

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 13TH DAY OF AUGUST 2025 / 22ND SRAVANA,

1947

CRL.A NO. 1480 OF 2013

CC NO.5 OF 2003 OF ENQUIRY COMR.& SPECIAL
JUDGE, KOZHIKODE

APPELLANT/1ST ACCUSED:

T.T.KUNHIKANNAN
S/O.KUNHIKANNAN (FORMERLY CLERK AND SECRETARY
IN CHARGE, THERUMAMBALAM WEAVER'S INDUSTRIAL
CO-OPERATIVE SOCIETY), THEKKETHALAKKAL HOUSE,
CHITTARIKOVVAL, KANDOTH P.O., PAYYANNUR,
KANNUR DISTRICT.

BY ADVS.
SHRI.M.SASINDRAN
SHRI.SATHEESHAN ALAKKADAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
KOCHI - 682 031.

SPECIAL PUBLIC PROSECUTOR VACB ADV.RAJESH.A,
SENIOR PUBLIC PROSECUTOR VACB ADV.REKHA.S

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
04.08.2025, THE COURT ON 13.08.2025 DELIVERED THE
FOLLOWING:



“C.R”

A. BADHARUDEEN, J.

=====
Crl.Appeal No.1480 of 2013-C
=====

Dated this the 13th day of August, 2025

J U D G M E N T

The 1st accused in C.C.No.5 of 2003 on the files of the Enquiry Commissioner and Special Judge, Kozhikode, has preferred this appeal challenging the conviction and sentence imposed against him in the above case dated 11.09.2013. State of Kerala is the respondent herein.

2. Heard the learned counsel for the 1st accused/appellant as well as the learned Public Prosecutor.

3. Perused the trial court records as well as the verdict under challenge.

4. The prosecution case is that the 1st accused while working as Clerk and Secretary-in-charge of Therumambalam Weaver's Industrial Co-operative Society ('Society' for short hereinafter),



Payyannur during the period 01.10.1993 to 03.09.1994 and the 2nd accused while working as Weaving-cum-Dyeing Master of the above Society during the period 13.04.1984 to 31.03.1998 being public servants had abused their position as public servants and committed criminal breach of trust and fraudulently misappropriated clothes worth Rs.5,16,721/- and cash amounting to Rs.560/- of the above society during the period 01.10.1993 to 03.09.1994 and caused loss of Rs.5,17,287/- to the Society and had obtained undue pecuniary advantage of that amount for themselves and thereby they had committed the offences punishable under Sections 13(1)(c) and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 ('PC Act' for short hereinafter) and under Section 409 r/w 34 of the Indian Penal Code ('IPC' for short).

5. On getting final report filed after investigation in this crime, the Special Court took cognizance of this matter and proceeded with trial. During trial, PWs 1 to 13 were examined and Exts.P1 to P38 were marked on the side of the prosecution. DW1 to DW3 were examined and Exts.D1 to D3 were marked on the side of the accused. Apart from that, Exts.X1 and X2 were also marked.



6. The Special Court appraised the contention raised by the prosecution as well as the accused and finally found that the 1st accused is guilty for the offences punishable under Section 13(1)(c) and 13(1)(d) read with 13(2) of the PC Act as well as under Section 409 of the IPC.

7. While impeaching the veracity of the verdict of the trial court, it is submitted by the learned counsel for the 1st accused/appellant that the Special court went wrong in finding that the accused had dishonest or fraudulent intention so as to misappropriate the amount alleged. According to the learned counsel for the 1st accused, the 1st accused took charge on 01.10.1993 and held the post of Secretary till 03.09.1994 and the verification conducted by PW6 on 30.06.1994. PW6 deposed that stock verification was not conducted by the Board of Directors for a long period. Thus PW6 was not in a position to make any accurate report on that aspect. Therefore, the stock verification at the instance of PW6 alleged to be occurred on 30.06.1994 in between 10 a.m to 5 p.m whereupon the entire prosecution allegation as to misappropriation was raised is not believable. It is pointed out that as per clause 23(1)(f) of the bye-law of the Society, the Secretary is the custodian of all the property, including the



