



2025:KER:77700

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 17<sup>TH</sup> DAY OF OCTOBER 2025 / 25TH ASWINA, 1947

CRL.A NO. 992 OF 2010

AGAINST THE JUDGMENT DATED 26.04.2010 IN C.C. NO.151 OF 2008 ON THE  
FILES OF THE COURT OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE,  
KOTTAYAM

APPELLANT/ACCUSED NOS.3 AND 4:

- 1 P.R.SASI, S/O RAMAN,  
PLATHOTTATHIL HOUSE, ADUKIDANTHAN, CHATHURANGAPPARA,  
IDUKKI.
- 2 K.G. SASIDHARAN NAIR  
S/O. GOPINATHAN NAIR, KOLLIKUNNEL HOUSE, KALLUPALAM,  
CHATHURANGAPPARA, IDUKKI.

BY ADVS.  
SHRI.C.S.MANILAL  
SRI.S.NIDHEESH

RESPONDENT/STATE:

STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.

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

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07.10.2025,  
THE COURT ON 17.10.2025 DELIVERED THE FOLLOWING:

**“C.R”****JUDGMENT****Dated this the 17<sup>th</sup> day of October, 2025**

The 3<sup>rd</sup> and 4<sup>th</sup> accused in C.C. No.151/2008 on the files of the Court of the Enquiry Commissioner and Special Judge, Kottayam, have filed this appeal, under Section 374(1) of the Code of Criminal Procedure, 1973, challenging the conviction and sentence imposed by the Special Judge, against them as per the judgment dated 26.04.2010. The State of Kerala, represented by the Public Prosecutor is arrayed as the sole respondent herein.

2. Heard the learned counsel for the appellants and the learned Public Prosecutor, in detail. Perused the verdict under challenge, the records of the Special Court as well as the decisions placed by the learned counsel for the appellants.

3. Parties in this appeal shall be referred as ‘accused’ and ‘prosecution’, hereafter.

4. In this matter, the prosecution case is that, the 1<sup>st</sup> accused, who was Manager in Idukki District Co-



operative Bank, Thookkupalam branch and as such being public servant, entered into criminal conspiracy with the other accused persons, forged documents in respect of 1 acre 15 cents of property in survey No.1/1 Kalkoonthal village and the said documents were used as genuine, by impersonating Joseph Mathew (Baby), Edakunneal House, Vattappara, who was the real owner of the property (subsequently sold to one Thankachan), through the 3<sup>rd</sup> accused at the volition of the 1<sup>st</sup> and 4<sup>th</sup> accused and obtained loan of Rs.1,00,000/- on 09.01.2001 from the bank. On this premise, the prosecution alleges commission of offences punishable under Sections 13(1)(c) and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 [hereinafter referred as 'P.C. Act' for short] and under Sections 468, 471, 419 and 120B of the Indian Penal Code [hereinafter referred 'IPC' for short], by the accused.

5. The 1<sup>st</sup> and 2<sup>nd</sup> accused have expired and the case against them has abated. The 3<sup>rd</sup> and 4<sup>th</sup> accused appeared on summons. After hearing both sides charge was framed under Sections 419, 420, 120-B read with 468, 471 IPC and 120-B IPC read with Sections 13(2) read with 13(1)



(c) and 13(1)(d) of the P.C. Act against the 3<sup>rd</sup> and 4<sup>th</sup> accused.

6. After framing charge, the Special Court recorded evidence and completed trial. During trial, PWs 1 to 12 were examined and Exts.P1 to 67 were marked on the side of the prosecution. After questioning the accused under Section 313(1)(b) of Cr.P.C, Exts.D1 to D1(b) were marked on the side of accused as defence evidence.

7. On appreciation of evidence, the Special Court found that the 3<sup>rd</sup> accused was guilty for the offences punishable under Sections 419, 420, 468 and 471 of the IPC and under Section 120B of IPC read with 13(2) of the P.C. Act. The Special court also found that, the 4<sup>th</sup> accused was guilty for the offences punishable under Section 120B read with 468 and 471 of the IPC and 120B of IPC read with 13(2) of the P.C. Act. Accordingly, they were convicted for the said offences and sentenced as under:

*In the result, 3<sup>rd</sup> accused is convicted under Sec.419 I.P.C. and sentenced to undergo rigorous imprisonment for 1 (one) year, convicted under Sec.420 I.P.C. and sentenced to*



*undergo rigorous imprisonment for 2 (two) years and fine Rs.50,000/- (fifty thousand), in default to undergo simple imprisonment for 3 (three) months, convicted under Sec.468 I.P.C. and sentenced to undergo rigorous imprisonment for 1 (one) year, convicted under Sec.471 I.P.C. and sentenced to undergo rigorous imprisonment for 1 (one) year and convicted under Sec.120-B I.P.C. r/w Sec.13(2) of the Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for 2 (two) years and fine Rs.50,000/- (fifty thousand), in default to undergo simple imprisonment for 3 (three) months. The sentences of imprisonment shall run concurrently.*

