Bail Slip

The appellant/Accused Viz., N. Sridhar was directed to be released on bail in both the Criminal Appeals in M.P.No.1 of 2006 in Crl.A.No.1058/2006 and M.P.No.1/2006 in Crl.A.No.1059/2006 as per order of this court dated 12.12.2006.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal Nos.1058 and 1059 of 2006

Judgment reserved on :27.02.2015
Judgment pronounced on :04.03.2015

N.Sridhar
.. Appellant/Accused
in both the appeals

v.

State rep. by
Inspector of Police
SPE/CBI/ACB, Chennai. .. Respondent/Complainant
in both the appeals

Prayer:Criminal Appeals filed under Section 374(2) CrPC. against the judgment of conviction and sentence dated 30.11.2006 made in C.C.Nos.26 and 27 of 2004 on the file of the learned Principal Special Judge for CBI cases, Chennai.

For Appellant : Mr.Ayyadurai for Mr.S.P.Sudalaiyandi

For Respondent : Mr.K.Srinivasn
Special Public Prosecutor (CBI cases)

C O M M O N J U D G M E N T

The Criminal Appeals arise out of the judgment of conviction and sentence dated 30.11.2006 made in C.C.Nos.26 and 27 of 2004 on the file of the learned Principal Special Judge for CBI cases, Chennai, whereby the accused was convicted and sentenced in C.C.No.26 of 2004 as follows:

offence under Section	Sentence
477A, 467, 467 read with 471 and 420 IPC	To undergo three months rigorous imprisonment each and to pay a fine of Rs.1,000/- each in default in payment to undergo two weeks rigorous imprisonment each.
13(2) read with 13 (1)(d) of the Prevention of Corruption Act, 1988	To undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/- in default in payment to undergo two months rigorous imprisonment.
The sentence are ordered to be run concurrently.	

The accused was convicted and sentenced in C.C.No.27 of 2004 as follows:

offence under Section	Sentence
477A, 467(2 counts), 467 read with 471 (2 counts) and 420 IPC	To undergo three months rigorous imprisonment each and to pay a fine of Rs.1,000/- each in default in payment to undergo two weeks rigorous imprisonment each.
13(2) read with 13 (1)(d) of the Prevention of Corruption Act, 1988	To undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/- in default in payment to undergo two months rigorous imprisonment.
The sentence are ordered to be run concurrently.	

2.The case of the prosecution is as follows:

(i) The accused/appellant herein was working as Assistant Manager, Indian Bank, T.Nagar Branch from May 1999 onwards. Each officers in the Bank is given User ID and Password to operate the system. User ID of the accused is NSR116.

(ii) In the bank, every day, the transaction logs have been taken, which contains the details of transactions put into the system on the particular day with details such as transaction number, transaction type, amount, the person who entered the transaction, time etc. are rooted through the computers and the System Administrator is the in-charge of entire system as well as the data of the Branch and he has to enter the User ID and Password. Every 15 days, the password will be changed for all officers and the computer will automatically inform the user to change his password. P.W.7/N.M.Karthikeyan was working as System Manager during relevant time.

(iii) P.W.14/A.Sri Ramachandra Murthy was the Senior Manager posted in the Credit Department from May 1997 to May 2002. His User ID is SRM096. He was also placed in-charge of the Branch during absence of the Chief Manager. During 2001, Indian Bank launched Home loans, personal loans, vehicle loans etc. and P.W.14 asked the accused to pass vouchers by using his password in order to ensure uninterrupted customer service and he informed the accused about the change of his password. The accused used the password of P.W.14 and done the work.

(iv) P.W.2/Valmikinathan, who was working as Manager, Indian Bank, Vigilance Department during July 2001 to October 2004, visited T.Nagar branch and on inspection, he came to know the fraudulent transactions in the Savings Bank and Loan account of the accused and filed Exs.P2 and P3 reports. The BPO No.025480 dated 05.09.2000 for Rs.62,573/- favouring M/S.Southern Auto Centre is Ex.P4. The accused has taken Ex.P4/BPO for the purchase of Hero Honda Splendor from M/S.Southern Auto Centre. For the issue of BPO, some remittance has to come into Bank either by cash or by any authorised means, but no remittance was received from the accused towards the issue of Ex.P4. Invoice dated 18.09.2000 in respect of Hero Honda Splendor for total sum of Rs.46,150/- in favour of the accused is Ex.P35 and the statement of account for the accused issued by the M/S.Southern Auto Centre is Ex.P36. After adjusting the sale price, the balance amount of Rs.15,268/- was refunded to the accused by way of a cheque. The transaction log relating to the details of the accused, P.W.14 and Manager Shanmugasundaram is Ex.P7. Ex.P6 is the certified copy of combined transaction log dated 05.09.2000 and the relevant entry was marked as Ex.P9. When interest was charged in excess by the Bank from the customers' account, only debit entry can be made for refund of such excess interest. Corresponding credit entry should be made only in the particular loan account and it is not permissible to credit another account except the loan account. But the credit entry marked in Ex.P9 is wrong. The transactions done under the User ID of P.W.14 is mentioned in Ex.P7/transaction log and the relevant entries are Ex.P10, which reflects the debit of income account and credit of BPO's account.

