THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE Nos. 1152 & 1194 OF 2007

COMMON ORDER:

The petitioner/A1 in Criminal Revision Case No.1194 of 2007 and the petitioner/A2 in Criminal Revision Case No.1152 of 2007 were arraigned as accused in C.C.No.1450 of 2001 on the file of the learned X Additional Chief Metropolitan Magistrate, at Secunderabad.

2. The said learned X Additional Chief Metropolitan Magistrate, by his judgment dated 30.11.2006 found both the accused guilty of the offences punishable under Sections 408 read with 120-B and 477-A read with 120-B and 420 read with 120-B of the IPC and convicted them under Section 248(2) of the CrPC. The charges held proved and the sentences imposed against A1 and A2 are as under:

S. No.	Section/s of law of the Offence	Substantive sentence of Imprisonment	Fine with In default sentence
1.	408 r/w 120 (b) IPC - A1 A2	SI for 1 year each	Rs.100/- each IDSI 3 months each
2.	4 7 7 A r/w 120(b) IPC A1 A2	SI for 1 year each	Rs.100/- each IDSI 3 months each
3.	420 r/w 120 (b) IPC A1 A2	SI for 1 years each	Rs.100/- each IDSI 3 months each

The trial Court had also directed that all the substantive sentences shall run concurrently.

3. Both the accused had preferred separate appeals, viz., Criminal Appeals Nos.434 of 2006 and 435 of 2006. The learned Special Judge for trial of offences under SCs/STs(POA) Act, by separate judgments, simultaneously rendered on 11.06.2007, had partly allowed both the appeals and had set aside the convictions of the accused for the offence punishable under Section 420 read with 120-B of the IPC and had acquitted both the accused of the said offence. However, the appeals of both the accused insofar as the remaining two offences for which they were found guilty by the trial Court were dismissed and the sentences for the two offences respectively under Section 408 read with 120-B of the IPC and 477-A read with 120-B of the IPC are reduced from one year each to three months simple imprisonment each while maintaining the sentences of fines as imposed by the trial Court. Therefore, the aggrieved A1 and A2 had preferred these two revision cases before this court. In the circumstances, both the revisions were taken up and heard together and are being disposed of by this common order.

4. I have heard the submissions of the learned counsel for the petitioners/A1 and A2 ('A1 and A2', for brevity) and the learned Public Prosecutor representing the respondent-State. I have carefully perused the material record.

5. Now the points for determination are:

1. **Whether the prosecution could bring home the guilt of the petitioners/A1 and A2, beyond reasonable doubt, for the offences with which they were respectively charged and found guilty?**
2. **Whether the petitioners/A1 and A2 had made out valid and sufficient grounds for their acquittal? And, if so, whether the judgment of the court below is liable to be aside?**

6. POINTS:

6. (a) The prosecution case including the gravemen of the charge, in brief, is as follows:

The General Manager of M/s.A.S.Transport Limited, which is having its head office at Madonna Mansion, 66, Nungambakka, High Road, Chennai and Branch office at Sarojini Bhavan, opposite to St. Ann's College of Education, S.D.Road, Secunderabad had filed a private complaint under Sections 199 and 200 of the CrPC before the Court of the learned X Additional Chief Metropolitan Magistrate at Secunderabad. The learned Magistrate had referred the said complaint under Section 156(3) of the CrPC to the police. On that, the subject crime was registered and was investigated into. The case of the complainant, in brief, is this: 'The complainant company is a transport company The said company (hereinafter referred to as 'the transport company' is engaged in the business of transportation of goods by road by hiring trucks from the market for the transportation of consignments from Hyderabad to various stations in the country. The trucks were being hired through brokers/lorry suppliers in the market. The Branch Office at Hyderabad is being managed by A1 and A2. A1 is working as a Senior Branch Manager in the Branch office since 24.02.2000 and A2 is Traffic-in-charge-cum-Cashier since 1994. While so, A1 and A2 had conspired together to cheat the company and had started misappropriating the funds of the company by falsifying the accounts. One Mr. T.Paul Prasad Rao, the Branch Officer at the Branch, having come to know about the fraud being committed by A1 and A2, had informed the same to the Managing Director at Chennai. On that, the Managing Director had deputed the complainant/General Manager and also Amalanathan, Assistant General Manager (Audit) for verification of the accounts. The complainant and the said AGM (Audit) on reaching Hyderabad on 25.07.2000, had visited the Branch office and made enquiries with the staff and various brokers, who have been supplying the trucks to the complainant company and they had also verified the accounts. During such verification, they had found several discrepancies that were committed by A1 and A2 besides falsification of accounts amounting to Rs.1.50 lakhs. There are several instances of misappropriation by the accused by means of inflating the lorry hire amounts ranging from Rs.100/- to Rs.2000/- per load depending upon the destination. Having thus misappropriated the amount to a tune of Rs.1.50 lakhs, the accused 1 and 2 had wrongfully gained for themselves and had caused wrongful loss to the company. During the months of May, June and July, 2000, about one thousand loads were moved. The complainant had verified with few truck suppliers. They had furnished him the details about the actual lorry hire at which the Lorries were supplied to them. The complainant had also obtained the written statements from five of the truck suppliers for the purpose of satisfying himself in respect of the misappropriation of the amounts committed by A1 and A2. The said documents clearly prove that the accused had entered into a criminal conspiracy and had cheated the transport company and misappropriated the company amounts. A1 and A2 had hired a truck bearing no.ADC 1694 on 15.07.2000 to Ichapuram from M/s. Srilaxmi Sambasiva Transport. The hire amount actually paid was Rs.6,600/-. But the accused have accounted for Rs.6,800/- in the books. Similarly, the accused had hired a truck bearing no.OAU 1339 on 05.07.2000 from M/s New Royal Roadways Limited for Rs.9,000/- but the accused had shown in the account books Rs.9500/- as the amount paid. The accused had hired a truck bearing no.AP 16 T 7659 from M/s. Surya Transport Company on 02.06.2000 from Hyderabad to Vijayawada and had inflated the hire amount by Rs.200/- in a similar manner. On personal verification with A2 as regards the modus operandi, A2 had admitted that he in collusion with A1 had inflated the lorry hire amounts from Rs.100/- to Rs.2000/- per load. A2 had given a sworn statement, which is duly notarised. Meanwhile, A1 having come to know about the enquiry had stopped attending the office and had sent his resignation letter dated 26.07.2000 stating that for personal reasons, he is unable to continue in service. On enquiries made with the T.Paul Prasada Rao, the said officer had informed the complainant that he was paid

