IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 6TH DAY OF APRIL 2026 / 16TH CHAITHRA, 1948

CRL.A NO. 260 OF 2015

AGAINST THE COMMON JUDGMENT DATED 07.02.2015 IN CC NO.22 OF 2011 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

APPELLANT/1ST ACCUSED:

RADHAKRISHNAN NAIR,
AGED 70 YEARS,
S/O GOPALAN NAIR, FORMER SECRETARY, KUNDAYAM SERVICE CO-OPERATIVE BANK LIMITED, KUNDAYAM, KOLLAM DISTRICT, RESIDING AT ARYA BHJAVAN, MANJALLOOR, PATHANAPURAM, KOLLAM DISTRICT, CHAMBER ROAD, ALAPPUZHA.

BY ADVS.
SRI.R.BINDU (SASTHAMANGALAM)
SRI.PRASANTH M.P

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682031.

SPECIAL PUBLIC PROSECUTOR SRI RAJESH.A ,
SENIOR PUBLIC PROSECUTOR SMT.REKHA.S

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13.03.2026, ALONG WITH CRL.A.257/2015, THE COURT ON 06.04.2026 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 6TH DAY OF APRIL 2026 / 16TH CHAITHRA, 1948

CRL.A NO. 257 OF 2015

CRIME NO.3/1999 OF VACB, KOLLAM, Kollam

AGAINST THE JUDGMENT DATED 07.02.2015 IN CC NO.19 OF 2007 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

APPELLANT/1ST ACCUSED:

RADHAKRISHNAN NAIR,
AGED 70 YEARS,
S/O.GOPALAN NAIR,FORMER SECRETARY,KUNDAYAM SERVICE CO-OPERATIVE BANK LIMITED,KUNDAYAM,KOLLAM DISTRICT
RESIDING AT ARYA BHAVAN,MANJALLOOR,PATHANAPURAM,KOLLAM DISTRICT,CHAMBER ROAD, ALAPPUZHA.

BY ADVS.
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RESPONDENT/COMPLAINANT:

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

SPECIAL PUBLIC PROSECUTOR SRI RAJESH.A ,
SENIOR PUBLIC PROSECUTOR SMT.REKHA.S

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13.03.2026, ALONG WITH CRL.A.260/2015, THE COURT ON 06.04.2026 DELIVERED THE FOLLOWING:

"C.R"

A. BADHARUDEEN, J.

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Crl.Appeal Nos.257 and 260 of 2015

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Dated this the 6th day of April, 2026

COMMON JUDGMENT

Crl.Appeal No.257 of 2015 and Crl.Appeal No.260/2015 are at the instance of the 1st accused in C.C.No.19/2007 and C.C.No.22/2011 respectively on the files of the Enquiry Commissioner and Special Judge, Thiruvananthapuram and he impugns the common judgment dated 07.02.2015 rendered by the learned Special Judge after joint trial of both the above cases.

2. State of Kerala is the respondent. Sri Radhakrishnan Nair is the appellant and I shall refer him as the `appellant' hereafter.

3. Heard the learned counsel for the appellant in both the cases. Also heard the learned Special Public Prosecutor in detail and gone through the evidence available meticulously as well as the common

judgment impugned. In both these cases, prosecution alleges commission of offences punishable under Section 13(1)(c) r/w 13(2) of the Prevention of Corruption Act, 1988 (`PC Act, 1988' for short) and Sections 408, 465, 471 & 477A and 120B of the Indian Penal Code (`IPC' for short) by the appellant.

4. In C.C.19/2007 precisely the prosecution case is that the first accused is the Secretary of the Kundayam Service Co-operative Bank Ltd. No.3259, Kundayam and second accused is the President of the said Co- operative Bank. First and second accused being public servants during the year 1990 conspired together to misappropriate public money abusing their official position and in pursuance of the said criminal conspiracy first accused withdrew an amount of ₹23,500/- on 2.7.1990 from the District Co-operative Bank, Pathanapuram Branch using cheque No. 473939 (Ext.P3), made false entries in the Bank records, fabricated chalans and vouchers to make it appear that the said amount was paid to one Mr.P.J.Babu and Alexander Mathew and misappropriated the said amount for his own use. After that on 6.8.1990 A1 Secretary withdrew another amount of ₹16,500/- from the said Bank using cheque No.474084

(Ext.P17) drawn on the account of Kundayam Service Co-operative Bank and made false entries in the records of Kundayam Service Co-operative Bank to make it appear that the said amount was paid to Smt. Kunjamma Mathai, and misappropriated the said amount for his own use. Subsequently on 15.10.1990 A1 withdrew another amount of ₹15,000/- by cheque No.474092 (Ext.P26) from the District Co-operative Bank Branch at Pathanapuram from the account of Kundayam Service Co-operative Bank and made false entries in the records of the Society, to make it appear that out of the said amount ₹12,000/- was paid to Smt. Suhura Beevi as fixed deposit loan and ₹3,000/- to K.S.Gopala Pillai as deposit loan by making false loan applications with forged signature of the above mentioned persons and misappropriated the said amount for his own use. A2 (since died) as being the President and ex-officio treasurer of the said Bank, had not compared the accounts shown in the day book related records to ensure the genuineness of the entries in the records and thereby A2 facilitated Al to misappropriate the aforesaid amounts and thereby cheated the Bank and obtained for Al pecuniary advantage to the extent of ₹55,000/- and thereby committed criminal misconduct, criminal breach trust, forgery for the purpose of cheating and falsification of accounts etc.

5. In CC.22/2011, the prosecution case is that the first accused Secretary hatched conspiracy with the second accused President by misutilizing their official position and misappropriated Rs.59,912/-. In a nutshell the allegation is that the first accused, being the Secretary of the Kundayam Service Co- operative Bank Ltd. No.3259, Kundayam, and the second accused, being the President of the said Bank during the year 1991, conspired together to misappropriate public money abusing their official position and in pursuance of the said criminal conspiracy Al withdrew an amount of ₹24,912/- on 4.1.1991 from the account of Kundayam Service Co-operative Bank maintained before the District Co-operative Bank Branch at Pathanapuram using cheque No.474100 (Ext.P36), made false entries in the Bank records, made false vouchers and applications to make it appear that out of the said amount a sum of ₹24,000/- was disbursed to one Smt Moly Thomas as deposit loan No. 14/1990-91, ₹900/- was given as advance for Al Secretary himself and ₹12/- was given as auto-rikshaw fares and thus Al Secretary misappropriated the said amount for his own use. After that on 29.4.1991 Al Secretary withdrew another amount of

₹32,000/- from the account of Kundayam Service Co-operative Bank with the District Co-operative Bank, Pathanapuram Branch by cheque No.611614 (Ext.P48) and made false entries in the Bank records to make it appear that out of the said amount ₹20,000/- was paid to Sri. Alexander Mathew as deposit loan No.24/1990-91 and made false loan application and false vouchers and misappropriated the said ₹20,000/- for his own use. Subsequently on 4.7.1991 A1 Secretary withdrew an amount of ₹15,000/- from the account of Kundayam Service Co-operative Bank with District Co-operative Bank, Punalur Branch by cheque No.417853 (Ext.P54) and made false entries in Bank records to make it appear that the said amount was paid to the Manager FACT as advance for fertilizer and misappropriated the said amount for his own use. It is further alleged that A2 (since died) as being the President and ex-officio treasurer of the said Bank had not compared the accounts shown in the day book with the related records of the Bank to ensure the genuineness of the entries made in the records and thereby A2 facilitated Al to misappropriate the aforesaid amount and thereby cheated the Bank and obtained for Al pecuniary advantage to the extent of ₹59,912/- and thereby committed criminal misconduct, criminal breach of trust, forgery for the purpose of cheating and falsification of accounts etc.

