

IN THE COURT OF THE SPECIAL JUDGE(VIGILANCE),
BHUBANESWAR.

P R E S E N T : Shri N.Sahu, LL.B.,
Special Judge(Vigilance),
Bhubaneswar.

T.R.Case No.149 of 2006

(Arising out of VGR Case No.9/2001
corresponding to Bhubaneswar Vigilance
P.S.Case No.9/2001).

S T A T E Prosecution.

-Versus-

Akhila Kumar Moharana, aged about 55 years,
S/o.Late Sahadeva Moharana, Vill.-Kantilo,
PS-Khandapada, District-Nayagarh,
A/P.-House No.M-140, Baramunda Housing
Board Colony, Baramunda, Bhubaneswar, Dist.Khurda.

.... Accused.
(ON BAIL)

For the Prosecution : Sri D.K.Chhotray, Spl.P.P.Vig.
Sri S.K.Barik, Addl.P.P.

For the Defence : Sri P.K.Panigrahi &
Associates, Advocates.

Date of argument : 05.12.2014

Date of judgment : 18.12.2014

Offence u/s.13(1)(e) read with 13(2) of P.C.Act, 1988.

J U D G M E N T

1. The aforesaid accused stood charged for
committing the offence punishable u/s.13(1)(e) read with 13(2) of
P.C. Act, 1988

2. Briefly stated the prosecution case is that one Sahadev Moharana had two sons namely, Akhila (accused) and Anjan (DW-1) and two daughters. Accused Akhila had married to DW-2 in 1985 and they were blessed with two sons who were reading in Class-IX and VI at the time of enquiry. As per FIR, the accused entered into Government service as Asst. Supervisor in OFDC on 21.12.81 and was promoted to the rank of Sectional Supervisor. The accused while working as Sectional Supervisor, Orissa Forest Development Corporation, Bhubaneswar during the period between 1.1.1988 to 30.3.2001 had acquired assets in his name and in the name of his family members disproportionate to his known source of income.

Further case of prosecution is that on the strength of search warrant issued by Addl. CJM, Bhubaneswar PW-2 the then DSP, Vigilance along with other vigilance staff searched the house of the accused at Baramunda Housing Board Colony on 17.3.2001. The house of father-in-law of the accused, his house located in his native village and the house of his other relations were also searched on that day. Several house hold articles, ornaments, cash etc. were seized and the accused was found to be in possession of disproportionate assets worth Rs.12,00,703.00 which he could not satisfactorily account for. PW-2 lodged one FIR Ext.4 basing on which this case was registered and being directed by SP, Vigilance, PW-27 investigated into the case, obtained information from different authorities and after completion of investigation and obtaining sanction order, charge-sheeted was submitted against the accused showing his disproportionate asset at Rs.10,60,432.75P.

3. The accused pleaded not guilty stating that prosecution has deliberately shown the valuation of the assets and quantum of expenditure in higher side and has suppressed the

income of himself (accused) as well as of his wife. If the quantum under each head had been shown correctly, there would not have been any disproportionate assets.

4. The prosecution has examined 27 witnesses and proved Exts.1 to 43 whereas the accused has examined 2 witnesses only and proved Exts.A to R.

Pws-1 and 2 have stated about search of the house. Pws-3, 4, 7, 8, 10, 12 and 14 are tenants who have stated about payment of house rent. PW-5 has stated about consumer expenditure of the accused. PW-6 has stated about payment of electric charges. PW-9 has stated about payment of registration charge and road tax. PW-11 has stated about purchase of the house by the accused. PW-13 has stated about LIC Policies. PW-16 has stated about balance in S/B Accounts. Pws-17 and 18 have stated about housing loan availed by the accused. PW-19 has stated about educational expenses. Pws-20 and 21 have stated about payment of water tax and holding tax respectively. PW-22 has stated about valuation of the building. Pws-23 to 25 have stated about salary particulars of the accused. PW-26 is the Sanctioning Authority and PW-27 is the IO.

DW-1 has stated about the agriculture income of the accused whereas DW-2 stated about her PCO and transport business.

5. To substantiate a charge under Section 13(1)(e) of the Act, the prosecution must prove the following ingredients, namely, (1) the prosecution 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 and possession of others on his behalf and the same must be disproportionate to his known source of income and (3) the accused fails to account for such resources or property.

6. So far the first ingredient i.e. “Public Servant”, PW-26 the then General Manager, OFDC stated that during that time the accused was working as Sectional Supervisor under his control. The said aspect has not been disputed by the defence. So far the other ingredients, it would be appropriate to reproduce the details of income, expenditure and assets of the accused as mentioned in the charge-sheet.

INCOME

a	Salary income	Rs.4,11,630.70
b	Rental income	Rs.1,24,222.00
c	Loan from Deptt.(HBA)	Rs. 60,000.00
d	Interest on deposits	Rs. 898.00
e	Other loan from banks	Rs.4,38,990.00
	Total	Rs.10,35,740.70

EXPENDITURE

a	Consumption on food, fuel, clothing etc	Rs.2,36,523.45
b	Educational expenses	Rs. 14,663.00
c	Energy charges	Rs. 79,113.55
d	Telephone charges	Rs. 54,017.00
f	Water charges	Rs. 5,948.00
g	Vehicle maintenance	Rs. 46,558.00
i	Repayment of loan	Rs.4,11,797.00
j	Stamp and Reg. Fee	Rs. 11,845.00
k	Building maintenance	Rs. 20,703.00
l	Holding tax	Rs. 4,538.00
m	Income tax paid	Rs. 1,208.00
	Total	Rs.8,86,914.00

ASSETS

a	Building	Rs. 7,43,760.00
b	Vehicle	Rs. 3,11,000.00
c	Bank/Postal deposit	Rs. 5,317.45

d	Cash	Rs. 1,332.00
e	House hold articles	Rs. 70,000.00
d	Gold/Silver ornament	Rs. 5,945.00
	Total	Rs.11,37,354.45

7. **SALARY INCOME**

So far the income from salary, Pws-23, 24 and 25 have proved Exts.26-series, 27, 28 and 29. In the charge-sheet the IO has shown **Rs.4,11,630.70P** as salary income. The IO in his evidence has categorically stated that basing on Exts.26, 27, 28 and 29 he calculated the income from salary and he has calculated the income for the check period only.

Learned Special PP during course of argument submitted that calculation in the charge-sheet under the head income from salary shown by the IO as **Rs.4,11,630.70** is incorrect and the total amount from salary is **Rs.3,77,617.95** only. Ext.26-series and 27 to 29 contain the payment particulars relating to both check period and pre-check period. On calculating the payments relating to the check period i.e. from 1.1.88 to 31.3.2001, it comes to **Rs.3,92,403.30P** only.

8. On the contrary the learned defence counsel during course of argument submitted that the IO in his cross-examination has admitted that he had not taken into account the salary of the accused w.e.f. 18.9.80 to 1.1.88 amounting to **Rs.51,300.65** and that should be added in the income of the accused. The IO has clearly stated that it relates to the pre-check period, so he has not taken the same into account. Admittedly, the check period is from 1.1.1988 to 30.3.2001. So, I do not find any illegality on the part of the IO in not taking the income of the accused relating to the pre-check period. Learned defence counsel further contended that the IO in his evidence admitted that there is mention in the sanction order(Ext.31) about the income of **Rs.31,498.40** towards

surrender leave and **Rs.41,409.45** towards arrear salary in favour of the accused and the IO has also admitted that he had not taken into account these two amounts in the income side of the accused. So, the same should be taken into account and added in the income side of the accused.

