

SHEILA SEBASTIAN

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v.

R. JAWAHARAJ & ANR. ETC.

(Criminal Appeal Nos. 359-360 of 2010)

MAY 11, 2018

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**[N. V. RAMANA AND S. ABDUL NAZEER, JJ.]**

*Penal Code, 1860 – ss.420, 464, 465 – Allegation of forgery – Prosecution case was that accused no.1, with the aid of imposter impersonating as the owner of the property belonging to the complainant, created a Power of Attorney (PoA) in his name as if he was her agent and using the said PoA accused-respondent no.1 attempted to transfer the property by executing a mortgage deed in favour of accused-respondent no.2 – Conviction by trial court, upheld by Sessions court – High Court set aside concurrent finding of courts below and ordered acquittal – On appeal, held: A charge of forgery cannot be imposed on a person who is not the maker of the forged document – Explanation 2 to s.464 states that, for constituting an offence under s.464 it is imperative that the accused person is the maker of the false document – In the instant case, there is no finding recorded by trial Court that the accused-respondents made any false document – It is the imposter who can be said to have made the false document by committing forgery – The prosecution could not prove the offence of forgery by adducing reliable evidence – In such an event trial court as well as appellate court misguided themselves by convicting the accused – High Court rightly acquitted the accused.*

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*Investigation – Botched up investigation – Miscarriage of justice – This case on hand is a classic example of poor prosecution and shabby investigation which resulted in acquittal of the accused – The Investigating Officer is expected to be diligent while discharging his duties – He has to be fair, transparent and his only endeavour should be to find out the truth – However, he has not even taken bare minimum care to find out the whereabouts of the imposter who executed the PoA – The evidence on record clearly revealed that PoA was not executed by the complainant and the beneficiary is the accused, still the accused could not be convicted*

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A – *The latches in the lopsided investigation went to the root of the matter and fatal to the case of prosecution.*

**Dismissing the appeals, the Court**

B HELD: 1. Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463, IPC. Section 465 provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and until ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete. [Para 19][447-A-C]

D 2. A charge of forgery cannot be imposed on a person who is not the maker of the same. Making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery. The definition of “false document” is a part of the definition of “forgery”. Both must be read together. ‘Forgery’ and ‘Fraud’ are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial Court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that ‘false document’. Hence, neither respondent no.1 nor respondent no.2 can be held as makers of the forged documents. [Paras 25, 26][449-E-H; 450-A]

H 3. The imposter has not been found or investigated into by the concerned officer. Nothing has been spilled on the relationship between the imposter and respondent no.1. Strong suspicion, coincidence, grave doubt cannot take the place of proof. A duty

is cast upon the courts to ensure that suspicion does not take place of the legal proof. In this case, the trial court as well as the appellate court carried away by the fact that accused is the beneficiary or the executant of the mortgage deed, where the prosecution miserably failed to prove the first transaction i.e. PoA as a fraudulent and forged transaction. The evidence clearly revealed that PoA was not executed by the complainant and the beneficiary is the accused, still the accused could not be convicted. The latches in the lopsided investigation goes to the root of the matter and fatal to the case of prosecution. If this is the coordination between the prosecution and the investigating agency, every criminal case tend to end up in acquittal. In the process, the common man will lose confidence on the criminal justice delivery system, which is not a good symptom. It is the duty of the investigation, prosecution as well as the Courts to ensure that full and material facts and evidence are brought on record, so that there is no scope for miscarriage of justice. [Paras 27, 28][450-C-E, G; 451-A]

*Md. Ibrahim and Ors. v. State of Bihar and Anr. (2009) 8 SCC 751 : [2009] 9 SCR 845 ; Mir Nagvi Askari v. Central Bureau of Investigation (2009) 15 SCC 643 : [2009] 13 SCR 124 ; Latesh @ Dadu Baburao Karlekar v. The State of Maharashtra (2018) 3 SCC 66 – relied on.*

*Guru Bipin Singh v. Chongtham Manihar Singh & Another (1996) 11 SCC 622 : [1996] 7 Suppl. SCR 611 – referred to.*

*Dickins v. Gill (1896) 2 QB 310 – referred to.*

#### Case Law Reference

[1996] 7 Suppl. SCR 611	referred to	Para 5
[2009] 9 SCR 845	relied on	Para 21
[2009] 13 SCR 124	relied on	Para 24
(2018) 3 SCC 66	relied on	Para 27

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A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 359-360 of 2010.

