IN THE COURT OF THE SPECIAL JUDGE (VIGILANCE), BERHAMPUR, GANJAM.

Present : **Sri Gyanendra Kumar Barik, OSJS,**
Special Judge (Vigilance),
Berhampur, Ganjam.
(**JO Code No.OD00268**)

Dated, the day of 14th July, 2026

G.R.Case No.32/2008(V)
T.R. No.28/2012

(Arising out of Berhampur Vigilance P.S. Case No.32 dtd.30.09.2008, U/s.13(2) r/w. Sec.13(1)(e) of P.C Act, 1988)

Complainant: State of Odisha

Represented by: Sri Surendra Panda, Spl.P.P Vigilance
Sri Sumit Kumar Nayak, Spl.P.P Vigilance &
Sri Ashok Kumar Sukla, Spl. P.P Vigilance,
Berhampur.

Accused: Ashok Kumar Padhy, aged about 68yrs,
S/o- Late Narasingh Padhy
Resident of Suryanagar-1st lane, Ankuli,
PS-B.N.Pur, Dist-Ganjam,

Represented by: Sri Prasad Kumar Pattnaik, Advocate and Associates,Berhampur.

Date of offence:	From 17/11/82 to 23/07/2008
Date of FIR:	30/09/2008
Date of Charge sheet:	19/12/2011

Date of Framing of Charge:	24/12/2015
Date of commencement of evidence:	06/09/2016
Date on which judgment is reserved:	NA
Date of the judgment:	14/07/2026
Date of the sentencing order, if any:	NA

Accused Details:

Rank of the accused	Name of the accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for purpose of section 428 CrPC
01	Ashok Kumar Padhy	Not Arrested	--	U/s.13(2) r/w. Sec.13(1)(e) of P.C Act, 1988.	Convicted	To undergo SI for three years and to pay a fine of Rs.1,00,000/- (Rupees One Lakh) only in default thereof, shall undergo SI for a further period of six months for commission of the offence U/s13(1)(e) r/w. 13(2) of Prevention of Corruption Act, 1988	NA

Date of Argument: 08/07/2026
Date of Judgment: 14/07/2026

Status of the accused person: On bail and present.

JUDGMENT

The above named accused stands charged for the offence punishable u/s.13(1)(e) r/w. Sec.13(2)of P.C Act, 1988, on the allegation of amassing disproportionate assets amounting Rs.38,95,991.57 during the check period from17.11.1982 to 23.07.2008, which is beyond his known source of income during the above period.

2. The case of the prosecution is as followed:-

On the allegation of acquisition and possession of disproportionate assets by Sri. Ashok Kumar Padhi, Jr. Engineer in the O/o-Asst. Soil Conservation Office, Gunupur, an enquiry was taken up by Inspector Vigilance Sri Surendranath Panigrahi. During course of his enquiry, the residential house of Sri A.K.Padhi, situated at Ankuli Suryanagar and his rented residential house at Gunupur were simultaneously searched on 23.07.08, on the strength of search warrant issued by ld. CJM, Ganjam, Berhampur in MC No.04/08. Accordingly, search-cum-inventory lists of the movable assets and documents relating to the Bank deposits and other properties acquired and possessed by Sri A.K.Padhi and his family members were prepared. Thereafter, Inspector Vigilance Sri S.N.Panigrahi prepared his enquiry report and placed the same before the SP (V), Berhampur Division by showing that accused Sri Padhy was accumulated disproportionate assets of Rs.41,01,272/- during the check period. Since, Sri A.K.Padhi could not explain satisfactorily about such assets therefore, on the direction of SP Vigilance, Berhampur, the then OIC Vigilance PS, Berhampur registered Berhampur vigilance PS Case No.32 dtd.30.09.08 and on the direction of SP Vigilance, Inspector P.P.Choudhury was entrusted to take up the charge of investigation.

During course of investigation, the Inspector Vigilance Sri P.P.Choudhury, examined the complainant and other witnesses and recorded their statements, collected the inquiry report and other documents relating to house search at the house of accused Ashok Kumar Padhi, received detailed pay particulars, bio-data of accused from Asst. Soil Conservation Office, Gunupur, Asst. Soil Conservation Office, Sonepur, Asst. Soil Conservation Office, Cuttack, collected bank statement of accused Ashok Padhy, his wife and children from Andhra Bank, SBI Berhampur and Gunupur, received certified copy of sale deeds relating to purchase of land in the name of Ashok Kumar Padhi and his wife, collected vehicle details of Ashok Kumar Padhi from RTO, Ganjam, examined the vendor P.Fakira and some other witnesses, collected insurance policy details in the name of Ashok Kumar Padhy, Bhagyalaxmi Padhy, Abhisekh Padhi and Abhinash Padhi from Bajaj Allianz, Berhampur, LIC, Berhampur, attended the technical inspection of houses of accused at Surjyanagar and Ankuli conducted by vigilance technical team, received the technical report regarding measurement of the above houses, collected house hold expenditure of accused and his family, examined the accused Sri Padhi and recorded his statement. But before completion of investigation, as per direction of SP Vigilance,he handed over the charge of investigation to Aswin Kumar Nayak. During course of his investigation, Sri Nayak received the sanction order from Director of Agriculture & Food Production, Bhubaneswar through SP Vigilance, Berhampur. Later he found that accused Sri Padhy has accumulated disproportionate assets worth Rs.38,95,991.57 which he could not explain properly. Therefore, after completion of investigation, he submitted charge sheet against Ashok Kumar Padhy for commission of offence u/s.13(2) r.w Sec.13(1)(e) of PC Act, 1988 by showing DA of Rs.38,95,991.57/-i.e. 185.27% excess to his known sources of income during the check period i.e. from 17.11.1982 to 23.07.2008.

3. The defence plea is that of complete denial of the allegations and of false implication. During recording of statement of the accused u/s.313 CrPC, the accused has claimed that the assessment of the assets is totally wrong and income of his wife from tuition and house rent were not taken into consideration.

4. The point for determination in this case is :

i) Whether accused Ashok Kumar Padhy, being a public servant working as Jr. Engineer in the O/o-Asst. Soil Conservation Office, Gunupur was found to have amassed pecuniary resources and properties illegally in his name and in the name of his family members to the extent of Rs.38,95,991.57 disproportionate to his known source of income during the check period which he could not satisfactorily account for and thereby committed an offence of criminal misconduct?

5. To bring home charge against the accused, the prosecution has examined 26 nos. of charge sheeted witnesses on its behalf of whom P.W.1 is the Asst. Soil Conservation Officer who exhibited and proved the bio-data and pay particular of Ashok Kumar Padhi for the period from 07/06 to 06/08 as Ext.2 and Ext.3 together with the corresponding forwarding letter marked as Ext.1. P.W.2 is one of the independent witness, P.W.3, P.W.4 & P.W.5 are the seizure witnesses who proved the seizure list marked as Ext.4 & Ext.5 i.e. regarding seizure of pay acquaintance roll of the accused. P.W.6 is the RTO Ganjam, Chhatrapur who proved the computer generated registration certificate of 04 vehicles marked as Ext.7, Ext.8, Ext.9 and Ext.10 together with the information sheet regarding the vehicle and corresponding forwarding letter as Ext.6 and Ext.11. P.W.7 is the JE in the O/o-Zonal Laboratory R&B, Berhampur in whose presence the house of accused was searched and this witness P.W.7 proved the search-cum-inventory list marked as Ext.12 so also search-cum-inventory list regarding a recovery of gold ornaments from the locker of Andhra Bank marked as Ext.13. P.W.8 is the informant-cum-Inspector Vigilance who proved the search warrant marked as Ext.14 and FIR marked as Ext.15. P.W.9 is the SDO Electrical, Berhampur who proved the statement of payment of electrical charges by accused Ashok Kumar Padhi towards consumer no.5-A-56/143 and Bhagyalaxmi Padhi towards consumer no.5-A-56/376 marked as Ext.16 and Ext.17 and its corresponding forwarding letter to vigilance Berhampur marked as Ext.18. P.W.10 is the Chief Manager Andhra Bank Courtpeta Branch, Berhampur who proved the account statement of Sri Padhi for the period from 01.01.01 to 24.07.08 marked as Ext.19. P.W.11 is the Manager LIC of India, City Branch-I who supplied information relating to LIC policy of Abhisekh Padhi, Rukmini Padhi, A.K.Padhi, Bhagyalaxmi Padhi and Abhinash Padhi and its corresponding policy bonds marked as Ext.21 to Ext.23. P.W.12 is the BM Bijay Bank, Berhampur who proved the accounts details of Bhagyalaxmi Padhi W/o-Ashok Kumar Padhi marked as Ext.35. P.W.13 is the BM Andhra Bank, Gunupur who proved the statement of account of Sri A.K.Padhi marked as Ext.36. P.W.14 is the Addl. Tahasildar, Gunupur Tahasil who proved the certified copy of two sale deeds marked as Ext.38 and Ext.39 and the copy of ROR marked as Ext.41 together with corresponding forwarding letter. P.W.15 is the BM SBI Gunupur who proved the statement of account of Sri A.K.Padhi marked as Ext.42 and its corresponding passbook and cheque book marked as Ext.42/2 and

Ext.42/3. P.W.16 is the BM Sahara India Corporation, Berhampur who proved the Sahara Passbook in the name of Bhagyalaxmi Padhi marked as Ext.43 and Ext.44 and Passbook of Abhinash Padhi marked as Ext.45 and Ext.46 and 14 nos. of renewal receipts marked as Ext.47 series. P.W.17 is the BM Bajaj Allianz, Berhampur who proved the policy details of policy bonds of Bhagyalaxmi Padhi, Ashok Kumar Padhi marked as Ext.49 to Ext.51. P.W.18 is the MVI Ganjam who proved the report regarding probable expenditure of Maruti Car, Hero Honda Motor Cycle, TVS Motor Cycle and Bajaj Scooter of the accused Ashok Kumar Padhi marked as Ext.52 to Ext.55 together with its corresponding forwarding letter marked as Ext.56. P.W.19 is the Asst. Agriculture Engineer who proved the pay particular of Ashok Kumar Padhi for the period from 17.11.82 to 07/85 marked as Ext.57. P.W.20 is the Sub-Registrar, Berhampur who proved certified copy of 06 sale deeds marked as Ext.59 to Ext.64 together with the information regarding payment of stamp duty, registration fees towards registration of the above sale deeds marked as Ext.58. P.W.21 is the Asst. Agricultural Engineer, Kandhamal who proved the pay particulars of Sri Padhi for the period from 07/85 to 07/92 marked as Ext.65/2 together with its corresponding forwarding letter marked as Ext.65. P.W.22 is the Soil Conservation Officer, Cuttack who proved the pay particulars of Sri Padhi from 2003-04 to 2004-05 marked as Ext.66/1 together with its corresponding forwarding letter marked as Ext.66. P.W.23 is the JE VTW Vigilance Director, Cuttack who proved the measurement register regarding measurement of the house of the accused marked as Ext.67 together with his report regarding valuation of the building and structure marked as Ext.68 and general abstract of cost of construction of building of accused marked as Ext.69/2. P.W.24 is the IO who proved the seizure list marked as Ext.70 i.e. regarding his seizure of enquiry report. This witness P.W.24 further proved the search-cum-inventory list marked as Ext.71 and Ext.72 and pay particulars of the accused for the period from 23.01.04 to 19.07.05 marked as Ext.74 and pay particulars from 05.12.98 to 31.01.02 marked as Ext.75, zimanama regarding zima of the service book of the accused marked as Ext.77 and attested copy of service book of accused is marked as Ext.78 and Ext.79. He (P.W.24) also proved the educational expenses of Abhisekh Padhi S/o-A.K.Padhi marked as Ext.80 and Ext.81 and Abhinash Kumar Padhi marked as Ext.82, LIC policy particulars of Bhagyalaxmi Padhi marked as Ext.83 and Ext.84. He again proved the report of Asst. Director Statistics Vigilance Directorate, Cuttack regarding per-capita household consumer expenditure of accused and his family for the period from 17.11.82 to 22.07.08 marked as Ext.87 together with its forwarding letter marked as Ext.86. P.W.25 is the Asst. Director Statistics, Vigilance Directorate, Cuttack who proved the forwarding letter marked as Ext.88 regarding his sending of the reports of per-capita expenditure and annual household expenditure of the accused and his family to the IO. P.W.26 is the Inspector of Vigilance, Berhampur who is the subsequent IO of this case and this witness proved the sanction order marked as Ext.90 together with its corresponding forwarding letter. That apart this witness P.W.26 proved the remaining documents collected during investigation and house search marked as Ext.91 to Ext.107. The details of the documents are mentioned at the foot of the judgment.

6. On the other hand five witnesses were examined on behalf of the accused of whom, D.W.1, D.W.4 and D.W.5 are claimed to be the tenants under Bijay Laxmi Padhi W/o- accused Ashok Kumar Padhi. Whereas D.W.2 is the brother-in-law of the accused and D.W.3 is the wife of accused Ashok Kumar Padhi. But defense did not exhibit any document on its behalf.

7. Since here in this case the present accused is charged for commission of offence punishable U/s.13(2) r/w. Sec.13(1)(e) of P.C Act, 1988 on the allegation of acquisition of DA to the extent of Rs.38,95,991.57/- during the check period from 17.11.1982 to 23.07.2008, therefore initial burden is upon the prosecution to establish such allegation. However, mere acquisition of property by a Govt. servant does not any way constitute an offence if the Govt. servant satisfactorily accounted for such possession of the property. Therefore, the failure in the part of the defence to account satisfactorily about the acquisition of assets, makes him liable for the offence charged against him. But, before delving into the evidence of the prosecution to decide the case in hand, this court deem it proper to mention the submission of respective counsels raised at the time of argument of this case.

