

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Appeal No.729 OF 2007

Between:

C.Bala Malleshwar Rao

... Appellant

And

The State of Telangana
ACB, City Range, rep. by
Special Public Prosecutor

..Respondent/Complainant

Criminal Appeal No.737 OF 2007

Between:

G.Chandrasekhar

... Appellant

And

The State of Telangana
ACB, City Range, rep. by
Special Public Prosecutor

..Respondent/Complainant

Criminal Appeal No.789 OF 2007

Between:

Syed Anwar Hussain

... Appellant

And

The State of Telangana
ACB, City Range, rep. by
Special Public Prosecutor

..Respondent/Complainant

Criminal Appeal No.793 OF 2007

Between:

G.Damodar ... Appellant

And

The State of Telangana
ACB, City Range, rep. by
Special Public Prosecutor ..Respondent/Complainant

Criminal Appeal No.828 OF 2007

Between:

K.L.Rama Rao ... Appellant

And

The State of Telangana
ACB, City Range, rep. by
Special Public Prosecutor ..Respondent/Complainant

Criminal Appeal No.850 OF 2007

Between:

V.Satyanarayana and another ... Appellants

And

The State of Telangana
ACB, City Range, rep. by
Special Public Prosecutor ..Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED :16.04.2024

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

- 2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

- 3 Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? Yes/No

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

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! Counsel for the Appellants: Sri A.Dattanand

Sri S.Someshwar Rao

Sri L.N.Bhadri Raju

Sri C.Sharan Reddy

^ Counsel for the Respondents: Sri Sridhar Chikyala,

Special Public Prosecutor for ACB

>HEAD NOTE:

? Cases referred

¹ 2023 SCC OnLine SC 1261

² AIR 2004 SC 892

³ AIR 1985 SC 1224

⁴ AIR 1998 SC 244

⁵ (2003) 1 SCC 259

HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL Nos.729, 737, 789, 793, 828 and 850
OF 2007****COMMON JUDGMENT:**

1. These Criminal Appeals are filed aggrieved by the conviction recorded by the Principal Special Judge for SPE & ACB Cases, City Civil Court at Hyderabad vide judgment in C.C.No.17 of 2000 dated 15.06.2007 for the offences punishable under Sections 13(1)(c) r/w 13(2) Section 13(1)(d)(i) & (ii) r/w 13 (2) of the Prevention of Corruption Act, under Section 409 r/w 120-B IPC and Section 477A r/w Section 120-B IPC.

2. A4 (Syed Anwar Hussain, Senior Assistant) filed Criminal Appeal No.789 of 2007, A5 (V.Satyanarayana, Assistant Director) and A7 (M.Hari Narayana) filed Criminal Appeal No.850 of 2007, A9 (C.Bala Malleswara Rao, Chief Process Operator) filed Criminal Appeal No.729 of 2007, A10 (G.Chandrasekhar, Compositor) filed Criminal Appeal No.737 of 2007 and A11(K.L.Rama Rao, Machine Man) filed Criminal Appeal No.828 of 2007.

3. A1 (A.K.Gopalan, former Director, Osmania University) filed CrI.A.No.1114 of 2010 and the said appeal is decided separately as A1 was tried separately by trial Court.

4. A2 (Bheem Rao, Cashier) died during the course of trial. A3 (Ehsan Ahmed Khan, Senior Assistant) filed Criminal Appeal No.788 of 2007, he died during the pendency of appeal before this Court, as such, the appeal was dismissed as abated on 01.02.2024. A6 (B.Sankaraiah, Mono operator) died during pending trial and A8 (G.Damodar, Mono Type Operator) filed Criminal Appeal No.793 of 2007, died during pendency of appeal, as such, the case against A8 is dismissed as abated.

