

Bail Slip
Crl.A.No.802 and 895 of 2007
Crl.A.No.802/2007

The appellant/Accused Nos.1 and 3 namely Paramasivam, S/o.Sennikrishnan, aged 48 years, and Karthikeyan, S/o.R.Ramachandran, aged 35 years, respectively were directed to be released on bail, vide order dated 31.8.2007 made in Crl.MP.No.1 of 2007 in Crl.A.No.802 of 2007.

Crl.A.No.895 of 2007

The Appellant/Accused No.5 namely Padma Rajagopalan is directed to be released on bail, is order dated 28.09.2007, made in Crl.MP.No.1 of 2007 in Crl.A.No.895 of 2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.07.2018

Pronounced on : 19.07.2018

Coram:

THE HON'BLE DR. JUSTICE G. JAYACHANDRAN

Criminal Appeal Nos. 802 and 895 of 2007

1.Paramasivam

2.Karthikeyan

.. Appellants in Crl.A.No.802/2007/
Accused 1 & 3

Padma Rajagopalan

.. Appellant in Crl.A.No.895/2007/
Accused 5

/versus/

State by,
Inspector of Police,
CBI/ACB/Chennai,
(RC No.19/A/97)

.. Respondent in Crl.A.No.802/2007/
Complaint

State by
The Inspector of Police,
SPE/CBI/ACB,
Chennai

.. Respondent in Crl.A.No.895/2007/
Complaint

Common Prayer in Crl.A.Nos.802 and 895 of 2007: Criminal Appeals filed under Section 374(2) of the Criminal Procedure Code against the judgment passed against the appellant in C.C.No.23 of 1999 by the Principal Special Judge for CBI Cases, Chennai on 13.08.2007.

For Appellants

:Mr.A.Natarajan, Sr.C for
Mr.C.P.Palanichamy
(Crl.A.No. 802 of 2007)

Mr.K.R.Rameshkumar
(Crl.A.No. 895 of 2007)

For Respondent

:Mr.K.Srinivasan, Spl.PP(CBI cases)
in both appeals

COMMON JUDGMENT

The genesis of these appeals is traced to the complaint dated 03.03.1997 made by the Chief Commissioner of Income Tax, Chennai to the Joint Director, Central Bureau of Investigation, Chennai which runs as under:

One Sankaranarayanan, Income Tax officer was murdered and the same was investigated by Pondy Bazaar Police in Crime No.315 of 1997. In the course of investigation of that crime, the police came to know that S.Paramasivam, Tax Assistant in City Ward III (8) was working along with the deceased Sankaranarayanan between 27.06.1995 and 01.02.1997 and he had role in the murder of Sankaranarayanan. The further investigation had brought to light that Paramasivam as Tax Assistant and Sankaranarayanan as Income Tax Officer had together defrauded the Government of India, through false refund orders made in the name of various assesseees and by opening fictitious accounts in the name of those assesseees by impersonation to encash the refund money. While sharing the proceeds from the refund orders encashed fraudulently, enmity developed between Paramasivam and Sankaranarayanan leading to the murder of Sankaranarayanan by Paramasivam through hired killers.

2. The material gathered during the investigation had revealed that Paramasivam had prepared refund orders in the case of assesseees without entitlement of any refund. He got the signature of the Income Tax Officer in the refund order. Strengthly instead of despatching the refund orders to the tax payer as per the procedure, had opened the account in the name of the respective tax payers in MMDA Nagar, Indian Overseas Bank either by his wife Smt.Kalavathy or in the name of his brother Sri.Kartik by impersonation and incase of assessee Thiru.Muralidharan, Paramasivam himself has impersonated as Muralidharan had opened the bank account.

3. Between 27.01.1994 and 06.10.1996 a sum of Rs.9,06,608/- has been found deposited in the account of Muralidar and subsequently withdrawn. A sum of Rs.4,13,732/- has

been found deposited in the account of Tmt.Kalavathy. In the account opened in the name of M/s Leo Travels showing Kalavathy as Proprietor, cash deposit aggregating Rs.1,78,000/- had been made. These amounts made either in the name of Kalavathy, wife of Paramasivam or in the name of Muralidar impersonated by Paramasivam and in the account of M/s Leo Travels, totally a sum of Rs.15,78,340/- suspected to be the amount wrongful gained through false refund orders alleging that (a)in some cases, refunds legitimately due to the assesses had been issued but encashed by Sri Paramasivam; (b)in some cases, where no refunds were due as per records, refunds, however, came to be issued; (c)in some cases such as M/s Kesar Sons, some tax was due from the assessee to the Government but refund was still issued and (d)there has been a deliberate attempt to destroy part/whole of the records in some cases involving refunds. For example, in the case of M/s Vaisali, Muralidar, Sri Manoj kumar Bisani, Sri Shyam Sundar, M/s Kesar and Sons(91-92 and 92-93) Misc. records for the years for which refund was issued are missing, requested to register the case and taken up the matter for investigation was sought.

4. Based on the complaint Ex.P.53, First Information Report Ex.P54 against Paramasivam, Kalavathy wife of Paramasivam and Karthikeyan brother-in-law of Paramasivam was registered by CBI and investigation taken up.

