



2025:KER:75980

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 13TH DAY OF OCTOBER 2025 / 21ST ASWINA, 1947

CRL.A NO. 140 OF 2013

AGAINST THE COMMON JUDGMENT DATED 06.12.2012 IN C.C. NO.26 OF 2009 ON THE
FILES OF THE COURT OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE,
THIRUVANANTHAPURAM

APPELLANT/ACCUSED:

PADMAPRASAD
ASSISTANT MOTOR VEHICLE INSPECTOR, NEYYATTINKARA.

BY ADVS.
SHRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.MANU SEBASTIAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA
THROUGH DEPUTY SUPERINTENDENT OF POLICE, VIGILANCE ND ANTI
CORRUPTION BUREAU, THIRUVANANTHAPURAM,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

SPL PP VACB - RAJESH.A, SR PP VACB - REKHA.S

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18.09.2025, ALONG
WITH CRL.A.NO.141 OF 2013, THE COURT ON 13.10.2025 DELIVERED THE
FOLLOWING:



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FOLLOWING:**

**“C.R”****COMMON JUDGMENT****Dated this the 13th day of October, 2025**

These criminal appeals have been filed under Section 374(2) of the Code of Criminal Procedure, 1973, by the sole accused in C.C. Nos.26 and 27 of 2009 on the files of the Court of the Enquiry Commissioner and Special Judge, Thiruvananthapuram, challenging the conviction and sentence imposed by the Special Judge against him as per the common judgment dated 06.12.2012. The State of Kerala, represented by the Public Prosecutor is arrayed as the sole respondent herein.

2. Heard the learned counsel for the appellant and the learned Public Prosecutor, in detail. Perused the common verdict under challenge and the records of the Special Court.

3. Parties in these appeals shall be referred as ‘accused’ and ‘prosecution’, hereafter.

4. The prosecution allegation in C.C. No.26 of 2009 is that, the accused, while working as an Assistant Motor



Vehicle Inspector, Sub Regional Transport Office, Neyyattinkara, during the period from 11.04.2003 to 18.03.2004, was authorized to collect fees and fines in respect of the vehicles, had collected Rs.4,93,400/- being the fees and fines directly and through other officials in the office, using TR5 receipts, which were entrusted to him and possessed by him during the period from 04.04.2003 to 12.03.2004. It is alleged further is that, out of Rs.4,93,400/- collected by the accused, he had remitted only Rs.2,12,190/- in the office and he dishonestly and fraudulently misappropriated the balance amount of Rs.2,81,210/-. It is also alleged that the accused also falsified the accounts, namely, 10 original TR5 receipts in order to misappropriate a sum of Rs.15,700/- entrusted to him. On this premise, the prosecution alleges commission of offences punishable under Section 13(1)(c) read with 13(2) of the Prevention of Corruption Act, 1988 [hereinafter referred as 'P.C. Act' for short] and under Sections 409, 420, 468, 471 and 477-A of the Indian Penal Code [hereinafter referred as 'IPC' for short], by the accused.



5. Similarly, the prosecution case in C.C. No.27 of 2009 is that, the accused, while working as an Assistant Motor Vehicle Inspector, Sub Regional Transport Office, Neyyattinkara, during the period from 30.03.2004 to 24.06.2004, was authorized to collect fees and fines in respect of the vehicles, had collected Rs.56,310/- during the period from 17.04.2004 to 25.06.2004 and he had remitted only Rs.47,410/- in the office and he dishonestly and fraudulently misappropriated the balance amount of Rs.8,900/-. On this premise, the prosecution alleges commission of offences punishable under Section 13(1)(c) read with 13(2) of the P.C. Act and under Sections 409, 420 and 477-A of the IPC, by the accused.

6. The Special Court framed charge for the offences under Section 13(1)(c) read with 13(2) of the P.C. Act and under Sections 409 and 477-A of the IPC in C.C. No.26 of 2009 and under Section 13(1)(c) read with 13(2) of the P.C. Act and under Section 409 of the IPC in C.C. No.27 of 2009. Thereafter, the Special Court conducted joint trial of these cases, recorded evidence and tried the matter.



During trial, PWs 1 to 18 were examined and Exts.P1 to 46 were marked on the side of the prosecution. After questioning the accused under Section 313(1)(b) of Cr.P.C, DWs 1 and 2 were examined and Exts.D1 to D7 were marked on the side of accused as defence evidence.

