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IN THE COURT OF THE PRL., CIVIL JUDGE & JMFC COURT- SINDHANUR

PRESENT:- **Smt. RUPA C.VAGGA , B.B.A. LL.B.,**

Prl., Civil Judge and JMFC
Court., Sindhanur.

DATED THIS THE 04th DAY OF AUGUST-2026.

C.C NO.40/2017

COMPLAINANT:

The State
through Town police station.

(By A.P.P,)

//Vs//

ACCUSED :

Amaresh Nayak S/o. Ramanna
Age: 60 Yrs., Occ: Post official
R/o. Manvi

(By Sri.M.A.H., Adv)

J U D G M E N T

The PSI of Sindhanur Town Police Station have submitted the Charge Sheet against the accused for the offence punishable Under Sec,. 409 of Indian Penal Code.

2. **The brief facts of the Prosecution case is as follows:**

It Is alleged by the prosecution that, accused being the Post man and while working as a postman at Sindhanur Post Office, during the period from March to July 2010, did not pay the OAP amount of Rs.400/- sanctioned by the Government for the month of January 2010 to Rajasaba's father by name B. Suban vide Money Order No.4751/4 dated 12-03-2010. Accused did not pay the OAP amount sanctioned by the Government to Muragesha's father Huchaiah Swamy vide Money Order No.4783/43 dated 19-03-2010. Accused has not paid the PHP amount of Rs.800/- sanctioned by the Government in favor of Bibijana for the months of March and April 2010 vide Money Order No.4103/5 dated 20-05-2010. Accused has not paid the PHP amount of Rs.2000/- sanctioned by the Government in favor of Farida Begum for the months of May and June 2010 vide Money Order No.4163/49 dated 12-07-2010. Accused has not paid the SSY amount sanctioned by the Government in favor of Ravi

Prabhu's sister-in-law by name Mrs. Akkamma for the months of January to April 2010 Money Order No. 3799155 dated 10-05-2010 of Rs. 1,600/- has not been paid, 75% of the PHP sanctioned by the Government for the months of May and June 2010 to Pyarijan was not paid, Money Order No. 4163/48 dated 12-07-2010 of Rs. 2000/- SSY amount sanctioned by the Government for the months of January to April 2010 to Mrs. Lakshmibai Ganda Keshavrao, S.A. Sindhanur was not paid, Money Order No. 3811/99 dated 12-05-2010 of Rs.1600/- has not been paid in favor of Lakshmibai W/o Keshvrao. Like this the accused committed an offence of criminal breach of trust by affixing his thumb impression on the money order forms as payment to the said customers and misappropriating the money for his personal use. Accordingly, the accused committed aforesaid offence under Sec., 409 of IPC.

3. On the basis of Statement given by C.W-1/First Informant, Town Police, has registered a

case against the accused in Crime No.83/2016 and registered the FIR for the offence punishable under Sec-409 of Indian Penal Code. The PSI of Sindhanur Town Police took up the investigation and after completion of investigation, has submitted the Charge Sheet against the Accused for the offence punishable Under Sec-409 of Indian Penal Code.

4. After receipt of charge sheet, as there are sufficient materials in the Charge Sheet to proceed against the accused cognizance was taken for the offence punishable under Sec., 409 of Indian Penal Code and the summons was issued to the Accused.

5. In pursuance of summons, the Accused appeared before the Court through his advocate and the accused was released on bail. The Copy of Charge Sheet papers were furnished to the Accused as contemplated U/Sec. 207 of Cr.P.C. As there are materials to frame charge against accused. Hence, charge framed for the offence punishable under Sec., 409 of Indian Penal

Code. The same was read over and explained to the Accused in the language known to him. Accused pleaded not guilty and claims to be tried.

6. In order to prove the guilt against the Accused the prosecution got examined nine witnesses as P.W-1 to 9 and got marked 43 documents as per Ex.P-1 to 43 and closed their side evidence.

7. After completion of prosecution side evidence the accused examined Under Section-313 of Cr.P.C and all the incriminating circumstances against the said accused appearing in the evidence of the prosecution was put forth to the accused and his explanation was sought. The accused after understanding the same denied all the incriminating circumstances and submitted that he does not desire to file any written statement on his behalf or wish to lead any evidence on his behalf. Hence, the matter was posted for arguments.

