

GAHC010129942013



REPORTABLE
2026:GAU-AS:9735

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./128/2013

KALYANARAMAN GANESH
S/O LATE V. KALYANARAMAN, R/O B-3 POOA APARTMENT, 61ST MAIN
ROAD, R.A. PURAM, P.S. CHENNAI, DIST. CHENNAI, TAMIL NADU.

VERSUS

CENTRAL BUREAU OF INVESTIGATION CBI

BEFORE

HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the petitioner(s): Mr Z Kamar
Mr P D Choudhury,
Mr Abudu Kumar Rajaratnam
Mr Sachin S,
Mr P Gowtham,
Mr Guruprasath

Advocate for the respondent(s): Ms M Kumari, SC, CBI

Date on which judgment was reserved : **09.06.2026**

Date of pronouncement of judgment : **16.07.2026**

Whether the pronouncement is of the : **NA**

operative part of the judgment?

Whether the full judgment has been: **Yes**

pronounced?

JUDGMENT AND ORDER (CAV)

This is an appeal filed under Section 27 of the Prevention of Corruption Act, 1988, read with Section 374 of the Code of Criminal Procedure, 1973, by which the appellant has challenged the Judgment and Order dated 26.03.2013, passed by the learned Special Judge, CBI, Assam, at Guwahati, in Special Case No. 89 of 2004. By the said judgment and order, the appellant was convicted under Section 13 (1) (e) of the Prevention of Corruption Act, 1988 (hereinafter, referred to as "the PC Act"), and was sentenced to undergo Rigorous Imprisonment for 3 (three) years with a fine of Rs. 50,000/- (Rupees Fifty Thousand)only and in default of the payment of fine, to undergo Rigorous Imprisonment for another period of 3 (three) months.

FACTS:

2. The case of the appellant is that he was working as the Chief General Manager, Telecom, North-East Task Force, at Guwahati, and retired from his service on 30th of September, 2005, and that he is presently about 83 years of age. The appellant also stated that before he joined as the Chief General Manager, Telecom at Guwahati, he was working in the Department of Telecom, Government of India, at various places across the country, for nearly 28 years without any blemish in his service career.

3. It is the further case of the appellant that while he was working as the Chief General Manager, Telecom, Guwahati, and was proceeding from Guwahati to Chennai, on 06.09.1997, he was intercepted at Guwahati Airport by the

Security Superintendent stationed at the said Airport, as well as by another Security Officer, along with one Sub-Inspector of Assam Police, attached to Airport Security. The appellant further stated that he was detained at the Airport as he was carrying cash in his baggage and that on finding the same, the Executive Magistrate was called to the Airport and an amount of Rs. 25,31,200/- (Rupees Twenty Five Lakhs Thirty One Thousand Two Hundred Only) was seized from his baggage at the Airport Security Enclosure in presence of police personnel. Thereafter, it is stated that the said Executive Magistrate lodged a complaint which was treated as First Information Report (shortly as "FIR") before the Azara Police Station, being registered and numbered as Azara PS Case No. 74 of 1997, under Section 7/13(1) (e) of the PC Act. In the said FIR, it was stated *inter alia* that the seized money was given as illegal gratification to the appellant by 5 (five) contractors named therein. The appellant, thereafter was taken into police custody on the same day, i.e., on 06.09.1997, and the Deputy Superintendent of Police took up the investigation as the Investigating Officer. The appellant further stated that on the next day, i.e., on 07.09.1997, an additional amount of Rs. 4,00,000/- (Rupees Four Lacs Only) were seized from his residence by the Investigating Officer. Thereafter, the charge sheet was submitted in which it was *inter alia* stated that the amount of Rs. 29,31,200/- (Rupees Twenty Nine Lakhs Thirty One Thousand Two Hundred Only) was disproportionate assets of the appellant.

4. It is the further case of the petitioner that while the investigation was conducted by the Assam Police, the Central Bureau of Investigation (for short, "the CBI"), took over the charge of the said case being Azara PS Case No. 74/97 and registered a fresh FIR being RC No. 5 (A)/98-SHG, on 11.02.1998, on receipt of a no-objection letter from the Assam Government dated 22.01.1998.

The CBI, after conclusion of their investigation, submitted a charge sheet on 29.11.2001 against 4 (four) accused persons for various offences. The names of the accused persons are mentioned hereinbelow:

- i) K. Ganesh, the appellant, charged under Sections 13 (2)/13(1) (a)/13(1)(e) of the PC Act, as well as Section 120(B)/193, read with Sections 192/465/468/511/471 of the Indian Penal Code, 1860.
- ii) M. K. Agarwal, charged under Sections 13 (2)/13(1)(a)/13(1)(e) of the PC Act, as well as Section 120(B)/193, read with Sections 192/465/468/511/471 of the Indian Penal Code, 1860.
- iii) K.V. Muthulakshmi, wife of the appellant, charged under Sections 120(B)/193, read with Sections 192/465/511/471 of the Indian Penal Code, 1860.
- iv) Nima Tsering Khrime, charged under Sections 120(B)/193, read with Sections 192/465/511/471 of the Indian Penal Code, 1860.

5. The CBI Court, during framing of charge, after hearing both the parties, vide order dated 10.03.2005, discharged all other three accused persons mentioned above, i.e., M.K. Agarwal, K.V. Muthulakshmi and Nima Tsering Khrime, from the case, but charged the appellant. The said discharge order was passed on the consideration that there was lack of proper evidence and also due to the embargo of Section 195 (1) (b) of the CrPC. The appellant was also discharged of other offences mentioned in the charge sheet and the only charge framed against him was the offence under Section 13 (1) (e) and 13 (2) of the PC Act. The appellant further states that against the said discharge

order under the various Sections of law, the CBI had not filed any appeal or revision before any higher Court, both against the discharged accused persons as well as against the discharge of the appellant under other Sections of law.

6. It is also the case of the appellant that Nima Tsering Khriem, who was arrayed as Defence witness No. 1, a businessman and hotelier of Itanagar, Arunachal Pradesh, filed a petition under Section 451 of CrPC, on 16.03.1998, claiming the seized cash amount of Rs. 29,00,000/- as his, on the ground that he had given the money to the appellant on 04.09.1997, as advance for purchase of diamond jewellery based on an estimate given to him on 07.06.1997 by S.Visweswaran, a diamond jeweller of Chennai. The said application for custody/refund of the said amount of Rs. 29,00,000/- was filed before the concerned Court, and the said application was numbered as Misc. Petition No. 2 of 1998, and after hearing the parties, the learned Special Judge, CBI, by order dated 25.05.1998, rejected the said petition on the ground that the money was seized during course of an investigation of a criminal proceeding and that the petitioner, Shri Nima Tsering Khriem was not entitled to get back the said money. Against the said order, an application was filed before High Court which was also rejected.

7. The trial against the appellant commenced and the prosecution examined 67 (sixty-seven) witnesses and the Court examined one witness, and the defence examined two witnesses. The learned Special Judge, CBI, after hearing both the sides, and on conclusion of the trial, convicted and sentenced the appellant as mentioned above, vide Judgment and Order dated 26.03.2013.

Being allegedly aggrieved by the said Judgment and Order, the appellant has filed this appeal on the following grounds:-

- i) The trial Court failed to appreciate the evidence on record in its proper perspective and came to an erroneous finding that the appellant was guilty under Section 13 (1) (e) of the PC Act.
- ii) The investigation of the case was also done in a perfunctory manner, causing serious prejudice to the appellant.
- iii) The trial Court on the basis of conjectures and surmises, came to an erroneous finding that the appellant possessed disproportionate assets, beyond his known source of income.
- iv) The trial Court had taken into account, the materials favoring the prosecution and ignored the materials placed by the appellant.
- v) The framing of charge under Section 13(1)(e) read with Section 13(2) of the PC Act, by the Special Judge, CBI, on 10.03.2005, under one head of charge was defective, inasmuch as in the charge sheet, the prosecution considered the check period of 7 (seven) days from 01.09.1997 to 07.09.1997, and the amount of disproportionate asset was calculated at Rs. 29,19,053/52, whereas the trial Court had altered the check period from 06.09.1997 to 12.09.1997, and the amount of disproportionate asset was also changed to Rs. 25,31,200/-.
- vi) The prosecution had failed to prove the exact amount of disproportionate assets to the known source of appellant's income.

