BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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|---|---|
| Date of Reserved | 22/10/2024 |
| Date of Pronounced | 23/01/2025 |

CORAM

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

**Crl.A(MD)No.353 of 2019**

S.Victor : Appellant/Sole Accused

Vs.

State represented by
The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Kanniyakumari Detachment @ Nagercoil,
(Crime No.4 of 2013) : Respondent/Complainant

**Prayer:** This Criminal Appeal is filed under Section 374 of the Criminal Procedure Code, to call for the records in SC No.05 of 2015 on the file of the Special Judge-cum-Chief Judicial Magistrate Court, Nagercoil, dated 23/07/2019 and allow the above said appeal by acquitting the accused and pass further or other orders.

For Appellant : Mr.K.P.S.Palanivel Rajan
Senior Counsel
for Mr.K.Prabakaran

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

**J U D G M E N T**

This Criminal Appeal is filed against the judgment passed in Special Case No.05 of 2015 by the Special Judge-cum-Chief Judicial Magistrate, Nagercoil, dated 23/07/2019.

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

The accused namely Victor was working as Assistant Engineer (Agricultural Engineering], Konam at Nagercoil during the period 19/02/2009 to 21/11/2012. He alleged to have abused his official capacity by forging the signature of his superior namely Assistant Executive Engineer, opened a Savings Bank Account in Bank of Baroda, Nagercoil Branch, falsified the records by cheating and fraudulently diverted the funds from the Farmers contribution amount by falsification of accounts and committed misappropriation of Rs.13,79,999/-. Based upon the complaint, a case in Crime No.4 of 2013 was registered for the offences under sections 167, 465, 468, 419, 420, 471, 472, 473, 474 and 477(A) of IPC and section 13(2) r/w 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988. After completing the investigation, final report was fled. It was taken on file by the Special Judge-cum-Chief Judicial Magistrate, Nagercoil, in Special Case No.5 of 2015 for the offences under sections 420, 468, 471, 409, 477-A IPC and section 13(2) r/w 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988. After completing 207 Cr.P.C proceedings, framed the following charges against the accused:-

(i)The accused was working as Assistant Engineer in the Office of the Agriculture Engineering Department, Konam, Nagarcoil District between 19/02/2009 and 21/11/2012; He had no authority to open the Bank Account in his official name; By forging the signature of the Assistant Executive Engineer namely Vellaiyan, he opened the Bank Account in the Bank of Baroda, Nagercoil Branch, on 19/02/2009 bearing No.2442010007113 for the purpose of crediting the interest and the contribution amount deposited in the name of the Assistant Executive Engineer and Farmers Association for the purpose of misappropriation and thereby, he forged and created false M-Book and thereby the accused committed an offence punishable under section 420 IPC;

(ii)In the course of same transaction, the accused has forged and created false M-Books, bills., etc and thereby he committed an offence punishable under section 468 IPC;

(iii)In the course of the same occurrence, those documents were used as genuine documents and thereby, the accused benefited to the tune of Rs.13,79,999/- and thereby, he committed an offence punishable under section 471 IPC;

(iv)By that way, the accused misappropriated the amount to the tune of Rs.13,79,999/- and thereby, the accused committed an offence punishable section 409 IPC;

(v)By the above said process, the accused made credit in his account to the tune of Rs.13,79,999/- and thereby he committed an offence punishable under section 477-A IPC; and

(vi)In view of the above said commission of the offence of cheating, falsification of accounts, bill books, M-Books, forging of the Assistant Executive Engineer signature, misappropriated the amount to the tune of Rs.13,79,999/-. So, he is liable to be punished under section 13(2) r/w 13(1)(c), 13(1)(d) of Prevention of Corruption Act, 1988.

3.To that charges, the accused pleaded not guilty and claimed to be tried.

4.During the trial process, on the side of the prosecution, 30 witnesses have been examined and 191 documents marked. On the side of the accused, one witness was examined and 5 documents marked.

