IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 29TH SEPTEMBER 2006 / 7TH ASWINA 1928

CRL.A.No. 1102 of 2005()

CC.16/2003 OF SPECIAL JUDGE (SPE/CBI-I), ERNAKULAM

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APPELLANTS/ACCUSED:

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1. K.K.VIJAYACHANDRAN, ASSISTANT,
   PASSPORT OFFICE, KOZHIKODE, S/O.LATE APPUTTY,
   R/O. DIVAM, NANOTH PARAMBA, KUTHIRAVATTOM P.O.,
   KOZHIKODE-673 016.

2. P.P.NAUSHAD, PROPRIETOR,
   M/S.KINGS INTERNATIONAL, TOURS & TRAVELS,
   5/215, B.T.BUILDING, BYE-PASS ROAD,
   ERANHIPALAM, KOZHIKODE, S/O.KHADER,
   R/O.PUTHIYAPURAYIL HOUSE, KALIKANDIPARAMBU,
   OLAVANA P.O., KOZHIKODE.

BY ADV. SRI.P.JACOB VARGHESE
SMT.V.A.GANGUJA
SRI.V.MANOJ KUMAR
SRI.VIVEK VARGHESE P.J.
SRI.GEO PAUL

RESPONDENTS:

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1. THE SUPERINTENDENT OF POLICE,
   CBI-SPE, COCHIN-17.

2. STATE OF KERALA, REPRESENTED BY
   THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY ADV. SRI.S.SREEKUMAR, SC FOR CBI FOR R1

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 29/09/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.HEMA, J.

CRL.A.NO.1102 of 2005

Dated this the 29th day of September, 2006

JUDGMENT

The appellants, two in number, were charge-sheeted by respondent-CBI for offences under Section 120-B IPC read with Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 ('the Act', for short) and Section 465 of Indian Penal Code (`IPC', for short). Both of them were convicted and sentenced under the said sections by learned Special Judge (SPE/CBI)('the Special Judge', for short). This appeal is filed challenging such conviction and sentence.

FACTS, BRIEFLY:

2. According to prosecution, first accused was working as an 'Assistant' in the Passport Office in the 'passport writing section'. Second accused was the proprietor of a travel agency. In September, 2002 they allegedly conspired and agreed to get a fake passport issued to PW1, by incorporating therein a wrong date of birth of PW1, to facilitate PW1 to get a job abroad. Accordingly, first accused, on 9.9.2002, being a public servant, by corrupt and illegal means, by abusing the position as a public servant, forged signatures of PW10 in Exhibit P4-passport, affixed the seal of the passport officer, which was not then in use and made a false document, with intent to support a false claim. In

pursuance of the alleged criminal conspiracy, first accused also allegedly prepared Ext. P4 manually, by falsely noting a wrong date of birth of PW1. The accused thereby, allegedly obtained Ext. P4-passport, a valuable thing for PW1 and committed the various offences.

3. PWs 1 to 29 were examined and Exhibits P1 to P53 were marked on the side of the prosecution. The accused examined DW1 and marked Exhibits D1 to D4. The court below held:

> i) that accused 1 and 2 hatched a criminal conspiracy for creating Ex.P4 passport with a false date of birth of PW1 than what is contained in the original passport, Ex.P1;
>
> ii) that the first accused, in pursuance of such conspiracy dishonestly and by abusing his official position as a public servant, by corrupt or illegal means, wrote Exhibit P4 and forged the signatures of PW10 in Ex.P4;
>
> iii) that first accused handed over Ex.P4 passport to second accused, in pursuance of such conspiracy; and
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> iv) that all the items marked as 'Q1 to Q4' in Ex.P4-passport were written by first accused.

On the basis of the above findings, mainly, both the accused were convicted for the various offences including criminal

conspiracy and forgery falling under Sections 120-B and 465 IPC.

4. 'Criminal conspiracy' is defined under Section 120-A IPC as follows:

> **"S.120-A. Definition of criminal conspiracy**.— When two or more persons agree to do, or cause to be done,—
>
> (1) an illegal act, or
>
> (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:
>
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.
>
> *Explanation.*—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

A reading of section 120-A IPC reveals that to constitute the offence of criminal conspiracy, there must be an agreement between two or more persons. Such agreement must be, to do or cause to be done, a particular act or acts of the nature specifically referred to in the said section. Such acts may be either illegal as stated in sub-clause (1) of section 120-A IPC or, it may not be illegal. If such act is not illegal by itself, sub-clause (2) of section 120-A IPC requires that such act is to be done or caused to be done, by illegal means.

5. The proviso to Section 120-A lays down that no agreement, except an agreement to commit an offence shall

amount to a criminal conspiracy, unless some act besides the agreement is done by one or more parties to such agreement, in pursuance thereof. As per the explanation, it is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object. Thus, if the above ingredients in section 120-A are satisfied, an agreement between two or more persons can be designated 'criminal conspiracy'.

6. As far as criminal conspiracy is concerned, the factum of “agreement” is the most relevant factor constituting the offence. The court must be satisfied that the accused has entered into an agreement of the nature referred to in Section 120A IPC on a particular day or during a particular period at a particular place or places and there was meeting of minds of two or more persons in a particular manner. But, in this case, there is no evidence to show at which place and what manner the accused 1 and 2 have come to an offending agreement. Where exactly the offence is committed and in what manner the offence of criminal conspiracy was committed are not clear even from the charge framed by the court or entering into an agreement, the parties can either personally meet at a particular place or contact each other in some manner as they may please by phone, letter or by any other mode. But, in this case, none of the details are discernible from the charge as to how the accused entered into the objectionable agreement as referred to in Section 120B IPC.

7. Any offence is committed on a particular day or during a period at a particular place or places in a particular manner. Such details should be ascertained at least before framing charge and stated in the charge. It is a legal requirement also. A joint reading of Section 211 and Section 212 of the Code reveals that the charge "SHALL" contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged. This requirement is mandatory and the omission to mention the details not only violates mandatory provision of law, but also prejudices the accused.

8. To avoid making any omissions while framing charge, Form No.32 of Schedule II of the Code and the relevant provisions of the Code relating to charge shall be followed by the court. The court has to fill up the relevant details in the form of charge under Section 120B IPC which is extracted below (Vide Dr. Sir Hari Singh Gour's Penal Law of India 11th Edition, Volume at page 1165):

> "I (name and office of the Magistrate, Sessions Judge, etc.) hereby charge you (name of the accused) as follows:"
>
> "That you, on or about the .....day of ..... at ..... agreed with (name of the co-consiprator) to do (or cause to be done) an illegal act, to wit.....(or

an act to wit..... which is not illegal, by illegal means to.....) and that you did some acts to wit.....besides the agreement in pursuance of the said agreement to commit the offence of ..... punishable with death (or imprisonment for life, etc.) and thereby committed an offence punishable under Sec.120-B of the Indian Penal Code; and within my cognizance."

"And I hereby direct that you be tried on the said charge."

9. Thus, the change must contain the date or period during which and the place at which, the accused agreed with the co-conspirator to do or caused to be done the particular act which is either illegal, or not illegal. If not illegal, by illegal means in a particular way. It shall also contain the particular act or acts which he has allegedly done, besides the agreement. But, the court below does not seem to have made any probe into these details. The court below does not seem to have ascertained what are the inevitable factors which are necessary to constitute the offence of criminal conspiracy under Section 120-B IPC. Neither before the accused was called upon to answer the charge of 'criminal conspiracy' nor before convicting the accused for such offence, such an exercise was not done.

10. The charge does not contain the relevant details which are to be stated therein as per Section 211 read with Section 212 of Cr.P.C. The offence of criminal conspiracy is an

independent offence and a person cannot be held guilty of such offence without proof of all the ingredients of section 120A IPC. It is not sufficient if the court vaguely states in the charge that the accused conspired to commit a particular act etc. No doubt, the lower court has taken strenuous effort in elaborately and painstakingly analysing the voluminous evidence in meticulous details. But, unfortunately, learned Special Judge has lost sight of the essentials which are to be looked into in an offence of criminal conspiracy.