6. The learned Special Judge jointly tried C.C.No.19/2007 and 22/2011. PW1 to PW16 were examined and Exts.P1 to P90 were marked on the side of the prosecution and Exts.D1 to D3 were marked on the side of the defense. Thereafter the learned Special Judge found in both the cases that the first appellant committed the offences punishable under Section 13(1)(c) r/w 13(2) of the PC Act, 1988 and Sections 408, 465, 471 & 477A of the IPC while acquitting him for the offences punishable under Sections 468 and 120B of the IPC. Accordingly, the appellant is sentenced in both the cases as under:

CC 19/2007

> *"Therefore, for the offence under S.13(1)(c) r/w S.13(2) of P.C. Act, 1988, first accused is sentenced to undergo simple imprisonment for two year and to pay a fine of ₹5,000/- (Rupees Five Thousand only). Fine, if not paid, first accused shall undergo*

simple imprisonment for a further period of three months. For the offence under S.408 I.P.C. also the first accused is sentenced to undergo simple imprisonment for two year and to pay a fine of ₹5,000/- (Rupees Five Thousand only). Fine, if not paid, he shall undergo simple imprisonment for a further period of three months. For the offences under Ss.465, 471 and 477-A of 1.P.C. the first accused is sentenced to undergo simple imprisonment for one year each.

91.Therefore, for the offence under S.13(1)(c) r/w S.13(2) of P.C. Act, 1988, first accused is sentenced to undergo simple imprisonment for two year and to pay a fine of ₹5,000/- (Rupees Five Thousand only). Fine, if not paid, first accused shall undergo simple imprisonment for a further period of three months. For the offence under S.408 I.P.C. also the first accused is sentenced to undergo simple imprisonment for two year and to pay a fine of ₹5,000/- (Rupees Five Thousand only). Fine, if not paid, he shall undergo simple imprisonment for a further period of three months. For the offences under Ss.465, 471 and 477-A of I.P.C. the first accused is sentenced to undergo simple imprisonment for one year each.“

7. The learned counsel for the appellant submitted that in this case the prosecution allegation is confined to misappropriation of the amounts covered by Exts.P3, P17, P26 in C.C.No.19/2007 and Exts.P36, 48 and 54 in C.C.No.22/2011. According to the learned counsel for the

appellant, in order to prove the alleged misappropriation, the prosecution mainly relied on the evidence of PW1, who held the post of Cashier during the relevant period at the bank. It is pointed out by the learned counsel for the appellant that the evidence of PW1 is not sufficient to prove the allegations and her versions are not consistent to find commission of the alleged offences by the appellant. Further the identity of the handwritings, signatures and initials as that of the appellant in the relevant documents such as the day book, ledger, etc. not properly proved as no expert opinion obtained to corroborate the allegations supporting the substantial evidence tendered by PW1. It is further pointed out that, though the prosecution alleged misappropriation, PW8, the Auditor who prepared Exts. P59, P60, P61, P62 and P63 audit certificates, did not find any misappropriation during the periods 1989-90, 1990–91 and 1991–92. Therefore, the prosecution evidence is in the midst of doubts and the same must be adjudged in favour of the appellant, so as to acquit him in both these cases.

8. Whereas the learned Special Public Prosecutor zealously opposed the contentions raised by the learned counsel for the appellant and submitted that the evidence available would categorically show that

Exts.P3, P17, P26, P36, P48 and P54 cheques for an amount of Rs.55,000/- and Rs.59,912/- were encashed by the appellant and in Ext.P4 cash book the same were not entered accurately except one entry of Rs.12,000/- form part of Ext.P54 cheque which was entrusted by the accused at the hands of PW1. It is also pointed out that insofar as Exts.P3, P17, P26 and Exts.P36, P48, P54, the cheques were encashed to give to the persons entitled for the said sum, they had given evidence categorically denying receipt of the amount by the accused. Therefore, the evidence of PW1 even without the evidence of handwriting expert substantially proved the allegations and when the entrustment is established by the prosecution, it is the duty of the appellant to account for and the appellant failed to offer any acceptable explanation rather than simply denying the allegations. Therefore, the common verdict would not require any interference.

9. Adverting to the rival arguments, the points arise for consideration are:

(i) Whether the learned Special Judge is right in holding that the appellant committed the offence punishable under Section 13(1)(c) r/w 13(2) of the PC Act, 1988 in C.C.Nos.19/2007 and 22/2011?

(ii) Whether the learned Special Judge is right in holding that the appellant committed the offence punishable under Section 408 of IPC in C.C.Nos.19/2007 and 22/2011?

(iii) Whether the learned Special Judge is right in holding that the appellant committed the offence punishable under Section 465 of IPC in C.C.Nos.19/2007 and 22/2011?

(iv) Whether the learned Special Judge is right in holding that the appellant committed the offence punishable under Section 471 of IPC in C.C.Nos.19/2007 and 22/2011?

(v) Whether the learned Special Judge is right in holding that the appellant committed the offence punishable under Section 477A of IPC in C.C.Nos.19/2007 and 22/2011?

(vi) Is it necessary to interfere with the impugned judgment in any manner?

(vii) The order to be passed?

<u>Points (i) to (vii)</u>

10. The prosecution allegations is that as per Ext.P3 cheque dated 02.07.1990, Ext.P17 cheque dated 05.08.1990 and Ext.P26 dated

15.10.1990 a total amount of Rs.55,000/- was encashed by the appellant as the Secretary of the Society and in the same way as per Ext.P36 cheque dated 04.01.1991, Ext.P48 cheque dated 29.04.1991, Ext.P54 dated 04.07.1991 the appellant encashed a total sum of Rs.59,192. The Special Court found that the evidence available fully established the prosecution case, as discernible from the cheques itself, supported by the evidence of PW1 to PW3. The evidence would suggest that out of which Rs.12,000/- covered by Ext.P54 cheque was entrusted to PW1 and she entered the said amount in Ext.P12 cash book and the evidence of PW1 is that the other amounts were not entrusted by the appellant to her after encashing the same by herself.

11. Radhakrishnan Nair, Former Secretary, Kundayam Service Co. Operative Bank Ltd. Accused No.2/President expired on 03.05.2012 and charge against him is abated.

12. Ext. P3 is the cheque dated 02.07.1990, signed by the appellant and Accused No. 2, and its reverse side, marked as Ext. P3(a), also bears the signature of the appellant. Ext. P4 is the cash book proved through PW1, and Ext. P4(a), being page No. 1 of Ext.P4 dated

02.07.1990, does not contain any entry regarding the amount of ₹23,500/- covered by Ext.P2 cheque. However, the signature of the appellant was put in Ext. P4(a) at the time of closing the transactions for that day. In Ext. P2 passbook, it is specifically recorded that an amount of ₹23,500/- was withdrawn from the Bank on the basis of Ext. P3 cheque, and the relevant entry got marked as Ext. P2(a-1).

13. Ext. P5 is the day book, and in page No. 1, i.e, Ext.P5(a), the appellant put his signature at the end. Though ₹23,500/- is shown in the cash column in Ext. P5(a), the corresponding entries in the adjustment column had been erased as testified by PW1. The erased portion and the corresponding cash entry got marked as Ext. P5(a-1), and PW1 deposed that the handwriting therein were that of the appellant.