cash of the society. As per Ext.P14(a) statement regarding verification of stock reveals that the 2nd accused was working in the Society as weaving cum dyeing Master. As per Ext.P5, on 14.03.1984, the Director Board took decision that responsibility of the entire stock, i.e finished goods, yarn, looms and weaving equipments to be held by the Director Sri Krishnan to be given to the 2nd accused. Ext.P14 issued by Junior Co-operative Inspector District Industries Centre, Kannur revealed that the 2nd accused, namely P.V.Vijayan took charge of the entire stocks, i.e finished goods, yarn, looms and weaving equipments and accessories. It is submitted further that at the time when the 1st accused took charge of the Secretary, there was no stock verification and the stock as such available was made accountable by the 1st accused. Thus the misappropriation alleged could not be at the instance of the 1st accused and the same may be of continuous default of various persons, for which the accused alone is not accountable. The learned counsel had given much emphasis on Ext.P14, which would suggest that there is no practice of giving or taking charge of stock after due verification. This paved way for evading responsibility of stock.



8. Opposing the contentions raised by the learned counsel for the 1st accused, the learned Public Prosecutor argued that as per the report of PW6 marked as Ext.P33, which was prepared as directed by the General Manager, District Industries Centre, Kannur on 30.06.1994, it was found that there were shortage of articles to the tune of Rs.5,22,611.55 and the responsibility of the same was fixed in favour of the 1st accused, who held the charge of the Secretary during the relevant period. It is pointed out by the learned Public Prosecutor further that on getting notice regarding the misappropriation at the instance of the 1st accused, the 1st accused applied for leave and went abroad. It was thereafter his cousin intervened and paid Rs.2,25,000/-, but the balance amount of Rs.2,93,734.45 was not paid at all. According to the learned Public Prosecutor, the 1st accused, who held the post of Secretary from 01.10.1993 to 03.09.1994 could not evade his responsibility in the matter of shortage of stocks for the amount of Rs.5,22,611.55 and the same is a huge amount during 1994. It is submitted that the details of the available stock would establish the fact that the 1st accused alone is responsible for the shortage of loss as he misappropriated the same and also swallowed the



proceeds out of the same with dishonest intention by misutilising the public wealth. Soon he absconded to screen himself from prosecution.

9. Appraising the rival submissions, the points arise for consideration are:

(i) Whether the Special Court went wrong in finding that the 1st accused committed offence punishable under Section 13(1)(c) r/w 13(2) of the PC Act?

(ii) Whether the Special Court went wrong in finding that the 1st accused committed offence punishable under Section 13(1)(d) r/w 13(2) of the PC Act?

(iii) Whether the Special Court went wrong in finding that the 1st accused committed offence punishable under Section 409 of the IPC?

(iv) Whether the verdict would require interference?

(v) The order to be passed?

Point Nos.(i) to (v)

10. The allegation against the 1st accused is that while he was working as Clerk of the society, Secretary of the society Nalini went on Maternity Leave on 01-10-1993 and the 1st accused was put in charge of



the Secretary of the society on 01-10-1993. Thereafter Nalini joined duty only on 05-09-1994 and the 1st accused left the office even before Nalini rejoined for duty, that too, without handing over the charge to Nalini. Then the 1st accused had attended the office on 03-09-1994 and had withdrawn Rs.5,000/- from the bank account of the society and had disbursed wages to the workers and thereafter he had not attended the office. A perusal of Ext.P25 document which is the Cheque Book containing counterfoils of cheque leaves issued by the society, the same would show that the 1st accused had issued Cheque No.258911 on 03-09-1994 for Rs.5,000/-. This fact is admitted by the 1st accused when he was questioned under Section 313(1)(b) of Criminal Procedure Code. Wages Register which is marked as Ext.P3 also would show that wages were distributed to the workers on 03-09-1994. So, the fact that the 1st accused had attended the office on 03-09-1994 is proved by these documents. It is true that in the Attendance Register which is marked as Ext.P8, 1st accused had signed only up to 11-08-1994. But the Petty Cash Book which is marked as Ext.P22 would show that he had written the Cash Book up to 31-08-1994 and he had made endorsement in Page 209 of that book which