From the Judgment and Order dated 25.01.2008 of the Madurai Bench of the High Court at Madras in CrI. R. C. No. 523 of 2005 & CrI. R. C. No. 546 of 2005.

B R. Anand Padmanaban, Romil Pathak, Ananya Mukherjee, Akshay R.(for Pramod Dayal), Advs for the Appellant.

Sabarish Subramanian, Prabhu Rama Subramanian, Y. William Vinoth Kumar, V. G. Pragasam (for M/s. Legion of Lawyers), Advs for the Respondents.

C The Judgment of the Court was delivered by

D **N. V. RAMANA, J.** 1. These criminal appeals are filed against the impugned order dated 25.01.2008, passed by the High Court of Judicature at Madras, Madurai Bench in Criminal Revision Case Nos.523 & 546 of 2005, wherein the High Court has allowed the criminal revisions and held that the conviction of accused respondents is not sustainable under Section 465 of the Indian Penal Code, 1860 [*hereinafter* 'IPC'].

E 2. The case of the prosecution giving rise to these appeals, in brief, is that the complainant Mrs. Doris Victor (deceased mother of the appellant) was the owner of a plot in survey numbers 1777/1A,1778/1,1779/1 and 1779/2 in Valliyoor village. The complainant alleges that, accused no. 1, (R. Jawaharaj), with the aid of an imposter who by impersonating as Mrs. Doris Victor created a Power of Attorney (*hereinafter* 'PoA') in his name as if he was her agent. It was further alleged that, using the aforesaid PoA the accused no. 1, attempted to transfer the property of complainant by executing a mortgage deed in favour of accused no. 2, (Rajapandi) for a sum of Rs.50,000/-. After getting the information about the aforesaid transaction, the owner of the property Mrs. Doris Victor gave a complaint to the police which was subsequently registered as FIR dated 14.03.1998. After the completion of investigation, a final report was filed against the aforesaid accused under Sections 420, 423 and 424,IPC. The complainant Mrs. Doris Victor died after filing the complaint.

F 3. The learned Judicial Magistrate framed charges against accused no. 1 for the alleged offences punishable under Sections 420,423 and

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465,IPC and against the accused no. 2 for the offences under Sections 424 and 465 read with 109,IPC. Both the accused were tried by the learned Judicial Magistrate at Valliyoor in C.C. No: 62/1999, wherein accused no. 1 was convicted under Section 465, IPC and was sentenced to undergo 2 years of simple imprisonment and to pay a fine of Rs. 5,000/- and accused no. 2 was sentenced to undergo simple imprisonment for a period of 1 year and to pay a fine of Rs. 2,000/- for the offences under Section 465 read with Section 109, IPC vide order dated 12.03.2003.

4. Aggrieved by the same, the Respondents—Accused appealed before the Ld. Sessions Judge at Tirunelveli by way of Criminal Appeal Nos. 72 & 78 of 2003, which ended up in dismissal by upholding the order of conviction.

5. Thereafter, the respondents approached the High Court of Madras, Bench at Madurai, wherein the High Court acquitted the revision petitioners by setting aside the concurrent findings of the courts below. The High Court, basing on the decision in *Guru Bipin Singh v. Chongtham Manihar Singh & Another*, 1996 (11) SCC 622 observed that, the requirement of Section 464, IPC is not satisfied in view of what has been stated under Explanation 2 to Section 464. Further from the perusal of the Explanation, it is clear that to get attracted the offence of forgery, “making of a false document is essential. Hence perusing the given facts and circumstances before it, the High Court concluded that, as no case is made out under Section 464, IPC offence under Section 420 of the IPC being a consequential one, equally cannot be sustained.

6. Dissatisfied with the judgment of the High Court setting aside the concurrent findings of conviction recorded by the Courts below against the respondents, the appellant(daughter of the deceased Doris Victor) filed the present appeal before this Court.

7. The counsel for the appellant submits that, the High Court failed to appreciate the material placed on record and acquitted the respondent solely on the basis that their signatures are not found on the forged document. According to the appellant,this is an erroneous interpretation of Section 464 of IPC which mandates that anyone who makes a false document is guilty of forgery. The respondents allegedly created the forged power of attorney with the sole intention of grabbing the property belonging to Mrs. Doris Victor.

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A           8. *Per contra*, the ld. counsel for the respondents supported the judgment of the High Court and the interpretation given by the High Court, how the offence under Section 464, IPC is attracted. Further he submits that the appellant has got back the property and the mortgage deed has been cancelled by a competent civil court.