5. On completion of investigation the prosecution has filed 3 final reports culminating in framing of charges in C.C.No.21 of 1999 against (1)Paramasivam; (2)Kalavathy; (3) Sivaraj; (4) Yadav; (5)Padmarajagopalan; in C.C.No.22 of 1999 against (1)Paramasivam; (2)Kalavathy; (3)Karthikeyan; (4)Jacob; (5)Yadav and (6)Padmarajagopalan and in C.C.No.23 of 1999 against (1)Paramasivam; (2)Kalavathy; (3)Karthikeyan; (4)Yadav and (5)Padma Rajagopalan.

6. These two appeals Crl.A.No.802 of 2007 and Crl.A.No.895 of 2007 are directed against the judgment made in C.C.No.23 of 1999 by the learned Principal Special Judge, CBI Cases, Chennai. Paramasivam(A1), Tax Assistant, City Circle III (2), Income Tax Department, Chennai and Karthikeyan (A3) brother in law of A1[Paramasivam] are the appellants in Crl.A.No.802 of 2007 and Padma Rajagopalan (A5) a private individual is the appellant in Crl.A.No.895 of 2007.

7. In C.C.No.23 of 1999, based on the final report, the trial Court has framed 26 charges against the accused persons viz., (i) Paramasivam, (2) Kalavathy, (3)Karthikeyan, (4)Yadav and (5)Padma Rajagopalan for conspiracy to commit criminal misconduct along with the deceased Sankaranarayanan to cheat the

Income Tax Department. Pursuant to the conspiracy, A1 [Paramasivam], Tax Assistant abused his official position, prepared seven income tax refund orders in the name of M/s Mangalam, Mrs. Kousalya Rathi, Mrs. Vaishali and Shri Shyam Sundar. He opened the followings bank accounts by impersonation with the help of his wife Kalavathy, brother in law Karthikeyan and his friend Padma Rajagopalan.

<i>Name</i>	<i>Account No.</i>	<i>Introducer</i>	<i>Exhibit</i>
Shyam Sundar, No.106, Natarajapuram Street, MMDA Colony, Madras.	IOB A/c No.8001	Paramasivam	Ex.P44
Kousalya Rathi No.17, Road, Madras-6.	Indian bank A/c No.19191	Paramasivam	Exs.P78 and 86
S.Vaishali No.17, Natarajapuram Street, MMDA Colony, Madras	IOB A/c No.7851	Paramasivam	Ex.P90
Vaishali, Prop.of Managalam, 123 J Block, Colony, Madras	IOB current A/c No.534	Introduced by Paramasivam for M/s Kessar Sons	Ex.P96
S.Muralidhar Prop.of M/s Kessar Sons, No.17, Natarajapuram Street, MMDA Colony, Madras.	IOB current A/c 454	D.Sekar	Ex.P104
S.Muralidhar, Prop.of M/s Kessar Sons, 17, Natarjapuram Street, MMDA Colony, Madras.	IOB A/c 7665	Kalavathy	Ex.P112

Through these bank accounts, the fake refund orders were deposited and encashed wither by transfer or by withdrawal, thereby caused a total loss of Rs.1,65,651/- to the Income Tax

Department and corresponding wrongful gain and pecuniary advantage to the accused persons, thereby committed offence of conspiracy to commit substantive offences punishable under Sections 419, 420, 468, 468 r/w 471, 467, 467 r/w 471, 468 r/w 471 IPC.

8. To prove those charges, the prosecution had examined 14 witnesses and marked 139 exhibits. On appreciation of evidence let in by the prosecution and the arguments put forth by the defence, the trial Court found that the charges against A2(Kalavathy) and A4(Yadav) are not proved. Whereas, the prosecution has proved charges against A1(Paramasivam), A3 (Karthikeyan) and A5(Padma Rajagopalan). The sentence imposed against A1, A3 and A5 by the trial Court is hereunder:

Rank of the Accused in C.C.No.23/1999	Conviction under Section	Sentence imposed by the Trial Court
Paramasivam (A1)	Under Section 120-B r/w 420, 419, 467, 471, 468, 471 IPC and Section 13(2) r/w 13(1) (d) of P.C. Act, 1988 Section 13(2) r/w 13(1) (d) of P.C. Act, 1988	To undergo 6 months R.I and to pay a fine of Rs.500/- in default to undergo 1 (one) month R.I. To undergo one year RI and to pay a fine of Rs.500/- in default to undergo 2 months R.I.
Karthikeyan (A3)	Under Section 120-B r/w 420, 419, 467, 468, 471 of I.P.C and Section 13 (2) r/w 13(1) (d) of P.C, Act 1988.	To undergo 6 months R.I and to pay a fine of Rs.300/- in default to undergo 1 (one) month R.I
	Under Section 419 of I.P.C	To undergo 2 years R.I and to pay a fine of Rs.300/-, in default to undergo 2 months R.I
	Under Section 468 of I.P.C	To undergo 2 years R.I and to pay a fine of Rs.300/-, in default to undergo 2 months R.I