is marked as Ext.P2(b) that he had handed over the charge on 31-08-1994 and had signed it. So, even though he had not signed in the Attendance Register from 11-08-1994 onwards, these documents would reveal that he had attended the office and had attended his duties as Secretary till 03-09-1994. Even though he had made an endorsement in the Day Book that he had handed over the charge to Nalini on 31-08-1994 and he had put his signature, there was no endorsement made by Nalini that she had received charge from the 1st accused on that day and Nalini, who rejoined duty on 05.09.1994, could not take charge on 31.08.1994. On the other hand, Nalini had made endorsement that she had received Rs.2,453/- on 05-09-1994. A perusal of the Minutes Book which is marked as Ext.P6, the same would reveal that in the meeting of the Director Board held on 07-09-1994, it was recorded that Nalini took charge on 05-09-1994 and it is marked as Ext.P6(c). Ext.P6 document also reveals that resolution was taken by the Director Board evidenced by Ext.P6(b) that the 1st accused had disbursed wages on 03-09-1994 and even though the 1st accused had made entry in the Day Book that he had handed over the charge to Nalini on 31-08-1994, though actually and recordically Nalini took charge only



on 05-09-1994 and the 1st accused did not hand over the charge to Nalini. The day book would reveal further that the 1st accused did not attend the office from 04-09-1994 onwards and he had not given any leave letter and he did not hand over the charge of the stock to Nalini. Thus decision was taken to verify the stock of the society by the Director Board. Ext.P6 document further would reveals that decision was taken by the Director Board on 24-10-1994 that on verification of stock by Directors they found that there was shortage of stock of the society to a tune of about Rs.5,00,000/- and odd and misappropriation of stock was done by the 1st accused and they took a decision to suspend the 1st accused and to prefer a complaint against him before the Police. Decision taken by the Director Board on 03-11-1994 evidenced by Ext.P6(f) would show that, it was recorded that A1 had absconded on 04-09-1994 and Nalini had joined duty after cancelling her leave on 05-09-1994, as per the request made by the President and she found that 1st accused had made endorsement in the Day Book that he had handed over the charge on 31-08-1994 and she verified the stock and found that the 1st accused had withdrawn an amount of Rs.5,000/- from the account of the society and did not hand over the



balance amount after disbursing the wages to the workers. Then Nalini had reported this fact to the President on 22-09-1994 and in pursuance of the same, President requested Nalini to verify the stock and when she verified the stock, she found shortage of stock and it was reported by her on 12-10-1994. Thereafter request was made by the society to District Industries Centre, Kannur to depute a person to verify the stock and complaint was filed against the 1st accused before Payyannur Police and 1st accused was suspended from service. Thereafter the staff of District Industries Centre, Kannur verified the stock and found that there was huge deficit in stock.

11. PW10, who is the Director of the Society testified with regard to the decision to entrust the stocks of the Society to the 1st accused. According to him, Director Board took such a decision in the Director Board meeting and he had attended those meetings and signed in the minutes book. PW10 deposed further that Nalini took charge on 05.09.1994 and during her absence the 1st accused held the charge of Secretary from 01.10.1993 to 03.09.1994. The presence of the 1st accused till 03.09.1994 and discharge of his duties as a Secretary till that date also



was deposed by PW10. As per the minutes book, the 2nd accused was given the charge of stock of the Society and retail sale of the goods of the Society, but as per clause 23(1)(f) of the Bye-law of the Society marked as Ext.P9, the Secretary is the custodian of all the properties including cash of the Society and therefore as per Bye-law of the Society Secretary is the *ex officio* trustee of the Society. PW5, who conducted the stock verification categorically given evidence that without the direction of the 1st accused, the 2nd accused, who is the weaving cum dyeing Master, could not sell the finished goods. PW10, the Director of the Society also supported Ext.P9 and given evidence that Secretary is the custodian of the stock. Based on this evidence, the Special Court found that the 1st and 2nd accused had joint liability regarding custody of the stock and without the knowledge of the 1st accused, the 2nd accused (who was no more during trial) could not do any misappropriation in the stock. The said finding is only to be justified.

