THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Revision Case No.73 of 2008

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 ('the CrPC' for brevity) by the petitioner/accused is directed against the judgement dated 24.01.2008 of the learned II Additional Sessions Judge, East Godavari at Amalapuram passed in Crl.A.No.163 of 2006.

1. **(a)** By the judgment dated 23.06.2006 passed in CC.No.341 of 2002, the learned Additional Judicial Magistrate of First Class, Amalapuram of East Godavari District found the accused guilty of the following offences and imposed sentences mentioned infra.

S. No.	Section/s of law of the Offence	Substantive sentence of Imprisonment	Fine with In default sentence
1.	409 IPC	RI for three years	Rs.2000/- IDSI three months
2.	467 IPC	RI for one year	Rs.2,000/- IDSI two months
3.	477A IPC	RI for one year	Rs.1,000/- IDSI one month

Though the accused was charged and tried for the offence punishable under Section 420 of the IPC also, the learned trial Judge found the accused not guilty of the said offence for the reason that the accused cannot be convicted of both the offences punishable under the said Section and Section 409 of the IPC. While allowing in part the above mentioned appeal preferred by the accused, the learned Additional Sessions Judge had set aside the conviction of the accused for the offence punishable under Section 467 of the IPC but confirmed the convictions recorded and sentences imposed on the accused for the offences punishable under Sections 409 and 477A of the IPC.

2. I have heard the submissions of the learned counsel for the petitioner/Accused and the learned Additional Public Prosecutor appearing for the respondent/State. I have perused the material record.

3. Now the points for determination are: -

1. **Whether the prosecution was successful in bringing home the guilt of the accused, beyond all reasonable doubt, for the offences punishable under Sections 409 and 477A of the IPC?**
2. **Whether the accused had made out valid and sufficient grounds for his acquittal of the said offences? And, if so, whether the judgment impugned is liable to be set aside?**

4. POINTS:

4. (a) The case of the prosecution including the gravemen of the charge, in brief, is this: - 'The accused was at the relevant time an employee of the State Bank of India and had worked in Komarigiripatnam branch from 07.05.1990, the date of his appointment, on compassionate grounds consequent on the death of his father, who had worked in that branch of the bank as Sentry/Guard. The accused who belongs to the locality and having worked in the same branch continuously for over ten years had developed acquaintances with his colleagues, depositors and public. There used to be a regular branch manager for the said branch prior to January 2000. But, he was later suspended on account of certain irregularities; and, PW4 was placed in-charge of the said branch. PW4 had concentrated on his field work more than on the internal day to day affairs and administration of the said branch of the bank. For lack of sufficient staff pattern, the work in the branch was used to be carried on by way of mutual understanding rather than allocation of work by fixing responsibilities. The accused used to attend cash counter and write the ledger in assisting PW2, the clerk-cum-cashier's assistant. The accused took advantage of his position as assistant for cash and accounts and the opportunity of ledger writing and also his acquaintance with the depositors and the further fact that the branch manager was concentrating on field work. He was receiving amounts from the depositors and was making entries in the passbooks without entering the receipts on the scrolls. As and when a depositor used to come for withdrawal, he used to inflate the amount in the ledger by entering the amount on a proxy date and then used to pay the amount that was being withdrawn. He used to make initials of other members of the staff also for the said purpose in the ledger. He had transferred an amount of Rs.30,000/- from the account of G.Kalavathi to a joint account of his and his mother and had appropriated that amount for himself. Without posting any credit entries in the passbooks he used to issue the counter foils and pay-in-slips to the depositors like BVC Engineering College. All these transactions had taken place between the period from January 2002 to May 2002. On 01.05.2002, PW1 took charge as the branch manager. On receipt of a letter from SBI, Kothapet branch regarding inordinate delay in DD purchases he had entertained a suspicion and had, therefore, verified the accounts. PW1 had noticed that the accused had misappropriated an amount of Rs.4,27,510/-. On enquiries, the accused made a confession in writing that he had misappropriated the amount and had surrendered the pay-in-slips etcetera to PW1. He had paid away the misappropriated amount to the bank in two spells. PW1 gave a report to the zonal office at Visakhapatnam. PW7, the Assistant General Manager of the Zonal Office concerned had appointed PW5, the Chief Manager (credit) as investigating officer for verification of the accounts of the branch. PW5 with the assistance of two more officers had verified the records of the Komaragiripatnam branch of the SBI in the presence of the accused on 16.05.2002 and 17.05.2002 and had confirmed that the accused had misappropriated the amounts of the bank to a tune of Rs.4,27,510/-. He had submitted a report to PW7 accordingly. The accused was placed under suspension. And, PW1 was directed to launch a criminal proceeding against the accused. Therefore, PW1 gave a report to the SHO, Allavaram Police Station. Pursuant to the said report, the subject crime was registered and investigated into and the charge sheet was laid after the completion of the investigation.'

