



Crl.A.No.474 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 13.04.2022	Orders pronounced on 16.06.2022
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THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

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State represented by
Inspector of Police
CBI/ACB/Chennai.

... Appellant

Vs.

1. Shri V.Thiyagarajan
2. Shri V.S.Balusamy
3. Ms.Manimehalai
4. Shri.R.Narayanasamy

... Respondents

This Criminal Appeal is filed under Section 378 read with 386 Cr.P.C., to call for the records in this case and set aside the judgment of learned II Additional District and Sessions Judge (CBI Cases), Coimbatore dated 04.04.2012 in C.C.No.5 of 2006 and convict the respondents/accused herein.

For Appellant

: Mr.K.Srinivasan
Special Public Prosecutor



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For Respondent-1 : Mr.K.Shankar
For Respondent-2 : Mr.AR.L.Sundaresan
Senior Counsel
for
M/s.A.L.Ganthimathi
For Respondent-3 : Mr.B.Vijay
For Respondent-4 : Mr.B.Kumar
Senior Counsel
for
Mr.G.Maniprabhu

ORDER

The State has filed this appeal challenging the judgment of the trial Court in C.C.No.5 of 2016 dated 04.04.2012 acquitting the accused in this case.

2. Appellant filed final report against the accused in this case for the offences under Sections 120(b) r/w.420, 467, 471 and Section 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988. First accused was the then Senior Divisional Manager, United India Insurance Company Limited, Erode. The role of first accused and other accused, namely A2-Thiru.V.S.Balusamy, A3-Tmt.Manimegalai, A4-Thiru.Narayanasamy and



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the approvers Dr.Paramasivam, Thiru.Velliyangiri, Thiru.Ponnusamy came to light in the matter of claiming compensation under Motor Vehicles Act on the basis of false and forged documents. A2-Thiru.V.S.Balusamy is a practicing advocate at Kangeyam. A3-Tmt.Manimegalai is junior advocate of A2-Thiru.V.S.Balusamy. Accused Thiru.Mohamed Jabir was working as Assistant Surgeon in Government Hospital, Dharapuram during 2000-2001 and also the proprietor of Apollo Bone and Joint Hospital, Dharapuram. Fourth accused is a partner in a factory called Udhayam Fabwhich. A2-Thiru.V.S.Balusamy filed a claim petition on behalf of Thiru.Ponnusamy before Motor Accident Claims Tribunal, Dharapuram. A3-Tmt.Manimegalai filed a claim petition for Thiru.Velliyangiri and A4-Thiru.Narayanasamy. The claim petition of A4-Thiru.Narayanasamy is MCOP No.80 of 2000 and the claim petition of Thiru.Velliyangiri and Thiru.Ponnusamy are MCOP Nos.118 and 470 of 2000 respectively. Dr.Paramasivam was working as Resident Medical Officer, Sri Ramakrishna Hospital, Coimbatore and was entrusted with the work of issuing wound certificates. A1-Thiyagarajan was working as Senior Divisional Manager, United India Insurance Company Limited, Erode and was incharge of



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settlement of claims pending before Motor Accident Claims Tribunal at Dharapuram. First accused had settled the aforesaid cases in conspiracy with other accused knowing fully well that these claimants had not met with accident for which the claims were made and the claimants names were not figuring either in the First Information Report or final report. Without ordering investigation by a panel investigator into the claims to prove the genuineness of the claims, first accused settled the claims of the claimants and caused huge loss to the United India Insurance Company Limited and corresponding gain to himself and others. A2-Thiru.V.S.Balusamy and A3-Tmt.Manimegalai arranged false medical records and bills from Sri Ramakrishna Hospital with the help of Dr.Paramasivam for making the false claims. Therefore, final report was filed for the commission of offences punishable under Sections 120(b) r/w.420, 467, 471 and Section 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988. The trial Court framed the following charges against the accused:

*“Firstly, U/s.120-B IPC r/w 420, 468 and 471 IPC
and Section 13(2) r/w 13(1)(d) of PC Act, 1988*



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against A.1 to A.4.

SECONDLY, U/s. 420 IPC against A.1 to A.3 – 3 counts and A.4 one count.

THIRDLY, U/s.468 r/w 471 IPC (3 counts) against A.2 and A.3.

FOURTHLY, U/s.13(2) r/w 13(1)(d) P.C Act, 1988 against A.1.”

3. Accused denied the charges and claimed to be tried. Prosecution examined PW.1 to PW.24 witnesses and produced Exs.P1 to P76 documents. Accused examined DW.1 and DW.2 and produced Exs.D1 to D22 documents and also marked Ex.X.1 as Court document.

4. Case of the prosecution as seen from the evidence of prosecution witnesses, in brief, is as follows:-

PW.1- Thiru.Velliyangiri is a claimant in MCOP No.118 of 2000.



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PW.3 – Thiru.Ponnusamy is the claimant in MCOP No.470 of 2000, PW.2 was the Resident Medical Officer in Sri Ramakrishna Hospital, Coimbatore.

The reading of the evidence of these witnesses shows that PW.1 suffered head injury in an accident on 10.08.1999 when he was riding his two wheeler MSR 6683 near his house. He took treatment in Ganapathi Nursing Home, Tiruppur and then, was admitted at Sri Ramakrishna Hospital, Coimbatore on 12.08.1999. He took treatment as inpatient from 12.08.1999 to 29.08.1999 at Sri Ramakrishna Hospital and spent Rs.25,000/- towards medical expenses. Three months after the accident, Advocate A2-Thiru.V.S.Balusamy asked him to come to Saravana Mahal Marriage Hall in connection with a work. He met advocate A2-Thiru.V.S.Balusamy at his office cum residence. He asked him to do the grill work and then enquired about the accident, instructed him to bring the medical records and promised to get compensation to him. He directed PW.1 to meet his Assistant. He was asked to sign in many forms. A2-Thiru.V.S.Balusamy informed him that compensation cannot be claimed on the basis of medical records produced by P.W.1 and some other medical records have to be created. PW.1 told him not to do like that. A2-Thiru.V.S.Balusamy told him that he



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would make arrangements for evidence and it is enough if PW.1 signs.

After some time, he was asked to come to Advocate's office and informed that 1/3rd of compensation amount would be paid to him. False documents were made ready narrating the accident differently. PW.1 was asked to sign in the documents and he signed. 1½ months later, advocate A2-Thiru.V.S.Balusamy asked him to come to Insurance Company at Erode. His head injury was examined. After some time, he was asked to come to Dharapuram Court. The Judge informed him that a sum of Rs.2,75,000/- was awarded as compensation to him. Subsequently in a function, he was handed over a cheque. He was paid Rs.55,000/-. His claim petition is Ex.P5. He gave Ex.P3-Confessional statement. He was granted pardon by the learned Chief Judicial Magistrate, Coimbatore.

5. PW.3 was working as a worker in Brindavan Cotton Mills at Sultanpet in Pollachi Main Road. On 24.01.2000, he travelled in Mahindra Van to drop the workers. The van driven by Manivannan. The van met with an accident between Ayyampalayam and Chenjur Hills. The workers, driver and he suffered injuries. He sustained a small injury in his right leg. He



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took treatment at Ganga Hospital, Salem. Thiru.Vijayan, clerk of A.2, told him that he would make arrangement to get compensation for the injuries suffered by him in the accident. He was asked to sign papers. After some time, he received call from the office of Advocate A2-Thiru.V.S.Balusamy. He visited the office and handed over the medical record. The clerk informed him that nothing could be done with the medical bills produced by him and they would create the bills. After some days, he was asked to come to insurance office, Erode and was enquired about the injury suffered by him. Then he was asked to come to Dharapuram Court after some days and there, he was informed by the Judge that a sum of Rs.90,000/- was awarded to him. Two days thereafter he was given a cheque for Rs.50,000/-. An account was opened in his name, then he was given Rs.10,000/-. Copy of the claim petition is Ex.P26. He has not taken treatment at Sri Ramakrishna Hospital, Coimbatore or in Apollo Bone and Joint Hospital, Dharapuram.

6. PW.2 was working as Resident Medical Officer at Sri Ramakrishna Hospital, Coimbatore from 1981. He had been attending cases regarding medico-legal cases. He came to know A2-Thiru.V.S.Balusamy,



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A3-Tmt.Manimegalai, Chellamuthu and certain other Advocates. They used to approach him for issuance of wound certificates on behalf of patients, who had been admitted in Sri Ramakrishna Hospital. Some time in 2000, he issued wound certificate to Advocate Thiru.V.S.Balusamy for three patients, namely Thiru.Velliyangiri, Thiru.Ponnusamy and A4-Thiru.Narayanasamy. The wound certificates were issued without verifying the patients' records. Thiru.Velliyangiri had taken treatment in Sri Ramakrishna Hospital, in the month of August 1999, but he issued a wound certificate for Thiru.Velliyangiri stating that he had taken treatment in the month of February, 1999. Thiru.Ponnusamy and A4-Thiru.Narayanasamy have not taken treatment in Sri Ramakrishna Hospital. On the request of A2-Thiru.V.S.Balusamy, he issued wound certificate to them. In 2002, CBI enquired him and verified the hospital records. He informed the facts to CBI officers. The wound certificate to A4-Thiru.Narayanasamy is Ex.P9. A2-Thiru.V.S.Balusamy showed the discharge summary and inpatient bills of A4-Thiru.Narayanasamy and they are Exs.P10 and P11. He signed in Ex.P9 without examining A4-Thiru.Narayanasamy. The wound certificate of Thiru.Velliyangiri is Ex.P12. This wound certificate was issued by him



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on the basis of discharge summary and inpatient bills shown by A2-Thiru.V.S.Balusamy. That is Ex.P13 and the medical bill is Ex.P14.