11. When, where, at which place, on which date or during which period, the accused allegedly agreed to do an act or cause an act to be done and in what manner etc. they entered into a particular type of objectionable agreement (which can be designated as criminal conspiracy) are not looked into by the court below before convicting the accused for criminal conspiracy. No discussion is made in the judgment, whether any of the ingredients of the offence under Section 120-A IPC are proved by the prosecution. In short, the judgment is totally bereft of any finding on the ingredients of Section 120B IPC to base a conviction under the said Section.

12. It is also relevant to note that there is absolutely nothing in evidence to indicate that accused 1 and 2, at any time, on any date had any occasion to meet each other or agree to commit any offence, as alleged. No witness gave evidence that the accused 1 and 2 had any acquaintance, friendship or relationship of any kind at all with each other or that they had access to each other so that it may probable for

them to meet on some date or at some place and to enter into any agreement by some means to do or cause to be done, any act or acts which would constitute offence of 'criminal conspiracy'. There is neither oral or documentary evidence to prove at least such possibility. No direct or circumstantial evidence is adduced from which the court can infer that the accused 1 and 2 could have entered into a criminal conspiracy, as alleged. In short, evidence is totally lacking to prove any of the ingredients of offence under Section 120-A IPC.

13. Learned counsel for the appellants, however pointed out that the sole reason which persuaded the court to convict the accused under Section 120-B IPC appears to be that both of the accused engaged the same lawyer during trial. According to them, they could sift out only such an observation from the whole text of the impugned judgment. Needless to say, the appearance of the same lawyer for the alleged conspirators during trial is no ground at all, to conclude that the accused committed criminal conspiracy, as alleged by the prosecution. The question is not whether they 'conspired' to engage the same lawyer to defend them or not. What is relevant is the act committed by the accused prior to the laying of the charge and their appearance in court.

14. The prosecution can prove the essential facts to constitute offence under Section 120-A IPC either by direct or circumstantial evidence or by both. Of course, because of the secret nature of the offence committed, it may be difficult to

procure direct evidence and hence, prosecution shall produce sufficient circumstantial evidence to prove the offence. From the proved circumstances, the court may be able to infer whether the offence of criminal conspiracy is committed or not. But, learned Standing Counsel for the respondent-CB1, strongly argued that it may not be possible to procure any evidence to prove criminal conspiracy' since the offence of 'criminal conspiracy' is committed in utmost secrecy. According to him, the court has to infer that the alleged offence was committed. With due respect, I can only reject this argument. The particular day/period, time and place at which and the manner in which the offence was committed cannot be presumed by the Court from vacuum. The secret nature of the offence is no excuse for the prosecution for not placing the relevant particulars of the offence such as date, time, place etc. before court. Several other offences like theft, murder etc. are also committed in secrecy and the prosecution is bound to allege the date/period during which the incident occurred and the place where it happened and also the manner in which it was committed.

15. The fact that an offence is committed in secrecy is not all a reason to justify failure on the part of the prosecution to allege and prove the relevant particulars of the offence. It is also not a justifiable answer either for any court to convict a person, in the absence of any such details, based on any hunches or intuitions or even by any subsequent conduct of the accused after registration of the crime or during trial. The

offence of criminal conspiracy also shall be proved beyond reasonable doubt, by direct (if available) or by circumstantial evidence on each of the ingredient of the offence. But, the offence of 'criminal conspiracy' is not proved in this case as required and hence the conviction for offence under Section 120B IPC is unsustainable.

16. **FORGERY:** Now, coming to offence of forgery falling under Section 465 IPC, specific allegation is made against first accused. As far as second accused is concerned, there is only a vague allegation that he “conspired” to commit forgery. He is called upon to answer the charge of forgery only as a co-conspirator. Since I have already held that criminal conspiracy is not established in this case, second accused cannot be found guilty of offence under Section 465 IPC read with Section 120B IPC.

17. Under the head of forgery, the case against first accused is: i) that on 9.9.2002, he forged the signatures of PW10 in Ext.P4 passport, ii) that in September 2002 he affixed the seal of the passport office, PW10 (which was not in use during the relevant time) on Ext.P4, to forge a fake passport for PW1 with intent to support a false claim (vide “secondly” and “fourthly” in the court-charge), iii) that dishonestly prepared Ext.P4 passport manually, falsely showing the date of birth of PW1 and false details in the name of PW1. These are the only specific instances of forgery which, the accused is called upon to answer, as per the charge. Hence, I shall confine my

discussion to the above specific instances of forgery mentioned in the charge.

18. To prove the allegations relating to forgery, prosecution mainly relies upon the evidence of PW10 (Passport Officer),PW 29 (handwriting expert) and the reports of the handwriting expert, which are marked as Exts.P50 to P53. The case of the prosecution is that the seal of PW10 which was not in use at the relevant time, ie., in September 2002, was affixed by first accused on Ext.P4 to commit forgery. There is no direct evidence to prove this fact. But, PW10 was examined to prove that first accused might have used the said seal on Ext.P4. PW10 deposed that she was working as the Passport Officer during the relevant period and the first accused was working as an 'Assistant' in the passport writing section. She stated that the seal which is seen affixed on Extd.P4 was being used for issuing passports from passport office only till April, 2002.

19. According to PW10, the said seal was in the custody of first accused who was in charge of passport writing section. Except a bare statement made by PW10 in court, there is absolutely nothing in evidence to show that first accused was in custody of the seal at any time. No evidence, either oral or documentary, is forthcoming to support this version of PW10. It is also to be noted that it is only in the court that PW10 came forward with such a statement for the first time. It was brought out that she did not state the said fact to the CBI

officials. PW10 stated that the Investigating Officer did not ascertain any such details from her and hence the omission.

20. PW10, the Passport Officer stated in court that the CBI officials did not make any request to her to show the seal and hence she did not show it to them. It is quite strange and unusual for an Investigating Officer to make such vital omissions. In any case, where any material object is used for commission of an offence, there will be investigation as to how and under what circumstances the accused came into possession of the same. Steps will also be made to seize such object. But, this is a peculiar case where the Investigating Officer did not make any such effort or even question the Passport Officer, PW10 to find out whether the seal was in possession of the accused during the relevant time or whether he had any access to the seal during the relevant period.

21. The possession of the seal by first accused or his accessibility to the same is a very relevant and strong incriminating piece of evidence against the accused. But no investigation was done to find out who was in custody of the seal during the relevant period. According to PW10, the seal was used only till April 2002 but the offence was committed after five months in September 2002. So, it is the duty of the investigating officer to find out in whose custody the unused seal was kept during the five months and how the accused obtained possession of the same, for using it for committing forgery.

22. The relevant seal, being a very important object (since it is used for issuing passports) normally is expected to be handled at the passport office in a very responsible way. If it is stopped being used, it will normally be surrendered, destroyed or kept in safe custody. There must be document also to prove entrustment of the seal to any particular official. But, there is no investigation into this and the seal was not seized nor produced in court. Had first accused been in custody or possession of the seal, its seizure from his custody would have satisfied the court about the complicity of the accused in the crime. But, there is also no explanation for the failure to seize the seal or even for the omission to question the Passport officer (PW10) regarding this. It is not understood why the Investigating Officer did not make any investigation into the existence or availability of the seal or the probable custody or accessibility of the same by the first accused. In such circumstances, it is even doubtful whether the seal was actually available at all in the Passport Office with first accused.

