2025 INSC 643

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2489 OF 2025
[@ SPECIAL LEAVE PETITION (CRIMINAL) NO.2127 OF 2024]

P. NALLAMMAL **...APPELLANT(S)**

Versus

STATE BY THE INSPECTOR OF POLICE, VIGILANCE AND ANTI-CORRUPTION POLICE, DINDIGUL, TAMIL NADU

...RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 2490 OF 2025
[@ SPECIAL LEAVE PETITION (CRIMINAL) NO.2288 OF 2024]

WITH

CRIMINAL APPEAL NO(S). 2491-2492 OF 2025
[@ SPECIAL LEAVE PETITION (CRIMINAL) NO(S).5196-5197 OF 2024]

SUDHANSHU DHULIA, J.

1. I had the benefit of going through the Judgment authored by my learned brother Ahsanuddin Amanullah, J. where the Accused No.2 (P. Nallammal) has been acquitted for the offence under

Section 109 of IPC read with Section 13(1)(e) and Section 13(2) of Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act'). Though I agree with some of the observations made by my brother Judge, yet I am unable to accept the conclusion and findings of acquittal as regards Accused No.2, who was the wife of the public servant Accused No.1. Consequently, I have found it necessary to pen down my reasons for doing so.

2. I would, first of all, make it clear that the delivery of this order has taken more time than usual. But then I was only handed over his opinion by my learned Brother a fortnight back and it has taken this much of time further for me to give my reasons.

3. Leave granted.

4. There are four appeals before us:

a. Appeal arising from SLP (Crl) No.2127/2024 filed by the Accused No.2 (P. Nallammal) challenging the impugned order dated 20.11.2023 by which appellant's conviction and sentence of one year R.I for offence under Section 109 of IPC read with Section 13(1)(e) and Section 13(2) of PC Act by the Trial Court, has been affirmed.

b. Appeal arising from SLP (Crl) No.2288/2024 filed by Accused No.2 and Legal Heirs of the Accused No.1 (children of the Accused No.1 and Accused No.2), challenging the attachment Order as modified by the impugned order dated 20.11.2023.

c. Appeals arising from SLP (Crl) No.5196-5197/2024 filed by the Legal Heirs of the Accused No.1 (children of the Accused No.1 and Accused No.2), challenging the Administrative Order dated 03.03.2022 by which the Chief Justice of the High Court had listed the criminal appeals for fresh hearing which finally resulted in the common impugned order dated 20.11.2023 by which order of Accused No.2's conviction and sentence as well as the order of the attachment, with modification, were affirmed.

5. For the sake of convenience, the facts of the case are being taken from the Criminal Appeal arising out of SLP (Crl) No. 2127 of 2024. However, the facts are not being reproduced in detail.

6. For the present purpose, it is sufficient to take note of the following details of this case:

a. Accused no.1 (husband of the appellant) who was a Member of the Legislative Assembly and a Minister, was

accused of acquiring disproportionate assets while holding public office as a public servant. The properties were also accumulated in the name of the present appellant i.e. Accused no.2 and their minor children. The present appellant was thus accused of abetting the accumulation of disproportionate assets.

b. The Trial Court convicted Accused No.1 under sections 13(2) and 13(1)(e) of the PC Act, whereas the appellant (Accused No.2) was convicted under sections 13(2) and 13(1)(e) of the PC Act read with section 109 of the IPC. Accused No.1 and appellant (Accused No.2) were sentenced to rigorous imprisonment of two years and one year, respectively.

c. An attachment order dated 03.01.2001 was passed under sections 3 and 4 of the Criminal Law Amendment Ordinance, 1944 (hereinafter referred to as 'Ordinance'), whereby the disproportionate assets belonging to Accused No.1 and the appellant were attached.

d. Against both these orders (of conviction and sentence, and attachment, respectively), the accused filed appeals before the High Court. The High Court dismissed the criminal

appeals by the impugned judgment dated 20.11.2023. However, the High Court modified the attachment order by reducing the quantum of disproportionate assets calculated by the Trial Court.

e. During the pendency of the appeal before the High Court, Accused No.1 (husband of the appellant) has passed away. Now, we have only Accused No.2 i.e. P. Nallammal, wife of the main accused (A.M Paramasivam) who is now deceased, before us.

7. The challenge before us is to a judgment delivered by the Madras High Court on 20.11.2023, whereby the conviction of the appellant under sections 13(2) and 13(1)(e) of the PC Act read with section 109 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and consequent sentence of rigorous imprisonment of one year imposed by the Trial Court was upheld.

8. At the outset, I must note that there are concurrent findings against the accused in this case, holding her guilty of abetment in amassing disproportionate assets during Accused No.1's tenure in public office i.e. between 16.06.1991 and 09.05.1996 (hereinafter 'check period').

9. The prosecution case was that the accused had amassed disproportionate assets, since there was a vast difference between the assets in their name at the beginning of the check period i.e., between 16.06.1991 and 09.05.1996. The prosecution case against the present appellant was that although she had no independent income as such, she abetted her husband in acquisition of these assets in her name and in the name of her children as their representative and natural guardian.

10. On the other hand, defence would argue that the figure of disproportionate assets arrived at by the prosecution was grossly exaggerated and based on arbitrary calculations. They had also challenged the inclusion of many immovable properties by the prosecution, arguing that these were acquired before the check period. It was also the contention that their assets were traceable to legitimate sources of income, such as income from agriculture, gifts etc. and this was forthcoming from the Income Tax returns submitted by them. Moreover, the counsel for the appellant would also argue that the present appellant, in any case, is not a public servant and thus, she has no obligation to explain her sources of income and further,

she cannot be convicted under Section 109 of IPC read with Section 13(1)(e) and Section 13(2).

11. We have heard both sides and perused the record.

12. The Trial Court undertook a thorough examination of the oral and documentary evidence on record, as well as the arguments made by both sides, to arrive at the conclusion that the prosecution had proved its case beyond reasonable doubt and that the Accused No.1 was guilty of misusing his public office in order to accumulate disproportionate assets, which constituted 'criminal misconduct' under section 13 of the Act. Further, the present appellant, i.e. Accused no.2, was held guilty of abetment of the offence of Section 13(1)(e) of the PC Act. It was specifically held that the accused had failed to establish that the assets treated as disproportionate by the prosecution were traceable to legitimate sources of income, since the evidence brought on record by the accused to prove the same was not satisfactory. These findings of the Trial Court were affirmed by the High Court by the impugned judgment.

13. Before us, the learned counsel for the appellant also tried to argue that many of the assets considered by the Courts as 'disproportionate assets', were actually gifted by the father of

the appellant at the time of her marriage to accused No.1. Further, a substantial portion of the immovable properties sought to be included in the 'disproportionate assets' by the prosecution were, in fact, purchased long before the check period. These arguments have rightly been disbelieved as the Trial Court arrived at a specific finding on these on examination of documents and witnesses which show that the properties were purchased only between March and May 1996, which falls within the check period.

14. The story of defence that some portion of land, included in 'disproportionate assets', was purchased by Accused No.1 from his brother in the year 1988 (i.e. before the check period), but for which the sale deed was executed in favour of the children of the Accused No.1 and appellant only in the year 1994, is very difficult to believe, and the High Court and the Trial Court rightly rejected this line of reasoning.

15. The efforts to prove that the income alleged to be 'disproportionate assets' by the prosecution is from legitimate sources failed as the evidence presented by the defence was not only vague but lacked credibility as well.