Certified copy of inpatient admission register of Sri Ramakrishna Hospital is Ex.P15. Inpatient records of Thiru.Velliyangiri maintained by the hospital is Ex.P16. As per Exs.P15 and P16, Thiru.Velliyangiri was admitted in Sri Ramakrishna Hospital on 12.08.1999 and discharged on 23.08.1999. He issued Ex.P17 wound certificate to Thiru.Ponnusamy. It was issued on the basis of discharge summary, inpatient bills shown by A2-Thiru.V.S.Balusamy. They are Exs.P18 and P19. Though it is stated in Exs.P18 and P19 that Thiru.Ponnusamy had taken treatment in hospital, he had never been treated in Sri Ramakrishna Hospital. Exs.P18 and P19 were not issued by Sri Ramakrishna Hospital. Same is the case with Exs.P13, P14, P10 and P11. Learned Judicial Magistrate No.I, Coimbatore recorded his confessional statement. Then he was granted pardon by learned Chief Judicial Magistrate, Coimbatore. At the time of issuing the wound certificates, he knew that wound certificates were false. He received the amount of Rs.900/- to Rs.1000/- for issuing wound certificate to A2-Thiru.V.S.Balusamy.



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7. PW.20 was working as Shrestidar in Chief Judicial Magistrate Court, Erode. MCOP No.118 of 2000 was filed on behalf of Thiru.Velliyangiri by his Advocate Tmt.Manimegalai (A3). A sum of Rs.2,75,000/- was awarded as compensation. Rs.1,50,000/- was paid to the petitioner therein through cheque. The balance amount of Rs.1,25,000/- was deposited in Indian Overseas Bank, Kolinchipadi Branch. MCOP No.89 of 2000 was filed on behalf of A4-Thiru.Narayanasamy by his Advocate Tmt.Manimegalai (A3). A sum of Rs.1,25,000/- was paid as compensation in this case. Rs.60,000/- was deposited in Indian Overseas Bank, Kolinchipadi Branch and then, returned to A4-Thiru.Narayanasamy. MCOP No.470 of 2000 was filed on behalf of Thiru.Ponnusamy by his Advocate Thiru.V.S.Balusamy (A2). A sum of Rs.90,000/- was awarded as compensation. Rs.50,000/- was paid through cheque and the balance was deposited in State Bank of India. Advocates A3-Tmt.Manimegalai and A2-Thiru.V.S.Balusamy had signed in the vakalath filed in the cases filed by them.



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8. PW.24 - Inspector of Police registered the First Information Report in this case as per the orders of SP, CBI, ACB, Chennai and conducted investigation and filed final report.

9. On perusing the oral and documentary evidence produced in this case and on the basis of submissions made by the learned counsel appeared for the parties, learned Judge found that the charges framed against the accused are not proved and therefore, acquitted them under Section 248(1) Cr.P.C. Challenging the acquittal, this appeal is filed by the appellant/State.

10. Learned Special Public Prosecutor for the appellant submitted that there is overwhelming and convincing evidence available on record to prove the charges levelled against the accused beyond reasonable doubt. However, the trial Court failed to appreciate the evidence and blindly accepted the defence version. Finding of the Court that the trial Court failed to prove the forgery is not correct. PW.2 is the author of the documents Ex.P11, P14, P19 and P10, P13 and P18, P9, P12 and P17. He deposed that



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these documents were issued as per the instruction of second accused. His evidence is corroborated by the evidence of PW.1, PW.3 and Ex.P16. Oral evidence of PW.3, PW.7, PW.8 and PW.11 is corroborated by the documentary evidence in the form of Exs.P34 and P38 to prove the forgery of the documents. First accused proposed to settle the cases without following the rules and regulations of United India Insurance Company Limited. He misrepresented the facts to his higher officials and caused the approval of the settlement. False documents have been arranged by second accused and third accused and produced for settlement.

10.1. The finding of the trial Court that the learned Magistrate has not followed the procedure laid down for recording 164 Cr.P.C statement is not correct and also finding that the recording of statement of witnesses is in violation of Sections 126 and 129 of Indian Evidence Act is also not correct. The finding of the trial Court that the learned Chief Judicial Magistrate is not empowered to grant tender of pardon is also not correct in view of the judgment in *Anandnarayanan ..vs.. CBI* reported in (2000) 9 Crl.L.J. 926.



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10.2. The evidence of approvers, namely PW.1 to PW.3 have been substantially corroborated by the other evidence. The contradictions found in the evidence of prosecution witnesses are only minor in nature. First Information Report is not an encyclopedia and therefore, omission to mention the name of the accused is not a ground for rejecting the prosecution case. Sanction for prosecution in Ex.P33 was granted in respect of first accused invoking the provision of General Insurance Conduct (Discipline and Appeal) Rules, 1975, which is applicable to every person appointed to any post under the General Insurance Corporation of India or its subsidiary company. It was validly given.

10.3. Accused had caused loss of Rs.4,90,000/- to United India Insurance Company Limited and therefore, the finding that there was no loss caused to United India Insurance Company Limited is not correct. The award was obtained by committing forgery and forged documents were used for the purpose of cheating by the accused in conspiracy with each other. The prosecution has proved through oral and documentary evidence that the claim petitions had been filed claiming compensation for the injuries alleged to have been sustained in the accident, in which claimant had in fact



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not involved/not sustained any injuries and forged false documents had been filed for settling the claims in Lok Adalat. However, the trial Court, without considering the evidence, gave judgment contrary to the evidence available and acquitted the accused. Thus, the learned counsel for the appellant / Special Public Prosecutor prayed for setting aside the judgment of the trial Court and for convicting and sentencing the respondents.

11. Learned counsel for the first respondent submitted that first respondent is falsely implicated in this case. There was a direction from the higher authorities to settle Motor Accident cases in the Lok Adalat. Accordingly, many cases, including the cases in this case, were identified for settlement in Lok Adalat and settled. The allegations against the first respondent is that without a mention about the claimant suffering injuries in the accident in the First Information Report / final report, without examining the injured by the Government Doctors and without private investigation and without actually verifying whether the claimants suffered injuries in the accused, he recommended for settlement of the claims in Lok Adalat. However, it is submitted by the learned counsel for the first



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respondent that it is not necessary that the name of the injured should find a place in First Information Report / final report. If there are materials to support that the claimant suffered injuries in the accident by convincing evidence, compensation can be awarded. Private investigation is not necessary in all the cases. When the Government Doctors are not available and when the injuries and disability are supported by acceptable evidence, non-examination of the injured by the Government Doctor is not an offence. It was not the individual decision of the first respondent to refer the matter to Lok Adalat. He is one of the members of the committee, which selected the cases for settling in Lok Adalat. There were other members in the committee, but they were let off. Lok Adalat was presided over by a former Judge and cases were settled. Sanction for prosecution given against the first respondent is not in accordance with law, for the reason that only a Board can give sanction and not an individual member of the Board. The settlement reached in Lok Adalat was communicated to the head office along with necessary documents and it was approved. Only then the claim was settled. There is no evidence to show that the first respondent got any monetary gain out of the settlement effected in Lok Adalat. Since there is



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absolutely no material to implicate the first respondent, the trial Court acquitted him.

12. Learned counsel for the first respondent relied on the Judgment in ***K.T.Uthappa ..vs.. State (Crl.A.Nos.933 and 835 of 2005 of Karnataka High Court)***, the order of Hon'ble Supreme Court in ***Crl.A.Nos.1872 and 1873 of 2004 (State of Karnataka ...vs.. K.T.Uthappa and another)*** for the proposition that the sanction for prosecution given when General Insurance Conduct (Discipline and Appeal) Rules, 1975 not gazetted is not valid. The order in ***Crl.A.(MD) No.430 of 2009 and 301 of 2010 (CBI ..vs.. Surendiran)*** is relied for the proposition that merely because signing in joint compromise memo, we cannot infer conspiracy under Section 120(b) of IPC.

13. Learned Senior counsel appearing for the second respondent submitted that the charges framed against second accused and third accused are not specific charges. It is understood from the final report that they filed claim petitions for the claimants without their suffering injuries in the



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accident mentioned in the claim petition and that they had created medical records in support of the claim petitions. It is also the case of the prosecution that second accused got false medical records from PW.2. However, the reading of the evidence of PW.1 to PW.3 shows that they contradicted their evidence in chief examination with the evidence in cross examination. PW.3 had not implicated second and third accused at all. Therefore, the evidence of PW.1 and PW.2, in the light of the material contradictions, cannot be believed. They were originally accused in this case and later, became approvers at the instance of the prosecution. Their evidence has to be looked into with suspicion, for the reason that in order to escape from criminal liability, they became the approvers and now giving evidence against the accused. Proper procedures were not followed before recording the confessional statements of PW.1 to PW.3 and at the time of tendering pardon to them. There is absolutely no material to show that the second accused and third accused were responsible for getting medical certificates and produced either before the Court or before the Lok Adalat. There is no evidence for conspiracy / meeting of minds among the accused for the commission of alleged offence.



