2025:KER:29135

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

FRIDAY, THE 4TH DAY OF APRIL 2025 / 14TH CHAITHRA, 1947

CRL.APPEAL NO. 2544 OF 2009

AGAINST THE JUDGMENT DATED 06.11.2009 IN CC NO.3 OF 2003

OF THE SPECIAL COURT (SPE/CBI)-I, ERNAKULAM

APPELLANT/4TH ACCUSED:

K.S.RAMANKUTTY
KADAVIL HOUSE, CARMAL MOUNT ROAD,
KANJIRAPPILLY, (KODAVANPADATH HOUSE,
KALLEPPADAM P.O., PAZHAYANNUR, THRISSUR-87).

BY ADVS.
SRI.T.V.GEORGE
SRI.JIMMY GEORGE THADATHIL

RESPONDENT/COMPLAINANT:

CBI/SPE/KOCHI-17, REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV SREELAL WARRIAR, SC, CBI

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON 19.03.2025, ALONG WITH CRL.A.2545/2009 AND CONNECTED CASES, THE COURT ON 04.04.2025 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

FRIDAY, THE 4TH DAY OF APRIL 2025 / 14TH CHAITHRA, 1947

CRL.APPEAL NO. 2545 OF 2009

AGAINST THE JUDGMENT DATED 06.11.2009 IN CC NO.3 OF 2003

OF THE SPECIAL COURT (SPE/CBI)-I, ERNAKULAM

APPELLANTS/ACCUSED 2 & 3:

1 T.LASKSHMI DEVI
W/O M.R.SOMARAJAN, AGED 52 YEARS, PERMANENTLY RESIDING AT, MAPPALAPARAMBIL, P.O.THAMPALACKADU, KANJIRAPPALLY, VILLAGE, KOTTAYAM DISTRICT.

2 M.R.SOMARAJAN S/O. NARAYANA PANICKER
AGED 68 YEARS, PERMANENTLY RESIDING AT, MAPPALAPARAMBIL, P.O.THAMPALACKADU, KANJIRAPPALLY, VILLAGE, KOTTAYAM DISTRICT.

BY ADVS.
A.B.MOHANAKUMAR
BAJI SOMARAJAN
V.A.PRADEEP KUMAR

RESPONDENT/COMPLAINANT:

CBI, KOCHI BRANCH,
KALOOR, KOCHI – 682 017, REPRESENTED BY ITS SUPERINTENDENT OF POLICE.

BY ADV SREELAL WARRIAR, SC, CBI

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON 19.03.2025, ALONG WITH CRL.A.2544/2009, 2581/2009, THE COURT ON 04.04.2025 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

FRIDAY, THE 4TH DAY OF APRIL 2025 / 14TH CHAITHRA, 1947

CRL.APPEAL NO. 2581 OF 2009

AGAINST THE JUDGMENT DATED 06.11.2009 IN CC NO.3 OF 2003

OF THE SPECIAL COURT (SPE/CBI)-I, ERNAKULAM

APPELLANT/5TH ACCUSED:

V.SATHYAPALAN
R 82/5, RAMESH PARK, LAXMI NAGAR, DELHI-92.

BY ADVS.
SRI.R.GIREESH VARMA
SRI.V.K.GANGADHARAN

RESPONDENT/COMPLAINANT:

CBI/SPE, KOCHI-17
KOCHI-17, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY ADV SREELAL WARRIAR, SC, CBI

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON 19.03.2025, ALONG WITH CRL.A.2545/2009 AND CONNECTED CASES, THE COURT ON 04.04.2025 DELIVERED THE FOLLOWING:

P.G. AJITHKUMAR, J.

Crl.Appeal Nos.2544, 2545 and 2581 of 2009

Dated this the 4th day of April, 2025

JUDGMENT

These appeals arose on the judgment dated 06.11.2009 of the Court of Special Judge (SPE/CBI)-I, Ernakulam. Out of the six accused, who faced trial, accused Nos.2 to 5 were convicted; while accused Nos.1 and 6 were acquitted. Accused Nos.2 and 3 together filed Crl.Appeal No.2545 of 2009, accused No.4 filed Crl.Appeal No.2544 of 2009 and accused No.5 filed Crl.Appeal No.2581 of 2009. Since the issues involved in these appeals are common, these appeals are disposed of by this common judgment.

