BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.11.2022

Pronounced on : 08.03.2023

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THE HONOURABLE MR.JUSTICE **G.ILANGOVAN**

Crl.A(MD)Nos.364, 373, 362, 365 and 372 of 2016

(1).Crl.A(MD)No.364 of 2016:-

1.Chandran
2.Kanathasan (Died)
3.Ramalingam : Appellants/A1, A2 and A5
4.Chandra
5.Vinothini
6.Manonmani
7.Selvamani : Appellants 4 to 7 LRs of the deceased Kanathasan
(Appellants 4 to 7 impleaded as per order of this court, dated 01/10/2021 in Crl.MP(MD)No.6194 of 2021 in Crl.A(MD)No.364 of 2016)

Vs.

State through
The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Ramanathapuram District.
(Crime No.3 of 1996) : Respondent/Complainant

Prayer: Criminal Appeal filed under section 374 of the Criminal Procedure Code, to call for the records relating to the judgment in Special C.C No.5 of 2005, dated 02/09/2016 on the file of the Chief Judicial Magistrate/Special Court, Ramanathapuram and set aside the same.

For Appellants : Mr.Subash Babu

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

(2).Crl.A(MD)No.373 of 2016:-

1.Nallusamy : 1st Appellant/A3

Ramanathan (Died)/A4

2.Santha
3.Saravanan
4.Poongodi
5.Manjula
6.Rani
7.Meenal : Appellants 2 to 7/LR.s of the deceased Ramanathan
(Appellants 2 to 7 impleaded as per order of this court, dated 31/03/2022 in Crl.MP(MD)No.3442 of 2022 in Crl.A(MD)No.373 of 2016)

Vs.

State through
The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Ramanathapuram District.
(Crime No.3 of 1996) : Respondent/Complainant

Prayer: Criminal Appeal filed under section 374 of the Criminal Procedure Code, to call for the records relating to the judgment in Special C.C No.5 of 2005, dated 02/09/2016 on the file of the Chief Judicial Magistrate/Special Court, Ramanathapuram and set aside the same.

For Appellants : Mr.S.Balamurugan

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

(3)Crl.A(MD)No.362 of 2016:-

Sethurajan : Appellant/A2

Vs.

The State rep. By
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Ramanathapuram District.
(Crime No.3 of 19960 : Respondent/Complainant

Prayer: Criminal Appeal filed under section 374 of the Criminal Procedure Code, to call for the records relating to the judgment in Special C.C No.6 of 2005, dated 02/09/2016 on the file of the Chief Judicial Magistrate/Special Court, Ramanathapuram and set aside the same.

For Appellant : Mr.A.Arputharaja

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

(4).Crl.A(MD)No.365 of 2016:-

1.Chandran
2.Ramalingam : Appellants/A1 and A4

Vs.

State through
The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Ramanathapuram District.
(Crime No.3 of 1996) : Respondent/Complainant

Prayer: Criminal Appeal filed under section 374 of the Criminal Procedure Code, to call for the records relating to the judgment in Special C.C No.6 of 2005, dated 02/09/2016 on the file of the Chief Judicial Magistrate/Special Court, Ramanathapuram and set aside the same.

For Appellants : Mr.Subash Babu

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

(5).Crl.A(MD)No.372 of 2016:-

Ramanathan (Died)/A3
1.Santha
2.Saravanan
3.Poongodi
4.Manjula
5.Rani
6.Meenal : Appellants/LRs of the deceased Ramanathan
(Appellants 1 to 6 impleaded as per order of this court, dated 31/03/2022 in Crl.MP(MD)No.3444 of 2022 in Crl.A(MD)No.372 of 2016)

Vs.

State through
The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Ramanathapuram District.
(Crime No.3 of 1996) : Respondent/Complainant

Prayer: Criminal Appeal filed under section 374 of the Criminal Procedure Code, to call for the records relating to the judgment in Special C.C No.6 of 2005, dated 02/09/2016 on the file of the Chief Judicial Magistrate/Special Court, Ramanathapuram and set aside the same.

For Appellants : Mr.S.Balamurugan

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

COMMON JUDGMENT

These criminal appeals have been preferred against the judgment passed in Special C.C Nos.5 and 6 of 2005, dated 02/09/2016 on the file of the Chief Judicial Magistrate/Special Court, Ramanathapuram.

2.**The case of the prosecution in brief**:-

One T.Deivendran was working as Inspector in the Vigilance and Anti-Corruption Department, Sivagangai. He registered a case in Crime No.3 of 1996 for the offences punishable under sections 120-B, 409, 420, 477-A IPC and section 13(2) r/w 13(1)(c),(d) of Prevention of Corruption Act, 1988, on the basis of the report received from the Director of Vigilance and Anti-Corruption, Chennai, on 15/03/1996 at about 13.00 hours, took up the investigation and recorded the statement of the several persons.

3.**Tmt.Fathima Rohin**i (PW67 in CC No.5 of 2005 and PW35 in CC No.6 of 2005) was working as Inspector of Police in the Vigilance and Anti-Corruption Department, Sivagangai, in December, 1999. Due to the death of the above said Deivendran, she took up further investigation as per the order of the Director of Vigilance and Anti-Corruption, Chennai, on 01/03/2000. She recorded the statement of further witnesses and also recorded the further statement of the other witnesses. She recorded the statement of A7-John Bosco, on 27/01/2001, and obtained his thumb impression, on 01/02/2001. She obtained the thumb impression of the accused Kannathasan, Sethurajan, Nallusamy, Ramanathan and Ramalingam in the presence of one Sengol Mari at her office. The above said sample thumb impressions were marked as Ex.P81. Recorded the statement of the other witnesses as well as beneficiaries. On 13/07/2001, she submitted the disputed documents through court for expert examination. After completing the formalities and receiving the documents in Special CC No.6 of 2005, she filed final report.