- vii) No preliminary enquiry was conducted before registration of the FIR.
- viii) The prosecution had not discharged its initial burden to prove a case under Section 13 (1)(e) of the PC Act.
- ix) The burden never shifted to the appellant since prosecution could not successfully discharge its own burden.
- x) The appellant had discharged its burden by proving the fact that the money was given by DW-1 and the said fact was proved on the touchstone of preponderance of probability.
- xi) The appellant had successfully accounted for the possession of the seized amount.
- xii) The appellant had successfully proved that Rs. 25,31,200/- was collected not from his known source of income.
- xiii) The check period considered by the trial Court, i.e., from 06.09.1997 to 12.09.1997, was illegal since during that period, the appellant was in the police custody.
- xiv) The trial Court had not taken into account, the expenditures and the income during the check period to arrive at a conclusion thereof.
- xv) The learned trial Court, in its Judgment and Order, had contradicted itself.
- xvi) The CBI, took over the case from the Assam Police, without the specific consent of the Assam Government.

- xvii) The Inspector, CBI, who was the Investigating Officer, during his cross-examination, had stated that no consent of the Assam Government was taken under Section 6 of Delhi Special Police Establishment Act, 1946 (for short, the DSPE Act).
- xviii) The CBI, commenced its fresh investigation from 11.02.1998, and as such, the materials collected by the State Police beforehand, were hit by Section 162 of the CrPC.
- xix) The defence evidence was not considered in its proper perspective.
- xx) No confession under Section 164 of the CrPC was ever made by the appellant to the effect that money seized from him was the illegal gratification from the contractors.
- xxi) The examination of the appellant under Section 313 of the CrPC was defective, as all the incriminating circumstances were not put to him.
- xxii) The evidence of DW No. 1 that he was the leading timber merchant and that he was financially sound was not considered by the trial Court.
- xxiii) The estimate given for diamond jewellery should have been considered as genuine by the trial Court.
- xxiv) The payment of Rs. 1 crore and 80 lacs by DW No. 1, as one time settlement to clear his outstanding loan amount with Vijaya Bank, should have been considered by the Trial Court to bring home the

fact that DW-1 was financially sound.

- xxv) The finding of the trial Court that DW-1 had not revealed from which bank account he withdrew the money to clear his outstanding loan, is absurd.
- xxvi) The further finding that DW-1 had only two-years friendship with the appellant and DW-1 had also not visited his house and as such, he could not have given such a big amount is also absurd.
- xxvii) Giving of a receipt by the Appellant for the money received from DW-1, is a normal behaviour which was taken as otherwise by the trial Court.

On these grounds, the appellant has challenged the conviction and sentence order passed against him.

SUBMISSIONS:

8. Mr.Rajaratnam, the learned Senior Counsel assisted by Mr. Sachin S., learned Counsel for the appellant argued at length and submitted a written argument, containing the following contentions:

- i) The appellant reached Borjhar Airport on 06.09.1997 to board his flight to Chennai via Kolkata and the security official asked the appellant to screen his bags and when the appellant did the same, an inkling occurred suggesting that the appellant was carrying something suspicious and when he was asked to

open the bags, the appellant refused saying that the keys were not available.

ii) At that juncture, the Superintendent of Police and Deputy Commissioner, Kamrup, were called, who, in turn, called the Executive Magistrate, and as such, the Executive Magistrate reached the Airport and after enquiring about the case, took the appellant to the Azara Police Station.

iii) At the Police Station, the appellant opened his bags and a sum of Rs. 25,31,200/- was found inside and that both the money and the suitcase were seized by the Police, and that, thereafter, a complaint was lodged by the Executive Magistrate and the same was registered as FIR, as mentioned above.

iv) On the next date, i.e., on 07.09.1997, an amount of Rs. 4 lacs were recovered and seized from the house of the appellant.

v) During the investigation of the instant case, the CBI sought for transfer of the investigation by a letter dated 28.11.1997, and the Deputy Secretary to the Government of Assam, by a letter dated 22.01.1998, replied that the Government of Assam, has no objection for investigation of the case by the CBI, and as a consequence, the CBI registered one FIR being Crime No. RC No. 5 (A)/98-SHG, dated 11.02.1998, as mentioned above.

vi) On conclusion of the investigation, the CBI submitted charge-sheet against four accused persons, including the appellant and the allegations in the charge-sheet is that the appellant received bribes from contractors.

vii) In the charge sheet it is stated that the wife of the appellant entered into a conspiracy with DW-1, who stated that the money was given by him to

the appellant.

viii) During the stage of Charge framing, the trial Court discharged the other three accused persons and the charge was framed only against the appellant. The Learned Senior Counsel submits that the prosecution had filed a charge sheet stating inter-alia that the appellant had possessed Rs. 29,31,200/-, as disproportionate asset, but the trial Court had framed charge only to the tune of Rs. 25,31,200/-.

ix) The trial Court had altered the check period and that apart from the alleged disproportionate asset, no other movable or immovable property were found from the appellant, and also that the assets at the beginning and assets at the end of the check period was not discussed by the trial Court.

x) The learned counsel submits that the trial Court had not considered the application filed by DW-1, claiming the amount of Rs. 29,00,000/-, as his money. He also submitted that the evidence of DW-1 was wrongly discarded on the ground that denominations of the money mentioned by DW-1 was different compared to the denominations of money seized by the Police from the appellant.

xi) He also submits that the financial well being of DW-1 was seen by the trial Court and DW-1 being found a debtor for his outstanding loans to the bank, the learned Trial Court reached the conclusion that DW-1 could not have given the money to the appellant, which, however, according to the counsel, was absurd. He strenuously argued and has placed the same in the written argument that DW-1 had deposed before the trial Court after a period of 15

years from the alleged offence for which the differences in denomination becomes a natural corollary. He also stated that the trial Court had also not considered the evidence of the bank officials who had deposed before the Court that some of the bundles that were produced before the Court were issued by the Bank subsequent to the date of occurrence. In this connection, he placed the statements of PWs-13, 15 and 22. As such, he submits that the money which was produced before the Court was not the money recovered from the appellant at the Borjhar Airport.

xii) The learned counsel further submitted that the learned Court had not taken into consideration the innumerable transactions that were carried out in the accounts of DW No. 1, which demonstrated that DW-1 was capable of giving a sum of Rs. 29,00,000/- to the appellant. He further submitted that although the account of Hotel Bomdila named as such, was declared as NPA by Vijaya Bank for default in payment of Rs. 1.8 crores, but the learned trial Court failed to consider the evidence of the Investigating Officer, who had deposed about the letter written by the Vijaya Bank to the SP, CBI, wherein it was stated that DW-1 had cleared all his dues as one time settlement to the Bank, and the said letter was written on 27.03.2001. He submits that the said fact was not written in the charge sheet, submitted by the CBI. The said fact of return of money by DW-1 to the Bank, was also discernible from the Court case filed by the Bank, which was deposed to, by the Bank official.

xiii) The learned counsel also submitted that the trial Court had not considered the evidence of the Investigating Officers of the CBI, who admitted that they never visited Arunachal Pradesh, to check the credibility of DW-1, and that the investigation was perfunctory.

xiv) He also submitted that the trial Court had not considered that relationship between the appellant and DW-1 was that of a fiduciary in nature and that DW-1 trusted the appellant and gave him Rs. 29,00,000/- to procure diamond jewellery from appellant's father-in-law. In this connection, he placed reliance on a judgment passed by the Hon'ble Apex Court in ***CBSE -vs- Adiya Bandopadhyay; reported in (2011) 8 SCC 497***, wherein the Apex Court had observed that fiduciary relationship is used to describe a situation or transaction, where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business and transaction. He also relied upon the judgment passed by the Hon'ble Apex Court in ***State of Haryana -vs- Ram Singh; reported in (2002) 2 SCC 426***, by which the Apex Court had re-iterated that prosecution had to prove its case beyond reasonable doubt.

xv) The learned counsel also submitted about the check period considered by the trial Court as well as the amount considered to be disproportionate asset, as the charges against Rs. 4 lacs was dropped. He submits that the trial Court had failed to record reasons as to how the said four lacs was considered to be genuine and the remaining as tainted money.

xvi) Mr Rajaratnam had further submitted that the trial Court failed to consider the fact that appellant had no other movable or immovable disproportionate asset, apart from the alleged money recovered at the Airport, for which the appellant had a valid ground, i.e. the evidence of DW-1. He also submits that the transfer of investigation to the CBI by the Assam Police was not in accordance with law, since the consent of the State Government was not

obtained as mandated under Section 6 of the DSPE Act. He further submits that even the No-Objection letter placed by the prosecution which demonstrated that the State Government had no objection to the investigation being carried out by CBI was also issued at a later point of time, i.e., much after the case was already handed over to the CBI. He further submits that no official from the State Government were examined to prove the said No-Objection letter. He also submits that the No-Objection letter was only a photocopy being inadmissible in evidence. In this connection, he relied on the following judgments:-