(v) The BPO bearing No.978073 dated 08.03.2002 for Rs.1,50,000/- favouring M/S.Green Peace Constructions Pvt. Ltd. is Ex.P11 and it is signed by the accused and P.W.3/M.N.Sankaran, Credit Monitoring Officer and the amount has been paid to the payee through Karur Vysya Bank. But no amount was remitted in the Bank by the accused for the issuance of Ex.P11. The combined transaction log dated 08.03.2002 is Ex.P12.

(vi) The BPO No.979219 dated 27.03.2002 for Rs.7,50,000/- favouring M/S.Green peace Constructions Pvt. Ltd. is Ex.P18 and the same was signed by the accused and P.W.4/Madhavan Pillai, Manager and that amount was paid in clearing on 29.03.2002, but no voucher for cash payment was available in the Branch for the issue of Ex.P18. The combined transaction log for the day 27.03.2002 is Ex.P19.

(vii) The loan file relating to P.W.12/Murali and his wife Sheila is Ex.P22. They have already availed loan from HDFC and they wanted T.Nagar branch to take over the liability from HDFC loan and they applied for a loan of Rs.8,04,160/- and sanction of loan was made on 18.12.2001 by the then Manager. Based on the Ex.P22 appraisal note made by the accused, Ex.P20 debit was made on 27.03.2002 for Rs.7,50,000/- under Home loan and BPO was issued favouring M/S.Green Peace Constructions Pvt. Ltd., but the BPO should have been issued in favour of HDFC. In the course of enquiry by P.W.2, the accused admitted that he has taken the BPO for the purchase of flat in the name of his wife from M/S.Green Peace Constructions Pvt. Ltd. 21 entries both debit and credit are found in Ex.P25 under transaction No.6 was marked as Ex.P26. The entries are made under the User ID of the accused and passed under the ID of P.W.14.

(viii) P.W.13/P.R.Sethuraman, Chief Manager was in-charge of the overall functioning of T.Nagar Branch. The various fraudulent transactions in the loan against Deposit account and the Savings Bank account of the accused came to light on 22.07.2002 in the course of inspection by P.W.2 and P.W.4 has intimated the same to P.W.13 over phone. On 24.07.2002, before P.W.13 and P.W.2, the accused admitted the misuse of password of P.W.14 without his knowledge and debiting various accounts, making credit entries in his own accounts and withdrawal of amount. Further, he promised to repay the amount and has put everything in writing and the letters written by the accused addressed to the Chief Manager were marked as Exs.P29 to 32.

(ix) P.W.11 is the Director of M/S.Green Peace Constructions Pvt. Ltd. deposed that they constructed nine flats, out of which, one Manikandan working in the T.Nagar branch and the accused purchased one flat each.

(x) P.W.15/T.Sriddharan was the Inspector of Police, CBI/ACB, Chennai has registered the case against the accused and P.W.14 under Sections 120B read with 420, 467, 468, 471, 477A IPC and Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and the F.I.R. was marked as Ex.P51. He took up the case for investigation and examined all the witnesses and recorded their statements.

(xi)P.W.6/Janardhana Rao, Chief Manager was instructed by the CBI to take print outs of the transaction log, User ID in a C.D. and the C.Ds. were copied and the same were marked as M.O.1 to M.O.4. The details of the payment made by the accused on various dates totalling Rs.30,52,087.27 P is mentioned in Ex.P34.

(xii) P.W.1/J.M.Garg, who was the General Manager, Indian Bank, Circle Office, was the appointing authority and after perusing FIR, statement of witnesses and other documents, applied his mind and issued Ex.P1 sanction order for prosecution of the accused for the loss of Rs.9,62,573/-. The accused has paid a sum of Rs.30,52,087/- and the same is mentioned in Ex.P1.

(xiii) P.W.15/Inspector of Police, after completing investigation, filed two charge sheets against the accused only, one charge sheet for a sum of Rs.62,573/- and another charge sheet for a sum of Rs.9 lakhs. He has recommended major penalty proceedings against PW.14 for having shared his password with the accused and in respect of the same, he referred the matter to the Bank for departmental action.

3.The learned Principal Special Judge for CBI Cases, Chennai after following the procedure, framed necessary charges. Since the accused pleaded not guilty, the Special Court examined the witnesses P.W.1 to P.W.15 and marked the documents Exs.P1 to P51 and material objects M.O.1 to M.O.4 and placed the incriminating evidence before the accused and the accused denied the same in toto. The Special Court after considering the oral and documentary evidence, convicted and sentenced the appellant/accused as stated above.

4.Challenging the judgment of conviction and sentence passed by the Special Court, learned counsel for the appellant/accused has raised the following points for consideration:

(i) F.I.R. was registered on the source information. On single F.I.R., two charge sheets have been filed, which is unsustainable. To substantiate his arguments, he relied upon the decision of the Apex Court reported in 2012 (2) CHN 368 (Goutam

Ghoshal v. the State of West Bengal).

(ii) One sanction order for two cases is not maintainable, which shows non application of mind by the sanctioning authority. Draft charge sheet has not been furnished to the sanctioning authority by the CBI, while sought for sanction from the sanctioning authority.

(iii) The alleged extra judicial confession of the accused under Exs.P29 to P32 are not satisfied the ingredients of Section 24 of the Indian Evidence Act and it is not a substantial piece of evidence, which was obtained by force.

(iv) While seizing documents under the Mahazar, the prosecution has not followed the provisions under Sections 101 to 104 of Cr.P.C., which is fatal to the case of prosecution.