16. We must also keep in mind that insofar as corruption cases under section 13(1)(e) of the PC Act are concerned, the burden of proof is reversed, and it becomes the responsibility of the accused to dislodge the presumption against him. This position has been reiterated by this Court in ***State of T.N. v. R. Soundirarasu*** **(2023) 6 SCC 768:**

> *"83. Section 13(1)(e) of the 1988 Act makes a departure from the principle of criminal jurisprudence that the burden will always lie on the prosecution to prove the ingredients of the offences charged and never shifts on the accused to disprove the charge framed against him.* ***The legal effect of Section 13(1)(e) is that it is for the prosecution to establish that the accused was in possession of properties disproportionate to his known sources of income but the term "known sources of income" would mean the sources known to the prosecution and not the sources known to the accused and within the knowledge of the accused. It is for the accused to account satisfactorily for the money/assets in his hands. The onus in this regard is on the accused to give satisfactory explanation...*** *"*

In the present case, the prosecution succeeded in establishing that the accused were in possession of assets hugely disproportionate to their known sources of income. The prosecution had successfully discharged its initial burden. Thereafter, it was for the accused to satisfy the Court, through

cogent evidence, that the assets are from legitimate sources. Upon perusal of the material on record and considering the concurrent findings of the Courts below, I am of the opinion that the accused miserably failed to discharge this burden of satisfactorily explaining the source of income behind the 'disproportionate assets'.

17. In fact, as far as the evaluation of disproportionate assets is concerned, I and my learned brother (Ahsanuddin Amanullah, J.), both agree that the High Court has rightly evaluated the assets, after considering the material on record. The only point of our disagreement is the question of the culpability of the appellant (P. Nallammal). In the opinion of my learned brother Ahsanuddin Amanullah, J., it was the appellant's husband (Accused No.1) who had accumulated assets disproportionate to his known sources of income and the prosecution could not prove that the appellant was aware that the money from which assets were being purchased or bought in her name, were from unlawful sources. It is this finding that I disagree with.

18. There is no doubt that mere registration of disproportionate assets in the name of a public servant's relative or friend does not make that person guilty of abetment of the offence of

Section 13(1)(e) of the PC Act. All the same, it is also a settled position of law that a person who is not a public servant still can commit an offence under Section 13(1)(e) and Section 13(2) of the PC Act read with Section 109 of the IPC. I am of the opinion that the appellant was an accomplice in the commission of the crime when she allowed Accused No.1 to register the properties in her name. Where there is abetment by a close relative in corruption matters, such as the spouse in the present case, the culpability of such a relative has to be tested by the surrounding circumstances and his/her overall conduct. This is because, in such cases, there would rarely be direct evidence of abetment. This factor has to be kept in mind.

19. The appellant married Accused No.1 in the year 1983 and she was a housewife without any independent source of income. After going through the records, the High Court notes that from the year of marriage (i.e.1983) till 1991, there is no acquisition of immovable property either in the name of the appellant or Accused No.1. Accused No.1 became MLA in the year 1991 and minister in the year 1993 and then the acquisition of properties, moveable and immovable, also starts. After perusing the document showing the properties acquired by the accused,

the Trial Court observed how land was purchased in the name of the appellant or in the name of minor children through the appellant, on more than one occasion. This is what was observed by the Trial Court:

> *"(5) On 25.11.92, the 2nd Accused purchased 0.45 Acres of land for a sale consideration of Rs.16,875 situated at Kodikulam Village under Ex.P.2, Stamp fee is Rs.2,030, PW-1, PW-46 deposed about sale. (6) On 14.02.1992, the 2nd Accused purchased 9 cents of land for a sale consideration of Rs. 4500 situated at Kodikulam Village under Ex. P.11, Stamp fee is Rs.540, PW-2, PW-48 deposed about sale. (7) On 16.04.1993, the 2nd Accused purchased 1.45 acre of land for a sale consideration of Rs.64,980 on behalf of Selvakumar Pandian situated at Kodikulum Village under Ex.P.3, Stamp fee is Rs.7860, PW-1, PW-47 deposed about sale. (8) On 22.09.1993, the 2nd Accused purchased a house situated at K.K Nagar, Madurai and 1 cents of land situated at Kerala, for a sale consideration of Rs1,50,000 under Ex.P.16, Stamp fee is Rs.9050, PW-4, PW-44 deposed about sale. On 04.04.1994, the 2nd Accused purchased 2.48 acres of Nanja land for a sale consideration of Rs.80,600 on behalf of Selvakumar Pandian situated at Kodikulam Village under Ex.P.4, Stamp fee is Rs.9680, PW-1, PW-54 deposed about sale. (10) On 12.09.1994, the 2nd Accused purchased 2.43 acres of Nanja land for a sale consideration of Rs.1,23,160 on behalf of Selvakumar Pandian situated at Kodikulam Village under Ex.P.5, Stamp fee is Rs.14,860, PW-1, PW-45 deposed about sale. (11) On 23.09.1994, the 2nd Accused purchased 1.29 acre of Nanja land for a sale consideration of Rs.70,950 on behalf of Selvakumar Pandian situated at Kodikulam*

> *Village under EX.P.6, Stamp fee is Rs.8520, PW-1, Pw-49 deposed about sale.....(14) On 11.04.1996, the 2nd Accused purchased 4.27 acres Nanja land for a sale consideration of Rs.2,32,210 on behalf of daughter Suriyakala situated at Kodikulam Village under Ex.P.7, Stamp fee is Rs.28000, PW-1, PW-51 deposed about sale....(16) On 06.05.1996, the 2nd Accused purchased 1.61 acre of Nanja land for a sale consideration of Rs.87,620 on behalf of Rajkumar Pandian situated at Kodikulam Village under Ex.P.6, Stamp fee is Rs.10,680, PW-1, PW-50 deposed about sale...."*

Not only this, but additionally, two cars and other movable and immovable properties were also purchased in the name of the appellant and the minor children through the appellant.

20. Thus, it is not the case that there were only one or two transactions in the name of the appellant for which the appellant can say that she acted in a bona fide manner without knowing that the funds which were used for acquiring these assets were from unlawful sources. In my considered opinion, these transactions during the check period demonstrate how the appellant aided her husband in the accumulation of disproportionate assets by allowing him to register the same in her name. The High Court notes that the total salary drawn by accused No.1 during the check period was Rs. 2,17,178, and considering this, it is impossible to imagine that the appellant

was not aware of her husband's legitimate income. It is very hard to believe that she was not aware that these assets which were in her name were not acquired from her husband's legitimate sources of income.

21. Moreover, it was never the appellant's case that she was not aware that her husband had been purchasing the properties in her name by using the funds gained from illegitimate sources. From the Trial Court to this Court, what the appellant has only been unsuccessfully arguing is that her independent income was not taken into account and her assets prior to the check period were not properly assessed. All these grounds have already been dealt with by the Trial Court and High Court, and the appellant has failed to show that there has been any discrepancy in the evaluation of assets. Even on re-evaluation by the High Court, the High Court has only found a discrepancy of around Rs.2 lacs and even by reducing that amount from the total worth of disproportionate assets, the percentage of disproportionality remained above 400% of the accused's known sources of income. There is no doubt that the appellant intentionally aided her husband in the accumulation of disproportionate assets.