14. PW1, the Cashier, further deposed that the appellant had drawn and encashed Ext. P3 cheque but did not entrust the amount to him, which is evident from Ext. P4(a) cash book. According to PW1, in order to mislead the auditor, the appellant erased the entry of ₹23,500/- from the adjustment column and shifted it to the cash column. PW1 also stated that, in order to make it appear that the amount was received as per chalan,

chalan No. 10 was falsely noted in Ext. P5(a) day book. However, the actual chalan No. 10 was issued in the name of Smt. Susan Babu for ₹5/- in connection with the purchase of a form, as evident from Ext. P6 receipt and the corresponding entry in Ext. P4(a). Thus, it is evident from the evidence of PW1, Ext. P6, and Ext. P4(a) that the chalan No. 10 referred to in Ext. P5(a) is false and fabricated. Further, as per Ext. P8 day book payment, an amount of ₹23,500/- is shown as paid to one Sri. P.J. Babu as manure advance under voucher No. 4, as seen in Ext. P8(a), which is page No. 1 of Ext. P8. However, the said entry appears to have been made after erasure, and PW1 deposed that the erasure was in the handwriting of the appellant. Contrarily, Ext. P4(a) cash book would show that voucher No. 4 on 02.07.1990 was issued to one Mr.K.O. Thangal Rawther for ₹2,000/-. Ext. P9 is the voucher allegedly issued in the name of PW5 Sri. P.J. Babu, and PW1 stated that though the appellant put his signature in Ext. P9, she did not put her signature as Cashier therein. It is also significant that PW5 did not put her signature in Ext. P9, though his name is shown. Moreover, it is to be noted that the said payment of ₹ 23,500/- in the name of P.J.Babu not at all entered in Ext.P4(a) cash book on 2.7.1990. Ext.P4(a) cash book entry would show that on 2.7.1990 on the basis of voucher No.004, ₹2,000/- was issued to K.O Thangal Rawther.

15. PW5, who was working as a commission agent for manure distribution, categorically deposed that he did not receive any such amount and that the signature in Ext. P9 was not his. Thus, from the evidence of PW1 and PW5, and the discrepancies in the records, it is clear that Ext. P9 is a forged document.

16. That apart, the evidence of PW1 would show that the corresponding manipulations were made in Ext. P8 day book and Ext. P7 general ledger. No entry relating to the transaction dated 02.07.1990 could be found in page No. 230 of Ext. P7, though such transactions are posted in page No. 228, and erasures could be seen in page No. 351, marked as Ext. P7(b). In Ext. P5 day book receipt (page No. 535, marked as Ext. P5(b)), it is recorded that PW5 repaid ₹23,500/- under the head “advance due to,” and according to PW1, it was so written in the handwriting of the appellant. Thus the evidence of PW1 Cashier, PW5 P.J Babu and from the entries in the documents discussed as above pertaining to the correspond-

ing registers, and Ext.P9 voucher it is established that in order to cover up the misappropriation of ₹ 23,500/- covered by Ext.P3 cheque Ext. P9 voucher was forged in the name of PW5 Sri.P.J.Babu in respect of 23,500/- and after that entry in respect of ₹ 23,500/- was made in Ext.P5(b) day book to make it appear that on 29.5.1991 the amount was re-paid by PW5 P.J.Babu.

17. In addition to that the evidence of PW1 would show that in order to cover up the misappropriation, documents were fabricated to show that PW4 Dr. Alexander Mathew had availed a fixed deposit loan of ₹23,500/-. Ext.P10 is the application submitted by PW4 in order to start a fixed deposit in Kundayam Service Co-operative Bank. The specimen signature of PW4 could be seen on the reverse side of Ext.P10. Ext.P10 application is for the purpose of permitting PW4 to deposit 50,000/- as fixed deposit. Ext. P11 is the alleged loan application for ₹23,500/-, PW4 testified with certainty that he gave Ext.P10 fixed deposit application in order to start a fixed deposit in Kundavam Service Co-operative Bank and he admitted the signature on the reverse side of Ext.P10 and PW4 denied having submitted it or having availed any loan. He also denied the

signature in Ext. P11 and in Ext. P58 voucher dated 23.05.1991 for ₹23,500/-. Going through the evidence of PW4 Dr.Alexander Mathew it could be seen that Ext.P11 deposit loan application and Ext.P58 voucher were forged documents. In Ext.P11 loan application the appellant put his signature and it was the decision of the appellant to sanction the loan and accordingly he made entry in the application that "sanctioned".

18. PW3 Subhangadan, who was an employee of the Kundayam Service Co-operative Bank, deposed that Ext.P11 was filled in his handwriting as per the direction of the appellant. PW3 also deposed that the writing seen in Ext.P11 as "sanctioned" was written by the appellant and that the signature of the appellant in Ext.P11 was identified by him.

19. On a close reading of the evidence of PW1, PW3 and PW4, and from Ext.P11 and Ext.P58 would establish that Ext.P11 fixed deposit loan application purported to have been given by PW4 Dr. Alexander Mathew and Ext.P58 voucher purported to have been issued by PW4 were forged documents, fabricated for the purpose of covering up the misappropriation of ₹23,500/- covered by Ext.P3 cheque and it was so done by the

appellant.

20. Apart from that in Ext.P12 cash book, the issuance of ₹23,500/- to PW4 was not noted. If ₹23,500/- had been given to PW4 on 23.5.1991, it would normally have been entered in Ext.P12 cash book. PW1 further deposed that in Ext.P8(b) day book payment, it is noted that the amount was given to PW4 on the basis of voucher No.2638. However, as per Ext.P12(b) cash book entry, voucher No.2638 was submitted by one Ramakrishnan on 24.5.1991 in respect of ₹70/-. Ext.P12(b), would show that the amount of ₹70/- was issued to Ramakrishnan on the basis of voucher No.2638. But in Ext.P8(b), it is recorded that ₹23,500/- was given to PW4 Dr. Alexander Mathew on 23.5.1991 on the basis of the very same voucher No.2638. This would show that the entry in Ext.P8(b) day book payment is a false entry.

21. PW1 further testified that Ext.P13 is a chalan for ₹25,809/- purported to have been remitted by PW4 Dr. Alexander Mathew at the time of repayment of ₹23,500/- towards principal and ₹2,309/- towards interest. PW1 also stated that the handwriting in Ext.P13 chalan belonging

to the appellant and that the appellant put his initials in Ext.P13. PW4 Dr. Alexander Mathew categorically deposed that he had not repaid any amount on the basis of Ext.P13 chalan. According to him, since he had not availed any loan amount, there was no necessity to repay any loan. In such circumstances, the evidence on record is sufficient to hold that Ext.P13 chalan is also a cooked up/false document created by the appellant.

22. Ext.P14 is the loan subsidiary day book for the period from 1.7.1991 to 14.1.1993. In sheet No.133 of Ext.P14, it was noted that ₹23,500/- as deposit loan and ₹2,309/- as interest was repaid by PW4, Dr.Alexander Mathew. A perusal of this entry would show that this as a subsequent addition under the deposit loan of one Mr. Abbas, indicating that corrections or additions were made in Ext.P14 loan subsidiary day book also. It was so deposed by PW1. Thus the above entries in Ext.P14 are falsified by the appellant.

23. PW1 further deposed that in Ext.P15 day book, at page No.354, ₹28,500/- was noted as deposit loan receipt, and this figure also was corrected by adding ₹5,000/- to the original figure of ₹23,500/- to

read the same as `28,500/-' instead of `23,500', which was originally there. Page No.354 of Ext.P15 day book receipt got marked as Ext.P15(a). Ext.P15(a) would establish that there was correction or alteration in respect of the entry "28,500". Admittedly, the appellant was the authority to sanction fixed deposit loans and thus correction also was done by the appellant.

