

**IN THE COURT OF ADDL.DISTRICT & SESSIONS JUDGE-I
AIZAWL JUDICIAL DISTRICT, AIZAWL**

***Crl.Tr.No.1380/1994 U/S 409 IPC
Aizawl P.S Case No.662/1994***

State of Mizoram	:	Complainant
	Vrs	
Lalengmawii	:	Accused

**BEFORE
Vanlalmawia
Addl.District & Sessions Judge-I
PRESENT**

For the opposite party	:	R.Lalremruata, Addl.PP Lily Parmawii Hmar, APP
For the Accused	:	W.Sam Joseph.
Date of hearing	:	31.8.2015
Date of Judgment	:	30.9.2015

ORDER

This instance Crl.Tr.No.1205/1994 was disposed by my predessor Addl. District & Sessions Judge-I Aizawl District Aizawl by sentencing her to imprisonment already undergone and to pay a fine of Rs.50,000/- i/d 1(one) year S.I vide order dt.30.7.2010 the judgment order of the said court was appealed by the convicted Lalengmawii before the Hon'ble Gauhati High Court, Aizawl Bench, and registered appeal No.42 of 2012, the Hon'ble Gauhati High Court remanded back the case for re-trial from the stage of closure of prosecution witness by applying the provision of section 232, 233 and 313 Cr.P.C, and the

case was endorsed to me by District & Sessions Judge on 27.2.2014 for my disposal.

The prosecution submitted that they do not have any other witness apart from prosecution witness already examined, and hence closed the stage of prosecution witness on 5.5.2014.

Accused Lalengmawii was examined u/s 313 Cr.P.C in the presence of her Id. counsel Mr.W.Sam Joseph, and answer the question put forth as under Q.1. It is from the evidence that you were holding the post of Assistant under Mizoram Co-operative Society around 1994. What do you say ?

Ans : Yes I hold the post of Assistant.

Q.2.The evidence against you is that in the year 1994, Pi Lalramengi was the cashier of the same department. What do you say ?

Ans : Yes, Lalramengi was cashier in the Department.

Q.3 The evidence against you is that cheque amounting to Rs. 20 lakhs bearing no.B/918720 dt.3.8.94 was handed over to you by cashier Lalramengi. What do you say ?

Ans : Yes, the cheque amounting to Rs. 20 lakhs was handed over to me by the cashier, but I do not know the cheque number.

Q.4 It is from the evidence that in the said department file No.4 27033/1/92-RCOOP page no.36 dated 3.8.94 you entered and wrote the acceptance of the cheque. What do you say ?

Ans : Yes, I entered and wrote the acceptance of the cheque on 3.8.94.

Q.5 The evidence against you is that on the next working day i.e 4.8.94 you left your office telling the officer Superintendent Pu K.Lianzapauva that you were not feeling well and left the office early. What do you have to say ?

Ans : Yes, I left the office early on 4.8.94 and I handed over the keys to the locker to the Superintendent Pu K.Lianzapauva.

Q.6. The evidence against you is that during the period of your absence from office, the above said cheque amounting to Rs.20 lakhs was found already drawn from SBI dt.4.8.94, the date was clearly oppended on the back side of the cheque with the date given as 4.8.94. What do you say ?

Ans : The cheque was drawn on 4.8.94 during my absence but I came to know only in the month of October.

Q.7. The evidence against you is that you did not turn up to your office after you left the office on 4.8.94 till 12.8.94. What do you say ?

Ans : I availed C.L for this period due to illness.

Q. 8 The evidence against you is that you availed leave further from office w.e.f 30.8.94 to 30.9.94. What do you say ?

Ans : I availed E.L during this period due to illness of my daughter.

Q.9. The evidence against you is that you managed to get hold of this original cheque book of the department from cashier and you removed the last cheque leaf of the cheque book no.B/A32/100 918701 – 918800. What do you say ?

Ans : **No I did not remove.**

Q.10. The evidence against you is that you made duplicate copy of the last cheque no B/A32/100 918800 and on that duplicate cheque you forged the hand writing of the cashier and the signature of the then Registrar, co-operative Society. Pu A.K.Guha I.A.S and the signature of Joint Registrar, Pu Lalpekliana. What do you say ?

Ans : **No, I did not forge the said signatures.**

Q.11. The evidence against you is that in order to hide the crime you committed you prepared the same cheque again in favour of the Chief Executive Officer, Mizoram State Co-operative Union for an amount of Rs. 20 lakhs forging the signature of the then Registrar, Pu A.K.Guha I.A.S and the then Joint Registrar, Pu Lalpekliana. What do you say ?

Ans : **No, I did not prepare duplicate cheque.**

Q.12. The evidence against you is that you kept the said forged cheque under your custody for a long time so as to make it appear like that of the original cheque. What do you say ?