5.***The case of the prosecution, as narrated through the prosecution witnesses:-***

**PW4** and others created a Society called 'Mukkudal Neerpidippu Vivasayikal Sangam' and he was the President. One Albert was the Secretary. The main purpose of the Sangam is to felicitate the Farmers to take the fertilizers, for repairing the road between Vellimalai and Mukkudal and for taking and transporting agricultural products. 90% of the share amount was contributed by the Government and the balance amount was collected from the Public. The money was deposited in a Savings Account opened in the name of the Society. The account was opened jointly in the name of the Society along with the Tamil Nadu Agricultural Department. At that time, one Vellaiyan was the Assistant Executive Engineer. Account was bearing No.10921 in Indian Overseas Bank in January 2002. The Society formed, but did not start functioning. So, it was dissolved.

6.The Executive Engineer is **PW7-**Vellaiyan. He has stated that opening of the account in his name and PW2's name was not known to him. He never signed in any of the documents. According to him, the account was opened in his name fraudulently by the accused. After opening the account, the accused diverted the funds through various cheques to his own account totally Rs.12,60,861/-. He withdrew all the amounts in his name and his wife's name from the above said bogus account. On the basis of the above said information furnished by Sundara Rajan, attached to the Vigilance and Anti-Corruption Unit, Nagercoil, a case in Crime No.2 of 2013 was registered.

7.That investigation was taken by **PW30**-Spurgeon Rajan Roy, DSP. On 10/12/2013, recorded the statement of witnesses. After obtaining search warrant, he made search in the office of the accused, seized Bank Account Passbooks, cheques, Society seal 'Assistant Engineer, Western Ghats Development Programme, Nagercoil, prepared a mahazar and submitted the records to the concerned court. He received the Registration Certificate of the Farmers Society from the concerned Department. Later, recorded the statement of various witnesses, Submitted a request to the Judicial Magistrate to record the statement of the witnesses under section 164 Cr.P.C. After completing the investigation, filed final report on 22/07/2015 charge sheeting the accused for the offences under sections 420, 468, 471, 409 and 477(A) IPC and section 13(2) r/w 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988.

8.After completing the prosecution side witness, the accused was put on 313 Cr.P.C question. He denied the allegation. On his side, as mentioned above, one witness was examined and 5 documents marked.

9.After considering the evidence, both oral and documentary, the accused was found guilty for the offences 420, 468, 471, 409, 477-A of IPC and section 13(2) r/w 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act as per the tabulation given under:-

| Offence | | |
|---|---|---|
| Section 420 IPC | 5 years RI | Fine of Rs.1,00,000/- in default one year SI |
| Section 468 IPC | 5 years RI | Fine of Rs.1,00,000/- in default one year SI |
| Section 471 IPC | 5 years RI | Fine of Rs.1,00,000/- in default one year SI |
| Section 409 IPC | 5 years RI | Fine of Rs.1,00,000/- in default one year SI |
| Section 477-A IPC | 5 years RI | Fine of Rs.1,00,000/- in default one year SI |
| Section 13(2) r/w 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988. | 5 years RI | Fine of Rs.1,00,000/- in default one year SI. |

The sentences were directed to run concurrently.

10.Against which, this criminal appeal is preferred by the appellant.

11.Heard both sides.

**The background facts**:-

12.The Government has introduced a Scheme called 'Mukkudal Neerpidippu Vivasayikal Sangam'. Fund is created with a help of the Central and State Government. Farmers Association also contributed to the funds. Funds will be deposited in a fixed deposit scheme in the name of the President of the Farmers Association and the Superintendent Engineer of the concerned area. The interest will accrue to the fixed deposit amount. The above said interest is to be deposited or credited in the account to be opened jointly in the name of the Assistant Executive Engineer of the concerned area and the President of the Farmers Association. The above said interest amount will be utilized for carrying out the works undertaken under the Scheme. As per the procedure, the Farmers Association President used to submit a proposal to the Assistant Executive Engineer of the concerned area. In turn, the Assistant Executive Engineer used to direct the Assistant Engineers of the concerned area to prepare the estimate. In turn, the estimate got to be submitted to the Executive Engineer. Work has to be undertaken by the Farmers Association. Funds will be released by the Assistant Executive Engineer and the President of the Farmers Association in favour of the Contractor. This is the procedure as contemplated under the Scheme.

