



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA, 1945

CRL.A NO. 692 OF 2007

AGAINST THE JUDGMENT DATED 28.3.2007 IN CC 17/2003 OF

ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

APPELLANT/ACCUSED:

G.CHANDRABHANU
FORMERLY JUNIOR SUPERINTENDENT OF THE OFFICE OF
DISTRICT, REGISTRAR (GL), ALAPPUZHA.

BY SRI. S. SREEDEV

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,,
ERNAKULAM, (THROUGH DY.S.P., VACB, SIU,
THIRUVANANTHAPURAM) .

SMT S REKHA SR PP, SRI A RAJESH SPL PP

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
02.08.2023, ALONG WITH CRL.A.693/2007, AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA, 1945

CRL.A NO. 693 OF 2007

AGAINST THE JUDGMENT DATED 28.3.2007 IN CC 21/2003 OF

ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

APPELLANT/ACCUSED:

G.CHANDRABHANU
FORMERLY JUNIOR SUPERINTENDENT OF THE OFFICE OF
DISTRICT, REGISTRAR (GL), ALAPPUZHA.

BY SRI. S. SREEDEV
SRI.ENOCH DAVID SIMON JOEL
SRI.RONY JOSE

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,,
ERNAKULAM, (THROUGH DY.S.P., VACB, SIU,
THIRUVANANTHAPURAM) .

SMT S REKHA SR PP, SRI A RAJESH SPL PP

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
02.08.2023, ALONG WITH CRL.A.692/2007 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA, 1945

CRL.A NO. 694 OF 2007

AGAINST THE JUDGMENT DATED 28.3.2007 IN CC 32/2003 OF

ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

APPELLANT/ACCUSED:

G.CHANDRABHANU
FORMERLY JUNIOR SUPERINTENDENT OF THE OFFICE OF
DISTRICT, REGISTRAR (GL), ALAPPUZHA.

BY SRI. S. SREEDEV
SRI.ENOCH DAVID SIMON JOEL
SRI.RONY JOSE

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,,
ERNAKULAM, (THROUGH DY.S.P., VACB, SIU,
THIRUVANANTHAPURAM) .

SMT S REKHA SR PP, SRI A RAJESH SPL PP

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
02.08.2023, ALONG WITH CRL.A.692/2007 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA, 1945

CRL.A NO. 695 OF 2007

AGAINST THE JUDGMENT DATED 28.3.2007 IN CC 23/2003 OF

ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

APPELLANT/ACCUSED:

G.CHANDRABHANU
FORMERLY JUNIOR SUPERINTENDENT OF THE OFFICE OF
DISTRICT, REGISTRAR (GL), ALAPPUZHA.

BY SRI. S. SREEDEV
SRI.ENOCH DAVID SIMON JOEL
SRI.RONY JOSE

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,,
ERNAKULAM, (THROUGH DY.S.P., VACB, SIU,
THIRUVANANTHAPURAM) .

SMT S REKHA SR PP, SRI A RAJESH SPL PP

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
02.08.2023, ALONG WITH CRL.A.692/2007 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA, 1945

CRL.A NO. 700 OF 2007

AGAINST THE JUDGMENT DATED 28.3.2007 IN CC 22/2003 OF

ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

APPELLANT/ACCUSED:

G.CHANDRABHANU
FORMERLY JUNIOR SUPERINTENDENT OF THE OFFICE OF
DISTRICT, REGISTRAR (GL), ALAPPUZHA.

BY SRI. S. SREEDEV
SRI.ENOCH DAVID SIMON JOEL
SRI.RONY JOSE

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,,
ERNAKULAM, (THROUGH DY.S.P., VACB, SIU,
THIRUVANANTHAPURAM) .

SMT S REKHA SR PP, SRI A RAJESH SPL PP

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
02.08.2023, ALONG WITH CRL.A.692/2007 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA, 1945

CRL.A NO. 701 OF 2007

AGAINST THE JUDGMENT DATED 28.3.2007 IN CC 16/2003 OF

ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

APPELLANT/ACCUSED:

G.CHANDRABHANU
FORMERLY JUNIOR SUPERINTENDENT OF THE OFFICE OF
DISTRICT, REGISTRAR (GL), ALAPPUZHA.