5. Briefly, facts of the case are that the Registrar of Osmania University addressed a letter dated 03.12.1993 vide Ex.P262 in the form of complaint to the Director General, Anti Corruption Bureau alleging that:

i) there was large scale embezzlement in payment of over time allowances contrary to the financial rules and procedure;

ii) Printing material purchased by Director-A1 along with other employees resulted in misappropriation of funds;

iii) Purchase of press equipment by A1 along with other employees deliberately without usage to gain illegally;

6. On the basis of the said complaint, the Director General, Anti Corruption Bureau ordered registration of crime and investigation. Accordingly, the case was registered on 01.01.1994 and investigation was taken up.

7. During the course of investigation, the concerned witnesses were examined and documents were also collected. Having concluded investigation, charge sheet was filed against A1 to A11. The gist of allegations made which are subject matters of charges framed against appellants and other accused are:

“1) During 1990-91 to 1992-93, A1 issued self-cheques amounting to Rs.28,99,343.43ps. The said cheques were encashed by A2 and A4. The said amount meant for overtime allowances to the employees were disbursed to an extent of Rs.11,13,339.59 ps and misappropriated the balance of Rs.17,86,003.84 ps punishable under Section 13(1) (c) r/w 13(2) of Prevention of Corruption Act.

2) A1, for the very same orders issued self-cheques and third party cheques to an extent of Rs.54,71,964.18ps to A2, A3, A7 to A11, who have encashed the cheques. It was shown that printing material worth Rs.36,55,560/- was purchased. However, the remaining amount of Rs.18,16,404-18 ps was not accounted, punishable under Section 13(1)(c) r/w 13(2) of PC Act r/w Section 34 of IPC.

3) A1 along with A2 and A4 purchased printing material including stationery to an extent of Rs.1,18,10,000.26ps at exorbitant rates, punishable under Section 13(1)(c) r/w 13(2) of P.C.Act r/w Section 34 of IPC.

4) A1 has issued self-cheques amounting to Rs.5,08,502.50ps and A2, A5 and A6 encashed the said cheques. An amount of Rs.25,470/- was given for private orders and the remaining amount of Rs.4,83,032.50 ps was misappropriated, punishable under Section 13(1)(c) r/w 13(2) of P.C.Act r/w Section 34 of IPC.

5) A1, A3 to A5 and A7 to A11 by corrupt and illegal means obtained pecuniary advantage to an extent of Rs.17,86,003.84 ps, Rs.18,16,404-18 ps, Rs.1,18,10,000-26ps

and Rs.4,83,032-50ps, violating financial limits, punishable under Section 13(1)(c) r/w 13(2) of P.C.Act r/w Section 34 of IPC.

6) A1, A3 to A5 and A7 to A11 have entered into criminal conspiracy while discharging their duties and misappropriated the amounts to an extent of Rs,17,86,003.84 ps, Rs.18,16,404.18 ps, Rs.1,18,10,000.26ps and Rs.4,83,032.50 ps for purchase of printing material, punishable under Section 409 r/w 34 IPC.

7) A1, A3 to A5 and A7 to A11 have falsified accounts willfully with an intention to defraud the institution and caused wrongful loss to the printing press, Osmania University, Hyderabad to an extent of Rs,17,86,003.84 ps, Rs.18,16,404.18 ps, Rs.1,18,10,000.26ps and Rs.4,83,032.50 ps, punishable under Section 477-A IPC r/w Section 120-B IPC.”

8. As seen from the allegations/charges against the appellants, the misappropriation was done in respect of disbursing overtime allowances to the employees of Osmania University and purchasing printing material and machinery.

9. The ACB, during the course of investigation, having collected documents and examining witnesses filed charge sheet for the offences under Sections 13(1)(c) r/w 13(2) Section 13(1)(d)(i) & (ii) r/w 13 (2) of the Prevention of Corruption Act, under Section 409 r/w 120-B IPC and Section 477A r/w Section 120-B IPC.

10. The prosecution examined P.Ws.1 to 37 and marked Exs.P1 to P268. On behalf of the accused, D.Ws.1 and 2 were examined and Exs.D1 to D4 marked. Learned Special Judge convicted A3 to A5 and A7 to A11 and sentenced to undergo rigorous imprisonment for a period of one year each under Sections 13(1)(c), 13(1)(d)(i) & (ii) r/w 13(2) of the Prevention of Corruption Act, 1988 r/w 34 IPC, Section 409 r/w 120-B IPC, Section 277-A r/w 120-B IPC.