23. The first accused contended that forgery, if any, might have been committed by somebody from outside the office. It is argued by learned counsel appearing for first accused that it is unlikely that anybody who was working in the passport office who must be aware of the procedure for issuance of passport would use the above seal for committing the offence. Certain circumstances were also pointed out by learned counsel for the appellant in support of this contention

which are worthy of consideration. Firstly, first accused being the staff in charge of the writing section in the passport office would know that the seal allegedly used for forgery was not in use during the relevant time. So, it is highly unlikely that such a seal would have been used by first accused for forging the document since the forgery will be easily detected. If the first accused can get the old seal, there is no reason why he could have clandestinely procured the other seal which was currently in use also.

24. Secondly, It was also pointed by learned counsel for the appellant, as per the evidence, if two different inks are used for writing the passport, it will be rejected and two different inks shall not be used for writing the same passport. This fact is brought out in evidence. As a staff who was working in the Passport Office for a long period (particularly in the 'passport writing section'), first accused must be aware of this fact. But, it is in evidence that two different inks are used in Ext.P4, the forged passport. According to learned counsel for appellant, it is highly improbable that any staff who knew this fact would use different inks in the same passport to forge the same, so also affix a seal which was not in current use in the passport office. So, the argument is that forgery, if any, could have been committed by somebody else out side the office, who would not have been aware of any of the above procedures. This may be the reason why the seal could not be seized nor produced from the passport office. This argument cannot be rejected lightly.

25. It has been brought out in evidence that a passport goes from hand to hand in the course of processing, and it will be accessible to many persons. It can never be in the exclusive possession of the accused. It was brought out in evidence that PW11, the peon in the passport office, who was engaged in laminating the passport, had allegedly removed during the lamination the original photograph and substituted it with another photograph and he is facing an enquiry in respect of the same. It is also in evidence that there were other instances of manipulations in the preparation of passport at the instance of other employees as well. According to learned counsel for the appellant, it is therefore likely that others who are not quite aware of the procedure involved in the issuance of passport would have committed forgery but it is highly improbable that first accused being posted in the writing-section would commit the offence by using different inks and also by using a seal which was not in current use.

26. It is also relevant to note that because of the accessibility of the passport by several other staff, certain persons, who are examined as witnesses in this case,were originally implicated in the offence. Taking all these facts into consideration, the failure to seize the seal from the Passport Office or from the accused and the failure to make any investigation into the whereabouts of the seal etc. raise a serious doubt whether first accused was in custody of the seal at all at any time for using it to forge the passport, Ext.P4.

27. The other allegation against first accused is that the first accused forged the signature of PW10 on Ext.P4. PW10 deposed that the signatures seen in Ext.P4 at different places were not put by her. But, when she was confronted with the Photostat copies of several passports issued from the office, which are marked as Ext.D3 series (there appears to be some clerical error in the judgment in noting the number of the exhibit), she admitted that her admitted signatures themselves are not similar. It has come out from the evidence of PW10 herself that she has no consistent signature. PW10 admitted that her signature 'Q3' in Ext.P3 and signature in Ext.D3 series are not similar. The signatures at page 2 and page 6 are strikingly different from the admitted signatures of PW10. A perusal of the signatures in Ext.D3 at pages-1 and 2 and a comparison of the same with the specimen signature of PW10 reveal that her signature had undergone a striking change, by lapse of time and by years. Hence, it is doubtful whether PW10 herself would be in a position to conclusively state, without any mistake, whether the signatures in Ext.P4 are those of hers or not.

28. Anyway, from the sole testimony of PW10 alone it may not be safe to conclude, on the facts and circumstances of this case, that the forged signatures in Ext.P4 are not that of PW10. Even if evidence of PW10 is totally accepted, that may not, by itself, be sufficient to hold that the accused is the author of the forged signatures in Ext.P4. Even if those signatures in Ext.P4 are not those of PW10, it cannot be

further concluded that those are put by first accused. In this context, the prosecution relies upon the evidence of handwriting expert to prove the relevant facts relating to the signatures. The prosecution examined PW29 and marked Exts.P50 to Ext.P53 to prove that the relevant signatures in Ext.P4 passport are not those of PW10 that those are in the handwriting of the accused.

29**.** PW29 is the handwriting expert. He deposed that he was working as Deputy Government Examiner of Questioned Documents in the Directorate of Forensic Science Laboratory, Ministry of Home Affairs, Government of India at Hyderabad and he examined the questioned document, Ex.P4. The signatures and the writings on Ex. P4 were compared by him with the relevant specimen writings of PW10 and those of the accused and an opinion was given by him on the same.

30. PW29 deposed that the person who wrote Ex.P15 (S82 to S91), ie., PW10 did not put the signatures marked as Q2 and Q3 in Ex. P4. He also gave evidence that the person who wrote Ex. P29 (S1 to S81) and Ex. P30 (A1 to A29), ie., A1 wrote Q1 to Q4 in Ex. P4-passport. He also stated that the reports relating to the examination are Exhibits P50 to P53. Learned Standing Counsel for the CBI argued that the above evidence of the expert itself is sufficient to prove that Ex P4 was forged by first accused. There can be no doubt that if the evidence of PW29 is accepted, it will prove that Ext.P4 was forged by first accused. As argued by learned Standing counsel for CBI, it is settled by now that the evidence of a handwriting

expert can be accepted without any corroboration. The following decisions were cited by him in support of his arguments:

31. In **State of Kerala v. Vijayan @ Rajan** (1992(1) KLT 878), this court held as follows:

> "Nothing in Ss.45 to 47 and 73 of the Evidence Act (which are provisions relating to handwriting and/or expert evidence) requires corroboration for expert's evidence as a rule. to argue that no corroboration need be looked into for acting upon the evidence of expert".

It is held in ***Murari Lal v. State of M.P.,*** *(1980) 1 SCC 704 thus:* :

> "There is no justification for condemning expert's opinion - evidence to the same class of evidence as that of an accomplice and insist upon corroboration."

32. But, it is clear from the above decisions themselves that the evidence of the handwriting expert can be accepted without corroboration, only if it is quite convincing and reliable. Just like any other piece of evidence, the court has to put the evidence of handwriting expert also to strict judicial scrutiny before acting upon the same. Only if it inspires confidence of the court, the court can accept the same and there is no rule that the evidence of a handwriting expert shall be accepted under all circumstances. It is held in 1992 (1) KLT 878: "if the findings of the handwriting expert is convincing and reliable, the court can certainly act upon the uncorroborated testimony

of a handwriting expert." In **Murari Lal v. State of M.P.,** (1980) 1 SCC 704, it is made further clear, ".....there can be no hard and fast rule, but nothing will justify the rejection of the opinion of an expert supported by unchallenged reasons on the sole ground that it is not corroborated" (emphasis supplied).

33. PW29 only gave a bare statement that a particular writing in Ext.P4 is not that of PW10 and that another writing is that of first accused. But, it is pertinent to note that PW29 did not give reasons to support his opinion. A court cannot jump to any conclusions if an expert merely states that a particular handwriting is that of 'A' or that it is not that of 'B'. "His opinion has to be tested by the acceptability of the reasons given by him. An expert deposes and not decides" (vide **Murari Lal v. State of M.P.,** (1980) 1 SCC 704*)*. "The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions" (vide **State of *H.P. v. Jai Lal,*** (1999) 7 SCC 280).

34. A reading of the evidence of PW29 shows that he did not state in his evidence, any reasons to support his opinion that the forged writings are those of first accused. He has not referred to in his evidence any observations made by him to support his conclusions. Learned counsel for the CBI argued that even though the expert witness has omitted to state the reasons to support his opinion, the reports prepared by him

are marked in this case and those contain the reasons. According to him, the contents of such reports can be acted upon, even in the absence of oral evidence given by expert on the relevant aspects. I cannot accept this argument. I shall explain the reasons.

35. The evidence of a handwriting expert consists of mainly two things: i) the observations made by him by examination and by comparison of the relevant documents i.e., evidence relating to what he saw, ii) the opinion formed by him on the basis of such observations and the grounds on which he holds such opinion. A reading of the interpretation given to the expression, “fact” in Section 3 of Evidence Act and the illustrations given thereunder reveal that the above two things constitute “facts”, as defined under the Evidence Act.

