T.J.John vs C.B.I.

T.J.John vs C.B.I.

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Court : Kerala

Decided On : May-09-2022

Judge : Honourable Mr. Justice Sunil Thomas

Appeal No. : CRL.A/1942/2004

Appellant : T.J.John

Respondent : C.B.I.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944 CRL.A NO. 1908 OF 2004 AGAINST THE ORDER/JUDGMENT IN CC 1/1995 OF SPECIAL (SPE/CBI)-I COURT, ERNAKULAM APPELLANT/S:

1 N.CHANDRASEKHARAN NAIR, S/O. LATE NARAYANAN NAIR, AGED 63 YEARS,, AMBAT HOUSE, MOOLAMATTOM P.O.,, IDUKKI DISTRICT. (EXPIRED) 2 P.J. JOSE SO. LATE JOSEPH, AGED 54 YEARS, PALAKKATTUKUNNEL HOUSE,, ARAKKULAM, IDUKKI DISTRICT. 3 ADDL. DEEPU CHANDRAN, S/O. LATE

N.CHANDRASEKHARAN NAIR, AGED 4. YEARS, AMBATTU HOUSE, MOOLAMATTOM.P.O., IDUKKI DISTRICT. (ADDL.APPELLANT BROUGHT ON RECORD AS PER ORDER DATED 9/3/2022 IN CRL.M.A. 1/2022.) BY ADV SOJAN MICHEAL

RESPONDENT/S:

1 CENTRAL BUREAU OF INVESTIGATIONS REPRESENTED BY THE SUPERINTENDENT OF POLICE,, CBI, KATHRIKADAVU, KOCHI. 2 T.J. JOHN SO. LATE JOSEPH, ASSISTANT COFFEE MARKETING OFFICE,, COFFEE BOARD, THAKKOLIKAL HOUSE, VALAKOM, MELUKAVU POST, KOTTAYAM DISTRICT. 3 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,, ERNAKULAM. BY ADVS. SRI. SASTHAMANGALAM S. AJITHKUMAR, SPL.P.P. FOR C.B.I., MANU S., ASG OF INDIA

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 09.03.2022, ALONG WITH CRL.A.166/2005, 176/2005 AND CONNECTED CASES, THE COURT ON 09.05.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944 CRL.A NO. 166 OF 2005 AGAINST THE ORDER/JUDGMENT IN CC 7/1994 OF SPECIAL (SPE/CBI)-I COURT, ERNAKULAM APPELLANT/S: V.I.BENJAMIN, VAZHEMATTATHIL HOUSE, MALUKAVU POST, KOTTAYAM DISTRICT. BY ADV SRI.RAJIT RESPONDENT/S: 1 SUPDT OF POLICE C.B.I.SPE. KOCHI 17. 2 STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,, ERNAKULAM. BY ADVS. SRI.P.CHANDRASEKHARA PILLAI, C.B.I. PUBLIC PROSECUTOR SRI.S.SREEKUMAR, SC, SPL.PP FOR CBI ADV.S.S.AJITHKUMAR

MANU S., ASG OF INDIA THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 23.12.2021, ALONG WITH CRL.A.1908/2004 AND CONNECTED CASES, THE COURT ON 09.05.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944 CRL.A NO. 176 OF 2005 AGAINST THE ORDER/JUDGMENT IN CC 7/1994 OF SPECIAL (SPE/CBI)-I COURT, ERNAKULAM APPELLANT/S: 1 (N.CHANDRASEKHARAN NAIR AGED 63 YEARS S/O. LATE NARAYANAN NAIR, ,, AMBAT HOUSE, MOOLAMATTOM P.O.,, IDUKKI DISTRICT.) EXPIRED 2 P.J.JOSE SO. LATE JOSEPH AGED 54 YEARS, PALAKKATTUKUNNEL HOUSE,, ARAKKULAM, IDUKKI DISTRICT. 3 ADDL.DEEPU CHANDRAN S/O. LATE N.CHANDRASEKHARAN NAIR, AGED 31 YEARS, AMBATTU HOUSE, MOOLAMATTOM.P.O., IDUKKI DISTRICT.

(ADDL. APPELLANT BROUGHT ON RECORD AS PER ORDER

DATED 9/3/2022 IN CRL.M.A. 1/22) BY ADVS. SRI.SOJAN MICHEAL SOJAN MICHEAL RESPONDENT/S:

1 CENTRAL BUREAU OF INVESTIGATIONS REPRESENTED BY THE SUPERINTENDENT OF POLICE, CBI, KATHRIKADAVU, KOCHI. 2 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,, ERNAKULAM. BY ADVS. SRI.P.CHANDRASEKHARA PILLAI, C.B.I. PUBLIC PROSECUTOR SRI.S.SREEKUMAR, SC, SPL.PP FOR CBI ADV.S.S.AJITHKUMAR MANU S., ASG OF INDIA

