reported in **(2022) 3 SCC 471** the Hon'ble Three Judges Bench of Supreme Court has held as follows**:**

31.2.2. *Where acquittal would result is gross miscarriage of justice:*

(a) Where the findings of the High Court, disconnecting the accused persons with the crime, were based on a perfunctory consideration of evidence, [State of U.P. v. Pheru Singh [State

of U.P. v. Pheru Singh, 1989 Supp (1) SCC 288 : 1989 SCC (Cri) 420]] or based on extenuating circumstances which were purely based in imagination and fantasy [State of U.P. v. Pussu [State of U.P. v. Pussu, (1983) 3 SCC 502 : 1983 SCC (Cri) 713 : AIR 1983 SC 867]].

20.11.The Hon'ble Supreme Court", in the case of ***Babu v. State of Kerala [Babu v. State of Kerala,,*** reported in ***(2010) 9 SCC 189*** has considered following earlier precedents and reiterated the principles to be followed in an appeal against acquittal under Section 378CrPC.

Balak Ram v. State of U.P., (1975) 3 SCC 219
Shambhoo Missir v. State of Bihar, (1990) 4 SCC 17
Shailendra Pratap v. State of U.P., (2003) 1 SCC 761
Narendra Singh v. State of M.P., (2004) 10 SCC 699
Budh Singh v. State of U.P., (2006) 9 SCC 731
State of U.P. v. Ram Veer Singh (2007) 13 SCC 102
S. Rama Krishna v. S. Rami Reddy, (2008) 5 SCC 535
Arulvelu v. State of T.N. [Arulvelu v. State of T.N., (2009) 10 SCC 206
Perla Somasekhara Reddy v. State of A.P., (2009) 16 SCC 98
Ram Singh v. State of H.P., (2010) 2 SCC 445

'12.While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the

views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court.

20.12. The Hon'ble Supreme Court, in the case of State of U.P .V. Banne (2009) 4 SCC 271, gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include : (SCC p. 286, para 28)

"28. ... (i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal."

20.13. When can the findings of fact recorded by a court be held to be perverse?, has been dealt with and considered in para 20 of the aforesaid decision, which reads as under : (Babu case [Babu v. State of Kerala, (2010) 9 SCC 189

'20. "findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material" or if they are "against the weight of evidence" or if they suffer from the "vice of irrationality"..

20.14. In K. Gopal Reddy v. State of A.P. [K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355, this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely

possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule.'

20.15. In the totality of the circumstances, the learned trial Judge magnified every minute irrelevant fact and made a mountain out of a molehill and acquitted the respondents which resulted in miscarriage of justice. In similar circumstances, the Hon'ble Supreme Court, in the case of State of Maharashtra v. Narsingrao Gangaram Pimple, reported in (1984) 1 SCC 446 at page 463 while dealing with the appeal against acquittal has held as follows:

> ***36.*** *.. It seems to us that the approach made by the learned Judge towards the prosecution has not been independent but one with a tainted eye and an innate prejudice. It is manifest that if one wears a pair of pale glasses, everything which he sees would appear to him to be pale. In fact, the learned Judge appears to have been so much prejudiced against the prosecution that he magnified every minor detail or omission to falsify or throw even a shadow of doubt on the prosecution evidence. This is the very antithesis of a correct judicial approach to the evidence of witnesses in a trap case. Indeed, if such a harsh touchstone is prescribed to prove a case it will be difficult for the prosecution to establish*

any case at all.

20.16.The learned trial Judge allowed himself to be beset with fanciful doubts and rejected the creditworthy evidence of the witnesses for slender reasons and has misguided himself by chasing the bare possibilities of doubt and exalting them into sufficiently mitigating factors justifying acquittal. Therefore, there is an obligation on the part of this Court to interfere with the impugned order of the Court below, in the interest of justice, lest the administration of justice be brought to ridicule and the same was emphasized by the Hon'ble Supreme Court in the following cases:

20.16.1 .In the case of ***Shivaji Sahabrao Bobade v. State of Maharashtra*** reported in ***(1973) 2 SCC 793***, ***V.R. Krishna Iyer, J***., stated thus :

> *"6. ... The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused.*

Otherwise any practical system of justice will then break down and lose credibility with the community."

In State of Punjab v. Jagir Singh [State of Punjab v. Jagir Singh, (1974) 3 SCC 277 : (SCC pp. 285-86, para 23) the Hon'ble Supreme Court has held as follows:

"23. A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy... Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy, on grounds which are fanciful or in the nature of conjectures."

