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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 25<sup>TH</sup> DAY OF JULY 2025 / 3RD SRAVANA, 1947

CRL.A NO. 2496 OF 2010

AGAINST THE JUDGMENT IN CC NO.56 OF 2003 OF ENQUIRY  
COMR.& SPECIAL JUDGE, KOZHIKODE.

APPELLANT/ACCUSED:

K.M.MATHEW  
KOCHUPURAKKAL HOUSE, P.O.ANAKKAL,  
KANJIRAPPALLY, , KOTTAYAM DISTRICT.

BY ADVS.  
SRI.S.RAJEEV  
SHRI.JOSY ANTONY

RESPONDENT/COMPLAINANT/STATE:

STATE OF KERALA  
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,,  
ERNAKULAM., (VC-16/2002 OF VACB, WAYANAD).

SPL PP VACB RAJESH.A, SRPP VACB REKHA.S

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD  
08.07.2025, THE COURT ON 25.07.2025 DELIVERED THE  
FOLLOWING:



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**CR**

**JUDGMENT**

Dated this the 25<sup>th</sup> day of July, 2025

This criminal appeal, filed under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.' for short), is at the instance of the sole accused in C.C.No.56/2003 on the files of the Enquiry Commissioner and Special Judge, Kozhikode. He assails judgment in the above case dated 30.11.2010.

2. Heard the learned counsel for the appellant/accused and the learned Special Public Prosecutor appearing for Vigilance and Anti-Corruption Bureau. Perused the relevant documents.

3. I shall refer the parties in this appeal as 'accused' and 'prosecution' hereinafter for easy reference.

4. Precisely speaking, the prosecution case is that, the accused while working as a Lower Division Clerk (LD



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Clerk) in Kerala State Housing Board (KSHB), Wayanad Division, Kalpetta, during the period from 04.06.1998 and 14.12.2000, abused his official position and committed criminal misconduct and thereby, dishonestly and fraudulently misappropriated an amount of Rs.86,332/- (Rupees eighty six thousand three hundred and thirty two only), which was collected by him, being the cashier, as part of repayment made by the loanees from the Kerala State Housing Board. Thus the accused alleged to have committed offences punishable under Sections 409, 468 and 420 of the Indian Penal Code (hereinafter referred to as 'IPC' for short) as well as under Section 13(1)(c) and (d) r/w. Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act' for short).

5. The Special Court took cognizance for the offences and proceeded with trial. During trial, PW1 to PW12 examined and Exts.P1 to P27 were marked on the side of the



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prosecution. On completion of prosecution evidence, even though the accused was questioned under Section 313(1)(b) of Cr.P.C. and provided opportunity to adduce defence evidence, no evidence adduced on the side of the accused.

6. Thereafter, the trial court addressed the question as to whether the accused misappropriated Rs.86,332/-, as alleged, while he was holding the post of L.D. Clerk in the Kerala State Housing Board, Wayanad Division, Kalpetta office in between the period 04.06.1998 and 14.12.2000 and finally, the accused was found guilty for the offences punishable under Section 13(2) r/w. Section 13(1)(c) and (d) of the PC Act and thereby, he was convicted and sentenced for the said offences while acquitting him for the offences punishable under Sections 409, 468 and 420 of IPC.

7. While assailing the verdict of the trial court, the learned counsel for the accused argued that, the trial court entered into conviction merely based on conjectures and



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surmises and the prosecution miserably failed to adduce convincing evidence to prove misappropriation of Rs.86,332/- by the accused with fraudulent and dishonest intention.

8. It is pointed out by the learned counsel for the accused further that going by the evidence of PW2 (clerk) as well as PW9 (Accounts Officer), it is emphatically clear that, apart from the accused/appellant, other persons, viz., James, PW2 and other contractual employees also, received amount from the loanees during the period. It is also pointed out that, according to PW9, the Accounts Officer, the amount received for the period in between 07.07.1999 and 23.07.1999 were deposited in bank and therefore, no misappropriation during the relevant period. It is also pointed out that Shri.Raveendran, the Accounts Officer who was responsible for verifying the cash book and daily books to ensure that the amounts collected on each day were remitted to the bank on the next day was spared by the prosecution without citing him as a



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witness or examining him. According to the learned counsel for the accused, since the amounts as per the prosecution evidence were collected not only by the accused but also by PW2 and other contractual employees, and when there was failure on the part of the Accounts Officer to verify the same, in a criminal prosecution, merely because the accused was entrusted to deal with the cash section as cashier by itself is insufficient to fasten the criminal culpability upon him. Therefore, the learned counsel for the accused pressed for grant of benefit of doubt to the accused. The learned counsel also conceded that when the accused was suspended from the service, he paid the amount for getting him reinstated.

