

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE - I
NEDUMANGAD**

Present: Smt. Ruby Ismail,

Judl. I Class Magistrate-I, Nedumangad

Dated: Saturday, 3rd January 2026/12th Pousha, 1947

CALENDAR CASE No. 811/2014

Complainant		State represented by the Assistant Commissioner of Police, Police Control Room, Cochin Police Station, in Crime No. 215/1994 of Vanchiyoor Police Station Rep. by Manmohan.A, APP Sr.Gr.
Accused	1. 2.	1. Jose, aged 45/94, S/o Solaman Joseph, Plavilakathu Veedu, TC No. 5/376, Indira Nagar Road, Near J.J.Hospital, Peroorkada Peroorkada Desom, Peroorkada Village. 2. Antony Raju, aged 51/94, S/o Alphonse, House No. 237, Swathi Nagar, Padinjarekotta Kottaykkakom Ward, Vanchiyoor Village. Rep by Adv.Kovalam B Ajith Kumar Adv.Sasthamangalam S Ajith Kumar
Offences		Under sections 120B, 420, 201, 193 and 217 read with section 34 of the Indian Penal Code
Plea		Not guilty
Finding		Guilty
Sentence or Order		1) The first and second accused are sentenced to undergo simple imprisonment for a term of 6 months each for the offence punishable under section 120 B of the IPC. 2) The first and second accused are sentenced to undergo simple imprisonment for a term of 3 years each and fine of Rs 10,000/- (Ten Thousand only) each for the offence punishable under section 201 read with section 34 of the IPC. In default of payment of fine, they shall undergo simple imprisonment for 3 months each. 3) The first and second accused are sentenced to undergo simple imprisonment for a term of 3 years each for the offence punishable under section 193 read with section 34 of the IPC. 4) The first accused is sentenced to undergo simple imprisonment for a term of 1 year and fine of Rs 5,000/- (Five Thousand only) for the offence punishable under section 409 of the IPC. In default of payment of fine, he shall undergo

	simple imprisonment for 2 months. 5) The first and second accused are sentenced to undergo simple imprisonment for a term of 2 years each for the offence punishable under section 465 read with section 34 of the IPC. The bail bond executed by them stands cancelled. The sentences shall run concurrently.
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DESCRIPTION OF THE ACCUSED

Rank & Name	Father's Name	Residence	Age	Taluk
Jose	Solaman Joseph	Peroorkada	45	Thiruvananthapuram
Antony Raju	Alphonse	Padinjarekotta	51	Thiruvananthapuram

DATE OF

Occurrence	Complaint	Apprehension or appearance	Period of detention	Release on bail	Commitment	Commencement of trial
09.08.90	24.03.06	27.07.06	-	13.09.06	-	03.09.12
Commencement of evidence	Close of trial	Sentence or Order	Service of copy of judgment or finding on accused	Explanation for delay		
07.02.25	31.12.25	03.01.2026	03.01.2026	No delay		

This case having been finally heard on 31.12.2025 and posted for judgment to 03.01.2026 and the court on the same day delivered the following:-

J U D G M E N T

The first and second accused were put on trial upon the final report filed by the Assistant Commissioner of Police, Control Room, Cochin Police Station, in Crime No. 215/1994 of Vanchiyoor Police Station alleging commission of offences punishable under sections 120B, 420, 201, 193 and 217 read with section 34 of the Indian Penal Code.

2. The prosecution case, in brief, is as follows:- In order to secure the acquittal of an Australian national who was the accused in Valiyathura Police Station Crime No. 60/1990 (corresponding to S.C. No. 147/1990 before the Sessions Court, Thiruvananthapuram) alleging offense under Section 21(b) of the NDPS Act, the first accused, then Clerk of the Judicial

Second Class Magistrate II, Thiruvananthapuram (hereinafter mentioned as JSCM II, Thiruvananthapuram) in charge of the Property Section, entered into a conspiracy with the second accused, who was the defence counsel in the said case. In pursuance of the conspiracy, the first accused on 09.08.1990, dishonestly delivered to the second accused the MO1 underwear, which was in the custody of the Court as T. No. 241/1990. The second accused dishonestly received it after endorsing its receipt in the property Register, took it out of Court, altered it, and re-submitted it on 05.12.1990. The first accused thereafter accepted back the altered underwear and forwarded it to the Sessions Court as if it was genuine. By such fabrication of evidence and deception of the Court, the first and second accused are alleged to have committed offences punishable under Sections 120B, 420, 201, 193, 217, 409, 465 and 468 read with Section 34 of the IPC.

3. In the present case, the criminal law was set in motion pursuant to the registration of an FIR by PW17, Sri K.V Abraham, on the basis of the first information statement of PW1, Sri T.G. Gopalakrishnan Nair. Subsequently, upon completion of investigation, PW19, Sri. P. Prabha, filed the final report against the first and second accused alleging commission of offences punishable under Sections 120B, 420, 201, 193, 217 read with S. 34 of the Indian Penal Code.

4. The case was originally taken on the file of the Additional Chief Judicial Magistrate Court, Thiruvananthapuram, as C.C. No. 268/2006, against the first and second accused for offences punishable under Sections 120-B, 420, 201, 193, 217, and 34 of the Indian Penal Code. On issuance of summons, both accused appeared before the Court and were enlarged on bail. They were represented by counsels of their choice. Copies of all relevant prosecution records were furnished to them in compliance with Section 207 of the Code of Criminal Procedure, 1973. After considering the police report, the documents submitted along with it, and after hearing both sides, the

Hon'ble Court, being satisfied that there were sufficient grounds to proceed against the accused, framed charges for offences punishable under Sections 120-B, 420, 201, 193, 217, and 34 IPC. These charges were read over and explained to the accused, to which they pleaded not guilty and claimed to be tried.

5. Pursuant to Order No. C2. 11430/2013 of the Hon'ble Chief Judicial Magistrate, Thiruvananthapuram, the case was transferred to this Court, where it was re-registered as C.C. No. 811/2014, being the present case. This Court again issued summons to both accused, and they appeared in pursuance thereto.

6. Subsequently, as per Common Order dated 10.03.2023 in CrI.M.C. No. 7805/2022 and CrI.M.C. No. 5261/2022, the Hon'ble High Court of Kerala quashed the order of the court taking cognizance (Crime No. 215/1994) and all further proceedings in this case, on the ground of bar under Section 195(1)(b) Cr.P.C.

7. However, by Common Order dated 20.11.2024 in SLP (CrI.) No. 7896/2023 and SLP (CrI.) No. 4887/2024, the Hon'ble Supreme Court of India set aside the above order of the Hon'ble High Court and restored the order taking cognizance and all further proceedings in this case.

8. Altogether 29 witnesses were cited by the prosecution in the final report. Out of them, CW1, CW3, CW4, CW6, CW9, CW10, CW12, CW15, CW16, CW17, CW19 to CW26, and CW29 were examined before this Court as PW1 to PW19. The documents produced by the prosecution were marked in evidence as Exhibits P1 to P3, P3(a) to P3(e), P4 to P7, P7(a) to P7(c), P8 to P20, P20(a), P21 to P23, P23(a) to P23(c), P24 to P55, and P55(a) to P55(c). Among these, Exhibits P54, P55, and P55(a) to P55(c) were marked in evidence at the instance of the defence. The material objects produced by the prosecution were marked as MO1 and MO1(a).

9. During cross-examination of the prosecution witnesses, Exhibits D1 to D7 contradictions were marked. Exhibits D1 to D3 contradictions were marked in the statement of PW3 recorded under S. 161 Cr.P.C., Exhibits D4 and D5 contradictions were marked on that of PW8, Exhibits D6 and D7 contradictions were marked on that of PW11. Exhibit D8 is the certified copy of the deposition of PW18 in S.C. No. 147/1990 on the file of the Hon'ble Sessions Court, Thiruvananthapuram. (Exhibit P55(c) marked through PW19 and Exhibit D8 marked through PW18 are one and the same documents). Exhibit D9 is the certified copy of the counter affidavit filed by PW1 along with the Enquiry Report of the Circle Inspector of Vigilance Cell, High Court of Kerala. The examination of CW2 and CW28 was given up by the learned Assistant Public Prosecutor. CW5, CW8, CW11, CW13, CW14, and CW27 were reported to be no more, and their respective death certificates were produced. CW7 and CW18 were reported to be ill, and despite efforts, their presence could not be procured by the prosecution. With that, the prosecution evidence was closed.

10. Thereafter, the first and second accused were examined u/S. 313(1) (b) of the Cr.P.C. They denied all incriminating circumstances appearing in evidence against them and pleaded innocence. The second accused also filed an additional written statement u/S. 313(1)(b) Cr.P.C. Thereafter, the first and second accused were called upon to enter on their defense. No defense evidence was adduced.

11. At the time of final hearing, the learned APP filed C.M.P. No. 4785/2025 under Section 216 Cr.P.C., seeking to add or alter a charge under Section 409 IPC. After hearing both sides, this Court, by order dated 26.09.2025, dismissed the said C.M.P. No. 4785/2025. However, the said order was set aside by the Hon'ble High Court of Kerala, vide Order dated 30.10.2025 in O.P. (Crl.) No. 718/202 and the petition seeking addition of

charge under Section 409 of the IPC was allowed. In the meantime, the learned Assistant Public Prosecutor filed C.M.P. No. 5516/2025 under Section 216 Cr.P.C. seeking addition of further charges under S. 465 and 468 of the IPC. After hearing both sides, this court allowed the said petition.

12. Consequently, additional charges were framed against the first and second accused for offences punishable under Sections 409, 465, and 468 read with Section 34 of the IPC. The additional charge was read over and explained to the accused, to which they pleaded not guilty. This Court thereafter reopened the prosecution evidence in terms of Section 216(4) of the Cr.P.C., and the case was posted for further prosecution evidence.

13. While so, the first and second accused filed memos dated 21.11.2025 and 24.11.2025 respectively stating that they do not wish to recall or further cross-examine any prosecution witness in view of the additional charges framed. They further stated that they have no additional defence evidence to adduce in relation to the said charges. The learned APP also filed a memo stating that the prosecution does not wish to recall or re-examine any witness. Accordingly, the prosecution evidence was closed.

14. Since, no further evidence was adduced by the prosecution, there was no scope for any further examination under Section 313(1)(b) Cr.P.C. As the first and second accused have already stated in their memos that they have no defence evidence to adduce, the defence evidence was also closed.

15. Heard both sides, perused the records and examined the Material Objects. The learned counsel for the first accused, learned Senior counsel for the second accused as well as the learned APP filed written Argument Notes.

16. The points that arose for consideration are as follows:-

(1) Whether the first and second accused conspired together to tamper the MO1 underwear, involved in crime No. 60/1990 of Valiyathura Police Station (received in court as T.No. 241/1990), which was kept in the custody of the Court, with the intention of securing the acquittal of the accused therein and thereby committed the offence of criminal conspiracy punishable under Section 120B of the Indian Penal Code?

(2) Whether the first and second accused, in furtherance of their common intention, cheated the Court by tampering with the MO1 underwear involved in crime No. 60/1990 of Valiyathura Police Station (received in court as T. No. 241/1990), with the intention of securing the acquittal of the accused therein, and succeeded in securing such acquittal and thereby caused wrongful gain to them and wrongful loss to the court, and thus committed the offence punishable under Section 420 read with Section 34 of the Indian Penal Code?

(3) Whether the first and second accused, in furtherance of their common intention, tampered with the MO1 underwear involved in crime No. 60/1990 of Valiyathura Police Station (received in court as T. No. 241/1990), and thereby caused the disappearance of evidence, knowing that the accused therein has committed the offense alleged in the said crime, with the intention of screening that accused from legal punishment, and thereby committed an offence punishable under Section 201 read with Section 34 of the Indian Penal Code?

(4) Whether the first and second accused, in furtherance of their common intention, fabricated false evidence by tampering with the MO1 underwear involved in crime No. 60/1990 of Valiyathura Police Station (received in court as T. No. 241/1990), intending that such fabricated evidence should be used in the judicial proceedings before the Sessions Court, and thus committed an offence punishable under Section 193 read with Section 34 of the Indian Penal Code?

(5) Whether the first accused, being a clerk of the JSMC II, Thiruvananthapuram, in charge of property section, dishonestly parted with the MO1 underwear (received in court as T.No. 241/1990) involved in Crime No. 60/1990 of Valiyathura Police Station, which was kept in the custody of that court and re-accepted it after it being tampered with by the second accused and thereby knowingly disobeyed the legal direction as to the way in which he is to conduct as such public servant, with the intention to thereby save the accused therein from legal punishment and thereby committed an offence punishable under Section 217 read with Section 34 of the Indian Penal Code?

(6) Whether the first accused, being a clerk of the JSMC II, Thiruvananthapuram, in charge of property section, who was entrusted with MO1 underwear in his capacity as such clerk, committed criminal breach of trust by dishonestly and unauthorisedly delivering it to Accused No. 2 and thereby committed an offence punishable under Section 409 of the Indian Penal Code?

(7) Whether the second accused in furtherance of his common intention with the 1st accused, dishonestly and fraudulently made a false document by causing an unauthorised endorsement in the Exhibit P3 Property Register regarding the receipt of MO1, purporting to show that such receipt and delivery were lawfully authorised, though neither of you had such authority; and thereby committed an offence punishable under Section 465 read with Section 34 of the Indian Penal Code?

(8) Whether the first and second accused, in furtherance of their common intention, committed forgery by making an unauthorized entry in Exhibit P3 Property register for the purpose of cheating, by creating a false official entry intended to deceive the Court regarding the lawful handling, custody and return of MO1, and thereby committed an offence punishable under Section 468 read with Section 34 of the Indian Penal Code?

(9) If found guilty and convicted, what is the proper order as to sentence?

17. Point Nos. (1) to (8):- Since the factual matrix involved in all these points for consideration remains the same, and for avoiding repetition and for brevity, these points are considered together.

18. In this case, the prosecution relied on the oral evidence of PW1 to PW19 and the documentary evidence of Exhibits P1 to P53 to prove their case. The underwear (MO2 in Sessions Case No.147/1990) which was allegedly subjected to tampering by the second accused has been produced before the court and marked in evidence as MO1, along with its label which is marked as MO1(a). The criminal law was set in motion by PW1, the then Shirasthadar of Sessions Court, Thiruvananthapuram, who gave the Ext.P1 First information statement to the police. PW2 was the Junior Superintendent of JFCM-III Thiruvananthapuram, who produced Exhibit

P3, Property register of that court, and proved Exhibit P4 mahazar. PW3 was the Junior Superintendent and former Property Section Clerk of Judicial First Class Magistrate Court, Karunagappally, who explained the procedure for receiving, verifying, recording, sealing, and storing material objects in court. PW4 was the Clerk of the Sessions Court, Thiruvananthapuram, who produced Exhibit P5 proceedings sheet in CP 31/1990 of JSMC II, Thiruvananthapuram and Exhibits P7 and P7(a) vakalaths in S.C. No. 147/1990 of the Sessions Court, Thiruvananthapuram and C.P. No. 31/1990 of JSMC II, Thiruvananthapuram respectively. PW5 was the Joint Director, FSL, who examined MO1 (underwear) and issued Exhibit P9, opining tampering of the material object. PW6 was the Joint Director who compared the questioned and admitted signatures of the second accused and issued Exhibit P10 Report, confirming authorship by the second accused. PW7 was the Records Keeper of the Sessions Court, Thiruvananthapuram, who produced Exhibits P13 to P15 (property lists) and Exhibits P17 and P18, letters of the JSMC II, Thiruvananthapuram. He also attested Exhibits P12 and P16 mahazars relating to the said documents. PW8 was a Clerk of the District Court Thiruvananthapuram, who produced Exhibit P20 Property Register of the Sessions Court of the year 1990 and attested its mahazar, Exhibit P21. He also issued Exhibit P22 receipt. PW9, was the Junior Superintendent of JSCM-II Thiruvananthapuram and PW11 was the Presiding Officer of JSMC II, Thiruvananthapuram during the relevant period. PW10, a clerk in the Foreigners Section of the Thiruvananthapuram Commissioner's Office, produced Exhibits. P24 to P27, communications of various agencies. PW12, Assistant Commissioner at the Commissioner's Office, attested Exhibit P30 mahazar relating to Exhibits P24 to P27. PW18 was the Investigating Officer of Crime No. 60/1990 of Valiyathura Police Station. PWs 13, 14, 15, 16, and 17 are the investigating officers who conducted different stages of the investigation. PW19 finally investigated the case and filed the final report before the court.