11. Learned counsel appearing for the appellants would submit that the learned Special Judge has relied heavily on the enquiry conducted by P.W.2 against A1, A3 and A4 and the enquiry report Exs.P15, 16 and 17 respectively. The findings in the enquiry report were made basis to record

conviction without examining the witnesses or the records which were examined by the Enquiry Officer during enquiry. The documents Exs.P1 to P14, P22 to P247 which are overtime bills, cash books, bank statements, cheques and registers were all marked through P.W.1, who was Assistant Registrar, Osmania University. Merely marking the said documents cannot form basis for the Court to rely upon the gist of all the documents which were stated by the witnesses PWs.1 to 4. The prosecution ought to have exhibited before the Court as to how the misappropriation was done by the appellants herein.

12. According to the counsel, enquiry was conducted only against A1 to A4 and there is no enquiry against any of the other accused. Merely on the basis of conclusions drawn in the enquiry, all the accused were convicted. The defence taken by the appellants herein is that it was A1 who had the cheque power, drawing and disbursing power and responsible for the accounts of the Osmania University press. Even according to P.W.1, it was A1 who had informed and acknowledged that the amounts received were in fact paid to

the persons who had executed job work which are the outside agencies.

13. Learned counsel for A5 and A7 submits that enquiry was not conducted against A5 and A7. That itself reflects that even the department did not have any doubt about the alleged involvement of A5 and A7. It was further argued that the other witnesses who are P.Ws.4 to P23 stated that they have received overtime allowances. It is not the case of P.Ws.4 to 23 who are employees that they have received excess amounts and paid back the excess amounts to any of the appellants. It was explicitly stated by P.W.38 that A1 was responsible for embezzlement and misappropriation and others have assisted him. However, it was specifically stated by investigating officer that A3 to A11 were not concerned with purchase of printing material.

14. Learned counsel appearing for A4 argued that A4 was not entrusted with any amounts and whatever amounts were asked to be disbursed by A1, he had disbursed the same. The allegation that A4 was maintaining overtime allowance

register and other record were not proved by the prosecution. The Learned Special Judge had relied on the alleged confession of A4 before the enquiry officer/P.W.2 that he had withdrawn amount and was also maintaining the records pertaining to overtime allowances, which formed basis for conviction, which is incorrect.

15. On the other hand, learned Special Public Prosecutor for ACB submitted that it is not in dispute that amounts were entrusted to A1 as the Director for the purpose of disbursing overtime allowances and also purchase of stationery and other material. The amounts that were withdrawn by A1, who had the power to disburse amounts and make payments for purchase of stationery, has to account for the same. In the absence of giving details of payments made after withdrawing the amounts, would clearly reflect that A1 along with other accused have misappropriated the amounts that were entrusted to them. The entire documents that were collected during the course of investigation and examined by PWs.1 to 4 during enquiry that was conducted against A1 to A4 can be looked into by the criminal Court for the purpose of

adjudicating upon the criminal acts committed by these public servants. In the said circumstances, learned Special Judge was right in convicting the accused.

16. Having gone through the record and also the findings of the learned Special Judge, heavy reliance was placed upon the enquiry report of P.W.3 under Exs.P15 to P17 against A1 to A4.