7. On appreciation of evidence, the Special Court found that the accused was guilty for the offences punishable under Section 13(1)(c) read with 13(2) of the P.C. Act and under Sections 409 and 477-A of the IPC in C.C. No.26 of 2009. Further, it is found by the learned Special Judge that the accused was guilty for the offences punishable under Section 13(1)(c) read with 13(2) of the P.C. Act and under Section 409 of the IPC in C.C. No.27 of 2009. Accordingly, he was convicted for the said offences and sentenced as under:

In C.C. No.26 of 2009:

Considering the facts and circumstance of this case, the accused is sentenced to undergo rigorous imprisonment for two years and to pay a fine of ₹3,00,000/- (Rupees Three Lakh only) and in default of the payment of fine to undergo rigorous imprisonment for six months under



S.13(1)(c) r/w S.13(2) of P.C. Act, 1988. The accused is also sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹10,000/- (Rupees Ten thousand only) and in default of payment of fine to undergo rigorous imprisonment for three months under S.409 of I.P.C. The accused is also sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹10,000/- (Rupees Ten thousand only) and in default of payment of fine to undergo rigorous imprisonment for three months under S.477-A of I.P.C. It is directed that the substantive sentence of imprisonments shall run concurrently. Set off under S.428 of Cr.P.C. is allowed.

In C.C. No.27 of 2009:

Considering the facts and circumstance of this case, the accused is sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹10,000/- (Rupees Ten Thousand only) and in default of the payment of fine to undergo rigorous imprisonment for three months under S.13(1)(c) r/w S.13(2) of P.C. Act, 1988. The accused is also sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹10,000/- (Rupees Ten thousand only) and in default of payment of fine to undergo rigorous



imprisonment for three months under S.409 of I.P.C. It is directed that the substantive sentence of imprisonments shall run concurrently. Set off under S.428 of Cr.P.C. is allowed.

8. While impeaching the impugned common judgment, it is pointed out by the learned counsel for the appellant/accused that, in order to prove entrustment of Exts.P11 to P27 TR5 receipts to the accused, PWs 5 and 6 given evidence and it has come out in evidence that, apart from the accused, PWs 4 and 9 also collected fees and fines using the said TR5 receipts. Therefore, the liability of misappropriation could not be attributed solely as against the accused and the witnesses cited in this case ought to have been arrayed as accused. It is pointed out by the learned counsel for the accused further that, merely relying on the evidence of PWs 5 and 6, supported by the evidence of PWs 3 and 5 to 8, the Special Court found that the accused misappropriated Rs.2,81,210/-, 15,700/- and 8,900/-, as alleged by the prosecution. It is further pointed out that, the receipt of TR5 receipts by the accused was proved through the evidence of PW5 and 6. The FSL report



in this regard proved through the Scientific Assistant (PW17), discussed in the impugned common judgment, in no way consistently attributed that, it was the accused, who obtained undue pecuniary advantage by misappropriating the amount collected as fees and fines and therefore, the scientific evidence is against the prosecution. According to the learned counsel for the accused, since the prosecution failed to prove entrustment of TR5 receipts to the accused and consequential use and collection of money by the accused, the finding of the Special that the accused committed the offences punishable under Section 13(2) read with 13(1)(c) of the P.C. Act and under Sections 409 and 477-A of the IPC in both these cases is erroneous and the same would require interference.

9. The learned Public Prosecutor argued that, in these cases, entrustment of Exts.P11 to P27 TR5 receipt books is established by the evidence of PWs 2 to 9 and through Ext.P1. That apart, in Ext.P10 stock register, receipt of TR5 receipts by the accused also endorsed and



proved. It is submitted that, PWs 4 and 9 also collected some amounts by using the TR5 receipts and they have given evidence stating that they have entrusted back the money to the accused. It is also pointed out by the learned Public Prosecutor that, PW10 examined in this case categorically stated the mode of collection of money by the accused.

10. It is argued by the learned Public Prosecutor further that, as alleged by the prosecution in C.C. No.26 of 2009, Rs.2,81,210/- and in C.C. No.27 of 2009, Rs.8,900/- were misappropriated by the accused. According to the learned Public Prosecutor, in these cases, Ext.P1 proved through PW1 and Ext.P35 Enquiry report proved through PW10, also justified the prosecution case, where misappropriation was found against the accused.

11. It is also submitted by the learned Public Prosecutor that, Ext.P10 stock register of TR5 books would show that it was the accused, who received the said TR5 receipts to collect fees and fines, as alleged by the prosecution. It is pointed out by the learned Public



Prosecutor further that, as deposed by PWs 4 and 9, they also collected fees and fines occasionally, using the TR5 receipts, during the relevant period and they had given consistent evidence that, the money so collected using TR5 receipts was entrusted back to the accused. According to the learned Public Prosecutor, the misappropriation could not be detected during the tenure of the accused in the office and it was detected by PW10, after transfer of the accused from the office, where the occurrence took place. In support of the prosecution materials, the learned Public Prosecutor has given reliance on Ext.P35 Enquiry Report against the accused, submitted by PW10, proved through him to contend that misappropriation of the amounts was found during departmental enquiry also. Thus, entrustment of TR5 receipts to the accused and collection of fees and fines by him and by PWs 4 and 9 were proved in this case, beyond reasonable doubt. In such a case, the conviction and sentence imposed by the learned Special Judge as against the accused are liable to sustain, is the submission of the learned Public Prosecutor.