- (i) *Nawal Kishore Meena vs. State of Rajasthan*; [SLP(Crl.) No. 492 of 2026]**
- (ii) *Hussein Ghadially vs. State of Gujarat*; (2014) 8 SCC 425**
- iii) *Babubhai vs. State of Gujarat*; (2010) 12 SCC 254**
- iv) *State of Punjab vs. Davinder Pal Singh Bhullar*; AIR 2012 SC 364.**

xvii) The learned counsel also submits that the Trial Court had not considered the requirement of law as regards the application of mind by the concerned authority while granting sanction under the DSPE Act. He strenuously argues that at one point it seems that the Hon'ble President of India had applied his mind in issuing the sanction order whereas it is found in the statement of PW No. 1 that the Minister had applied his mind, the fact which does not find mention in the sanction order. He also submitted that the Minister's note has also not been produced during the trial. As such, he submits that it is unknown as to who had applied his mind when the sanction order was issued. In this connection, the learned counsel had relied on the following judgments:-

- (i) *R. S. Nayak vs. A.R. Antulay*; (1984) 2 SCC 183**
- (ii) *MansukhlalVithaldas Chauhan vs. State of Gujarat*; (1997) 7 SCC**

622.

iii) ***Nanjappa vs. State of Karnataka; (2015) 14 SCC 186.***

iv) ***Robert Lalchungnunga Chongthu vs. State of Bihar; 2025 SCC OnLine SC 2511***

xviii) The learned counsel further submitted that the appellant had discharged his burden by placing oral and documentary evidence through DW-1 and DW -2 and also by cross-examining the prosecution witnesses and has successfully established the fact that money was held by the appellant in fiduciary relationship on behalf of DW No. 1. He further relied on the following judgments:-

(i) ***V D Jhingan vs. State of UP; AIR 1966 SC 1762***

(ii) ***State of Maharashtra -vs. Wasudeo Ram Chandra Kaidalwar; (1981) 3 SCC 199.***

iii) ***Basalingappa vs. Mudibasappa; (2019) 5 SCC 418***

xix) It is further submitted that the trial Court failed to consider the evidence of PW No. 8, an officer of Telecom department, who stated before the Court that on an internal enquiry, the allegations against the appellant were found to be false.

xx) On admissibility of confessional statement, the learned counsel submits that the alleged confession of the appellant before the Executive Magistrate is inadmissible in law, and to substantiate the fact, he relied on a judgment of this High Court reported in **2017 SCC Online Gau 1239 (Kartik Chakraborty -vs- State of Assam)** in which, it was held that the Magistrate mentioned under Section 26 of the Evidence Act, should be a Judicial Magistrate and not an

Executive Magistrate. The learned counsel also relied on the judgments below:-

- i) ***State of UP vs. Deoman Upadhyaya; AIR 1960 SC 1125.***
- ii) ***Ganesan vs. State; 2024 SCC OnLine Mad 6112.***

xxi) The learned counsel further submits that all the incriminating circumstances which arose in the case were not placed to the appellant in his examination under Section 313 of the CrPC, and non-consideration of the answers to the questions put, endangers the conviction and to substantiate this fact, he has relied on the judgment rendered by the Supreme Court in *Prem Chand -Vs State of Maharashtra* ;(2023) 5 SCC 522.

9. On the other hand, Ms. M Kumari, learned Standing Counsel for the CBI, by her extensive argument and by submitting a written argument, has emphasized on the following contentions:-

- i) The appellant, at the time, when he was intercepted at the Airport and money was recovered from his bag, at the first instance, stated that he was sending cash of Rs. 5,00,000/- to Chennai for purchase of machinery and subsequently, he stated that he had huge cash in the suitcase as well and that the said money was collected from the contractors for construction of an Institution at Chennai. As such, she submits that the appellant had given various reasons for possession of such huge cash and the same was found unconvincing.
- ii) When the money was recovered from both the suitcases as well as the handbag, it was found in different denominations and the same were stuffed in envelopes, file covers as well as polythene bags.

iii) During the course of investigation, the appellant revealed that money was given to him by contractors, which shows that habitually he accepts for himself or any other person, gratification, other than legal remuneration as a motive or reward for doing or for not doing any official act. It is further stated that apart from the money recovered at the Airport, Rs. 4 lacs were additionally found in the house of the appellant, which were again seized.

iv) Since money was recovered from the possession of the appellant at the Airport, the appellant has to account for the source of the alleged money.

v) The Assistant Director (VIG) Telecom Department, examined as PW No. 1 was authorized to convey the sanction of the President of India for prosecution of the accused.

vi) The Security personnel of the Airport who were examined as PWs-2 and 3, deposed that on apprehension, when the appellant was asked to open his bag, he refused, at which they informed the higher authorities, who in turn called the Executive Magistrate and in presence of the said witnesses, the appellant opened the suitcase and on recovery of the money, the appellant stated that he had carried the money to open an institute for physically handicapped people in Chennai.

vii) When the appellant was apprehended for the first time, he did not open the suitcase, stating that the keys were not with him and when Rs. 5 lacs were recovered from his handbag, he claimed that the money was meant for an Institution, as stated above.

viii) The appellant was examined by the Income Tax Department and his statement was recorded under Section 131 of the Income Tax Act, in which he could not give any satisfactory reply with regard to the source of money. The appellant before the said authorities, had claimed that the said money was collected as donation for a Trust in Chennai. Learned Counsel further stated that the statement recorded under Section 131 of the Income Tax Act, has evidentiary value and any disclosure made during the said proceeding becomes binding on the person, who makes it.

ix) The Executive Magistrate who was present when the money was recovered, deposed as PW No. 10, and he stated that appellant admitted the money to have been received from the contractors, who had given it to the appellant as they had earned profit from the work entrusted to them.

x) The Bank officials examined as PW No. 12 to PW No. 47, had identified the bundles of money issued from their respective Bank containing their seal and signature.

xi) With regard to the financial capabilities of DW No. 1, the Assistant General Manager of Vijaya Bank, examined as PW No. 46, deposed that DW-1 had availed four types of loans and that he could not repay the loan and his account was made Non- Performing Asset (NPA) which, however, was recovered by the Bank by filing a suit. It is also stated that DW No. 1 had very less amount in his other accounts, which shows that he was not in a position to lend 25 lacs or 29 lacs of rupees to anybody or the appellant.

xii) During the cross-examination of DW-1 by the prosecution, he stated that

he handed over Rs. 29 lacs to the appellant, with denominations of Rs. 1,000/- and Rs. 500/-, but the money that was recovered from the bag of the appellant, was of denomination of Rs. 500/-, Rs. 100/-, Rs. 50/- and Rs. 10/-, and as such, the evidence of DW-1 was unreliable.

xiii) The money receipt for the money allegedly given by DW No. 1, was issued by the appellant and not by the appellant's father-in-law, who was stated to have a jewellery shop.

xiv) DW-1, who was indebted to the Bank for a huge loan amount, cannot be believed to have given Rs. 29 lacs to the appellant, more so, in view of the fact that his timber business and other businesses were not running properly, during the commission of the offence.

xv) DW No. 1, although is exempted from paying income tax as he was a local of Arunachal Pradesh, but he had not produced any statement of income/return, filed with the Income Tax Department. It is also stated that DW No. 1, had deposed in his evidence that he did not know the full name of the appellant, which makes his statement of giving money to the appellant, whom he did not know properly, becomes unbelievable. It is also stated that if DW-1 had so much of money, he could have gone to Chennai to purchase the jewellery himself, instead of giving such huge amount of money to a person, whom he barely knows.

xvi) DW No. 1 had although filed a petition for custody of Rs. 29 lacs recovered from the appellant, but he did not approach higher authorities after his applications were dismissed by both the trial Court as well as the High Court.

xvii) The appellant had made various stories with regard to the money recovered and had the reason given by him that DW-1 had given him the money being correct, he would have said that at the very first instance, i.e., when the money was recovered at the Airport.

xviii) The defence of the appellant that DW-2 had cleared the loan amount on one time settlement with Vijaya Bank, was not stated by the Assistant General Manager of the said Bank, who was examined as PW No. 46, and as such, the same shows that said settlement had no connection whatsoever with the present offence.