20.17. It is well settled that it is not every doubt, but only a reasonable doubt of which benefit is to be given to the accused. The function of the criminal Court is to find out the truth and it is not a correct approach to pick up the minor lapse in an investigation, irrelevant omission and minor contradiction, to acquit the accused when the ring of the truth is undisturbed from the cogent and trustworthy evidence of prosecution witness as discussed above. The learned trial Judge has not properly addressed the issue of "reasonable doubt". The cherished principles of golden thread of proof of reasonable doubt which runs

through web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubts. The same has been emphasized by the Hon'ble Supreme Court in the following cases:

20.17.1. In the case of ***Suresh Chandra Jana v. State of W.B***., reported in ***(2017) 16 SCC 466 at page 476*** , it has held that,

> ***16..*** *A doubt of a timid mind which is afraid of logical consequences, cannot be said to be reasonable doubt. The experienced, able and astute defence lawyers do raise doubts and uncertainties in respect of evidence adduced against the accused by marshalling the evidence, but what is to be borne in mind is—whether testimony of the witnesses before the court is natural, truthful in substance or not. The accused is entitled to get benefit of only reasonable doubt i.e. the doubt which a rational thinking man would reasonably, honestly and conscientiously entertain and not the doubt of a vacillating mind that has no moral courage and prefers to take shelter itself in a vain and idle scepticism.*

20.17.2 In the case of ***Rajesh Dhiman v. State of H.P.,*** reported in ***(2020) 10 SCC 740 at page 749,*** *it has held that,*

> ***15...*** *Reasonable doubt does not mean that proof be*

so clear that no possibility of error exists...

20.17.3. In the case of ***Bhim Singh Rup Singh Vs. State of Maharastra*** reported in ***1974 3 SCC 762***

> *"A reasonable doubt", it has been remarked, "does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other; it does not mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt founded upon reasons"*

20.17.4.In the case of ***State of U.P. Vs. Anil Singh*** reported in ***(1988) Supp SCC 686*** the Hon'ble Supreme Court has held as follow:

> *"Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth."*

20.17.5.In the case of ***Inder Singh v. State (Delhi Admn.)*** reported in ***(1978) 4 SCC 161*** the Hon'ble Supreme Court has held as follows:

> *A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the*

evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish.

20.18. The Hon'ble Supreme Court on various occasions cautioned the Courts not to extend the arms of the rule of benefit of doubt to render unmerited acquittals by nurturing fanciful doubts or lingering suspicions causing miscarriage of justice. It is not only the duty of the Court to acquit an innocent, but it is also the paramount duty of the Court to see that a guilty man does not escape. The relevant precedents in this aspect is as follows:

20.18.1 The lord Viscount Simon in Stirland v. Director of Public Prosecution (1944) 2 All ER 13 (HL)] held as follows:

"[A] Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. ... Both are public duties...."

20.18.2. In the case of Gurbachan Singh Vs. Satpal Singh reported in 1990 (1) SCC 445 the Hon'ble Supreme Court has held as follows:

> ***17....*** *Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law....”*

20.18.3. In the case of Sadhu Saran Singh v. State of U.P., reported in (2016) 4 SCC 357 at page 365, it is held :-

> ***20.*** *...we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent.*

21.<u>Conclusion</u>:

The accused have entered into a colourable exercise with a view to knock away the property for a low price and accordingly, sale certificate was issued in favour of the A2's wife and A4 though the property was

worth more than the price fetched. The prosecution produced the materials to substantiate their case that all the accused conspired together in the entire course of the fictitious public auction from fixing the upset price to the stage of getting sale certificate even before issuance of the sale confirmation order.

21.1.Corruption is a cancer that spreads its tentacles in all directions and over all the departments. Therefore, legal requirement is, not to consider irrelevant omissions and immaterial contradictions and magnify the same as a big material defect to acquit the accused, as it would be against the object of the prevention of the Corruption Act. In the considered opinion of this court, the learned trial judge acted contrary to the above object and acquitted the accused by giving undue importance to the irrelevant facts, while failing to give importance to the abundant materials placed before the court

21.2. In view of the above discussion, the finding of the Learned Trial Judge is held to be perverse in all aspects and hence this court is inclined to interfere with the same. Accordingly, this Court holds that the prosecution proved the case against all the accused beyond reasonable

doubt and A1 to A5 are found guilty u/s.120 B r/w169, 420, 409 of IPC r/w 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. A1 to A5 are found guilty under Section 420 of IPC; A1 to A5 are found guilty under Section 409 of IPC and A1 and A5 are found guilty under Section Section13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

22. Accordingly, this Criminal Appeal stands allowed. The judgment passed by the learned II Additional District Judge for CBI Cases, Madurai in C.C.No.5 of 2011 dated 07.12.2016 is set aside. All the respondents, namely, the accused No.1 to 5 in C.C.No.5 of 11 are convicted for the offence as stated below.

Sl. No	***Charged offences under Section***	***Accused***	***Conviction***
1	120 B r/w169, 420, 409 of IPC r/w 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988	A1 to A5	All are convicted
2	420 of IPC	A1 to A5	All are convicted
3	409 of IPC	A1 to A5	All are convicted
4	Section13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988	A1 and A5	Both are convicted

23. List this case for appearance of the respondents 1 to 5 / Accused Nos.1 to 5 for questioning them on the sentence of imprisonment on 20.03.2025.