19. Before adverting to discuss the evidence adduced by the prosecution, it is pertinent to briefly analyse the factual background that led to the registration of this crime. The accused in Crime 60/1990 of Valiyathura Police Station, one Australian National, was a passenger for the Indian Airlines Flight I.C.168 from Thiruvananthapuram to Bombay on 4.4.1990. At about 2:45 pm, the Sub Inspector in charge of frisking duty at the Airport detected two packets containing 55 grams and 6.5 grams of Charas kept concealed in his underwear. He informed the matter to the Inspector in the Airport Security. The contraband material was seized and the accused was taken into custody and was produced before the Valiyathura Police Station at 5:30 pm on the same day. On the basis of a report by the Airport Security Inspector, an FIR was registered as Crime 60/1990 of Valiyathura Police Station for the offense punishable Section 20(b)(ii) of the NDPS Act on 04.04.1990. Thereafter the investigation was conducted by the then Circle Inspector of Poonthura, K.K. Jayamohan, who was examined as PW18 in this case. The underwear allegedly worn by the accused and seized by the investigating officer was produced before the JSMC-II, Thiruvananthapuram on 05.04.1990. After investigation by PW18, his successor filed the final report before the JSMC-II, Thiruvananthapuram. It was taken on file before the JSMC-II, Thiruvananthapuram as CP 31/1990. Later the case was committed to the Hon'ble Sessions Court, Thiruvananthapuram and there it was taken on file as SC147/1990. After the trial, the Hon'ble Sessions Court convicted the Australian National and sentenced him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1 Lakh under Section 20(b)(ii) of the NDPS Act, 1985.

20. Against the Judgment of the trial Court, the convict (Australian National) filed Criminal Appeal No.20 of 1991 before the Hon'ble High Court of Kerala. During the course of hearing, a practical test was conducted on the Australian National, on his request and it was found that the said underwear did not fit him. Therefore, the Hon'ble High Court acquitted the

Australian National vide its judgment dated 05.02.1991. The Hon'ble High Court while acquitting the Australian National, observed that there is a strong possibility of underwear (marked as MO2 in SC 147/1990) being planted in an attempt to help the accused wriggle out of the situation. The Hon'ble High Court also observed that the matter will be duly enquired into and properly dealt with by the authorities concerned.

21. Consequent to the direction issued in CrI. A No. 20/1991, a Vigilance enquiry was conducted and subsequent to that on 27.09.1994, an Official Memorandum HC D2.8384/1992 was issued by the Hon'ble High Court to the District Judge Thiruvananthapuram stating that the MO-II underwear involved in Sessions Case No. 147/1990 of the Sessions Court, Thiruvananthapuram has been substituted by somebody interested in the accused and that a police investigation is required to trace out the manner in which the offense was committed.

22. Accordingly, as per the direction of the District Judge Thiruvananthapuram, PW1 Sri. Gopalakrishnan Nair, the then Sheristadar of the District and Sessions Court Thiruvananthapuram, had set the criminal law in motion by giving Exhibit P1 First Information statement to PW17 Sri. K.V. Abraham, the then Assistant Sub-Inspector of Police, Vanchiyoor Police Station. Consequent to that, on 05.10.1994, the FIR in this case came to be registered by PW17, for offences punishable under Sections 420 and 201 of the IPC, as Crime No. 215/1994 of Vanchiyoor Police Station. The FIR was marked as Exhibit P32.

23. Thereafter, the primary investigation of this case was conducted by PW14, Sri. Thampi S. Durgadutt, Sub Inspector of Police, Vanchiyoor P.S. He inspected the Exhibit P20 Property Register of the District and Sessions Court, Thiruvananthapuram of the year 1990, which was produced before him for inspection by PW8, Sri. Premachandran, a clerk in the District Court,

Thiruvananthapuram. On 28.07.1995 at 11:00 a.m, PW14 prepared the Mahazar of Exhibit P20 Property Register, which was marked as Exhibit P21. PW8 was an attesting to the Exhibit P21 mahazar prepared by PW14 and PW8 vouched the same before the court. The relevant page No.122 of Exhibit P20 containing entries of T-242/1990, T-243/1990, and T-241/1990, was marked as Exhibit P20(a). The Exhibit P20 was returned to the court by PW14 and its receipt was acknowledged by PW8 by issuing Exhibit P22 receipt.

24. PW14 further inspected the Property lists, Nos. 242/1990, 243/1990, and 241/1990 in Crime 60/1990 of Valiyathura Police station which were produced for inspection by PW7, Ramachandran Nair, who was the Records Keeper of the Sessions Courts, Thiruvananthapuram. The originals of the above Property lists were marked through PW7 as Exhibit P13, Exhibit P14, and Exhibit P15 respectively. PW14 further prepared the Exhibit P12 mahazar on 31/7/1995 regarding the Exhibit P13, P14, and P15. PW7 was an attesting witness to the Exhibit P12 mahazar prepared by PW14 and PW7 also vouched the same before the court. PW14 physically verified the MO2 underwear involved in Sessions Case No. 147/1990, which was marked as MO1 in this case. The label found in MO1 underwear was marked as MO1(a). PW14 also prepared the Exhibit P33 Mahazar of the MO1 underwear on 21.06.1996. He thereafter prepared the Exhibit P34 forwarding note for sending the MO1 underwear for examination at FSL through Court.

25. The investigation of the case was thereafter taken up by PW15, Saik Anwarudeen, Circle Inspector of Police, Pettah in the year 1997. According to him, he submitted a report to the Commissioner of Police, recommending to entrust the investigation of this case to a special agency.

26. Thereafter the investigation was conducted by PW16, R. Hithapalan Nair, who was the then the Assistant Commissioner of Police, DCRB, Thiruvananthapuram City. He seized Exhibit P3, the property Register 1990 Vol.I of JSMC II Thiruvananthapuram (present JFCM-III, Thiruvananthapuram) which was produced for inspection by PW2 Sarojam, the then Junior Superintendent of that court. PW16 also prepared Exhibit P4 Mahazar of Exhibit P3 which was attested by PW2 as an attesting witness.

27. PW16 also prepared the Exhibit P16 mahazar of Exhibit P17 letter (D-2046/1990 dated 05.11.1990) and Exhibit P18 letter (D-1822/1990 dated 12.10.1990) of the JSMC II, Thiruvananthapuram produced for inspection by PW7. PW7 was an attesting witness to the Exhibit P16 mahazar who also issued the Exhibit P19 receipt on its return. PW16 further produced before the court, the Exhibit P3 Property Register by virtue of Exhibit P35 Form151A and the Exhibits P17 and P18 letters by virtue of Exhibit P36 Form 151A.

28. The further investigation of the case was taken up by PW13, Babu Rajendran, who was the then Assistant Commissioner of Police, Crime Detachment, Thiruvananthapuram City. To that effect, he submitted the Exhibit P31 report dated 04.09.2000 before the court. However, due to his health condition, he was unable to complete the investigation.

29. Subsequent to that, the Exhibit P54 UN report came to be filed before the Hon'ble Court of Additional Chief Judicial Magistrate, Thiruvananthapuram on 16.08.2002. Though the Exhibit P54 report was produced before the court by the prosecution, it was marked in evidence at the instance of the defense through PW19, P.Prabha.

30. The case was finally investigated by PW19, P. Prabha, who was then the Dy.SP, Vanchiyoor. He took over the investigation on 24.12.2005 and submitted the Exhibit P43 report regarding his assumption of charge.

He inspected Exhibit P24, the message from Interpol, New Delhi, Exhibit P25 the letter from the National Central Bureau of Investigation, New Delhi, Exhibit P26, the message from the Australian National Central Bureau to Interpol, New Delhi, and Exhibit P27, the letter from Interpol, Canberra. These documents were produced for inspection by PW10, Shanavas, a Clerk in the Office of the City Police Commissioner, Thiruvananthapuram. PW19 also prepared the Exhibit P30 Mahazar of Exhibits P24 to P27 and produced them before the court under Exhibit P44 Form 15. Exhibit P30 mahazar was attested by PW12 Ramachandran, who was working as Assistant Commissioner in the Office of the City Police Commissioner, Thiruvananthapuram.

31. Subsequently, PW19 obtained Exhibits P7 and P7(a) vakalaths from the Thiruvananthapuram District and Sessions Court Records Section and prepared the Ext. P8 mahazar. He also submitted before the court Exhibit P11 Specimen (Admitted) writings and signatures of the second accused (S1 to S4) along with Exhibit P45 Form 15. The report he submitted before the court, seeking permission to make markings as to questioned documents in Exhibit P3 Property Register, for the purpose of sending it for FSL examination, is marked as Exhibit P46. He accordingly marked Q1, Q2, and Q3 on pages 286 (Exhibit P3(a)) and 287 (Exhibit P3(b)) of the Exhibit P3 Property Register and the said 'Q' markings are marked as Exhibits P3(c), P3(d), and P3(e) respectively. He further submitted Exhibit P47 report, whereby Jose and Antony Raju were arrayed as Accused Nos. 1 and 2, respectively, and additional offences punishable under Sections 120B, 193, 217 and 34 of the Indian Penal Code were also incorporated. PW19 further produced the Exhibit P29 duty certificate of the 1st accused along with the Exhibit P48 letter. He seized the Exhibit P5 order sheet and prepared the Exhibit P6 mahazar in that regard. The order sheet was produced before the court under Exhibit P49 Form 15. He also prepared the Exhibit P50 mahazar relating to the Exhibit P2 official memorandum of Hon'ble High Court and

produced it before the court through Exhibit P51 Form 15. On requisition from the FSL, he obtained additional specimen writings and signatures of the second accused, submitted the same before the court along with Exhibit P52 report and Exhibit P53 standard Requisition Form. He completed the investigation and filed the Final Report Before the Hon'ble Additional Chief Judicial Magistrate Court, Thiruvananthapuram alleging offences punishable under Sections 120B, 420, 201, 193, 217 read with 34 of the I.P.C.

32. During the cross-examination of PW19 on behalf of the first accused, the witness stated that he was aware that CW27, M.M. Thambi, had filed a UN ("Undetected") report in this case. As CW27 was already reported to be no more, the defense (first accused) sought to mark the UN report, in evidence through PW19. The same was allowed and the UN report dated 16.08.2002 was marked as Exhibit P54, at the instance of the defence (first accused).

33. During the cross-examination on behalf of the second accused, PW19 stated that he had prepared a mahazar dated 12.01.2006, under which he seized three documents, namely: (i) the judgment of the Hon'ble Sessions Court in S.C. No. 147/90, (ii) the judgment of the Hon'ble High Court in Crl. Appeal No. 20/1991, and (iii) the deposition of PW7 in S.C. No. 147/90 before the Hon'ble Sessions Court. The said mahazar, was marked at the instance of the second accused as Exhibit P55. The other three documents mentioned above were also marked as Exhibits P55(a) to P55(c) respectively, at the instance of the defence (second accused).

34. Further, the certified copy of the counter affidavit filed by PW1 along with the Enquiry Report of Circle Inspector, Vigilance Cell, Hon'ble

High Court of Kerala was also marked in evidence through PW19 as Exhibit D9.

35. I have carefully considered the oral and documentary evidence adduced by both sides and examined the material objects. I have also heard the learned counsel appearing for the first accused, learned Senior counsel appearing for the second accused as well as the learned Assistant Public Prosecutor and considered the argument notes filed by them.

36. The specific case of the prosecution is that in pursuance to the conspiracy hatched between the first and second accused and in furtherance of their common intention, the first accused, then serving as Clerk in charge of the Property Section of the JSMC II, Thiruvananthapuram, on 09.08.1990 dishonestly and unauthorizedly delivered to the second accused, who is the defense counsel for the accused (Australian National) in Crime No. 60/1990 of Valiyathura Police Station, the MO1 underwear (received in court as T.No. 241/1990) involved in that case and the latter, tampered it by altering its size, and thereafter re-submitted it to the court on 05.12.1990. The said tampering of the material object led to the acquittal of the accused in Valiyathura Police Station Crime No. 60/90 by the Appellate Court. Thus, the first and second accused are alleged to have committed offences punishable under Sections 120B, 420, 201, 193, 217, 409, 465 and 468 read with Section 34 IPC.

37. The initial point that arises for consideration is how, and in what manner, MO1 underwear came to be received in the JSMC II, Thiruvananthapuram. To prove this, prosecution examined PW18. PW18 was the Circle Inspector of Police, Poonthura, and the Investigating Officer in Crime No. 60/1990 of Valiyathura Police Station.

38. According to PW18, after the registration of FIR as Crime No. 60/1990 of Valiyathura Police Station on 04.04.1990, he reached the Valiyathura Police Station at about 6.00 p.m. that day. He interrogated the accused, an Australian National, and during the course of investigation, seized two packets containing hashish from his possession. PW18 further deposed that he also removed the underwear worn by the accused and seized the same by preparing a mahazar. Exhibit P37 is the certified copy of the mahazar prepared by PW18 on 04.04.1990 at about 8.30 p.m., wherein the underwear was described as a dark blue, baniyan-cloth stitched, worn-out underwear bearing a printed label indicating size "180-90", to fit waist "85-90 cm", cotton polyester. In court, PW18 identified MO1 as the underwear seized from the accused and MO1(a) as the label attached to it.

39. PW18 categorically stated that all the seized material objects, including MO1 underwear, were properly packed and sealed and were produced before the JSMC II, Thiruvananthapuram, on the very next day, i.e., 05.04.1990, through a police constable. MO1 underwear was forwarded to court along with Exhibit P38, Form 151A, and the description of MO1 therein was consistent with the description contained in Exhibit P37.

40. Exhibit P39 is the certified copy of the mahazar prepared by PW18 on 04.04.1990 at 7.00 p.m. in respect of the contraband substances seized from the accused, which were produced before court under Exhibit P40, Form 151A, on 05.04.1990. Exhibit P41, is the certified copy of the inventory prepared by PW18 at 8.00 p.m. on 04.04.1990, of the personal belongings seized from the accused, and all those items were also produced before court on 05.04.1990 under Exhibit P42, Form 151A.

41. The learned defence counsels contended that the evidence of PW18 in this aspect is untrustworthy and cannot be relied upon. The learned

counsel for the first accused specifically argued that although PW18 stated to have reached the police station at about 6.00 p.m. on 04.04.1990, Exhibit P37 mahazar was prepared only at 8.30 p.m., nearly two and a half hours later. According to the defence, this delay casts a serious doubt on the genuineness of Exhibit P37.

42. During the cross-examination of PW18, this aspect was specifically put to him by the learned counsel for the first accused. PW18 explained the sequence of events and stated that there was no delay in preparing the mahazars. He deposed that after reaching the police station at about 6.00 p.m., he interrogated the accused regarding the source of the contraband. According to him, the contraband substances were seized and the relevant mahazar was prepared at about 7.00 p.m., the personal belongings were inventoried at about 8.00 p.m., and the mahazar relating to the underwear was prepared at about 8.30 p.m.