Rank of the Accused in C.C.No.23/1999	Conviction under Section	Sentence imposed by the Trial Court
	Under Section 468 r/w 471 of I.P.C	To undergo 3 years R.I and to pay a fine of Rs.300/-, in default to undergo 2 months R.I
	Under Section 467 of I.P.C	To undergo 2 years R.I and to pay a fine of Rs.300/-, in default to undergo 2 months R.I
	Under Section 467 r/w 471 of I.P.C	To undergo 3 years R.I and to pay a fine of Rs.300/-, in default to undergo 2 months R.I
	Under Section 420 of I.P.C	To undergo 2 years R.I and to pay a fine of Rs.300/-, in default to undergo 2 months R.I. Totally Rs.2,100/-
Padma Rajagopalan (A5)	Under Section 120-B r/w 420, 419, 467, 468, 471 of I.P.C and Section 13 (2) r/w 13(1)(d) of P.C.Act, 1988	To undergo 6 months R.I and to pay a fine of Rs.300/- in default to undergo 1 (one) month R.I.
	Under Section 419 of I.P.C	To undergo 2 years R.I and to pay a fine of Rs.300/-, in default to undergo 2 months R.I.
	Under Section 468 of I.P.C	To undergo 2 years R.I and to pay a fine of Rs.300/-, in default to undergo 2 months R.I.
	Under Section 468 r/w 471 of I.P.C	To undergo 3 years R.I and to pay a fine of Rs.300/-, in default to undergo 2 months R.I.

Rank of the Accused in C.C.No.23/1999	Conviction under Section	Sentence imposed by the Trial Court
	Under Section 467 of I.P.C	To undergo 2 years R.I and to pay a fine of Rs.300/-, in default to undergo 2 months R.I.
	Under Section 467 r/w 471 of I.P.C	To undergo 3 years R.I and to pay a fine of Rs.300/-, in default to undergo 2 months R.I.
	Under Section 420 of I.P.C	To undergo 2 years R.I and to pay a fine of Rs.300/-, in default to undergo 2 months R.I.

The sentences imposed upon A1, A3 and A5 ordered to run concurrently along with the sentence imposed in C.C.Nos.21 & 22 of 1999. A2 and A4 were found not guilty and were acquitted under Section 248(1) Cr.P.C. Aggrieved by the judgment of conviction, these appeals are preferred.

Submission made by the appellants in C.A.No.802 of 2007:

9. It is contended by the learned Senior Counsel appearing for the appellant/A1 in Crl.A.No.802 of 2007 that as per the procedure adopted in the Income Tax Department for refund of tax, the role of Tax Assistant is very minimum. The Tax Assistant has to receive the request application for refund or on perusing the records, if there is any refund to be made to the assessee, he has to prepare the refund order and place it to the dealing clerk along with the relevant records. The dealing clerk on scrutinizing the transactions entries made in respect of tax paid should place note to the Income Tax Officer, who on verification will pass the refund order. After passing the refund order, the file will go to the Despatch Clerk and the despatch clerk should despatch the refund order to the respective assessee. In the said process, the role of the Tax Assistant is to prepare the refund order and forward it to the dealing clerk. While the Income Tax Officer is the signatory of the refund order and the Despatch Clerk who has to despatch the refund orders to the respective assessee, were acquitted by the trial Court, the appellant herein, who as LDC a lower rank staff and a mere matriculate, cannot held guilty because even if there is some error in the refund orders, it is the duty of the dealing clerk to verify the records and forward the same to the Income Tax Officer for appropriate orders. The Income Tax

officer, being a signatory of the refund order has to confirm the correctness of the refund order. Thereafter, the refund order has to be despatched to the assessee through the Despatch Clerk.

10. In this case, the prosecution has failed to prove through appropriate witnesses, who are acquainted with the handwriting and signature of the first appellant to identify the writings in the alleged refund orders. Because of the collective responsibility in preparing the refund order, this appellant who is the lowest in the rank cannot be isolated and convicted, while the signatory to the refund orders and the person, who is responsible for despatching the refund orders, are not held guilty. When there is no material to show that the refund orders in the name of PW-5 and PW-13 were prepared by this appellant and the refund orders are forged, the trial Court erred in concluding that this appellant has prepared forged refund orders and encashed it through impersonators.

11. The prosecution has failed to prove beyond doubt that various accounts in the name of Vaisali, Shyam Sundar and Kousalya Rathi were introduced by this appellant(A1). Solely based on the opinion of the handwriting expert [PW.9] even without any corroboration, the trial Court has held that A1 (Paramasivam) has conspired with the other accused to open bank accounts in the fictitious names. The subject accounts were not opened during the tenure of PW-6 [Chandrasekar]. He had no personal knowledge about the accounts opening and the person, who is dealing the account. PW-5 and PW-13 the so called assesses had not deposed that the refund orders which they are entitled were defrauded. They have not even claimed any refund orders and they have not produced any material to show that they are asseses and their refund orders have been withdrawn by the accused persons by preparing false refund orders. Without any material proof to show that the refund orders were false and the refund orders issued in the name of the assesses were fraudulently prepared by A-1 the conviction and sentence imposed by the trial Court is bad in law.

1. It is admitted by the prosecution witnesses that the register for refund is maintained and the movement of files are recorded in the register. Further, the despatch register will also indicate how and to whom the refund orders have been despatched. While the prosecution witnesses clearly deposed that the refund orders along with the advise note to be sent to the bank and the refund order will be sent to the assesses through post, the responsibility of despatching to the bank as well as the assessee is upon A4. The trial Court has found A4 not guilty and the signatory of not guilty however held A1

erroneously.

2.