17. P.W.1 worked as Deputy Registrar. According to P.W.1, the record that was available in the department of printing in Osmania University was subject matter of the enquiry against A1. On the basis of the said record, statements were prepared pertaining to overtime payments, purchase of stationery items for the years 1990-1991 and thereafter. P.W.1 prepared Ex.P1 statement showing the details of amounts drawn for payment of overtime allowances made for the relevant period. According to Ex.P1, A4 had shown that he had paid overtime allowances to the employees of Osmania University. The said statement made by A4 was considered by P.W.1. P.W.1 then marked Exs.P1 to P14 and P22 to P247,

which are cash book, bank statements, cheque registers, overtime bills etc. All the said documents were also provided to the ACB authorities. Similarly, statement Ex.P33 was prepared with the details of self-cheques and cheques issued in the name of employees for purchase of material for Osmania University Press. The said statement was prepared by P.W.1. Similarly, Ex.P34 is the statement of third party cheques issued for purchase during the year 1990-91 to 1992-93. Exs.P35 to P148 are the purchases pertaining to printing material. Ex.P162 is the statement showing particulars of payments of outside printing bills for the year 1990-91 to 1992-93. According to P.W.1, A5, who is a technical person prepared Ex.P230 showing existing machinery in the Osmania University and details of purchase of new machinery. Ex.P230 was prepared on 22.12.1995. According to P.W.1, for purchasing machinery for the Osmania University Press, A1 had to take permission from the authorities and thereafter call for tenders and then place it before the purchase committee. After obtaining approval from the purchase committee, purchase of machinery had to

be made. However, no such permission was taken by A1 for the purpose of purchase of machinery. During the course of cross-examination, P.W.1 admitted that there is no evidence that the entire amount was withdrawn by A 4. However, A4 had disbursed the amount in accordance with the register maintained by him.

18. P.W.2 worked as Director of Treasuries and he was asked to conduct enquiry against A1. According to P.W.2, A1 did not cross-examine any of the witnesses except one witness namely Ram Reddy during enquiry. However, A1 filed written statement and out of eight charges that were framed against A1, four charges were proved. The said charges were pertaining to payment of overtime allowances to the employees of Osmania University without sanction and irregularity in purchasing printing papers for Osmania University. Ex.P15 is the copy of enquiry report. According to P.W.2, i) Rs.31,83,765/- was misappropriated in OT allowance, ii) Rs.19,91,922/- misappropriated in purchasing printing paper; iii) Rs.20,10,090/- misappropriated for

purchasing stationery; iv) Rs.13,92,000/- was misappropriated for purchase of computer equipment.

19. Further, according to P.W.2 Rs.6,08,000/- was also not accounted which was towards alleged payments made for supply of computer equipment. P.W.2 further conducted enquiry against A4. A4 was given benefit of doubt in the departmental enquiry since A4 admitted in the departmental enquiry that he did not keep the records properly regarding overtime allowances payments. Ex.P17 is the enquiry report against A4. PW.2 recommended stoppage of three increments. During the cross-examination, P.W.2 stated that he did not have any documents to show that he was appointed as enquiry officer to conduct departmental enquiry against A1 to A4. Further, charges were not framed against A3 and A4. P.W.2 admitted that it is the duty of the Director to verify records of Osmania University printing press.

20. P.W.3 was the Professor in Physics. According to P.W.3, the Vice-Chancellor appointed three men committee including P.W.3 to examine the accounts pertaining to Publications of Osmania University Press for the years 1988-89 to 1992-93

along with Professor Y.Saraswathi Rao and Professor A.Narsing Rao (both not examined). On 03.06.1993, A1 presented himself before the Committee and he failed to produce any record. However, the allegations of i) unauthorized apportionment of income realized through proceeds; ii) costing procedure; iii) unauthorized apportionment of payment of overtime allowances to the employees of Osmania University Press; iv) purchase of various books like paper, printing material, printing equipment etc., and v) bogus entries in the stock were all looked into. Accordingly, on 28.06.1993 Ex.P18, preliminary report was given and later final report dated 02.09.1993 which is Ex.P19 was handed over to the Vice-Chancellor.

21. According to P.W.3, A1 was responsible for all the irregularities and unauthorized payments. He was assisted by A2, A3 and A4. Later, A4 submitted two overtime payment acquittance registers, which were found to be written subsequently. However, the said registers were not seized by the Investigating Officer. During the course of cross-examination, P.W.3 admitted that A1 was the Drawing and

Disbursing officer and he had cheque power. A1 was responsible for all the amounts drawn by him and also for settlement of the accounts. P.W.3 also stated that A1 never complained against other accused. When questioned by the counsel for A4, P.W.3 stated that A4 admitted during enquiry that he was maintaining overtime payment details.