43. It is pertinent to note that PW18 had clearly explained the sequence of events following the search and seizure of the material objects from the Australian National. Apart from the alleged delay, no other shortcomings were brought to the notice of this court to discredit the evidence of PW18 regarding the seizure of the MO1 underwear or to doubt the genuineness of Exhibit P37 mahazar.

44. Yet another contention raised by the defense is that although PW18, during his cross-examination, stated that the underwear was sealed and produced before the court, the prosecution has not produced any documentary evidence to establish that the material object was, in fact, sealed when produced before the court.

45. It is true that no document has been produced by the prosecution to specifically establish that MO1 underwear was sealed after its seizure on 04.04.1990 or that it was produced before court in a sealed condition. During his cross-examination also PW18 fairly admitted that the mahazar does not specifically mention that MO1 underwear was sealed after its seizure. However, PW18 clearly asserted that MO1 underwear was in fact sealed after its seizure, which was the usual practice followed. A mere suggestion as to possibility of malpractice due to the non-sealing of the material object by PW18, without any cogent or reliable material to substantiate such an allegation, cannot be accepted as a valid ground to doubt the genuineness or identity of MO1 as produced before the Court. Hence the said contention of the defense does not merit any acceptance.

46. The evidence adduced by PW18, read along with the documentary evidence marked as Exhibits P37 to P42, clearly establishes that the material objects in Crime No. 60/90 of Valiyathura Police Station, including the MO1 underwear, were produced before JSMC II, Thiruvananthapuram on 05.04.1990 and they were entered in the Exhibit P3 property register as T. No. 241/1990, T. No. 242/1990, and T. No. 243/1990, respectively.

47. It is not in dispute that on 05.04.1990, the first accused was working as a clerk in JSMC II, Thiruvananthapuram. Exhibit P29 is the duty certificate dated 16.02.2006, issued by the then Judicial First Class Magistrate-III, Thiruvananthapuram, and the same was marked in evidence through PW11, as its genuineness was not disputed by the first accused. Exhibit P29 certifies that the first accused was working as a U.D. Clerk in the office of the Judicial First Class Magistrate-III, Thiruvananthapuram (erstwhile JSMC II, Thiruvananthapuram), during the period from 08.01.1990 to 02.02.1992, and that he was in charge of the Property Section from 05.02.1990 to 02.02.1991.

48. On the application of the prosecution, the original attendance register of JSMC II, Thiruvananthapuram for the year 1990, was summoned before this Court and marked in evidence through PW9 as Exhibit P23. The relevant entries for the month of April 1990 would show that the first accused was present in court on 05.04.1990, the very day on which the MO1 underwear was produced in court.

49. In order to explain the procedure and formalities followed when a material object (property article) is produced before a criminal court, the prosecution examined PW3, Radha. PW3 deposed that during the year 1990, she was working as Junior Superintendent in the Judicial First Class Magistrate Court, Karunagappally, and that she had also served as the Property Section Clerk in that court. She explained in detail the procedure for receiving, verifying, recording, sealing, and storing properties in court, and the manner in which such items are released under orders of the court or forwarded to higher courts upon committal of cases.

50. During her cross-examination, when the learned Senior Counsel for the second accused confronted PW3 with certain portions of her statement recorded under Section 161 Cr.P.C., she stated that she did not remember making such statements. The relevant portions of her previous Statement were marked as Exhibits D1 to D3, subject to objection by Learned APP and subject to proof.

51. It is significant to note that when the witness was confronted with her previous statement, she did not deny having made any such statements, but merely stated that she could not recall having made them. In the absence of such denial, there is no apparent contradiction between her testimony before the Court and her previous statement. Consequently, Exhibits. D1 to D3 cannot be considered as contradictions, and hence no further question arises as to whether it is proved or not.

52. As discussed above, the MO1 underwear was received in court on 05.04.1990, and it was entered in Exhibit P3 Property Register as T. No. 241/1990. The relevant entry appearing on Page No. 286 of Exhibit P3 was marked as Exhibit P3(a). The description of the article in Exhibit P3(a) reads as “കൂടും നീല നിറത്തിലുള്ളതും ബനിയൻ തൂണിയിൽ തൂണിയതുമായ മുഷിഞ്ഞ ജെട്ടി -1”, which is identical to the description found in Exhibit P38, KPF Form 151A.

53. It is proved from Exhibit P23, the attendance register of JSMC II, Thiruvananthapuram for the year 1990, that the first accused was present in court on 05.04.1990, the very day on which the MO1 underwear was produced before the court. It is further proved through Exhibit P29 Duty Certificate that the first accused himself was in charge of the Property Section during the relevant period.

54. As per Circular No. 8/70 (Cl-19896/68) dated 19th March 1970, issued by the Hon'ble High Court of Kerala, entries in the property register are required to be made by the person who is in charge of the articles. While non-valuable properties may be entrusted to the Property Clerk or any other clerk, valuable properties are to be entrusted to the Chief Ministerial Officer. The Circular further makes it clear that the responsibility for maintaining the register rests on the person who makes the initial entry. Thus, the procedure to be followed in respect of entries in the Property Register has been specifically laid down by the Hon'ble High Court.

55. In the absence of any counter evidence, it can be reasonably presumed that the first accused is the one who received the MO1 underwear in court on its production and who entered its receipt in the Exhibit P3 Property Register as T. No. 241/1990. Therefore, it stands proved that the entry relating to the MO1 underwear in Exhibit P3(a) was made by none

other than the first accused. Exhibit P3 (a) would also show that the word “chest” is written within brackets against T. No. 241/1990.

56. It is the contention of the learned counsel for the first accused that the marking “chest” would indicate that the MO1 underwear was received by the then Junior Superintendent and was kept in his custody alone. It is also pointed out that one Gopinathan was the Junior Superintendent of the court at the relevant time and that the MO1 underwear was under his custody.

57. As per Rule 182 of the Criminal Rules of Practice, Kerala, only articles such as gold, silver, coins, currency notes, and other items of special value which can be easily converted into money are to be treated as valuables. Therefore, the MO1 underwear, by its very nature, is a non-valuable property and therefore, there was no necessity in the ordinary course to place the MO1 underwear in the treasury chest. The mere marking of the word “chest” against T. No. 241/1990 in Exhibit P3(a) cannot, by itself, lead to the conclusion that the article was in the exclusive custody of the then Junior Superintendent. Having found the first accused as the one responsible for making such an entry, the reason for making such an entry is also a matter within the special knowledge of the first accused.

58. Thus, from the above discussion it is clear that the MO1 underwear was received in court on 05.04.1990 by the first accused, who was then in charge of the Property Section, and that he was the person who entered its receipt in the Exhibit P3 Property Register.

59. Admittedly, the second accused was one of the advocates representing the Australian National in Crime No. 60/1990 of Valiyathura Police Station. The vakalath executed by the Australian National in S.C. No. 147/1990 and C.P. No. 31/1990 were produced before this Court and

marked in evidence as Exhibits. P7 and P7 (a), respectively. Exhibit P7(a) is dated 10.07.1990 and Exhibit P7, 20.10.1990.

60. A perusal of Exhibit P7(a) would reveal that the second accused was holding joint vakalath for the accused in C.P. No. 31/1990 before the JSCM II Thiruvananthapuram along with Advocate Smt. Celine Wilfred. Exhibit P7 would further show that in S.C. No. 147/1990 before the Sessions Court Thiruvananthapuram also, the second accused held joint vakalath along with Advocate Smt. Celine Wilfred and others. Hence, the evidence would clearly show that it was under this authority that the second accused had represented the Australian National in C.P. No. 31/1990 and S.C. No. 147/1990.

61. The prosecution evidence would show that after the material objects were received in court on 05.04.1990, the MO1 underwear was released from its custody on 09.08.1990 and was subsequently returned on 05.12.1990. To appreciate this aspect, it is necessary to consider the evidence of PW11 and the relevant documentary evidence.

62. PW11, Sri. Muhammad Wassim, was the Presiding Officer of Judicial Second Class Magistrate-II, Thiruvananthapuram, during the year 1990. He identified Exhibit P5, the proceedings sheet of JSMC II, Thiruvananthapuram, in Crime No. 60/1990 of Valiyathura Police Station. A perusal of Exhibit P5 would show that the accused in the said crime was arrested and produced before the court on 05.04.1990 at 3.30 p.m. and was remanded to judicial custody till 18.04.1990. Thereafter, his remand was extended from time to time.

63. The proceedings dated 10.07.1990 in Exhibit P5 would further reveal that upon filing of the final report, the case was taken on file as C.P.

No. 31/90 before the JSMC II Thiruvananthapuram. Exhibit P5(a) is the proceedings dated 03.08.1990, whereby the court ordered the release of personal properties of the accused and committed the case to the Hon'ble Court of Sessions. The Exhibit P5(a) order dated 03.08.1990 reads as follows:

“Accused produced. Counsel not present. Petition filed to get the personal properties. Report of the Investigating Officer called for. No objection filed. APP also heard. Accused is in custody. Item Nos. 1 to 41 and 45, 46 and 49 are released to the accused on proper acknowledgment. Case committed to Court of Sessions for trial. Produce before that court.”

64. A true copy of the above order dated 03.08.1990, seen appended to Exhibit P3 at page 286 (Exhibit P3(a)), was sought to be marked in evidence by the prosecution. The learned counsel for the first accused objected to its marking on the ground that it was only a true copy of the original order. Accordingly, the true copy was marked as Exhibit P28, subject to proof. On verification, this Court is satisfied that Exhibit P28 is the true copy of the Exhibit P5(a) order. Since the original order (Exhibit P5(a)) has already been marked in evidence, Exhibit P28 stands proved. Thus the evidence of PW11 and Exhibit P5 would show that the only order passed regarding the release of material objects in the said crime is the Exhibit P5(a) order dated 03.08.1990.

65. The Exhibit P5(a) order of the court dated 03.08.1990 directed the release of material objects described as Item Nos. 1 to 41 and 45, 46 and 49. As already noted earlier, the material objects in Crime No. 60/1990 were produced before the court under three separate KPF Form 151A (property lists), marked as Exhibits P38, P40 and P42.

66. Exhibit P38 (T No. 241/1990) contains only one item, namely, “a dark blue, worn-out underwear stitched with baniyan cloth – 1”. Exhibit P40 (T No. 242/1990) contains two items, namely: (1) a light black coloured substance in the form of lumps and powder, having a medicinal odour – 55 grams; and (2) a light black coloured powdery substance having a medicinal odour – 6.5 grams. Exhibit P42 (T No. 243/1990) contains fifty items.

67. Thus, it can be reasonably presumed that the order in Exhibit P5(a) can only pertain to the release of items included in T No. 243/1990 (Exhibit P42). This aspect is also not disputed by the defense.

68. Perusal of Exhibit P3(a), shows that against entry T No. 241/1990, an endorsement is made to the effect “Received the item No. 241/1990 as per court order on 09.08.1990 – sd/- Antony Raju, Advocate.” Similarly, in Exhibit P3(b) (page 287 of the Exhibit P3 Property Register), an endorsement is made to the effect “Received items mentioned under 243/1990 as per court order except Item Nos. 42, 43, 44, 47, 48 and 50 – sd/- 09.08.1990, Antony Raju, Advocate.” Further, Exhibit P3(a) also contains an endorsement near the acknowledgment of receipt stating, “Returned on 05.12.1990 – sd/-”.

69. A combined reading of these endorsements would clearly establish that the MO1 underwear under T 241/1990 and certain items (Item Nos. 1 to 41 and 45, 46 and 49) under T 243/1990 were released from the court custody on 09.08.1990 and the MO1 underwear under T 241/1990 was later returned to the court on 05.12.1990.

70. In order to prove that the above endorsements were made by the second accused, the prosecution examined PW6, the handwriting expert. PW6 deposed that while he was working as the Joint Director, Forensic Science Laboratory, Thiruvananthapuram, he compared the questioned

writings and signatures in Exhibit P3 Register with the admitted and specimen writings of the second accused. The questioned writings (Q1 to Q3) examined by him are the three endorsements mentioned in para 68 above. They are as follows:

i) Q1- "Received the item No. 241/1990 as per court order on 09.08.1990 – sd/- Antony Raju, Advocate." occurring on Exhibit P3(a).

ii) Q2- "Returned on 05.12.1990 – sd/-" occurring on Exhibit P3(a)

iii) Q3 - "Received items mentioned under 243/1990 as per court order except Item Nos. 42, 43, 44, 47, 48 and 50 – sd/- 09.08.1990, Antony Raju, Advocate." occurring on Exhibit P3(b)

71. The above markings as 'Q1' to 'Q3' were marked as Exhibit P3(c) to Exhibit P3(e). The admitted writings of the second accused used by PW6 for comparison include the red-enclosed writings marked as 'A2' in Exhibit P7 vakalath and the red-enclosed writings marked as 'A1' in Exhibit P7(a) vakalath. These markings as 'A1' and 'A2' were marked as Exhibit P7(b) and Exhibit P7(c). The specimen writings and signatures (S1 to S4) of the second accused were collected and produced before the court by PW19 along with Exhibit P52 report and Exhibit P53 Standard Requisition Form. The document containing the specimen writings and signatures (S1 to S4) was marked as Exhibit P11.

72. After comparing the questioned, admitted and specimen signatures and writings, PW6 issued the Exhibit P10 report, opining that all these writings and signatures were authored by the same person.

73. The findings in Exhibit P10 Report were not disputed by the defence. Further, the second accused, during his examination under Section 313(1)(b) Cr.P.C., expressly admitted that the endorsements marked as

Exhibits P3(c) to P3(e) were made by him. Consequently, it stands proved that MO1 underwear was received from court by the second accused on 09.08.1990 and was returned to court by him on 05.12.1990.

74. At this stage, the evidence of PW11 & PW9 assumes relevance. PW11, during his examination-in-chief, stated that he became aware of the release of the MO1 underwear only when it was returned to court by the second accused with a submission that it had been obtained by a mistake. According to him, at that point of time, he was under the impression that the MO1 underwear had been mistakenly interchanged with another underwear produced in court as item No 23 of T 243/1990, which was also ordered to be released among the other personal belongings of the Australian National. On that understanding, the returned article was received back in the office. During cross-examination, PW11 candidly admitted that he did not personally see the underwear when it was returned and that the advocate who brought back the property had personally admitted the mistake in his chamber.

75. PW9, Sri. Unnikrishnan B., was the Junior Superintendent of the JSMC II, Thiruvananthapuram, at the relevant time. He deposed that during his tenure, a letter was received from the Sessions Court calling for the material objects in Crime No. 60/1990 of Valiyathura Police Station, and the same was forwarded to the Property Section Clerk for compliance. According to him, all the material objects except the MO1 underwear were forwarded to the Sessions Court at the first instance on 12.10.1990 vide Exhibit P18 letter and the MO1 underwear was subsequently forwarded to the Sessions Court on 05.12.1990 vide Exhibit P17 letter.

76. PW9 further stated that on 05.12.1990, he saw the second accused conversing with the first accused, during which the second accused handed

over a small parcel to the first accused. PW9 deposed that the first accused thereafter sealed the parcel and forwarded it to the Sessions Court under the Exhibit P17 letter. During cross-examination for the second accused, PW9 admitted that he did not know the contents of the packet at the time it was handed over. He asserted that he had informed the investigating officer that he had seen the second accused handing over a packet to the first accused, though he was uncertain whether the same was recorded. He further stated that the packet was handed over in front of the seat of the Property Clerk and that, when he enquired about its contents, no reply was given, as the first accused was engaged in urgently dispatching it to the Sessions Court. PW9 added that he was not aware of what was transpiring at that time.