04.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

24. **Sequence of events from 04.03.2025:-**

After the pronouncement of the order of conviction on 04.03.2025, all the counsel on record undertook to ensure the appearance of respondents before this Court to answer the question of sentence and on their request, the case was adjourned to 20.03.2025.

25. On 20.03.2025, the respondent Nos.2 to 5 were present before this Court and Thiru.R.Balasubraminan, learned Senior counsel would request this Court to adjourn the case for making appearance of the first respondent for questioning of sentence and the first respondent also undertook to appear before this Court in person to answer the question of sentence. This Court passed the following order:

> *Today(20.03.2025), when the matter was taken up for hearing, under the caption "for questioning of sentence". The respondent Nos.2 to 5 are appeared before this Court in person along with their respective counsel.*
>
> *2.Mr.R.Balasubramanian, learned Senior Counsel appearing on behalf of the first respondent made request that the first respondent has some inconvenience today. Hence, he seeks time to make appearance before*

this Court. The first respondent also appeared through video conference.

3.Considering the said request made by the learned Senior counsel and also the first respondent, this Court adjourns the case on 27.03.2025 for questioning of sentence and this Court hopes that all the respondents to be appeared on that day for making appearance

26. On (27.03.2025), Thiru.C.M.Arumugam, learned counsel appearing for the first respondent would submit that the first respondent has preferred S.L.P.(crl.).Diary No.15695 of 2025 before the Hon'ble Supreme Court and filed memo with the following prayer:-

"In the light of this development, the AOR of the 1st respondent has requested to file a memo along with letter and documents before the Hon'ble High Court of Madras at Madurai, informing the Court about the present status of the case and requesting that no further proceedings be undertaken until the disposal of the Special Leave Petition. Therefore, it is prayed that this Hon'ble Court may be graciously pleased to adjourn the proceedings in Crl.A(MD)No.297 of 2019 until the disposal of the Special Leave Petition and thus render justice."

27. On 20.03.2025, the learned Senior counsel Thiru.R.Balasubramanian pleaded some inconvenience and difficulty and undertook to ensure the appearance of the accused today. The respondent No.1 also undertook to appear before this Court today. This Court always gives respect to the words of the learned Senior counsel. In order to accommodate the first respondent, this Court on earlier occasion accepted the same and adjourned this Case today. Further, this Court, in order to accommodate him, "***repeatedly in its all sensible manner by using words please, please"***, requested the learned Senior counsel and the first respondent to ensure his presence today. They agreed. But, 27.03.2025, they produced the memo. Since the memo was filed in open Court, this Court asked the counsel to file before the Criminal Section and passed over the matter.

28. The matter was called again at 01.00 pm. The learned counsel Thiru.C.M.Arumugam, orally submitted that the Hon'ble Supreme Court was pleased to grant interim suspension of imprisonment.

29. The Hon'ble three Judges Bench of Supreme Court in the case of ***Rama Narang Vs. Ramesh Narang*** reported in ***1995 2 SCC 513***, has held

that,

Para 12	Para 13
It will thus be seen that under the Code after the conviction is recorded, Section 235(2) *inter alia* provides that the Judge shall hear the accused on the question of sentence and then pass sentence on him according to law. The trial, therefore, come to an end only after the sentence is awarded to the convicted person.	It will thus be seen from the above provisions that after the court records a conviction, the accused has to be heard on the question of sentence and it is only after the sentence is awarded that the judgment becomes complete and can be appealed against under Section 374 of the Code.

30. The Hon'ble two Judges Bench of Hon'ble Supreme Court in the case of ***Yakub Abdul Razak Memon Vs, State of Maharashtra*** reported in ***(2013) 13 SCC 1***, has held as follows:-

Para 106	Para 113
It is also clear that a conviction order is not a "judgment" as contemplated under Section 353 and that a judgment is pronounced only after the award of sentence.	It is also relevant to mention that Section 354 makes it clear that "judgment" shall contain the punishment awarded to the accused. It is therefore, complete only after the sentence is determined.

31. The Hon'ble Constitution Bench of Supreme Court in the case of Sukhpal Singh Khaira Vs. State of Punjab reported in (2023) 1 SCC 289, has affirmed the said principle in para 32 of the said judgment, which is

held as follows:-

> *"the conclusion of the trial in a criminal prosecution if it ends in conviction, a judgment is considered to be complete in all respects only when the sentence is imposed on the convict....."*

32. This case was posted for questioning of sentence, passing of sentence and serving judgment copy. Therefore, this Court asked the counsel to produce the order copy of the Hon'ble Supreme Court and the counsel sought time to produce the order. Hence, this Court adjourned the case on 02.04.2025.

