

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

CRL.A.No. 2201 of 2004 (E)

**AGAINST THE JUDGMENT IN CC 10/1997 OF THE SPECIAL JUDGE SPE/CBI-I,
ERNAKULAM DATED 21-12-2004**

APPELLANT(S)/ACCUSED NO.1 :-

**P.SOUNDARARAJAN, FORMERLY MANAGER,
BANK OF BARODA, PALAYAM BRANCH, TRIVANDRUM,
T.C.15/644(1), MURALI SADANAM, PALATTUKONAM ROAD,
VAZHUTHAKKAD, TRIVADNRUM.**

**BY ADVS.SRI.T.D.ROBIN
SRI.K.S.ANIL
SRI.P.LEAN JOSE
SRI.V.V.PRATHEEKSH KURUP
SRI.BIMAL PRASAD
SRI.R.ANUP
SRI.V.DIPU**

RESPONDENT(S)/COMPLAINANT/STATE :-

- 1. SUPERINTENDENT OF POLICE,
CBI/SPE, COCHIN, REP. BY STANDING COUNSEL FOR CBI,
HIGH COURT OF KERALA.**
- 2. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.**

**R1 BY ADVS. SRI.S.SREEKUMAR, SC FOR CBI.
SRI.P.CHANDRASEKHARA PILLAI, SC FOR C.B.I.**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17-11-2015,
THE COURT ON 25.11.2015 DELIVERED THE FOLLOWING:**

P.UBAID, J.

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Crl.Appeal No.2201 of 2004
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Dated this the 25th day of November, 2015

ORDER

The appellant herein is the first accused in C.C.No.10 of 1997 of the Special Court, SPE/CBI-I, Ernakulam. He, along with three others, faced prosecution before the court below on the allegation that as part of a conspiracy hatched by them the first accused, by using his official position as Manager of the Bank of Baroda, Palayam Branch, Trivandrum issued bankers cheques in favour of the District Manager, Food Corporation of India, Trivandrum towards the credit account of the second accused when the second accused had no cash credit facility to that extend, thus helped the second accused and others to derive illegal benefits, and the first accused also derived some benefits in the said vitiate transaction. It is alleged that documents and registers were also forged or

fabricated by him for the said purpose.

2. All the four accused appeared before the trial court, and pleaded not guilty to the charge framed against them. The prosecution examined 29 witnesses and proved Ext.P1 to Ext.P87 documents. When examined under Section 313 Cr.P.C., all the accused denied the incriminating circumstances. Though opportunity was granted no defence evidence was adduced by the accused. On an appreciation of the evidence adduced by the prosecution, the learned trial Judge found the first accused guilty, but found the accused Nos.3 and 4 not guilty. As the second accused died pending proceedings, the charge against him abated under the law. On conviction the first accused was sentenced to undergo rigorous imprisonment for five years, and to pay a fine of ₹1,00,000/- under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, to undergo rigorous imprisonment for five years, and to pay a fine of ₹25,000/- under Section 120B read with Section 420 IPC, and to undergo another term of rigorous imprisonment for five years under Section 477A of the IPC, by judgment dated 21.12.2004. Aggrieved by the said judgment of conviction the first accused

has come up in appeal.

3. When this appeal came up for hearing, the learned counsel for the appellant submitted that he has no case to be argued on merits, and that the appellant would concede that the conviction is right under the law. The learned counsel submitted that in view of Exts.P20 and P21 documents containing extra judicial confession of the guilt voluntarily and consciously made by the accused, and proved by the definite evidence of PW5, the appellant would accept the conviction. But the learned counsel made a request to reduce the sentence appropriately. The learned counsel submitted that the alleged manipulation of accounts happened to be made on some misapprehension, or it was rather, an innocent mistake. The learned counsel submitted that the appellant had no bad intention in allowing cash credit facility, or in issuing bankers cheques, however he owns the liability and the responsibility as the person in charge of the bank at the relevant time, and as the person who should have taken due care and caution in the transactions. Realising the mistakes on his part, the appellant sent the Ext.P20 and Ext.P21 letters to the higher authority admitting his liability and owning the responsibility.

These letters stand well proved by the evidence of PW5. The learned counsel submitted that these two letters practically contain an extra judicial confession of the guilt, and the admissions therein cannot be explained away by the appellant in any manner.

4. In view of the submission made by the learned counsel conceding that the conviction is right under the law, especially in view of Ext.P20 and P21 documents containing extra judicial confession, I find it necessary to go to the factual aspects or to the merits of the case. Anyway, on a perusal of the materials including the evidence given by the material witnesses, and also the material documents including Ext.P20 and Ext.P21, I find that the finding of the trial court is quite correct. Issuance of bankers cheque by the accused stands well proved, and the prosecution records also prove that he issued such cheques when the other accused had no cash credit facility in his account at the time. No doubt, the first accused did so to help the other accused illicitly. Of course, it is true that definite materials are not there to show that the appellant was in fact benefited by the said transaction. So far as the offence made punishable under

Section 13(1)(d) of the PC Act is concerned, it would suffice that somebody else is benefited by the illegal acts of the public servant. In view of the clear evidence adduced by the prosecution proving the guilt, I find that the appellant was rightly found guilty by the learned trial Judge.

5. Let me come to the request made by the learned counsel. As already observed, definite materials are not there to show that the appellant was in fact financially benefited much in the alleged transaction. However, it is a fact proved that the other accused was benefited. Anyway in the particular facts and circumstances, I find that the sentence in this case can be modified and reasonably reduced. It was submitted that the amount involved in this case was later remitted in the bank. Ofcourse, this will not exonerate the accused from the liability. An offence once committed is committed, and it cannot be condoned, except by any defence possible under the law. However, this fact can be considered by the Court in deciding the quantum of sentence. As on the date of the alleged incident, the minimum punishment prescribed for the offence under Section 13(2) read with Section 13(1)(d) of the PC Act was imprisonment for one year.

Now it stands enhanced to imprisonment for four years. In the particular facts and circumstances of the case, I find that the minimum sentence then possible under Section 13(2) of PC Act will be the adequate and reasonable sentence in this case. The other sentence also can be reduced accordingly. This Court also feels that the nature of the sentence imposed by the court can be modified and altered to simple imprisonment. To the very limited extent of modifying and reducing the sentence imposed by the court below, this appeal can be allowed in part, confirming the conviction made by the court below.

In the result, this appeal is allowed in part confirming the conviction against the appellant under Sections 13(2) read with Section 13(1)(d) of the PC Act, Section 120B read with Section 420 IPC and under Section 477A IPC, but modifying and reducing the jail sentence imposed by the trial court. Accordingly, the jail sentence imposed by the trial court under Section 13(2) read with Section 13(1)(d) of the PC Act will stand modified and reduced to simple imprisonment for one year, and the jail sentence imposed under Sections 477A IPC and 120B read with Section 420 IPC will stand modified and

reduced to simple imprisonment for six months. The fine sentence imposed by the trial court under Section 13(2) of the PC Act will stand set aside. But the other five sentence under Section 420 IPC is maintained.

Sd/-
P.UBAID
JUDGE

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P.A. TO JUDGE