8. Advancing the argument, the ld. Spl.P.P(V) submitted that prosecution has all total examined 26 witnesses and exhibited 107 series of documents to prove its case. That apart, submitted that the witnesses examined and documents exhibited by the prosecution are sufficient enough to prove that the accused has accumulated DA to the tune of 185.27% against his known source of income at the end of check period i.e.on23.07.2008. He further submitted that the statement of income, expenditure and assets of the accused mentioned in 'A', 'B', 'C' & 'D' statement, available in the charge sheet was duly proved by the witnesses and documents of the prosecution. In this context, he contended that the immovable and movable assets of accused was shown under statement 'B' of the charge sheet and such statement is well proved by prosecution by adducing both oral and documentary evidence. He further submitted that the cost of immovable assets of accused, very particularly the three buildings at Ankuli vide Plot no.1530/4233, 1401/4867 and 1549 are proved by P.W.23 (JE VTW, Cuttack) and documents marked as Ext.67 to Ext.69. The purchase of the plots in the name of accused

Ashok Padhi and in his wife was duly proved by Sub-Registrar, Berhampur (P.W.20) and in-charge Sub-Registrar, Gunupur (P.W.14) and document marked as Ext.38 and Ext.39 and Ext.59 to Ext.64. That apart the deposits of accused and his family members at various banks is proved by the witnesses such as P.W.11, P.W.10, P.W.12, P.W.16 and the deposits under various policies were proved by P.W.17and P.W.26 and the document marked as Ext.48 to Ext.51, Ext.101, Ext.102, Ext.20 to Ext.33.It is also submitted that the repayment of car loan is proved by P.W.10. He further submitted that the probable household expenditure of the family of the accused during the check period is proved by the P.W.25 (Director Statistics of Vigilance Directorate, Cuttack) and the document marked as Ext.88/2. Further the income of accused from Govt. service is duly proved by P.W.1, P.W.3, P.W.4, P.W.19, P.W.21, P.W.22, P.W.24 and the documents marked as Ext.3, Ext.6, Ext.57, Ext.65/2, Ext.66/2 and Ext.76. He further submitted that the above oral and documentary evidence adduced from the side of prosecution is very clear that accused and his family has though income of Rs.21,02,837.85 and Expenditure of Rs.16,20,435.42, however accused has accumulated assets of Rs.43,78,394/- at the end of check period. Therefore, there is DA of Rs.38,95,991.57/- i.e. after deducting probable saving of Rs.4,82,402.43. He further submitted that though accused adduced evidence to establish that his wife has separate income from tuition and house rent but except oral evidence, there is no documentary evidence to satisfy about existence of income of the wife of the accused during check period. Submitting above ld. Spl.P.P (V) prayed to convict the accused under the offences charged against him.

9. On the other hand, ld. counsel for the accused submitted that burden to bring home the charge of criminal misconduct is on the prosecution to establish beyond reasonable doubt. Besides, he further submitted that to prove a case u/s.13(1)(e) of PC Act, 1988, prosecution has to prove that accused is a public servant who has accumulated property in possession disproportionate to his known source of income. However, here in this case prosecution unable to prove original documents of the immovable properties which are the primary ingredients. That apart, not examined any of the vendors of the sale deeds to prove accumulation of the landed property by the accused. It is further submitted that father of accused Ashok Padhi purchased two plots in the name of accused through the sale deeds vide document no.1555/90 and 1556/90(the copy of the said documents are marked as Mark-X and X/1.) However though the recital of the above sale deeds reveals that the consideration money towards above purchase was paid by Narasingha Padhi, the father of accused, but prosecution did not consider the same while calculating assets of the accused. It is also submitted that construction over the above purchased land corresponding to sale deed no.1555/90 and 1556/90 were also made by Lt. Narasingha Padhi. Besides, the house over Item No. 2 of statement 'B' was not existed as on the date of search. But the IO calculated the cost of the above house together with the electricity charges. It is further submitted that one plot at Gunupur mentioned under Item No.4 was purchased in the name of accused by one friend of the accused. It is also submitted that the valuation of the building made by P.W.23 is not proper and the same is not got corroboration from any other evidence. It is also submitted that the gold ornaments recovered from the locker of the accused at Andhra Bank are old gold ornaments gifted by father-in-law of the accused at the time of his marriage. He further submitted that the salary particulars of the accused for the month of July, 1992 to Nov, 1998 are absent. Therefore, the total income of the accused is not assessed properly. He also submitted that the GPF withdrawal of accused together with maturity value of LIC policy under Ext.62/2 and Ext.83 are not calculated as income. He again submitted that the household expenditure of the accused is proved by P.W.25 is imaginary and probable expenditure statement prepared without any data. Again, he also submitted that though prosecution examined one staff of LIC to prove the policy stands in the name of accused and his family members however the evidence of P.W.11 (Manager LIC) together with the document exhibited by him no way proved actual payment of premium towards the above policies. Besides all the above, ld. defense counsel further argued that there is irregularity in the sanction order. In this regard he submitted that though the initial entry of the accused in Govt. service is under Director of Agriculture but subsequently he was observed by Department of Horticulture and Soil Conservation. But, the sanction order against accused was received from Director Agriculture and Food production which is a separate wing existed after division of Director of Agriculture. He further submitted that the sanction order marked as Ext.90 does not disclose about the fact constituting the offence against the present accused. Therefore, such irregularity is enough to vitiate the proceeding against the accused. Submitting all the above ld. defense counsel prayed to acquit the accused with a claim that prosecution fails to bring home the charge leveled against him beyond all reasonable doubts.

10. To counter the argument advanced by ld. defense counsel regarding competent authority to grant sanction to proceed against accused, ld Spl.P.P(V) submitted that Director Agriculture & Food Production is the competent authority. In this aspect he further submitted that during investigation of this case SP Vigilance sent a letter to Director Soil Conservation Govt. of Orissa, Bhubaneswar vide letter no.2794/VC-BPR and thereby sought for sanction against the accused. However Administrative Officer Soil Conservation through his letter vide no.16-P(VII)09/2011 forwarded all the enclosure documents supplied by SP Vigilance, Berhampur to Director Agriculture and Food Production Orissa, Bhubaneswar for necessary sanction. Besides in the said letter, the Administrative Officer in the O/o-Director Soil Conservation Orissa clearly mentioned that Director Agriculture & Food Production is the competent Authority. Accordingly, GA Vigilance Department also issued request letter to Director Agriculture and Food Production Orissa, Bhubaneswar for necessary sanction. In this context he further submitted that though these documents are official communication between SP Vigilance, Berhampur and Director of Soil Conservation and Director of Agriculture and Food Production Orissa, Bhubaneswar but relevant to decide about the competent authority of the accused. Hence, by filling a petition at the time of argument, Ld. Spl.P.P prayed to exhibit the above three documents on behalf of the prosecution as evidence. On the other hand, defence filed written objection to such petition and thereby claimed that the petition filed by the prosecution is not maintainable at such a stage while evidence of either side was closed. Besides, Ld. defense counsel also claimed that correspondence made in the course of investigation of a case can never be treated as an official correspondence, therefore required to be proved. However, prosecution without proving these documents through the IO with malafide intention subsequently filed petition to exhibit the three letters. Hence the petition is not maintainable.

Again, while the case was posted for judgment, ld. Spl.P.P filed an advance petition and one another petition with 29 receipts of Magma Finance and one Xerox document regarding deposit of Rs.90,000/- at SBI, Berhampur and thereby prayed to exhibited the same on behalf of prosecution. However, learned defense counsel challenged such petitioner with claim that the same is not admissible in evidence since after closure of evidence.

Since both the petitions are filed at the time of hearing of the argument and this court in its order dtd.23.05.25 and 07.07.26 is of opinion to decide both the petitions at the time of judgment. Hence, before delving into the evidence of the party to decide the issued in hand it is necessary on the part of the court to decide the fate of both the petitions. Accordingly, this court carefully examined both the petition and the proposed documents, which prosecution intended to exhibit as evidence from its side, together with objection thereto. Through, the petition dtd.19.05.26, the prosecution prayed to exhibit four letters such as copy of letter no.2794/VC-BPR dtd.30.06.11 addressed to Director Soil Conservation Odisha, Bhubaneswar, letter of Special Secretary to Govt. Sri S.K.Upadhayay to Director Soil Conservation Odisha, Bhubaneswar vide Memo No.5255 dtd.27.07.11, copy of letter of Administrative Officer, Director Agriculture & Food Production Orissa Bhubaneswar vide Memo No.7282 dtd.29.08.11 and copy of letter of Special Secretary to Govt. Sri S.K.Upadhayay to Director

Agriculture & Food Production Orissa Bhubaneswar vide memo No.6813 dtd.13.09.11. Through the 2nd petition dtd.02.07.26, the prosecution prayed to exhibit 29 nos. of receipt issued by Magma Finance as evidence from the side of prosecution. During hearing of both the petitions, ld. Spl.P.P submitted that the letters filed through first petition are relating to the correspondence of SP Vigilance, Berhampur with the Competent Authority of the accused. Therefore, the said documents are relevant in the context to decide the issue regarding competent authority of accused. Further, he also submitted that the 29 nos. of money receipts filed along with 2nd petition dtd.02.07.26 are originally seized from the house of the accused during house search on dtd.23.07.08 and also reflected in the inventory list marked as Ext.12 but unfortunately the said documents are not exhibited in this case. Hence, prayed to adduce the same as evidence from the side of prosecution.

Ld. defense counsel vehemently raised objection to such submission and claimed that both the sets of documents filed through petition dtd.19.05.26 and 02.07.26 are the documents filed during argument of this case. Besides that, here in this case neither the IO nor any witnesses to the prosecution utter anything about such documents during their evidence. Hence, at such a stage the petition filed by ld. Spl.P.P to exhibit the documents is not maintainable.

Admittedly both the petitions of the prosecution are filed after closure of evidence and during hearing of argument of this case. Therefore, the question before the court as to decide whether the documents filed by the prosecution along with its petition are considered as evidence from the side of prosecution at such a stage while evidence from the either side was closed. In this regard this court carefully examined the evidence of IO so also the other witnesses examined from the side of prosecution and found that none of the witnesses have uttered anything regarding the letters corresponding to petition dtd.19.05.26 or about the money receipts corresponding to petition dtd.02.07.26. Further through the petitions of the prosecution, there is no prayer of prosecution to examine the makers of the above said documents. Hence there is no occasion for defense to examine the genuineness of the documents to which prosecution intended to exhibit as evidence from its side. Therefore, in such a circumstance while the case is posted for argument, the petitions filed by prosecution bears no merit. Accordingly both the petitions are rejected.

11. Since this accused was charged for commission of offence punishable u/s.13(2) r/w Sec.13(1)(e) of PC Act, 1988, therefore, the first and foremost question is to decide as to whether this accused was a public servant under definition of PC Act at the time of institution of this case. In this regard, it is the claim of the prosecution that accused joined in Govt. service as Foreman-cum-

Instructor (JE Rank) in implement factory Satyanagar, Bhubaneswar (i.e. under Deptt. of Agriculture Govt. of Orissa) and posted as JE in the O/o-Asst. Soil Conservation Officer, Gunupur with Addl. Charge of Project Implementing Agency PD DRDA, Rayagada for Watershed Project, during the time of institution of this case. The informant being P.W.8 (Inspector Vigilance) in his evidence also claimed that accused was posted as JE in the O/o-Soil Conservation, Gunupur during the time of institution of this case. Further the IO (P.W.24) in his evidence claimed to have seize the service book of the accused from the O/o-Soil Conservation Officer, Gunupur by preparing seizure list marked as Ext.5 thereby he (P.W.24) proved the attested copy of service book of accused marked as Ext.78/P.W.4. Such part of claim of seizure of service book of accused is also supported by P.W.5 (Jr. Soil Conservation Asst., Gunupur). During evidence defense did not dispute the marking of the copy of the service book of accused. That apart, defense did not dispute the claim of informant (P.W.8) regarding employment of accused as JE in the O/o-Soil Conservation, Gunupur as on the date of institution of the case i.e. 30.09.08. Furthermore, during argument of this case, defense did not dispute the status of accused as Jr. Soil Conservation Asst., Gunupur at the time of institution of this case. This court also perused the undisputed attested copy of service book of the accused marked as Ext.78 and found that on dtd.17.11.82 accused

Sri Padhi was joined as Foreman-cum-Instructor. Hence, the above evidence of P.W.8 together with the entries in the service book (Ext.78), acquaintance roll (Ext.79), seized under seizure list marked as Ext.3, are enough to prove that the accused Sri Ashok Kumar Padhi was working as Jr. Engineer in the O/o-Soil Conservation Asst., Gunupur during the time of institution of this case on 30.09.08, as such he was public servant.

12. Since, the prosecution came with a case that accused Ashok Kumar Padhi being a Govt. servant accumulated DA of worth of Rs.38,95,991.57/- i.e. 185.25%, therefore it is to be seen how far prosecution discharges its burden. To discharge its initial burden, here in this case, prosecution all total examined 26 witnesses, including the informant. The informant being P.W.8, in his evidence claimed that after getting reliable information from sources regarding possession of disproportionate assets by accused Ashok Kumar Padhi, Jr. Engineer in the O/o-Asst. Soil Conservation Office, Gunupur, he conducted search of the house of accused at Surjyanagar, Ankuli on dtd.23.07.08, as per the search warrant issued by CJM, Ganjam marked as Ext.14. Besides, P.W.8 also claimed that in the above process Anil Kumar Pradhan, searched the rented house of the accused at Gunupur. This witness P.W.8 further claimed that during house search, he recovered key of a bank locker of Andhra Bank Courtpeta Branch, Berhampur. Therefore, on 24.07.08, he searched the locker of the accused at

Andhra Bank Courtpeta Branch in presence of accused Sri Padhi and recovered gold ornaments and thereby prepared an inventory list marked as Ext.13. He (P.W.8) further claimed that he gave zima of the household articles recovered from the house of the accused and mentioned in inventory list marked as Ext.12 to the wife of accused Sri Padhy by preparing zimanama marked as Ext.12/3 and zima of the locker key and ornaments to accused Padhy by taking signature of accused in the inventory list marked as Ext.13/3. Besides, he (P.W.8) also claimed that basing on his preliminary enquiry, he found that accused was accumulating disproportionate assets of Rs.41,01,272/- to which accused could not satisfactorily explained. Hence, he filed FIR marked as Ext.15.