8. The Ld.APP argued that, in order to establish the charges levelled against the accused, the

prosecution examined the complainant as P.W-1, who has fully supported the case of the prosecution. P.W-8, a postal official, has also corroborated the prosecution case. The victims viz., P.W-2 and P.W-7, have supported the prosecution by deposing about the alleged incident. P.W-9, the Investigaed Officer, has also supported the prosecution case and spoken regarding the investigation conducted by him. It is contended that the oral testimony of these witnesses is duly corroborated by the documentary evidence placed on record. Therefore, it is submitted that the prosecution has proved the guilt of the accused beyond all reasonable doubt and, accordingly, the accused is liable to be convicted.

9. Per contra, the Ld. counsel for the accused vehemently contended that, though P.W-1, P.W-8, the postal official, P.W-2 and P.W-7, the alleged victims, and P.W-9, the Investigating Officer, have supported the prosecution case, the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. It is

argued that even prior to the lodging of the present complaint, the postal authorities had recovered the alleged amount from the possession of the accused as per Ex.D-1. However, after an unexplained lapse of nearly six years, the present complaint came to be lodged only with an intention to harass the innocent accused. It is further argued that P.W-3 to P.W-6 have turned hostile and have not supported the prosecution case. It is also argued that the prosecution has failed to obtain and prove any expert opinion comparing the disputed thumb impressions with the admitted thumb impressions of the deceased persons, which, according to the defence, is a material omission going to the root of the prosecution case. Hence, it is prayed that the accused be acquitted of all the charges.

10. Perused the materials available on record.

11. On going through the facts and circumstances of the prosecution case, the following

Points that would arise for the consideration of this Hon'ble court :-

P O I N T S

1. Whether the prosecution proves beyond all reasonable doubt that, during March 2010 to July 2010, the accused allegedly did not disburse Government-sanctioned Money Orders to the intended beneficiaries and accused failed to pay these Government benefits to the recipients and instead misappropriated or retained the amounts, thereby causing wrongful loss to the beneficiaries and entrusted with an amount by a Government for distribution to beneficiaries have misappropriated the same for his personnel use and has breached the trust of Government and thereby committed an offence punishable under **Sec., 409 of Indian Penal Code .?**

2. What order .?

12. The findings to the above Points of this court are as under:

Point No.1	:	In the Negative.
Point No.2	:	As per final order,
		for the following: -

:: R E A S O N S ::

13. **POINT NO.1:** It is the case of prosecution that, accused being the Post man and while working as a postman at Sindhanur Post Office, during the period from March to July 2010, did not pay the OAP amount of Rs.400/- sanctioned by the Government for the month of January 2010 to Rajasaba's father by name B. Suban vide Money Order No.4751/4 dated 12-03-2010. Accused did not pay the OAP amount sanctioned by the Government to Muragesha's father Huchaiah Swamy vide Money Order No.4783/43 dated 19-03-2010. Accused has not paid the PHP amount of Rs.800/- sanctioned by the Government in favor of Bibijana for the months of March and April 2010 vide Money Order No.4103/5 dated 20-05-2010. Accused has not paid the PHP amount of Rs.2000/- sanctioned by the Government in favor of Farida Begum for the months of May and June 2010 vide Money Order No.4163/49 dated 12-07-2010. Accused has not paid the SSY amount sanctioned by the Government in favor of Ravi

Prabhu's sister-in-law by name Mrs. Akkamma for the months of January to April 2010 Money Order No. 3799155 dated 10-05-2010 of Rs. 1600/- has not been paid, 75% of the PHP sanctioned by the Government for the months of May and June 2010 to Pyarijan was not paid, Money Order No. 4163/48 dated 12-07-2010 of Rs. 2000/- SSY amount sanctioned by the Government for the months of January to April 2010 to Mrs. Lakshmibai Ganda Keshavrao, S.A. Sindhanur was not paid, Money Order No. 3811/99 dated 12-05-2010 of Rs.1600/- has not been paid in favor of Lakshmibai W/o Keshvrao. Like this the accused committed an offence of criminal breach of trust by affixing his thumb impression on the money order forms as payment to the said customers and misappropriating the money for his personal use. The allegation is that the accused failed to pay these Government benefits to the recipients and instead misappropriated or retained the amounts and thereby causing wrongful loss to the beneficiaries.