xix) The appellant, being the Chief General Manager of BSNL, posted in Assam, does not require the sanction of Section 5 of the DSPE Act, due to the reason that he was a Central Government Employee. It was stated that CBI has full jurisdiction to investigate offences related to corruption, bribery as well as disproportionate asset under the PC Act, in case of Central Government Employees. It is also stated that there is already a general consent in place for the CBI to investigate offences allegedly committed by Central Government officials regardless of specific consent of the State Government, and that in the present case, the State Government had given a general consent and as such, there appears no irregularities. In this connection, the learned counsel has relied on the judgment passed by the Apex Court, in ***State CBI vs. A. Satish & Others***; reported in **2025 INSC 11**, by which the Hon'ble Apex Court had held that requirement of State consent under DSPE Act, does not apply when the accused person is a Central Government Employee and the alleged offence pertains to a Central Law.

xx) With regard to the prosecution sanction, it is stated that the Hon'ble Apex Court had settled the position that even if there is any irregularity in prosecution sanction, the same would not become fatal and will not vitiate the case. The learned counsel relied on the judgment of the Apex Court in ***Prakash Singh Badal -vs. State of Punjab***; reported in (2007) 1 SCC 1, by which the Apex Court had observed that mere error, omission or irregularity in prosecution sanction is not considered fatal unless the same results in failure of justice or has been occasioned thereby. The learned counsel has also relied on the judgment delivered by the Supreme Court in ***CBI -vs- Jagatram (Criminal Appeal No. 4964 of 2024)***.

xxi) The appellant, on being apprehended at the Airport, revealed that he had the money given by some industry and that the same was collected as donation for handicapped persons and then he said that the money was collected for a Trust and so on and so forth. It is as such, submitted that when all the theory failed, the appellant took the plea that money was given in a fiduciary relation between him and DW No. 1, for purchasing jewellery.

xxii) The learned counsel, on the aforesaid grounds submit that the Trial Court had appreciated the evidence on record properly and the same does not call for any interference.

These are the submissions of the learned counsels for the parties.

EVIDENCE:

10. During the trial of the appellant, the prosecution had examined 67

numbers of witnesses. The statement of the relevant witnesses in brief, are mentioned hereinbelow:-

i) The Assistant Director (VIG), Telecom Department, was examined as PW No. 1, and he stated before the trial Court that he was authorized to convey the prosecution sanction granted by the Hon'ble President of India for prosecution of the appellant and that he was supplied with the SP's report and some other related documents along with the statements relating to the asset of the appellant at the beginning as well as at the end of the check period and the expenditures he incurred during the same. He further stated that the said documents were transmitted to the Minister of the Telecom Department for his consideration and approval. He then stated that the said Minister in consultation with Central Vigilance Officer, accorded his sanction to launch the prosecution against the appellant, and that after perusal of the report, the Hon'ble Minister was satisfied that a *prima facie* case has been established against the appellant. This witness also stated, during his cross-examination that the Minister's approval was found on a note-sheet and on the basis of the said note-sheet, he accorded sanction to launch prosecution against the appellant.

ii) PWs-2 and 3 are the Security Personnel stationed at Borjhar Airport, Guwahati, and they stated similar statements to the effect that during the bag-checking, it was found that the same had some suspicious material and when it was found out that the bags were of the appellant, he was called and was told to open the suitcase as well as the handbag, and that initially, the appellant did not open the suitcase, saying that the keys were not with him, but when the handbag was checked, 5 lacs of rupees were found, which he said that those were for purchasing some machinery on behalf of M/s Pragjyotish Private

Limited. Not being satisfied with the answer, they took him to the security office and intimated the fact to the higher officials, who in turn, called the Executive Magistrate, and on being requested by the Executive Magistrate, the appellant handed over the keys and on opening the suitcase, money was found to which, the appellant replied that he was carrying the same to open an institution for physically handicapped people in Chennai. These witnesses further stated that currency notes of the denomination of Rs. 500/-, Rs. 100/-, Rs. 50/- and Rs. 10/- were found and that the money was counted and a total of Rs. 25,31,200/- was found and that the same were seized and they along with others had put their signatures as witnesses. They also stated that, thereafter, the appellant was taken to the Police Station. During their cross-examination, they reiterated the statements made in their examination-in-chief. However, PW No. 3 stated during his cross-examination, that the appellant did not give any statement about the source or the purpose of money.

iii) The police personnel from the Azara Police Station, was examined as PW No. 4, and he stated that the appellant was brought to the Police Station and that he could not offer any proper explanation for possessing such huge amount of money. He also stated that money was seized before the appellant was brought to the Police Station and that he had only kept the money in Malkhana for safe custody.

iv) The Assistant Director, General (VIG), Department of Telecommunication was examined as PW No. 5, and he stated that on demands being made, he handed over statement 1 to statement 6 pertaining to details of the appellant to the CBI. During his cross-examination, he stated that statements with regard to immovable property of the appellant as on

06.09.1997 was also handed over.

v) A worker in the Maheswari Industries was examined as PW No. 6, and he stated that the said industry supplies various materials relating to sanitary items to the Telecom Department and while supplying, the Industry submit bills of the contract work done by them, and they receive the payment of the bills by way of cheques. During his cross-examination, he stated that he was arrested in the instant case and was allowed to go on bail.

vi) The Accountant of the said Maheswari Industries was examined as PW-7, and he stated that sanitary articles were supplied to the Telecom Department since 1994 and continued till 1998, and that bills with regard to purchase and sale for the year 1995-1996, were given to the CBI.

vii) The Chief General Manager, Telecom Department, Assam Region, for the year 1997 was examined as PW No. 8, and he stated that he was present when the house of the appellant was searched. He deposed before the trial Court that the appellant voluntarily opened his almirah and took out an amount of Rs. 4 lacs, kept inside the same along with a video camera, which were seized by the police personnel, and that he had put his signature in the seizure list. During his cross-examination, he stated that he conducted an internal inquiry with regard to alleged financial anomalies of the appellant, but in the said enquiry no anomalies were found against the appellant, rather he stated that the appellant did certain acts, which were beneficial to the Department, and he also stated that no departmental proceeding was ever initiated against the appellant.

viii) The Deputy Director, Income Tax Department, was examined as PW-9, and he stated that on a direction given by a higher officer, he examined the appellant and recorded his statement. He stated that the appellant could not give proper answers with regard to the source of the money found in his possession. During his cross-examination, he stated that he interrogated the appellant inside the jail in presence of some other jail officials.

ix) The Executive Magistrate who was called to the Airport was examined as PW No. 10, and he stated that he requested the appellant to unlock his baggage and that the appellant told him and others that the amount of Rs. 5 lacs which was found in his handbag, were for purchasing some articles in the name of M/s Pragjyotish Construction Limited, and that on opening all the bags, including the suitcase, an amount of Rs. 29,31,200/- was found, and that the denomination were of Rs. 500/-, Rs. 100/-, Rs. 50/- and Rs. 10/-. He also stated that at the Police Station, the appellant admitted that the money was given by some contractors as the profit money that the contractors earned from their work, and that on the said information, he lodged the FIR. During his cross-examination, he stated that in the seizure list, he did not reflect the numbers mentioned on the notes and that some money were recovered from some addressed envelopes and some from plain envelopes. He further stated that the money which was seized were not produced before the Court on the day of his examination and he further stated that even if the money had been placed before the Court, he would not have recognized since he had not noted down the number on the notes.

x) The Security Surveillance Officer posted at Borjhar Airport was examined as PW-11, and he stated that on checking the bags of the appellant, an amount

of Rs. 29,31,200/- was recovered. During his cross-examination, he stated that bank counting slip was attached to only one or two bundles of notes, not with all.

xi) The Assistant Manager, SBI, Chenikuthi, was examined as PW No. 12 and he stated before the Court that there were three bundles of notes of Rs. 100/- each and he stated that the said bundles were given to customers on 26.08.1997 or thereafter.

xii) The Cashier of Bank of Baroda of Dimapur Branch, was examined as PW No. 13, and he also stated that there were three bundles of Rs. 100/- denomination each and he stated that the said bundles were given to the customers on 02.10.1997 or thereafter.

xiii) Another Cashier of Andhra Bank, AT Road was examined as PW-14 and stated that three numbers of hundred-rupee bundles were given to customers.

xiv) A Clerk from Indian Bank, Beltola Branch, was examined as PW-15 and he stated that the money which was shown to him was given to the customers on 21.10.1997 or on subsequent date.

