

Bail Slip

CRL.A.803/2007:

The Appellant/Petitioner Accused namely Paramasivam S/o.S.A.Sennikrishnan was directed to be released on bail as the order of this court dated 31.08.2007 made in MP.NO.1/07 in Crl.A.803/2007 on the file of this court.

CRL.A.NO.897/2007:

The Appellant/Petitioner Accused namely Padma Rajagopalan was directed to be released on bail as the order of this court dated 28/09/2007 made in MP.NO.1/07 in Crl.A.897/2007 on the file of this court.

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. 803 and 897 of 2007

Paramasivam .. Appellant in Crl.A.No.803 of 2007

Padma Rajagopalan .. Appellant in Crl.A.No.897 of 2007

/versus/

State By

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

.. Respondent in Crl.A.No.803 of 2007

State by

The Inspector of Police,
SPE/CBI/ACB,
Chennai.

.. Respondent in Crl.A.No.897 of 2007

Common Prayer in Crl.A.Nos.803 and 897 of 2007: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment passed in C.C.No.21 of 1999, dated 13.08.2007 convicting the appellant by the learned Principal Special Judge, CBI Cases at Chennai and to set aside the same.

For Appellants :Mr.A.Natarajan, Sr.C for
Mr.C.P.Palanichamy
(Crl.A.No. 803 of 2007)

Mr.A.Nagarajan
(Crl.A.No. 897 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 Pondi Bazaar police came to know that S.Paramasivam (A1), 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(A1) 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(A1) and Sankaranarayanan leading to the murder of Sankaranarayanan by Paramasivam(A1) through hired killers.

2. The material gathered during the investigation had revealed that Pramasisivam(A1) 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 orders. Strenghtly 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. In the case of the assessee by name Muralidharan, Paramasivam(A1) himself has impersonated as Muralidhar and opened the bank account by introducing him as Muralidhar by his wife. .

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 opened in the name of M/s Leo Travels showing Kalavathy(A2) as Proprietrix, cash deposit aggregating Rs.1,78,000/- had been made. These amounts made either in the name of Kalavathy(A2), wife of Paramasivam(A1) or in the name of Muralidar impersonated by Paramasivam(A1) 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 assessee had been issued but encashed by Sri Paramasivam(A1);

(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 Kessar 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 Vaishali, Muralidar, Sri Manoj kumar Bisani, Sri Shyam Sundar, M/s Kessar 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. Based on the complaint, First Information Report Ex.P119 against Paramasivam(A1), Kalavathy(A2), w/o Paramasivam and Karthikeyan, brother-in-law of Paramasivam(A1) was registered by CBI and investigation taken up.

4. 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;

C.C.No.22 of 1999 against (1)Paramasivam; (2)Kalavathy; (3) Karthikeyan; (4)Jacob; (5)Yadav and (6)Padmarajagopalan; and

C.C.No.23 of 1999 against (1)Paramasivam; (2)Kalavathy; (3) Karthikeyan; (4)Yadav and (5)Padma Rajagopalan.

5. These two appeals CrI.A.No.803 of 2007 and CrI.A.No.897 of 2007 are directed against the judgment made in C.C.No.21 of 1999 by the learned Principal Special Judge, CBI Cases, Chennai. Paramasivam(A1), Tax Assistant, City Circle III (2), Income Tax Department, Chennai, who is the appellant in CrI.A.No.803 of 2007 and Padma Rajagopalan(A5) a private individual, who is the appellant in CrI.A.No.897 of 2007.

