

(2025) 12 KL CK 1841

In the High Court Of Kerala

Case No : Criminal Appeal No. 1126, 1146 Of 2010

Ganesh Gopal @ G.Gopal

APPELLANT

Vs

Central Bureau Of Investigation Represented By The Standing
Counsel

RESPONDENT

Date of Decision : 19-12-2025

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 420, 511
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 15
Insurance Act, 1938 — Section 64VB, 64VB(1), 64VB(2)

Citation : (2025) 12 KL CK 1841

Hon'ble Judges : A.Badharudeen, J

Bench : Single Bench

Advocate : P.Vijaya Bhanu, M.Revikrishnan, Sreelal N.Warrier

Final Decision : Dismissed

Judgement

A.Badharudeen, J

1. Accused Nos.1 and 3 in C.C.No.03/1999 on the files of the Special Court, (SPE/CBI)-II, Ernakulam are the appellants herein and they impugn the conviction and sentence imposed against them, as per judgment dated 01.06.2010.

2. Heard the learned counsel for the appellants/accused Nos.1 and 3 as well as the learned Special Public Prosecutor. Perused the judgment under challenge.

3. In this matter, the prosecution alleges commission of offences punishable under Section 120B r/w Section 420 of the Indian Penal Code (for short, 'the IPC' hereinafter), and Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act, 1988' hereinafter), and Section 13(2) r/w Section 15 of the PC Act, 1988, as well as under Section 420 r/w Section 511 of the IPC, by the accused. The prosecution case is that the 1st accused, who was employed as Assistant Branch Manager, New India Assurance Company Ltd., Kalpetta Branch, from 30.08.1990 to 30.12.1996, hatched a criminal conspiracy with the 3rd

accused during the period from 29.07.1994 to 30.07.1994 to cheat the New India Assurance Company Ltd. in relation to insurance claims and to obtain pecuniary advantage for the 2nd accused, Assam Brooks Exports Ltd., 1 Sheksphere Sarani, Calcutta, represented by Sri.Sidharth Rampuria, Director - a company engaged in the purchase, sale and export of tea and having a branch office at Willingdon Island, Cochin and to commit criminal misconduct. According to the prosecution, the conspiracy was formed with a view to misappropriate the funds of the insurance company in the names of accused Nos.2 and 3 by fraudulently inserting endorsements in the insurance policies taken by accused Nos.2 and 3, thereby covering FST risk after making such illegal endorsements.

4. The Special Court ventured the matter. PW1 to PW31 were examined and Exts.P1 to P75 and MO1 were marked on the side of the prosecution. Exts.D1 to D47 were marked on the side of the defence.

5. On analysis of the evidence, the Special Court found that the accused Nos.1 and 3 committed offences punishable under Section 120B r/w Section 420 of the IPC as well as under Section 13(1)(d) of the PC Act, 1988. Further, the 1st accused also committed offence punishable under Section 13(2) r/w Section 15 of the PC Act, 1988. The 3rd accused also committed offence punishable under Section 420 r/w Section 511 of the IPC. Accordingly, accused Nos.1 to 3 were sentenced as under:

"A1 and A3 are sentenced to undergo SI for six months and A2 company to pay a fine of Rs.10,000/- (Rupees ten thousand only) for the offence punishable under Sections 120(B) IPC read with Section 420 IPC and Section 13(1)(d) of the P.C Act. A1 is sentenced to undergo SI for one year and to pay fine of Rs.10,000/- (Rupees ten thousand only) with default sentence of three months for the offence under Section 13(2) read with Section 15 PC Act. A3 is sentenced to undergo SI for one year and to pay fine of Rs.10,000/- (Rupees ten thousand only) with default sentence of three months and A2 is sentenced to pay fine of Rs. 15,000/-(Rupees fifteen thousand only) for the offence under Section 420 read with Section 511 IPC. It is enough if A1 and A3 suffer the substantive sentence of imprisonment concurrently."

6. While assailing the conviction and sentence, the learned counsel for the 1st accused argued that the 1st accused, who was the Branch Manager of the New India Assurance Company Ltd., Kalpetta Branch, was unfairly blamed for the wrong committed by the higher officials. It is further contended that the 2nd accused - Company had filed a civil suit claiming the amounts covered by Exts.P2 and P3 policies, to which, Exts.P5 and P6 endorsements were made subsequently. The learned counsel vehemently argued that, in this case, two specific aspects assume significance. The first point urged is that the 1st accused had visited Willingdon Island, and Ext.P19 is the TE Bill, evidencing his visit. It is contended that this visit was as authorized by PW1, and the 1st accused had gone there only on the basis of a fax message purportedly issued by PW2, directing him to meet the 3rd accused and discuss the insurance matter.