13.From the above said procedure, it is seen that only the Assistant Executive Engineer and the President of the Farmers Association are the competent persons for opening the Bank Account. In that Account, only interest will be credited. As mentioned above, that amount will be utilized for carrying out the work. Since it is a joint account, naturally the Assistant Executive Engineer and the President of the Farmers Association have to issue the cheque jointly. So, all the operations must be undertaken in a joint manner. Here, the role of the Assistant Engineers are very limited, that is to prepare the estimate and supervising the work undertaken by the Contractors. The work is not directly undertaken by the Department. Here comes the alleged forgery and misappropriation of funds by the accused.

14.It is not in dispute that the present accused was working as Assistant Engineer in Konam Office, Nagercoil between 19/02/2009 and 21/11/2012.

15.As mentioned above, the fixed deposits were made in several Banks namely Indian Bank, Indian Overseas Bank, Canara Bank and State Bank of India. But it is the allegation on the side of the prosecution that the accused opened the account in his official name namely the Assistant Engineer by manipulating the official seal in the

Bank of Baroda and diverted the interest amount to that account, which in-turn was misappropriated by him.

16.How the above said fraud came to light is explained by the prosecution by stating that in one occasion, cheque was issued by the Assistant Executive Engineer and the President of the Farmers Association for the purpose of maintenance. But that cheque came to be dishonoured. Based upon which, a complaint was lodged by the President of the Farmers Association.

17.In the above said background, now let us take up the origin of the criminal prosecution.

18.PW5 was working as a Night Watchman in Nagercoil Agricultural Engineering Department. He was known to the accused, having account in Bank of Baroda, Vadacherry Branch. On a particular day in 2009, the accused approached him for opening an account in the Bank of Baroda. He must be an introducer. He was taken by the accused to the Bank. He was waiting outside. The accused contacted the Manager. The Manager enquired about him, put his signature in the Form, in which the accused also signed. That account opening Form is marked as Ex.P6 on the side of the prosecution. Wherein it is mentioned that it is opened in the name of the Assistant Engineer, Office of the Assistant

Executive Engineer, Konam. As an Introducer, PW5 has signed. Seal of the Assistant Engineer No.3 is affixed. As mentioned above, as per the procedure, the account can be opened only in the name of the Assistant Executive Engineer and not the Assistant Engineer.

19.It is the case of the prosecution that to overcome the above said procedure, the accused fabricated Ex.P7 letter alleged to have been written by the Assistant Executive Engineer (PW7) to the Branch Manager, Bank of Baroda, Nagercoil, as if permission was granted to open an account in the name of the Assistant Engineer, Nagercoil for operating departmental activities. This letter, according to the prosecution. is fabricated one, by manipulating the Assistant Engineer's Office Seal by creating the same as Assistant Executive Engineer as well as his signature.

20.Now we will turn to the evidence of PW2 as to see how it occured. Even though, the letter was written in his name, it does not bear his signature. He never made a communication like that. Further reading of Ex.P7, he would say that it is, dated as 01/02/2009. But as per the Attendance Register under Ex.P10, the above said date fell on Sunday. In the account opening Form, the date is mentioned as 19/02/2009. So, according to PW7, the letter itself is a forged one.

21.Now we will go to the evidence of the Bank Manager working, at that time, who was examined as PW27 on the side of the prosecution. He would say that he was working in the Branch between 08/06/2008 and 31/05/2010. The account was opened on 19/02/2009. The introducer name was verified by PW29 Saravana Bhavan.

22.Now we will go to the evidence of PW29. He was working as an Accountant in the Branch between 19/05/2008 and 31/10/2010. He received the letter under Ex.P7. He verified the signature of the introducer namely Krishnan and made side initial. He identified the signature of the accused in various transactions. By this, the prosecution wants to prove the chain of events linking this accused.