9. Resisting this argument, the learned Special Public Prosecutor zealously argued that as per Ext.P3 Office Order, proved through PW5, the accused, who joined as LD clerk in the office, was assigned the job of collection of cash, DD, cheque, maintenance of cash books and other registers



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related to collection of cash, sale of application forms, receipt and registration of new application forms during the relevant period. Therefore, it is his sole responsibility to ensure the receipt of money as per the office order and remit the same to the bank on the next day. Even if some supervisory latches could be found on the part of the Accounts Officer, the same by itself is not sufficient to hold that the accused is innocent. He also pointed out that as per Ext.P21, the statements of amount collected and remitted starting from 01.04.1998 to 23.07.1999, it could be seen that the total amount of Rs.86,332/- was not remitted to the bank. Therefore, the accused is the person who misappropriated the amount. In such view of the matter, the finding of the trial court that the accused committed offences punishable under Section 13(1)(c) and (d) r/w 13(2) of the PC Act is only to be sustained.



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10. The learned Special Public Prosecutor placed decision of this Court in **Vijayakumar K. V.State of Kerala**, reported in **2016 KHC 635 : 2016(4) KHC SN 30 : 2016(2) KLD 498 : 2016 (4) KLT SN 76**, with reference to paragraph No.14 that, once it is proved by the prosecution that there was entrustment and there was no proper accounting of the amount entrusted, then the burden shifts to the accused to prove that there was no misappropriation and explain the irregularities found in the disbursement. Further if entrustment is proved and explanation given by the accused is not satisfactory or there was no proper explanation, then it can be presumed that the accused had committed the offence of criminal breach of trust and misappropriation. The modus operandi of the accused, how he committed the misappropriation etc need not be proved by the prosecution. The fraudulent intention of the accused can be inferred only from the attending circumstances and those things cannot be





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proved by the prosecution by direct evidence and it has to be inferred from the circumstantial evidence adduced by the accused on this aspect. The same ingredients of criminal breach of trust and misappropriation have to be proved by the prosecution for convicting the accused for the offences under S.13(1)(c) of the PC Act, 1988 as well. This was so held in the decisions reported in Jaikrishnadas Manohardas Desai and another v. State of Bombay, 1960 KHC 694: AIR 1960 SCC 889:1960(c) SCR 319 : 1960 CriLJ 1250, Krishan Kumar v. Union of India, 1959 KHC 635 : AIR 1959 SC 1390 : 1960(1) SCR 452 : 1959 CriLJ 1508, State of Kerala v. Vasudevan Namboodiri, 1987 KHC 518 : 1987(2) KLT 541 : 1987 KLJ 270 : 1987 (1) KLT SN 7, Bagga Singh v. State of Punjab, 1996 KHC 3288 : 1996 CriLJ 2883 (SC), Vishwa Nath v. State of J & K., 1983, KHC 420 : AIR 1983 SC 174 : 1983(1) SCC 215 : 1983 SCC (Cri)173 : 1983 CriLJ 231, Om Nath Puri v. State of Rajasthan, 1972 KHC 414 : AIR 1972 SC 1490 : 1972 (1) SCC



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630 : 1972 SCC (Cri) 359 : 1972 (3) SCR 497 : 1972 CriLJ 897, T Ratnadas v, State of Kerala, 1999 KHC 2074 : 1999 CriLJ 1488, State of Rajasthan v. Kesar Singh, 1969 CriLJ 1595, Roshan Lal Raina v. State of Jammu & Kashmir, 1983 CriLJ 975 and Raghavan K v. State of Kerala, 2012 KHC 420.

11. In addition to that, the decision of this Court in **Ravinathan L. v. State of Kerala**, reported in **2023 (4) KHC 530** also has been placed to contend that the ingredients to prove offence under Section 409 of IPC as well as under under Section 13(1)(c) of the PC Act are one and the same.

12. In view of the rival argument, the points arise for consideration are :

1. Whether the trial court is justified in finding that the accused committed offence punishable under Section 13(1)(c) r/w 13(2) of the PC Act?
2. Whether the trial court is justified in finding that the accused committed offence punishable under Section 13(1)(d) r/w 13(2) of the PC Act.
3. Whether the verdict under challenge would



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require any interference?