*The 4<sup>th</sup> accused is convicted under Sec. 120-B r/w Sec.468 I.P.C. and sentenced to undergo rigorous imprisonment for 1 (one) year and fine Rs.50,000/- (fifty thousand), in default to undergo simple imprisonment for 3 (three) months, convicted under Sec. 120-B r/w 471 I.P.C. and sentenced to undergo rigorous imprisonment for 1 (one) year and convicted under Sec.120-B r/w 13(2) of the Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for 2 (two) years and*



*fine Rs.50,000/- (fifty thousand) in default to undergo simple imprisonment for 3 (three) months. The sentences of imprisonment shall run concurrently.*

8. While canvassing the acquittal of the 3<sup>rd</sup> and 4<sup>th</sup> accused, it is submitted by the learned counsel for accused Nos.3 and 4 that, the Special Court relied on the evidence of PWs 1, 5 and 17 as well as Ext.P42 confession statement as that of the 4<sup>th</sup> accused to find that, accused Nos.3 and 4 committed the offences alleged by the prosecution. It is argued by the learned counsel for accused Nos.3 and 4 that, in the instant case, there was no proper identification of either the 3<sup>rd</sup> accused or the 4<sup>th</sup> accused. It is submitted that, though PW5, who had disbursed the loan to the 3<sup>rd</sup> accused, was examined to prove the identity of the 3<sup>rd</sup> accused, when a question regarding identity of the 3<sup>rd</sup> accused was put directly to PW5, at the first instance, he deposed in the negative, though subsequently, he testified identifying the 3<sup>rd</sup> accused with certainty, after pointing out him at the dock, among accused Nos.3 and 4. It is submitted further that, the Special Court relied on the



evidence of PW5 to identify the 3<sup>rd</sup> accused merely on the basis of photograph identification. According to the learned counsel for accused Nos.3 and 4, even though identification of an accused, through photograph is not legally impermissible, the modalities for the same should have to be complied in such identification. Otherwise, the photograph identification is not proper in the eye of law. To substantiate this contention, the learned counsel for accused Nos.3 and 4 placed decision of the Apex Court reported in **[AIR 2004 Supreme Court 4965 : 2005 (1) SCC 85 : 2004 AIR SCW 5685] D. Gopalakrishnan v. Sadanand Naik and Others**, wherein the Apex Court held as under:

*The learned Counsel for the appellant vehemently contended that showing of photographs to the witnesses for the purpose of identification is permissible under law. He even drew our attention to the Police and Criminal Evidence Act, 1984 which is in force in England and submitted that the provisions of the said statute permit the showing of photographs to the witnesses for the purpose of identification and there is nothing in law*



*which prohibits such action being taken by the Investigating Officer. In the instant case, the witnesses had not described the physical features of the accused or any identifying characteristics as to how they identified the assailants. To such a witness, showing of photograph would only lead the investigating officer to make the wrong conclusion regarding the identification. Even under the provisions of the Police and Criminal Evidence Act, 1984 which is prevalent in England, the photographs could be shown to the witnesses only under certain specified conditions. Annexe E of the Act are the guidelines and it says that before showing the photographs of the suspect, the supervising officer must first confirm that the description of the suspect given by the witness has been recorded, and if the supervising officer is unable to confirm the description, the officer shall postpone the showing of the photographs. The other condition as stated in Annexe E of the statute says that a witness must not be shown photographs or computerized or artist's composite or similar likeness or pictures if the identity of the suspect is known to the police and suspect is available to take part in a video identification, an*





*identification parade or group identification.*

*There are no statutory guidelines in the matter of showing photographs to the witnesses during the stage of investigation. But nevertheless, the police is entitled to show photographs to confirm whether the investigation is going on in the right direction. But in the instant case, it appears that the investigating officer procured the album containing the photographs with the names written underneath and showed this album to the eye-witnesses and recorded their statements under Section 161 Cr.P.C. The procedure adopted by the police is not justified under law as it will affect fair and proper investigation and may sometimes lead to a situation where wrong persons are identified as assailants. During the course of the investigation, if the witness had given the identifying features of the assailants, the same could be confirmed by the investigating officer by showing the photographs of the suspect and the investigating officer shall not first show a single photograph but should show more than one photograph of the same person, if available. If the suspect is available for identification or for video identification, the*



*photograph shall never be shown to the witness in advance.*

9. Apart from that, the learned counsel for the accused placed decision of this Court in ***Santhosh Madhavan @ Swami Amritha Chaithanya v. State*** reported in ***[2014 KHC 31]*** to buttress the same point. The learned counsel for accused Nos.3 and 4 also placed decision of the Bombay High Court in ***Laxman Ganpati Khot and Others v. Anusyabai and Another*** reported in ***[AIR 1976 BOM 264 : AIR 1976 BOMBAY 264]*** cited in this regard.