23.Now we will go to the transaction, that was carried out in the account. For that purpose, the prosecution relied upon the statement of the account submitted by one Ragupathi, Senior Manager, Bank of Baroda, Nagercoil, under Exs.P181 to P187. He was not examined before the trial court because of his overseas appointment in Uganda. The account was opened with Rs.1,000/- as initial deposit. A cheque book was issued to the Account Holder. On various dates between 06/03/2009 and 20/04/2011, various amounts were deposited. Those deposits were made by way of Bank cheques of various Banks and Branches, which need not be elaborated. All those deposited cheques were processed, amounts were credited in the account. This is corroborated and verified by PW27, PW28 and PW29.

24.Now we will see how the amounts were en-cashed.

25.PW27, PW28 and PW29 would say that within few days of deposits, the amounts were withdrawn in the name of the accused and various persons namely, Er.S.Victor, M.Sabina, P.Vanrose, V.Antony Thomas Ferdolin, T.Michael Satheesn and G.Selvaraj. Those cheques were verified with reference to the signatures. After verification of the signatures, amounts were disbursed on en-cashment. As on 06/03/2013, there was balance amount of Rs.1,931/-. Some of the cheques bear the Seal of the Assistant Engineer No. 3, Agricultural Engineering, Nagercoil, on the reverse. The cheques were in the name of the private persons was identified by the accused by way of attestation on the reverse.

| S.No. | Name | Amount [Rs.] |
|---|---|---|
| 01. | Self | 7,74,935/- |
| 02. | S.Victor | 2,66,748/- |
| 03. | M.Sabina | 1,01,100/- |
| 04. | B.Vanrose | 10,000/- |
| 05. | V.Antony Thomas Fredolin | 4,000/- |
| 06. | T.Micheal Satheesh | 88,614/- |
| 07. | G.Selvarajr | 2,46,646/- |
| | Total | **14,92,043/-** |

26.So, by that way, Rs.14,92,046/- has been withdrawn. Through these documents and the oral evidence, the prosecution says that by dubious method, the accused opened the Account in his official name, got the amount credited and en-cashed.

27.Now we will go to the evidence of the private persons. in whose benefit, the cheques were issued and en-cashed.

28.Among the beneficiaries, the private persons namely M.Sabina, P.Vanrose, T.Micheal Satheesh and G.Selvaraj were not examined on the side of the prosecution. Sabina, according to the prosecution, is the wife of the accused. Regarding P.Vanrose, there is no details. Similarly, in respect of T.Michael Satheesh and G.Selvaraj also, there is no explanation on the side of the prosecution. But V.Antony Thomas Fredolin was examined as PW17. He turned hostile. But he gave a statement before the Investigating Officer that through his account in State Bank of India, Rs.5,70,000/- was en-cashed and in 11 cheques, his signatures were forged. But, as mentioned above, his name is mentioned in the details submitted by the prosecution. These are the direct evidences, which are available against the accused with regard to the funds misappropriation, forgery, etc.

29.Now next step is what was the *modus operandi* adopted by the accused. PW4 formed Mukkudal Water Shed Association called 'Mukkudal Neerpidippu Vivasayikal Sangam', Account was opened jointly in the Indian Overseas Bank. But the Association did not function properly. There was no transaction, later, it was dissolved. The Office Seal of the Association was missing. Later, he found the Seal in the cheques, which were not affixed by him and he did not sign in the cheques. So, from his evidence, it is established that his signatures were forged in 16 cheques by misusing the Association Office Seal.

30.Now in this context, we will go to the evidence of the Investigating Officer regarding the recovery of the Seal under Ex.P169.

31.Search mahazar was prepared, wherein we find that a rubber stamp of Assistant Engineer, Western Ghat Development Programme, Nagercoil was seized. Apart from that, the cheque book of Bank of Baroda bearing No.24420100007113 was seized.