The sanction order (Ext.31) shows that the Sanctioning Authority had found that certain income on bonus, surrender etc. amounting to **Rs.31,498.40** received by the accused had not been reported earlier to the vigilance, so the said amount needs to be added to his salary income which pertains to the check period. It is also mentioned in the sanction order that the accused had received a sum of **Rs.41,904.45** prior to the check period. PW-16 the Sanctioning Authority has proved the sanction order and has also stated that these two amounts were not taken by vigilance in the income side of the accused. It is seen from Ext.31 that the amount of **Rs.41,904.45** does not relate to the check period, so the same cannot be added to the income of the accused particularly when he has not filed any document to the contrary. But, the sum of **Rs.31,498.40** relating to the check period should be added in the salary income of the accused. As such, the total salary income of the accused is taken as **(Rs.3,92,403.30P + Rs.31,498.40P) = Rs.4,23,901.70P.**

9. INCOME FROM HOUSE RENT

The check period is from 1.1.88 to 31.3.01. PW-3 stated that he was paying monthly rent of Rs.500/- for 8 months commencing from January 2001. But in view of the check period, the same comes to **Rs.1,000/-** only i.e. Rs.500 x 2 months for January and February, 2001. PW-7 stated that he was paying rent @ Rs.500/- per month from July, 1996 to December, 1999 which comes to Rs.500/- x 42 = **Rs.21,000/-**. So also he further stated that from January, 2000 he was paying the rent @ Rs.800/- for 14

months which comes to **Rs.11,200/-**. PW-8 stated that he was paying Rs.700/- per month as rent from 11/98 to February, 2001 which comes to **Rs.19,600/-** i.e. @ Rs.700 x 28. PW-10 stated that he was paying rent @ Rs.500/- per month from 3/96 to 3/99 which comes to Rs.500/- x 37 = **Rs.18,500/-** and he was also paying rent @ Rs.700/- per month from April, 2000 to February, 2001 which comes to Rs.700/- x 11 = **Rs.7,700/-**. PW-12 stated that he was paying rent @ Rs.2,000/- per month from August, 2000 to February, 2001 which comes to Rs.2,000/- x 7 = **Rs.14,000/-**. (Relating to check period). PW-14 stated that he was paying rent @ Rs.750/- per month from February,2000 to February, 2001 which comes to Rs.750/- x 13 = **Rs.9,750/-**. (Relating to check period).

10. Besides this, in cross-examination PW-3 stated that he had paid **Rs.5,000/-** as security deposit as per agreement. Neither any agreement nor any receipt showing payment of such security deposit has been proved. So, the same cannot be accepted. PW-7 stated during his examination-in-chief that he had paid security of **Rs.5,000/-** to the owner. During cross-examination PW-7 stated that he had paid advance of **Rs.20,000/-** under an unregistered agreement, dt.1.6.95 vide Ext.A. PW-7 was declared hostile by prosecution. During cross-examination by Special PP PW-7 admitted that he had neither shown the agreement to vigilance people nor had told to IO that he had paid **Rs.20,000/-** to the accused vide Ext.A. So, his version regarding advance payment of **Rs.20,000/-** is not acceptable. But, so far payment of security of **Rs.5,000/-**, he has not been cross-examined by prosecution. So, that amount of **Rs.5,000/-** should be accepted. PW-8 in his examination in chief has stated that he had paid **Rs.7,000/-** as security. During cross-examination PW-8 has proved one agreement vide Ext.B and stated that on 1.10.97 he

had paid **Rs.20,000/-** to the accused as advance and being cross-examined by prosecution, PW-8 like PW-7 stated that he had not shown Ext.B to vigilance and had also not stated before vigilance police that he had given **Rs.20,000/-** to the accused as advance. So, such version is not acceptable. But so far payment of **Rs.7,000/-** paid as security as stated by PW-8 during his examination-in-chief he has not been cross-examined by prosecution. So, that amount of **Rs.7,000/-** should be accepted. PW-10 during his examination in chief has stated that besides paying the monthly rent he had paid **Rs.4,000/-** and **Rs.1,000/-** more as security deposit. This witness was neither declared hostile nor cross-examined by the prosecution. So, payment of security deposit of **Rs.4,000/- + Rs.1,000/- = Rs.5,000/-** to the accused, is acceptable. PW-10 during cross-examination denied his knowledge if his wife had entered into an agreement with the owner and had paid **Rs.20,000/-** as advance. Besides this, he stated that on two occasions there was written agreement between his wife and house owner, but no such agreement has been proved.

11. PW-12 during his examination in chief stated that he had given **Rs.5,000/-** as security which was adjusted towards the house rent when he vacated the house. He had stayed in the house till May, 2002. So, the security of **Rs.5,000/-** was with the accused during check period. Hence, the same should be accepted. PW-12 during cross-examination stated that he had paid **Rs.20,000/-** as advance to the house owner vide Ext.C. This witness was declared hostile by the prosecution. During cross-examination he could not say as to who dictated the contents of the agreement and as per whose advice. He stated that the stamp paper was purchased in the year 2000 and also admitted that the date of purchase of the stamp paper has been mentioned as

“18.4. /9”. In cross-examination PW-14 stated that he had not given any advance of **Rs.20,000/-** to the accused. But after seeing a stamp paper (which was marked “X”), he stated that 2 to 3 years prior to taking of the house on rent, he had advanced **Rs.20,000/-** to the accused. He has also stated that he does not remember if on 1.10.97 advocate K.C.Mohapatra had drafted the agreement and Balaram Maharana was witness in that agreement. In view of such inconsistent evidence of Pws-12 and 14 that each of them had paid **Rs.20,000/-** to the accused as advance is not acceptable. The IO has categorically stated that Pws-7, 8, 12 and 14 had not stated to him that they had paid **Rs.80,000/-** in total to the accused and they had also not shown agreement to him. So, version of Pws-7, 8, 12 and 14 about payment of advance of **Rs.20,000/-** each does not inspire confidence. But PW-14 has stated in his examination-in-chief that he had given **Rs.7,000/-** towards security amount. The said evidence has remained unshaken. So, that amount of **Rs.7,000/-** should be accepted.

From the aforesaid discussion, it comes that the tenants Pws-3, 7, 8, 10, 12 and 14 had paid house rent and security amounting to **Rs.1,31,750.00** in total to the accused.

The learned Special PP during course of argument contended that the house property was acquired out of funds of unknown source of income, so the income derived therefrom cannot be accepted. The house property was purchased vide RSD, dt.17.7.89. Ext.40 shows that the ground floor of the shop wing and the addition and alteration of the purchased building was made in between 1990 to 1995. It also shows that the first floor was constructed during 1995 to 1998 and the second floor was constructed during 1998 to 2000. There is no definite evidence as to which portion of the house was constructed in which particular year. Equally, no specific balance sheet of income, expenditure

and assets date wise has been proved by the prosecution. As such, it is difficult to ascertain the quantum of disproportionate assets of the accused date wise. So, it cannot be definitely said as to which portion of the house was constructed at which particular point of time and if by that time the asset in the hands of the accused was disproportionate or not. Therefore, the contention of the learned Special PP is not accepted and the house rent earned by the accused amounting to **Rs.1,31,750.00** should be taken in his income side.

12. **LOAN & INTEREST ON DEPOSITS**

The IO in his evidence stated that as reported by the D.M., OFDC vide Ext.33, he has taken a sum of **Rs.60,000/-** in the income side of the accused which he had taken as building advance in 1991. Likewise, basing on Exts.14 and 15 (proved by PW-16), he has shown **Rs.898/-** in the income side of the accused which he had earned as interest on bank deposit.

In the charge-sheet under the head “other loan from banks” the IO has shown **Rs.4,38,990/-** in the income side of the accused. In his evidence before Court the IO stated that basing on Ext.17 (proved by PW-17) he has shown **Rs.76,000/-** in the income side which the accused had taken as house building loan on 25.6.98. Similarly, basing on Exts.18 (proved by PW-18) he has shown **Rs.50,000/-** in the income side which the accused had taken as loan from ORHDC. The IO has also stated that basing on Exts.34 and 34/1 of Birla Global Finance Ltd. he has shown **Rs.3,11,000/-** in the income side of the accused which the wife of the accused had availed for purchasing the car. Ext.34/1 shows that the amount was drawn on UBI, BBSR on 27.10.1998. Ext.13 shows that the wife of the accused had availed a loan of **Rs.1990/-** on 26.12.96 from LIC which should be taken in the income side of the accused. The learned defence counsel in page 3 of the

written argument has admitted all these items. So, these are taken in the income side of the accused.