BY SRI. S. SREEDEV
SRI.ENOCH DAVID SIMON JOEL
SRI.RONY JOSE

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,,
ERNAKULAM, (THROUGH DY.S.P., VACB, SIU,
THIRUVANANTHAPURAM) .

SMT S REKHA SR PP, SRI A RAJESH SPL PP

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
02.08.2023, ALONG WITH CRL.A.692/2007 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA, 1945

CRL.A NO. 702 OF 2007

AGAINST THE JUDGMENT DATED 28.3.2007 IN CC 24/2003 OF

ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

APPELLANT/ACCUSED:

G.CHANDRABHANU
FORMERLY JUNIOR SUPERINTENDENT OF THE OFFICE OF
DISTRICT, REGISTRAR (GL), ALAPPUZHA.

BY SRI. S. SREEDEV

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,,
ERNAKULAM, (THROUGH DY.S.P., VACB, SIU,
THIRUVANANTHAPURAM) .

SMT S REKHA SR PP, SRI A RAJESH SPL PP

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
02.08.2023, ALONG WITH CRL.A.692/2007 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA, 1945

CRL.A NO. 703 OF 2007

AGAINST THE JUDGMENT DATED 28.3.2007 IN CC 29/2003 OF

ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

APPELLANT/ACCUSED:

G.CHANDRABHANU
FORMERLY JUNIOR SUPERINTENDENT OF THE OFFICE OF
DISTRICT, REGISTRAR (GL), ALAPPUZHA.

BY SRI. S. SREEDEV
SRI.ENOCH DAVID SIMON JOEL
SRI.RONY JOSE

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,,
ERNAKULAM, (THROUGH DY.S.P., VACB, SIU,
THIRUVANANTHAPURAM) .

SMT S REKHA SR PP, SRI A RAJESH SPL PP

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
02.08.2023, ALONG WITH CRL.A.692/2007 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA, 1945

CRL.A NO. 704 OF 2007

AGAINST THE JUDGMENT DATED 28.3.2007 IN CC 19/2003 OF

ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

APPELLANT/ACCUSED:

G.CHANDRABHANU
FORMERLY JUNIOR SUPERINTENDENT OF THE OFFICE OF
DISTRICT, REGISTRAR (GL), ALAPPUZHA.

BY SRI. S. SREEDEV

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,,
ERNAKULAM, (THROUGH DY.S.P., VACB, SIU,
THIRUVANANTHAPURAM) .

SMT S REKHA SR PP, SRI A RAJESH SPL PP

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
02.08.2023, ALONG WITH CRL.A.692/2007 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA, 1945

CRL.A NO. 705 OF 2007

AGAINST THE JUDGMENT DATED 28.3.2007 IN CC 20/2003 OF

ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

APPELLANT/ACCUSED:

G.CHANDRABHANU
FORMERLY JUNIOR SUPERINTENDENT OF THE OFFICE OF
DISTRICT, REGISTRAR (GL), ALAPPUZHA.

BY SRI. S. SREEDEV

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,,
ERNAKULAM, (THROUGH DY.S.P., VACB, SIU,
THIRUVANANTHAPURAM) .

SMT S REKHA SR PP, SRI A RAJESH SPL PP

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
02.08.2023, ALONG WITH CRL.A.692/2007 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA, 1945

CRL.A NO. 706 OF 2007

AGAINST THE JUDGMENT DATED 28.3.2007 IN CC 31/2003 OF

ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

APPELLANT/ACCUSED:

G.CHANDRABHANU
FORMERLY JUNIOR SUPERINTENDENT OF THE OFFICE OF
DISTRICT, REGISTRAR (GL), ALAPPUZHA.