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 09.03.2022, ALONG WITH CRL.A.1908/2004 AND CONNECTED CASES, THE COURT ON 09.05.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944 CRL.A NO. 177 OF 2005 AGAINST THE ORDER/JUDGMENT IN CC 7/1994 OF SPECIAL (SPE/CBI)-I COURT, ERNAKULAM APPELLANT/S: MOHAMMED SHERIFF KOTHAYIL HOUSE, MALUKAVU POST,, KOTTAYAM DISTRICT. (FORMERLY A.6). BY ADV SRI.S.RAJEEV RESPONDENT/S: STATE OF KERALA PUBLIC PROSECUTOR, CBI/SPE, KOCHI,, (C.C.NO. 7/94 ON THE FILE OF THE SPECIAL JUDGE, (SPE/CBI)-I, ERNAKULAM). BY ADVS. SRI.P.CHANDRASEKHARA PILLAI, C.B.I. SRI.S.SREEKUMAR, SC, SPL.PP FOR CBI ADV.S.S.AJITHKUMAR MANU S., ASG OF INDIA THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 23.12.2021, ALONG WITH CRL.A.1908/2004 AND CONNECTED CASES, THE COURT ON 09.05.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944 CRL.A NO. 580 OF 2006 AGAINST THE ORDER/JUDGMENT IN CC 36/1998 OF SPECIAL (SPE/CBI)- II COURT, ERNAKULAM APPELLANT/S: T.J.JOHN S/O.T.J.JOSEPH, ACCOUNTS OFFICER,, C/O.THE JOINT DIRECTOR,, COFFEE BOARD, GOVT. OF INDIA,, KALPETTA, WYNAD DISTRICT. BY ADVS. SRI.SAJAN MANNALI SRI.SHANTHI K.PAI SMT.K.INDU POURNAMI SRI.M.P.JAYAKUMAR RESPONDENT/S: 1 C.B.I REPT. BY THE COUNSEL FOR CBI,, HIGH COURT OF KERALA,, ERNAKULAM. 2 STATE OF KERALA REEPT. BY THE PUBLIC PROSECUTOR,, HIGH COURT OF KERALA,, ERNAKULAM. BY ADV MANU S., ASG OF INDIA, SPL.PP FOR CBI ADV.S.S.AJITHKUMAR THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 23.12.2021, ALONG WITH CRL.A.1908/2004 AND CONNECTED CASES, THE COURT ON 09.05.2022 DELIVERED THE FOLLOWING: C SPE/CBI- II & 4 ADDITIONAL DISTRICT COURT,EKM

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944 CRL.A NO. 583 OF 2006 AGAINST THE ORDER/JUDGMENT IN CC 36/1998 OF SPECIAL (SPE/CBI)-I COURT, ERNAKULAM APPELLANT/S:

1 (N.CHANDRASEKHARAN NAIR S/O.LATE NARAYANAN NAIR, AGED 64 YEARS,, AMBAT HOUSE, MOOLAMATTOM P.O., IDUKKI DISTRICT.) EXPIRED 2 P.J.JOSE SO.LATE JOSEPH AGED 55 YEARS, PALAKKATTUKUNNEL HOUSE,, ARAKKULAM, IDUKKI DISTRICT. 3 ADDL. DEEPU CHANDRAN AGED 31 YEARS S/O. LATE N.CHANDRASEKHARAN NAIR, AGED 31 YEARS, AMBATTU HOUSE, MOOLAMATTOM.P.O., IDUKKI DISTRICT. (ADDL. APPELLANT BROUGHT ON RECORD AS PER ORDER DATED BY ADVS. TONY PETTAH SOJAN MICHEAL THAMBI JACOB

RESPONDENT/S: CENTRAL BUREAU OF INVESTIGATIONS REPRESENTED BY THE SUPERINTENDENT OF POLICE,, CBI, KATHRIKADAVU, KOCHI. BY ADVS. ASSISTANT SOLICITOR GENERAL SRI.S.SREEKUMAR, SC, FOR CBI S.S.AJITHKUMAR MANU S., ASG OF INDIA THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 09.03.2022, ALONG WITH CRL.A.1908/2004 AND CONNECTED CASES, THE COURT ON 09.05.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944 CRL.A NO. 1942 OF 2004 AGAINST THE ORDER/JUDGMENT IN CC 1/1995 OF SPECIAL (SPE/CBI)-I COURT, ERNAKULAM APPELLANT/S: T.J.JOHN S/O. T.J. JOSEPH, ACCOUNTS OFFICER, O/O. THE JOINT DIRECTOR, COFFEE BOARD, GOVT. OF INDIA,, KALPATTA, WYNAD DISTRICT. BY ADVS. SRI.SAJAN MANNALI

SRI.M.P.JAYAKUMAR RESPONDENT/S: 1 C.B.I. REPT. BY COUNSEL FOR CBI, HIGH COURT OF KERALA, ERNAKULAM. 2 STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY ADVS. SRI. SASTHAMANGALAM S. AJITHKUMAR, SPL.P.P. FOR C.B.I. MANU S., ASG OF INDIA THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 23.12.2021, ALONG WITH CRL.A.1908/2004 AND CONNECTED CASES, THE COURT ON 09.05.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944 CRL.A NO. 2142 OF 2004 AGAINST THE ORDER/JUDGMENT IN CC 6/1994 OF SPECIAL (SPE/CBI)-I COURT, ERNAKULAM APPELLANT/S: V.I.BENJAMIN, VAZHEMATTATHIL HOUSE, MALUKAVU POST,, KOTTAYAM DISTRICT. BY ADV SRI.RAJIT RESPONDENT/S: 1 SUPERINTENDENT OF POLICE,COCHIN CBI/SPE, COCHIN-17. 2 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR,, HIGH COURT OF KERALA. BY ADVS. SRI.P.CHANDRASEKHARA PILLAI, C.B.I. SRI.SASTHAMANGALAM S. AJITHKUMAR MANU S., ASG OF INDIA THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 23.12.2021, ALONG WITH CRL.A.1908/2004 AND CONNECTED CASES, THE COURT ON 09.05.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944 CRL.A NO. 2143 OF 2004 AGAINST THE ORDER/JUDGMENT IN CC 6/1994 OF SPECIAL (SPE/CBI)-I COURT, ERNAKULAM APPELLANT/S:

1 (N.CHANDRASEKHARAN NAIR S/O.LATE NARAYANAN NAIR, AGED 63 YEARS,, AMBAT HOUSE, MOOLAMATTOM P.O.,, IDUKKI DISTRICT) EXPIRED 2 P.J.JOSE SO.LATE JOSEPH AGED 54 YEARS, PALAKKATTUKUNNEL HOUSE,, ARAKKULAM, IDUKKI DISTRICT. 3 ADDL. DEEPU CHANDRAN S/O. LATE.N.CHANDRASEKHARAN NAIR, AGED 31 YEARS, AMBATTU HOUSE, MOOLAMATTOM.P.O., IDUKKI DISTRICT. (ADDL. APPELLANT BROUGHT ON RECORD AS PER ORDER DATED BY ADVS. SOJAN MICHEAL SRI.TONY PETTAH

RESPONDENT/S: 1 CENTRAL BUREAU OF INVESTIGATIONS REPRESENTED BY THE SUPERINTENDENT OF POLICE,, CBI, KATHRIKADAVU, KOCHI. 2 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,, ERNAKULAM. BY ADVS. SRI.P.CHANDRASEKHARA PILLAI, C.B.I. SRI.SASTHAMANGALAM S. AJITHKUMAR MANU S., ASG OF INDIA THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 09.03.2022, ALONG WITH CRL.A.1908/2004 AND CONNECTED CASES, THE COURT ON 09.05.2022 DELIVERED THE FOLLOWING:

COMMON JUDGMENT

These appeals arise from various criminal proceedings initiated by the Central Bureau of Investigation in relation to the allegations of misappropriation and falsification of accounts by the employees of the Coffee Board Kerala.

2. Crl.Appeal.Nos.1908 of 2004 and 1942 of 2004 arise from

C.C.No.1 of 1995. Crl.Appeal.Nos.2142 and 2143 of 2004 arise from C.C.No.6 of 1994. Crl.Appeal.Nos.583 of 2006 and 580 of 2006 arise from C.C.No.36 of 1998. Crl.Appeal.No.166, 176 and 177 of 2005 arise from C.C.No.7 of 1994. All the criminal cases were pending before the Special Judge (SPE/CBI)-I, Ernakulam for offences punishable under sections 120B r/w 409, 467, 471 and 477A IPC and Section 5(2) R/w 5(1)(c) of PC Act 1947. All the appellants stand convicted by separate judgments in each of the above C.Cs. Crl.Appeal.Nos.1908 of 2004 and 1942 of 2004:

Accused Nos.2 and 3 are the appellants in Crl.Appeal.1908 of

2004 and Crl.Appeal 1942 of 2004 is filed by the first appellant. The crux of the prosecution allegation was that the first accused, while working as the Assistant Manager of Coffee Pool Depot, Thodupuzha, during the period May 1985 to August 1986, hatched a criminal conspiracy with second and third accused, who were coffee collecting agents for misappropriation of the Coffee pool fund amount of the Coffee Pool Depot and in pursuance of the criminal conspiracy forged the records, registers and receipts in relation to the supplementary payments made in relation to the coffee growers. The accused allegedly

misappropriated a sum of Rs.2,27,029.60/-. On the basis of the allegations, investigation was conducted and final report was laid. On the side of the accused, PWs.1 to PW19 were examined and Exts.P1 to P752 were marked. On the side of the accused, DW1 and DW2 were examined and Exts.D1 to D2 were marked. On the basis of the available materials, the court below found all the accused guilty of various offences, convicted and imposed sentences of imprisonment and fine extending to various periods. Crl.Appeal.Nos.2142 of 2004 and 2143 of 2004:

These appeals arise from C.C.No.6 of 1994 of Special Judge, (SPE/CBI)-I Ernakulam. Crl.Appeal.No.2143 of 2004 is preferred by the second and third accused together and Crl.Appeal.2142 of 2004 is preferred by the fourth accused.

3. The crux of the prosecution allegation was that, the first accused was the Assistant Coffee Depot Manager of the Coffee Pool Depot, Thodupuzha during the period October 1986 to December 1986.

Accused Nos.2 to 5 were the coffee collecting agents. During that period, accused entered into a criminal conspiracy to misappropriate pool funds of the Coffee pool Depot Thodupuzha under the control of the first accused and in pursuance of the said criminal conspiracy, accused forged receipts falsely showing the disbursement of supplementary payments to the coffee growers and misappropriated a sum of Rs.42,260.90/-.

