

**R. Chellappan vs State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/1453299](https://sooperkanoon.com/1453299)

**Court :** Kerala

**Decided On :** Aug-19-2022

**Judge :** Honourable Mr.Justice K. Babu

**Appeal No. :** CRL.A/1104/2008

**Appellant :** R. Chellappan

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K. BABU FRIDAY, THE 19TH DAY OF AUGUST 2022 / 28TH SRAVANA, 1944 CRL.A NO. 1102 OF 2008 AGAINST THE JUDGMENT IN CC 24/2004 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM APPELLANT/ACCUSED: 1 R.CHELLAPPAN (DIED) AGED 58 YEARS S/O RAMAN, FORMERLY AGRICULTURAL ASSISTANT, KRISHI BHAVAN, PATHANAPURAM, SANTHA BHAVAN, IRUMPANANGAD P.O., EZHUKONE, KOLLAM. 2 \*ADDL.APPELLANT IMPLEADED R.SANTHAKUMARI, AGED 55 YEARS, W/O LATE CHELLAPPAN, R/O SANTHA BHAVAN, IRUMPANANGAD P.O, EZHUKONE, KOLLAM.

**\*(IMPLEADED AS ADDITIONAL APPELLANT AS PER ORDER**

DATED 01.02.2022 IN CRL.M.A NO.1/2020) BY ADVS. SRI.M.K.CHANDRAMOHAN DAS SRI.MURALI MADANTHACODU RESPONDENT/STATE: STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA , ERNAKULAM, COCHIN 682031 BY ADV SRI.RAJESH.A, SPECIAL GOVERNMENT PLEADER (VIGILANCE) THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19.08.2022, ALONG WITH CRL.A.1103/2008, 1104/2008, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K. BABU FRIDAY, THE 19TH DAY OF AUGUST 2022 / 28TH SRAVANA, 1944 CRL.A NO. 1103 OF 2008 AGAINST THE JUDGMENT IN CC 25/2004 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE,THIRUVANANTHAPURAM APPELLANT/ACCUSED: 1 R.CHELLAPPAN(DIED) AGED 58 YEARS, S/O RAMAN, FORMERLY AGRICULTURAL ASSISTANT, KRISHI BHAVAN, PATHANAPURAM, SANTHA BHAVAN, IRUMPANANGAD P.O., EZHUKONE, KOLLAM 2 \*ADDL.APPELLANT IMPEADED R.SANTHAKUMARI, AGED 55 YEARS, W/O LATE CHELLAPPAN, R/O SANTHA BHAVAN, IRUMPANANGAD P.O, EZHUKONE, KOLLAM.

**\*(IMPEADED AS ADDITIONAL APPELLANT AS PER ORDER**

DATED 01.02.2022 IN CRL.M.A NO.2/2020) BY ADVS. SRI.M.K.CHANDRAMOHAN DAS SRI.MURALI MADANTHACODU RESPONDENT/STATE: STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, COCHIN-682031 BY ADV SRI.RAJESH.A, SPECIAL GOVERNMENT PLEADER (VIGILANCE) THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19.08.2022, ALONG WITH CRL.A.1102/2008 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K. BABU FRIDAY, THE 19TH DAY OF AUGUST 2022 / 28TH SRAVANA, 1944 CRL.A NO. 1104 OF 2008 AGAINST THE JUDGMENT IN CC 26/2004 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM APPELLANT/ACCUSED: 1 R. CHELLAPPAN (DIED) AGED 58 YEARS, S/O RAMAN, FORMERLY AGRICULTURAL ASSISTANT, KRISHI BHAVAN, PATHANAPURAM, SANTHA BHAVAN, IRUMPANANGAD P.O., EZHUKONE, KOLLAM 2 \*ADDL.APPELLANT IMPLEADED R.SANTHAKUMARI, AGED 55 YEARS, W/O LATE CHELLAPPAN, R/O SANTHA BHAVAN, IRUMPANANGAD P.O, EZHUKONE, KOLLAM.