BY SRI. S. SREEDEV

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,,
ERNAKULAM, (THROUGH DY.S.P., VACB, SIU,
THIRUVANANTHAPURAM) .

SMT S REKHA SR PP, SRI A RAJESH SPL PP

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
02.08.2023, ALONG WITH CRL.A.692/2007 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA, 1945

CRL.A NO. 707 OF 2007

AGAINST THE JUDGMENT DATED 28.3.2007 IN CC 30/2003 OF

ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

APPELLANT/ACCUSED:

G.CHANDRABHANU
FORMERLY JUNIOR SUPERINTENDENT OF THE OFFICE OF
DISTRICT, REGISTRAR (GL), ALAPPUZHA.

BY SRI. S. SREEDEV

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,,
ERNAKULAM, (THROUGH DY.S.P., VACB, SIU,
THIRUVANANTHAPURAM) .

SMT S REKHA SR PP, SRI A RAJESH SPL PP

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
02.08.2023, ALONG WITH CRL.A.692/2007 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA, 1945

CRL.A NO. 708 OF 2007

AGAINST THE JUDGMENT DATED 28.3.2007 IN CC 28/2003 OF

ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

APPELLANT/ACCUSED:

G.CHANDRABHANU
FORMERLY JUNIOR SUPERINTENDENT OF THE OFFICE OF
DISTRICT, REGISTRAR (GL), ALAPPUZHA.

BY SRI. S. SREEDEV

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,,
ERNAKULAM, (THROUGH DY.S.P., VACB, SIU,
THIRUVANANTHAPURAM) .

SMT S REKHA SR PP, SRI A RAJESH SPL PP

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
02.08.2023, ALONG WITH CRL.A.692/2007 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA, 1945

CRL.A NO. 709 OF 2007

AGAINST THE JUDGMENT DATED 28.3.2007 IN CC 18/2003 OF

ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

APPELLANT/ACCUSED:

G.CHANDRABHANU
FORMERLY JUNIOR SUPERINTENDENT OF THE OFFICE OF
DISTRICT, REGISTRAR (GL), ALAPPUZHA.

BY SRI. S. SREEDEV

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,,
ERNAKULAM, (THROUGH DY.S.P., VACB, SIU,
THIRUVANANTHAPURAM) .

SMT S REKHA SR PP, SRI A RAJESH SPL PP

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
02.08.2023, ALONG WITH CRL.A.692/2007 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA, 1945

CRL.A NO. 712 OF 2007

AGAINST THE JUDGMENT DATED 28.3.2007 IN CC 25/2003 OF

ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

APPELLANT/ACCUSED:

G.CHANDRABHANU
FORMERLY JUNIOR SUPERINTENDENT OF THE OFFICE OF
DISTRICT, REGISTRAR (GL), ALAPPUZHA.

BY SRI. S. SREEDEV

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,,
ERNAKULAM, (THROUGH DY.S.P., VACB, SIU,
THIRUVANANTHAPURAM) .

SMT S REKHA SR PP, SRI A RAJESH SPL PP

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
02.08.2023, ALONG WITH CRL.A.692/2007 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA, 1945

CRL.A NO. 713 OF 2007

AGAINST THE JUDGMENT DATED 28.3.2007 IN CC 26/2003 OF

ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

APPELLANT/ACCUSED:

G.CHANDRABHANU
FORMERLY JUNIOR SUPERINTENDENT OF THE OFFICE OF
DISTRICT, REGISTRAR (GL), ALAPPUZHA.

BY SRI. S. SREEDEV

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,,
ERNAKULAM, (THROUGH DY.S.P., VACB, SIU,
THIRUVANANTHAPURAM) .

SMT S REKHA SR PP, SRI A RAJESH SPL PP

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
02.08.2023, ALONG WITH CRL.A.692/2007 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA, 1945

CRL.A NO. 714 OF 2007

AGAINST THE JUDGMENT DATED 28.3.2007 IN CC 27/2003 OF

ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

APPELLANT/ACCUSED:

G.CHANDRABHANU
FORMERLY JUNIOR SUPERINTENDENT OF THE OFFICE OF
DISTRICT, REGISTRAR (GL), ALAPPUZHA.