Rs.10,000/- to maintain silence as regards the fraud played by A1 and A2. The said amount was handed over by the said Prasada Rao to Amalanathan. The said officer had also made a statement; and the same was addressed to the complainant. There was dishonest intention on the part of A1 and A2 to cheat the company by keeping the Head Office in dark. A1 has taken Rs.85,000/- from out of the companies funds. In the month of May 2000, he had rotated the amount for his personal gain by investing the same in a similar business which he is carrying on in competition to the business being carried on by the complainant's company. A2 had also confessed the said fact. A1 and A2 having criminally conspired to cheat the transport company had misappropriated the funds of the company and had defrauded the company and are therefore, liable for punishment under Section 420 and 408 read with 120-B and 477-A of the IPC.'

6. **(b)** Before the trial Court, PWs 1 to 7 were examined and exhibits P1 to P56 were marked.

7. The learned counsel for the petitioners/A1 and A2 had forcefully contended as follows: 'The judgments of the courts below are contrary to the weight of evidence and probabilities of the case. The judgments are based on presumptions and assumptions and not on any material evidence. The findings of guilt recorded for the offences punishable under Section 408 read with 120-B of the IPC and Section 477-A read with 120-B of the IPC are based only on presumptions and are not based on the evidence on record. Therefore, the said findings are illegal and illogical. The court below had failed to see that the prosecution had failed to adduce reliable and credible legal evidence and has failed to prove its case beyond all reasonable doubt. The court below ought to have seen that the evidence brought on record is not sufficient to hold that the ingredients of the penal provisions with which the accused are charged are satisfied and that the said penal provisions

are attracted to the case on hand. The convictions are based on imaginary grounds. The findings based on documentary evidence caused prejudice to the accused. The evidence was not appreciated in the right perspective. A1 is in no way concerned with the financial aspects and he is not the Finance Manager. PW1 was earlier not cross-examined due to lack of communication and change of counsel of A2. An application filed under Section 311 of the CrPC was allowed and PW1 was recalled. But, PW1 could not be produced by the prosecution as he is not available. Therefore, when PW1 could not be produced for cross-examination, his evidence cannot be put against A1 and A2 to base a conviction. The internal auditor PW6 had deposed that he had visited the Hyderabad office on 25.07.2000 and had inspected the records of the Unit along with PW2. During the said audit, no irregularities (both on financial and accounting aspects) were noticed. Therefore, the documents which were relied upon are of suspicious nature. When PW4 had testified that he is not the concerned person, the court below ought not to have considered exhibit P9 and ought to have held that it is a subsequently created document. The courts below ought to have seen that PW4 had admitted exhibit P10, the advance receipts, which contain no manipulations. The courts below ought to have seen that the original broker slip prepared by the concerned person accompanied with the lorry contract agreement submitted to the head office is not produced into the court and the person who prepared the said document is not examined.
Consideration of the evidence of PW4 saying that he has no enmity is not legal when his evidence is otherwise not credible. The courts below ought to have seen that exhibits P10, P11, P13 and P14 are based on the original broker slip, which is submitted to the head office and the same is not filed. The courts below ought to have seen that exhibit P9 is fabricated by PW2 with the assistance of PW4. The courts below ought to have seen that the immediate superior officer was PW1 and that A2 had worked under him on the instructions of PW4.'