4.Later, Muthuraman (PW69 in CC No.5 of 2005 and PW37 in CC No.6 of 2005) took up the further investigation in pursuance of the above said order of the Director of Vigilance and Anti-Corruption Department, Chennai, recorded the statement of the officials, who issued the sanction orders against the accused persons in the connected CC No.5 of 2005. Since, this is the connected matter, no fresh order was obtained. On further perusal of the records, he came to know that the offences said to have taken place during various periods. Against A1 to A5 namely Chandran, Kannadhasan, Nallusamy, Ramanathan and Ramalingam CC No.5 of 2005 was taken cognizance. CC No.6 of 2005 was taken cognizance against A1-Chandran, A2-Sethurajan, A3-Ramanathan, A4-Ramalingam and A7-John Bosco, died on 16/02/2004. So, he was deleted from the final report. In respect of CC No.5 of 2006, the trial court framed the charges against the accused for the offences punishable under sections 167, 167 r/w 109, 467, 468(A), 471 r/w 467 IPC, 471 r/w 468 IPC, 420, 420 r/w 109 IPC, 409, 409 r/w 109 IPC, 13(1)(c),(d) r/w 13(2), 13(1)(c) and (d) r/w 13(2) the Prevention of Corruption Act r/w 109 IPC. In respect of CC No.6 of 2006, the trial court framed the charges against the accused persons for the offences punishable under sections 167 and 167 r/w 109 IPC, 467, 468(A), 471 IPC r/w 467, 471 r/w 468 IPC, 420, 420 r/w 109 IPC, 409, 409 r/w 109 IPC, 13(1)(c) & (d) r/w 13(2) and 13(1)(c) and (d) r/w 13(2) of the Prevention of Corruption Act r/w 109 IPC.

5.On the side of the prosecution in respect of CC No.5 of 2005, 69 witnesses were examined and 147 documents marked. On the side of the accused persons, two witnesses were examined and one document was marked. The accused persons were put to section 313 Cr.P.C proceedings. They denied the truth of the facts deposed by the prosecution witnesses.

6.Similarly, in respect of CC No.6 of 2005, on the side of the prosecution, 37 witnesses were examined and 215 documents marked. On the side of the accused persons two witnesses were examined and three documents marked.

7.At the conclusion of the trial process, the trial court convicted the accused persons namely A1 to A5 in CC No.5 of 2005, sentenced them to undergo one year RI for the offence under section 120(B) r/w 167 IPC; and to undergo one year RI and imposed a fine of Rs.100/- for each offences namely 409, 467, 468, 471 r/w 468 IPC, 477-A, 420 IPC and section 13(1)(c) and (d) r/w 13(2) of the Prevention of Corruption Act.

8.Similarly, at the conclusion of trial, the trial court convicted the accused persons namely A1 to A4 in CC No.6 of 2005, sentenced them to undergo one year RI for the offence under section 120(B) r/w 167 IPC; and to undergo one year RI and imposed a fine of Rs.100/- for each offences namely 409, 467, 468, 471 r/w 468 IPC, 477-A, 420 IPC and section 13(1)(c) & (d) r/w 13(2) of the Prevention of Corruption Act.

9.Challenging the above said conviction and sentence passed in CC No.5 of 2005, all the accused persons namely A1 to A5 filed separate criminal appeals before this court. So far as Crl.A(MD)No.364 of 2016 is concerned, A1-Chandran, A2-Kannathasan, A5-Ramalingam in CC No.5 of 2005 are before this court. A2-Kannathasan died during the pendency of the appeal. So their legal heirs have been brought on record as appellants 4 to 6 in Crl.A(MD)No.364 of 2016, whereas Crl.A(MD)No.373 of 2016 is filed by A3-Nallusamy and A4-Ramanathan, who are the Circle Supervisor in CC No.5 of 2005. Similarly A4-Ramanathan also, died on 28/09/2017 pending appeal and his legal heirs have been brought on record as appellants in Crl.A(MD)No.373 of 2016.

10.Similarly, challenging the above said conviction and sentence passed in CC No.6 of 2005, all the accused persons namely A1 to A4 filed separate criminal appeals before this court. Crl.A(MD)No.362 of 2016 has been filed by A2-Sethurajan, who was working as Special Secretary of the Society. Crl.A(MD)No.365 of 2016 is filed by A1-Chandran and A4-Ramalingam in CC No.6 of 2005. Crl.A(MD)No. 372 of 2016 is filed by A3-Ramanathan in respect of CC No.6 of 2005. Since A3 Ramanathan died on 28/09/2017 pending appeal, his legal heirs have been brought on as appellants in Crl.A(MD)No.372 of 2016.

11.**<u>The facts in brief</u>**:-

A1 to A5 in CC No.5 of 2005 were working in various cadres in Nambuthalai Preliminary Agriculture Co-operative Society Bank. A1-Chandran is the Secretary. A2-Kannathasan the Special Officer. A3-Nallusamy and A4-Ramanathan are the Circle Supervisors. A5-Ramalingam is the Junior Assistant, the deceased A7-John Bosco is working as Clerk. During the course of the above said employment, they sanctioned loan in favour of the dead persons. Similarly, they also sanctioned loan in favour of the persons, who did not apply for the loan. They also created false documents as if loans have been sanctioned in favour of the beneficiaries in the form of cash, agricultural inputs, etc. By the above said process, they have caused loss to the society to the tune of Rs.1,86,530/- in the form of agricultural inputs and cash of Rs.3,24,960/-. They misappropriated the above said amount. The above said illegal activity has been committed in pursuance of the conspiracy between all the accused. So this is the sub and substance of the allegation.

12.With this, let us go to the evidence on record.

13.From 27/08/2003, **Samikannu** (PW1 in CC Nos.5 and 6 of 2005) was working as Special Officer in Nambuthalai Primary Agricultural Co-operative Society Bank.