33. Today (02.04.2025), the first accused produced the order copy of the Hon'ble Supreme Court with supercilious and derisive countenance and his eyebrow arched in supercilious manner and the same never caused any prejudice to this Court to continue the proceedings. Therefore, this Court perused the order of the Hon'ble Supreme Court which reads as follows:-

> *"We clarify that the High Court may proceed to hear the parties on the issue of sentencing. However, the sentence, if pronounced, shall remain suspended for a period of three weeks from today."*

33.1.Therefore, this Court questioned the accused about their sentence. They answered as follows:-

33.1.1.S.Kasimayan (A1)

He stated that he is 55 years old and he filed a detailed written submission with following "***mitigating circumstances***" and "***absence of any aggravated circumstances***" and he also produced the medical records:

4

I. **Mitigating Circumstances**

a) **Nature of offences are official judicial duty:** *I submit that all the charges such as fixing upset price, disposing applications, conducting auction, confirming sale and passing appealable orders are official judicial duties within the jurisdiction of the recovery officer. There is no allegations of bribery, or corruption or disproportionate of assets.*

b) **No Antecedents:** *I submit that no criminal case against me and I have track record of outstanding performance from 1998 till date. My integrity has been always assessed as beyond doubt. I am a student of Gandhigram Rural University committed to the values of truth, non-violence and selfless service.*

c) **Consequence will be Irreversible:** *I submit that inflicting punishment for discharging official duties will result in miscarriage of justice and cause irreversible injustice to me.*

d) **Sufferings already undergone:** *I submit that due to this vexatious/misconceived prosecution I have already sustained immeasurable suffering by fighting this false case for last 18 years for want of due attention of concerned officer/court. I had undergone prolonged suspension of 7 years with subsistence*

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allowance and promotions were delayed more than 10 years and due to this appeal monitory benefit has been withheld.

e) **Pathetic Family condition**: *I submit that my wife with spinal card destruction due to potts spine disease is in bedridden condition for last 4 years needing care and support to all essential duties and no elder member to support. There is no scope for improvement. I have a dependent daughter of 25 years of age, yet to be married. My son is studying undergraduate course.*

f) **My Health deteriorated due to false case**: *I submit that due to false prosecution, I have been put to enormous stress and strain and I have become chronic diabetic and medication for last 17 years and my retina got damaged and lost my vision partially. I am also suffering from other illness i.e. fatty liver, heart valve dysfunction etc. needing constant medical care.*

g) **Pitiable Economic Condition**: *I submit that I have spent all my salary in fighting this false case and I have no property and only house build in the ancestral property of my wife with House loan for which I have to pay Rs 14000/- EMI every month and I am the only bread winner of the family. My family will be virtually on the street without my care and support.*

II. Absence of any aggravating circumstance:

a) **There is no loss and no gain to anybody:** *I submit that the alleged sale has been set aside as per rule. There is no loss and no gain to anybody. There is no pecuniary interest to state. The judgment debtor has abused to absolve his loan liability to bank and save mortgaged property (D16 Vol III page 43 refers) and he was given opportunity to sell as per his valuation by DRAT, Mumbai (D19 Vol III page 111 refers) and he did not comply. In the inquiry by judicial body (DRT), I have been absolved from all these allegations holding that all allegations are baseless and motivated (D17, D18 and D19 Vol III pages from 45 to 111refers).*

b) **Chilling effect on decision making and adjudicating: :** *I submit that punishing official judicial duties will have serious chilling effect in decision making and demoralize lower judiciary and will adversely affect society at large. This court is mandated to protect the lower judiciary from the onslaught of predators of judicial system.*

III) Serious Questions of law on sentencing.

a) **Absolute Judicial Immunity:** *I submit that as all the allegations are my official judicial duty within the jurisdiction, as per section 3(1) of Judges Protection Act 1985 no criminal proceeding be taken for actions taken within the jurisdiction.*

Even to hold that there is no judicial immunity, there are two binding judgments of two single judges of this Court in Crl.O.P.(MD) No 2520/2009and Crl.R.C.(MD) No.551/2012 holding that I am covered under judicial immunities as all allegations are within my jurisdiction.

b) **The offence of abusing official position has been decriminalized by the Parliament.** *I submit that the offence of abusing official position u/s 13(1)(d) has been omitted consciously by the Parliament to safeguard official function and to prevent misusing the section by the police. As it is omission, section 6 of General Clause Act cannot be applied. As the offence has expired and pending matter must be terminated. This issue is no more Res Integra as per Constitution Bench judgment in Rayala Corporation (P) Ltd Vs Directorate of Enforcement (1970 AIR 494), it has been held that in case of omission of offence the section 6 of General Clause Act cannot be applied unless there is saving clause. While omitting section 161 to 165 of IPC offences in PC Act 1988, there was saving clause u/s 31 of PC Act 1988 but in 2018 amendment there is no such saving clause. Therefore, there is no offence to punish.*

c) **This appeal falls under Chengalvarayan ratio:** *I submit that this criminal case has come to this stage only on the misleading statement of the appellant; firstly that in trail court on affidavit*