32.In this context, an argument was advanced by the appellant regarding the procedure adopted. We will deal with this later. But regarding the Seal used by PW4, it was not recovered. But suffice to say that as per the evidence of PW4, Seal was misused and shown his signature in the cheques were forged.

**Now the work:-**

33.The case of the prosecution is that in fictitious and imaginary work, the accused diverted Rs.13,79,999/- to his own account, by using the cheque books in various fictitious names.

34.Now we will go to the work.

35.It is the duty of the appellant herein to make periodical visit to the work place, take measurement in M-book under Ex.P27.

36.Now it is contended on the part of the appellant that except one work, other works were not taken by him and one work was properly done, for which counter sign was made by the higher authorities in the bills. But the prosecution relied upon the evidence of PW9 and PW17. They were not the Farmers as admitted by themselves during the course of the evidence. But however, the accused prevailed upon them and used them for the purpose of manipulating the official records. Exs.P27 to P120 were produced by the prosecution to show the falsification of records.

37.From the evidence of PW9, PW8 and PW17, it stands established that they were used by this accused for the purpose of manipulating the records.

38.Now we will go to the evidence of those persons. PW8 has not inducted or implicated the appellant. But he has stated that he was a Member of the Association called' Asmbu Watershed Association'. He issued a cheque in favour of the Assistant Engineer for Rs.11,500/-. It was en-cashed.

39.PW9 would say that he is not a Farmer by profession. He was approached by the accused for contributing Rs.5,130/- for the work. He identified the accused.

40.PW13 would say that he was approached by the accused and at his instance, an Association called 'Kathadi Pottrai' was created. But without undertaking any work, the accused obtained his signature in M-books bearing Nos.1885, 1886, 1889 and 1827. He signed in various cheques on various dates. An amount of Rs.1,76,159/- was credited in his account. In-turn, the accused insisted upon him to issue cheques in the name of various persons. He identified all the records and bills, cheques, etc. On various dates, various amounts such as Rs.2,46,342/-, 1,35,392/- and Rs.52,026/- were credited in his account as if work was done by him. Similarly, another Rs.13,00,000/- was credited in his account. He issued cheques for the above said amounts at the advise of the accused in favour of various persons and three cheques were issued in favour of this appellant.

41.PW17, as mentioned above, turned hostile. But he has admitted the issuance of the cheques by him in favour of various persons.

42.So, from the evidence of those persons as well as the documents produced by the prosecution, it is contended that this is the *modus operandi* adopted by the accused for swindling the money.

43.On the basis of the above said facts narrated by the witnesses and the documents, the trial court rendered a finding of guilt.

**Now the argument**:-

44.Since we started discussion from the stage of opening of the account in the name of the Assistant Engineer, we will take up this issue first.

45.It is the contention on the part of the appellant that PW5-K.Krishnan has not stated anything about his seeing the appellant signing in the opening Form. But this argument is completely misconstrued one.

46.PW5 has clearly identified the accused, his signature in the account opening Form as Introducer as well as the signature of the accused. As stated above, account cannot opened in the name of the Assistant Engineer. But in a fraudulent manner, the account has been opened by fabricating Ex.P7.

47.With regard to Ex.P7 also, argument was advanced by the appellant that there is no evidence to show that Ex.P7 was created by this appellant. But *prima facie* from the evidence of PW7, it stands established that Ex.P7 is a fabricated document.

48.We can verify the involvement of this appellant from one another angle also. A search was made in the office of the accused, cheques pertaining to Bank of Baroda were seized. If really, the accused was not involved in opening of the account in the Bank of Baroda, then those cheques would not have been available in his office. So, this circumstance also clearly establishes the guilt of the appellant.

49.Here, an argument was advanced by the appellant that search was made illegally, since in the Search warrant, the signature of the Chief Judicial Magistrate is not available. It is true that the signature is missing in the Search warrant Ex.P170. But, as stated by the trial court, presumption is available to form of official record. Only copy is produced before the trial court and the original was not sent for from the concerned Court. Simply because, the signature is not available in the copy, it cannot be construed as an non-existing search warrant. It was spoken clearly by the Investigating Officer about his application for issue of the search warrant, search made, etc. So, the contention on the part of the appellant on this aspect is rejected.