However, the witnesses related to the Bank as mentioned above and also other witnesses, i.e., from PW-16 to PW-45 as well as PW-50 had stated that exact date of preparation of bundle cannot be stated with certitude and that bank note slips are interchangeable, i.e., it can be changed whenever money is transacted between the Banks.

xv) The Assistant General Manager (i/c), Vijaya Bank, Guwahati, was

examined as PW No. 46 and he stated that at the relevant juncture, i.e., during 1998, three types of loans were given to DW-1 and that they were mortgaged loan of Rs. 26 lacs, secured loan of Rs. 14 lacs and OLCC limit of Rs. 0.58 lacs towards working capital and that another loan in the year 1990 to the tune of Rs. 14.48 lacs, were given to DW-1 and he further stated that the Bank filed a case for non-repayment of the loan by DW-1 and that DW-1 cleared the entire loan amount through one time settlement to the Bank. This witness also stated that no case was pending against DW-1.

xvi) The Branch Manager of SBI, Rangapani Branch, was examined as PW-47 and he stated that with regard to the bank account opened in the name of M/s Rupa Veneer and Sawmill of DW-1, few transactions were there in the said account and the balance did not exceed Rs. 2 lacs.

xvii) The Assistant Manager, SBI, Mysore, examined as PW-48 stated that a joint account in the name of the appellant and his wife had the credit balance of Rs. 1,49,754.88, as on 01.04.1997, and on 07.09.1997, the credit balance was Rs. 39,063.18/-.

xviii) PW-52 was the DSP, Pandu Division, Guwahati, and he stated about the entire facts from seizure of the money at the Airport as well as examination of the witnesses, and further stated that one Abid Hussain, one of the alleged contractors, was examined under Section 164 CrPC and he stated that the cash amount was received from the contractors and the reasons for carrying the said money was stated for different purposes. This witness further stated that he had handed over the case diary as well as other documents to CBI when the case was taken over by them.

xix) An officer in Shenoy Nagar Branch, Canara Bank, Chennai, was examined as PW-61, and he stated that an account held by the appellant was with the credit balance of Rs. 5,813/- as on 01.04.1997.

xx) PW-65 was a contractor during the year 1999 and he stated before the trial Court that he did not know whether the appellant was involved in passing his bills and further during his cross-examination, he denied that appellant was involved in receiving money to clear bills of contractors.

xxi) One of the CBI officials was examined as PW-66, and he stated before the trial Court that on examination, the appellant claimed that the money was given to him by DW-1 and on examination of DW-1, this witness stated that DW-1 was not in a sound financial position to give appellant the said amount of money. During his cross-examination, he stated that he did not visit the State of Arunachal Pradesh during the investigation of the case, to see the financial status of DW-1.

xxii) The Inspector of Police, CBI, was appointed as the Investigating Officer and was examined as PW No. 67, and he stated before the Court that prior to his taking over the investigation, the appellant disclosed before the Assam Police that he received the money from the contractors and when he took over the investigation and examined the appellant, the appellant stated that money was given to him by DW No. 1. He further stated that out of the seized money, few currency bundles amounting to Rs. 13, 70,000/- was withdrawn from 47 numbers of banks and respective officials from the concerned banks were examined and rest of the money amounting to Rs. 15,61,200/- was without any

bank slip and as such, it could not be ascertained from which Bank, the amount was withdrawn. During his cross-examination, he stated that he recorded the statement of DW-1 and the banks statements of DW-1 were also seen and by assessing the financial health of DW-1, he stated that DW-1 could not have given the said money to the appellant, but at the same stretch, he also stated that he had not visited the State of Arunachal Pradesh to ascertain the financial status of DW-1 in its entirety. This witness further stated that DW-1 had cleared his loan amount to the tune of Rs. 1 crore and above, to the Vijaya Bank. He also stated that he did not visit Chennai too, to ascertain the financial status of the appellant.

11. The appellant examined two witnesses on his behalf, one was DW-1, who was Sri Nima Tsering Khriem, and the other was the Chief Manager of Vijaya Bank. The statements of these two witnesses, in brief, are mentioned below:

i) DW-1 stated before the trial Court that he is a businessman and he has a hotel, namely, Hotel Bomdila at Itanagar and the said hotel was a three-star category hotel. He also stated that he had timber business in the name of M/s Rupa Veneer and Sawmill and that he transports timber to various States in the country. He further stated that his yearly transactions with SBI and UCO Bank, Rangapara, ranges to the tune of Rs. 8 crores and Rs. 2 crores respectively. He stated that he was a Government supplier too. Thereafter, he stated that he shared a cordial relation with the appellant, which developed into a family friendship and that during a meeting, his wife saw some diamond jewellery owned by wife of the appellant and she being desirous to buy said jewelries, asked the wife of the appellant as to where did she get it from, to which the wife of the appellant replied that her father had a jewellery shop in Chennai and

upon knowing the same, on the request of his wife, DW-1 gave money and requested the appellant to get the said jewellerys from Chennai. This witness also stated that before he gave the money to the appellant, a quotation was given by the father of the appellant's wife with regard to the price of the jewellerys and this witness had given 90 percent of the estimated price as the advance money. He also stated that since it was his money he filed an application for custody of the same which was however rejected by the Hon'ble Courts. He further stated that he cleared his loan amount as one time settlement with the Vijaya Bank. This witness further stated that he being a Scheduled Tribe person, is not required to pay income tax, but he possessed the certificate issued by the Superintendent of Taxes, Naharlagun, Arunachal Pradesh. During his cross-examination, he reiterated the statements and further stated that he had full trust and faith upon the appellant and as such, he had paid the money for purchase of jewellerys. He further stated that financial condition of his hotel was not good, but his timber business was good and he denied that he was not in a position to pay the amount of money to the appellant.

ii) The appellant had examined another witness on his behalf who was the Chief Manager of Vijaya Bank, examined as DW-2. This witness stated that DW-1 had taken loan from the Vijaya Bank, but DW-1 had settled the said loan as one time settlement as permitted by the Reserve Bank of India and that he had issued a certificate with regard to the same. He also stated that the petitioner's account was no longer NPA and that they do not have any claim over Hotel Bomdila. He also stated that at no point of time, Vijaya Bank took custody of Hotel Bomdila and that the said hotel was always under the custody and

possession of DW-1.

12. Apart from the said witnesses, the Court examined an official of the CBI as Court witness No. 1 and he stated before the trial Court that when he was entrusted with the case, the investigation was already completed and the sanction order for prosecution of the appellant was also received and he further stated that on perusal of the Case Diary and other connected papers, he came to the conclusion that *prima facie* case was established against the appellant and other three persons and as such, the charge sheet was submitted. The prosecution had declined to cross-examine this witness, however, this witness was cross-examined by the defence, and during the same he stated that one of the contractors had given his confessional statement, i.e., Sri Abid Hussain. He, however, further stated that he had not examined any other witness to prove the allegation of Abid Hussain of making a payment of Rs. 30,000/- to appellant. He further stated that if the appellant was a State Government Employee, Section 6 of DSPE Act is not required to be followed.

13. After the examination of all the witnesses as stated above, the appellant was examined under Section 313 of the CrPC and during the said examination, the appellant had denied all the allegations and further answered *inter alia* to various queries as mentioned below:-

- i) PW-1 had not applied his mind while granting sanction for prosecution.
- ii) Carrying cash while travelling by air was not an offence and as such, he has not committed the offence as alleged.
- iii) The Hon'ble Court had discharged the other accused persons for lack of evidence, which is equally applicable to him.

- iv) PW No. 46 had admitted that loan amount was paid and cleared by DW-1 before filing of the charge sheet, but in the charge sheet, the loan was stated to be unpaid.
- v) The money seized from him was given by DW-1 for purchase of jewelleries and as such, it was incorrect to say that the same was disproportionate asset to the appellant's income as the money was not of the appellant's.
- vi) None of the bank slips figured in original seizure list and that it had surfaced nearly one year later.
- vii) During the check period, he had not done anything which will result in disproportionate asset compared to his income and the money that was seized was not acquired by him, and the same was only taken in fiduciary capacity from DW-1.

ANALYSIS AND FINDINGS:

14. At the very outset, this Court would like to give its findings on the issue raised by the appellant, i.e., whether the consent of the State Government is required for the CBI, to investigate into the offence at hand. In order to adjudicate on the said issue, Section 5 and Section 6 of the DSPE Act be referred to hereinbelow:

5. Extension of powers and jurisdiction of special police establishment to other areas.—

(1) The Central Government may by order extend to any area (including Railway areas) 4[in 5[a State, not being a Union territory]] the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences

specified in a notification under section 3.

2) When by an order under sub-section (1) the powers and jurisdiction of members of the said police establishment are extended to any such area, a member thereof may, subject to any orders which the Central Government may make in this behalf, discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of the police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force.

3) Where any such order under sub-section (1) is made relation to any area, then, without prejudice to the provisions of sub-section (2), any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer in charge of a police station in that area and when so exercising such powers, shall be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station.