2. There were two sets of allegations. The first set pertaining to accused No.6 and owing to his acquittal, the facts concerning that matter need not require mention. The accusation against accused Nos.2 to 5, which requires mention are the following:

Accused No.1 was the Manager of Kottayam Branch of State

Bank of India (SBI) and as such a public servant. He together with accused Nos.2 to 5 hatched a conspiracy for misappropriating money by cheating the SBI. In furtherance of that conspiracy, accused No.3 presented six discounting draft bills (DD bills) together with forged lorry receipts and other documents on 23.03.1998 in the Bank. He submitted three more such discount draft bills along with forged lorry receipts and connected documents on 26.03.1998 in the Bank. The consignments were centrifugal latex. The consignees were M/s Mattress House and M/s Premier Foam Industries, New Delhi, of which accused No.5 was the proprietor. M/s Kerala Trading Corporation to which accused No.2 is the proprietrix had sent the consignments. Her husband is accused No.3. The lorry receipts were fabricated and corresponding invoices were drawn falsely. Accused No.1 allowed to discount the fake bills so submitted and paid an amount of Rs.30,60,855/- to accused Nos.2 and 3 causing loss of that amount to the bank. The offences thereby committed by the accused are punishable under Sections

120B, 467, 468 and 471 of the Indian Penal Code, 1860 (IPC), and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (PC Act).

3. At the trial of the case, PWs.1 to 32 were examined and Exts.P1 to P284 were marked. On the close of the prosecution evidence, the accused were questioned under Section 313(1)(b) of the Code of Criminal Procedure, 1973 (Code). All of them maintained that they were innocent. Their respective defences were also mentioned in their statements. DW1 was examined and Exts.D1 to D10 were marked on the side of the accused. The Special Court, after appreciating the evidence, convicted accused Nos.2 to 5 for the offences under Section 120B read with Sections 420, 467, 468 and 471 of the IPC. They were sentenced accordingly as well.

4. Heard the learned counsel appearing for the respective accused and the learned Standing Counsel for the CBI.

5. Accused No.2 was the proprietrix of M/s Kerala Trading Corporation. Accused No.3 is her husband. He had

another proprietorship concern named M/s Amba Rubber Industries. They were dealing with centrifuged latex. The said concerns used to sell centrifugal latex to accused No.5, who carries on business in New Delhi. Accused Nos.2 and 3 have accounts with Kottayam Branch of SBI in the name of M/s Kerala Trading Corporation. They had a discounting limit of Rs.50 lakhs and a cash credit facility of Rs.10 lakhs. These facts are not under challenge.

6. The case of the prosecution is that nine DD bills each accompanied by request for discounting and consignee copy of the lorry receipts evidencing sending of consignments to the consignees at New Delhi were submitted in the Kottayam branch of the SBI. It was stated that each consignment was insured, which was later turned out to be untrue. The documents were signed by accused No.2 for M/s Kerala Trading Corporation. On the request of accused Nos.2 and 3, all the nine requests for discounting were sanctioned by accused No.1 and a total amount of Rs.30,60,855/- was paid. The said amount was credited to the account maintained

by M/s Kerala Trading Corporation and was eventually withdrawn.

7. Accused Nos.2 and 3 did not dispute the fact that such an amount was received by them from the bank. Besides their statements during examination under Section 313(1)(b) of the Code, Ext.D7 letter sent by accused No.3 to PW21, who was the Divisional Manager of Transport Corporation of India (TCI), through which the consignments were sent, it has been categorically admitted that such discounts were availed and money received. Dehors such admission, the prosecution adduced overwhelming evidence as well. Every such transaction is borne by records and all such records are brought in evidence. Therefore, without much deliberation, it can be said that the findings of the Special Court in the above regard, which was after adverting to the evidence came on record, is liable to be affirmed.

8. The modus operandi was availing bill discounting from the bank making use of fabricated lorry receipts. Accused No.4 was the Manager of Kanjirappally branch of TCI.

He received the consignments each of one barrel of double centrifuged latex to be sent to either M/s Mattress House or M/s Premier Foam Industries, both at New Delhi and issued lorry receipts. As explained by PW21, accused No.4 ought to prepare original and four carbon copies of each lorry receipt. The original will be given to the consignor. One exact carbon copy each of it shall be given to the consignee, records section and filing section.