22. P.Ws.4 to P.W.23, witnesses are permanent employees and also daily wage workers. During evidence, witnesses stated that they were paid overtime allowances and A2 and A4 used to take signatures after making payments.

23. P.W.24 was working as Senior Assistant in Arts College. He stated that A3 used to maintain records. Further, cheques were written by A2 and A3 and also he used to write cheques. However, the said cheques were signed by A1. P.W.24 identified A5 and A7 stating that he used to receive cash from A2 and also cheques were given for payment of money to outside printers. P.W.24 was declared hostile and cross-examined by the Public Prosecutor. During cross-examination by Public Prosecutor, he admitted that some cheques were being taken by A3 and A5 without signing in the registers.

24. P.W.25 was the Commercial Tax Officer. He had given information about M/s.Jayshree traders and M/s.Harikishan and Company for the years 1990-91 to 1992-93, to which 'Firms' payments were made.

25. P.W.26 is another ACTO, who spoke about M/s.Mico Business Corporation and the registration number of the Firm.

26. P.W.27 was working under A1 as binder in Osmania University Press during 1991-92 to 1992-19993. He stated that P.W.24 used to assist A3 in the purchase section. Third party cheques were taken by A3, A5, A6 and A7 pertaining to M/s.Harikishan Company and also M/s.Mac Traders, M/.OPrime Creative Force, M/s.Mico Business Corporation and M/s.Metro Traders. Though cheques were being taken in the name of such firms, signatures were not appended in the relevant register Ex.P157. In the cross-examination, he stated that A1 had knowledge about issuance of the cheques and none of the third parties complained about not receiving the amounts covered by the cheques which were collected by A3,

A5 to A7. The said cheques which were collected by A3, A5 to A7 were prepared by A2 at the instance of A1.

27. P.W.28 stated that he was working as Compositor in Osmania University Press. According to him, whenever they used to get job work from colleges and there was no possibility of executing the said work, no objection certificates were given to the colleges for getting printing done outside. The concerned college authorities used to get 3 quotations from private printers and P.W.8 used to accept the lowest quotations. After printing work was done by the said outside firms, cheques were being prepared and handed over. Further, A4 was disbursing overtime allowances.

28. P.W.29 was working as Junior Assistant in the Osmania University Pres. He did not state anything against accused and was declared hostile.

29. P.W.30 stated that he has not received any overtime allowances during 1991 to 1993. He speaks about the procedure of the printing press taking up the job of printing.

He further stated that he never received any overtime allowances through A1 to A3.

30. P.W.31 while working as Deputy Director of the Government Central Press, went to Osmania Hospital campus and inspected Printing machinery. According to him, three items were purchased without proposals and four items were purchased without sanction. However, during cross-examination, he stated that he was not aware about the details of the purchases made.

31. P.W.32 was the Assistant Commercial Tax Officer who furnished information regarding Metro Traders and Metro Printers and binders to whom payments were made.

32. P.W.33 is the Joint Registrar of Osmania University. He stated that along with P.Ws.2 and 3, he had conducted enquiry against A1 to A4. A1 and other officers did not produce oral or documentary evidence. A1 did not participate in the enquiry and A3 and A4 participated in the enquiry but did not produce any evidence in defence. A1 and A4 were

found guilty of the departmental charges and A3 was exonerated.

33. P.W.34 was assisting A2 in the accounts section. During the course of enquiry, P.W.34 assisted P.Ws.1 to 3 in the preparation of statements regarding overtime payments and also purchase of stationery and machinery.

34. P.W.35 was the Director of Osmania University Computer Centre. According to him, P.W.3 was appointed as Enquiry Officer and he assisted P.W.3 during enquiry. The price paid for computer system by the Osmania University Press was about Rs.3.00 lakhs whereas the Journalism Department purchased with similar configuration for an amount of Rs.1,80,000/- only. The said computer was kept idle without utilization. It was A1 who had purchased the said computer.