10. Relying on the decision of the Apex Court reported in ***[2024 KHC 6345 : 2024 KHC OnLine 6345 : 2024 INSC 490]*** ***Vinod Jaswantray Vyas (Dead) Through LRs v. State of Gujarat***, it is pointed out by the learned counsel for accused Nos.3 and 4 that, mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the “evidence of those persons who can vouchsafe for



the truth of the facts in issue". In this decision, the Apex Court relied on another decision reported in **[2003 (8) SCC 745] Narbada Devi Gupta v. Birendra Kumar Jaiswal**, holding the same view.

11. According to the learned counsel for accused Nos.3 and 4, in this case, the signature of the 3<sup>rd</sup> accused in the loan application, marked as Ext.P13 and the signature of the 4<sup>th</sup> accused in Ext.P16 application for membership, submitted by the 3<sup>rd</sup> accused by impersonating Joseph Mathew (Baby) were not forwarded to FSL to get an expert opinion of the handwriting to prove the same. It is also pointed out that, Ext.P42 was also not sent for getting expert opinion to prove that the same was one voluntarily written by the 4<sup>th</sup> accused. It is submitted by the learned counsel for accused Nos.3 and 4 further that, the prosecution case as to availing fake loan by the 3<sup>rd</sup> and 4<sup>th</sup> accused with the connivance of the 1<sup>st</sup> and 2<sup>nd</sup> accused, who were no more, is not substantially proved beyond reasonable doubt and in such a case, 3<sup>rd</sup> and 4<sup>th</sup> accused are entitled to get acquittal on adjudging benefit of doubt in



their favour by reversing the judgment of the Special Court.

12. Repelling the contentions raised by the learned counsel for accused Nos.3 and 4, it is pointed out by the learned Public Prosecutor that, regarding the identity of the 3<sup>rd</sup> accused as the person, who applied for loan as per Ext.P13 is concerned, when Joseph Mathew (Baby) was examined as PW11, he had given evidence that, when there was failure to pay the loan availed in his name, a letter was issued in his address and on receipt of the same, he in turn responded that he did not avail any loan. At this juncture, PW11 find out the person, who affixed the photograph in the application form for the loan and it was found after meeting him at his house that the person was the 3<sup>rd</sup> accused. The evidence of PW11 during cross-examination in this regard is available to see that it was the 3<sup>rd</sup> accused, who availed loan by impersonating PW11. He also submitted that, in the deposition of PW5 in page No.2 also, he categorically identified the 3<sup>rd</sup> accused by pointing him at the dock, as the person, who had met him at the time of disbursement of the loan. According to the learned Public Prosecutor, even though to the first question



regarding the identity of the 3<sup>rd</sup> accused, PW5 stated that he did not know him without properly understanding the question, subsequently, he had categorically stated that, it was the 3<sup>rd</sup> accused, who came to meet him at the time of disbursement of the loan. Therefore, the identity of the 3<sup>rd</sup> accused is well established. It is pointed out further that, the evidence of PW5 is sufficient to identify the 4<sup>th</sup> accused also, as he deposed that, he was familiar to the 4<sup>th</sup> accused, as the 4<sup>th</sup> accused applied for loan in Nedumkandam Co-operative Society, while PW5 was working there.

13. Insofar as proof of Ext.P42 confession statement, alleged to be written by the 4<sup>th</sup> accused addressed to the General Manager, as deposed by PW17, is concerned, it is pointed out by the learned Public Prosecutor that, the proof of the document to be found with the assistance of explanation to Section 47 of the Evidence Act, as it was deposed by PW17 that, the 4<sup>th</sup> accused written Ext.P42 in front of him. Therefore, Ext.P42 was rightly relied on by the Special Court to identify the 3<sup>rd</sup> and 4<sup>th</sup> accused and entered into conviction. Thus, the learned Public Prosecutor



opposed interference in the impugned verdict.