36. As per section 3 of Evidence Act, a “fact” means 'anything, state of things, or relation of things, capable of being perceived by senses'. As per illustration (b), 'that a man saw something', is a fact and as per (d), “that a man holds a certain opinion', is a “fact”. Section 59 of Evidence Act provides that all “facts” may be proved by oral evidence. Therefore, it follows that the above two “facts” have to be ordinarily proved by oral evidence, especially when the expert is available for examination.

37. As per section 60 of evidence Act, oral evidence must be direct. If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it. If it refers to an opinion or to the grounds on which that opinion is

held, it must be the evidence of the person who holds that opinion on those grounds. Therefore, the observations etc., made by the handwriting expert relating to the relevant documents and his opinion and the grounds thereof must be deposed to by the expert himself in court. Oral evidence of the expert alone would constitute substantive evidence relating to the relevant facts viz., his observations, opinion and grounds to support the same.

38. But, section 59 of Evidence Act lays down that all "facts," except contents of documents, may be proved by oral evidence. Therefore, an argument may be advanced, as in this case, that the report of the hand- writing expert which is a document which contains all the relevant facts need not be proved by oral evidence. Since the report itself is produced, it may be contended that the contents of the document stands proved by the mere production of the said document. Section 61 of Evidence Act lays down that contents of any document may be proved by primary evidence and section 62 of Evidence Act provides that primary evidence means the document itself produced in court for inspection.

39. So, a question arises whether it is sufficient if the report of the expert is produced, and the court can treat the contents of such document as evidence or not. I have already held, referring to the relevant provisions, that in the case of a handwriting expert's evidence, facts which are seen by the expert and the opinion which is formed by him and the grounds on which he holds such opinion are relevant facts.

Going by "best evidence rule" under section 60 and as per section 59 of Evidence Act, those facts must be proved by direct oral evidence. Those are not "facts" which can be proved by any method other than by adducing "oral evidence," especially if the expert is available. Those cannot be proved by mere production of the report. By production of the report, only the contents may stand proved but not the truth of the contents or what the expert has perceived. The contents of the report may constitute a reproduction of what the expert saw, opined etc., but it is not substantive evidence as stated in Section 59 and 60 of Evidence Act.

40. As per Section 61 and 62 of Evidence Act, if a party seeks to prove the contents of a available document, he has to produce the document itself, but he cannot be permitted to give oral evidence relating to the contents of the document without producing the document because contents may be proved only by production of the document as laid down in Sections 61 and 62 of Evidence Act. Sections 61 and 62 of Evidence Act only lay down that the contents of a document may be proved by production of the document itself. But that does not further mean that by mere production of the document/report of the expert a party or prosecution can prove all what the expert has perceived by his senses.

41. For example, in a case where a fact is sought to be proved by the evidence of an eye-witness, he himself must depose in court that he saw the said fact. He cannot put all the details of what he saw in writing and produce the said

document before court and ask the court to accept the contents as evidence. He cannot request the court to rely upon the contents of such document on the ground that contents of a document can be proved by mere production of the document, as stated in Sections 61 and 62 of Evidence Act. What a person saw or perceived by his senses can be proved only by the oral evidence of such person by virtue of Sections 59 and 60 of Evidence Act and those cannot be proved by production of document. The contents of such a document will not be a substitute for the oral evidence of the person who saw the incident. Of course, if there is a contemporaneous statement in writing it may be used to corroborate his evidence, but the said document or the contents thereof will not be substantive evidence.

42. A handwriting expert has to give oral evidence on what he has seen/observed, on examination and by comparison of the relevant documents and also on what basis his opinion is formed. He has also to depose about the grounds on which he has formed his opinion. The mere production of the written report of the expert may only prove its contents, but not the truth of the same. The truth of what he saw and what is recorded in the report can be vouched only by the testimony of the expert given in court. If such version is given by the expert in court, the written report prepared by him can be used for corroborating his testimony as laid down in section 157 of Evidence Act. But, the substantive evidence

is what the witness deposes in court and not what the report contains.

43. The written opinion and reasons given in writing by an expert cannot be admitted in evidence, automatically. It is not a substantive piece of evidence. What is deposed to by the expert in court alone can be treated as substantive evidence. The written report, if any prepared by him, can be used either for refreshing his memory, or to contradict whatever he might say from the witness box. Referring to a report of a medical expert i.e., the postmortem report, inquest report etc. this is what the Supreme Court held in **Munshi Prasad** v**. State of Bihar**, (2002) 1 SCC 351:

> "Post-mortem report is prepared by the doctor who held the post-mortem examination on the body of the deceased Indrasan Prasad and his findings have been recorded therein. The document by itself is not a substantive evidence but it is the doctor's statement in court, which has the credibility of a substantive evidence and not the report, which in normal circumstances ought to be used only for refreshing the memory of the doctor witness or to contradict whatever he might say from the witness box.....neither the inquest report nor the post-mortem report can be termed to be a basic evidence or substantive evidence..." *(emphasis supplied)*

44. In the above circumstances, I find that the report prepared by the handwriting expert is not a substantive piece of evidence. It can be used only for corroboration or contradiction. Only fact which is deposed to by him in court

will have the credibility of substantive evidence and not the mere contents of his report in writing issued under Section 45 of the Evidence Act. Thus, the evidence given by PW29 which confines only to his mere opinion without being supported by reasons deposed to by him in the court cannot be acted upon to hold that a particular writing in Ex.P4 is that of first accused or it is not that of PW10.

45. Learned standing counsel for CBI however maintained the consistent stand that the whole report of a handwriting expert can be admitted in evidence even without examining him in court. He placed reliance upon the decision reported in **Kannan** v. **Nanu** [1989 (2) KLT 288] which reads as follows:

> "Both the courts below were not right in rejecting the opinions for the reason that the experts were not examined. The view of the newly introduced R.10A to O.26 C.P.C. read along with R.10, the report shall be evidence in the suit and shall form part of the records even without examination of the experts. Examination of the experts is not a condition precedent to admissibility of the report even though the court or with its permission any of the parties may examine the experts (Deonandan Rai v. Mahant Pai (1983 All. L.J.618). That does not mean that with or without the examination of the expert the court is bound to accept the opinion as substantive evidence and act on it".

46. It is true that as per the dictum laid down in the above case, the report of an expert was admitted in evidence even without examination of the expert. But, it was so done in

view of a specific provision contained in Order 26 Rule 10A of the Code of Civil Procedure which permits admission of reports in evidence even without examination of the expert. But, the situation here is totally different. Firstly, the Code of Civil Procedure is not applicable here. Secondly, there is no provision equivalent to Order 26 Rule 10A of CPC which permits admission of a report of a handwriting expert without he being examined. The present proceedings at hand are governed by the Code of Criminal Procedure and as per Section 293 of Cr. P.C., only certain reports can be used as evidence, without examination of the scientific expert. But handwriting expert like PW29 does into fall under Section 293 Cr.P.C. and the report make by him cannot be admitted in evidence in the absence of the deposition given by such expert on the relevant facts.

47. It is also to be noted that in the same decision it is held that even though as per Order 26 Rule 10A the report can be admitted in evidence, "that does not mean that with or without examination of the expert the court is bound to accept the opinion as substantive evidence and act on it." Anyway, in the absence of any specific provision which permits the court to act upon the contents of the report of a handwriting expert as substantive evidence, in may considered view, such report cannot be used for proving the contents. As held in the decisions of the Supreme Court in **Munshi Prasad's** case referred to earlier, it is only the statement of the expert given

in court which can be acted upon and not the contents of the report.

