

CRIMINAL APPEAL NO(S) OF 2026
(@SPECIAL LEAVE PETITION (CRIMINAL) NOS. 2910-2911 OF 2026)

.....APPELLANT

.....RESPONDENT

ORDER

1. Heard.
2. Leave granted.
3. These appeals arise from the common judgment and order dated 03.12.2025 passed by the High Court of Kerala at Ernakulam in Criminal Appeal Nos. 45 and 46 of 2014, whereby the High Court dismissed the appeals preferred by the accused/Appellant herein and affirmed the conviction and sentence imposed by the Enquiry Commissioner & Special Judge, Thiruvananthapuram in C.C. Nos. 29 of 2008 and 30 of 2008 by common judgement and order dated 18.12.2013.
4. The prosecution case, as appears from the record, is that the Appellant, while working as Secretary of Service Co-operative Society Ltd. No. 4280, Thamarakkulam, misappropriated amounts of Rs. 1,500/- and Rs. 14,000/- allegedly entrusted to her on 16.06.2001 and 26.02.2003 respectively, by failing to account for the same in the records of the Society, as such, FIRs came to be registered against the Appellant. After the completion of

investigation, the charge sheets was filed on 02.04.2008, which were taken on file as CC No. 29 & 30 of 2008, respectively and charges came to framed under section 13(2) read with section(s) 13(1)(c) & 13(1)(d) of the Prevention of Corruption Act, 1988 (for short '**PC Act**') and section(s) 409, 465 and 477A of the Indian Penal Code, 1860 (for short '**IPC**') in both the cases. Meanwhile Appellant had filed Criminal Miscellaneous Petition No. 1178 of 2013 in CC No. 30 of 2008 seeking joint trial of both the cases since the offence alleged against the accused were committed in same series of transaction, wherein orders were passed to jointly conduct the trial of both the cases.

5. The Trial Court, upon appreciation of the evidence of PW1 to PW6 and documents marked as Exts. P1 to P13, vide common order dated 18.12.2013, came to the conclusion that prosecution had sufficiently proved the charges beyond reasonable doubt, as such, the trial court convicted the Appellant for offences punishable under Sections 409 and 477-A of the IPC and Sections 13(1)(c) and 13(1)(d) read with Section 13(2) of the PC Act, and sentenced her to undergo rigorous imprisonment for one year each, with fines to the tune of Rs. 1000/- (Rupees One Thousand Only) each and in default, to undergone rigorous imprisonment for a further period of one month each, in both the cases bearing CC No. 29 and 30 of 2008, respectively. The sentences were directed to run concurrently. However, the Appellant was acquitted for the offence under section 465 of IPC.
6. Aggrieved by the common order of conviction and sentence, the Appellant preferred two Criminal Appeals bearing Crl. A No. 45 and 46 of 2014 challenging the common order of conviction and sentence passed by trial court in CC No. 29 and 30 of 2008, respectively.

7. The High Court, re-appreciated the evidence and affirmed the findings of the Trial Court, vide judgement and order dated 03.12.2025, holding that the testimony of PW2 and PW3, coupled with documentary evidence, sufficiently established entrustment of the amounts and failure on the part of the Appellant to account for the same. Hence, aggrieved by the said order, the present appeals have been preferred.
8. We have heard learned counsels for the Appellant and respondents. The principal contention canvassed on behalf of the appellant is that entrustment has not been proved and that the receipts relied upon by the prosecution were not duly established in accordance with law. It has further been contended that the entire prosecution case rests upon the oral testimony of PW2 and PW3, whose evidence suffers from serious infirmities and lacks the degree of reliability necessary to sustain a conviction in a criminal trial. It is also urged that PW3, who allegedly entrusted the amounts to the Appellant, was himself initially arrayed as an accused in the very same crime and, therefore, his testimony required strict corroboration in material particulars, which is conspicuously absent in the present case. As such, he has prayed for the allowing the present appeal.
9. Per Contra, the Learned Counsel appearing on behalf of the respondent State has vehemently objected to said contentions canvassed by the appellant and has stated that both the trial court and high court have rightly appreciated the evidence of the prosecution witnesses and documentary exhibits to arrive at findings of conviction. As such, the learned counsel has prayed for dismissal of the present appeal.
10. We have given our anxious and thoughtful consideration to submissions tendered at the bar and have perused the material on record. The prosecution case fundamentally rests upon Ext.P1(b) and Ext.P3(ab), being

the receipts allegedly executed by the Appellant acknowledging receipt of amounts of Rs.1,500/- (Fifteen Hundred Rupees Only) and Rs.14,000/- (Fourteen Thousand Rupees Only) respectively. The genuineness of these receipts, therefore, constitutes the very foundation upon which the prosecution seeks to establish entrustment and consequential misappropriation.