6. The case of the prosecution in C.C.No.21 of 1999 as found in the final report is that during the year 1994-1995 at Chennai, Paramasivam(A1), Kalavathy(A2), Sivaraj(A3); Yadav(A4) and Padmarajagopalam(A5) agreed to do an illegal act namely to cheat the Income Tax Department. In pursuance to the said conspiracy, Paramasivam(A1) working as Tax Assistant prepared 11 Income Tax refund orders in favour of the persons, who are not actually entitled for any refund. Knowing fully well that there is no refund order due for those assesseees, Paramasivam(A1) prepared refund orders and Sivaraj(A3), Income Tax Officer issued the same. To encash the refund orders, Paramasivam(A1) impersonated himself as Muralidar and opened the saving bank account bearing No.7665 in the Indian overseas Bank, MMDA Nagar. Kalavathy (A2) impersonated herself as Vaishali and opened saving bank account bearing No.7851 in the Indian Overseas Bank, MMDA Branch and also Kalavathy(A2) impersonated herself as Proprietrix of M/s Mangalam and opened current account bearing No.534 in Indian Overseas Bank, MMDA Nagar and the said account was introduced by Paramasivam(A1). Kalavathy(A2) is none other than wife of Paramasivam(A1). Paramasivam(A1) also impersonated himself as Proprietor of M/s Kessar Sons and opened current account No.454 with Indian overseas Bank, MMDA Branch. Padma Rajagopalan(A5) impersonated herself as Kousalya Rathi and opened a saving bank account bearing No.454 with Indian Bank, Thousand Light Branch and the said account was introduced by Paramasivam (A1). Knowing fully well that Padma Rajagopalan (A5) is not Kousalya Rathi. The false refund orders issued in the name of Muralidhar, Vaishali and Kousalaya Rathi were deposited in the above said account and encashed, thereby causing wrongful loss of Rs.2,35,771/- to the Income Tax Department and pecuniary advantage among the accused persons.

7. The trial Court based on the final report had in detail framed 32 charges for the offences such as conspiracy, impersonation, cheating, forgery and use of forged document dishonestly and for misconduct under Sections 120-B r/w 420, 419, 467, 471, 468 & 471 IPC besides Section 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988 as against Paramasivam(A1); Sivaraj(A3); and Yadhav(A4) for misconduct.

8. To prove the charges, the prosecution has examined 22 witnesses. 151 exhibits were marked. On the side of the accused persons one witness Thiru.R.Palanivalu and 4 exhibits were marked. The trial Court, on appreciation of the evidence, has held Paramasivam (A1) and Padma Rajagopalan(A5) guilty and imposed the following sentences:

Name of the accused in C.C.No.21 of 1999	Conviction under Section	Sentence imposed
Paramasivam (A1)	U/s 120-B r/w 420, 419, 467, 471, 468, 471 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.	To undergo 6 months Rigorous Imprisonment and to pay a fine of Rs.500/- in default to undergo RI for one month.
	U/s 419 IPC (2 counts)	To undergo 2 years Rigorous Imprisonment for each count and to pay a fine of Rs.500/- for each count, in default to undergo Rigorous Imprisonment for 2 months each.
	U/s 468 IPC (2 counts)	To undergo 2 years Rigorous Imprisonment for each count and to pay a fine of Rs.500/- for each count in default to undergo Rigorous Imprisonment for 2 months each.
	U/s 468 r/w 471 IPC (2 counts)	To undergo 3 years Rigorous Imprisonment for each count and to pay a fine of Rs.500/- for each count in default to undergo Rigorous Imprisonment for 2 months each.
	U/s 467 IPC (2 counts)	To undergo 2 years Rigorous Imprisonment for each count and to pay a fine of Rs.500/- in default to undergo 2 months Rigorous Imprisonment
	U/s 420 IPC (6 counts)	To undergo 3 years Rigorous Imprisonment for each count and to pay a fine of Rs.500/-

Name of the accused in C.C.No.21 of 1999	Conviction under Section	Sentence imposed
PadmaRajagopalan (A5)	U/s 120-B r/w 420, 419, 467, 468, 471 IPC and Section 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988	To undergo 6 months Rigorous Imprisonment and to pay a fine of Rs.300/- in default to undergo Rigorous Imprisonment for one month
	U/s 419 IPC	To undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.300/- in default to undergo Rigorous Imprisonment for 2 months.
	U/s 468 IPC	To undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.300/- in default to undergo Rigorous Imprisonment for 2 months.
	U/s 468 r/w 471 IPC	To undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.300/- in default to undergo Rigorous Imprisonment for 2 months.
	U/s 467 IPC	To undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.300/- in default to undergo Rigorous Imprisonment for 2 months.
	U/s 467 r/w 471 IPC	To undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.300/- in default to undergo Rigorous Imprisonment for 2 months.
	U/s 420 IPC (2 counts)	To undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.300/- in default to undergo Rigorous Imprisonment for 2 months.