77. The learned defence counsels for the first and second accused strenuously contended that the testimony of PW9 in this regard was false as he was making such a statement for the first time in the court. It is argued that even the investigating officers admitted that no such statement was made by PW9 to them at the time of recording his statement. Accordingly, it is argued that this omission amounts to a material contradiction affecting the credibility of the witness. It was further contended that the version of PW9 is inconsistent with the evidence of PW11, which totally makes his evidence unreliable.

78. At the outset, it must be noted that there is no dispute from the side of the defence regarding the factum of receipt of MO1 underwear by the second accused on 09.08.1990 and its return on 05.12.1990. The challenge is confined only to the specific version of PW9 that he saw the second accused handing over a parcel to the first accused on 05.12.1990.

79. The Court is unable to accept the contention that the omission on the part of PW9 to state this fact to the police necessarily amounts to a

material contradiction. It is well settled that every omission is not a contradiction. Importantly, PW9 was not examined by the prosecution as an eyewitness to any occurrence.

80. Moreover, though it is alleged that the evidence of PW9 and PW11 are contradictory, this Court is of the view that these two versions are not mutually inconsistent. PW11 stated that the advocate came to his chamber and admitted the mistake, and that he directed the article to be handed over to the office. PW9, on the other hand, stated that he saw the second accused handing over a parcel to the first accused in the office, near the seat of the Property Clerk. These two versions when read together may depict different stages of the same sequence of events rather than contradictory narratives.

81. In the light of the above discussion, this Court finds that there is nothing on record to disbelieve the testimony of PW9 merely on the ground that he stated for the first time in court that he saw the second accused handing over a parcel to the first accused on 05.12.1990.

82. Further, during his examination under Section 313(1)(b) Cr.P.C., the second accused filed an additional written statement explaining the circumstances under which he received and returned the MO1 underwear on 09.08.1990 and 05.12.1990 respectively. According to him, the accused in Crime No. 60/1990 was a client of his senior advocate, Smt. Celine Wilfred, and he had signed the vakalath as a junior advocate. He stated that on 09.08.1990, as instructed, he went to court along with his office clerk Thulasi (since deceased) and a relative of the accused (Australian National, for the purpose of receiving the personal belongings. He explained that while one court staff obtained his acknowledgment in the register, another court staff handed over the articles to the accused's uncle, Paul. He further stated that, as there were several articles and the process was likely to take

considerable time, and as advised by the court staff and his office clerk, he signed the register and left the place.

83. He further stated that the personal belongings were taken by the accused's uncle, Paul. Subsequently, on 05.12.1990, he was informed that the articles so released also included the underwear, which was a material object in the case. Acting on the instructions of his senior advocate, he went to court along with Thulasi and Paul to return the same. He stated that he met the Magistrate in his chamber, explained the matter, and, as directed by the Magistrate, an office staff verified and received the articles. Thereafter, he acknowledged its return in the register as instructed. According to him, apart from signing the register, he had no further role, and the receipt and return of the articles were, in fact, effected by the accused's uncle, Paul.

84. The extent of admissibility of these explanations offered by the second accused will be discussed in detail in the later part. However, from the above documentary and oral evidence as well as from the explanation offered by the second accused himself, it is proved that MO1 underwear was in fact taken out of court custody on 09.08.1990 by the second accused and was thereafter returned by him on 05.12.1990.

85. The next aspect that arises for consideration is what happened to MO1 after its return to the court on 05.12.1990. The evidence adduced by PW9 would show that the MO1 underwear, which was returned by the second accused on 05.12.1990, was thereafter forwarded to the Sessions Court, Thiruvananthapuram, on the same day along with the Exhibit P17 forwarding letter.

86. Exhibit P17 letter was marked in evidence through PW7 and was seized during investigation by PW16, Hithapalan Nair, under Exhibit P16

mahazar. It is relevant to note that Exhibit P17 bears the date 05.11.1990. However, a perusal of the date seal affixed by the Sessions Court on the said document would show that it was in fact received by the Sessions Court on 05.12.1990. Along with Exhibit P17, the property list containing the material object was also forwarded to the Sessions Court. The said property list was marked as Exhibit P15, It contains only one item, the MO1 underwear under T.No.241/1990. Exhibit P15 also bears the seal of the Sessions Court showing its receipt on 05.12.1990.

87. The evidence would further show that the material object covered under T.No.241/1990, along with Exhibit P17 letter and the property list marked as Exhibit P15, was sent to the Sessions Court through one Peon Vasudevan. Its receipt there is also entered on Exhibit P20(a) i.e., Page No. 122 of the Exhibit P20 Property Register of the District and Sessions Court, Thiruvananthapuram for the year 1990. A perusal of Exhibit P20(a) would clearly show that the entry relating to T.No.241/1990 was made on 05.12.1990. Thus, the documentary evidence unequivocally establishes that MO1 underwear reached the Sessions Court on 05.12.1990.

88. It is true that in Exhibit P17, the date is shown as 05.11.1990. Admittedly the MO1 underwear was not in the possession of the court on 05.11.1990 and hence in no way it can be forwarded to the Sessions Court on 05.11.1990. In the above circumstances, the date shown in Exhibit P17 as 05.11.1990 can only be treated as an error committed at the time of its preparation.

89. Exhibit P23(b), attendance register for the month of October 1990 of JSMC II, Thiruvananthapuram, would clearly show that the first accused was present in court on 05.12.1990. Therefore, in the absence of any counter evidence, it can again be reasonably presumed that the first accused was

responsible for its preparation. If so, only the first accused would know how such an error in date has crept in Exhibit P17 letter.

90. Thus, from the oral and documentary evidence discussed above, this Court finds that the MO1 underwear was forwarded to the Sessions Court on 05.12.1990 itself and the discrepancy in the date in Exhibit P17 does not, in the facts and circumstances of the case, affect the chain of custody of the MO1 underwear.

91. The most crucial aspect that now arises for consideration is whether the prosecution has been able to establish that the MO1 underwear was subjected to tampering. The prosecution case is that the MO1 underwear, which was seized from the Australian National in Crime No. 60/1990 on 04.04.1990 by PW18, was later found to be not fitting him when a practical test was conducted before the Hon'ble High Court at the request of the Australian National himself, while considering the appeal against the order of conviction in S.C. No. 147/1990 of the Sessions Court, Thiruvananthapuram.

92. In this regard, It is relevant to consider the observations of the Hon'ble High Court in paragraph 5 of Exhibit P55(b) judgment. It reads as follows:

“.....His request for a practical test in that matter was not considered by the Sessions Judge. Before me also, such a request was made and I allowed the same. The report submitted by the Registrar is that MO2 will not suit a person of the size of the appellant and that in spite of repeated attempts it was impossible to pull MO2 up his thighs and reach the buttocks.....”.

93. Thus, the above observation of the Hon'ble High Court makes it clear that when a practical test was conducted at the request of the appellant (Australian National) during the consideration of the appeal, it was found that the underwear did not fit him. This resulted in setting aside his conviction in SC 147/1990 before the Hon'ble Sessions Court Thiruvananthapuram and acquitting him.

94. The entries in Exhibit P20(a), the Property Register of the Sessions Court would show that MO1 underwear, which has been in the custody of the Sessions Court from 05.12.1990 onwards, was transmitted to the Hon'ble High Court for the purpose of Criminal Appeal No.20/1991 on 23.01.1991. Thereafter, when the underwear was subjected to the practical test, it was found to be not fitting the accused.

95. In order to prove that the MO1 underwear was subjected to tampering, prosecution has examined PW5, who was the then Joint Director of the Kerala State Forensic Science Laboratory. According to PW5, he examined the MO1 underwear on a requisition from the Vigilance Cell, High Court of Kerala in Case No. VE 19/92-D2.8384/92 (Crime No. 60/1990). The forensic examination report, prepared by him, is marked as Exhibit P9.

96. According to PW5, the material object consists of a dark blue colour underwear, and that it was received for examination on 15.01.1994. As per the Exhibit P9 Report, he could notice that the vertical stitches on the left and right side joints and the bottom cross stitches of the underwear were made using one kind of thread, whereas the remaining stitches on the underwear were made using a different kind of thread. He stated that the side vertical stitches and the bottom cross stitches lacked precision and symmetry when compared with the other stitches on the underwear. He further observed that the bottom cross stitches were exposed, whereas in

similar types of underwear commonly available in the local market, such stitches are usually concealed.

97. PW5 further noted that the underwear carried a small label stitched vertically, bearing the inscriptions: “Size 85–90 ‘___’ waist ‘___’ cm cotton polyester,” and on the other side, “warm machine wash, do not bleach, do not tumble dry.” According to him, the label appeared to have been cut and re-stitched onto a small cut fragment of the same label, which itself was already attached to the underwear by vertical stitches. PW5 deposed that when the inner portions of the underwear stitched with the two different kinds of threads were exposed and compared, the colour of the cloth on the inner side at the vertical stitches and bottom cross stitches was lighter than the colour of the cloth at the other stitched portions. He further stated that the surface of the cloth inside the folded regions at the vertical and bottom cross stitches was more worn, and that the fibres were more frayed and disturbed when compared to similar folded regions at the other stitched portions. According to him, this condition was similar to the exposed surface of the non-stitched portions adjacent to those stitches. Based on the examination, PW5 recorded the following conclusions in his report:

1. It was not possible to offer any opinion regarding the origin of the underwear.
2. The type of stitches and the thread used for stitching the left and right side vertical joints and the bottom cross joint were different from those used in the remaining portions of the underwear, which suggests tampering. The cutting of the label and its re-stitching onto a fragment of the same label also supports the inference of tampering.
3. The tampering of the underwear could have been done recently.

98. In court, PW5 further explained that while looking around the underwear, a difference in shape was noticed on one side, and that holes from earlier stitches were also visible on one side. He further commented in court that, tampering could be specifically inferred from the stitching

pattern, the lack of precision, the variation in alignment, and the presence of frayed fibres, which according to him, suggest that the vertical stitches are hand-stitched whereas the remaining stitches are machine stitched.

99. PW5 also deposed that subsequently, a letter was received from the Additional Chief Judicial Magistrate, Thiruvananthapuram, seeking to examine MO1 underwear. In response to that, the Director, Forensic Science Laboratory, had replied stating that MO1 had already been examined upon the requisition of the Vigilance Officer, High Court of Kerala. Along with the reply, a copy of the Exhibit P9 Report was also forwarded to that court.

100. It is argued by the Learned Senior Counsel for the second accused that the evidence adduced by PW5 and his findings recorded in the Exhibit P9 report are not sufficient to prove the aspect of tampering of MO1 underwear. It is contended that Exhibit P9 is dated 18.06.1994, whereas the prosecution alleges that the tampering occurred between 09.08.1990 and 05.12.1990. In that context, the opinion expressed in Exhibit P9 that the tampering might have been done “recently” is stated to be incorrect. On this basis, it is argued that it would be unsafe to place reliance on Exhibit P9.

101. It is true that PW5, in his Exhibit P9 report, has opined that the tampering of MO1 underwear could have been done recently. However, a forensic expert cannot be expected to determine the exact date or period of tampering with precision. It is also not clear what PW5 meant to suggest by using the word ‘recently’ and its meaning was also not clarified during his cross-examination by the accused. In such circumstances, the use of the word “recently” cannot be viewed in isolation. The expert opinion contained in Exhibit P9 has to be appreciated as a whole, and cannot be discarded totally on the sole ground that it suggested that tampering had been done recently.

102. Now, on a careful examination of MO1 by this Court, the physical aspects noted by PW5 in his Exhibit P9 report appear to be convincing. It is clearly observable that the thread used for the vertical stitches and the bottom cross stitches is different from the thread used in the remaining portions of the MO1 underwear. A lack of precision is also evident in the vertical and bottom stitches. Even to a lay observer, these features would reasonably indicate that the garment had been subjected to alteration at the vertical and bottom sides.

103. That said, PW5, in Court, opined that the asymmetrical stitching pattern, lack of precision, variation in alignment, and the presence of frayed fibres suggested that the vertical and bottom stitches were hand-stitched. However, on a close inspection, this Court is not inclined to agree with the opinion that the said stitches were hand-stitched. This is because the stitching pattern on both vertical and bottom portions is that of an interlocking style, which could normally be done only through a machine. It is also relevant to note that no such observation was made by him in his Exhibit P9 report.

104. Except for this aspect, the conclusions drawn by PW5 in Exhibit P9 Report are based on clear material observations and supported by reasoning. The defence was not able to point out any defect, improbability, or procedural irregularity in the examination or in the conclusions arrived at by PW5 regarding its physical features. Hence, this Court finds no reason to disbelieve or reject the findings recorded by PW5 in Exhibit P9 report to the effect that the MO1 underwear had been subjected to tampering.

105. It has already come out in the oral evidence of PW18 that MO1 underwear was taken by him from the body of the Australian National when it was still worn by him. According to PW18, he seized it by describing it in

the Exhibit P37 Mahazar. Undisputedly, Exhibit P37 Mahazar dated 04.04.1990 is the initial document prepared describing the MO1 underwear. In Exhibit P37, the underwear is described as a dark blue coloured, baniyan-cloth stitched, worn-out underwear, bearing a printed label indicating size “180–90”, to fit waist “85–90 cm”, cotton polyester.

106. Subsequently, during the course of investigation, PW14, Sri. Thampi S. Durgadutt further examined the MO1 underwear and its label, MO1(a), and prepared the Exhibit P33 mahazar dated 21.06.1996. Exhibit P33 describes MO1 as a blackish navy blue coloured underwear, having a waist measurement of 70 centimetres, a length of 20 centimetres, and a leg measurement of 40 centimetres, stitched using baniyan cloth. It also notes that the label contains the inscription “Size 85–90, to fit waist ... cm” (the measurement below being illegible), and below that “cotton polyester”. On the reverse side of the label, the words “warm machine wash” are printed, with the remaining print being illegible.

107. A similar description of MO1 underwear is also found in the Exhibit P9 Report prepared by PW5, wherein it is noted as a dark blue coloured underwear, bearing a label marked as MO1(a), containing the impression “Size 85–90 ‘_____’ waist ‘_____’ cm cotton polyester”, and on the reverse side, “warm machine wash, do not bleach, do not tumble dry”.

108. In this regard, The defence has strongly contended that there is a material discrepancy in the description of MO1 underwear as found in Exhibit P37 mahazar on the one hand, and Exhibit P33 mahazar and Exhibit P9 forensic report on the other. According to the learned counsel for the first accused, the description of the underwear found in Exhibit P33 (prepared by PW14, Thampi S. Durgadutt) and Exhibit P9 (prepared by PW5, Vishnu Potti) consistently mentions the label size as “85–90”, whereas the earliest

document, namely Exhibit P37 mahazar prepared by PW18, Jayamohan, describes the underwear as bearing a label with “Size 180–90”. It is also pointed out that the descriptions found on the reverse side of the label, as noted in Exhibits P33 and P9, are absent in Exhibit P37. According to the defence, this discrepancy suggests that the original underwear was possibly substituted with some other, rather than being tampered with.

109. It is true that in Exhibit P37, the size printed on the label is noted as “180–90”, whereas in Exhibit P33 and Exhibit P9, the size printed on the label is noted as “85–90”. However, in Exhibit P37, the inscriptions on the label also indicated “85–90 cm”.