On the other hand, the IO of this case, Sri Patitapaban Choudhury, being P.W.24 supported the version of informant regarding his submission of FIR before SP Vigilance. Besides, he also claimed that as per direction of SP Vigilance, Berhampur, the FIR of this case was registered by OIC Vigilance, Berhampur and accordingly he was entrusted to investigate the case. That apart, he (P.W.24) further claimed that during course of investigation, he examined the informant, some other witnesses, recorded their statements, collected the bank details, insurance details, service and salary particulars of the accused from various offices, collected information regarding purchase of land and thereby exhibited the corresponding documents. However, from his evidence it appears that before completion of investigation, he handed over charge of investigation of this case to Sri Aswin Kumar Nayak (PW.26) as per order of SP Vigilance, Berhampur. The subsequent IO, Sri Nayak (PW.26) in his evidence claimed to have received the sanction order to proceed against the accused. That apart he proved the sanction order marked as Ext.90 and the document recovered from the house of the accused during house search marked as Ext.89 to Ext.107. Sri Nayak (P.W.26) further claimed that after completion of investigation, he found that this accused and his family members had received income of Rs.21,02,837/- during the check period from 17.11.82 to 23.07.08 and his family expenditure was of Rs.16,20,435.42/- whereas accused has possessed both movable and immovable assets of Rs.43,78,294/- and after deducting the probable savings, he claimed to have found DA of Rs.38,95,991.57 (185.27%). Hence, filed charge sheet by showing the details of the movable and immovable assets together with income and expenditure statement under statement 'A', 'B', 'C' & 'D' attached to charge sheet. Perused, the said statement A, B, C & D shown in charge. The statement 'A' is relating to the assets acquired by accused before check period and statement 'B' is relating to assets acquired by accused at the end of the check period. Statement 'C' is the income of accused during check period and Statement 'D' is the expenditure of accused and his family during the check period. Since prosecution laid evidence in view of the statement ‘A’, ‘B’, ‘C’ and ‘D’, therefore it is to be seen what evidence prosecution adduced to prove the contents mentioned under statement ‘A’, ‘B’, ‘C’ and ‘D’ of the charge sheet. As there is no assets shown under statement ‘A’ i.e. assets acquired before check period and no evidence adduced from the side of prosecution on this aspect, therefore the next question before the court to decide about the claim of prosecution regarding immovable and movable assets of the accused and his family members mentioned under statement ‘B’. In statement ‘B’, the IO showed the immovable and movable assets as follows:

Sl. No.	Assets acquired at the end of the check period	Amount
01	Double storied building over Plot No.1530/4233 Ankuli Berhampur including the conversion fees	Rs.13,77,405/-
02	Single storied building with compound wall over Plot No.1401/4867, Khata No.1226/151 in Ankuli Mouza, Berhampur including cost of land	Rs.9,61,417/-
03	Double storied building with compound wall over Plot No.1549 Khata No.863/1173 in Ankuli Mouza, Berhampur including cost	Rs.4,18,659/-

	of land and conversion fees	
04	Two nos. of homestead lands at Gunupur under Rayagada District, Plot No.1314/1728	Rs.1,12,100/-
05	Land vide Plot No.1548, Khata No.675 in Ankuli Mouza, Berhampur	Rs.32,850/-
06	Land vide Plot No.1796, Khata No.863/608 in Ankuli Mouza, Berhampur	Rs.52,841/-
07	Maruit Alto Car bearing Regd. No.OR07M-4696	Rs.3,43,030/-
08	TVS Apache motorcycle bearing Regd. No.OR07M-9666	Rs.54,230/-
09	Bajaj Caliber motorcycle bearing Regd. No.OR16A-2464	Rs.45,200/-
10	Hero Honda Spl. motorcycle bearing Regd. No.OR07J-7363	Rs.12,000/-
11	House Hold Articles	Rs.3,43,254/-
12	Gold ornaments	Rs.1,96,000/-
13	Cash in possession of accused during house search	Rs.90,000/-
14	Deposit in Banks	Rs.3,39,408/-
All total		Rs.43,78,394/-

13. From the statement ‘B’, it appears that the assets of the accused has shown in three different categories such as immovable, movable and bank deposits.

13 (i). Regarding immovable assets of the accused Sri Padhi, P.W.26 (IO) in statement ‘B’ claimed that accused has acquired three buildings (1) Double storied building over Plot No.1530/4233 Ankuli Berhampur including conversion fees all total amounting Rs.13,77,405/- (2) Single storied building with compound wall over Plot No.1401/4867, Khata No.1226/151 in Ankuli Mouza, Berhampur including cost of landandconversion fees all total amounting Rs.13,77,405/-(3) Double storied building with compound wall over Plot No.1549 Khata No.863/1173 in Ankuli Mouza, Berhampur including cost of land and conversion fees amounting Rs.4,18,659/-. To prove acquisition of the property mentioned under statement ‘B’- (1) to (3), prosecution relied upon the evidence of P.W.20 (Sub-Registrar, Berhampur), P.W.23 (JE, VTW, Cuttack) and evidence of the IO (P.W.24).

The IO being P.W.24, in his evidence claimed that he received the certify copy of 06 documents marked as Ext.59 to Ext.64 from the O/o-Sub-Registrar, Berhampur on 03.08.09 which are marked as Ext.59 to Ext.62. On the other hand, the Sub-Registrar, Berhampur being P.W.20 supported such version of IO (PW.24) regarding his sending of certify copy of six documents vide no.3203/04, 7002/06, 4428/05, 7621/06, 4427/05 &8988/05 (Ext.59 to Ext.63) to vigilance Berhampur through his forwarding letter marked as Ext.58. On careful examination of the above documents it appears that Ext.63 (document no.4427/05) is the certify copy of conversion deed corresponding to conversion of Plot No.1530/4233 to gharabari plot by paying conversion fees of Rs.14,700/- (Sl. No.1 of Statement ‘B’), Ext.60 is the certify copy of the sale deed vide deed no.7002/06 showing purchase of Plot No.1401/4867 corresponding Khata No.1226/151 of Mouza Ankuli (Sl. No.2 of Statement ‘B’) in the name of Ashok Kumar Padhi for consideration money of Rs.2,58,730/-, Ext.59 is the certified copy of sale deed No.3203/2004 relating to purchase of Plot No.1549 corresponding to Khata No.863/1173 under Mouza Ankuli (Sl. No.3 of Statement ‘B’) in the name of Bhagya Laxmi Padhi W/o-Ashok Kumar Padhi for consideration of Rs.24,490/- and Ext.63 is the certified copy of conversion deed no.4427/05 relating to conversion of Plot No.1530/4233 to gharabari plot by paying conversion fees of Rs.14,700/- (Sl. No.1 of Statement ‘B’). However, no sale deed relating to Plot No.1530/4233 has been exhibited from the side of the prosecution, whereas during examination of P.W.26, he marked the xerox copy of the sale deed no.1555/1990 and 1556/1990 as Mark-X and Mark-X/1 which are available in the case file.

13(ii) Besides, to prove the valuation of the building over the aforesaid three plots mentioned under sl. no.1, 2 & 3 of Statement ‘B’, prosecution examined the Jr.

Engineer Vigilance Technical Wing Sri Dillip Kumar Rout as P.W.23. This witness P.W.23 in his evidence claimed that he along with C.R.Swian, Asst. EE Vigilance, Bhubaneswar technically inspected the above three buildings existed over plot no.1530/4233 of Mouza Ankuli, Plot No.1401/4867 of Mouza Ankuli and Plot No.1549 of Mouza Ankuli in presence of IO P.P.Choudhury and accused Ashok Kumar Padhi from 11.11.09 to 13.11.09. That apart this witness, P.W.23 also exhibited his measurement register as Ext.67, calculation sheet of the three buildings as Ext.68 and the general abstract of cost of three buildings as Ext.69/2, cost evaluation report marked as Ext.69/5 and corresponding forwarding letter to SP Vigilance as Ext.69. Further, P.W.23 also proved the signature of the accused Sri Padhy on measurement sheet marked as Ext.67/2 which is marked without objection. This court carefully examined the above documents marked as Ext.67 to Ext.69 series and found that under Ext.69/5, P.W.23 mentioned the cost of the above three buildings corresponding to sl. no.1,2& 3 of the Statement 'B' and thereby valued the double storied building with compound wall over Plot No.1530/4233 as Rs.13,62,705/-, single storied building with compound wall on Plot No.1401/4867 as Rs.702487/- and building with compound wall on Plot No.1549 as Rs.3,78,569/-. All total cost of three buildings as Rs.24,43,761/-. He also shown in the report that in case of self-supervision an amount of Rs.2,22,292/- i.e. 10% of the cost is deducted from the total cost of the three buildings.

But, before concluding on this aspect, it is pertinent to mention the submission of ld. defense counsel about valuation of the above said building. In this regard ld. defense counsel submitted that the father of accused Sri Padhy purchased Plot No.1530/4233 in the name of Ashok Kumar Padhy and the same is well evident from the copy of the sale deed marked as Mark-X and X/1. That apart, the father of accused also constructed the building over Plot No.1530/4233, however the same was not considered while calculating the cost of the building mentioned under sl. no.1 of Statement-B. He further submitted that the single storied building under Plot No.1401/4867 (Item No.2 of Statement 'B') was not completed as on the date of search i.e. 23.07.08 and the same was admitted by the IO (P.W.24) during cross examination. But prosecution calculated the complete building with cost of the compound wall. Hence such calculation is wrong. Besides, he also submitted that the calculation of P.W.23 is baseless, imaginary and not scientific. Therefore, the same is not acceptable to value the buildings of the accused.

Taking into consideration the submission of the ld. defense counsel, this court carefully examined the evidence of prosecution regarding existence of building over the three plots vide Plot No.1530/4233, 1401/4167 and 1549 all of Mouza Ankuli and cost thereof. To prove the existence of the building over the above three plots prosecution witnesses P.W.23 claimed that he measured the above buildings in presence of accused Padhy and others. To substantiate such he also proved the signature of accused Padhy on the measurement sheet which was marked as Ext.57/2 without objection. Again defense also not challenged such claim of P.W.23 regarding measurement of the three building. Hence, the above evidence is sufficient to prove the existence of three buildings on the above three plots. Further to prove the ownership of the accused and his family members on the above three plots prosecution exhibited the certified copy of the sale deeds, conversion deeds relating to three plots marked as Ext.63 (conversion deed), Ext.60 (sale deed) and Ext.59 (sale deed) corresponding to Plot No.1530/4233, 1401/4167 and 1549. During evidence P.W.26 (subsequent IO) proved the original documents of the above certify copies of the document marked as Ext.63, Ext.60 and Ext.59 and thereby claimed all the above documents were recovered from the house of the accused during search and he received the same from P.W.24 (initial IO). Accordingly, the original of Ext.60 is marked as Ext.93, original of Ext.63 is marked as Ext.98, original of Ext.59 is marked as Ext.95 and original of Ext.61 is marked as Ext.97. Taking into consideration the above certify copy and original documents relating to Plot No.1530/4233, 1401/4867 and Plot No.1549 of Mouza Ankuli, this court is of opinion that the above properties were acquired in the name of accused and his wife during the check period on payment of consideration money by the respective purchases. However, from the Xerox copy of the sale deed marked as Mark-X and X/1, it appears that the consideration money towards purchase of Plot No.1530/4233 was paid by father of accused Ashok Kumar Padhy, Lt. Narasingha Padhy. On the other hand, there is no other evidence adduced from the side of prosecution to prove that the consideration money towards purchase of Plot No.1530/4233 was paid by Ashok Padhy. Therefore, this court deem it proper to exclude the cost of the purchase of Plot No.1530/4233 to count as value of the assets of accused Sri Padhy i.e. Rs.26,400/-. However, from the conversion deed marked as Ext.63 (original marked as Ext.98) it appears that Sri Ashok Kumar Padhi paid conversion fees of Rs.14,700/- to change the Kissam of Plot No.1530/4233 to Gharabari. Hence, the same conversion fees is to be considered while calculating the value of the building over Plot No.1530/4233.

Further from Ext.60 together with the original sale deed marked as Ext.93 reveals that Plot No.1401/4867 under Mouza Ankuli was purchased in the name of accused Ashok Kumar Padhi on payment of consideration of Rs.2,58,930/-. Likewise Ext.59 together with the original sale deed marked as Ext.95 reveals the Plot No.1549 of Mouza-Ankuli was purchased in the name of Bhagyalaxmi Padhi W/o-Ashok Kumar Padhi for consideration of Rs.24,490/-. Hence, the above consideration money has to be calculated along with the cost of building existed over the three plots under Mouza Ankuli as it also prove the acquisition of the above said plots by accused and his wife during the check period.

12.(iii) It is the claim of the defense that the house over Plot No.1530/4233 was constructed by Narasingha Padhi, the father of accused, whereas to that regard there is no evidence from the side of defense. Hence such claim is not acceptable. Further it is also claimed by the defense that the house over Plot No.1401/4867 of Mouza Ankuli was not existed as on the date of search i.e. 23.07.08 and to that regard relied the cross examination part of P.W.24 wherein he admitted that his investigation is silent regarding existence of house in Plot No.1401 as on the date of search. Again the FIR marked as Ext.15, proved by the informant (P.W.8), reveals that the building existed over Plot No.1401/4867 was under construction as on the date of lodging of FIR. Therefore, this court is of opinion that there was no complete building existed over Plot No.1401 of Mouza Ankuli as on the date of initiation of this case i.e. 30.09.08. Therefore, this court deem it proper to exclude the cost of the building existed over Plot No.1401/4867 as assets of accused acquired during the check period. However, from the sale deed marked as Ext.93 (certified copy marked as Ext.60) it appears that Plot No.1401/48677 was purchased for consideration of Rs.2,58,930/- and a sum of Rs.14,067/- was paid towards conversion of the said plot during the check period. Therefore, both the consideration money and conversion fees all total **Rs.2,72,997/-**is taken into consideration as assets of the accused, in absence of evidence regarding valuation of the half constructed house over Plot No.1401/4867.