BY SRI. S. SREEDEV

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,,
ERNAKULAM, (THROUGH DY.S.P., VACB, SIU,
THIRUVANANTHAPURAM) .

SMT S REKHA SR PP, SRI A RAJESH SPL PP

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
02.08.2023, ALONG WITH CRL.A.692/2007 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**“CR”****J U D G M E N T**

Crl.A Nos.692, 693, 694, 695, 700,
701, 702, 703, 704, 705, 706, 707,
708, 709, 712, 713 & 714 of 2007

Dated this the 2nd day of August, 2023

The above appeals have been filed challenging the common judgment passed by the Enquiry Commissioner and Special Judge, Thiruvananthapuram (for short 'the court below') in C.C.No.16/2003 to C.C.No.32/2003 dated 28.3.2007.

2. The appellant, in all the cases, is one and the same person. He faced the trial of 17 cases altogether with a similar set of allegations. The offences alleged in all the cases are under Section 13(1)(d) read with 13 (2) of the Prevention of Corruption Act, 1988 (for short 'the PC Act') and Sections 465, 468 and 471 of the Indian Penal Code (for short 'the IPC'). The court below tried all 17 cases jointly. The evidence was recorded in C.C.No.16/2003. All the cases were disposed of by a common judgment. Since all the appeals are connected, I am also disposing of all the appeals together.

3. The appellant was working as Junior Superintendent in the office of the District Registrar (GL), Alappuzha, during the period from March 1992 to November 1993. The prosecution case



is that, while the accused was working in the above capacity during the aforesaid period, he abused his official position as a public servant, committed criminal misconduct by forging Essentiality Certificates (47 in Numbers), used the same as genuine and obtained medical reimbursement amount of ₹23,381/-, unauthorisedly, causing corresponding loss to the Government.

4. After trial, the court below found the accused guilty in all the cases and he was convicted and sentenced in CC.No.16/2003 to undergo simple imprisonment for a period of three years under Section 13(1)(d) read with 13(2) of the PC Act, to undergo simple imprisonment for a period of three years under Sections 468 of the IPC and simple imprisonment for a period of one year each under Sections 465 and 471 of the IPC. In CC.Nos. 17/2003 to 32/2003, he was sentenced to undergo simple imprisonment for a period of three years each under Section 13(1) (d) read with 13(2) of the PC Act, simple imprisonment for a period of three years each under Section 468 of the IPC, simple imprisonment for one year each under Section 465 of the IPC and simple imprisonment for one year each under Section 471 of the IPC. Challenging the said conviction and sentence, the accused preferred all these appeals.



5. I have heard Sri. S. Sreedev, the learned counsel for the appellant and Sri. A. Rajesh, the learned Special Public Prosecutor for VACB.

6. The learned counsel for the appellant impeached the finding of the court below on appreciation of evidence and resultant finding as to the guilt. The learned counsel submitted that the prosecution has failed to prove the photocopies of the Essentiality Certificates, which were alleged to have been forged, in accordance with the law. He further submitted that there is no satisfactory evidence to prove that the Essentiality Certificates produced by the appellant were forged. In the absence of legal evidence to prove the criminal misconduct on the part of the appellant, the court below ought to have acquitted the accused, submitted the counsel. On the other hand, the learned Special Public Prosecutor supported the findings and verdict of the court below and submitted that the prosecution had succeeded in proving the case beyond reasonable doubt.

7. It is not in dispute that the appellant was working as Junior Superintendent in the office of the District Registrar (GL), Alappuzha, during the period from March 1992 to November 1993. It is also not in dispute that the appellant had submitted medical reimbursement claims covered by Exts. P2 to P9, P11, P12, P14 to



P44 and P47 to P50 and obtained claim amount of ₹23,381/-. According to the prosecution, the appellant produced forged Essentiality Certificates along with medical reimbursement claims and, using the said Certificates as genuine, obtained the claim amount. The defence set up by the appellant is that he had submitted only genuine Essentiality Certificates and claimed and received the amount which was actually due to him as medical reimbursement benefits. The crucial point that arises for consideration is whether the Essentiality Certificates produced by the accused, along with the applications for medical reimbursement, were forged documents or not.