110. It is of common understanding that when an elastic garment like an underwear is of size 85–90, it denotes that the garment is intended to fit a person having a waist measurement between 85 and 90 centimetres. When the general sizing pattern of undergarments is considered, they are manufactured in universally accepted standard ranges, such as 85–90, 90–95, 95–100, and so on. These ranges ordinarily refer to the lower and upper limits of the waist size for which the garment is intended to fit. In this background, it is inconceivable that an underwear would be manufactured or labelled to fit a size range of “180–90”. This itself clearly indicates that the mention of “180–90” in Exhibit P37 is nothing more than a mistake in its recording.

111. Significantly, Exhibit P37 also records the label inscription as “To fit waist 85–90 cm” and “cotton polyester”, which sufficiently tallies with the label markings noted in Exhibit P33 mahazar and Exhibit P9 forensic report. It is also true that in Exhibit P37, the writings on the reverse side of the label are also not noted, unlike in Exhibits P33 and P9. However, except for these aspects, there is nothing convincing to suggest that the differences in the

label description found in these documents point to different underwears. Therefore, this court is unable to accept the said argument as convincing.

112. In a similar line, the learned Senior Counsel for the second accused contended that it was a deliberate omission from the part of the detecting officers to record the actual measurements of MO1 underwear in Exhibit P37 mahazar or Exhibit P38 Form 151A. According to the defence, in the absence of such measurements, it is not possible to determine whether the measurements of the underwear were later altered. Reliance was also placed on the observations of the Hon'ble High Court in paragraph 7 of Exhibit P55(b), wherein suspicion was expressed regarding the conduct of the police officials namely PW2, PW3, and PW7 (PW18 herein) in the Sessions Trial SC 147/1990, to suggest that the possibility of foul play could have existed from the inception. On this basis, it was argued by the learned Senior Counsel for the second accused that authenticity and integrity of MO1 are doubtful, and that unless the prosecution establishes beyond reasonable doubt that the underwear seized under Exhibit P37 is the very same article examined under Exhibits P9 and P33, the foundation of the prosecution case would be shaken.

113. In respect of this argument, it is true that actual measurements of the MO1 underwear were not recorded either in Exhibit P37 mahazar or in Exhibit P38 KPF Form 151A. When this aspect was specifically put to PW18 during his cross-examination, he candidly admitted the non mentioning of measurements in the Mahazar or property list prepared by him. He further explained that such measurements are generally not recorded, as it is not possible to measure an elastic garment like underwear accurately. He further admitted that he did not compare the measurements mentioned on the label with the actual dimensions of the underwear, stating that such an objective comparison was not practically possible. PW18 also

explained that at the relevant time, there was no reason for suspicion as to whether the underwear would fit the accused, since it was removed from the body of the accused himself.

114. Upon careful consideration of the evidence and the rival submissions, this Court finds the explanation offered by PW18 for not recording the exact dimensions of the underwear at the time of seizure to be both reasonable and convincing. The witness has consistently stated that the underwear was removed from the body of the accused in his presence during the course of body search. Having regard to the nature of the article seized and the circumstances in which it was recovered, no fault can be attributed to the investigating officer for not noting its precise measurements, especially when he had clearly indicated that the underwear was worn by the accused at the relevant time. In this context, during cross-examination, PW5, the expert witness also stated that he did not record the actual measurements of the underwear as it was not possible to ascertain the exact waist measurement due to the elastic nature of the waistband. Considering the above, the statement of PW18 that it was not practically possible to accurately measure the waist size etc of the underwear due to its elastic nature, cannot be viewed with any suspicion.

115. Usually a mahazar is required to be drawn up by the investigating officer when any material objects are seized during investigation. While so seizing, it is obligatory on the part of the seizing officer to describe it in the Mahazar with such particulars as are reasonably necessary to enable its identification by him or the witnesses to it at a later stage. By itself, a mahazar has no independent evidentiary value. It is only a contemporaneous record as to what was observed by the officer concerned and it is intended to assist them in refreshing memory and to corroborate their oral testimony, as contemplated under Sections 157 and 159 of the Evidence Act. Thus it is not

necessary to describe every minute detail while preparing a Mahazar of any material object.

116. Viewed in that light, the omission to record the actual measurements of the underwear in Exhibit P37 mahazar cannot be considered as a serious or fatal lapse, particularly when PW18 had clearly described the article and noted the size and writings found on the label attached to it.

117. From the evidence adduced in the present case, particularly the testimony of PW18 and the contents of Exhibit P37 mahazar, it is shown that MO1 underwear was in fact removed from the body of the accused on 04.04.1990. During the cross examination of PW18, when the learned Senior Counsel for the second accused suggested that Exhibit P37 does not explicitly state that the underwear was removed from the accused by PW18, the witness clarified that the expression “underwear found during body search” necessarily means that it was taken from the body of the accused. He further clarified that removal from the body does not imply any forcible act, but that the underwear was handed over by the accused (Australian National) during the course of the body search. No cogent or reliable material has been brought on record by the defence to disprove this version. Nothing has emerged in the evidence of this case to discredit the testimony of PW18 in this regard. Thus considering the above discussion, it is borne out from the evidence that MO1 underwear, which fitted the accused at the time of seizure, was later found to be incapable of fitting him when subjected to a practical test before the Hon’ble High Court.

118. Thus, when the identity of MO1 as the underwear seized by PW18 from the Australian National stands proved and when it is later shown as not fitting the said accused, the inevitable conclusion is that the underwear

was subjected to tampering at some later point of time after its seizure. Thus the next and more crucial question that arises for consideration is whether the accused persons had any role in the said tampering.

119. The learned APP submits that the prosecution has successfully proved all the essential foundational facts that are capable of being proved in the instant case. According to him, once the prosecution has established that the material object was tampered with, and that the tampering could only have occurred during the period when MO1 was in the unauthorised possession of the second accused, the burden shifts to the accused to explain what happened to the material object during that period as it was a matter especially within the knowledge of the second accused. In this context, the learned APP placed reliance on Section 106 of the Evidence Act.

120. It is further contended that it would be impossible for the prosecution to establish the exact date, time, or manner in which the tampering was effected, since those facts lie exclusively within the knowledge of the accused. According to the learned APP, the prosecution has discharged its burden by proving its case beyond reasonable doubt, and the accused have failed to discharge the burden cast upon them under Section 106 of the Evidence Act. Hence, it is argued that the allegations levelled against the accused stand proved.

121. Reliance is also placed on the decision of the Hon'ble Supreme Court in *Anees v. State (Govt. of NCT of Delhi), 2024 KHC 6256*.

122. S.106 of the Evidence Act reads as follows: "106. Burden of proving facts especially within knowledge. - When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

123. Thus, S.106 of the Evidence Act referred to above provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The scope and ambit of Section 106 of the Evidence Act have been authoritatively explained by the Hon'ble Supreme Court in *Anees v. State (Govt. of NCT of Delhi), 2024 KHC 6256*. It held as follows:

“The word "especially" means facts that are pre-eminently or exceptionally within the knowledge of the accused. The ordinary rule that applies to the criminal trials that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the rule of facts embodied in S.106 of the Evidence Act. S.106 of the Evidence Act is an exception to S.101 of the Evidence Act. S.101 with its illustration (a) lays down the general rule that in a criminal case the burden of proof is on the prosecution and S.106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish the facts which are, "especially within the knowledge of the accused and which, he can prove without difficulty or inconvenience".

124. In *Nagendra Sah v. State of Bihar, 2021 (10) SCC 725*, the Hon'ble Apex Court observed that:

"22. Thus, S.106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn

regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference”.

125. So a combined reading of the above authorities of the Hon’ble Apex court would throw light that, before invoking S. 106 Evidenec Act, the following requirements must be satisfied.

1. The prosecution must have, succeeded in establishing the foundational facts, or proving the guilt of the accused beyond reasonable doubt,
2. The proved facts should give a reasonable inference regarding the existence of certain other facts, which are especially within the knowledge of the accused.
3. Whether it was impossible or at any rate disproportionately difficult for the prosecution to establish the facts which are, "especially within the knowledge of the accused” and which he can prove without difficulty or inconvenience.
4. If so, whether the accused had failed to offer a proper explanation.

126. Only when the above conditions are satisfied, can S. 106 Evidenec can be resorted to by the court in taking adverse inference against the accused. Before considering the applications of these principles specifically to the facts of this case, it is necessary to consider the objections raised by the defence against its invocation. The defense have assailed the prosecution’s reliance on Section 106 on the ground that the prosecution has failed to prove the foundational facts, particularly that the tampering had occurred during the period alleged (ie, between 09.08.1990 & 05.12.1990). It further alleged that the prosecution has failed to establish the existence of any criminal intention or common intention on the part of the first and second accused. Further according to the defence, the

investigation conducted by PW19 itself is defective, which would warrant extending the benefit of doubt to the accused persons.

127. So the first issue to be addressed here is whether the prosecution was able to prove the foundational facts, that the tampering of MO1 underwear occurred between the period 09.08.1990 & 05.12.1990.

128. Now in this regard, while appreciating the evidence adduced by the prosecution, what assumes significance is the undisputed fact that during the period from 09.08.1990 till 05.12.1990 the MO1 underwear was admittedly not in the custody of the court. The defence does not dispute this position. Therefore, the crucial question is whether the prosecution has been able to establish that tampering was done during the period between 09.08.1990 and 05.12.1990.

129. The prosecution's specific case is that the period between 09.08.1990 and 05.12.1990, is the only period when the chain of custody of the material object stood broken after its seizure on 04.04.1990.

130. From the discussion so far, the prosecution has clearly established the following facts: (i) seizure of MO1 from the Australian National on 04.04.1990 by PW18; (ii) production of MO1 before court on 05.04.1990; (iii) release of MO1 to the second accused on 09.08.1990; (iv) return of MO1 by second accused to court on 05.12.1990; and (v) forwarding of MO1 to the Sessions Court on 05.12.1990.

131. On examining the subsequent chain of custody, Exhibit P55(c) [the deposition of PW18 herein, as PW7 in S.C. No. 147/1990] reveals that the MO1 underwear was marked in evidence as MO2 in that case through PW18 on 27.12.1990. This fact is also borne out by Exhibit P55(a), the

judgment of the Hon'ble Sessions Court in S.C. No. 147/1990. These documents clearly show that after MO1 reached the Sessions Court on 05.12.1990, it was identified by PW18 and marked in evidence through him on 27.12.1990

132. Further, in court, PW18 deposed that during trial in S.C. No. 147/1990 before the Hon'ble Sessions Court, the defence argued that the MO1 underwear did not fit the accused. According to him, he denied the said contention and asserted that it was the very same underwear that he had seized and that it would indeed fit the accused. He further stated that he even requested the court to conduct a practical test, but though the request was noted, no such test was conducted and the defence did not pursue the matter further.

133. Admittedly, the defense side in SC 147/90 had taken the stand that the MO1 underwear will not fit the accused. This fact is quite evident from Exhibits. P55(a) and P55(b), the Judgments of the Hon'ble Sessions Court and the Hon'ble High Court respectively. Moreover, Exhibit P55(c), which is the previous statement of PW18, can be relied upon for the limited purpose of showing that PW18 was examined before the Sessions Court on 27.12.1990. It is also not in dispute that the Australian National was arrested on 04.04.1990 and was in judicial custody from 05.04.1990 onwards. There is nothing on record to show that, at any point prior to 05.12.1990, either the defence counsels or the Australian National himself had raised any contention before the court that the MO1 underwear would not fit him. Thus from the above documentary evidence, it can be safely inferred that the contention that MO1 underwear did not fit the accused was for the first time raised by the defence on 27.12.1990, when PW18 was examined in S.C. No. 147/1990.

134. Having found so, another important aspect deposed to by PW18 before this Court also requires consideration. PW18 stated that when he reached the court for giving evidence in S.C. No. 147/1990, the second accused met him in the court verandah and told him in that:

“ഈ കേസിൽ ഞങ്ങൾ ഒരു ബോംബ് വെച്ചിട്ടുണ്ട്, ഈ ഭയൽ കഴിയുന്നതോടെ ആ ബോംബ് പൊട്ടും, താങ്കളുടെ കേസ് ശു പോലെ പോകും.”(meaning thereby that a “bomb” had been planted in the case, that it would explode once the trial was over, and that the case would be finished).

135. When PW18 asked about it further, the second accused replied: “അതൊക്കെ കാത്തിരുന്ന കണ്ടാട്ടെ.”(“you may wait and see”).

136. PW18 further stated that he immediately informed the then Public Prosecutor, Sri. Rajasekharan, about this conversation, but the Prosecutor brushed it aside stating that the case was strong and would end in conviction.

137. This testimony of PW18 is assailed by the learned Senior Counsel for the second accused mainly on the ground that the alleged statement has no evidentiary value before the court. It is argued that the statement allegedly made by the second accused to PW18 does not amount to a confession, nor it is relevant under Sections 6 or 157 of the Evidence Act, as it does not form part of the same transaction. Reliance is placed on *Gentela Vijayavardhan Rao v. State of A.P. [(1996) 6 SCC 241]* to contend that if there was an interval, however slight it may be, which was sufficient enough for fabrication, then such statements cannot be treated as res gestae.

138. It is true that the statement allegedly made by the second accused to PW18 on 27.12.1990 cannot be said to form part of the same transaction, when the prosecution case is that the tampering occurred between 09.08.1990 and 05.12.1990. Therefore, the said statement cannot be considered as a relevant fact within the purview of Section 6 of the Evidence Act.

139. However, this Court is of the considered view that the alleged statement is relevant under Section 9 of the Evidence Act, insofar as it is a fact which tends to support an inference suggested by a fact in issue. The fact in issue here is whether the second accused had any role in the tampering of MO1 underwear. The statement allegedly made by the second accused that 'they have planted a bomb in the case, and that it would explode once the trial was over, and that the case would be finished', cannot be considered as a casual or ordinary remark. But it clearly indicates that the second accused was referring to something within his special knowledge, which has the potential to destroy the prosecution case. Thus, it is of no doubt that the statement allegedly made by the second accused to PW18 is a relevant fact.

140. Having found that the evidence is relevant, the next question is whether the said evidence is believable. The defence contends that PW18 did not mention this statement in his earlier statement recorded by CW27 and that it surfaced only in his additional statement to the subsequent investigating officer. According to the defence, this omission is material and renders the testimony doubtful and unreliable.

141. During cross examination, PW18 was specifically confronted by the learned Senior counsel for the second accused on this aspect. PW18, then stated that though he had specifically mentioned it to CW27, it was not

properly recorded. He further stated that he gave a similar statement before the High Court Vigilance also. He also asserted that he orally informed the then Public Prosecutor, though no written report was given.

142. It is true that there is no independent corroboration for this part of PW18's testimony. However, corroboration is required only where the testimony of a witness is not wholly reliable. In this context, the principles laid down by the Hon'ble Supreme Court in *Vadivelu Thevar v. State of Madras [AIR 1957 SC 614]* assume significance. The Apex Court held that evidence is to be weighed and not counted, and that a conviction can be based on the testimony of a single witness if the court finds such testimony to be wholly reliable. It was further held that:

“the following propositions may be safely stated as firmly established:

1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.”

143. Applying the above principles to the facts of the present case, this Court finds that PW18 has consistently stated, both in his additional statement and before this Court, about the statement made by the second accused to him. Despite extensive cross-examination, nothing has been elicited to show that PW18 had any reason to falsely implicate the second accused or to invent such a statement. He asserts that though he had

mentioned about it when his statement was recorded by CW27, it was not properly recorded. From the overall appreciation of testimony of PW18, this Court finds no reason to doubt the veracity of PW18 on this aspect and has no doubt in holding that his evidence is wholly reliable. If so, this court need not be hesitant to rely on the said evidence adduced by PW18 without any further corroboration.