13. **PCO BUSINESS**

DW-2 wife of the accused in her evidence stated that she was running a PCO with phone No.301920 to which digit "2" was inserted before that number subsequently. She stated she was earning **Rs.4000/- to Rs.5000/-** there from and in that process during the period of business from 1996 to 2001 she had earned **Rs.2,52,662/-** and she proved the carbon copy of money receipt showing deposit of Rs.5000/- issued by the GMTD, Bhubaneswar vide Ext.L and the office copy of her application, dt.21.10.05 for disconnection of the telephone No.301920 vide Ext.M and receipt, Dtd.21.10.05 issued by GMTD vide Ext.N, so also the telephone directory of Bhubaneswar Telecom Division of the year 2000 vide Ext.P and the relevant entry vide Ext.P/1. During cross-examination DW-2 stated that her husband had deposited Rs.5000/- vide Ext.L and she also stated that she had constructed a booth for the PCO business in the first room of their house, but she had not purchased the machine to record the call duration and to see the bill amount. She also stated that she was not maintaining any register to record the names of the customers and total income of each day. She admitted that she had no bill or cash memo to show as to what amount she deposited in the Telephone Department for the aforesaid telephone number as those have been destroyed. She stated that by the time of search, those telephone bills and receipts were not available with her and those were destroyed.

Ext.L is not a money receipt, but it was a demand note wherein DW-2 was asked to deposit a sum of Rs.5000/- as security deposit for pay phone. No money receipt has been proved on behalf of the accused to show if in fact a cash of Rs.5000/- was

deposited in pursuance to that demand note. Ext.M is the office copy of the application, dt.21.10.05 of DW-2 addressed to the Senior Accounts Officer of GMTD, Bhubaneswar wherein there is mention that STD pay phone No.2301920 standing in her name had remained closed since last many months and she had asked to disconnect that telephone after adjustment of security deposit of Rs.5000/- and to refund the balance amount. DW-2 has proved one receipt Ext.N which does not contain any office seal. So also, the name and address of the subscriber has not been mentioned in Ext.N. As stated earlier, DW-2 has stated that as on the date of search in March, 2001 telephone booth was not running. If that be so, why application for disconnection and adjustment was not made for a period of four years. Moreover, there is nothing on record to show if any follow up action was taken on Ext.M.

14. So far the telephone directory Ext.P, in the relevant entry vide Ext.P/1 at page 216 the telephone No.301920 was in the name of "Maharana Minati Ladies Hstl Cspr". DW-2 claims that she was running a PCO business in her house at Plot No.M-140, Baramunda Housing Board Colony. No explanation has been adduced by the accused or by DW-2 as to how the address was mentioned as "Ladies Hstl Cspr" vide Ext.P/1. On the contrary, the prosecution case is that telephone bearing No.405039/470239/550239 stood in the name of DW-2 at Plot No.M-140, Housing Board Colony, Baramunda vide Ext.38 and she had paid certain amount in respect of that telephone. The said telephone No.550239 finds place at page 49 of Ext.P in the address "Maharana Mrs. Minati, M-140, Brmnd". If DW-2 was running a PCO Booth in her house and if phone No.550239 standing in her name has been shown in the address "M-140, Brmnd" in Ext.P, then how the address "Ladies HstlCspr" has

been mentioned vide Ext.P/1 in respect of phone No.301920. No explanation has been adduced by DW-2 in this regard.

Above all, if DW-2 ran the PCO business for such a prolonged period, she must have some documents in support of such business or could have obtained the same from Telephone Department soon after the search. That apart, no witness has been examined on behalf of the accused to establish the fact that DW-2 was running such PCO business in her house. This fact of running a PCO Booth could have been elicited at least from the tenants Pws-3, 7, 8, 10, 12 and 14 who were staying in the house of the accused during the relevant period. Moreover, it is quite abnormal that a person running PCO business, would be able to collect the call charges from the respective customers without the help of a machine as because call charge is not only dependent on the call duration, but also, it is dependent upon the distance factor. Considering from other angle also, a person running PCO business is expected to keep the account of call details which are usually of higher range in comparison with personal phones. Because in the eventuality for re-conciliating the charges raised in the bill received from Telephone Department, the book of accounts maintained by the proprietor would be much helpful. But admittedly, no such book of accounts was being maintained by DW-2 in respect of the so called PCO business. Above all, she herself admitted in her cross-examination that she had not entered into any agreement with Telephone Department for opening PCO booth.

15. Learned defence counsel during course of argument submitted that the IO in his cross-examination stated that Exts.35 and 38 revealed that wife of the accused was running PCO business. Such version of the IO is far from truth, as because there is no mention in Exts.35 and 38 about PCO business. Ext.35 is the

application of the accused and Ext.38 is the letter of Telephone Department regarding expense of telephone No. 550239/470239 (old) which is not the PCO phone No.301920 as stated by DW-2. Exts.35/1 to 35/6 are the copies of the IT Returns filed by DW-2. In none of these IT Returns there is any mention about PCO business. Of course, Ext.R which is the copy of statement of income for the assessment year 2001-2002 proved by DW-2 shows that therein she had shown her income of **Rs.12,000/-** from PCO business during the financial year 2000-2001. The said return was filed in June, 2001. As per the version of DW-2, no bill or cash memo relating to PCO business was available with her as on the date of search dt.17.3.2001. If that be so, on which basis Ext.R was prepared. No document has been brought to record as to basing on which such IT Return was prepared. In absence of any supporting document, copies of IT Returns itself are not sufficient to conclude about the income shown therein. Above all, during his examination u/s.313 Cr.P.C. the accused has not stated anything regarding the so called income by his wife from PCO business. For these reasons, the claim for income from PCO business is not acceptable.

16. **TRAVEL BUSINESS**

DW-2 stated that she had purchased an ambassador car bearing No.OR-02J-7797 and engaged the same in Rinku Travels from November, 1998 till March, 2000 and from April, 2000 till the date of search, she had engaged the aforesaid vehicle with Krushi Vigyan Kendra, Sunabeda and she had earned **Rs.1,70,000/- @ Rs.10,000/-** per month for 17 months during its engagement in Rinku Travels and she had earned **Rs.1,17,600/-** during the period from April, 2000 till the date of search @ **Rs.9,800/-** per month during its engagement at Krushi Vigyan Kendra, Sunabeda and she had shown the income in the IT

Returns of these years. She has proved the permit of the vehicle vide Ext.Q and the copy of statement of income for the assessment year 2001-02 vide Ext.R.

During cross-examination DW-2 stated that she was the proprietor of M/s. Rinku Travels and Transport and in Ext.R, she had shown her income for the financial year 2000-01. Specifically she stated that the income of **Rs.40,380/-** shown in Ext.R by her was the income for 4 to 5 months relating to Rinku Travels and for the rest period of 7 to 8 months, she had engaged the vehicle at Krushi Vigyan Kendra, Sunabeda. Further, she stated that in Ext.R, she had shown **Rs.18,000/-** as payment of salary to the driver. She admitted that she has no document regarding engagement of the car in Rinku Travels, so also regarding registration of that transport agency with Collector, Sales Tax Authority or Tourism Department. She could not say if any agreement was executed with Krushi Vigyan Kendra, Sunabeda before engagement of the vehicle in that firm. She stated that they have never received any amount from Krushi Vigyan Kendra, Sunabeda through bank account, but at times they were sending hiring charges through driver and at times they were sending the same through money orders in her name. But she has no receipt relating to those money orders. She also admitted that she has not kept any book of accounts to show monthwise rent and date of receipt of the same from Krushi Vigyan Kendra, Sunabeda. Specifically, she stated that during the assessment years 1995-96, 1996-97 and 1997-98 she was not running any transport business. But in Exts.35/5 and 35/6 i.e. the copies of IT Returns for Assessment year 1996-97 and 1995-96 DW-2 had shown herself as Proprietor of Rinku Travels and had also shown her business as "Travels & Transport". Such assertion

in Exts.35/5 and 35/6 is quite contradictory to the version of DW-2 which renders her testimony doubtful.