The sentences imposed on Paramasivam (A1) and Padma Rajagopalan (A5) were ordered to run concurrently. A2 to A4 were found not guilty and were acquitted under Section 248 (1) Cr.P.C. Aggrieved by the judgment of conviction, these appeals have been filed.

9. The learned Senior Counsel for Paramasivam (A1)/appellant would submit that the refund orders are to be prepared by the dealing clerks on the instruction of the Income Tax Officer. The appellant herein, who is the Tax Assistant cannot prepare any refund order by himself. The procedure adopted in the Income Tax Department for preparing refund orders as found in the work allotment order would show that this appellant independently could not have prepared any refund orders as alleged by the prosecution. The preparation of refund order is a collective work of various officials in the Income Tax department after verifying the relevant records maintained in the office. The prosecution has not produced any register relating to the refund orders to substantiate the claim that the refund orders involved in this case are forged refund orders. The alleged bank accounts opened in Indian Overseas Bank, MMDA Nagar in the names of Muralidhar and M/s Kessar sons are not proved to be the accounts opened by Paramasivam (A1) or at the instance of Paramasivam (A1). The sole evidence for the prosecution in this regard is PW-7. Thiru.Sankaranarayanan/Bank Manager, who had no personal knowledge about the opening of those accounts because admittedly he joined the office subsequently to those accounts came into operation. The photographs found in the account opening forms have no relevancy since the photograph of the first accused has been pinned in the account opening form though there is no specific column or space in the form for the photograph of the account holder. The lower Court has relied upon the evidence of some of the Assesseees in whose names the refund orders were issued. In the absence of relevant records maintained in the Income Tax Department showing the refund orders details, the uncorroborated evidence of these interested witnesses ought not to have been relied upon. The Assesseees namely, PW-5[Mr.G.S.Metha], PW-6[Mr.R.K.Bhaya], PW-8 [Mr.Mahendar], PW-15[Mr.Muralidhar Sharada] and PW-17[Mr.Ramlal] had not supported the case of the prosecution or proved that the refund orders issued by the department in their names are forged documents. The evidence of PW-9 [D.Sekar] that he introduced Muralidhar for opening the account in Indian Overseas Bank, MMDA Nagar, at the request of the account holder does not incriminate this appellant any manner. Drawing of sample writings and signature in violation of the law and the Court relying upon the expert opinion based on specimen signature obtained illegally is contrary to settled law. When there is no adverse report during the internal audit and the revenue audit conducted by the Department, the trial Court has erroneously drawn a conclusion of guilty.

10. The learned Senior Counsel appearing for the 1st accused Paramasivam would submit that Yadhav (A4) who is the Despatch Clerk and in-charge of despatching refund orders was found not guilty and acquitted. While so, without any evidence to show how the alleged false refund order came in to the possession of Paramasivam (A1), the trial Court has erred in holding this appellant guilty. The deposition of the Investigating Officer has exposed the truncated manner in which he has conducted the investigation. The drawing of sample from the accused person without permission of the Magistrate renders the prosecution case illegal and vitiated. The trial Court has relied upon the evidence of hand writing expert, which is outright inadmissible.

11. The learned counsel appearing for the 5th accused/Padma Rajagopalan would contend that the trial Court has miserably failed in appreciation of the evidence placed by the prosecution as against Padma Rajagopalan (A5). The case of the prosecution is that to encash the refund order issued in the name of Kousalya Rathi this appellant has impersonated herself as Kousalya Rathi and opened saving bank account in Indian Bank, Thousand Light Branch. To show that the account bearing No.19191 was opened by this appellant, there is no material evidence placed by the prosecution except the evidence of PW-10 [Chandrasekar], the Senior Manager, Indian bank, Thousand Light Branch.