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

*1. Whether the Special Court is justified in finding that the 3<sup>rd</sup> accused committed the offence punishable under Section 120B of IPC read with 13(2) of the P.C. Act, 1988?*

*2. Whether the Special Court is justified in finding that the 3<sup>rd</sup> accused committed the offence punishable under Section 419 of IPC ?*

*3. Whether the Special Court is justified in finding that the 3<sup>rd</sup> accused committed the offence punishable under Section 420 of IPC ?*

*4. Whether the Special Court is justified in finding that the 3<sup>rd</sup> accused committed the offence punishable under Section 468 of IPC ?*

*5. Whether the Special Court is justified in finding that the 3<sup>rd</sup> accused committed the offence punishable under Section 471 of IPC ?*

*6. Whether the Special Court is justified in finding that the 4<sup>th</sup> accused committed the offence punishable under Section 120B read with 468 of IPC?*

*7. Whether the Special Court is justified in finding that the 4<sup>th</sup> accused committed the offence punishable under Section 120B read with*



*471 of IPC?*

*8. Whether the Special Court is justified in finding that the 4<sup>th</sup> accused committed the offence punishable under Section 120B of IPC read with Section 13(2) of the P.C. Act, 1988?*

*9. Whether the verdict of the Special Court would require interference?*

*10. Order to be passed?*

15. Point Nos.1 to 8:- In order to address these questions, it is necessary to evaluate the evidence, in this case. PW1 deposed that he was working as the Manager of Idukki District Co-operative bank, Mundiyeeruma branch from 01.01.2003 and the 1<sup>st</sup> accused was the Manager in that bank in 1997-2001. He deposed that Mundiyeeruma branch was situated at the place Thookkupalam. He further deposed that, since the loan taken in the name of Joseph Edakunnel i.e. PW11/Joseph Mathew (Baby) was not closed, he had sent notices to the said person and on his enquiry and it was understood that Joseph Mathew (Baby) had not come to the bank to avail the loan and had not signed in the documents and he reported the matter to head office. He further said that Ext.P1 is the loan application given in



the name of Joseph Mathew (Baby). Ext.P2 is the affidavit filed along with it. Ext.P3 is the consent letter given in the name of Joseph Mathew (Baby). Ext. P4 is the tax receipt in the name of Joseph Mathew (Baby). Ext.P5 is the photocopy of the possession certificate. Ext.P6 is the photocopy of location sketch. Ext.P7 is the encumbrance certificate. Ext. P8 is the photocopy of the assignment deed. Ext.P9 is the provisional patta, Ext.P10 the release deed. Ext.P11 is the valuation certificate in respect of the property. Ext.P12 is the photocopy of the scrutiny report given by the Advocate. Ext.P13 is the letter given by PW5 in order to forward the document to create mortgage by deposit. Ext.P15 is the affidavit in the name of Joseph Mathew (Baby). Ext.P16 is the accounting opening form in the name of Joseph Mathew (Baby). Ext. P17 Is the accounting opening form in the name of K.G. Sasidharan. Ext.P18 is cash cheque for Rs.1.00.000/- which was shown to be collected in the name of PW11 and Ext.P19 is the voucher for that amount which are kept in the bank. He further deposed that, Ext.P22 is the promissory note in the name of PW11, Ext.P23 is the





consumption loan agreement, Ext.P24 is the loan sanction order, Ext.P25 is the encumbrance certificate and that in Ext.P23 K.G. Sasidharan Nair and Beena Cherian signed as witnesses.

16. PW1 identified the signature of Divakaran (A1) in Exts.P1 to P3 and P5. He also said that Ext.P11 valuation certificate was prepared and signed by Divakaran. Beena Cherian was examined as PW7 and she testified that she was working as Clerk on daily wages in Idukki District Co-operative bank, Mundiyeeruma branch from December 1999 to June 2001 and she signed in Ext.P23 agreement as directed by the then Manager.

17. PW5 deposed that he was working as Accountant in Idukki District Co-operative bank from 1998 to 2001, at that time Divakaran was the Manager and he could identify Divakaran's signature. He identified signature of Divakaran in Ext.P1 to P3 and P5 to P7. He further deposed that the application and the connected documents in the disputed loan were verified by Divakaran. Divakaran died in January and that after sanction of the loan from the Head Office he



disbursed the loan amount to the applicant. According to him, he attested the signature of the applicant in Ext.P13, which is Form No.3, the forwarding letter to the Manager Nedumkandam branch for deposit of the title deed. He further testified that he identified the applicant from the photo in Ext.P1 loan application and accused No.3 in the dock is the person who signed before him in Ext.P13. He said that, since Divakaran died in January he was in charge of the Manager.

18. PW1 deposed that on enquiry, he was convinced that the photograph placed in Ext.P1 loan application is that of P.R.Sasi, the 3<sup>rd</sup> accused. In cross examination he replied that he even went to the house of the 3<sup>rd</sup> accused in the dock. PW5 deposed that he disbursed the loan amount, that he identified the loanee from the photograph in Ext.P1 application, as he has acquaintance with him, since the 3<sup>rd</sup> accused used to come for the purpose of the loan and he identified the accused No.3 in the dock as the said person. He also said that the person in the photograph in Ext.P1 himself signed before him in Ext.P13 and P19. He explained



