BAIL SLIP

The Accused namely Viz., B.Gurunathan, S/o.Late S.Bakthavachalam (Accused in Crl.A.No.708 & 709 of 2009) and Crl.A.No.710 of 2009 and R.R.Sridharan, S/o.Late. R.N.Ramalingam) were directed to released on bail made in M.P.No.7 of 2009 (3 MPs) in Crl.A.Nos.708 to 710 of 2009, dated 19.11.2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on 02.09.2016)

DATED : 16.09.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Crl.A.No.708 of 2009

B.Gurunathan ... Appellant

Vs.

State by
Inspector of Police,
SPE : CBI : ACB,
Chennai,
(Crime No.RC MAI 2002 A 0005) ... Respondent

Prayer: Criminal Appeal has been filed under Section 374 (2) of the Criminal Procedure Code, against the judgment dated 27.10.2009 in C.C.No.48/2003 passed by the learned XI Additional Special Judge for CBI Cases, Chennai-1.

For Appellant : Mr.S.Ashok Kumar, Senior Counsel, for M/s.G.Ravikumar

For Respondent : Mr.K.Srinivasan, Special Public Prosecutor for CBI.

ORDER

This appeal has been filed by the appellant as against the judgement dated 27.10.2009 in C.C.No.48/2003 passed by the learned XI Additional Special Judge for CBI Cases, Chennai-1, in and by which the appellant herein/accused was convicted and sentenced as follows_

Conviction	Sentence
Section 467 IPC (2 counts)	RI for one year and to pay a fine of Rs.2,000/-, in default to undergo RI for three months
Section 467 r/w 471 IPC (2 counts)	RI for one year and to pay a fine of Rs.2,000/-, in default to undergo RI for three months
Section 468 IPC	RI for one year and to pay a fine of Rs.2,000/-, in default to undergo RI for three months
Section 468 r/w 471 IPC	RI for one year and to pay a fine of Rs.2,000/-, in default to undergo RI for three months
Section 420 IPC	RI for one year and to pay a fine of Rs.2,000/-, in default to undergo RI for three months
Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988	RI for one year and to pay a fine of Rs.2,000/-, in default to undergo RI for three months
	Sentences imposed the appellant/accused was directed to run concurrently. Total fine amount is Rs.16,000/-.

2.The gist of the prosecution case leading to the conviction of the appellant is as follows_

2-1The appellant/accused was working as a Clerk-cum-Shroff, in Indian Overseas Bank, Tower Branch, Anna Nagar. On 09.06.2001, the appellant/accused forged certain documents purporting to be valuable security namely loan application dated 09.06.2001 purportedly writtend by one Vatsala Bhai, Form 16H for loan on RDP for Rs.1,50,000/- against RDP Receipt Nos.500000618, 500000619 and 500000635 each for Rs.75,000/- by forging the signature of the said Vatsala and her daughters P.Aruna and Swarnalatha, with an intention to defraud the Indian Overseas Bank, Tower Branch, Anna Nagar, Chennai, to the tune of Rs.1,50,000/-. The accused knew or had reasons to believe at the time he used it, to be a forged document; thereby the appellant/accused committed the offence punishable under Section 467 IPC and Section 467 r/w 471 IPC.

2-2.The appellant/accused on 11.06.2001 at Chennai forged certain documents namely SB account opening form bearing SB A/c.No.22123 and specimen signature card in the name of Smt.R.Vatsala Bhai by forging her signature intending that it shall be used for the purpose of cheating; thereby the appellant/accused committed the offence punishable under Section 468 IPC.

2-3.The appellant/accused on 11.06.2001 at Chennai forged certain documents namely SB Account opening form bearing SB A/c.22123 and specimen signature card in the name of Smt.R.Vatsala Bahi by forging her signature, which the appellant/accused knew or had reasons to believe at the time he used it, to be a forged document and that thereby the appellant/accused committed offence punishable under Section 468 r/w 471 IPC.

2-4.The appellant/accused on 11.06.2001 at Chennai cheated Indian Overseas Bank, Tower Branch, Anna Nagar, Chennai by dishonestly inducing the said bank to deliver a sum of Rs.1,50,000/- to the appellant/accused as loan against RDP Receipts as mentioned above in the previous charges by forging the signatures of the holders of RDP Receipts as mentioned in the previous charges, which was the property of the said Bank; thereby, the appellant/accused committed an offence punishable under Section 420 IPC.

2-5.The appellant/accused on 11.06.2001 at Chennai forged certain documents purporting to be valuable security namely cheque bearing No.907081, dated 11.06.2001 for Rs.1.5 lakhs by forging the signature of Smt.R.Vatsala Bhai with intention to defraud the Indian Overseas Bank, Tower Branch, Anna Nagar, Chennai to the tune of Rs.1,50,000/-; thereby, the appellant/accused committed the offence punishable under Section 467 IPC.