12. While addressing the question as to whether the shortage of stock had occurred during the tenure of the 1st accused or not, the stock verification was conducted on 30.06.1994 and as on 31.12.1994, the shortage was found on 30.06.1994 as well as 31.12.1994. If so, the



shortage occurred in between 30.06.1994 and 31.12.1994 and it is proved that during these periods the 1st accused attended the office upto 04.09.1994 and he held the post of Secretary being the custodian of the stock. The said finding of the Special Court also to be justified from the records. It is true that there was no practice of stock verification at the time of handing over of the charge. In this connection, it is relevant to note that when Nalini took charge on 05.09.1994, she noticed that the 1st accused, though had falsely created record to the effect that he had handed over the charge to Nalini on 31.08.1994, he did not return the balance amount after spending the amount for disbursement of wages since he had misappropriated that amount also. Accordingly the said fact was reported by Nalini to the Director Board on 22.09.1994. Thereafter, the Director Board Requested Nalini to verify stock and on verification she found shortage of stock and was reported to the Director Board on 12.08.1994. Therefore, there is no possibility to occur any shortage as on 05.09.1994. Thus the Special Court observed that the 1st accused attempted to create suspicion as he left the office without handing over the charge and without informing the Director Board after making the false endorsement in the



day book that he had handed over his charge on 31.08.1994. The above conduct of the 1st accused was to believe that he was ready to hand over the charge of Secretary to Nalini though he had something to hide, which was found to be in shortage.

13. In this case, on the side of the accused, DW1 to DW3 were examined. Exts.D1 to D5 were marked. Ext.X1, the order issued by the Government of Kerala, granting permission to write off the debts of the Societies also got marked. Production of Ext.X1 was to apprise the fact that since Rs.2,25,000/- was collected from the relatives of the 1st accused, the remaining amount of Rs.2,93,734.45 to be written off. DW1 supported Ext.X1. As far as the evidence given by DW1 and Ext.X1 is concerned, the same has no bearing in the instant case, where the allegation as to commission of the offence by the accused is to be evaluated independently. If at all Government decided to write off the misappropriated amount of a public servant, that by itself would not efface his criminal culpability and writing off of a liability also factually a loss to the Society. DW2 gave evidence that he is the brother-in-law of the 1st accused and an agreement was entered into between the Secretary of the



Society as party No.1 and himself and Rajan, who is the brother of the accused, as party No.2 on 25.03.1996. According to DW2, the said agreement was executed because of the continuous threat from one Govindan, the President of the Society and accordingly as per Exts.D1 to D5 series, a total sum of Rs.2,25,000/- was repaid. In fact, the evidence of DW2 and Exts.D1 to D5 would show partial discharge of the liability, the accused did not execute any agreement. DW3 was examined to prove Ext.X2 letter received from the General Manager, District Industries Centre, Kannoor, requesting to write off the liability and the Society was administered by the Director Board, controlled by the CPI(M) party. As I have already observed, evidence of DW2 and Ext.X2 also have no much bearing in this case.

14. The crucial question herein is whether the misappropriation of Rs.5,22,611.55 by manipulating the stock of the Society was done by the 1st accused?

15. A perusal of Ext.P14 and P14(a) document shows that PW5 who is the Junior Co-Operative Inspector (Handloom) of District Industries Centre, Kannur had submitted Ext.P14 report dated 30-06-1995



stating that he had inspected the society involved in this case and conducted stock verification and found that there was deficit of stock of finished goods to a tune of Rs.5,22,611.55 as on 31-12-1994 and he had submitted detailed statement showing the stock position of finished goods as on 31-12-1994 and the value of excess and deficit stock found in each item of finished goods and that statement is marked as Ext.P14(a) and the report submitted by him is marked as Ext.P14. PW5 has given evidence that while he was working as Junior Co-Operative Inspector (Handloom), District Industries Centre, Kannur he attended departmental training from 01-10-1994 to 07-11-1994 and PW9 held his charge during that period and the Deputy Registrar of District Industries Centre, Kannur issued Ext.P34 Proceedings for conducting urgent and detailed inspection of the society involved in this case. Pursuant to the same Proceedings, PW9 along with Senior Supervisor Shylaja conducted inspection of the society and submitted a report to the Deputy Registrar. Acting on that report, direction was given to PW5 to conduct detailed inspection of the society and he conducted inspection and verified the stock, PW5 in turn submitted Ext.P14 report and Ext.P14(a) statement after verifying the stock as on 31-