144. The evidence of PW18 is further assailed by the defence on the ground that PW18 failed to notice the alleged tampering of MO1 underwear when it was identified by him and marked as MO2 during the Sessions trial in S.C. No. 147/1990. It is argued that, if tampering had in fact occurred during the period alleged by the prosecution, PW18, being the officer who seized the underwear and prepared the mahazar, ought to have detected the same at the time of trial. On this premise, the defence contends that PW18 himself may have had a role in the alleged tampering. In support of this contention, reliance is also placed on the observations made by the Hon'ble High Court in Exhibit P55(b), wherein suspicion was expressed regarding possible foul play involving PW18.

145. When this aspect was specifically put to PW18 during his cross-examination on behalf of the second accused, the witness categorically stated that he had never imagined, even remotely, that a material object once produced before a court could be taken out of court custody prior to trial and be subjected to tampering by its defence counsel. He further stated that had he anticipated any possibility of manipulation, he would have subjected the material object to a more careful and detailed scrutiny.

146. Having regard to the common course of human conduct, the explanation offered by PW18 appears to be reasonable and convincing. Once a material object, which was seized during investigation is produced before

a court, an investigating officer would ordinarily have no reason to suspect that it has been subjected to any alteration while in court custody. If so it cannot be reasonably expected that the seizing officer would make every minute scrutiny of the material object at the stage of its identification before the trial court. In the present case, the alterations found on the MO1 underwear are not something which is readily apparent on a bare sight of it. Identification of such alterations would require some amount of scrutiny. In the present case, when PW18 has consistently asserted that it was he who removed the undergarment from the body of the Australian National during the body search, it would be wholly unreasonable to expect him to entertain any suspicion regarding its genuineness or to conduct a detailed scrutiny of it at the time of its identification during trial. In these circumstances, the failure of PW18 to notice the tampering at the time of its identification and marking during the Sessions trial cannot be treated as a ground to doubt his credibility or to infer any complicity on his part.

147. It is also true that, when the MO1 underwear was found not fitting the Australian National, the Hon'ble High Court, in paragraph 7 of Exhibit P55(b), expressed a suspicion that some foul play might have occurred in respect of MO1 underwear in order to help its accused. The Hon'ble High Court further observed that such foul play could have been committed either jointly by the airport security officials, namely PW2 and PW3, who were on frisking duty at the airport and detected the Australian national and PW7 (PW18 herein), who was the investigating officer in that case, or independently by PW7.

148. However, it is to be noted that the said observation was only a suspicion expressed by the Hon'ble High Court on the basis of the evidence available before it in that case. The same cannot be treated as a finding of fact or as a ratio decidendi so far as this case is concerned. Therefore, the

observation contained in Exhibit P55(b) cannot be construed as a final or conclusive finding by the Hon'ble High Court against PW18.

149. In view of the foregoing discussion, this Court already found that the contention that the MO1 underwear would not fit the Australian National was raised by the defence in that case only after 05.12.1990, the date on which the said material object was returned to court by the second accused. It also stands proved that the second accused had made a statement to PW18 that "they have planted a bomb in the case, and that it would explode once the trial was over, and that the case would be finished."

150. Further, there is no cogent evidence before this Court to suggest that the tampering of MO1 could have occurred at any time other than during the period between 09.08.1990 to 05.12.1990. Though the defence contends that the tampering might have been committed either before MO1 reached the JFCM-II, Thiruvananthapuram, or after it reached the Sessions Court, or even after the trial in S.C. No. 147/1990 and before it was forwarded to the Hon'ble High Court in appeal, no cogent material has been brought on record by the defence to create any such reasonable doubt in the mind of this court. Such contentions remain mere assertions, unsupported by evidence, and hence cannot be accepted by this court in the light of the proven facts.

151. In the absence of any cogent and reasonable evidence suggesting tampering during any other period, this Court finds no reason to disbelieve the evidence adduced by the prosecution. The cumulative circumstances reasonably lead to the conclusion that the tampering of MO1 could have occurred only during the period from 09.08.1990 to 05.12.1990, and not at any other time.

152. The next question that arises for consideration is whether there is any evidence to prove that the accused persons 1 and 2 are alone responsible for the tampering found to be done of the MO1 underwear.

153. The learned counsel for the first accused contended that criminal liability cannot arise unless the act complained of is shown to have been done with a guilty intention. It was argued that, at the highest, the conduct attributed to the first accused may amount to negligence or a lapse warranting departmental action, but not a criminal offence. According to the defence, in the absence of proof of criminal intention or common intention, the first accused cannot be held liable.

154. It is pertinent to note that the evidence already discussed establishes that the first accused was in charge of the Property Section from 05.04.1990, when MO1 reached the court, till 05.12.1990, when it was forwarded to the Sessions Court. It is also proved that he was present on 09.08.1990, the date on which MO1 was handed over to the second accused. Exhibit P5(a) clearly shows that there was no court order permitting the release of MO1 under T.241/1990. Despite this, MO1 was delivered to the second accused. Thus, it stands proved that the first accused unauthorisedly delivered MO1 to the second accused.

155. During his examination under Section 313(1)(b) Cr.P.C., the first accused stated that MO1 was received by the then Junior Superintendent, Gopinathan, and that it was kept in the court chest. He further stated that the endorsements relating to receipt, return, and closure of entries in the property register were not made during his tenure. However, apart from these bare denials, no evidence was adduced by the first accused to substantiate his version.

156. It is also evident that the first accused did not properly verify MO1 when it was returned on 05.12.1990. Hence his mere denial during examination u/S. 313 (1) (b) Cr.P.C, without any supporting evidence, cannot displace the clear and consistent evidence adduced by the prosecution.

157. Though the prosecution has not produced direct evidence to show that the first accused shared the same intention as the second accused, the conduct of the first accused, as proved, is a relevant fact under Sections 8 and 10 of the Evidence Act. His unauthorised delivery of a material object, coupled with the surrounding circumstances, is not a natural or innocent act which is to be expected from a normal prudent man. It is also hard to perceive that such handing over of the MO1 underwear without any order of the court happened coincidentally or due to a bonafide mistake.

158. Further, Illustration (a) to Section 106 of the Evidence Act provides that when a person does an act with an intention other than that suggested by the character and circumstances of the act, the burden of proving such intention lies upon him. In this context, In *Anees's case (Supra)*, the Hon'ble Supreme Court held that, the intention underlying the act or conduct of any individual is seldom a matter which can be conclusively established; it is indeed only known to the person in whose mind the intention is conceived. Therefore, if the prosecution has established that the character and circumstance of an act suggest that it was done with a particular intention, then it held that, under illustration (a) to section 106, it may be assumed that he had that intention, unless he proves the contrary.

159. In the present case, the circumstances clearly suggest culpable intent. It was therefore incumbent upon the first accused to explain the

circumstances under which MO1 was delivered to the second accused, or to prove that it was a bonafide mistake. He neither mounted the witness box nor adduced any evidence to that effect. Hence, this Court has no option but to draw the inference suggested by the proved facts.

160. As regards the second accused, it was argued that he acted only on the direction of PW11, the then Magistrate, and that he merely handed over the packet to the first accused after informing the Magistrate of the mistake.

161. While it is true that PW11 stated that the second accused had approached him and informed him about the mistake, this conduct by itself does not establish that he did it innocently. When viewed in the light of the entire evidence, including the proved tampering and the benefit derived therefrom to him, this explanation is insufficient to rebut the prosecution case.

162. Thus, once the prosecution has proved that MO1 was tampered with and that such tampering could have occurred only during the period when it was in the unauthorised custody of the second accused, the facts relating to what happened to MO1 during that period are matters especially within the knowledge of the accused. In such circumstances, this Court is of the considered view that Section 106 of the Evidence Act squarely applies.

163. The additional written statement filed by the second accused during his examination under Section 313(1)(b) Cr.P.C. cannot be treated as any evidence, as it was not made on oath. In the absence of any substantive evidence from the defence to rebut the inference suggested by the foundational facts proved from the evidence adduced by the prosecution, an adverse inference against the accused is clearly warranted.

164. In *Tulshiram Sahadu Suryawanshi and Anr. v. State of Maharashtra, 2012 (10) SCC 373*, the Hon'ble Apex Court explained that:

"23. It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of S.114 of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in S.106 of the Evidence Act can also be utilised. We make it clear that this section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference."

165. In *Trimukh Maroti Kirkan v. State of Maharashtra, 2006 (10) SCC 681*, the Hon'ble Apex Court held that:

"The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to

be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind S.106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

166. Further, in *Balvir Singh v. State of Uttarakhand, 2023 KHC 6894*, the Hon’ble Supreme Court held that:

“A manifest distinction exists between the burden of proof and the burden of going forward with the evidence. Generally, the burden of proof upon any affirmative proposition necessary to be established as the foundation of an issue does not shift, but the burden of evidence or the burden of explanation may shift from one side to the other according to the testimony. Thus, if the prosecution has offered evidence, which if believed by the court, would convince them of the accused's guilt beyond a reasonable doubt, the accused, if in a position, should go forward with counter - vailing evidence, if he has such evidence. When facts are peculiarly within the knowledge of the accused, the burden is on him to present evidence of such facts, whether the proposition is an affirmative or negative one. Although not legally required to produce evidence on his own behalf, the accused may, therefore, as a practical matter find it essential to go forward with proof. This does not alter the burden of proof resting upon the prosecution.”

167. On a combined reading of the above judgments, the clear inference is that while the primary burden of proving the guilt of the accused beyond reasonable doubt always rests on the prosecution, the law does not insist on the prosecution proving facts that are inherently difficult or impossible to establish. Where the prosecution has successfully proved foundational facts, the Court is entitled to draw reasonable presumptions of fact under Section 114 of the Evidence Act, guided by ordinary human conduct and the natural course of events. In such situations, Section 106 of the Evidence Act comes into play, not to dilute the prosecution's burden, but to place a duty of explanation upon the accused in respect of facts that are especially within his personal knowledge. If the accused, despite being in a position to do so, fails to offer a plausible explanation or rebuttal, the Court may legitimately draw an adverse inference.

168. Thus on an overall appreciation of the evidence, this Court finds that the only reasonable and logical conclusion that can be drawn in the facts and circumstances of this case is that the tampering of MO1 underwear occurred during the period when it was in the unauthorised custody of the second accused between 09.08.1990 till 05.12.1990, and that the conduct of the first accused materially facilitated such tampering. In the light of the foregoing discussion, this Court is satisfied that the prosecution has successfully proved the foundational facts and established the guilt of the accused beyond reasonable doubt through cogent and reliable evidence. In such circumstances, the burden of offering a satisfactory explanation squarely rested upon them under Section 106 of the Evidence Act. The accused, however, have failed to offer any plausible or satisfactory explanation to discharge the said burden. In the absence of any credible explanation from the accused, this Court is justified in drawing an adverse inference against the first and second accused, which further fortifies the

prosecution case and supports the conclusion of guilt arrived at on the basis of the evidence on record.

169. It is pertinent to note that defence has assailed the credibility of the investigation conducted by PW19 by alleging that it suffered from serious omissions and lapses, thereby undermining the prosecution case and thereby making them entitled to the benefit of doubt to the accused. It is contended that Security Inspector and Security Sub-Inspector who were examined in S.C. No. 147/1990, were not examined in the present case, and that such non-examination casts doubt on the fairness and completeness of the investigation.

170. Another criticism raised by the defence relates to the alleged failure of the investigating agency to probe into the role of Gopinathan, the then Junior Superintendent, who according to the defense had handled the MO1 material object after its receipt in the Court.

171. The defence has further alleged suppression of material documents, particularly the petition filed under Section 451 Cr.P.C., whereupon the court had ordered the release of the personal belongings of the Australian National. It is contended that the non-production of this petition deprives the Court of the opportunity to ascertain whether MO1 (T.241/1990) was included among the items sought for release, and also to understand the precise role played by the accused's uncle, Paul, and the senior advocate, Smt. Celine Wilfred, in the process of release and return of properties.

172. Reliance is also placed on Exhibit D9, the Vigilance Enquiry Report dated 04.01.1993. The defence contends that the report indicates that at the Sessions Court, Thiruvananthapuram, Sri.Chakrapani was the

custodian of the property room and Sri.Satheesh had also free access to the property room and that it was kept in the property room till it was produced before the Hon'ble High Court during appeal. According to the defence, the possibility of tampering during these periods were not properly investigated. It is also argued that the prosecution failed to investigate the theory of substitution or swapping of the underwear, despite such a reference in Exhibit P27 Interpol communication.

173. The defence has also relied on Exhibit P54, "UN Report", contending that it records that, up to that stage, the investigation had not revealed material sufficient to fix criminal liability on the accused or any other individual. According to the defence, the prosecution has failed to adequately explain or overcome the conclusions reflected in that report.

174. This Court has carefully considered each of the above contentions. At the outset, it is well settled that defects or omissions in investigation do not, by themselves, render the prosecution case unreliable, unless such defects go to the root of the matter and cause serious prejudice to the accused.

175. In this regard, it is imperative to consider some authorities of the Hon'ble Apex court. In **Karnel Singh v. State of M.P., 1995 (5) SCC 518**, it was held that in cases of defective investigation, the Court has to be circumspect in evaluating the evidence; however, it would not be right to acquit an accused person solely on account of such defect, as doing so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.

176. In **Paras Yadav and Others v. State of Bihar, 1999 (2) SCC 126**, while commenting upon certain omissions of the investigating agency, it was

held that such lapses may be committed either designedly or due to negligence, and therefore the prosecution evidence is required to be examined *de hors* such omissions to ascertain whether the said evidence is reliable or not.

177. A similar view was also taken in **Ram Bihari Yadav v. State of Bihar, 1998 (4) SCC 517**, wherein the Hon'ble Apex Court observed that in such cases the prosecution story will have to be examined *de hors* such omissions and the contaminated conduct of officials; otherwise, the mischief deliberately done would be perpetuated and justice would be denied to the complainant party. Such a course would inevitably shake the confidence of the people not merely in the law-enforcing agency, but also in the administration of justice.

178. Thus, proceeding in the light of the above decisions, in the present case, the prosecution has adduced clear oral and documentary evidence to establish the essential facts, namely the seizure of MO1, its production before court, its unauthorised release, its return, and the period during which the chain of custody stood broken. The non-examination of certain witnesses or officials, by itself, does not negate these proven facts, especially when the evidence on record is otherwise cogent and consistent.

179. The allegations regarding suppression of documents, failure to investigate alternate possibilities, and reliance on Exhibit D9 and Exhibit P54 remain at the level of conjecture. No material has been produced by the defence to substantiate that any of these alleged lapses resulted in distortion of evidence or miscarriage of justice. Moreover, if at all the defense had a strong case that the original petition filed under S. 451 Cr.P.C for the release of the personal belongings of the Australian National had contained an order for the release of the MO1 underwear, there was nothing which prevented

them from taking steps to summon it before the court. Thus, mere suggestions of some possible alternative scenarios, without any supporting proof, cannot displace the evidence adduced by the prosecution.

180. This Court is therefore of the view that the allegations of defective investigation raised by the defence are based on assumptions and speculation, and not on any tangible material. The same do not create a reasonable doubt regarding the prosecution case, nor do they detract from the reliability of the The contentions raised on the ground of defective investigation are accordingly rejected.

181. Thus having found that the prosecution has succeeded in establishing the allegations levelled against the first and second accused beyond reasonable doubt, it now becomes incumbent upon the court to further dwell on to discuss what specific offences the facts proved would attract against the accused. The specific offences charged against the accused include those punishable under Sections 120B, 420, 201, 193, 217, 409, 465 and 468 read with Section 34 IPC.