**\*(IMPLEADED AS ADDITIONAL APPELLANT AS PER ORDER**

DATED 01.02.2022 IN CRL.M.A NO.1/2020) BY ADVS. SRI.M.K.CHANDRAMOHAN DAS SRI.MURALI MADANTHACODU RESPONDENT/STATE: STATE OF KERALA, REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, COCHIN-682031 BY ADV SRI.RAJESH.A, SPECIAL GOVERNMENT PLEADER (VIGILANCE) THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19.08.2022, ALONG WITH CRL.A.1102/2008 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.BABU, J.**

----- Crl.A. Nos.1102, 1103 & 1104 of 2008  
----- Dated this the 19th day of August, 2022

**JUDGMENT**

These Criminal Appeals are directed against the common

**judgment dated 12.05.2008 passed by the Enquiry Commissioner**

and Special Judge, Thiruvananthapuram in C.C.Nos.24/2004, Section 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 and Sections 420, 468, 471 and 477A of the Indian Penal Code.

2. During the course of proceedings in this Appeal, the accused died and his wife was granted leave to continue the appeal.
3. The accused was working as Agricultural Assistant at Pathananpuram (Edathara), Karavalloor and Kulakada-I in the Krishibavans during the period from 10.08.1993 to 05.08.1995. From 14.08.1995 to 24.06.1996, he worked in the Buffalo Breeding Park, Kuriyottumala.
4. The accused allegedly forged his last pay certificate and falsified GPF account by forging the GPF pass book issued to him. It is also alleged that the accused submitted false applications claiming ineligible temporary PF advances and presented them as genuine before the sanctioning authority and by corrupt and illegal means obtained pecuniary advantage by way of cheating.
5. The VACB submitted three final reports against the accused alleging the aforesaid offences before the Enquiry Commissioner and Special Judge, Thiruvananthapuram.
6. The accused appeared before the Court below and faced trial.
7. The prosecution examined PWs 1 to 18 and proved Exts.P1 to P49. Ext.D1 was marked on the side of the defence. The accused pleaded innocence. The Trial Court found the accused guilty of the offences under Section 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 and Sections 420, 468, 471 and 477A of IPC and he was convicted thereunder.
8. The accused was sentenced to undergo rigorous imprisonment for a period of one year each in each of the cases.
9. Heard, Sri.Murali Madanthacodu, the learned counsel appearing for the appellant/accused and Sri.Rajesh A., the learned Special Government Pleader (Vigilance).
10. The gist of the prosecution allegations is as follows:

C.C.No.24 of 2004 The accused while working as Agricultural Assistant at the Krishibhavan, Pathanapuram during the period from 10.08.1993 to 17.07.1994 falsified his GPF accounts and submitted forged records before the sanctioning authority and had withdrawn Rs.7,290/- on 13.09.1993, Rs.7,890/- on 30.11.1993 and Rs.7,500/- on 09.02.1994 as temporary GPF advances for which he was not entitled. C.C.No.25 of 2004 The accused while working as Agricultural Assistant at Karavalloor and Kulakada-I Krshibhavans, during the period from 10.08.1993 to 05.08.1995, falsified his GPF accounts and submitted forged records before the sanctioning authority and obtained Rs.8,725/- on 14.07.1994, Rs.9,600/- on 08.08.1994 and Rs.19,350/- on 10.02.1995 as temporary GPF advances which he was not entitled. C.C.No.26 of 2004 The accused while working in the Buffalo Breeding Farm, Kuriyottumala during the period from 14.08.1995 to 24.06.1996, he falsified his GPF pass book and GPF credit particulars and by corrupt and illegal means obtained Rs.23,675/- as temporary GPF advance on 14.09.1995 without any credit in his GPF account.

11. The following facts are not in dispute:-

(a) The accused was working as Agricultural Assistant during the relevant periods in the aforementioned Krshibhavans and the Buffalo Breeding Farm.

(b) The accused availed GPF advances during the relevant periods.