13(a). In order to prove the case of the prosecution, the prosecution examined the following nine witnesses as P.W-1 to 9.

Specimen Chart for Witnesses Examined.

Prosecution Witness No.	**Name of Witnesses**	**Description**
1	Amaresh	Complainant
2	Rajasab	Beneficiary
3	Bibijan	Beneficiary
4	Farida Begum	Beneficiary
5	Parijan	Beneficiary
6	Murugesh	Beneficiary
7	Raviprabhu	Witness
8	P.Chidananda	Postal officer
9	Deepak Boosareddy	Investigated officer

13(b). The prosecution got marked 43 documents as per Ex.P-1 to 43.

Specimen Chart for Exhibited Documents.

Exhibit No.	**Description of the Exhibit**	**Proved by/Attested by**
1	Complaint	Not proved
2	Postal register book	Not proved
3 to 10	Money order receipts	Not proved

11 & 12	Death Extracts	Not proved
13 to 18	Delivery slip of money	Not proved
19	Letter money frauds by accused	Not proved
20	Panchanama	Not proved
21	Seizure panchanama	Not proved
22 to 39	Statements	Not proved
40	FIR	Not proved
41	Letter dtd., 11.05.2016	Not proved
42	Postal cover	Not proved
43	Transfer order of accused	Not proved

13(c). The defence got marked one document as per Ex.D-1 by way of confrontation.

Specimen Chart for Exhibited Documents.

Exhibit No.	**Description of the Exhibit**	**Proved by/Attested by**
1	Certificate of credit	Accordingly

14. Now it is necessary to discuss about the evidence of prosecution witnesses. The prosecution examined the complainant as P.W-1. P.W-1 deposed that, accused Amaresh Nayak was working as a postman in their postal department in the year 2010.

There are documents available that during the period between March and July 2010, the accused misused the money orders of their department by not paying the same to the customers/Beneficieries. Therefore, as per the orders of their superiors, he lodged the complaint as per Ex.P-1. Further deposed that, he got issued the documents to the police as per Ex.P-2 to 19. Further deposed that, after next day of complaint, police drawn panchanama in his office as per Ex.P-20 and by receiving above documents at Ex.P-2 to 19 and the police drawn seizure panchanama as per Ex.P-21. Further deposed that, as per Ex.P-2, accused misappropriated the money of one Huchhayya Swamy Veerabhadrayya swami and also mis-used the money of Safan Sab and Khasim Sab.

15. The prosecution examined the son of one of the beneficiary as P.W-2. He deposed that, his father died on 14.02.2010. During the lifetime of his father, he used to receive old-age pension of Rs.400/- from the

Government. The post man used to give the said amount as money order. Further deposed that, after death of his father, said old-age pension amount was stopped. Thereafter, postal officials informed him that, said amount was misappropriated by post man by name Amaresh Nayak for his personal use. Further, P.W-2 identified the Ex.P-3. Further deposed that, accused put his thump impression on Ex.P-3 and received his father pension and on the date of Ex.P-3, his father was not alive. He identified the his father death extract as per Ex.P-11. The said information given by the postal authorities and took his statement as per Ex.P-22.

16. The prosecution examined the one of beneficiary/C.W--6/Bibijan as P.W-3. P.W-3 deposed that, in the 2016, she was getting Rs.400/- per month as a monthly allowance for the disabled from the Karnataka Government, now it is Rs. 600/-. The said monthly allowance was received by him correctly in the year 2016. In the year 2010, the accused used to bring

monthly allowance. Apart from this, she do not know anything else. Herself used to sign and take the monthly allowance every month when it came. She did not sign with her thumb. He has not put her sign with his thumb on Ex.P-5. He further deposed that, he used to write in English as Bibi Jan. The accused Amaresh Nayak is a postman. She has not given any statement before the police.

17. The prosecution examined the one of beneficiary/C.W--8/Farida Begum as P.W-4. P.W-4 deposed that, in the 2010, she was getting Rs.1000/- per month as a monthly allowance for the disabled from the Karnataka Government at that time, accused was the postal man, the said amount used to give her by him. Except these, she do not know anything about the present case. Police have not taken her statement,

18. beneficiary/C.W--10/Pyrijan as P.W-5. P.W-5 deposed that, since 12 years she was getting Rs.1000/- per month as a monthly allowance from the Karnataka

Government. In the year 2010, the accused used to bring monthly allowance. Further deposed that, she did not received monthly allowance during the May and June of 2010. She has not given any statement before the police. She used to sign in English when she received the monthly allowance. She further deposed that, occasionally, she put her thumb impression. She identified the accused.