48. In such circumstances, the written report of an handwriting expert does not constitute substantive evidence and it does not become automatically admissible in evidence, on the mere marking of the same. Therefore, no reliance can be placed on the contents of the written report of a handwriting expert, in the absence of the expert giving evidence on the relevant details stated in the report while examined in court. Since PW29 has not stated in evidence, the reasons to support his opinion that a particular writing or signature is that of PW10 or that of the accused, such opinion cannot be relied upon by the court to make any conclusion on the authorship or otherwise of a writing/signature in the relevant document. The onion evidence given by PW29 in court is unsupported by any reasons and it cannot be acted upon to hold that Ext.P4 contains the writing/signature put by the accused and not that of PW10.

49. A reference to another decision of the Supreme Court in **State of H.P.** ***v.*** **Jai Lal** (1999) 7 SCC 280 also would be beneficial on this context. It is held therein as follows:

> "An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested

> becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions".

50. The opinion expressed by the expert PW29 is not supported by any scientific criteria and hence it cannot be acted upon to enter any finding against first accused, with respect to Ext.P4. Even if the report is looked into I find it difficult to accept the same for the following reasons. As per the report of PW29, the questioned writings marked Q1 to Q4, were compared with the specimen writings S1 to S81 and A1 to A29 on the well-established principle of "comparing like with the like shows characteristic similarities in their writing habits". It is reported in Exhibit P51 that the similarities are significant and sufficient and those will not coincide in the writings of two different persons. It is also stated therein that the expert looked for the dis-similarities between the questioned and the standard writings while comparing them, but did not find any dis-similarities.

51. But this opinion in Ext.P51 cannot be accepted at all for the following reasons: Though there are striking difference between the specimen handwriting and the questioned handwriting, the expert has given his opinion that the writings are similarly observed with no dissimilarity. Even on a plain naked-eye-examination of the document without the aid of even any magnifying glass the writings look different. I shall

refer to the details. It is noted by PW29 in Ext.P51 series as item No.24 that the "manner of writing '7'" along with the nature and location of its cross stroke as seen in Q4 is similarly observed in the specimens and also in A14, 19 etc. But, on a perusal of the relevant details in Q4, I find that the figure '7' is seen written in a significant and peculiar manner, by forming a triangle in-between the vertical and horizontal lines of the number 7. The expert has compared such `7' with those found in the specimen handwriting of the first accused and stated that there is similarity. It is such alleged similarity which persuaded him to reach an opinion that the particular writing in Ex.P4 is that of the first accused. But, curiously '7' seen in admitted signatures (not the specimen handwriting) of first accused (vide A14 and A19), look like '1' with a horizontal cross-cut in several places. In those documents, there is no vertical or horizontal line drawn to form '7'. There is also no triangle in-between the two lines to form '7' which is significant in the questioned writing.

52. In other words, the manner in which '7' is seen written in the admitted documents of first accused, is strikingly different from those found in the questioned document, Q4. '7' written in A14 and A19 (admitted writing) at several places look like '1', with a cross-cut on the same whereas '7' in the questioned document look like '7' with a triangle at right top. But, in spite of this striking dis-similarity, the expert opined that `the manner of writing '7' along with the nature and location of its cross as seen in Q4 is similarly observed in the

specimens and also in A14, A19' etc. The opinion expressed in respect of '7' is far from satisfactory and not acceptable, even on a mere naked-eye examination.

53. It is also curious to note that according to the expert, 'the manner of writing '2', along with the nature of its commencement together with the movement of its final part as seen in Q1 and Q4 is similarly observed in 'S4, S8, S9' etc. ie., in specimen writings of the first accused. A perusal of Q1 and Q4 in Exhibit P4 shows that in the forged document, '2' is written in a peculiar manner, particularly towards the end of the tail in '2'. But in A1 to A29, '2' is written by the accused at several places by forming a loop to write '2'. But such looping is significantly missing in the admitted handwriting of first accused. The significant loop is conspicuously missing in the forged document (vide Q1 and Q4 in Exhibit P4. Thus, there is a striking difference between the admitted handwriting (A1 to 29) and the alleged forged document (vide Q1 and Q4 in Ex. P4) and those are not similar at all.

54. It is also quite curious to note that the expert failed to compare the admitted handwriting of the first accused with the alleged forged writings in Ex.P4 (Q1 and Q4). The striking difference seen in writing '7' and '2' in the alleged forged document and the admitted writings of the first accused itself would suffice to reject the opinion expressed by the expert. The expert has opined that the two writings are similar despite the strong dissimilarity. Even if he opined that both are similar, he ought to have given the detailed reasons for his conclusions in

his evidence, but he failed to do so. In the absence of PW29 to state the reasons, the court below also failed to examine the correctness of the reasons. Though the expert reported that he looked into the similarity between the questioned and the standard writing while comparing them and he could not find any striking dissimilarity, in the light of what I have already discussed (the striking dissimilarity which is found in A1 to A29 when compared with Exhibit P4), I find that the opinion expressed and the reasons given by the expert cannot be accepted at all, especially in the absence of any corroboration.

55. Now coming to the figure '4' also, I find that the expert failed to compare the admitted writings in A1 to A29 with the '4' seen in forged document, Exhibit P4. As per his opinion, “the manner of writing '4' in a single operation along with the shape of its body part as seen in Q1 is similarly observed in S1, S4, S7, S8” etc. It is true that in the specimen writings obtained by the Investigating Officer, there is a striking similarity in the writing '4'. But, the figure '4' is written in a totally different manner in the admitted writing of the first accused in A1 to A4.

56. Though two types of '4' are seen written in the admitted writings A1 to A29, neither of those figures are written in a single operation as seen in the alleged forged document (vide Q1) and the specimen writings, S1, S4 etc. There is a striking difference in the manner of writing '4' in the admitted writings and the alleged forged document. In most of the places '4' is written in two operations and not by a single

operation, as seen in Q1 in Exhibit P4. The expert has not given any opinion with respect to striking dis-similarity which can be easily noted by even a layman. The expert reported that he had looked for dissimilarity between the questioned and the standard writings while comparing the same and he could not find any. This part of his opinion and the reason given by him cannot be accepted at all in the light of what is discussed above.

57. Apart from all these, ordinarily, in any handwriting, the combination of 'th' along with the nature and location of t-cross is taken as very significant for comparing the signatures. Any authority on handwriting identification would reveal that the combination of 'th' is taken as a striking feature to identify the author of the handwriting. In this case also, the expert opined as item No.15 in Exhibit P51 that “the manner of writing the combination 'th' along with the nature and location of t-cross as seen in 'Pookath' in Q4 is similarly observed in the similar word in the specimens”. But, in Exhibit P4 (Q4) 'th' is written separately ie., 'h' is written with a single vertical line, whereas in the specimen writings in Exhibit P29 series 'h' is written with a loop on the vertical line.

58. In Exhibit P4 (Q4), however, 'th' is formed by two vertical lines of 't' and 'h' which is totally different in all the specimen writings in Exhibit P29 series. 'h' seen in 'th' of specimen writing is strikingly different from the one seen in Exhibit P4. In such circumstances, the opinion expressed by the expert that the said combination 'th' is similarly observed

in the alleged forged document and the specimen writings of first accused is contrary to the reality. Even on a naked-eye-observation, such writings are totally different.

59. Since the writings in the specimen and the questioned documents differ substantially, as discussed above, may be, a case could have been set up that the accused had deliberately disguised his handwriting and that could have been projected as a reason why the writings in the relevant documents do not tally. But, that is not the case here. The prosecution has no case that the accused was faking or disguising his handwriting. Instead, the prosecution would allege, on the basis of the reports of the handwriting expert that certain writings in the specimen handwriting of the first accused and the writing in the alleged forged document are similar and hence, written by him.