14.**Syed Mohammed** (PW4 in CC No.5 of 2005 and PW27 in CC No.6 of 2005) was working as President in the said society. Kannadasan-A2 in CC No.5 and Senthurajan-A2 in CC No.6 of 2005 were the Special Officers. Before his tenure, Chandran-A1 in CC Nos.5 and 6 of 2005 was working as Secretary, Ramalingam-A5 in CC No.5 of 2005 and A4 in CC No.6 of 2005 and John Bosco were as Clerks. During their tenure, there was no Special Officer. The elected persons came to office. He has spoken about the scheme that was introduced by the Government for the beneficiaries; also spoken further about the circular, that was issued by the Government mentioning the duties and responsibilities of the officials. During his office, the documents consisting the above said loans were obtained by the Investigating Officer. He has spoken about the illegality that was committed by the officers. He identified the signature of the various accused persons in the illegal documents. We need not go into the minutest details in the evidence. Suffice to say that in respect of the above said illegality, documents have been collected by the Investigating Officer from him.

15.Similarly **Kathiresan** (PW5 in CC No.5 of 2005 and PW24 in CC No.6 of 2005) has also handed over the relevant documents on the basis of the request made by the Investigating Officer.

16.**Senaimuthy (**PW6 in CC No.5 of 2005 and PW29 in CC No.6 of 2005) has stated the procedures to be adopted, while sanctioning loan to the beneficiaries. We will deal in the later part of the judgment.

17.**Ramakrishnan (**PW7 in CC No.5 of 2005 and PW30 in CC No.6 of 2005) was working as Audit Officer in Senior Cadre. He made auditing in respect of the Nambuthalai Agricultural society. He identified his signature in the audit report.

18.**Senthamarai Selvan (**PW8 in CC No.5 of 2005 and PW31 in CC No.6 of 2005) was present, when the thumb impression of the accused persons obtained.

19.**Avvai Ammal (**PW9 in CC No.5 of 2005 and PW 32 in CC No.6 of 2005) was the expert, who was working in the Department of Tamil Nadu Finger Prints Bureau. She examined the documents containing the thumb impression and submitted a report. We will deal about this detail in the later part of the judgment.

20.**Ummul Baisha** (PW10 in CC No.5 of 2005), even though was a Member in the above said society, she would say that she did not make any loan application. And the thumb impression in Ex.P15 does not belong to her. She also did not sign in Ex.P6, also did not sign as surety for any person. She disputed her signature Exs.P5, P14 and P16.

21.**Rathinam** (PW11 in CC No.5 of 2005 and PW19 in CC No.6 of 2005) also did not make any loan application. He also disputed his signature in Exs.P6, P14, P16, P6, P4, P5 & P76.

22.**Chellammal (**PW12 in CC No.5 of 2005) also did not make any loan application. She did not sign the above said documents referred above.

23.**Murugesan (**PW13 in CC No.5 of 2005) also did not make any loan application. He did not sign any of the documents as mentioned above.

24.**Mohideen Pitchai (**PW14 in CC No.5 of 2005) also did not make any loan application for the period 1993-1994. He also disputed his signature in the above said documents, so also, Alagudevan-PW15 in CC No.5 of 2005 and Arumugammal-PW16 in CC No.5 of 2005.

25.**Ganapathi** (PW17 in CC No.5 of 2005) was a member of the above said society. He also did not make any signature in the above said document.

26.**Balu** (PW18 in CC No.5 of 2005) though the member, did not make any loan application and did not sign the above said documents.

27.**Kala (**PW19 in CC No.5 of 2005) though admits her signature in Ex.P6 and other documents, but would submit that she made signature only at the instance of the accused Chandran and no amount was disbursed in her presence, either in cash or agricultural inputs.

28.**Ramakrishnan (**PW21 in CC No.5 of 2005) also admitted the signature, but did not sign as surety to any person. The signature was made at the instance of the the accused Chandran. Also did not know, who is Sivakumar and no amount, either in cash or agricultural inputs were disbursed to him.

29.**Natarajan Chettiar (**PW22 in CC No.5 of 2005), even though he is a member, he did not sign the above said document.

30.**Ramakrishnan (**PW2**3** in CC No.5 of 2005) working as Section Director and during his work as Scientific Assistant in the Forensic Lab, examined the signatures, which were sent to him by the Investigating Officer. He filed a report.

31.**Indira (**PW24 in CC No.5 of 2005) also admits the signature in the above said documents. But she was not aware to whom, she stood as surety.

32.**Karuppa Pillai** (PW25 in CC No.5 of 2005) did not make any signature in the document and also did not apply for any loan. He disputed his signature in the above said document.

33.**Naganathan** (PW26 in CC No.5 of 2005) was not a member of the society. He disputed his signature, so also Rajendran PW27 in CC No.5 of 2005. Velusamy Bose-PW28 in CC No.5 of 2005 disputed. Arumugam-PW29 in CC No.5 of 2005 admits the signature and receiving the loan.

34.**Ponnammal** (PW30 in CC No.5 of 2005) disputed the signature as well as the thumb impression in the above said documents, so also Vallu-PW31 in CC No.5 of 2005, Rajagopal-PW32 in CC No.5 of 2005, Aravalli-PW33 in CC No.5 of 2005 and Thangaraj-PW34 in CC No.5 of 2005.

35.**Subramanian** (PW35 in CC No.5 of 2005) admits his signature, but he did not know about the disbursement of the loan and agricultural inputs. But he signed in the security document at the instance of the accused Chandran.

36.**Karuppa Pillai (**PW36 in CC No.5 of 2005) also admits the signature, but stated that cash or agricultural inputs were not delivered in his presence to Ramamoorthy.

37.**Perumal** (PW37 in CC No.5 of 2005 and PW13 in CC No.6 of 2005) disputed his signature. He did not obtain any loan, so also **Ramamoorthy-PW38** in CC No.5 of 2005, **Chitiram Pillai-PW39** in CC No.5 of 2005, **Subramaniya Arasi-PW40** in CC No.5 of 2005, **Muniyandi**-PW41 in CC No.5 of 2005.

38.**Iluthar-PW42** in CC No.5 of 2005 admits the signature in the above said document Ex.P6, but he disputed the signature in Ex.P9.

39.**Ravi-PW43** in CC No.5 of 2005 was also not a member. He has also disputed the signature.

40.**Sithim-PW44** in CC No.5 of 2005 was also not a member. She has also disputed her signature.