4. All the above accused faced trial before the court below. On the side of the prosecution PW1 to PW20 were examined and Exts.P1 to

P302 were marked. On the side of the accused Exts.D1 to D3 were marked. There was no defence evidence. On an evaluation of the entire evidence, learned Special Judge found all the accused guilty, convicted and sentenced them to undergo imprisonment for various periods. Aggrieved by the above conviction and sentence, the accused have preferred these appeals. Crl.Appeal.Nos.583 of 2006 and 580 of 2006:

Both the criminal appeals arise from the judgment in C.C.No.36 of 1998 of the Special Judge (SPE/CBI)-II Ernakulam for offences punishable under sections 120B r/w 468, 471, 477A IPC and for offence under Section 5(2) r/w Section 5(1)(d) of the PC Act, 1947. Crl.Appeal.580 of 2006 is preferred by accused No.1 and Crl.Appeal.583 of 2006 is preferred by accused Nos.2 and 3.

5. The crux of the prosecution allegation was that the first

accused was the Manager of the Coffee Pool Depot Thodupuzha and accused Nos.2 and 3 were the coffee collecting agents attached to the coffee pool depot, Thodupuzha. They entered into criminal conspiracy during the period 1984 to deceive the coffee Board and thereby to derive illegal gain from the pool fund account of Coffee Depot

Thodupuzha. In prosecution of the above common object of criminal conspiracy, they forged 247 EDP 02/2 receipts, used for making supplementary payments to the coffee growers, falsified entries in various registers and thereby obtained an illegal gain of Rs.58,993.30/-. On the basis of the complaint lodged, crime was registered and after investigation, final report was laid. All the accused faced trial before

the trial court. On the side of the prosecution, PW1 to PW25 were examined and Exts.P1 to P269 were marked. On the side of the accused, there was no defence evidence. However, Exts.D1 to D6 were marked. The court below, on an appreciation of the entire evidence, found all the accused guilty, convicted and sentenced them to undergo RI for varying period for the offences found against them. Aggrieved by the conviction and sentence, the above accused have preferred these appeals. Cr.Appeal.166 of 2005, 176 of 2005 and 177 of 2005:

These appeals arise from the conviction and sentence in C.C.No.7

of 1994 of the learned Special Judge, (SPE/CBI)-I Ernakulam for offences punishable under section 120B, 467, 471 and 477A IPC along with section 5(2) r/w 5(1) of the PC Act and . The original first accused died and the prosecution proceeded against the remaining accused. The crux of the prosecution allegation was that, the first accused who faced the trial was the Assistant Coffee Depot Manager of the Coffee Pool Depot Thodupuzha during the period from December 1986 to

December 1988. During the period, the first accused entered into a criminal conspiracy with the remaining accused and in prosecution of the above crime, manipulated and falsified various receipts showing that a sum of Rs.1,45,715.55/- was paid to coffee growers as supplementary payments. The above sum was allegedly misappropriated by all the accused together. On the basis of the above allegation, crime was registered and after investigation, final report was laid. All the accused faced the trial for offences punishable under sections 120B r/w 467, 471 and 477A IPC and Section 5(2) r/w 5(1)(c) of

the PC Act and 13(1)(c) r/w 13(2) of the PC Act. On the side of the prosecution, PW1 to PW24 were examined and Exts.P1 to P767 were marked. On the side of the accused, there was no oral evidence, but Exts.D1 and D2 were marked. The court below, on an evaluation of the entire evidence, found the accused guilty, convicted and sentenced them

to undergo imprisonment and to pay fines. Aggrieved by the above sentence and conviction, the above accused have preferred these appeals. Pending the above appeals, N.Chandrasekharan Nair who is the appellant in some of the appeals died and interlocutory applications were filed by the legal heirs to pursue the above case. It was allowed and the legal heir was permitted to pursue the appeals.

6. Since all the issues arise from similar facts and identical

facts and law are involved, all the appeals were heard together and are

disposed of by a common judgment since common questions of law and

facts arise.

7. It seems that, in all the crimes, there is a common pattern of

allegation. In the Coffee pool depot at Thodupuzha, one officer is appointed as the Assistant Depot Manager. Several coffee collecting agents were appointed by the Board with an authorization to collect coffee beans from the coffee growers. A special procedure was followed in the coffee depot for the purpose of collecting coffee beans from the coffee growers, weighing it and making payments. They collected coffee beans from the growers after issuing provisional receipts and initial payments of amounts fixed by the Coffee Board were paid to them against the weight of coffee so collected. Coffee beans were thereafter taken by the agents to the depot for pooling. The Assistant Depot Manager after weighing it would assess the quality of coffee beans so weighed and purchased. He will issue a 01 receipt to the grower evidencing the weight, quality and also the provisional payment made. Thereafter, the coffee so pooled would be put for auction. On the basis of the amounts received in auction, supplementary payments would be

declared. On declaration of the supplementary payments, the agents would collect the supplementary payments on the basis of 01 receipts and authorization issued by the coffee growers, after deduction of the earlier amounts paid, the payments due to each of the coffee growers would be collected. If coffee beans are produced on separate dates in

one season, separate 01 receipts would be issued. Essentially, the facts

disclose that, two receipts are issued. 01 receipt was issued at the time of supplementary payments and 02 receipts prepared thereafter. 02 receipts were prepared in quadruplicate. The original would be kept in the depot. Two copies would be sent to the Divisional Office and the fourth copy would be given to the owner of the coffee beans. Two records were maintained and prepared by the ADM which were the index register and the pool advance register. As per the scheme, 01 receipts and 02 receipts were prepared by the ADM.