(vi) Charge against the appellant is that he misappropriated the amount by misusing the User ID and password of P.W.14. But the same is not supported by any evidence.

(vii) Non examination of the clerical staff and non production of the documents are fatal to the case of the prosecution.

(viii) Non production of housing loan, vehicle loan registers and audit report is fatal.

(ix)Even though F.I.R. has been filed against the appellant and P.W.14, non filing the charge sheet against P.W.14 is fatal to the case of prosecution.

Therefore, he prayed for allowing the appeals. To substantiate his arguments, he relied upon the following decisions:

(i) 2014 Cri.L.J. 930 (CBI v. Ashok Kumar Aggarwal);

(ii) (2014) 1 MLJ (crl) 723 (SC) (P.L.Tatwal v. State of Madhya Pradesh);

(iii) (2012) 6 SCC 403 (Sahadevan and another v. State of Tamil Nadu);

(iv)2009 Cri.L.J. 319 (Chattar Singh and another v. State of Haryana);

(v) (2009) 16 SCC 785 (Hardeep Singh v. State of Punjab and others);

5.Resisting the same, learned Special Public Prosecutor (CBI cases) has made the following submissions:

(i) Supplement charge sheet was filed on the single F.I.R. So filing of two charge sheets is not fatal to the case of prosecution.

(ii)Sanctioning authority has accorded sanction after applying his mind, hence, the sanction order Ex.P1 is valid.

(iii)Extra judicial confession under Exs.P29 to P32 were voluntary statements of accused under Section 24 of the Indian Evidence Act, which was corroborated by other witnesses and hence, Exs.P29 to 32 are reliable.

(iv)All the documents are not required for seizing, because during investigation, documents were seized from the Bank and no seizure mahazar is necessary.

(v)Evidence of P.W.14 proved that he furnished his User ID and password to the appellant whenever he has gone for official work and on leave.

(vi)Non examination of clerical staff, who made entry manually in the register is not fatal to the case of prosecution.

(vii)Non production of housing and vehicle loan registers and audit report is not fatal.

Hence, he prayed for dismissal of the appeals.

6.Considered the rival submissions made on both sides and perused the materials available on record.

7.Now this Court has to decide whether Ex.P1 sanction order accorded by the sanctioning authority is valid? According to the learned counsel for the appellant/accused, as per the evidence of P.W.1 and Ex.P1/sanction order, draft sheet was not produced before P.W.1 while sought for sanction, which is fatal to the case of prosecution. To substantiate the same, he relied upon the decision reported in 2014 Cri.L.J. 930 (CBI v. Ashok Kumar Aggarwal), the legal propositions can be summarised, in which it was stated that "the prosecution must send the entire relevant record to the sanctioning authority including the F.I.R., disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction."

8.In the cross-examination of P.W.1/sanctioning authority, no suggestion was posed to him that as to why charge sheet was not furnished to him. Learned counsel for the appellant has drawn attention of this Court through page No.6 of the Ex.P1/sanction order, in which, it is stated as follows:

> " I, J.M.Garg, being the competent authority to remove the said Shri.N.Sridhar from the office after having fully and carefully examining the materials placed before me such as copy of F.I.R., copies of the statement of witnesses and documents relating to this case viz., Bankers' Pay Orders mentioned above, combined transaction log pertaining the transactions for the dates mentioned, the user id transaction log in respect of user-id NSR116 pertaining to Shri N.Sridhar, statement of accounts in respect of the accounts in question, Invoice and Debtors Register of M/S.Southern Auto Centre, Chennai, Housing Loan File in respect of Shri.R.Murali, Certified copy of sale deed D.No.1233 of 2002 dated 05.06.2002 of Sub-Registrar, K.K.Nagar, receipts issued by

> M/S.Green Peace Constructions (P) Ltd. in the name of Smt.Usha in respect of payments received by them etc., and the statements of witnesses examined during the course of investigation, applied my mind and I am fully satisfied that a prima face case has been made out against Shri.N.Sridhar and that he should be prosecuted in the Court of law for the aforesaid offences punishable under Sections 420, 467, 471 and 477-A IPC and 13(2) read with 13(1)(d) of P.C.Act, 1988. "

In the above para, charge sheet has not been mentioned. But the argument advanced by the learned counsel for the appellant that non furnishing draft charge sheet to the sanctioning authority is fatal to the case of prosecution, does not merit acceptance. Because as per the above para, P.W.1 is the competent authority to accord sanction for prosecuting the accused and after perusing entire materials and satisfying that the prima facie case made out, he accorded sanction. In such circumstances, I am of the view, Ex.P1 sanction order is valid.

9.Now this Court has to consider whether extra judicial confession of the accused under Exs.P29 to P32 are admissible evidence? Learned counsel for the appellant has drawn attention of this Court through Sections 24 and 25 of the Indian Evidence Act and submits that Exs.P29 to P32 extra judicial confession of the accused are not satisfied the ingredients of aforesaid sections and it was obtained by force.