41.**Sesumani-PW45** in CC No.5 of 2005 admits the signature. But would say that either cash or kind was delivered in his presence to one Thangavel.

42.**Ramanathan-PW46** also admits his signature, but whether by cash or by kind it was delivered to one Rathinam was not known to him.

43.Thangaraj (PW47), Luthusamy (PW48), Kannathasam (PW49), Malairaj (PW50), Rathinam (PW51)and Pushpam (PW52) disputed their signatures in the above said documents.

44.Puranam (PW53), Shanmuga Thevar (PW54), Baskaran (PW55), Sivanandham (PW56) did not obtain any loan. They disputed their signatures.

45.Mallika (PW57) would say that her father did not obtain any amount from the deceased and she was also not a member.

46.Balasubramaniam (PW58), Kandasamy (PW59), Mahaboob (PW63) and Sengolmary (PW64) also disputed the thumb impression in the above said document and would say that no loan was obtained by them.

47.Kathiresan (PW65) and Kaliammal (PW66) would say that the signature found in the above said document did not belong to their father; Their father did not obtain any loan.

48.From the above said, it is seen that Pushpam (PW52) and some other persons are admitting their signatures in the above said documents. Some of them totally denied. Other group of people even though admitted the signatures, disputed the disbursement of cash amount and agricultural inputs.

49.Pushpam (PW52) would say that even though her husband obtained loan from the society, in 1991 itself he repaid the same. But the above said Chandran and Ramalingam threatened her that the above said loan was not repaid. So she again repaid the above said amount.

50.Baskaran (PW55) has spoken about the service particulars of the accused Ramanathan and Nallusamy, also furnished the above said particulars to the Investigating Officer.

51.Sivananandham (PW56) has spoken about the duties assigned to the officers.

52.Balasubramanian (PW58) has furnished the service particulars of Kanadhasan and Sethurajan to the Investigating Officer, so also Kandasamy (PW59) in respect of Nallusamy and Ramanathan.

53.Ashokan (PW60) has spoken about the duties and responsibilities of the Manadhasan and Sethurajan.

54.Vasudevan (PW61) on the direction of the higher official along with another Village Administrative Officer Attended the Vigilance Department office, on 15/02/2001; at that time, they found several persons; four of them stated that they did not obtain any loan; four others stated that they did not know to read and sign. In their presence, sample signatures and thumb impressions of 34 persons were obtained; thumb impression of four persons obtained. And at that time, Ramalingam and Vasu also present; Their thumb impression and signature were also obtained.

55.Vasu-PW62 spoken about the duties and would say that even though, he filled up Ex.P61, on 01/11/2002, he did not personally know the beneficiaries as well as the particulars of the society.

56.Mahaboob-PW63 was working as writer, he wrote resolution at the instance of Kanathasan.

57.Kathiresan-PW65 was working as Manager in Ramanathapuram Central Cooperative Bank and he has spoken about the procedure to be followed while issuing loans.

58.From the preamble portion, it is evident that for the various periods, separate cases have been registered. In respect the period 1993-1994, CC No.5 of 2005 has been registered. CC No.6 of 2005 has been registered for the period September 1994 to January 1995.

59.As per the case of the prosecution in respect of CC No.5 of 2005, the amount involved is Rs.3,24,960/- in cash and Rs.1,85,530/- in the form of fertilizers, pesticides etc. whereas in respect of CC No.6 of 2005, the amount involved is Rs.3,24,960/- in cash and Rs.1,85,530/- in form of fertilizers, pesticides, etc., during the relevant period.

60.It is not in dispute that at that period, the accused persons were working in various cadres. But one of the accused, who is the Secretary would say that he was working as In-charge Secretary, so, he cannot be held liable for the above said alleged misappropriation. We will deal with the issue in the later portion of the judgment.

61.So far as the case in CC No.5 of 2005 is concerned, totally 69 witnesses have been examined, who were stated to be the alleged beneficiaries. Out of the above said witnesses, some of the witnesses disputed their signature in the relevant documents.

62.The following witnesses were admitting the transactions and their signatures, etc. viz., PW19, PW21, PW22, PW23, PW24, PW29, PW35, PW36,PW42 (partly admitted), PW45 and PW46.

63.The following witnesses were partly supporting the prosecution case with regard to the membership etc., and denied with regard to the disbursement of the amount, agricultural inputs, etc. viz, PW52, PW55, PW56, PW58, PW59, PW60, PW61, PW62, PW63, PW65.

64.So we find three sets of evidence in this matter. One supporting the case of the prosecution, another supporting the defence and third one, partly supporting the prosecution.

65.With this in mind, now let us straightaway go to the evidence of the expert, so that a clarity may come in the course of discussion.

66.Now let us first go to the evidence of Avvaiyammal (PW9 in CC No.5 of 2005), the Finger Print Expert. She would say that on the basis of the request made by the Investigating Officer through the trial court, she received the documents containing the finger print of the witnesses and as well as the accused persons.

67.PW12-Chellammal (in CC No.5 of 2005) has stated in her evidence, as narrated in the preamble portion, that she has not made any signature in the Membership Register and cash disbursement register and delivery of the fertilizer register, receipt, etc. Those documents were marked on the side of the prosecution as Exs.P50, P6, P4, P16 and P5 respectively. She also made her thumb impression at the time of investigation, at the request made by the Investigating Officer. That was marked as Ex.P97. Her admitted thumb impressions were marked as SI by PW9. That was compared with the disputed thumb impression in Exs.P50, P6, P14, P16 and P62; She found that Q1 and D1 are tallying with the other thumb impression of the 5th accused namely Ramalingam, similarly, Q1 and D1 does not tally with the Chellammal's thumb impression, but tallies with A1 namely Chandran. Similarly, Q1 does not tally with her admitted thumb impression. But it does tally with the thumb impression of one Mari.

68.So from her evidence, it is seen that except her thumb impression in the membership document, no other documents, which are now disputed do not bear the thumb impression of Chellammal. But rather, it has been forged by A1 and A6 as if it belongs to Chellammal.