11. At the outset, it requires to be noticed that PW3, the then Agricultural Officer attached to Krishi Bhavan, Thamarakkulam, who allegedly entrusted the aforesaid amounts to the Appellant, was originally arrayed as Accused No.1 in the Ext. 9 FIR, however, his case was subsequently split up and he has been acquitted. The defence case throughout has been that the receipts in question were fabricated by PW3 in collusion with PW2, namely the President of the Society, in order to shield PW3 from vigilance proceedings relating to missing subsidy amounts. Although PW3 stood acquitted, his evidence so far as it inculpated the appellant is that of an Interested Witness. A 'Interested witness' is one who derives some benefit from the result of the litigation in the decree in a civil case or in seeing an accused person punished.¹ Though it is a settled proposition of law that it there is no invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence, however it is necessary that evidence of interested witnesses should be subjected to careful scrutiny and examined with caution. If upon such scrutiny, the testimony of such witness is found to be intrinsically reliable or so probable that by itself it is

¹ Ref: *Ramji Singh v. State of U.P.*, (2020) 2 SCC 425 & *Ganpathi v. State of Tamil Nadu*, (2018) 5 SCC 549.

sufficient in the circumstances of the case to base a conviction, the courts can rely on the same without any hesitation.²

12. Hence, in this background, when this court considers the evidence on record. It is admitted that PW1 did not possess any direct knowledge regarding the transactions Ext. P1 file and Ext. P3(a) file, as such, his testimony is not of relevance to establish entrustment. It is undisputed that PW3, whose testimony was relied upon by the prosecution to prove the entrustment, had deposed that appellant had put her signature in Ext. P1(b) receipt and Ext. P3(ab) on the letter head of the society and issued the same to PW 3 nevertheless is also undisputed that the said letter head was not in exclusive possession of the appellant and the same could have been used by PW2, the President of the society as well. It is noteworthy that the defence consistent stand was PW2 and PW 3 were related to each other since they were workers of the same political party, as such, the possibility of them colluding with each other could not have been ruled out. It is also noteworthy that PW3 was charged as an accused in Ext. 9 FIR but stood acquitted. The trial court and appellate court accepted the oral testimony of PW3 regarding the identification of the disputed receipts.

13. It is apt and appropriate to note the testimony relied by the trial court and appellate court had come from a previously implicated individual, as such, the trial court and appellate court ought to have made a calibrated approach to admit the credibility and reliability of said testimony after close scrutiny and sufficient corroboration. However, in the present case, the identification of Ext. P1(b) and Ext. P3(ab) was solely accepted on the basis of oral testimonies and no attempt was made on behalf of the prosecution to obtain evidence of expert examination or any other

² *Hari Obula Reddy v. State of A.P.*, (1981) 3 SCC 675 (Ref. Para 24).

independent witnesses as it would corroborate evidence of PW 2 and PW3. The Courts below accepted PW2's testimony under Section 47 of the Evidence Act on the ground that he was acquainted with the handwriting of the Appellant while functioning together in the Society. Section 47 of evidence Act makes relevant the opinion of a person who though is not an expert as per Section 45 of the evidence Act, his testimony becomes relevant by virtue of the fact that he is acquainted with the handwriting of the person alleged to have authored the document. A Person may be acquainted with the handwriting of another person mainly in three ways, viz

1. When he has seen that person write;
2. When he has received communication purporting to be written by that person in answer to documents purporting to be written by himself, although neither of them saw each other write; and
3. In the ordinary course of business documents purporting to be written by that person have been habitually submitted to him.

14. However, such kind of non-expert evidence can be considered to be the better than expert evidence, if the person deposing to it is disinterested. Moreover, even if the witnesses assert firmly or otherwise, his testimony is merely an opinion based on the comparison in the mind between the disputed writing and an example formed by his previous experience. As such, the opinion of such person under section 47 is not conclusive by itself and the court is to determine regarding the reliability of the said evidence after considering cumulatively the other strong circumstances to prove the execution of the disputed document. In this background, when the testimony of PW2 is considered relevant under section 47, it should be borne in mind that appellant primary defence was fabrication in collusion

between PW2 and PW3 who were workers of same political affiliation. Therefore, it could not be said in all probability that PW2 statement which though held relevant can be the sole basis to arrive at the conclusion that the disputed receipts possessed the handwriting of appellant and the prosecution was expected to establish the genuineness of disputed receipts by independent evidence by way of an expert or otherwise, which has not happened in the present case. This omission assumes considerable importance because the entire prosecution case regarding entrustment is inseparably intertwined with the authenticity of the disputed receipts.

- 15.** What further weakens the prosecution story is the material discrepancy surrounding Ext.P3(ab). According to the prosecution, the amount of Rs.14,000/- was allegedly entrusted to the Appellant on 26.02.2003. However, the corresponding receipt relied upon by the prosecution bears the date 03.03.2003, nearly five days after the alleged entrustment. No satisfactory explanation has been offered by the prosecution regarding this inconsistency. If the receipt represented contemporaneous acknowledgment of payment, the discrepancy in dates strikes at the very genuineness of the transaction alleged by the prosecution.
- 16.** The Trial Court itself acquitted the Appellant for the offence punishable under Section 465 IPC relating to forgery. Once the prosecution failed to conclusively establish the authenticity of the disputed documents for the purpose of forgery, the same documents could not have been treated as unimpeachable evidence of entrustment for sustaining conviction under Section 409 IPC and the provisions of PC Act by itself, as such, the prosecution was required to bring on record independent witnesses or forensic evidence of sterling quality. The reasoning adopted by the Courts below suffers from an inherent inconsistency inasmuch as the same

evidentiary material was considered insufficient for one charge and simultaneously treated as conclusive for another.