12. PW-10 [Thiru.Chandrasekar] has not identified the 5th accused (Padma Rajagopalan) as Kousalya Rathi in whose name the bank account stands. When there is no evidence to show that this appellant has impersonated as Kousalya Rathi, the trial Court ought not to have found her guilty. Solely relying upon the opinion(Ex.P-117) of handwriting expert (PW-18) which is not a conclusive proof, the trial Court has come to an erroneous conclusion. The manner in which the specimen signature and handwriting of this appellant had been obtained by the investigating officer without permission of the Magistrate would clearly show that based on a manipulated document, erroneous opinion of the handwriting expert obtained. Based on that evidence, the appellant has been convicted.

13. When the specific case of the prosecution that this appellant/A5 has impersonated herself as Kousalya Rathi and withdrawn the income tax refund of Rs.14,990/- and Rs.16,190/- issued in the name of Kousalya Rathi, the assessee Kousalya Rathi ought to have been examined by the prosecution. Without examining Kousalya Rathi, with an uncorroborated testimony of PW-18[Thiru.N.Ravi], which is only opinion of the expert, the lower Court had erroneously held that this appellant is guilty of impersonation and other offences.

14. 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 Muralidhar, M/s Kessar Sons, Vaishali and M/s Mangalam 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 11 refund orders totally to the tune of Rs.2,35,771/-. In order to encash the refund orders, he himself has impersonated as Muralidhar and opened account in Indian Overseas Bank, MMDA Nagar. PW-9 [D.Sekar] has identified Paramasivam (A1) as a person whom he introduced to open the bank account in the name of Muralidhar. The bank officials have identified A1[Paramasivam] as the account holder Muralidhar and as the person, who was operating the account in the name of M/s Kessar Sons. Furthermore, the real partners of Kaser and sons Thiru.G.S.Metha (PW-5) had deposed before this Court that they have not opened any current account in Indian Overseas Bank, MMDA Nagar.

15. Through R.K.Bhaya (PW-6) the prosecution has proved that no account was opened by Vaishali. It is also proved that the account in the name of Vaishali was introduced by Paramasivam (A1). Kalavathy(A2) is wife of Paramasivam(A1). Though A2 was acquitted, the fact remains that the account in the name of 'Vaishali' was introduced by this appellant and the false refund orders had been encashed through this account. Likewise, through Mr.Mahendran (PW-8) PW8 the account in the name of M/s Mangalam has also been proved that it was opened by the real proprietor of M/s Mangalam but by Paramasivam(A1) to facilitate the encashment of false refund orders made in favour of M/s Mangalam. The hand writing expert has given his opinion incriminating this appellant which is marked as Ex.P117. 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 his investigation.

16. As far as Padma Rajagopalan(A5) appellant in CrI.A.No.897 of 2007 is concerned, since the refund order in the name of Kousalya Rathi had been encashed by this Padama Rajagopalan(A5)/appellant by impersonating herself as Kousalya Rathi, the evidence let in by the prosecution is adequate to hold her guilty.

17. Point for consideration:

Whether the judgment of the trial Court unsustainable for want of proof and whether the opinion of expert marked as Ex.P117 is unreliable?

18. The case of the prosecution centres around: (a) 11 fabricated refund orders made in favour of Muralidhar; M/s Mangalam; Vaishali; M/s Kessar Sons and Kousalya Rathi; (b) opening of bank accounts in the name of the above persons by Paramasivam(A1), Kalavathi(A2) (wife of A1), Karthikeyan (brother-in-law of A1), and Padma Rajagopalan(A5) (friend of A1) for deposit of refund orders; and (c) later withdrawal.

19. The 11 fabricated refund orders which are the subject matter of these appeals are exhibited as:

Ex.P4 :The Income Tax Refund Order No.232067 dated 31.03.95 for Rs.16,288/- in the name of Vaishali (GIR No.2845-M) for the assessment year 1991-92, 92-93, 93-94 whereas GIR No.2845-M is allotted to Vaishali Dhooch not to Vaishali.