that since the loan was already sanctioned from the Head Office, he had no occasion to scrutinize the file and that the loan application was sent to the Head Office by the former Manager, Divakaran. He also said that the 4<sup>th</sup> accused in the dock was also used to come along with 3<sup>rd</sup> accused from the time the loan application was given and that 4<sup>th</sup> accused was also present at the time of execution of Ext.P13. In cross-examination a suggestion was made to him that the 3<sup>rd</sup> accused in the dock is not the person in Ext.P1 photograph and he denied it. He also said that the 4<sup>th</sup> accused had loan account in Idukki District Co-operative bank, Nedumkandam branch, that he had previous acquaintance with the 4<sup>th</sup> accused, as he was working in that branch. Nothing has come out to disbelieve the evidence of PW5. A suggestion was made during cross examination that he gave false evidence against the accused for fear of that he himself would be made accused in the case, he denied that suggestion. When the loan was already sanctioned as per the papers forwarded by the former Manager, PW5 might not have taken care to verify



whether 3<sup>rd</sup> accused himself was the loanee. It is also to be noted that loan application contains the photograph of the 3<sup>rd</sup> accused. So the involvement of accused Nos.3 and 4 is specifically spoken to by PW5. There is no suggestion to him that he was also a member of the conspiracy. So there is no reason to disbelieve the testimony of PW5.

19. Regarding the identity of the 3<sup>rd</sup> accused is concerned, initially, as argued by the learned counsel for the accused, PW5 stated that he did not know. But, immediately he stated that, he knew the 3<sup>rd</sup> accused and he identified the 3<sup>rd</sup> accused at the dock voluntarily, when the 3<sup>rd</sup> and 4<sup>th</sup> accused were at the dock. In fact, there is no reason to disbelieve the identification of the 3<sup>rd</sup> accused by PW5 and the same is not at all a photograph identification as argued by the learned counsel for accused Nos.3 and 4, to apply the ratio of the decisions placed by him. In fact, the ratio of the decisions have no direct application in this case, where PW5 as well as PW11 well identified him as the person who applied and signed the necessary documents to avail loan of Rs.1 Lakh in the



name of PW11.

20. The Special Court given much reliance on Ext.P42 confession statement of the 4<sup>th</sup> accused to show the involvement of the 4<sup>th</sup> accused in the matter of availing of fake loan. Ext.P42 is proved through PW17. PW17 deposed that he was the Manager of the Idukki District Co-operative Bank, Nedumkandam branch. He deposed that 4<sup>th</sup> accused in the dock had account in Nedumkandam branch, that he asked 4<sup>th</sup> accused regarding the loan taken from Mundiyeeruma branch, he gave written statement to him addressing the General Manager and that he sent the same to the General Manager. He further said that Ext.P42 is the said statement given by 4<sup>th</sup> accused. The marking of the statement was objected by the counsel for the accused for the reason that the statement was addressed to General Manager, Idukki District Co-operative Bank and there was no endorsement on it by PW17. Since the statement was alleged to be handed over to PW17, the document was marked by the Special Court. The crucial evidence of PW17 is that 4<sup>th</sup> accused wrote the statement in front of him and



signed the same in his presence. On this ground, the Special Court found that PW17 is the most competent person to say about the said statement. He further said that he did not compel 4<sup>th</sup> accused to give such a statement and he only told him that in order to prove his innocence the statement could be forwarded to the General Manger. A suggestion was made during cross-examination that 4<sup>th</sup> accused did not give such a statement. PW17 emphatically denied the same. At the time of questioning under Sec.313 Cr.P.C. the 4<sup>th</sup> accused denied that he gave such a statement.

21. The learned counsel for accused Nos.3 and 4 zealously opposed the sanctity of Ext.P42 mainly urging that the same was not given to PW17 and it was given to the General Manager. But, on analysing the evidence of PW17, it is crystal clear that Ext.P42 was a statement written and signed by the 4<sup>th</sup> accused in front of PW12 and handed over to him, though it was addressed to the General Manager. Therefore, the contention raised by the learned counsel for accused Nos.3 and 4 in this regard



would not succeed. For these reasons the Special Court held that, there was no reason to disbelieve Ext.P42, since it was brought out that the statement was not given under any threat, inducement or promise. So the said document would be admissible in evidence.

22. A perusal of Ext.P42, it was stated that Manager, Divakaran (A1) borrowed a total amount of Rs.75,000/- from the 4<sup>th</sup> accused on different occasions, that Divakaran did not repay the same inspite of repeated demands, that on one occasion when he went to the bank demanding the money Divakaran told him that one person, who was not in the station gave documents of his property for taking loan, that if a third person was arranged at the place of the property owner, the loan could be passed and amount could be repaid to the 4<sup>th</sup> accused. Accordingly he arranged his neighbor, Sasi (A3) and introduced him to Divakaran and an account was opened in the name of the property owner Joseph Mathew (Baby), that the loan was passed when Divakaran was alive, that later Divakaran died, thereafter the amount was withdrawn and at that



time another person was in charge of the Manager and he himself got the entire amount as per the loan. Considering the other facts brought out in evidence, it appears that what are stated in Ext.P42 are the true facts except the version that Joseph Mathew (Baby) was not in station and he entrusted his title deeds to Divakaran.

