IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :10.10.2017

Pronounced on :20.10.2017

Coram

The Hon'ble Dr.Justice G.Jayachandran

Criminal Appeal No.13 of 2009

C.Shanmugam .. Appellant

/versus/

The Inspector of Police,
SPE, CBI:ACB, Chennai. .. Respondent

Criminal Appeal has been filed under Section 374(2) of the Criminal Procedure Code against the order of conviction and sentence and fine ordered by the learned XI Additional Judge for CBI Cases, Chennai-1, dated 29.12.2008 in C.C.No.31 of 2004.

For Appellant :Mr.K.Gajendiran

For Respondent :Mr.K.Srinivasan, Spl.PP for CBI

JUDGMENT

This Criminal Appeal is directed against the judgment of XI Additional Judge for CBI Cases, Chennai in C.C.No.31 of 2004 dated 29.12.2008 for the offences under Sections 120B, 420, 467, 467 r/w 471 of the Indian Penal Code and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

2. The case of the prosecution, as told by the witnesses for prosecution and unfold through documents is that, One Mr.Abdullah, a NRI, residing at Singapore, had opened a NRI Account No.14116 in Indian Overseas Bank, Sirkali branch on 07.10.1992 with an initial deposit of Rs.50,000/-. The request to open the account has been routed through the Singapore branch and the relevant documents are exhibited as prosecution Exs.P4 to P9. The account ledger with folio No.32 for the new NRI Account No.14116 opened on 07.10.1992 in the name of Abdullah is marked as Ex.P10. Abdullah was issued cheque book containing leaves No.426531 to 426540 to operate the account. The cheque book issue register is marked as Ex.P11 and the relevant entry for issuance of the above cheque book is separately marked as Ex.P13. The said Abdullah had deposited a sum of Rs.1,250/- on 23.03.1993 and a sum of Rs.60,000/- on 26.05.1994. While so, when Abdullah came to know that his cheque for Rs.1,00,000/- drawn in favour of National Polypack Company was not honoured by the Indian Overseas Bank, Srikali Branch, he has given a complaint on 12.06.1994 marked as Ex.P49 to look into the matter and find out how the money has been debited in his account without he withdrawing it. This has prompted the bank higher officials at Zonal level to appoint Mr.T.Ramanathan, Deputy Chief Officer attached to Vigilance Department of Indian Overseas Bank Zonal Office at Trichy to investigate the matter. T.Ramanathan examined as PW-

15 has submitted his report to the Zonal Office wherein, he has stated that C.Shanmugam (Accused/appellant) has stealthily stolen two cheque book from Srikali Branch and forged the signature of Abdullah, NRI Account holder No.NRE S B 14116 and withdrew a total sum of Rs.68,200/- between 24.08.1993 to 10.06.1994 on 9 occasions. In the said process, he has connived with four other persons namely, G.Rajarajaseelan, S.Kalimurthy, M.Palanivelu and Mr.Ravi.

3. The matter has been taken note by the CBI and the First Information Report has been registered on 28.10.1994 quoting reliable information received by the office of SP, CBI, ACB, Chennai. The First Information Report marked as Ex.P51 runs as below:

> "A1 Shri.C.Shanmugam was working as a Daftry in Indian Overseas Bank, Sirkali Branch. An NRE account No.14116 was opened on 07.10.92 in the aboveaid branch in the name of one Shri.A.Abdulla, resident of New Street, Kadavasal, Sirkali, who is an NRI at Singapore with an opening balance of Rs.50,000/-. A cheque book bearing Sl.Nos.426531 to 426540 was issued to the account holder. The acount holder Shri.A.Abdullah never used the above cheques. There was a withdrawal of Rs.1250/- in the account by the account holder on 27.03.93 but for this there was no other withdrawals. The account holder remitted another Rs.60,000/- into this account by means of mail order from Singapore on 15.05.94 through IOB, Singapore Branch.
>
> In the instant case A1 Shri.C.Shanmugam while working as Daftry in as much as a public servant at IOB, Sirkali Branch along with A2 Shri.Raja Rajaseelan @ Karathe Master @ Seeman of Mayuram and A3 Shri.S.Kaliamurthy of Sirkali,both private individuals entered into a criminal conspiracy to do illegal acts during the period of August, 93 and June, 94 to cheat the said bank and in furtherance of the said criminal conspiracy, A1 Shri.C.Shanmugam, Daftry has stealthily removed two cheque boks bearing Sl.Nos.356301 -356310 and 0481701 to 0481725

from the branch and made entries in the cheque Book Issue Register as if they were issued to the account holder Shri.Abdulllah. The signature of the account holder was forged by the accused persons and the stolen cheques were pruprotedly issued favouring A2 and A3 who were the co-conspirators of this case and who encashed the forged cheques by prepetrating fraud. A1 Shri.C.Shanmugam had posted impugned debit entries in the ledger and issued token on occasions. A sum of Rs.68,200/- has been withdrawn from the abovesaid account on different dates between 24.08.93 and 10.06.94 by A1 to a3 by using the cheques which were stealthily removed. Shri.Abdhullah, the holder of the above NRI account denied of having issued such cheques. Thus, the amount withdrawn fraudulently were shared among themselves by misusing or abusing his official position as Daftry, a public servant and thereby cheated the IOB, Sirkali and committed offences punishable U/s 120-B, r/w Sec.380, 419, 420, 467, 468 and 471 IPC and Sec.13(2) r/w 13(1)(d) of PC Act, 1988."