According to the learned counsel for the appellants, insofar as Exts.P5 and P6 endorsements are concerned, the issuance of such endorsements was well within the powers of PW1, and therefore, the 1st accused issued Exts.P5 and P6, namely, the Fire Extra endorsement dated 01.08.1994 and the endorsement adding Peirce Leslie Godown No.1. It is further contended that the issuance of these endorsements without inspection or regional approval, and the adjustment of the excess premium, would not by itself constitute an offence. According to the learned counsel, the entire case in this matter rests on Ext.D5 (the proposal for the policy), and on the issuance of Ext.P3 (the policy) and Ext.P6 (the endorsement). Specifically, it is argued that the prosecution case depends upon Ext.P3 and the subsequent Ext.P6 endorsement, which purportedly extended FST cover in respect of Peirce Leslie Godown No.1. In this connection, the learned counsel for the 1st accused pointed out that Ext.D5 is the photocopy of the application submitted by the 3rd accused on behalf of the 2nd accused Company for issuance of the policy, and in column No.6, FST coverage was opted for, though the said coverage was not given at the time of issue of policy. It is further submitted that, subsequently, the 3rd accused filed Ext.D8 application on 30.07.1994, and based on that request, Ext.P6 endorsement was issued to extend FST cover. According to the learned counsel, the additional premium was treated set off against the excess premium paid earlier and by paying additional amount for the FST coverage. It is pointed out that, although PW1 deposed in his chief examination that the 1st accused had no authority to issue Exts.P5 and P6 endorsements, the learned counsel for the 1st accused contended that Ext.D2 letter of authority would clearly show that the 1st accused was empowered to make such endorsements. Thus, the sum and substance of the argument advanced by the learned counsel for the 1st accused is that Exts.P5 and P6 endorsements were issued in the exercise of the authority conferred on him, acting upon the application subsequently filed as Ext.D8. Therefore, according to the learned counsel, the prosecution miserably failed to establish the commission of the alleged offences by convincing and cogent evidence, and the evidence on record is not free from doubt.

7. The learned counsel for the 3rd accused also shared the argument of the 1st accused and contended that the evidence available are quite insufficient to find guilt of the 3rd accused.

8. The learned Special Public Prosecutor for the CBI submitted that, in this case, the original policies were issued as Exts. P2 and P3 on the basis of Ext.P1 proposal. It is further submitted that the endorsements in Exts.P5 and P6 were made on 01.08.1994 acting on Ext.D8 proposal, by which, Peirce Leslie Godown No.1 was added without inspection or the requisite regional approval, and by enhancing the sum assured while granting FST coverage. Subsequently, the 1st accused issued Ext.P21 letter dated 09.08.1994 to the 3rd accused, confirming that the endorsements would be effective from the dates of the original policies, thereby enabling submission of a false claim under Ext.P4 (fire claim form). It is pointed out that, as per Ext.P19, even before a decision was taken on Ext.D8,

which was filed on 30.07.1994, the 1st accused had visited Willingdon Island on 29.07.1994, and Ext.P19 (the TE bills) would establish the same. It is pointed out that, in view of Exts.P5 and P6 endorsements, when the claim for flood damage was submitted by the 2nd accused through the 3rd accused, the 1st accused prepared Exts.P16 and P17 Fire Special Claim Reports, recommending an amount of Rs.49.82 Lakh on the basis of the manipulated coverage. It is submitted that, as per Ext.P61 Meteorological Register, heavy rainfall was recorded on 29.07.1994, 30.07.1994, and 31.07.1994. According to the learned Special Public Prosecutor, before making the endorsements in Exts.P5 and P6, there ought to have been a proper verification, which was not carried out.

9. Having considered the rival submissions, the points arise for consideration are:

(i) Whether the Special Court was right in holding that accused Nos.1 and 3 committed offence punishable under Section 120B r/w Section 420 of the IPC?

(ii) Whether the Special Court was right in holding that accused Nos.1 and 3 committed offence punishable under Section 13(1)(d) of the PC Act, 1988?

(iii) Whether the Special Court was right in holding that the 1st accused committed offence punishable under Section 13(2) r/w Section 15 of the PC Act, 1988?

(iv) Whether the Special Court was right in holding that the 3rd accused committed offence punishable under Section 420 r/w Section 511 of the IPC?

(v) Whether the verdict would require interference?

(vi) The order to be passed?