50.So, from the above said circumstantial evidence also, the guilt of the accused in opening the account in the Bank of Baroda against the procedure, is established. So, the circumstance also indicates that Ex.P7 Authorization Letter is a fabricated one. Since it was submitted by the appellant, he has to face the own responsibility. Absolutely, there is no explanation on his side regarding Ex.P7, except stating that no evidence is available. The opening of the account in Bank of Baroda through illegal means against the procedure clearly indicates the guilty mind of the appellant from the beginning. So, this lead to the subsequent of the commission of other offences, like fabrication of false official records, forging of cheques, creation of fictitious names and stolen of Seal, etc.

51.From the evidence of PW13, more specifically forging or fabricating of the official records stands established. I find absolutely no reason to discard the evidence of PW13. Absolutely, no convincing or acceptable ground is made out by the appellant to discard the evidence of PW13, leave alone other independent witnesses.

52.The evidence of PW13 not only gives the fictitious of the false official records, but also establishes the fact that en-cashments were made by this accused by adopting dubious method by creating fictitious persons. On that account, the argument was advanced by the appellant that even though the prosecution says that 16 cheques were forged and money has been withdrawn, there is no evidence on record to show the fact that those cheques were fabricated by the accused.

53.Now for more clarity, the fund transfer in the independent names can be made as indicted above. So, may be that in the final tally, there may be some variations. But it does not ultimately have any impact upon the case of the prosecution.

54.From the evidence of the officials, attached to various Banks and the individuals, huge amount was swindled by this accused, which were also borne out by records and evidence. So, I find absolutely no reason to discard the prosecution evidence in this regard.

55.Now coming to the charge, it is contended by the appellant that PW1 has passed an order for prosecuting the accused for forgery, but in the charge, there is no mentioning regarding the forgery.

56.Now we will go to the charge. But reading of the charge does not show any defect. The first charge is with regard to the offence under section 420 IPC. Cheating was committed by way of forging and fabricating the official records, for which, one under section 468, 471, 477(A) IPC were framed. Each charge is dedicated to separate document. So, I find absolutely no error in the charges framed against the accused.

57.In this context, the appellant would rely upon the following judgments:-

*(i)Sheila Sebastian Vs. R.Jawaharaj and another [(2018)7 SCC 581];*

*(ii)Guru Bipin Singh Vs. Chongtham Manihar Singh and another [(1996)11 SCC 622];*

*(iii)G.S.Bansal Vs. Delhi Administration [(1964)2 SCR 470];*

*(iv)Bank of India Vs. Yeturi Mardedi Shanker Rao and another [(1987)1 SCC 577]; and*

*(v)N.Raghavender Vs. State of Andhra Pradesh, CBI [(2021)18 SCC 70].*

58.More particularly, by relying upon the judgment reported in ***Sheila Sebastian Vs. R.Jawaharaj and another {(2018)7 SCC 581]***, the appellant would contend that since Ex.P7 was not established by the prosecution, the charge under section 464 IPC falls to the ground. But this judgment does not support the appellant. On the contra, supports to the case of the prosecution. The definition of false document is a part of the definition of forgery. Both must be read together. Section 468 IPC encompasses forging of the document. Now the offence under section 468 IPC is mentioned in the second charge. For the purpose of committing the offence of cheating, the accused created false official documents that is the sum and substance of the prosecution case.

59.So, the argument advanced by the appellant that there is no specific charge for the offence under section 464 IPC, so the offence under section 468 IPC falls to the ground shows the improper framing of charge is totally devoid of any merit. None of the judgments cited on this aspect supports his defence even remotely.

60.The next contention is that the offence under section 409 IPC does not attract to the facts and circumstances. For that purpose, he would rely upon the judgment of the Hon'ble Supreme Court reported in K.S.Narayanan and others vs. S.Gopinathan (1981 SCC OnLine Mad 289)

61.According to the appellant, for attracting section 409 IPC, there must be entrustment. But here, there is no entrustment. So, as such the charge is not attracted. I am unable to subscribe my agreement.