in the counter to discharge petition had submitted that Recovery Officer is not judicial officer that too after this Hon'ble Court judgment in Crl.O.P.2520/2009 finding that RO is judicial officer. Secondly, this appeal got admitted on the misleading statement that pecuniary interest is involved to state whereas there is no pecuniary interest to state. Thirdly, the sanction has not been obtained in a manner known to law, that is, if one department accords sanction and another department refuses to accord sanction, the matter has to be resolved by DoPT but appellant suppressed this material fact and filed final report without complying this mandatory OM and it has occasioned failure of justice by prosecuting an officer without sanction of law. As per Chengalvaraya Naidu ratio, as this criminal case has been vitiated by the misleading statements, it can be brought to an end at any stage and in any proceeding.

Therefore, it is prayed that this Hon'ble Court may be graciously pleased to show leniency to me and pass minimum sentence in the Crl. A. (MD) No 297/2019 before the Hon'ble High Court of Madras, Madurai Bench and thus render justice.

Solemnly affirm and sign his name on this 2nd day of April 2025

Petitioner

Before me

Advocate

(G. Bhagavath Singh
reg. 9624 1996

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33.1.2.R.Selvaraj (A2)

எனக்கு 55 வயது ஆகிறது நான் மட்டும் தான் என் குடும்பத்தில் வருமானம் ஈட்டுகிறேன்.

எனக்கு திருமண வயதில் ஒரு பெண் இருக்கிறாள். எனது பெண்ணிற்கு திருமண ஏற்பாடு செய்து வருகிறேன்.

என் மகன் படித்துகொண்டு இருக்கிறான். வீட்டில் இருந்து பார்த்துக்கொள்ள என்னை தவிர வேறு யாரும் இல்லை.

எனக்கு ரத்த கொதிப்பு மற்றும் சர்க்கரை நோய் உள்ளது. ஆகவே எனக்கு குறைந்த பட்ச தண்டனை வழங்க கேட்டுக்கொள்கிறேன்.

33.1.3.**R.Rajeshkanan(A3)**

நான் அரிசி கடை வைத்துள்ளேன்.

என்னை தவிர வேறு யாரும் குடும்பத்தில் இல்லை. எனக்கு இரண்டு பெண் குழந்தைகள் உள்ளது.

என் மனைவி வருமானம் இல்லாமல் என்னுடைய வருமானத்தில் குடும்பத்தை பார்த்துக்கொள்கிறார்.

எனது வலது பக்கத்தில் பக்கவாதம் உள்ளது. அது மட்டுமில்லாமல் மூச்சுத்திணறலும் அடிக்கடி வரும். ஆகவே குறைந்த பட்ச தாண்டணை வழங்க கேட்டுக்கொள்கிறேன்.

33.1.4.**R.Anitha(A4)**

எனக்கு வயது 48 ஆகிறது.

எனக்கு இரண்டு குழந்தைகள் உள்ளது.

என் பொண்ணுக்கு திருமண ஏற்பாடு செய்து கொண்டு இருக்கிறேன்.

எனது மகன் கல்லூரியில் சேர்ந்து படித்துக் கொண்டு இருக்கிறேன்.

என்னுடன் வயதான மாமியார் மற்றும் மாமியாரின் அம்மா என்னுடைய பாதுகாப்பில் அரவணைத்து வருகிறேன். ஆகவே எனக்கு குறைந்த பட்ச தண்டணை வழங்க கேட்டுக்கொள்கிறேன்.

33.1.5.**N.Vakeeswaran(A5)**

He is 69 years old. He is suffering from liver ailment and his Gal bladder has been removed. Further, he was hospitalized in the last year and he is also suffering from diabetes, blood pressure and cholesterol. Now, he is in continuos medication and he also produced medical records. He pleaded that he did not commit any offence. Hence, he pray for lesser sentence.

33.2.**Counsel submissions:**

The learned counsel appearing for the respondents also re-iterated the above mitigating circumstances and pleaded for the lesser sentence. Thiru.D.Malaisamy, learned counsel appearing for the third respondent, would specifically submit that the third respondent/Rajesh Kannan has two daughters and elder daughter is studying in the college and younger daughter is attending 10th standard board examination and he has to take care of both daughters and hence, he seeks lesser sentence.

33.3.The learned Special Public Prosecutor for CBI would submit that the claim of the respondent No.1 that he is entitled to benefit of Judges Protection Act, is not a ground to be addressed during questioning of sentence. All the accused committed white collar crimes and hence, they are not entitled to any leniency and the same would amount to the misplaced sympathy. Therefore, he seeks to give maximum punishment.

34. **Discussion on question of sentence:**

Juvenal's question **quis custodiet ipsos custodes (who guards the guardians?)** remains a central concern of this case to impose proper punishment.