22. The Trial Court as well as the High Court have rightly relied upon the decision of this Court in ***P. Nallammal & Anr.*** *v.* ***State (1999) 6 SCC 559*** to hold the appellant guilty of abetment of the offence of Section 13(1)(e) of the PC Act. In that case, this Court had accepted the submission of the State that a person who is not a public servant, can also be an abettor for the offences under Section 13 of the PC Act. Accepting and reiterating the illustrations suggested by the State's Counsel, it was observed by this Court as follows:

> *"24....*
> *The first illustration cited is this:*
> *If A, a close relative of the public servant tells him of how other public servants have become more wealthy by receiving bribes and A persuades the public servant to do the same in order to become rich and the public servant acts accordingly. If it is a proved position there cannot be any doubt that A has abetted the offence by instigation.*
> *Next illustration is this:*
> *Four persons including the public servant decide to raise a bulk amount through bribery and the remaining persons prompt the public servant to keep such money in their names. If this is a proved position then all the said persons are guilty of abetment through conspiracy.*
> *The last illustration is this:*
> *If a public servant tells A, a close friend of his, that he has acquired considerable wealth through bribery but he cannot keep them as he has no known source of income to account, he requests A to keep the said wealth in A's name,*

> *and A obliges the public servant in doing so. If it is a proved position A is guilty of abetment falling under the "Thirdly" clause of Section 107 of the Penal Code.*
>
> *25. Such illustrations are apt examples of how the offence under Section 13(1)(e) of the PC Act can be abetted by non-public servants. The only mode of prosecuting such offender is through the trial envisaged in the PC Act."*

It is clear that the appellant's case squarely falls within the third illustration produced above. Interestingly, the case cited above i.e. of ***P. Nallamal (Supra)*** relates to none other but the present appellant and her deceased husband, who had earlier approached this Court seeking quashing of the present criminal case.

23. My learned brother has also discussed two other cases of this Court, though in my humble opinion, these are distinguishable on facts and would be of no help to the appellant.

24. The first case is ***K. Ponnuswamy*** *v.* ***State of Tamil Nadu (2001) 6 SCC 674***. In this case, the High Court upheld the conviction of the main accused for acquiring disproportionate assets while his wife and daughter were acquitted. When the main accused came before this Court, this Court dismissed his criminal appeal, whereas in relation to the acquittal of wife and daughter, this Court did not say anything since the State had

submitted that they are going to file an appeal challenging the acquittal of the daughter and wife of the main accused. No such appeal was filed by the State. On the contrary, the wife and daughter of the main accused therein approached this Court challenging the order confiscating their properties. This Court remitted the matter to the High Court on the ground that the Courts below did not record proper reasons for confiscating the properties belonging to the wife and daughter. Finally, the High Court gave directions for the exclusion of their assets from the order of confiscation, considering that they stand acquitted in the matter. However, that case cannot be read as a decision in favour of the daughter and wife, since the innocence or guilt of the daughter and wife of the public servant involved in that case was never an issue before this Court. Hence, that case cannot come to the aid of the present appellant.

25. The second case which my learned brother relies upon is ***State** v. **Uttamchand Bohra (2022) 16 SCC 663***. The facts of this case are also totally distinguishable from the case at hand. In that case, a public servant (main accused) working for the Central Government was accused of buying some property, in the name of a company named M/s Raviteja Trading Co. Pvt. Ltd., using

the money from his unknown sources of income. There one Uttamchand Bohra (respondent therein) was also made an accused, alleging that he had abetted the public servant in the accumulation of disproportionate assets inasmuch as Uttamchand Bohra's employee was the witness of the sale deed, and title deeds were also recovered from his house. The respondent moved a discharge application, which was dismissed by the Trial court. Later, in revision, the High Court quashed the case against Uttamchand Bohra. Thereafter, the State approached this Court against the order of the High Court. This Court dismissed the State's appeal and affirmed the order of the High Court. The relevant portion of the judgment is as follows:

> ***"25.*** *The charge-sheet further does not contain any allegation which can amount to an offence under Section 109IPC. The prosecution has not suggested that he abetted A-1 to acquire disproportionate assets in any manner; the only allegation is that the title deeds to the flat, which is in the name of M/s Raviteja Trading Co. Pvt. Ltd. was seized from his custody and that he had instructed his employee to witness the document. An allegation of the existence of signatures of Uttamchand's employee, as a witness to the sale deed cannot amount to his aiding or abetting A-1 to acquire disproportionate assets. Witnessing a sale deed is a formal requirement. Likewise, the fact that the sale deed was in Uttamchand's*

residence cannot satisfy the ingredient of any of the offences alleged against him.

26. *The statements of the approvers, A-3 and A-4, who were tendered pardon by the Court, do not reveal any involvement by Uttamchand in commission of the alleged offence. During the pendency of the present proceedings the recording of depositions of 74 witnesses was completed. Those were part of this Court's record; they do not show any incriminating material as far as Uttamchand is concerned. Furthermore, crucially, the money trail for the property bought under the sale deed, does not show Uttamchand's involvement. It may implicate A-3 and A-4, however as stated before, the Court has granted a pardon to them, for which they have turned approvers.*

....

29. *CBI cannot deny that Uttamchand's name was included in the present case, although the sale deed was seized during a search conducted in relation to another FIR (the earlier case) — and not in relation to the present case, which relates to the disproportionate assets case. The FIR in the present case names only A-1 and A-2 as the accused. The sale deed had already been seized from Uttamchand's house by then.*

....

36. *An entire overview of the material produced before the trial court, with the charge-sheet and final report, as well as deposition of the 74 witnesses who were examined during the trial, does not support CBI's allegation of Uttamchand. He did not directly or indirectly finance the transaction by which property was sold to M/s Raviteja Trading Co. Pvt. Ltd., which, according to that prosecution, was in fact by A-1. The respondent also is not alleged to have facilitated the flow of money to fund acquisition of the flat. The material put against him is that the sale*

> *deed was seized, prior to the present case. The other circumstance put against him is that his employee witnessed the sale deed. The respondent is concededly neither the owner, nor has any links with M/s Raviteja Trading Co. Pvt. Ltd. In these circumstances, this Court is of the opinion that no material which can prima facie support an inference that Uttamchand was either a conspirator or had abetted the commission of the offences alleged against the accused A-1 is made out."*
>
> *(Emphasis Provided)*

Thus, it is clear that the facts of the above case are entirely distinct from the present matter. The accused in that case had no involvement in the offence as the assets were allegedly purchased by the public servant in the name of a company with which the accused (Uttamchand Bohra) had nothing to do. The only allegations against Uttamchand Bohra were that the title deeds were recovered from his residence, and that one of his employees was a witness to the sale deed by which assets disproportionate to known sources of income were purchased by the public servant.

26. In no way can the facts of the above cases be compared to the case at hand. In the present case, the appellant actively participated in the purchase of various movable and immovable properties in her name. It has come in unrebuttable evidence of

the prosecution that the present appellant had visited the office of the concerned Registrar for getting the sale deeds registered. And this had happened on more than one occasion for different sale deeds. The Trial Court and the High Court had rightly accepted the prosecution's case that the appellant knowingly allowed her husband to accumulate illegal wealth in her name and thus, committed an offence under Section 109 of the IPC read with Section 13(1)(e) and Section 13(2) of the PC Act.

27. In view of the above, I find no reason to interfere with the impugned order dated 20.11.2023 passed by the High Court. Also, like my brother Judge, I do not see any fault in the administrative order dated 03.03.2022 passed by the High Court. Accordingly, I dismiss all these appeals.