6. Consent of State Government to exercise of powers and jurisdiction.—Nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in 3[a State, not being a Union territory or railway area], without the consent of the Government of that State.]

6A. Approval of Central Government to conduct, inquiry or investigation.—

(1) The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed

under the Prevention of Corruption Act, 1988 (49 of 1988) except with the previous approval of the Central Government where such allegation relates to—

(a) the employees of the Central Government of the level of Joint Secretary and above; and

(b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

(2) Notwithstanding anything contained in sub-section (1), no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration referred to in clause (c) of the Explanation to section 7 of the Prevention of Corruption Act, 1988 (49 of 1988)].”

15. A bare perusal of Section 5 aforesaid, provides that the Central Government may extend the powers and jurisdiction of the members of Delhi Special Police Establishment, to any area for investigation of offences, specified in a notification under Section 3 of the said Act and once, the powers are extended, the member would discharge the function of a Police Officer and while discharging such functions, the said Member will be considered as a Member of the Police Force of that area, and will be vested with all the powers attached to a Police Officer.

16. Under Section 6 of the DSPE Act, it is provided that a Member of the DSPE will not be able to perform its duties and exercise its powers as provided under Section 5 of the Act, as mentioned above, unless the State Government, where

the offence is required to be investigated into, gives its consent.

17. Further under Section 6-A of the DSPE Act, it is provided that the Member of the Delhi Special Police Establishment, shall not conduct any investigation into any offence alleged to have been committed under the PC Act and the investigation can be conducted only with the previous approval of the Central Government. Yet another rider was provided in the said provision wherein it is stated that allegation should relate to employees of the Central Government, in the level of Joint Secretary and above and also that such officers are appointed by the Central Government in corporations, established under the Central Act or owned and controlled by the Central Government. However, Section 6-A of the DSPE Act, which came into force on September 12, 2003, was struck down as unconstitutional by the Hon'ble Supreme Court in ***Subramanian Swamy vs. Director, CBI & Ors; reported in (2014) 8 SCC 682***. Thereafter, the Supreme Court in a subsequent decision had clarified that striking down of Section 6-A of the DSPE Act, applies retrospectively, which means that Section 6-A of the said act is considered to have never legally been in force from its very inception in the year 2003.

18. As such, this Court is left with the issue as to whether the consent from the State Government is required for the CBI to investigate into the offence, arising in the State of Assam. As per provisions of Section 6 of the DSPE Act, the State Government is required to issue notification granting consent to enable any Member of the DSPE (CBI), to exercise power and jurisdiction in any area in the concerned State and pursuant to such notification, the Government of India may issue notification under Section 5 of the DSPE Act, thereby extending the powers and jurisdiction of Members of the DSPE, for investigation

of any offence or class of offences specified in the notification under Section 3 of the DSPE Act, to such area in the concerned State.

19. This leads to another issue as to whether the Member of the DSPE or the CBI has power to investigate into the offence in the present case and to get an answer to the said query, recourse has to be made to Section 3 of the DSPE Act, which is quoted hereinbelow:-

“Section-3:Offences to be investigated by special police establishment.

The Central Government may, by notification in the Official Gazette, specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment”

However, the answer to the said query mentioned above has to be in the affirmative, inasmuch, as a notification being Notification No. 7/5/55-AVD dated November 6, 1956, is in place. The said notification notified that members of DSPE, will have powers to investigate offences punishable under the Prevention of Corruption Act.

Further, in case of Central Government Employee and when the offence was under the Central Act, the CBI is empowered to investigate such offences. The Hon’ble Supreme Court in ***CBI vs. A. Satish Kumar (Supra)*** had held that in case of Central Government employees, the consent of the State Government is not required. The relevant portion of the said judgment is reproduced hereinbelow:

“25. Irrespective of the place of posting, the aforesaid factual position would go onto show that they were Central Government employees/Central Government Undertaking employees and allegedly

committed serious offence under PC Act, which is a Central Act. Therefore, the question is in such circumstances merely because such an employee works within the territory of a particular State, to register an FIR by the CBI in connection with commission of an offence under a Central Act whether consent from the State Government concerned is required or not? The said question is no longer a legal conundrum in view of the decisions of this Court in Kanwal Tanuj v. State of Bihar and Ors. and in Fertico Marketing and Investment Pvt. Ltd.'s case (supra).

20. The Apex Court in ***Fertico Marketing and Investment Pvt. Ltd. -vs - CBI***, reported in **(2021) 2 SCC 525**, had held as follows:-

“26. Recently, a bench of this Court consisting one of us (Khanwilkar J.) had an occasion to consider the aforesaid provisions of DSPE Act, in Kanwal Tanuj v. State of Bihar, (2020) 20 SCC 531. In the said case, the question arose, as to whether when an offence was committed in the Union Territory and one of the accused was residing/employed in some other State outside the said Union Territory, the Members of DSPE had power to investigate the same, unless there was a specific consent given by the concerned State under Section 6 of the DSPE Act. The contention on behalf of the appellant before the High Court was that since the appellant was employed in connection with the affairs of the Government of Bihar, an investigation was not permissible, unless there was a specific consent of State of Bihar under Section 6 of the DSPE Act. This Court rejected the said contention holding that if the offence is committed in Delhi, merely because the investigation of the said offence incidentally transcends to the Territory of State of Bihar, it cannot be held that the

investigation against an officer employed in the territory of Bihar cannot be permitted, unless there was specific consent under Section 6 of the DSPE Act. While considering the argument on behalf of the State, that such a consent was necessary for CBI to proceed with the investigation, this Court held that the respondent-State having granted general consent in terms of Section 6 of the DSPE Act vide notification dated 19.02.1996, it was not open to the State to argue to the contrary.”

21. The said point was also enunciated and settled by the Hon’ble Supreme Court in ***Kanwal Tanuj vs. State of Bihar***; reported in **(2020) 20 SCC 531**. As such, it is seen that in case of a Central Government employee, the CBI has the power to investigate into the offences under the Central Act. As such, it is clear that the CBI has the power to investigate into the alleged offence committed by the appellant.

22. As far as the next issue raised by the appellant that prosecution sanction granted for prosecution of the appellant was not proper, this Court would like to give the following findings:

i) The appellant was working as the Chief General Manager of Telecom Department, which admittedly shows that he is a Senior Central Government Employee. It is a settled position of law that in case of such officers, the Hon’ble President of India is the appointing and the disciplinary authority. Since the President of India is the appointing authority for these officers, the power to grant sanction for prosecution ultimately rests with the President’s office. However, this power is largely delegated to the respective Ministries or designated departmental Heads under the Central Civil Service (Classification,

Control and Appeal) Rules, 1965. In the instant case, it is seen, more specifically from the evidence of PW-1, i.e. the Assistant Director (VIG.) Telecom Department, that the report of the Superintendent of Police, as well as other related documents were first supplied to the said witness and that he had transmitted the same to the Hon'ble Minister in the Telecom Department. He further stated that the Hon'ble Minister had examined the case and upon finding a *prima facie* case against the appellant, approved the sanction and communicated the same to PW No. 1 and on the instruction of the Hon'ble Minister, PW-1 had issued the sanction order, which was in the name of the Hon'ble President of India.

ii) It is a settled position of law that the sanctioning authority has to apply its mind to the documents made available in respect of an accused person before granting sanction and on careful appraisal of the same, sanction order can be issued. It is seen in the instant case that the concerned Minister of Telecom Department had applied his mind and had given approval to prosecute the Appellant. The Hon'ble Supreme Court in ***Dinesh Kumar -vs- Chairman, Airport Authority of India***; reported in **(2012) 1 SCC 532**, had held that sanction has to be granted by the sanctioning authority after considering the case by application of mind. It has been observed that sanction is not intended to be a mere formality, but a solemn sacrosanct Act, which affords protection to Government Servant against frivolous prosecution. The Hon'ble Apex Court had relied on the case of ***Prakash Singh Badal (Supra)*** and observed as follows:-

“10. The provisions contained in Section 19(1),(2),(3) and (4) of the P.C. Act came up for consideration before this Court in *Parkash Singh Badal and another*. In paras 47 and 48 of the judgment, the Court held as

follows:

"47: The sanctioning authority is not required to separately specify each of the offences against the accused public servant. This is required to be done at the stage of framing of charge. Law requires that before the sanctioning authority materials must be placed so that the sanctioning authority can apply his mind and take a decision. Whether there is an application of mind or not would depend on the facts and circumstances of each case and there cannot be any generalized guidelines in that regard.