182. It is pertinent to note that the offences alleged against the first and second accused fall within the category of offences against public justice and offences relating to documents produced in evidence. Ordinarily, the taking of cognizance of such offences is barred under Section 195(1)(b) of the Code of Criminal Procedure. However, the legal position on this aspect has already been settled by the Hon'ble Supreme Court of India in **Ajayan M. R. v. State of Kerala, 2024 KHC 6639**, wherein it specifically held that in the instant case, the bar under Section 195(1)(b) Cr.P.C. would not apply since it was the Hon'ble High Court of Kerala that directed the filing of the complaint in respect of the offences alleged herein. Accordingly, as far as this case is concerned, the embargo contemplated under Section 195(1)(b) Cr.P.C. is clearly inapplicable.

183. Now, the first offence charged against the first and second accused is the one punishable under Section 420 of the Indian Penal Code, which deals with cheating and dishonestly inducing delivery of property. For an offence under Section 420 IPC to be attracted, the prosecution must establish that the accused had a dishonest intention at the very inception, and that by such deception, the accused induced the victim to deliver property, resulting in wrongful loss to the victim and corresponding wrongful gain to the accused.

184. In the present case, the prosecution case itself is that the material object (MO1 underwear) was delivered by the first accused to the second accused in furtherance of their common intention. The evidence does not disclose any circumstance to show that the second accused had deceived or dishonestly induced the first accused to part with the property. On the contrary, the delivery of the material object was an act done by the first accused which from the facts proved was done in furtherance of their common intention.

185. Further, for Section 420 IPC to apply, the person induced must be a victim of deception. In the facts of the present case, the first accused cannot be treated as a victim, nor is there any evidence to show that he was misled, deceived, or induced by the second accused. Hence, this Court is of the considered view that the essential ingredients of Section 420 IPC are not made out against either of the accused. Accordingly, the charge under Section 420 IPC is not attracted on the facts proved in this case.

186. The prosecution alleges that the first and second accused have committed the offence of criminal conspiracy punishable under Section 120B of the Indian Penal Code. It therefore becomes necessary to examine whether

the essential ingredients of the said offence are made out on the basis of the evidence adduced.

187. To constitute an offence of criminal conspiracy under Section 120B IPC, the prosecution must establish the following ingredients:

- 1) An agreement between two or more persons;
- 2) The agreement must be to do an illegal act, or to do a legal act by illegal means; The illegal act includes an offence, anything prohibited by law or anything which furnishes ground for a civil action.

188. It is well settled that conspiracy is generally hatched in secrecy, and therefore, proof of a formal or express agreement is not required. In the instant case, a meeting of minds can be inferred from a chain of circumstances which, when taken together, point unmistakably to a common design. From the evidence discussed earlier, it already stands proved beyond reasonable doubt that MO1 underwear was seized by PW18 from the body of the Australian National on 04.04.1990 and was produced before the court on 05.04.1990. It was also proved that the first accused was in charge of the Property Section of the court during the relevant period and that on 09.08.1990, the 1st accused unauthorisedly delivered MO1 underwear to the second accused without any court order. This court has also found that the second accused retained MO1 underwear outside court custody until 05.12.1990, and later the material object was found to have been tampered with. It is also proved beyond reasonable doubt that the tampering could have occurred only during this period when it was out of court custody. Further, no plausible or lawful explanation was offered by the first accused to show the circumstances under which he has parted with the MO1 material object unauthorisedly, without any court order to the second accused. Similarly the second accused has also not discharged his burden

of explanation that the MO1 was not subjected to any tampering during the period it was taken outside the court's custody.

189. On a careful evaluation of the above proven facts, this court is precluded from taking a stand that all these acts from the part of the first and second accused had happened coincidentally and without any common design. The conduct of both accused shows a meeting of minds to interfere with the due course of justice by manipulating a material object which was vital to the prosecution case in SC 147/1990. The acts of the first accused in parting with the material object and the acts of the second accused in retaining and returning it after tampering can only be considered as of a sequence of events consciously designed to achieve the common object of saving an offender from the clutches of the law. These acts proved to have been committed by the first and second accused cannot be viewed in isolation.

190. It is true as discussed earlier that there is no direct evidence of an express agreement between the accused. However, the chain of circumstances proved by the prosecution unerringly leads to the inference of an agreement to do an illegal act, namely, to tamper with a material object in judicial custody so as to benefit the defence in the Sessions Case. In the considered view of this Court, the prosecution has successfully established that the first and second accused acted in concert and pursuant to a common design. The agreement between them to commit an illegal act can be reasonably inferred from their conduct and the surrounding circumstances proved on record. Accordingly, this Court finds that the essential ingredients of criminal conspiracy under Section 120B IPC stand satisfied, and the offence is clearly attracted against both the first and second accused.

191. The prosecution has further alleged that the first and second accused are guilty of the offence punishable under Section 201 of the Indian Penal Code. In order to attract an offence under Section 201 IPC, the prosecution must establish the following ingredients:

- 1) That an offence has been committed;
- 2) That the accused had knowledge or reason to believe that such offence has been committed;
- 3) That the accused caused the disappearance of evidence of the said offence, or gave false information respecting the offence;
- 4) That such act was done with the intention of screening the offender from legal punishment.

192. The Hon'ble Supreme Court of India in *Sukhram v. State of Maharashtra 2007 (7) SCC 502 : (AIR 2007 SC 3050)* has considered the prerequisites for conviction for offence under S.201 of the IPC and held that the intent to screen the offender committing an offence must be the primary and sole aim of the accused and there must be on record cogent evidence to prove that intention and a mere suspicion is not sufficient to bring home the said offence.

193. It further observed that: "It is plain that the intent to screen the offender committing an offence must be the primary and sole aim of the accused. It hardly needs any emphasis that in order to bring home an offence under S.201 IPC, a mere suspicion is not sufficient. There must be on record cogent evidence to prove that the accused knew or had information sufficient to lead him to believe that the offence had been committed and that the accused has caused the evidence to disappear in order to screen the offender, known or unknown."

194. Thus, the first question that arises for consideration is whether the first and second accused had the knowledge, or at least reason to believe, that an offence had been committed. In the present case, the core issue relates to the commission of an offence punishable under Section 20(b)(ii) of the NDPS Act by the Australian National, Andrew Salvatore.

195. It is a matter of record that the trial court found the Australian national guilty of the said offence and convicted him, sentencing him to rigorous imprisonment for ten years and imposing a fine of ₹1,00,000/-. However, on appeal, the Hon'ble High Court, after conducting a practical test, found that the underwear in which the contraband was allegedly concealed did not fit the accused. Mainly taking note of this circumstance, the Hon'ble High Court extended the benefit of doubt and set aside the conviction, thereby acquitting him. The Hon'ble High Court also expressed a suspicion that there was a possibility of foul play with respect to the material object.

196. From the evidence now available in the present case, it stands proved beyond reasonable doubt that the MO1 underwear, which was relied upon as a crucial material object against the Australian National, had been subjected to tampering after it was unauthorisedly taken out of court custody with the involvement of the first and second accused. But for such tampering, the Australian national, who was otherwise found guilty of a serious offence punishable with imprisonment extending up to ten years, would not have escaped conviction.

197. There can be no dispute that MO1 underwear constituted a vital piece of evidence to connect the Australian national to the offence alleged against him. It therefore clearly falls within the description of "evidence" within the meaning of II proviso to S. 60 of the Evidence Act. The second

accused, being the advocate holding vakalath for the Australian National, had every reason to know, or at least to believe, that an offence had been committed. From the discussion already made, the intention behind his acts can be reasonably inferred from his conduct.

198. Likewise, the first accused, who unauthorisedly delivered the material object from court custody to the defence side, cannot be heard to say that he had no knowledge or reason to believe that the offence had been committed. The unauthorised delivery of such a crucial material object to the defence, thereby facilitating its alteration, points unmistakably to knowledge, or at least a conscious awareness of the nature of the offence and the evidentiary value of the material object.

199. The expression “disappearance of evidence” is not defined in the Code. However, it can include acts which render evidence unreliable, when done with the intention of protecting the offender. In the present case, the permanent alteration of MO1 underwear clearly rendered the evidence unreliable. Such tampering squarely amounts to causing disappearance of evidence for the purposes of Section 201 IPC.

200. The final requirement is whether such an act was done with the intention of screening the offender from legal punishment. From the proved facts, it is evident that the disappearance of the evidence directly resulted in the Australian National escaping the sentence of imprisonment imposed by the trial court. The connection between the tampering of MO1 and the acquittal of the offender stands clearly established.

201. Thus in view of the foregoing discussion, the conduct of the first and second accused squarely falls within the purview of Section 201 IPC.

Accordingly, this Court holds that the offence punishable under Section 201 IPC is clearly attracted against the first and second accused.

202. Section 193 IPC prescribes punishment for the offence of giving or fabricating false evidence in a judicial proceeding. To determine whether the said offence is attracted, it is necessary to examine the scope of Sections 191 and 192 IPC, which define “giving false evidence” and “fabricating false evidence” respectively. As already noticed, Section 191 IPC contemplates a false statement made by a person who is legally bound by oath or by law to state the truth. Section 192 IPC, on the other hand, deals with the fabrication of false evidence.

203. As per Section 192 IPC, a person fabricates false evidence not only by making a false document or false entry, but also by causing any circumstance to exist, with the intention that such circumstance may appear in evidence in a judicial proceeding, and that such appearance may cause the court or any person concerned to form an erroneous opinion on any point material to the result of the proceeding.

204. In the present case, the evidence on record clearly establishes that MO1 underwear was a crucial material object relied upon by the prosecution in the judicial proceedings against the Australian National. It has also been proved that the said material object was deliberately altered, so as to make it appear that it did not fit the accused. After such alteration, the defence itself relied upon the altered condition of MO1, which ultimately resulted in the acquittal of the accused by the Hon'ble High Court on the ground that the underwear did not fit him.

205. By tampering with MO1, the accused caused a circumstance to exist, which was intended to and did, in fact, appear in evidence in the

judicial proceedings. The appearance of this altered circumstance led the court to form an erroneous opinion on a material point, namely, whether the accused could have concealed contraband in the underwear.

206. This conduct squarely falls within the ambit of Section 192 IPC. A close and careful reading of the statutory provision, when applied to the facts proved in the present case, clearly shows that the acts established against the accused amount to fabrication of false evidence. Consequently, the offence punishable under Section 193 IPC is clearly attracted.

207. The next offence to be examined is the one punishable under Section 217 IPC. This provision applies when a public servant, being legally bound to act in a particular manner, wilfully disobeys the law, with the intention of saving a person from legal punishment or of causing injury to any person.

208. The essential ingredients of Section 217 of the IPC are therefore the following:

- (i) the accused must be a public servant;
- (ii) there must be a direction of law requiring him to conduct in any particular manner;
- (iii) there must be a wilful disobedience of such law; and
- (iv) such disobedience must be with the intention of saving any person from legal punishment or causing injury.

209. The expression "*wilful disobedience*" is of crucial importance. Mere negligence, error of judgment, omission, or even an unauthorised act by a public servant does not, by itself, attract Section 217 IPC. The prosecution must establish that the public servant consciously and deliberately disobeyed a specific legal mandate governing the manner in which he was required to act.

210. In the present case, it has been proved that the first accused, who was a public servant, unauthorisedly delivered MO1 underwear to the second accused without any judicial order permitting such release. This act was clearly improper and unauthorised. However, the prosecution has not brought on record any material to show that the first accused wilfully disobeyed any specific statutory provision or express lawful command governing the manner in which he was required to deal with court property.

211. In the absence of evidence showing deliberate disobedience of a specific direction of law, the ingredients of Section 217 IPC are not attracted.

212. Therefore, this Court is of the considered view that the offence punishable under Section 217 IPC is not made out in the facts and circumstances of the present case.

213. Section 409 IPC deals with criminal breach of trust by a public servant, banker, merchant, or agent. The offence is an aggravated form of criminal breach of trust. Section 405 IPC defines the offence of criminal breach of trust and lays down that a person is guilty of criminal breach of trust if he is entrusted with property or dominion over property and dishonestly misappropriates or converts it, or uses or disposes of it in violation of any direction of law or contract. Section 409 IPC, which is a special provision, deals with criminal breach of trust committed by certain categories of persons such as public servants, bankers, merchants, or agents.

214. The essential ingredients required to attract Section 409 IPC are:
(i) the accused must be a public servant or a person falling within the categories mentioned in the section;

- (ii) the property must have been entrusted to him, or he must have had dominion over it in that capacity; and
- (iii) the accused must have dishonestly misappropriated or converted the property to his own use, or dishonestly disposed of it in violation of law.

215. In the present case, there is no dispute that the first accused was a public servant and was in charge of the property section of the Judicial Second Class Magistrate Court-II, Thiruvananthapuram, during the relevant period. It has already been proved that on 09.08.1990, the first accused unauthorisedly delivered MO1 underwear to the second accused without any judicial order permitting such release. Documentary evidence, particularly Exhibit P3(a), establishes that the first accused handed over MO1 to the second accused on that date. Exhibit P3(b) further shows that the material object was returned to court on 05.12.1990.

216. The next question is whether there was entrustment of property to the first accused within the meaning of Section 409 IPC. This issue has already been settled by the Hon'ble High Court of Kerala in ***Anil K. Emmanuel v. State of Kerala*** (2025 KHC 1140), which arose from an order of this Court declining to frame an additional charge under Section 409 IPC. Reversing that order, the Hon'ble High Court held that there was prima facie sufficient entrustment in the facts of this case. It was observed that the first accused, being a property clerk, was by virtue of his office the custodian of the properties kept in the property room, and that no separate order of entrustment was required. In view of this authoritative pronouncement, the ingredient of entrustment stands fully satisfied.

217. The remaining question is whether the conduct of the first accused amounts to criminal breach of trust. The prosecution case, which stands proved from the earlier discussion, is that after receiving MO1 from the first accused, the second accused tampered with it and returned it to

court in a condition that ultimately led to the acquittal of the Australian National. It has already been found that MO1 was subjected to deliberate tampering.

218. The evidence on record clearly establishes that the first accused, who was the lawful custodian of MO1, delivered the material object without any court order to the second accused, retained silence for nearly three months, and accepted its return without proper verification. This unauthorised delivery and handling of court property directly facilitated the tampering of a crucial piece of evidence.

219. Such conduct cannot be brushed aside as a mere irregularity or lapse. The act of parting with a material object entrusted to him, in violation of law, and in circumstances that enabled its alteration, amounts to dishonest misappropriation within the meaning of Section 405 of the IPC. This Court has already drawn an adverse inference against the first accused due to his failure to discharge the burden cast upon him under Section 106 of the Evidence Act to explain the circumstances under which MO1 was delivered and returned.

220. In the light of the proven facts and the settled legal position, this Court finds that the dishonest intention necessary to constitute criminal breach of trust stands established against the first accused. All the essential ingredients of Section 409 of the IPC are therefore satisfied.

221. Accordingly, this Court holds that the offence punishable under Section 409 of the IPC is attracted against the first accused.

222. The next question for consideration is whether the facts proved on record are sufficient to attract the offences punishable under Sections

465 and 468 of the IPC. Section 465 of the IPC prescribes punishment for the offence of forgery. Forgery is defined under Section 463 of the IPC and essentially involves the making of a false document or electronic record with intent to cause damage or injury, to support a claim or title, to cause a person to part with property, or with intent to commit fraud. The core element of the offence is the creation of a false document accompanied by a dishonest or fraudulent intention.