28. The appellant is directed to surrender within ten weeks from today to undergo her remaining sentence.

29. Interim order(s), if any, stand(s) vacated.

30. Pending application(s), if any, stand(s) disposed of.

.....J.
[SUDHANSHU DHULIA]

NEW DELHI;

May 07, 2025.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2489 OF 2025

[@ *SPECIAL LEAVE PETITION (CRIMINAL) NO.2127 OF 2024*]

P. NALLAMMAL …APPELLANT

VERSUS

STATE BY THE INSPECTOR OF POLICE …RESPONDENT

WITH

CRIMINAL APPEAL NO. 2490 OF 2025

[@ *SPECIAL LEAVE PETITION (CRIMINAL) NO.2288 OF 2024*]

TMT. P. NALLAMMAL & ORS. …APPELLANTS

A1: TMT. P. NALLAMMAL

A2: THIRU A. M. PARAMASIVAM (DIED) THROUGH LRS.

A2.1: P. RAJAKUMAR PANDIAN

A2.2: P. SELVAKUMAR PANDIYAN

A2.3: SELVI SURIYAKALA @ SUDARSENA

VERSUS

STATE OF TAMIL NADU, REPRESENTED BY

INSPECTOR OF POLICE …RESPONDENT

WITH

CRIMINAL APPEAL NOS. 2491-2492 OF 2025

[@ *SPECIAL LEAVE PETITION (CRIMINAL) NOS.5196-5197 OF 2024*]

THIRU A. M. PARAMASIVAM (DIED) THROUGH LRS. & ORS.

…APPELLANTS

A1.1: TMT. P. NALLAMMAL

A1.2: P. RAJAKUMAR PANDIAN

A1.3: P. SELVAKUMAR PANDIYAN

A1.4: SELVI SURIYAKALA @ SUDARSENA

VERSUS

STATE OF TAMIL NADU, REPRESENTED BY

INSPECTOR OF POLICE …RESPONDENT

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

Leave granted.

2. The present appeals arise from a common set of facts and have, therefore, been heard together, and are disposed of by this Judgment. It is necessary to first advert to the relevant factual background, wherefrom the instant appeals have traversed to this Court.

FACTUAL LENS:

3. A. M. Paramasivam (hereinafter also referred to as the '1st Accused') was an elected Member of the Tamil Nadu Legislative Assembly during the period 16.06.1991 to 09.05.1996. He also served as the Minister for Labour Welfare, Government of Tamil Nadu during the period 17.05.1993 to 09.05.1996. On 20.08.1996, CR No.5/AC/96/Headquarters was registered against him and his wife, P. Nallamal (hereinafter referred to as the '2nd Accused') alleging acquisition of properties beyond known pecuniary resources, which were disproportionate to the extent of Rs.38,72,545/- during the Check Period i.e., between 16.06.1991 to 09.05.1996. The 1st Accused and 2nd Accused are hereinafter collectively referred to as the 'Accused'.

4 A. M. Paramasivam was charged for the offence under Section 13(2) read with 13(1)(c) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'Act') for acquiring properties and pecuniary resources which were disproportionate to his known sources of income to the extent of Rs.38,72,545/-, which he had not satisfactorily accounted for. Whereas, P. Nallamal was tried for offence under Section 109 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC') read with Sections 13(2) read with 13(1)(c) of the Act for abetting the offence by permitting the 1st Accused to acquire a substantial portion of

the properties in her name and in the names of her minor children and for holding such properties on his behalf.

5. Before the learned III Special Judge/XIII Additional Judge, Chennai (hereinafter referred to as the 'Trial Court'), on behalf of the prosecution, 62 witnesses (PW1 to PW62) were examined, 160 Exhibits (Ex.P1 to Ex.P160) were marked along with 31 material objects (MO1 to MO31). On the side of the defence, 30 witness (DW1 to DW30) were examined and 15 Exhibits (Ex.D1 to Ex.D15) were marked.

6. The Trial Court *vide* Judgment and Order dated 15.11.2000 determined the value of the assets acquired by the 1st Accused disproportionate to his known source of income as being Rs.35,25,136/- for the purpose of action under Section 12 of the Criminal Law (Amendment) Ordinance Act, 1944, and convicted both the 1st and 2nd Accused:

Accused	**Offence** [under the Act as it then stood]	**Conviction and Sentence**
1st Accused	Section 13(2) r/w 13(1)(c) of the Act	To undergo two years Rigorous Imprisonment and to pay fine of Rs.10,000/. In default of payment of fine, to

		undergo 2 months further Simple Imprisonment.
2nd Accused	Section 109, IPC r/w 13(2) r/w 13(1) (c) of the Act	To undergo one year Rigorous Imprisonment and to pay fine of Rs.5000/-. In default of payment of fine, to undergo 1 month further Simple Imprisonment.

7. In view of the above conviction, the learned Principal Sessions Judge, Madurai by Order dated 03.01.2001 in Crl. O.P. No.2 of 1997 (hereinafter referred to as the 'Attachment Order') made the earlier interim attachment order dated 06.03.1997 of the schedule-mentioned properties in Crl. M.P. No.1168/1997, absolute and ordered that the amount of Rs.35,25,136/- shall be recovered by forfeiture of the attached properties.

8. The 1st and 2nd Accused filed Criminal Appeal No.1170/2000 (hereinafter referred to as the 'Criminal Appeal') before the High Court of Judicature at Madras (hereinafter referred to as the 'High Court') challenging the conviction and sentence imposed by the Trial Court. Along with this Criminal Appeal, the accused filed Civil Miscellaneous Application No.425/2001 challenging the Attachment Order. With the

leave of the High Court, the accused marked two additional documents as Ex.D16 & Ex.D17.

9. The story takes a rather interesting turn from here. It would be material to note the case of the appellants. According to them, between 08.02.2013 and 20.02.2013, the Criminal Appeal was listed before the High Court and elaborate arguments were advanced by both sides, subsequent to which the judgment was reserved by a learned Single Judge. On 30.04.2013, as put forth by the appellants, the learned Single Judge pronounced Judgment and acquitted both the accused. Thereafter, the counsel for the accused filed applications dated 30.04.2013, 09.12.2013 and 16.02.2015 praying for a Certified Copy of the Judgment/Order dated 30.04.2013, which was not made available. On 23.03.2015, the 1st Accused passed away. Later, the 2nd Accused also made a complaint to the Registrar General of the High Court to the effect that a Certified Copy of the Judgment/Order dated 30.04.2013 had not been furnished by the Registry and no reason was assigned for the same. The Assistant Registrar (Administration) of the High Court, on 19.08.2015, replied to the 2nd Accused, stating that no action could be taken in judicial proceedings on letters received by post.

10. After over five years, the High Court, on 19.07.2018, listed the criminal appeal for '*fresh hearing*'. The 2nd Accused filed **Writ Petition (Criminal) No.437/2021** titled ***P Nallammal v The Registrar General High Court of Judicature at Madras*** before this Court challenging the fresh listing of the Criminal Appeal, which was disposed of *vide* Order dated 13.12.2021 with a request to Hon'ble the Chief Justice of the High Court to conduct an enquiry on the administrative side and to take a decision. Pursuant to this Order, an enquiry was conducted by the learned Chief Justice on 23.02.2022, in which the 2nd Accused participated. By an order dated 03.03.2022 in R.O.C. No.2/2022/Crl.Sec. (hereinafter referred to as the 'Impugned Administrative Order'), the Chief Justice, in the absence of a judgment on record, directed the appeal to be listed for fresh hearing.