Further the document marked as Ext.59 together with original sale deed marked as 95 shows that Plot No.1549 was purchased in the name of Bhagyalaxmi Padhi for consideration of Rs.24,490/- and conversion deed marked as Ext.97 reveals she has paid Rs.15,600/- towards conversion of the said land to Gharabari. Therefore, the above cost of Rs.40,090/- is added to the cost of building existed over Plot No.1599 of Mouza-Ankuli. Further, though defense claimed that the evidence of P.W.23 (JE VTW) regarding cost of building is not scientific or imaginary, however to establish such defense adduce no positive evidence. Hence, this court has no hesitation to accept the valuation of the two buildings on Plot No.1530/4233 & Plot No.1549 made by P.W.23 as proper. Accordingly, held that the cost of double storied building on Plot No.1530/4233 together with cost of compound wall and conversion fees is of **Rs.12,14,934/-** **(**Excluding supervision charges and purchase cost as per Mark-X & X/1). Further this court taken into consideration the land value together with cost of building and compound wall over Plot No.1549 of Mouza-Ankuli as of (including cost of land and conversion charges) **Rs.4,18,659/-** and taken the land and conversion fees of Plot No.1401/4867 amounting Rs.2,72,997/- as assets of accused and his family during the check period**.** On calculation of value of item no.1, 2 and 3 of Statement 'B', this court found the value of above assets acquired during check period is of **Rs.19,06,590/-.**

13.(iv) To prove the acquisition of the Plot at Gunupur mentioned under item no.4 of Statement 'B' the prosecution has examined P.W.14, the in-charge Sub-Registrar, Gunupur and through him proved certified copy of RSD vide RSD No.714/06 and 880/06 marked as Ext.38 and Ext.39. That apart, prosecution also proved the original sale deed of the above two sale deeds, recovered from the house of accused during house search, through this witness marked as Ext.38/1 and Ext.39/1 respectively which are marked without objection. This court examined both the above sale deeds marked as Ext.38/1 and Ext.39/1 respectively and found that accused Ashok Kumar Padhi purchased two separate plots vide Plot No.1314/1728 of Khata No.321/176 of Mouza-Gunupur and Plot No.1314/1/1679 of Khata No.321/308 of Mouza Gunupur for consideration of Rs.56,000/- each during the year 2005-06 which is within the check period. Further, the vendor of the above sale deed is examined from the side of prosecution as P.W.2. However, during argument defense claimed that the above two plots were purchased by one of the friend of accused in the name of accused. But to that regard there is no positive evidence. Hence, taking into consideration the oral evidence of P.W.2 and P.W.14 together with the document marked as Ext.38/1 and Ext.39/1, this court is of the opinion that accused Ashok Kumar Padhy had purchased two plots at Gunupur. Therefore, the consideration money together with the registration fees and stamp duty are taken into consideration as the value of above assets of accused. Accordingly calculated the above asset as of **Rs.1,12,100/-.**

13. (v) To prove the acquisition of the Plot No.1548, Khata No.675 at Mouza-Ankuli Berhampur mentioned under item no.5 of Statement 'B', prosecution relied on the evidence of P.W.20 together with the evidence of subsequent IO (P.W.26). P.W.20 in his evidence proved the certified copy of the sale deed relating to purchase of the above said land (Plot No.1548) in the name of Bhagyalaxmi Padhi W/o-Ashok Kumar Padhi marked as Ext.64. Again the IO being P.W.26 in his evidence exhibited the original sale deed of Ext.64 as Ext.96, with claim that the same was recovered from the house of accused Ashok Kumar Padhy during house search on dtd.23.07.08. Though marking of the certified copy was objected by defense and during argument raised that in absence of original it cannot be taken into consideration to count the value of the property. But in this aspect, this court is of the opinion that original of Ext.64 is available in the case record and proved by P.W.26 marked as

Ext.96. Therefore, this court considered it proper to take both the above documents as relevant to calculate the asset of accused. Accordingly, held that wife of accused Smt. Bhagyalaxmi Padhy was acquired one another plot at Ankuli Mouza vide Plot No.1548 Khata No.675 for payment of consideration money of **Rs.32,850/-.** Hence, the said amount is also calculated towards the above assets of the accused family, acquired during the check period.

13. (vi) To prove the acquisition of the Plot No.1796 of Khata No.863/608 in Mouza-Ankuli, mentioned under item no.6 of Statement 'B', prosecution relied on the evidence of P.W.20 together with the evidence of subsequent IO P.W.26. P.W.20 proved the certified copy of the sale deed relating to purchase of the above said land in the name of Bhagyalaxmi Padhi W/o-Ashok Kumar Padhi marked as Ext.62. Again the IO being P.W.26 in his evidence exhibited the original sale deed of Ext.62 as Ext.94, with claim that the same was recovered from the house of accused Ashok Kumar Padhy during house search on dtd.23.07.08. Though marking of the certified copy was objected by defense and during argument raised that in absence of original it cannot be taken into consideration to count the value of the property. But in this aspect, this court is of the opinion that original is available in the case record and proved by P.W.26 marked as Ext.94. Therefore, this court consider it proper to take both the documents to calculate the asset of

accused. Accordingly, held that wife of accused Smt. BhagyalaxmiPadhy was acquired one anotherPlot No.1796 of Khata No.863/608 in MouzaAnkuli for payment of consideration money of **Rs.52,841/-.** Hence the said amount is also calculate assets of the accused family acquired during the check period.

On calculation of the value of the immovable properties acquired by accused family during the check period it comes to Rs.**21,04,381**/- (Item No.1 to 6 of Statement 'B').

14. (i) In item no.7 of Statement 'B', the IO has shown a Maruti Alto car vide Regd. No.OR07M-4696 of Rs.3,43,030/- as assets of accused. To prove the same prosecution relied upon the evidence of P.W.6 and P.W.7. P.W.7 is the official witness to the search who in his evidence claimed that he was present during house search on 23.07.08 and preparation of search-cum-inventory list marked as Ext.12. That apart, he also claimed that the year of the acquisition of the item together with its value are reflected in Ext.12 as per disclosure of accused Padhy and his wife. Again the search-cum-inventory list marked as Ext.12 sl. no.145 reveals that one Maruti Alto car vide Regd. No.OR07M-4696 was recovered from the garage of the accused and value of the said car as mentioned as Rs.3,43,030/-. Further it appears that the signature of wife of accused Smt. Bhagyalaxmi Padhi available in Ext.12 is marked as Ext.12/4 without objection. Therefore, it can be safely said that Bhagyalaxmi has knowledge about the

contents of Ext.12 (search-cum-inventory list) wherein it is mentioned that the value of the articles in Ext.12 is mentioned as per her disclosure. Again, she has also not raised any objection to the contents of Ext.12 in shape of written endorsement while signed on it. Besides, this prosecution also examined the RTO Ganjam, Chhatrapur to prove the ownership of the above said vehicle vide Regd. No.OR07M-4696. This witness P.W.6 while adducing his evidence proved copy of the RC particular of above vehicle marked as Ext.7, showing that the said vehicle vide Regd. No.OR07M-4696 stands registered in the name of accused Sri Padhy. Further, the original RC book recovered from the house of accused is also marked as Ext.107. Hence, taking into consideration the above oral evidence together with the document marked as Ext.107, this court held that accused has acquired the said car during the year 2006 and accordingly registered the same in his name on 27.03.06. Therefore, the value of car mentioned in Ext.12 amounting **Rs.3,43,030/-** as considered as movable asset of accused acquired during the check period.

14.(ii) Under item no.8, 9 and 10, of Statement 'B', the IO has shown three motor cycles vide Regd. No.OR07-M-9666 (TVS Apache), Regd. No.OR16-A-2464 (Bajaj Caliber) and Regd. No.OR07-J-7363 (Hero Honda Splendor) with cost of Rs.54,230/-, Rs.45,200/- and Rs.12,000/- respectively. To prove the ownership of the said vehicle, prosecution relied upon the evidence of

P.W.6 and P.W.7. P.W.7 is the official witness to the search who in his evidence claimed that he was present during house search and preparation of search-cum-inventory list marked as Ext.12. That apart he also claimed that the year of the acquisition of the item together with its value are reflected in Ext.12 as per disclosure of accused Padhy and his wife. Again the search-cum-inventory list marked as Ext.12 sl. no.146 & 147 reveals recovery of Hero Honda Splendor motor cycle vide Regd. No.OR07-J-7363 with cost of Rs.41,466/- and sl. no.147 reveals recovery of TVS Apache motor cycle bearing regd. no.OR07M-9666 with amounting Rs.35,000/-. However, the search-cum-inventory list at the rental house of accused at Gunupur marked as Ext.71 shows recovery of Bajaj Caliber Motor cycle amounting Rs.40,100/-. To prove the ownership of the above said vehicle, prosecution examined the RTO, Ganjam as P.W.6. This witness P.W.6 during his evidence exhibited the certified copy of RC books of the above three vehicles marked as Ext.8 to Ext.10. Besides, he (P.W.6) also exhibited a report regarding ownership of the above vehicles marked as Ext.6. During argument ld. defense counsel raised that vehicle no.OR07J-7363 was not transferred in the name of accused during the check period. Considering, such submission this court carefully examined the document relating to the above vehicles. In this regard, Ext.6 i.e. report of RTO reveals that vehicle no.OR07J-7363 (Hero Honda Motor Cycle) transferred in the name of one Baya Rout on 28.10.08 but prior to that the said motor cycle is in the name of Ashok Kumar Padhy till 29.08.08 i.e. within the check period. Therefore, the cost of the said vehicle is also counted towards assets of the accused. Hence, from the evidence of P.W.6 and P.W.7 together with the document marked as Ext.6, Ext.9 and Ext.10 it well proved that accused has acquired the Apache motor cycle vide regd. no.OR07M-9666, Hero Honda vide Regd. No.OR07J-7363 and Bajaj Caliber Motor cycle vide regd. No.OR16-A-2464 during the check period. Hence, the cost of the above vehicle amounting **Rs.54,230/-, Rs.12,000/- and 45,200/- i.e. Rs.1,11,430/-** is taken to calculate the movable assets of the accused.

14. (iii) Under Item No.11 of Statement ‘B’, the IO shown the value of house hold articles recovered from the house of accused as amounting Rs.3,43,214/-. To prove the above amount, prosecution relied upon the evidence of the official witnesses P.W.7 and the informant-P.W.8. P.W.8 who is the vigilance inspector so also informant of this case, in his evidence claimed that on 23.07.08 he conducted search at the house of accused in presence of witnesses. Besides, this witness-P.W.8 claimed that he prepared inventory list of the household item recovered from the house of accused marked as Ext.12 and mentioned the cost valuation of the above said articles in the inventory list as per disclosure of the wife of accused Smt. Bhagyalaxmi Padhi. The only official witness

examined from the side of prosecution P.W.7 (Jr. Engineer R&B, Berhampur) supported such version of P.W.8 and thereby proved the search-cum-inventory list with claim that the same was prepared during search and the valuation and year of acquisition was mentioned as per disclosure of wife of accused. Further the signature and endorsement of the wife of accused in the inventory list marked as Ext.12 is proved by P.W.8 as Ext.12/3 and Ext.12/4 without objection. Both these witnesses were thoroughly cross examined, but the defense failed to brought out anything substantial to establish that the wife of accused had never disclosed the value of the items. Accordingly, this court held that the value and year of acquisition of household articles mentioned in Ext.12 is as per disclosure of wife of the accused. That apart, to prove recovery of some other articles from the rented house of accused at Gunupur, prosecution proved the search-cum-inventory list marked as Ext.71, through the IO (P.W.24). The said document reveals recovery of some other articles from the rented house of accused at Gunupur. However, prosecution examined no witness to prove as to how the value of the said articles is reflected in Ext.71. Therefore, this court deem it not proper to count the value of the said articles mentioned under Ext.71 as assets acquired during the check period. Accordingly, only calculated the cost of house hold articles mentioned in Ext.12 and found it comes to

Rs.2,36,554/-. Hence, calculated the same amount as assets of accused acquired during the check period.

14. (iv) Under item no.12 of Statement 'B', the IO claimed the cost of gold ornaments recovered from the possession of the accused and his family members is amounting Rs.1,96,000/-. To prove the above, prosecution relied on the evidence of the informant (P.W.8), P.W.7 (witness to search) and the bank manager Andhra Bank examined as P.W.10. The informant (P.W.8) in his evidence claimed that during house search on dtd.23.07.08, he recovered a key of locker at Andhra Bank, Courtpeta Branch, Berhampur. Accordingly, on the next day i.e. 24.07.08, the said locker was opened in presence of bank manager (PW.10), official witness (P.W.7), accused Ashok Padhi, and other witnesses. Besides, he further claimed that the gold ornaments recovered from the above locker were enlisted under the inventory list marked as Ext.13. P.W.8 further claimed that the weight and carat of the gold ornaments were determined by approved goldsmith of Andhra Bank and year of acquisition and value thereto is reflected in the inventory list as per disclosure of accused Ashok Kumar Padhi. Such part of the claim of P.W.8 well supported by both officials witness P.W.7 and Bank Manager Andhra Bank P.W.10. They both in their evidence also claimed that after opening the locker, one inventory list of the item was prepared under Ext.13. Hence it is well proved that the item recovered from the locker of Andhra Bank on 24.07.08 was enlisted under Ext.13. Therefore, this court carefully examined the said document and found that 10 gold ornaments were detected from the locker of Andhra Bank with different weight. Defense also did not object the existence of the above gold ornaments but taken a plea that the same were gifted by the father-in-law at the time of marriage of the accused. However, the claimed of defense regarding mode of acquisition of the above gold ornaments will dealt later while evaluating the defense evidence. But at this stage it can be safely said that the item mentioned under the inventory list marked as Ext.13 as assets detected during search of the locker of accused at Andhra Bank. Further the signature of the accused Ashok Padhy proved and marked as Ext.13/3 reveals that the contents mentioned in Ext.13 was with knowledge of the accused. Therefore, this court held that all total 293.9 gram of gold ornaments were recovered from the locker of Andhra Bank. Hence, taking into consideration the market value as per date of acquisition mentioned in Ext.13, this court held that the value of the gold ornaments is mentioned properly under item 12 of Statement 'B' as of **Rs.1,96,000/-.** Accordingly, accept the same amount as movable asset of accused during the check period.