4. (b) During the course of the trial, the following witnesses were examined. PW1 was the Branch Manager who took charge of the Komaragiripatnam branch of the SBI on 01.05.2002. He had lodged with the police the report dated 11.06.2002 under exhibit P22. PW2 worked as the Assistant of the said branch. PW3 was the Accountant of the said branch. PW4 was the Assistant Manager of the said Branch. PW5 was the officer who was appointed by PW7 to investigate into the matter concerning the branch. PW6 was the Special Assistant of the said Branch. PW7 was the officer of the zonal office, Visakhapatnam who had appointed PW5 as investigating officer to investigate into the matter. Further PWs8 to 13 are said to be the customers/depositors of the bank. PW14 is the scientific expert of the FSL, Hyderabad. PW15 was the investigating officer who had registered the crime and investigated into the case and laid the charge sheet.

4. (c) The learned counsel for the petitioner/accused had contended as follows: - 'The trial court did not record a conviction against the accused for the offence punishable under Section 420 of the IPC. The court below found the accused not guilty of the offence punishable under Section 467 of the IPC. Therefore, when the court below found that the evidence on record is not sufficient to safely base a conviction for the offence punishable under Section 467 of the IPC, it ought not to have relied upon the very same evidence to convict the accused for the offences punishable under Sections 409 and 477A of the IPC. The Courts below erred in coming to a conclusion that there was entrustment of the cash to the accused and that the accused has committed the offence of breach of trust. None of the account holders/customers of the branch have stated in their evidence that cheques and drafts were given to the accused for being credited to their respective accounts. None of the account holders/customers had supported the case of the prosecution. Therefore, the alleged entrustment of either the monies or the encashable instruments to the accused by the customers is not proved. The evidence of PW1 shows that only one transaction had occurred during his tenure and that it was a genuine transaction. All the remaining transactions had allegedly occurred when PW4 was the branch manager. He did not speak against the accused in his evidence. On the other hand, he, as branch manager, has been sending monthly statements i.e., BMMC statements to the higher authorities; and, while sending such statements he had found that everything was correct. Therefore, during his tenure no misappropriation or irregularities in maintenance of the scrolls and the ledgers was noticed by him. He had stated that he did not come across any corrections in the ledgers and that he did not receive any complaints from the public in regard to misappropriation by the accused. PW1 had admitted in his cross examination that exhibit P19-Demand Draft for a sum of Rs.30,000/- was credited to the account of G.Kalavathi on 03.04.2002 itself i.e., on the very date of its presentation. Therefore, the alleged case that the amount was credited to the joint account of the accused and his mother was not established. The alleged confessional statement of the accused was not proved by sending the same to an expert and as required under law though the accused had denied the same. The expert opinion in this case cannot be looked into as the specimens were collected from the accused during investigation and under the supervision of the Magistrate. The courts below had erred in recording a finding that the accused had indulged in falsification of accounts though there is no valid and credible evidence to support such a finding. No valid and sustainable reasons were assigned in support of the findings that the accused is guilty of the offences punishable under Sections 409 and 477A of the IPC. The statements of the witnesses during course of investigation were admittedly recorded in Telugu by the investigating officer. The said original statements of the witnesses were not produced into court. However, by substitution, the typed English versions of the said statements were produced into the court. The non production of the original/manuscript statements of the witnesses had caused prejudice to the accused. The same is fatal to the case of the prosecution. It is alleged that the accused has credited back the amounts which were misappropriated. To establish the same, the sundry deposit account is not produced. The non production of the same is fatal to the case of the prosecution. The courts below had erroneously held that the accused was responsible for the alterations of the dates and the corrections in the books of the bank while in fact, there is no evidence in that regard. The courts below ought to have seen that the entries in the records are not by themselves evidence and such evidence cannot be put against the accused. The courts below had relied upon the portions of the evidence brought on record in regard to the corrections allegedly found in the records without putting the said incriminating circumstances in the evidence to the accused in his examination under Section 313 of the CrPC. The prosecution had failed to adduce the required standard of evidence and had failed to bring home the charges against the accused beyond all reasonable doubt.'

4. (d) Per contra, the learned Additional Public Prosecutor had contended that the Courts below have appreciated the evidence brought on record by the prosecution in proper perspective and had recorded concurrent findings of fact after carefully evaluating the evidence and that, therefore, the well reasoned findings in the well considered judgments of the Courts below do not call for any interference and that there is no merit in any one of the contentions raised in this revision by the accused and that this revision case is devoid of merit and is liable to be dismissed. He had emphasised on the aspects that the accused gave a confessional statement and had also paid the misappropriated amount in two instalments and had submitted that the prosecution had established not only the entrustment but also the misappropriation by examining the responsible officers of the bank and by proving the corrections of the dates and the entries in the records of the branch of the bank.

4. (e) Now, it is necessary to carefully examine the evidence brought on record to find out as to whether the prosecution could bring home the guilt of the accused beyond all reasonable doubt and as required under law insofar as the two offences of which the accused was found guilty by the court below.