11. Pursuant to the Impugned Administrative Order, the appeal along with CMA No.425/2001 challenging the Attachment Order, was re-heard. *Vide* Final Judgment and Order dated 20.11.2023 (hereinafter referred to as the 'Impugned Order'), the High Court dismissed the Criminal Appeal and confirmed the conviction and sentence imposed by the Trial Court. The High Court, in the Impugned Order, found the value of the assets disproportionate to the known source of income of the accused to be Rs.33,25,136. Accordingly, CMA No.425/2001 was dismissed and the

Attachment Order was confirmed with a modification to the effect of recovering a sum of Rs.33,25,165/- instead of Rs.35,25,136/- with interest @ 6% *per annum* from the date of interim attachment *viz*. 06.03.1997.

12. For the sake of clarity, the three appeals before us presently are:

(i) Appeal arising from SLP (Criminal) No.2127/2024 filed by the 2nd Accused challenging the conviction and sentence imposed by the Impugned Order.

(ii) Appeal arising from SLP (Criminal) No.2288/2024 filed by the 2nd Accused and the Legal Heirs of the 1st Accused (children of the 1st and 2nd Accused), challenging the Attachment Order as modified by the Impugned Order.

(iii) Appeal arising from SLP (Criminal) Nos.5196-5197/2024 filed by the Legal Heirs of the 1st Accused (2nd Accused and children of the 1st and 2nd Accused) challenging the Impugned Administrative Order directing fresh hearing of the Criminal Appeal as well as the Impugned Order.

APPELLANTS' SUBMISSIONS:

13. At the outset, learned senior counsel for the appellants submitted that after the acquittal of the appellants by the High Court by pronouncing a Judgment in open court on 30.04.2013, it was not constitutionally permissible to rehear the disposed of appeal only on the ground that the Judgment which was pronounced in open court was not found in the case bundle, that too after over five years of the pronouncement of the judgement and almost three years after the death of the 1st Accused. It was submitted that the Judgment dated 30.04.2013 had properly appreciated the evidence on record and acquitted the accused, and this, in itself, would prove that the Impugned Order is erroneous and illegal.

14. It was submitted that in terms of ***DSP v K Inbasagaran*****, (2006) 1 SCC 420**, when there is evidence that the wife had independent income and the same is proved, it cannot be included with the assets of the husband-public servant. In the present case, in Statement-II, the prosecution had admitted that at the time of marriage, the 2nd Accused was given 100 sovereigns of gold. The properties acquired in the name of the 2nd Accused during the Check Period were valued at Rs.5,42,375/-. It was submitted that Item 19 (second-hand Ambassador Car) was valued at Rs.1,30,000/- whereas PW55 (the vendor) stated that he had

sold it for only Rs.40,000/-. Thus, the total amount of properties acquired in the name of the 2nd Accused is only Rs.4,52,375/-.

15. It was contended that way before the Check Period, the 2nd Accused had agricultural lands as per Ex.P93 and her father/DW29 had given 1.18 acres and 1.35 acres of *Nanja* land to her as *stridhana*. For some lands, the *patta* stands in her name. Further, DWs 3, 6, 11, 14, 19, 23, and 25 have given evidence stating that they borrowed money from the 2nd Accused before the Check Period and were paying interest for the same. The income from agriculture and by way of interest also stands corroborated from Ex.D2 and Ex.D3, which are the returns recovered from PW62 (auditor) during the course of investigation.

16. Next, it was argued that the Income Tax Department has assessed the agricultural income and the income by way of interest and the Trial Court has disbelieved the defence witnesses and documents in this behalf, without assigning any cogent reasons. It was argued that the 2nd Accused was not a pauper, that she was a daughter of a rich family and also paying income tax of her own. Learned senior counsel submitted that the Courts below had rejected the explanation so offered by the 2nd Accused without any reasoning. Further, it was pointed out that there is no evidence that the 1st Accused contributed anything ever to the

2nd Accused to purchase any assets. Instead, the purchases made by the 2nd Accused were from her own income and from the contributions of her father/DW29.

17. It was further contended that if the assets standing in the name of the 2nd Accused are excluded, then the assets held by the 1st Accused at the end of the Check Period itself would be within limits. It was urged that there was no disproportionality in the assets held by him. There were as many as fifteen documents and 30 witnesses on the side of the defence, which would discharge the 1st accused from the burden under Section 106 of the Indian Evidence Act, 1872. The Impugned Order failed to refer to the defence documents. As per Ex.D3, Ex.D16 and Ex.D17 and the oral evidence of the defence witnesses, it has been clearly established that the 1st Accused had an agricultural income of Rs.13,55,715/- and the 2nd Accused had an agricultural income of Rs.1,59,250/-. Furthermore, the Impugned Order failed to note the evidence of PW29 and Ex.P60 which would prove that the income of the 2nd Accused from the sale of sugarcane at the mill and the amounts earned by the sugarcane mill were to the tune of Rs.4,21,349/-. The Travelling Allowance and Dearness Allowance paid to the 1st Accused totalling Rs.1,20,779/- has also not been taken into account by the Courts below. ***Kartarey v State of Uttar Pradesh*, AIR 1976 SC 76** and ***Reena Hazarika v State of***

***Assam*, (2019) 13 SCC 289** were referred to in support of the propositions canvassed by the learned senior counsel.

18. Learned senior counsel submitted that the Accused have discharged the burden under Section 106 of the Evidence Act, 1872 and established their lawful sources of income and the acquisitions made by them. In such scenario, the Impugned Order is liable to be set aside and the 2nd Accused is entitled to be acquitted. As a consequence, the Impugned Attachment Order in CMA No.425/2001, upholding the Attachment Order is also liable to be set aside in the absence of proof that such properties were acquired by committing a scheduled offence. It was prayed to allow the respective appeals as aforesaid.

19. We may also note that though, in the pleadings, there is an argument that the ingredients of Section 107 of IPC are not made out and hence, the 2nd Accused cannot be punished for abetment by invoking Section 109 of IPC, the same was not canvassed during oral submissions.

RESPONDENT-STATE'S SUBMISSIONS:

20. *Per contra*, learned counsel for the respondent-State submitted that the appeals are without merit and the prosecution had proved the charges beyond reasonable doubt. It was submitted that the prosecution had demonstrated, through witness testimonies and documentary evidence, that the accused, particularly the 1st Accused, Late Mr. A. M. Paramasivam, who held public office as a Member of the Legislative Assembly and later as Minister for Labour Welfare, Government of Tamil Nadu, had amassed wealth significantly beyond his disclosed income sources. Despite claims by the Accused that their incomes were from agricultural lands and independent sources of income of the 2nd Accused, these claims had not been substantiated by reliable documentation or testimony.

21. The assessment of the Accuseds' assets, submitted learned counsel, as determined by the Trial Court, was accurate and based on credible evidence, which led to a determination that the appellants were in possession of assets worth Rs.37,71,590/-, significantly disproportionate to their known income sources, amounting to a 442% disparity, which justified conviction. It was submitted that except for about 5 acres of land in possession at the beginning of the Check Period, the accused had not produced any acceptable evidence to show that they had other lands that they were cultivating or owned.

22. It was contended that the 2nd Accused had no independent income and aided the 1st Accused in illegally acquiring wealth in her and her children's name. It is submitted that the Accused relied heavily on Income Tax Returns and agricultural income claims, but the returns alone cannot substantiate the claim of legal acquisition of assets. The income disclosed in the Income Tax Returns and the findings of the Income Tax Department are confined to income assessable to tax and is not proof that the assets from which the income is derived, were acquired legally. It was submitted that Ex.D1, Ex.D2 and Ex.D3 were self-serving documents which surfaced after the search conducted at the residential premises of the Accused, and would be of no evidentiary value.