8. On the other hand, the learned Public Prosecutor had submitted as under: 'The prosecution had adduced overwhelming evidence, both oral and documentary. The courts below had recorded well reasoned concurrent findings of fact after proper appreciation of oral and documentary evidence. A1 and A2 are the employees of the transport company is not in dispute. The evidence adduced established that A1 and A2 had indulged in inflation of hire charges while accounting hire charges in the account books and had misappropriated huge amounts by resorting to cheating, misappropriation and fraud. A2 had made a confessional statement before the superior officer when he came for verification of the accounts of the company. A1 having come to know that the superior officers had come to know of the irregularities had absented from duty and had submitted a resignation citing personal reasons. The conduct of A1 and A2 and the evidence brought on record by any standards is sufficient to base a conviction. Therefore, the court below was correct in arriving at a finding of guilt against the accused. None of the grounds urged in the revisions by the accused are valid and sufficient to interfere with the impugned judgment. The revisions are devoid of merit and are liable to be dismissed.'

9. Now, to find out as to whether the prosecution could bring home the guilt of the accused for the two offences for which the accused were found guilty, the evidence has to be looked into. PW1 is one Paul Prasad Rao. He is said to be the Branch Officer at the Branch, where A1 and A2 worked as Senior Branch Manager and Traffic-in-charge-cum-Cashier respectively since February 2000 and since 1994 respectively. His evidence is to the following effect: 'I know A1 and A2. A1 was the Senior Branch Manager, Secunderabad Branch. A2 was in-charge of traffic-cum-cashier. I was the authorized signatory for issuing cheques. There was deposit of some lakhs in the bank account of Secunderabad branch of the transport company. The Head Office used to send cheques to me on my name for the purpose of meeting the day-to-day administration. I was in the habit of getting cash from the bank and handing over the same to the cashier. The Cashier has to disburse money on vouchers and receipts. On 14.06.2000, A2 had asked me to draw money from the bank. As such, I withdrew some cash and had given the same to A2. On 14th I had verified the cash balance as per the cash sheet. There appeared a cash balance of Rs.75,000/- (approximately). Then, I had questioned A2 as to why he had asked for more money when money was available. He had failed to give a satisfactory answer. Then I had entertained a doubt over his integrity. I had demanded him to show me the cash physically for verification. He had refused to do so. I had advised A2 to reimburse the money to the company if he had used the money for a purpose other than the purpose for which it was entrusted to him and show the receipts within two or three days to my satisfaction. He did not comply. After my persistent persuasion, A2 had confessed that he had given Rs.75,000/- to A1 for his personal use. He did not recover the money from A1 and deposit the money to the credit of the company in spite of my advice. In the first week of July, A2 had given me Rs.10,000/- in order to keep me quiet. I had questioned the A2 as to what is the source for the money. He had informed that for the past several months, they [A1 and A2] have been inflating the amounts of lorry hire and making some money out of the transactions. After some enquiry, I am convinced that there was some problem. On 13.07.2000, I had reported the matter to the Head Office.'

Be it noted that by the time PW1 gave evidence, he had retired from service. In the cross-examination, he had admitted that A1 is of higher cadre than his cadre and that he had worked as Branch Manager till the age of superannuation and that A1 was junior to me. As already noted, as per the submissions of the learned counsel for the accused, this witness was not cross-examined on behalf of A2. A plain reading of the evidence of this witness would show that he simply made oral statements and his evidence is not supported by any documentary evidence though it is possible to produce documentary evidence, which is the best evidence. He did not produce the cash sheet, which he was said to have verified on 14.06.2000. He did not produce any record to show that he had withdrawn some cash on 14.06.2000 at the request of A2 and had given the same to A2. He could not even say as to how much amount was withdrawn on that day and was given to A2. He simply said that he made enquiries and came to know that there is some problem. But, he did not say as to with whom he made such enquiries. Admittedly, he was the person having cheque power. This witness had categorically stated that A1 is not in charge of either cash transaction and is also not directly dealing with the customers. According to his admission, he is not the person to speak about the inflation of rates. Therefore, his evidence as such does not show the complicity of the accused. **PW2** is the complainant, whose private complaint which was referred to the police set the criminal law into motion. He is the General Manager at Madras. According to him, after PW1 had informed about the problems in the branch office at Secunderabad, he and one Amalanathan (PW6), the Accounts Officer (Audit) had inspected the Secunderabad branch and examined the records as per the directions of the Managing Director of the company. He had testified to the following effect: 'A1 was our Sr. Branch Manager and A2 was Traffic In-charge in our Hyderabad branch. My organisation is having transport contract with leading companies like Britania Industries, Glaxo, Smith Kline etcetera. A1 was entrusted with the job of management of our Branch at Hyderabad. On 25.07.2000, I had visited Hyderabad Branch along with PW6 on the instructions of our MD for inspection and checking of the Branch at Hyderabad. We had specific information that the lorry hire was being inflated than the normal hire and the difference was being pocketed by A1 and A2. This type of fraud had taken place during the months of