223. Section 464 of the IPC explains what constitutes a “false document”. The first limb of Section 464 of the IPC is attracted when a person dishonestly or fraudulently makes or executes a document so as to cause it to be believed that such document was made or executed by another person, or by the authority of another person, by whom or by whose authority he knows it was not made or executed. The essential feature under this limb is that the maker gives the document an appearance of authority or legal validity which he does not in fact possess.

224. cases where a person signs in the name of another. Even when a document or endorsement is made in the maker’s own handwriting, it may still amount to a false document if it purports to record, authenticate, or validate a transaction which the maker had no lawful authority to effect, and if such act is done with dishonest or fraudulent intent.

225. In the present case, it stands proved that the second accused made the endorsements marked as Exhibits P3(c) to P3(e) in Exhibit P3, the Property Register, acknowledging the receipt of MO1 underwear. This was done despite the admitted and proved position that the first accused had no authority to release the said property and the second accused had no authority to receive it.

226. By making such an entry in an official court register, the second accused created a document which purported to authenticate a transaction that neither accused was legally empowered to carry out. This act clearly falls within the ambit of “making a false document” under the first limb of Section 464 of the IPC. Consequently, the foundational requirement of forgery as defined under Section 463 of the IPC stands satisfied.

227. This court has already discussed that dishonest intention underlying this act is evident from the surrounding circumstances. The endorsement was made with full knowledge that the property was not ordered to be released, and it was intended to lend an appearance of legitimacy to an otherwise unauthorised delivery of a material object. The subsequent tampering of MO1 and its use in judicial proceedings further demonstrates that the false entry was not an innocent or casual act, but one calculated to facilitate the manipulation of evidence. Such conduct unmistakably discloses dishonest intention within the meaning of the Penal Code.

228. Having thus found that a false document was made with dishonest intent, the offence of forgery stands attracted, and the penal provision under Section 465 of the IPC squarely applies.

229. Further Section 468 of the IPC deals with forgery committed for the purpose of cheating. For this provision to apply, the forged document must have been made with the intention that it be used for cheating. However, this Court has already found, for reasons discussed earlier, that the offence of cheating under Section 420 of the IPC is not attracted in the present case. In the absence of the foundational ingredients of cheating, Section 468 of the IPC cannot be invoked.

230. Accordingly, this Court holds that while the offence of forgery punishable under Section 465 of the IPC is clearly made out on the facts proved, the offence under Section 468 of the IPC is not attracted in the present case.

231. In view of the foregoing discussion and the appreciation of oral and documentary evidence on record, this Court finds that the prosecution has successfully proved, beyond reasonable doubt, that the first and second accused acted in concert and committed the offences punishable under Sections 120B, 201, 193, 409 and 465 read with Section 34 of the Indian Penal Code. Accordingly, Point Nos. 1, 3, 4, 6 & 7 are answered in favour of the prosecution and against the accused.

232. At the same time, for the reasons stated in the earlier part of this judgment, this Court finds that the prosecution has failed to establish the essential ingredients of the offences punishable under Sections 420, 217 and 468 of the Indian Penal Code. Consequently, the first and second accused are found not guilty of the said offences and are acquitted thereunder. Accordingly, Point Nos. 2, 5 & 8 are found against the prosecution.

233. Point No.(9):- In the result, the accused 1 and 2 found not guilty of the offence punishable Sections 420, 217 and 468 read with S. 34 of the Indian Penal Code of the IPC and they are acquitted u/S. 248 (1) of the Cr.P.C. The accused 1 and 2 are found guilty of the offences punishable Sections 120B, 201, 193, 409 and 465 read with Section 34 of the Indian Penal Code and they are convicted u/s 248(2) of Cr.P.C for the said offences.

234. Having found the accused guilty of the offences proved against them, this Court is of the considered view that the nature and gravity of the

acts committed do not warrant any leniency. The 1st accused was a court staff and the second was an Advocate of law at the time of the commission of the offences proved in this case. The offences established in this case strike at the very foundation of the administration of justice and involve deliberate interference with a material object kept in the custody of the court. Such conduct, particularly when committed by persons who were expected to uphold the sanctity of judicial proceedings, cannot be viewed lightly. The benevolent provisions of the Probation of Offenders Act, 1958, are not applicable in the present case.

Sd/-
Judicial First Class Magistrate-I,
Nedumangad

235. The convicts were heard on the question of sentence. The learned APP filed a petition under Section 325 of the Cr.P.C./Section 364 of the BNSS, seeking to submit the case to the Hon'ble Chief Judicial Magistrate. It is averred in the petition that, having regard to the nature, magnitude, and gravity of the offences proved, particularly the offence punishable under Section 409 IPC, which carries a sentence of imprisonment for life or imprisonment extending up to ten years, this Court is not vested with adequate sentencing power to impose a punishment commensurate with the seriousness of the offences.

236. However, the learned Assistant Public Prosecutor has not pointed out any specific or exceptional circumstances warranting the invocation of the power under Section 325 Cr.P.C. No material has been placed before this Court to show that the facts of the present case necessitate the imposition of a sentence beyond the statutory competence of this Court. In the absence of such circumstances, this Court is of the considered view that no occasion has arisen to invoke the provisions of Section 325 Cr.P.C.

237. On the other hand, the learned counsel appearing for the 1st and 2nd Accused pleaded for leniency. It was submitted that both convicts have no criminal antecedents and that they have been facing criminal proceedings in this case for nearly thirty-five years. It was urged that these factors may be taken into account while awarding sentences.

238. While imposing sentence, the Court is required to balance the gravity of the offence with the mitigating circumstances placed on record. Having carefully considered the nature of the offences proved, the manner in which they were committed, and the attendant circumstances, including the prolonged pendency of the proceedings, this Court is satisfied that the sentence to be imposed hereunder would meet the ends of justice.

Hence the accused persons are sentenced to:-

- 1) The first and second accused are sentenced to undergo simple imprisonment for a term of 6 months each for the offence punishable under section 120 B of the IPC.
- 2) The first and second accused are sentenced to undergo simple imprisonment for a term of 3 years each and fine of Rs 10,000/- (Ten Thousand only) each for the offence punishable under section 201 read with section 34 of the IPC. In default of payment of fine, they shall undergo simple imprisonment for 3 months each.
- 3) The first and second accused are sentenced to undergo simple imprisonment for a term of 3 years each for the offence punishable under section 193 read with section 34 of the IPC.
- 4) The first accused is sentenced to undergo simple imprisonment for a term of 1 year and fine of Rs 5,000/- (Five Thousand only) for the offence punishable under section 409 of the IPC. In default of payment of fine, he shall undergo simple imprisonment for 2 months.

5) The first and second accused are sentenced to undergo simple imprisonment for a term of 2 years each for the offence punishable under section 465 read with section 34 of the IPC.

The bail bond executed by them stands cancelled. The sentences shall run concurrently.

Dictated to the Confidential Assistant transcribed and typed by her, corrected and pronounced by me in open Court this the 3th January, 2026

Sd/-
Judicial First Class Magistrate-I,
Nedumangad

A P P E N D I X

Witnesses for prosecution:-

PW1 – T.G.Gopalakrishnan Nair (Official witness - CW1)
 PW2 – Sarojam (Official witness - CW9)
 PW3 – Radha (Official witness - CW10)
 PW4 – Raveendran Nair (Official witness – CW17)
 PW5 – Vishnu Potti (Official witness – CW19)
 PW6 – Dr K.P. Jayakumar (Official witness - CW20)
 PW7 – Ramachandran Nair (Official witness - CW6)
 PW8 – Premachandran (Official witness - CW4)
 PW9 – Unnikrishnan.B (Official witness – CW3)
 PW10 – Shanavas (Official witness – CW15)
 PW11 – Muhammed Wassim (Official witness - CW21)
 PW12 – Ramachandran (Official witness - CW16)
 PW13 – Babu Rajendran (Official witness - CW26)
 PW14 – Thampi S Durgadutt (Official witness – CW23)
 PW15 – Sheikh Anwardheen Sahib (Official witness – CW24)
 PW16 – R Hithapalan Nair (Official witness - CW25)
 PW17 – K.V.Abraham (Official witness - CW22)
 PW18 – K.K Jayamohan (Official witness - CW12)
 PW19 – P.Prabha (Official witness – CW29)

Exhibits for prosecution:-

P1	First Information	Proved by PW1	Dated 05.10.94
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	Statement		
P2	Official Memorandum	Proved by PW1	Dated 27.09.94
P3	Property Register 1990, JSCM II, Thiruvananthapuram	Proved by PW2	Dated nil
P3(a)	Relevant page in Property Register 1990, JSCM II, Thiruvananthapuram	Proved by PW9	Dated nil
P3(b)	Relevant page in Property Register 1990, JSCM II, Thiruvananthapuram	Proved by PW9	Dated nil
P3(c)	Questioned Writings in Ext.P3 Register	Proved by PW9	Dated nil
P3(d)	Questioned Writings in Ext.P3 Register	Proved by PW9	Dated nil
P3(e)	Questioned Writings in Ext.P3 Register	Proved by PW9	Dated nil
P4	Mahazar of Property Register, JSCM II, Thiruvananthapuram	Proved by PW2	Dated 27.03.98
P5	Order Sheet in Crime No. 60/1990 of Valiyathura Police Station (CP 31/1990 of JSCM II, Thiruvanantha puram)	Proved by PW11	Dated 05.04.90 - 03.08.90
P5(a)	Relevant portion of order sheet in Crime No. 60/1990 of Valiyathura Police Station (Releasing personal properties)	Proved by PW11	Dated 03.08.90
P6	Mahazar	Proved by PW4	Dated 25.02.06
P7	Vakalath of order sheet in S.C 147/1990	Proved by PW4	Dated 20.10.90
P7(a)	Vakalath in C.P No. 31/1990	Proved by PW4	Dated 10.07.90
P7(b)	Red Closed Writings marked as A2 in Exhibit P7 Vakalath	Proved by PW19	Dated 20.10.90
P7(c)	Red Closed Writings marked as A1 in Exhibit P7	Proved by PW19	Dated 10.07.90
P8	Inventory Mahazar of Vakalaths	Proved by PW4	Dated 28.01.06

P9	Forensic Examination Report of MO1 underwear	Proved by PW5	Dated 18.06.94
P10	Report of Handwriting Expert	Proved by PW6	Dated 09.03.06
P11	Specimen writings and signatures S1 to S4	Proved by PW6	Dated nil
P12	Mahazar	Proved by PW7	Dated 31.07.95
P13	Property List – T.No. 242/90	Proved by PW7	Dated 12.10.90
P14	Property List – T.No. 243/90	Proved by PW7	Dated 12.10.90
P15	Property List – T.No. 241/90	Proved by PW7	Dated nil
P16	Mahazar of Property List	Proved by PW7	Dated 29.04.98
P17	Letter from JSCM – II, Thiruvananthapuram	Proved by PW7	Dated 05.11.90
P18	Letter from JSCM – II, Thiruvananthapuram	Proved by PW7	Dated 12.10.90
P19	Kaychit	Proved by PW7	Dated nil
P20	Property Register of Sessions Court, Thiruvananthapuram, 1990	Proved by PW8	Dated nil
P20(a)	Relevant page in Property Register of Sessions Court, Thiruvananthapuram, 1990	Proved by PW8	Dated nil
P21	Mahazar of Property Register of JSCM II, Thiruvananthapuram	Proved by PW8	Dated 28.07.95
P22	Kaychit	Proved by PW8	Dated 28.07.95
P23	Attendance register of JSCM II, Thiruvananthapuram, 1990	Proved by PW9	Dated nil
P23(a)	Relevant Page of Attendance register	Proved by PW9	Dated 09.08.90
P23(b)	Relevant Page of Attendance register	Proved by PW9	Dated 12.10.90
P23(c)	Relevant Page of Attendance register	Proved by PW9	Dated 05.12.90
P24	Message from Interpol, New Delhi	Proved by PW10	Dated 24.07.95
P25	Letter from National Central Bureau of Investigation, New	Proved by PW10	Dated 23.02.96

	Delhi		
P26	Message from Australian National Central Bureau to Interpol, New Delhi	Proved by PW10	Dated 29.01.96
P27	Letter from Interpol, Canberra	Proved by PW10	Dated 20.01.96
P28	True Copy of Ext. P5 order	Proved by PW11	Dated 03.08.90
P29	Duty Certificate of first accused	Proved by PW11	Dated 16.02.06
P30	Inventory Mahazar (Ext.P24 - P27)	Proved by PW12	Dated 17.01.06
P31	Report of assumption of investigation	Proved by PW13	Dated 04.09.2000
P32	FIR	Proved by PW14	Dated 05.10.94
P33	Mahazar of MO1 underwear	Proved by PW14	Dated 21.06.96
P34	Forwarding note for FSL examination	Proved by PW14	Dated 26.06.96
P35	KPF Form 151 A	Proved by PW16	Dated 06.02.99
P36	KPF Form 151 A	Proved by PW16	Dated 06.02.99
P37	Certified Copy of Mahazar	Proved by PW18	Dated 04.04.90
P38	KPF Form 151 A	Proved by PW18	Dated 04.04.90
P39	Certified Copy of Mahazar	Proved by PW18	Dated 04.04.90
P40	KPF Form 151 A	Proved by PW18	Dated 04.04.90
P41	Mahazar	Proved by PW18	Dated 04.04.90
P42	KPF Form 151 A	Proved by PW18	Dated 04.04.90
P43	Report	Proved by PW19	Dated 24.12.05
P44	Form 15	Proved by PW19	Dated 17.01.06
P45	Form 15 of Vakalaths	Proved by PW19	Dated 07.02.06
P46	Report for FSL examination	Proved by PW19	Dated 02.02.06
P47	Report	Proved by PW19	Dated 13.02.06
P48	Letter	Proved by PW19	Dated 16.02.06
P49	Form 15	Proved by PW49	Dated 17.03.06
P50	Mahazar	Proved by PW19	Dated 14.03.06
P51	Form 15	Proved by PW19	Dated 15.03.06
P52	Report	Proved by PW19	Dated 20.02.06

P53	Standard Requisition Form	Proved by PW19	Dated 07.02.06
P54	UN Report	Proved by PW19	Dated 16.08.02
P55	Inventory Mahazar	Proved by PW19	Dated 12.01.06
P55(a)	Certified Copy of Judgment in Sessions Case No. 147/90	Proved by PW19	Dated 05.01.91
P55(b)	Certified Copy of Crl. Appeal Judgment No. 20/1991	Proved by PW19	Dated 05.02.91
P55(c)	Certified Copy Deposition of PW18 in SC No. 147/90 of the Hon'ble Sessions Court, Thiruvananthapuram	Proved by PW19	Dated 27.12.90

Material Object:-

MO1 - Underwear

MO1(a) – Label of Underwear

Witnesses for defence:-

Nil

Exhibits for defence:-

D1	Relevant portion of 161 Stt	Proved by PW3	Dated 17.07.02
D2	Relevant portion of 161 Stt	Proved by PW3	Dated 17.07.02
D3	Relevant portion of 161 Stt	Proved by PW3	Dated 17.07.02
D4	Relevant portion of 161 Stt	Proved by PW8	Dated nil
D5	Relevant portion of 161 Stt	Proved by PW8	Dated nil
D6	Relevant portion of 161 Stt	Proved by PW11	Dated nil
D7	Relevant portion of 161 Stt	Proved by PW11	Dated nil
D8	Certified Copy Deposition of PW18 in SC No. 147/90 of the Hon'ble Sessions Court, Thiruvananthapuram	Proved by PW18	Dated 27.12.90
D9	Certified Copy of Counter Affidavit and Enquiry Report of the Circle Inspector of Vigilance Cell, High Court of Kerala	Proved by PW19	Dated 27.09.22

//True Copy//

Judicial First Class Magistrate-I,
Nedumangad