9. Nine such consignments were sent, each was one barrel of double centrifuged latex. Six consignments were sent on 23.03.1998 and three were on 26.03.1998. The consignee copy of the lorry receipts is expected to be sent to the consignee. It can be sent directly or through the bank of the consignee. PW1, who was the Deputy Manager (Accounts) in the SBI during the relevant time explained that the bank of the consignee in the present cases was Dena Bank, Alipore Branch. The documents were to be sent to that bank through the Chandni Chowk Branch of the SBI. If the consignor needs to discount the bill, he is expected to submit the consignee

copy of the lorry receipts along with the discounts draft bill and the request. After such discounting only, the papers along with discounting particulars would be sent and in that event the lorry receipts and documents are sent through the bank only. Accused Nos.2 and 3 discounted all nine bills and therefore all such bills were sent to the consignee through the bank as explained above.

10. From the evidence of PW1 and PW2, who were officers of the SBI, Kottayam Branch, it is seen that all the said nine discounted bills along with lorry receipts were sent to Chandni Chowk Branch of the SBI for collection from the consignee through his bank, Dena Bank, Alipore Branch. But none of those consignments was taken delivery of. The consignee, according to the prosecution, is accused No.5. Following that, enquiry ensued and the foul-play was unearthed. PW2 deposed that he went to the Kanjirappally Branch of TCI, from where he discreetly verified the record copy corresponding to the consignee copy of the lorry receipts submitted by accused Nos.2 and 3 for discounting. The

forgery in the consignee copy of the lorry receipts and creation of corresponding false documents such as, invoice and DD bills were revealed. Resultantly the crime was registered and investigation taken place.

11. During the investigation, lorry copy, record copy and file copy of the disputed consignee copy of the lorry receipts were seized and produced before the court. Exts.P4, P8, P12, P16, P20, P24, P33, P37 and P41 are the consignee copy of the lorry receipts said to have been forged. Each of the said consignee copies of the lorry receipts was submitted in the bank together with a request for discounting, an invoice and discount draft bill. The said documents corresponding to Ext.P4 are Exts.P1, P2 and P3. Thus, Exts.P1 to P4 thus constitute one set of documents submitted by accused Nos.2 and 3 for discounting the bill amount of the first consignment. Four such documents were submitted by them in the bank in relation to each of the said nine consignments. The details of the consignee copy of the lorry receipts and accompanied documents submitted for discounting, corresponding lorry

copy, record copy and file copy as evidenced in this case are tabulated below:

Sl. No.	Consignee copy and connected documents	Lorry copy	Record copy	File copy
1	Exts.P1 to P4	Ext.P106	Ext.P124	Ext.P115
2	Exts.P5 to P8	Ext.P107	Ext.P125	Ext.P116
3	Exts.P9 to P12	Ext.P108	Ext.P126	Ext.P117
4	Exts.P13 to P16	Ext.P109	Ext.P127	Ext.P118
5	Exts.P17 to P20	Ext.P110	Ext.P128	Ext.P119
6	Exts.P21 to P24	Ext.P111	Ext.P129	Ext.P120
7	Exts.P30 to P33	Ext.P114	Ext.P132	Ext.P123
8	Exts.P34 to P37	Ext.P112	Ext.P130	Ext.P121
9	Exts.P38 to P41	Ext.P113	Ext.P131	Ext.P122

From the above, it can be seen that lorry copy, record copy and file copy of the forged consignee copy of the lorry receipts are available on record. Corresponding copies of Ext.P4 are Exts.P106, P124 and P115. Similarly, the copies of all other lorry receipts are also available. Identical are the corrections carried out in the consignee copies. A comparison of the consignee copy with other copies is enough to understand the manipulation brought about. For an easy understanding photo impression of the first among the forged consignee copy, which is Ext.P4 and its other copies, Exts.P106, P115 and

P124 are copied below:

Exhibit P4



Exhibit P106



Exhibit P115



Exhibit P124

TRANSPORT CORPORATION OF INDIA LTD.

P124 P-129

Regd. Office: 5-9-30/1-N, New M.L.A. Quarters Road, 501, 5th Floor, Paigah Plaza, Basheerbagh, Hyderabad-500 029

SCALE OF DEMURRAGE CHARGES

RECORD COPY

AT CARRIER'S RISK / OWNER'S RISK (Delete whichever is not applicable)

CAUTION

This Consignment will not be detained, diverted, re-routed or re-booked without Consignee Bank's written permission. Will be delivered at the destination.