35. P.W.36 granted sanction orders Exs.P252 to P261 to prosecute A1 to A11.

36. P.W.37 is the successor of A1. He states that he handed over the documents that were in the department to P.W.2 for

the purpose of enquiry. Further, he assisted P.W.1 in preparing statements available in the department regarding payment of overtime allowances and purchase.

37. P.W.38 is the Investigating Officer who has given details about the documents that are collected by him during the course of investigation. He stated that several irregularities were seen in the payments made and record was not being maintained for the amounts that were paid. P.W.38 had taken assistance of P.W.1, P.W.34, P.W.37 for preparing the statements regarding self-cheques, third party cheques that were issued by A1 for purchase of material, overtime payments that were made during 1990-91 to 1992-93. P.W.38 deposed about the individual seven charges framed against the accused. During the course of cross-examination, P.W.36 Investigating Officer stated that A1 directed withdrawal of the amount and further the person who had actually withdrawn the amount had to account for the same. He admitted that there is no evidence on record to show that the entire amount drawn towards payment of overtime allowances was entrusted to A1 but A1 was responsible as

the head of the institution. The evidence of misappropriation is on the basis of record that was available in the office and verified during investigation. The inferences drawn regarding misappropriation was based only on the record that was available. Investigating Officer further admitted that all the cheques in question were issued by A1 and he did not receive any complaint from the persons who have undertaken printing work and stationery suppliers that they did not receive their amounts for their work. He further admitted that A2 to A11 were unconcerned with the purchase of printing machinery.

38. Having gone through the entire evidence and documents, the basis for prosecuting the accused are the statements including Ex.P1 showing the details of amounts drawn for payment of overtime allowances during the year 1990-91 to 1992-93. The said statements were prepared on the basis of (i) Exs.P2 to P8, overtime bills, (ii) Exs.P9 to P11 counter foils of cheques, (iii) Exs.P12 to P15 cash books. Thereafter, enquiry report Ex.P15 submitted by P.W.2 against A1 is also on the basis of Ex.P1. Ex.P15 (there is no date or

signature of P.W.2) is the enquiry report submitted by P.W.2 against A1. Ex.P16 is the report against A3 dated 13.09.1994. Ex.P17 is the enquiry report against A4 dated 30.09.1994.

39. The complaint under Ex.P262 letter dated 03.12.1993 addressed to ACB and FIR was registered on 01.01.1994 on the basis of Ex.P262. However, after registration of crime, P.W.2 conducted departmental enquiry on the basis of the documents that were seized and statements were prepared including Ex.P1 for payments of overtime allowances. Ex.P38 is the statement of details of self-cheques issued in the names of employees during the years 1991-92 to 1992-93. Ex.P34 is the details of third party cheques for the said orders. Exs.P35 to P148 pertaining to purchases of printing material during 1990-1991. Ex.P166 to P229 are the files pertaining to the work done outside the Osmania University Press. ExP232 to P245 files are pertaining to purchase of machinery.

40. According to the enquiry report, A1 did not participate fully in the enquiry. However, A3 and A4 replied to the charge memos. As already noted, on the basis of the gist of the

payments made towards overtime allowances, cheques disbursed and the purchase made, the enquiry officer P.W.3 concluded regarding the misappropriation done. P.W.38, who is the Investigating Officer states that he has sought assistance of P.W.2, P.W.1 and others and also relied on the statements, which forms the gist of payments made and the amounts that were withdrawn.

41. Appellants have totally denied the allegations leveled against them regarding any kind of misappropriation. Not a single witness is examined by the investigating agency to show that amounts were drawn or cheques issued in favour of an individual or a firm and such amounts were not paid.

42. Learned Special Judge believed the version of the prosecution witnesses regarding statements that were prepared and concluded that under Section 106 of Indian Evidence Act, the burden is on the accused to explain regarding the amounts that were withdrawn as such withdrawals and usage was to the exclusive knowledge of the accused.