(c) The sanctioning authority concerned sanctioned the various amounts as GPF advance as referred above, to the accused.

(d) The accused received those amounts as pleaded by the prosecution.

12. The case of the prosecution in C.C.No.24/2004 is that he received Rs.7,290/- on 13.09.1993 as temporary PF advance while working in the Krshibhavan (Edathara), Pathanapuram.

13. The prosecution relied on the oral evidence of PWs 5,9

and 10 to establish its case. Ext.P10 is the application stated to have been furnished by the accused. Ext.P11 is the tabulation statement/detailed statement

stated to have been prepared and furnished by the accused. Ext.P12 is the sanction order passed by PW5, the then Agricultural Officer, based on Exts.P10 and P11. According to PW5, the entries in Exts.P10 and P11 were entered by the accused himself.

14. According to the prosecution, the entries in Exts.P10

and P11 are made by the accused with intent to claim ineligible advances. PW5 deposed that he had seen the accused writing the entries in Exts.P10, P11 and P12.

15. Ext.P14 is the application submitted by the accused

claiming a sum of Rs.7,500/-. Ext.P15 is the tabulation statement. Ext.P16 is the sanction order issued by the Agricultural Officer (PW9). According to PW9, the handwriting and signature in Exts.P14 and P15 are that of the accused.

16. PW10, who was the Accounts Officer working on

deputation in the VACB, verified the GPF accounts of the accused in respect of the withdrawal of the sum of Rs.7,890/- on 30.11.1993. PW10 stated that Ext.P26, the copy of GPF account, is in relation to the accused. According to PW10, as per Ext.P26, the accused availed Rs.7,890/- as GPF advance. As far as the sum of Rs.7,890/- stated to have been drawn by the accused, the application and the tabulation statement allegedly submitted by the accused were not produced and marked.

17. In C.C.No.25/2004, it is alleged that the accused obtained GPF advances of Rs.8,725/- on 14.07.1994, Rs.9,600/- on 08.08.1994 and Rs.19,350/- on 10.02.1995.

18. Ext.P17 is the application submitted by the accused for

drawing Rs.8,725/- on 14.07.1994. Ext.P4 is the entry relating to the passing of GPF loan. Ext.P31 is the GPF pass book which does not contain the entry relating to the loan. The prosecution relied on the oral evidence of PW1, the then Agricultural Officer who granted loan, to substantiate its case.

19. PW8, the Agricultural Officer worked during the

relevant period, gave evidence that accused availed Rs.9,600/- as GPF advance on 08.08.1994. The application for obtaining GPF advance and the tabulation statement stated to have been prepared by the accused were marked in respect of this transaction.

20. PW7, the Assistant Director gave evidence that the

accused availed Rs.19,350/- as PF advance on 10.02.1995. In respect of this transaction also the application and the tabulation statement submitted by the accused were not produced and marked. The order sanctioning the amount in favour of the accused was also not produced. The prosecution relied on the oral evidence of PWs 7, 8 and 9, the Officers who sanctioned the PF advance to the accused, to establish its case.

21. The allegations in C.C.No.26/2004 is that while working

in the Buffalo Breeding Farm, Kuriyottumala, the accused availed a sum of Rs.23,675/- as GPF advance. Ext.P33 is the application furnished by the accused. Ext.P31 is the PF pass book issued in favour of the accused. Ext.P34 is the sanction order issued by the then Agricultural Officer. The prosecution mainly relied on PW12, a Head Clerk attached to the Buffalo Breeding Farm Kuriyottumala to substantiate the case against the accused. PW12 deposed that he could identify the handwriting and signature of the accused in Ext.P33.

22. In order to establish the offences alleged against the accused the prosecution has to primarily establish that the accused intentionally submitted applications containing false particulars and forged documents.