NOTICE

INSURANCE

The consignor has stated that he has insured/not insured the consignment

Company

Policy No.

Amount

CONSIGNMENT WILL REACH ON OR BEFORE 10-1-98

SDT-152

9999

Address of Delivery Office: TCI, Green Park, Kohn Road, DELHI

Address of Issuing Office: Transport Corporation of India Ltd, Near Perinthalmanna, Ernakulam

Consignor's Name & Address: M/s Kerala Timber Corporation, Trichur

Consignee's Name & Address: M/s Bank of India

CONSIGNMENT NOTE

NO. PP 209901 Date 23-2-98

From (Code & Name): MJPY KALAMASSERY

To (Code & Name): DLHN DELHI

Method of Packing	Description (said to contain)	Actual Weight	Charged Weight	Rate		Amount Rs.	Ps.
BRL	Latex based Products	220	220	400	FREIGHT	880	00
Packages: One				O/R	HANDLING CHARGES	11	00
					CARTAGE CHARGES	10	00
					STATISTICAL CHARGES	20	00
					SERVICE CHARGES	10	00
					TOTAL	931	00

Classification of Goods Code: 67

Amount Rs. in words: Nine Hundred and Thirty One only

Invoice No. 9060/

Signature of Booking Official

12. The lorry receipt was drawn concerning one barrel of centrifugal latex. Price of which was shown as Rs.880/-. The price along with handling charges and sales tax was Rs.931/-. The correction carried out in the consignee copy of the lorry receipts were; "ONE" was corrected as "FOURTY ONE" barrels. The price amount was Rs.880/- and the total amount was Rs.931/-. That amount was converted as Rs.19,931/- while prefixing "19". The total amount shown as "931" was corrected as "19931" by prefixing "19". The total amount written in words was also corrected by prefixing "Nineteen thousand". Thus, the lorry receipts drawn in respect of a consignment of one barrel of centrifugal latex was changed to 41 barrels of centrifugal latex, and the amount of Rs.931/- was corrected as Rs.19,931/-. Using the said corrected consignee copy of nine lorry receipts, amounts were discounted.

13. As stated, PW21 explained the procedure for drawing up lorry receipts by an official in TCI. There cannot be any difference between various copies of a lorry receipt. When

the consignee copies presented by accused Nos.2 and 3 in the bank for the purpose of discounting, totally vary from the other copies, namely, lorry copy, record copy and file copy; all bearing the same serial number, the forgery is obvious. Of course, the consignor copy, which should have been with accused Nos.2 and 3 were not recovered. That does not, however, affect the case of the prosecution at all. Addition of words in consignee copies are quite evident on a perusal of these documents itself. That together with a comparison of the other copies, it is quite evident that the consignee copies were forged and the same were submitted in the bank for discounting together with invoice and other documents stating incorrect facts. When the said documents were submitted in the bank and obtained money by discounting the bills, that amounted to using of false documents as genuine and obtaining money fraudulently from the bank.

14. In order to prove the charge that the forgery was committed in furtherance of a conspiracy hatched among accused Nos.2 to 5, the prosecution can essentially rely on

the evidence of PWs.1, 2, 9, 21 and 29. As stated, PWs.1 and 2, who were officials in Kottayam Branch of the SBI, deposed about submission of Exts.P1 to P24 and P30 to P41 for the purpose of discounting the bills and receipt of money. Submission of those documents in the name of M/s Kerala Trading Corporation is not disputed. The signatures of accused No.2 in the said documents have been proved by oral evidence, circumstances and opinion of PW29. PW9 is an ex-employee of Kerala Trading Corporation. He identified the signatures of accused No.2. The bank officials also identified the signatures. Accused Nos.2 and 3 having accounts with Kottayam Branch of SBI for years together, the officials could well identify their signatures.

15. Exts.P1 to P24 and P30 to P41 were handed over to PW1 by accused No.3. Her evidence is convincing. PW29 is a handwriting expert. He was working as Deputy Government Examiner, Questioned Documents in the office of the Government Examiner of Questioned Documents, Government of India. In Ext.P253 he furnished his categoric opinion about

signatures of accused Nos.2 and 3. Specimen signatures of accused Nos.2 and 3 were compared with the questioned signatures in the DD bills, invoice, etc. in question. Signatures in those documents were proved to be of accused No.2. Signatures of Ext.P198 series invoices were found to be that of accused No.3. The said opinion of PW29 together with the oral testimonies about authenticity of the signatures and the circumstance that the discounted amounts were credited to the account of M/s Kerala Trading Corporation proved beyond doubt that the documents in question were falsely created at the instance of accused Nos.2 and 3.