4. (f) PW1, on whose report under exhibit P22 the subject crime was registered and the criminal law was set in motion, had took charge of the branch on 01.05.2002 i.e., a few days before the alleged acts of misappropriation and breach of trust said to have been committed by the accused were detected by him. Even according to the admitted case of the prosecution, the transactions took place between January 2002 and May 2002. As per the evidence brought on record, PW1 had received a letter dated 07.05.2002 under exhibit P1 from SBI, Kothapeta branch wherein it was pointed out that there were delays in the matter of despatches of demand drafts. In the said letter, it is stated to the following effect: - 'Two Demand Drafts which were purchased in the months of December 2001 and January 2002 from the branch of Komarigiripatnam were received by the complainant branch on 03.05.2002 and 07.05.2002 in Seriatum and that on the dates of the purchases of these two demand drafts there were no balances in the accounts and the amounts were remitted into the accounts in April 2002 only and that the instruments were honoured since the balances were available in the said accounts as on the dates of the receipt of the instruments at the complainant branch and that on the dates of purchases of any instruments like DDs sufficient balances must be there in the accounts and that what was observed was quite contrary to the rules and regulations of the bank.' In the said letter under exhibit P1, it was further stated that the complainant branch is unable to understand why the instruments were not despatched by the Komarigiripatnam branch to the complainant branch immediately after purchases of the instruments and it was pointed out that the instrument bearing the date 22.01.2002 was despatched to the complainant branch on 06.05.2002 and was received by it on 07.05.2002. On receipt of exhibit P1 letter, PW1 having entertained a suspicion had made verification. PW1 had testified to the following effect: –'The said delay had occurred due to the negligence of the accused as the accused has taken the cheques in his custody and has not sent the same to the SBI Kothapeta within time. He had found alteration of balance in A/c No.AG 2602. Then he had verified the ledger also. There are three date alterations i.e.,09.04.2002, 23.04.2002 and 24.04.2002 in the account No.AG 2602. The dates 23.04.2002 and 24.04.2002 were struck off. He had verified the receipt vouchers of the above dates. There is no credit voucher for Rs.15,000/- on the above dates. On the same day i.e., 11.05.2002 he had proceeded to the house of the account holder of the account No.AG 2602 and had verified the passbook of the account holder Srinivasa Rao and found a credit entry on 09.04.2002 for Rs.15,000/- which was made by the accused with his initials. He had verified the cashier's receipts scroll; but, there was no voucher for Rs.15,000/- or entry for Rs.15,000/- on 09.04.2002. On 09.04.2002 the accused made entries in cashier's receipts scroll with his hand writing. Having suspected that the accused had misappropriated the money, PW1 had questioned the accused. The accused had confessed that he had used the said sum of Rs.15,000/- for his own purpose and that on 30.04.2002 he had credited the same into the account of the account holder-Srinivasa Rao. On the next working day the accused had availed leave. On 13.05.2002 at about 06:30 PM the accused came to the bank and had voluntarily confessed that he had committed misappropriation of Rs.4,27,510/- and that he is ready to pay Rs.3 lakhs. Immediately Rs.3 lakhs was credited in the sundry deposit accounts as the business hours were already closed on 13.05.2002. On 14.05.2002 the accused had submitted 21 receipt vouchers by which he had committed the misappropriation. PW1 had verified the vouchers and ledgers and had found that there are no entries on the particular dates of the said vouchers. The said 21 receipts were taken by the accused from the customers. On 14.05.2002 the accused had paid Rs.97,510/- and he (PW1) had credited the same into sundry deposit account. The remaining Rs.30,000/- was credited in three accounts; out of which, the accused had credited Rs.15,000/- into A/c.No.2602 on 30.04.2002. The accused gave a statement in his own handwriting stating as to on what accounts he had committed misappropriation. PW1 and PW3 had attested the said letter. PW1 had reported the matter to the controlling authority at Visakhapatnam i.e., PW7. PW7 had sent to the branch, a team headed by PW7 for investigation. The investigation team had done the investigation on 16.05.2002 and 17.05.2002 and had prepared a report and submitted the same to the disciplinary authority. The accused was suspended; and PW1 had filed a report with the police on the instructions of the controlling authority.'

4. **(g)** In his further examination-in-chief he had exhibited the following documents: 'Exhibit P2 is the pass book, voucher, cash receipts scroll and ledger sheet of Account bearing No. AG 2602 of K.V.Srinivasa Rao. Exhibit P3 consists of three receipt vouchers, three cashier receipt scrolls and pass book, ledger sheet of A/c.No.P.11/1682. Exhibit P4 consists of document relating to

A/c.No.AG-15/2495. Exhibit P5 consists of documents relating to A/c.No.AG 8/1053 of R.Satyanarayana Raju. Exhibit P6 consists of documents relating to A/c.No.AG 17/2819 of R.Satyanarayana. Exhibit P7 consists of documents relating to A/c.No.AG1/42 of K.Satyanarayana. Exhibit P8 consists of document relating to A/.c.No.P2/187 of P.Subba Rao. Exhibit P9 consists of documents relating to A/c.No.P11/1709 of A.Suseela Devi. Exhibit P10 consists of documents relating to A/c.No.P-1/6 of B.Surynarayana Murthy (two vouchers, two cash receipts scrolls, pass book, ledger sheet). Exhibit P11 consists of documents relating to A/c.No.AG13/1976 of K. Babuji. Exhibit P12 consists of documents relating to A/c.No.p-7/1006 of MPR Vittal. Exhibit P13 consists of documents relating to A/c.No.17/2863 of A.Suri Babu. Exhibit P14 consists of documents relating to A/c.No.C & I-231 of BVC Engineering college. Exhibit P15 consists of documents relating to A/c.No.P-331 by name VVSLN Mani. Exhibit P16 consists of documents relating to A/c.No.AG-8/1122 of A. Sundara Rao. Exhibit P17 consists of documents relating to A/c.No.P-14/217 of S.Trimurthulu. Exhibit P18 consists of documents relating to A/c.No.K-285 of N. Venkata Swamy Naidu (cashier receipt scroll was in exhibit P2 i.e., A/c.No.2606). Exhibit P19 consists of documents relating to A/c.No.291 of G.Kalavathi (DD bearing No.981592 for Rs.30,000/-, credit voucher, credit slip, pass book, ledger sheet). Exhibit P20 is the letter said to have been executed by accused with his own handwriting. Exhibit P21 is the investigation report of PW5. Exhibit P22 is the report given by PW1.'