23. The findings recorded by the Trial Court, contained in Paragraph 26 of the judgment, read thus:

**26. From the evidence discussed above, the following facts**

emerge: The accused while working as Agricultural Assistant in the Pathanapuram (Edathara), Karavalloor and Kulakkada Krishibhavans and in the Buffalo Breeding Farm, Kuriyottumala during the period from 10.08.1993 to 24.06.1996, had obtained PF advances of Rs.7,290/- on 13.09.1993, Rs.7,890/- on 30.11.1993, Rs.7,500/- on 09.02.1994 Rs.8,725/- on 14.07.1994, Rs.9,600/- on 08.08.1994, Rs.19,350/- on 10.02.1995 and Rs.23,675/- on 14.09.1995 and for the purpose of obtaining such PF loans, he forged his Last Pay Certificates marked as Exts.P25 & P23 and used them as genuine and filed Exts.P10, P14, P17, P33 and other applications claiming the amounts mentioned above as PF advances by stating false particulars regarding his PF accounts and he also submitted Exts.P11, P15, P41 and other tabulation statements containing such false PF particulars and by practicing deception and by adopting corrupt and illegal means and by inducing PWs 5, 9, 8, 7 and other sanctioning authorities obtained the said amounts as PF advances when he was not having the amounts in his credit. He also produced forged PF Pass book before PW5 and other sanctioning authorities after having concealed Ext.P31 pass book for the purpose of getting his PF loans sanctioned and thus he is found to have abused his position as public servant and obtained pecuniary advantage to the extent of the above amounts by forging records and cheating the sanctioning authorities as alleged in these cases. The points are answered accordingly (sic)

24. The Trial Court found that the accused forged Exts.P25

and P23, his Last Pay Certificates during the relevant period and used them as genuine and filed Exts. P10, P14, P17 and P33 applications claiming the amount mentioned above as PF advances stating false particulars regarding his PF accounts.

25. The crux of the findings of the Court below is as follows:

(a) The accused forged Ext.P23 and P25, his Last Pay Certificates and used them as genuine and filed Exts.P10, P14, P17 and P33 applications.

(b) He has stated false particulars in Exts.P11, P15 and P41 tabulation statements.

(c) The accused induced PWs 5,7, 8, 9 and the sanctioning authority to obtain PF advances when he was not eligible to draw such amounts.

(d) The accused produced forged Ext.P31 pass book before PW5.

26. The prosecution relied on the oral evidence of PWs 5,

7, 8, 9, 10 and 12 to establish that the appellant/accused submitted forged Last Pay Certificates and produced tabulation statements containing false information and forged pass book. PW5 deposed that he had seen the appellant/accused writing Exts.P10, P11 and P12. PW9 deposed that she is acquainted with the handwriting and signature of the accused. PW12 also deposed that he could identify the signature and handwriting of the appellant/accused. While giving evidence, none of these witnesses identified the disputed documents as written by the accused.

27. The prosecution witnesses, who were examined to

bring opinion evidence in respect of the disputed documents, did not identify the handwriting and signature of the accused in any of the disputed documents. The necessary inference is that there is absolutely no evidence to connect the accused with any of the forgery and falsification alleged by the prosecution. Though some of the witnesses stated that they are acquainted with the handwriting and signature of the accused, they failed to give evidence as to the circumstances by which they got opportunity to acquaint themselves with the handwriting and signature of the accused. They have not given evidence that they had seen the accused writing the disputed documents, nor they gave evidence that they had received documents purporting to be written by the accused in answer to the documents written by the accused himself or under his authority addressed to them. Those witnesses also did not give evidence that in the ordinary course of

business they had been habitually receiving documents purporting to be written by the accused.

28. The admissibility of the opinion of the lay witnesses as provided in Section 47 of the Evidence Act was considered by this Court in *Sivadas v. State of Kerala* [2023 (1) KHC 482]. In that case this Court held thus:

16. Section 47 of the Evidence Act reads thus:- 47. Opinion as to handwriting, when relevant.- When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact. Explanation.-A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

17. Section 47 permits the Court to admit the opinion of a person who

is acquainted with another persons handwriting or signature. The explanation attached to Section 47 gives guidance as to who is considered to be acquainted with anothers handwriting. It includes a person;

(1) who has seen that person writes;

(2) or who has received documents written by that person in answer to documents written by himself or under his authority and addressed to that person or;

(3) who has in the ordinary course of business receives documents written by that person or such documents are habitually submitted to him.