23. PW11, Joseph Mathew (Baby) given evidence that, he did not avail any loan and PW10 to whom PW11 sold the property subsequently also deposed that he also did not avail any loan. Relying on the evidence of PWs 9, 11 to 16, 17 and 23, the Special Court found that, the probability would be that the prior document, tax receipt and the encumbrance certificate given by PW10 to PW16, which in turn were given to PW23 for effecting the mutation, were returned to Ramesh Babu (A2), that there was a conspiracy between Divakaran (A1) and Ramesh Babu (A2) and 4<sup>th</sup> accused and thereafter 3<sup>rd</sup> accused was arranged by 4<sup>th</sup> accused in the place of the loanee, that there was conspiracy between all the accused and accordingly the documents were forged and the loan was





sanctioned. In this regard, the Special Court observed that, PW5 stated that the 3<sup>rd</sup> accused used to come along with 4<sup>th</sup> accused to the bank in connection with the taking of the loan and so the same clearly corroborated the statement in Ext.P42, proved through PW17. PW5 also said that it was 3<sup>rd</sup> accused, who signed in his presence in Ext.P13. So it is evident that accused No.3 had also knowledge about the taking of the loan in the name of another person.

24. It is true that, the prosecution could not produce direct evidence regarding the criminal conspiracy entered into between all the accused persons and it is impossible also as it would be done secretly. The criminal conspiracy could be inferred from the facts and circumstances brought out by the prosecution. There is sufficient evidence to infer that the 1<sup>st</sup> accused did all the things to sanction the loan in the name of Joseph Mathew (Baby) and ultimately the money was received either by 3<sup>rd</sup> accused or by 4<sup>th</sup> accused. So he committed criminal misconduct by giving Rs,1,00,000/- either to 3<sup>rd</sup> accused or to 4<sup>th</sup> accused by illegal means. Since 3<sup>rd</sup> accused gave his photograph in



order to affix in the loan application and he signed in the loan documents, it is evident that the 3<sup>rd</sup> accused is a member of the conspiracy. Ext.P16 is the account opening form in the name of Joseph Mathew (Baby). The 4<sup>th</sup> accused is shown as the person who introduced the account holder to the bank. Ext.P23 is the consumption loan agreement in respect of the alleged transaction. The 4<sup>th</sup> accused signed therein also as a witness. So the prosecution evidence would emphatically support that 4<sup>th</sup> accused is also the member of the conspiracy. As stated earlier Ext.P42 statement given by 4<sup>th</sup> accused to PW17 which could be termed as extra judicial confession also positively would prove the involvement of the 3<sup>rd</sup> and 4<sup>th</sup> accused in the misappropriation of Rs.1,00,000/- from the said bank, which still remains as unpaid.

25. PW4 deposed that he was working as Senior Accountant in Mundiyeeruma branch of Idukki District Co-operative bank and he produced documents before the Vigilance Dy.S.P. on 14.10.2003. Ext.P26 is the true copy of page No.256 in ordinary loan ledger kept in that bank and Ext.P28 is the true copy of the page in current account



ledger maintained in the name of Joseph in that bank. As observed by the Special Court, the marking of the said copies were objected from the side of the accused on the ground that they were not legally attested. But at the time of argument how those documents are inadmissible in evidence not even remotely pointed out. It is seen from the said ledgers that Rs.1,00,000/- was disbursed towards loan account of Joseph and the amount was debited from the current account on 25.01.2001. Ext.P18 is the cheque dated 25.01.2001 for Rs.1,00,000/- and it was cashed in the name of Joseph. So the prosecution could prove by producing documents that Rs.1,00,000/- was disbursed from the Idukki District Co-operative bank, Mundiyeeruma branch as per the loan sanctioned to Joseph Mathew (Baby).

26. Criminal conspiracy in terms of Section 120B of the IPC is an independent offence. The ingredients of the offence of criminal conspiracy, as laid down by the Apex Court are:

- (i) an agreement between two or more persons;



- (ii) the agreement must relate to doing or causing to be done either
  - (a) an illegal act;
  - (b) an act which is not illegal in itself but is done by illegal means.

The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end, or they have come together to pursue the unlawful object. The former does not render them conspirators, but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series



of acts, he would be held guilty under section 120B of the IPC.