17. No documents which were attached along with the returns Exts.35/2 to 35/6 have been proved by the accused or his wife. Of course, the copy of statement of income said to be attached with Ext.35/1 has been proved as Ext.R which relates to the assessment year 2001-02 that means it covered the income for the financial year 1.4.2000 to 31.3.2001. In Ext.R itself the income from Krushi Vigyan Kendra, Sunabeda has been shown as **Rs.1,17,600/- @ Rs.9,800/- x 12,**. so also, the income from Rinku Travels amounting to **Rs.40,380/-** has been shown. I fail to understand if the vehicle was engaged in Krushi Vigyan Kendra, Sunabeda for twelve months, then how it was engaged in Rinku Travels and Transport. As discussed above, DW-2 stated that for 4/5 months she had engaged the vehicle in Rinku Travels and for rest period of 7/8 months she had engaged the vehicle in Krushi Vigyan Kendra, Sunabeda. As such, her version is quite inconsistent and self contradictory, so also contrary to the narration of Ext.R. Above all, no document showing engagement of the vehicle with Krushi Vigyan Kendra, Sunabeda has been proved. It is quite improbable that a Government Department will hire a vehicle without any written agreement. Equally, it sounds improbable that a Government Department would send the hiring charges through the driver of the vehicle. No money receipt showing payment of hire charges or engagement of the vehicle with Krushi Vigyan Kendra has been proved nor the driver who had allegedly brought the hiring charges from the Government Department and gave the same to DW-2 has been examined. Admittedly, the IT Return Ext.35/1 was filed after the search. So, the assessee was supposed to keep all the connected documents in support of such income. Even the documents in this connection

could have been obtained from the concerned Government firm to substantiate such income, but the same has not been done.

18. Peculiarly, the IO in his cross-examination stated that the vehicle No.OR-02J-7797 registered in the name of the wife of the accused was engaged on hire basis in Agriculture Department, Sunabeda for the year 1998 to 2001 @ **Rs.9,800/-** per month. He stated that income of **Rs.3,52,800/-** by the accused from hire of the vehicle has not been taken in the income side of the accused. The IO further stated that he does not remember if the accused had produced any document before him regarding engagement of the vehicle on hire basis. Admittedly, the vehicle was purchased on 26.10.98 and the check period is from 1.1.88 to 31.3.2001. DW-2 herself has not stated that the vehicle was engaged at Agriculture Department from 1998-2000 nor she has stated that she had earned **Rs.3,52,800/-**. As such, version of the IO and DW-2 is quite contradictory to each other. For the above reasons, the claim of income from travel business is not acceptable.

19. Considering from other angle also, it is seen that in the copies of IT Returns vide Exts.35/1 to 35/6,DW-2 has shown her total income as **Rs.3,37,786.00**. DW-2 stated that she started PCO business in 1996. Ext.L is the demand note, dt.8.3.96. DW-2 has not stated anything if she was running any other business prior to that date. But in IT Returns Exts.35/5 and 35/6 she had shown her income as **Rs.89,261/-**. She has not stated anything as to what was the source of her income from which she had earned this amount. On the other hand, in Exts.35/1 to 35/6 she had shown her total income from business as **Rs.3,37,786.00**. But in her evidence DW-2 stated that she had earned **Rs.2,52,662.00** from PCO business and **Rs.2,87,600.00** from travel business which comes to **Rs.5,40,262.00** in total which also does not tally

with the quantum of income shown in the above IT Returns. Most peculiarly the IO in his evidence stated that DW-2 had earned **Rs.3,52,800.00** from hire business of the vehicle and she had shown **Rs.2,52,662.00** from PCO business which comes to **Rs.6,05,462.00** in total. This amount also neither tallies with the total quantum shown in the IT Returns nor with the version of DW-2. It is a surprising factor that on what basis the IO deposed about this amount particularly when the same is not in consonance with the total quantum shown in the above IT Returns proved by the IO himself. Hence, the version of DW-2, the IO and the income shown in the IT Returns are not acceptable to ascertain the income of DW-2 from business.

20.

AGRICULTURE INCOME

So far agriculture income, DW-1 the brother of the accused in his evidence stated that they have 20 acres of land in the name of their father, uncle and cousins and out of the same and he was cultivating 5 acres of land and since 1980 he was giving 50% yield to the accused and he proved the RORs vide Exts.D, E, F, G, H, J and K. He stated that he was cultivating paddy, black grams, groundnuts, vegetables and excluding all the expenses he was getting **Rs.35,000/- to Rs.40,000/-** per year from the above crops and till the date of his examination he has been paying 50% of such income to the accused. During cross-examination he stated that out of the above lands, the share of his father was only 4 acres, but in fact he was in cultivating possession of 5 acres. He admitted that there is no specific note of possession of anybody against any plot covered under Exts.D to K. In cross-examination DW-1 stated that exactly he cannot say the quantity of paddy, mung and black grams etc. which he was getting from those lands in particular years from 1988 to 2001 nor he remembers the rate per quintal of each variety of crop. So also,

he could not say the amount which he earned from agriculture in each particular year. He stated that the accused was not paying any amount for harvesting the crops and he (DW-1) was spending Rs.8,000/- to Rs.10,000/- per year and excluding the expenses, he was getting Rs.35,000/- to Rs.40,000/- from the entire land during 1988 to 2001, but he was not maintaining any book of accounts. He also stated that he was not obtaining any acknowledgment nor he was arranging any person to witness the transaction when he was paying the amount to his brother each year towards agriculture income. He further stated that he was looking after the maintenance of their ancestral house, so also, he was bearing the expenses of social obligation of relations and friends, such as, functions, ceremonies etc.

In the RORs Exts.D to K, there is no specific note of possession against each plot. These RORs stand recorded in the name of the father, uncle and one Balabhadra Behera and Basudev Sahoo jointly. There is no document to show that there was partition among the recorded owners. There is also no mention in any of the ROR about possession of respective recorded owners in respect of any particular plot. As per noting of share in the above RORs, the share of the accused out of these lands is only Ac.1.40 decimals. Absolutely, no document has been proved by the accused to show his income from these agriculture lands. Of course, in the copies of the IT Returns for the assessment year 2001-2002 (Ext.35/7) and 2000-2001 (Ext.35/8) the accused has shown **Rs.6,000/-** and **Rs.5,000/-** respectively as income from agriculture from HUF property. DW-2 the wife of the accused has not stated anything in her evidence about receipt of any income from agriculture by her husband from DW-1. In his evidence, the IO has stated that he had collected information regarding the annual income from agriculture land of

the accused extending to an area of Ac.1.45 decimals, but he had not taken the said income into consideration as the accused had given that land to his brother on “Bhagchasa” basis and usually he was not bringing any yield from those lands. According to RORs, the share of the accused was only Ac.1.40 decimals. DW-1 claims that he was cultivating 5 acres of land and giving 50% share to the accused. Evidence of DW-1 is also not clear and cogent about the quantum of production of crops. So, his evidence does not inspire confidence.

Learned Special PP, Vigilance during course of argument placing reliance on a decision of the Hon'ble Supreme Court reported in **AIR 2007 S.C. 2677 N.P.Jharia-Vrs.-State of M.P.** submitted that even calculating the agriculture income of the accused at the rate mentioned in the above judgment, the same comes to **Rs.14,375/-**. But since DW-2 wife of the accused has not supported the version of DW-1 about taking of agriculture income by her husband from DW-1, the said income as claimed by the accused should not be accepted. With profound respect to the authority, it is seen that in the above case, no guideline was fixed by the Hon'ble Court to compute the income from agriculture land. Rather, in that case the estimate of agriculture income made by the trial Court was not approved by the Hon'ble High Court. Moreover, the nature of land related in that case is not known. So, I hold that the said decision is not applicable to the present case.

In this regard, the learned defence counsel has placed reliance on a decision reported in **1999 Criminal Law Journal 1026 G.V.S.Lingam-Vrs.-State of A.P.** wherein income from double crop wet land was taken @ Rs.500/- per acre as net profit. Kism of land mentioned in Exts.D, E, F, G, H, J & K the RORs are “SARADA-2” that means double crop lands. So,

considering the rival submission and the facts and circumstances of the case, I am of the view to accept the quantum mentioned in the above judgment as the basis for calculating the annual income from agriculture land. Calculating the agriculture income of the accused on the basis of this judgment, the annual income of the accused comes to Rs.700/- per year (Rs.500/- x Ac.1.40 decs.) and the total income during the period from 1.1.88 to 31.3.2001 i.e. 13 years which comes to Rs.9,100/-. It may be mentioned here that in the aforesaid judgment the check period was from 1.1.1971 to 27.8.1987. But here, the check period is from 1.1.1988 to 31.3.2001. Keeping in view the rise of price from year to year, a modest estimation should be made and in my opinion, the quantum of **Rs.9,100/-** should be tripled which comes to **Rs.27,300/-** and the same should be taken in the income side of the accused from agriculture.