19. The prosecution examined the son of one of beneficiary by name Huchayyaswamy as P.W-6. He deposed that, his father died on 18.06.2009. During alive of his father, he used to receive old-age pension of Rs.400/- from the Government. The post man used to give the said amount as money order. Further deposed that, after death of his father, he informed about the death of his father and refused to receive the said old-age pension amount of his father. Further he deposed that, he do not know the name of post man and police have not enquired.

20. The prosecution examined the brother-in-law of one of beneficiary by name Akkamma as P.W-6. He deposed that, Akkamma is his mother-in-law, further deposed that, she died on 27.05.2016. When she was alive, she was getting monthly allowance of Rs.400/- under Sandhya Suraksha Yojana for many years. She did not get monthly allowance for four months from January 2010. They asked C.W-1 about the same and C.W-1 told him that his mother-in-law had taken monthly allowance by putting her thumb impression. Further deposed that, but his mother-in-law used to sign in English as A.S. Prabhu. The accused used to bring it to his mother-in-law for every month. Later, when the accused was questioned, he told them that he had not received monthly payment. When they questioned C.W-1 again, the accused told that instead of giving the monthly payment to his mother-in-law, he had taken it himself by putting his thumb impression on it. Later, a case was registered in this regard. He has

given his statement before the police. He identified the accused before the court.

21. The prosecution examined the Postal official/ C.W--12 as P.W-8. P.W-8 deposed that, on 31-08-2010, he obtained two statements from the accused. He stated that he had given the money order to the family members of the persons to whom it was issued as they were in the hospital as per Ex.P-26 and 27. Further deposed that, he has obtained 5 statements of the accused on 22-11-2010 and himself has identified them as per Ex.P-28 to 32. Further deposed that, on 13-01-2011, he received another statement of the accused which was identified as per Ex.P-33. While obtaining the above statements of the accused, he has obtained the statement by showing the complaint, statement and money order receipts given by the complainant. He obtained those documents from C.W--11 and shown them to the accused. C.W-11 is currently bedridden due to poor health and himself

identified the C.W-11's signatures. Similarly, C.W-11 has received the statements of Mrs. Bibijana, Khaja Mainuddin, Farida Begum, Parijana. Mrs. Lakshmi and Murugesha on 04-07-2017 as per Ex.P-34 to 39 and after receiving the statements, he submitted them to the Raichur Postmaster General. He identified the accused.

22. The prosecution examined the investigated officer as P.W-9. He deposed in his evidence with respect to conducting the chain of investigation from registering the crime till filing of chargesheet against the accused persons. And he withstood with his examination in chief.

23. The prosecution has brought on record the aforesaid evidence against the accused to prove the charges levelled against him for the offence under Sec., 409 of Indian Penal Code. At this juncture, it is relevant to refer offence punishable under Sec., 409 of Indian Penal Code which is extract below:

SECTION – 409 :-

<u>Criminal breach of trust by public servant, or by banker, merchant or agent-</u>

Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable tofine.

For the aforesaid offence under Sec., 409, the prosecution has to establish beyond all reasonable doubt that, the accused being public servant, has dishonestly cheated the vi..e, father of C.W-4, 5, C.W-6 to 8, Paternal Aunt of C.W-9, C.W-10 and Smt.Lakshmibai W/o Keshav Rao.

24. It is pertinent to note that, according to the prosecution, the accused misappropriated various amounts belonging to different beneficiaries under the AAP, SSY and PHP schemes. The prosecution alleged that the accused dishonestly withdrew an amount of

Rs.400/- belonging to the father of C.W-4, namely B. Suban; Rs.400/- belonging to the father of C.W-5, namely Hucchayya Swamy, under the AAP Scheme; Rs.800/- each belonging to C.W-6 and C.W-7 under the PHP Scheme for the months of March and April 2010; Rs.2,000/- belonging to C.W-8 under the PHP Scheme for the months of May and June 2010; Rs.1,600/- belonging to the aunt of C.W-9, namely Akkamma, under the SSY Scheme for the period from January to April 2010; and Rs.1,600/- belonging to Lakshmibai, wife of Keshav Rao, under the SSY Scheme for the period from January to April 2010.