69.Next comes Aravalli, who was examined as PW33 in CC No.5 of 2005. She would say that during the course of evidence, she was not a member of the society and never signed in Exs.P50, P21, P6, P16, P14, P108, P105 and P5, which were the documents pertaining to the above said transactions.

70.Now coming to the evidence of PW9 in CC No.5 of 2005, the finger print expert. According to her, the admitted signature of Aravalli was marked as Ex.S3. On comparison, she would say that the thumb impression of Aravalli, even though tallies with Q23, but does not tally with the disputed thumb impression in Q3H. But Q3B tallies with the thumb impression of A6. Similarly, Q3H also tallies with the thumb impression of A6.

71.Now, the next witness is Ummul Baisha, who was examined as PW10 in CC No.5 of 2005. During the course of her evidence, as mentioned earlier, she would say that she was a member in the society, but did not receive any loan, fertilizer etc. She denied her thumb impression in Ex.P15 in the disputed document.

72.Now coming to the evidence of PW9 finger print expert. The admitted thumb impression is S4, during the course of examination, it was found that the disputed thumb impression QAA and Q4B did not tally with the admitted thumb impression. The disputed thumb impression of Q4B tallies with the thumb impression of A6.

73.Similarly, the admitted thumb impression of one Mari does not tally with the disputed thumb impression. But it tallied with the admitted thumb impression of A6. Similarly, all other disputed thumb impressions tally with the thumb impression of A6.

74.Similarly, the thumb impression of one Gandhi, he was not examined as witness; the disputed thumb impression tallies with the thumb impression of the 6th accused.

75.Similarly, Sengolmary thumb impression, who was examined as PW64 in CC No.5 of 2005 also tally with the admitted thumb impression. But the disputed thumb impression of the above said Aravalli tallies with that of A6's thumb impression.

76.So from her evidence, it is seen that in the disputed documents, A1-Chandran and A3-Ramalingam made verification by forging and impersonating the above said persons.

77.Now A1-Chandran and A6-Ramalingam are the appellants in Crl.A(MD)No.364 of 2016. The deceased Kannathasan, who was working as Section Officer, as mentioned above, died and his legal heirs have been impleaded. *Prima facie*, it is seen that A1 and A5 have forged the documents.

78.Now let us go to the evidence of Hand Writing Expert, who was examined as PW23-Ramakrishnan in CC No.5 of 2005. He would say that on the basis of the request made by the Investigating officer through the trial court, he examined the disputed signature with that of the admitted signatures of the witnesses.

79.According to him, she marked the disputed signature as Q1, A54O and Q149A. Their sample signatures were also marked as S1 to S351. The admitted signatures of the accused were marked as Exs.A1 to A59. On his examination, he found that the sample signatures, which were admitted and marked as Exs.S1 to S11, does not tally with Q1 to Q7. This is with reference to PW42.

80.Similarly, the admitted signature of A2 and the sample signature of S12 to S22 does not match with Q10 to Q12, so also with the alleged signature of the witness Murugesan.

81.Admitted signature of A4 does not tally with the disputed signature of Mohideen Pichai.

82.Similarly, A5's signature found tallied with Q39. This is in respect of beneficiary Alagu Thevar. But Q42 to Q55 were not signed by A5 or Alagu Thevar.

83.Similarly, A6's sample signature does not tally with the disputed signature of Siluvai Muthu.

84.A7 does not tally with the disputed signature. This is pertaining to one Subatha Beevi.

85.A8 signature does not tally with Q65, Q73, Q75, Q78. But the admitted signature of Muthu does tally with the disputed signature, so also Siluvaimuthu, Alagu Thevar, Mohidden Pichai, Murugesan, Rathinam, Muthu, Kanni Ammal, Nagarathinam, Rajendran, Kalimuthu, Valli, Pechimuthu, Irulaya Maliya Looise, Malayarasan, Sundarsan, M.Iluthuar, V.Shed Mohammed, Md.Moodh Kasi, Chithram Pillai, Muniyandi, Anthonisamy, Sandhana Samy, Pooraman, Answar Basha Shahib, Arumugam, Indira, SS.Athi, S.Balu, Ponnammal, Rajagopal Pillai, Adaikalam, Arumugam, Sl.Chellai, E.Perumal, A.Kandasamy, M.Velu and A.Karuppaiyya.

86.Now coming to the admitted signature of A11, A12, A14, A16, A18, A19, A29, A32, A36, A38, A39, A41, A42, A43, A45, A49, A52, A54, A57 and A59 do not tally with the disputed signature of the beneficiaries.

87.So from their evidence, it is clear that the disputed signature of the beneficiaries do not tally with that of the admitted signature. So it is evident that their signatures have been forged. So, except the Anthonysamy signature, all other signatures have been forged. And who committed the forgery, responsible for the same is a matter for consideration in the appeal. But in respect of some of the disputed signatures, he has stated that no concrete or definite opinion could be given, since sufficient clarity was not available. Totally, 62 beneficiaries signatures were sent to him for examination.

88.Now coming back to the argument, the preliminary contention is that base of the initiation proceedings namely vigilance report is not available in the final report.

89.According to the appellants, when the initiation itself is under doubt, further process and proceedings undertaken by the Vigilance Department is not valid under law.

90.But I am unable to agree with this line of argument for the simple reason that FIR has been registered only based upon the enquiry report under section 81 of the Tamil Nadu Cooperatives Societies Act, but not on the basis of the information from the Director of Vigilance and Anti-Corruption Department, Chennai.

91.More-over, it is not necessary that FIRs must be registered on the basis of the complaint by the specific person. The Vigilance and Anti-Corruption Department is empowered to take *suo motu* cognizance of the offence, when credible information is received. So the information need not be disclosed and the initiation of the proceedings itself is sufficient for further investigation. So this cannot be doubted and even as per the evidence on record, as I found earlier, prima facie case has been made out by the prosecution. Here, the beneficiaries signatures as well as the thumb impressions have been forged by the society people.

92.No doubt that the thumb impression of A1-Chandran and A6-Ramalingam tallied with that of the disputed thumb impression of the alleged beneficiaries, as noted above. As mentioned above, a clear case of forgery, impersonation, falsification of records have been created by the Department officials.