Ans : **I received cheque from the cashier only once, and I kept it until the Joint Registrar gave me verbal instruction to release the money.**

Q.13. The evidence against you is that you approached the Registrar, Joint Registrar, Co-operative Society with the duplicate fake cheque saying their signatures are required in the cheque. What do you say ?

Ans : **I did not approach the Registrar or Joint Registrar to obtain their signatures.**

Q.14. The evidence against you is that you were dealing with plan files and nobody except you were in charge of plan files in your department. What do you say ?

Asn : **Yes, it is a fact, however during my absence period it had to be taken up by some other official.**

Q.15. The evidence against you is that the plan files are the files in which plan funds are to be distributed/disbursed.

Ans : **It is correct.**

Q.16. The evidence against you is that you went to the chamber of Pu Lalpekliana, the then Joint Registrar, Co-operative Society stating that the cheque meant for Mizoram State Co-operative Society amounting to Rs. 20 lakhs was wirth you and a new cheque was needed to be prepared as the amount meant for District Co-operative Union, Lunglei and Saiha were exchanged from Rs.150 lakhs to Rs. 2 lakhs respectively. What do you say?

Ans : **No, I did not.**

Q.17. The evidence against you is that you met cashier Lalramengi on 2.8.94 on the corridor just outside the room of P.A to RCS (Registrar, co-operative Societies) What do you say or what have you got to explain yourself ?

Ans : **I did not explain myself to the cashier.**

Q.18. The evidence against you is that when you met the cashier Lalramengi, you told her to hand over to you the said cheque amounting to Rs. 20/- lakhs .What have you got to explain yourself ?

Ans : **I did not tell cashier to give me the said cheque.**

Q.19. The evidence against you is that you told cashier Lalramengi that you had a discussion with the RCS about the disbursement of assistance to MSCU and you have to prepare some instructions to MSCU as to how they are going to utilize the assistance, therefore you needed the cheque. So, you asked cashier Lalramengi to hand over the cheque to you ? What have you got to explain yourself ?

Ans : **I did not tell anything about the cheque, how the money utilize etc. to the cashier or any discussion with the RCS.**

Q.20. The evidence against you is that the cashier Lalramengi accordingly submitted the said cheque No B/A 32/100 – 918720 to you on 3.8.94 along with the cash transaction file at your table in your office. What have you got to explain yourself ?

Ans : I received cheque from the cashier Lalramengi as per instruction by the JRCS to issue to the beneficiaries, but I do not know the cheque number.

Q.21. The evidence against you is that when the said cheque and file was submitted to you by cashier Lalramengi, you told her to write all the necessary formalities as you are very busy so the cashier wrote down on the note sheet No.36 that cheque No B/A 32/100 – 918720 was handed over to Pi Lalengmawii, Assistant. Then you put your signature with a date on the note sheet. What have you got to explain yourself ?

Ans : I did not tell the cashier anything as I received cheque from her. However, I gave my signature in the note sheet as a receipt of the cheque.

Q.22. The evidence against you is that your colleagues working with you in your office came to know that the said cheque was encashed already on 3.4.94 but they came to know it on the month of October 1994 only, but the cheque was encashed on 3.4.94, the day it was handed over to you by the cashier Lalramengi, how do you explain yourself ?

Ans : I came to know the encashment on 3.4.94 in the month of October 1994.

Q.23. The evidence against you is that the said cheque submitted to you by cashier Lalramengi was bearing No. B/A 32/100 – 918720 dated 3.4.94, but the remaining cheque with you not encashed was bearing cheque No. B/A 32/100 – 918800. What have you got to explain yourself ?

Ans : I can not say or remember the number of cheque which I received from the cashier.

Q 24. The evidence against you is that the cheque submitted to you by cashier Lalramengi is fully ready for encashment i.e already signed by the authority of your department and already date given ? What do you say to this ?

Ans : I do not know whether the said cheque given by cashier to me was fully ready for encashment or not.

Q 25. The evidence against you is that the cashier Lalramengi testified before the court that cheque bearing No. B/A 32/100 – 918720 which is exhibited in the court as Exhibit – 1 is prepared by her whereas the cheque bearing No B/A 32/100 – 918800 which you return to her inside envelope which is exhibited in the court as material Exhibit- 2 is not prepared by her and it does not bear a date. How do you explain yourself ?

Ans : The only cheque that I kept was the one given to me by the cashier and I do not know the number of the said cheque.

Q.26. The evidence against you is that you went to the chamber of Pu Lalpekliaana saying a new cheque was required which needed his signature and you brought cheque No. B/A 32/100 – 918800 and take his signature on the cheque. What have you got to say ?

Ans : I did not go to the Chamber of Pu Lalpekliaana JRCS for obtaining his signature on the said cheque No. B/A 32/100 – 918800.