12. In view of the rival submissions, the questions arise for consideration are:

1. Whether the Special Court is justified in finding that the accused/appellant committed the offence punishable under Section 13(1)(c) read with 13(2) of the P.C. Act, 1988, in C.C. No.26 of 2009?

2. Whether the Special Court is justified in finding that the accused/appellant committed the offence punishable under Section 409 of the IPC in C.C. No.26 of 2009?

3. Whether the Special Court is justified in finding that the accused/appellant committed the offence punishable under Section 477-A of the IPC in C.C. No.26 of 2009?

4. Whether the Special Court is justified in finding that the accused/appellant committed the offence punishable under Section Section 13(1)(c) read with 13(2) of the P.C. Act, 1988, in C.C. No.27 of 2009?

5. Whether the Special Court is justified in finding that the accused/appellant committed the offence punishable under Section 409 of the IPC in C.C. No.27 of 2009?

6. Whether the verdict of the Special Court would require interference?

7. Order to be passed?



13. Point Nos.1 to 5:- In order to address these questions, it is necessary to evaluate the evidence, in this case. PW1 deposed that, he was working as Joint RTO in Sub Regional Transport Office, Neyyattinkara during the period 9.6.2004 to 28.2.2005. Ext.P1 is the copy of audit report pursuant to the audit conducted on 23.9.2004 at his office. According to PW1, Ext.P1 was forwarded to Transport Commissioner, Thiruvananthapuram and as per Ext.P2, copy of the proceedings of Transport Commissioner, he was directed to register a case against the accused in respect of serious irregularities pointed out in the Audit Report. Ext.P3 is the copy of letter sent by PW1 to Sub Inspector, Neyyattinkara, in pursuance of the direction of the Transport Commissioner. Ext.P4 is the copy of FIR registered by the Sub Inspector, Neyyattinkara Police Station. Ext.P5 is the copy of inventory as per which Fee Acceptance Registers, Stock Register of TR5 Receipt Books and 26 TR5 Receipt Books issued to the accused and three submissions given by the accused were produced before the Investigating Officer. While, Exts.P6 to P9 are volume Nos.3



to 6 of Fee Acceptance Registers, Ext.P10 is the copy of Stock Register. Exts.P11 to P27 are the 17 TR5 receipt books alleged to have been issued to the accused and Ext.P28 is the inventory as per which the three submissions alleged to have been given by the accused were produced before the Investigating Officer. Ext.P29 is another inventory as per which PW1 had produced the transfer and posting order of the accused. Exts.P30 and P31 are the transfer and posting order and joining report of the accused which conclusively prove that during the relevant period, the accused was working as AMVI at Sub Regional Transport Office, Neyyattinkara. In cross-examination, PW1 admitted that during his tenure, the accused was transferred to Parassala and necessary relieving letter for that purpose was issued by him. His version is that at that time he was not aware about the liability of the accused. He had also stated that there was no practice of maintaining Office Order Book and TR5 Deposit Register at his office. It was also deposed by PW1 that an internal audit was also conducted at his office. PW1 had further stated that it was



the responsibility of the Head Accountant to receive back TR5 receipt books issued to the AMVI and MVI. In re-examination, PW1 had deposed that another case as C.C.25/2009 was pending before the Court against the accused and copies of the documents produced in this case are the attested copies of the documents produced in the previous case. In cross-examination, it was brought out from PW1 that in Ext.P12, receipt Nos.14 to 38 have been used by another AMVI, namely, Joyson.

14. In addition to PW1, the Head Accountant of the office during the period 29.8.2003 to 2006 was examined as PW2. PW2 deposed that the amounts collected by AMVI as per TR5 Receipt Books would be entrusted with the Head Accountant, who was expected to make entries in Fee Acceptance Register. It was further deposed by her that towards fee collected for issuance Certificate of Fitness issued by AMVI, duplicate receipts would be pasted in CF Register. According to PW1, there was no bar for issuing more than one TR5 Receipt Books to the AMVI. She had also clarified that at the time of vehicle inspection and learner's



tests, if any amount was collected by AMVI using TR5 Receipt Book of another AMVI, the amounts so collected by him would be handed over to the custodian of TR5 Receipt Book, in favour of whom that book was issued. According to PW1, Ext.P10(a) which is the relevant page of the copy of Stock Register reveals that TR5 Receipt Book No.1077 was issued to the accused on 31.03.2003. While Ext.P10(b) relates to TR5 Receipt Book No.1093 issued to the accused on 24.4.2003, Ext.P10(c) is in respect of TR5 Receipt Book No.1107 issued to the accused on 23.5.2003.