25. In order to prove the alleged misappropriation of Rs.400/- belonging to the father of C.W-4, the prosecution examined the son of the deceased beneficiary as P.W-2. P.W-2 has supported the prosecution case in his examination-in-chief. He deposed that his father died on 14.02.2010 and, therefore, he was not alive on 12.03.2010, the date on

which the prosecution alleges that the accused fraudulently withdrew the amount of Rs.400/- by affixing a thumb impression in the relevant records.

26. According to the prosecution, the thumb impression found on Ex.P-3 is shown as that of the deceased father of P.W-2. The prosecution alleges that the accused forged or fraudulently affixed the thumb impression in place of the genuine thumb impression of the deceased account holder and thereby dishonestly withdrew the amount of Rs.400/-.

27. However, on careful scrutiny of the entire material available on record, it is evident that the prosecution has not taken any steps to establish this crucial allegation through scientific evidence. The disputed thumb impression found on Ex.P-3 was neither sent for forensic examination nor was the specimen thumb impression of the accused obtained and forwarded to the Fingerprint Bureau or any forensic expert for comparison. In the absence of such scientific

evidence, the prosecution has failed to prove that the disputed thumb impression appearing on Ex.P-3 was in fact that of the accused or that it was fraudulently affixed by the accused dishonestly. Consequently, the allegation of forgery and fraudulent withdrawal based on the disputed thumb impression is not sustainable in the eyes of law.

28. It is the specific case of the prosecution that the accused also misappropriated an amount of Rs.1,600/- standing in the name of Lakshmibai, W/o Keshav Rao, under the SSY Scheme. However, the prosecution has neither examined the said Lakshmibai as a witness nor furnished any explanation for her non-examination. There are no materials available on record to indicate whether she was alive or deceased at the relevant point of time. The charge sheet is silent in this regard. In the absence of any explanation for withholding this material witness, the prosecution has failed to adduce the best available evidence to

substantiate the alleged misappropriation relating to her account. This omission creates a serious lacuna to the prosecution case.

29. Further, on a careful reading of the evidence of P.W-7, who claims to be one of the victim, it appears that the deceased Akkamma was his maternal aunt. However, the prosecution has not placed any material on record to show whether the deceased Akkamma died leaving behind any Class-I legal heirs or not. The chargesheet is silent on this aspect. Likewise, the prosecution has not explained under what circumstances P.W-7 came forward to depose regarding the alleged misappropriation or cheating said to have been committed by the accused in respect of the SSY deposits made during the period from January to April 2010. There is no clarity by the IO in this regard.

30. P.W-7 has deposed that his aunt, Akkamma, died on 27.05.2016 and that she had not received the SSY amount for four months in the year 2010. However,

as per the prosecution records, the complaint at Ex.P-1 came to be lodged on 09.05.2016. Thus, on the date of lodging of the complaint, Akkamma was admittedly alive. If, in fact, the accused had misappropriated her money, the prosecution has failed to explain why no complaint was lodged by Akkamma herself or why no action was initiated by the postal authorities during her lifetime. This omission creates a doubt on the prosecution case.

31. It is also pertinent to note that P.W-7 has categorically admitted in his cross-examination that he came to know about the alleged cheating through C.W-1. This admission clearly indicates that P.W-7 had no personal knowledge of the alleged acts of misappropriation and he is hearsay witness to the prosecution case.

32. Further, on perusal of Ex.P-25, it appears that Akkamma had given a statement on 30.09.2010. Thus, long before the registration of the complaint, FIR

at Ex.P-1 and P-40, her statement had already been recorded by the postal authorities. Despite such a statement, the prosecution has neither produced nor proved the same in accordance with law, nor has it offered any explanation for withholding such material evidence. The prosecution has also failed to explain the inordinate delay of six years in lodging the complaint/Ex.P-1. These creates to a serious doubt regarding the genuineness of the prosecution case.