16. The role of accused No.4 is in the creation of false consignee copies of the lorry receipts. The learned Special Judge after analysing the evidence held that accused No.4 left out blank areas in the lorry receipts in order to facilitate filling up the same at a later point of time. It is submitted by the learned counsel for accused No.4 that the aforementioned finding itself is enough to absolve accused No.4. Opinion of PW29 that the handwritings in the disputed consignee copies

(Exts.P4, P8, P12, P16, P20, P24, P33, P37 and P41) were of accused No.4 is assailed by contending that it was not specific.

17. The learned counsel for accused No.4 would submit that only evidence practically available to implicate him is the opinion of PW29 contained in Ext.P253. But the said opinion is useless inasmuch as the embellishments in those documents were not specifically examined. Accused No.4 admitted issuance of the lorry receipts in his hand. He contends that at the time of issuance, all were exact copies, and the modifications were made subsequently. It is submitted by the learned counsel that when accused No.3 categorically admitted in Ext.D7 that such additions/alterations were made at his instance as required by accused No.5, there could not be a finding that accused No.4 was in any way involved in the forgery. The further submission is that the prosecution did not allege when and where the alleged conspiracy took place and that accused No.4 did not obtain any pecuniary advantage in the matter. When the prosecution failed to adduce any

evidence to prove complicity of accused No.4, the opinion rendered by PW29 alone cannot be based on to convict him. In this regard the learned counsel placed reliance on **Vijayachandran K.K. and others v. Superintendent of Police and others [2008 (2) KLJ 751]** and **Yogarani v. State by the Inspector of Police [AIR 2024 SC 4641]**.

18. As stated, a comparison of the consignee copies of the lorry receipts with other copies establish the falsification of the documents. It is obvious that at the time of preparing the lorry receipts a few portions were left unfilled. Columns in consignee copies were subsequently filled and entries were corrected. Question is, who made the additions in Ext.P4 and other consignee copies of lorry receipts.

19. PW29 opined that the entire handwriting in Ext.P4 and other consignee copies were of accused No.4. The allegation in that regard is that when nine words in the said consignee copies alone were the addition, the query to the handwriting expert should have been to examine those nine

words. Instead, a wholesale comparison of writings in the lorry receipts was queried to PW29. While examined in court it was put to him also as to whether he examined the words allegedly added, specifically. His answer was that he compared the entire writings in the consignee copies.

20. Opinion of PW29 concerning the disputed writings of accused No.4 is contained in paragraph No.5 of Ext.P253. The reasons for arriving at such a finding is separately given in Ext.P254. For a proper appreciation of the contention of accused No.4 in this regard, the said reasons are extracted below:

> "Reasons for opinion as embodied in para 5.- My opinion that the person who wrote the blue enclosed writings stamped and marked S52 to S79 also wrote the red enclosed writings similarly stamped and marked Q29 to Q46, Q48 and Q49 is based on the cumulative consideration of various similarities occurring between the questioned and the specimen writings both in individual writing habits as well as in general writing habits along with commencement, combination and terminations of various strokes and parts of the strokes. The general writing habits of movement, skill, slant, alignment, spacing relative size

and proportions of letters, etc., are similar between the questioned and the specimen writings. Line quality is also free and smooth. Similarities have also been observed in the minute and inconspicuous details of formation of various characters of the questioned writings when compared with the similar characters of the specimen writings. Some of such similarities are: Formation of 'r' along with the nature of twist at its base and the extent of its finish, shape of the oval part of 'a', formation of 'T' in two operations, hooked commencement of 'C' along with the shape of its curved part with similar variation, nature and location of commencement of 'n' along with its movement and the shape of its body part with similar variation, straight nature of body part of 't', other variety of 't' having loop in its body part and the nature of t-crossing as observed in the questioned writings is also observed in the specimen writings, peculiar formation of 'f' along with the location of its commencement and the nature of movement at the apex with similar variation, formation of 'd' along with its movement and the shape of its curved part, straight nature of body part of 'I', formation of 'y' along with the shape of its upper curved part, nature of twist at its apex and the direction of its finish, peculiar formation of 'M' along with its movement, formation of 'S' along with the shape of its upper and lower curved parts, formation of various letters along with their movement and their