Q.27. The evidence against you is that when your office found out that cheque bearing No. B/A 32/100 – 918720 dated 3.4.94 was already encashed at SBI Aizawl, they went to the SBI and found that the recipient signature was signed as Engi which was found to be your signature. What have you got to explain yourself ?

Ans : I did not go to the SBI Aizawl to draw the said cheque, in fact I did not sign on the said cheque.

Q.28. The evidence against you is that SBI employee Mr. Ngurthantuma who is PW No.4 before the court that on 4.8.94, while he was on duty at SBI (Main Branch) at the current account counter, you went to him for encashment of the said cheque, in his presence you gave your signature at the bolt of the bearer cheque and he inturn issued to you a token and the token No. is C.A 24. How do you explain yourself ?

Ans : I did not go to the SBI Main Branch for encashment of the said cheque on 4.8.94. It is not my duty to go to the Bank for drawing cash /money for the Department.

Q.29. The evidence against you is that Ext. M. 1 is the said cheque amounting to Rs. 20/- lakhs and it was testified in the court by the PW No.4 as brought to him by you on 4.8.94. How do you explain yourself ?

Ans : I did not go to the SBI Main Branch for encashment of the said cheque on 4.8.94. But in the month of October 1994 I met Mr.Ngurthantuma PW No.4 at the Bank as directed by JRCS to ascertain whether the money was already drawn or not.

Q.30. The evidence against you is that the cheque bearing No B/A 32/100 – 918800 you had return to cashier was found to be the last leaf of the cheque book bearing No. from 918701 to 918800 which you have taken from cashier Lalramengi, and you are suspected to tear it off from the cheque book. What have you got to say ?

Ans : **I did not tear off the said cheque from the cheque book. The only cheque that I kept is the one that the cashier gave me and I returned the same to the cashier after direction from the JRCS.**

Accused Lalengmawii was examined herself as defence witness No1 and accused Lalengmawii stated that :

1994 1st October joined as Assistant in the office of the Registrar Co-operative Society Department Mizoram Aizawl.

I want to say that I am not involve in misappropriation of Rs.20 lakhs and the allegation made against me is false and concocted. I am in the establishment Branch and I am dealing with Annual Plan file in the year of 1994 so I am not in a position to know the transaction and Account matter in the office of Co-operative Society. From the Annual Plan file Government sanction and release order of beneficiaries are prepared as and when approval from higher authority. In the month of August 1994 and the Joint Registrar of Co-operative Societies Mr.Lalpekliana gave me instruction to make release order of Rs.20 lakhs to be issued to MSCU Aizawl and then after I make release order and put up the file and he signed the release order on 3rd October 1994 and I informed the cashier Mrs Lalramengi to disburse the said cheque to the cashier of MSCU Aizawl. But Mrs Lalramengi came to me and gave me the cheque of Rs.20 lakhs and she told me that she left the office for duty and she request me to hand over the said cheque to the cashier of MSCU. However I do not know the said cheque number of Rs.20 lakhs. And I informed the cashier of MSCU Aizawl to collect the said cheque and she came to me to collect the said cheque and before I handed over the cheque to the said cashier (MSCU) JRCS Pu Lalpekliana telephone me not to

hand over the cheque since the sanction amount of Rs. 20 lakhs for Saiha Lunglei and Aizawl District were not yet finalized to disburse. And he instruct me to kept the said cheque until further order. On 20th October 1994 Pu Lalpeklia, JRCS called me in his office chamber to discuss release of Rs.20 lakhs and he inform me to encash the said cheque but I informed him that I am not entrusted with to draw the money and that is the duty of the cashier then after he called the cashier Lalramengi and I handed over the said cheque in the presence of Pu Lalpeklia JRSC after 20 minutes the cashier came to me and she told me that the said cheque was already encash in 4th August 1994.

In 4th August 1994 I left the office in the after noon with permission of Superintendent as I am not feeling and left the office, and I handed over the key of the locker to the Superintendent Pu K.Lianzapauva. When I left the office the said cheque was inside my locker with register.

I do not know while the said cheque was in my locker till 20th October 1994 how it can be encashed on 4th August 1994

In her cross examination by prosecution, she stated that It is a fact that when I gave a key of the locker to the Superintendent as I left the office I did not inform or tell him what all the things kept inside the locker. The spare key of the said locker was already with the Superintendent. The Superintendent was a male and not a female.

I do not know the number of the said cheque which I kept inside the said locker. I also do not know the number of the cheque that I handed over to the cashier as instructed by JRCS in the month of October 1994 and I do not know whether the cheque that I kept inside the locker before I left the office was same as the cheque that I handed over the cashier.

I myself along with one staff enquired at the SBI as per the instruction of JRCS, I found out that the cheque was encashed on 4th August 1994 and I was accused of putting my signature on the said cheque. Though I was accused of

putting my signature on the said cheque, I did not file FIR or make a complaint to the Police or the concerned authority.