24. The evidence discussed as above would show that the appellant encashed Ext.P3 cheque and did not entrust the said amount to PW1 Cashier, as a result of which it was not accounted in Ext.P4 cash book. Thereafter, in order to cover up the same, the appellant forged documents and made false entries in the concerned registers to make it appear that ₹23,500/- was given to PW5 P.J. Babu towards advance for manure and ₹23,500/- was issued to PW4 Dr. Alexander Mathew as a fixed deposit loan. The appellant also forged documents and made false entries in the concerned registers to create an appearance that the said amounts were repaid by PW5 P.J. Babu and PW4 Dr. Alexander Mathew.

25. Ext. P17, Cheque No.474084 dated 5.8.1990 is the second cheque involved in C.C. No.19/2007. The amount covered by Ext.P17 cheque is Rs.16,500/-. PW1 deposed that from Ext.P2(b) pass book would show that, on the basis of Ext.P17 cheque, ₹16,500/- was withdrawn and that in Ext.P17 the appellant put his signature; and on the reverse side of Ext.P17 cheque also the appellant put his signature. PW1 further deposed that in Ext.P4 cash book, in sheet Nos.20, 21 and 22, transactions which took place on 4.8.1990 and 6.8.1990 were entered, and the said sheets got marked as Exts.P4(b), P4(c) and P4(d) respectively. Thus, as per Ext.P4 cash book, no transaction was recorded on 5.8.1990. The signatures of PW1 (Cashier) and the appellant could be found in Ext.P4(b) after closing the transactions on 4.8.1990. According to PW1, the amount covered by Ext.P17 had not been received by her, and hence the same was not entered in Ext.P4 cash book.

26. PW1 further deposed that in Ext.P5 day book receipt, at page Nos.43 and 44, transactions which took place on 6.8.1990 were entered, and the said pages got marked as Exts.P5(c) and P5(d) respectively. According to PW1, in Ext.P5(c), after erasing the entry made in the

adjustment column, ₹16,500/- seen written in the cash column in the hand-writing of the appellant, and in the corresponding total column also ₹16,500/- was written. PW1 further deposed that the total money transaction in the cash column of Ext.P5(d) on 6.8.1990 was Rs.44,396.88, whereas as per Ext.P4(d) cash book entries, the total cash receipt was only Rs.27,896.88, and thus the difference is Rs.16,500/-. PW1 further testified that, in Ext.P5(c), the chalan number relating to the said ₹16,500/- was noted as chalan No.685. However, as per Ext.P4(d) cash book entry, chalan No.685 was in the name of one Mr. Thangal Rawther in respect of the remittance of ₹150/- as chitty subscription on 7.8.1990, i.e., Ext.P18 voucher.

27. Thus Ext.P5(c) would indicate that ₹16,500/- originally written in the adjustment column had been erased and the said amount was now shown in the cash column. It is to be noted that the said ₹16,500/- was not entered in Ext.P4 cash book. Moreover, Ext.P18 would show that it was a receipt No.685 for ₹150/- dated 7.8.1990 in the name of Mr. Thangal Baba Rawther. Therefore, the entries in Ext.P5(c) showing that ₹16,500/- was received on 6.8.1990 as per receipt No.685 was correct. At

the same time, Ext.P19 also would bear the same number, viz., 685, in respect of ₹16,500/- dated 6.8.1990. In both Ext.P19 and Ext.P18, the receipt number is “685”, and PW1 categorically deposed that the handwriting in Ext.P19 belonged to the appellant, while the initials of PW1 seen therein were not belonged to her.

28. It is pertinent to note that, even though ₹16,500/- was entered in Ext.P5(c) day book receipt by the appellant, the corresponding entry not marked in Ext.P4 cash book though the appellant signed Ext.P4(d) cash book. It is also evident that in Ext.P7(a) general ledger, ₹16,500/- was posted; however, PW1 deposed that this occurred only because the amount was entered in the day book receipt (Ext.P5(c)). PW1 further deposed that in Ext.P8 day book payment at page 27, it was recorded that ₹16,500/- was disbursed to one Smt. Kunjamma Mathai on 6.8.1990 under the deposit loan head as per voucher No.226. PW1 also stated that the said amount was also entered in the cash column of Ext.P8(c) after erasing the original entry in the adjustment column, and Ext.P8(c) would show that the original entry was erased. The name of Smt. Kunjamma Mathai also seen written after erasure in Ext.P8(c), and the corresponding voucher number

shown is “226”. However, as per Exts.P4(b), P4(c) and P4(d) cash book entries, ₹16,500/- was not disbursed to Smt. Kunjamma Mathai on 6.8.1990.

29. On the contrary, as per Ext.P4(b), voucher No.226 was issued in the name of Sri N. Bahuleyan in respect of disbursement of ₹2,800/- on 6.8.1990, and Ext.P20 is the said voucher issued by Sri Bahuleyan. Thus, the entries in Ext.P8(c) showing disbursement of ₹16,500/- to Smt.Kunjamma Mathai is false. Further, if such disbursement had actually taken place, it would have been reflected in Ext.P4 cash book.

30. Smt. Kunjamma Mathai was cited as CW11 in C.C. No.19/2007; however, the summons issued to her was returned unserved with the endorsement that she was `no more’, and her death certificate was produced. Hence, she could not be examined. Ext.P21 is the application submitted by Smt. Kunjamma Mathai for starting a fixed deposit of ₹33,575/-, bearing her signature. Ext.P22 is the deposit loan application purportedly submitted by her; however, the signatures found in Ext.P21 and Ext.P22 appear to be patently different. Ext.P22 bears the sanction of

the appellant, and his signature therein was identified by PW1 to PW3. Ext.P23 is the chalan No.1599 dated 29.8.1991 for ₹16,500/- as principal and ₹2,000/- as interest allegedly remitted by Smt. Kunjamma Mathai; however, PW1 stated that her initials are not present therein.

31. PW1 further deposed that Ext.P25 was the genuine receipt No.1599, dated 30.8.1991, in the name of Smt. Ambika for ₹50/-, and Ext.P12(d) cash book also would reflect this entry. Hence, it could be inferred that Ext.P23, showing ₹18,500/- in the name of Smt. Kunjamma Mathai, is fabricated. In Ext.P14(a) subsidiary day book, it was recorded that on 29.8.1991, on the basis of chalan No.1588, Smt. Kunjamma Mathai repaid ₹16,500/- and ₹2,000/- as interest; however, Ext.P12(c) would show that chalan No.1588 relates to payment of ₹332.20 by Mr. N. Bahuleyan, supported by Ext.P24. From the evidence of PW1 it could be gathered that in Ext.P24 signature of PW1 Cashier, concerned Clerk and the signature of Al Secretary is present. Thus the evidence of PW1 coupled with Exts. P24 and P12(c) entry also would show that the so called payment of ₹ 18,500/- as per Ext. P14(a) subsidiary day book is not genuine.

32. PW3 Shubhangdan stated that in Ext.P57(a), the name of Smt. Kunjamma Mathai was entered in the loan column under the account of Mr. Kunjan Pillai directed by the appellant. Thus Ext.P57(a) would show that the entry dated 06.08.1990 in the name of Kunjamma Mathai was recorded under another person's as part of falsification of documents.

33. PW2 examined in this case is one Mrs.Eliamma Thomas. She deposed that there was no reference to Ext.P11 loan application in Ext.P57 register and that the alleged loan was entered along with the details of Mr. Kunjan Pillai. She further testified that any disbursed deposit loan would necessarily be entered in the cash book, which had not been done in the present case.PW1 also deposed that in Ext.P15(b), page No.106 of the day book receipt, a correction entry of ₹18,500/- was made with visible over-writing. This evidence would show that the alleged deposit loan transaction in the name of Smt. Kunjamma Mathai, including its disbursement and repayment were false. Thus false documents were created to give an impression that she had availed and repaid a deposit loan of ₹16,500/-. Thus it is established that these documents were fabricated to cover up the defalcation committed on the basis of Ext.P17 cheque leaf.