18. The first case deals with direct evidence. Going by Section 47, besides direct evidence, the law makes two other modes as mentioned above.

19. In *B. Raghuvir Acharya (supra)*, the Apex Court held that the

prosecution has to produce relevant material before the Court to establish that the witness who claimed familiarity with the handwriting of the accused had the competency to identify the disputed writings. In *Hema (supra)*, the Apex Court found the evidence of a lay witness identifying the handwriting of the accused therein admissible under Section 47 of the Evidence Act on the ground that the witness had the opportunity to get familiarity with the disputed writings and he has the competence to identify the same. In *Ajit Savant (supra)*, the Apex Court observed that a comparison made by anyone familiar with the handwriting of the person concerned is admissible under Section 47 of the Act.

20. In the present case, admittedly, there is no direct evidence as the prosecution has no case that any of the witnesses examined to prove its allegations has seen either accused No.1 or 2 write or put signature.

21. The learned counsel for accused Nos.1 and 2 contended that the

prosecution has not succeeded in establishing that any of the witnesses gave evidence to show that they had an opportunity to acquaint with the writing and signature of accused Nos. 1 and 2. A person gets an opportunity to get acquainted with the handwriting of another person when he has often seen that person writing something, or when he has been receiving papers written by that person in reply to his own drafts or for the purpose of typing, filing, or advising. The mandate of Section 47 is that the opinion of such a person can be relied upon. In the present case, the witnesses relied on by the court below only stated that as they had worked with the accused in the same office, they could identify their signatures and writings. The circumstances by which they got familiarity with the signature of accused No.1 or the handwriting of accused No.2 had not been brought out in evidence. They had not given evidence to

the effect that they had received documents written by accused Nos. 1 and 2 in answer to documents written by themselves or under their authority and addressed to them or in the ordinary course of business received documents written by accused Nos. 1 and 2 or such documents were habitually submitted to them. Their evidence is so weak that such an inference is not possible.

22. As far as the evidence against accused Nos.1 and 2 is concerned,

the prosecution could not bring forth sufficient material to prove that the witnesses though partly supported the prosecution had an opportunity to have familiarity with the signature of accused No.1 and handwriting of accused No.2 in accordance with the requirements of Section 47 of the Evidence Act.

29. Viewed on the touchstone of the principles discussed above, the oral evidence of PWs 5, 7 to 10 and 12 cannot be reckoned as opinion evidence as provided under Section 47 of the Indian Evidence Act.

30. The learned counsel for the appellant submitted that

even if it is accepted for argument sake that the disputed applications were submitted by the accused, those applications were processed by the officials higher in charge of the administrative matters and at the most what could be inferred is that the accused happened to submit application stating factual errors. It was the duty of the verifying officer to find out the exact amount for which the accused was entitled. It is submitted that the sanctioning authority was expected to sanction only the amount entitled to the accused, and therefore, sanctioning of any excess amount than what the accused was entitled to cannot be attributed to the accused. The learned counsel further contended that the accused who was working in the technical wing of the Agricultural Department had no role in the processing of any papers in the administrative side.

31. The learned counsel for the appellant relied on the oral evidence on PW1 who had deposed that the verification of applications regarding GPF advances etc., is done by the officer in the administrative wing concerned.

32. Yet another aspect that requires consideration is that

none of the prosecution witnesses gave evidence to the effect that the accused intentionally submitted any false particulars with the applications. A person can be fastened with criminal liability only if it is established that the said person had sufficient mens rea in the commission of the alleged crime.

33. The resultant conclusion is that the prosecution failed to

establish the offences alleged against the accused. The accused is found not guilty and he is acquitted of the offences alleged. These Criminal Appeals are allowed as above. Sd/- K.BABU JUDGE VPK

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