60. In such circumstances, I find it difficult to conclude, on the basis of the opinion evidence of the expert in court, (especially since, it is bereft of reasons to support his conclusions) that the accused has forged ExP4. On the basis of this type of an expert opinion obtained in this case, especially in the absence of any independent evidence touching the relevant aspects, the case set up by the prosecution that the first accused forged by affixing the signature and other writings in Exhibit P4 cannot be accepted.

61. It is relevant in this context to mention that that the prosecution could have procured evidence which is admissible under Section 47 of the Evidence Act. As per Section 47 of

Evidence Act, the evidence of the persons who are acquainted with the handwriting of a person etc. is relevant to prove identity of handwriting. The first accused being a government official, it would not have been difficult for the investigating officer to procure the evidence of persons who are acquainted with the handwriting of the first accused to prove that Ext.P4 was written Ex.P4 was written by first accused or that it is in his handwriting. There can also be no doubt that there would be senior officials who would have had occasion to receive documents purported to be written by the first accused in the ordinary course of business. There would also be available documents purported to be written by first accused being habitually submitted to the higher officials. But no higher official who is acquainted with the handwriting of the accused in the ordinary course of business was examined to prove the handwriting of the first accused.

62. It appears from the evidence of PW10, the Passport Officer, that she herself was in doubt whether the handwriting in Ex.P4 was that of the first accused. It has come out from her evidence that she questioned first accused regarding the manipulations and she asked him about the handwriting in Ex.P4. But he said that it must not have written from the office. Even at the time, PW10 had not suspected the first accused, as the person who had allegedly forged the writings in Exhibit P4. Though there would have been occasion for PW10 to get acquainted with his signature and her evidence would be admissible under Section 47 of the Evidence Act, particularly

as per the explanation under the said Section, she could not confirm whether Ext.P4 was written in fist accused's hand. Various other witnesses who claimed to have acquaintance with first accused's handwriting deposed before court that Ext.P4 was not in the handwriting of the accused.

63. **Other aspects - motive**: According to prosecution, it was for the purpose of obtaining an employment for PW1 in gulf countries as salesman that the accused intended to manipulate Ex.P4-passport, showing false details therein. PW1's case is that only if a person completes 40 years of age, he would get employment in gulf countries as a salesman and hence, he brought this fact to the notice of the second accused, who assured him that it can be 'set right'. But, his evidence does not reveal that there was any request from the side of PW1 to issue a forged passport. It is also not in his evidence that either the first or the second accused was approached with such a request and either of them had, at any time, asked for any remuneration to alter the date of birth in the passport or to 'set things right'.

64. Apart from all these, it appears from the evidence of PW1 himself that he did not actually require employment as a salesman in gulf countries. He deposed that he was working in gulf countries from 1993 onwards up to August 2002, until he came back to India on leave. PW1 has no case that his services at Gulf were terminated. He has no case that he is not permitted to re-join on duty. He came to India only on leave. For nine long years, he was working as Salesman in Gulf and

as per the evidence of PW1, he had approached second accused only for getting the passport renewed.

65. Therefore, the allegation that PW1 wanted to get a job in Gulf countries and that it can be done only if the age ins passport is manipulated etc. does not appear to be convincing. It is not understood why a person who is already working in gulf countries for nine years, even at a much younger age than 40 years requires the age to be corrected in the passport to get the same job, especially since PW1 has no case that his services were terminated because of the age. The case set up by the prosecution with respect to the motive for the accused to commit the offence does not appear to be quite convincing.

66. It also appears from the evidence of PW1 that he himself was not aware of the manipulation allegedly done by the accused in the passport. His evidence reveals that after getting the passport Ext.P4, he had approached M/s. Akbar Travels for getting visa and when he produced the passport Ext.P4. He was then told that there was some “smudging of the ink” in the passport and hence, it would be difficult to get visa. Therefore, he met the passport officer, PW26 at his office and handed over both the original passport and Ext.P4 to PW26. It appears that PW1 was not aware of the alleged changes effected in the date of birth in Ext. P4, the renewed passport. Had he known about the corrections, which were purportedly made at his request, it i s highly unlikely that he would hand over both the passports containing different entries which would reveal the forgery.

67. PW1 would not have also given any written complaint or any statement like Ext. P5 to the passport officer, along with the two passports on 10.12.2002. A mere suspicion expressed from any source would have driven him back to the second accused and he would have sought for his advice. At least when he was told at M/s. Akbar Travels that it would be difficult to get visa because of the smudging, he would have met the second accused. But, from his conduct, it appears that he did not have any idea about the forgery. As per the evidence of PW1, he came to know that a change is effected in the date of birth in Ext. P4 only when he went to the passport office, on getting a letter from there. When the correction was brought to the notice of PW1 from the passport office also, he did not seem to have any doubt about the manipulations in Ex. P4. His reaction was, he did not know about the same.

68. If as a matter of fact, the date of birth in Ex P4 was corrected at the request of PW4, things would have been different. Any way, the conduct of PW1 does not tally with the case set up by the prosecution of an intentional act of forgery of passport, at the request of PW1. It is clear from Ext. P5 that PW1 had only stated therein that there is some overwriting in the name in his passport, as stated from the travel agency and he only requested that it may be rectified. In Ext. P6 letter dated 27.11.2002 given by him to the passport officer also, he had not expressed any doubt about any possibility of forgery. He only stated that he wanted to get the passport at the earliest and hence he had approached the travel agency. He

stated in Ext. P6 itself that he came to know about the change in the age in Ext. P4 only from the passport office. He specifically stated in Ext. P6 that he had not told the travel agency to correct the age or get the passport issued enhancing the age.

69. PW1's specific case is that he had shown only the correct age in the application form and he had not committed any mistake by himself. According to him, he had also not requested the accused to carry out any corrections. It appears form the evidence of PW1 himself that as a person who is already working as a salesman for the past nine years in gulf countries, he did not require any correction in the age to continue in the employment. He himself had no case that he required the correction in the age to continue employment in gulf countries.

70. At any rate, the evidence of PW1 does not reveal that he had approached the first accused, at any time, with any request, to change the age or that the first accused had accepted anything from him to oblige. He has no case that he is even acquainted with the first accused. PW1 or any other witness did not say that first and second accused were acquainted with each other in any manner so as to conspire and commit the forgery on behalf of PW1. Since the evidence of PW1 itself reveals that in all probabilities he did not require a correction in the age to get a job in gulf countries, it is not understood why either first or second accused committed the

alleged offences, without there being any request from PW1, for issuing a passport showing wrong details.

71. Delivery of passport: Another circumstance which the prosecution relies upon to prove the guilt of the accused is that the passport was allegedly delivered to PW1 by the second accused and not from the passport office ,as ordinarily done. It is true that PW1 stated in his chief-examination that he received the passport from Kings Travels, as handed over by second accused. But, the question is whether the oral evidence of Pw1 can be accepted or not on this aspect. If the prosecution case is true, PW1 is the person for whom and at whose instance the forgery was committed. So, his evidence has to be scrutinised with greater care.

72. In the nature of the evidence of PW1 and other evidence adduced in this case, it is not safe to rely upon the sole oral evidence of PW1 to conclude that the passport was handed over by second accused to him, unless it is corroborated by satisfactory evidence. It has come out in evidence that if the passport is delivered to any party from the passport office, the signature of the party would be obtained on the application form, under seal “received passport”. But, curiously, such a seal and signature are available at page 3 of Ext.P2, passport application form which was submitted by PW1. The signature purported to be that of the passport holder is seen in page no.3 on Ext.P2 under a seal “received passport”.

73. PW9 is the Lower Division Clerk who was working in the passport office in the delivery section during the relevant period. He deposed that the passport used to reach him for delivery through the peon and on verification of the photo in the file as well as the passport of the person, he would obtain the signature of the applicant on the application form under a seal stamped by the peon as “received passport”. The evidence of PW9 reveals that he had told the C.B.I. officials that the passport was delivered by him, after obtaining the signature of the applicant under the stamp. He also stated in his evidence that he had informed the officials of this fact in writing. He deposed that subsequently also, the C.B.I. questioned him when he reiterated the same statement that the passport was delivered by him from the passport office.