10.At this juncture, it is appropriate to consider the evidence of following witnesses:

P.W.2/Valmikinathan, Manager, Vigilance Department came to know that there was misappropriation committed by the appellant by using User ID and password of P.W.14/Sriramachandra Murthy. Therefore, he submitted the reports under Exs.P2 dated 25.07.2002 and P3 dated 12.08.2002. In that report, it was stated as "the officer Shri.N.Sridhar, had been using his ID / password as Entry ID and the pass word of Shri.A.Ramachandra Murthy, Senior Manager, looking after the Advances as the Passing Officer's ID/Pass word to pass all the said unauthorised transactions to the credit of his various accounts" and thereby the accused cheating the Bank and caused loss to the Bank. Ex.P4 Indian Bank BPO for Rs.62,573/- dated 05.09.2000 was marked to show that the accused made entry by using the User ID and password of P.W.14 and passed Bankers pay order for Rs.62,573/- in favour of M/S.Southern Auto Centre. To prove the same, P.W.9/Srinivasan, Accountant in M/S.Southern Auto Centre, Chennai, has been examined.

11.P.W.9/Srinivasan in his evidence deposed that he issued Ex.P35 invoice dated 18.09.2000 in favour of the accused for purchase of Hero Honda Splendor for a total sum of Rs.46,150/- and Ex.P4/Bankers pay order dated 05.09.2000 for Rs.62,573/- was drawn on Indian Bank in favour of Southern Auto Centre. The remaining amount of Rs.15,268/- was refunded to the accused by way of cheque dated 14.09.2000 drawn on Bharath Overseas Bank in favour of accused. The refund particulars are available in Ex.P36 and debtor ledger was marked as Ex.P37.

12.Admittedly, the vehicle loan application and register were not placed before the Court. Without filing those applications, this Court cannot come to the conclusion that as to who sanctioned vehicle loan to the accused and how much amount has been sanctioned and whether the appellant himself has drawn the pay order for Rs.62,573/- in favour of Southern Auto Centre. Exs.P8 and P9 are entries made by using User ID and password of P.W.14 (i.e.) User ID of P.W.14 is SRM096 and passed under the ID of the accused NSR116. Under such circumstances, without those documents, this Court cannot accept the version of the prosecution that appellant himself contra to the amount sanctioned using the User ID and password of P.W.14 and he himself posting and passing the amount, prepared Bankers Pay Order in favour of M/S.Southern Auto Centre.

13.The next transaction is Ex.P11 (i.e.) the Bankers Pay Order dated 08.03.2002 for Rs.1,50,000/- and it was given to M/S.Green Peace Constructions Private Limited and that amount has been passed as per the entries made in Exs.P13 and P14. The passing clerk was P.W.14 and his User ID was used.

14.Ex.P18 is the Bankers Pay Order dated 27.03.2002 for Rs.7,50,000/- and it was given in favour of M/S.Green Peace Constructions Private Limited and the transaction log for that day was marked as Ex.P19 and the relevant entries were marked as Exs.P20 and P21. These entries were named under the ID of the accused and passed under the ID of P.W.14.

15.Now this Court has to decide whether the loan has been sanctioned in favour of the appellant? It is appropriate to consider the evidence of P.W.11/P.R.Earnarst, who is doing construction business in the name of M/S.Green Peace Constructions Private Limited, deposed that in the year 2002, nine flats were constructed, out of which, the accused and one Manikandan purchased each one flat. The accused purchased the flat in third floor measuring 1040 sq.ft. and the total cost is Rs.18,58,500/- and he paid Rs.18,50,000/- from 24.01.2002 to 03.06.2002 out of which Rs.2,00,000/- was paid in cash on 07.03.2002 and on 03.06.2002, the rest of the amount paid by way of cheque. P.W.11 gave Ex.P38 certificate which shows the details of payment. He further deposed that Exs.P11 and P12 Bankers Pay order were given by the accused and the amount was collected through Karur Vysya Bank. The receipts given by P.W.11 were marked as Exs.P39 to P45. Suddenly, the accused asked P.W.11 to sell the flat and the same was also sold to one Suresh. He received Rs.3.90 lakhs as an advance and the amount of Rs.3,00,000/- was given to Indian Bank in the account of accused and another sum of Rs.50,000/- and Rs.40,000/- were given to wife of the accused. The remaining amount was Rs.15,50,000/- was directly paid by the purchaser to the Indian Bank.

16.P.W.11 in his cross-examination fairly conceded that even though flat has been purchased in the name of the appellant's wife, after receiving payment, they have not handed over possession of flat to Usha/wife. Thereafter, Usha told to P.W.11 to sell the flat and give the money back to her. Indian Bank, T.Nagar Branch has also given instruction to P.W.11 to sell the flat and to give the sale proceeds to the Bank. Accordingly, the flat was sold to one Suresh. As per the instruction given by the Bank, entire sale proceeds of the flat has been remitted in the Indian Bank, T.Nagar Branch.

17.P.W.12/Murali in his evidence deposed that he is working as Accounts Manager, Akir Consumer Electronic (L) Chennai and he purchased a flat in the Burket Road, T.Nagar for which he has obtained a loan of Rs.8,00,000/- from HDFC Bank, Chennai and applied for the change of loan to Indian Bank in November 2001. Further deposed that he approached Indian Bank, T.Nagar Branch and Ex.P22 is the joint application along with his wife. But they did not receive any loan from Indian Bank either by cash or demand draft and he did not receive any communication from the Indian Bank regarding the loan.

18.On going through the above evidence, it is seen that there is no evidence to show that the appellant herein has applied home loan and loan amount was sanctioned by whom and whether Indian Bank, T.Nagar Branch has directed P.W.11 to sell the property, which was purchased in the name of appellant's wife and remitted the sale proceeds into the Bank. If really housing loan application and register were produced before the Court, it will be very useful for this Court to come to the conclusion.

