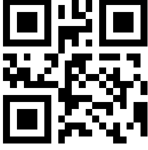

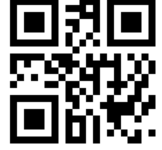

2026:CGHC:27468

**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRA No. 467 of 2023**

**Judgment Reserved on 23.06.2026**

**Judgment Delivered on 03.07.2026**

- Vinod Kumar Tamboli, S/o Late Samelal @ Kishun Lal Tamboli, aged about 65 Years, R/o Bhartiya Nagar, P.S. Civil Line, Bilaspur, Tehsil and District Bilaspur Chhattisgarh.

**...Appellant**

**versus**

- State of Chhattisgarh, Through A.C.B. Raipur / A.C.B. Unit Bilaspur, District Bilaspur, Chhattisgarh.

**... Respondent**

| For Appellant | : | Mr. Vaibhav P. Shukla, Advocate along with Mr. Ashish Thawait, Advocate. |
|---|---|---|
| For Respondent/State | : | Mr. Sumit Singh, Deputy Advocate General. |

**(Hon'ble Shri Justice Radhakishan Agrawal)**

**CAV Judgment**

1. This criminal appeal under Section 374(2) of the Code of Criminal Procedure has been preferred against the judgment of conviction and order of sentence dated 17.02.2023 passed by the learned Special Judge (Prevention of Corruption Act, 1988), Bilaspur, C.G. in Special Sessions Case No.06/2017 whereby the appellant has been convicted for the offence punishable under Section 13(1)(e)

read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the Act, 1988') and sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.4,00,000/-, in default of payment of fine amount to undergo additional rigorous imprisonment for 1½ year.

2. Case of the prosecution case, in brief, is that the appellant was appointed as *Patwari* on 15.02.1981 and was serving under the Revenue Department. On the basis of source information received by the Anti-Corruption Bureau alleging that the appellant had accumulated assets disproportionate to his known sources of income, a preliminary enquiry was conducted. Thereafter, Crime No.0/2014 was registered on 29.09.2014 and after obtaining a search warrant, a search was conducted at the residential premises of the appellant on 30.09.2014. During the search, various documents, valuables and other articles were seized. Subsequently, Crime No.42/2014 was registered and after completion of investigation and obtaining sanction for prosecution, charge-sheet was filed before the Special Court. According to the prosecution, the check period was taken from 01.01.1990 to 30.09.2014. During the said period, the appellant and his family members were found to have acquired movable and immovable properties beyond their known sources of income. The prosecution assessed the total income of the appellant and his family members at Rs.67,14,930/- and the total expenditure and assets at Rs.1,81,65,460/-, thereby calculating disproportionate

assets of Rs.1,14,50,530/- which amounted to 170.52% of the known income. On that basis, charge under Section 13(1)(e) read with Section 13(2) of the Act, 1988 was framed and the statements of the witnesses were recorded.

3. Appellant denied the allegations and pleaded false implication. In defense, he examined 16 defence witnesses i.e. DW-1 to DW-16 and exhibited 72 documents i.e. Exs.D-1 to D-72. The prosecution examined 33 witnesses i.e. PW-1 to PW-33 and exhibited 248 documents i.e. Exs.P-1 to P-248.

4. After appreciation of evidence, the learned Special Judge recalculated the income and expenditure and held that the total income of the appellant was Rs.67,75,545/- and total expenditure and assets were Rs.1,65,65,680/-. The learned trial Court held that the appellant possessed disproportionate assets worth Rs.97,88,855/- (as corrected by the trial Court vide order dated 20.02.2023) which was approximately 144% more than his known income and accordingly convicted and sentenced him.

5. Learned counsel for the appellant submits that the learned Special Judge has wrongly convicted and sentenced the appellant in absence of cogent and reliable evidence. It is contended that the impugned judgment suffers from serious errors in the appreciation of both facts and law. It is further submitted that the trial Court failed to properly consider the defence evidence relating to the lawful sources of income of the appellant and his family. The prosecution had issued a notice (Ex.D-45) seeking information for