23. It was further submitted that the self-serving evidence testified by interested witnesses in respect of the Accuseds' immovable properties are hard to believe. Particularly, when the 1st Accused himself claims that he was a full-time politician, his tall claim of cultivating about 6.61 acres of land under lease besides owning 5 acres of land, has rightly been disbelieved by the Trial Court as lacking evidence.

24. For the sake of argument, even if the explanation of the Accused is accepted, assuming that the relatives of the Accused presented

household articles during the house-warming ceremony, the entire value of such house-hold appliances like Colour Television, Fridge etc. being only a sum of Rs.1,24,740/- could be reduced from the total value of the assets acquired during the Check Period. At the most, the dispute in valuation can be only in respect of Architect fees (less Rs.75,000/-) and the value of the household articles alleged to have been gifted by known persons and relatives (less Rs.1,24,740/-). At this, the value of assets acquired during the Check Period would reduce, from Rs.37,70,590/- to Rs.35,71,330/.

25. Moreover, the marriage of the Accused took place in 1983, whereas the Check Period commenced from 16.06.1991. It was submitted that no document was placed before the Courts to indicate that, after the marriage and till soon before the Check Period, the 1st Accused had any source of income other than 5 acres of land shown in Statement-I or had purchased any property. It is submitted that the Act shifts the burden of proof to the public servant when disproportionate assets are found. The Accused attempted to rely on Income Tax Returns and self-serving testimony regarding gifts and agricultural income, but these efforts failed to meet the required standards. Reliance was placed on ***State of Karnataka v J Jayalalithaa*, (2017) 6 SCC 263**. In the context of burden of proof when disproportionate assets are found being

on the defence, learned counsel cited ***Kedari Lal v State of Madhya Pradesh*, (2015) 14 SCC 505** and ***State of Tamil Nadu v R Soundirarasu*, (2023) 6 SCC 768**.

26. With regard to the grievance of the appellants regarding the fresh listing of the Criminal Appeal, learned counsel stated that it is pertinent to mention that the appellants had not pursued the matter immediately in the year 2013 itself, when the Judgment is said to have been delivered on 30.04.2013. No explanation was given by the appellants, except stating that repeated prayers were made to the learned Single Judge concerned for obtaining Certified Copy(ies) of the said Judgment. It was thus within the appellants' knowledge that the Judgment dated 30.04.2013 had not been furnished. Moreover, the contention urged was that the Impugned Administrative Order cannot be challenged directly *via* filing a Special Leave Petition and the appellants should have approached the High Court by filing a writ petition under Article 226 of the Constitution of India. In this backdrop, the State sought dismissal of all the appeals.

ANALYSIS, REASONING & CONCLUSION:

27. We have heard the rival contentions and perused the material on record. At the outset, we may indicate that we do not intend to undertake the exercise of re-evaluation/re-assessment of the quantum insofar as the disproportionate assets are concerned. The Impugned Order has rightly considered the material on record and is well-reasoned in that regard. Therefore, we circumscribe our enquiry to the question of culpability of the 2nd Accused under Section 109 IPC read with Sections 13(2) and 13(1)(e) of the Act. The 2nd Accused was charged with colluding with the 1st Accused and purchase of properties in her name, in the names of her daughter and sons and keeping the said properties on behalf of the 1st Accused.

28. It would be profitable to set out Sections 107 and 109 of the IPC at the outset:

> '***107. Abetment of a thing***.—*A person abets the doing of a thing, who—*
>
> *First.—Instigates any person to do that thing; or*
>
> *Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or*
>
> *Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing*.
>
> xxx
>
> *109.* ***Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.***—*Whoever abets*

any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in S. 161.

(b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(c) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.'

29. The question as to whether offences under the Act are abettable by non-public servants and whether they can be prosecuted by the Special Courts under the Act is no longer *res integra*. Interestingly, the position of law was also expounded in an earlier round of litigation wherein the 2nd Accused had approached this Court seeking pre-trial exoneration. The decision is reported as ***P Nallamal v State*, 1999 6 SCC 559**, wherein the Court cited illustrations fitting within each of the three clauses in Section 107 of the IPC *vis-à-vis* Section 13(1)(e) of the Act. They are:

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

30. Although the illustrations *supra* were cited by the prosecution/respondents therein, the Court was *ad idem* therewith. Ultimately, this Court held that the offence under Section 13(1)(e) of the Act can be abetted by a non-public servant.

31. We may note that it is not the case of the prosecution that the 2nd Accused instigated the 1st Accused to amass wealth disproportionately or

that she is holding the properties *benami*. No material has been brought on record by the prosecution to suggest so. Therefore, the act of abetment as alleged is either one of conspiracy or one of intentionally aiding. The properties acquired in the name of the 2nd Accused during the check period were valued at Rs.5,34,179/- (Rupees Five Lakhs Thirty Four Thousand One Hundred and Seventy Nine) by the Impugned Order. The question, therefore, before us is whether the 2nd Accused is liable for abetment merely by reason of the fact that she was the wife of the 1st Accused and some properties were acquired/purchased in her name.

32. At this juncture, it is expedient to understand the scope of Section 109 of the IPC *vis-à-vis* Section 13(1)(e) of the Act and the evidentiary burden to be discharged by the prosecution. In ***K Ponnuswamy v State of Tamil Nadu*, (2001) 6 SCC 674**, which lies in a similar factual scenario, the main accused therein challenged his conviction by the High Court, which challenge was negatived by this Court. The High Court convicted the main accused (A1) for being unable to satisfactorily account for the disproportionate assets, while acquitting his wife (A2) and daughter (A3), in whose name the bulk of the properties were held. While doing so, the High Court [*vide* its Judgment and Order dated 12.04.2001 in **Criminal Appeal No.749/2000**] returned the following findings:

> '***45.*** *It has been clearly found that the properties and resources standing in the name of A2 and A3 were not*

satisfactorily accounted for by A1. A4's explanation was already found to be not acceptable. A2 and A3 are not the earning members of the family, except they get a meagre income from agricultural property. The defence of A2 is that she purchased movable and immovable property by using the gift cheques received by her through A4. This theory was not accepted for the reasons already recorded. So far as A3 is concerned she could not say anything as to how the properties came in her name. She being a student may not be knowing naturally. Therefore, merely because A2 & A3 have acquired properties in their names whether they can be held to have abetted the first accused to commit the offence? The offence of abetment can be established only by proving that the abettor instigated the main offender to do the offence or conspired together or intentionally aided by any act or illegal omission, for the commission of the offence. Insofar as the first limb of Section 107 I.P.C. is concerned, there is no evidence that either A2 or A3 instigated A1 to acquire properties and resources disproportionate to his known sources of income. There is also no evidence of any conspiracy for that end. The last limb of Section 107 is intentional aid by any act or illegal omission. Nodoubt [sic]*, A2 & A3 are holding properties rather purchased properties in their names. There is ample proof to that effect. Whether mere purchase of properties including jewels would amount to intentional aid is a point to be decided. This last limb can be held to be established only either when A1 informs A2 and A3 or A2 & A3 have knowledge that the ill-gotten money was being used for the purpose of purchasing properties in their names. In the absence of such a proof, A2 & A3 cannot be held to be liable for the offence of abetment…*

46. *Though Section 13(1)(e) of the Act was abettable still there is no evidence to bring A2 to A5 within the ambit of abetment. Therefore, benefit of doubt has to be given to them…*'

(emphasis supplied)

33. ***K Ponnuswamy*** (*supra*), however, noted that '*…As we are told that the State is going to file an appeal against the acquittal of Accused 2 and 3, we are not making any comments thereon.*' Yet, the same was not

filed as is apparent from Order dated 31.03.2009 passed by this Court in **Criminal Appeals No.849-850 of 2001**, where A2 and A3 had approached this Court challenging the order of the High Court in ordering confiscation of the properties in their name despite acquitting them of all charges. By the said Order dated 31.03.2009, this Court allowed their appeals and remitted the matter to the High Court for fresh consideration, on the ground that no tangible or sustainable reasons were recorded by the Courts below in exercise of jurisdiction under Section 452[1] of the Code of Criminal Procedure, 1973 with regard to the confiscation of properties owned and possessed by A2 and A3. Post-remand, on fresh consideration, the High Court by its Judgment dated 28.07.2018[2] in **Criminal Appeals Nos.882/2000 and 884/2000** allowed the appeals and held that having acquitted A2 and A3, assets standing in their names had to be excluded from the order of confiscation and ordered accordingly. In

[1] '*452. Order for disposal of property at conclusion of trial.—(1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.*

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in Sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.'