It is a fact that I do not have any documentary proof of my statements in my examination in chief and I state that this is due to the reason that I was not allowed to collect the same from my office by my superior Officers.

I accept that the signature given on the cheque at the time of drawing or encashment at the Bank was written as Engi which is a female name.

I believe that some of my colleagues sitting by my side saw me keeping the cheque inside my locker before I left the office and before I gave the key of the said locker to the Superintendent. However, I cannot say their names who might have seen the same.

After prosecution and defence evidence is closed, I heard both the defence council and public prosecutor, Mr.W.Sam Joseph, Id. defence counsel for the accused verbally submitted that the prosecution did not prove the case beyond reasonable doubt, and the conviction based only on suspicious ground and not proving the fact. Since the prosecution unable to prove the two cases, benefit of doubt be in favour of accused and prayed to acquit the accused Lalengmawii Pu R.Lalremruata, Addl. Public Prosecutor also submitted verbally that the Id. Addl. Judge, Fast track court be confirmed, the Hon'ble Gauhati High Court Aizawl Bench accepted the prosecution evidence, but unluckily the trial court did not obtained signature of accused in 313 Cr.P.C examination, and is not given chance defence evidence to the accused and this is the only reason as to why the Hon'ble High Court set aside the judgement. After these verbal submission, both the Id counsel submitted argument in writing the Id. Addl. Public Prosecutor submitted that :

1. The accd was convicted by the Addl. Judge Fast Tract Court on 30.07.2010 and sentenced her to pay a fine of Rs. 50,000/- I.D.S.I for one year and imprisonment for a period already undergone (i.e. 14 days) in Crl. Tr. No. 42

and in CrI. Tr. No. 1380/94 convicted on 06.08.10 and sentence to pay a fine of Rs. 1,00,000/-.

2. The State of Mizoram filed an appeal of the said judgment and order before the Hon'ble High Court praying for enhancement of the sentence and as per High Court order in CrI. A. No. 16 of 2010 dt. 14.02.12 the Hon'ble High Court allowed the appropriate court to pass appropriate order of sentence.

3. On 22.08.12 the Hon'ble Court passed another order directing the Addl. Sessions Judge-I to proceed with the case.

4. On 30.10.12 the Addl. District & Sessions Judge-I passed an order sentencing the convicted to undergo RI for a period of 2 yrs. Detention period of one month shall be set off.

5. The acdd/convicted filed an appeal before the Hon'ble Court and by order dt. 31.01.2014 in CrI. A. No. 41 and 42 of 2012, the Hon'ble High Court set aside the said order and remanded back to the Ld. Trial Court for proceeding afresh from the stage of closure of prosecution witness, by applying provisions of sec. 232, 233 and 313 Cr.P.C.

6. The acdd was then examined u/s 313 Cr.P.C. by the Ld. Trial court and the acdd put her signature on all the pages.

7. The acdd was given a chance to produce her witness and she as her witness deposed before the court.

8. On perusal of all materials available on record, it is pretty clear that the acdd is guilty of the charge leveled against her. Infact the Ld. Addl. Judge, Fast Track Court was right in convicting the acdd. This Hon'ble Court is prayed to reply on the judgment dt. 30.07.2010 and dt. 06.08.2010 passed by the said Court.

9. When the acdd preferred an appeal before the Hon'ble High Court, even the Hon'ble High Court did not send the case back for retrial right from the beginning, infact only from the stage of closure of prosecution witness and it appears that this is due to the very fact that the acdd did not give her signature on all the pages of her examination u/s 313 Cr. P.C. and she was not given a chance to produce her witness.

10. The signing on all the pages of her examination u/s 313 Cr.P.C. and their deposition as defence witness never shake the facts and the trial already conducted or the case and indeed the signing on all the pages of her examination u/s 313 Cr.P.C. and her deposition as defence witness can never be used as a base for acquitting the accd.

11. That on cross-examination she stated that though she was accused of putting her signature on the cheque, she did not file FIR to the Police or make a complaint to the concerned authority, which highlights that she accepted the accusation of putting her signature on the cheque.

She also stated that she gave the locker key to the Superintendent who was a male and accepted that the person who signed on the cheque was Engi who was a female. Hence the Superintendent who was a male was not the one who encashed the cheque. Since it was a female who encashed the cheque, the only female who could have encashed the cheque was the accused person as she was the only female person who had the said cheque.

12. The Ld. Counsel will submit other facts and points at the time of hearing.

In the facts and circumstances mentioned above this Hon'ble Court is earnestly prayed to convict the accused Lalengmawii, U/s 409/420/486/471 IPC.