combinations in the words 'Nineteen', 'Thousand', 'Hundred', 'Nine', 'of', 'India', 'Kerala', 'Corporation', 'Kanjirapally', 'State Bank', 'Centrifuged', 'Thirty', 'and', etc., as observed in the questioned writings is also observed in the specimen writings with similar variation, formation of figures '2', '6', '3', '9', '8', '5' along with their movement is similarly observed both in questioned and specimen writings. Similarities have also been observed when the various characters of the questioned signatures have been compared with the similar characters of the specimen signatures. Nature and location of commencement of the first character appearing as 'K' along with its movement and the shape of its curved part with similar variation, formation of 'S' along with the shape of its upper and lower curved parts, movement of 'R' along with the shape of its curved part, formation of the next character appearing as 'K' along with the shape of its buckle part, formation of 'u' along with its movement, formation of 't' along with the straight nature of its body part and its extent, simplification of the terminal character, nature of underscoring as observed in the questioned signatures is also observed in the specimen signatures with similar variation. All the characteristic features as occurring in the questioned writings are also exemplified in the specimen writings at one or the other place with similar variation.”

21. It is pertinent to note that letters and words forming part of the embellished words were specifically examined by PW29, although there was no such pointed query. The words 'nineteen', 'thousand', etc. are such words. When the opinion was rendered after examining those words allegedly added in the consignee copies also, the contention that the en bloc examination of the writings belied credibility of the opinion and caused prejudice to accused No. 4 cannot be accepted.

22. As the manager and person in charge of Kanjirappally Branch of TCI, accused No.4 alone could have written the lorry receipts. This fact has been asserted by PW21 as well. When the written text appeared in different copies of the same lorry receipt vary, that indicates to the role of accused No.4 in creation of false consignee copies. Such a strong circumstance is corroborated by the opinion rendered by PW29 that the handwritings in the lorry receipts were of accused No.4. When such forged consignee copy lorry receipts were used by accused Nos.2 and 3 for discounting the bills,

conspiracy among them in the matter is quite clear. Viewed in that perspective, Ext.D7 can be taken as a handiwork of accused No.3.

23. Suffice it to say that a conspiracy takes place often in secret. Time of its occurrence, the manner in which it occurred and so on and so forth cannot ordinarily be proved with positive evidence. The facts proved and circumstances established in this case, in the light of the provisions of Section 10 of the Evidence Act, are enough to establish that accused Nos.2 to 4 were privies to the conspiracy. In the above circumstances, the law laid down in **Vijayachandran K.K.** and **Yogarani** (supra) that the opinion of an expert on its own is not enough to convict a person is not available to the help of accused No. 4.

24. Accused No.5 was implicated in this case for the reason that all the nine consignments were in favour of the concerns run by him. The concerns are M/s Mattress House and M/s Premier Foam Industries, New Delhi. Seven consignments were in the name of M/s Mattress House and

the remaining two were in the name of M/s Premier Foam Industries. There is evidence to show that accused No.5 was the proprietor of M/s Mattress House. But there is no evidence to show that he was the proprietor of M/s Premier Foam Industries. Even if it is taken that the said concern also belonged to accused No.5, the question still lingers is whether the evidence is sufficient to establish that he connived in creation of false documents and discounting the bills using such fabricated documents.

25. A consignee can unilaterally be selected by the consignor. Ordinarily, on the basis of a contract, a consignment is sent. Here, however, the consignment itself is shady and therefore such a normal inference is not possible. The prosecution puts forward the circumstance that accused No.5 requested Dena Bank, Alipore Branch for more time for taking delivery of the consignments. Another circumstance pointed out is that accused No.3 along with accused No.5 reached SBI Kottayam Branch and requested to re-sent the bills in question to the Dena Bank. Although PW1 was cited to

prove that fact, she could not remember and say whether accused No.5 was the person who came to her branch requesting to re-sent the bills.