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14. It is submitted by learned counsel for the third respondent that it is admitted by PW.3 that he gave the wound certificate. When it is admitted by him that he is the one who is the author of wound certificate, there is no commission of offence of forgery under Section 468 of IPC. Medical records are not compared with the original medical records or carbon copy of the medical records. There is no evidence to show that how the Investigating Officer secured medical records in this case, especially when the medical records are not produced in the court along with claim petitions. Accused have produced evidence to show that PW.2 had given several false wound certificates, obviously for cash consideration. It is the case of second respondent and third respondent that it was the claimant who secured medical records from PW.2 and produced the same for settling the claims in Lok Adalat. The Advocate had no role in the production of medical records. Advocate preferred the petition and conducted the case on the basis of the information supplied by the claimants. For the false documents produced by the parties and the false information given by the parties, Advocate cannot be prosecuted. Till now, the Lok Adalat award



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passed in the cases concerned in this case were not challenged by the Insurance Company.

15. Learned counsel for the third respondent submitted, relying upon judgment reported in **(2009) 10 SCC 401 in Dhanapal ..vs.. State** that the appellate Court, as a matter of routine, should not interfere with the finding of the acquittal order recorded by the trial Court unless there are substantial and compelling reasons. It is observed in this judgment as follows:-

39. The following principles emerge from the cases above:

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court.

The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but



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the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

16. The judgment reported in **(2009) 8 SCC 751 in *Md.Ibrahim and others ..vs.. State of Bihar*** is relied for the proposition that when PW.2 admitted having issued the wound certificate, the offence of forgery, making of false documents is not made out. For making out a case for creating a false documents (1) one must have made or executed a document claiming



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to be someone else or authorised by someone; (2) altered or tampered the document; and (3) obtained a document by practicing deception or from a person not in control of senses. None of these three ingredients exist in this case. Therefore, the offence of forgery, making a false document and using the forged document claiming it to be a genuine would not arise in this case.

17. Learned counsel for the third respondent relied the judgment reported in **1990 ACJ 333 (Brestu Ram ..vs.. Anatram and others)** for the proposition that merely because the claimants name is not mentioned in the First Information Report, it would not deter him from filing a case for compensation for the injuries suffered.

18. Learned counsel also relied on the judgment reported in **1957 AIR SC 637 (Sarwan Singh Ratan Singh : Harbans Singh Bhan Singh ..vs.. State of Punjab)** and **1956 AIR SC 217 (Aher Raja Khima ..vs.. State of Sourashtra)** for the proposition that approver should be sent to judicial custody before recording confession statement. On going through these judgments, this Court finds that in the cases concerned, the accused were in



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police custody or in grip of police custody. In that circumstances, it was held that the accused should have been sent to judicial custody. In the case before hand, the accused were not in judicial custody or police custody, but they were released on bail and comfortably breathing fresh air sitting at their home. It is not mandated under Section 164 Cr.P.C that the accused, who wanted to give a confession statement or become an approver, should be sent to judicial custody. Therefore, these judgments are not applicable to the facts of this case.

19. It is submitted on behalf of the learned counsel for the third respondent by citing the judgment reported in ***AIR 1966 Kerala 264 (M.K.Parameswara Kurup ..vs.. N.Krishna Pillai)*** for the proposition that the counsel owes a duty to his client and he must carry out faithfully his client's instructions. It must be remembered that the counsel is not a Judge in the case and it is not for him to decide whether the allegations made by his client are true or false. He is bound, except in very exceptional circumstances, to accept his client's words. A Court may presume that the counsel who signed the pleading has acted bonafide and without malice and



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no counsel should be called upon to answer a complaint for defamation, simply because he signed a pleading which contains a defamatory matter.

The judgment in ***Crl.A.No.669 of 2012, dated 16.12.2021 (State represented by Inspector of Police, CBI, ACB, Chennai ..vs.. S.Karnan and others)*** is relied on for the proposition that it is settled principle of law that after securing an order of acquittal, there is double presumption occurred in favour of the accused. Firstly, the foundational principle of criminal justice delivery system that every person, accused of committing the offence, shall be presumed to be innocent, unless the guilt is proved by competent Court of Law. Secondly, if the accused secured an order of acquittal, the presumption of innocence is reaffirmed and strengthened by trial Court. Even if two possible conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

20. Learned counsel for the fourth respondent submitted that PW.11 claims that Exs.P9 and P10 documents are true documents and therefore, there is no reason to doubt these documents and the claims made on the



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basis of these documents.

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21. Learned counsel for the fourth respondent relied on the judgment in *Murugesan and others ..vs.. State reported in (2012) 10 SCC 383* for the proposition that the reversal of acquittal by the High court is possible only if the conclusion recorded by the trial Court did not reflect the possible view. It is observed thus,

“32. In the above facts can it be said that the view taken by the trial court is not a possible view? If the answer is in the affirmative, the jurisdiction of the High Court to interfere with the acquittal of the accused appellants, on the principles of law referred to earlier, ought not to have been exercised. In other words, the reversal the acquittal could have been made by the High Court only if the conclusions recorded by the learned trial court did not reflect a possible view. It must be emphasized that the inhibition to interfere must be perceived only in a situation where the view taken by the trial court is not a possible view. The use of the expression “possible view” is conscious and not without good



reasons. The said expression is in contradistinction to expressions such as “erroneous view” or “wrong view” which, at first blush, may seem to convey a similar meaning though a fine and subtle difference would be clearly discernible.

33. The expressions “erroneous”, “wrong” and “possible” are defined in the Oxford English dictionary in the following terms:

“erroneous : wrong;incorrect.

*wrong : 1. not correct or true, mistaken
2. unjust,dishonest or immoral*

*possible : 1. capable of existing, happening,
or being achieved.*

2. that may exist or happen, but that is not certain or probable.” 34. It will be necessary for us to emphasize that a possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. A view taken by a court lower in the hierarchical structure may be termed as erroneous or wrong by a superior court upon a mere disagreement. But such a conclusion of the higher court would not take the view rendered by the subordinate court outside the



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arena of a possible view. The correctness or otherwise of any conclusion reached by a court has to be tested on the basis of what the superior judicial authority perceives to be the correct conclusion. A possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact where it is agreed upon or not by the higher court. The fundamental distinction between the two situations have to be kept in mind. So long as the view taken by the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, the view taken by the trial court cannot be interdicted and that of the High Court supplanted over and above the view of the trial court.”

22. Thus, learned counsel appearing for the respondents submitted that the trial Court after going through the evidence found that there are no materials to convict the respondents for the charges framed against them and acquitted. Thus the presumption of innocence of the accused gets strengthened. When the trial Court rejected the case of the prosecution and acquitted the accused, in an appeal against the acquittal, the scope of



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interference by the appellate court is very limited. Merely because there is another possible view, judgment of the trial Court should not be reversed, when it recorded its finding on the basis of the evidence available and the view taken by it is also possible. Thus, the learned counsel appearing for the respondents prayed for confirming the judgment of the trial Court and for dismissal of this appeal.

23. Points for consideration are :-

(1) Whether the judgment of the trial Court is liable to be set aside, in the light of the submissions made by the learned counsel appearing for the appellant ?

(2) Whether this appeal can be allowed ?

24. Considered the rival submissions and perused the records.

25. Before considering the rival contentions of the parties, it is better to narrate, in brief, the allegations/charges made against the accused in this case:



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First Information Report in this case was registered by CBI in Crime No.SPE/ACB/CBI, Chennai R.C.No.12(A)/2004 for the offences under Sections 120(B) r/w 420, 467, 468, 471 IPC and 13(2) r/w 13(1)(d) of PC Act, 1988 by PW.24 on the basis of source information that the first accused V.Thiyagarajan, Senior Divisional Manager, United India Insurance Company Limited, as deciding authority in settling third party motor accident claims, without collecting the concerned documents, relying on forged documents, had intentionally knowing fully well that claims settled are not genuine motor accident claims cases, settled the cases in Lok Adalat and caused wrongful loss to United India Insurance Company Limited to the tune of Rs.15,30,000/-. First Information Report was originally registered against V.Thiyagarajan, first accused and third party claimants and others. As rightly pointed out by the learned counsel for the respondents, the names of the respondents are not specifically mentioned in the First Information Report. It is a settled proposition of law that the First Information Report is not an encyclopedia and it is not necessary that it should contain all the informations. If the police comes to the conclusion on the basis of the



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materials collected during the course of investigation, about the involvement of the accused, though not named in the First Information Report, the police can always file a final report against the accused. In the case before hand, appellant police, during the course of investigation, found the involvement of five accused in this case. They are,

- 1) Sri.Thiyagarajan, Senior Divisional Manager, United India Insurance Company Limited;
- 2) Dr.Mohamed Jubair, Assistant Surgeon, Government Hospital, Dharapuram.
- 3) Thiru.V.S.Balusamy
- 4) Tmt.Manimegalai
- 5) Thiru.Narayanasamy

A.2 Dr.Mohamed Jubair was discharged as per order passed in Crl.M.P.No.160 of 2007, dated 26.04.2007.