From the aforesaid discussion the total income of the accused is taken as follows :-

Salary	= Rs. 4,23,901.70
House Rent	= Rs. 1,31,750.00
Departmental HBA	= Rs. 60,000.00
Interest on bank deposit	= Rs. 898.00
Car loan, etc	= Rs. 4,38,990.00
<u>Agriculture Income</u>	= Rs. 27,300.00
Total	= <u>Rs.10,82,839.70</u>

or rounded to Rs.10,82,840.00

21.

EXPENDITURE

The IO in his evidence stated that basing on the following exhibits he has shown the amount mentioned against each item in the expenditure side of the accused for the purpose noted therein. It may be noted here that the IO in his cross-examination admitted that the expenses towards payment of LIC premium and Peerless premium (Ext.41) ought to have been

shown in expenditure side, but he has shown the the same in the asset side of the accused.

Exhibits	Amount	Purpose
5	Rs.2,36,523.45	Consumer expenditure
20 & 21	Rs. 4,080.00	Educational expenses
36	Rs. 6,408.00	Educational expenses
37	Rs. 4,175.00	Educational expenses
7 & 8	Rs. 79,113.55	Electric bills
38	Rs. 54,017.00	Telephone bills
23	Rs. 5,948.00	Water charges
39	Rs. 11,845.00	Stamp duty & registration fees
24	Rs. 4,538.00	Holding tax
35/8	Rs. 1,208.00	Income tax
9 & 10	Rs. 3,058.00	Road tax and registration charges
18	Rs. 6,330.00	Repayment of loan to ORHDC
33	Rs. 32,775.00	Repayment of house building loan to OFDC
34/2	Rs.3,66,362.00	Repayment of vehicle loan
	Rs. 20,703.00	Building maintenance
	Rs. 46,558.00	Vehicle maintenance
Ext.41	Rs. 4,200.00	Peerless Premium
Ext.13	Rs. 89,500.50	LIC Premium

The learned defence counsel in the written argument at pages 4 and 5 had admitted the quantum of expenditure shown vide Exts.20, 21, 36, 37, 38, 23, 39, 24, 35/8, 9 and 10, 18, 33, 34/2 and 41. He had disputed the quantum of expenditure shown vide Exts.5, 7 and 8, 13 as well as the expenditure under heads “Building Maintenance” and “Vehicle Maintenance”. So, I shall confine my discussion to the quantum of disputed expenditure.

22. CONSUMER EXPENDITURE

PW-5 Assistant Director of Economic and Statistics in her evidence proved the report Ext.5 and stated that as per that statement the total expenditure of the accused was **Rs.2,36,523.45P** for the period from August, 1988 to 31.3.2001. She also stated that the calculation is based on Government of India National Sample Survey Report and Urban Income and Saving Report and price index of Urban non-manual employees. She stated that she had not received any information regarding the food habits, place of posting such as, urban and rural with particular period and the living style of the accused and his family members. So also they had not received any information regarding ancestral agricultural land, yielding of paddy etc. She admitted that rural food habit is much less than the urban area food habit. Ext.6 the letter of the Director shows that the per capita consumer expenditure was estimated from the annual disposable income of the incumbent basing on National Sample Survey Reports, Urban Income and Saving Report and price index/indices for Urban Non-manual employees. The figures shown in the statement indicate a general category of consumption pattern which may differ from person to person depending on food habits and propensity to consume and save. Absolutely, no evidence has been adduced by the accused to show a different consumption pattern and to show his propensity to consume less and to save more. So far the place of posting Ext.33 shows that from 18.9.90 till the date of issuance of that letter i.e. 8.5.01 the accused was posted in Bhubaneswar Division barring a period of 3 years and 4 months i.e. from 8.8.88 to 20.12.91 when he was working at Angul Division. Angul cannot be said to be a rural area. Apart from that, no evidence has been adduced by the

accused to establish that he was posted in any rural place under Angul Division.

Learned defence counsel during course of argument placing reliance on a decision of the Hon'ble Supreme Court reported in **AIR 1964 (S.C.), page 464 Sajjan Singh-Vrs.- State of Punjab** submitted that the consumer expenses @ 1/3rd of the income should be taken, but as per Ext.5, prosecution has shown the consumer expenditure at a higher side. So, the same should not be accepted. With profound respect to the authority, it is seen that no such proposition of law was decided therein that 1/3rd of the income should be taken as consumer expenditure. In that case, the Hon'ble Apex Court held that at least Rs.100/- per month must have been the average expenses of the accused during years 1922 to 1952. The facts and circumstances of that case are distinguishable from the facts and circumstances of the present case. Here, prosecution has proved the consumer expenditure statement basing upon the guidelines of National Sample Survey Reports. In absence of any evidence to the contrary, I am not inclined to discard the same. As such, the consumer expenditure is taken as **Rs.2,36,523.45P**.

23. **ENERGY CHARGES**

PW-6 the Clerk of SDO, Electrical has stated in his evidence that the accused had two connections to the house, one being commercial and the other being domestic bearing consumer Nos.22-A-140 and 22-A-140/1 respectively and for the first connection he had paid **Rs.41,294.35P** and for the other connection he had paid **Rs.37,819.20P** and he proved Exts.7 and 8. During course of argument the learned defence counsel submitted that the total energy charges should be calculated at **Rs.53,420.09P** as under Ext.5(Consumer Expenditure Statement), **Rs.25,893.46P** has been assessed towards the energy charges. So,

the said amount should be deducted from Ext.7. Moreover, Pws-7, 8, 12 and 14 (tenants) have stated that they were paying the electric charges separately. Admittedly, an amount of **Rs.25,893.46P** has been shown in Ext.5 towards fuel and light expenses. No material is placed before the Court to show as to what was the fuel charges and what was the expenses for light. That apart, though Pws-7, 8, 12 and 14 have stated that they were staying as tenants in the house of the accused and were paying electric charges separately, but none of them have stated about the quantum of energy charges per month which were being paid by them. Moreover, those tenants had occupied the house at different times during 1996 to 2001. They must have paid some amount towards energy charges. Keeping in view their period of tenancy a sum of **Rs.10,000/-** should be deducted from the payments made under Ext.7. That apart, the expenses towards light have been taken in Ext.5 as well as in Ext.7 twice. But there is no definite materials to show what was the expense for light out of **Rs.25,893.46P** (fuel and energy) taken in Ext.5. Considering the facts and circumstances of the case, a sum of **Rs.13,000/-** (about 50% of the amount shown in Ext.5) should be deducted. As such, in total **Rs.23,000/- (Rs.10,000/- + Rs.13,000/-)** be deducted from **Rs.79,113.55P** and an amount of **Rs.56,113.55P** only should be taken in the expenditure side towards energy charges.

24. **BUILDING MAINTENANCE**

As regards the expenditure under the head “Building Maintenance”, the IO has stated that he had calculated **Rs.20,703/-** under this head. But during cross-examination he stated that he has shown such expenditure calculating the maintenance cost @ 1/6th of the building cost. But he had not gone through any document in this regard. It is common experience that a building needs minimum maintenance. A sum of

Rs.20,703/- for maintenance of a building during a period of 13 years does not seem to be unreasonable or in higher side. So, the same is taken in the expenditure side of the accused.

25.

VEHICLE MAINTENANCE

The IO in the charge-sheet has shown expenditure of **Rs.46,558/-** towards vehicle maintenance. In his evidence the IO has stated that the accused had paid **Rs.3,058/-** towards registration fees and tax vide Exts.9 and 10. So for the rest amount, the accused had stated to him that he had paid salary to the driver of the vehicle OR-02J-7797 amounting to **Rs.43,500/-**, but he had not seen any document relating to payment of salary to the driver. He further stated that during that period, the vehicle was hired by Agriculture Department, Sunabeda. As discussed earlier, the claim of the accused for engagement of the vehicle in Agriculture Department, Sunabeda has not been accepted. No driver has been examined. No document regarding payment of salary to the driver has been proved. Amount of **Rs.18,000/-** as salary of the driver shown in Ext.R has been discarded. So, the expenses of **Rs.43,500/-** towards the salary of the driver as claimed by the prosecution is not acceptable and the same should be deducted from that head. As a result a sum of **Rs.3,058/-** is only taken as expenditure under this head which is already reflected vide Exts.9 and 10 and admitted by the accused.