[2] This Judgment was amended by the Madras High Court by Order dated 11.03.2019.

***Kishori Lal v State of Madhya Pradesh*, (2007) 10 SCC 797**, this Court explained:

> '***6.*** *Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.*'
>
> (emphasis supplied)

34. Relevant reference can be made to the discussion in ***State v Uttamchand Bohra*, (2022) 16 SCC 663** which although not in reference to a family member of the principal accused but explains in-depth the requirements of conspiracy and abetment *vis-à-vis* a charge of accumulation of disproportionate assets by a public servant:

> '***22.*** *As is evident from the discussion of the facts, Uttamchand is accused of abetting and/or conspiring with the principal accused, a public servant (A-1), so as to permit him to accumulate assets disproportionate to his known sources of income. A-1 was a senior official of the Central Government, working in the Income Tax Department. According to the prosecution, he acquired the flat, through the Company. Two other accused, who facilitated the*

acquisition, turned approver; they also deposed during the trial. The role attributed to the respondent is that he helped in the execution of the sale deed of the property, and kept custody of the title deed to it. The document was in fact seized from his house. The seizure took place over a year before the present case was initiated; in fact, CBI had initiated another criminal proceeding, in which A-1 too was implicated. In that case, CBI had seized Rs 50 lakhs from him. In the present case, the recovery from Uttamchand's custody of the sale deed of the property, owned by the Company led to initiation of separate proceeding; inter alia, Uttamchand was charged with "criminal conspiracy", defined under Section 120-A IPC and punishable under Section 120-B IPC and "abetment", defined by Section 107 IPC and punishable under Section 109 IPC.

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***25.** The charge-sheet further does not contain any allegation which can amount to an offence under Section 109 IPC. The prosecution has not suggested that he abetted A-1 to acquire disproportionate assets in any manner; the only allegation is that the title deeds to the flat, which is in the name of M/s Raviteja Trading Co. Pvt. Ltd. was seized from his custody and that he had instructed his employee to witness the document. An allegation of the existence of signatures of Uttamchand's employee, as a witness to the sale deed cannot amount to his aiding or abetting A-1 to acquire disproportionate assets. Witnessing a sale deed is a formal requirement. Likewise, the fact that the sale deed was in Uttamchand's residence cannot satisfy the ingredient of any of the offences alleged against him.*

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***31.** This Court explained the essence of conspiracy in the context of acts or omissions, and allegations relating to conspiracy along with offences under the PCA, in K. Narayana Rao [CBI v. K. Narayana Rao, (2012) 9 SCC 512: (2012) 4 SCC (Civ) 737: (2012) 3 SCC (Cri) 1183], and observed that: (SCC p. 530, para 24)*

> *"24. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the*

> *essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence."*

32. *The material to implicate someone as a conspirator acting in concert with a public servant, alleged to have committed misconduct, under the PCA, or amassed assets disproportionate to a public servant's known sources of income, thus, has to be on firm ground. In the present case, only two circumstances — the custody of the sale deed (of the property allegedly belonging to A-1) and the fact that it was witnessed by Uttamchand's employee — are alleged against the respondent. These are wholly insufficient to raise a reasonable suspicion, or make out a prima facie case against him, for conspiracy.*

33. *It would be useful, in the context of the present case, to recollect the decision of this Court, in P. Nallammal v. State [P. Nallammal v. State, (1999) 6 SCC 559: 1999 SCC (Cri) 1133] which observed, as follows: (SCC pp. 564-65, para 15)*

> *"15. Thus, the two postulates must combine together for crystallisation into the offence, namely, possession of property or resources disproportionate to the known sources of income of public servant and the inability of the public servant to account for it. Burden of proof regarding the first limb is on the prosecution whereas the onus is on the public servant to prove the second limb. So it is*

> *contended that a non-public servant has no role in the trial of the said offence and hence he cannot conceivably be tagged with the public servant for the offence under Section 13(1)(e) of the PC Act."*

34. *As far as the respondent Uttamchand is concerned, the initial burden of showing that a conspiracy existed, cannot even be alleged against him, given the nature of the material presented along with the charge-sheet.*

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36. *An entire overview of the material produced before the trial court, with the charge-sheet and final report, as well as deposition of the 74 witnesses who were examined during the trial, does not support CBI's allegation of Uttamchand. He did not directly or indirectly finance the transaction by which property was sold to M/s Raviteja Trading Co. Pvt. Ltd., which, according to that prosecution, was in fact by A-1. The respondent also is not alleged to have facilitated the flow of money to fund acquisition of the flat. The material put against him is that the sale deed was seized, prior to the present case. The other circumstance put against him is that his employee witnessed the sale deed. The respondent is concededly neither the owner, nor has any links with M/s Raviteja Trading Co. Pvt. Ltd. In these circumstances, this Court is of the opinion that no material which can prima facie support an inference that Uttamchand was either a conspirator or had abetted the commission of the offences alleged against the accused A-1 is made out*.'

(emphasis supplied)

35. In the above light, let us turn back to the facts of the instant case. The defence put forth by the 2nd Accused before the Trial Court has been noted in its Judgment dated 15.11.2000 as below:

> '*The summary of the written statement filed by the 2nd Accused: During the time of marriage of the Accused, to the 2nd Accused the family of him had given 100 sovereigns of gold and lands as Sreedhanam. Through which the Accused family got income. During the time of marriage, the gift amount of Rs.10,000/- has acquired. The above said incomes were all shown in the list which is annexed herewith.*

> *The 1st Accused was head of the family and he maintained the income and expenditure of the family. A false case is filed to take revenge and to cause disgrace against the Accused*.' (sic)
>
> (emphasis supplied)

36. The 2nd Accused is the widow of the 1st Accused-public servant. The assets standing in her name are three immovable properties, two cars, share certificates and some cash balance in the bank. Pausing here, we may note that the Trial Court has observed that the 2nd Accused showed interest to purchase the land, that she had given the sale consideration which is proved by witnesses and therefore her acts fall within the third limb of Section 107 of the IPC, which is one of intentional aid. Regard being had to the fiduciary relationship shared between the Accused, *mens rea* cannot *ipso facto* be presumed by the mere fact that some assets stood in the name of the 2nd Accused, and she had extended consideration for the same. This Court cannot be oblivious to human realities, especially the usual course of human conduct in marital relationships. We are cognizant of the presumptions provided for in criminal law, but the same by itself cannot supplant evidence. We reiterate that suspicion, however strong, cannot take the place of evidence. To presume culpability of a close relative of the public servant merely on the ground that certain transactions were made in such relative's name would be akin to reversing the burden of proof. This may

have dangerous consequences and result in diluting the presumption of innocence, beyond what the statute in question contemplates.