Mr. W.Sam Joseph, defence counsel also submitted argument in writing that :

1. The prosecution story in brief is that on 21.10.94 Pu Lalpekliana, Registrar, Cooperative Societies, Aizawl lodged a written ejahar to the Aizawl P.S. to the effect that an amount of Rs.20 lakhs was sanctioned by the Govt. of Mizoram for release as financial assistance drawn by one Lalengmawii, Assistant, Co-operative Societies without the knowledge of Registrar and Joint Registrar of Co-operative Societies fraudulently and misappropriated. Hence (A) PS c/no.565/94

u/s.420/468/471 IPS was registered and investigated into. In the course of investigation the accused was arrested and remanded into J/C but released on bail. Some valuable articles suspected to have purchased from the misappropriated Govt. money were seized from the possession of husband of the accused person but released on zimma as per order of ADM(A). As many as 15 witnesses were examined and recorded their statement judicially u/s 164 Cr.P.C. All the witnesses corroborated the FIR. The State Bank staff were put on pressure in extracting statements from the respective clerks that they knew personally the accd and identified her while taking TOKEN and CASH from the Bank. Documents like cheque Book, Note sheets and cash book of current Account had been seized. Original cheque alongwith specimen signature of the accd sent to F.S.L for Expert Opinion in regard of questioned documents have been received from the Forensic Science Laboratory, Guwahati have been received which is found positive. As a prima facie case u/420/468/471 IPC has been well established against the Accd. Lalengmawii, so the I.O. submitted charge sheet in the case.

2. After the charge sheet was received by the court, the court furnished the copies of the charge sheet and the documents submitted there with to the accused. Thereafter, charges under S.420/468/471IPC was read over, explained and framed against the accused Lalengmawii to which the accused pleaded not guilty and claimed for trial.
3. Thereafter, the prosecution examined the following witnesses namely, 1.Lalpekliaana, 2.Lalramengi, 3.Ngurthantuma, 4.K.Zothankima, 5.Helen Laltluangi, 6.Tlanthangi, 7.Lalmalsawmi, 8.S.I. Jimmy L.Renthlei and 9.O.U.Majumdar.
4. After the prosecution witnesses were examined the accused was examined and the accused denied the allegations made against her.

5. After the hearing the arguments from the counsels for the prosecution and the me your honour was pleased to direct me and the prosecution counsel to submit our arguments in writing. Hence the written argument.
6. The prosecution has to prove beyond reasonable doubt that the accused committed the offences under S. 420/468/471IPC. Hence the provisions of the said sections of law are re-produced here-in-below:

420. Cheating and dishonestly inducing delivery of property.- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

In the case of cheating and dishonestly inducing delivery of property the prosecution has to prove the following beyond reasonable doubt.

Proof.—The points requiring proof are—

(1) that the accused cheated another person ;

(2) that he thereby induced—

(a) delivery of property to any person, which property did not belong to the accused ; or

(b) to make, alter or destroy the whole or any part of a valuable security ;

or

(c) anything which is signed or sealed and capable of being converted into a valuable security ;

(3) that he did so dishonestly.

468. Forgery for purpose of cheating.--Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

In the case of Forgery for purpose of cheating the prosecution has to prove the following beyond reasonable doubt.

Proof.—The points requiring proof are—

(1) that, the document or electronic record is a forged ;

(2) that the accused forged the document or electronic record ;

(3) that he did as above intending that the forged document would be used for the purpose of cheating.

471. Using as genuine a forged document. - Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

In the case of Using as genuine a forged document the prosecution has to prove the following beyond reasonable doubt.

Proof.—The points requiring proof are—

(1) that accused fraudulently or dishonestly used a document as genuine ;

(2) the accused knew or had reason to believe that the document was forged one.

7. It is clear that the cheque which was drawn by some person was the cheque bearing no.B/A32/100 918720 amounting to Rs.20 lakhs and the said Cheque was marked as Exb-M1 by the prosecution.

8. The ingredients of the S.468 and 471 IPC are not attracted in the present case.

The investigating officer had sent the Blue enclosed writing and signatures stamped and marked Q1 to Q15 and S1 to S23, A1 and A2 in 2 cheques, 12 sheets and 1 volume were sent to the Forensic Science Laboratory, Assam, Guwahati. As per the opinion given by the Scientific Officer, Questioned Documents Division, Forensic Science Laboratory, Assam, Kahilipara, Guwahati – 19, the expert could give opinion only in respect of Q9 which relates to the ext.M-2 (Cheque bearing no. .B/A32/100 918800 and no money was encashed with the said cheque. The opinion of the Expert is re-produced here-in-below for ready reference and it runs thus: "The documents in connection with Aizawl P.S.Case No.565/94 u/S 420/468/471 IPC have been carefully and thoroughly examined. The person who wrote the blue enclosed writings and signature stamped and marked S1 to S7 also wrote the red enclosed writings similarly stamped and marked Q9. It has not been possible to express a definite opinion regarding the authorship of the rest of the questioned items on the basis of comparison with the materials at hand" The expert could not give any opinion on the authorship of the writings found on the Ext M-1 which is the cheque bearing no. B/A32/100 918720.