48: The sanction in the instant case related to the offences relatable to the Act. There is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial."

iii) On a simple reading of the sanction order dated 06.11.2001, it becomes crystal clear that all the materials connected with the case of the appellant, was looked into in details and on satisfaction of the same, the sanctioning authority had accorded the sanction to prosecute the appellant before the Court of law. Although in the said sanction order, it is seen that it was the President of India, who had applied his mind, but in the normal circumstances, it is the application of mind by the concerned Minister. Here, the Minister is of the TelecomDepartment, who had applied its mind and on being authorized, PW No. 1 had issued the said sanction order in the name and order of the Hon'ble President. From a bare reading of the sanction order, it cannot be stated that there was no application of mind. Eighteen points were formulated and on being

satisfied with the same, the sanction order was granted. Further, it is no res integra that some procedural error, creeping up in the sanction order will not make it bad. The Hon'ble Supreme Court in ***Binod Kumar Garg vs. State NCT of Delhi***, reported in **(2020) 2 SCC 88**, had observed as follows:-

“A mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in a failure of justice or has been occasioned thereby. Section 19(1) of the Act is matter of procedure and does not go to the root of the jurisdiction and once the cognizance has been taken by the court under the Code, it cannot be said that an invalid police report is the foundation of jurisdiction of the court to take cognizance and for that matter the trial.”

23. As such, in the instant case, the prosecution sanction given with regard to the appellant cannot be considered to be wrong.

24. After deciding the first two points in favour of the prosecution, this Court would now deal with the issue of alleged disproportionate asset of the appellant. Section 13(1)(e) of the PC Act under which the appellant was convicted and sentenced, reads as under:-

“13 . Criminal misconduct by a public servant-

(1) A public servant is said to commit the offence of criminal misconduct, -

(e) If he or any person on his behalf, is in possession or has , at any time , during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation- For the purposes of this Section, "known sources 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"

25. A simple reading of the aforesaid provision makes it clear that if a public servant is in possession of pecuniary resources or property which is not proportionate to his known source of income and which the public servant cannot satisfactorily account for, he can be charged for the criminal misconduct. The explanation to Section 13 (1) (e) of PC Act, defines the expression-"known sources of income" and states that this expression means the income received from any lawful source and also requires that the receipt should have been intimated by the public servant in accordance with any provisions of law, which is applicable to him. In fact, this explanation was not present in the repealed Act, i.e., Prevention of Corruption Act of 1947, and the said fact was enunciated by the Supreme Court in ***Jagan M. Seshadri vs. State of Tamil Nadu ;*** reported in **(2002) 9 SCC 639.**

26. The said explanation to Section 13 (1) (e) of PC Act, consists of two parts. The first part provides that the known source of income means the income received from any lawful source and the second part provides that such receipt should have been intimated by the public servant in accordance with the law. The first part of the expression-"known sources of income" has been explained by the Hon'ble Supreme Court in ***N. Ramakrishnaiah vs. State of Andhra Pradesh;*** reported in **2009 Cri. J. 1767,** as follows:-

"15. The emphasis of the phrase "known sources of income" in Section 13(1)(e) (old Section 5(1)(e)) is clearly on the word "income". It

would be primary to observe that qua the public servant, the income would be what is attached to his office or post, commonly known as remuneration or salary. The term "income" by itself, is classic and has a wide connotation. Whatever comes in or is received is income. But, however, wide the import and connotation of the term "income", it is incapable of being understood as meaning receipt having no nexus to one's labour, or expertise, or property, or investment, and being further a source which may or may not yield a regular revenue. These essential characteristics are vital in understanding the term "Income". Therefore, it can be said that, though "income" in receipt in the hand of its recipient, every receipt would not partake into the character of income. For the public servant, whatever return he gets of his service, will be the primary item of his income. Other income which can conceivably be income qua the public servant will be in the regular receipt from (a) his property, or (b) his investment. A receipt from windfall, or gains of graft crime or immoral secretions by persons prima facie would not be receipt for the "known source of income" of a public servant."

i) The second part of the explanation, i.e., such receipt should have been intimated by the public servant, refers to the requirement that the public servant should explain the receipt of the same in accordance with the law, rules or orders applicable to him. The legislature has used the expression "satisfactorily account" and the same thus, deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came to possess the wealth, but also to satisfy the Court that his explanation was worthy of acceptance.

27. Further the expression-"known sources of income" refers to the sources

known to the prosecution and the expression-“for which the public servant cannot satisfactorily account”, refers to the onus and burden on the accused to satisfactorily explain and account for the assets found to be in possession of the public servant. This burden is on the accused or the public servant as the said facts will be within his special knowledge. In this context, Section 106 of the Evidence Act comes into play. Section 106 of Evidence Act is reproduced below:-

“When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.” In this connection, the phrase the burden of proof is clearly used in the secondary sense namely, the duty of introducing evidence. The nature and extent of the burden cast on the accused is well settled. The accused is not bound to prove his innocence beyond all the reasonable doubt. All that he need to do is to bring out a preponderance of probability.”

28. Further the explanation to Section 13 (1) (e) of PC Act, is a procedural provision which explains the expression-“known sources of income”, which is again the source known to the prosecution and not to the accused. The prosecution should know, the known source of income, in the normal circumstance, not by having an open, wide and rowing investigation. It curtails the need and necessity of the prosecution to go into the alleged source of income, which a public servant may, or possibly have, which have not been declared by him. The undeclared alleged sources, are by their very nature, are expected to be known to the public servant only, which are within his personal knowledge. This undeclared source of income has to be intimated by the public servant under the law applicable to him. This is the purport of the provision enshrined under Section 13 (1) (e) of the PC Act, read with the explanation.

29. In order to prove a case of disproportionate asset of a public servant, it is required to calculate the gap between the accused's acquired assets and his known lawful income over a specific check period. The prosecution has to establish a *prima facie* case with regard to disproportionate asset being acquired by the public servant after which the burden shifts to the accused to legally account for the said excess. The Investigating Agency or the prosecution must define a specific time frame during which the public servant is alleged to have acquired the assets being excess to his known source of income. It is a settled position of law that the prosecuting agency should follow a specific methodology to prove a case under Section 13 (1) (e) of the PC Act. The Agency has to first take out the total value of all the assets which will include properties, bank balance, vehicles, jewelleries, etc., at the beginning of the check period and, thereafter, take out the total value of all the assets at the end of the check period and the difference between the two values should be calculated by the prosecuting Agency. This is one part of the exercise and on the other part, the prosecuting Agency should calculate the legitimate sources of income, which may include salary, allowances, lawful loans, etc. for the said check period, and simultaneously, the Agency should also calculate the expenses, household cost, taxes, loan payments during the same check period and the difference between these two exercises should be calculated. The requirement, thereafter, is that the prosecution should deduct the savings acquired from the said exercise from the assets calculated by the first exercise as mentioned above. It is in this manner that disproportionate asset may be finally calculated and found out. Further, in the present case, the total value of assets and pecuniary resources of the petitioner and his family members at the end of the check period was not computed by the Investigating Officer. Furthermore, the prosecution had

determined the check period from 01.09.1997 to 07.09.1997 and the trial Court had altered it to 06.09.1997 to 12.09.1997. It is also seen that the prosecution could not find out any other asset either movable or immovable, disproportionate to the income of the appellant. It is only the amount of Rs. 25,31,200/- recovered from the appellant, which was considered as the disproportionate asset, which was satisfactorily accounted for, by the appellant.

30. In respect of offence under Section 13 (1) (e) of the PC Act, if any pecuniary resources is found in possession of the public servant which is disproportionate to the known source of income, it is required that the public servant should satisfactorily account for the same. In the instant case, the reason for possessing the said amount of Rs. 29 lacs has been explained by the appellant before the authorities and the Court. Further, Rs. 4 lacs found in the house of the appellant was excluded by the prosecution and the same is not considered as disproportionate asset.