8. Exts. P2 to P50 are the files relating to the medical reimbursement claims of the appellant. Documents marked as (a) series of Exts.P2 to P50 are the applications for medical reimbursement, the documents marked as (b) series are the declarations and the documents marked as (c) series are the Essentiality Certificates submitted by the appellant. It is pertinent to note that (c) series of Exts. P2 to P50 are only photocopies. The originals of those documents were not produced or marked on the side of the prosecution. An explanation was offered by the prosecution for the non-production of the same. According to the prosecution, the appellant, while submitting the medical



reimbursement claims, produced the original as well as the photocopies of the Essentiality Certificates. Thereafter, after processing the claims, the applications, along with the originals of the Essentiality Certificates, were forwarded to the treasury, retaining the photostat copies of the Essentiality Certificates in the file. From the treasury, the applications, along with the original Essentiality Certificates, were forwarded to the office of the Accountant General of the State of Kerala (AG), and those were kept there. It is alleged that the office of the AG, after some time, destroyed the originals of the Essentiality Certificates. To prove the same, the prosecution relied on Ext.P66 letter issued from the office of the AG.

9. A conjoint reading of Sections 59, 61 and 62 of the Indian Evidence Act, 1872 (for short 'the Act') would show that the contents of the documents must be proved by primary evidence by producing original documents itself for the inspection of the court. Section 64 of the Act says that the documents must be proved by primary evidence, except in cases provided in Section 65 of the Act. Section 65 provides when secondary evidence can be given [clauses (a) to (g)]. Section 63 of the Act categorises five kinds of secondary evidence. Photocopy of a document (copy made by mechanical process) is one among them. Secondary



evidence relating to the contents of a document is inadmissible until the non-production of the original is accounted for to bring it within one or more other of the clauses provided in Section 65 of the Act. The party who proposes to adduce secondary evidence is bound to explain the non-availability of the original. To admit a photocopy in evidence, it is necessary to lay the foundation of reception of secondary evidence [see **J. Yashoda v. K. Shoba Rani** (AIR 2007 SC 1721) and **State of Kerala v. Sunil** (2022 (1) KLT 512)]. That apart, the secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original.

10. As stated already, according to the prosecution, the originals of (c) series of Exts.P2 to P50 Essentiality Certificates were destroyed by the office of the AG. As per sub-clause (c) of Section 65 of the Act, secondary evidence relating to documents may be given when the original has been destroyed or lost. A party seeking to produce secondary evidence must explain the non-production/non-availability of primary evidence. Thus, a party who proposes to produce a photostat copy of a document as secondary evidence on the ground that the original has been destroyed or lost is bound to prove the said fact to receive the photocopy in evidence. Without laying down the said factual



foundation for the reception of secondary evidence, the photostat copies cannot be admitted into the evidence at all. It is well settled that neither mere admission of documents in evidence amounts to its proof nor mere marking of an exhibit of a document dispense with its proof, which is otherwise required to be done in accordance with the law.

11. Now, let me examine whether there is legal evidence to show that the original Essentiality Certificates were destroyed. To prove the said fact, the prosecution relies on Ext. P66. Ext.P66 is a letter issued by the Assistant Accountant General to the Director, VACB, Thiruvananthapuram. It has been marked through PW19, who was the C.I. of Police, VACB, Poojappura, during the relevant period. Ext.P66 was issued in reply to a letter given by the Director, VACB. According to the prosecution, as per that letter, VACB asked for the vouchers, bill and Essentiality Certificate of the appellant forwarded to the office of the AG. The contents in Ext.P66 reads as follows:

“Please refer to the above.