9. The Complainant Pu Lalpekliana could not prove the original complaint. He during cross examination clearly stated that "I do not find the FIR filed before the Police today in the Court. Exb. P-I is only the type matter and I do not find my signature in Exb.P-I. I do not know the whereabouts of my F.I.R." He clearly admitted that "In Exb.M-1 bearing No. B/A32/100 918720 the signature found within a red enclosure Q2 and Q7 are my signatures Q3 and Q8 are signatures of the then Registrar, Co-operative Societies Mizoram Mr.A.K.Guha. I do not know who put the signature shown in Red enclosure Q5 and Q6 and also I cannot say who wrote the words mentioned in Red

enclosure Q4." As regards the Exb-M-2 he stated during cross examination that "In Exb M-2 the signature found in Red enclosure Q13 is my signature Q12 is the signature of the Registrar Mr.A.K.Guha." He further stated during cross examination that "It is a fact that Exb. M-1 and 2 were kept in the custody of the cashier. The cashier used to hand over the cheque to the bearer/addressee." He further stated that "I personally do not know who wrote the words in the Red enclosed portion mentioned the Q1 in exb.M-1 and Q9 in exb.M-2. However, I presume Q1 was written by cashier as she used to do always. My cashier also is known as 'Eng' but her full name is Lalramengi. I do not remember whether Lalramengi used to sign as 'Engi' in the files or not. I personally do not know who had drawn the cheque exb.M-1. I know that exb.M-2 was not drawn by anybody." He further stated that 'I do not remember clearly as to whether the words "please pay to Pi Lalramengi" was bearing Exb.M-2 when I put my signature. It is difficult to say as to who has drawn the cheque exb.M-1 it may be Lalengmawii, Lalremengi or any other 'Engi". He further said that "My complaint was made on the basis of suspicion only."

10. The PW Ngurthantuma stated that "On 4-8-94, while I was on duty at S.B.I. main Branch at the current account counter, the accd came and draw a bearer cheque amounting to Rs.20 lakhs for encashment and I have told her to give her signature at the back of the bearer cheque accordingly She gave her signature in the bearer cheque. After which I had issued a token to the accd. Then, the cheque is posted in the Deptt. account, then through the token money was received from the counter. Exb.M-1 is the cheque brought by the accd. amounting to Rs.20 lakhs. Q.5 and Q6 in Exb. M-1 is sign by the accd. in my present." During cross examination he stated that "It is a fact that I have made statement before Pu H.B.Thapa Magst. 1st Class Aizawl District and I put my signature in the statement. The Statement was read over to me. I was in the current account counter before 4.8.94

may be about the month even after 4.8.94 I contd to sit in the same counter only the cashier was to come to present the cheque encash the cheque. I do not know the accd. personally but I have seen her face since she was working at statistic deptt as cashier." He clearly stated during cross examination that "It is a fact that in my statement made before the Magst. H.B.Thapa I have told that the cashier of Co-operative Socieity came to the bank and presented Exb-M-1"

11. It is clear from the statement of the said PW that he had mixed up with the cashier of the Co-operative department with the accused. The accused was never a cashier of the Co-operative department or statistics department and during cross-examination he stated that he was there only from one month prior to 4.8.94, hence it is clear that it is a mistaken identity. Though the said PW Ngurthantuma alleged to have stated that the accused put the signature marked as Q5 and Q6 but the expert in his opinion clearly stated that he could not give definite opinion regarding the authorship of the Q5 and Q6. This raise a doubt as to who was the person really went to the Bank and put the signatures in the ext M-1. The benefit should go to the accused.
12. The I.O. of the case S.I.Jimmy L.Renthlei stated during cross examination that "It is a fact that I did not see the original FIR filed by the Registrar of Cooperative Societies in the Court today." He further stated that "It is a fact that I do not find the name of the accused showing that the signature and handwriting belongs to her." He also stated that "I did not see the seized article in the court today. The custody of the cheque book and cheque leafs are with the cashier." He also stated that "It is a fact that there was no complaint lodged by the cooperative Department regarding the loss of the cheque leafs or cheque books." He also stated that "It is a fact that I did not seize any cash from the accused or her relatives and I have also not seized any account book relating to the accused in any Bank."