93.The independent role, that has been played by the accused persons will be decided in the course of judgment.

94.The next preliminary argument is that the entire alleged misappropriation amount have been deposited in the account of the society. So there is no misappropriation during the period 1993-1994 and no complaint was also given by any public or beneficiaries. But this argument also missed one basic point. Depositing of the misappropriated amount will not cure or absolve the criminal liability. Even temporary misappropriation is sufficient for criminal proceedings. So this ground is also not available to the accused.

95.Their preliminary objection is that sanction was not proper and there was a delay of 9 years. As per the provision of the Cooperative Societies Act, sanction must be obtained within six years from the date of the offence and the delegation of power is not permissible under law. This is the primary point.

96.Now let us go to the sanction aspect. This point was raised before the trial court, the trial court has recorded positive finding in favour of the prosecution.

97.PW1 is the Sanctioning Authority for the accused, Chandran, Ramalingam and John Basco. Among them, John Basco already died. The request was made, on 17/10/2003 and it was also sanctioned, on 29/11/2003. But however, the delay occurred only in respect of the registration of the case. There is no delay in sanction and he would say that in respect of the Secretary of Society, Joint Registrar is the competent authority for appointment. From 2005 to 2010, the above said power was given. No specific contention was made with regard to his power, during the course of the cross examination. The trial court has relied upon the GO.M2B/108, dated 31/08/2005, by which the subordinates of the Registrar have been given power. This was heavily attacked by the accused stating that delegation of power is not permissible.

98.So far as the sanctioning given others is concerned, PW2 has given sanction in respect of the accused Kanathasan and Sethurajan, when he was working as Joint Registrar. His power was also questioned stating that only the Registrars of the Cooperative Society empowered to grant sanction. That was denied by him.

99.PW3 has granted sanction against the Accused Nallusamy, when he was working as Special Officer. But his power was not questioned by the accused during the course of cross examination.

100.Now coming to the records, A1 and A2 were the Section officers and A3 was the Secretary and A4 and A5 were Clerks. Even if we accepts the argument of the accused that PW1 was not competent to grant sanction against A1 and A5, section 19(3) must be satisfied by the accused to the effect that, because of the error that has been committed by the prosecution in getting sanction order, failure of justice occasioned. Here, the error defines in the above said clause includes the competency of the authority to grant sanction. Here, the competency error committed by the prosecution. But in the sanction order, it has been stated by PW1 that he is the competent authority to remove Chandran, Ramalingam and John Bosco. Even though, PW1 stated that he was empowered by Registrar of Cooperative Society, further sanction by the above said Joint Registrar and Assistant Registrar cannot be made in favour of their Junior Officers, as rightly contended by the accused. But this is too late to make such an objection. Apart from that, as mentioned earlier, their case is not affected by the above said error in the sanctioning order. Not even a suggestion was made to PW1 to the effect that because of the defective sanction order granted by him, their right is greatly affected. Similarly, no cross examination was made to the Investigating Officer on this aspect. Apart from this, nothing is also brought on record, except the bald cross examination of PW69 by the accused on the above said issue. So this argument also does not lie and I find that no prejudice is caused to the accused, because of the defective sanction order issued by PW1. In respect of the others, the validity is not challenged.

101.By pointing out this error, it is submitted by the accused that if the defence document namely D1 has been placed before the competent authority, sanction would not have been issued. D1 refers the letter, dated 26/02/2009 written by the Special Officer to the Joint Registrar/Special Officer stating that all the loans that have been sanctioned during the period of Ramanathan and Nallusamy, either recovered or have been written off by the Government.

102.As mentioned earlier, mere deposit of the amount or written off will not cure the criminal offence. But she was also referring another document in CC No.6 of 2005, it has been submitted that during the course of section 81 of the Tamil Nadu Cooperative Societies Act proceedings, it was found that no misappropriation took place during the relevant periods. But the documents show that except the criminal investigation subject matter, in respect of the other matters only, the above said order was made application. So this argument is also not available to the accused now.

103.Similarly, they also relied upon the evidence of the Investigating Officer for the above said argument. Some answer made above applies to this point. And that is why, I have started the discussion by referring to the reports of finger print expert, as well as the handwriting expert. So the first discussion is sufficient enough to answer this argument.

104.Now coming to the other arguments with regard to the procedure, that has been adopted by the Investigating Officer, while taking the finger print as well as the sample signatures. The learned counsel appearing for the appellants would rely upon section 2(2)A of the Identification of Prisoners Act and the Police Standing Order 801. According to him, when proper procedure has not adopted, then the entire prosecution must fail and the evidence of the finger print expert as well as the handwriting expert cannot be taken into consideration at all.

105.In support of his contention, he would rely upon the following judgments (1)Bala & others Vs. State rep by Inspector of Police, Jamnamarathur Police Station, Vellore District (2014-1-LW.(Crl.) 213); (2)Nanjappa Vs. State of Karnataka [(2015)3 MLJ (Crl) 744 (SC); 3.P.Parimaladevan Vs. State by Inspector of Police, CCIW, CDI, Vellore, Vellore District (2020(1) MWN (cr.) 342); 4.Vijay Rajmohan Vs. State represented by the Inspector of Police, CBI, ACB, Chennai, Tamil Nadu (2022 LiveLaw (SC) 832) and 5.J.Ansar Mohidden Vs. The Inspector of Police, Commercial Crime Investigation Wing, Tiruchirappalli and one another (Crl.OP(MD)No.320 of 2022, dated 10/01/2022); this argument was also advanced before the trial court and it was answered, the above said issue by relying upon the judgment of this court reported in 2009-4-MLJ-1208 that as per the provisions of the Identification of Prisons Act, 1920, there is no bar for the Investigating Officer to take out the sample signature and the thumb impression, otherwise then by following the above said Act, So, the judgment rendered in the case of Bala & Others (2014-LW-(Crl.) 213) was dealt with about the finger print taken by the Inspector, who was declared by the Superintendent concerned as competent. But we are dealing with about the Vigilance Department Inspector. But no cross examination was also made to PW67. But the cross examination has been made to the effect that finger print as well as the signature samples were taken through the court process. Nothing has been suggested to her that for lifting of samples, she was not authorised. And the cross examination has been made only with regard to her competency to compare the finger print and the thumb impression. So the belated contention on the part of the appellants that proper process under Rule 801 of the Police Standing Order was not followed cannot be made applicable to the present case.