74. In the light of these evidence and circumstances, it is difficult to believe that the passport Ext.P4 was not delivered to PW1 from Passport Office. It was also pointed out by learned counsel for the accused that no attempt was made by the investigators to verify whether the signature on Ext.P2 at page-3 is that of PW1 himself or not. No investigation was also made to find out who affixed the seal in Ext.P2. The investigation as well as the prosecution are silent on this aspect. At least when PW1 was examined in court this fact should have been confronted with the relevant signature in Ext.P2 which evidences delivery of passport to him from the passport office. In the absence of this, since there is no denial from PW1 that the signature in Ext.P2 is not that of his, I find

it difficult to conclude that the signature in ExP2 is also forged by some body and that the passport was delivered to PW1 by the second accused and not from the passport office.

75. But, the finding of the court below is that on a perusal of the signature at page-3 of Ext.P2, it is very easy to ascertain that somebody forged the signature below the seal. The lower court found that the signature is not identical or similar to the actual signature of PW1, which is available in the same document. The court also found that there is also no vast difference in the signature shown below the seal from the admitted signature of PW1 and that somebody attempted to imitate and forge the signature of PW1 at page-3 of Ext.P2. These findings cannot be sustained, especially since the prosecution has not made any attempt to prove that the said signature was not put by PW1 and the said witness himself has no case that the said signature was not put by him. There is no explanation by the prosecution for not putting the details to PW1.

76. The signature in Exhibit P2 is one of the most crucial evidence to connect second accused with the crime. This appears to be the only evidence to connect second accused with the crime. But, significantly nothing has been brought out from the evidence of PW1 to show that Ext.P2 was not made by him at page-3. In the absence of even an attempt being made either by the investigating machinery or the prosecution to prove the signature in Ext.P2 as not that of PW1, no conclusion can be made by a mere comparison of the

signatures as done by the court below. It is worthy to remember that the signatures of PW10, a responsible government official like the passport officer themselves are strikingly different at different places, as admitted by herself in evidence. Therefore, in the absence of PW1 denying the signature in Exhibit P2, it was not proper for the court to make any conclusion that the signature in Ext.P2 is not that of PW1, only because there is difference in the admitted signature and the signature in Ext.P2.

77. At any rate, in the absence of evidence of PW1 to show that the relevant signature in Exhibit P2 does not belong to him, the case of the prosecution that the passport was not delivered from the passport office cannot be accepted. This is specially so since PW9, in the beginning of the investigation, had a definite case that the passport was delivered by him to PW1 at the passport office after obtaining the signature and the seal “received passport”. It is only much later that he came with a different version and said that he had not delivered the passport from the passport office. To believe the second version, the court must be satisfied that the second version is true on the basis of material available on record. In the absence of it, when two versions are given by the same witness, the court cannot hold that the version which is favourable to the prosecution is true and acceptable and the other has to be rejected as untrue.

78. Even otherwise, though the court below held that Ext.P2 contains a forged signature, for having delivered the

passport, nothing is brought out from evidence to show that first accused had any occasion to deal with Ext.P2 or he had access to Ext.P2 to forge the signature of the first accused. Though several documents, signatures, handwriting etc. are sent for expert opinion, the signature in Ext.P2 alone is not sent for comparison. There is no explanation for this strange omission by the investigating machinery. Though the signature in Ext.P2 is a material piece of evidence to connect second accused with the crime, it is not understood why the said signature is not sent for obtaining expert opinion. It is pertinent to note that even specimen writings of various other persons were all collected by the C.B.I. and sent for identification to the expert, but the most crucial evidence is left untouched without any plausible explanation. This fact raises a doubt whether the case set up by the prosecution can be accepted as such.

79. Since there is documentary evidence to show that somebody had signed on Ext.P2 at page-3 for having obtained the passport from the passport office, in the absence of any cogent material to prove the contrary, it cannot be held that the passport was not delivered from the passport office and that PW1 obtained the passport from second accused. PW9 is only a hostile witness. His version was contradictory even at the time of investigation. His version was found to be unacceptable even by the prosecution and hence a request was made to declare him hostile at the time of evidence. He is the

only person who is examined to prove that the passport was not delivered from the passport office.

80. There can be no doubt that there will be other evidence in the passport office to show whether the passport was actually delivered or not, from the passport office. But, no satisfactory evidence is available to prove this fact and the evidence of PW9, the hostile witness cannot be acted upon without there being any other evidence on record which is free from infirmity to prove the relevant aspect. The evidence regarding alleged delivery of passport by second accused is shabby and not proved by the prosecution. Any way, in the light of Exhibit P2, the evidence of PW1 that it was delivered by second accused cannot be accepted.

81. In this connection, it is also relevant to note that prosecution is relying upon the entries made in Exts.P12 and P13 to prove that the passport was received by PW1 not from the passport office. The explanation given by PW9 is that on 9.10.2002, PW1 had not gone to the passport office and received the passport, since his signature is not seen obtained in Ext.P12. It is true that Ext.P12 does not contain any signature as against the entries made in respect of PW1's passport. Though the prosecution would call Exts.P2 to P12 as “register”, I find that the so-called “register” consists of only loose sheets containing certain details and entries. The case of PW9 is that if any person received passport on a particular day such entries will be made in Ext.P13. A perusal of entries

in Exts.P12 and P13 shows that this evidence cannot be accepted.

82. Many of the entries seen in Ext.P12 show that the passport was not received by the party on 9.9.2002, but those have not been re-entered in Ext.P13. Some of the names recorded in Ext.P13 are not seen in Ext.P12. There is no comparison of the documents Exts.P12 and P13 and those documents speak against the version given by PW9. No reliance can be placed on the above documents to infer that the passport was not delivered to PW1 from the passport office. The evidence of PW9 is totally insufficient to hold that passport was delivered from the passport office. Even otherwise, evidence is lacking to show as to how a document like the passport went out of the passport office. No proper investigation is seen in this regard. The court cannot make any conclusion based on suspicion.

83. Wife's House name: The prosecution has a case that PW1's wife's name has been entered in the application form Ext.P2 and the passport at a later stage so as to facilitate forgery of Ext.P4. The prosecution has also a case that such house name is entered in the computer by the first accused. At the outset, it may be stated that there is no evidence as to who made the entries in Ext.P2 regarding the house of PW1's wife. It has only been stated that such an entry has been made. There is no case that first accused had any access to Ext.P2 at any time. No witness was examined to prove the same. Nobody stated that first accused had any access to

Ext.P2 or it has come to his hands at any time. Therefore, the mere presence of entry Ext.P2 will not be sufficient to come to the conclusion that first accused himself made the relevant entries.

84. The prosecution has made an attempt to prove by producing certain extracts from the computer and by the evidence of PW17 that some manipulations are done by first accused in the computer to tally with the forgery allegedly committed by him in Ext.P4. PW17 deposed that he is the Scientist in National Informatics Centre and he was working as a System Administrator during the relevant period in the passport office. The supervision of the computer system was done by him. He marked Exts.P24, P25 and other documents of which Ext.P25 seems to be the crucial evidence on which the prosecution relies upon. According to learned Special Prosecutor, Ext.P25 is a certified copy of the print out from the date showed in the hard disc of the Computer of Passport Office managed by NIC. Ext.P25 has been certified to be such print out.

85. PW17 deposed that in Ext.P25, there is an entry “correct in it” and that it also shows the code number of the last person who corrected the document. According to PW17, Code number allotted to the accused is P314 and hence he is responsible for making the corrections in the computer entries. The case set up by prosecution is that the house name in the computer print out has been corrected by the accused. But no

charge has been laid against first accused for making false entries in the computer.