13. As far as A3 (Karthikeyan), who is the appellant in CrI.A.No. 895 of 2007 is concerned, the learned counsel appearing for the appellant would submit that in the absence of evidence to show that A3 (Karthikeyan) impersonated as Shyam Sundar, the finding of the trial Court is erroneous. No witness has deposed that the 3rd accused Karthikeyan had impersonated as Shyam Sundar. The photographs in the account opening form have not been identified by any witness. Mere handwriting opinion is not sufficient to hold the appellant guilty. The uncorroborated evidence of the handwriting expert which has only persuasive value cannot be relied for convicting this appellant.

The contention of the learned counsel appearing for the appellant Padma Rajagopalan(A5) in CrI.A.No.895 of 2007:

14. It is contended by the learned counsel appearing for the appellant that there is no evidence to show that this appellant/A5 is friend of A1 nor evidence to show that this appellant impersonated herself as Kousalya Rathi and opened bank account. The prosecution has not examined any person by name Kousalya Rathi to show that she is an assessee of Income Tax, she had paid income tax and entitled for refund. No evidence to show that she had received the refund or not received the refund or to say that the income tax refund order dated 21.07.1995 for Rs.16,190/- (Ex.P4) was not encashed by her. In the absence of evidence to prove that this appellant opened the bank account and this appellant was operating the said bank account by depositing the refund order and withdrew the money, merely based on the uncorroborated testimony of PW-9 (N.Ravi) Handwriting expert, who had opined that the specimen signature of this appellant tallies the specimen signature found in the account opening form and the other documents, which are not corroborated by any other material evidence, the conviction of the trial Court ought to be set aside. The suspicious manner under which the alleged specimen signatures were obtained by the prosecution directly without order of the Magistrate and the report being forwarded to the Investigating Officer instead of forwarding it to the Court concerned had not been taken note by the trial Court. In view of the illegality in obtaining the specimen signature, the opinion of the hand writing expert has to be eschewed. After eschewing the evidence of handwriting expert, there is no evidence to implicate this appellant for the crime alleged. Hence, this appellant is entitled for acquittal.

15. Per contra, the learned Special Public Prosecutor for CBI Cases would submit that the first accused was working as Tax Assistant in the Income Tax Department, Chennai, City Circle III (2), during the relevant point of time. He has forged the

records as if the department is liable to pay tax refund to M/s Managalam, Vaishali, Shyam Sundar and Kousalya Rathi. He in connivance with the Income tax officer, without making proper entry in the register relating to refund of tax, had prepared 7 refund orders totally to the tune of Rs.1,65,651/-. In order to cash the refund orders, he himself has impersonated as Muralidhar and opened the SB A/c No.7665 in the name of Muralidhar with the introduction of his wife Kalavathi and current A/cNo. 454 in the name of M/s Kessar sons, Proprietor Muralidhar at Indian Overseas Bank, MMDA Colony thereafter he introduced to open SB A/c No.8001 in the name of Shyam Sundar by his brother in law Karthikeyan as impersonator. He introduced to open SB A/c 7851 in the name of Vaishali by his wife Kalavathy as impersonator. He introduced to open current A/c No.534 in the name of Vaishali, Proprietor M/s Mangalam by his wife as impersonator. He introduced to open the current A/c No. 454 by impersonating himself as Muralidhar, Proprietor of M/s Kessar & Co., with introduction of D.Sekar.

16. The handwriting expert has given his opinion incriminating this appellant which is marked as Ex.P22. The specimen signature obtained during the course of investigation by the Investigating Officer without the order of Magistrate shall no way vitiate the prosecution case since during that point of time there was no specific mandate imposed upon the Investigating Officer to seek permission of the Magistrate for obtaining specimen handwriting. Section 311A Cr.P.C came into force only on 23.06.2006 much later to this case. Therefore, the law prevailing at that point of time did not prohibit the investigation officer getting the specimen signatures or writings of any person in the course of investigation.

17. Karthikeyan (A3) brother-in-law of A1 had impersonated himself as Shyam Sundar. With the held of A1 as introducer he has opened the account bearing No.8001 with Indian Overseas Bank, MMDA colony. The refund orders were deposited in the account for encashment and later withdrawn. The signatures found in the refund orders, account opening forms and withdrawals have been identified as the signatures of A3, who has impersonated himself as Shyam Sundar. Therefore, the trial Court has rightly held him guilty.

18. The appellant Padma Rajagopalan (A5) in Cr1.A.No.895 of 2007 is concerned, she had opened Saving Bank Account in Indian Bank, Thousand Light, impersonating herself as Kousalya Rathi. This account was introduced by A1. She had deposited the refund order Ex.P.4 in the name of Kousalya Rathi for Rs.16,190/-, this money and other amount credited into account through refund orders were withdrawn through cheques Ex.P.82, Ex.P.83, Ex.P.87, Ex.P.88 and Ex.P.89 issued infavour of

Paramasivam, M/s Kessar & Sons Proprietor Muralidar and Muralidhar. All these accounts in different names were operated by A1 and the prosecution has proved through these documents and the handwriting expert opinion that A5(Padma Rajagopalan) is part of conspiracy and had impersonated herself as Kousalya Rathi and cheated the Income Tax Department.