4. **(h)** In his cross examination, the following points were elicited. 'It is true that there are two different types of scrolls. One is cashier's receipt scroll and the other is transfer scroll. The third type is payments scroll. The cashier's scroll deals with cash transactions. It is true that DD purchases, A/c payee cheques and drafts are covered by transfer scroll. It is true that all transactions from out of exhibits P2, P3, P5 to P18 and P19 had taken place before I had assumed charge. It is true that outstanding balance as per ledger is Rs.34,688/- and it is correct as per exhibit P4. It is true that as per the rules and procedure, the SB account ledgers are to be verified by the supervising authority once in every month and that after verification, he has to send every month Branch Manager's Monthly Certificate (BMMC) to the higher officials. It is true that for the months from January 2002 to the end of April 2002 BMMC reports were sent to the higher officials. It is true that in case of DD purchases, the purchasers should first approach the accountant or the Manager concerned and he has to acknowledge the instrument and put his initial on the instrument and then the customer has to approach the accountant with that instrument and that the same will be handed over to the clerk concerned and that on that the DD purchase clerk prepares the schedule and the commission by making note of all the facts and sends back the same to the accountant and then the accountant verifies the vouchers prepared by the clerk and then the accountant retains the instrument along with schedule with him and sends the voucher after thorough verification and transfers the same to scroll clerk and that then he in turn makes an entry in the scroll and that the dispatch clerk as per the instructions of the accountant has to dispatch the same after making an entry in the register. It is true that exhibit P1 does not show that the accused had negotiated the two DDs in the months of December 2001 and January 2002. I do not remember if I had stated before the police that the accused negotiated two DDs in December 2001 and January 2002. So, I cannot contradict the suggestion that I had not stated before the police about those transactions. It is true that I did not state before police that D.D. purchase means the accused taken the advance payment at Komaragiripatnam and the same has to be debited at Kothapeta and the said delay was occurred due to the negligence of accused as accused has taken the said cheque in his custody and he has not sent to the SBI

Kothapeta within time. [reproduced verbatim]. I do not remember if I have not stated before the police that the said cheque was credited to the account of his mother. It is true that I did not state before police that there are alterations of dates and those days are struck off i.e., 09.04.2002, 23.04.2002, 24.04.2002 in the A/c.No.AG 2602 (exhibit P2) [reproduced verbatim]. I do not remember if I have not stated before police that there is no credit voucher for Rs.15,000/- on the above dates in exhibit P2 and as such, I cannot deny the suggestion. As per the ledger in exhibit P2 account, Sri K. Srinivasa Rao has withdrawn Rs.23,000/- and the balance of Rs.8,649/- by 21.03.2002 (i.e., earlier to 09.04.2002) in exhibit P2 is correct [reproduced verbatim]. 'It is true that in ledger in exhibit P2 the credit date 30.04.2002 pertaining to K.V.Subrahmanyam. It is true that voucher in exhibit P2 is in the name of K.V.Subrahmanyam. The witness adds that A/c.No. is 2602' [reproduced verbatim]. It is not true to suggest that because of a mistanken entry of credit of RS.15,000/- in ledger the balance was shown as Rs.23,649/- and after realisation of credit the Rs.15,000/- is struck off and balance is shown as Rs.8,649/-. As per the ledger the outstanding balance is Rs.8,649/- as on 30.04.2002. It is true that I did not state before the police that I called the accused and asked him about the entries in exhibit P2 and he confessed that he used Rs.15,000/- for his own purpose and that on 30.04.2002 the accused had credited the same in the account bearing A/c.No.AG 2602 of K.V Srinivasa Rao. I do not remember if I had stated before the police that I had verified the passbook of K.V.Srinivasa Rao and I had found the initials of the accused in regard to the credit entry on 09.04.2002. It is true that I did not state to the police that on my enquiry the accused asked for one day time and that on the next day i.e., on Monday he went on leave and that on 13.05.2002 the accused came to the bank and he had confessed that he had committed misappropriation of Rs.4,27,510/- and he is ready to pay Rs.3,00,000/- and that immediately he had credited Rs.3 lakhs in