the period from 01.02.1995 to 30.09.2014. However, at the stage of filing the charge-sheet, the check period was altered to 01.01.1990 to 30.09.2014, and assets relating to the earlier period were included without giving the appellant an opportunity to explain the same. It is also submitted that both daughters of the appellant were employed prior to their marriage, and their income was duly proved by oral and documentary evidence. However, the trial Court failed to consider this material evidence. Similarly, the appellant's wife, Pushpa Tamboli, had an independent source of income, which was duly established through defence evidence, but the same was wrongly ignored. Learned counsel further submits that the trial Court arbitrarily reduced the agricultural income without any supporting evidence. It is also contended that the appellant's wife received Rs.40,00,000/- as advance sale consideration for agricultural land, which was proved by the purchaser and supported by a compromise decree passed by the Lok Adalat (Ex.D-18), but the same was not considered by the trial Court. It is further submitted that the rental income from the house situated at Bhartiya Nagar was duly proved through tenants and corroborated by the Investigating Officer, yet it was wrongly discarded. According to learned counsel, if all these lawful sources of income are properly taken into account, the prosecution's calculation of disproportionate assets becomes unsustainable. It is also submitted that several expenditure heads have been wrongly inflated by the prosecution and accepted by

the trial Court, including household expenses assessed at 60% of salary, valuation of jewellery, bank balances, household articles, electronic items, luxury items, educational expenses, foreign travel of the appellant's son, cash seized during the search, and valuation of immovable properties. It is contended that if the evidence is appreciated in light of the settled principles laid down by the Hon'ble Supreme Court, the appellant is able to satisfactorily explain all the disputed items. On proper recalculation, his lawful income exceeds the total expenditure and assets. Therefore, it is prayed that the impugned judgment be set aside and the appellant be acquitted of all the charges. In support of his submissions, learned counsel for the appellant has placed reliance on the decisions of the Hon'ble Supreme Court in *M. Krishna Reddy v. State Deputy Superintendent of Police, Hyderabad, (1992) 4 SCC 45; Ashok Tshering Bhutia v. State of Sikkim, (2011) 4 SCC 402; DSP, Chennai v. K. Inbasagaran, (2006) 1 SCC 420; Krishnanand Agnihotri v. The State of Madhya Pradesh, (1977) 1 SCC 816 and Nirankar Nath Pandey v. State of U.P., Criminal Appeal No. 5009 of 2024 (arising out of SLP (Crl.) No. 10101 of 2024), decided on 04.12.2024 / 2025 Livelaw (SC) 90 & Pratibha Rani v. Suraj Kumar & Anr., (1985) 2 SCC 370*. Reliance has also been placed on the judgment of this Court in *Krishna Kumar Shukla v. State of Chhattisgarh, Criminal Appeal No. 490/2002, decided on 30.03.2010*.

6. Per contra, learned counsel for the State supports the impugned judgment and submits that the prosecution has successfully established each ingredient of the offence punishable under Section 13(1)(e) of the Act of 1988. It is argued that the appellant failed to furnish satisfactory explanations regarding several assets discovered during investigation and that the learned Special Judge has already granted due benefit to the appellant by modifying the original calculations prepared by the investigating agency. According to the learned State counsel, the findings recorded by the trial Court are based upon a proper appreciation of oral and documentary evidence and do not warrant interference in an appeal against conviction.

7. I have heard learned counsel for the parties and perused the entire record.

8. Appellant has been convicted for the offence punishable under Section 13(1)(e) read with Section 13(2) of the Act, 1988. Before adverting to the rival contentions, it would be appropriate to examine the legal principles governing a prosecution under Section 13(1)(e) of the Act, which reads as under:-

> "**13. Criminal misconduct by a public servant**.-(1) A public servant is said to commit the offence of criminal misconduct, -
>
> xxx xxx xxx xxx
>
> (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.”

9. The law relating to disproportionate assets cases is well settled. In *State of Maharashtra v. Wasudeo Ramchandra Kaidalwar, (1981) 3 SCC 199*, the Hon’ble Supreme Court held that the initial burden always lies upon the prosecution to establish the income, assets and expenditure of the accused during the check period. Only after the prosecution discharges this burden does the onus shift upon the accused to satisfactorily explain the assets found in his possession. Para 13 is relevant which is reproduced hereunder:-