33. In the present case, the as alleged by the prosecution the accused forged or misused the thumb impressions of the deceased account holders and thereby dishonestly withdrew the amounts. The identity of the thumb impressions is the foundation of the prosecution case. Despite this, the Investigating Officer neither obtained the specimen thumb impressions of the accused nor forwarded the disputed and admitted thumb impressions to the FSL for expert comparison under Section-45 of the Indian Evidence Act. Though

the Court is empowered to compare the thumb impressions under Section-73 of the Evidence Act, the **Hon'ble Supreme Court in Ajit Savant Majagvai v. State of Karnataka, (1997) 7 SCC 110,** has held that, as a rule of prudence, the Court should be slow to record a finding based solely on its own comparison and that expert opinion should ordinarily be obtained where the identity of handwriting or finger impressions is in serious dispute. However, the prosecution has failed to produce any expert opinion establishing that the disputed thumb impressions or signatures were affixed by the accused. In the absence of such vital scientific evidence, the prosecution has failed to prove the allegations of forgery and misappropriation beyond all reasonable doubt, thereby creating a serious doubt to the prosecution case.

34. It is an admitted fact that Akkamma was alive as on the date of lodging of the complaint. If, as alleged by the prosecution, the accused had dishonestly

misappropriated the amount standing in her account, it is not explained as to why Akkamma herself did not initiate any action against the accused or lodge a complaint either before the postal authorities or the jurisdictional police. The prosecution has also failed to place any material on record to show that she had raised her grievance regarding the alleged misappropriation during her lifetime. It creates a reasonable doubt regarding the prosecution version in so far as the alleged misappropriation relating to Akkamma's money is concerned.

35. Now, coming to the evidence of P.W-3, P.W-5, P.W-6 and P.W-8, who were examined as the victims corresponding to C.W-6, C.W-8, C.W-10 and C.W-5 respectively, it is evident that these witnesses have not supported the case of the prosecution. They have denied the prosecution allegations, stated that they had not given the statements during the course of investigation, and failed to identify the accused before the Court.

Their evidence, therefore, does not advance the prosecution case.

36. It is pertinent to note that P.W-5 has specifically deposed that she ordinarily used to sign in English, though on certain occasions she used to affix her thumb impression. This admission itself creates a doubt regarding the prosecution allegation that the accused had fraudulently misused her thumb impression. The prosecution has not produced any cogent evidence to establish that the disputed thumb impression was forged or that it was affixed by the accused. On the contrary, the evidence of P.W-5 indicates that she herself used both signature and thumb impression, depending upon the circumstances.

37. Further, during her cross-examination of P.W-5 categorically admitted that she had never made any enquiry with the concerned postal department as to why the amount had not been paid to her. This conduct assumes significance, particularly when the prosecution

alleges dishonest misappropriation by the accused. In the absence of enquiry or efforts by the alleged victim creates a reasonable doubt regarding the prosecution version. It weaken the prosecution case in respect of the alleged transaction concerning P.W-5.

38. Further, P.W-6 has deposed that, on one occasion, the postman came to their house and they informed him that their father, Huchayyaswamy, had already passed away and, therefore, they were not interested in receiving the amount. P.W-6 has further categorically stated that he had not seen the accused at any point of time and that the police had not enquired with him during the course of investigation. This evidence clearly indicates that P.W-6 has no personal knowledge regarding the alleged acts of misappropriation attributed against the accused, and consequently, his testimony is not helpful to the case of prosecution.

39. It is also significant to note that the charge sheet is silent with respect to whether the legal heirs of the deceased had suppressed the fact of his death and thereafter claimed or received the amount, or whether the amount was allegedly withdrawn by the accused by impersonation or by forging the thumb impression of the deceased. The prosecution has failed to present a clear, consistent, and definite version in this regard, thereby creating serious ambiguity about their case.

40. Further, as already discussed supra, the IO has utterly failed to obtain the specimen thumb impressions/signatures of the accused and to forward the disputed thumb impressions or signatures appearing on the relevant documents, along with the admitted thumb impressions/signatures of the deceased account holders, to the FSL for scientific comparison. In the absence of such crucial scientific evidence, the prosecution has failed to establish that the disputed thumb impressions or signatures were

forged or affixed by the accused. This serious omission goes to the very root of the prosecution case and creates a reasonable doubt regarding the allegations levelled against the accused.