14 (v) Under item no.13 of Statement 'B', the IO claimed the hard cash of Rs.90000/- was recovered from the possession of the accused and his family members during search on dtd.23.07.08. To prove the above, prosecution relied on the document marked as Ext.71 proved by P.W.24. On perusal of the said document marked as Ext.71, it appears that there was seizure of cash of Rs.90,000/- from the rented house of accused at Gunupur on dtd.23.07.08. But interestingly here in this case, the prosecution did not examine any witness to the above search of the rented house of the accused at Gunupur on dtd.23.07.08. However, while proving the said search-cum-inventory list marked as Ext.71/P.W.24, the IO (P.W.24) claimed that the said list was prepared by Inspector Anil Pradhan. Again prosecution did not examine said Anil Pradhan who conducted search of the house of accused at Gunupur on 23.07.08. Therefore, in absence of any cogent evidence from the side of prosecution to prove recovery of Rs.90,000/- from the house of accused, it is hard to believe that there was any search at the rented house of accused at Gunupur and thereby Inspector Sri A.K.Pradhan recovered Rs.90,000/-. Further, it is pertinent to mention that during hearing of argument, ld. Spl.P.P filed a memo along with a xerox copy of prayer of IO to SP Vigilance, Berhampur, Xerox copy of letter of SP Vigilance, Berhampur to BM SBI, Industrial Branch, towards deposit of Rs.90,000/- and xorox copy of deposit slip and thereby claimed that the above document shows the recovered amount was deposited in SBI Industrial Estate Branch. However, such Xerox copies of prayer of IO or Xerox copy of letter of SP Vigilance, Berhampur to BM SBI is no way proved that the amount of Rs.90,000/- was recovered from the house of accused during house search and the same amount was deposited in the bank. Accordingly, this court excluded such amount of Rs.90,000/- as assets of accused.

15. Under item no.14 of Statement 'B', the IO has shown that there was deposit of Rs.3,39,408/- in the name of accused and his family members in various banks at Berhampur and Gunupur. To prove the same prosecution examined the Chief Manager of Andhra Bank as P.W.10, Sr. Manager Bank of Baroda ester-while Bank of Vijay as P.W.12, Branch Manager Andhra Bank, Gunupur as P.W.13, Branch Manager SBI Gunupur as P.W.15 and P.W.16 Branch Manager, Sahara India, Berhampur.

During evidence, P.W.10 exhibited the account statement of accused Ashok Padhy at Andhra Bank, Courtpeta, Berhampur marked as Ext.19 and thereby claimed that there was available balance of **Rs.11,533.60/-** as on 19.07.08.

Further P.W.12, Branch manager, Bank of Baroda Ester-while Vijay Bank being P.W.14 claimed that one bank account in the name of Bhagyalaxmi Padhi W/o-Ashok Padhi bearing A/c No.740201010007923 existed in Bijay Bank. That apart this witness exhibited the original passbook of the said account recovered from the house of accused marked as Ext.35/2. This court perused the said passbook and found that there was deposit of **Rs.1420/-** as on 07.02.08.

Again the Andhra Bank Manager Gunupur, being P.W.13 exhibited the account statement of accused Ashok Kumar Padhi marked as Ext.36 and thereby claimed that there was balance of **Rs.1,81,530.50** as on 23.07.08.

The Branch Manager, SBI Gunupur being P.W.15 in his evidence claimed that in the year 2008, the then BM supplied the account statement of account No.11116604069 in the name of Ashok Kumar Padhi for the period from 01.01.06 to 12.12.2008 showing closing balance as **Rs.1959/-.** Further this witness P.w.15 exhibited the account statement and the corresponding original passbook seized from the house of the accused marked as Ext.42, Ext.42/2 and cheque book as 42.

Further the BM Sahara India being P.W.16 in his evidence claimed that there was balance of **Rs.11,100/-** in account no.11399945682 & **Rs.5400/-** in A/c No.11391713114 both stands in the name of Bhagyalaxmi Padhi W/o-Ashok Kumar Padhi. This witness also exhibited the original passbook of the above accounts recovered from the house of accused as Ext.43 and Ext.44. Further he (PW.16) also claimed that A/c No.11391305121 stands in the name of Abhinash Padhi was having balance of **Rs.19,380/-** and exhibited the corresponding passbook as Ext.45. Again, he also claimed that there was balance of **Rs.17,100/-** in A/c No.11391601901 stands in the name of AbhinashPadhi S/o-Ashok Kumar Padhi. That apart he also proved the corresponding monthly renewal receipt of the above passbooks recovered from the house of accused as Ext.47 series.

During argument ld. defense counsel claimed that the evidence of the above witnesses is not sufficient to prove the outstanding balance in the account of accused. Further submitted that some of the account statements does not bear certificate. Therefore, cannot be accepted as evidence. But in this context this court is of the opinion that P.W.10, P.W.12, P.W.13, P.W.18 and P.W.16 being the Bank authorities proved the statement of account of the above accounts so also the corresponding passbook or cheque book recovered from the house of the accused during search. Therefore, this court considered the evidence of P.W.10, P.W.12, P.W.13, P.W.18 and P.W.16 together with the documents proved by the above witnesses as relevant to calculate the bank balance of the accused as on the date of search. Accordingly, held that there was bank balance of **Rs.2,49,423.10** in the name of accused and his family members as on the last date of cheque period.

On calculation, it appears that the accused Sri Padhy has accumulated movable assets including deposits of Rs.3,43,030/-+1,11,430/-+Rs.2,36,554/-+1,96,000/-+Rs.2,49,423.10=11,36,437.10. On addition of movable and immovable assets the value of total assets possessed by the accused on the last date of check period is of Rs.21,04,381+11,36,437.10=**32,40,818.10.**

16. Under Statement 'C', the IO shown the income of accused and his family during the check period which as follows:

Sl. No.	Source of income	Amount (Rs)
1	Net Salary at Bhubaneswar	Rs.30,352/-
02	Net Salary at Kandhamal, Phulbani	Rs.1,33,044/-
03	Net Salary at Sundergarh	Rs.1,34,064/-
04	Net Salary at Cuttack	Rs.2,32,250/-
05	Net Salary at Sonepur	Rs.2,03,125/-
06	Net Salary at Gunupur	Rs.4,90,944/-
07	Net Salary at Paralakhemundi	Rs.60,475/-
08	Net Salary at Aska	Rs.10,394/-
09	Average Salary calculate from July, 1992 to Nov, 1998	Rs.5,79,008/-
10	Car loan from Magma Finance	Rs.3,00,000/-
Total		Rs.21,02,837.85

So far as question of acquisition of disproportionate assets is concerned, the income of the accused and his family members during the check period is necessary to determine. In this regard, it is the case of prosecution that accused and his family has total income of Rs.21,02,837.85/- during the check period from salary and other sources. To prove the income from salary of the accused, the prosecution examined P.W.19 (Asst. Agriculture Engineer (IF) Bhubaneswar who proved the pay particulars of accused for the period from **17.11.82 to July, 1985** marked as Ext.57. Prosecution further examined P.W.21 (Asst. Agriculture Engineer) who proved the pay particulars of the accused for the period **from 07/1985 to 07/1992** marked as Ext.65/2. Prosecution also proved the pay particulars of the accused Padhy for the period from **05.12.98 to 31.01.02** through the IO (P.W.24). The Soil Conservation Officer, Cuttack being PW.22 proved the pay particulars of accused Padhy for the period from **Aug-1999 to 22.01.2004** marked as Ext.66/2. Further the IO (P.W.24) also proved the pay particulars of the accused for the period **from 23.01.2004 to 19.07.05** marked as Ext.73/P.W.24 with claim to have received the same from Asst. Soil Conservation Officer, Sonepur through forwarding letter marked as Ext.74. Besides the IO (P.W.24) further claimed that he also seized the pay particulars of the accused for the period from **07/2006 to 06/2008** marked as Ext.3. On careful examination of all the above document exhibited from the side of prosecution to prove the income of accused from his salary, this court found that the salary statement for the period from 07/1992 to 11/1998 & for the period from 20.07.2005 to June, 2006 are not available or proved by the prosecution. But the exhibited documents proved by P.W.1, P.W.21 and P.W.22 reveals that accused has got net salary of Rs.30,352.10 for the period from 17.11.82 to 30.06.85 (as per Ext.57), Rs.1,33,040.60 for the period from July, 1985 to July, 1992 (as per Ext.65/2), Rs.1,37,038/- for the period from 05.12.98 to 31.01.02 (as per Ext.75 & Ext.76), Rs.2,32,252/- for the period from 14.08.99 to 22.01.04 (as per Ext.66/2), Rs.2,03,125/- for the period from 23.01.04 to 19.07.05 (as per Ext.74) and Rs.4,91,526/- for the period from July, 2006 to June, 2008 (as per Ext.3). Though, defense objected marking of the above said documents for which the same are marked with objection. But during cross examination of the above witnesses, who have proved the salary particulars of accused, defense has not suggested under what circumstance the above said documents were objected. Hence, mere objection is no way diminish the value of the pay particulars of the accused, which shows to have been prepared by an official witness due discharge of his duty. Hence, deem it relevant to consider as documentary evidence to calculate the pay particulars of accused. On calculation of the above salary of accused as per salary statement exhibited from the side of prosecution it appears that accused has income of **Rs.12,27,333.70** during the above period mentioned under respective salary statement exhibited by the prosecution.

However, in the Statement 'C' the IO has shown the average salary for the missing period from July, 1992 to Nov, 1998 as Rs.5,79,008/-. During argument ld. counsel for the accused submitted that the said calculation cannot be considered as salary particular of accused for the above said period as because no evidence to that regard has been adduced from the side of prosecution. But in this context this court is of the opinion that there is no positive evidence from the side of prosecution that accused has acquired more salary than the salary mentioned in the Statement 'C'. Besides the service book (Ext.77) and the other document relating to service particulars of accused exhibited by prosecution reveals that accused service has never interrupted during the missing period from July, 1992 to Nov, 1998 and he was on Govt. service during such period. Therefore, in absence of salary particulars for the above said missing period i.e. July, 1992 to Nov, 1998, this court deem it proper to calculate the salary of accused basing upon his previous salary statement together with the after period statement adding with the principle of increment and DA as per Govt. rule and found that the salary amount comes to Rs.3,52,636/-. However, in the statement 'C' the salary for the above said missing period has been considered much more higher level than the assessment made by this court. Hence, this court deem it proper to accept the average salary calculation mentioned in Statement 'C' i.e. amount of **Rs.5,79,008/-**as income of accused for the period from July, 1992 to November, 1998**.** Again, this court also calculate the salary for the missing period from 20.07.05 to June, 2006 (i.e. for the period of 11 month 10 days) as per the salary particular from July, 2006 available in Ext.3 and held that accused had income of **Rs.1,25,460/-** during the above said missing period. On calculation of the salary of the accused for different period as discussed above, this court found that accused has income of**Rs.19,31,801.70**as salary, during the check period.

16 (i) Further, prosecution also claimed in Statement 'C' that accused had availed car loan of Rs.3,00,000/- and to that regard though not examined any witness. However, prosecution proved the bank statement marked as Ext.19, showing repayment of car loan to Magma Finance. Hence, this court is of the opinion that when prosecution has a case that accused has availed a car loan for amounting Rs.3,00,000/- then the same is accepted as income of accused, even though there is no evidence from the side of prosecution. Accordingly, held that the said car loan of **Rs.3,00,000/-** as income of the accused.

During argument ld. defense counsel raised that the GPF withdrawal of accused during the check period has not taken into consideration while calculating the income of the accused. In view of such submission, this court also carefully examined the available salary particulars of the accused marked as Ext.57, Ext.65/2, Ext.66/2, Ext.74 and Ext.76 and found that Ext.66/2, i.e. the pay particulars of the accused for the period from 14.08.99 to 22.01.04, reveals GPF withdrawal of Rs.88,770/-. Since no other positive evidence is adduced from the side of defense to prove any extra GPF withdrawal by the accused during the check period, therefore this court held that there was total GPF withdrawal of **Rs.88,770/-** during the check period. Hence, the above said amount is considered as income of the accused during the check period.

On calculation of all the above income of the accused and his family during the check period, it comes to **Rs.19,31,801.70+Rs.3,00,000/-+Rs.88,770/- =23,20,571.70.**

17. After ascertaining the income and assets of the accused and his family during the check period, the further question is to determine about the expenditure of the accused during the check period. It is the case of the prosecution that the expenditure of the family of the accused during the check period was Rs.16,20,435.42/-. Towards the above expenditure, prosecution assigned the expenditure list on different head under Statement 'C' as follows:

Expenditure during the check period

Sl. No.	Items on Expenditure	Amount (Rs)
01	Per-capita expenditure on foot and clothing etc.	6,57,358.42
02	Repayment of Car Loan	2,88,000/-
03	Electricity charges of the house of S.O	73,000/-
04	Bajaj Allianz Insurance premium paid vide policy no.003701283	10,000/-
05	Bajaj Allianz Insurance premium paid vide policy no.0032048138	10,000/-

06	Bajaj Allianz Insurance premium paid vide policy no.0080530395	25,000/-
07	Premium paid towards LIC policy No.582750425	42,136/-
08	Premium paid towards LIC policy No.580558535	24,780/-
09	Premium paid towards LIC policy No.571471752	10,152/-
10	Premium paid towards LIC policy No.571470822	7,192/-
11	Premium paid towards LIC policy No.571462576	20,056/-
12	Premium paid towards LIC policy No.570854421	25,809/-
13	Premium paid towards LIC policy No.571462579	23,940/-
14	Premium paid towards LIC policy No.571471776	6844/-
15	Premium paid towards LIC policy No.570854211	43,368/-
16	Educational expenditure at KIIT Bhubaneswar and SRM University, Chhenai	3,52,800/-
Total		16,20,435.42

17.(a) In order to prove the above expenditure of the accused and his family members during the check period, prosecution examined several witnesses so also exhibited many documents.