15. PW2 had further stated that receipt Nos.39 to 49 of Ext.P12 are seen used by one Muraleekrishna, who was working as MVI. According to her, receipt Nos.52 to 54 are also seen used by Joyson. PW2 had further admitted that receipt Nos.45, 46 and 48 to 51 of Ext. P22 are seen used by another AMVI, namely Jerald. She had also stated that there was no practice of entering in the TR Deposit Register, when used TR5 Receipt Books are returned by AMVI or MVI. It was suggested to PW2 that when she was questioned and her statement was recorded under S.161



Cr.P.C., she had stated that TR5 Deposit Register was being maintained at her office. PW2 had denied that suggestion and the "relevant" portion of 161 statement of PW2 was marked as Ext.D1. It is pertinent to note that the fact that Ext.D1 is only a portion of a sentence stated by PW2 denying that there was no practice of maintaining TR5 Deposit Register was not brought to the notice of the Special Court by the learned defence counsel or the learned Additional Legal Adviser.

16. PW3 deposed that, he was working as MVI in the very same office and he had testified that the usual practice adopted in that office was to remit the amount collected in a particular day on the immediate next day.

17. In support of the evidence of PW1 and PW2, PW3 testified that Ext.P32 which is the CF Register contain the duplicates of TR5 receipts issued at the time of vehicle checking. Ext.P32(a) is the duplicate of TR5 receipt in respect of vehicle No.KL-01-4 3896, as per which, as per receipt No.53 of TR5 Receipt Book No.49 a sum of Rs.2,100/- was collected. But Ext.P23(a), the original TR5



Receipt discloses receipt of Rs.200/- only. Ext. P32(b) relates to vehicle No.KL-01-C 1817 and as per the duplicate receipt pasted, Rs.3,300/- was collected. But Ext. P23(b) the corresponding original receipt shows receipt of Rs.300/- only. Ext.P32(c) reveals collection of Rs.1,100/ in respect of vehicle No.KL-5A 6158, while its corresponding original receipt marked as Ext.P23(c) shows receipt of Rs.100/- only. Ext.P23(d) which relates to vehicle No.KL-2A 2516 shows receipt of Rs.2,900/-. But the amount shown in its corresponding original receipt marked as Ext.P24(a) is Rs.200/- Ext.P32(e) shows collection of Rs.500/- towards vehicle No. KL-01-Y 3936. But Ext. P24(b), its corresponding original receipt only shows collection of Rs.200/-. While Ext.P32(f) shows collection of Rs.500/- towards vehicle No.KL-01-W 9377, its corresponding original receipt marked as Ext.P24(b) discloses collection of Rs.200/- only. Ext.P32(g) which relates to vehicle No.KL-01-N 5162 reveals collection of Rs.1,700/-. But, its corresponding original receipt marked as Ext.P24(d) is for Rs.200/-. Ext.P33(a) in respect of KL-01-F 2483 is for Rs.1,900/- and Ext.P24(e), its



original receipt shows only collection of Rs.100/-. Ext. P33(b) which is with respect to vehicle No.KL-01-A 3819 shows collection of Rs.1,200/-, but its corresponding original receipt marked as Ext.P24(f) only shows collection of Rs.200/-. Ext.P34(a) which is with respect to vehicle No.KL-7D 1926 shows collection of Rs.3,100/-, but its corresponding original receipt marked as Ext.P25(a) only shows collection of Rs.100/-. PW3 had deposed that the handwriting in Exts.P32(a) to P32(g), Exts.P33(a) and P33(b) and Ext.P34 (a) as well as in Exts.P23(a) to P23(c), Exts.P24(a) to P24(f) and Ext.P25(a) are of the accused. During cross-examination of PW3, no challenge raised disputing the hand writing of the accused in Ext.P32(a), P33(b), P34(a), P23(a) to P23 (c), P24(a) to P24(f) and P25(a) and as such this evidence is not impeachable.

18. PW4 deposed that, he was working as AMVI in the very same office and he had deposed that he had occasion to collect a sum of Rs.250/- by way of using the TR5 receipt book issued to the accused. Ext.P26(a) is the relevant entry. He had also stated that receipt Nos. 46, 48,



49, 50 and 51 of Ext.P20 marked as Exts.P22(b) to P22(f) have also been used by him. PW5 also deposed that, she was working as L.D Clerk in the very same office during the period 2001 to 2004. Ext.P6 is the Fee Acceptance Register maintained in that office. According to her, the accused was working as AMVI in her office. She had deposed that she had occasion to receive the amounts produced by the accused while she was in charge of the cash counter. She had further deposed the amounts remitted by the accused as per Exts.P6(a) to P6(g), Exts.P7(a) to P7 (g), Exts.P8(a) to P8(m) and Exts.P9(a) to P9(h) have been received by her. She had also specifically deposed about the amounts received by her on each day. In cross-examination she had stated that the amounts collected after 1.00 p.m used to be entrusted with the Head Accountant.

19. Apart from PW4 and PW5, PW6 deposed that, she was working as U.D Clerk and she had stated that while she was working in the cash counter, she had occasion to receive amounts entrusted by the accused as per Exts.P6(a), P6(d), P6(e), P7(e), P8(b) and P8(e). According



to her, all those amounts have been received from the accused. The amount received on each day was also specifically deposed by PW6.

