



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	23.12.2021
Pronounced on	20.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Criminal Revision Cases Nos.127 & 128 of 2018

Divakaran Moorkath ...Petitioner/Defacto complainant
in both CrI.R.C
.Vs.

1.D.Manuel ...Respondent 1/Accused 1
in both CrI.R.C

2.Sathayanathan ...Respondent 2/Accused 2
in both CrI.R.C

3.State Rep by Inspector of Police,
District Crime Brnach,
Coimbatore,
Coimbatore District.
(Crime No.8 of 2000) ...Respondent 3/Complainant
in both CrI.R.C

Prayer in CrI.RC.No.127 of 2018: Petition filed under Section 397 and 401 of Cr.P.C to set aside the order of acquittal passed by the III Additional District and Sessions Judge, Coimbatore made in CA No.147 of 2014 dated 29.04.2017 and to confirm the conviction judgment of the District Munsif Cum Judicial Magistrate, Valparai made in C.C.No.69 of 2005 dated 18.09.2014.

Prayer in CrI.RC.No.128 of 2018: Petition filed under Section 397 and 401 of Cr.P.C to set aside the order passed by the IIIrd Additional District and Sessions Judge, Coimbatore made in CA No.49 of 2015 by which the Prayer to enhance the sentence was dismissed.

For Petitioner : Mr.Ashok Kumar,
Senior Counsel for
Mr.A.Sasidharan in both cases.

For Respondents : Mr.K.Balasubramaniam(R1&R2)
in both cases.

: Mr.A.Gopinath,
Government Advocate (R3) (CrI.side)
in both cases.



COMMON ORDER

These Criminal Revision Petitions have been filed by the defacto complainant, to set aside the Common judgement of the learned III Additional District and Sessions Judge, Coimbatore passed in C.A.No.147 of 2014 and C.A.No. 49 of 2015. The Criminal Revision Petition in CrI.R.C. 127 of 2018 has been filed to set aside the reversal Judgement of acquittal passed by the Learned III Additional District and Sessions Judge, Coimbatore and to confirm the judgment of the learned District Munsif Cum Judicial Magistrate, Valparai made in CC No.69 of 2005. The CrI.R.C.No. 128 of 2018 has been filed to set aside the Judgement passed by the same Court in C.A.No.49/2015, by which the prayer to enhance the sentence was dismissed.

2. The brief facts of the case of the prosecution:

The defacto complainant is the Criminal Revision Petitioner in both the Criminal Revision cases. A-1 and A-2 were working as Section Officer and Assistant Section Officer in Anaimudi Estate, Mudis. The Estate is owned by the Bombay Burma Trading Corporation Limited and the Estate in-charge is A-1/Manuel. He is responsible for maintaining the cash book, journals and other accounts pertaining to payments made towards the disbursement of salary to the staff etc., A-2 is the person in-charge for raising indent for weekly expenses and he is also responsible for managing the cash affairs of the Estate along with A-1.

2.1. Both the accused entered into a conspiracy between themselves and inflated the expenses of the Estate by fabricating vouchers and falsifying the accounts pertaining to the period from April 1999- January-2000 and thereby misappropriated a sum of Rs.22,07,582.56 during the period between April- 1999 to January 2000.

3. On the compliant dated 29.05.2010, given by one Andrew D White, Manager of Anaimudi Estate of the Bombay Burma Trading Corporation Limited., a case in Cr.No.8/2000 of District Crime Branch, Coimbatore for the offences under Sec.120(b), 408, 477 and 420 IPC, and FIR (Ex.P.51). was prepared.

4. PW.6/ Investigation Officer took up the case for investigation and examined the witnesses and also obtained the samples of signatures and short signatures from the complainant/Andrew D White and the accused; thereafter the sample signatures and the disputed documents were sent to the Court for forensic examination.

5. After completing the investigation, charge sheet was filed against the accused under Sec. 120(b), 408, 477 and 420 IPC.



However the Court had taken cognizance of the case against the accused under Sec.408 and 477 (A) IPC alone.