12-1994. During inspection PW5 found that there was deficit of stock of finished goods to the tune of Rs.5,22,611.55. Nothing is brought out to discredit these versions of PW5. A perusal of Ext.P14(a) statement would show that Weaving-cum-Dyeing Master of the Society who was the 2nd accused (no more), signed it and the Director of the Society had also signed it stating that the stock was verified in their presence. PW5 also signed in Ext.P14(a) document. Ext.P14(a) document further would reveal that in certain items of finished goods stock was found excessive and in majority of items of finished goods stock was found deficit. Thus it is clear that actual physical verification of the stock was conducted by PW5. PW5 has also given Certificate to the effect that the figures shown in it are correct. Report submitted by PW9 and Shylaja is marked as Ext.P32 and the same would show that they had conducted only a preliminary verification and they found shortage of stock and had made a request to conduct detailed verification of the stock. PW9 has also given evidence that he didn't conduct a detailed verification of the stock and only preliminary verification of the stock was done by him and he had made a request in his report for conducting detailed verification of the stock. PW9



has also given evidence that while he was holding the charge of PW5, he received Ext.P34 communication from the Deputy Registrar of District Industries Centre, Kannur dated 27-10-1994 directing him to conduct urgent inspection and himself and Shylaja conducted inspection and submitted Ext.P32 report and when PW5 joined duty after training, he handed over Ext.P34 communication to PW5 and thereafter PW5 had conducted detailed inspection and verification of stock. So, the evidence of PW9 would prove that PW5 had conducted actual physical verification of the stock of the society and found that there is deficit of stock of finished goods to a tune of Rs.5,22,611.55 as on 31-12-1994 in the society involved in this case. Prosecution has produced the Stock Registers of the society which is marked as Ext.P19 and P20. A perusal of those documents shows that the entries shown in Ext.P14(a) statement as per the register tallies with the entries seen in Ext.P19 and P20 documents. So, as per Ext.P14 report, there is deficit of stock of finished goods worth value of Rs.5,22,611.55 as on 30-12-1994.

16. Evaluation of the evidence would show that loss of Rs.5,22,611.55 was sustained to the Society and it was so happened during



the tenure when the 1st accused held the post of the Secretary of the Society and his involvement in this misappropriation could be established beyond any reasonable doubt. Even though the relatives of the 1st accused paid a substantial amount to the Society and the Government decided to write off the remaining amount, the offence committed by the 1st accused could not be effaced. Therefore, there is no reason to hold that the trial court went wrong in convicting the accused.

17. In this matter, validity of sanction marked as Ext.P36 also is under challenge on the submission that the sanction was issued by the Board of Directors of the Society, who, in fact, made the complaint which led to registration of this case.

18. Law regarding sanction is settled by the various decisions of the Apex Court. Reading Section 19(1) of the P.C. Act, what mandated is that, no court shall take cognizance for offences punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with previous sanction embodied under Section 19(1)(a) to (c), subject to Section 19(2) of the P.C. Act. Section 19(3) carves out exception to 19(1). Section 19(3)(a) of the P.C. Act emphasizes



that, no finding, sentence or order passed by a special judge shall be interfered on the ground of absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of court, failure of justice occasioned thereby. Section 19(3)(b) provides that, for the same ground, no court shall stay the proceedings under this Act. As per Section 19(4) of the P.C. Act, the absence of, or any error, omission, or irregularity in, sanction has occasioned or resulted in a failure of justice, the court shall have regard to the fact that, whether the objection could and should have been raised at an earlier stage of the proceedings. It is relevant to note further that, error includes competency of the authority to grant sanction.

19. Going by various decisions on this point, majority of the decisions would emphasize the point that, failure of justice if not occasioned, by way of the absence of, or any error, omission or irregularity in sanction, the same by itself is not a ground to interfere the finding, sentence or order passed by the Special Judge. It is the fundamental principle of interpretation of statute that, when provisions of a statute are interpreted, the interpretation should be by giving effect



to all the provisions, without making any of the provisions redundant or inoperative.