sundry deposit account. It is true that I did not state before the police that on 14.05.2002 the accused had handed over 21 receipts. There are entries in the ledgers showing the entries on the dates of 21 receipts (vouchers). The witness adds that the entries are fabricated entries. It is true that I was not working in SBI, Komaragiripatnam on the dates of above transactions except on 06.05.2002. It is true that I did not state before the police that the accused while handing over 21 receipt vouchers had stated before me that those receipts are taken by him from the customers. Those receipts were handed over by the accused to me from his bag in the bank. It is true that I did not state before the police or in my chief examination that accused handed over 21 receipts from his personal bag. It is not true to suggest that I did not state before the police that the accused had paid Rs.97,510/- on 14.05.2002 and I had credited the same in the sundry deposit. It is true that I did not state before police that the remaining Rs.30,000/- was paid by accused in three accounts in which Rs.15,000/- was credited in A/c.No.2602
[reproduced verbatim]. There are transactions on 06.04.2002 and 03.05.2002 and the correct balance is Rs.51,410/-. I do not remember if I had not stated before the police that the accused had misappropriated the DD for Rs.30,000/- in the name of Kalavathi and it was credited in the joint A/c.No.Staff 47. He had denied the suggestions which are given in line with the defence of the accused.

4. **(i)** Thus, a reading of the evidence of PW1 shows that he did not state any material aspects before the police when his statement was recorded and that therefore, his version before the court is an improvised version on the material aspects.

4. **(j)** **PW2** did not state anything incriminating against the accused and he had only stated that PW1 told him about the receiving of exhibit P1 letter from Kothapet branch and that one week later he came to know that the accused was suspended by the authorities but he does not know the reasons for suspension. He had stated that the accused is a secretary of the clerks union in the year 2002 and that there are differences between two unions in the bank affairs. He had also stated that his higher officials had never enquired with him about the matter. **PW3** who had earlier worked in the Komaragiripatnam branch of the SBI from October 2001 to September 2002 had stated that his primary duty is book keeping, security and management of accounts and that earlier to PW1 one B.P. Sastry was the manager and that the said Manager was suspended and that later he had acted as Manager from December 2002 to February 2002. **PW4** who had earlier worked on deputation as officiating Branch Manager, SBI, Komaragiripatnam branch from 01.02.2002 to 15.04.2002 had deposed that during that time he was the supervising authority of all the transactions of the branch of the bank and that he was supposed to verify every proceeding on the same day evening. He had further testified that the accused was doing cashier's duties and SB balancing and day book maintenance during his tenure. According to him, PW2 and the accused used to maintain the day book and exhibit P19 was credited into the account of K.S.Veni, the mother of the accused, in stead of A/c.No.291 and that he cannot say the reason for the same. He had categorically stated in his cross examination that during his tenure he did not receive any complaints from the public in regard to misappropriation and that he did not come across any corrections in the ledgers in regard to exhibit P19 and that any corrections have not come to his notice and that during his tenure he had sent the Branch Manager's Monthly Certificates to the higher authorities and that everything was correct and OK. **PW5** is the officer who had investigated into the affairs of the branch on the instructions of PW7. He had worked as Chief Manager of the Zonal Office at the relevant time. He had testified that on the instructions of PW7 he had conducted a primary enquiry regarding misappropriation of cash receipts to an extent of Rs.3,97,000/- and odd and DD purchasing irregularities in a sum of