> “13. That takes us to the difficult question as to the nature and extent of the burden of proof under Section 5(1)(e) of the Act. The expression 'burden of proof' has two distinct meanings (1) the legal burden. i.e. the burden of establishing the guilt, and (2) the evidential burden, i.e. the burden of leading evidence. In a criminal trial, the burden of proving everything essential to establish the charge against the accused lies upon the prosecution, and that burden never shifts. Notwithstanding the general rule that the burden of proof lies exclusively upon the prosecution, in the case of certain offences, the burden of proving a particular fact in issue may be laid by law upon the accused. The burden resting on the accused in such cases is, however, not so onerous as that which lies on the prosecution and is discharged by proof of a balance of probabilities. The ingredients of the offence of criminal misconduct under Section 5(2) read with Section 5(1)(e) are the possession of pecuniary resources or property disproportionate to the known sources of income for which the public servant cannot satisfactorily account. To substantiate the charge, the prosecution must prove the following facts before it can bring a case under 5(1)(e), namely, (1) it must establish that the accused is a public servant, (2) the nature and extent of the pecuniary resources or property which were found in his possession,

> (3) it must be proved as to what were his known sources of income i.e. known to the prosecution, and (4) it must prove quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income. Once these four ingredients are established, the offence of criminal misconduct under s. 5(1)(e) is complete, unless the accused is able to account for such resources or property. The burden then shifts to the accused to satisfactorily account for his possession of disproportionate assets. The extent and nature of burden of proof resting upon the public servant to be found in possession of disproportionate assets under s. 5(1)(e) cannot be higher than the test laid by the Court in Jahgan's case (supra), i.e. to establish his case by a preponderance of probability. That test was laid down by the court following the dictum of Viscount Sankey, L.C. in Woolmington v. Director of Public Prosecutions, 1935 AC 462. The High Court has placed an impossible burden on the prosecution to disprove all possible sources of income which were within the special knowledge of the accused. As laid down in Swamy's case (supra), the prosecution cannot, in the very nature of things, be expected to know the affairs of a public servant found in possession of resources or property disproportionate to his known sources of income i.e. his salary. Those will be matters specially within the knowledge of the public servant within the meaning of Section 106 of the Evidence Act, 1872. Section 106 reads:
>
> 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 reasonable doubt. All that he need do is to bring out a preponderance of probability.

10. Similarly, in *M. Krishna Reddy (supra)*, the Supreme Court held that the burden cast upon the accused is not as heavy as that resting upon the prosecution and the accused can discharge the same on the touchstone of preponderance of probabilities.

11. Thus, before drawing any adverse inference against the appellant, this Court is required to examine whether the prosecution has correctly determined the check period and whether it has fairly assessed the income, expenditure and assets of the appellant.

12. The first aspect which requires consideration is the issue of the check period. The record shows that during investigation, PW-31 S.P. Karosiya, Investigating Officer, issued notice Ex.D-45 to the appellant seeking information regarding his income, expenditure, movable and immovable properties for the period from 01.02.1995 to 30.09.2014. However, while filing the charge-sheet and preparing the final calculation sheet, the prosecution adopted the check period from 01.01.1990 to 30.09.2014. As a result, several transactions and properties relating to the period prior to 01.02.1995 were included in the assessment. No witness examined by the prosecution has explained as to why the check period was altered. Even PW-31 S.P. Karosiya, Investigating Officer, in his evidence has not assigned any reason for changing the check period from 1995 to 1990. The prosecution has also failed to establish that any opportunity was afforded to the appellant to explain transactions falling within the additional period. Since the entire prosecution case rests upon calculation of income and expenditure during the check period, such inconsistency goes to the root of the matter and creates serious doubt regarding the correctness of the assessment made by the prosecution. Therefore, the appellant is entitled to the benefit of this doubt.

13. The next issue relates to the income earned by the daughters of the appellant before their marriage. To prove this fact, the defence examined DW-13 Achala Tamboli, elder daughter of appellant, who categorically stated that before joining government service as a Patwari, she was employed in NICT Computer Education Institute. Her evidence is fully supported by DW-14 Saiyad Maqbool Ali, who issued the salary certificates (Exs.D-39 and D-40). The salary received by her after joining government service is also supported by the pay slips (Exs.D-41 and D-42). So far as the younger daughter, Abha Tamboli, is concerned, DW-11 Hemant Kumar Soni, Head of ICE Computer Institute, has proved that she was employed in the said institute and had received salary, which is supported by salary certificate (Ex.D-38). Thus, the defence has produced both oral and documentary evidence to establish that both daughters had independent sources of income before their marriage. The learned trial Court rejected the aforesaid income mainly on the ground that the appellant had not disclosed the same in the annual property returns submitted to his department. In the opinion of this Court, such an approach cannot be accepted.