34.1.It is true that each accused pleaded their mitigating circumstances. But, A1 is recovery officer and A2 is his subordinate. A5 is the Bank Manager. The properties of the judgment debtor requires to be protected and safeguarded by them. They entered into criminal conspiracy among themselves and A3 and A4 to commit fraud betraying the public trust reposed upon them and thereby, conducted a fraudulent auction purchase and made a fraudulent sale in favour of A4, who was none other than the wife of A2 and also in favour of A3. Therefore, this Court is not inclined to accept the argument of the learned counsel appearing for the accused to impose minimum sentence. The learned Special Public Prosecutor would submit that the Recovery Officer and his team committed this white collar crime. Therefore, he seeks to award maximum punishment.

35. In view of the above submissions, this Court inclines to do a balancing act between two situations ie, sympathy and the administration of Criminal Justice system in awarding punishment. To come out of the complex problem and to meet out balance between two situations, this Court recapitulates the principles relating to the punishment laid down by the Hon'ble Supreme Court in the following cases:

35.1.The principle of imposition of punishment should commensurate with crime committed has been illustrated by Hon'ble Supreme Court in the case of ***Sevaka Perumal v. State of T.N.*** reported in ***(1991) 3 SCC 471*** in the following paragraph:

> *"13. ... The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'."*

35.2.The said principle was further elaborated by the Hon'ble Supreme Court in the case of ***Shailesh Jasvantbhai v.State of Gujarat*** reported in ***(2006) 2 SCC 359***, and it has been held that :

> *8. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of*

every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc.

(emphasis supplied)

35.3.Again in the case of ***Gopal Singh* v. *State of Uttarakhand*** reported in ***(2013) 7 SCC 545*** the Hon'ble Supreme Court has discussed about the gravity of the crime and the concept of proportionality as regards the punishment and observed as follows:

"18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect—propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of

the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasise, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment."

(emphasis supplied)

35.4.A three-Judge Bench of the Hon'ble Supreme Court in the case of ***Ahmed Hussein Vali Mohammed Saiyed*** **v.** ***State of Gujarat*** reported in ***(2009) 7 SCC 254*** observed as follows :

> *"99. ... The object of awarding appropriate sentence should be to protect the society and to deter the criminal from achieving the avowed object to (sic break the) law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be resultwise counterproductive in the long run and against the interest of society which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.*
>
> *100. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the victim of the crime but the society at large while considering the imposition of appropriate punishment. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which both the criminal and the victim belong."*

35.5.In the case of ***State of Punjab v. Bawa Singh*****,** reported in **(2015) 3 SCC 441 at page 447**

> ***16.*** *We again reiterate in this case that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment. Meagre sentence imposed solely on account of lapse of time without considering the degree of the offence will be counterproductive in the long run and against the interest of the society.*

35.6.The Hon'ble Supreme Court reiterated the above principle in the case of ***Raj Bala v. State of Haryana, reported in (2016) 1 SCC 463 and held as follows:***

> ***3.*** *It needs no special emphasis to state that prior*

to the said decision, there are series of judgments of this Court emphasising on appropriate sentencing. Despite authorities existing and governing the field, it has come to the notice of this Court that sometimes the court of first instance as well as the appellate court which includes the High Court, either on individual notion or misplaced sympathy or personal perception seems to have been carried away by passion of mercy, being totally oblivious of lawful obligation to the collective as mandated by law and forgetting the oft quoted saying of Justice Benjamin N. Cardozo, "Justice, though due to the accused, is due to the accuser too" and follow an extremely liberal sentencing policy which has neither legal permissibility nor social acceptability.

4. *We have commenced the judgment with the aforesaid pronouncements, and our anguished observations, for the present case, in essentiality, depicts an exercise of judicial discretion to be completely moving away from the objective parameters of law which clearly postulate that the prime objective of criminal law is the imposition of adequate, just and proportionate punishment which is commensurate with the gravity, nature of the crime and manner in which the offence is committed keeping in mind the social interest and the conscience of the society, as has been laid down in State of M.P. v. Bablu [(2014) 9 SCC 281 : (2014) 6 SCC (Cri)*

1] , State of M.P. v. Surendra Singh [(2015) 1 SCC 222 : (2015) 1 SCC (Cri) 603] and State of Punjab v. Bawa Singh [(2015) 3 SCC 441 : (2015) 2 SCC (Cri) 325] .

16. *A court, while imposing sentence, has a duty to respond to the collective cry of the society. The legislature in its wisdom has conferred discretion on the court but the duty of the court in such a situation becomes more difficult and complex. It has to exercise the discretion on reasonable and rational parameters. The discretion cannot be allowed to yield to fancy or notion. A Judge has to keep in mind the paramount concept of rule of law and the conscience of the collective and balance it with the principle of proportionality but when the discretion is exercised in a capricious manner, it tantamounts to relinquishment of duty and reckless abandonment of responsibility. One cannot remain a total alien to the demand of the socio-cultural milieu regard being had to the command of law and also brush aside the agony of the victim or the survivors of the victim. Society waits with patience to see that justice is done. There is a hope on the part of the society and when the criminal culpability is established and the discretion is irrationally exercised by the court, the said hope is shattered and the patience is wrecked. It is the duty of the court not to exercise the discretion in such a manner as a consequence of which the*

expectation inherent in patience, which is the "finest part of fortitude" is destroyed. A Judge should never feel that the individuals who constitute the society as a whole is imperceptible to the exercise of discretion. He should always bear in mind that erroneous and fallacious exercise of discretion is perceived by a visible collective.