B           9. Before we proceed to deal with the merits of the case, it would be appropriate to have a look at the Statements of certain prosecution witnesses for better appreciation of the dispute involved in the case.

C           10. P.W. 1 (Narayanan Pillai), who is a document writer, stated that on 08.12.1997, both the accused accompanied a woman who identified herself as Mrs. Doris Victor and approached P.W.1 to execute a Power of Attorney in favour of accused no.1. After the said document was made by P.W. 1, two witnesses put their signatures along with P.W. 1 himself. Later they registered the said document in the office of Sub Registrar, Panangudi. One month thereafter, both the accused came to the office of PW 1 for the execution of mortgage deed in respect of the said property for an amount of Rs. 50,000/-. PW 1 prepared the said document which was then signed by accused no.1. The said deed was registered in the office of the Sub-Registrar, Valliyoor wherein both the accused were present and accused no. 1 put his thumb impression on the said document.

D           11. PW 2 (Irin Edward) was an acquaintance of Doris Victor, who was informed by one Dhanaraj of Panangudi that the accused no.1 has forged the Power of Attorney in respect of a property belonging to Doris Victor and attempted to alienate the same by executing and registering a mortgage deed in favour of Rajapandi. After inspecting the requisite official records, PW 2 informed to Doris Victor who was in Chennai, then both PW 2 & Doris Victor filed complaints against the accused persons.

E           12. PW 3 (Ramasubramanian), who was assisting PW 1 during the occurrence of the said incident, is an acquaintance of the accused and was not aware of the fact that the lady claiming to be Doris Victor was genuine or not. The statement made by PW3 corroborates with that of PW1.

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13. PW 4 (Ms. Latha) was the Sub Registrar when the accused persons came with the imposter for the registration of the Power of Attorney. During the registration, along with the imposter, accused no. 2 Rajapandi put his signature as a witness. The left hand thumb impression of the imposter was maintained in the office of Sub Registrar. The original Power of Attorney was received by the accused no. 1 Jawaharaj who put his signature on the same.

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14. PW 6 (Mr. Nagaraja) was working as Sub Registrar when accused no.1 executed the mortgage deed in favour of accused no.2 and he put his signature in the capacity of being the agent of Doris Victor and registered the documents.

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15. PW 7 (Mr. Ramu) is a Scientist in the Forensic Department who has testified that there exist discrepancies between the disputed signature of the imposter and the original signature of Doris Victor.

16. PW 8 (Mr. Albonse Xavier), a finger print recording inspector, has testified that the fingerprints present on the alleged forged Power of Attorney do not match with that of Doris Victor.

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17. At this juncture, it is pertinent to have a look at the definition of 'forgery' and the precedents on this aspect.

**463. Forgery**—Whoever makes any false documents [or false electronic record] or part of a document [or electronic record,] with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

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18. It would also be necessary to understand the scope of Section 464, IPC in this context-

**464. Making a false document.**—A person is said to make a false document or false electronic record—

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*First.*—Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;

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- A (b) makes or transmits any electronic record or part of any electronic record;
- (c) affixes any electronic signature on any electronic record;
- (d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,
- B with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or
- C *Secondly.*—Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or
- D dead at the time of such alteration; or
- Thirdly.*—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.
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- Explanation 1.—A man’s signature of his own name may amount to forgery.
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- Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.
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- Explanation 3.—For the purposes of this section, the expression “affixing electronic signature” shall have the meaning assigned to it in clause (d) of sub-section (1) of section 2 of the Information Technology Act, 2000.
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19. A close scrutiny of the aforesaid provisions makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463, IPC. Therefore, we can safely deduce that Section 464 defines one of the ingredients of forgery i.e., making of a false document. Further, Section 465 provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and until ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete

20. The key to unfold the present dispute lies in understanding Explanation 2 as given in Section 464 of IPC. As Collin J., puts it precisely in *Dickins v. Gill*, (1896) 2 QB 310, a case dealing with the possession and making of fictitious stamp wherein he stated that “to make”, in itself involves conscious act on the part of the maker. Therefore, an offence of forgery cannot lie against a person who has not created it or signed it.