14. In the matter of *Ashok Tshering Bhutia (supra)*, the Supreme Court held in para 40 which reads as under:-

> "40.The contention of the respondents regarding non-compliance with the 1981 Rules adversely affecting the evidentiary value of Ext.D-4 must be rejected for at least two reasons:
>
> (i) The 1981 Rules are not rules of evidence. The admissibility and probative value of evidence is

> determined under the provisions of the Evidence Act, 1872. These Rules are merely service rules by which government servants in Sikkim are expected to abide. Consequently, the respondent has not been able to provide any cogent reason why the contents of Ext. D-4 should be disregarded; and
>
> (ii) Rule 19(i) of the 1981 Rules does undoubtedly require government servants to, on first appointment to any service or post and thereafter at the close of every financial year, submit to the Government the return of their assets and liabilities. However, it is to be noted that the said Rule envisages that public servants will submit such returns in a prescribed form. Despite being repeatedly questioned by this Court, the respondents were unable to produce such form. Thus, it cannot be said that the appellant did not comply with the said Rule as in the absence of such a form it was impossible for him to have done so (through no fault of his own). In any event, failing to submit such returns even if there had been no such a form, would make the appellant liable to face disciplinary proceedings under the service rules applicable at the relevant time. The provisions of the 1981 Rules cannot by any stretch of imagination be said to have the effect of rendering evidence inadmissible in criminal proceedings under the PC Act, 1988.
>
> Thus, in such a fact situation, the appellant could not be fastened with criminal liability for want of compliance with the said requirement of the Rules.”

15. Thus, the above principles clearly establish that rules requiring submission of annual property returns are not rules of evidence. Mere non-disclosure of any asset or income in departmental returns may lead to disciplinary proceedings, but it cannot, by itself, be a ground to discard otherwise reliable and admissible evidence in criminal proceedings.

16. In view of the aforesaid legal position, and in the absence of any material to show that the testimonies of the aforesaid witnesses

are false or unreliable, this Court finds no justification for rejecting the income of the appellant's daughters. Accordingly, the income of Rs.13,05,401/- earned by the daughters prior to their marriage deserves to be accepted.

17. The next issue relates to the independent income of the appellant's wife, Pushpa Tamboli. The defence examined DW-12 Raj Kumar Bajaj, LIC Agent, who stated that DW-2 Pushpa Tamboli, wife of appellant, was working as a collection agent under him and was receiving remuneration for the work performed by her. The defence also produced salary certificates and other documents marked as Exs.D-19 to D-21 in support of the said claim. The learned trial Court rejected the aforesaid evidence mainly on the ground that the documents were prepared after commencement of the investigation. Merely because the documents were prepared after initiation of investigation, the same cannot be discarded unless it is shown that they are false or fabricated. During cross-examination of DW-12 Raj Kumar Bajaj, nothing material has been elicited to discredit his testimony. The prosecution has also failed to produce any evidence to establish that the documents are fabricated or manipulated.

18. In view of the aforesaid evidence, this Court is satisfied that the income of DW-2 Pushpa Tamboli, wife of appellant, amounting to Rs.3,00,000/- during the check period stands duly established and deserves to be included in the lawful income of the family.

19. The next issue pertains to the agricultural income claimed by the appellant. The record shows that the appellant and his family owned agricultural lands during the check period. In support of the agricultural income, reliance has been placed upon certificates issued by the competent revenue authorities i.e. Exs.P-228, P-229 and P-230. The prosecution itself examined PW-20 Yugal Kishor Urvasha, the then Tehsildar, and PW-28 Sandeep Thakur, Additional Tehsildar, who proved the issuance of the aforesaid certificates. According to the certificates, the agricultural income earned by the appellant and his family members during the relevant period was Rs.34,54,805/-. The learned trial Court, however, accepted only Rs.11,57,339/-. It first deducted 33% towards cultivation expenses and thereafter made a further deduction of 50% by presuming that cultivation was carried out under the *Adhiya* system. This Court finds no evidence on record to support such a conclusion. Neither PW-20 Yugal Kishor Urvasha, nor PW-28 Sandeep Thakur has stated that the lands were cultivated on *Adhiya* basis. No document has been produced by the prosecution to establish such an arrangement. The second deduction, therefore, rests purely on assumption.