26. Gist of the charges against the accused are that Thiru.Narayanasamy, claimant in MCOP No. 89 of 2000/A4 fractured his



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wrist on 11.06.1999 in a freak accident that happened at Kollehal while a car hit him when he was standing in a traffic signal. He took treatment as inpatient in Richmond hospital from 04.06.1999 to 14.06.1999. No First Information Report was lodged in respect of this accident.

26.1. The claimant in MCOP No.118 of 2000/PW.1 fell down from his scooter in the month of August 1999 and was admitted in Sri Ramakrishna Hospital, Coimbatore from 12.08.1999 to 23.08.1999. No First Information Report was lodged with the police with regard to this accident.

26.2. The claimant in MCOP No.470 of 2000/PW.3 was the cleaner of the van bearing No.TN-45-D-5080. There was a collision between car bearing TN-41-A-5154 and the van bearing No.TN-45-D-5080 on 24.01.2000. PW.3 suffered minor injuries in this accident. First Information Report in Crime No.18 of 2000 for the offence under Sections 279, 338 IPC was registered at Kamanayakkanpalayam police station. PW.3



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had only taken first aid. Thiru.V.S.Balusamy traced an accident that occurred on 07.02.1999 involving a bus bearing No.TN-69-B-0709 and a van bearing No.TN-47-A-054 at K.Kallipatti Pirivu in Vedachandur to Ottanchatram road, Dindigul. This accident resulted in the death of six persons and injuries to many. Case in Crime No.139 of 1999 for the offence under Sections 239, 337, 338 and 304 IPC was registered at Ottanchatram police station for this accident. Final report was also filed. 13 persons filed Motor Accident Claim Petitions in 1999 and claim petitions were settled in Lok Adalat by Madurai Regional Office of United India Insurance Company Limited. This bus was a tourist bus and started its trip from Chozhavaram near Tuticorin. No passenger had boarded the bus from Ottanchatram. However the claim petitions for PW.1 and A.4 had been prepared as if both of them travelled in this bus and suffered injuries in this accident, which in fact is not true. For the purpose of making claim, Thiru.V.S.Balusamy, in conspiracy with PW.1 and PW.3 and other accused, requested PW.2 - Dr.Paramasivam, to issue medical certificates in the name of PW.1 and PW.3. Thiru.V.S.Balusamy and Tmt.Manimegalai arranged for medical bills in support of their claim. Though Thiru.Ponnusamy had suffered minor



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injuries in the accident concerned in Crime No.18 of 2000, A2-Thiru.V.S.Balusamy requested PW.2 to issue medical certificate and created false medical bills, discharge summary for making a false claim, in conspiracy with PW.3 Thiru.Ponnusamy and other accused.

26.3. A1 Thiagarajan had settled these claims knowing fully well that the claimants had not met with an accident for which the claims were made. He had not conducted any verification of accident by ordering investigation, or to find out from the criminal case records, as to whether the claimants had suffered injuries and had not properly verified the medical records. Accused A4-Thiru.Narayanasamy's claim of Rs.4,00,000/- was settled at Rs.1,25,000/-. Accused Velliyangiri's (PW.1) claim of Rs.4,00,000/- was settled at Rs.2,75,000/- and accused Ponnusamy's (PW.3) claim of Rs.4,00,000/- was settled at Rs.90,000/-

27. PW1. Thiagarajan, PW.2- Dr.Paramasivam PW.3- Ponnusamy, who were accused in this case, gave confession statements admitting their crimes to the learned Judicial Magistrate and then when they were granted



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pardon by learned Chief Judicial Magistrate, Coimbatore. The proceedings relating to recording of confessional statement of PW.1 and tender of pardon proceedings are marked as Exs.P.2, P.3 and P.4. The proceedings relating to recording of confessional statement of PW.2 and tender of pardon proceedings are marked as Exs.P.20 to P.22. The proceedings relating to recording of confession statement of PW.3 and tender of pardon proceedings are marked as Exs.P.27, P.28 and P.31. Prosecution mainly relied on the evidence of PW.1 to PW.3 to establish the theory of conspiracy among the accused for claiming compensation illegally. It is claimed that other evidence supported the theory of conspiracy and also making false, fraudulent and illegal claims of compensation. PW.1 Velliyangiri gave evidence with regard to his sustaining head injury on 10.09.1989 while riding his two wheeler, taking treatment at Ganapathi Nursing Home, Tiruppur and then at Sri Ramakrishna Hospital, Coimbatore. He was treated at Sri Ramakrishna Hospital, Coimbatore from 12.08.1999 to 29.08.1999. It is also his evidence that accused Thiru.Balusamy called him over phone to meet him and when he met he offered to get compensation for the injuries sustained by him and that the compensation cannot be claimed on the basis



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of his actual medical records and that he would make documents to support the claim. Accordingly, claim petition was filed and it was settled in Lok Adalat. Ultimately he was paid Rs.55,000/- in cash. His specific evidence during the course of chief examination is that he did not suffer injury in a bus accident, but suffered injuries in an accident involving his scooter.

28. PW.2, who was Resident Medical Officer of Sri Ramakrishna Hospital, Coimbatore knew accused Balusamy. Balusamy showed him discharge summary and bills for Velliyangiri, Ponnusamy and Narayanasamy . On the basis of the discharge summary and the bills produced by Balusamy, he issued wound certificates to these three persons. Velliyangiri had taken treatment at Sri Ramakrishna Hospital in August 1999, but Ponnusamy and Narayanasamy have not taken treatment in Sri Ramakrishna Hospital. The wound certificate of Narayanasamy is Ex.P9, the wound certificate of Velliyangiri is Ex.P12 and the wound certificate of Ponnusamy is Ex.P13. He issued Ex.P9 on the basis of Exs.P10 and P11, discharge summary and inpatient bills shown by Balusamy. Similarly he issued PW.12 wound certificate to Velliyangiri on the basis of Ex.P13



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discharge summary and P14 inpatient bills shown by Balusamy. On the basis of Ex.P18 discharge summary and P19 inpatient bills, he issued Ex.P17 wound certificate to Ponnusamy. However, as per Ex.P15-inpatient admission register and Ex.P16 - inpatient record of Velliyangiri, Velliyangiri was admitted in the hospital on 12.08.1999 and discharged on 23.08.1999. Ponnusamy had not taken treatment in Sri Ramakrishna Hospital as per Ex.P18 and P19. Exs.P10, P11, P13 and P14, P18 and P19 were not issued by Sri Ramakrishna Hospital. He received a sum of Rs.900/- to 1000/- for issuing wound certificate to Balusamy.

29. It is seen from the evidence of PW.3 that after the accident, he took treatment at Ganga hospital. Advocate clerk Vijayan informed that on the basis of his medical bills, the claim cannot be made and said that they would prepare bills and claim petition was filed. A sum of Rs.90,000/- was awarded. During the course of his evidence, he has not implicated Balusamy and Manimegalai. He specifically stated during the cross



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examination that he did not know who appeared for him. He admitted giving Ex.P28 confession statement and that learned Chief Judicial Magistrate, Coimbatore had granted pardon to him. During his cross examination he stated that he did not know whether the Advocate Balusamy and Manimegalai appeared for him. Obviously, he has not supported the case of Prosecution. However, he was not treated as a hostile witness by the prosecution.

30. Thus, of all the three accused turned approved witnesses. PW.1 and PW.2 had fairly supported the case of the prosecution during the course of recording the chief examination. It is the submission of the learned counsel for the respondents / accused that, these witnesses have not sustained their evidence, during the course of cross examination and said something materially different / contradictory creating suspicion in the case of the prosecution.

31. PW.7 Dr.S.Rathinavel was working as Doctor in Orthopedics Specialist in Sri Ramakrishna Hospital from 1998. It is his evidence that



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Ex.P10, discharge summary issued to Narayanasamy was not issued by him, though his name is mentioned as a Doctor, who issued the discharge summary. Neither he nor any of the Doctors worked under him and named in the discharge summary had signed in Ex.P10. Similarly, Ex.P13 discharge summary found to have been issued by Dr.Murali. Ex.P13 was not issued by Sri Ramakrishna Hospital and no Doctor worked in Sri Ramakrishna Hospital signed in Ex.P13. So is the case of Ex.P18 – discharge summary. It was not signed by Dr.Kumarasami. Dr.Kumarasami died five years back. Thus, it is seen from the evidence of PW.7 that Exs.P10, P13 and P18 documents had not been issued by Sri Ramakrishna Hospital.

32. PW.8, bill collector in Sri Ramakrishna Hospital gave evidence to the effect that the signatures found in Exs.P11, P14 and P19 receipts were not his signatures. These documents had not been issued by Sri Ramakrishna Hospital. Thus, it is his evidence that Ex.P11, P14 and P19 receipts were not issued by Sri Ramakrishna Hospital and the signatures



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found in these receipts are not his signatures.