26.

L.I.C. PREMIUM

The learned defence counsel during course of argument submitted that as per Ext.13, the total premium paid by the accused is **Rs.70,042.55P**, but the IO has shown it as **Rs.89,500.50P**. PW-13 in his evidence and has proved his report vide Ext.13 has specifically stated about the policies as follows :-

Sl.No.	Policy No.	Policy Holder	Amount
1	58044467	A.K.Moharana	Rs.34,859.50

2	58310988	A.K.Moharana	Rs. 207.00
3	580762372	A.K.Moharana	Rs.18,072.00
4	590379075	Smt.Minati Moharana	Rs.19,458.00
5	580762678	Smt.Minati Moharana	Rs.16,904.00
Total			Rs.89,500.50

The total payment under these five policies comes to **Rs.89,500.50**. PW-13 in his evidence denied to have stated to the IO that the accused and his wife had paid **Rs.70,042.50P**. But the IO in his evidence stated that PW-13 had stated so to him. The IO has categorically stated that basing on Ext.13 he had shown **Rs.89,500.50P** in the asset side of the accused. Ext.13 is a type written letter. The number of policies, amount paid thereunder and the position of the policies with loan particulars are mentioned therein. On Ext.13 there is one hand written endorsement such as “**total Rs.89,500.50P – Rs.19,458.00 = Rs.70,042.50P**”. There is no explanation on record from either side as to how these writings were made on this document when total amount paid under five policies as mentioned in Ext.13 are type written. The accused has not challenged the correctness of any of the five entries nor adduced any evidence to disprove the quantum shown in these five entries. Hence, it is held that the accused had paid **Rs.89,500.50P** under these five policies and the same should be taken in the expenditure side of the accused.

From the aforesaid discussion the total expenditure of the accused is taken as follows :-

Exhibits	Amount	Purpose
5	Rs.2,36,523.45	Consumer expenditure
20 & 21	Rs. 4,080.00	Educational expenses
36	Rs. 6,408.00	Educational expenses
37	Rs. 4,175.00	Educational expenses

7 & 8	Rs. 56,113.55	Electric bills
38	Rs. 54,017.00	Telephone bills
23	Rs. 5,948.00	Water charges
39	Rs. 11,845.00	Stamp duty & registration fees
24	Rs. 4,538.00	Holding tax
35/8	Rs. 1,208.00	Income tax
9 & 10	Rs. 3,058.00	Road tax and registration charges
18	Rs. 6,330.00	Repayment of loan to ORHDC
33	Rs. 32,775.00	Repayment of house building loan to OFDC
34/2	Rs.3,66,362.00	Repayment of vehicle loan
	Rs. 20,703.00	Building maintenance
	Nil	Vehicle maintenance
Ext.41	Rs. 4,200.00	Peerless Premium
Ext.13	Rs. 89,500.50	LIC Premium
Total	Rs.9,07,784.50 rounded to Rs.9,07,785.00	

27.

ASSETS(i) **Bank Balance & Net Cash**

Basing on Ext.34/1, the IO has shown the cost of the car bearing No.OR-02J-7797 in the name of the wife of the accused and he proved the registration certificate vide Ext.9. The IO has also stated that basing on Exts.14, 15 and 16 he has shown **Rs.1616.96** in the asset side of the accused which was the closing balance in S.B.A/C.Nos.2828 and 619 in the name of the accused and his wife. The IO has further stated that basing on Sl.Nos.51 and 145 of the seizure list Ext.1 he has shown **Rs.1332/-** in the asset side of the accused. The learned defence counsel in page 5 of the written argument admitted these items. Hence, the same are taken in the asset side of the accused.

(ii) Vespa Scooter & Fiat Car

The IO has stated that one LML Vespa scooter vide Sl.Nos.143 and 148 of Ext.1 and one fiat car vide Sl.Nos.144 and 147 of Ext.1 were seized from the house of the accused which stood registered in the name of Anjan Kumar Moharana and Ajay Kumar Moharana who were brother and brother-in-law of the accused respectively. But he has not taken the same in the asset side of the accused. Learned Special PP, Vigilance during course of argument submitted those vehicles were seized from the possession of the accused during house search and the accused had disclosed the years of acquisition of those vehicles, but had not explained anything as to how those were found in his possession. That apart, DW-1 brother of the accused during his cross-examination could not say where from he had purchased the scooter nor he could say its purchase price. So, it can be safely held that these two vehicles were purchased with the consideration money provided by the accused and the cost of the said vehicles amounting to **Rs.61,385/- (Rs.31,385/- + Rs.30,000/-)** should be added in the asset side of the accused.

Learned defence counsel placed reliance on a decision of the Hon'ble Apex Court reported in **AIR 1977 SC 796 Krishnanand-Vrs.-The State of Madhya Pradesh** and submitted that these two items belong to the brother and brother-in-law of the accused and cannot be taken in the asset side of the accused. **Para 26** of the aforesaid judgment is extracted below :-

“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 Mm, nor justify the acceptance of mere conjectures or surmises as a substitute for proof. (Vide Jayadayaal Poddar v. Mst.Bibi Hazra). It is not enough merely to show circumstances which might create suspicion, because the court cannot decide on the basis of suspicion. It has to act on legal grounds established by evidence.”

Both these vehicles do not stand registered in the name of the accused. The normal presumption is that the person in whose name registration of the vehicles stands, is the owner of the same. Prosecution claims that the registered owners were only “Benamidars” and the accused had supplied consideration money for purchase of those vehicles. But prosecution has failed to adduce evidence to substantiate such fact. Mere recovery of a vehicle from the possession of a person cannot lead to a conclusion that he is the owner thereof particularly when the vehicles stand registered in the name of some others. So, these two items cannot be added in the asset side of the accused.

(iii) Car No.OR-02J-7797

The learned defence counsel has challenged the quantum of **Rs.3,11,000/-** i.e. the price of car taken by the IO in the asset side stating that the wife of the accused had purchased the same by incurring loan. So, the same cannot be taken in the asset side of the accused. Fact remains that the wife of the accused had incurred a loan of **Rs.3,11,000/-** vide Ext.34 and repaid the same with interest vide Ext.34/2 and these two items have been shown in respective heads of income and expenditure

accordingly. Ext.9 shows that the vehicle stood registered in the name of the wife of the accused. DW-2 admits that she had purchased the car by availing loan and she also claimed that she had engaged the same in travel business. Hence, the cost of the car **Rs.3,11,000.00** is taken in the asset side of the accused.

(iv) Gold & Silver Ornaments

Sl.No.146 of the search list Ext.1 shows that two numbers of gold rings weighing 4 grams, one gold chain weighing 8 grams and silver ornaments weighing 95 grams were seized. Neither the year of acquisition nor the cost of the same have been mentioned against that entry. The IO has also admitted this fact in para 46 of his evidence and also admitted that he had not tested or valued the same by any gold smith. In absence of any test report by any gold smith, the valuation of the same cannot be ascertained. That apart, it is admitted fact that the accused was serving since 21.12.81 and he had married in the year 1985. Possibility of acquiring these ornaments before pre-check period and the possibility of receiving the same towards marriage gift cannot be ruled out altogether. When two views are possible, obviously the view favourable to the accused should be taken. As such, it is held that the said amount of **Rs.5,945/-** should be deleted from the asset side of the accused.

(v) House Holding Articles

In the charge-sheet the cost of household articles have been shown as **Rs.70,000/-** in the asset side. During cross-examination the IO has stated that while calculating the cost of the household articles mentioned in Ext.1, he had not taken into consideration the valuation of the articles which were shown to have been received as marriage gifts. The learned Special PP, Vigilance during course of argument contended that Sl.No.54 of the search list relating to sewing machine costing Rs.1400/- is

said to have been acquired in 1990 as marriage gift which is unbelievable. Likewise, in Ext.1 at Sl.No.118 the washing machine costing Rs.5000/- is noted to have been acquired by gift. But, there is no evidence where from the same was accepted and on what occasion. So, these items should be added in the asset side of the accused. In the written argument at page 5 the learned defence counsel disputing the amount submitted that it comes to **Rs.55,250.00** only.