43. In the present case, it is necessary to discuss regarding the following aspects; i) Whether the statements that were prepared on the basis of the documents available in the department can form basis to infer misappropriation and falsification of accounts, without there being any independent witnesses examined to support the allegation of drawing or disbursing amounts in the names of individuals and Firms, or that such persons have not received amounts; ii) Whether such statements prepared on the basis of enormous documents that were examined by witnesses can form basis to conclude guilt in the absence of proving each and every document before the Court below; iii) Whether the learned Special Judge was right in invoking Section 106 of Indian Evidence Act on the basis of statements prepared by P.Ws.1 to 7 to convict the accused on the ground that the accused failed to discharge burden shifted on to them.

44. It is not in dispute and admitted that: i) The entire basis of P.W.2 finding A1, A3 and A4 guilty of the charges of misappropriation are the statements that were prepared under Exs.P1 and P35; ii) The Court and the Investigating

Officer/P.W8 heavily relied on Exs.P15 to P19 enquiry reports of P.W.2; iii) The accused denied execution of any of the documents that were placed by the prosecution to show entrustment of the funds to them by A1.

45. Departmental enquiry conducted by any enquiry officer, who is appointed will conduct enquiry on the basis of preponderance of probabilities and inferences or conclusions will be drawn on the basis of the evidence that is placed before him and/or collected. However in criminal cases, the principle of proof is beyond reasonable doubt, contrary to the procedure followed in the departmental enquiry. PW.2, Enquiry Officer admitted that A1 did not completely participate in the enquiry but filed statement. A3 and A4 participated, however, they have not cross-examined any witnesses who were examined during enquiry. According to P.W.2, A4 produced two registers which appear to have been prepared at one go apparently, to mislead the enquiry officer. However, the said registers were not seized by the Investigating Officer.

46. For the sake of convenience, Section 65 of Indian Evidence Act is extracted hereunder:

“65. Cases in which secondary evidence relating to document may be given.

(a)....

(b)....

(c)...

(d)....

(e)....

(f)....

(g)When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.”

47. Under Section 65 of the Indian Evidence Act, when original consists of numerous accounts or other documents which cannot conveniently be examined in Court and the fact to be proved is the general result of the whole collection, evidence may be given as to the general result of the documents by any person who has examined them and who is skilled in the examination of such documents.

48. P.W.2 enquiry officer or for that matter, P.W.1, P.W.3 who assisted P.W.2 during enquiry and all of them in turn

who had assisted Investigating Officer/P.W.38 did not speak about, they being experts or skilled in the examination of the documents which were examined during preparation of Exs.P1 and P35. There were admittedly two almirahs filled with documents which were examined and the gist prepared under Exs.P1 and P35. P.Ws.1 to 3 have not stated that they have any expertise in preparation of such statements. P.W.1 worked as Deputy Registrar of the Accounts Division, PW.2 retired as Director of Treasuries and Accounts, P.W.3, who is retired Professor in Physics. For argument sake assuming that P.Ws.1, 2 and 3 had correctly prepared the statements which is the general result of examining several hundred documents and files, there is no evidence that such documents were prepared by the appellants herein. During the course of cross-examination and also Section 313 Cr.P.C examination, the accused denied the documents and its correctness. On the basis of which, Exs.P1 and P35 reflecting misappropriation were prepared.

49. It is for the prosecution to prove beyond reasonable doubt that the documents were in fact prepared and maintained by A4.

50. It is not the case that A4, A5, A7, A9 to A11 have in any manner prepared or maintained the accounts or files that formed basis for preparation of Exs.P1 and P35 statements showing irregularities. The said statements, in such scenario, cannot be made basis to infer that there was misappropriation by the appellants herein in collusion with A1. Admittedly, most of the amounts were withdrawn on the basis of cheques issued by A1.