Ex.P5 :The Income Tax Refund Order No.136546 dated 26.08.1994 for Rs.29,751/- in the name of Shri Muralidhar (GIR No.2229-M) for the assessment year 1993-1994, whereas GIR No.2229-M is allotted to Muralidhar Saradha (HUF) not to Shri Muralidhar.

Ex.P6 :The Income Tax Refund Order No.136632 dated 29.11.94 for Rs.5,227/- in the name of Shri Muralidhar (GIR No.22562-M) for the assessment year 92-93, 93-94 whereas GIR No.2250-M is allotted to Muralidhar Saradha not to Shri Muralidhar (Ex.P6).

Ex.P7 :The Income Tax Refund Order bearing No.136660 date 10.01.1995 for Rs.17,345/- in the name of Shri Muralidhar (FIR No.2982-M) for the assessment year 1988-89, 1990-91, whereas GIR No.2982-M is allotted to Muralidhar Saradha not to Shri Muralidhar.

Ex.P8 :The income Tax Refund Order No.232030 dated 31.03.95 for Rs.14,990/- in the name of Kousalya Rathi (GIR No.3124-K) for the assessment year 1991-92, 92-93, 93-94.

Ex.P9 :The Income Tax Refund Order No.136550

dated 26.09.94 for Rs.22,547/- in the name of M/s Kessar Sons (GIR No.2442-K) for the assessment year 91-92.

Ex.P10 :The Income Tax Refund Order No.136693 dated 07.02.1995 for Rs.37,605/- in the name of Kessar Sons (GIR No.2442-K) for the assessment year 1989-90, 1991-92.

Ex.P11 :The Income Tax Refund Order No.136690 dated 07.02.95 for Rs.23,752/- in the name of Vaishali (GIR No.2356-M) for the assessment year 1991-92, 92-93.

Ex.P12 :The Income Tax Refund Order No.232073 dated 31.03.95 for Rs.35,207/- in the name of M/s Mangalam (GIR No.2460-M) for the assessment year 1992-93, 94-95.

Ex.P13 :The advice note from the Income Tax department for the Refund Order No.136686 dated 01.02.1995 for Rs.16,190/- in the name of Kousaya Rathi (GIR No.3124-K) for the assessment year 1986-87, 88-89, 90-91 (Totalling amount to Rs.2,37,371/-).

Ex.P14 :The advice note from the Income Tax department for the Refund Order No.232070 dated 31.03.95 for Rs.18,869/- in the name of Shri Muralidhar Saradha (GIR No.2229-M) for assessment year 1989-90.

20. 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.P-15 (Income Tax return for the assessment year 1989-90 filed by M/s Kessar Sons, 38, Godown Street, Madras-PAN/GIR No.13311-K/III(5)); Ex.P-16 (Income Tax Return for the assessment year 1991-92 filed by M/s Kessar Sons, 38 Godown Street, Madras.PAN/GIR/47087-fv-9881); Ex.P-18 (Income Tax Return for the assessment year 1992-93 filed by M/s Kessar Sons, 38, Godown Street, Madras PAN No.47-087-fv-9881); Ex.P-104 (Income Tax Return for the assessment year 1990-91 filed by Jeetha Muralidhar, No.55/3 Godown Street, Madras (PAN No.47-059-px-2236) with statement of accounts for the assessment year 1990-91); Ex.P-105 (Income Tax Return for the assessment year 1988-89 filed by Muralidhar Jeetha, No.55/3, Godown Street, Madras (PAN No.47-059-px-2236) with statement of accounts for the assessment year 1990-91) ; Ex.P122 (Income Tax Return for the assessment year 1988-89 in the name of M/s Vaishali GIR No.2356-V/III(2) PAN

No.47-059-FT-1545); Ex.P123 (Income Tax Return for the assessment year 1991-92 in the name of M/s Vaishali G.Baiya GIR No.2845-V/III(2) PAN No.47-059-PX 2984); Ex.P133 (Income Tax Return for the assessment year 1992-93 in the name of Muralidhar Saradha HUF No.62, Godown Street, Madras PAN No.47-0781-HY-7740, 2229-M/III(2)) and Ex.P135 (Income Tax Return for the assessment year 1991-92 in the name of Muralidhar Saradha HUF No.62, Godown Street, Madras PAN No.47-059-PZ-2283, 2982-M/III(2)).