13. After the case came back from the High Court, the accused examined herself as defense witness. In her statement she stated clearly that "1994 1st October joined as Assistant in the office of the Registrar Co-operative Society Department Mizoram Aizawl. I want to say that I am not involve in misappropriation of Rs.20 lakhs and the allegation made against me is false and concocted. I am in the establishment Branch and I am dealing with Annual Plan file in the year of 1994 so I am not in a position to know the transaction and Account matter in the office of Co-operative Society. From the Annual Plan file Government sanction and release order of beneficiaries are prepared as and when approval from higher authority. In the month of August 1994 and the Joint Registrar of Co-operative Societies Mr.Lalpeklana gave me instruction to make release order of Rs.20 lakhs to be issued to MSCU Aizawl and then after I make release order and put up the file and he signed the release order on 3rd October 1994 and I informed the cashier Mrs Lalramengi to disburse the said cheque to the cashier of MSCU Aizawl. But Mrs Lalramengi came to me and gave me the cheque of Rs.20 lakhs and she told me that she left the office for duty and she request me to hand over the said cheque to the cashier of MSCU. However I do not know the said cheque number of Rs.20 lakhs. And I informed the cashier of MSCU Aizawl to collect the said cheque and she came to me to collect the said cheque and before I handed over the cheque to the said cashier (MSCU) JRCS Pu Lalpeklana telephone me not to hand over the cheque since the sanction amount of Rs. 20 lakhs for Saiha Lunglei and Aizawl District were not yet finalized to disburse. And he instruct me to kept the said cheque until further order. On 20th October 1994 Pu Lalpeklana, JRCS called me in his office chamber to discuss release of Rs.20 lakhs and he inform me to encash the said cheque but I informed him that I am not entrusted with to draw the money and that is the duty of the cashier then after he called the cashier Lalramengi and I handed over the said cheque in the presence of Pu Lalpeklana JRSC after 20

minutes the cashier came to me and she told me that the said cheque was already encash in 4th August 1994. In 4th August 1994 I left the office in the afternoon with permission of Superintendent as I am not feeling well and left the office, and I handed over the key of the locker to the Superintendent Pu K.Lianzapauva. When I left the office the said cheque was inside my locker with register. I do not know while the said cheque was in my locker till 20th October 1994 how it can be encashed on 4th August 1994.

14. If at all the accused had drawn the huge amount of Rs.20,00,000/-, the I.O. should have traced out the entire amount how it was utilized or where it was kept, the fact that the I.O. could not have any evidence to show beyond doubt that the accused had withdrew the money and utilized by herself.
15. In the case of Tulsi Ram Vs. State of U.P. AIR 1963 SC 666 it was stated by the Supreme court that "To establish a charge under S.420, it must be proved not only that he has cheated someone but also that by doing so he has dishonestly induced the person who was cheated to deliver any property etc. A person can be said to have done a thing dishonestly if he does so with the intention of causing wrongful gain to one person or wrongful loss to another person – wrongful loss means loss of property to which a person is entitled while wrongful gain to a person means a gain to him by unlawful means of property to which the person gaining is not legally entitled."
16. From the evidence on record the prosecution has not proved that the accused forged any document and used any forged document. There is no proof of cheating. As stated by the complainant the case is based on suspicion.
17. In the case of AIR 1996 SUPREME COURT 3345 "State of M.P. v. Surbhan" the supreme court has clearly mentioned that *"It is contended that the FIR mentions the names of above persons who were specifically mentioned and it lends corroboration to the evidence of P.W. 2. We find no substance in this contention. The FIR cannot*

be used as substantive evidence or corroborating a statement of third party, i.e., P.W. 2. FIR cannot be used to corroborate the evidence of P.W.2. It can be used either to corroborate or for contradiction of its maker." In the present case the prosecution could not produce the original FIR and even if the original FIR is available it is not a substantive evidence and it can be used for corroborating or contradicting the maker of the FIR.

18. In the case of AIR 1995 SUPREME COURT 1437 "Madhusudan Singh v. State of Bihar the supreme court has given its opinion on the FIR - *"FIR - Evidentiary value - Conviction based only on allegations in FIR - Allegations in FIR not proved at trial nor substantiated by oral evidence - Conviction set aside - FIR by itself is not substantive piece of evidence and it can only be used to either contradict or corroborate the maker thereof."*
19. In the case of AIR 1973 SUPREME COURT 491 "Nanhku Singh v. State of Bihar" it was decided by the Supreme Court that *"In the first place it may be noticed that F. I. R. is not a substantive piece of evidence. It is an information of a cognizable offence given under Section 154 of the Criminal Procedure Code and if there is any statement made therein it can only be used for the purposes of contradicting and discrediting a witness under Section 145 of the Evidence Act. In the second place the statement given by the informant need not necessarily be an eye witness account of what he has actually seen."*
20. In the present case the original FIR was not available in the record and the FIR was not proved as it should be proved, hence the accused is entitled to the benefit.
21. In the case of AIR 1994 SUPREME COURT 250 "State of Gujarat v. Patel Mohan Mulji" it was decided by the Supreme Court that "It may be also pointed out here that the **medical evidence as rightly held by the High Court is irreconcilably in conflict with the oral evidence given by P.Ws. 5 and 8.** Thus it is seen that there are many infirmities surrounding the prosecution case. Under these

circumstances, we do not like to interfere with the order of acquittal passed by the High Court and in fact that judgment of the High Court does not suffer from any manifest illegality or perversity. In the result, the appeal is dismissed. Bail bonds are discharged." In the present case the expert opinion is in conflict with the evidence of the PW Ngurthantuma, hence the accused is entitled to get the benefit.