35.7.In the case of ***Baba Natarajan Prasad v. M. Revathi*****,** reported in **(2024) 7 SCC 531,** the Hon'ble Supreme Court recently also considered the above all judgments and held that it is the duty of the Court to impose sentence commensurate with the gravity of offence by keeping view of the interest of the society and considering the degree of the offence which would be counter productive in long run and against the interest of justice and also noted as follows:

Leave granted. Salmond defined "crime" as an act deemed by law to be harmful for society as a whole although its immediate victim may be an individual. Long-long ago, ***Kautilya said:"it is the power of punishment alone which when exercised impartially in proportion to guilt and irrespective of whether the person punished is the king's son or the enemy, that protects this world and the next"****.*

35.8. Applying the above principles, this Court declines to accept the argument of the learned counsel for the accused to grant minimum

sentence. But, considering the age and illness, this Court also is unable to concur with the argument of the learned Special Public Prosecutor to award maximum punishment on considering the gravity of the offence. To resolve the same, this Court gets guidance from the following observation made by the Hon'ble Supreme Court in the case of ***R. Venkatkrishnan v. CBI***, reported in (2009) 11 SCC 737 at page 791

> ***168.****A sentence of punishment in our opinion poses a complex problem which requires a balancing act between the competing views based on the reformative, the deterrent as well as the retributive theories of punishment. Accordingly, a just and proper sentence should neither be too harsh nor too lenient. In judging the adequacy of a sentence, the nature of the offence, the circumstances of its commission, the age and character of the offender, injury to individual or the society, effect of punishment on offender, are some amongst many other factors which should be ordinarily taken into consideration by the courts.*

35.9. This court does not want to show any mercy to these accused which amounts to misplaced sympathy. In the said circumstance, it will be unethical to accept the request for minimum sentence and grant minimum sentence of imprisonment and also it is not expedient in the administration

criminal justice system. Therefore, this court is not inclined to grant minimum sentence which amounts to showing misplaced sympathy to the *"white collar criminals"*.

35.9.1. White-collar criminals violate trust and create distrust which lowers social morale and results into social dis-organisation to a large extent while other crimes produce relatively little effect on social institutions.

35.9.2. **Reiss** and **Brideman** define it as violations of law " that involve the use of a violator's position of significant power, influence or trust... for the purpose of illegal gain, or to commit an illegal act for purpose of organizational gain".

35.9.3. **Edwin Hardin Sutherland,** the most influential criminologist of the 20th century and also a sociologist,, for the first time in 1939, defined white collar crimes as "*crimes committed by people who enjoy the high social status, great repute, and respectability in their occupation*".

35.10. From reading the various articles and precedents, this Court holds that white collar crimes are defined as non violent crimes committed

by the person enjoying high social status, great repute and Public servants with calculated and deliberate design with greedy eyes for personal benefit at the cost of public, regardless of the consequence of the economic disaster.

35.11. These crimes do not have eyewitnesses as they are committed *in camera,* which means that the offenders commit these crimes while sitting in a closed room or in their personal space using their computers, and nobody could know about what they are doing on their computer. This makes it difficult to track the offenders. All these loopholes becomes an incentive for the offenders to fearlessly commit such crimes because the punishment is also for a short term unlike in blue-collar crimes. Offenders are mostly seen roaming freely which poses danger to the society.

35.12.1. Therefore, His Excellency former president of India Dr.Radhakrishnan, in the following words emphasized the requirement of the strenuous action against the white collar crimes:

> "*The practitioners of evil, hoarders, the profiteers, the black marketeers, and speculators are*

> *the worst enemy of our society. They have to be dealt with sternly. However well placed important and influential they maybe, if we acquiesce in wrongdoing, people will lose faith in us.*

35.12.2.The Hon'ble Supreme Court in the case of ***State of Gujarat v. Mohanlal Jitamalji Porwal*****,** reported in ***(1987) 2 SCC 364*** also reiterated the said requirement of the strenuous action in the following terms:

> ***5.*** *An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.*

35.12.3. The said requirement also reaffirmed by the Hon'ble Supreme Court in the case of ***Ram Narayan Popli v. CBI*****,** reported in ***(2003) 3 SCC 641***

> ***"381.*** *... the need to pierce the facadial smokescreen to unravel the truth to lift the veil so that the apparent, which is not real, can be avoided. The proverbial red herrings are to be ignored, to find out the guilt of the accused.*
>
> ***382.*** *The cause of the community deserves better treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not a persona non grata whose cause may be treated with disdain. The entire community is aggrieved if economic offenders who ruin the economy of the State are not brought to book.*
>
> ***383.*** *Unfortunately in the last few years, the country has seen an alarming rise in white-collar crimes which has affected the fibre of the country's economic structure. These cases are nothing but private gain at the cost of the public, and lead to economic disaster."*

35.13. It is said that crimes have been taking place since the time human beings started living together. There are various crimes which have swept away with times and there are some which have found different dimensions to them with the society becoming modern. The ancient Vedic text says that the concept of white collar crime has existed in society from the very beginning.