May to July 2000. In our Branch about 1000 loads were moved. I went to the market and had examined a few truck suppliers. I have examined the organisers of Laxmi Sambasiva Transport, New Royal Roadways and Surya Transport. They had furnished me the details about actual lorry hire at which lorries were supplied. I do not remember the truck numbers. They (A1 and A2) have inflated rate from Rs.100/- to Rs.2000/- per truck. After noticing this I had approached Gopalapuram Police Station. They had refused to take the case on the ground that it is of civil nature. I had filed a private complaint. On 26.07.2000 onwards, A1 stopped coming to the office. Subsequently, he had sent a resignation letter citing personal problems as the reason for resignation. The original complaint is exhibit P1. On 15.07.2000, the truck bearing no.ADC 1694 was booked from Hyderabad to Ichapuram by A1 and A2 through Sri Lakshmi Sambasiva Transport and the cost shown was Rs.6,800/-; whereas the actual cost was Rs.6,600/-; and Rs.200/- was overcharged. Exhibit P2 is the broker memo of Sri Lakshmi Sambasiva Transport showing the actual hire was Rs.6,600/-. Exhibit P3 is the cash voucher of our company. Exhibit P4 is the copy of lorry challan agreement. Exhibit P5 is the copy of cash sheet of our Hyderabad branch dated 15.07.2000 showing the inflated amount. On 17.07.2000 truck no.ADM 3614 was hired from Sri Lakshmi Sambasiva Transport by A1 and A2 from Hyderabad to Ichapuram for Rs.6,800/- whereas the actual cost was Rs.6,600/-; and Rs.200/- was overcharged. Exhibit P6 is the cash voucher of our company. Exhibit P7 is copy of LCA no.434834. Exhibit P8 is the copy of cash sheet of our Hyderabad branch dated 17.7.2000 showing the inflated amount.' This witness similarly spoke of similar such transactions on 05.7.2000, 07.7.2000, 03.05.2000, 12.05.2000, 19.05.2000, 24.05.2000, 02.06.2000, 07.06.2000, 09.06.2000, 27.06.2000, 02.07.2000, 07.07.2000, 11.07.2000, 14.07.2000 and marked documents relevant to such transactions as exhibits P9 to P49. He had further testified as follows:

‘When I checked the transactions relating to misappropriation by the accused, Amalanathan (PW6) was present. We had prepared a list showing the entire misappropriated amount. Exhibit P51 is the list showing the truck numbers, the actual hire paid, the lorry hire accounted for and the difference misappropriated. I had also prepared a comprehensive list of the total amount misappropriated which accounted to Rs.1,62,300/-. Exhibit P52 is the said list. I have questioned A1-Arul Raj about the amount misappropriated. He had stopped attending the office and had sent a resignation letter on the following day, stating that he is resigning due to personal reasons. A-2 gave an affidavit to the Managing director stating therein that he is in collusion with A1 in inflating the lorry hire from Rs.100/- to Rs.2000/- per truck depending upon the destination and that they had misappropriated the amount. Our Branch Officer-Prasad Rao (PW1) also gave an affidavit stating that he is aware of the misappropriation and that A1 and A2 had tried to bribe him by giving Rs.10,000/- so that he will not disclose the facts to the management. Both the affidavits are given in my presence and they are notarised. Exhibit P53 is the notarised affidavit of A2 and exhibit P54 is the notarised affidavit of PW1.’ In the cross-examination of PW2, the following points were elicited. ‘I am working for the past 29 years. We have 40 branches all over India. In all the branches, we have conducted inspections with regard to hire charges. I have not filed any document related to the said inspections of our branches. I have filed the report of my inspection of the particular branch in question. Along with me one Amalanathan (PW6) had conducted the inspection. In our company, there are Finance Manager and Administrative Manager. Finance Manager is the Head of the Accounts Department. It is true that there is an agreement with our customers with regard to supply of trucks by us to them. I have not filed any such agreement before the court. Exhibits P2, P5, P8 are not prepared by our company. Exhibit P9 does not bear the signature of A1. Exhibits P12 and P15 are not prepared by our company, so also exhibit P19. It is true that exhibit P20 does not bear the signature of A1. Exhibit P22 is not prepared by our company. Exhibit P23 does not bear the signature of A1. Exhibit P25, P31 are prepared by our Branch at Hyderabad. Hyderabad branch is a part of our company. There is no provision under the Companies Act that a branch office of a particular company has to be registered under the Companies Act. There is no system of our customers giving acknowledgment for supply of truck by us. I am not sure whether exhibits P1 to P52 do not contain the signature of A1.' He had denied the following suggestions put to him in line with the defence. 'It is not true to say that A1 is not connected with the misappropriation in this case and all the statements in this connection are vague and that in order to get promotion from our Head Office, I fabricated the documents and had filed the false case against the accused. It is not true to say that there is a dispute with regard to promotion between PW1 and A1. It is not true to say that in order to remove A1 from service; this false case is fabricated in collusion with PW1. It is not true to say that I have not conducted any inspection of the branch in question. It is not true to say that exhibits P2, P12 and P15 are prepared by our company. It is not true to say that the documents marked by us do not indicate the hire charges. It is not true to say that I have not filed any resolution before the court to show that the Board of Directors had passed a resolution for filing the present complaint. It is not true to say that the documents in this case are fabricated by our Hyderabad branch inspecting officer at the instance of the Head Office.' In the cross-examination done for A2, the following points were elicited: 'Written orders to inspect the Hyderabad branch are not filed before the court. The inspection of the branch is an independent inspection as per the guidelines of management. Proceedings of the inspection have not been prepared. I have not filed any documents showing my inspection of Hyderabad branch. The cash accounting statement has to be sent on daily basis. Bank statement has to be sent once in a month. Provisional bank statement has to be sent once in a month. Bills outstanding with the customers have to be sent once in fifteen days. In that manner there are various procedures to be followed by the branch. The Manager and his Assistant have to send all the above reports. A2 is number two and Prasada Rao is number three in Hyderabad branch. The loading report is the document from the Branch addressed to the Head office with a copy to the destination branches furnishing details of the loads despatched. One original plus copies as per requirements of the destination branches will be prepared. In loading report the date of loading, consignor, consignee, truck number, LCA number, consignment note number, lorry hire, advance and destination will be mentioned. Hyderabad branch will prepare the loading report and sends the original to the Head Office and the copies to the respective branches; and a file copy will be retained in the branch. The enclosures of the loading reports are LCA, copy of consignment note and broker memo. The broker memo is a document, given in proof of supply of lorry, mentioning the destination, truck number, lorry hire and advance payable. The broker memo will be prepared by the concerned lorry broker. LCA document gives particulars of the lorry hire. The LCA will be prepared by the loading supervisor, who attends the loading as per the instructions of the Senior Branch Manager and the Traffic Incharge. I did not file any document that is the LCA prepared by the Supervisor on the instructions of the Branch Manager and the Traffic in-charge. The original documents which are said to be submitted by our Branch Office, Hyderabad to the Head Office are the documents like loading report and supervisor's report. The loading report and supervisor's report have not been filed into court as they are not relevant to this case. I cannot say whether the signature of A2 is present on exhibits P4, P7, P11, P14, P18, P21, P24, P27, P30, P33, P36, P39, P42, P44, P46 and P49 as I do not know his signature. I do not know who prepared the above documents. It is not true to say that the original broker slip has not been filed. Exhibit P9 is dated 27.07.2000. The broker slip can be prepared on the same day or subsequently which may extend to 10 to 20 days. Exhibit P5 does not bear the signature of the person who prepared it. So, also exhibit P12. Within two or three days after the loading, the report has to be submitted to the Head Office along with LCA and Supervisor's report; and the Broker's memo will also be enclosed with the loading report. The alleged inflation of the lorry hires took place during May, June, July 2000. The bills which are to be passed basing on the loading report are not sent for the audit. I have not filed the supervisor's report for the alleged inflation period. It is true that the loading slip and consolidated loading report are also not filed. I have stated to the police in my 161 CrPc statement that the total amount inflated by the accused is Rs.1,62,300/-. It is true that I have stated in my 161 CrPC statement that the amount inflated is Rs.1.5 lakhs. My statement was recorded after lodging the complaint. It is not true to suggest that exhibit P9 is prepared on my instructions. Exhibit P9 is the second document apart from the document, which was submitted to us along with the loading report from the Branch office. I have not filed the first broker's memo accompanying the loading report. Exhibit P37 is not an attested copy. There is no procedure of receiving notarised statement of the delinquent employee about the admissions made by him. It is true that the stamp papers of exhibits P53 and P54 are purchased from one vendor. There is no mention that the statements in the above documents are read over to the witness. It is not true to suggest that A2 did not give any affidavit, more particularly exhibit P53. I have not filed any receipt filed in token of amount paid by PW1 to the company. It is not true to say that since no amount was paid by PW1, I could not produce any document. Exhibit D1 is copy of order dated 12.10.95 issued by our MD with a copy marked to A1 and issued to PW1. It is true that PW1 was transferred from Guntur to Hyderabad as Branch Manager and was asked to take charge from A1 and by that time