19. Point for consideration:

Whether the judgment of the trial Court unsustainable for want of proof and whether the opinion of expert marked as Ex.P.22 is unreliable?

20. The case of the prosecution centres around:(a)7 fabricated refund orders made in favour of M/s Mangalam; Kousalya Rathi; Vaishali; and Shyam Sundar; (b)opening the bank account in the name of the above persons by Paramasivam(A1); Kalavathy(A2) (wife of A1); Karthikeyan(A3) (brother-in-law) and Padma Rajagopalan by impersonation (A5) friend of A1 for deposit of refund orders; and (c)later withdrawal.

21. The 7 fabricated refund orders which are the subject matter of these appeals are exhibited as:

Ex.P3 :The Income Tax Refund Order bearing No.232111 dated 16.08.95 for Rs.30,026/- for the assessment year 1994-95, in the name of M/s Mangalam (PAN No.22460-M);

Ex.P4 :The Income Tax Refund Order No.232105 dated 21.7.1995 for Rs.16,190/- in the name of Kousalya Rathi (PAN No.23124-K);

Ex.P5 :The Income Tax Refund Order No.232118 dated 12.10.95 for Rs.13,688/- in the name of Vaishali (PAN No.2845-V);

Ex.P6 :The Income Tax Refund Order No.232120 dated 13.10.95 for Rs.20,533/- in the name of Shri Shyam Sundar (PAN No.2970-S) for the assessment year 1991-92, 1992-93;

Ex.P7 :The Income Tax Refund Order No.232122 dated 11.10.95 for Rs.14,321/- in the name of Shyam Sundar (PAN No.320-S) for the assessment year 92-93.

Ex.P8 :The Income Tax Refund Order No.232117 dated 12.10.95 for Rs.19,449/- in the name of Shri Shyam Sundar (PAN No.3200-S) for the assessment year 1992-93. Whereas the said PAN number is pertaining to Shyam Sundar Kothari.

Ex.P9 :Advice of Income Tax Refund Order No.232109 dated 02.08.1995 for Rs.51,444/- in the name of M/s Mangalam for the assessment year 1993-94 (PAN No.22460-M)

22. The falsity in the above refund orders has been established by the prosecution through the income tax returns filed by the respective assesses before the Income Tax Department and the genuine refund orders issued to them by the department through the intimation of the department under Section 143(1) of the Income Tax Act about their entitlement of tax refund. Those documents are Ex.P59(certified copy of the Income Tax Returns for the assessment year 1992-93 filed by Muralidhar HVF No.62, Godown Street, Madras PAN No.47-0781-HY-7740); Ex.P61(certified copy of the Income Tax Return for the assessment year 1991-1992 filed by Muralidhar Saradha, HVF, No.62, Godown Street, Madras PAN No.47-059-PZ-2283); Ex.P125(certified copy of Income Tax Return for the assessment year 1991-92 in the name of M/s Kessar Sons, No.38 Godown Street, Madras PAN No.47-087-FV-9881); and Ex.P126 (certified copy of the Income Tax Return for the assessment year 1992-93 filed by M/s Kessar Sons, No.38 Godown Street, Madras PAN No.47-087-FV-9881).

23. The department has issued acknowledgement for receipt of returns filed by the assesses concern and they are marked as Exs.P24,P30, P40, P41, P66, P67, P68, P69, P70, P74,P110, P111 and P124. The intimation under Section 143(1) of the Income Tax Act served on these assesses are marked as Ex.P42, P43, P60, P65, P127 and P139. Whereas in the fake refund orders, PAN number assigned to Muralidhar Saradha (HUF) at No.62, Godown Street, Chennai, is 2229-M/III(2)/Mds. PAN number assigned to Muralidhar Saradha (individual) is 2982-M/III(2). PAN Number assigned to Kousalya Rathi at 18A Manikeswari Road, Kilpauk, Madras-10 is 7911-K/Central Circle. PAN Number assigned to M/s Vaishali at No.68, Godown Street, Chennai-01 is 2356-V/III(2). PAN Number assigned to Shyam Sundar Kothai at No.74, Godown Street, Chennai is 3200/5. On comparing the genuine document, which has been emanating from the Income Tax Department and the documents filed by the respective assesses to the income Tax Department with that of the fake refund orders and advise notes (Ex.P.3 to Ex.P.9) mentioned above, it is crystal clear that the refund orders are fabricated with wrong PAN numbers of the assesses and encashed through bank accounts opened in fictitious name and different address.

24. The learned Senior Counsel appearing for the first accused Paramasivam contend that as per the work allotment order, it is not the duty of the first accused to prepare the refund orders. Contrarily, the overwhelming evidence adduced by the prosecution as well as the evidence of the PW-1 identifying this appellant as the person prepared those refund orders. Therefore, the appellant is bound to clarify how the refund orders with wrong PAN numbers happened to be prepared by him.