2-6.The appellant/accused on 11.06.2001 at Chennai fraudulently and dishonestly used as genuine certain documents namely cheque bearing No.907081, dated 11.06.2001 for Rs.1.5 lakhs by forging the signature of Smt.R.Vatsala Bhai, which he knew or had reasons to believe tat the time he used it, to be a forged document; thereby, the appellant/accused committed the offence punishable under Section 467 r/2 471 IPC

2-7.The appellant/accused being a public servant employed as Clerk-cum-Shroff of Indian Overseas Bank, Tower Branch, Anna Nagar on 11.06.2001 at Chennai, by corrupt or illegal means or by otherwise, abusing his official position as such public servant for himself and derived pecuniary advantage to the extent of Rs.1.5 lakhs from Indian Overseas Bank, Tower Branch, Anna Nagar; thereby the appellant/accused committed an offence punishable under Section 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988.

3.In order to prove the guilt of the appellant/accused, the Prosecution has examined 12 witnesses and marked 52 documents as Ex.P.1 to Ex.P.52. On the side of the appellant herein/accused, no witness was examined; however, six documents were marked as Ex.D.1 to Ex.D.6. When the appellant/accused was examined under Section 313(1)(b) of Cr.P.C., regarding the incriminating materials and facts which appeared against him, he denied the allegations.

4.The Trail Court, after considering both oral and documentary evidence, has convicted and sentenced the appellant/accused as stated supra. Aggrieved over the same, the appellant/accused has filed the present appeal before this Court.

5.The learned senior counsel for the appellant would contend that he is not going to touch upon the merits of the case, but only on the sentence. The learned senior counsel for the appellant submitted that the appellant is only a last grade servant and he was working as Clear-cum- Shroff, in Indian Overseas Bank, Tower Branch, Anna Nagar. The case was registered on 21.02.2002 and there was no wrongful loss to the Bank and even before registering the FIR, the petitioner repaid the entire amount of Rs.1,50,000/-, which would be evident from Ex.P.39. In fact, P.W.8 Mr.S.Natarajan, the then Chief Manager, IOB, Tower Branch, has stated that there is no loss to the Bank. Therefore, on the date of registration of the case, there was no commission of cognizable offence, as per the Bank records and some of the irregularities were set right on 23.12.2001, which was deposed by P.W.1-Gomathinayagam, P.W.12-Jayaraj (Investigating Officer) and consequently, there was no loss to the Bank on 21.02.2002. Further, the appellant is suffering from various ailments. Thus, the learned Senior Counsel for the appellant/accused submitted that considering the fact that the appellant has paid the entire amount before the registration of the case/FIR as well as taking note of the facts that he is suffering from various ailments and that the Bank has not lodged any complaint and only on source information, the respondent-CBI has registered the FIR and prosecuted, which ended in conviction, the sentence could be modified by converting the rigorous imprisonment into one of simple imprisonment by fixing a fine amount a recommendation could be made to the State Government to pass appropriate orders under Section 433 (d) of Cr.P.C. In support of his contention, the learned senior counsel for the appellant/accused has also relied upon the decisions of this Court reported in CDJ 2007 MHC 2934 [M.V.Nathan Vs. State rep by the Special Police Establishment/Central Bureau of Investigation/Anti-Corruption Brnach, Chennai] and 2007-1 LW (Crl) 123 (S.P.Meiappan & another Vs. State, etc).

6.Heard the learned Special Public Prosecutor appearing for the CBI also, who has not raised any serious objection for the request made by the learned Senior counsel for the appellant on the ground that the petitioner is suffering from various ailment.

7.Though the learned senior counsel appearing for the appellant made a request to convert the rigorous imprisonment into simple imprisonment and to fix a fine amount and also to make a recommendation to the State Government under Section 433(d) of Cr.P.C. to convert the simple imprisonment into that of a fine, this Court is not inclined to fix any amount as fine and to recommend to the State Government under Section 433(d) of Cr.P.C. However, considering the fact that the appellant has paid the entire amount even before filing the case/FIR and also taking into account the fact that the appellant is suffering from various ailments, this Court is inclined to modify the sentence. Accordingly, this Court while confirming the conviction imposed on the appellant for the alleged offences, modifies the sentence of rigorous imprisonment to that of simple imprisonment for the alleged offences. The sentence shall sun concurrently. The appellant/accused is at liberty to move the Government for appropriate relief under Section 433(d) of Cr.P.C., by making a representation within a period of four weeks from the date of receipt of a copy of this judgment with regard to the commutation of the simple imprisonment to that of fine, as it is a matter between the accused and the Government in that regard. If such a representation is received from the appellant/accused, it is for the Government to pass appropriate orders under Section 433(d) of Cr.P.C. Hence, until the Government decides one way or the other on receipt of such representation, the appellant/accused need not surrender, as he is on bail pending this appeal.

With the above observations and modification in the sentence, the appeal is partly allowed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssv
To

1.The learned XI Additional Special Judge
for CBI Cases, Chennai-1.

2.The Special Public Prosecutor
for CBI Cases,
High Court, Madras.

3.The Inspector of Police,
SP, CBI, ACB, Chennai 06.

+3cc's to Mr.G.Ravikumar, Advocate, S.R.No.52681

Crl.A.No.708 of 2009

RP(CO)
CA(03/10/2016)