37. Another striking feature in the present case is that during the entire trial, the prosecution never took the line of proving that the 2nd Accused was all along aware that the money from which the assets were being bought in her name was obtained through ill-gotten or unlawful sources. Thus, under *bonafide* belief, she has tried to defend the acquisition of the assets trying to explain the sources from various means which cannot lead to the presumption in law that she was party *ab initio* to such illegal acquisition(s) as ultimately she is a housewife and, from the record, it can be safely stated that it was the late husband-1st Accused who arranged for the money from which the assets, disproportionate to the known sources of the income of the family, have been bought in her name. Thus, the role of the 2nd Accused, in our opinion, does not fall within the three illustrations taken note of by this Court in ***P Nallamal*** (*supra*).

38. It is for the prosecution to prove its case beyond all reasonable doubt and a solitary circumstance of name-lending, such as the one at present, cannot lead us to draw and sustain an inference which unerringly points to the guilt of the 2nd Accused. There has to be

something more in the form of positive evidence to satisfy the essential requirements for the offence of abetment. Life and liberty are not things to be trifled with on the basis of conjectures and surmises. ***Suresh Thipmppa Shetty v State of Maharashtra*, 2023 SCC OnLine 1038** held:

> '***18.*** *On a deeper and fundamental level, when this Court is confronted with a situation where it has to ponder whether to lean with the Prosecution or the Defence, in the face of reasonable doubt as to the version put forth by the Prosecution, this Court will, as a matter of course and of choice, in line with judicial discretion* [Although in the context of bail jurisprudence, for a working idea as to what 'judicial discretion' entails, peruse the views of a learned Single Judge (sitting as Judge-in-Chambers) of this Court in *Gudikanti Narasimhulu* v *Public Prosecutor, High Court of Andhra Pradesh*, (1978) 1 SCC 240.]*, lean in favour of the Defence. We have borne in mind the cardinal principle that life and liberty are not matters to be trifled with, and a conviction can only be sustained in the absence of reasonable doubt. The presumption of innocence in favour of the accused and insistence on the Prosecution to prove its case beyond reasonable doubt are not empty formalities. Rather, their origin is traceable to Articles 21 and 14 of the Constitution of India. Of course, for certain offences, the law seeks to place a reverse onus on the accused to prove his/her innocence, but that does not impact adversely the innocent-till-proven-guilty rule for other criminal offences.*
>
> ***19.*** *In Coffin v. United States, 156 US 432 (1895), the United States' Supreme Court held:*
>
> > *'The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.'*
>
> ***20.*** *We see no quarrel with the afore-noted statement as the same applies on all fours to our criminal justice system. The presumption of innocence is also a human right, per the pronouncement in Narendra Singh v. State of Madhya*

Pradesh, (2004) 10 SCC 699. In Ranjeetsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294, a 3-Judge Bench of this Court, at Paragraph 35, had opined that '… Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. …''

(emphasis supplied)

39. The presumption of innocence is a basic tenet of criminal jurisprudence and it gets dislodged only by presenting cogent and reliable evidence. Not for nothing is it stated that the accused is the favourite child of the law and to him/her enure all the benefits of doubt as available in law. There is absolutely no evidence on record, much less any evidence to satisfy the standard of proof beyond reasonable doubt to establish that the 2nd Accused conspired/colluded with or intentionally aided the 1st Accused in committing offence(s) under Sections 13(2) r/w 13(1)(e) of the Act. Therefore, we hold that the acts of the 2nd Accused do not fall within the ambit of Section 107 of the IPC and in such circumstances, it would be unsafe to sustain her conviction with the aid of Section 109 of IPC.

40. Accordingly, the Impugned Order is set aside to the extent of conviction of the 2nd Accused and she stands discharged of the liability of her bail bonds and sureties. As we have acquitted the 2nd Accused, we see no reason to interfere in the Attachment Order as it attaches the assets standing in her name beyond the value which has been explained

by her and accepted by the Courts below. Further, the Impugned Administrative Order, having worked itself out, does not call for any interference. However, the learned Single Judge who pronounced the 'Judgment' dated 30.04.2013, as revealed by the Impugned Administrative Order, is already under appropriate scrutiny. The conduct of this learned Single Judge in not making available copies of his judgments/orders at all, or having made them available much after his date of retirement (26.05.2017) has been adversely commented upon by this Court in ***State through Inspector of Police CBI Chennai v Naresh Prasad Agarwal*, (2024) 3 SCC 515** and ***State through the Inspector of Police CBI, ACB, Chennai v S Murali Mohan*, Criminal Appeal No.4166/2024** [Order dated 01.10.2024]. We say no more. As evincible from the Impugned Administrative Order, there did not exist any 'Judgment' dated 30.04.2013. The learned then Chief Justice of the High Court, thus, cannot be faulted for restoring the criminal appeal for fresh hearing.

41. Consequently, the appeal arising from SLP (Criminal) No.2127/2024] is allowed; the appeal arising from SLP (Criminal) No.2288/2024 is dismissed, and; the appeals arising from SLP (Criminal) Nos.5196-5197/2024 are dismissed.

42. No order as to costs.

43. Pending I.A.s/Crl. M.P.s are closed.

…….J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
MAY 07, 2025

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2489 OF 2025
[@ *SPECIAL LEAVE PETITION (CRIMINAL) NO.2127 OF 2024*]

P. NALLAMMAL …APPELLANT

VERSUS

STATE BY THE INSPECTOR OF POLICE …RESPONDENT

WITH

CRIMINAL APPEAL NO. 2490 OF 2025
[@ *SPECIAL LEAVE PETITION (CRIMINAL) NO.2288 OF 2024*]

TMT. P. NALLAMMAL & ORS. …APPELLANTS
A1: TMT. P. NALLAMMAL
A2: THIRU A. M. PARAMASIVAM (DIED) THROUGH LRS.
A2.1: P. RAJAKUMAR PANDIAN
A2.2: P. SELVAKUMAR PANDIYAN
A2.3: SELVI SURIYAKALA @ SUDARSENA

VERSUS

STATE OF TAMIL NADU, REPRESENTED BY
INSPECTOR OF POLICE …RESPONDENT

WITH

CRIMINAL APPEAL NOS. 2491-2492 OF 2025
[*@ SPECIAL LEAVE PETITION (CRIMINAL) NOS.5196-5197 OF 2024*]

THIRU A. M. PARAMASIVAM (DIED) THROUGH LRS. & ORS.

…APPELLANTS

A1.1: TMT. P. NALLAMMAL
A1.2: P. RAJAKUMAR PANDIAN
A1.3: P. SELVAKUMAR PANDIYAN
A1.4: SELVI SURIYAKALA @ SUDARSENA

VERSUS

STATE OF TAMIL NADU, REPRESENTED BY INSPECTOR OF POLICE

…RESPONDENT

ORDER

We have authored separate judgments, though we differ only with respect to the appeal arising from SLP (Criminal) No.2127/2024.

2. We are though unanimous as to the appeals emanating from SLP (Criminal) No.2288/2024 and SLP (Criminal) Nos.5196-5197/2024 and these are hereby dismissed.

3. In view of the above, Registry to place the relevant papers of the appeal arsing from SLP(Criminal) No.2127/2024, before Hon'ble the Chief Justice of India for appropriate directions.

……J.
[SUDHANSHU DHULIA]

……J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
MAY 07, 2025