

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

TUESDAY, THE 11<sup>TH</sup> DAY OF JULY 2023 / 20TH ASHADHA, 1945

CRL.A NO. 2546 OF 2009

AGAINST THE ORDER/JUDGMENT IN CC NO. 14/2005 OF  
ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

**APPELLANT/ACCUSED :**

ENOSE  
FORMERLY UDC,  
OFFICE OF THE HIGHER SECONDARY,  
DIRECTORATE, THIRUVANANTHAPURAM.

BY ADVS.  
SRI.SHABU SREEDHARAN  
SRI.N.A.JOHN JACOB

**RESPONDENT/COMPLAINANT :**

STATE OF KERALA  
REP.BY THE DY.S.P., VACB,  
THIRUVANANTHAPURAM UNIT,  
THROUGH THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA.

BY  
SMT S REKHA SR PP,  
SRI. A RAJESH SPL .PP, VACB

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON  
11.07.2023, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

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## **J U D G M E N T**

Dated this the 11<sup>th</sup> day of July, 2023

This appeal has been preferred by the appellant/accused in C.C.No.14/2005 on the files of the Enquiry Commissioner and Special Judge, Thiruvananthapuram (for short 'the court below'), challenging the judgment dated 02/11/2009, convicting and sentencing him under Sections 13(2) r/w 13(1)(c) of the Prevention of Corruption Act (for short, 'the PC Act') and Sections 409, 465, 468, 471 and 477-A of the Indian Penal Code (for short, 'the IPC').

2. The accused was working as L.D.Clerk on deputation in the Directorate of Higher Secondary Education, Thiruvananthapuram. Admittedly, his nature of work includes the disbursement of cash, withdrawal and deposit of cash in the Treasury. An amount of ₹5,90,000/- was sanctioned for the examination wing of the Directorate of Higher Secondary Education. The said amount was withdrawn through the A-Section wherein the accused was working as L.D.Clerk and handed over to D-Section. The D-Section returned unused portion of the amount of

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₹74,789/- to the A-Section and entrusted with the accused on 03/10/1998. The prosecution allegation is that, the accused misappropriated the said amount and retained it with him till 02/04/2002 by making false entry in the Cash Book so as to appear that the said amount was remitted in the Treasury on 03/10/1998 itself. It is further alleged that for the said purpose, he forged Ext.P6 challan and used the same as genuine with the dishonest intention to cause loss to the Government.

3. On the side of the prosecution, PW's 1 to 13 were examined and Exts. P1 to P24 were marked. On the side of the defence, DW1 was examined. After trial, the court below found the accused guilty under Sections 13(2) r/w 13(1)(c) of the PC Act and Sections 409, 465, 468, 471 and 477A of the IPC and convicted him for the said offences. He was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹1,000/- in default to suffer rigorous imprisonment for a period of two months for the offences under Section 13(1)(c) r/w 13(2) of the P.C.Act, rigorous imprisonment for a period of one year and to pay a fine of ₹1,000/- and in default to suffer rigorous imprisonment for

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two months for the offence under Section 409 of the IPC, rigorous imprisonment for a period of one year for the offence under Section 465 of the IPC, rigorous imprisonment for a period of one year, to pay a fine of ₹1,000/-, in default to suffer rigorous imprisonment for two months for the offence under Section 468 of the IPC, rigorous imprisonment for a period of one year, to pay a fine of ₹1,000/-, in default to suffer rigorous imprisonment for two months for the offence under Section 471 of the IPC and rigorous imprisonment for a period of one year for the offence under Section 477-A of the IPC. Challenging the conviction and sentence the accused has preferred this Appeal.

4. Since there was no continuous representation on the side of the appellant, I have appointed Advocate Abraham Mathan as *Amicus Curiae*. Thereafter, on the date of hearing, the counsel appearing for the appellant appeared and submitted that he has no instructions.

5. I have heard Sri.Abraham Mathan, the learned *Amicus Curiae* as well as Sri.A.Rajesh, the learned Special Public Prosecutor for VACB. I place on record the appreciation for the

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able assistance rendered by Sri.Abraham Mathan, the learned *Amicus Curiae*.

6. The learned *Amicus Curiae* impeached the findings of the court below on appreciation of evidence and the resultant finding as to the guilt. The learned *Amicus Curiae* submitted that, there is absolutely no evidence on record to connect the appellant with the offences under Sections 13(2) r/w 13(1)(c) of the PC Act and Sections 409, 465, 468, 471 and 477A of the IPC. On the other hand, the learned Special Public Prosecutor supported the findings and verdict of the court below and submitted that the prosecution has succeeded in proving the case beyond reasonable doubt.

7. PW1 was working as Administrator (Grade I) during the period from 16/02/1998 to 03/10/1998, PW2 was working as Administrative Officer during the period from 03/10/1998 to March, 1999 and PW3 was working as Junior Superintendent during the period from May, 1995 to May, 1999 at Directorate of Higher Secondary Education, Thiruvananthapuram. It is not in dispute that the accused was working as L.D.Clerk on deputation at the office of Directorate of Higher Secondary Education,

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Thiruvananthapuram on 03/10/1998 and his works include disbursement of cash, withdrawal and deposit of cash in the Treasury. It has come out in evidence and rather it has been admitted by the accused that as per Ext.P2 order, a sum of ₹5,90,000/- was allotted for conducting the examination and permission to withdraw the said amount was granted. The evidence of PW's 1 to 3 coupled with Ext.P3(a) would prove that the said sum of ₹5,90,000/- was withdrawn by the accused and handed over to the D-Section which deals with the examination. The evidence of PW's 1 to 3 coupled with Ext.P5(a) would further prove that out of ₹5,90,000/- mentioned above, the D Section returned unused amount of ₹74,789/- to the accused for depositing the same in Treasury. In fact, it is admitted by the accused also. However, the said amount of ₹74,789/- though entrusted with the accused on 03/10/1998, was not deposited in the Treasury on that day, whereas entries were made in the Cash Book to make it appear that the said amount was remitted in the Treasury vide Ext.P6 challan. Admittedly, later on, as per Ext.P11 challan, the accused deposited the said amount in the Treasury on 02/04/2002.