Rs.30,000/- committed by the accused who was working at SBI Komaragiripatnam in cash and accounts section and that he was assisted by U. Suryanarayana Manager, Disciplinary Cell, Zonal Office, Visakhapantam and Y.T.Nandana, Dy.Manager in Zonal Office, Vizag. He further deposed as follows: "In the branch, we were given admission letter and vouchers alleged to have been surrendered by the accused. We have privately asked the accused and not in the presence of PW1 as to whether he had given the admission letter voluntarily and whether the contents of the same are true. The accused admitted and had accepted the admission letter voluntarily. In the letter given by the accused i.e., exhibit P20 there were two types of entries; out of 18 entries 17 are cash receipts and another is a credit on account of the draft. There are also three other entries. The modus operandi of misappropriation was this: 'While the accused was the cashier, he was receiving cash from customers during the period from January 2002 to May 2002 and in the above mentioned cash receipts matter he did not account for the monies received to the customers' accounts and had instead pocketed the money.' I had scrutinized the cashier's scroll, ledger sheet, day books etcetera. In the specific case of drafts mentioned as DD for Rs.30,000/- with payee name as G.Kalavathi [A/c.No.291], which was presented to the bank, the credit voucher was substituted in the name of K.S Veni i.e., the mother of the accused having joint Ac/No. Staff 2/47. The details of the entire investigation are stated in my report-exhibit P21." In his cross examination, the following points were elicited. 'I have not examined any customers who were said to have been defrauded. I have not taken written statement from the accused. PW1 was present at the time of investigation. PW1 had handed over to me all the documents and the vouchers which were referred to in my report-exhibit P21. I did not state before the police that I have seen the letter exhibit P20 and that I had questioned the accused and that the accused had admitted before me that exhibit P21 report was given to the bank authorities. I did not conduct any private enquiry with the accused. It is not true to say that I did not state before police that DD worth Rs.30,000/- in the name of G.Kalavathi was manipulated by the accused in his mother's account. It is true that in exhibit P19 an amount of Rs.30,000/- was credited in her account i.e., G.Kalavathi. Witness adds the said entry is a manipulated by accused [reproduced verbatim]. I did not receive any complaint from the SB account holders or from the public that the accused had misappropriated money." He had denied the suggestions given in line with the defence of the accused. **PW6** who is a special assistant in the branch of the bank did not support the case of the prosecution by stating that no enquiry was conducted in his presence. **PW7** is the Assistant General Manager who had deputed PW5 to investigate into the matters of the branch. He had deposed that he had sent two officers for preliminary investigation and that later he had sent PW5 for detailed investigation and that PW5 had submitted exhibit P21 report to him and that he had suspended the accused for misappropriation of funds and that he had instructed PW1 to lodge a report with the police. IN his cross examination, the following point was elicited. 'The two officers by names Nanda and U.Surayanarayana, who were deputed for preliminary investigation, have not submitted any preliminary report to me.' He had denied the suggestion that as the accused was found to be not at fault during the preliminary enquiry, no preliminary report was submitted by the officers. **PWs8 to 12** who are said to be account holders in the said branch of the bank did not support the case of the prosecution. **PW13** who was the Record Assistant of BVC Engineering College which was having an account in the branch had also not supported the case of the prosecution. **PW14** is the scientific officer of the State Forensic Science Laboratory. He was said to have compared the signatures marked and stamped by him as Q1 to Q17 on 17 pay slips and also the standard signatures of the accused marked by him as S1 to S5 which were said to be available on account opening forms and S6 to S10 which are also stated to be standard signatures and had furnished an opinion that the person who wrote the signatures marked as S1 to S10 also wrote the signatures Q1 to Q17. The opinion was marked as exhibit P30. In his cross examination he had admitted that he did not send his observations to the court. **PW15** is the investigating officer. He had registered the case and investigated into and laid the charge sheet. In his cross examination, the material contradictions and omissions were elicited and were brought on record.

4. **(k)** I have thus carefully and analytically examined the evidence on record. PW1 has no personal knowledge of the transactions. As already noted, his version is an improvised version. PW6 who had worked as Special Assistant in the Branch from September 1999 till the date of his deposition in March 2006 testified that he had worked as Officiating Cash Officer and that he was the head of the cash department during that period and that he was the first person to find the deficiency of cash in every day transactions and that every DD purchase will be entered into the cash scroll and that there is no complaint from the public against the accused. Further, PW4 who had earlier worked on deputation as officiating Branch Manager, SBI, Komaragiripatnam branch from 01.02.2002 to 15.04.2002 i.e., during the relevant period had deposed that during that time he was the supervising authority of all the transactions of the branch of the bank and that he was supposed to verify every proceeding on the same day evening and that during his tenure he did not receive any complaints from the public in regard to misappropriation and that he did not come across any corrections in the ledgers in regard to exhibit P19 and that any corrections have not come to his notice and that during his tenure he had sent the Branch Manager's Monthly Certificates to the higher authorities and that everything was correct and OK. Therefore, when periodical verification was made and monthly certificates were sent every month to the higher authorities no irregularities or illegalities or misappropriations or corrections in the records of the bank were found by PW4 and according to him everything was correct and OK. Exhibit P1 which prompted PW1 to investigate into the affairs of his branch does not show that the accused had negotiated the two DDs which were issued in the months of December 2001 and January 2002. He had given in his evidence the detailed account as to how DD purchases take place in the branch. The said procedure which was adverted to supra while extracting the evidence of PW1 would show that several members of staff of the branch are involved including the despatch clerk whose duty it is to despatch the draft after making an entry in the register. Therefore, as rightly contended, if there is any malpractice in the matter of handling DDs, it would come to the notice of one member of staff or the other immediately on the same day. Though PW1 testified in regard to alterations and corrections, he did not speak of the said aspects before the police when his statement was recorded. Even in regard to the confession in writing said to have been given by the accused and the amounts said to have been repaid by the accused to the bank, the version of PW1 is an improvised version. None of the customers and account holders supported the case of the prosecution. Though it is in evidence that a DD worth Rs.30,000/- under exhibit P19 was misappropriated and was said to have been credited to the joint account bearing No.Staff 47 of the accused and his mother Satyaveni, the said account holder by name Kalavathi was neither examined during course of the investigation nor was examined before the trial Court. LW18 who is the husband of the said Kalavathi by name G.Nageswara Rao, who is said to be the joint account holder along with his wife was given up and was not examined. Therefore, there is no evidence on the aspect as to which of the staff members of the bank the said draft was handed over by the customer. There is no evidence brought on record showing specific duties assigned to the staff of the bank including the accused.