20. In the latest decision of the Apex Court reported in **[2025 INSC 654] Dashrath v. The State of Maharashtra**, the Apex Court referred **Neeraj Dutta**'s case (supra) and the decision reported in **[(2015) 2 SCC 33] Manzoor Ali Khan v. Union of India**, and held in paragraph Nos.12 and 13 that, *it is no longer res integra that requirement of sanction has a salutary object. Provisions requiring sanction to prosecute, either under Section 19, PC Act or Section 197 of the (now repealed) Cr. PC or under Section 218 of the Bharatiya Nagarik Suraksha Sanhita, 2023 are intended to protect an innocent public servant against unwarranted and mala fide prosecution. Indubitably, there can be no tolerance to corruption which has the effect of undermining core constitutional values of justice, equality, liberty and fraternity; however, at the same time, the need to prosecute and punish the corrupt is no ground to deny protection to the honest. This is what was held by this Court in its decision in **Manzoor Ali Khan v. Union of India** while repelling a challenge raised in a Public*



Interest Litigation to the constitutional validity of Section 19 of the PC Act. Even otherwise, merely because there is any omission, error or irregularity in the matter of granting sanction, that does not affect the validity of the proceedings unless the court records its own satisfaction that such error, omission or irregularity has resulted in a failure of justice.

21. In another decision of the Apex Court reported in **[2025 INSC 50], The State of Punjab v. Hari Kesh**, after referring **S.Subbegowda's** case (supra), the apex Court considered the combined effect of sub-sections (3) and (4) of Section 19 and reiterated that, *in view of sub-section (3) clearly forbids the court in appeal, confirmation or revision, the interference with the order passed by the Special Judge on the ground that the sanction was bad, save and except in cases where the failure of justice had occurred by such invalidity.*

22. Thus, the law emerges is that, in order to take cognizance for the offences under Sections 7, 10, 11, 13 and 15 of the P.C. Act, alleged to have committed by a public servant, sanction is



necessary. After taking cognizance, during trial, when considering the validity of sanction on the ground of absence of, any error or omission or irregularity in the sanction, including the incompetency of the authority to grant sanction, a court in appeal, confirmation or revision on the said ground, no finding, sentence or order passed by the special judge shall not be interfered, unless the court finds that such error or omission or irregularity has resulted in failure of justice. Therefore, even though sanction is necessary to take cognizance for offences under Sections 7, 10, 11, 13 and 15 of the P.C. Act alleged to be committed by a public servant, unless there is no failure of justice in the finding, sentence or order passed by the Special Judge, the same shall not be reversed or altered by a court in appeal, confirmation or revision.

23. No doubt, in the instant case, the challenge against the sanction is mainly on alleging that, though sanction was issued by the competent authority, the said authority is the aggrieved party as well. As per explanation to Section 19(3)(a) of the P.C. Act, it has been specifically provided that any error or omission or irregularity in granting sanction,



that doesn't affect the validity of proceedings, unless failure of justice is not occasioned. In the instant case, merely finding an irregularity in the sanction, this Court cannot interfere with the conviction and sentence under challenge herein unless there is no failure of justice. On evaluation of evidence, this Court could not find that there was failure of justice in this case, if at all any irregularity in the matter of grant of sanction. Therefore, interference of the verdict impugned, on the said ground would also not succeed.

24. Coming to the sentence, taking note of the serious allegations, involving misappropriation of a huge sum of Rs.5,22,611.55 during 1993-1994, the sentence also is found to be reasonable and I am not inclined to revisit the sentence. Therefore, the sentence also is confirmed.

25. In the result, this appeal must fail and is accordingly dismissed. Consequently the conviction and sentence imposed by the Special Court are confirmed. As a sequel thereof, the order suspending sentence and granting bail to the accused stands cancelled and the bail bond also stands cancelled.

26. The accused is directed to surrender before the Special



2025:KER:60948

Cr1.A.No.1480/2013

25

Court to undergo the sentence forthwith, failing which the Special Court shall execute the sentence forthwith.

Registry is directed to forward a copy of this judgment to the Special Court for compliance and further steps.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/