As the period of reservation of the vouchers requisitioned are over, they have already been weeded out. Hence, this office is not in a position to supply these vouchers.”

12. The above description only shows that the VACB made



the request for the supply of vouchers, and the reply given was also with respect to vouchers only. The contents in Ext.P66 are not sufficient to establish that the original Essentiality Certificates were destroyed. The prosecution could have produced the letter given by the Director, VACB, to substantiate its contention that they requested Essentiality Certificates as well, along with the vouchers. That apart, the contents of Ext.P66 had not been proved in accordance with the law. Mere production of a document would not prove its contents. The contents of the document must be proved by admissible evidence, i.e., by the evidence of those who can vouchsafe for the truth of the facts in issue. It shall not be legal for the court to rely solely upon the recitals in the document as substantive evidence to decide whether the disputed facts exist or proved or not. The person who issued Ext.P66 could have been examined to prove the contents. The prosecution version that the original Essentiality Certificates were destroyed at the office of the AG has been specifically denied by the appellant. Hence, the prosecution could have examined the person who has direct knowledge of the destruction of the original Essentiality Certificates, which is a fact in issue. The 'facts' stated in the 'contents of documents' do not constitute substantive evidence for proving the existence of such facts. Hence, the disputed facts cannot be resolved by merely interpreting the recitals in the



document in the absence of oral evidence on such facts [See **Suresh v. Tobin** (2013 (1) KLT 293)]

13. In short, there is no acceptable legal evidence on record to prove that the originals of the (c) series of Exts. P2 to P50 Essentiality Certificates were destroyed to receive the photostat copies in evidence. In the absence of such proof, the photostat copies of the Essentiality Certificates produced by the prosecution cannot be relied on at all. Thus, I am of the view that the prosecution failed to adduce legally acceptable evidence to prove that the original Essentiality Certificates produced by the appellant, along with the medical reimbursement claims, were forged. In the absence of such proof, the conviction of the appellant in none of the cases could be sustained.

14. The learned Special Public Prosecutor sought for remand to give an opportunity to the prosecution to prove the contents of Ext.P66, in accordance with law and to adduce evidence to prove that the original Essentiality Certificates were actually destroyed. I cannot accede to the said request for the following reasons:

15. Section 386 of Cr. P.C defines the power of the appellate court while disposing of an appeal against an order of conviction or acquittal. Section 386(b)(i) empowers the appellate court to order the re-trial of the accused. Though such power



exists, it is trite that it should not be exercised in a routine manner. A *de novo* trial or retrial of the accused should be ordered by the appellate court in exceptional and rare cases, and only when, in the opinion of the appellate court, such course becomes indispensable to avert failure of justice. This power cannot be used to allow the prosecution to improve upon its case or fill up the lacuna. The guiding factor for retrial must always be the demand for justice. The scope of power of the appellate court to direct a retrial has come up before the Apex Court for interpretation in several decisions. The Constitution Bench of the Apex Court in ***Ukha Kolhe v. State of Maharashtra*** (AIR 1963 SC 1531) held that an order for retrial of a criminal case could only be made in exceptional cases. The Apex Court held that a retrial would not be ordered unless the appellate court is satisfied that (i) the court trying the proceeding had no jurisdiction; (ii) the trial was vitiated by serious illegalities and irregularities or on account of a misconception of the nature of the proceedings as a result of which no real trial was conducted; or (iii) the prosecutor or an accused was for reasons beyond their control prevented from leading or tendering evidence material to the charge and that in the interest of justice, the appellate court considers it appropriate to order a retrial. The Apex Court affirmed the principle that a retrial cannot be ordered merely on the ground that the