A1 was the Branch Manager at Hyderabad. I do not remember who was having cheque issuing power at the time of my inspection of Hyderabad branch. I do not remember whether PW1 was the cheque issuing authority at that time. It is true that the documents produced before the court do not contain the signature of A2. It is not true that the voucher slip is the prime document for payment of the transportation charges. It is not true to say that to terrorise the accused and to deprive them of their terminal benefits, this case is filed. It is true that the accused are not paid the service benefits by our company so far. It is not true to say that the accused have not committed any offence and that the documents filed before the court are fabricated and this case is foisted falsely against the accused.' **PW3** is a Clerk-cum-Cashier in Laxmi Sambasiva Transport Office situated at Vanasthalipuram. He had testified that his transport office is having business relations with A.S.Transport company and that they used to provide trucks to them and on agreement of rates, place and distance, they used to send trucks to the complainant's company. According to his evidence, on 15.07.2000, A.S. Transport people asked a truck from the concerned Traffic Department of his transport office and that they had provided Truck bearing no.ADC 1694 for Ichapuram and that exhibit P2 is the loading memo, which was signed by their employee-Srinivas, but, he had discontinued his services with the transport office and left the job. He had further deposed that the hire was fixed at Rs.6,600/- and an advance of Rs.5,600/- was paid. He had stated that he is not the scribe of exhibit P2. In his cross-examination, he had stated that he is not aware of any documents and that there will be no written requisitions and that the transaction will be between the traffic in-charge of their company and company requiring the transport and that they are having two traffic in-charges in their company and that he will not follow the conversation of the traffic-in-charge with their customers and that he cannot say as to from which place to which place the lorry bearing no.ADC 1694 was taken and that generally, the loading slip will be given on the very same day otherwise one or two days. He had further deposed as under: "Exhibit P2 is dated 27.07.2000. Exhibit P3 is the receipt in token of advance in respect of the transaction dated 15.07.2000 pertaining to the lorry bearing No. ADC 1694. It discloses the total hire amount as Rs.6,800/- and the advance received at Rs.5,800/-. I cannot say whether I had stated to the police in my 161 CrPC statement as Cashier. I cannot say when exhibit P2 is prepared." **PW4** is the Assistant Clerk in Transport at Auto Nagar, Hyderabad. He testified as follows: "My transport office supplies lorries on hire to other transporters and that on 05.7.2000, our office had supplied a lorry bearing no.ADA 1339 to A.S. Transport for Cuttak on hire for an amount of Rs.9,000/-. After six to seven months, A.S. Transport office people came to me and enquired about the hire amount paid. Exhibit P9 bears my signature. I gave the details of exhibit P9 to the Managing Director of A.S.Transport on 27.07.2000. In exhibit P9 the details of the truck were also mentioned. Exhibit P10 is the receipt for advance amount paid which also bears my signature." When it was suggested to him that he does not know the facts of the case and he is deposing falsehood, he had denied the said suggestion. He had admitted that he does not know the person, who came to his office from A.S.Transport Company and had stated that he cannot clearly understand the meaning of English written matter. In the cross-examination done for A2, he had stated that there are 20 lorries in his office and that he does not know what are the lorries that were sent on hire on 05.7.2000 and that he also does not know as to how many lorries were booked on 06.07.2000 and that his duty is to collect the amount from the parties on the instructions of his Proprietor and that he bargains the rate of transport and that he knows about only the amount of contract. In his cross-examination, he had further deposed as follows: 'The hire charge in exhibit P10 is mentioned as Rs.9,500/-. I gave the advance receipt to A.S. Transport for Rs.7,500/- in advance. Exhibit

P10 was issued on 05.07.2000. It is true that on the date of booking of the lorry, the details of the transaction will be entered. On 27.07.2000 his Proprietor attended the office. It is true that he is not the scribe of exhibit P9. The contents of exhibit P9 are written by the A.S.Transport people and he had signed on it. Ledger copies showing the amounts contracted for each lorry were not taken by the police from our office. The contents of exhibit P10 were written by A.S. Transport people after I signed on it. It is not true to say that staff of A.S. Transport have not written after I signed on exhibit P10.' **PW5** is a chartered accountant practising at Chennai. He had testified that he was asked to audit the accounts and the transactions that took place in the months of May and June 2000 as the management got information that the affairs of the Hyderabad branch have not been carried out in the best interest of the company and that he was informed that an internal audit team was deputed to examine all the records like cash statements, vouchers and books and that they have also enquired the lorry brokers who used to supply the vehicles for transporting goods and that on the information supplied by the brokers, it was noticed that there was a difference amounting to Rs.1,62,300/- between the amount paid to the brokers as lorry hire and the amount debited in the books of account and that the same meant that there is inflation in lorry hire payments. Exhibit P55 is the certificate him dated 16.09.2000 given by him. In the cross-examination, he had stated that the details of the documents are not there in exhibit P55-certificate. He had also stated that he had examined only the material which was placed by the complainant company before him and that he came to Hyderabad at the instance of the complainant's company and that the expenses for coming from Chennai to Hyderabad and back were borne by the complainant's company. He had denied the suggestion that he had not issued exhibit P55 certificate. No cross-examination of this witness was done by the learned counsel for A1.