19.As per the evidence of P.W.12, only the loan application was filed. But that loan register was not filed and there is no evidence to show that the amount was sanctioned to P.W.12 and his wife. P.W.12 fairly conceded that he has not received any communication from the Indian Bank in respect of the said loan. So I am of the view, there is no evidence to show that the loan amount has been sanctioned to P.W.12/Murali and the same has been misused by the appellant by issuing Bankers Pay Order using the User ID and pass word of P.W.14.

20.Furthermore, P.W.4/Madhavan Pillai, Manager, Indian Bank, T.Nagar Branch, deposed that he does not know whether the appellant has applied vehicle and housing loan.

21.P.W.2 to P.W.4 and P.W.13 are examined to prove the extra judicial confession of the accused under Exs.P29 to P32. As per the evidence of P.W.2/Valmikinathan, he conducted inspection and gave inspection reports Exs.P2 and P3. Ex.P4 is the Bankers pay order dated 05.09.2000 for Rs.62,573/-. P.W.2 in his cross-examination, stated as follows:

> “.. .. Accused has not availed any vehicle loan at Indian Bank, T.Nagar Branch. I have not seized the vehicle loan register and the Home loan application register in this case. It is not correct to say that the accused has submitted a vehicle loan application and home loan application to the Indian Bank, T.Nagar Branch and the Branch had also sanctioned the loan and subsequently, they came to know that they have no authority to sanction the loan, have requested the accused to repay the amount and accordingly, the accused had remitted the amount in the Bank. Accused had remitted a sum of Rs.30 lakhs and the same is mentioned in the records maintained in the Indian Bank T.Nagar Branch. It is not correct to say that the accused has submitted the Vehicle Loan Application and Home Loan Application and based on that, P.W.14 has sanctioned the loan. I have not perused the Loan Application Register, Advance Register, Documents Execution Register, Demand Promissory Note Diary, Equitable Mortgage Register, Insurance Register. “

The above para shows that P.W.2 himself admitted that the appellant has not availed any vehicle loan and he has not perused and seized the loan application.

22.Further, P.W.2 in his cross-examination deposed that if payment has to be made to third parties, the clerical staff has to enter the amount in the computer and the same was authorised by the officer for passing. Each officer is given User ID and password to operate the computer with respect to banking transactions. The officer can change his password at any time. In his reports under Exs.P2 and P3, it was stated that appellant herein has used User ID and Password of P.W.14 and falsified the records and created forged documents using them as genuine and thereby cheating the Bank.

23.P.W.5/P.Ravichandarn, Chief Manager, Indian Bank Head Office, Vigilance Department, deposed that there are three levels of protection given to the officers and clerical staff to operate the computer. They are log in ID, User ID and password. Log in ID means it can be used by the officer of the Indian Bank or system administrator or software provider. In all Banks where computers are provided fully or partially there is an officer called system administrator. In the absence of officer, after getting permission from the circle office in writing the system operator can pass transaction in the computer on condition that whatever transaction passed by him should be verified at the end of the day by another officer. There is a system administrator register which discloses the particulars of the officers who worked as system administrators on a particular day. He further deposed that if the user is on leave or on official duty, his User ID will be deactivated or delisted for the particular day and it will be in the custody of the system administrator. The officer can use the same User ID till he is in the branch. For one officer, only one User ID is given in the branch. The evidence of P.W.5 is corroborated by the evidence of P.W.6.

24.P.W.6/Janardhana Rao, Chief Manager, in his cross-examination deposed that housing loan of the officer of the particular branch can be sanctioned only by the Circle office. Officers of the Bank has no power to share their password with any other officer. During the absence of P.W.14, his work will be looked after by another officer. That officer can pass the instrument relating to the Department of P.W.14 by using his password and the password of P.W.14 will not be used by the officer in-charge, unless he knows both the User ID and password.

25.P.W.7/Karthikeyan, System Manager, deposed that when ever some body goes on leave or is absent, the same day the User ID of the said person will be deactivated. When a person is permanently transferred, his User ID will be deleted along with the Chief Manager. The same User ID cannot be given to another person. They cannot delete or add a new person without the approval of the Chief Manager. Both the System Manager and the Chief Manager have come to the Terminal and operate the system of deletion or addition. Further he deposed as follows:

> "To safe-guard all the records, we take a back up and keep it separately for future reference. At the end of the day, I verify whether all transactions are passed. Any unbalanced transaction is there. All Fixed Deposit receipts, Demand Drafts, Pay orders are printed and verified and all the payments and receipts are received. If any problem is there, I will ask to complete the transaction. After everything is over, I will

disable the log in and the transaction. At the end of the day, I will generate the day book and verify whether it tallys. "

26.P.W.7 in his cross-examination, deposed that the officer to whom User ID and password is given by the branch has to use only that User ID and password. No one should share the password. The officer is not expected to disclose his password to other officer as per the instructions given by our Head Office. Whenever an officer goes on leave or he is on other duty his User ID is deactivated. On 05.09.2000, 08.03.2002 and 27.03.2002, P.W.7 had taken printouts of cash scroll, transfer scroll and sectional day book and other reports. User ID is used to fix up accountability of the person who is using it. The officer whose User ID is mentioned in the transaction is alone responsible for the particular transactions. For example, if the User ID of P.W.14 is mentioned in a transaction it is presumed to have been done by P.W.14 and P.W.14 alone is responsible for the transaction.