21. It is observed in the case *Md. Ibrahim and Ors. vs. State of Bihar and Anr.*, (2009) 8 SCC 751 that-

*“a person is said to have made a ‘false document’, if*

- (i) he made or executed a document claiming to be someone else or authorised by someone else; or*
- (ii) he altered or tampered a document; or*
- (iii) he obtained a document by practicing deception, or from a person not in control of his senses.”*

22. In *Md. Ibrahim (supra)*, this Court had the occasion to examine forgery of a document purporting to be a valuable security (Section 467, IPC) and using of forged document as genuine (Section 471, IPC). While considering the basic ingredients of both the offences, this Court observed that to attract the offence of forgery as defined under Section 463, IPC depends upon creation of a document as defined under Section 464, IPC. It is further observed that mere execution of a sale

A deed by claiming that property being sold was executant's property, did not amount to commission of offences punishable under Sections 467 and 471, IPC even if title of property did not vest in the executant.

23. The Court in *Md. Ibrahim (supra)* observed that:

B “There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of ‘false documents’, it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

E When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.”

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G 24. In *Mir Nagvi Askari vs. Central Bureau of Investigation*, (2009) 15 SCC 643, this Court, after analysing the facts of that case, came to observe as follows:

“A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be

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believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else.

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The second criteria of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore, in our opinion the second criteria of the said section is also not applicable to the present case.

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The third and final condition of Section 464 deals with a document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e. because of intoxication or unsoundness of mind, etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document.

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25. Keeping in view the strict interpretation of penal statute i.e., referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.

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26. The definition of “false document” is a part of the definition of “forgery”. Both must be read together. ‘Forgery’ and ‘Fraud’ are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial Court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that ‘false document’. Hence, neither respondent no.1 nor respondent no.2 can be held as makers of the forged

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A documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial court as well as appellate court misguided themselves by convicting the accused. Therefore, the High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same.

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27. A reasonable doubt has already been thoroughly explained in the case of **Latesh @ Dadu Baburao Karlekar Versus The State of Maharashtra**, (2018) 3 SCC 66 wherein ‘reasonable doubt’ has been enunciated by this Court as “*a mean between excessive caution and excessive indifference to a doubt, further it has been elaborated that reasonable doubt must be a practical one and not an abstract theoretical hypothesis.*” In this case at hand, the imposter has not been found or investigated into by the concerned officer. Nothing has been spilled on the relationship between the imposter and respondent no.1. Law is well settled with regard to the fact that however strong the suspicion may be, it cannot take the place of proof. Strong suspicion, coincidence, grave doubt cannot take the place of proof. Always a duty is cast upon the Courts to ensure that suspicion does not take place of the legal proof. In this case, the trial Court as well as the appellate Court carried away by the fact that accused is the beneficiary or the executant of the mortgage deed, where the prosecution miserably failed to prove the first transaction i.e PoA as a fraudulent and forged transaction. The standard of proof in a criminal trial is proof beyond reasonable doubt because the right to personal liberty of a citizen can never be taken away by the standard of preponderance of probability.

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28. This case on hand is a classic example of poor prosecution and shabby investigation which resulted in the acquittal of the accused. The Investigating Officer is expected to be diligent while discharging his duties. He has to be fair, transparent and his only endeavour should be to find out the truth. The Investigating Officer has not even taken bare minimum care to find out the whereabouts of the imposter who executed the PoA. The evidence on record clearly reveals that PoA was not executed by the complainant and the beneficiary is the accused, still the accused could not be convicted. The latches in the lopsided investigation goes to the root of the matter and fatal to the case of prosecution. If this is the coordination between the prosecution and the investigating agency, every criminal case tend to end up in acquittal. In the process,

the common man will lose confidence on the criminal justice delivery system, which is not a good symptom. It is the duty of the investigation, prosecution as well as the Courts to ensure that full and material facts and evidence are brought on record, so that there is no scope for miscarriage of justice. A

29. Although we acknowledge the appellant's plight who has suffered due to alleged acts of forgery, but we are not able to appreciate the appellant's contentions as a penal statute cannot be expanded by using implications. Section 464 of the IPC makes it clear that only the one who makes a false document can be held liable under the aforesaid provision. It must be borne in mind that, where there exists no ambiguity, there lies no scope for interpretation. The contentions of the appellant are contrary to the provision and contrary to the settled law. The prosecution could not succeed to prove the offence of forgery by adducing cogent and reliable evidence. Apart from that, it is not as though the appellant is remediless. She has a common law remedy of instituting a suit challenging the validity and binding nature of the mortgage deed and it is brought to our notice that already the competent Civil Court has cancelled the mortgage deed and the appellant got back the property. B C D

30. In light of the above discussion, we find no reason to interfere with the order passed by the High Court, resultantly appeals stand dismissed being devoid of merits. E