8. According to the prosecution, in the case of supplementary

payments, same procedure was adopted. Amount for coffee pooling would be calculated and accounts for supplementary payments would be released from the Divisional office on the basis of indent submitted by the ADM. The amount from the divisional office would be entered in the pool advance register and amounts mentioned in 01 receipts and 02 receipts would also be incorporated in the pool advance register. As mentioned earlier, all the above documents were prepared by the Assistant Depot Manager.

9. The prosecution has a specific case that, in all the crimes

that were detected by the CBI, it was found that, ADM failed to prepare 01 receipts and 02 receipts and they were indiscreetly prepared by the agents with the approva of ADM. Corresponding entries were also not made in the index register as well as in the pool advance register.

10. On the basis of the above procedure that are discussed above, which is common in all cases, the materials gathered by the prosecution as against the accused herein in discussed as follows.

11. Witnesses were examined by the prosecution in this case

essentially to prove that the records were shabbily maintained in the coffee depot. Witness also gave evidence touching upon the fact that 01 receipts as well as 02 receipts were handed over by the ADM to the agents who in turn prepared it and supplementary payments though in fact were not paid to the coffee growers, but were misappropriated by the agents along with the Assistant Depot manager.

12. In C.C.No.1 of 1995 from which Crl.Appeal.No.1908 of 2004 and 1942 of 2004 arises, PW1 who was a sales officer of the coffee

Board was examined. He gave general evidence touching upon the evidence in relation to the collection of coffee beans and the mode of payments made thereunder. He deposed that, regarding the allegations that arise in Thodupuzha Depot, a team of officials have inspected the depot during the period 1991 to 1992. They checked all the payment transactions from the Thodupuzha Depot during the period 01.01.1984 to 31.12.1986 and also those covering the period upto 1989 -1990.

13. According to PW1, the committee which verified the entire records could trace out several instances of excess payments, double payments etc. The above report was produced as Ext.P-731. Prosecution relied on the evidence of PW4 who had worked as ACMO,

Kottayam, during the period 1985-1990. He had inspected the Thodupuzha depot during the relevant period and claimed that, they were only limited inspections and he could not conduct any detailed enquiry. PW4 and PW6 were officers who had at some point of time

worked in the Thodupuzha Depot. However, evidently they had not worked during the entire disputed period. The evidence of the above witnesses would show that, records were not properly maintained in the depot. PW4, PW6, PW9, PW11 and PW12 were the witnesses examined by the prosecution to establish the allegations of misappropriation and falsification of records. To establish that, though as per records supplementary payments were made, the growers had either not received it nor had they given any authorization to the agents to collect the supplementary amount, PW5, PW7, PW10, PW15, PW17 and PW18 were examined. However, some of them turned hostile and versions of the remaining did not completely support the prosecution case. However, PW17 and PW18 had given evidence stating that they did not get the supplementary payments nor had they subscribed to the signatures shown on the records.

14. PW14 was the handwriting expert, who, with reference to his

report confirmed that verification of the specimen signatures of third accused as well as the disputed signatures of the third accused in A21 to A34 showed that they were executed by the very same person. It seems that the court below had referred to the various receipts and the corresponding records to conclude that, there were serious allegations of misappropriation.

15. The prosecution heavily relied on the oral testimony of PW2 who was originally the second accused in the case. He had turned approver and was examined as a witness. He was a watchman cum peon

by name E.K Gopalan. He was working as the Watchman cum Peon during the period 1979-1997. PW2 in his version after referring to the normal procedure of preparing documents 01 and 02 receipts stated that, agents used to take blank 02 receipts to their houses and prepare receipts. It was also stated that, 02 receipts were also prepared by the

ADM. On some occasions, PW2 used to prepare 02 receipts on the directions of A1. He further asserted that, false receipts were prepared, misappropriation of funds committed and agents along with ADM shared the misappropriated funds. He further stated that, he used to provide meals at noon and a peg of liquor to PW2 from a nearby hotel. He along with the agents regularly used to go with PW2 for having the meals. The payments at the hotel were made by the agents. He also

further stated that, details of the false receipts were not correspondingly incorporated in the reports. According to him, though the officers from the ACMO office, Kottayam used to conduct inspection, they have never verified the office records properly. They used to visit places using the vehicle of the agents.

16. In C.C.No.6 of 1994, the Assistant Depot Manager along with

4 other collection agents, faced the trial. To substantiate the prosecution case, they relied on the evidence of PW1, who was aAssistant Depot Manager of Thodupuzha, on a previous occasion. He deposed on the procedure of preparing the receipts and also the payment of money. He stated that, a team headed by Radhakrishnan was constituted for checking the accounts of the coffee pool depot.

He stated that, they checked 01 receipts and 02 receipts on the basis of both the registers. He stated that, several instances of excess payment and double payment effected by boosting the quantity etc were traced

out. To further supplement the allegations, the prosecution further relied on the evidence of PW9 who was the ACMO of the Head office during the relevant period. He had conducted short inspections of the Thodupuzha coffee depot, but could not conduct any detailed

inspection. At the most, the evidence of PW9 indicates that records were not properly maintained at the ACMO office during the relevant period. Another witness examined by the prosecution was PW7, who was the Head Clerk of the ACMO office who stated that the complete records could not be verified. Though receipts were submitted by the depo Manager fortnightly, the same were not been sent to the ACMO

office properly on time. The receipts received from the depot were dumped in the record room. PW3 was an officer who had some indirect information regarding the allegations of misappropriation in Thodupuzha coffee pool depot.