20. Moreover, PW7, another U.D Clerk in the very same office had testified that during his tenure, he had occasion to work in the cash counter and the amount received by him used to be entered in the Fee Acceptance Register. According to him, thereafter, the amount so collected will be entrusted with the Head Accountant. Exts.P7(h), P7(g), P8(i), P8(k) and P9(d) relate to the amounts received by him from the accused. In cross-examination, PW7 had stated that TR5 Deposit Register was not being maintained in that office. PW8 deposed that, he was working as L.D. Clerk in the very same office. According to him, he was in charge of Store and so, it was his duty to issue TRS Receipt Books. According to him, he used to obtain the signature of AMVI or MVI in the Stock Register at the time of issuance of TR5 Receipt Book. Ext.P10 is the Stock Register alleged to have been maintained by him. As per Exts.P10(a) to P10(m) TR5



Receipt Book Nos. 1077, 1093, 1107, 1181, 1151, 1205, 1218, 1192, 1198, 1241, 49, 19, 65, 78, 122 and 125 were issued to the accused. He had also identified the initials of the accused in Ext.P10.

21. PW9 was also working along with the accused at Sub Regional Transport Office, Neyyattinkara as AMVI. According to him, it was the usual practice for the AMVIs to remit the amount collected by them to the Clerk on the cash counter after entering the same in Fee Acceptance Register. PW9 deposed that, in Ext.P14, which is one of TR5 Receipt Books issued to the accused, by way of using receipt Nos.1 to 19 and 30, he had collected a sum of Rs.4,040/-, which he had entrusted to the accused as it was possible only for the accused to remit the amount collected through the TR5 Receipt Book issued to him. In page 19 of Ext.P14, according to PW9, the accused himself had acknowledged receipt of Rs.4,040/-. In cross-examination, it was suggested to PW9 that only after exhausting all receipts in the TR Receipt Book issued to the AMVI, another TR5 Receipt Book would be issued to him. PW9 had



specifically denied that suggestion as according to him, number of receipts intended to be used at the time of field checking, learner's test etc. could not be planned earlier and so there was no prohibition for receiving more than one TR5 receipt book from the office. It is pertinent to note that Ext.P14(a) series, which relate to the receipts issued by PW9 and genuineness of the alleged endorsement by the accused on page No.19 of Ext.P14 was not specifically challenged in cross-examination.

22. PW10 deposed that, he was working as Accountant in the very same office, and according to him as per the order of the Transport Commissioner, he had submitted an Enquiry Report with respect to the cash transactions of the accused during the period 17.4.2002 to 25.6.2004. Ext.P35 is the copy of that report. It is the case of PW10 that by way of using Exts.P11 to P25, the accused had collected a total sum of Rs.4,93,400/-. Exts.P26 and P27 related to collection of amounts in C.C.No.27/2009 and according to PW10 during the relevant period, the accused had collected a sum of Rs.56,310/-. PW10 had further



deposed that as per Exts.P11 to P25, the accused had collected Rs.40,200/-, 42,400/-, 16 ,800/-, 34,600/-, 31,680/-, 22,710/-, 18,400/- 20,230/-, 50,800/-, 10,000 /-, 57,500/-, 39,860/-, 31,720/ , 30,110/-, 950/- and 50,150/- respectively. As per Exts.P26 and P27, the accused had collected Rs.47,310/- and Rs.9,000/- respectively. The remittances made by the accused have also been specifically mentioned in Ext.P35. According to PW10, the accused had remitted a total sum of Rs.2,81,210/- and he had also collected CF Fee of Rs.17,400/- with respect to the period covered by C.C.No.26/2009. PW10 had further deposed that with respect to the period covered by C.C.No.27/2009, the accused had only remitted Rs.47,410/- out of Rs.56,310/- collected by him.

23. PW10 had further deposed that the amount shown in Ext.P23(a) with respect to receipt No.53 is Rs.200/-, but as per Ext.P32(a) which is its corresponding duplicate receipt the amount shown is Rs.2,300/-. The amount shown in Ext.P23(b) which is the original receipt, is Rs.300/-, while the amount shown in Ext.P32(b), its