41. On a careful reading of the evidence of P.W-1, the complainant, it is evident that, though he has supported the prosecution case during his examination-in-chief, his testimony in the cross-examination weakens the prosecution case. P.W-1 has admitted that he was not working in the Sindhanur Post Office during the year 2010, which is the period in which the alleged acts of misappropriation were stated to have taken place. From this evidence, this court is of the opinion that, he has no personal knowledge as to who was working as the Postman or Inspector in the said office during the time of offence as alleged by the prosecution.

42. P.W-1 has further admitted that C.W-2 to C.W-10 had neither visited his office nor submitted any written complaint or representation alleging that the

accused had cheated them or misappropriated their amounts. He has also admitted that, since he was not posted at the Sindhanur Post Office in the year 2010, he had no personal knowledge regarding the transactions in question. He has further stated that it was not possible for him to say who were working in the Sindhanur Post Office during the relevant period.

43. These admissions clearly demonstrate that P.W-1 is not an eyewitness to the alleged transactions and has no direct or personal knowledge of the alleged acts of misappropriation attributed to the accused. His evidence is, therefore, based only on the records subsequently made available to him and not on his own personal observation. Consequently, his testimony has limited evidentiary value in establishing the guilt of the accused and does not materially advance the prosecution case.

44. P.W-8 is a postal official. He has deposed that, during the departmental enquiry, he recorded two

statements alleged to have been given by the accused, which are marked as Ex.P-26 and P-27. However, the contents of Ex.P-26 and P-27, by themselves, cannot be treated as conclusive proof of the guilt of the accused so as to establish the offences punishable under Sections-409 of the IPC.

45. Further, during his cross-examination, P.W-8 has admitted that, during the relevant period, as many as four postmen, namely Lingappa, H.R. Megalamani, Devendrappa and H.R. Megalamani., were working in the Sindhanur Post Office. In the absence of documentary evidence regarding the specific beat entrusted to the accused or the distribution register showing that the accused alone was responsible for the delivery of the amounts to the concerned beneficiaries, it would be unsafe to conclude that the accused had the opportunity to commit the alleged acts of misappropriation. It creates a reasonable doubt regarding the prosecution case.

46. It is pertinent to note that, according to the prosecution, the alleged acts of misappropriation were committed during the period from 01.03.2010 to 31.07.2010. However, the complaint at Ex.P-1 came to be lodged by C.W-1 only on 09.05.2016. Thus, there is an inordinate delay of more than six years in setting the criminal law into motion. A careful perusal of Ex.P-40 discloses that it is completely silent as to the reasons for such extraordinary delay. Even the IO has not offered any explanation during the course of his evidence regarding the belated lodging of the complaint.

47. It is a settled principle of law that mere delay in lodging the FIR is not, by itself, fatal to the prosecution. However, where the delay is inordinate and remains wholly unexplained, the Court is required to scrutinize the prosecution evidence with greater care and caution. AT this stage, it relevant to rely on a decision of the Hon'ble Supreme Court in **Sekaran v. State of T.N., (2024) 2 SCC 176 decided on 12-12-**

2023 has held that, an unexplained delay in lodging the FIR may cast a serious doubt on the genuineness of the prosecution case and may indicate embellishment or afterthought, depending upon the facts and circumstances of each case.

48. In the present case, the prosecution has failed to furnish any explanation for the extraordinary delay of more than six years in lodging the complaint. Such an unexplained delay assumes significance when the entire case depends upon documentary evidence and allegations of forged thumb impressions and misappropriation, but the IO has also failed to secure the best scientific evidence by obtaining expert opinion from the FSL.

49. Moreover, the accused has relied upon Ex.D-1 to contend that a sum of Rs.13,595/- had already been recovered from him. However, despite the alleged recovery, the complainant lodged the complaint only after a lapse of nearly six years, as visible from Ex.P-1.

There is absolutely no explanation on record for such an inordinate delay. The prosecution has also failed to place any material to justify or explain why the complaint was not lodged immediately after the alleged recovery. This unexplained delay creates a serious doubt regarding the prosecution case.

50. As discussed supra, the entire prosecution case rests upon documentary evidence i.e., forged signatures and thumb impressions of the beneficiaries. The prosecution has specifically alleged that the accused dishonestly withdrew the amounts by forging or misusing the thumb impressions and signatures of the account holders. Under such circumstances, it is the duty of the IO to obtain the specimen signatures and thumb impressions of the accused and to send the disputed as well as the admitted signatures/thumb impressions of the beneficiaries to the FSL for scientific comparison.