27. Thus, the gist of the offence under section 120A is that the agreement between two or more persons to do or cause to be done an illegal act or a legal act by illegal means subject to the proviso that the agreement does not except agreement to commit offence, amount to a conspiracy unless it is followed by an overt act done by one or more persons in pursuance of such an agreement. An agreement to do an illegal act which amounts to a conspiracy, will continue as long as the members of the conspiracy remain in agreement and as long as they are acting in accord and in furtherance of the object for which they entered into the agreement.

28. It is not necessary that conspirators should know each and every detail of the plot so long as they are conspirators in the main object. Participation of all the conspirators from the very inception of conspiracy is also not necessary. Unity of purpose and the participation of the conspirators at different stages are the determinative



factors.

29. In this context, it is relevant to notice the Objects and Reasons of the said amendment to understand that the underlying purpose of introducing section 120A was to make a mere agreement to do an illegal act or an act which is not illegal by illegal means, punishable, the same are as follows:

30. The sections of the IPC which deal directly with the subject of conspiracy are those contained in Chapter V and section 121A of the IPC. Under the latter provision, it is an offence to conspire to commit any of the offences punishable by section 121 of the IPC or to conspire to deprive the King of sovereignty of British India or any part thereof or to overawe by means of criminal force or show of criminal force the Government of India or any Local Government and to constitute a conspiracy under this section. It is not necessary that any act or illegal omission should take place in pursuance thereof. Under section 107, abetment includes engaging with one or more person or persons in any conspiracy for the doing of a thing, if an act



or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing. In other words, except in respect of the offences particularised in section 121A conspiracy *per se* is not an offence under the IPC.

31. On the other hand, by the common law of England, if two or more persons agree together to do anything contrary to law, or to use unlawful means in the carrying out of an object not otherwise unlawful, the persons, who so agree, commit the offence of conspiracy. In other words, conspiracy in England may be defined as an agreement of two or more persons to do an unlawful act or to do a lawful act by unlawful means, and the parties to such a conspiracy are liable to indictment.

32. Experience has shown that dangerous conspiracies have entered into India which have for their object aims other than the commission of the offences specified in section 121A of the IPC and that the existing law is inadequate to deal with modern conditions. The present Bill is designed to assimilate the provisions of the



IPC to those of the English law with the additional safeguard that in the case of a conspiracy other than a conspiracy to commit an offence some overt act is necessary to bring the conspiracy within the purview of the criminal law. The Bill makes criminal conspiracy a substantive offence, and when such a conspiracy is to commit an offence punishable with death, or rigorous imprisonment for a term of two years or upwards, and no express provision is made in the Code, provides a punishment of the same nature as that which might be awarded for the abetment of such an offence. In all other cases of criminal conspiracy, the punishment contemplated is imprisonment of either description for a term not exceeding six months or with fine, or with both.

33. Prior to the amendment of the Code and the introduction of sections 120A and B, the doctrine of agency was applicable to ascertain the liability of the conspirators, however, conspiracy in itself was not an offence (except for certain offences). The amendment had made conspiracy a substantive offence and rendered the mere agreement to





commit an offence is punishable. Prior to the amendment, unless an overt act took place in furtherance of the conspiracy it was not indictable (it would become indictable by virtue of being abetment).

34. In the decision reported in **[(1999) 5 SCC 253: AIR 1999 SC 2640:1999 (3) SCR 1], State through Superintendent of Police, CBI/SIT v. Nalini and Others**, the Apex Court explained that conspiracy results in a joint responsibility and everything said written or done in furtherance of the common purpose is deemed to have been done by each of them. The Court held:

- 1. Under section 120A of the Indian Penal Code, 1860 offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is a legal act by illegal means overt act is necessary. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question*



*for consideration in a case is did all the accused have the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever horrendous it may be, that offence be committed.*

- 2. Acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.*
- 3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects must be inferred from the circumstances and the conduct of the accused.*
- 4. Conspirators may for example, be enrolled in a chain- A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrolment, where a*



*single person at the centre does the enrolling and all the other members are unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell which conspiracy in a case falls into which category. It may however, even overlap. But then there must be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.*

- 5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.*



6. *It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.*
7. *A charge of conspiracy may prejudice the accused because it forces them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution must produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy, the court must guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise*



*contribution of each member of the conspiracy but then there must be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".*

*8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist of essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time but may be reached by successive actions evidencing their joining of the conspiracy.*

*9. It has been said that a criminal conspiracy is a*



*partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefore. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done or written by each of them and this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incidental to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.*

10. *A man may join a conspiracy by word or by deed. However, criminal responsibility for a*



*conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty, and one who tacitly consents to the object of a conspiracy and goes along with other conspirators, standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime.*