34. Ext. P26 is the third cheque involved in C.C. No.19/2007, bearing No.474092 dated 15.10.1990 for ₹15,000/- issued from Ext.P2 account. Sheet No.16 of Ext.P2 pass book, would show that Ext.P26 cheque was encashed on 15.10.1990, and the said sheet got marked as Ext.P2(c). According to PW1, in Ext.P26 cheque, the signatures of the appellant and the second accused (President) were present, and on the reverse side of the cheque also the appellant put his signature. The reverse side of Ext.P26 cheque got marked as Ext.P26(a). According to PW1, the appellant put his signature on the reverse side of Ext.P26 when he received the amount from the drawee bank. PW1 further deposed that the transactions which took place on 15.10.1990 were entered in page Nos.61 and 62 of Ext.P4 cash book, and the said sheets were marked as Exts.P4(e) and P4(f) respectively. According to PW1, the encashed amount of Ext.P26 cheque, i.e., ₹15,000/-, was not entered in Exts.P4(e) and P4(f) cash book entries. PW1 also stated that the appellant had not entrusted the said amount to her, and hence the same was not entered in Exts.P4(e) and P4(f) on 15.10.1990. However, according to PW1, the said amount of ₹15,000/- was seen entered in the cash column of page No.123 of Ext.P5

day book under the head “QDCB-SB-withdrawal” as per chalan No.1952, after erasing the entry in the corresponding adjustment column.

35. Page No.123 of Ext.P5 day book got marked as Ext.P5(e).PW1 testified further that the said entry was in the handwriting of the appellant. On a perusal of Ext.P5(e) day book receipt, there was erasure in the corresponding adjustment column of the said entry. The receipt (chalan) number shown corresponding to the said entry in Ext.P5(e) is 1952, and Ext.P27 is the said receipt No.1952 dated 15.10.1990. According to PW1, her initials were not there in Ext.P27, and she specifically denied that the initials appearing therein were not put by her. PW1 further stated that, as per Ext.P4 cash book sheet No.62, chalan No.1952 stands in the name of one Smt. Kunjumol James in respect of the receipt of ₹406/- received on 15.10.1990. This would show that chalan No.1952 mentioned in Ext.P5(e) corresponding to the receipt of ₹15,000/- under the head “QDCB-SB-withdrawal” is a false entry, since the said ₹15,000/- was not entered in Ext.P4 cash book on 15.10.1990. Therefore, Ext.P27 is a fabricated document. Thus it is established by the evidence of PW1 and PW2

Eliamma Thomas, that on 15.10.1990, PW2 was in charge as Secretary and she put her signature in Ext.P4(f).

36. It is pertinent to note that, as per Ext.P5(e) day book receipt, the total receipt on 15.10.1990 was ₹46,378.65, whereas as per Ext.P4(f) cash book, the total cash receipt was only ₹31,378.65, and thus the difference of ₹15,000/-, viz the amount covered by Ext.P26 cheque. It is admitted that Ext.P5(e) is in the handwriting of the appellant and he had signed therein, and that day book entries were made only after closing the cash book. This would show that originally in Ext.P5(e), the said ₹15,000/- was entered in the adjustment column and subsequently erased and shifted to the cash column. The handwriting of the appellant in Ext.P5 day book was also identified by PW2 Eliamma Thomas.

37. PW1 specifically stated that since ₹15,000/- was shown in the adjustment column and total column of Ext.P5(e) day book, the same was posted in Ext.P7(a) general ledger. PW1 testified further that in Ext.P8 day book payment, at page No.69, it was noted that ₹15,000/- was paid under the head deposit loan, i.e., ₹12,000/- to one Smt. Suhura Beevi as per

voucher No.608 and ₹3,000/- to one Mr. K.S. Gopala Pillai as per voucher No.610. PW1 also deposed that these entries were made after effecting erasures. In short, according to PW1, these entries were made to create an impression that the amount of ₹15,000/- covered by Ext.P26 cheque was disbursed in favour of Smt. Suhura Beevi and K.S. Gopala Pillai under the head deposit loan. That apart, on a perusal of page No.69 of Ext.P8 day book payment, it would appear that the names of Smt. Suhura Beevi and K.S. Gopala Pillai were incorporated after making erasures under the head deposit loan. Page No.69 of Ext.P8 is marked as Ext.P8(d), wherein ₹12,000/- is shown against Suhura Beevi and ₹3,000/- against K.S. Gopala Pillai, with voucher numbers 608 and 610 respectively, but overwriting to be found in the voucher numbers. Ext.P28 is voucher No.608 in the name of Suhura Beevi for ₹12,000/- and Ext.P29 is voucher No.610 in the name of K.S. Gopala Pillai for ₹3,000/-. PW1 categorically deposed that the appellant put his signature in Exts.P28 and P29, but she did not put her signature or initials therein. PW1 further deposed that, as per Exts.P4(e) and P4(f) cash book entries, no cash transaction took place on 15.10.1990 in respect of voucher Nos.608 and 610, whereas transactions on the basis of voucher Nos.614 and 615 alone took place on that day.

38. According to PW1, transactions relating to voucher Nos.608 and 610 had actually taken place on 12.10.1990 and were recorded in Ext.P4(e), wherein voucher No.608 would stand in the name of Mr. Chithrangadhan for ₹1,223.30 and voucher No.610 was in the name of Smt. Eliamma Thomas for ₹100/-. Ext.P30 is voucher No.608 in the name of Chithrangadhan, and PW1 deposed that she put her initials therein as Cashier and the appellant also put his signature.

39. PW1 further deposed that corrections were seen in Ext.P7(d) general ledger. According to her, she originally made an entry in Ext.P7(d) in respect of a transaction dated 18.10.1990 for ₹5,000/-, but the said entry was erased and corrected as ₹15,000/- after manipulating the date to 15.10.1990. On a perusal of Ext.P7(d), such erasures and corrections would be evident. Ext.P31 is the fixed deposit application form submitted by K.S. Gopala Pillai for starting a fixed deposit of ₹5,000/-, and he had put his signature therein along with his specimen signature on the reverse

side. Ext.P32 is the application purported to have been submitted by him for obtaining a fixed deposit loan, which would bear the sanction and signature of the appellant. However, the evidence would suggest that in Ext.P32 K.S.Gopala Pillai did not put his signatures though he put his signatures in Ext.P31.

40. This aspect is fortified by the evidence of PW12, the son of K.S. Gopala Pillai. He testified that his father died in 2006 and in Ext.P31, the genuine application submitted by his father, he had affixed his signatures. But the signature in Ext.P32 did not belong to his father. PW12 also stated that the signature in Ext.P29 voucher also did not belong to his father and that his father had never availed or repaid any loan. This evidence would posit the fact that the alleged loan in the name of K.S. Gopala Pillai is nothing but a a false and forged transactions .

41. It could be seen from the evidence of PW1 that Ext.P35 was the receipt in respect of ₹3,578/- allegedly issued to K.S. Gopala Pillai on 16.8.1991 towards repayment of ₹3,000/- and interest ₹578/- and she did not put her signature in Ext.P35, and as per Ext.P12 cash book, no such

repayment also recorded. Sheet No.111 of Ext.P12 cash book, marked as Ext.P12(e), did not show any such entry. Additionally from Ext.P14 loan subsidiary day book, it could be gathered that after making erasures in sheet No.20 (Ext.P14(b)), entries relating to repayment by K.S. Gopala Pillai were subsequently added, and PW1 deposed that such additions were in the handwriting of the appellant. Erasures and additions in Ext.P14(b) are apparent to see this aspect. PW1 also deposed regarding corrections in Ext.P15 day book in respect of the alleged repayment, stating that in page No.96 (Ext.P15(c)), the amount ₹950/- was altered to ₹3,950/- by adding "3" on the left side, which is apparent on perusal.