51. Under Section 106 of the Evidence Act, the initial burden is always on the prosecution to prove its case and then burden shifts on to the accused. As already discussed, the prosecution utterly failed to prove that files and registers which formed basis to prepare Exs.P1 and P35 statements showing misappropriation, were admitted or that they were maintained by the appellants herein.

52. The Hon'ble Supreme Court in the case of **Balvir Singh v. State of Uttarakhand**¹ held that when the prosecution has offered evidence which can be believed by the Court and convincing regarding the accused guilt beyond reasonable doubt, then the burden shifts on to the accused to present evidence regarding the facts peculiarly which are within the knowledge of the accused. All the documents that were seized and examined by P.Ws.1 to 3, P.W.38 Investigating Officer were available in the office. When statements are prepared on the basis of the said documents, there is no question of any exclusivity of the knowledge of any facts to the accused when the documents are denied by accused. On the basis of such statements Exs.P1 & P35 being prepared, the trial Court cannot place burden on the accused to explain such statements and the conclusions drawn by enquiry officer/P.W.2 regarding the amounts that were allegedly misappropriated. The approach of the learned Special Judge in shifting the burden on to the accused to explain the opinion and inferences drawn during departmental enquiry is

¹2023 SCC OnLine SC 1261

incorrect and it does not fall within the purview of Section 106 of Indian Evidence Act to draw adverse inference against accused and convict the accused. In view of above discussion, in the absence of any proof and direct evidence against the accused apart from the inferences drawn by P.Ws.1 to 3 and P.W.38, on the basis of the record found in the office, there cannot be any conviction for the offences alleged.

53. Section 13(c) of the Act is akin to Section 409 of IPC. Both under Section 13(c) of PC Act and Section 409 of IPC, the *sine qua non* to establish the offence of misappropriation is to prove entrustment. The factum of entrustment to the appellants herein are assumptions on the basis of the withdrawals from Banks and payments made by A1 through cheques. Admittedly, self cheques were drawn and signed by A1. Not a single bank witness is examined to show that at any point of time, self-cheques or the cheques of others were encashed in the bank by any of these appellants. The prosecution ought to have produced witnesses from the Bank to prove that cheques signed by A1 were withdrawn by the

appellants herein. In the absence of any such proof, the question of these appellants abetting A1 in committing alleged misappropriation of the funds entrusted to A1 would not arise.

54. The Hon'ble Supreme Court in the case of **R.Sai Bharathi v. J.Jayalalitha**² held that entrustment has to be proved for establishing an offence of criminal misappropriation.

55. The case is one of circumstantial evidence. The burden is on the prosecution to prove the circumstances of the case by admissible and legal evidence. All such circumstances cumulatively should form a complete chain pointing unerringly towards the guilt of the accused. The circumstances relied upon by the prosecution should be incompatible with the innocence of the accused leading to the only conclusion of the guilt of the accused. The Hon'ble Supreme Court in the case of **State of Uttar Pradesh v. Sukhbasi**³, **Haricharan v. State of Rajasthan**⁴ held that

² AIR 2004 SC 892

³ AIR 1985 SC 1224

where there are missing links in the chain of evidence adduced by the prosecution, benefit of doubt should go to the accused.

56. In **Anthony D'Souza v State of Karnataka**⁵, the Hon'ble Supreme Court held that in order to sustain conviction, the evidence produced by the prosecution should not only be consistent with the guilt of the accused but should also be inconsistent with the innocence of the accused.

57. In view of above discussion, the prosecution has failed to provide evidence to prove guilt of the accused and accordingly, benefit of doubt is extended to the appellants herein.

58. In the result, the judgment in C.C.No.17 of 2000 dated 15.06.2007 is hereby set aside against A4, A5, A7, A9, A10 and A11. Since the appellants are on bail, their bail bonds shall stand discharged.

⁴ AIR 1998 SC 244

⁵ (2003) 1 SCC 259

59. Criminal Appeal Nos.789, 850, 729, 737 and 828 of 2007 are allowed. Criminal Appeal No.793 of 2007 is dismissed against A8, as abated.

Date: 16.04.2024
kvs

K.SURENDER, J