26. Ext.P134 is a fax message. It was allegedly sent by accused No.5 concerning the consignments in question. He denied sending any such fax message. Its authenticity was not duly proved by the prosecution. Even accepting Ext.P134 as a message sent by accused No.5, that would not point to his role in the conspiracy without some evidence indicating his participation in the alleged act. Therefore, the evidence to implicate accused No.5 with the transactions is quite scarce. Solely because the consignments were sent to the firm owned by accused No.5, his involvement in the conspiracy or in doing the criminal act cannot be inferred. Nothing is in evidence to show that he requested to send the consignments. So no positive act on the part of accused No.5 in the defrauding act of discounting bills and obtaining money from the SBI, Kottayam branch could be proved beyond doubt. The findings of the learned Special Judge leading to his conviction are thus

not based on any evidence, but based on inferences alone. Hence, his conviction is unsustainable in law and is liable to be set aside.

27. Resultantly, conviction of accused Nos.2 to 4 is confirmed and accused No.5 is set aside. In regard to the sentence, it is submitted by the learned counsel for accused Nos.2 and 3 that the said accused are now aged and bedridden. Hence, it is unjust to incarcerate them. Medical certificates concerning their treatment have been made available for my perusal also. Further, it is submitted that the bank had realised the entire amount from them. Accordingly, the learned counsel would plead for a lenient view in the matter of their sentencing. As regards accused No.4 it is submitted that having undergone the ordeal of the trial and other proceedings this far, he is entitled for a lenient view. Entire amount was appropriated by accused Nos.2 and 3 and there is nothing to show that accused No.4 obtained any pecuniary advantage. For that reason also he is entitled for leniency.

28. Having considered the nature of the offence proved to have been committed and the circumstances of accused Nos.2 to 4 in detail, I am of the view that in the matter of sentencing, a lenient view can be taken.

29. Accordingly, each of accused Nos.2 to 4 is sentenced to undergo simple imprisonment for a period of six months for the offence punishable under Sections 120B, 420 and 467 of the IPC; besides fine of Rs.25,000/- for each of the said offences. The default sentence shall be simple imprisonment for two months on each count. No separate sentence is imposed under Sections 468 and 471 of the IPC. The period of substantive sentence shall run concurrently. Set off, if entitled, is allowed under Section 428 of the Code.

Appeal No.2581 of 2009 is allowed and the appellant is set at liberty. Appeal Nos. 2544 and 2545 of 2009 are allowed in part to the above extent.

Sd/-

P.G. AJITHKUMAR, JUDGE

dkr

APPENDIX OF CRL.A 2545/2009

PETITIONER ANNEXURES

Annexure A1	**THE TRUE COPY OF THE CERTIFICATES ISSUED TO THE 1ST APPELLANT DATED 15.11.2023**
Annexure A2	**THE TRUE COPY OF THE CERTIFICATE ISSUED TO THE 2ND APPELLANT ON 15.11.2023**
Annexure A3	**THE TRUE COPY OF THE OPERATION NOTES ISSUED BY THE ASTER MEDICITY KOCHI DATED 21.06.2017**
Annexure A4(a)	**A TRUE COPY OF THE ORDER DATED 23.01.2012 OF THE DEBT RECOVERY TRIBUNAL (KERALA & LAKSHADWEEP) IN DRC NO. 799 IN OA K-108/99**
Annexure A4(b)	**A TRUE COPY OF THE ORDER DATED 13.09.2010 OF THE DEBT RECOVERY TRIBUNAL (KERALA & LAKSHADWEEP) IN DRC NO. 799 IN OA K-108/99**
Annexure A4(c)	**A TRUE COPY OF THE ORDER DATED 19.01.2007 OF THE DEBT RECOVERY TRIBUNAL (KERALA & LAKSHADWEEP) IN DRC NO. 799 IN OA K-108/99**
Annexure A4(d)	**A TRUE COPY OF THE ORDER (RS.6,60,000/-) DATED 11.11.2003 OF THE DEBT RECOVERY TRIBUNAL (KERALA & LAKSHADWEEP) IN DRC NO. 1046 IN OA K-109/1999**
Annexure A4(e)	**A TRUE COPY OF THE ORDER (RS. 12,90,000/-) DATED 11.11.2003 OF THE DEBT RECOVERY TRIBUNAL (KERALA & LAKSHADWEEP) IN DRC NO. 1046 IN OA K-109/1999**

Annexure A4(f)	**A TRUE COPY OF THE ORDER (RS. 14,10,000/-) DATED 11.11.2003 OF THE DEBT RECOVERY TRIBUNAL (KERALA & LAKSHADWEEP) IN DRC NO. 1046 IN OA K-109/1999**