25. Sofar as this case is concerned, the non-production of

refund register and other connected documents may not have much significance because the prosecution had established the fact that all these 7 refund orders were prepared and generated from Paramasivam(A1). The trial Court after examining the witnesses has come to the conclusion that the handwriting expert opinion is not conclusive so far as the signature found in the refund orders to fix the income tax officer and therefore, he has been exonerated. Mere exoneration of the Income Tax Officer by extending benefit of doubt will not exonerate the first accused Paramasivam from the charge, when the prosecution has proved beyond reasonable doubt that the ten refund orders were prepared by Paramasivam (A1). The guilt of the first accused had not stopped with preparing the false refund orders, but he had encashed it through the bank accounts opened in fictitious name by himself or on his introduction. This fact is also established by the prosecution through Ex.P104-account opening form for saving bank account number 7665 in the name of Muralidhar, Proprietor Kessar Sons having office at No.17 Natarajapuram Street, MMDA Colony. This account has been introduced by Sekar. Thereafter other accounts were opened on his introduction.

26. Extending the benefit of doubt to A2, the trial Court has acquitted A2 from all the charges. However, the fact remains that the refund orders drawn in the name of Muralidhar had been deposited in the savings bank account number 7665 or in current A/c No.454 opened in the name of Muralidhar, Prop. of M/s Kessar Sons introduced by A2 and subsequently withdrawing him. The handwriting expert opinion Ex.P.22 has given a conclusive opinion that the signatures found in the account opening forms tallies with the specimen signatures obtained from A1 during investigation.

27. In this case, the opinion of the handwriting expert is pleaded as weak piece of evidence and cannot be base for conviction. It is necessary to clarify the evidentiary value of the handwriting expert opinion.

28. In *Murari Lal v. State of Madhya Pradesh* reported in 1980 (1) SCC 704, the Hon'ble Supreme Court has held that:

"Expert testimony is made relevant by Section 45 of the Evidence Act and where the Court has to form an opinion upon a point as to identity of handwriting, the opinion of a person 'specially skilled' 'in questions as to identity of handwriting' is expressly made a relevant fact. There is nothing in the Evidence Act, as for example like illustration (b) to Section 114 which entitles the Court to presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars,

which justifies the court in assuming that a handwriting expert's opinion is unworthy of credit unless corroborated. The Evidence Act itself (Section 3) tells us that 'a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists'. It is necessary to occasionally remind ourselves of this interpretation clause in the Evidence Act lest we set an artificial standard of proof not warranted by the provisions of the Act. Further, under Section 114 of the Evidence Act, the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to facts of the particular case. It is also to be noticed that Section 46 of the Evidence Act makes facts, not otherwise relevant, relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant. So, corroboration may not invariably be insisted upon before acting on the opinion of an handwriting expert and there need be no initial suspicion. But, on the facts of a particular case, a court may require corroboration of a varying degree. There can be no hard and fast rule, but nothing will justify the rejection of the opinion of an expert supported by unchallenged reasons on the sole ground that it is not corroborated. (emphasis added). The approach of a court while dealing with the opinion of a handwriting expert should be to proceed cautiously, probe the reasons for the opinion, consider all other relevant evidence and decide finally to accept or reject it."

29. The trial Court has relied upon the judgment of the Hon'ble Supreme Court in State Of Maharashtra Etc. -vs- Sukhdeo Singh And Anr. Etc. reported in [AIR 1992 SC 2100], the relevant para is:

After examining the case law this Court proceed to add: "We are firmly of the opinion that there is no rule of law, nor any rule of prudence which has crystallised into a rule of law, that opinion- evidence of a handwriting expert must never be acted upon, unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting, the approach, as we indicated earlier, should be one of caution. Reasons for the opinion must be carefully probed and examined. All other relevant evidence must be considered. In appropriate cases, corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting expert may be accepted. There cannot be any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight."

What emerges from the case law referred to above is that handwriting expert is a competent witness whose opinion evidence is recognised as relevant under the provisions of the Evidence Act and has not been equated to the class of evidence of an accomplice. It would, therefore, not be fair to approach the opinion evidence with suspicion but the correct approach would be to weigh the reasons on which it is based."

30. In *State of Uttar Pradesh v. Ram Babu Misra* reported in 1980 AIR 791 at paras 4,5, and 6, the Hon'ble Supreme Court has held that:

" 4. We may also refer here to Section 5 of the Identification of Prisoners Act, 1920, which provides:

"5. If a Magistrate is satisfied that, for the purposes of any investigation or proceeding under the Code of Criminal Procedure, 1898, it is expedient to direct any person to allow his measurements or photograph to be taken, he may make an order to that effect, and in that case the person to whom the order relates shall be

produced or shall attend at the time and place specified in the order and shall allow his measurements or photograph to be taken, as the case may be, by a police officer:

Provided that no order shall be made directing any person to be photographed except by a Magistrate of the first class:

Provided further, that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding".

Section 2(e) of the Act defines "measurements" as including "finger impressions and foot print impressions".

5. There are two things to be noticed here. First, signature and writing are excluded from the range of Section 5 of the Identification of Prisoners Act and, second, 'finger impression' are included in both Sections 73 of the Evidence Act and Section 5 of the Identification of Prisoners Act. A possible view is that it was thought that Section 73 of the Evidence Act would not take in the stage of investigation and so Section 5 of the Identification of Prisoners Act made special provision for that stage and even while making such provision, signature and writings were deliberately excluded. As we said, this is a possible view but not one on which we desire to rest our conclusion. Our conclusion rests on the language of Section 73 of the Evidence Act.