Point Nos.(i) to (vi):

10. The prosecution relied on the evidence of PW18 Sri.Badri Prasad, who was examined to speak about the procedure relating to risk assessment and verification prior to the issuance of policies and endorsements. He deposed that he was serving as the Risk Engineer of the New India Assurance Company from May 1998 to 2008. He stated that he had inspected the godown on receiving the claim application on 25.03.1993, prior to the issuance of Exts.P2 and P3 policies. However, with respect to the issuance of Exts.P5 and P6 endorsements, he deposed that no methodology or procedure was adopted to assess the additional risk, nor was any verification conducted to ascertain whether any incident had occurred on or prior to the date of the application seeking such enhancement of coverage.

11. The learned Special Public Prosecutor submitted that, as per the evidence of PW2 Smt.Alice Vaidyan, who had worked as Assistant Manager at the Regional Office of the New India Assurance Company, Exts.P5 and P6 endorsements were beyond the powers of the 1st accused and ought to have been issued only from the Regional Office.

12. PW3, the Godown Keeper also was examined to speak about the condition and features of the godown, for which, FST coverage was given and the circumstances relating to the alleged damage. PW3 deposed about the lie, location and level of the godown, the existence of shutters and a hump as a precaution to prevent the entry of rainwater, the manner in which the tea dust of the 2nd accused Company was stocked therein, and the damage caused to the said tea dust during the heavy rainfall in the last week of July 1994. He also testified that Peirce Leslie Godown was included in Ext.P6 endorsement.

13. PW5, Sri.Ashok Kumar was further examined to prove the communications received from the 2nd accused, the deputation of the 1st accused to Willingdon Island, and the preparation and processing of the relevant T.E. bills and Special Claim Reports. PW5 is the Principal, Chavara Institute of Management Studies, Calicut and had earlier served as the Senior Divisional Manager of the New India Assurance Company, Calicut, during the period 1992 to 1998, under which the Kalpetta Branch also fell. He identified the 1st accused, who was present before the Special Court and stated that he had been the Assistant Branch Manager in Kalpetta and was in charge of the branch during the relevant period. PW5 proved Ext.P25, the telex message received by him on 27.07.1994 from the 2nd accused Company, bearing his initials, by which the 3rd accused, the General Manager of the 2nd accused Company, requested that a senior and responsible officer be deputed to meet him to sort out an issue relating to insurance coverage of tea stored at the Central Warehouse, Cochin. Pursuant to this request, PW5 deputed the 1st accused and simultaneously informed the Regional Office, Ernakulam, under Ext.P26 message, and sent Ext.P27 message to PW2 on the same day. Exts.P18 and P19, the T.E. bills submitted by the 1st accused, were passed by PW5. Ext.P28 is the T.E. bill of PW5 himself, showing that he had reached Ernakulam on 08.08.1994 and left the next day. Exts.P16 and P17 Fire Special Claim Reports relating to the 2nd accused Company, bear the signature of the 1st accused, indicating that they were prepared by him, and also bear the signature of PW5, showing that the reports were placed before him.

14. According to the learned counsel for the appellant/1st accused, the visit of the 1st accused to Willingdon Island was duly authorised by his senior officers, and the encashment of Exts.P18 and P19 T.E. bills in respect of the said visit is not in dispute. The crucial question to be considered in this case is whether Exts.P5 and P6 endorsements were made in Exts.P2 and P3 policies issued on the basis of Ext.P1 proposal on 01.08.1994, by which, Peirce Leslie Godown No.1 was added without inspection or the requisite regional approval and by providing the sum assured while granting FST coverage.

15. Here, acting on Ext.D8 proposal, Exts.P5 and P6 endorsements were made in Exts.P2 and P3 policies granting FST coverage and it was informed by the 1st accused as per Ext.P21 letter, dated 09.08.1994 to the 3rd accused, confirming that the endorsements would be effective from the dates of the original policies. The prosecution case is that, Ext.D8 proposal was made after destruction of the

tea dust kept in Peirce Leslie Godown No.1, which was not covered by Exts.P2 and P3 policies due to flood on 30.07.1994 because of heavy rainfall on 29.07.1994. Even though it is argued by the learned counsel for the 1st accused/appellant that a civil suit had been filed by the 2nd accused Company when the claims under Exts.P2 and P3 policies, inclusive of Exts.P5 and P6 endorsements, were repudiated by the Insurance Company on the ground of falsification after the flood, Ext.P75, copy of the judgment in O.S.Nos.108/2002 and 109/2002, would show that both the suits were dismissed on merits with costs in favour of the Insurance Company. No appeals therefrom have been filed so far, and therefore, the denial of the said claims has attained finality. As per the evidence given by PW3 and PW6, the 3rd accused, Ganesh Gopal of Assam Brooks Exports Ltd., came to Peirce Leslie Godown No.1 and witnessed the damage caused to the tea dust on account of the heavy rainfall on 29.07.1994 and the consequential flood on 30.07.1994. In this matter, Ext.D8 dated 30.07.1994 given by the 3rd accused to the 1st accused to include the godown which was fully damaged by flood and the 1st accused issued Exts.P5 and P6 endorsements covering the risk of Peirce Leslie Godown No.1 which was already fully damaged due to flood. Even though it is argued by the learned counsel for the 1st accused/appellant that the 1st accused was fully empowered to make Exts.P5 and P6 endorsements by collecting additional premium, any such power vested in the 1st accused to make those endorsements had to be exercised only after verifying the physical condition of the insured structures before effecting the endorsements. If there had been no conspiracy among accused Nos.1 to 3, as alleged, Exts.P5 and P6 endorsements would not have been made by the 1st accused in respect of Peirce Leslie Godown No.1, acting on the proposal dated 30.07.1994, in a case where the tea dust stored in the godown had already been fully destroyed on 29.07.1994 and 30.07.1994 due to heavy rain and flood.