27.It is pertinent to note that there is no document to show that on the date of passing of Exs.P4, P11 and P18/Bankers Pay Orders, P.W.14 was on leave or on duty. In such circumstances, I am of the view, non examination of the person who has made manual entry and also non production of vehicle and housing loan register is fatal to the case of prosecution. Further the above evidence is clearly shows that one officer is on leave or on duty, his User ID is deactivated. Further, P.W.7 stated that he has daily generated the day book and verified whether it tallys. Ex.P4/bankers pay order was issued in the year 2000 and every year audit has been done, but there is no document to show that this mistake has been deducted during audit.

28.P.W.8/Naganathan, Assistant Manager, in his cross-examination deposed that he has no direct knowledge with regard to the transactions that have taken place on 05.09.2000, 08.03.2002 and 27.03.2002. He has given evidence in the chief examination on the basis of records that are available. If the User ID of P.W.14 is found in the transaction, then the transaction is presumed to have been done by P.W.14. Ex.P26 transaction were passed by P.W.14. P.W.14 alone has got the passing powers in respect of the transaction mentioned in Ex.P26. A person creating a transaction cannot pass the transaction. Ex.P26 is related to the transaction done on 31.03.2002 and the passing officer is only P.W.14/Sriramachandra Murthy.

29.Considering the evidence of P.W.8, there is no evidence to show that the appellant herein has having knowledge about the password of P.W.14 and he himself passed the amount.

30.P.W.14/Sriramachandra Murthy, Senior Manager, in his cross-examination deposed that he was posted in the Credit Department and the accused was joined there in 1999-2000 as Assistant Manager. During 2001, Indian Bank launched Home Loans, Salaried Loans, Personal Loans, Vehicle Loans, Pension Loans. For the same, he has to attend on the customers, press advertisements of the loans, attending the borrowers, explain the features of the loans and processing the applications. So his work load had increased enormously. Very often, he used to go out. In order to ensure uninterrupted customer service and smooth functioning of the branch in his absence, he asked the accused to pass the vouchers by giving his User ID and password. He had gone to the extent of saying that every fifteen days, the password should be changed and accordingly, he has changed. Depending upon the work load, P.W.14 had informed the accused about the change of the password also. He had gone to the extent of saying that when he was in office and when he was unable to work, he has authorised the accused to attend the transactions and pass the vouchers.

31.As already stated that P.W.14 is the person whose User ID is mentioned in the amount and hence, he is responsible.

32.P.W.14 in his cross-examination fairly conceded that he has not produced any documents to show that he attended other duties during office hours when he was examined by the CBI officials. His candid admission is that he did not produce any register during examination by the CBI officials.

33.As per the evidence of P.W.5 to P.W.7, if any officer is on leave or on duty, his User ID has been deactivated. Each and every staff has been provided with User ID and password and they are directed to change their passwords once in fifteen days. No one permitted to share the User ID and password to other officer on his absence. If the officer has disclosed his User ID and password to other officer, he is responsible for any action. In such circumstances, as already stated that there is no evidence to show that on 05.09.2000, 08.03.2002 and 27.03.2002, P.W.14 was on leave or on duty. There is no evidence to show that the appellant herein has falsified the records and created forged documents using them as genuine and thereby cheating the Bank.

34.Learned Special Public Prosecutor (CBI cases) submits that the appellant herein has admitted the irregularity committed by him by giving extra judicial confession under Exs.P29 to P32, which are vital documents and the same have been rightly considered by the Special Court.

35.Now this Court has to decide whether the letters under Exs.P29 to P32 can be used as extra judicial confession? It is pertinent to note that P.W.2 to P.W.4 and P.W.14 stated about Exs.P29 to P32. At this juncture, it is appropriate to incorporate Section 24 of the Indian Evidence Act, which reads as follows:

> "24. Confession caused by inducement, threat or promise when irrelevant in criminal proceedings--A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat for promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him."

36.In the case on hand, P.W.2 is the person who alleged to be found fault with the accused during inspection. P.W.13/ deposed that accused has voluntarily executed the letters under Exs.P29 to P32. But extra judicial confession means a person has deposed confidence on the another person to disclose the commission of offence and it should be made to a known person to whom the accused would go for confidence may be believed. The evidence of P.W.2 to P.W.4 and P.W.13 proved that Exs.P29 to P32 are given by the accused in the presence of officers in the room of P.W.13, who are superiors of the appellant/accused. At this juncture, it is appropriate to consider the evidence of P.W.13.

37.P.W.13 in his cross-examination deposed as follows:

> " .. .. Myself and 3 other officers were present in the cabin of the Chief Manager at the time of writing of the Ex.P29 to P.32 by the accused. It is not correct to say that Ex.P29 to P32 letters were dictated by myself and 3 officers who were present in the cabin of the Chief Manager. It is not correct to say that we have pressurized the accused to write Ex.P29 to P32 letters and our branch has no authority to sanction housing loan to the staffs. I do not know the exact amount remitted by the accused. The amount was remitted by the accused after Ex.P29 to P32. If any fraud or irregularity happened in our branch the same has to be reported to the higher authorities and not to the police. "

38.P.W.2 in his chief-examination deposed that the loan availed of by Murali and Sheela actually taken by the accused and not received any intimation for taking the loan. In his cross-examination, he fairly conceded that he has no direct knowledge as to what had happened on 05.09.2000, 08.03.2002 and 27.03.2002.