6. Section 73 of the Evidence Act was considered by us in State (Delhi Administration) v. Pali Ram, where we held

that a Court holding an enquiry under the Criminal Procedure Code was entitled under Section 73 of the Evidence Act to direct an accused person appearing before it to give his specimen handwriting to enable the Court by which he may be tried to compare it with disputed writings. The present question whether such a direction, under Section 73 of the Evidence Act, can be given when the matter is still under investigation and there is no proceeding before the Court was expressly left open. The question was also not considered in *State of Bombay v. Kathi Kalu Oghad*, where the question which was actually decided was that no testimonial compulsion under Art. 20(3) of the Constitution was involved in a direction to give specimen signature and handwriting for the purpose of comparison. The view expressed by us in the earlier paragraphs, on the construction of s. 73, Evidence Act was the view taken by the Madras High Court in *T. Subbiah v. S. K. D. Ramaswamy Nadar*, the Calcutta High Court in *Farid Ahmed v. the State* (Mitter J., at page 32). and *Priti Ranjan Ghosh & Ors. v. The State*, the High Court of Punjab and Haryana in *Dharamvir Singh v. State*, the High Court of Madhya Pradesh in *Brij Bhushan Raghunandan Prasad v. The State*, the Orissa High Court in *Srikant Rout v. State of Orissa* and the Allahabad High Court in the judgment under appeal. A contrary view was taken by the Patna High Court in *Gulzar Khan & Ors. v. State* and the High Court of Andhra Pradesh in *B. Rami Reddy & Ors. v. State of Andhra Pradesh*. We do not agree with the latter view. We accordingly dismiss the appeal and while doing so we would suggest the suitable legislation may be made on the analogy of s. 5 of the Identification of Prisoners Act, to provide for the investiture of Magistrates with the power to issue directions to any person, including an accused person, to give specimen signatures and writings".

31. The learned counsel for the appellant also rely upon the Hon'ble Supreme Court judgment in *K.Dhanasekaran v. State by Inspector of Police, CBCID, Erode, Town Police Station*, wherein it is stated that:

"The following conclusion of the Supreme Court in *S. Gopal Reddy v. State of A.P.*, 1996 SCC (Cr1.) 792 is pressed into service:

"28. Thus, the evidence of P.W.3 is not definite and cannot be said to be of clinching nature to connect the appellant with the disputed letters. The evidence of an expert is a rather weak type of evidence and the courts do not generally consider it as offering 'conclusive' proof and therefore safe to rely upon the same without seeking independent and reliable corroboration. In *Magan Bihari Lal v. State of Punjab*, , while dealing with the evidence of a handwriting expert, this Court opined: (SCC pp.213-14, para 7) "...We think it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in *Ram Chandra v. State of U.P.*, : 1957 Cr1 LJ 559 that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in *Ishwari Prasad Misra v. Mohdn. Isa*, that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in *Shashi Kumar Banerjee v.*

Subodh Kumar Banerjee, where it was pointed out by this Court that expert's evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in Fakruddin v. State of M.P., AIR 1967 SC 1326 : and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial."

32. The opinion of the handwriting expert falls under Section 45 of the Indian Evidence Act, 1872 for relevancy. Undoubtedly, the opinion of the handwriting expert is not a conclusive proof, however, the opinion have a persuasive value and can be used as a substantive piece of evidence, if the Court is of the opinion that the expert opinion is supported by acceptable reasoning. In such cases, the report of the expert is singularly enough to hold the guilty of the accused. There is no bar in relying upon the expert opinion, if it is supported by direct or circumstantial evidence to corroborate. Also, there was no statutory requirement during that point of time that the specimen signature should be obtained with the leave of the Magistrate. Section 311(A) of Criminal Procedure Code had come into force only after 23.06. 2006.

33. It is settled long back by the Hon'ble Supreme Court that obtaining specimen signatures or writings does not fall within the provisions of Identification of Prisoners Act. The judgment State of Uttar Pradesh v. Ram Babu Misra reported 1980 AIR 791 referred by the learned counsel appearing for the appellant had been considered by the Hon'ble Supreme Court in the subsequent judgments and also taken note by the Law Commission, resulting in introduction of Section 311 A Cr.P.C. This does not mean that the investigating officer had no power to collect the specimen signatures in the course of his investigation. If there is any suspicion in the manner in which the signature obtained for comparison or if there is any

material to doubt manipulation in the specimen signature sent for comparison, The Courts may hold the expert opinion as unreliable but merely because absence of provision in the Code prior to 2006 will not render the evidence collected during the course of investigation otiose.

34. As far as Karthikeyan(A3) is concerned, though it is contended by the learned Senior Counsel appearing for the third accused that there is no evidence to show that A3(Karthikeyan) impersonated himself as Shyam Sundar and opened the bank account in the fictitious name to encash the refund orders. The evidence placed by the prosecution proves otherwise Ex.P.6 refund order in the name of Shyam Sundar for Rs.20,533/- dated 13.10.1995, Ex.P.7 refund order in the name of Shyam Sundar for Rs.14,321/- dated 11.10.1995 and Ex.P.8 the refund order for Rs.19,449/- dated 12.10.1995 issued in the name of Shri Shyam Sundar with PAN No.3205-S were deposited in the account of Shyam Sundar SB A/c. No.8001 at Indian Overseas Bank, address at No.106, New Natarajapuram, Chennai. The statement of account of Mr.Shyam Sundar indicated he has made several deposits of Income Tax refund and withdrawn through self cheques Ex.P.48, Ex.P.49, Ex.P.50 and Ex.P.51. The real assesses namely, Shyam Sundar Kothari (PW-5) had categorically deposed before this Court that they have no account in the Indian Overseas Bank, MMDA Colony and his residence is at Godown Street. This account has been introduced by A1(Paramasivam). A1 has introduced him. The opinion of the handwriting expert also corroborated the fact that this accused A3 has impersonated himself as Shyam Sundar and affixed signature in the account opening form.