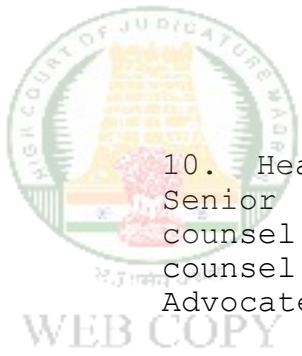
6. After complying due legal mandates, charges have been framed against the accused under Sec.408 and 477(A) IPC. When questioned; the accused denied the charges and claimed to be tried.

7. During the course of trial 6 witnesses have been examined as PW.1 to PW.6 and 59 documents, marked as Ex.P.1 to 59. No witness was examined and no document is marked.

8. After concluding the trial and on consideration of the materials available on record, the learned trial Judge found the accused guilty for the offences under Sec.407 and 477 (A) IPC and convicted them and sentenced them as under:

Rank of the accused	Conviction passed by the trial Court	Sentence passed by the trial Court
A-1	Section 408 IPC Sec.477 A	To undergo Simple Imprisonment of two years and imposed to pay a fine of Rs.5000/- in default to undergo Simple Imprisonment of six months To undergo Simple Imprisonment of two years and imposed to pay a fine of Rs.5000/- in default to undergo Simple Imprisonment of six months
A-2	Sec. 408 IPC Sec.477 A	To undergo Simple Imprisonment of two years and imposed to pay a fine of Rs.5000/- in default to undergo Simple Imprisonment six months To undergo Simple Imprisonment of two years and imposed to pay a fine of Rs.5000/- in default to undergo Simple Imprisonment of six months

9. The accused preferred an Appeal in C.A. 147 of 2014 before the III-Additional District and Sessions Judge, Coimbatore challenging the judgement of the trial Court. The defacto Complainant has also filed an another appeal in C.A. 49 of 2015 to enhance the sentence. By a common judgement dated 29.04.2017, the Appellate Court has allowed the appeal filed by the accused in C.A, 147 of 2014 and acquitted the accused and dismissed the Appeal filed by the defacto Complainant in C.A. 49/2015. Aggrieved over the same the defacto complainant has filed these two Revision Cases.



10. Heard the submission made by Mr. S. Ashok Kumar, learned Senior counsel appearing on behalf of Mr.A.Sasidharan, learned counsel for the petitioner and Mr. K.Balasubramaniam, learned counsel for the respondents 1 & 2 and Mr.Gopinath, Government Advocate (crl.side) for the 3rd respondent.

11. The learned counsel for the revision petitioner would submit that there are sufficient evidence available on record, more particularly from the evidence of PW.1 to PW.3 that vouchers have been prepared by PW.1 and PW.2; basing on those vouchers, the accused had to prepare letter and get the signature of the Manager; after the letter was sent to the group office of Mudis Group, the Manager would go to the Group Office and collect the amount mentioned in the letter by cash; thereafter, he would give the amount to the Section Officer and the indent would be given to the Filed Officer for disbursing salary to the employees and workers, after obtaining their signatures in the Pay Slips. It is further submitted that their evidences would reveal that the accused had replaced the vouchers prepared by A-1 and A-2 with false vouchers showing excessive amounts; they also falsified the entries in the Cash Books by exaggerating the amount without any supporting materials for expenditure and further, the accused had managed to enter the excess amounts while computerizing the accounts by making wrong entries in the computer.

11.1. The learned counsel for the revision petitioner would further submit that the learned Magistrate had made use of his power under Sec.73 of the Evidence Act and compared the handwritings in Exs.P.4 to 16 vouchers and compared them with Exs.P.54 to 59 sample signatures and arrived at a conclusion that those vouchers have been written by A-1 and A-2; but the learned First Appellate Judge had overlooked the above facts and reversed the judgment of the Trial Court and convicted the accused.

11.2. In sum, the learned counsel for the revision petitioner submitted that the materials on record are sufficient enough to prove the guilt of the accused and to convict them with enhanced punishments, taking into account of the seriousness of the offence and the quantum of the amount misappropriated.