86. On a perusal of Ext.P25 and the evidence of PW17, it cannot be said that the correction is made by the first accused, even if his entire evidence is accepted. PW17 himself stated that he cannot say in which field, code number P314 has made corrections and he cannot say what was the correction made. He admitted that the data can be corrected if it requires a genuine correction. It is also admitted that the person in charge of passport writing section is given an option to change such data. Anyway, the entry in Ext.P25 shows that the despatch date of the passport Ext.P4, as per the computer record, is 10.9.2002. But all the records produced in this case pertains to 9.9.2002. Nobody has a case that the entry made in Ext.P25 as despatch date is wrong or falsely entered. But the documents produced from the passport office themselves show different despatch date as 9.9.2002 and 10.9.2002. In this connection, it is doubtful whether the documents available in the passport office showing the despatch of the passport as 10.9.2002, if produced would tally with the endorsement in Ext.P25, and also the endorsement made in page-3 of Ext.P2 that the passport was actually delivered from the passport office to PW1.

87. The investigating officer has not taken any steps to see whether passport was despatched from passport office from 10.9.2002 as seen from Ext.P25 or not. Evidence revealed from Ext.P2 at page-3 that the passport was delivered

from the passport office on 9.9.02 whereas as per Ext.P25, the despatch date is 10.9.2002. The prosecution ought to have produced the records with respect to the despatch of passport effected on 10.9.2002 to rule out the possibility of the passport being despatched on 10.9.2002 as seen from Ext.P25. In the absence of this, the court cannot conclude that passport was despatched on 10.9.2002 as seen from Ext.P25.

88. **Evidence of PW25**: PW25 deposed that he was working as Lower Division Clerk in the passport office in September 2002 and he was working MRP (passport printing) section. He deposed that the first accused used to decide as to which of the passport to be printed and he alloted the booklet and the particular file to the person in the printing section and those are seen from his section. He also deposed that, from such passports, if any passport is taken for manual writing, information will be passed on to him from the passport writing section. He gave evidence that Ext.P4 was allotted to him on 9.9.02 for printing.

89. It was brought out from the evidence of PW25 that if any passport is taken for manual writing, he would make an entry in the register as against the said passport to show that it was taken for manual writing. He will make an endorsement “manual” in the register. His definite case is that, in the case of Ext.P4, he had made entries in the register as “manual”. Therefore, this would clearly indicate that the said passport had reached the hands of PW25 and he had not taken it for printing. His evidence reveals that passports which are

rejected by the machines are normally taken for manual writing.

90. But it was pointed out by learned counsel appearing for the appellant that the relevant register was not produced in this case. PW25 deposed that the said register was taken into custody by the C.B.I. But, the register is not produced. If such a register is produced, it can be easily found out whether the said document had reached the hands of PW25 and whether the machine has rejected the same and whether it was entered in the register as taken for manual writing by making necessary entries. There is no explanation why the said register was not produced in this case.

91. PW25's case is that the passport did not reach his hands at all, but it was withheld by the first accused in his own section without sending it for printing, but on information conveyed to him that it was taken for manual writing, entries are made in the register. It is not understood why if the record had not reached his hands and the machine has not rejected the same why the entry should be made by this witness in the register which is maintained for the purpose of showing the passports which are rejected by the machine. His evidence is also contradictory with respect to the fact as to how the information was conveyed by the first accused to him.

92**. PW24:** The court below proposed to take action against PW9 and PW24 for giving false evidence in court in favour of the first accused. While discussing the evidence of PW9, the court below entered a finding at para.37 of the

judgment that Ext.P4 was shown to PW9 and he deposed that he did not know as to in whose handwriting it was written and also stated that he did not know whether it was the handwriting of the first accused. According to the court below, the deposition of PW9 would clearly reveal that the aforesaid answers were deliberately given by him in cross-examination in order to aid the first accused.

93. The court below also found that the witness referred first accused as 'Vijayettan' and this itself will denote the intimacy of PW9 to first accused. On a close perusal of of the evidence of PW9, the admitted handwriting of the first accused, the entires in Ext.P4 etc., nobody can blame PW9 for stating that he did not know whether the handwriting in Ext.P4 is that of the first accused. I have already considered meticulously the differences seen in the specimen and admitted writing of the accused and also alleged forged writing. I have noticed that there are striking differences between the forged writing and admitted writing of first accused.

94. I have also referred to the combination of “th” found in various documents in Exhibit P40 series (which are admitted documents) and come to a finding that those do not tally with the said combination in the forged document. At the most, it can be argued that first accused was disguising his handwriting while making false entries in Exhibit P4, since there are several dissimilarities between his admitted handwriting and the forged writing. But nobody can be blamed for not identifying the handwriting in Ext.P4 as that of the first accused, since a bare

perusal of Ext.P40 series and a comparison of the admitted handwriting in the documents with Ext.P4 would show that those do not tally. Hence, it cannot be said that PW9 was perjuring. The action proposed to be taken against him is unwarranted and is without any basis.

95. PW24 has given evidence that he was engaged in manual writing of the passport. He was entrusted with blank book for manually writing the passport. He deposed that after writing the passport manually, he used to hand over such passport to the first accused. The entries will be made manual process register. According to PW24, Ext.P4 is not written by him. He deposed that he is acquainted with the handwriting of the first accused, but stated that the handwriting in Ext.P4 is not that of the first accused. He was declared hostile.

96. When Ext.P29 series (specimen handwriting) were shown to PW24, he deposed that he did not know the handwriting in Ext.P29 series and he gave evidence in the negative when questions were put to him whether those contain the specimen writing of the first accused. The said witness was declared as hostile. According to the court below, this witness had made an attempt to save the first accused while examined in court. Reasons are not stated in the last paragraph. But it appears that the court was referring to the evidence given by PW24 regarding the handwriting of the first accused. Ext.P29 series are the specimen handwriting taken from the first accused, which according to the learned counsel appearing for the accused, were obtained by the first accused

by the C.B.I. Officials compulsorily and he was made to write imitating the entires made in Ext.P4. Therefore, said handwriting in Ext.P29 series will not have any comparison with the original hand writing of the first accused. Under such circumstances, PW24 cannot be found fault with for not identifying Ext.P29 series as that of the first accused.

97. On a perusal of Ext.P29 series, Ext.P40 series and the handwriting in Ext.P24, I find that the admitted handwriting of the accused is totally different from the specimen handwriting taken from him and which contained in Ext.P24. The handwriting under Ext.P24 and the specimen handwriting in Ext.P29 series to a certain extent dealt with each other though not in all particulars. However, those are different from the style, the manner of writing etc. which is seen in Ext.P40 series. I have already discussed the details in the foregoing paragraphs. Therefore, PW24 as the person who is acquainted with the handwriting of the first accused though stated referring to Ext.P29 series that the handwriting cannot be said to be that of the first accused, no action can follow based on the same. The direction given in the judgment to take action against PW9 and PW24 is totally unwarranted and such findings are set aside. If any action is already initiated against PW9 and PW24, it is directed that it shall be dropped.

98. Concluding my discussion, I hold that the prosecution has not proved beyond reasonable doubt that the first accused forged the signature of PW10 and made certain false entries in Ext.P4 and also used the seal of PW10 (which

was not in use) for preparing Ext.P4, to use it as a genuine document, to support a false claim. The charge of criminal conspiracy and criminal misconduct are also not proved by satisfactory evidence. Consequently, the charge under the various provisions of the Prevention of Corruption Act also stands not proved. In the above circumstances, the conviction and sentence passed against the accused are not sustainable and those are set aside. The accused are acquitted of all the offences for which they are charge-sheeted viz., under Section 120-B and 465 of Indian Penal Code and 13(2) and 13(1)(d) of the Prevention of Corruption Act 1988.

Appeal is allowed.

Sd/-

K. HEMA, JUDGE.

krs.

K.HEMA, J.

CRL.A.NO.1102 of 2005

29th September, 2006

JUDGMENT