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33. When accused Narayanasamy claimed that he was treated at Sri Ramakrishna Hospital, PW.9 Dr.Velusamy stated that when he was working in Richmond Hospital, Coimbatore in 2008, Narayanasamy was admitted in Richmond Hospital on 11.06.1999 and treated as inpatient till 14.06.1999. The treatment records of Narayanasamy at Richmond Hospital are produced as Exs.P41 to P47.

34. PW.11, the Dean of Sri Ramakrishna Hospital stated that Exs.P10 and P11 documents are false and fabricated documents and those documents were not issued by Sri Ramakrishna Hospital. In support of his claim, he produced a copy of the Inpatient Register as Ex.P61. It is also his evidence that Velliyangiri had not taken treatment from 08.02.1999 to 22.02.1999 as mentioned in Exs.P13 and P14 and Exs.P13 and P14 are the false documents. Ponnusamy had not taken treatment on 24.01.2000 and 25.01.2000 as shown in Exs.P18 and P19 medical records. A.4 Narayanasamy was also not treated at Sri Ramakrishan Hospital. Exs.P10,



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P11, P13, P14, P18 and P19 documents were created and were not issued by Sri Ramakrishna Hospital.

35. The submission of the learned counsel appearing for the respondents is that wound certificate, discharge summary, inpatient medical bills have not been produced by the claimants along with claim petitions. The accused 2 and 3 have also not produced these documents before the Lok Adalat. If at all these documents had been produced before the Lok Adalat, they would have been produced only by the parties themselves. There is no evidence to show, how these documents were obtained by Investigating Officer in this case. The documents were not secured in accordance with law and following the well established procedure by preparing seizure mahazar. The chain of custody of these documents is not properly explained by the Investigating Officer. Therefore, learned counsel appearing for the respondents 2 and 3 submitted that the very allegations/charge against them that they created these documents falsely and produced before the Court is not true and the case of the prosecution in this regard is not established. Considering the charges against the



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respondents 2 and 3 that they created these false documents and produced before the Lok Adalat for getting compensation awarded, this contention of the learned counsel for the respondents 2 and 3 assumes importance in the outcome of this case. However, it is necessary to consider the other aspects available, from the evidence of this case, before taking a decision on this issue.

36. PW.5 is the Manager of Eswaran Computer Lab. At the request of CBI, he produced the register and bills relating to Eswaran Computer Lab, Dharapuram. They are Exs.P34 and P35. It is his evidence that there is no bill available in Ex.P35 to show that Velliyangiri had taken X-ray in their lab on 05.09.1999. It is his specific evidence that Ex.P38- X-ray said to have been taken at Eswaran Computer Lab was not taken in their lab. PW.10-Inspector of Police, Ottanchatram police station during February 1999 stated that his investigation of the case in Crime No.139 of 1999 for the offence under Sections 279, 337, 338 and 304 IPC revealed that Narayanasamy and Velliyangiri had not suffered injuries in the accident concerned in Crime No.139 of 1999. PW.13-Sub Inspector of Police,



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Kamanayakkanpalayam handed over the case records concerned in Crime No.18 of 2000 - Ex.P50 to the CBI. PW.3 Ponnusamy said to have suffered injuries in the accident concerned in Crime No.18 of 2000. PW.17 is the Manager of Brindavan Cotton Mills, Sultanpet, Palladam. PW.3 Ponnusamy was working as worker in this mill from 1994 and his salary was Rs.1,500/- per month in 2000-2001. He learnt that PW.3 suffered injury in a road accident. PW.18 was the owner of the van bearing No.TN-45-T-5080 involved in accident with other vehicle and he stated that PW.3 suffered injury in this accident. PW.17 and PW.18 had been primarily examined to show that Ponnusamy was not the manager of Brindavan Cotton Mills, but only a worker.

37. PW.14 was working as Vigilance Officer at Regional Office of United India Insurance Company Limited, Coimbatore from 1990-2006. It is his evidence that before settling the motor accident claims cases in Lok Adalat, it must be ensured that the vehicles involved in the accident have insurance cover, that the driver has valid licence and that the vehicle has a valid permit. It should be ascertained from the First Information Report,



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Accident Register and final report as to whether the name of the claimant is found in these records. If the name is not found it should not be referred to Lok Adalat and should be allowed to be decided in the Court. There must be an investigation conducted by investigators of the insurance company with regard to the accident and other aspects. These guidelines are enumerated in Ex.P51. However in the case before hand, the names of Narayanasamy , Velliyangiri and Ponnusamy did not find a place in the First Information Report, Accident Register and final report of the accident cases. No step was taken to investigate the accident and claim through investigators. First accused had signed in the settlements.

38. PW.15 was the Administrative Officer working under the first accused. It is his evidence that he is not aware of the Lok Adalat proceedings and it was taken care by the first accused. He prepared office note for settlement of the claims concerned in these cases, as per the direction of the first accused. PW.6 and PW.16, Advocates appearing for insurance company had given evidence with regard to giving consent for settlement of claims by PW.6 in MCOP Nos.89 and 118 of 2000 and PW.16



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in MCOP No.470 of 2000. PW.19 was working as Senior Civil Surgeon in Palladam Government Hospital in 2005. When enquired by CBI, he informed them that Ponnusamy S/o.Chinnadurai had not taken treatment in Palladam Government Hospital on 24.01.2000 and 25.01.2000.

39. Ex.P5 is the copy of claim petition in MCOP No.118 of 2000 filed on behalf of PW.1 – Velliyangiri by Tmt.Manimegalai. Copy of the consent memo filed in Lok Adalat is produced as Ex.P7. This memo reads that claim was settled at Rs.2,75,000/-. Petitioner therein and his Advocate Selvi.Manimegalai were present at the time of recording the settlement. Cheque petition was filed in Ex.P8 for Rs.1,50,000/-. Ex.P12 is the wound certificate, P13 is the discharge summary and Ex.P14 is the inpatient bills of Velliyangiri for taking treatment at Sri Ramakrishna Hospital. It is seen from Ex.P12 that Velliyangiri said to have suffered injury in a road accident on 07.02.1999 and took treatment at Sri Ramakrishna Hospital from 08.02.1999 and 29.02.1999. The claim made in these documents are seriously disputed by PW.2, PW.7, PW.8 and PW.11. They produced Ex.P16 treatment record of PW.1 – Velliyangiri to show that he suffered head injury



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in a road accident on 10.08.1999. He was treated in the hospital as inpatient from 12.08.1999 to 23.08.1999. Ex.P16 shows that PW.1's wife K.V.Krishnaveni gave consent for the surgical treatment of PW.1, when he was admitted at Sri Ramakrishna Hospital on 12.08.1999. Therefore, Ex.P16 and the evidence of PW.2, PW.7 PW.8 and PW.11 clearly proved that Velliyangiri was treated for his head injury from 12.08.1999 to 23.08.1999 and not during the period from 08.02.1999 to 29.02.1999. Ex.P15–Inpatient admission Register also confirms that PW.1–Velliyangiri was treated only from 12.08.1999 to 23.08.1999.

40. Ex.P17 is the wound certificate of Ponnusamy. Ex.P18 is his discharge summary. Ex.P19 is his inpatient bills alleged to have been given by Sri Ramakrishna Hospital. Ex.P9 is wound certificate of Narayanasamy. Ex.P10 is his discharge summary. Ex.P11 is his inpatient bills alleged to have been given by Sri Ramakrishna Hospital. These documents show that Narayanasamy said to have been taken treatment at Sri Ramakrishna Hospital from 08.02.1999 to 14.02.1999. His claim is disproved from the evidence of PW.2, PW.7, PW.8, PW.9 and PW.11. Exs.P41 to P47 and



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evidence of PW.9 show that Narayanasamy was treated at Richmond Hospital, Coimbatore. Exs.P17, P18 and P19 show that Ponnusamy was said to have taken treatment at Sri Ramakrishna Hospital from 14.01.2000 to 29.01.2000, which again was disproved by the evidence of PW.2, PW.7, PW.8 and PW.11.

41. Ex.P23 copy of claim petition in MCOP No.470 of 2000 was filed by accused Balusamy on behalf of PW.3 – Ponnusamy. Ex.P25 is the consent memo filed for settling the claim at Rs.90,000/-. Ex.P8 is the copy of the claim petition in MCOP No.89 of 2000 filed by accused Tmt.Manimegalai on behalf of the accused Narayanasamy. Ex.P59 is the vakalath and Ex.P60 is the memo filed by Insurance Company for depositing the draft for Rs.90,000/- towards award amount.

42. Ex.P52 is the office note prepared for settling the claim made in MCOP Nos.79, 86, 89, 118 and 341 of 2000. Ex.P53 is a letter sent to Regional Office, Madurai for approving the settled amount. This letter was sent by the first accused Thiyagarajan, after fixing / approving the award



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amount in the aforesaid cases. Ex.P54 is the office note in connection with MCOP No.470 of 2000 for Rs.90,000/-. The amount approved in MCOP Nos.89 and 118 of 2000 are Rs.1,25,000/- and Rs.2,75,000/- respectively. Ex.P6 is the letter from Advocate A.Guna Sundari, panel Advocate for United India Insurance Company Limited for settling the claim in MCOP No.470 of 2000 for Rs.90,000/-. Ex.P39 is the original Lok Adalat consent memo filed in MCOP No.18 of 2000. Ex.P40 is the original Lok Adalat consent memo filed in MCOP No.89 of 2000.