Perused Ext.1. Some items have been shown as marriage gift. Some items such as, Sl.Nos.29, 30, 31, 83, 105, 108, 111 are shown to have been acquired prior to check period i.e. 1.1.1988, so the same should not be taken into consideration. It may be mentioned here that in Ext.5, a sum of **Rs.17,547.75P** has been shown as expenditure on clothing and a sum of **Rs.2,608.70P** on foot wear. In Ext.1 vide Sl.Nos.29, 30, 31, 33 to 35, 42, 66 to 68, 71 and 141, some clothing and shoe items have been shown. Since expenditure on clothing and foot wear have been taken in Ext.5, these items of Ext.1 should not be taken in the asset side of the accused. Excluding these aforesaid items, the quantum of asset covered under Ext.1 (Search List) comes to **Rs.59,370/-** and the same is taken in the asset side of the accused.

(vi) Building Valuation

The IO has stated in his evidence that basing on Exts.25 and 25/2, he has shown the assets of the accused as **Rs.7,43,760/- (Rs.6,83,760/-** as cost of the building + **Rs.60,000/-** as cost of the land). The IO has proved the allotment file vide Ext.12 which contains the copy of RSD NO.8123, dt.17.7.89 in favour of the accused for **Rs.60,000/-**, so also, the agreement marked Ext.12/1 shows that the accused had paid the consideration money of **Rs.60,000/-** for purchasing the house. It was suggested to the IO that he had not furnished the datas

relating to the building of the accused such as ROR, building plan etc. to which he denied. It was also suggested to the IO that the valuation of the building during the relevant time was Rs.3,50,000/- only to which he denied. Ext.25 is the technical inspection report of the Superintending Engineer addressed to the IO. There is specific mention that measurement of the building was taken in presence of the accused and the IO. It is also mentioned in the report that the valuation of the building was done by adopting appropriate government schedule of rates by taking the year of construction intimated in letter No.35, dt.19.1.02 of the IO. Ext.25/2 is the general abstract of cost sheet enclosed to Ext.25. Ext.40 is the measurement book which contains the signatures of the IO, the accused and the Building Inspector which have been marked as Exts.40/1 to 40/3 respectively. So, the suggestion of non-furnishing the datas such as ROR, building plan etc. loses its significance as the accused was very much present at the time of valuation of the building and had signed in the measurement book.

That apart, PW-22 the Building Inspector stated that as per requisition of vigilance and direction of S.E., Vigilance he inspected a three storeyed building which was identified to him by the Vigilance Inspector and the accused. He has specifically stated that he assessed the cost of all the three floors of the building as **Rs.7,11,402/-** and deducted a sum of **Rs.29,642/-** therefrom towards personal supervision and assessed the cost at **Rs.6,81,760/-**. Adding the value of the motor installed worth **Rs.2,000/-**, he valued the building as **Rs.6,83,760/-**. PW-22 has also stated that while assessing the cost of the ground floor at **Rs.1,49,982/-**, he had not included the purchase price of the ground floor. He further stated that after assessment he prepared the report and forwarded the same to SE which was sent to the

SP, Vigilance vide Ext.5. He also proved the report Ext.25/2 and he stated that it was countersigned by the SE Sri R.K.Panda vide Ext.25/4. Of course, in his cross-examination he stated that he was not provided any document except the requisition and year of construction. PW-22 also stated that Exts.25 and 25/2 do not disclose the number of plot, mouza or any detail location of the house. But he categorically stated that Ext.25 reflects the fact that the IO as well as the accused were present during inspection. When the accused himself has signed in the measurement book and was present by the time of inspection, there is nothing to doubt the identity and location of the house which was inspected. The IO denied the suggestion of the accused that the valuation of the building during relevant time was **Rs.3,50,000/-** only. Barring such mere suggestion, no evidence is adduced by the accused to establish that the cost of the building as **Rs.3,50,000/-**. As such, the cost of the building including land cost amounting to **Rs.7,43,760.00** is taken in the asset side of the accused.

From the above discussion, the total assets of the accused is taken as follows :-

Bank deposit	Rs. 1,616.96
Cash	Rs. 1,332.00
Cost of car	Rs.3,11,000.00
House holding articles	Rs. 59,370.00
Building Valuation	<u>Rs.7,43,760.00</u>
Total	<u>Rs.11,17,078.96</u>

or to say Rs.11,17,079.00

28. In view of the above discussion, the conclusion regarding income, expenditure and asset of the accused during the check period is calculated as follows :-

Income from different sources	-	Rs.10,82,840.00
Expenditure on different heads	-	Rs. 9,07,785.00
Asset	-	Rs.11,17,079.00

So, the quantum of disproportionate asset is as follows :-

**Rs. 9,07,785.00 + Rs.11,17,079.00 – Rs.10,82,840.00 =
Rs.9,42,024.00**

The accused is found in possession of asset up-to **Rs.9,42,024.00** which is disproportionate to his known source of income.

In the result, it is held that prosecution has well proved that the disproportionate asset found in possession of the accused and his family members on his behalf during the check period is **Rs.9,42,024.00** which the accused could not satisfactorily account for. Therefore, the accused is found guilty of the offence u/s.13(2) read with 13(1)(e) of the P.C.Act and is convicted thereunder.

Special Judge(Vigilance),
Bhubaneswar.

The judgment having been typed to my dictation and corrected by me and being sealed and signed by me is pronounced in the open court today this the 18th day of December, 2014.

Special Judge(Vigilance),
Bhubaneswar.

HEARING ON THE QUESTION OF SENTENCE

Heard the convict and his counsel on the question of sentence. The convict prays for leniency stating that he is a retired Govt. servant. The learned Special PP, Vigilance submits to inflict adequate sentence. Corruption by public servant affects public interest at large and it is also detrimental to progress of society. The statute provides for imprisonment for maximum period of seven years with liability for fine for such offence. Considering these facts and circumstances and keeping in view the quantum of disproportionate asset, the convict is sentenced to

undergo R.I. for two and half years and to pay a fine of Rs.2,00,000/-, in default to undergo R.I. for one and half years more. The period undergone as UTP shall be set off u/s.428 Cr.P.C.

Special Judge(Vigilance),
Bhubaneswar.

The judgment having been typed to my dictation and corrected by me and being sealed and signed by me is pronounced in the open court today this 18th day of December, 2014.

Special Judge(Vigilance),
Bhubaneswar.

List of witnesses examined for the prosecution :

P.W.1	Muzibar Rahaman Khan.
P.W.2	Padma Charan Patra.
P.W.3	Gajendra Prasad Pattnaik.
P.W.4	Narayan Shauti Malla Choudhury.
P.W.5	Pramodini Sahu.
P.W.6	Rabindra Nath Mohapatra.
P.W.7	Susanta Kumar Pattnaik.
P.W.8	Gayadhar Sahu.
P.W.9	Laxmidhar Swain.
P.W.10	Sankarsan Das.
P.W.11	Dinabandhu Sahu.
P.W.12	Mahendra Nath Sahu.
P.W.13	Bibhuti Bhusan Kar.
P.W.14	Dillip Kumar Das.
P.W.15	Abdul Fazul Khan.
P.W.16	Pravat Chandra Sahu.
P.W.17	Dillip Prasad Bhattacharya.
P.W.18	Swosti Ranjan Mohapatra.
P.W.19	Rabindra Nath Padhi.
P.W.20	Lingaraj Sahu.
P.W.21	Satyananda Mohanty.
P.W.22	Hari Krishna Behera.
P.W.23	Muralidhar Pradhan.
P.W.24	Prasant Kumar Sahu.
P.W.25	Ajit Kumar Mohapatra.
P.W.26	Jogeswar Sahu.
P.W.27	Indrajit Nahak.

List of witnesses examined for the defence :-

D.W.1	Anjan Kumar Maharana.
D.W.2	Minati Maharana.