To prove the house hold expenditure of the family of accused during the check period, prosecution examined the Asst. Director Statistics Vigilance

Directorate, Cuttack as P.W.25. This witness (P.W.25) in his evidence proved the report of per capita household consumer expenditure of the family of the accused marked as Ext.88/2. During argument, ld. counsel for the accused argued that the per capita household expenditure on consumer items was shown under Ext.88/2 at higher side. In this regard, he also submitted that the report of consumer expenditure of the family of the accused marked as Ext.88/2 is not in accordance with the sample collected by NSSO. That apart, submitted that during cross-examination, P.W.25 admitted that he has not collected the personal details regarding habit and lifestyle of the accused. Hence, the report cannot be considered to assess the expenditure of the family of the accused towards household consumable items. On the other hand such submission of ld. defense counsel was challenged by ld. Special P.P and accordingly, he argued that the report of household expenditure marked as Ext.88/2 was prepared on the basis of NSSO report. Hence, the same can be considered as parameter to assess the expenditure of the family on consumable items.

Taking note of the above submission of ld. counsel for the parties, it is to be decided, what is the consumable expenditure of the family of the accused during the check period i.e. from 17.11.82 to 23.07.08. Prosecution has shown the expenditure of the family of accused on consumer items during check period as Rs.7,25,680.90/- in Statement 'D'. To substantiate such claim of expenditure, P.W.25 in his evidence claimed that as per his instruction Sri B.K.Mallik prepared the consumer expenditure statement marked as Ext.88/2 on various item of consumption on the basis of data available in NSSO Report of various grounds. However, during cross examination, this witness (P.W.25) admitted that IO had not supplied any document with regard to expenditure habit of the accused and his family members. But interestingly there is no positive evidence adduced from the side of accused to establish any specific expenditure habit of the family of accused. Therefore, in such a circumstance non-collection of information regarding specific expenditure habit of family of accused is no way sufficient to discard the reportof P.W.25 marked as Ext.88/2. Further, P.W.25 in his cross examination though admitted that their Department has not collected the data (sample) but claimed that the report is prepared as per NSSO Survey report. It is well settled that NSSO data is a common yardstick to ascertain the per capita household expenditure of a common family and anyone who challenged the same on the ground of any specific habit he has to establish the same by adducing his evidence. However, here in this case, though defense claimed that the habit and expenditure of the family was not taken into consideration during preparation of Ext.88/2 but to substantiate such, defense adduced no such evidence to prove any specific expenditure habit of accused and his family. Hence, this court found no sufficient reason to disbelieve Ext.88/2 and the version of P.W.25 regarding household expenditure of family of accused. Accordingly, hold that the family of expenditure of accused during the check period is amounting Rs.7,25,680/-. But since the expenditure statement reveals separate head for electricity charges and maintenance and fuel charges of vehicles under Statement D', therefore the amount show towards fuel and light in the per capita income i.e amount of Rs.68322.48/- is deducted from the above said expenditure statement marked as per Ext.88/2. According this court held that the per capita household expenditure of the family of the accused during check period comes to Rs.**6,87,042/-**.

18. Under Statement 'D' of Item No.2 prosecution claimed that accused has expenditure of Rs.2,88,000/- for repayment of car loan. To prove such prosecution relied on the evidence of P.W.10 (Chief Manager, Andhra Bank) who proved the statement of account of accused at Andhra Bank, Courtpeta marked as Ext.19. Except that, prosecution has not adduced any other evidence. Since this court accepted the said statement marked as Ext.19 in favour of accused while calculating his income and thereby held that accused has availed car loan of Rs.3,00,000/- therefore the same is also accepted to prove repayment of car loan. On perusal of the said statement marked as Ext.19 it appears that there was repayment of loan amounting Rs.8000/- on eight installments to Magma Finance. Therefore, the total repayment of loan as

appeared from Ext.19 is of **Rs.64,000/-**. As such the same is expenditure of the accused towards repayment of car loan.

18 (i) Prosecution further came with a case that accused has expenditure of Rs.73,000/- towards electric charges to his houses. To prove such, prosecution examined the SDO Electrical, Berhampur as P.W.9. This witness P.W.9 in his evidence claimed that both Ashok Kumar Padhi and his wife Bhagyalaxmi Padhi are consumer under electricity vide their consumer no.5-A-56/143 and 5-A-56/376 respectively and they both taken electric connections to their respective houses on dtd.04.03.977 and 24.03.05. Besides, this witness (P.W.9) also proved the payment statement details of accused Ashok Kumar Padhi and Bhagyalaxmi Padhi and Ext.16 and Ext.17. However, during argument ld. defense counsel submitted that the house at Plot No.1401/4867 is not existed as on the date of initiation of this case. Therefore the claim of connection of electricity to this house is not believable. Keeping in the mind above aspect, this court also carefully overview all the evidence adduced from the side of prosecution and found that there are three houses of accused and his wife situated over Plot No.1530/4233, 1401/4867 and Plot No.1549 all of Mouza Ankuli. However, out of the above said plots vide Plot No.1530/4233 & 1401/4867 stands in the name of accused Ashok Kumar Padhy and Plot No.1549 stands in the name of Bhagyalaxmi. This court in the preceding

para already held that house over Plot No.1401/4867 was not completed as on the date of initiation of this case. But that does not mean that houses over Plot No.1530/4233 in the name of Ashok Padhi and Plot No.1549 in the name of Bhagyalaxmi Padhi were not existed. Therefore, this court is of the opinion that the consumer no.5-A-56/143 and 5-A-56/376 are relating to the houses over Plot No.1530/4233 and 1549 stands in the name of Ashok Kumar Padhy and Bhagyalaxmi Padhi. Accordingly accepted the electricity expenditure shown under the document marked as Ext.16 and Ext.17 and held that a sum **Rs.73,000/-** was paid by accused and his family members towards electricity charges.

18 (ii) Under Item No.4,5 and 6 of Statement 'D', it is mentioned that accused family has paid insurance premium of three policies under Bajaj Allianz Insurance Pvt. Ltd. To prove the same, the IO P.W.24 in his evidence claimed that he received the insurance details of three Bajaj Allianz Insurance policy receipts from Asst. Manager Bajaj Allianz Insurance Co., Berhampur. Such claim of P.W.24 was supported by the Asst. Manager Bajaj Allianz who has been examined by P.W.17. The said witness P.W.17 in his evidence exhibited status report regarding three policies stands in the name of Bhagyalaxmi Padhi and two policies in the name of Ashok Kumar Padhi marked as Ext.48. Besides the original Bajaj Allianz policy bonds of the above policies recovered from the house of accused during house search

were proved by him as Ext.49 to Ext.51 marked without objection. However, during cross examination of the said witnesses (PW.17) defense brought out from his mouth that a sum of Rs.30,000/- was deposited towards policy marked as Ext.49 stands in the name of Bhagyalaxmi Padhi for three installments till 22.04.09. Since the policy bond Ext.49 reveals that it was started on 26.01.07 with yearly premium. Therefore it is assumed that one premium of Rs.10,000/- was paid till the last date of check period. Further this witness PW.17 also deposed in his cross examination that a sum of Rs.20,215/- was paid towards policy marked as Ext.50 stands in the name of Ashok Kumar Padhi till 30.11.06 which is within the check period towards the bond marked as Ext.49. Again he also answered in his cross examination that there was payment of Rs.25,000/- i.e. for one installment towards policy marked as Ext.51 stands in the name of Ashok Kumar Padhi. Further this court also examined the other two policy bonds and marked as Ext.50 and Ext.51 and found the said document reveal such payment as claimed by P.W.17. On calculation of the premium paid towards the above three Bajaj Allianz Policies (The bonds of which are marked as Ext.49 to Ext.50) during the check period, this court found that all total a sum of **Rs.55,215/-** was paid. Hence, the said amount is also calculated as expenditure of accused and his family during the check period.

18 (iii) Under sl. no.7 to 15 of Statement 'D', the IO has shown payment of premium towards 09 LIC policies in the name of accused and his family members. To prove the existence of said policy and payment of premium thereto, prosecution relied upon the evidence of P.W.24 and P.W.26 together with evidence of P.W.11, Manager LIC of India, Berhampur Branch. During evidence P.W.24 (initial IO) proved the status report of policy no.580558535 in the name of Ashok Kumar Padhi marked as Ext.84 and claimed that he had received the same from Manager LIC Berhampur as per his requisition. Besides this witness PW.24 also proved the forwarding report of LIC marked as Ext.83. Further the subsequent IO (P.W.26) proved the original LIC policy of the above said policy marked as Ext.101 and claimed that the same was recovered from the house of accused during search. The search-cum-inventory list also disclosed about recovery of the said LIC policy. Hence all the above evidence is enough to conclude that LIC policy no.580558535 stands in the name of Ashok Kumar padhi and he has been paying policy premium of **Rs.5117/-** during the check period.

18 (iv) Again prosecution witness P.W.26 in his evidence proved the original policy stands in the name of Bhagyalaxmi Padhi vide policy no.582750425 marked as Ext.102. However, prosecution adduced no other evidence regarding payment of installment of Rs.229/-. Therefore, this court deem it not proper to held that there

was any expenditure towards payment of premium of policy no.582750425.

Further, prosecution also examined P.W.11 to prove the remaining 07 policies. During his evidence, P.W.11 claimed that his office supplied the information and status report of 07 policies stands in the name of Abhisekh Padhi S/o-Ashok Kumar Padhi, Rukmini Padhi C/o-Ashok Kumar Padhi, Ashok Kumar Padhi, Bhagyalaxmi Padhi W/o-Ashok Kumar Padhi, Abhinash Padhi S/o-Ashok Kumar Padhi, Bhagyalaxmi Padhi W/o-Ashok Kumar Padhi and Ashok Kumar Padhi marked as Ext.20, Ext.22, Ext.24, Ext.26, Ext.28, Ext.30 and Ext.32. Besides, through this witness P.W.11, prosecution also proved the original policy bonds of the above 07 policies recovered during house search as Ext.21, Ext.23, Ext.25, Ext.27, Ext.29, Ext.31 and Ext.33. Further this witness P.W.11 in his evidence also claimed that half yearly premium of Rs.1692/- was paid towards policy bond marked as Ext.21 for the period from 04/2006 to 04/2009, yearly premium of Rs.3696/- was paid towards policy bond marked as Ext.23 for the period from 03/2006 to 03/2009, half yearly premium of Rs.5114/- was paid towards policy bond marked as Ext.25 for the period from 03/2006 to 03/2009, half yearly premium of Rs.4090/- was paid towards policy bond marked as Ext.27 for the period from 03/2006 to 03/2009, half yearly premium of Rs.1761/- was paid towards policy bond marked as Ext.29 for the period from 03/2006 to 03/2009, yearly premium of Rs.3687/- was paid towards policy bond marked as Ext.31 for the period from 03/2006 to 03/2009, yearly premium of sum of Rs.5421/- was paid towards policy bond marked as Ext.33 for the period from 03/2006 to 03/2009. This court carefully examined all the policy bonds with status report marked as Ext.20 to Ext.33. On perusal of all the above policy bonds, this court found that out of the said policies, policy no.571470822 stands in the name of Rukmini Padhi C/o-Ashok Kumar Padhi marked as Ext.23. Since prosecution adduced no evidence to establish the relationship between the said Rukmini Padhi with accused Ashok Padhy, therefore this court feel it not proper to accept the payment made towards above said policy as expenditure of accused's family. However, the policy bonds marked as Ext.21, Ext.25, Ext.33 stands in the name of Ashok Padhi whereas policy bond marked as Ext.27 and Ext.31 stands in the name of Bhagyalaxmi Padhi W /o-Ashok Padhi. Further the policy bond marked as Ext.29 stands in the name of Abhinash Padhi, S/o-Ashok Padhi. Therefore, the payment made towards the above six policies is the expenditure of accused and his family members. To ascertain the payment made towards the above six policies, this court carefully examined the payment status report of the above policies marked as Ext.21, Ext.25, Ext.27, Ext.29, Ext.31 and Ext.33 and found that the status report of all the policies are for the period from 03/2006 to 03/2009 except policy bond marked as Ext.31

(i.e. for the period from 12/2001 to 12/2008) and policy bond marked as Ext.33 (i.e. for the period from 12/2001 to 12/2008). Hence, taking into consideration the evidence of P.W.1 regarding payment of premium status of the above said policies together with the respective status report of all the above policies. This court found that there was payment of (04 installments as the policy was started on 17.05.06) **Rs.6768/-** towards policy bond marked as Ext.21 in the name of Abhinash Padhi till the last date of check period, payment of (02 installments as the policy was started on 13.03.06) **Rs.10228/-** towards policy bond marked as Ext.25 in the name of Ashok Kumar Padhi till the last date of check period, payment of (04 installments as the policy was started on 13.03.06) **Rs.16360/-**towards policy bond marked as Ext.27 in the name of Bhagyalaxmi Padhi till the last date of check period,payment of (04 installments as the policy was started on 13.03.06) **Rs.6844/-** towards policy bond marked as Ext.29 in the name of Abhinash Padhi till the last date of check period,payment of (07 installments as the policy was started on 28.12.01) **Rs.25809/-**towards policy bond marked as Ext.31 in the name of Bhagyalaxmi Padhi till the last date of check period, payment of (07 installments as the policy was started on 28.12.01) **Rs.37,947/-**towards policy bond marked as Ext.33 in the name of Ashok Kumar Padhi till the last date of check period. Hence, on calculation of the above payment towards the seven policies, this court found that there was total payment of premium of **Rs.1,09,079/-** towards LIC policies of accused and his family members during the check period as such the same is counted as expenditure of accused.

Under Item-16 of Statement 'D', the Prosecution claimed that there was educational expenditure of Rs.3,92,800/- towards both the sons of accused at KIT University and SRM University. However to prove the educational expenditure of the sons of accused at KIT University and SRM University prosecution did not examine any of the staff of the above said university. But during evidence through IO (P.W.24), prosecution proved two documents marked as Ext.81 and Ext.82 (i.e. letter of SRN University and fees detail of KIIT University) and both the documents are marked with objection. In this context, the IO (P.W.24) in his evidence claimed that he received the educational expense particulars of Abhisekh Padhi S/o-Ashok Kumar Padhi from the O/o-KIIT University (Ext.82)for the period from 2008-09 showing payment of Rs.1,65,000/- and Rs.1,62,800/-. Regarding payment at SRM University, P.W.24 further claimed that he received the educational expenses particulars of Abhinash Padhi S/o-Ashok Padhy from SRM University (Ext.81), Chennai for the period from 2008-09 showing payment of Rs.25,000/- as advance booking for admission in B-tech (IT) at Rampur campus. Except that there is no other evidence from the side of prosecution.