43. Ex.P51 guidelines issued by United India Insurance Company Limited with regard to motor accident claims cases shows that immediately on the receipt of copy of the First Information Report or claim intimation or summons from Motor Accident Claims Tribunal, the Divisional office should initiate necessary investigation. AAO (investigation) or any other officer assigned should make on the spot investigation to obtain information regarding age, occupation, income of the deceased/injured, details of family members etc., Vehicle documents, driving licence should be verified and the copy should be obtained. Concerned hospital authorities should be



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contacted and medical report indicating the nature of injuries suffered should be obtained. It is no denial of the fact that none of these procedures had been followed before settling the claims of PW.1, PW.3 and A4.

44. Ex.P61 is the copy of inpatient admission register concerning PW.1, PW.3 and A4 and two others. It is seen from the covering letter attached to Ex.P61 and the evidence of PW.11 that the aforesaid persons were not admitted in the hospital on the dates they claimed that they were admitted. Therefore, the hospital does not have documents like admission register, case sheets, bills and discharge summary for them. The hospital has not issued any bills, discharge summary, case sheets etc., for these persons.

45. On the side of the accused, Exs.D18, D19 and D29 and certified copies of claim petitions filed in MCOP Nos.89 of 2000, 118 of 2000 and 470 of 2000 along with connected records had been filed. Exs.D1 to D9, wound certificates, copy of the deposition of PW.2 in MCOP



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No.1158 of 2000, inpatient register have been filed to show that PW.2 is in the habit of issuing wound certificate and false medical records.

46. From the evidence discussed above, it is clearly established that PW.1 – Velliyangiri had not taken treatment at Sri Ramakrishna Hospital in February 1999 as claimed in his claim petition, whereas, he had taken treatment only during August 1999. It is also made clear that PW.3 – Ponnusamy and A4 – Narayanasamy had not taken treatment at Sri Ramakrishna Hospital at all. PW.3 was not a Manager, but only a worker and he suffered only a minor injury. The evidence of PW.14 makes it clear the procedures to be followed for settling the motor accident claims in Lok Adalat. It is on record that PW.1 and PW.3's names are not found in First Information Report in Crime No.139 of 1999 of Ottanchatram police station or in the final report. There was no private investigation conducted by the Insurance Company before taking these cases for settlement in Lok Adalat.

47. Ex.P70 is the petition filed by the Investigating Officer before the learned Chief Judicial Magistrate, Coimbatore for recording the



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confession statement of PW.1 to PW.3. On the basis of this requisition, confession statement of PW.1 to PW.3 were recorded. Much was said about the confession statement of PW.1 to PW.3 by the learned counsel appearing for the respondents and also the learned trial Judge. The learned trial Judge observed that proper procedures were not followed before recording 164 Cr.P.C statement and tendering pardon. It was also observed that recording of confession statement of these witnesses is against the provisions of Sections 126 and 129 of Indian Evidence Act.

48. Section 126 of Indian Evidence Act deals with professional communications. This section expressly prohibits a Barrister, Attorney or Pleader or Vakil to disclose any communication made to him in the course or the purpose of his employment unless the client expressly gives consent. Section 129 of the Indian Evidence Act deals with the confidential communications with the legal advisors. Under this section, no person shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional advisor unless he offers himself as a witness. In the case before hand, the witnesses



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namely PW.1 to PW.3 had offered themselves to be witnesses and their confession statements were under section 164 Cr.P.C. Ex.P2 is the first day proceedings and Ex.P3 is the second day proceedings for recording 164 statement of PW.1 Velliyangiri. Ex.P4 is the tender of pardon proceedings conducted by the learned Chief Judicial Magistrate, Coimbatore for PW.1. Ex.P20 is the first day proceedings and Ex.P21 is the second day proceedings for recording 164 statement of PW.2. Ex.P22 is the tender of pardon proceedings conducted by the learned Chief Judicial Magistrate, Coimbatore for PW.2. Exs.P27 and P28 are the first day and second day proceedings for recording 164 statement of PW.3 respectively and Ex.P31 is the tender of pardon proceedings conducted by the learned Chief Judicial Magistrate, Coimbatore.

49. It is seen from the first day proceedings for recording the confessional statements of PW.1 to PW.3 that P.W22, learned Judicial Magistrate had given sufficient warning to PW.1 to PW.3 that they are not bound to give confession statement and if they give confession statement that may be used against them. He also, from his enquiry, found that PW.1



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to PW.3 came forward to give confession statement voluntarily and then recorded their confession statements. It is also seen from the first day proceedings that there is a certificate given by the learned Judicial Magistrate, which is mandated to be given after recording of the confession statement. The learned counsel appearing for the parties submitted and the learned trial Judge observed that, the fact that even before the confession statement was recorded, the certificate was given shows that non-application of mind by the learned Judicial Magistrate. However, this Court does not subscribe to the views of the learned counsel for the parties and the trial Judge for the reason but for this deviant, the learned Judicial Magistrate had substantially followed the procedural formalities before recording the confession statement of the accused and therefore, this deviant will no way affect the credibility of the confession statements of PW.1 to PW.3.

50. Similarly, PW.23, learned Chief Judicial Magistrate had given evidence and his proceedings show that he had conducted a detailed enquiry with PW.1 to PW.3 to find out whether they had given confession statement



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voluntarily before the learned Judicial Magistrate. Only after satisfying that the confession statement of PW.1 to PW.3 had been given voluntarily, he again informed the consequences of giving confession statement and then tendered pardon to PW.1 to PW.3 on the condition that they should give evidence about the facts fully, which are known to them, failing which they may be tried and prosecuted for tendering false evidence. After finding that PW.1 to PW.3 had understood the consequences of giving confessional statement and that they voluntarily gave confession statement, tendered pardon to them. Therefore the submissions of learned counsel appearing for the respondents and the observation of the learned trial Judge, challenging the credibility and legality of the confession statements of PW.1 to PW.3 and the pardon granted to them are to be rejected outright and rejected accordingly.

51. The analysis of the evidence aforesaid and discussion shows that PW.1, PW.3 and A4 had not suffered injuries as claimed in their petitions and had not taken treatment in Sri Ramakrishna Hospital, Coimbatore on the dates they indicated in the claim petitions that they took



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treatment at Sri Ramakrishna Hospital, Coimbatore. It is claimed by the prosecution that the wound certificate, discharge summary and inpatient treatment medical bills had been produced by the counsel appearing for them, namely A2 and A3 for settlement of claims before the Lok Adalat. This claim of prosecution is stoutly denied by the counsel appearing for these accused / respondents and they stated that they have not filed/produced the medical records before the Lok Adalat. The medical records might have been produced by the parties themselves. The case of the prosecution is that A2 – Balusamy is the person responsible for creating these medical records with the help of PW.2. PW.2, during the course of his evidence, admitted issuing the wound certificate alone, wherein he stated that he issued the wound certificate based on the discharge summary and inpatient medical bills produced by A2 – Balusamy. Admittedly, medical records have not been produced along with the claim petitions, because annexure to the claim petitions shows that there is no reference about the production of medical records along with the claim petitions. Now the originals and copies of wound certificate, discharge summary and inpatient medical bills are produced before the trial Court. How, when, where and



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from whom these documents were obtained by the Investigating Officer is a serious question. However, this Court finds that there is no answer for this important question from the evidence produced by the prosecution.

52. The evidence of PW.24 - Investigating Officer shows that his chief examination with regard to his conduct of investigation is very brief and not specific as to the details. He just said that he examined so and so witnesses, recorded their statements and collected documents from various organisations and individuals, obtained certified copies of the order in MCOP Nos.79, 89 and 341 of 2000, collected documents from Sri Ramakrishna Hospital, obtained sanction for prosecution to prosecute A1 etc. He has not given evidence giving specific details with regard to what document was collected when and where it was collected and from whom, it was collected. There is no specific evidence with regard to medical records said to have been produced before the Lok Adalat authorities for settling the claims as to who produced the medical records. If this main link is not proved by appropriate evidence, especially when the accused 2 and 3 claimed that they have not produced these medical records before the Lok



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Adalat, we cannot conclude with certainty that the medical records were produced by A2 and A3 before Lok Adalat.

53. It is also relevant to consider the evidence of PW.1, PW.2 and PW.24 in this regard. It is no doubt that PW.1 and PW.2 had fairly supported the case of the prosecution, when giving evidence in chief examination. However, during the course of cross examination, PW.1 stated that he had not informed the CBI that accused Balusamy enquired about the accident and he informed him about the accident. He also stated that he never travelled in Balusamy's car before the accident. This is in total contrast with chief examination. It is also his evidence that accused Balusamy had not obtained his signatures in any form, but his Assistant only got his signatures. The discharge summary was handed over to him by Sri Ramakrishna Hospital. No account was opened in State Bank of India, Kangeyam Branch. He did not know who had taken money from his bank account in Sivanmalai Branch. When he was examined by the CBI Officer, for the first time, he lied as instructed by the Advocate. When he was examined again, he told the truth. He denies knowing Dr.Paramasivam. He



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stated that Rs.55,000/- was not given to him by Balusamy. When he met Balusamy for the first time in his office, he told him to speak to his junior about the case. Balusamy had not spoken to him about this case.