12. The learned counsel for the respondents/accused submitted that though the complaint has been given by the Manager/Andre D White, he was not examined as a witness to speak about his compliant and the role played by him in signing the letters and getting the amounts from the Group Office; the learned Appellate Judge has considered the Report given by the handwriting expert of the Forensic Department to the effect that the disputed signatures did not tally with the sample signatures



collected by the Investigation Officer from the accused; the petitioners cannot give much significance to the alleged confession letters sent by A-1 vide Exs.P.46, 47 and 49, for the very reason that the addressees were not subjected to examination and there is a possibility that A-1 and A-2 being the employee and working under the Group Managers, they could have written the letter by coercion and undue influence; hence there is no reason to interfere with the judgement of the Appellate Court.

13. Therefore the points that arise for consideration are as under:

(i) Whether judgement of the lower Appellate Court in holding the accused not guilty is fair, proper and legal?

14. Out of the six witnesses examined by the Trial Court, PW.1 Chinnaparaj was the Junior Assistant of Annamudi Estate and he deposed by identifying the signature of the complainant (Ex.P.19) Andrew D White. He has also stated about the facts relating to unearthing of false accounts during the Audit conducted in the Estate and he has stated that the amount misappropriated by the accused would come around Rs.22,00,000/-.

15. PW.2/D.P.Janarthanan is a Junior Assistant of Annaaimudi Estate and he had also spoken about the Audit and Statement of Accounts and lodging of the compliant.

16. PW.3/ Devasi is the Relationship Officer for Mudils group of Estate and he has stated in his evidence about the rules and responsibilities of the employees of the Estate. He also identified the signature of the Manager of Annaaimudi Estate of the Bombay Burma Trading Corporation Limited, Andrew D White in Ex.P.19., Through him the handwritings of A-1 and A-2 have been marked.

17. The Chartered Accountant who has conducted the Special Audit in Annaaimudi Estate for the period from 17.01.2000 to 19.01.2000, has been examined as PW.4. He had spoken about the Audit conducted and the modus operandi adopted by the accused for committing misappropriation. He has stated that without any supporting documents, the expenditure has been shown in inflated figures. According to him, during the period from 1999 to 2000, the accused had replaced the vouchers prepared by other staff with false vouchers by concealing the actual amounts spent and by substituting the exaggerating the figures. By adopting such a practice, the accused had misappropriated to the tune of Rs.12,82,791.62. He has stated that the Registers and Cash Books were under the custody of Aland A-2 and they had taken undue advantage of the same and misappropriated a sum to



the tune of Rs.22,07,562.56.

18. PW.5/ Diwkaran Moorkath is the Criminal Revision Petitioner herein and he is the General Manager of the Bombay Burma Trading Corporation Limited, under which the Annamudi Estate is governed. Since PW.5 was in charge of the labour and employer affairs, he has knowledge about the present complaint. He has also stated that after a preliminary enquiry was conducted by the Group Manager J.D.Kamdin, the accused had given a letter on 06.03.2000, wherein he had admitted that he had misappropriated a sum of Rs.18,00,000/- by creating false vouchers. In the said admission letter, he has also stated that a sum of Rs.5,00,000/- was paid to A-2 and he also stood in complicity with A-1 for misappropriating the amount. He has also stated about the repeated letters sent by the accused for seeking mercy.

19. It is relevant to note that, the petitioner, in CrI.R.C.No.128/2018 has been filed by the de facto complainant for seeking enhancement of punishment imposed by the learned Trial Judge, but in view of Section 372 Cr.P.C, the petitioner/defacto complainant cannot maintain such a petition seeking enhancement of punishment. As per Section 372 Cr.P.C, the defacto complainant does not have a right to file an appeal on the ground that the punishment imposed by the Court is less or inadequate.