During argument ld. defense counsel raised that the communication under Ext.81 & Ext.82 were communication with a Pvt. Institute, therefore the genuineness of the payment particular status is required to be proved by the makers thereof. However, in absence of evidence of the authority of KIIT University and SRM University creates doubt about genuineness of the above said documents. Considering the above submission of ld. defense counsel, this court vividly examined the evidence available in the case record and found that there is no corroborative evidence from the side of prosecution regarding education of both the son of accused at KIIT University and SRM University and about payment of fees to the above university. The only evidence is the version of P.W.24 who is the IO. But during cross examination of defense witness by prosecution, the brother-in-law of accused (D.W.2) admitted that the son of accused Ashok Padhy namely Abhisekh Padhi was studied at KIIT University, Bhubaneswar. But he has not deposed anything regarding payment of fees at KIIT University. However, the wife of accused Ashok Padhy being D.W.3 admitted during her cross examination that a sum of Rs.25,000/- was paid as advance at SRM University for admission of Abhinash Padhy (son of accused Ashok Padhy). Hence, the above admission of wife of accused corroborated the claim of IO (P.W.24) regarding advance payment of Rs.25,000/-. On the other hand, the statement marked as Ext.82 page-2 reveals that

Abhisekha Padhi prosecuting his B-tech course at KIIT University during the period from 2008-12 and accordingly the fees for education of Abhisekha Padhi at KIIT University were paid during the period 24.08.08 to 15.07.09. Hence, such payment of Rs.1,62,000/- and Rs.1,65,000/- is not considered as expenditure of the family during the check period i.e. 17.11.1982 to 23.07.08.

Therefore the total expenditure of the accused during the check period was **Rs.6,87,042/-+Rs.64,000/-+73,000/-+55,215/-+5117/-+1,09,079/-=9,93,453/-**

19. On calculation of the above figure of income, expenditure and assets of the accused during the check period, at this stage it appears that there was disproportionate assets to the extent of Rs.19,13,699.30 (i.e. assets of Rs.32,40,818+ expenditure of Rs.9,93,453/- =total Rs.42,34,271/- -income of Rs.23,20,571.70) which is 81.94% of the total incomeof the family of the accused during the check period from 17.11.82 to 23.07.08.

20. But question is to decide as to whether the accused has accounted satisfactorily about such excessive income. To prove a case u/s.13(1)(e) of PC Act, 1988 the burden is upon the prosecution to establish the pecuniary assets acquired by the public servant are disproportionate to his known source of income and then onus shifted to the public servant to accounted such excess accumulation of assets. Again explanation to Sec.13 of Act, 1988 define "known source of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant. Therefore, onus on the accused is not only to account for the lawful source of such accumulation but also to satisfy the court that such receipt has been intimated in accordance with the provision of existing law for the time being applicable to a public servant. To explain satisfactorily about the lawful source of the above DA,defense examined 05 witnesses but exhibited no document. But before going to the evidence of the defense, it is pertinent to mention the submission of ld. counsel for the parties on the evidence of defense.

Ld. counsel for the accused submitted that the IO calculated the gold ornaments gifted during marriage of accused as assets of the accused. In this regard he submitted that the evidence of the wife of accused and his brother-in-law examined as D.W.3& D.W.2 are enough to prove that the gold ornaments recovered from Andhra Bank are the marriage gifts. He further submitted that the wife of accused Smt. Bhagyalaxmi Padhi had separate income from house rent and from private tuition but the IO did not consider such income of Bhagyalaxmi Padhi. In this regard he further submitted that the tenants under Bhagyalaxmi has been examined as D.W.4 and D.W.5 and thereby claimed that they have been residing in the house of accused as tenant since 2001 to 2008. Therefore the above income be calculated as income of the family.

On the other hand ld. Spl.P.P (V) submitted that though the accused claimed that his wife has separate income from house rent and tuition whereas there is no documentary evidence to support such claim. In this regard he further submitted that such income was also not duly intimated to the authority, therefore the same cannot be considered.

In view of the above submission of ld. counsel for both the parties, this court carefully examined the evidence of defense. Here in this case, accused has all total examined 05 nos. of witnesses including his wife as D.W.3. Out of the other witnesses, D.W.2 is brother-in-law and D.W.1, D.W.4 and D.W.5 are claiming to be the tenants under wife of accused.

The wife of accused Bhagyalaxmi Padhi being D.W.3 in his evidence claimed that during her marriage in the year 1995, her father gifted cash of Rs.2,00,000/- and another cash of Rs.2,00,000/- to the accused for purchase of motor cycle, household articles and utensils. That apart she further claimed that her father gifted 30 bhari of gold ornaments to her. Again she also claimed that she has some income from private tuition and tailoring. She also claimed that one land at NH was purchased by his father-in-law in her name and she let out the ground floor of their house at Suryanagar to a tenant on monthly rent of Rs.3000/-. But interestingly to substantiate such claim, defense exhibited no document. However, the brother of Bhagyalaxmi being D.W.2 in his evidence supported the version of D.W.3 regarding marriage gift of Rs.4,00,000/- and gift of gold ornaments of 20-25 bhari. Further D.W.4 in his evidence supported the version of D.W.3 regarding her letting out of the house at Suryanagar to a tenant and thereby claimed that he was the tenant in the house of accused at Suryanagar and paying Rs.3000/- including electricity charges. The other two witnesses D.W.1 and D.W.5 in their respective evidence claimed that their family has been residing at the paternal house of accused at Hillpatna and house of accused at By-pass road on monthly payment of Rs.5000/- respectively. In this regard while D.W.1 claimed that his family was residing at the Hillpatna house when he was 08 years old whereas D.W.5 claimed to have resided in the house of accused at NH since July, 2005 to June, 2008. However, none of the above witnesses filed any documents regarding their payment of rent to accused or his wife. They also admitted during their cross examination about such. Therefore, the question before the court is to decide whether the above evidence is anyway proved the defense of the accused.

It is well settled principle of law that standard of proof for defense is not similar as of standard of proof required for the prosecution to prove its case. While standard of proof for prosecution is beyond reasonable doubt, the standard of proof of defense is only to the extent of preponderance of probability. Keeping, in view the above aspect, this court carefully examined the evidence of defense. It is the claimed of D.W.2 and D.W.3 that there was marriage gift of cash of Rs.4,00,000/- to the accused during the time of marriage. But to substantiate such claim, defense did not exhibit any document. However, it is well clear from the evidence of D.W.2 and D.W.3 that marriage of accused was solemnized in the year 1985 and at that time accused was in Govt. service. Therefore, burden is upon accused to prove his intimation of the said receipt of Rs.4,00,000/- to the authority. Hence, in absence of any documentary evidence regarding receipt of Rs.4,00,000/- as marriage gift and thereafter intimation of the same to authority, creates doubt on the claim of D.W.2 and D.W.3 regarding marriage gift of cash of Rs.4,00,000/-.

It is the further claim of D.W.2 and D.W.3 that there was 20-30 bharis of gold ornaments gifted by their father to D.W.3 at the time of marriage. Again to that regard, defense filed no document that the father of D.W.2 and D.W.3 purchased the above said gold ornaments which are recovered from the locker of accused at Andhra Bank mentioned under the search-cum-inventory list marked as Ext.13. Further the evidence of P.W.7, P.W.8 and P.W.10 reveals that Ext.13 was prepared at the time of search of the locker of accused at Andhra Bank on dtd.24.07.08. Again the document marked as Ext.13 reveals that year of acquisition of each of the gold ornaments has been mentioned on Ext.13 upon which the undisputed signature of accused is available and marked as Ext.13/3. This court also carefully examined the year of acquisition of the gold ornaments recovered from locker and mentioned in Ext.13 and found that year of acquisition of all the gold ornaments are within the period from 2001 to 2007 except sl. no.10 i.e. gold ring and sl. no.11 i.e. gold ring both of 07 gram and 05 gram respectively. Hence, this court is of opinion that except these two items mentioned under Ext.14 sl. no.X and XI all other gold ornaments are acquired by the accused during check period. Since Ext.13 reveals that item no.10 and 11 are marriage gifts. Hence, counted the same as marriage gift and of opinion to deduct the cost of the above same gold ornament i.e. **Rs.8027/-** from the asset of the accused.

Further it is the claim of D.W.3 (Bhagyalaxmi Padhy) that his father-in-law purchased a land in her name at NH. However, there is no documentary evidence that the consideration money of the land purchased in the name of Bhagyalaxmi Padhi was paid by Narasingha Padhy, the father of accused. However, the certified copy of three sale deeds and original thereto marked as Ext.59, Ext.61 and Ext.64 (i.e. regarding purchase of land in the name of Bhagyalaxmi Padhi) and its corresponding original sale deed marked as Ext.95, Ext.97 does not reveal anything regarding payment of consideration money of the above purchase by the father-in-law of Bhagyalaxmi Padhi. Hence, such claim of D.W.3 is baseless and not considered as proper.

Again D.W.3 also claimed that his father-in-law inducted three tenants at his house and collected rent till his death on 08.11.96. Besides she further claimed that after death of her father-in-law she used to collect the rent of the above said house. Such evidence of D.W.3 is supported by D.W.1 and he claimed that his family was a tenant in the house of Narasingha Padhi (father-in-law of D.W.3) since his childhood on payment of Rs.5000/-. But during cross examination D.W.1 admitted that he had never seen any payment of house rent. Besides D.W.1 though claimed that his family has been residing in the house of Narasingha Padhi at Hillpatna since his childhood days but admitted that none of his educational certificate reveals his address as Hillpatna. Further he also admitted that he has not filed any rent receipt or agreement regarding his family's payment of rent to Narasingha Padhi and or to Bhagyalaxmi Padhi. Further defense also adduce no documentary evidence regarding existence of house of Narasingha Padhi at Hillpatna. Considering, all the above aspects this court is of opinion that the evidence of D.W.1 is not up to standard to prove that his family was a tenant under Bhagyalaxmi Padhi and paying rent since 1996.

Further this court also carefully examined the evidence of D.W.4 and D.W.5. D.W.4 in his evidence claimed that he was residing as a tenant in the house of Ashok Padhi at Suryanagar since 2001 to 2008 on payment of monthly Rs.3000/-. It is the case of the prosecution that house of accused Padhi at Suryanagar is a double storied building. During cross examination the IO (P.W.24) admitted that the first floor of the house was searched on dtd.23.07.08. That apart he (P.W.24) also admitted under para.27 that he has not made any investigation to ascertain as to whether there was any tenant in the double storied building at Ankuli Suryanagar. Hence, considering all the above aspects together with the evidence of D.W.4, this court held that D.W.4 had been residing in the house of accused at Suryanagar as tenant for the period from 2001 to 2008 on payment of monthly payment of Rs.3000/-. Accordingly, this court held that accused family has received rent of Rs.3000/- from D.W.4 for the period from January, 2001 to June, 2008i.e. 90 months. Hence, the above rent of **Rs.2,70,000/-** is considered as income of accused's family.

Further it is claimed by D.W.5 that he has been residing at the house of accused as tenant from July, 2005 to June, 2008 situated near by-pass road which is now NH and thereby paid Rs.5000/- including the vacant site. However, he admitted that there is no agreement relating to the above tenancy so also he admitted that he has not filed any document regarding his payment of rent from July, 2005 to July, 2008. Again it is the case of the prosecution that accused has all total three houses including the house near NH corresponding to Plot No.1401/4867. Since this court while adjudicating the immovable assets of the accused is of opinion that house of accused at Plot No.1401/4867 near NH was not completed as on the date of search and such plea is also advanced by ld. defense counsel during argument. Therefore, it is hard to believe that D.W.5 was a tenant in the said house near NH and has been paying Rs.5000/- since 2005 to 2008. Therefore the above claim of D.W.5 is not believable.

On above analysis of the evidence of defense both oral and documentary, at this stage it appears that accused by adducing its evidence able to prove that the family of accused has income of Rs.2,70,000/- from house rent during the check period. Besides defense also proved that gold ornament amounting Rs.8027/- as marriage gift. Hence, the rent amount of Rs.2,70,000/- is to be added in the income of the family of the accused and Rs.8027/- is to be deducted from the assets. On addition of the said income it appears that the income of the family comes to **Rs.25,90,571.70(23,20,571.70/- +Rs.2,70,000/-)** and after deduction of Rs.8027/- from assets, the value of assets comes to **Rs.32,32,791/-(i.e. Rs.32,40,818/- - Rs.8027/-)**. Therefore, the DA comes to **Rs.16,35,673/-** [Assets of Rs.32,32,791/- + Expenditure of Rs.9,93,453/-=42,26,244- (income) Rs.25,90,571/-] i.e. **63.13**% of his total income from known source and the accused failed to account for the above DA by adducing his evidence.

21. But before concluding the judgment, this court deemed it proper to answer the argument of ld. defense counsel about sanction. During argument ld. defense counsel vehemently raised objection to the legality of the sanction and thereby submitted that sanction has not been accorded by the competent authority. In this context he submitted that though accused was initially entered into Govt. service as a Foreman-cum-Instructor in Implement Factory at Satyanagar, Bhubaneswar under Department of Agriculture, Govt. of Orissa but subsequently after Division of Deptt. of Agriculture, he was observed under Soil Conservation Deptt. Therefore, Director Soil Conservation is the competent authority to accord sanction to proceed against the accused. Whereas the sanction order marked as Ext.90 itself reveals that the sanction has been granted by Director Agriculture & Food Production Orissa, Bhubaneswar. Further he also submitted that there is no evidence from the side of prosecution to prove that there was any pre-sanction discussion before sanction against the accused to proceed the case. Besides the sanction order marked as Ext.90 does not reveal that the authority has applied mind after verifying the document placed before him. Hence, there is no proper sanction to proceed against the accused. Accordingly, ld. defense counsel prayed to acquit the accused on the above score.