54. PW.2's evidence shows that he cannot say in how many cases bogus wound certificates had been issued by him. The fee collected by him for issuing bogus certificate did not go to the hospital management. He admitted issuing two wound certificates for the same person (in respect of one Shanmugam) with different injuries. It is his evidence that he is in the habit of issuing wound certificate directly to the patients sometimes. There is nothing in Exs.P9, P12 and P17 that these wound certificates were issued to Balusamy or any other Advocate. There are no documents in the hospital to show that these certificates were issued to Balusamy or any other Advocate. It is seen from his evidence in cross examination that he is not a trust-worthy witness. He issued fake wound certificates, for the asking, for cash consideration. He also admitted issuing wound certificates directly to the parties and had sometimes issued multiple certificates for the same person mentioning different wounds. Therefore, his evidence has to be



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looked upon only with suspicion.

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55. As already referred, there is no detail given in the evidence of PW.24, Investigating Officer with regard to how he came in possession of medical records filed in this case. During the course of his cross examination, he stated that Exs.P10, P13 and P18 discharge summaries were not issued by Dr.Paramasivam and he did not know who forged these documents. Who forged these documents is a vital aspect which ought to have been investigated by PW.24. Unfortunately that was not done in this case. During the course of his cross examination, he submitted that he obtained copies of the petitions and enclosures from the Motor Accident Claims Tribunal, Tiruppur and all the medical records relating to three Motor Accident Claims Cases, which were used for settlement in the Lok Adalat, from the office of United India Insurance Company Limited. However, there is no evidence, like a letter addressed to United India Insurance Company Limited, their reply with regard to seeking these medical records from United India Insurance Company Limited and production by them. His evidence is that since Exs.P10, P13 and P18 are



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false documents, it was found not necessary to take specimen signatures of Doctors mentioned in these documents. He also stated that Balusamy had not signed in the settlement memos filed before the Lok Adalat relating to Velliyangiri and Narayanasamy and he is not aware whether the signatures found in settlement memo of Ponnusamy is that of Balusamy. He is also not aware whether Balusamy signed in the cheque application in these cases. It is his evidence that there is no document to show Balusamy received wound certificate from Sri Ramakrishna Hospital. There is no documentary evidence to show as to who prepared / manufactured the discharge summary, inpatient bills used for settlement in Lok Adalat. There is no reference either in the Lok Adalat award or the award passed by the Court with regard to the production of discharge summaries, medical bills and wound certificates. It is his evidence that PW.1 did not say to him that Balusamy sent a car to bring him to his office and he did not say about the opening of the account in his name in State Bank of India, Kangeyam Branch. Evidence of PW.24, the Investigating Officer shows that he did not have convincing answer to many vital links in this case, especially to implicate A.2 and A.3 that they produced the medical records before the Lok



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Adalat.

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56. So far as first respondent/first accused is concerned, admittedly, he signed in Lok Adalat settlement memos. It is submitted that there was communication from head office to dispose of cases in Lok Adalat. Therefore, as a Senior Divisional Manager of United India Insurance Company Limited and as a Committee Member, the settlement process was initiated. The office note approving the settlement was signed not only by him, but also one Thiru.L.Ram Prasad and Thiru.D.Abbas, Assistant Administrative Officer. The said D.Abbas is also the member of the Committee constituted for approving the claims. When that be the case, targeting him alone and implicating him as an accused is not correct. It is also claimed that sanction for prosecution granted against him by PW.4 is not in accordance with law.

57. It is seen from the evidence of PW.15 that he said to have signed in Exs.P54 and P55 as per the directions of the first respondent.



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However, during the course of cross examination, he stated that he did not give any complaint to the superiors with regard to his claim that he signed at the behest of the first respondent. It is his evidence that persons connected with Motor Accident Claim cases can request the Insurance Company for settlement. If such request is made, it is the duty of the insurance officials to verify the concerned documents and the genuineness of the claim. After verifying the claims with reference to connected documents, a note has to be prepared certifying that the case is fit for settlement. As he was working as Assistant Administrative Officer in the said branch, he is the head of third party claims cell and the records relating to third party would be available in his custody. If the claim is not in order, he would have avoided signing in the settlement. He admitted that he is the member of the Divisional Claims Committee and in his capacity as a member of the Divisional Claims Committee, he signed in Exs.P54 and P55. Other member is D.Abbas. There is no practice of cross checking, as to whether the investigation report is available in all the cases taken for settlement. He informed the CBI Officials that the settlement was effected without the presence of Government Doctors for the reason that the Government Doctors were not



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available. The settlement arrived at Rs.3,50,000/- in MCOP No.118 of 2000 was reduced to Rs.2,75,000/- at Regional Office. All the settlements were sent for approval to the Regional Office. When the settlement was sent to the Regional Office for approval, all the records connected with the concerned cases were also sent. His evidence is that the Divisional Claims Committee member Thiru.Thiyagarajan, Abbas and he can either settle or refuse the offer of settlement. But the note was prepared as if the claim was approved after verifying the documents. Ex.P.52, P.54 and P.55 office notes confirm this. Thus, it is seen from his evidence that the decision to settle and approve the claims concerned in this case had been taken by the Divisional Claims Committee consisting of first respondent, PW.15 and one Abbas and it is not an individual and independent decision of the first respondent.

58. DW.2, the Chief Manager of United Insurance Company, when deposing about the settlement of 5 MCOP cases connected in Ex.D.21 and D.22 files, stated that case wise legal opinion, wound certificate, liability certificate, medical certificate were considered before sending the file to



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head office for approval. It is implied that once approval is granted, all the documents were considered before granting approval. The evidence of these witnesses clearly show that A.1 as one of the members of District Claims Committee and as Senior Divisional Officer forwarded the settlement proposals along with concerned documents for approval and then the proposals were approved. The letter, dated 24.11.2000 to A.1 shows that the Regional Office, after considering the medical records, reduced the compensation amount from Rs.3,50,000/- to Rs.2,75,000/- in M.C.O.P.No.118 of 2000. Accused filed Ex.D1 letter said to have been sent by Velliangiri for settling his claim along with relevant records. If the false documents, medical records were used for settling the claim in Lok Adalat, it is the responsibility of everyone concerned in scrutinizing the medical records to take the blame. This being the position, it is not known how the appellant chose to prosecute only the first respondent.

59. With regard to sanction for prosecution, it is seen from the evidence of PW.4 that he is the appropriate authority for giving sanction for prosecution against the first respondent and accordingly, he gave Ex.P33



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sanction order. This sanction was opposed on the ground that General Insurance Conduct (Discipline and Appeal) Rules, 1975 were not placed before the Parliament and no Gazette notification was issued and therefore, the sanction given under General Insurance Conduct (Discipline and Appeal) Rules, 1975 is not valid. However, it is submitted by the learned Special Public Prosecutor that the General Insurance Conduct (Discipline and Appeal) Rules, 1975 is not inconsistent with the General Insurance Business (National Insurance), Amendment Act, 2002 and the later Act not repealed earlier rules made in parent Act. The direction to lay the rules before the Parliament is only directory and not mandatory. Non-compliance would not be a ground to declare the rules framed under statute as ultra vires. The General Insurance Conduct (Discipline and Appeal) Rules, 1975 is applicable to every person appointed to any post in the General Insurance Corporation of India or its subsidiary companies. Therefore, the sanction given under Ex.P33 is perfectly legal.

60. It is seen from the judgments referred and extracted above by the learned counsel for the first respondent that one of the grounds recorded



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by the Trial Court is that General Insurance Conduct (Discipline and Appeal) Rules, 1975 were not placed before the Parliament. Therefore, the sanction order was held invalid. Irrespective of the validity or invalidity of the sanction, this Court finds from the evidence available in this case that the first respondent was not the sole person in approving the settlement of claims in the claims concerned in this case. He is only a member of three member Committee. All the three members have approved the claims/settlement. The settlements were sent for approval to the Regional office along with documents. Regional Office had also approved the settlement of claims. Therefore, this Court is of the view that it is highly inappropriate to prosecute the first respondent alone for the collective wrong committed by other members of Divisional Claims Committee, especially when there is no evidence forthcoming against the first respondent that he approved the claims for his personal illegal gain.

61. Careful analysis of the evidence produced in this case shows that admittedly, the medical records namely, wound certificate, discharge summary and inpatient medical bills were not produced by the claimants,



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PW.1 and PW.3 and R2 to R4 along with claim petitions. The settlement at Lok Adalat does not indicate what are all the documents that were produced before the Lok Adalat at the time of negotiation for settlement. It is not known whether the wound certificate, discharge summary and inpatient medical bills were produced. However, it is the common knowledge that without the production of these medical records, negotiation for settlement was not possible. Therefore, it can be presumed that the medical records were produced before the Lok Adalat at the time of negotiation.