20. Once the revenue authorities themselves certified the agricultural income and the certificates have been proved by prosecution witnesses, there was no legal justification for making arbitrary deductions unsupported by evidence. Accordingly, the agricultural

income of Rs.34,54,805/- deserves to be accepted instead of Rs.11,57,339/-.

21. The next issue relates to the rental income from the residential house situated at Bhartiya Nagar, Bilaspur. To prove this, the defence examined DW-3 Narendra Kumar Naidu, DW-5 Ramshankar Shriwas, DW-6 Indresh Naidu, DW-8 Ramswaroop Yadav, DW-9 Santosh Kumar Naidu and DW-10 Mohd. Wasim Javed. All these witnesses consistently stated that they were tenants in different portions of the appellant’s house and were paying rent to the appellant or his family members. The defence also relied on affidavits of the tenants (Exs.D-23, D-25 and D-26) and a departmental intimation regarding rental income (Ex.D-63). Further, PW-31 S.P. Karosiya, the Investigating Officer, admitted in his cross-examination that at the time of the search, some portions of the house were occupied by tenants. Thus, the existence of tenants is supported not only by defence evidence but also by the prosecution evidence. The learned trial Court rejected the rental income only on the ground that no rent agreements or rent receipts were produced. However, in the present case, several tenants have been examined, their evidence has remained largely unchallenged, and even the Investigating Officer has admitted the presence of tenants. Therefore, complete rejection of the rental income is not justified. Accordingly, this Court holds that the rental income of Rs.11,52,600/- deserves to be included in the income of the appellant.

22. The next issue relates to the receipt of advance sale consideration of Rs.40,00,000/- by DW-2 Pushpa Tamboli, wife of the appellant. To prove this, the defence examined DW-1 Krishna Kumar Shrivastava, who stated that he had agreed to purchase agricultural land bearing Khasra No. 86/1 situated at Dhaurabhata. He further stated that he paid Rs.40,00,000/- to Pushpa Tamboli in four instalments of Rs.10,00,000/- each. The defence also relied on a compromise decree passed by the Lok Adalat (Ex.D-18), which supports the said transaction. In addition, the bank account statement of Pushpa Tamboli (Ex.P-90) was placed on record. However, the learned trial Court rejected this transaction solely on the ground that it was not disclosed in the appellant's annual property returns.

23. Applying the above principle to the present case, this Court finds that the statement of DW-1 Krishna Kumar Shrivastava, along with documents Ex.D-18 and Ex.P-90, satisfactorily establishes that the amount of Rs.40,00,000/- was received by Pushpa Tamboli, wife of the appellant. Accordingly, the said amount deserves to be treated as a lawful source of income.

24. The next objection raised by the appellant relates to the household expenditure assessed by the prosecution and accepted by the learned trial Court.

25. The learned trial Court has calculated the household expenditure by taking 60% of the salary income, thereby assessing the

expenditure under this head at Rs.14,03,269/-. Counsel for the appellant submits that in the matter of *Krishna Kumar Shukla (supra)*, this Court held that taking household expenditure at 60% is on the higher side and, in the absence of any specific evidence regarding actual expenditure, 50% of the salary income would be a reasonable estimate. Paragraph 31 of the said judgment is relevant and is reproduced hereunder:-

> "31.So far as expenditure part of the appellant is concerned, the first point is that 60 per cent of the house hold expenditure prior to check period and also during the check period is on the higher side, this Court finds force in the argument of the appellant that Rs.35,939 is required to be deducted towards the household expenditure prior the check period and also during the check period. The total household expenditure, in the opinion of this Court, should be taken as 50 per cent of the total income of the appellant and not 60 per cent as has been taken by prosecution. From the record it appears that no challenge whatsoever in respect of the aforesaid has been made at the time of trial by the appellant and therefore, merely on the basis of surrounding circumstances or standard of living of the appellant and his family members, Rs. 35,939 can be deducted from the expenditure of 60 per cent from the household."