PW6, is the Manager (Operations) in A.S.Cargo Movers Private

Limited, Banglore. He had earlier worked as Assistant Manager [internal audit] in A.S. Transport, Chennai. He had testified that as an internal auditor, he used to visit all the branch offices for conducting internal audit and that he had visited the Hyderabad Branch on 27.05.2000 along with his General Manager and had conducted the internal audit of the Hyderabad Branch and that he had found some discrepancies in lorry hire and inflation of Rs.100/- to Rs.200/- per truck and that he had verified the statement of six months and made a statement and submitted the same to the General Manager and that he had observed a total difference of Rs.1,62,300/-. Exhibit P51 is the statement prepared by him. In the cross-examination done for A2, he had stated that he had learnt that there are discrepancies in the account and that he had stayed in Hyderabad for a week and that the statement under exhibit P51 is prepared by him at the end of his visit, after collecting all the details. He had admitted that the details of work of his visit to various offices and also the nature of records verified by him during the period are not mentioned in his statement. He had also admitted that the details of the custodians of the records verified by him are also not mentioned in the statement. He had also stated that he had not filed the itinerary pertaining to the verification of the accounts. When it was suggested to him that he had not visited Hyderabad branch and had not inspected the branch, he had denied the said suggestion. In his further cross-examination, it is elicited that PW1 was the office in charge of the Hyderabad branch and that his designation is next to A1. He had further deposed as under: “It is true that in his routine duties, A2 has to follow the instructions of A1 and PW1. It is true that PW1 is the cheque issuing authority in Hyderabad. Without any cheque issued by PW1 no expenditure will be made in Hyderabad Branch. On the instructions and data given by A1 and A2, who receive the requirements from various transport companies, PW1 will issue cheques to the respective transport companies. [Again he had stated that the cheques will be encashed by the Cashier of the branch and the amount in cash will be given to the respective transport companies.] It is true that exhibit P51 does not contain the signature of anybody." He had denied the following suggestions: "It is not true to say that I have not prepared exhibit P51 statement and that I am deposing false at the instance of the complainant company." This witness was also not cross-examined by the learned counsel for A1. PW7 is the police officer who had investigated into the crime and laid charge sheet.

10. Thus, I have carefully gone through the entire evidence and analysed and examined the evidence. The evidence on record brings to the fore the following material aspects: "The complainant/transport company which is engaged in transport business hires lorries from various brokers and lorry supply offices for transporting goods of their customers to various places or destinations in the country. The Hyderabad branch was headed by A1, the Senior Branch Manager and A2, the Traffic incharge-cum-Cashier. PW1 is the Branch Officer of the company. At the request of A2, he had withdrawn from the Bank some cash and gave it to the accused in June 2000. However, on verification of cash sheet he had found that there is a cash of Rs.75,000/-. Therefore, he had questioned A2 as to why he had asked for withdrawal of cash when cash is available. On his insistence, A2 had stated to him that he gave that amount to A1 for his personal use. Later, neither A1 nor A2 made good the money by repaying it to the company. He had further questioned A2, when a sum of Rs.10,000/- was given to him (PW1) to keep him quiet and make him not to inform about the acts of A1 and A2 to the head office. On that A2 had confessed that they are in the habit of inflating the lorry hire charges and are making money from out of the said transactions. Therefore, having sensed problem PW1 had informed the matter to the head office. On the instructions of the Managing Director, PWs 2 and 6 had inspected the Branch at

Hyderabad. The inspection revealed that A1 and A2 were inflating the lorry hire charges from Rs.100/- to Rs.2,000/- per truck depending upon the destination etcetera and were pocketing the difference amount between the inflated amount being accounted for in the accounts of the company and the actual hire amount that was being paid to the lorry supplier. Having examined several such transactions, which were spoken to in the evidence of PW2, exhibit P51 list showing the transactions related to inflated hire amounts of the lorries and the misappropriation was prepared. A comprehensive list under exhibit P52 showing the misappropriated amount was also prepared. A2 gave a confessional statement in the form of a notarised affidavit, which is exhibit P53, wherein he had admitted his complicity in the matter. Having come to know that verification is being done, A1 did not report to duties and later sent his resignation citing personal reasons as the reason for resignation. PW1 had also given an affidavit under exhibit P54, which is notarised. In the evidence of PW2, the further documents related to the inflated hire charges and pertaining to the transactions done by A1 and A2 during the relevant period are also exhibited.