20. The Hon'ble Supreme Court has also upheld the said position of law in its order dated 28.08.2020 passed in CrI.A. No.555 of 2020. In the above said order, the Hon'ble Supreme Court has held in paragraph No.9 as under :

'9. Chapter XXIX of the Code of Criminal Procedure, 1973 deals with 'Appeals' and Section 372 makes it clear that no appeal to lie unless otherwise provided by the Code or any other law for the time being in force. It is not in dispute that in the instant case appellant has preferred appeal only under Section 372, Cr.PC. The proviso is inserted to Section 372, Cr.PC by Act 5 of 2009. Section 372 and the proviso which is subsequently inserted read as under:

"372. No appeal to lie unless otherwise provided.

-- No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:

Provided that the victim shall have a right



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to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."

A reading of the proviso makes it clear that so far as victim's right of appeal is concerned, same is restricted to three eventualities, namely, acquittal of the accused; conviction of the accused for lesser offence; or for imposing inadequate compensation. While the victim is given opportunity to prefer appeal in the event of imposing inadequate compensation, but at the same time there is no provision for appeal by the victim for questioning the order of sentence as inadequate, whereas Section 377, Cr.PC gives the power to the State Government to prefer appeal for enhancement of sentence. While it is open for the State Government to prefer appeal for inadequate sentence under Section 377, Cr.PC but similarly no appeal can be maintained by victim under Section 372 Cr.PC on the ground of inadequate sentence. It is fairly well settled that the remedy of appeal is creature of the Statute. Unless same is provided either under Code of Criminal Procedure or by any other law for the time being in force no appeal, seeking enhancement of sentence at the instance of the victim, is maintainable. Further we are of the view that the High Court while referring to the judgment of this Court in the case of National Commission for Women v. State of Delhi & Anr (2010) 12 SCC 599 has rightly relied on the same and dismissed the appeal, as not maintainable. "

21. Since the de facto complainant does not have any right to prefer an appeal challenging the adequacy of punishment, the criminal revision case in CrI.R.C.No.128 of 2018 is liable to be dismissed as not maintainable.

22. Hence the rest of the discussion would be relevant to CrI.R.C.No.127/2018. Despite a case was registered and action was initiated on the basis of the complaint given by one Andrew D White, who is the Manager for the Estate in question, he was not examined as a witness. No doubt, the authors of the vouchers, which were prepared for raising money from the Group Office or from PW.1 and PW.2 were not examined. According to the case of the prosecution, the accused managed to replace the vouchers with the vouchers prepared by them, showing excessive expenditures.



23. On the basis of the vouchers, the accused were said to have entrusted with the responsibility of preparing letters and obtaining the signatures of the Manager/Andrew D White and thereafter the letters were sent through a special messenger to the Head Office. After the amount was sanctioned, the Manager would go to the Group Office and get it in cash and give it to the officers concerned for disbursement towards various expenses. Since the main allegation is preparation of false vouchers by replacing original vouchers, it has to be proved beyond all reasonable doubt that the vouchers that were seized by the Investigation Officer and marked as Exs.P4 to P17, P22 to P29 besides the cash book (Ex.P18) of Annaaimudi Estate were manipulated by the accused. It is claimed by the prosecution that the handwriting in Ex.P18 is that of A-1. The sample signatures obtained from the accused have been marked as Exs.P52 to P59.

24. The Investigation Officer has deposed in his evidence that the handwriting in the disputed vouchers and the sample signatures were sent to the handwriting expert of Forensic Science Department through Court for examination and for obtaining the Report. However, the said Report was not marked as a document during the trial.

25. The learned lower Appellate Judge has observed that the prosecution had arrived at a conclusion that there was misappropriation by relying on the Auditor report/Ex.P44, prepared by the Auditor/PW.4; but the said auditor is the Company's Auditor and so he is not an independent witness; neither he was a part of the Investigation team; hence it is the duty of the Investigation officer to unearth the truth by making independent enquiry; and the Court cannot simply go by what the Auditor/PW.4 says in the Ex.P44, particularly in the absence of any material to show that the documents which are incriminating to accused were recovered by the Investigating Officer in accordance with the procedure established by law or handed over by the witnesses enquired by the Investigation Officer.

26. But the learned Trial Judge took up the exercise of comparing the admitted handwritings with the questionable handwriting and verified it by examining with his own eyes and arrived at a conclusion that they have been written by A-1 only. The above opinion of the trial Court is the basis for the finding the accused guilty.