26. In the present case also, the prosecution has not produced any independent evidence to establish that the appellant and his family were incurring household expenditure to the extent of 60% of their salary income. Therefore, the household expenditure assessed by the learned trial Court at Rs.14,03,269/- cannot be sustained. Therefore, applying the principle laid down by this Court in *Krishna Kumar Shukla* (supra), the household expenditure is liable to be calculated at 50% of the salary income, which comes to

Rs.11,69,390/-. Consequently, the expenditure under this head is reduced from Rs.14,03,269/- to Rs.11,69,390/-, and the appellant is entitled to the benefit of the corresponding reduction.

27. The next objection raised by the appellant relates to the amount of Rs.26,95,995/- taken by the learned trial Court under the head of “bank deposits” as expenditure. The appellant submits that the amount lying in bank accounts represents savings and cannot, by itself, be treated as expenditure. This submission deserves to be accepted. A bank deposit is only a way of keeping money and does not mean that the amount has been spent. Unless the prosecution proves that the money deposited in the bank was actually used for acquiring assets or represents unexplained expenditure, it cannot be treated as expenditure. In the present case, no such evidence has been brought on record. Therefore, the amount of Rs.26,95,995/- taken by the trial Court under this head cannot be sustained and is liable to be excluded. Accordingly, the expenditure under the head “Bank Deposits” is taken as Nil.

28. The prosecution treated the cash of Rs.20,01,930/- recovered during the search as unexplained expenditure of the appellant. However, the defence examined DW-2 Pushpa Tamboli, DW-4 Manish Kumar Tamboli, DW-7 Abhishek Tamboli, DW-13 Achala Tamboli and DW-16 Vinod Kumar Tamboli, all of whom consistently stated that the cash belonged to different family members. The evidence shows that Rs.9,00,000/- belonged to the appellant’s son, Abhishek Tamboli, and was kept for his marriage, while the

remaining amount belonged to the appellant’s wife and other family members from their independent income. The prosecution has not produced any evidence to disprove this explanation. The cash was recovered from a house jointly occupied by several family members, and there is no material to show that the entire amount belonged only to the appellant. In these circumstances, the explanation given by the defence appears reasonable and deserves to be accepted. Accordingly, the amount of Rs.20,01,930/- included by the learned trial Court under this head is liable to be excluded, and the expenditure under the head “Cash Found During Search” is taken as Nil.

29. The learned trial Court has separately included Rs.91,750/- towards electronic items and Rs.3,20,000/- towards luxury items as expenditure. In the opinion of this Court, these items are part of normal household articles, and their cost is already included in the household expenditure assessed separately. Therefore, making separate additions under these heads would result in duplication. Accordingly, the amounts of Rs.91,750/- and Rs.3,20,000/- are excluded, and the expenditure under the heads “Electronic Items” and “Luxury Items” is taken as Nil.

30. The prosecution treated jewellery and silver ornaments valued at Rs.15,42,286/- as assets acquired by the appellant during the check period. The defence contended that most of the jewellery was Stridhan belonging to the wife and daughters, received by them on occasions such as marriage and family ceremonies. The

evidence also shows that details of the jewellery possessed by the daughters were furnished to the department through the relevant documents relied upon by the defence. However, the learned trial Court valued the jewellery at the market rate prevailing on the date of search and treated the entire amount as expenditure incurred by the appellant. Such an approach is not acceptable.

31. In *Pratibha Rani (supra)*, the Hon’ble Supreme Court clearly recognised that *Stridhan* is the exclusive property of a married woman, over which neither the husband nor his family members have any ownership rights. Such property remains under her absolute control, and its mere presence in the shared household cannot lead to an inference that it belongs to the husband.

32. Similarly, in *M. Krishna Reddy* (supra), the Hon’ble Supreme Court held that jewellery found in the possession of the wife cannot automatically be treated as assets of the public servant. The prosecution must establish, by cogent evidence, that such jewellery was in fact purchased by the public servant from his own undisclosed income. In the absence of such proof, the benefit must go to the accused.

33. Further, in *Nirankar Nath Pandey* (supra), the Hon’ble Supreme Court observed that the valuation of assets such as gold and jewellery cannot be treated as static over a long check period. It was held that the natural appreciation in value over time must be taken into account while assessing alleged disproportionate

assets. Therefore, valuing jewellery at the rate prevailing on the date of search, without considering the time and source of acquisition, may lead to an incorrect and inflated assessment.

34. These principles make it clear that jewellery belonging to the wife or family members cannot be automatically attributed to the appellant, and its valuation must be made in a fair and reasonable manner keeping in view the time of acquisition and natural appreciation in value.