62. The next question arises is that who produced these medical records ? There is no indication on this aspect, whether it was produced by the counsel appearing for the claimants or the claimants themselves – there is no evidence in this regard. Wound certificates, discharge summaries, medical bills and their copies were produced before the Court and marked as Exhibits. How these documents were secured by the Investigating Officer. There is absolutely no hint of any evidence in this regard. PW.24, the Investigating Officer claims that he received the medical records from the Insurance Company. As said earlier, there is no evidence produced to



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support this claim. The chain of custody of medical records is not properly established. It is primarily the duty of the Investigating Officer to collect the records through proper mahazars or written communication supported by written acknowledgment. However, in the case before hand, no mahazar was prepared for getting all important medical records, namely wound certificates, discharge summaries and inpatient medical bills. No communication regarding requisition of these documents from the Insurance Company or from any other source and acknowledgment for receipt of these documents are available in this case. This important lapse strengthens the case of the respondents 2 and 3 that they have not produced the medical records before the Lok Adalat. When there is a possibility of the fact that the claimants can directly approach the insurance company for settlement of their claims, we cannot infer that the respondents 2 and 3 would have filed the medical records before the Lok Adalat, merely because they entered appearance on behalf of the claimants by filing vakalat. It is also clear from the evidence of PW.2 that he is in the habit of giving wound certificates for the asking for cash consideration, sometimes multiple medical certificates to the same person with different injuries. In the light of the evidence



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available and discussed above, this Court is of the view that it cannot be conclusively held that it is the respondents 2 and 3, who filed the medical records in the the form of wound certificates, discharge summaries and inpatient medical bills at the time of settling the claims before the Lok Adalat.

63. The charges against R2 and R3 are that they arranged through PW2 false medical bills, medical certificates and discharge summaries, meaning thereby, it was PW.2, who created the medical bills, wound certificates and disability certificates. However, it is the evidence of PW.2 that it was the second respondent who produced the disability certificate and inpatient medical bills and on that basis, he issued wound certificates. As discussed earlier, there is absolutely no investigation conducted and evidence produced as to the source of creation/production of discharge summaries and inpatient medical bills, as to how and from where the second respondent obtained the discharge summaries and medical bills. Thus, the charge against respondents 2 and 3 that they arranged the aforesaid medical records through PW.2 is not supported by the evidence available in this case



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and thus, not proved.

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64. As already stated, fourth respondent Narayanasamy filed a claim petition claiming a compensation of Rs.4,00,000/- stating that while he was travelling in the bus bearing Registration No.TN-69-B-0709 on 07.02.1999, the bus dashed against the stationary Van at about 02.45 p.m., and he suffered injuries. A copy of the claim petition is marked as Ex.P.58. The filing of this claim petition and settlement at Lok Adalat is not disputed by the fourth respondent. In fact, when he was questioned under Section 313 Cr.P.C., he reiterated the manner of accident involving the bus bearing Registration No.TN-69-B-0709 and the injuries suffered by him. It is also his case that he knew Dr.Paramasivam and as per his instructions, he took treatment at Sri Ramakrishna Hospital from 08.02.1999 to 14.02.1999. Then he filed the claim petition and it was settled in Lok Adalat. Thus, it is seen from Ex.P.58 claim petition and the statement of the fourth respondent during the course of 313 questioning that there is absolutely no doubt with regard to filing of claim petition in M.C.O.P.No.89 of 2000 by the fourth respondent and settlement of the claim in the Lok Adalat.



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65. As discussed above, the prosecution was able to prove the claim of the fourth respondent that he met with an accident on 07.02.1999 while travelling in a bus bearing Registration No.TN-69-B-0709, suffered injuries and took treatment at Sri Ramakrishna Hospital are not true, through the evidence of P.W.10, who investigated the case in Crime No.139 of 1999 of Ottanchatram Police Station registered for the offence under Sections 279, 337, 338 and 304(A) IPC and other witnesses. PW.10 was specific that the fourth respondent had not suffered injuries in the accident involving the bus bearing Registration No.TN-69-B-0709 on 07.02.1999. It is also proved from the evidence of PW.2 that Ex.P9 wound certificate was given by him without examining the fourth respondent. It is also the evidence of PW.2, PW.7, PW.8 and PW.11 that Exs.P.10 and P.11 discharge summary and medical bills, respectively had not been given by Sri Ramakrishna Hospital. On the other hand, it is seen from the evidence of PW.9 that the fourth respondent had been admitted at Richmond Hospital on 11.06.1999, treated till 14.06.1999 and was discharged on 14.06.1999. In support of this case Exs.P.41 to P.47 had been produced. Thus, it is proved



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beyond any pale of doubt that the fourth respondent had not suffered injuries in the accident concerned in Crime No.139 of 1999 of Ottanchatram Police Station involving the bus bearing Registration No.TN-69-B-0709. Despite that he filed a claim petition as if he suffered injuries in the aforesaid accident and on the basis of false medical documents and got the claim settled in the Lok Adalat. By making false claims on the basis of false documents, the fourth respondent deceived the United India Insurance Company to part with a sum of Rs.1,25,000/-. Thus, this Court finds that the charge against the fourth respondent for the offence under Section 420 IPC is proved beyond any reasonable doubt.

66. The outcome of the aforesaid discussion is that there is no conclusive evidence available to show that the first respondent alone was responsible for approving the Motor Accident Claim cases for settlement before the Lok Adalat for pecuniary advantage by illegal or corrupt means either to himself or others and committed criminal misconduct. Similarly though there is evidence in support of the prosecution that PW.1, PW.3 and fourth respondent had made a false claim on the basis of false medical



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records, there is no conclusive proof available to show that the second and third respondents were the persons responsible for making / arranging for false medical records and filing false claim. It is claimed by the respondents 2 and 3 that claim petitions had been filed on the instructions given by the respective claimants and they cannot be made acceptable for the wrong information given by the parties. Their case is supported by the Judgment relied by them reported in *AIR 1966 Kerala 264 (M.K.Parameswara Kurup ..vs.. N.Krishna Pillai)* extracted supra. Though PW.1 and PW.2 had supported the case of the prosecution, in the course of chief examination, they changed their version during the course of cross-examination as narrated above, creating a strong suspicion in their evidence. There is no evidence to show that the respondents 2 and 3 filed the medical records before the Lok Adalat for settlement. It is settled position of law that confession of co-accused is not the substantive piece of evidence and that can only be used to lend credence or confirm the conclusion drawn from other evidence. Other evidence available against the respondents 2 and 3 is not enough to conclusively decide that the charges against them are proved.



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67. In this view of the matter, this Court finds that there is no need to interfere with the finding of the trial Court regarding the Judgment of acquittal passed against the respondents 1 to 3. As indicated above, this Court finds that the prosecution proved the charge under Section 420 IPC against the fourth respondent. However, the trial Court has wrongly acquitted the fourth respondent and that requires to be corrected and accordingly, the Judgment of acquittal as against the fourth respondent is set aside. The fourth respondent is found guilty under Section 420 IPC for making a false claim on the basis of false medical records and thus, deceiving the United India Insurance Company to pay a sum of Rs.1,25,000/- in the Lok Adalat settlement. Thus, this Court finds that the fourth respondent is guilty under Section 420 IPC and convicts him thereunder.

68. In the result, this Criminal Appeal is allowed in part. The Judgment of acquittal recorded against the fourth respondent is set aside and the fourth respondent is found guilty under Section 420 IPC and convicted thereunder. The acquittal of respondents 1 to 3 by the trial Court is



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confirmed. The fourth respondent / fourth accused is directed to appear before this Court on 30.06.2022 at 02.15 p.m., for hearing on question of sentence. Consequently, connected Miscellaneous Petitions are closed.

Mra

16.06.2022

Index : **Yes**

Internet : **Yes**

Speaking/Non-speaking order

To:

1. The II Additional District and Sessions Judge (CBI Cases),
Coimbatore.
2. The Inspector of Police,
CBI/ACB/Chennai.
3. The Public Prosecutor
High Court
Madras.



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G.CHANDRASEKHARAN, J.,

mra

Pre-delivery Judgment in
Crl.A.No.474 of 2012

16.06.2022



Crl.A.No.474 of 2012

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G.CHANDRASEKHARAN, J.

As directed by this Court, dated 16.06.2022, the fourth respondent/fourth accused is present before this Court. He was informed about the conviction recorded against him under Section 420 I.P.C and questioned about the sentence to be imposed against him.

2. It is submitted by the fourth respondent as well as learned counsel appearing for the fourth respondent that the fourth respondent is suffering from Ischemic heart disease since 29.12.2021 and he is on Medication, he is a farmer and he may be imposed minimum sentence. Medical record is produced in support of claim of fourth respondent's illness.

3. Considered the submission of the fourth respondent/fourth accused and learned counsel for the fourth respondent. Considering the nature and seriousness of the offence and also the fact that the fourth respondent is said to be suffering from heart disease and he is a farmer, this Court sentences him to undergo Rigorous Imprisonment for a period of three months and to pay a fine of Rs.5,000/-, in default



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to pay the fine, to undergo one month Rigorous Imprisonment.

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06.07.2022

ps

Note:- (i) Registry is directed to prepare committal warrant and send the fourth respondent to undergo the sentence.

To: The Superintendent of Jail, Central Prison, Coimbatore.

Copy To:

- 1.The II Additional District and Sessions Judge (CBI Cases),
Coimbatore.
- 2.The Inspector of Police,
CBI/ACB/Chennai.



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G.CHANDRASEKHARAN, J.

ps

Crl.A.No.474 of 2022

06.07.2022