On the other hand, there is positive evidence that because of lack of staff, the members of staff of the branch of the bank are discharging duties by mutual adjustment and that one is assisting the other in discharge of the duties of one another. There is no evidence on record as to whom among the members of the staff of the bank, the exhibit P19 was delivered by the customer while depositing the same into the bank. It is necessary to recall that PW1 did not state before the police that the accused had misappropriated the DD for Rs.30,000/- which is in the name of Kalavathi and that the same was credited in the joint account bearing No.Staff 47. PW15 the investigating officer had confirmed the said aspect in his cross examination. PW4 who had stated that exhibit P19 which was presented to be credited to the account of Kalavathi bearing A/c.No.291 was credited to the account of K.S.Veni, Staff 47 in stead of the above account No.291, he had stated further that he cannot say the reason for the same. He did not state that the accused was responsible for the same. He did not also state in his evidence that exhibit P19 was presented by the customer to the accused. The evidence brought on record shows that there is a credit of Rs.30,000/- to the account of 291 on 03.04.2002 itself i.e., on the date the same was presented to the bank as PW4 had admitted that as per exhibit P19 there is a credit of Rs.39,000/- in account No.291 on 03.04.2002. It is to be noted that the amount Rs.39,000/- was wrongly mentioned in stead of Rs.30,000/- in the deposition of PW4 is not in dispute. Thus, the mistake was rectified on the same day is clear from his evidence. In the absence of any evidence of the customers of the bank as to which of the staff members of the bank they had entrusted the cash or other negotiable instruments it is not possible to safely conclude that such entrustment, if any, was only to the accused. There is no evidence brought on record to show that a particular member of the staff of the bank had made entries either by hand or by use of a computer printer in the passbooks of the customers. The accused had denied in his defence, the exhibit P20-letter which is said to be a letter admitting misappropriation of amount to a tune of Rs.4 lakhs and odd. Exhibit P22-report does not make a reference to this letter. PW3 who was said to have attested this letter did not make a whisper in his evidence about any such confession letter given by the accused. It is necessary to restate that PW1 on this aspect had stated as follows: ‘It is true that I did not state to the police that on my enquiry the accused asked for one day time and that on the next day i.e., Monday the accused was on leave and that on 13.05.2002 the accused came to the bank and that he had confessed that he had committed misappropriation of Rs.4,27,510/- and that he is ready to pay Rs.3 lakhs and immediately he had credited Rs.3 lakhs in sundry deposit account.’ In his examination in chief, he had stated that the accused had stated that he is ready to pay Rs.3 lakhs and that immediately he (PW1) had credited Rs.3 lakhs in sundry deposit account as the business hours are already closed on 13.05.2002. Therefore, there is no evidence of reliable character to show that the accused gave exhibit P20-letter and that the accused had personally credited the above said sum to the sundry deposit account. PW1 had also admitted that he did not state before the police that on 14.05.2002 the accused had handed over 21 receipts (vouchers) and that the accused had stated that he had misappropriated the amounts. PW15-the investigating officer had also admitted that PW1 did not state before him that the accused paid Rs.97,510/- on 14.05.2002 and that PW1 credited the same in the sundry deposit account and that exhibit P20 was executed by the accused and that the same was attested by him (PW1) and PW3. PW1 had also admitted that he did not state before the police that the remaining Rs.30,000/- was paid by the accused in three accounts in which Rs.15,000/- was credited in Ac/.No.2602 of K.Srinivasa Rao. Thus, there is no trustworthy evidence that the accused had paid the said amount of Rs.4,27,510/-. It is the case of the accused in his defence that he did not pay the said amount. The prosecution has failed to produce the sundry deposit account in support of its case. PW15-the investigating officer had stated that inspite of his requisition PW1 did not produce sundry deposit account before him. He had also stated that PW1 or any other person did not produce the transfer scroll before him. Thus, for the reasons best known, the officers of the bank did not produce material documents before the investigating agency is borne out by the record. Thus, in the well considered view of this court, the evidence brought on record is not sufficient to safely conclude that the evidence is credible and is sufficient to establish the complicity of the accused.

4. **(I)** There are two more aspects which are of significance and which require consideration.

Firstly: In the case on hand, the signatures of the accused were admittedly obtained by the learned Magistrate during the course of investigation of the case i.e., on 09.07.2002 and on 25.07.2002 and such signatures were sent to the Forensic Expert-PW14 for comparison of the signatures on disputed documents and for obtaining the opinion of the expert. Admittedly, the charge sheet was filed on 30.08.2002. Therefore, by the date the signatures were obtained by the Magistrate, the investigation is in progress and no case is taken on file and is pending before the Court of the learned Magistrate. IN this regard, reliance was placed on a decision in **State of Haryana v. Jagbir Singh and another**[1]**.** The facts of the cited case and the ratio laid down are as follows:

> **'The prosecution wanted to rely upon a report given by the handwriting expert. It appears that the accused was taken before Addl. Chief Judicial Magistrate, Bhiwani. According to him, on 10.9.1991 the accused was brought before him in custody for giving his specimen signature under Section 73 of the Evidence Act. It was noticed by this Court in State of Uttar Pradesh v. Ram Babu Misra [AIR 1980 SC 791] that the Chief Judicial Magistrate has no power to direct the accused to give his specimen signature for comparison during investigation. Section 73 of the Evidence Act reads as follows:**

"Section 73 - Comparison of signature, writing or seal with others admitted or proved : In order, to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

This section also applies, with any necessary modifications, to finger-impressions."