17. Essentially, the prosecution relied on the version of PW2 Gopalan, who was originally an accused in the case, but turned approver. He had given the evidence regarding the alleged misappropriation and referred to his own involvement in the case. To supplement the prosecution case, several coffee growers were

examined. They deposed that, they had not received supplementary payments. On the basis of this, the trial court concluded that, it was a clear case of misappropriation, since corresponding records were available to show that amounts were released to the coffee growers. The court below has referred in detail to specific instances of such receipts and conclusion that the entries were not correspondingly made in the other records.

18. In C.C.No.36 of 1998, the prosecution allegation was that,

the first accused, as the Assistant Depot Manager of the Coffee Pool Depot, Thodupuzha, along with accused No.2 and 3 who were the coffee collecting agents entered into a criminal conspiracy during the period 1985 to deceive the Coffee Board and in pursuance to the above criminal conspiracy, forged 247 numbers of 02 receipts allegedly for making supplementary payments to the growers, falsified the entries in pool advance register, used the above receipts as genuine and thereby generated a pecuniary advantage of Rs.7993/-. On the basis of the FIR registered, investigation was completed and final report was laid. On the side of the prosecution, PW1 to PW25 were examined and Exts.P1 to P65 were marked. On the side of the accused, though there were no oral evidence, Exts.D1 to D6 were marked. The court below found the accused guilty, convicted on the basis of materials gathered. Learned Special Judge relied on the oral evidence of PW1 to PW12 and PW21, to establish the nature of transaction carried out at the Coffee Pool Depot at Thodupuzha. PW19 who was attached the ACMO's office at Kottayam referred to the documentary evidence to establish that, on 13.03.1985 a cheque for Rs.5 lakhs was sent to the Coffee Depot Manager to meet the expenses for making the first supplementary payment declared by

the Coffee Board. It had also come on record by virtue of the pool

advance register that, Rs.5lakhs was received by A1. According to PWs.1, 21, 12, 10, 14 and 19, there was no proper checking of 01 and 02 receipts sent from the pool depot by the divisional office. It was not verified with the pool advance registers. It was stated that, due to the heavy filing of such receipts and paucity of time, there was no checking and verification of the fortnightly pool advance. It was only during the inspection conducted pursuant to the direction of the Head Office, the extent of falsification and forgery committed at the pool depot was unearthed, it was stated. It was also stated by the witness that, copies of 01 and 02 receipts were missing. Relating to the relevant period of 1981 to 1985, few supporting documents were traced out from ACMO's

office. All the above witnesses specifically referred to 01 and 02 receipts and stated that, in relation to the 01 receipts relating to the disputed transactions, the corresponding quantity in the 02 receipts

were highly boosted up. The learned Special Judge had specifically referred to each and every receipt produced and marked before the court with reference to the corresponding entries in the register, to conclude that the entires in all those receipts did not tally with the corresponding entries in the register and that, they were highly boosted

up. It was also found that, PW11 was the person who identified the handwriting and signature of the third accused in few of the documents referred to in the judgment. The handwriting of the second accused in the disputed document was established with reference to the opinion of the handwriting expert. Handwriting expert was examined with reference to the signatures of the first accused in various other documents were established through the oral testimony of PW19.

19. To establish the direct involvement of A1 Depot Manager in connivance with the accused Nos.2 and 3 and that they have forged

documents, PW1, PW14, PW21 gave consistent evidence. With reference to the pool advance registers marked as Exts.246 and 255, it was stated that, some of the bogus 02 receipts were drawn additionally again, under the first supplementary head as well as 02 receipts with the entries boosted up quantities. The witnesses categorically stated by referring to the entries found in the register of payments purported to have been prepared by the first accused by stating that, by creating forged documents, amounts were drawn from the pool fund account.

20. Based on these materials, clubbed with the report submitted

by the executive committee, the court below arrived at a conclusion

that, all the accused have committed offence. It seems that the court below has evaluated in detail entire evidence touching upon the allegations of prosecution, and I find no reason to interfere.

21. In C.C.No.7 of 1994 from which Crl.Appeal.Nos.166 of 2005,

177 of 2005 and 175 of 2006 arise, the crux of the prosecution allegation was that, one Janardhana was the Assistant Coffee Depot Manager of the Coffee Pool Depot Thodupuzha during the period

December 1986 to December 1988. During December 1986, said Janardhana and PW27 hatched the criminal conspiracy to pool the amount from the coffee pool depot, Thodupuzha. It was alleged that, all the accused entered into criminal conspiracy to manipulate documents and siphon off the amounts received as supplementary payments.

22. C.C.No.7 of 1994 from which the above criminal appeals arise, prosecution has relied on the oral testimony of PW1 to PW28 and Exts.P1 to P67. On the side of accused, though there were no oral evidence, Exts.D1 and D2 were marked. The court below on the basis of the available materials found the accused guilty, convicted and sentenced them to undergo RI for different periods.