27. No doubt, the Courts have got power to examine the handwritings in the above such manner and find out whether a signature or a writing has been made by a person by whom it is said to have been written or made. But the question is whether



such opinion recorded by the Magistrate can supersede an opinion given by an expert, who has made scientific examination of the materials. In this case, the documents have been sent for handwriting expert for comparison and he has also offered his opinion. Such opinion offered by the forensic scientific expert would fall under Sec.45 of the Evidence Act. For the purpose of convenience the provision of Sec.45 of the Evidence Act, is extracted as under:

"45. Opinion of experts: - When the Court has to form an opinion upon a point of foreign law or of science or art, or as identity of handwriting 1[or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art 2[or in questions as to identity of handwriting] 1[or finger impressions] are relevant facts.

Such persons are called experts.

Illustrations

(a) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died are relevant.

(b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the Act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is whether A wrote a certain document. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons are relevant."



28. As per the illustration(c), the opinion given by the expert with regard to the identification of the hand writing on examination can be taken as a relevant fact. If the Courts have to substitute its own opinion superseding the opinion of the experts, there should be some scientific reasons. The Court ought to have taken into consideration of the opinion given by some other experts if any, and recorded its reasons as to why the Report of the hand writing expert available on file can not be considered as a relevant material. But in this case a vital document namely the opinion of the scientific expert has been suppressed before the trial Court. In the opinion offered by the expert, he has stated that it is not possible to offer any reliable opinion on the signatures or writings sent to him. The learned Appellate Judge unearthed the said fact and took up the opinion of the expert into consideration.

29. In this context, the learned counsel for the respondent cited the decision of this Court held in the case of S.Chinnathai Vs. K.C.Chinnaduari [CRP.No.(MD) 57 of 2008]. In which it is held that once an expert has sent his opinion and stated that the materials are not sufficient to give any concrete opinion, the Court has to stop relying on the said documents, for the purpose of recording the guilt of the accused. In the said case it is held as under:

"6. The Civil Court has no doubt, got the powers under Section 73 of the Indian Evidence Act to compare the signatures made in a disputed documents with the admitted documents. The said power of the civil Court would be used sparingly and the Court below will have to give specific reasons while giving findings based upon that. However, the civil Court in all probability shall avoid such comparison, since it is always desirable to make the comparison with naked eyes instead of having access to an expert's opinion.

7 to 12.....

13. In the judgments reported in 1968-2-MLJ-48, (1971) 84-LW-348, 1976-1- MLJ-11 and 1998-3-CTC-140, the Hon'ble High Court has held that a document cannot be sent out of the Court for the purpose of getting a report of the expert. A reading of the said judgments would show that they have been rendered without taking into consideration of the Order 26 Rule 10A of the Civil Procedure Code and when such a provision was not available at the time of rendering the orders. Therefore, this Court is of the opinion that the above said judgments which have not considered Order 26 Rule



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10A of the Civil Procedure Code cannot be made applicable when the Civil Court exercise its power. In the judgment reported in 2006 (4) CTC 850 (N.Chinnasamy Vs. P.S.Swaminathan), the Hon'ble High Court has held that only when the expert expresses difficulty in examining the documents before the Court, a document can be sent outside. A reading of the said judgment also would show that the same has not specifically considered Order 26 Rule 10A of the Civil Procedure Code. In fact, the circular of the Hon'ble High Court referred in the earlier judgments are in pursuant to the judgments rendered earlier when the provisions of Order 26 Rule 10A of the Civil Procedure Code was not available."

30. During the course of investigation itself, the investigation officer had got the permission of the Court and sent the documents in question to the scientific expert of Forensic Scientific Department for examination. The documents have been compared by an expert and his opinion also given. Once again, the Court cannot go back and take recourse to Sec. 73 of the Evidence Act.

31. For a better clarity the provision of Sec.73 of the Evidence Act is extracted Below:

"Section 73 in The Indian Evidence Act, 1872

73. Comparison of signature, writing or seal with others admitted or proved.—In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose. The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person. 1[This section applies also, with any necessary modifications, to finger-impressions.]"