4. The order to be passed

13. Point Nos.1 to 4:

This crime was registered when PW9 took charge of the Accounts Officer in the office on 14.07.1999. PW9 deposed that when he joined as Accounts Officer on 14.07.1999, the accused Mathew as well as one Rajan were working as clerks in the office and cash section was dealt by the accused since there was no separate cashier post. Thereafter, when he had verified the account, he found some shortage of amount and the matter was reported to the then Executive Engineer. The Executive Engineer who was examined as PW11 also supported the version of PW9 in this regard. When the Executive Engineer reported the matter to the higher authority, the audit party inspected the office and PW3 had prepared Ext.P21, statement of receipts and remittance of cash from 01.04.1998 to 23.07.1999, referring to the original receipts of 254 numbers marked as Ext.P22 series



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and bank remittance books. According to PW9, as per Ext.P-2(a), the relevant pages of cash book from 24.07.1999 to 08.10.1999, the opening balance as on 27.07.1999 was 'nil'. But as per Ext.P21 supported by Ext.P22 series, there was shortage of Rs.86,332/-. As per Ext.P3, the charge of the cash section was entrusted to the accused with effect from 04.06.1998 to 14.12.2000. It is true that PW2 and PW9 gave evidence that, apart from the accused, PW2 and other contractual employees collected the money. Insofar as collection of money as per Ext.P21, supported by Ext.P22 series, is concerned, there is no much dispute. The question herein is whether the accused, who held the charge of cashier, got entrustment of the money collected being the cashier, failed to remit Rs.86,332/- and in turn, misappropriated the amount with dishonest and fraudulent intention. It is an admitted fact that, after registration of this crime, the accused remitted the amount and thereby, he was reinstated in service



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after revoking his suspension. The evidence of PW1 is that, he was the Executive Engineer, Kerala State Housing Board, Wayanad Division, from 16.08.2001 onwards and his office dealt with the advancing of loans for the construction of houses and repayments. According to PW9, the accused was the cashier entrusted with the above work from 04.06.1998 to 14.12.2000. It was through him, Ext.P1 cash book for the period from 10.02.1998 to 31.03.1998 and Ext.P2 cash book for the period from 24.07.1999 to 08.10.1999 were marked and the relevant page of Ext.P-2(a) would show that as on 24.07.1999, the amount was shown as 'Nil'. As pointed out by the learned counsel for the accused, during cross-examination, PW1 stated that in between 07.07.1999 and 23.07.1999, Rs.9,23,414/- was collected and Rs.9,72,914 was remitted. He also admitted that the entries in the cash book were made by the clerk concerned and the Accounts Officer would check the same. It is the duty of the clerk to entrust the



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daily collection to the Accounts Officer and the money should be kept in the chest for remittance to the bank on the next day. PW2 supported entrustment of the cash to the accused while he was working in the same office as a clerk. According to him, in Ext.P1 cash book, entries starting from 10.02.1998 to 31.03.1998 were made and thereafter, as per Ext.P2 cash book, the 1<sup>st</sup> entry was made on 24.07.1999 and no other cash book were maintained in between 01.04.1998 and 23.07.1998. During cross-examination, PW2 testified that some receipts were written by him, some receipts were written by James and the accused. He also deposed that when Mathew joined the service, there was no practice of preparing day book in the office and the Accounts Officer was bound to verify cash and records daily. PW3, V.J.Gopan, the Accounts Officer from 16.02.2001 in the office, supported preparation of Ext.P21 by him and also shortage of Rs.86,332/- and according to him, the amount in between 07.07.1999 and 27.09.1999 was



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omitted to be remitted in the bank. He also supported Ext.P22 series entrusted to the police. PW4 is another Accounts Officer, who worked in the office during 2000 March onwards and he also supported misappropriation of Rs.86,332/-. PW5, Sri.V.Valsakumar, who worked as the Executive Engineer during February, 1999 to February 2001, deposed that during this period, the accused was in-charge of cash collection and remitting the same to the bank. As per Ext.P3 office order, it was the duty of the cashier to keep the collection. He also submitted that during the period 01.04.1998 to 23.07.1999, no cash book maintained in the office, as he understood later. Thus, through him, by Ext.P4, attendance register, the employment of the accused was proved. PW7 deposed about remittance of some amount in the current account No.148 of Nedungadi Bank by the Kerala State Housing Board, Wayanad Division. In this matter, the sanction order permitting prosecution of the accused got marked as Ext.P24



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by examining PW6, Sri.P.M.John, who was the authorised officer to prove the same and he deposed about issuance of Ext.P24 after verifying the prosecution records in this case and after applying his mind. PW10 and PW12 are the investigating officers and Ext.P27 is the FIR registered in this crime on 07.07.1999. Later, PW10 investigated the crime. PW12, in support of Ext.P21 account statement prepared by PW3 as on 20.08.1998 except Rs.5/- all other amounts were remitted in the bank. In order to show remittance of loan, PW8, one among the loanees, was examined and he stated that he had remitted Rs.2,501/- on 08.07.1999 as per Ext.P11 receipts. Since the trial court found commission of offences under Section 13(1)(c) and (d) r/w 13(2) of the PC Act by the accused, it is necessary to extract the provisions to find out the ingredients to see the offences are made out in this case. Therefore, the provisions are extracted as under:

**“13. Criminal misconduct by a public servant.—** (1) A public servant is said to commit the





offence of criminal misconduct,—

(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or

(b) if he intentionally enriches himself illicitly during the period of his office.