23. On merits, PW1 had given evidence. He had worked in the

Sales Office counter during the relevant period. A team was constituted by the Head Office of Coffee Board for conducting an enquiry in respect of irregularities and illegalities committed in the coffee pool depot from 1984 to 1989. The documentary evidence produced before the court below showed that several payments were made through all 01 and 02 receipts and pool payment. Ext.P722 series were the pool advance registers, during the relevant period. It showed all the payments made

through 01 and 02 receipts and the pool payments. All the amounts received from the ACMO's office for the disbursement of pool payments at the Thodupuzha depot and all the regular and irregular payments made through the coffee pool depot were entered in the above document. The original index register was also produced. In C.C.No.1

of 1995, the signature of the persons who had written down on

examined, who consistently supported the prosecution case. They had clearly identified the records and stated that, they did not receive the amounts mentioned in the 02 documents by way of supplementary payments. The above evidence of all the witnesses show that, there were duplication of the payments made. Each and every payment made have been specifically referred to and dealt with, by the court below.

24. In Crl.Appeal.No.2142 of 2004, the learned counsel for the

appellant specifically contended that the procedure resulting in the granting of pardon to PW2 by the Special Judge was absolutely irregular and illegal. It was pointed out by the learned counsel that PW2 was made an approver by the prosecution. However, the statement of PW2 which was recorded was not handed over to the accused before the trial. The statement of PW2 which was relied on by the prosecution was recorded as early as on 22.10.1992. However, the statement was filed before the court below by the prosecution only on 05.09.2003, along with a petition to accept the same. A detailed objection was filed by the appellant to the petition filed by the prosecution. It was specifically pointed out that, chief examination of PW2 was recorded on 04.03.2003

and 06.03.2003. The cross examination of PW2 was done on 12.03.2003, 18.03.2003, 19.03.2003 and 21.03.2003. It continued on 03.04.2003 and 06.05.2003. The re-examination of PW3 was completed on 06.05.2003. The statement of PW2 was produced thereafter on

05.09.2003. Relying on the above, learned counsel for the appellant specifically contended that, this was highly irregular and on the above ground alone, accused is entitled for an acquittal. It was further pointed out that, there were inherent drawbacks in the evidence of PW2. It was only with the aid of evidence of PW2 that the prosecution intended to bring in the evidence, the criminal conspiracy hatched to defraud the coffee board. The mere fact that 02 receipts were written by the agents by itself will not cast any culpability on the part of agents as admitted in the staff strength in Thodupuzha depot was inadequate as spoken by the witness of the prosecution. It was also stated by PW9 that, even the divisional office used to take the assistance of the other coffee board officials to do the work in other office. Necessarily, the mere availability of the handwriting of some of the accused in the receipts by itself will not cast liability, unless other materials are brought on record to establish actual.

25. Learned counsel for the appellant invited the attention of

this Court to Rule 70 of the Criminal Rules of Practice which specifically provided the mode of recording confessions. It provided that the magistrate shall record any statement or any confession made by an accused person under S.164 of the Code until the magistrate has recorded in writing his reasons for believing that the accused was prepared to make the statement voluntarily and until he has explained to the accused that he is under no obligation to answer any question at all and has warned the accused that it was not intended to make him an

approver and that anything he says may be used against him. Rule 70(2) provides that, before recording a statement magistrate shall question the accused in order to ascertain the exact circumstance in which the confession was made and the extent to which police had relation with the accused before the confession was made.

26. Sec.306 Cr.P.C. refers to the tender of pardon to an

accomplice. Sec.306(4) Cr.P.C. provides that, every person accepting a tender of pardon made under subsection (1) shall be examined as a witness in a court of magistrate taking cognizance of the offence and subsequent trial if any. Sec.306(5) provides that, where a person has accepted a tender of pardon under subsection (1) and has been examined under Sec.4 before the magistrate taking cognizance of the offence, shall without making any further enquiry in the trial, commit the matter for trial. Learned counsel for the appellant contending that the recording under Sec.164 Cr.P.C was mandatory by virtue of Section 5(2)and (3) of the PC Act which was not available under the PC Act. Regarding the question whether the Special court was bound to record the statement of the accused under the 306(4) Cr.P.C, learned counsel for the petitioner referred to the decision in Bangaru Laxman v. State [2011 KHC 5059].

27. While referring to Sec.5(2) of the PC Act, it was held by the

Supreme Court that the power of the Special Judge to give pardon was an unfettered power subject to stipulation made in the Section itself. Such power can be exercised at any stage and there was no stipulation that the power can be exercised by the Special Judge only at the stage of trial as urged by the appellants counsel. The deeming clause which was introduced in Sec.5(2) was for a very limited purpose mentioned in 5(2) of the PC Act. Subsection 1 to 5 of 308 have already been set out above and it was clear therefrom that the said provisions have been enacted for a different purpose, namely for holding trial of a person for

not complying with the conditions of pardon. The power to grant pardon under Sec.306 of the Code had not been specifically denied. If it is not specifically denied, then as a Court of original criminal jurisdiction, the Special Court under the PC Act has the power to grant pardon under Sec.306 of the present code. Any different interpretation will be contrary to the plain words of Sec.306 of the Code, it was argued.

28. While referring to Sec.5(2) of the PC Act, vis-a-vis the

provision for granting pardon, it was held that Special Judge under the PC Act while trying offences has the dual power of the Sessions Judge, as well as that of a Magistrate.