42. Ext.P33 is the fixed deposit application submitted by PW6 Smt. Suhura Beevi, containing her signature and specimen signatures. Ext.P34 is a fixed deposit loan application purported to have been submitted by PW6 Smt. Suhura Beevi. The signature of PW6 seen in Ext.P34 had no similarity with her specimen signatures seen in Ext. P33. This would show that the said loan for Rs.12,000/- was sanctioned by the appellant and he had put his signature in Ext.P34. The said aspects also were stated by PW1, the Cashier.

43. PW6 examined in this case was a retired teacher. She categorically deposed that she had not availed any loan on her fixed deposit and that her signature was not therein in Ext.P34 or Ext.P28 voucher. Thus, from the evidence in the above line would show that Ext.P32 and Ext.P34 loan applications, as well as the corresponding vouchers Exts.P28 and P29, were forged by the appellant with a view to misappropriate the said amount. It is also evident that, in order to make it appear that K.S. Gopala Pillai and Suhura Beevi had availed deposit loans, alterations and corrections were made in the day book receipts, day book payments, general ledger and loan subsidiary day book. All these falsifications were carried out to cover up the defalcation relating to Ext.P26 cheque.

44. PW1 categorically deposed that the amount withdrawn on the basis of Ext.P26 cheque had not been remitted to the Kundayam Service Co-operative Bank. This evidence would prove that the amount covered by Ext.P26 cheque was misappropriated. The total amount misappropriated by the appellant in C.C. No.19/2007 is ₹55,000/- (₹23,500/- as per Ext.P3

cheque, ₹16,500/- as per Ext.P17 cheque and ₹15,000/- as per Ext.P26 cheque).

45. In C.C. 22/2011, the prosecution allegation is that the appellant withdrawn an amount of Rs.59,912 using three cheque leaves, ie. Exts. P36, P48 and P54. Ext. P36 is cheque No. 474100 dated 04.01.1991 for ₹24,912/- drawn on Ext. P2 account. The transaction in respect of Ext. P36 cheque leaf also was deposed by PW1. PW1 testified that the signatures of the appellant and the second accused (President) were affixed on Ext. P36 cheque and on its reverse side also the signature of the appellant could be seen. PW1 further deposed that the transactions dated 04.01.1991 were entered in sheet Nos. 111 and 112 of Ext. P4 cash book, marked as Exts. P4(g) and P4(h), and that in Exts. P4(g) and (h) the amount covered by Ext. P36 cheque, i.e., ₹24,912/-not entered at all. PW1 stated that on 04.01.1991 the said amount had not been received in the cash section.

46. PW1 also stated that in page No. 245 of Ext. P5 day book receipt, the entry relating to ₹24,912/- was erased from the

adjustment column and entered in the cash column and total column, and the said day book receipt is Ext. P5(f). Thus Ext. P5(f) would show that under the head ‘ODCB SB-withdrawals’, ₹24,912/- was entered in the cash column, indicating that the appellant was aware of the encashment of Ext. P36 cheque and had entered the amount in Ext. P5(f); however, without making the corresponding entry in Ext. P4 cash book, he affixed his signature therein at the time of closing the transaction on 04.01.1991.

47. PW1 deposed that the corresponding chalan number of the receipt of ₹24,912/- shown in Ext. P5(f) is ‘3510’, marked as Ext. P37, and that her signature or initial was not put in Ext. P37, whereas the initial of the appellant was put therein. PW1 further stated that as per Ext. P4(h) cash book entry, chalan No. 3510 relates to payment of ₹227.25 by T. Rajan on 04.01.1991, marked as Ext. P38, and in Ext. P38 the appellant put his initials. Ext. P4(h) would show that chalan No. 3510 is for ₹227.25 in the name of T. Rajan and the said receipt is Ext. P38. However in Ext. P37 also the number shown is ‘3510’. These vital aspects would lead to the conclusion that Ext. P37 is a forged document created for the purpose of

adjusting the withdrawal on the basis of Ext. P36 cheque. That apart in Ext. P7 General Ledger, the amount of ₹24,912/- encashed on the basis of Ext. P36 was entered by PW1 based on the entry found in the adjustment column and total column of Ext. P5 day book, i.e., Ext. P5(f). PW1 stated that in page Nos. 137 and 138 of Ext. P8 day book payment, it was noted that ₹24,000/- was disbursed to Smt. Moly Thomas under the head deposit loan and on the same day ₹1,500/- was given to one Ibrahim Rawther under the head “Advance due to”.In the bottom portion of the said entry in the name of Ibrahim Rawther, by way of alteration, disbursal of ₹900/- in the name of G. Radhakrishnan Nair got entered in Ext. P8(f). PW1 further stated that in Ext. P8(e) day book payment it was noted that ₹12/- had been given under the head office expense in respect of ‘Yesodharan auto kooli’. Ext. P8(f), would show that the entry of G. Radhakrishnan Nair corresponding to ₹900/- is an alteration, and just below the said entry, the deposit loan in the name of Smt. Moly Thomas also to be found under a heading ‘deposit loan’ had been written after erasure. In Ext. P8(e), at the extreme bottom, the entry ‘Yesodharan auto kooli’ corresponding to ₹12/- could be found. These entries, namely ₹12/-, ₹24,000/- and ₹900/-, appear to be additions made to make it appear that the amount of ₹24,912/- withdrawn on the basis of Ext. P36 cheque was spent.

48. Further, Ext. P39 voucher No. 1241 in the name of Smt. Moly Thomas for ₹24,000/- did not contain the initials or signature of the Clerk or Cashier, though the signature of the appellant was put therein Exts. P4(g) and P4(h). This would show that the said payment of ₹24,000/- was not entered in the cash book. Thus the evidence of PW1 and entries in Ext. P4(g), would show that voucher No. 1241 was actually issued in the name of ‘City Light’ for ₹18/-, marked as Ext. P40, and hence Ext. P39 was a fabricated document.

49. Ext. P45 is the fixed deposit application submitted by Smt. Moly Thomas before the Bank dated 16.11.1991. On the rear side of Ext. P45 specimen signatures of Smt. Moly Thomas to be found. Ext.P46 is the fixed deposit loan application for 24,000/- alleged to have been submitted by Smt.Moly Thomas. The evidence available would show that signatures in Ext. P46 did not tally with the specimen signature in Ext. P45. However

the appellant put his signature in Ext.P46. This aspect to be found from the evidence of PW7 Jacob George, the brother in law of Smt. Moly Thomas.