16. That apart, it is interesting to note that, based on Exts. P5 and P6 endorsements, when the claim for flood damage was submitted by the 2nd accused through the 3rd accused, the 1st accused, without conducting any enquiry, prepared Exts.P16 and P17 Fire Special Claim Reports recommending an amount of Rs.49.82 Lakh on the basis of the said endorsements, without verifying whether Peirce Leslie Godown No.1 had in fact been subjected to flooding and whether the tea dust stored therein had been totally damaged. Ext.P61 Meteorological Register would also justify the allegation of the prosecution that there was heavy rainfall at the Peirce Leslie Godown No.1 on 29.07.1994, 30.07.1994 and 31.07.1994.

17. In the instant case, Ext.P21 communication was issued by accused Nos.1 to 3 stating that the risk of Peirce Leslie Godown No.1 relates back to the date of issuance of policy. In this connection, as pointed out by the learned counsel for the accused, Section 64VB of the Insurance Act, 1938 assumes significance. Section 64VB states that "no risk to be assumed unless premium is received in advance". Section 64VB(1) provides that no insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily

payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner. Section 64VB (2) provides further that for the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer. Thus, it is emphatically clear that as per Section 64VB(2), assuming risk more than what is covered in the previous policy is permissible subject to payment of additional premium and the risk may be assumed not earlier than the date on which premium has been paid in cash or by cheque to the insurer. Thus, payment of premium is decisive in determining the date of coverage and the same is undoubtedly the date of remittance of the premium. Here, Ext.D8 proposal was on 30.07.1994 and Exts.P5 and P6 endorsements on getting additional premium was issued after 30.07.1994 and as per Ext.P21 letter, the 1st accused informed the 3rd accused that the risk would be covered starting from the date of the policy so as to cover the damages on 29.07.1994 and 30.07.1994, for which, no premium was actually paid before these dates. In fact, this course of action is not legally permissible.

18. Thus, on a re-appreciation of the evidence, it emerges that the issuance of Exts.P5 and P6 endorsements and Ext.P21 letter, showing coverage of Peirce Leslie Godown No.1 prior to the date of payment of premium (i.e. from the date of issue of Exts.P2 and P3 original policies), was the result of a conspiracy hatched among accused Nos.1 to 3 with a view to unlawfully enrich the 3rd accused, though the amount was not disbursed due to the intervention of higher officials, on detecting this falsity. If so, the Special Court was right in finding that accused Nos.1 to 3 have committed offences punishable under Section 120B r/w Section 420 of the IPC as well as under Section 13(1)(d) of the PC Act, 1988. Similarly, the Special Court was right in holding that the 1st accused also committed offence punishable under Section 13(2) r/w Section 15 of the PC Act, 1988. Accused Nos.2 and 3 accused also committed offence punishable under Section 420 r/w Section 511 of the IPC. Therefore, the conviction does not require any interference.

19. Coming to the sentence, the maximum sentence imposed by the Special Court on the appellants/accused Nos.1 and 3 is one year and the 2nd accused - Company was sentenced to pay a fine of Rs.10,000/-. Therefore, the sentence is found to be reasonable. Hence, no reduction in sentence is found necessary. Accordingly, the sentence also is confirmed.

In the result, both the appeals fail and are accordingly dismissed confirming the conviction and sentence imposed by the Special Court against the appellants/accused Nos.1 and 3. The order suspending sentence and granting bail to the appellants/accused Nos.1 and 3 stand cancelled and the bail bonds executed by them also stand cancelled. The appellants/accused Nos.1 and 3 are directed to

surrender before the Special Court, forthwith to undergo the sentence, failing which, the Special Court is directed to execute the sentence, without fail.

Registry is directed to forward a copy of this judgment of the Special Court, forthwith, without fail, for information and execution of the sentence against all the accused..