51. No expert opinion has been obtained to establish that the disputed thumb impressions or signatures were made by the accused. The identity of the disputed thumb impressions and signatures being the very foundation of the prosecution case, but they failed to send the same to Forensic.

52. The **Hon'ble Supreme Court in C. Kamalakkannan v. State of T.N., (2025) 4 SCC 487 decided on 03.03.2025** has held that in cases resting upon allegations of forgery of handwriting or signatures, the prosecution must prove the foundational documentary evidence, and expert evidence under Section-45 of the Evidence Act assumes importance where the identity of the handwriting or signatures is in dispute. In the absence of scientific evidence, it would be unsafe to record a finding of guilt.

53. Therefore, the failure of the prosecution to send the admitted and disputed signatures/thumb impressions for forensic examination creates a serious

lacuna in the prosecution case. Thus, this Court is of the considered opinion that the prosecution has failed to establish the charges against the accused beyond reasonable doubt, entitling the accused to the benefit of doubt.

54. As discussed supra, the prosecution has failed to establish the essential ingredients of the offence punishable under Section 409 of the Indian Penal Code beyond all reasonable doubt. The evidence adduced by the prosecution suffers from material inconsistencies and serious omissions. The prosecution has failed to establish the alleged forgery of the disputed thumb impressions and signatures through scientific evidence by obtaining an expert opinion from the FSL. There is also an unexplained delay of more than six years in lodging the complaint. It is a cardinal principle of criminal jurisprudence that the prosecution must prove its case beyond all reasonable doubt, and the

benefit of every reasonable doubt must necessarily enure to the accused. Since the prosecution has failed to prove the charge under Section-409 of the Indian Penal Code by cogent, reliable and convincing evidence, this Court is of the considered opinion that the accused is entitled to the benefit of doubt. Accordingly, the **point No.1 for determination is answered in the 'Negative'.**

55. **POINT NO.2:** For foregoing reasons, this court proceeds to pass the following :

O R D E R

Acting under Section-248(1) of Cr.P.C., 1973, the accused is hereby acquitted for the offences punishable under Section-409 of Indian Penal Code.

Bail bond and surety bond of the accused shall stands cancelled.

(Dictated to the Stenographer directly, typed by him, Judgment corrected and signed by me, then pronounced by me in the open Court on this the 04th Day of August-2026)

(Smt.RUPA.C.VAGGA)
Prl., Civil Judge and JMFC Court., Sindhanur.

:: **A N N E X U R E** ::

LIST OF THE WITNESSES EXAMINED BY THE PROSECUTION:

P.W-1	:	Amaresh
P.W-2	:	Rajasab
P.W-3	:	Bibijan
P.W-4	:	Farida Begum
P.W-5	:	Parijan
P.W-6	:	Murugesh
P.W-7	:	Raviprabhu
P.W-8	:	P.Chidananda
P.W-9	:	Deepak

LIST OF THE DOCUMENTS EXHIBITED FOR THE PROSECUTION:

Ex.P-1	:	Complaint
Ex.P-2	:	Postal register book
Ex.P-3 to 10	:	Money order receipts
Ex.P-11 & 12	:	Death Extracts
Ex.P-13 to 18	:	Delivery slip of money
Ex.P-19	:	Letter money frauds by accused
Ex.P-20	:	Panchanama
Ex.P-21	:	Seizure panchanama
Ex.P-22 to 39	:	Statements
Ex.P-40	:	FIR
Ex.P-41	:	Letter dtd., 11.05.2016
Ex.P-42	:	Postal cover
Ex.P-43	:	Transfer order of accused

LIST OF THE MOS MARKED ON BEHALF OF THE PROSECUTION:

-Nil-

LIST OF THE WITNESSES EXAMINED FOR DEFENCE:

-Nil-

LIST OF THE DOCUMENTS EXHIBITED FOR DEFENCE:

Ex.D-1 : Certificate of credit.

LIST OF THE MOS MARKED ON BEHALF OF DEFENCE:

-Nil-

Digitally signed by RUPA C VAGGA
Location: Prl.,Civil Judge and JMFC-Sindhanur

(Smt.RUPA.C.VAGGA)
Prl., Civil Judge and JMFC Court., Sindhanur.