CC No.6 of 2005:-

106.In the preamble portion, it is seen that the irregularities that occurred during the period of 1993-1994 in CC No.5 of 2020 was registered. So far as this case is concerned, as mentioned above, this is from the period of September 1994 to January 1995.

107.As per the case of the prosecution, the amount involved in the above said misappropriation is, as mentioned above, is Rs.1,02,500/- in cash and Rs.1,52,000/- in kind. Total beneficiaries are 28.

108.Now let us straightaway go to the evidence. We can categorise the beneficiaries into two groups. One admitting the transaction and another group denying.

Admitting group:-

109.PW4 admitted his signature and or obtaining the loan amount in cash and kind under Exs.P5, P4, P6, P7 and disbursement of documents. But he would deny the disbursement of the money and cash to one Malaiyasamy, for whom he stood as surety.

110.PW5 also admits the transaction and obtaining the loan amount in cash and kind, But denies the disbursement of loan to one Soundaram.

111.PW7 also admits the transaction. But he has no knowledge whether the amount was given to one Devarajan, so also PW8 and PW9.

112.PW11 would say that he received only Rs.9,800/- in kind. But would deny that he received the inputs.

Denial Group:-

113.PW10 would say that even though he was a member of the society, he did not obtain any loan, either in cash or in kind. Similarly, he has also denied that he stood as surety to one Indira, so also PW13, PW15, PW16, PW17 and PW20.

114.As mentioned above, PW10 disputed the transaction. But he admits that he was a member of the society and denied the signature in Exs.P6 and P16.

115.PW13 would also deny that even though, he was a member of the society, he did not sign in Exs.P6 and P16 and disbursement document and he also denies the subsequent transaction and signature in Ex.P6, P16 and P17, the documents showing the loan obtained, disbursement, etc.

116.PW16 also would say that even though he was a member, he did not obtain any amount. He denied the signature in Exs.P6, P16 and the disbursement of documents.

117.PW17 would also say that he was only a member of the above said society and denied the signature in Exs.P6, P7, P16, loan disbursement register, etc.

118.PW20 would say that even though he was a member, she never obtained any loan, either in cash or in kind. She denied the thumb impression in the documents, Exs.P6, P7 and P16, etc.

119.Now the above said persons are disputing the defence theory. So with this, let us go to the expert evidence, who has been examined as PW32 and PW34.

120.Let us go to the evidence of PW32, who was working as Scientific Assistant in the thumb impression Department attached to the Forensic Science Laboratory, Chennai. He sent the thumb impression report of A1-Chandran, A2-Sethurajan, A3-Nallusamy, A4-Ramalingam, A5-Ramanathan and John Bosco (died).

121.In so far Sengol Mary is concerned, she was examined to show that she is not making any thumb impression in the relevant documents. Her admitted thumb impression was marked as Q6. On examination, the thumb impression marked as Q6B, Q6C, Q6D, Q6E, Q661 were found tally with the thumb impression of the Ramalingam, which is marked as A6A.

122.Similarly Q6F and Q6G found tally with the thumb impression of John Basco, who is now dead.

123.Similarly, Q6H also tally with the thumb impression of the accused Ramalingam. So from her evidence, it has been established beyond doubt that the accused Ramalingam, who is A4 forged the document.

124.Now let us go to the evidence of hand writing expert.

125.Regarding Antonysamy-PW10, he would say that the disputed signatures were not signed by the above said Antonysamy and compared with the admitted signature.

126.Regarding PW13-Perumal, he would say that the admitted signature and the disputed signatures are not found tallying.

127.So from his evidence, it is seen that from the signatures of few persons are not tallying with the admitted signatures. Prima facie, it is seen that those persons have not signed in the disputed documents. But in respect of Jabamalai and other persons, no opinion could be given by him and he has also given evidence with regard to the above said opinion.

128.Now coming back to the independent role alleged to have played by the accused persons.

129.In so far as CC No.5 of 2005 and 6 of 2005 concerned, Chandran, Ramanathan and Ramalingam are involved in both the cases. So far as the Sethurajan is concerned, he is the accused in CC No.6 of 2005. So far as Kannathasan and Nallusamy are concerned, they are accused in CC No.5 of 2005 and not in CC No.6 of 2005.

130.To avoid confusion, we will hereinafter refer the name of the accused.

131.So far as Chandran, he was working as Secretary. In so far Sethurajan, he was working as Special Officer. So far as Ramalingam, he was working as Junior Assistant. So far as Kannadhasan, he was working as Special Officer (since died). So far as Nallusamy, he was working as Circle Supervisor. So far as Ramanathan, he was working as Circle Supervisor (since died).

132.From the discussion made above, *prima facie*, it is seen that the accused Chandran and Ramalingam are involved in the creation of thumb impression and forging the signature directly. So, they cannot deny and they are responsible for the above said illegal activities. So their contention that the thumb impression and signatures were obtained by not following proper proceedings, has been rejected by me.

133.Now let us go to the independent role alleged to have played by the Circle Supervisor namely Nallusamy and Ramanathan first.

134.The duty and responsibility, which were assigned to each official is relevant for consideration.

135.At this juncture, the evidence of Syed Mohammed, who was examined, in both matters are relevant. He has spoken about the procedure to be adopted, while granting the loan. He says, after obtaining the relevant application, the resolution must be adopted by the Secretary/Special officer; It must be scrutinized by the Circle supervisor; Again that will be scrutinized by the Area Manager, who in turn will submit the same to the Bank Manager. The accused Kannadhasan was the Special Officer from 11/10/1993 to 28/12/1994. He signed in the resolution. The cash disbursement register(Ex.P6) has shown that about 30 members were disbursed with cash. The accused Chandran signed in the document as if cash disbursed in his presence. But so far as the Circle Supervisors namely Nallusamy and Ramanathan are concerned, they did not make any spot inspection. Similarly, Ex.P14 is the disbursement register for inputs.