21. The department has issued acknowledgement for receipt of returns filed by the assessee's concern and they are marked as Exs.P16, P140 to P144 and P148. The intimations under Section 143(1) of the Income Tax Act served on these assessee's are marked as Exs.P17, P19, P134 and P139. The refund orders issued by the Income Tax Department pursuant to the intimation are marked as Exs.P145, P146, P147 and P148. Whereas in the fake refund order, the GIR number assigned to Muralidhar Saradha (HUF) at No.62, Godown Street, Chennai, is 2229-M/III(2)/Mds. GIR number assigned to Muralidhar Saradha (individual) is 2982-M/III(2). GIR Number assigned to Kousalya Rathi at 18A Manikeswari Road, Kilpauk, Madras-10 is 7911-K/Central Circle. GIR Number assigned to M/s Vaishali at No.68, Godown Street, Chennai-01 is 2356-V/III(2). GIR 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 assessee's to the income Tax Department with that of the fake refund orders and advise notes (Exs.P4 to P14) mentioned above, it is crystal clear that the refund orders are fabricated with wrong GIR numbers of the assessee's.

22. 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 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 GIR numbers happened to be prepared by him.

23. So far 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 11 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, who is arrayed as the 3rd accused in this case 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 eleven 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.P20-account opening form for saving bank account number 7665 in the name of Muralidhar, Proprietor M/s Kessar Sons having office at No.17 Natarajapuram Street, MMDA Colony. This account has been introduced by Kalavathy(A2), who is none other than the wife of A1. 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 account number 7665 opened in the name of Muralidhar introduced by A2 and the photograph of A1 is found in the account opening form and identified by the witnesses. The signatures found in the specimen signature card Ex.P21 had been subjected to the handwriting expert opinion and the handwriting expert has given a conclusive opinion that the signatures found in the specimen signatures card of S.Muralidhar is that of A1.

24. 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.

25. 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."

26. The trial Court has relied upon the judgment of the Hon'ble Surpeme 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."

27. 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. Ram 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".

28. 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."

29. 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.

30. 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.

31. 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 is concerned, the error in the GIR 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 appellant Paramasivam (A1) guilty. The trial Court had considered all the points raised by the defence and after proper appreciation of evidence had found the appellants/A1 guilty.

32. As far as A5 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.

33. 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

Padama 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. Hence, the appellant Padma Rajagopalan(A5) is entitled for acquittal. Since other co-accused are not found guilty, the sentence against Paramasivam(A1) in respect of conspiracy is liable to be set aside.

34. Except the sentence for the offence of conspiracy, for all other offences the sentence imposed upon Paramasivam (A1) by the trial Court is confirmed.

In the result,

Crl.A.No.803 of 2007 filed by Paramasivam (A1) is dismissed and the judgment passed by the learned Principal Special Judge, CBI Cases at Chennai made in C.C.No.21 of 1999, dated 13.08.2007 is hereby modified. Conviction and sentence imposed upon the appellant /A1 for the offence under Section U/s 120-B r/w 420, 419, 467, 471, 468, 471 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 is hereby set aside. Rest of the offences, the sentence imposed by the trial Court is confirmed. The trial Court is directed to secure Paramasivam (A1) to serve the remaining period of sentence. The period of sentence already undergone by the appellant/A1 shall be set off.

Crl.A.No.897 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.21 of 1999, dated 13.08.2007 as against Padma Rajagopalan(A5) is hereby set aside. Fine amount, if any, paid by this appellant shall be refunded to her. Bail bond if any executed by this appellant shall be cancelled.

Sd/-
सत्यमेव जयते

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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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.

+1cc to Mr.S.K.Rameshkumar, Advocate sr.no.48206
+1cc to Mr.C.P.Palanichamy, Advocate sr.no.47893

CrI.A.Nos.803 and 897 of 2007

gmr (co)
nr 02/08/2018



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