11. Though there are several transactions which are adverted to in the evidence of PW2, it is necessary to refer to some such transactions to test the veracity of the prosecution evidence. Coming to the transaction on 05.07.2000 as spoken to by PW2, a truck bearing No.OAU 1339 was booked from Hyderabad to Cuttak through New Royal Road Ways (lorry suppliers) and the actual hire charge was Rs.9,000/- but, an inflated hire charge of Rs.9,500/- was shown in the accounts of the company. Exhibit P9 is the broker memo showing the actual hire charge payable to the supplier. Exhibit P10 is the cash voucher of the company showing the inflated amount as Rs.9,500/-. Exhibit P11 is the copy of the LCA (Lorry Contract Agreement) of the complainant's company in respect of the above said lorry hired from Hyderabad to

Cuttak. Even in this document, the total hire amount was shown as Rs.9,500/-. Similarly, coming to the transaction on 05.07.2000, as spoken to by PW2, a truck bearing No.ADC 1694 was booked from Hyderabad to Ichapuram and the supplier of the said truck is one Sri Lakshmi Sambasiva Transport. The actual hire charge was Rs.6,600/- whereas the hire amount accounted for is Rs.6,800/- after inflating the hire charge by Rs.200/-. Exhibit P2 is the broker memo of the said transporter showing the actual hire charge of Rs.6,600/-. Exhibit P3 is the cash voucher of the complainant company. Exhibit P4 is the LCA showing the total hire charge as Rs.6,800/-. Exhibit P5 is the copy of the cash sheet of the company showing the relevant transaction of hiring of the said lorry from Hyderabad to Ichapuram. Coming to another transaction which was also spoken to by PW2, on 17.07.2000, a truck bearing No.ADM 3614 was hired from Sri Lakshmi Sambasiva Transport from Hyderabad to Ichapuram for an actual hire charge of Rs.6,600/-, whereas the inflated hire charge of Rs.6,800/- is shown in the records. Exhibit P6 is the cash voucher of the company and exhibit P7 is the LCA and exhibit P8 is the relevant copy of the cash sheet of the company dated 17.07.2000. Thus, the evidence of PW2 coupled with the documentary evidence sufficiently established the complicity of the accused for the offences with which they are charged. There is no need to dilate and further discuss each and every transaction, as all the transactions are substantiated by the documentary evidence and are proved through the direct evidence of PW2. His evidence is well-corroborated by the evidence of PW6-Amalanathan, who had assisted him in the inspection of the Branch. The chartered accountant who was examined as PW5 was not cross-examined by the counsel for A1. PW3 is the Clerk-cum-Cashier of Sri Lakshmi Sambasiva Transport at the relevant time. He also spoke about the actual hire which was fixed and the advance paid. PW4 is the Assistant Clerk in a transport company which had supplied lorry bearing No.ADA 1339 to the complainant's transport company on 05.07.2000. In his evidence, he proved exhibit P9, which bears his signature and he had stated that he had given details of the transactions to the Managing Director of the complainant's company. The documents exhibited and proved are by themselves sufficient and therefore, non-filing of the other documents, if any, from the Head Office is not a ground to discard the evidence brought on record. As a sequel to the discussion supra, it can safely be held that the evidence on record sufficiently established the complicity of the accused beyond all reasonable doubt. Hence, this court is of the well-considered view that the evidence brought on record is sufficient to hold that the prosecution had proved its case as required under law, by adducing the required standard of evidence. Having gone through the judgments of the court below, this court is satisfied that the courts below have considered the facts accurately and the evidence in proper perspective and that the courts below had rightly found the accused guilty of the offences punishable under Sections 408 read with 120-B and 477-A read with 120-B of the IPC. Hence, the points are accordingly answered in favour of the prosecution and against the accused.

12. Coming to the quantum of sentence, the learned counsel for the petitioners/accused had alternately contended that the sentence of imprisonment of three months is on a high side and that the accused are poor people and that A1 having lost his job is not having any avocation and that he is by now aged about 50 years and that he is not keeping good health and that therefore, a lenient view may be taken and the sentence may be reduced to one already undergone. Insofar as A2, it is submitted that he is married and that he is now aged about 48 years and that he is having wife and children who are dependent upon him and that he is the sole bread winner of the family and therefore, a lenient view may be taken and the sentence may be reduced to one already undergone. It is also represented that the accused are in prison for a period of almost one month. Taking into consideration the extenuating and mitigating circumstances and the explanatory statement offered on behalf of the accused, this court is of the well-considered view that the sentences can be modified and reduced to the sentences already undergone respectively by A1 and A2, while confirming the fine amounts imposed for both the offences by the court below.

13. In the result, the Criminal Revision Cases are dismissed. However, the substantive sentences of imprisonment imposed on the petitioners are modified and reduced to the sentences already undergone respectively by them while maintaining the fine amounts imposed. It is submitted that the fine amounts are already paid. If that is so, the bail bonds of the petitioners/A1 and A2 shall stand cancelled after further appeal/revision time is over.

Miscellaneous petitions, pending if any, in these revisions shall stand closed.

M. SEETHARAMA MURTI, J

19th January 2015
RAR