50. PW7 deposed that the appellant sanctioned Ext.P46 loan application for 24,000/-.PW7 stated that Smt. Moly Thomas who was working abroad and she had a fixed deposit before the Kundayam Service Co-operative Bank. since Moly Thomas and family were in abroad, bank dealings were conducted by him. He is familiar with her signature, and according to him the signatures in Ext.45 belong to her and in Ext.P46 and Ext. P39 were not put by her. According to him since Moly Thomas had not received any amount on the basis of Ext.P39 there was no necessity to repay the amount covered by Ext.P39. This evidence would show that Smt. Moly Thomas did not avail any loan on the basis of Ext. P46. Ext.P47 is a chalan dated 13.8.1991 in the name of Moly Thomas in respect of repayment of the fixed deposit loan including interest. Ext.P47 would show that on 13.8.1991 Smt.Moli Thomas repaid Rs.24,000/- towards principal and Rs.2,000/- towards interest and the total amount covered by Ext.P47 is Rs.26,000/-,it did not contain the initials or signature of the remitter, Cashier or Clerk, though the appellant put his signature, and PW1

deposed that the said amount was not entered in Ext. P12 cash book. In Ext. P12(f), relating to transactions dated 13.08.1991, no such amount to be found and the seal affixed on Ext. P47 is of the year 1994, thereby indicating that Ext. P47 also a forged document. It is pertinent to note that the amount covered by Ext. P47 is not entered in Ext. P12(f). Then Ext. P14(c), would show that entries relating to Smt. Moly Thomas were made after erasure of earlier entries, and PW1 deposed that such entries are in the handwriting of the appellant. Similar alterations could be found in Ext. P15(e), ie, page No.94 of Ext.P15 day book receipt. The transaction taken place on 13.8.1991 were recorded in page No.93 (Ext.P15(d)) and page 94 (Ext.P15(e)) of Ext.P15 day book. In Ext.P15(e) third entry is under the head deposit loan and 4th entry is under the head interest. The 3rd and 4th entries seen in Ext.P15(e) would show that there were additions in the cash column and total column. In the cash column the figure 24 is added on the left side in order to make it appear that the amount is ₹24,500. The original entry was only ₹ 500/-. Likewise ₹3/- was added on the left side of the entries in the cash column and total column corresponding to the 4th entry. The original amount as per the 4th entry is ₹1,294.05. By way of altering the figure 1on the left side as 3 the amount was altered as ₹3294.05. All these alterations and additions were done by the appellant in order to make it appear that the amount covered by Ext.P36 cheque for ₹24,912/- was utilized for official purposes.

51. Thus the evidence of PW1, coupled with Ext. P7(b) general ledger entry and the corresponding entry in Ext. P8(f) day book payment, it is evident that there were corrections and alterations in the general ledger. In Ext. P7(b), erasures and corrections were clearly visible on the relevant page. PW1 deposed that, though Ext. P8(f), in column 5, would refer to the page number of the corresponding general ledger entry as ‘351’, the entries under the head ‘Advance due to’, which were involved in this case, were actually recorded on page 229 of Ext. P7, namely Ext.P7(f). PW1 further stated that Ext. P7(f) would reflect an alteration of the expenditure to ‘2,400’, by incorporating an amount of 900/- as mentioned in Ext. P41 voucher. A perusal of Ext. P7(f) would substantiate the version of PW1, and the same found to be true and correct. The said entry is the first entry in Ext. P7(f) general ledger. Moreover there are corrections and alterations in Ext. P7(g) general ledger entries. Thus, the evidence

available on record would establish that Ext. P36 cheque was drawn by the appellant, that he encashed the cheque, and that he failed to entrust the encashed amount to the cash section. In order to cover up and adjust the said transaction, he fraudulently created Ext. P46 fixed deposit loan application in the name of Moly Thomas, and Ext. P39 voucher in the same name, along with Exts. P37 and P47, and effected corresponding alterations and falsifications of accounts in the concerned register.

52. Ext. P48 is the second cheque involved in C.C. No. 22/2011, bearing cheque No. 611614 dated 29.04.1991 for an amount of ₹32,000/-. The said cheque was issued from Current Account No. 7 of the Kundayam Service Co-operative Bank maintained with the Quilon District Co-operative Bank Ltd. According to PW1, the Cashier, the appellant and the second accused, who was the President of the Bank, put their signatures on Ext. P48. PW1 further deposed that the appellant had affixed his signature on the reverse side of the cheque at the time of encashment, and the reverse side got marked as Ext. P48(a).

53. The prosecution case is that, though the appellant encashed

₹32,000/- on the strength of Ext. P48, only ₹12,000/- was recorded in the account and the remaining ₹20,000/- was misappropriated. PW1 deposed that the transactions dated 29.04.1991 were recorded in pages 2 and 3 of Ext. P12 cash book, marked as Exts. P12(g) and P12(h) respectively. As per Ext. P12(g), an amount of ₹12,000/- was received from the current account based on chalan No. 6656. PW1 specifically stated that the appellant entrusted only ₹12,000/- on that day, and signatures were put by both of them in the cash book. Exts. P12(g) and P12(h) would clearly show that the appellant entrusted only 12,000/- to PW1 Cashier as receipt from QDCB current account No.7. That means even though as per Ext.P48 cheque 32,000/-was encashed on 29.4.1991, Rs.12,000/- alone was accounted.PW1 further deposed that in Ext. P5 day book receipt (page 474), the entry of ₹12,000/- in the cash column was altered to ₹32,000/- by changing the figure ‘12’ to ‘32’, and similar alterations were made in the adjustment column. The said page is marked as Ext. P5(h). Ext. P5(h) would show that though ₹32,000/- was shown in the cash and total columns, there were visible alterations in the figure ‘32’, and the corresponding adjustment entry appears to have been erased. The appellant’s signature to be found in Ext. P5(i), i.e., page 477 of Ext. P5. The transactions on 29.4.1991 got recorded in page Nos. 474,475,476 and 477 of Ext.P5. Since the appellant was the person who prepared the day book, he is responsible for these alterations.

54. It is also pertinent that the chalan number corresponding to the entry of ₹32,000/- in Ext. P5(h) is shown as ‘6656’. Ext. P49 is receipt No. 6656 dated 29.04.1991 for ₹32,000/-. However, PW1 deposed that the initial seen in Ext. P49 did not belong to her. According to PW1, the original chalan for ₹12,000/- noted in Ext. P12(g) was removed and replaced with Ext. P49 to falsely indicate that ₹32,000/- had been received on 29.4.1991.PW1 also stated that in Ext. P7(h) general ledger (page 41), the figure ‘12,000’ was altered to ‘32,000’ by changing ‘1’ to ‘3’, and the corrections in the figure ‘3’ are clearly visible. Further, in Ext. P8 day book payment (pages 238 and 239, marked as Exts. P8(g) and P8(h)), entries relating to 29.04.1991 show significant alterations. In Ext. P8(g), the original entry of ‘50’ under chitty discount was erased, and an amount of ₹20,000/- was added under the head ‘deposit loan’ in the name of Alexander Mathew. Similar alterations could be found under the head

‘FACT Advance due by’, and also in Ext. P8(h). PW1 specifically deposed that these alterations were made in the handwriting of the appellant, and that both the appellant and the second accused have signed Ext. P8(h).

55. In Ext. P8(g), the voucher number for the deposit loan is shown as 2365, whereas Ext. P12 cash book would show voucher No. 2635 as one pertaining to an amount of ₹67/- under the head ‘audit cost’ dated 27.04.1991. Voucher No. 2635 dated 29.04.1991 in the name of PW4 Alexander Mathew is marked as Ext. P50. PW1 stated that the initial of the Cashier in Ext. P50 did not belong to her, though the appellant put his signature therein. Ext. P51 is a deposit loan application purportedly submitted in the name of PW4 Alexander Mathew for ₹20,000/-. PW1 categorically stated that the handwriting in Ext. P51 is that of the appellant and that the loan was sanctioned by appellant. PW1 further deposed that the signature of PW4 in Ext. P10 (a genuine fixed deposit application) did not tally with the signature in Ext. P51. Ext. P52 is a chalan dated 17.02.1992 showing repayment of ₹20,000/- towards principal and ₹2,034/- towards interest. However, PW1 stated that the Cashier’s signature is absent in Ext. P52.