17. The offence under Section 409 IPC necessarily postulates proof of entrustment coupled with dishonest misappropriation. Entrustment is not a matter of presumption, but a foundational jurisdictional fact which the prosecution is bound to establish affirmatively and beyond reasonable doubt. Mere absence of corresponding entries in the cash book or day book of the Society cannot by itself establish misappropriation unless lawful entrustment is first proved through cogent and reliable evidence, which in our considered view was not sufficiently established.
18. At the cost of repetition, the prosecution failed to produce any independent material such as contemporaneous disbursement registers, treasury records, acknowledgment registers, vouchers, or testimony of any independent witness to establish actual delivery of cash to the Appellant. Conviction, therefore, has substantially been recorded on the basis of doubtful documentary evidence coupled with testimony of witnesses whose evidence required careful and necessary corroboration.
19. We also find merit in the contention advanced on behalf of the Appellant regarding applicability of the provisions of the PC Act. The prosecution was required to establish that the Appellant answered the description of a “public servant” within the meaning of Section 2(1)(c) of the Act. The Courts below appear to have proceeded on the assumption that since agricultural subsidies were routed through the Society, the Society itself became an aided institution. However, there is no cogent evidence on record demonstrating that the Society was “receiving or had received financial aid” from the Government in the manner contemplated by the statutory provision.

- 20.** It is trite law that suspicion, however grave, cannot substitute the place of proof. As such, Criminal Courts are duty bound to ensure that conviction follows only upon evidence which inspires confidence beyond reasonable doubt. The burden always rests upon the prosecution and never shifts upon the accused to establish innocence. It is noteworthy, that the Appellant has undergone the ordeal of criminal prosecution for more than two decades in relation to alleged misappropriation of amounts. While sympathy cannot substitute legal proof, the prolonged pendency of criminal proceedings founded upon doubtful evidence reinforces the necessity of strict adherence to settled principles of criminal jurisprudence. As such, upon cumulative assessment of the evidence on record, we are of the considered view that the prosecution has failed to establish the charges against the Appellant beyond reasonable doubt. The evidence adduced falls substantially short of the degree of certainty necessary for sustaining conviction.
- 21.** However, we clarify that the appellant would not be entitled to claim any service benefit including any pension from the State Government or the Service Cooperative Society Ltd. Thamarakkulam, as undertaken by the appellant in her affidavit at para 5.
- 22.** Consequently, the appeals are allowed. The common judgment and order dated 03.12.2025 passed by the High Court of Kerala at Ernakulam in Criminal Appeal Nos.45 and 46 of 2014 affirming the common judgment and order dated 18.12.2013 passed by the Enquiry Commissioner & Special Judge, Thiruvananthapuram in C.C. Nos.29 and 30 of 2008 are hereby set aside. Therefore, the Appellant stands acquitted of all charges and is directed to be released, if in custody, forthwith.

23. Bail bonds, if any, shall stand discharged. Pending application(s), if any, stands consigned to record.

.....J.
[ARAVIND KUMAR]

.....J.
[PRASANNA B. VARALE]

**NEW DELHI;
MAY 19th, 2026.**

ITEM NO.58 COURT NO.14 SECTION II-D

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

**Petition(s) for Special Leave to Appeal (Crl.)
No(s).2910-2911/2026**

**[Arising out of impugned final judgment and
order dated 03-12-2025 in CRLA No.45/2014 03-
12-2025 in CRLA No.46/2014 passed by the High
Court of Kerala at Ernakulam]**

SARALA DEVI T.C. Petitioner(s)

VERSUS

STATE OF KERALA Respondent(s)

FOR ADMISSION

**Date : 19-05-2026 These petitions were called
on for hearing today.**

**CORAM : HON'BLE MR. JUSTICE ARAVIND KUMAR
 HON'BLE MR. JUSTICE PRASANNA B. VARALE**

**For Petitioner(s) : Mr. Bijo Mathew Joy, AOR
 Ms. Gifty Marium Joseph, Adv.**

**For Respondent(s) : Mr. C. K. Sasi, AOR
 Dr. K. K. Geetha, Adv.
 Ms. Meena K. Poullose, Adv.**

**UPON hearing the counsel the Court made
the following**

O R D E R

Leave granted.

Criminal Appeals are allowed in terms of

the signed order placed on the file.

Pending application(s), if any, stands
consigned to record.

(NEHA GUPTA)
COURT MASTER (SH)

(AVGV RAMU)
COURT MASTER (NSH)