136.In the above said document, Ramalingam, Junior Assistant and Kannadhasan, Special Officer signed as if, the above said loans were disbursed in their presence. The Circle Supervisors namely Nallusamy and Ramanathan have also signed. They did not make a spot inspection.

137.In respect of the evidence, with regard to 63 beneficiaries concerned, in CC No.5 of 2006 and so far as the 23 beneficiaries are concerned in CC No.6 of 2006, similar resolution was adopted by Kannadhasan, Special Officer and he signed in it.

138.In Ex.P6 also, it is stated that all the 23 persons were disbursed with loan in cash on 12/01/1994 in his presence. But again, no spot inspection was made by the Circle Supervisor. The Secretary and the Special Officer namely Sethurajan alone signed in the above said document. Regarding the loan disbursement in kind, under Ex.P14, again the above said Chandran, Ramalingam and Kannadhasan signed as if disbursed in their presence. Again, no spot inspection was made by the Circle Supervisors in person.

139.So in respect of the period 16/03/1996, about 20 beneficiaries and for the period 1995 and 1996, some 10 beneficiaries were on various dates given loan in cash and kind have been disbursed. We need not go in detail in respect of disbursement, since the evidence is uniform in respect of all the loans to the effect that in all the documents, the accused Chandran has signed as if the loan in cash and kind were disbursed in his presence. In all the documents, the accused Ramalingam, the Special Officers namely Sethurajan and Kannadhasan had signed. So far as the Circle Supervisors namely Nallusamy and Ramanathan are concerned, without making spot inspection, they have signed the documents.

140.From the evidence of Syed Mohammed, it is seen that the accused Chandran, who was working as Secretary and Sethurajan-the Special Officer, Kannadashan-the Special Officer and Ramalingam-Junior Assistant have played predominant role in creating documents and of forging the documents. Even though, a large scale loan disbursements have been undertaken, some of them found to be fake. For which, the accused Chandran, who was the Secretary, Sethurajan and Kannadhasan, who were working as Special Officers during the relevant time and the accused Ramalingam, who was working as Junior Assistant have played fraud in creating the documents.

141.But so far as the Circle Supervisor namely Nallusamy and Ramanathan are concerned, even as per the evidence of the above said Syed Mohammed, they have not performed their duty properly in making the spot inspection, at the time of disbursement of the loan. But absolutely, there is no evidence on record to show that 62 persons were also actively involved in the above said forgery of records and misappropriation of money. They failed in their duty of supervising and making spot inspection. For which, they ought to have proceeded departmentally. But in the absence of evidence to show that they also participated in the misappropriation, I am of the considered view that for making these two persons criminally liable for the illegality committed by Chandran, Ramalingam, Sethurajan and Kannadhasan, absolutely, there is no material.

142.In so far as others are concerned, as stated above, the prosecution has established the guilt beyond all reasonable doubt.

143.For all the reasons stated above above, this court finds that in respect of Nallusamy and Ramanathan, who were working as Circle Supervisor during the relevant period, the judgment of the trial court is set aside and they were acquitted from the charges levelled against them and the fine amount, if any paid by them, shall be refunded. Accordingly, **Crl.A(MD)No.373 of 2016 filed by Nallusamy, Circle Supervisor and the Crl.A(MD)No.372 of 2016** filed by the Ramanathan, Circle Supervisor are allowed.

144.So far as the other appeals namely Crl.A(MD)Nos.362, 364 and 365 of 2016 are concerned, regarding the sentence imposed upon the appellants, perusal of the judgment shows that at the time of questioning, they replied that for the past 20 years, they are facing the prosecution and all of them are aged about 70. The date of judgment is 02/09/2016. Now they are about 76 or 77. So considering the age of the appellants and the period of trial process, I am of the considered view that the sentence imposed on the appellants in respect of the IPC offences namely 120(B) r/w 167 IPC, 409, 467, 468, 471 r/w 468 IPC, 477-A, 420 IPC IPC, is reduced to 6 months RI for each offence. In so far as the offence namely under section 13(1)(d) r/w 13(2) of Prevention of Corruption Act, only minimum sentence of one year of rigorous imprisonment has been imposed by the trial court, so no reduction is possible. Accordingly, Crl.A(MD)Nos.362, 364 and 365 of 2016 are partly allowed as indicated above.

145.In the result,

Case No.	Party name	Result
Crl.A(MD)No. 373 of 2016	1.Nallusamy (Circle Supervisor) 2.Ramanathan (Died) (Circle Supervisor) 3.Santha 4.Saravanan 5.Poongodi 6.Rani 7.Meenal	**Allowed**
Crl.A(MD)No. 372 of 2016	Ramanathan (Died) (Circle Supervisor) 2.Santha 3.Saravanan 4.Poongodi 5.Rani 6.Meenal	**Allowed**
Crl.A(MD)No. 364 of 2016 Crl.A(MD)No. 362 of 2016 Crl.A(MD)No. 365 of 2016	(1)Chandran, (2)Kanathasan, (3)Ramalingam, (4)Chandra, (5)Vinothini, (6)Manonmani (7)Selvmani Sethurajan (1)Chandran (2)Ramalingam	**Dismissed.** However, the punishment imposed upon the appellants under sections 120(B) r/w 167 IPC, 409, 467, 468, 471 r/w 468 IPC, 477-A, 420 IPC is reduced to six months RI each. In respect of the offence under section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, the order of the trial court is confirmed.

08/03/2023

Index:Yes/No
Internet:Yes/No
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To,

1.The Chief Judicial Magistrate/Special Court,
Ramanathapuram.

2.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Wing,
Ramanathapuram District.

3.The Ideational Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVAN,J

ER

Crl.A(MD)Nos.364, 373, 362, 365 and 372 of 2016

08/03/2023