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Thus, it has been satisfactorily proved that on 03/10/1998 the accused was entrusted with ₹74,789/- to deposit in the Treasury. It is not disputed by the accused. It has also been proved by the prosecution that the said amount was not deposited in the Treasury on 03/10/1998. As stated already, it was deposited only after four years i.e., on 02/04/2002. The defence set up by the accused is that on 03/10/1998 since he was overburdened with work in the office, he entrusted amount of ₹74,789/- to a temporary Peon namely Yesudas to be deposited in the Treasury and in the evening Yesudas produced Ext.P6 challan and submitted that the amount was deposited. He accordingly entered in the Cash Book and Challan Registers the factum of deposit.

8. PW1 identified Ext.P6 challan. It bears his signature as well as the seal of the Treasury and the Bank. He denied the signature appeared in Ext.P6 challan. PW's 1 to 3 identified the initials and handwriting of the accused in Ext.P6. Ext.P11 is the challan by which the accused admittedly deposited the above said amount to the Treasury on 2/4/2002. PW1 identified the signature of the accused in Ext.P11 challan as well. These evidence would

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clearly show that it was the accused who made the entries with respect to Ext.P6 challan in the Cash Register.

9. The evidence discussed above would clearly show that the accused was entrusted with an amount of ₹74,789/- on 3/10/1998 to deposit it in the treasury. But he failed to deposit the same on that day. Instead, he deposited it only on 2/4/2002 as evident from Ext.P11. To attract the offence of criminal breach of trust, the prosecution has to prove that there was entrustment of property with the accused and he has dishonestly misappropriated the same for his personal use. Once the entrustment is established by the prosecution, the burden shifts to the accused to account for the property entrusted. It is settled that if the entrustment is proved and the explanation given by the accused is not satisfactory, then it can be presumed that the accused has committed the offence of criminal breach of trust and misappropriation. The *modus operandi* of the accused, how he committed the misappropriation etc. need not be proved by the prosecution. The fraudulent intention of the accused can be inferred from the attending circumstances. The same ingredients of



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criminal breach of trust and misappropriation have to be proved by the prosecution for establishing the offence under section 13(1)(c) of the PC Act as well. [See **Jaikrishnadas Manohardas Desai and Another v. State of Bombay**, AIR 1960 SC 880, **Raghavan K v. State of Kerala**, 2012 KHC 420 and **Vijayakumar v. State of Kerala**, 2016 KHC 635]. As stated already, the entrustment of the amount with the accused has been proved. The explanation offered by the accused is that he entrusted the same with a temporary peon namely Yesudas to deposit it in treasury on 3/10/1998 and that in the evening Sri.Yesudas handed over the challan and noted that the money has already been deposited. With an attempt to prove the case, DW1 was examined on the side of the defence. He was an employee at the Higher Secondary Directorate, Thiruvananthapuram during the relevant period. He deposed that one Yesudas was working as temporary peon during the relevant period and he was entrusted with the duty to deposit the amount in treasury also. However, PW1 and PW2 specifically deposed that there were no temporary peon in the said office. In these circumstances, the evidence tendered by DW1 cannot be

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believed at all. That apart, the defence could have taken steps to produce documents to show that the so-called Yesudas was working in the said office during the relevant period. The accused has failed to prove at least by preponderance of probability that he had entrusted the amount with Yesudas. Then, the only conclusion possible is that the accused has misappropriated the money. He misusing his official position as public servant misappropriated the amount entrusted with him. Thus, offence under section 13(2) read with 13(1)(c) of the PC Act as well as under section 409 of IPC stands clearly proved.

10. It has come out in evidence that Ext.P6 challan is a forged one. PW1 to PW3 identified the hand writing of the accused in the disputed document. From their evidence, who were familiar with the hand writing and initials of the accused, it is proved that the accused has committed forgery. He has also used Ext.P6 challan which is a forged document as genuine, also falsified the accounts and signature and misappropriated an amount of ₹74,789/-. Thus the offence under Sections 465, 468, 471 and 477A of IPC are also attracted.

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11. The court below has appreciated the evidence on record in the correct perspective and rightly found that the prosecution has succeeded in proving the case beyond reasonable doubt that the accused has committed the offences punishable under Section 13(1)(c) read with 13 (2) of the PC Act and Sections 409, 465, 468, 471 and 477A of IPC. On a re-appreciation of evidence, I find no reason to interfere with the said findings of the court below. Considering the entire facts and circumstances of the case, the sentence imposed by the court below also appears to be reasonable.

The appeal fails and is accordingly dismissed.

Sd/-  
**DR.KAUSER EDAPPAGATH,**  
**JUDGE**

APA/KP