duplicate receipt is Rs.3,300/-. In Ext.P23(c), the original receipt, Rs.100/- has been shown and in Ext.P32(c), its duplicate copy, the amount shown is Rs.1,100/-. While Rs.200/- has been shown in Ext.P24(a), the amount shown in Ext.P32(d), its duplicate receipt is Rs.2,000/-. In Ext.P24(d), the original receipt, Rs.200/- has been shown and in Ext.P32(g), its corresponding duplicate copy, the amount shown is Rs.1,700/-. While, Rs.200/- has been shown in Ext. P24(b), in Ext.P32(f), its duplicate copy, the amount shown is Rs.500/-. In Ext.P25(a), the amount shown is Rs.100/- whereas in Ext.P34(a), its duplicate copy the amount shown is Rs.3,100/-. The amount shown in Ext.P24 is Rs.200/- and Rs.1,200/- has been shown in the photostat duplicate copy affixed in Ext.P35 report, which has been marked as Ext.P33(b). In Ext.P24(a), Rs.100/- has been shown and as per the duplicate receipt pasted in Ext.P35 report, the amount shown is Rs.1,900/-. In Ext.P24(c) the amount shown is Rs.100/-, whereas the amount shown in its duplicate copy which has been passed in Ext.P35 is Rs.500/-. According to PW10, the differences in between the



original receipts and the duplicate copies have been misappropriated by the accused. He had also stated that even though he had given a statement before the Vigilance Officials regarding total collection of Rs.7,52,595/- by the accused, the actual amount collected by him only comes to Rs.7,10,195/. PW10 deposed further that, the difference in calculation was mainly due to the illegible receipts examined by him. Even though, it was suggested to PW10 that non-adherence to the relevant Rules of the Kerala Treasury Code and Circulars by PW2 was the only reason for the discrepancy in the accounts, that suggestion was specifically denied by PW10. However, PW10 had admitted that PW2, who was working as Head Accountant was bound to strictly follow Circular No.3/86, copy of which has been marked as Ext.D2. The suggestion that it was without properly examining Exts.P11 to P27 and P6 that he had prepared Ext.P35 report was denied by PW10.

24. PW17, who was working as Assistant Director of Forensic Science Laboratory, was examined the records forwarded from JCM Court, Neyyattinkara and submitted a



report which has been marked as Ext.P43. According to her, after comparing Ext.P39 series along with questioned documents and Ext.P22(g) and Ext.P27(a), she had reached a conclusion that all the writings are probably written by same person. She had further stated that she could not reach any opinion with respect to the initials in page Nos. 15, 16, 20 and 21 of Ext.P10 Stock Register. Thus, the evidence of PW17 and Ext.P43 is not fully in support of the prosecution case. However, law is settled that expert evidence is only an opinion evidence of corroborative nature and in the absence of corroborative evidence, substantive evidence could be safely relied on to prove a fact in issue.

25. When opportunity was given to the accused to adduce defence evidence, two witnesses, DW1 and DW2 were examined on his side. DW1, who had worked as AMVI at Sub RT Office, Nevvattinkara, testified that the responsibility of accounting, at his office, was with Head Accountant. Even though he had admitted that the accused had worked along with him in the very same office, he was



not aware whether the accused was suffering from bipolar disease.

26. DW2 examined was none other than the wife of the accused. Through her, Ext.D6, which is the Internal Audit Report was marked. According to her, she came to aware that one Sreekantan Nair, who had conducted an Internal Audit had worked in the very same office, where her husband was working as AMVI. She had further stated that her husband was undergoing treatment under Dr.Subash, since the year 2000, for mental disease. Ext.D7 is the certificate issued by Dr.Subash, which was marked subject to the objection raised by the learned Additional Legal Adviser.

27. In these matters, the allegation of the prosecution is that, the accused, while working as an Assistant Motor Vehicle Inspector, Sub Regional Transport Office, Neyyattinkara, during the period from 11.04.2003 to 18.03.2004, who was authorized to collect fees and fines in respect of the vehicles, had collected Rs.4,93,400/- being the fees and fines directly and through other officials in the



office, using TR5 receipts, which have been entrusted to him and possessed by him during the period from 04.04.2003 to 12.03.2004. It is alleged further is that, out of Rs.4,93,400/- collected by the accused, he had remitted only Rs.2,12,190/- in the office and he dishonestly and fraudulently misappropriated the balance amount of Rs.2,81,210/-. Similarly, during the period from 30.03.2004 to 24.06.2004, the accused, who was authorized to collect fees and fines in respect of the vehicles, had collected Rs.56,310/- during the period from 17.04.2004 to 25.06.2004 and he had remitted only Rs.47,410/- in the office and he dishonestly and fraudulently misappropriated the balance amount of Rs.8,900/-.

28. On thorough scrutiny of the evidence of PWs 1 to 9 and Exts.P30 and P31, it is discernible that, the accused had been working as AMVI at Sub RT Office, Neyyattinkara, during the period from 17.04.2002 to 24.06.2004 and the allegation of misappropriation was from 11.04.2003 to 18.03.2004 and from 30.03.2004 to 24.06.2004. The accused also did not dispute that he had not worked as



AMVI at Sub RT Office, Neyyattinkara during the above period.