29. The learned counsel again referred to the decision of the

Supreme Court in State through CBI, Chennai v. Arul Kumar [2016 KHC 6402]. It was pointed out in the above decision, the Metropolitan Magistrate was authorized to grant tender of pardon under Sec.306 and can thereafter commit the case to the Special Judge for trial. However, after committal of the case, it was only that Court to which the

commitment has been made has the power to tender a pardon. The Hounourable Supreme Court on a plain reading of Sec.306 in conjunction with Sec.307 of the Code held that, it was manifest that Magistrate was duly empowered to grant tender of pardon even in respect of the cases which are triable by the Session Court or by the

Special Judge. This legal position is accepted in P.C Mishra's case [P.C.Mishra v. State (CBI) and Another [2014 KHC 4192]].

30. Referring to the provision of Sec.5 under the PC Act, vis-a-vis

Sec.306 Cr.P.C, it was held that Sec.5 of the PC Act while empowering a Special Judge to take cognizance of offence without the accused being committed to him for trial, only has the effect of waiving the otherwise mandatory requirement of S.193 of the Code. S.193 of the Code stipulates that the Court of Session cannot take cognizance of any offence as a Court of original jurisdiction unless the case has been

committed to it by a Magistrate under the Code. Thus, embargo of S.193 of the Code has been thus lifted. It however, nowhere provides that the cognizance cannot be taken by the Magistrate at all. It gives an option to the Special Judge to straightway take the cognizance of the offences. It was held that, however the normal procedure prescribed under Sec.190 of the Code empowering the Magistrate to take cognizance of such offences, though triable by the Court of Session, is not given a go bye. Both the alternatives are available. In those cases, where charge sheet is filed before the magistrate, he will have to commit it to the Special Judge. In such a situation, the provisions of Sec.306 of the Code would be applicable and the Magistrate would be empowered to exercise the power under the said provision. In contrast, those cases where Special Judge takes cognizance of offence directly is authorized to do so in view of Sec.5(2) of PC Act Sec.306 of the Code would get bypassed and as the Special Judge has taken cognizance, it is Sec.307 of the Code which would become applicable. Subsection 2 of Sec.5 of the PC Act makes this position clear by prescribing that it is the Special Judge who would exercise his powers to tender a pardon as can clearly be spelled out by the language employed in that provision. Section 5(2) is to be read in conjunction with Sec.5(1) of the PC Act. Honourable Supreme Court laid emphasis in this regard to the decision in Devendran v. State of Tamil Nadu [1997 KHC 1300] as well as in Bengaru Laxman's case (supra).

31. Learned counsel for the appellant to buttress his contention

has relied on the decision in Jasbir Singh v. Vipin Kumar [2001 KHC 719]. The question regarding granting of pardon vis-a-vis of the Sec.64 of the NDPS Act was the question. After an analysis of S.64 in the background of Sec.306 and 307, it was held that, there was no conflict between both the sections. It seems to have been followed by a learned Single Judge in Vipin Kumar v. Union of India and Another [2000 KHC 2204].

32. The entire facts appreciated against the legal position shows that the granting of pardon by the learned Sessions Judge was in

accordance with the procedure. Since the entire crux of the prosecution case is heavily based on the evidence tendered by PW2 and in the absence of any legal grounds challenging the granting of pardon, the conviction arrived at by the court below in C.C.No.6 of 1994 is liable to be sustained.

33. Learned counsel for the CBI, relying on the decisions

reported in Gopalan Nair v. State of Kerala [1960 KHC 487] and Retnadas T v. State of Kerala [1999 KHC 2074] contended that, sufficient materials to cast criminal liability on the accused are available. The learned counsel for the appellant in Crl.Appeal.No.1942 of 2004 specifically referred to the documents produced along with a memo to show that the appellant therein in Crl.Appeal.No.1942 of 2004 was suffering from serious ailment and had undergone a bypass surgery. He is undergoing treatment for systematic hypertension and acute diabetics since 2017.

34. An appreciation of the entire evidence show that, materials are available to show that the prosecution has succeeded in establishing the allegations against the accused in all cases.

39. On an appreciation of the entire facts, it is to be held that, there

are sufficient materials to hold that, accused in C.C.Nos.1 of 1995, 36 of 1998 and 7 of 1994 have committed the offences mentioned thereunder. The allegation against them are serious. However, it has to be noted that the incidents happened during the period 1985. The accused were convicted after a long drawn trial in the year 2004. Appeals have been preferred and have been pending for long time since then. It is seen that, two of the appellants have expired pending proceedings. All the accused are considerably aged now and have been undergoing the trauma for the past several years. I feel that, considering the fact that the conviction is imposed under the PC Act of 1947, which enables this Court to grant fine alone and the substantive sentence of imprisonment is not been compulsory, I am inclined to take a lenient view and all the substantive sentences in all the cases shall stand substituted for fine alone.

Conviction in all the C.Cs, from which the present appeals arise, stands confirmed. However, the substantive sentence of imprisonment granted as against each of the accused will stand substituted and it will be confined to fine imposed by the court below. The substantive sentence of imprisonment as against each of the accused will stand set aside. The fine imposed by the court below, as against each of the accused will stand modified to Rs.3000/- each, for each of the offence found against each of the accused. In case of default, accused shall undergo simple imprisonment for 15 days. Crl.Appeal.Nos.1908 of 2004, 1942 of 2004, 2142 of 2004, 583 of 2006, 580 of 2006, 176 of 2005, 177 of 2005, 166 of 2005 and 2143 of 2004 are allowed partly to the above extent. Sd/- SUNIL THOMAS JUDGE Sbna/