39.P.W.3 deposed that when he attended the office on 24.07.2002, P.W.13/Sethuraman called him to his cabin, wherein P.W.2/Valmikinathan, P.W.4/Madhavan Pillai and the accused were present. At that time, the accused has given letters under Exs.P29 to P32. A suggestion was posed to P.W.3 in his cross-examination that himself and staff members have compelled the accused to give the letters Exs.P29 to P32, but he denied the same.

40.P.W.4/Madhavan Pillai in his chief-examination deposed that on 24.07.2002, the accused telephoned to residence of P.W.4 in the morning and informed that he wants to say everything about the mistake done by him in the branch and requested him to come to the branch earlier. P.W.4 informed P.W.13 about the same and as per his direction he also informed the same to P.W.2. When he came to the branch on 24.07.2002 the accused, P.W.2 and all other branch staff were waiting outside. The accused wanted to confess everything and therefore P.W.4 took him the cabin of P.W.13. In the cabin, P.W.4, P.W.13, P.W.2 and accused were there and P.W.13 called P.W.3 to his cabin. At that time, the accused informed that he had misused the password of P.W.14 without his knowledge and thereby debited various accounts and credit his own accounts and withdrew the amounts and the accused promised to repay the amount. .. .. Exs.P29 to P32 were written by the accused and all the letters are addressed to the Chief Manager, in which, P.W.4 and P.W.3 have signed as witness and the same is initialled by P.W.13.

41.P.W.4 in his cross-examination deposed as follows:

> "I am aware of the letters written by the accused under Exs.P29 to 32. The letters were given by the accused to the Chief Manager's cabin. Mr.P.R.Sethuraman, Chief Manager, Mr.M.N.Sankaran Chief Credit Monitoring Officer, Mr.Valmikinatan and myself were present in the cabin of the Chief Manager at that time. .. .. "

The above evidence shows that in the presence of four persons, the accused has allegedly given statements under Exs.P29 to P32. At the time of questioning under Section 313 Cr.P.C., the accused stated that he was forced to write the letters under Exs.P29 to P32. In such circumstances, the prosecution has failed to prove the letters under Exs.P29 to P32 given by the accused/appellant voluntarily.

42.Now it is appropriate to consider the decision relied upon by the learned counsel for the appellant/accused reported in (2012) 6 SCC 403 (Sahadevan and another v. State of Tamil Nadu), wherein it was held that extra judicial confession is a weak piece of evidence. Para-14 and 16 are extracted hereunder:

> "14.It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.
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> 16.Upon a proper analysis of the above-referred judgments of this Court, it will be appropriate to state the principles which would make an extra- judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:
>
> i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.
>
> ii) It should be made voluntarily and should be truthful.
>
> iii) It should inspire confidence.
>
> iv) An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
>
> v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities."

As already stated that Exs.P29 to P32 are not given by the appellant/accused voluntarily and hence, no reliance can be placed on them.

43.Considering the facts and circumstances of the case, I am of the view, the Bank came to know that they have no authority to sanction the loan, have directed the appellant to repay the amount by selling the flat to escape from the irregularity committed by them. They treated the appellant as a scape goat. But no explanation has been given by any witnesses as to why vehicle loan register and housing loan register have not been seized and filed before the Court. Even though every officer deposed that they verified, they have not been filed the same. Hence, non filing vehicle loan and housing loan registers is fatal to the case of prosecution.

44.Now this Court has to decide whether two charge sheets based on the single F.I.R. is fatal to the case of prosecution? It is appropriate to consider the decision relied upon by the learned counsel for the appellant reported in 2012 (2) CHN 368 (Goutam Ghoshal v. the State of West Bengal), wherein it was held that one F.I.R. and one investigation cannot result in two charge sheets filed in two different Courts against different persons which ex facie is neither permissible in law nor acceptable in any manner. Para-18 is extracted hereunder:

> "18.The third point raised by Mr.Banerjee as to the peculiarity in the matter of filing two charge sheets on one investigation and one FIR in two different Courts has already been discussed. Mr.De, learned counsel appearing on behalf of the CBI conceded fairly that the CBI has acted most callously in this case and should not have filed two separate charge sheets in two different Courts in stead of filing one charge sheet against all the persons who are found accused. Peculiarly enough, the petitioner herein has not been shown as an accused in the charge sheet filed in the Court of learned Special Court CBI, Alipore. There was No. impediment for the CBI to show this accused/petitioner as an accused in the charge-sheet together with other accused persons in the same charge-sheet filed before the learned Special Court, CBI at Alipore. "

But the above decision is not applicable to the facts of the present case.

45.The case of the prosecution is that while the appellant was functioning as an Assistant Manager in Indian Bank, he dealt with three pay orders; one is Ex.P4 dated 05.09.2000 for a sum of Rs.62,573/-, second one is Ex.P11 dated 08.03.2002 for Rs.1,50,000/- and third one is Ex.P18 dated 27.03.2002 for Rs.7,50,000/-. So the occurrence was said to have taken place in three difference days. As per Section 219 Cr.P.C., three offences of same kind within one year may be charged together. As far as first pay order is concerned, it was occurred on 05.09.2000 and so a separate charge sheet was filed. As far as the second and third pay orders under Exs.P11 and P18 are concerned, they are said to have taken place on the same period, so the charge sheet was separately filed. So the argument advanced by the learned counsel for the appellant that filing of two charge sheets on single F.I.R. is fatal to the case of prosecution does not merit acceptance.