prosecution did not produce proper evidence and did not know how to prove their case. In **State of M.P. v. Bhooraji** (AIR 2001 SC 3372), it was held by the Apex Court that a *de novo* trial should be the last resort, that too only when such a course becomes so desperately indispensable. It should be limited to the extreme exigency to avert a “failure of justice”. Any omission or even the illegality in the procedure which does not affect the core of the case is not a ground for ordering a *de novo* trial. A three-Judge Bench of the Apex Court in **Mohd. Hussain v. State (NCT of Delhi)** [(2012) 9 SCC 408] has held that a *de novo* trial or retrial of the accused should be ordered by the appellate court in exceptional and rare cases and only when in the opinion of the appellate court such course becomes indispensable to avert failure of justice. It was further held that this power cannot be used to allow the prosecution to improve upon its case or to fill up the lacuna. In **Ajay Kumar Ghoshal v. State of Bihar** [(2017) 12 SCC 699], the Apex Court held that though the word “retrial” is used under section 386(b)(i) of Cr.P.C., the powers conferred by this clause is to be exercised only in exceptional cases, where the appellate court is satisfied that the omission or irregularity has occasioned in failure of justice. It was observed that the circumstances that should exist for warranting a retrial must be such that where the trial was undertaken by the court having no



jurisdiction or trial was vitiated by serious illegality or irregularity on account of the misconception of the nature of proceedings. The same view was adopted by the Apex Court in **P.Ramesh v. State** [(2019) 20 SCC 593]. A Single Bench of this Court in **P.Mammadkutty and Others v. State** (1996 KHC 232) held that in an appeal filed by the accused against conviction and sentence, no remand could be made by the Sessions Court for fresh trial for filling up a lacuna on the side of the prosecution. It was further held that in the absence of either an appeal by the prosecution or a revision by the defacto complainant, the Sessions Court was not justified in remanding the matter back to the trial court in an appeal filed by the accused against their conviction. The said decision was followed by this Court again in **Baby v. State of Kerala** (2016 KHC 272) and **M/s.Subhiksham Pharmaceutical Distributors and Another v. State of Kerala and Another** (Crl.R.P. No.651/2015 dated 4/3/2022).

16. Recently, a three-Judge Bench of the Apex Court in **Nasib Singh v. State of Punjab and Another** [2021 KHC 6613] formulated the following principles to be followed by the appellate court when a retrial is sought.

“(i) The appellate court may direct a retrial only in “exceptional” circumstances to avert a miscarriage of justice.

(ii) Mere lapses in the investigation are not sufficient to



warrant a direction for retrial. Only if the lapses are so grave so as to prejudice the rights of the parties, can a retrial be directed.

(iii) A determination of whether a “shoddy” investigation/trial has prejudiced the party, must be based on the facts of each case pursuant to a thorough reading of the evidence.

(iv) It is not sufficient if the accused/prosecution makes a facial argument that there has been a miscarriage of justice warranting a retrial. It is incumbent on the appellate court directing a retrial to provide a reasoned order on the nature of the miscarriage of justice caused with reference to the evidence and investigatory process.

(v) If a matter is directed for retrial, the evidence and record of the previous trial is completely wiped out; and

(vi) The following are some instances, not intended to be exhaustive, of when the Court could order a retrial on the ground of miscarriage of justice:

(a) The trial court has proceeded with the trial in the absence of jurisdiction;

(b) The trial has been vitiated by an illegality or irregularity based on a misconception of the nature of the proceedings; and

(c) The prosecutor has been disabled or prevented from adducing evidence as regards the nature of the charge, resulting in the trial being rendered a farce, sham or charade.”

17. Considering the entire facts and circumstances of the case, I am satisfied that it is not an exceptional case where



ordering of retrial of the accused could be justified. Here also, the remand was sought in an appeal filed by the accused, that too, only to fill up the lacuna in the prosecution evidence. Hence, the submission of the learned Special Public Prosecutor cannot be accepted.

In the light of the above findings, the conviction and sentence of the appellant in all cases vide impugned judgment cannot be sustained and are accordingly set aside. The appellant is found not guilty of the offences alleged against him. He is acquitted in all the cases. All appeals are allowed.

sd/-

DR. KAUSER EDAPPAGATH
JUDGE

kp/APA