35. As far as this case is concerned, the prosecution has able to establish the fabrication in the refund orders and the encashment of the refund orders through the accounts opened at the instance of A1. The process in between though could not be fully explained by the prosecution, it only indicates that apart from A1, there should have been other persons involved in the crime whom, the investigation has unable to lay its hand. As far as A1(Paramasivam) and A3 (Karthikeyan) are concerned, the error in the PAN number found in the refund orders, change of address of the assesses to divert the refund orders to get possession of it and opening of bank accounts in the name of Muralidhar with the help of his wife as introducer or introducing the accounts opened in the name of Vaishali and Kousalya Rathi knowing fully well that the signatories are impersonators provides the direct and circumstantial evidence which is sufficiently enough to hold the appellants Paramasivam (A1) and Karthikeyan(A3) guilty. The trial Court had considered all the points raised by the defence and after proper appreciation of evidence had found the appellants/A1 and A3 guilty.

36. As far as A5(Padma Rajagopalan) is concerned, the learned counsel appearing for the appellant would submit that apart from the evidence of handwriting expert, which is a weak piece of evidence, there is no other witness to substantiate the case of the prosecution that this appellant namely Padma Rajagopalan had impersonated herself as Kousalya Rathi. Kousalya Rathi, who is an existing person and the income tax assessee is necessary and vital witness. She could have thrown light whether the account opened in her name at Indian Bank, Thousand Light Branch was by her or by somebody else impersonated her. By non examination of this vital witness, the prosecution has miserably failed to establish that this accused has impersonated herself as Kousalya Rathi. Therefore, sought the benefit of doubt and set aside the judgment of the trial Court.

37. As far as appellant Padma Rajagopalan (A5) is concerned, this Court finds force in the above submission made by her counsel. The scrutiny of the prosecution documents and the depositions, we find no material incriminating the appellant Padma Rajagopalan (A5) which could lead to an irresistible conclusion that she had knowledge of the conspiracy and participated in the act of impersonation. No doubt, her signatures have been compared with that of signatures in the cheques issued by her in favour of Muralidhar, M/s Kessar Sons and Paramasivam. Her signature in the account opening form as Kousalya Rathi has also been examined and opined by the expert that they are of this appellant(A5). The reasoning of the handwriting expert is cogent and acceptable. However, except his opinion, there is no other document or evidence to indicate that this appellant has participated in the crime with knowledge. In the absence of direct evidence such as identification of this appellant as Kousalya Rathi by any of the witnesses who had an opportunity to see her operating account in the name of Kousalya Rathi or circumstantial evidence to infer Padma Rajagopalan(A5) was associated with Paramasivam(A1) in the scheme of conspiracy solely based on the handwriting expert opinion it is unsafe to hold her guilty in addition, non examination of Kousalya Rathi substantially dents the case of the prosecution to extend the benefit of doubt.

In the result,

CrI.A.No.802 of 2007 filed by Paramasivam (A1) and Karthikeyan(A3) is dismissed and the judgment passed by the learned Principal Special Judge, CBI Cases at Chennai made in C.C.No.23 of 1999, dated 13.08.2007 is hereby confirmed. Conviction and sentence imposed upon these appellants by the trial Court is confirmed. The trial Court is directed to secure the accused A1(Paramasivam) and A3(Karthikeyan) to serve the

remaining period of sentence. The period of sentence already undergone by the appellants shall be set off. So far as the first accused viz., A1[Paramasivam] is concerned, the sentences imposed on him shall run concurrently along with the sentence imposed in C.C.No.21/2007 and as far the third accused Karthikeyan is concern, the sentence imposed on him in C.C.No.23 of 2007 shall run concurrently with the sentence imposed on him in C.C.No.22/2007.

CrI.A.No.896 of 2007 filed by Padma Rajagopalan(A5) is allowed and the judgment passed by the learned Principal Special Judge, CBI Cases at Chennai made in C.C.No.23 of 1999, dated 13.08.2007 as against Padma Rajagopalan(A5) is hereby set aside. Fine amount if any paid by this appellant(A5) shall be refunded to him. Bail bond if any executed by this appellant (A5) shall be refunded to her.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To:

- 1.The Principal Special Judge for CBI Cases, Chennai.
- 2.The Inspector of Police, CBI/ACB/Chennai.
- 3.The Inspector of Police, SPE,CBI,ACB, Chennai
- 4.The Special Public Prosecutor for CBI Cases, High Court, Madras.

Copy to:The Section Officer,
Criminal Section(records)
High court, Madras.

+1cc to Mr.C.P.Palanichamy, Advocate Sr.No.47892
+1cc to Mr.K.R.Rameshkumar, Advocate Sr.No.48204

GJII(CO)
sm:16.8.2018

CrI.A.Nos.802 and 895 of 2007