35. The law on the issue emerges to the effect that conspiracy is an agreement between two or more persons to do an illegal act or an act which is not illegal by illegal means. The object behind the conspiracy is to achieve the aim of conspiracy. In order to achieve the ultimate object, parties may adopt many means. Such means may constitute different offences by themselves, but so long as they are adopted to achieve the ultimate object of the conspiracy, those are also acts of conspiracy. For an offence of conspiracy, it is not necessary for the prosecution to prove that conspirators expressly agreed to do an illegal act, the agreement may be proved by necessary implication. It is also not necessary that each member of



the conspiracy should know all the details of the conspiracy. Conspiracy is a continuing offence. Thus, if any act or omission which constitutes an offence is done in India or outside its territory, the conspirators continue to be the parties to the conspiracy. The conspiracy may be a general one and a smaller one which may develop in successive stages. It is an unlawful agreement and not its accomplishment, which is the gist/essence of the crime of conspiracy. In order to determine whether the conspiracy was hatched, the court is required to view the entire agreement and to find out as in fact what the conspirators intended to do.

36. Overall evaluation of the evidence would reveal that, the 3<sup>rd</sup> accused impersonated Joseph Mathew (Baby) and put up an application by affixing his photograph in the place of the photo of the applicant at the connivance of the 4<sup>th</sup> accused. Ext.P42 would reveal that, it was so done as instructed by the 1<sup>st</sup> accused to repay the amount due to the 4<sup>th</sup> accused, by creating fake loan application by using the documents in his custody as that of Joseph Mathew





(Baby). In fact, the evidence would show the identity of the 3<sup>rd</sup> and 4<sup>th</sup> accused in the manner known to law.

37. Coming to proof by opinion evidence as to handwriting and signature are concerned, as per Section 47 of the Evidence Act, 1872, the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact. Explanation to Section 47 of the Evidence Act provides for three modes of proof. That is to say, i) a person is said to be acquainted with the handwriting of another person when he has seen that person write, or ii) when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or iii) when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

38. In the instant case, PW17 categorically deposed



that the 4<sup>th</sup> accused written Ext.P42 in his presence and therefore, the evidence of PW17 would come within the purview of explanation (i) of Section 47 of the Evidence Act. In view of the above, there is no reason to disbelieve the evidence of PW17 to attach genuineness to Ext.P42. Therefore, the contention raised by the learned counsel for accused Nos.3 and 4 otherwise is found to be unsustainable.

39. Point Nos.9 and 10:- Thus, it has to be held that the prosecution successfully established that the 3<sup>rd</sup> accused committed offences punishable under Sections 419, 420, 468 and 471 of the IPC and under Section 120B of IPC read with 13(2) of the P.C. Act and the 4<sup>th</sup> accused committed offences punishable under Sections 120B read with 468 and 471 of the IPC and 13(2) of the P.C. Act. Therefore, the prosecution case is proved beyond reasonable doubt. Thus, the conviction imposed by the Special Court does not require any interference. Considering the facts and circumstances of this case, I am of the view that some leniency in the matter of sentence can be considered, as far as the 3<sup>rd</sup> accused is concerned.



40. In the result, this appeal stands allowed in part. The conviction entered into by the Special Court stands confirmed. Coming to the sentence imposed against the 3<sup>rd</sup> accused, the maximum sentence imposed by the Special Court, against the 3<sup>rd</sup> accused is for two years under Section 420 of IPC and Section 120B IPC read with 13(2) of the P.C. Act. In the interest of justice, I am inclined to modify the sentence to one year. Thus, the 3<sup>rd</sup> accused is sentenced to undergo rigorous imprisonment for one year and pay fine of Rs.50,000/- (Rupees Fifty Thousand Only) for the offences under Section 420 of IPC and 120B IPC read with 13(2) of the P.C. Act. In default of payment of fine, the 3<sup>rd</sup> accused shall undergo rigorous imprisonment/default imprisonment for a period of three months. Since the sentence imposed by the Special Court against the 3<sup>rd</sup> accused for other offences is one year and below, the same does not require any interference and the same stands confirmed.

41. Coming to the sentence imposed against the 4<sup>th</sup> accused, the Special Court imposed rigorous imprisonment for one year for the offences under Sections 120B read with 468 and 471 of the IPC and 13(2) of the P.C. Act. Since the



sentence lowest minimum, I am not inclined to modify the sentence against the 4<sup>th</sup> accused and the same stands confirmed. The substantive sentence shall run concurrently and the default sentence shall run separately.

42. The order suspending sentence and granting bail to the 3<sup>rd</sup> and 4<sup>th</sup> accused stands vacated, with direction to the 3<sup>rd</sup> and 4<sup>th</sup> accused to appear before the Special Court, forthwith, to undergo the modified sentence, failing which, the Special Court is directed to execute the sentence, without fail.

Registry is directed to forward a copy of this judgment to the Special Court, forthwith, for information and compliance.

**Sd/-  
A. BADHARUDEEN  
JUDGE**

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