46.At this juncture, learned counsel for the appellant/accused has relied upon the judgment of Karnataka High Court reported in 2003 Cri.L.J. 4763 (Motisham Mohammed Ismail v. Central Bureau of Investigation, SCD Bank Securities and Frauds Cell), wherein it was held that on the basis of one F.I.R., two charge sheets have been levied before two different Courts, one charge sheet was filed before the Mumbai High Court, another one was filed before I Additional Chief Metropolitan Magistrate, Bangalore City. Further it was held that the accused has filed an application before the Apex Court for transfer the criminal case pending before the Mumbai Court to the Bangalore Court. After transfer, when the case was on trial, the appellant/accused has filed an application to challenge the same on the ground that without F.I.R., no charge sheet can be filed. The High Court held that once the matter was before the Apex Court that defence has not been taken and hence, it cannot be taken now. Further, the short question which was arisen is " Whether in all the cases F.I.R. is required for the purpose of filing the charge sheet? The answer is No". Considering the facts and circumstances of the case on hand, the above decision is not applicable to the facts of the present case.

47.As per the Apex Court judgment reported in (2000) 3 SCC 262 (Michael Machodo and another v. Central Bureau of Investigation and another), it was held that the first appellant was the Chief Manager of Malad Branch of corporation Bank at Mumbai and the second appellant was the Chief Manager of Wadala Branch, Mumbai. A complaint was lodged with the police by the Deputy Manager of the Bank with the allegations that a huge amount, more than half a crore of rupees, had been defrauded by certain persons and the Bank was put to great loss to the above extent. An FIR was registered on its basis for certain offences and after completion of the investigation the police laid two charge-sheets before the said Metropolitan Magistrate arraigning four persons as the accused for offences under Sections 120B, 420, 467, 468 and 471 IPC. During enquiry, CBI came to know that there was an evidence to include another person as accused and by invoking Section 319 Cr.P.C., they included Michael Machado and another and the same was challenged by the said Michael Machado and another and their application was allowed. In the above decision, it was specifically mentioned that on the basis of single F.I.R., two charge-sheets have been filed. In such circumstances, I am of the view, on single F.I.R., two charge sheets have been filed and the same is not fatal to the case of prosecution.

48.To sum up,

(i)Even though sanction order is valid and two charge sheets can be filed on the basis of single F.I.R., but as per Exs.P29 to P32, the statement given by the appellant/accused is not voluntary one.

(ii)Non seizure of housing and vehicle loan registers and audit report on which basis F.I.R. was registered is fatal to the case of prosecution.

(iii)On the basis of the evidence of P.W.7/System Manager, if any officer is on leave or on duty, his User ID has been deactivated.

(iv)Each and every staff has been provided with User ID and password and they are directed to change their passwords once in fifteen days.

(v)No one permitted to share the User ID and password to other officer on his absence. If the officer has disclosed his User ID and password to other officer, he is responsible for any action.

(vi) In the case on hand, P.W.14 has cited as an accused in the F.I.R. and subsequently, charge sheet was not levied against him. (vii)Except the ipse dixit of P.W.14, no other evidence was available to corroborate that the User ID and password of P.W.14 are used by the appellant/accused.

(viii)The evidence of P.W.5 to P.W.7 have clearly proved that once the Officer was on leave or on duty, his User ID has been deactivated and no person will be permitted to use his User ID.

(ix)As already stated above that on 05.09.2000, 08.03.2002 and 27.03.2002, whether P.W.14 was on leave or on duty was not proved.

49.Considering the aforestated circumstances of the case, I am of the considered opinion, the prosecution has miserably failed to prove that the appellant/accused was guilt for offences under Sections 477A, 467, 467 read with 471 and 420 IPC and 13(2) read with 13(1)(d) of P.C.Act beyond reasonable doubt. The benefit of doubt is given in favour of the appellant/accused and he is acquitted from the charges levelled against him. The Special Court has committed an error in convicting the appellant/accused for the aforesaid offences and hence, the judgment of conviction and sentence passed by the Special Court is hereby set aside.

50.In fine,

- This Criminal Appeal is allowed by setting aside the judgment of conviction and sentence dated 30.11.2006 made in C.C.Nos.26 and 27 of 2004 on the file of the learned Principal Special Judge for CBI cases, Chennai.
- The appellant/accused is acquitted from the charges levelled against him and he is set free.
- The fine amount paid by the accused is ordered to be refunded to him.
- Bail bond executed by the appellant/accused shall stand cancelled.
- Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

kj

To

1.Inspector of Police
SPE/CBI/ACB, Chennai.

2.The Principal Special Judge for CBI cases
Chennai.

3.The Special Public Prosecutor (CBI cases)
High Court, Chennai.

4.The Record Keeper
Criminal Section, High Court, Chennai.

1 cc to Mr.S.P. Sudalaiyandi, Advocate, sr. 11786
1 cc to Mr.K. Srinivasan, Special Public Prosecutor, Sr. 11812

Crl.A.Nos.1058 & 1059 of 2006

BVR (CO)
13/3