29. In addition to the above evidence, Ext.P1 Audit report also let in evidence to prove the prosecution case. That is to say, the Audit Wing of the Accountant General conducted audit at Sub RT Office, Neyyattinkara and the Audit Officer attached to the office of Accountant General prepared Ext.P1. The accused joined Sub RT Office, Neyyattinkara as AMVI on 17.04.2002 and was relieved of his duty from that office on 25.06.2004, as is evident from Ext.P35. It is stated in Ext.P35 that the accused had collected a total amount of Rs.2,81,210/- and he had also collected CF fee of Rs.17,400/- with respect to the period covered by C.C. No.26/2009. Similarly, with respect to the period covered by C.C. No.27 of 2009, the accused remitted only Rs.47,410/- out of Rs.56,310/- collected by him. On the basis of Ext.P1, PW1 sent Ext.P3 letter to PW11, who registered a case as Crime No.736/2004 for the offences punishable under Sections 409, 408, 418, 464, 466 and 468 of IPC at Neyyattinkara Police Station. Ext.P4 is the FIR.



After registering the case, PW11 investigated the case. While so, as directed by the DGP, this case was subsequently handed over by PW14 to VACB. Subsequently, PW13 registered this case as VC.7/2005/Tvpm, on the direction of the Director of VACB. Thereafter, PWs 14 and 15 conducted investigation into this case and after the completion of the investigation PW16 submitted the final report to this Court.

30. The Special Court, after considering the evidence, found that, the prosecution could succeed in proving that the accused who was entrusted with a sum of Rs.4,93,400 had only remitted a sum of Rs.2,81,200/- and thereby he had dishonestly misappropriated a sum of Rs.2,96,910, which is inclusive of a sum of Rs.15,700/- misappropriated by him by way of committing falsification of TR5 receipts with respect to a sum of Rs.17,400/-. In C.C.27/2009, the prosecution also could prove that the accused who had collected Rs.56,310/- during the period 17.4.2004 to 25.4.2004 had dishonestly misappropriated a sum of Rs.8,900/- which was entrusted with him or over



which he was having dominion. Criminal breach of trust with respect to money over which the accused was having dominion has also be improved. Hence, both these points are found against the accused and held that the prosecution could establish beyond reasonable doubt that the accused in both these cases has committed offences punishable under Section 13(1)(c) read with 13(2) of the P.C. Act, 1988 and Section 409 of IPC. The prosecution has got a case in C.C.26/2009 that in order to misappropriate a sum of Rs.15,700/- which was collected towards CF fee, the accused had committed falsification of accounts. Exts.P23(a) to P23(c), P24(a) to P24(f), P25(a), P32(a), P32(b), P32(c), P32(d), P32(f) and P32(g), P33(b), P34(a) are the documents relied on by the prosecution to support the case falsification of accounts by the accused. PW10 had adduced detailed evidence with respect to falsification of accounts done by the accused. It was brought out through PW10 that it is usual practice to fix the duplicate copy of TR5 receipt with respect to collection of CF in CF Register and the original will be available in the TR5 Receipt Book.



Exts. P23(a), P23(b), P23(c), P24(a), P24(d), P24(b), P25(a), P24(f), P24(e) and P24(c) which are the original TR5 Receipts are with respect to Rs.200/-, 300/-, 100/-, 200/-, 200/-, 200/-, 100/-, 200/-, 1,000/- and 100/- respectively. In the duplicate receipts with respect to the original receipts except Exts.P24(e) and P24(c) which have been marked as Exts.P32(a), P32(b), P32(c), P32(d), P32(f), P32(g), P34(a) and P33(b), the amounts shown are Rs.2,100/-, 3,300/-, 1,100/-, 2,000/-, 1,700/-, 500/-, 3,100/- and 1,200/- respectively. PW10 had deposed that with respect to Exts.P24(e) and P24(c) the duplicate receipts have been pasted in his report which relate to Rs.1,900/- and Rs.500/- respectively. So, the total amount collected by the accused as per the duplicate receipts will come to Rs.17,400/- But the amount collected as per the original receipts only comes to Rs.1,700/-. So, it is clear that by way of falsification of accounts the accused had managed to misappropriate a sum of Rs.15,700/-. A perusal of the original receipts also shows that for the sake of convenience, the accused had erased one of the letter in



order to show lesser amount. For example, in Ext.P23(a) one '0' is seen erased. So, it is clear that falsification of accounts was purposefully and dishonestly done by the accused in order to facilitate his attempt to misappropriate Government money. Hence, it is further clear that the prosecution has succeeded in proving that the accused in C.C.26/2009 has committed the offence punishable under S.477-A of I.P.C. also.