32. In the case of Kannagi Rep. by her General Power of Attorney Agent, Govindharaj VS. K.Kandasamy and another [C.R.P.(PD) Nos.3747 & 3748 of 2015], a learned single Judge of this Court has made reference about the various judgments of the Hon'ble Supreme Court on this point. The relevant point is extracted as under:



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"15. Also the decision of the Apex Court reported in (2012) 12 Supreme Court Cases 406 (Ajay Kumar Parmar Vs. State of Rajasthan), the relevant portion of which reads as follows:

8. The opinion of a handwriting expert is fallible/liable to error like that of any other witness, and yet, it cannot be brushed aside as useless. There is no legal bar to prevent the court from comparing signatures or handwriting, by using its own eyes to compare the disputed writing with the admitted writing and then from applying its own observation to prove the said handwritings to be the same or different, as the case may be, but in doing so, the court cannot itself become an expert in this regard and must refrain from playing the role of an expert, for the simple reason that the opinion of the court may also not be conclusive. Therefore, when the court takes such a task upon itself, and findings are recorded solely on the basis of comparison of signatures or handwritings, the court must keep in mind the risk involved, as the opinion formed by the court may not be conclusive and is susceptible to error, especially when the exercise is conducted by one, not conversant with the subject. The court, therefore, as a matter of prudence and caution should hesitate or be slow to base its findings solely upon the comparison made by it. However, where there is an opinion whether of an expert, or of any witness, the court may then apply its own observation by comparing the signatures, or handwritings for providing a decisive weight or influence to its decision.

16. Also the decision of the Apex Court reported in (2013) 4 Supreme Court Cases 546 (Garre Mallikharjuna Roa (dead) by LRS. and others Vs. Nalabothu Punniah), the relevant portion of which reads as follows:

4. In Ajay Kumar Parmar Vs. State of Rajasthan while dealing with the provisions of Section 73 of the Evidence Act, 1872, this Court observed that courts should be slow to base their findings solely on comparison made by it. The Court further held: (SCC pp.417-18, para 28) 8. The opinion of a handwriting expert is fallible/liable to error like that of any other witness, and yet, it cannot be brushed aside as useless. There is no legal bar to prevent the court from comparing signatures or handwriting, by using its own eyes to compare the disputed writing



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with the admitted writing and then from applying its own observation to prove the said handwritings to be the same or different, as the case may be, but in doing so, the court cannot itself become an expert in this regard and must refrain from playing the role of an expert, for the simple reason that the opinion of the court may also not be conclusive. Therefore, when the court takes such a task upon itself, and findings are recorded solely on the basis of comparison of signatures or handwritings, the court must keep in mind the risk involved, as the opinion formed by the court may not be conclusive and is susceptible to error, especially when the exercise is conducted by one, not conversant with the subject. The court, therefore, as a matter of prudence and caution should hesitate or be slow to base its findings solely upon the comparison made by it. However, where there is an opinion whether of an expert, or of any witness, the court may then apply its own observation by comparing the signatures, or handwritings for providing a decisive weight or influence to its decision."

33. The message sent to the trial Courts vide the above judgements is that as a rule of caution, it is safe to rely on the opinion of the expert given under Sec.45 of the Evidence Act, before substituting the opinion of the Court under Sec. 73 of the Evidence Act. In the present case, the Magistrate, without considering the opinion of the scientific expert has(*) overlooked it. He proceeded to do his own exercise of comparing the signature with bare eyes. He found the accused guilty, based on his own opinion about the **(*)disputed** handwritings. As rightly submitted by the learned counsel for the respondent, the Court cannot **(*)determine** an issue which has already been decided by an expert vide his opinion.