35. In the present case, the prosecution has not produced convincing evidence to establish that the jewellery in question had been purchased by the appellant himself from unexplained income during the check period. In the absence of such evidence, the entire value of the ornaments could not have been treated as expenditure of the appellant. Accordingly, the amount of Rs.15,42,286/- is excluded and the expenditure under the head Gold and Silver Ornaments is taken as Nil.

36. The learned trial Court has included Rs.50,000/- towards the foreign trip of the appellant’s son and Rs.1,29,200/- towards his educational expenses as expenditure of the appellant. The defence has explained that the appellant’s son was independently employed and had borne the expenses of his foreign trip from his own income. As regards the educational expenses, they form part of normal household expenditure, which has already been considered separately. The prosecution has not produced any

evidence to show that these amounts were incurred by the appellant from his undisclosed income. Accordingly, the amounts of Rs.50,000/- and Rs.1,29,200/- are excluded, and the expenditure under the heads "Foreign Trip of Son" and "Education of Son" is taken as Nil.

37. The learned trial Court assessed the expenditure under the head "Immovable Properties" at Rs.53,51,518/-. On examining the record, this Court finds that the said calculation is not fully supported by the evidence. An amount of Rs.7,47,246/- spent on construction over land purchased by the appellant's mother has been included, even though the transaction falls outside the check period. The prosecution itself had sought information only for the relevant check period; therefore, inclusion of such amount is not justified. Similarly, properties purchased by the appellant's brother and brother-in-law in the name of his son have also been included without any clear evidence to show that the investment was made by the appellant. The defence has placed on record departmental intimations (Exs.D-55 and D-56), which show that these transactions were duly disclosed.

38. At this stage, reference may be made to the judgment of the Hon'ble Supreme Court in *Krishnanand Agnihotri (supra)*, wherein it has been held in paragraph 26 as under:—

> "26……….It is well settled that the burden of showing that a particular transaction is *benami* and the appellant owner is not the real owner always rests on the person asserting it to be so and this burden has to

> be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of benami is the intention of the parties and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of the serious onus that rests on him, nor justify the acceptance of mere conjectures or surmises as a substitute for proof. (Vide Jayadayal Poddar v. Mst. Sibi Hazra, (1974) 2 SCR 90). It is not enough merely to show circumstances which might create suspicion, because the court cannot decide on the basis of suspicion…….”

39. In view of the above legal position, and in the absence of any reliable evidence to link the said properties with the appellant, the calculation made by the prosecution under this head appears arbitrary and excessive. Accordingly, the expenditure under the head “Immovable Properties” is reduced from Rs.53,51,518/- to Rs.42,09,241/-.

40. From the above discussion, it is clear that the learned trial Court has either ignored or wrongly reduced several lawful sources of income of the appellant and his family members, despite there being reliable oral and documentary evidence on record. At the same time, certain expenditure heads have been increased on the basis of assumptions without any cogent evidence. This has materially affected the final calculation of the alleged disproportionate assets. Therefore, the computation made by the learned trial Court requires modification.

41. The comparative statement of income, as accepted by the learned trial Court and as held by this Court, is reproduced below:-

Comparative Statement of Income

| S. No. | Income Head | As observed by the Trial Court | As per Appellant and held by this Court |
|---|---|---|---|
| 1. | Salary of Appellant | Rs.23,38,781/- | Rs. 23,38,781/- |
| 2. | Salary of Son | Rs.14,50,817/- | Rs.14,50,817/- |
| 3. | Salary of Daughters | Nil | Rs.13,05,401/- |
| 4. | Salary of Wife | Nil | Rs.3,00,000/- |
| 5. | General Provident Fund | Rs.1,92,000/- | Rs.1,92,000/- |
| 6. | Deposit in Bank Accounts | Rs.2,42,882/- | Rs.2,42,882/- |
| 7. | Fixed Deposits | Rs.5,66,795/- | Rs.5,66,795/- |
| 8. | Agricultural Income | Rs.11,57,339/- | Rs.34,54,805/- |
| 9. | House Renovation | Rs.50,000/- | Rs.50,000/- |
| 10. | Vehicle Sale | Rs.4,55,000/- | Rs.4,55,000/- |
| 11. | Life Insurance | Rs.3,72,620/- | Rs.3,72,620/- |
| 12. | Income from Immovable Property | Rs.2,40,000/- | Rs.2,40,000/- |
| 13. | Rental Income | Nil | Rs.11,52,600/- |
| 14. | Advance income from Agreement to Sell of property | Nil | Rs.40,00,000/- |
| 15. | Other heads | Rs.27,22,621/- | Rs.27,22,621/- |
| | **Total** | **Rs.97,88,855/-** | **Rs.1,88,44,322/-** |