31. On re-appreciation of evidence, entrustment of Ext.P11 to P25 TR5 receipts to the accused, is established by the prosecution. Similarly, collection of fees and fines using the said TR5 receipts and misappropriation by way of committing falsification of TR5 receipts by the accused were also proved by the prosecution. It is true that, PWs 4 and 9 also collected fees and fines, coming to small amounts, using the said TR5 receipts, they have categorically given evidence that, after collecting the amounts, they have handed over the same to the accused. Thus, the allegation of the prosecution that, the accused, while working as an Assistant Motor Vehicle Inspector, Sub



Regional Transport Office, Neyyattinkara, during the period from 11.04.2003 to 18.03.2004, who was authorized to collect fees and fines in respect of the vehicles, had collected Rs.4,93,400/- being the fees and fines directly and through other officials in the office, using TR5 receipts, which have been entrusted to him and possessed by him during the period from 04.04.2003 to 12.03.2004 and out of Rs.4,93,400/- collected by the accused, he had remitted only Rs.2,12,190/- in the office and he dishonestly and fraudulently misappropriated the balance amount of Rs.2,81,210/- and similarly, during the period from 30.03.2004 to 24.06.2004, the accused, who was authorized to collect fees and fines in respect of the vehicles, had collected Rs.56,310/- during the period from 17.04.2004 to 25.06.2004 and he had remitted only Rs.47,410/- in the office and he dishonestly and fraudulently misappropriated the balance amount of Rs.8,900/-, is proved beyond reasonable doubt. In this regard, apart from the substantive evidence available, Ext.P43, expert opinion proved through PW17 also proved



that the handwriting and signatures of the accused agree standard writings and signatures in significant writing characteristics. Thus, the expert opinion fully corroborated the substantive evidence as well.

32. Before conclusion, it is relevant to consider what are the essentials to be proved to complete an offence under Section 409 of IPC. In the decision reported in ***[(2012) 8 SCC 547 : AIR 2012 SC 3242] Sadhupati Nageswara Rao v. State of Andhra Pradesh***, the Apex Court held that, *in order to sustain a conviction under section 409 of the Indian Penal Code, 1860, two ingredients are to be proved: namely: (i) the accused, a public servant or a banker or agent was entrusted with the property of which he is duty bound to account for; and (ii) the accused has committed criminal breach of trust. What amounts to criminal breach of trust is provided under section 405 IPC. The basic requirement to bring home the accusations under section 405 IPC are the requirements to prove conjointly (i) entrustment and (ii) whether the accused was actuated by a dishonest intention or not, misappropriated it or*



converted it to his own use or to the detriment of the persons who entrusted it.

33. That apart, it is also the essential requirement that, it should be shown that the accused has acted in the capacity of a public servant, banker, merchant, factor, broker, attorney or agent, as held by the Apex Court in the decision reported in **[2015 CrLJ 4040 : (2015) 3 SCC (Cri) 724 : (2015) 8 Scale 95], Robert John D'Souza v. Stephen V Gomes.**

34. It is equally the well settled law that, once it is proved by the prosecution that there was entrustment of property and there was no proper accounting of the entrusted property, then the burden is on the accused to prove that there was no misappropriation and to explain what happened to the property so entrusted. When the accused fails to discharge his burden or failed to explain or account for the misappropriated property, the accused is said to have committed the offences of criminal breach of trust and misappropriation. The fraudulent intention of the accused could be inferred from the attending



circumstances from the evidence adduced and the same could not always be proved by direct evidence. Thus, the law on the point is that, prosecution has the duty to prove entrustment of property to the accused and then it is the duty of the accused to account for the same or to explain the same. The same ingredients of criminal breach of trust and misappropriation have to be proved by the prosecution for convicting the accused for the offences punishable under Sections 13(1)(c) of the P.C. Act, 1988 as well. Decisions reported in **Jaikrishnadas Manohardas Desai and Another v. State of Bombay**, 1960 KHC 694: AIR 1960 SC 889: 1960 (3) 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 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, **Roshen Lal Raina v. State of Jammu & Kashmir**, 1983 KHC 584: 1983 (2) SCC 429: AIR 1983 SC 631: 1983 SCC (Cri) 533: 1983 CriLJ) 975 and **Raghavan K v. State of Kerala**, 2012 KHC 420 are in support of this view.

35. In the instant case, as already discussed, the entrustment of TR5 receipts and amount alleged to be collected by the accused are proved by the prosecution and the accused has no explanation otherwise to justify that he did not misappropriate the amounts, as alleged by the prosecution.

36. Point Nos.6 and 7:- Thus, on reappraisal of evidence, it could be gathered that, the prosecution evidence categorically established commission of offences punishable under Section 13(2) read with 13(1)(c) of the P.C. Act and under Sections 409 and 477-A of IPC, by the accused, beyond reasonable doubt as found by the Special



Court. Therefore, the conviction imposed against the accused by the Special Court does not require any interference.

37. Coming to the sentence, considering the gravity of offences, the same seems to be very reasonable considering the gravity of the offences. Therefore, I am inclined to confirm the sentence imposed by the Special Court, as such. Therefore, the common verdict impugned does not require any interference and in such view of the matter, these appeals must fail.

38. In the result, these criminal appeals stand dismissed. All interlocutory applications pending in these appeals stand dismissed.

39. 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 Special Court, forthwith, for information and further steps.

**Sd/-
A. BADHARUDEEN
JUDGE**

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