62.It is not in dispute that the appellant is a public servant. The Scheme, as mentioned above, shows that the appellant discharged his function of preparing estimates, overseas the work, etc. He was not entrusted with the duty or power for opening the Bank account in the name of the Assistant Engineer. But he has done it. The money, he collected from the public also indicates that the money was entrusted by the public to him believing his words that the Farmers are being benefited by floating the Association. He obtained the cheque book in the name of the Assistant Engineer against the rules. When, he acted against the procedure, rules and duty, it is nothing, but breach of trust in a larger sense. Every public duty has its ingredients of public trust. Even though, the accused was not entrusted with the Government or private money directly, but he was duty bound to act as per the procedure and rules in respect of the funds of the Government and the public. He is deemed to have a domain over the property. But here, by way of diverting the funds of the Government and the public to his own account, he committed the criminal breach of trust. So, the offence under section 409 IPC is squarely attracted. So, this court is not satisfied with the argument advanced by the appellant.

63.The last leg of the argument is that in respect of Crime No.75 of 2012, no final report was filed, two investigations were undertaken for the very same cause.

64.In this context, we will go to the evidence of the Investigating Officer. He was cross examined by the accused to the effect that one Kolakka Pillai and Raja Marthadan filed complaints against this appellant. An order was passed by the High Court to file final report within a stipulated time. Without filing the final report on the complaint by Kokako Pillai and Raja Marthandan, this matter was investigated even without examining the accused; The original complaint given by the Association President against PW19 was suppressed and a circumstance was created by him as if the complaint was forwarded by the Director of Vigilance and Anti-Corruption Department, the case has been foisted against him. But all those things were denied by the Investigating Officer.

65.DW1 was examined on the side of the defence to show that no allegation is made in Crime No.75 of 2012. Ex.D5 is the order passed by this Court granting time to complete the investigation from the date of receipt of a copy of the order. But further particulars are not available as to the allegation made in the complaint. So, no finding can be recorded by this Court on the argument advanced by the appellant.

66.The next contention is that he was appreciated by his Department for the exemplary work, which is evident from Ex.D1. So, he was a genuine person. But this is completely out of place. He has committed a grave offence in misappropriating the Government funds. So, this will not give any credit regarding his conduct. He has produced some questionnaires and answers given by some of the witnesses in the Departmental Proceedings. But these things are completely out of place, which cannot be taken into account in the criminal proceedings.

67.Another argument, that was advanced by the appellant is that as admitted by the Investigating Officer, all the works were not carried out by this appellant alone. One R.K.Sreekumar, who was examined as PW19 and Radhakrishnan carried out the work. In respect of the subject works, even though R.K.Sreekumar was examined, but not Radhakrishnan. In fact, the account would have been opened by R.K.Sreekumar and not by this appellant. Since the Investigating Officer failed to examine Radhakrishnan, it will not enure to the benefit of this appellant. But this argument is completely out of place and without any base. They are overwhelming documents and oral evidences on the side of the prosecution to show that this appellant single handedly committed all the offences as set out in the charges. Shifting the blame will not help the appellant. Having swindled the money by creating and fabricating official and private records, the appellant was brain behind the entire offences.

68.Finally, none of the arguments advanced on the side of the appellant are acceptable. So, rightly the trial court has convicted the appellant for the offences stated above. I find no reason to interfere into the judgment of conviction. Recording the sentence also, I find no reason to interfere.

69.In the result, the criminal appeal fails and the same is **dismissed**, confirming the judgment of conviction and sentence passed by the trial court.

23**/01/2025**

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

1.The Special Judge for
Trial of Cases under the
Prevention of Corruption Act,
Kanniyakumari District.

2.The Inspector of Police,
Vigilance and Anti-Corruption,
Kanniyakumar Detachment at
Nagercoil.

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

**G.ILANGOVAN,J**

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Crl.A(MD)No.353 of 2019

23/01/2025