42. Similarly, the expenditure determined by the learned trial Court and the expenditure as reassessed by this Court is as follows:

Comparative Statement of Expenditure

| S.No. | Expenditure Head | As accepted by the trial Court | As per Appellant and held by this Court |
|---|---|---|---|
| 1. | From Salary of Appellant | Rs.14,03,269/- (60%) | Rs.11,69,390/- (50%) |
| 2. | Bank Deposits | Rs.26,95,995/- | Nil |
| 3. | Cash Found During Search | Rs.20,01,930/- | Nil |
| 4. | Electronic Items | Rs.91,750/- | Nil |
| 5. | Luxury Items | Rs.3,20,000/- | Nil |
| 6. | Gold & Silver Ornaments | Rs.15,42,286/- | Nil |
| 7. | Foreign Trip of Son | Rs.50,000/- | Nil |
| 8. | Education of Son | Rs.1,29,200/- | Nil |
| 9. | Immovable Properties | Rs.53,51,518/- | Rs.42,09,241/- |
| 10. | Other heads | Rs.29,79,732/- | Rs.29,79,732/- |
| | **Total** | **Rs.1,65,65,680/-** | **Rs.83,58,363/-** |

Final Comparative Position

| **Particulars** | **As held by the trial Court** | **As held by this Court** |
|---|---|---|
| Total Lawful Income | Rs.97,88,855/- | Rs.1,88,44,322/- |
| Total Expenditure/Assets | Rs.1,65,65,680/- | Rs.83,58,363/- |
| Balance Position | Expenditure exceeded income by Rs.67,76,825/- | Income exceeded expenditure by Rs.1,04,85,959/- |

43. From the foregoing discussion and the comparative statements of income and expenditure, it is evident that the total lawful income of the appellant during the check period comes to Rs.1,88,44,322/-, whereas the total expenditure and assets come to Rs.83,58,363/-.

Thus, the lawful income of the appellant is substantially higher than the expenditure and assets attributed to him. The appellant has satisfactorily explained the disputed sources of income as well as the expenditure by leading reliable oral and documentary evidence, which finds due corroboration from the record. On the other hand, the prosecution has failed to establish beyond reasonable doubt that the appellant was in possession of assets disproportionate to his known sources of income. The findings recorded by the learned trial Court are based on an erroneous appreciation of the evidence and arbitrary calculations and, therefore, cannot be sustained.

44. It is well settled that in a prosecution under Section 13(1)(e) of the Act, 1988, the initial burden lies upon the prosecution to establish beyond reasonable doubt that the assets possessed by the public servant are disproportionate to his known sources of income. In the present case, the prosecution has failed to discharge the said burden. The appellant, on the other hand, has successfully explained the income and expenditure questioned by the prosecution. Consequently, the essential ingredients of the offence punishable under Section 13(1)(e) read with Section 13(2) of the Act, 1988 are not made out.

45. Accordingly, the impugned judgment of conviction and order of sentence dated 17.02.2023 passed by the learned Special Judge (Prevention of Corruption Act), Bilaspur in Special Sessions Case No.06/2017 convicting the appellant for the offence punishable

under Section 13(1)(e) read with Section 13(2) of the Act, 1988 deserves to be and is hereby set aside. Appellant- Vinod Kumar Tamboli is acquitted of the charge under Section 13(1)(e) read with Section 13(2) of the Act, 1988.

46. Appellant is on bail. His bail bonds shall remain in force for a further period of six months from today in terms of Section 481 of the BNSS, 2023.

47. The fine amount, if deposited by the appellant, shall be refunded to him in accordance with law.

48. The documents, title deeds, valuables and other articles seized during the course of investigation, if not required in connection with any other proceeding, shall be returned to the appellant after due verification.

49. Let a copy of this judgment be sent to the learned trial Court forthwith for information and necessary compliance.

Sd/-
**(Radhakishan Agrawal)**
Judge

Akhilesh