31. With regard to possession of pecuniary resource/seized money, to which the appellant has to satisfactorily account for, this Court gives the following findings:

i) In the instant case, the appellant was found in possession of Rs. 25,31,200/- in his bag and a suitcase at the Airport and the fact that some suspicious articles are present in the baggage, was detected during checking of the same and further when it was found that the appellant was the owner of the said baggage, he along with his bag and suitcase, were taken to the security room and the security personnel present there, told him to open the suitcase and the bag. The appellant, however, did not allegedly open the suitcase in

presence of the security personnel, but when the Executive Magistrate came to the said place, where he was detained, it is alleged that he gave the keys and his suitcase was opened, where there is again differences in facts narrated by witnesses. However, before that, on self declaration of the appellant that an amount of Rs. 5 lacs was there in the bag, the security personnel opened it and therein, they found said Rs. 5 lacs and on being asked by them, i.e., the security personnel, the appellant said that he had the money for the purpose of purchasing some machinery equipment on behalf of a company. Further, at the time of giving the keys to the Magistrate, the appellant himself said that there is some money inside and that he had carried the same to open an Institution for physically handicapped people at Chennai, and further that the same were collected from some contractors and others. These facts were stated by PW No. 2, who was the Security in-charge of the Airport.

ii) However, another security official stationed at the Airport, who was examined as PW-3 and who was there when the money was recovered, in his cross-examination, had stated that the appellant did not give any statement about the source or the purposes of the money, which he was carrying on that day. This witness further stated that the appellant had only shown an Identity Card demonstrating that he was a Central Government Employee and that he was the Chief General Manager of the Telecom Department.

iii) As such, the contention of the prosecution that the appellant had given different explanation regarding the source and purpose of money, is by some stretch demolished by the statement of PW No. 3.

32. The Executive Magistrate, who was examined as PW-10, stated *inter alia* that upon reaching the Airport, he found the appellant being detained there and

he found with the appellant, a locked handbag and a locked suitcase. He then stated that the appellant informed them, i.e., him and other Police Officers and Security Personnel of the Airport, that the keys of those bags were not available and at the same time, the appellant stated to them that one of the bags that he was carrying contained Rs. 5 lacs, which he said he was carrying for purchase of articles for a company. This witness also stated that the appellant was as such, taken to the Police Station and at the said Police Station, on being requested by him and others, appellant opened his bags and the money was recovered. He also stated that at the Police Station, the appellant admitted that money was given to him by some contractors as part of their profit.

33. The above evidence shows that there is contradiction to the effect that the security personnel at the Airport stated that money was recovered and seized at the Airport itself and the Executive Magistrate stated that appellant was taken to the Police Station and money was recovered and seized at the Police Station.

34. The contradiction with regard to the said fact, was further established by the statement of the Deputy Superintendent of Police, who was the first Investigating Officer from the Assam Police, examined as PW No. 52, who stated that on being informed, when he reached the Airport, he saw the appellant being apprehended by the Police staff with cash. He further stated that information was given to the Superintendent of Police and Deputy Commissioner, Kamrup and that the Deputy Commissioner called the Executive Magistrate to enquire and for seizure of the recovered money. He further stated that the Executive Magistrate reached the Airport, seized the cash money and other articles and prepared the seizure list. During the cross-examination of this witness, he stated that the Executive Magistrate handed over the appellant and

the seized money, to the office of one Sujit Saikia at the Borjhar Airport premises itself. His statement shows that not only money was recovered at the Airport itself, but it also goes to show that the same money was recovered even before the Magistrate reached the Airport. This witness who was there, when the recovery was made, did not speak of different statements made by the appellant during recovery. Therefore, it is seen that there are contradictions in the statements of witnesses regarding the recovery and seizure of money as well as explanation given by the appellant on recovery of the alleged money.

35. As stated above, Section 106 of the Evidence Act, is applicable, to bring home the facts, exclusively known to the public servant, in adjudication of a case under Section 13(1)(e) of the PC Act. In the instant case, the appellant had deposed both before the Investigating Officer as well as before the trial Court that the money seized from him was given by DW No. 1, Nime Tsering Khriem, for purchase of diamond jewellerys from the shop of appellant's father-in-law at Chennai. At the same time, DW-1 had also deposed about the same. He not only testified in his defence evidence that he had given the money, as an advance payment to the appellant, to get the diamond jewellerys for his wife, but also had filed an application for refund/custody of the said money after it was seized. He categorically stated in his evidence that on the quotation sent by the appellant's father-in-law, he paid the said advance money to the appellant to get the said jewelries. Both the appellant as well as DW-1 had deposed that a receipt with regard to the said money was given by the appellant to DW. No. 1. It was the repeated version of the DW-1 as well as the appellant that the money was given in fiduciary relationship between them. The statement of DW-1 that he did not know the full name of the appellant or that he had not visited the

house of the appellant ever, and on that account, he could not have parted with the money, as claimed by the prosecution, is irrelevant in the considered opinion of this Court. It is a settled position that both prosecution evidence and defence evidence has the same evidentiary value. The Supreme Court in ***Munshi Prasad Vs. State of Bihar*** reported in **(2002), SCC 351** has held as follows:

“Before drawing the curtain on this score however, we wish to clarify that the evidence tendered by the defence witnesses cannot always be termed to be a tainted one by reason of the factum of the witnesses being examined by the defence. The defence - witnesses are entitled to equal respect and treatment as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses at par with that of the prosecution - a lapse on the part of the defence witness cannot be differentiated and be treated differently than that of the prosecutors witnesses.”

36. It be further stated herein that carrying of unusually large sum of money by air is although not an offence, but the same should be verified by the authorities concerned and it is the duty of the person who carries, to intimate the Airport authorities about the same and he should also reveal the source of the said money as well as its purposes and its legitimacy. The said position of law has been briefly enunciated by the Hon’ble Supreme Court in ***Rajendran Chingaravelu vs. R. K .Mishra;*** reported in **(2010) 1 SCC 457**. The relevant portion is quoted here-in-below:

“It is no doubt true that a person has the right to carry money, whether his own or under authority of the person owning it, in the absence of any prohibition. But the purpose for which the money is carried is also important from the point of view of intelligence gatherers. Money which is drawn from a Bank and, legitimately belonging to the carrier, may still be used for an illegal purpose, say to pay for a crime or to fund an act of terrorism. It may also be used for a, routine illegal function - to make part payment of sale consideration for a property in cash, so that the full price is not

reflected in the sale deed, resulting in evasion of stamp duty and registration charges and evasion of payment of capital gains and creation of black money. The carrying of such a huge sum, itself gives rise to a legitimate suspicion. The intelligence officers are therefore entitled to satisfy themselves, not only that the money is from a legitimate source, but also : satisfy themselves that such a ,large amount is being carried for a legitimate purpose. That is necessary in the interest of preventing: crimes and offences. Therefore, even if the carrier is not guilty of any offence in carrying the money, the verification or seizure may be warranted to ensure that the money is not intended for commission of a crime or offence."

37. It is the further case of the prosecution that DW-1 was financially incapable to part with 29 lacs of rupees for purchase of jewellery due to non-payment of his outstanding loan amount as well as his failed business, also cannot be considered as relevant factors, for his inability to give the said amount of money to the appellant. It is an admitted position that DW-1 had cleared his outstanding loan of more than one-crore of rupees to the Vijaya Bank at one go. It is also an admitted fact that DW-1 had his timber business as well as hotel business in the State of Arunachal Pradesh, which suggests that he was not financially unstable as such. Further, it is in the evidence of the Investigating Officers that they had not gone to the State of Arunachal Pradesh, to get the financial status of DW-1. As such, the ground raised by the prosecution does not hold much water.

38. Another ground raised by the prosecution is that DW-1 did not mention the correct denomination of money that was seized from the possession of the appellant. With regard to this, this Court would like to state that the money was recovered and seized on 06.09.1997 and DW-1 had deposed before the trial Court on 03.12.2012, i.e., after a span of 15 long years. To remember the

denominations of the money that one gives to the other after such a long period, cannot be expected from any prudent person. Further, it is in the evidence of the bank officials that some money were issued to the customers, for the first time, from the Bank after the alleged recovery of the money. It is also in the evidence of the Executive Magistrate, that since he had not written the numbers mentioned in the notes in the seizure list, he will not be able to recognize the notes, which were not produced before him. In these facts, there is every possibility that the currency notes underwent some changes. It is further in the evidence of the bank official that it is always not possible to find out the exact date of issue of the notes, also makes the case weak and the benefit would go to the accused person.

CONCLUSION:

39. In view of the findings stated above, this Court deems it fit to hold that the Judgment and Order dated 26.03.2013, passed by the learned Special Judge, CBI, Assam, at Guwahati, in Special Case No. 89 of 2004, is unsustainable in law. As such, this Court sets aside and quashes the said Judgment and Order dated 26.03.2013, passed in the aforesaid case. Accordingly, the conviction and the sentence imposed upon the appellant is also set aside and quashed.

40. The appellant is as such, acquitted of all the charges.

41. The trial Court had ordered for confiscation of the seized money to the State in its judgment dated 26.03.2013. As such, this Court concludes that there would be no order as to the seized money, which stood confiscated in the year 2013.

42. The bail bonds are discharged.

43. Send back the Trial Court Record.

JUDGE

Comparing Assistant