List of exhibits marked for the prosecution :-

Ext.1	Search List.
Ext.1/1	Signature of PW-1 in Ext.1.
Ext.2	Search Warrant.
Ext.2/1	Endorsement of accused.
Ext.1/2	Signature of PW-2 in Ext.1.
Ext.1/3	Endorsement of accused.
Ext.3	Zimanama.
Ext.3/1	Signature of Akhila Kumar Moharana.
Ext.4	Written Report, dt.30.3.01(FIR).
Ext.4/1	Signature of PW-2 in Ext.4.
Ext.4/2	Endorsement of SP S.S.Hansda.
Ext.4/3	Endorsement of OIC, Vig. PS,BBSR.
Ext.4/4	Formal FIR.
Ext.5	Expenditure Report.
Ext.5/1	Signature of PW-5 on Ext.5.
Ext.5/2	Signature of Statistical Investigator R.P.Prusty on Ext.5.
Ext.6	Forwarding letter No.8343, dt.14.5.02.
Ext.6/1	Signature of Director R.K.Mohanty on Ext.6.
Ext.7	Information sheet(2 sheets) of SDO, Electrical.
Ext.8	Forwarding letter No.1930, dt.6.8.02.
Ext.8/1	Signature of SDO on Ext.8.
Ext.9	Certificate of Registration- OR-02-J-7797.
Ext.9/1	Signature of PW-9 on Ext.9.
Ext.10	Letter No.559, dt.21.5.2001.
Ext.11	Seizure List.
Ext.11/1	Signature of PW-11 on Ext.11.
Ext.12	Allotment File of OSHB, BBSR of S.K.Mohanty.
Ext.13	Report of PW-13.
Ext.13/1	Signature of PW-13 on Ext.13.
Ext.4/5	Signature of PW-15 in Ext.4.
Ext.14	Statement of accounts of the two accounts supplied by PW-16(Five sheets).
Ext.14/1	Signature of R.K.Swain on Ext.14.
Ext.15	Statement of accounts supplied by PW-16.
Ext.15/1	Signature of R.K.Swain on Ext.15.
Ext.16	Forwarding letter No.0188/21/008, dt.11.4.02.
Ext.16/1	Signature of PW-16 on Ext.16.
Ext.17	Information letter, dt.15.10.2001.
Ext.17/1	Signature of PW-17 in Ext.17.
Ext.17/2	Signature of Dealing Assistant Akshya Kumar Nayak on Ext.17.

Ext.18	Information as on 31.3.2001 supplied by PW-18.
Ext.19	Forwarding letter.
Ext.19/1	Signature of PW-18.
Ext.20	Information regarding Amit Moharana.
Ext.21	Information regarding Asit Moharana.
Ext.22	Forwarding letter.
Ext.22/1	Signature of PW-19 on Ext.22.
Ext.23	Forwarding letter No.4918, dt.31.5.01.
Ext.23/1	Signature of S.C.Mishra on Ext.23.
Ext.23/2	Initial of PW-20 on Ext.23.
Ext.23/3	Data of information.
Ext.23/4	Signature of the A.E. S.C.Mishra on Ext.23/3.
Ext.23/5	Signature of PW-20 on Ext.23/3.
Ext.24	Letter No.9373, dt.13.6.01 of Addl. Executive Officer, B.M.C., BBSR.
Ext.24/1	Signature of L.R.Ratha on Ext.24.
Ext.25	Forwarding letter of S.E. R.K.Panda to DSP,Vig.
Ext.25/1	Signature of R.K.Panda on Ext.25.
Ext.25/2	Report of PW-22.
Ext.25/3	Signature of PW-22 on Ext.25/2.
Ext.25/4	Countersigned of R.K.Panda on Ext.25/2.
Ext.26	Forwarding letter.
Ext.26/1	Signature of Divisional Manager, N.Choudhury on Ext.26.
Ext.26/2	Pay particular.
Ext.26/3	Signature of Sub-Divisional Manager on Ext.26/2.
Ext.26/4	Pay particular.
Ext.26/5	Signature of N.Choudhury on Ext.26/4.
Ext.26/6	Pay particular.
Ext.26/7	Signature of Divisional Manager on Ext.26/6.
Ext.27	Letter No.1855, dt.4.7.01.
Ext.27/1	Signature of predecessor of PW-23 Rasananda Pradhan.
Ext.28	Letter No.2272, dt.16.7.01.
Ext.28/1	Signature of Rasananda Pradhan.
Ext.28/2	Pay particular from November,88 to November,91 of the accused.
Ext.28/3	Signature of Rasananda Pradhan.
Ext.29	Pay Particulars of accused from November,97 to December,2000.
Ext.29/1	Signature of Sri Niranjana Choudhury, D.M. on Ext.29.
Ext.30	Letter No.2127, dt.24.5.2001.
Ext.30/1	Signature of Sri Niranjana Choudhury on Ext.30.
Ext.31	Sanction Order.
Ext.31/1	Signature of PW-26 on Ext.31.

- Ext.32 Forwarding letter No.5351, dt.31.12.2002 of PW-26.
- Ext.32/1 Signature of PW-26 on Ext.32.
- Ext.33 Letter No.2228, dt.30.5.2001.
- Ext.33/1 Signature of the then Divisional Manager, Plantation Division on Ext.33.
- Ext.34 Letter, dt.2.8.2002 of Birla Global Finance Ltd.
- Ext.34/1 Particulars enclosed on Ext.34.
- Ext.35 Application of accused.
- Exts.35/1 to 35/9 – Copies of I.T>Returns enclosed to Ext.35.
- Ext.36 Letter No.31, dt.27.8.2001 of Pradhan Acharya, Saraswati Sisu Mandir.
- Ext.36/1 Proforma expenditure of Amit Kumar Moharana from Class-I to V.
- Ext.37 Letter No.054, dt.9.7.2002 of Principal, Indira English Medium School.
- Ext.38 Letter No.157, dt.28.5.2001 of DGM, GMTD, BBSR consisting three sheets showing the expenses of telephone No.470239/550239 for period from 3/89 to December,2000.
- Ext.39 Letter No.2887, dt.11.6.2002 of DSR, BBSR.
- Ext.40 Measurement Book containing 22 sheets.
- Ext.40/1 Signature of PW-27 on page No.22 of Ext.40.
- Ext.40/2 Signature of accused on last page of Ext.40.
- Ext.40/3 Signature of Harekrushna Behera on the last page of the measurement book Ext.40.
- Ext.41 Letter No.116 of 2001 of Branch Manager, Peerless Company Ltd.
- Ext.42 Search List, dt.17.3.01.
- Ext.42/1 Signature of DW-1 on Ext.42.
- Ext.43 Zimanama.
- Ext.43/1 Signature of DW-1 on Ext.43.
- Exts.43/2 to 43/4 – Xerox copies of three KVPs.
- Exts.43/5 to 43/7 – Signatures of DW-1 on Exts.43/2 to 43/4.

List of exhibits marked for the defence :-

- Ext. A Agreement, dt.1.6.95.
- Ext. A/a Signature of PW-7 on Ext. A.
- Ext. A/b Signature of Akhila Ku. Moharana on Ext. A.
- Ext. B Unregistered agreement.
- Ext. B/a Signature of PW-8 on Ext. B.
- Ext. B/b Signature of Sri Moharana on Ext. B.
- Ext. C Agreement.
- Ext. C/a Signature of PW-12 on the Ext. C.
- Ext. D R.O.R. of Khata No.109.
- Ext. E R.O.R. of Khata No.160.
- Ext. F R.O.R. of Khata No.161.

Ext. G	R.O.R. of Khata No.276.
Ext. H	R.O.R. of Khata No.277.
Ext. J	R.O.R. of Khata No.278.
Ext. K	R.O.R. of Khata No.490.
Ext. L	Carbon copy of money receipt showing deposit of Rs.5,000/-.
Ext. M	Office copy of application of DW-2, dt.21.10.05.
Ext. M/1	Signature of DW-2 on Ext. M.
Ext. N	Receipt, dt.21.10.05.
Ext. P	Telephone Directory of 2000.
Ext. P/1	Publication of telephone no. & name of DW-2 at page 216 in Ext.P.
Ext. Q	Permit of vehicle No.OR-02J-7797.
Ext. R	Statement of income with IT Returns for the year 2001-02 of DW-2.
Ext. R/1	Signature of DW-2 on Ext. R.

List of documents marked by the prosecution for identification :-
Nil

List of documents marked by the defence for identification :-
Mark-X Agreement.

List of M.Os. marked for the prosecution :-
Nil

List of M.Os. marked for the defence :-
Nil

Special Judge(Vigilance),
Bhubaneswar.