56. The entries in Ext. P12 cash book for 17.02.1992 (pages 269 and 270, marked as Exts. P12(j) and P12(k)) do not show the amount of ₹22,034/- shown in Ext. P52, clearly indicating that no such amount was actually received by the Bank. PW4, Dr. Alexander Mathew, categorically deposed that he neither submitted Ext. P51 loan application nor availed any loan, that the signature in Ext. P50 did not belong to him, and that he never repaid any amount as alleged in Ext. P52.Thus, this evidence would clearly establishe that, in order to give the appearance that the amount withdrawn through Ext. P48 was properly utilized, the appellant fabricated Ext. P51 loan application, Ext. P50 voucher, and Ext. P52 chalan in the name of PW4. Further alterations are evident in Ext. P7(g) general ledger (page 133), where an entry dated 30.04.1991 for ₹4,700/- was erased and replaced with an entry dated 29.04.1991 for ₹20,000/-.

57. PW1 deposed that under the Head 'FACT Advance due' alterations found in Ext.P7 ledger. Ext.P14(d), ie. sheet No.105 of Ext.P14 loan subsidiary day book would show that by way of alteration Rs.20,000/- was added in the name of PW4 Alexander Mathew under the Head deposit loan.According to PW1 in Ext.P15(g) under the head deposit loan

"20,050" is noted by way of adding '200' on the left side of the figure '50'. According to PW1 it was in the handwriting of the appellant.PW1 deposed that in Ext.P16(a) general ledger also alteration in respect of entry dated 17.2.1991 was done by way of adding '200' on the left side of '50'. That means '50' has changed to '20.050'. Thus from Ext.P16(a) it could be seen that there were erasers and alterations corresponding to the entry dated 17.2.1992.The evidence of PW1 Cashier would show that the amount covered by Ext.P13, ie. chalan dated 11.4.1992 in the name of PW4 Dr. Alexander Mathew was not entered in Ext.P53 cash book. The amount mentioned in Ext.P13 is ₹25,809/-. In Ext. P53 cash book in sheet No.1 transaction dated 11.4.1992 was entered. The said sheet No.1 got marked as Ext.P53(a). In Ext.P53(a) amount mentioned in Ext.P13 also not entered. This evidence would show that even though ₹32,000/- was withdrawn on the basis of Ext. P48 cheque leaf on 29.4.1991 out of the said amount Rs.12,000/- was accounted and the remaining ₹20,000/- was defalcated.

58. Ext. P54 is the third cheque involved in C.C. No. 22/2011. It is cheque No. 417853 dated 04.07.1991 for an amount of ₹15,000/-, issued

from the Quilon District Co-operative Bank Ltd. (QDCB), Punalur Branch, to Savings Bank Account No. 7 maintained by the Kundayam Service Co-operative Bank. According to PW1, the President of the Bank put her signature in Ext. P54. The signature of the appellant to be found on the reverse side of the cheque, got marked as Ext. P54(a). PW1 deposed that the appellant put his signature on Ext. P54(a) at the time of encashment of the cheque from the drawee bank.PW1 further stated that the cash transactions of the Bank on 04.07.1991 were recorded in sheet Nos. 70 and 71 of Ext. P12 cash book, marked as Exts. P12(l) and P12(m) respectively. PW1 categorically deposed that the amount of ₹15,000/- covered by Ext. P54 cheque was not accounted in Ext. P12 cash book, and a perusal of Exts. P12(l) and P12(m) substantiates the said version. However, PW1 stated that in page No. 44 of Ext. P15 day book receipt, marked as Ext. P15(h), the amount of ₹15,000/- was shown in the adjustment column in the handwriting of the appellant.

59. According to PW1, Ext. P55 is the credit slip No. 022 dated 04.07.1991 for ₹15,000/-, and where the initial of the appellant was put. PW1 explained that since the amount covered by Ext. P55 was not directly

paid to the cash section, it was accounted through the said credit slip. PW1 further deposed that on the very same day, as per Ext. P56 debit slip No. 048, the amount of ₹15,000/- covered by Ext. P55 was shown as expended under the head 'FACT Advance due by'. PW1 specifically stated that the handwriting in both Ext. P55 credit slip and Ext. P56 debit slip belong to the appellant, and his initials were present in both documents.PW1 also deposed that in page No. 331 of Ext. P8 day book payment, marked as Ext. P8(j), the said amount of ₹15,000/- was entered in the adjustment column, and that entry is in the handwriting of the appellant. Based on this entry, PW1 posted the amount in page No. 409 of Ext. P16 general ledger. However, PW1 categorically testified that the amount covered by Ext. P54 cheque was never actually credited in the Bank.

60. The evidence of PW10, Rejeni Mohan, who was working as Regional Manager of FACT in 2001, would further corroborate this aspect. PW10 deposed that the amount of ₹15,000/- covered by Ext. P54 cheque and reflected in Ext. P56 debit slip was not received in FACT as per their records. Ext. P65, a letter dated 07.05.2002 issued by PW10, also would confirm that the payments referred to by the Vigilance Inspector were not

received in FACT. It is also pertinent to note that Ext. P54 was a cash cheque.Thus, from the combined evidence of PW1 and PW10, would show that the amount shown as disbursed under Ext. P56 debit slip was not recieved, in fact, thereby establishing that the amount of ₹15,000/- covered by Ext. P54 cheque was misappropriated.

61. On an overall re-appreciation of the evidence the prosecution successfully established that, the total amount misappropriated by the appellant in C.C. No. 22/2011 comes to ₹59,912/-, comprising ₹24,912/- under Ext. P36 cheque, ₹20,000/- (out of ₹32,000/-) under Ext. P48 cheque, and ₹15,000/- under Ext. P54 cheque.

62. Adverting to the contention raised by the learned counsel for the appellant, that the evidence of PW1 supported by the other evidence is insufficient to prove the prosecution case and, in fact, the prosecution miserably failed to prove the case of the accused with the aid of expert opinion identifying the handwriting and signatures of the appellant in various documents discussed herein above, it is held that the evidence discussed as that of PW1 and other witnesses,

particularly, on the basis of the documentary evidence, the misappropriation at the helm of the appellant, as alleged by the prosecution, is established beyond reasonable doubt. In such a case, there is no necessity for the prosecution to insist on corroboration of his evidence in the form of expert evidence. Therefore, absence of expert evidence is of no consequence in the instant case.

63. Another challenge raised is that the audit report certifying the misappropriation now alleged by the prosecution could not be found. This contention appears to be impressive at the first flush because the audit certificates were prepared on the basis of the documents which have been discussed herein above and the same are found to be forged and falsified by the accused to make it appear that everything is in order. So the audit report prepared on the basis of the forged and false documents which would give an inference that the accounts of the bank including the misappropriation alleged were accounted properly would not have any relevance to disbelieve the prosecution case in view of the evidence discussed in detail. Therefore, this challenge also must fail.

64. On re-appreciation of the evidence, the offences alleged by the prosecution are established beyond reasonable doubt as found by the Special Judge and therefore no interference in the verdict insofar as the conviction imposed by the Special Court is found necessary and the same is found to be sustainable.

65. Coming to the sentence, some modification in the sentence can be considered for the offences under Section 13(1)(c) r/w 13(2) of the PC Act, 1988 for the statutory minimum. Therefore, insofar as the sentence imposed under Section 13(1)(c) r/w 13(2) of the PC Act, 1988 in both the cases, the substantive sentence is reduced for one year and in all other respects the sentence imposed in both the cases stand confirmed. The substantive sentence shall run concurrently and default sentence shall run separately.

66. In the result, these appeals are allowed in part. The order suspending sentence and granting bail to the accused stands cancelled and the bail bond also stands cancelled.

67. The accused is directed to surrender before the Special Court to undergo the sentence forthwith, failing which the Special Court

shall execute the sentence forthwith.

Registry is directed to forward a copy of this judgment to the Enquiry Commissioner and Special Judge, Thiruvananthapuram, for compliance and further steps.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/