On the other hand, ld. Spl.P.P(V) raised objection to the above submission and submitted that the

Director Agriculture & Food Production, Odisha Bhubaneswar is the competent authority to accord sanction to proceed against the accused. He further submitted that the sanction order itself reveals that the authority had applied mind before granting sanction. He also submitted that any irregularity to prove the sanction is no way vitiate the proceeding as there is no prejudiced caused to the accused for such irregularity. Accordingly, claimed that the sanction is proper and no way affect the proceeding.

Considering the submission of the ld. counsel for the parties, the question before the court is to decide as to whether there was proper sanction in the present case to proceed against the accused or whether the irregularity in sanction vitiate the proceeding. In this context this court carefully examined the evidence of prosecution both oral and documentary. From the evidence of prosecution it appears that the sanction order has been proved by the Sub-sequent IO (P.W.26) with claim to receive the sanction order marked as Ext.90/P.W.26 through the forwarding letter of SP Vigilance, Berhampur marked as Ext.89/P.W.26. Besides this witness P.W.26 (IO) also proved the sanction order of sanctioning authority marked as Ext.90. That apart, this witness P.W.26 further proved the forwarding letter of Director Agriculture through which he forwarded the sanction order to SP Vigilance, Berhampur as Ext.90/1. During evidence though defense raised objection to the marking of the sanction order marked as Ext.90 and accordingly the same is marked with objection. Whereas not objected marking of the forwarding letter of SP Vigilance, Berhampur to the IO marked as Ext.89 and the forwarding letter of Director Agriculture and Food Production Orissa, Bhubaneswar marked as Ext.90/1. Hence, this court carefully examined the above two documents and of the opinion that Director of Agriculture & Food Production Orissa, Bhubaneswar forwarded the sanction order marked as Ext.90 was sent to SP Vigilance, Berhampur through the forwarding letter marked as Ext.90/1 and accordingly SP Vigilance, Berhampur forwarded the same to IO Aswini Nayak (P.W.26). But here the defense claimed that Director of Agriculture & Food Production Orissa, Bhubaneswar is not the competent authority. But interestingly there is no evidence from the side of defense to prove that Director Agriculture was ever divided into two separate wing i.e. Director Agriculture & Food Production, Orissa and Director Soil Conservation, Govt. of Orissa. Further the service book and other documents relating to employment of accused reveals that initial appointment of accused is under Director Agriculture. Hence, considering the above aspects this court is of the opinion that the Director Agriculture & Food Production, Orissa is the competent authority to accord sanction.

Further it is also contented by ld. defense counsel during argument that the competent authority has not applied his mind before accorded sanction. Admittedly there is no evidence that there was any pre-sanction discussion of IO with the sanction authority. However, from the sanction order marked as Ext.90 it appears that the sanction authority has sufficient knowledge about recovery of disproportion assets possessed by the accused. Further law is well settled that the object behind requirement of sanction to prosecute a public servant is only to check frivolous, mischievous and unscrupulous attempts to prosecute an honest public servant for act arising out of due discharge of his official duty, but that does not mean that a mischievous public servant get license to protect himself under the guise of irregularity in sanction. That apart, it is also well settled that mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in failure of justice. Since, there is no evidence from the side of defense to prove that how the accused prejudiced due to irregularity in sanction, therefore any irregularity in sanction is no way vitiate the prosecution case. Accordingly, this court held that in the fact and circumstances of this case, the sanction is proper to proceed against the accused.

22. In view of the above discussion, this court is of the opinion that prosecution well proved that the accused being a Govt. employee accumulated disproportionate assets of **Rs.16,35,673/- (i.e. 42,26,244/- -Rs.25,90,571/-)** i.e. **63.13**% more than his known source of income to

which he has failed to account for. As such the accused is found guilty of offence u/s.13(1)(e)/punishable u/s.13(2) PC Act, 1988 and accordingly this court convict Ashok Kumar Padhy hereunder as per the provision of Sec.248(2) CrPC.

23. Considering the nature of the offence and its social impact on the society this court feels it not proper to extend the benefit of Probation of Offenders Act to the convict and prefer to hear on question of sentence.

Special Judge (Vigilance)
Berhampur

<u>Hearing on the question of sentence</u>:

Heard learned defence counsel and learned Spl.P.P, Vigilance on the question of sentence. Learned defence counsel submitted that the convict Ashok Kumar Padhy is a year old person aged about 68 years having various old age ailments. That apart he has been adequately punished by running to court to face his trial since more than last 18 years. Besides, there is no previous criminal antecedent in his credit, therefore lenient view may be taken while awarding sentence against him. On the other hand, learned Spl.P.P., Vigilance, Berhampur submitted that the offence committed by the accused is not against any person but against the society at large, therefore exemplary punishment be awarded against him so as to prevent others to commit such type of offence.

Having heard counsels for both the parties on the question of sentence so also taking into considering the nature of the offence and its impact on the society, status and age of the convict, this court sentenced the convict to undergo SI for three years and to pay a fine of Rs.1,00,000/- (Rupees One Lakh) only in default thereof, shall undergo SI for a further period of six months for commission of the offence U/s13(1)(e) r/w. 13(2) of Prevention of Corruption Act, 1988.

The period of detention undergone by the convict during investigation, enquiry and trial if any be set off as against substantive sentence of imprisonment imposed on them as per the provision of Sec. 428 Cr.P.C.

The seized documents, records and registers be returned to the authorities of the concerned departments/ offices from where seized and the Zimanamas be cancelled four months after the appeal period is over if no appeal is preferred and in case of appeal being preferred, the same shall be disposed of as per the direction of the Hon'ble Appellate Court.

Special Judge (Vigilance)
Berhampur

Transcribed to my dictation by the Stenographer, corrected by me and pronounced the judgment in the open court, today this the 14th day of July, 2026 under my hand and seal of the court.

Special Judge (Vigilance)
Berhampur

<u>List of witnesses examined for the Prosecution</u>:-

P.W.1	Satyapriya Samantaray
P.W.2	P.Fakir
P.W.3	Fakir Nayak
P.W.4	Jugal Charan Achary
P.W.5	Girija Sankar Pattnaik
P.W.6	Subrata Satpathy
P.W.7	Gobinda Chandra Mohapatra
P.W.8	Surendranath Panigrahi
P.W.9	Rohit Kumar Mahapatra
P.W.10	Jagabandhu Rout
P.W.11	Basanta Kumar Rout
P.W.12	Raju Panigrahi
P.W.13	Santosh Kumar Behera
P.W.14	Kusha Garada
P.W.15	Ganesh Chandra Behera
P.W.16	Bibhuti Bhusan Pattnaik
P.W.17	Prasanta Kumar Rath
P.W.18	Diptiranjan Patra
P.W.19	Pradipta Kishore Beura
P.W.20	Pravat Kumar Sahoo
P.W.21	Gobinda Chandra Sethi
P.W.22	Saroj Chandra Das
P.W.23	Dillip Kumar Rout
P.W.24	Patitapaban Choudhury
P.W.25	Prafulla Kumar Dash
P.W.26	Aswini Kumar Nayak

<u>List of witnesses examined for the Defence:-</u>

D.W.1	Akash Kumar Panda
D.W.2	Sankar Prasad Dash
D.W.3	Bhagyalaxmi Padhi
D.W.4	Bijayalaxmi Mishra
D.W.5	Rajendra Mahankuda

<u>List of exhibits marked for the Prosecution</u>:-

Ext.1	Letter No.1272 dtd 11.08.08
Ext.1/1	Signature of P.W.1 on Ext.1
Ext.2	Bio-data
Ext.2/1	Signature of P.W.1 on Ext.2
Ext.3	Pay particulars

Ext.3/1	Signature of P.W.1 on Ext.3
Ext.4	Seizure list
Ext.4/1	Signature of P.W.3
Ext.4/2	Signature of P.W.4
Ext.5	Seizure list
Ext.5/1	Signature of P.W.5
Ext.6	information regarding vehicles
Ext.6/1	Signature of P.W.6
Ext.7 to	
Ext.10	Registration certificates (company generated)
Ext.11	Forwarding letter
Ext.11/1	Signature of P.W.6
Ext.12	Inventory list
Ext.12/1	Signature of P.W.7
Ext.13	List of gold ornaments
Ext.13/1	Signature of P.W.7
Ext.14	Search warrant
Ext.14/1	Signature of PW.8
Ext.12/2	Signature of PW.8
Ext.12/3	Zimanama available in Ext.12
Ext.12/4	Signature of wife of accused
Ext.13/2	Signature of P.W.8
Ext.13/3	Signature of accused
Ext.15	FIR
Ext.15/1	Signature of P.W.8
Ext.16	Statement of accounts of A.K.Padhi
Ext.17	Statement of accounts of B.Padhi
Ext.18	Forwarding letter
Ext.18/1	Signature of P.W.9
Ext.19	Accounts statement of A.K.Padhi
Ext.19/1	Signature of Dy. Manager PC Panda
Ext.P13/4	Signature of BM Sri M.K.Das
Ext.20	Status report
Ext.21	Original policy bond
Ext.22	Status report
Ext.23	Original policy bond
Ext.24	Status report
Ext.25	Original policy bond
Ext.26	Status report
Ext.27	Original policy bond

Ext.28	Status report
Ext.29	Original policy bond
Ext.30	Status report
Ext.31	Original policy bond
Ext.32	Status report
Ext.33	Original policy bond
Ext.34	Forwarding letter
Ext.35	Accounts statement
Ext.35/1	Signature of Issuing Manager
Ext.35/2	Passbook
Ext.35/3	Charge book
Ext.36	Accounts statement
Ext.36/1	Signature
Ext.36/2	Passbook
Ext.37	Forwarding lists
Ext.37/1	Signature
Ext.38	Certified copy of RSD
Ext.39	Certified copy of RSD
Ext.38/1	Original RSD
Ext.39/1	Original RSD
Ext.40	Forwarding report
Ext.41	ROR
Ext.42	Accounts statement
Ext.42/1	Signature
Ext/42/2	Passbook
Ext.42/3	Cheque book
Ext.43	Passbook
Ext.44	Passbook
Ext.45	Passbook
Ext.46	Passbook
Ext.47 to Ext.47/13	Records
Ext.48	Status report
Ext.49	Policy bond
Ext.50	Policy bond
Ext.51	Policy bond
Ext.52	Expenditure report
Ext.52/1	Signature of P.W.18
Ext.53	Report
Ext.53/1	Signature of P.W.18
Ext.54	Report

Ext.54/1	Signature of P.W.18
Ext.55	Report
Ext.55/1	Signature of P.W.18
Ext.56	Forwarding letter
Ext.56/1	Signature of P.W.18
Ext.57	Pay particulars
Ext.57/1	Signature of P.W.19
Ext.57/2	Forwarding letter No.47 dtd.07.01.09
Ext.57/3	Signature of Development Engineer (Tarini Sethy)
Ext.58	Letter No.1186 dtd.01.08.09
Ext.58/1	Signature of P.W.20
Ext.59 to Ext.64	Certified copies of registered sale deed
Ext.65	Letter No.969 dtd.24.11.08
Ext.65/1	Signature of P.W.21
Ext.65/2	Pay particular of Ashok Kumar Padhi
Ext.65/3	Signature of P.W.21
Ext.66	Letter No.1189/SC dtd.31.07.2009
Ext.66/1	Signature of P.W.22
Ext.66/2	Pay particular
Ext.66/3	Signature of P.W.22
Ext.67	Measurement Register
Ext.67/1	Signature of P.W.23
Ext.67/2	Signature of accused
Ext.68	Calculation sheet
Ext.69	Letter No.501/VTW
Ext.69/1	Signature of Supt. Engineer
Ext.69/2	General abstract of cost of construction
Ext.69/3	Signature of P.W.23
Ext.69/4	Signature of Asst. Executive Engineer
Ext.69/5	Cost evaluation report
Ext.69/6	Signature of P.W.23
Ext.69/7	Signature of Asst. Executive Engineer
Ext.15/2	Endorsement and signature of OIC
Ext.25/3	Endorsement and signature of OIC
Ext.15/4	Formal FIR
Ext.15/5	Signature of OIC
Ext.70	Seizure list dtd.23.07.08
Ext.71	Search-cum-inventory list
Mark-X	Xerox copy of search-cum-inventory list

Ext.72	Zimanama
Ext.73	Forwarding letter of Asst. Soil conservation Officer
Ext.74	Pay particulars
Ext.75	Bio-data of accused
Ext.76	Detailed pay particulars
Ext.5/2	Signature of P.W.24
Ext.77	Zimanama
Ext.77/1	Signature of P.W.24
Ext.78 & Ext.79	Attested copy of the service book and acquaintance register
Ext.80 & Ext.81	Detailed particulars
Ext.82	Letter from SRN University
Ext.83	Forwarding letter of LIC
Ext.84	Status report of policy
Ext.4/3	Signature of P.W.24
Ext.85	Zimanama
Ext.85/1	Signature of P.W.24
Ext.67/3	Signature of P.W.24
Ext.86	Forwarding letter
Ext.87	Report of Asst. Director Statistics Vigilance Directorate
Ext.88	Forwarding letter
Ext.88/1	Signature of P.W.25
Ext.88/2	Per capita expenditure and annual household expenditure
Ext.88/3	Signature of P.W.25
Ext.88/4	Signature of Sri Mallik
Ext.89	Forwarding letter
Ext.89/1	Signature of SP Vigilance
Ext.90	Sanction order
Ext.90/1	Forwarding letter
Ext.91	Original ROR
Ext.92	Original lease deed
Ext.93	Original RSD No.7002
Ext.94	Original RSD No.7621
Ext.95	Original RSD No.3203
Ext.96	Original RSD No.8988
Ext.97	Original lease deed

Mark-X and Mark-X/1	Copies of RSD No.1555/1990 and 1556/1990
Ext.99	Original ROR of Khata No.1226/261
Ext.100	Original ROR of Khata No.863/2562
Ext.101	LIC bond
Ext.102	LIC bond
Ext.103	SBI Life Insurance Policy
Ext.104	SBI SB accounts
Ext.105	SBI SB accounts
Ext.106	SBI SB accounts
Ext.107	Original RC book

List of exhibits marked for the Defence:-

Nil

List of M.Os marked for the Prosecution:-

Nil

Special Judge (Vigilance),
Berhampur.