35.14. **Yagnavalkya** once had proposed that the king, the supreme authority, should kill the dishonest officer and reward the honest ones. He further adds that those people who will try to extort a person, their property would be confiscated and then transported.

35.15. The need and greed of people have driven them to the extent of exploiting any possible field. The exploitation of the money of the other person by doing the act of fraud to get gain at the loss of other side usually form part of the white collar crimes.

35.16. In the case of fraud, greedy person gains at the loss of another. This case is no exception. This case does not deserve any sympathy to grant minimum sentence. But, considering the age, various ailments and other mitigating circumstances, this Court is inclined to take a balanced view and award proper sentence between the minimum sentence and maximum sentence and the same is as follows:

Sl. No	Under Section	Accused No.	Sentence of Imprisonment	Fine Amount	Default Sentence
1	120 B r/w169, 420, 409 of IPC r/w 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988	A1 to A5	**4 years** of Rigorous Imprisonment	Rs. **1,00,000/- each**	6 months of Simple Imprisonment
2	420 of IPC	A1 to A5	**5 years** of Rigorous Imprisonment	Rs. **2,00,000/- each**	9 months of Simple Imprisonment
3	409 of IPC	A1 to A5	**5 years** of Rigorous Imprisonment	Rs. **2,00,000/- each**	9 months of Simple Imprisonment
4	Section13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988	A1 and A5	**4 years** of Rigorous Imprisonment	Rs. **1,00,000/- each**	6 months of Simple Imprisonment

36. Accordingly, this Court imposes the following sentence of imprisonment to the accused:

(i)The respondent Nos.1 to 5 herein/accused Nos.1 to 5 in C.C.No. 05 of 2011 on the file of the II Additional District Court for CBI Cases, Madurai dated 07.12.2016 are hereby directed to undergo ***Four years of Rigorous Imprisonment*** for the offence under section ***120 B r/w169, 420, 409 of IPC r/w 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988,*** *each and to pay a* fine amount of ***Rs.1,00,000/- (Rupees One Lakh Only)***

each with ***default*** sentence of ***six months Simple Imprisonment***.

(ii) The respondent Nos.1 to 5 herein/accused Nos.1 to 5 in C.C.No. 05 of 2011 on the file of the II Additional District Court for CBI Cases, Madurai dated 07.12.2016 are hereby directed to undergo ***Five years of Rigorous Imprisonment*** for the offence under section 420 of IPC *each and to pay a* fine amount of ***Rs.2,00,000/- (Rupees Two Lakh Only)each*** with ***default*** sentence of ***nine months Simple Imprisonment***

(iii)The respondent Nos.1 to 5 herein/accused Nos.1 to 5 in C.C.No. 05 of 2011 on the file of the II Additional District Court for CBI Cases, Madurai dated 07.12.2016 are hereby directed to undergo ***Five years of Rigorous Imprisonment*** for the offence under section 409 of IPC each and to pay a fine amount of ***Rs.2,00,000/- (Rupees Two Lakh Only)each*** with ***default*** sentence of ***nine months Simple Imprisonment***

The respondent Nos.1 and 5 herein/accused Nos.1 and 5 in C.C.No. 05 of 2011 on the file of the II Additional District Court for CBI Cases, Madurai dated 07.12.2016 are hereby directed to undergo ***Four years of Rigorous Imprisonment*** for the offence under section ***13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988*** each and to pay a fine of ***Rs.1,00,000/- (Rupees One Lakh Only) each*** with ***default*** sentence of ***six months Simple Imprisonment.***

37. All the substantive sentence of imprisonment are to ***run concurrently***. The period if already undergone by the accused is ordered to be set off under Section 428 of Cr.P.C.,

02.04.2025

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
sbn

To

1. The II Additional District Court for CBI Cases,
   Madurai.

2. The Inspector of Police,
   CBI, ACB, Chennai.

3. The Special Public Prosecutor for CBI Cases,
   Madurai Bench of Madras High Court, Madurai.

4. The Section Officer,
   Criminal Section(Records),
   Madurai Bench of Madras High Court, Madurai.

K.K.RAMAKRISHNAN,J.

sbn

Pre-delivery judgment made in
CRL.A(MD).No.297 of 2019

04.03.2025
&
02.04.2025