*Explanation 1.*—A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

*Explanation 2.*—The expression “known sources of income” means income received from any lawful sources.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine.”



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14. On prosecution of the penal provisions, dishonest and fraudulent misappropriation or conversion otherwise of any property entrusted to a public servant or any property under his control as a public servant, or allowing any other person to do so, or if he intentionally enriches himself illicitly during the period of his office himself or any other person on his behalf, is an offence punishable under Section 13(1)(c) and (d) r/w. Section 13(2) of the PC Act. In this case, the evidence of PW2 and PW9 have been given much emphasis by the learned counsel for the accused/appellant to contend that apart from PW2, other contractual employees collected money daily and therefore, it is unsafe to hold that the accused/appellant misappropriated the amount as alleged, even though in order to save his job and to avoid his suspension, he had remitted back the amount.

15. It is true that as per Ext.P-2(a) the amount shown as on 24.07.1999 is 'Nil' and before that, for the period



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between 01.04.1998 to 23.07.1999, there was no entry made in Ext.P2. In this connection, as per Ext.P21 supported by Ext.P22 series, it could be gathered that an amount of Rs.86,332/- out of the total amount of loan collected was not at all deposited in treasury. Ext.P3, the office order, proved through PW5, would emphatically make it clear that the accused/appellant was entrusted with collection of cash by doing the job of a cashier on the date of joining his duty and he continued as the cashier to deal with cash, DD, cheque, maintenance of cash books and other registers related to collection of cash, sale of application forms, receipt and registration of new application forms during the relevant period. If so, it is the primary duty of the accused to see that the collected amounts were properly deposited on the next day without keeping the same otherwise. Since it is evident from Ext.P3 that the accused/appellant was the cashier in charge of collection of cash and as held above, when there is



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a shortage of Rs.86,332/-, as evident from Ext.P21, supported by Ext.P22, the responsibility for the same is not upon any other person and it is that of the accused. If at all, any other persons were entrusted to receive the money, it is the duty of the accused to vouch them and get the amount collected and to deposit the same in the Treasury without fail. Here, Rs.86,332/- failed to be deposited as evident from Ext.P21, supported by Ext.P22 series. If so, the oral evidence of PW2 stating that in between 07.07.1999 to 23.07.1999 Rs.9,23,414/- was collected and Rs.9,72,914/- was deposited in treasury by them is falsehood. The rationale is that there is no question of remitting the excess of amount than the amount collected. That apart, PW2, is none other than the colleague of the accused in the same rank and his evidence in this way as against Exts.P21 and P22 series is with a view to confuse the court. As pointed out by the learned Special Public Prosecutor, relying on the decision in **Vijayakumar K's**



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case (*supra*), once it is proved by the prosecution that there was entrustment and there was no proper accounting of the amount entrusted, then the burden shifts to the accused to prove that there was no misappropriation and explain the irregularities found in the disbursement. Further if entrustment is proved and explanation given by the accused is not satisfactory or there was no proper explanation, then it can be presumed that the accused had committed the offence of criminal breach of trust and misappropriation. The modus operandi of the accused, how he committed the misappropriation etc need not be proved by the prosecution. The fraudulent intention of the accused can be inferred only from the attending circumstances and those things cannot be proved by the prosecution by direct evidence and it has to be inferred from the circumstantial evidence adduced by the accused on this aspect.



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16. Thus, on overall evaluation of the evidence, it could be gathered that the allegation of the prosecution that the accused with dishonest and fraudulent intention misappropriated Rs.86,332/- and later, deposited by him after registration of the case. In such view of the matter, the finding of the trial court that the accused committed offences punishable under Section 13(2) read with Section 13(1)(c) and (d) of the PC Act is only to be confirmed.

17. Regarding the sentence, some modification can be considered, in view of the facts and circumstances of the case.

18. Therefore, this criminal appeal stands allowed in part. Accordingly, while confirming the conviction, sentence imposed against the accused to undergo rigorous imprisonment for 2 years each for the offence under Section 13(2) r/w 13(1) (c) and (d) of the PC Act is modified for a period of 1 year each and to pay a fine of Rs.2,000/- (Rupees



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two thousand only) each. In default of payment of fine, the accused shall undergo rigorous imprisonment for a period of two weeks.

19. The substantive sentences shall run concurrently and the default sentences shall run separately.

The order suspending sentence and granting bail to the appellant shall stand vacated and the bail bond executed by the appellant/accused stands cancelled. The appellant/accused is directed to surrender before the special court and to undergo the sentence within two weeks from today, failing which, the special court shall execute the sentence without fail.

Registry is directed to forward a copy of this judgment to the trial court concerned for information and compliance.

**Sd/-  
A. BADHARUDEEN  
JUDGE**

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