18. The second paragraph of Section 73 enables the Court to direct any person present in the Court to give specimen writings 'for the purpose of enabling the Court to compare' such writings with writings alleged to have been written by such person. The clear implication of the words 'for the purpose of enabling the Court to compare' is that there is some proceeding before the Court in which or as a consequence of which it might be necessary for the Court to compare such writings. The direction is to be given for the purpose of enabling the Court to compare and not for the purpose of enabling the investigating or other agency 'to compare'. If the case is still under investigation there is no present proceeding before the Court in which or as a consequence of which it might be necessary to compare the writings. The language of Section 73 does not permit a court to give a direction to the accused to give specimen writings for anticipated necessity for comparison in a proceeding which may later be instituted in the Court.
19. In order to enable exercise of power under Section 73, the pendency of a proceeding before the Court is the sine qua non. Therefore, the comparison of the signatures on the alleged ransom note in no way helps the prosecution.'

In the case on hand also, the signatures of the accused were obtained as per the directions of the learned Magistrate while the case is still under investigation and when there is no proceeding pending before the Court. The language of the said Section **73** does not permit a court to give a direction to the accused to give specimen writings for anticipated necessity for comparison in a proceeding which may later be instituted in the Court. Therefore, the report of the expert furnished after the comparison of the signatures is of no avail to the prosecution. Be it noted though Section 311 A of the CrPC deals with the power of Magistrate to order any person concerned to give specimen signatures or handwriting for the purpose of any investigation or proceeding under the Code, the said provision of law was not on the statute book during the course of investigation in this case as the said provision was introduced w.e.f 23.06.2006.

Secondly: The next aspect is in regard to non filing of the original statements of the witnesses recorded under Section 161 of the CrPC by the police during the course of the investigation. PW15 had admitted in his cross examination as follows: 'I recorded the statements of PWs1, 2, 3 and 5 in English. At first I recorded in manuscript and later I typed the same. [reproduced verbatim]'. Thus, the original manuscript statements of the said witnesses recorded by the investigating officer are not produced before the trial Court. The said statements of the witnesses which are not produced into court cannot be said to be documents of trivial nature and of no significance. There is no justification on the part of the prosecution in withholding the original statements of the witnesses. In the well considered view of this court and in view of the improvements made in the versions of the material witnesses during the course of their evidence before the trial court, this court finds that the failure on the part of the prosecution to produce the original statements of the witnesses resulted in serious prejudice to the accused and the same is not a defect which can be cured by having resort to the provision of Section 465 of the CrPC. On this aspect reliance was placed on **G.Ashok @ Jadukattala Ashok and another v. State of AP[2].** The ratio in the decision squarely applies to the facts of the case.

5. This court is of the considered view that the courts below had failed to appreciate the evidence in proper perspective and had failed to give cogent and convincing reasons in support of the findings recorded while overruling the contentions of the accused. The indubitable legal position is that ordinarily it is not open for this Court to interfere with the concurrent findings of the Courts below specially by re-appreciating the evidence and that while exercising revisional jurisdiction this Court has to satisfy itself as to the correctness, legality or propriety of any finding recorded by the inferior Court and that this Court has to exercise the revisional power and supervisory jurisdiction so as to prevent the miscarriage of justice and to correct any irregularity. Further, even the concurrent findings of the Courts below can be interfered with when there are compelling and substantial reasons and when the findings recorded by the Courts below are clearly unreasonable. In the facts and circumstances peculiar to the case and in the light of the discussion supra, this Court finds that the Courts below have not appreciated the evidence in proper perspective and had ignored material contradictions and omissions brought on record and had failed to take note of the fact that certain of the depositors/customers of the bank who are material witnesses were not examined and that the depositors/customers who were examined did not support the case of the prosecution and that therefore, there is no credible and required standard of evidence to come to a safe conclusion that the ingredients of the penal provisions are attracted to the case on hand and find the accused guilty.

6. Viewed thus, this Court finds that there are compelling and substantial reasons calling for interference with the concurrent findings of the Courts below which are clearly unreasonable. Accordingly, this Court finds that the evidence adduced on behalf of the prosecution was wholly insufficient to establish the charges of which the accused was found guilty by the court below. The points are accordingly answered in favour of the accused and against the prosecution.

7. Coming to the contention of the learned Additional Public

Prosecutor that if the accused is found not guilty and is acquitted he may reclaim the amount paid by him to the bank, what is to be noted is that it is not the case of the accused that he had repaid the allegedly misappropriated amount to the bank. On the other hand, his defence is that he did not pay any amount to the bank. Therefore, it follows that the accused cannot make any such claim.

8. In the result, the Criminal Revision Case is allowed and the impugned judgment passed in Criminal Appeal No.163 of 2006 finding the accused guilty of the offences under Sections 409 and 477A of the IPC is set aside. The accused is accordingly acquitted of the said offences. The bail bonds of the accused shall stand cancelled and the fine amount, if any, paid shall be refunded to the accused after the further appeal or revision time is over.

Miscellaneous petitions pending, if any, in this revision shall stand closed.

M.SEETHARAMA MURTI, J

27th February 2015
Vjl

[1] 2003(2) ALD (Crl) 998 SC= AIR 2003 SC 4377
[2] 2006(1) ALT (Crl) 503 DB