34. The learned Appellate Judge has appreciated and applied the legal position and given due weight age to the opinion of the scientific expert. The learned Appellate Judge has further pointed out that the impugned vouchers marked as Ex.P.4 to P.16 were not been proved by the prosecution that they pertained to the victim company. Reference has been made to the evidence of PW.6, where he has stated that he did not know how he came into the possession of those documents and who had handed over them to him. The documents ought to have been recovered under a seizure mahazar, evidencing its recovery from the persons who had its custody. Since the above mandates procedure is violated, the very authenticity of Ex.Ps.4 to 16 have become questionable.

35. The Investigation Officer has relied on the Report of the Auditor without making his own enquiry about the allegation of



misappropriation. Ex.P.44 is the Report of the Auditor, but its relevancy to the facts of the case and its connection to the accused ought to have been established during the course of investigation and it should have formed part of the charge sheet as well. But the report of the Investigation Officer/PW.6 would show that he has failed to undertake such an exercise while conducting the investigation.

36. It is further submitted by the learned counsel for the petitioner that the accused themselves have given extra judicial confession by admitting their guilt to the persons in charge of the affairs of the company and that cannot be ignored by the Court. The said alleged confession letters sent by the 1st accused to the Group Manager and one J.D.Kamdin have been marked as Exs.P.46, 47 and 49. In those letters, it is seen that the accused had pleaded mercy of his employers and requested to save their family from criminal action and had also undertaken to repay the misappropriated amount.

37. The 1st accused is the employee of the Defacto complainant and the letters viz., Exs.P45, P46, P47, P48 and P49 have been addressed to the Group Manager. Before proceeding to accept those letters as the confession of the accused, it has to be proved whether those statements have been given voluntarily without any element of fear or coercion. The best person who could say about its voluntariness, in the addresses of the above letters. But they were not brought to the box and examined. The accused were deprived of their opportunity to cross examine them. Under such circumstances, it cannot be claimed that the above letters should be accepted as proof of the guilt of the accused. The Court can not record the guilt of the accused by relying on the document which have not been proven in a manner known to law.

38. When the management takes an action against an employee on the allegation of misappropriation and also launches a criminal action, it is needless to state about the amount of stress in the mind of the employee. He would have also got a lot of pressure from various quarters. Under such situation, it cannot be said that Ex.P46, 47 & 49 letters could have been written by the accused voluntarily without any fear or coercion and knowing well about its consequences and more particularly, that they would be used as incriminating evidence against him. Since the persons to whom the letters have been addressed were also not examined by the Court to speak about these facts, the alleged confessions can not be guarded with any legal validity.

39. The Materials, which have been omitted to be looked into by the learned Trial Judge or wrongly appreciated by the Trial Judge by adopting a wrong procedure were rightly dealt by the



learned Appellate Judge and the accused have been given with the benefit of doubt. Hence, I do not find any illegality or infirmity in the judgment of the learned Appellate Judge and it does not require my interference.

In the result, both Criminal Revision cases in CrI.RC.No.127 of 2018 and CrI.RC.No.128 of 2018 stand dismissed and the common judgement passed by the learned III-Additional District and Sessions Judge, Coimbatore in C.A. 147 of 2014 and C.A.No. 49 of 2015 is upheld. Consequently, connected miscellaneous petitions, if any are also closed.

Sd/-

Assistant Registrar

Dated : 11.02.2022

**Corrected order to go as per
order dated 11.05.2022 and
made herein**

Sd/-

Sub Assistant Registrar (CO - II)

Dated : 13.05.2022

True Copy//

Sub Assistant Registrar

jrs

To

1. The III Additional District and Sessions Judge,
Coimbatore.
2. The District Munsif cum Judicial Magistrate,
Valparai.
3. The Inspector of Police,

District Crime Branch Coimbatore,
Coimbatore District.
4. The Public Prosecutor,
High Court, Madras.

Copy to

The Record Keeper,
Criminal Section, High Court, Madras.

**To be
Substituted
to the order
already
despatched on
22.02.2022**

+1cc to Mr.K.Balasubramaniam, Advocate, S.R.No.3837

+1cc to Mr.K.Balasubramaniam, Advocate, S.R.No.3838 RN(23/03/2022)

CrI.RC.Nos.127 &128 of 2018

GPL[CO]

NSK 14/02/2022

NSK 16/05/2022