22. In the case of JAHARLAL v. STATE OF ORISSA, (1991) 3 SCC 27 it was decided by the Supreme Court that "*Conjectures or suspicions should not be allowed to take place of legal proof.*" The complainant stated that he only suspected the accused. Hence in the light of the said Supreme court decision the accused is entitled to be acquitted.
23. In the case of RABINDRA KUMAR DEY v. STATE OF ORISSA, (1976) 4 SCC 233 it was decided that "In order to judge the truth or falsity of the version given by the defence three cardinal principles of criminal jurisprudence are well settled, namely:
 - (1) that the onus lies affirmatively on the prosecution to prove its case beyond reasonable doubt and it cannot derive any benefit from weakness or falsity of the defence version while proving its case;
 - (2) that in a criminal trial the accused must be presumed to be innocent unless he is proved to be guilty, and
 - (3) that the onus of the prosecution never shifts."
24. In the case of Kali Ram Vs. State of H.P., (1973) 2 SCC 808 it was held by the Supreme Court that "*If two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.*"
25. In the case of Basudev Hazra V. Matiar Rahman Mandal, (1971) 1 SCC 433 it was held by the Supreme Court that "*Defence of the accused person can legitimately be taken into consideration while assessing*

the value of the evidence and judging the guilt or innocence of accused."

26. In the case of Aher Raja Khima V. State of Saurashtra, AIR 1956 SC 217 it was held by the Supreme Court that "*When the accused person offers a reasonable explanation of his conduct, then, even though he cannot prove his assertions, they should ordinarily be accepted unless the circumstances indicate that they are false.*"
27. In the case of State of Punjab V. Bhajan Singh (1975) 4 SCC 472 it was held by the Supreme Court that " Suspicion, by itself, however strong it may be cannot take the place of proof and warrant a finding of guilt of the accused."
28. In the present case the prosecution miserably failed to prove beyond reasonable doubt that the accused forged any document and used the forged document and also cheated any person.
Therefore, I pray the court to acquit the accused person from the liabilities of the charged under s.420/468/471IPC.

The accused Lalengmawii was first convicted and sentence by Addl. Judge to imprisonment already undergone and to pay a fine of Rs.50,000/- i.d 1 yrs S.I vide order dt.30.7.2010 and the state Government preferred an appeal to the High Court, and the High court sent back the case to the District court in respect of sentence period, and the Addl.District Judge-I sentence for imprisonment for a period of 2 yrs, vide order dt.30.10.2012 and the High court remanded back again for the second time for retrial from the stage of closure of prosecution witness by applying section 232, 233, and 313 Cr P.C are have done with.

Perused all the evidence adduced by the prosecution witnesses available in the trial court/case record, and on careful perusal of all material evidence available in the case record, the defence evidence does not attack the prosecution evidence I am also convinced by the submission of public prosecutor that on cross examination she stated that though she was accused of putting her

signature on the cheque, she did file FIR to the police, or make complainant to the concern authority, which highlight that she accepted accusation of putting her signature on the cheque, and also that she stated that she gave the locker key to the Superintendent who was a male and accepted that the person who signed on the cheque was Engi who was a female. Hence the Superintendent who was as male was not the one who encashed the cheque. Since it was a female who encashed the cheque, the only female who could have encashed the cheque was the accused person as she was the only female person who had the said cheque.

I therefore find no new point of defence for the accused, but also find her guilty u/s 409/468 IPC. I have no alternative except to confirm the conviction and sentence awarded by Addl.Judge First track court, Aizawl to pay a fine of Rs.50,000/- and in respect of sentence of imprisonment, accused is found old aged women who was retire from Government service, the detention period already undergone about 16 days is found enough.

Announce in open court today 30.9.2015.

The case is disposed.

Sd/- VANLALMAWIA
Addl.District & Sessions Judge
Aizawl Judicial District,Aizawl

Memo No ____/ADJ-I(A)/2015 : Dated Aizawl the,30th September 2015

Copy to :-

1. District & Sessions Judge.
2. Accused Lalengmawii C/o W.Sam Joseph Advocate.
3. Deputy Superintendent of Police (Prosecution) Aizawl.
4. W.Sam Joseph Advocate.
5. App. Addl.PP
6. Judicial section
7. Case record.
8. Guard file.

PESHKAR