4. On completion of investigation, Final Report has been filed. Based on the final report, 7 charges were framed against the accused/appellant. His accomplice L.Murugesan was granted pardon, treated as approver and examined as PW-12. G.Rajarajaseelan [A2] and Kaliamurthy[A3] and other named accused in the First Information Report were examined as prosecution witnesses P.W.13 and P.W.18 respectively.

5. The trial Court, after considering the evidence let in by the prosecution through 21 witnesses and 51 exhibits, has held the accused guilty and concluded as under:-

"41.*All the above corroborations assure the correctness and trueness of the versions of approver L.Murugesan (P.W.12) and therefore, from his evidence corroborated by independent* *witness Mr.Rajarajaseelan (P.W.13). In material particulars, I come to the conclusion that the prosecution has proved beyond reasonable doubt. In view of the finding, the accused is found not guilty under Section 468 of IPC and 468 r/w 471 of IPC. Therefore, he is acquitted under Section 248(1)of the Criminal Procedure Code.*

42.In view of the finding on Point No.2 the accused is found not guilty under sec. 468 IPC and 468 r/w 471 IPC. Therefore he is acquitted under Sec.248(1) Cr.P.C.

43.In view of the finding on Point Nos. 1, 3, 4 and 5 the accused is found guilty under Sec. 120-B IPC, 420 IPC, 467, 467 r/w 471 IPC and u/s 13(2) r/w 13(1)(d) of P.C. Act, 1988.

44.Since there is no legal provisions for invoking the provisions under Protection of Offenders Act, the accused is questioned under Sec.248(2) Cr.P.C. Regarding the sentence to be imposed upon him. He stated that he maybe excused."

6. The learned counsel appearing for the appellant in his argument pointed out that, the prosecution has miserably failed to prove the charges against the appellant/accused. However, the learned trial Judge has erroneously convicted the accused/appellant, solely relying upon the evidence of P.W.12 [L.Murugesan] and P.W.13 [Rajarajaseelan] both being the named accused in the First Information Report. Without following the proper procedure for granting pardon to the accomplice, the trial Court has granted pardon to P.W.12 [L.Murugesan] and examined him on behalf of the prosecution. Even without

granting pardon and without assigning any reason to drop the name of P.W.13 [Rajarajaseelan] from the list of the accused, the prosecution has taken him as a witness. The trial Court, without testing the creditworthiness of these two witnesses P.W.12 and P.W.13, has given the finding of guilt solely relying upon their evidence.

7. The prosecution has not examined Abdullah, who is alleged to have lost the money and given the complaint marked as Ex P-49 or Mr.Vasantha Raj, who has registered the First Information Report Ex.P51, not based on the complaint of Abdullah but alleged to be based on the reliable information or the officer, who has laid the final report. Due to non examination of these three vital witnesses the accused/appellant has been put to grave prejudice. The charge against the accused/appellant is that he conspired with others accused and stealthily removed cheque book of Indian Overseas Bank, Sirkali Branch by abusing his position as Draftry in the said Bank and used those cheques to withdraw the money in the account of Abdullah while so no charge for theft of cheques framed or proved against the accused.

8. Heard the counsels representing the appellant and the respondent. Perused the records and exhibits.

9. The specific charge against the accused/appellant is that on 19.08.1993

a sum of Rs.20,000/- was withdrawn from the account of Abdullah by forging his signature in the cheque bearing No.481704. The cheque is alleged to have stolen by the accused and the cheque was issued in the name of Anwar Ali a non existing person. By impersonation, P.W.12 (L.Murugesan – approver) with the help of the accused en-cashed the same. Again on 03.09.1993, another cheque bearing No.481705 for a sum of Rs.15,000/- was en-cashed by P.W.12 from the account of Abdullah in the name of Anwar Ali. During the second week of May, 1994, with the help of stolen cheque book bearing No.356301 to 356310, a sum of Rs.10,000/- was en-cashed by PW-12 from the account of Abdullah in the name of Anwar Ali. Thus, three cheques were forged and a sum of Rs.45,000/- was fraudulently withdrawn from the account of Abdullah. The evidence let in by the prosecution, clearly establishes that the three cheques which are the subject matter of the charges and marked as Exs.P16, P17 and P19 were all written and withdrawn by the approver [L.Murugesan]. The handwriting expert, who has given a positive opinion about the writings on these three cheques and writings on back of these cheques were that of P.W.12 [L.Murugesan], in so far as the signatures found in these three cheques, he has given a positive opinion that those signatures are not that of Abdullah. Though there is no positive opinion by the expert that the signatures found in these cheques viz., Exs.P16, P17 and P19 is similar to the specimen signature of the accused, the approver and PW-13 have deposed that the accused signed in those cheques as Anwar Ali in their presence.

10. Since the crime has hatched in secrecy and except the parties to the conspiracy none other had any knowledge about the scheme of conspiracy, the prosecution has taken L.Murugesan as approver. In such circumstances, the trial Court has relied upon the evidence of P.W.12 and P.W.13 that the accused signed on the stolen blank cheques and gave it to the approver L.Murugesan for en-cashment. After encashment, the accused has given 4,000/- in total and retained the remaining money with him, thereby caused wrongful loss to the bank to a tune of Rs 45,000/- and wrongful gain for himself a like sum.

11. Perusal of Ex.P49, which is the complaint given by Abdullah dated 12.06.1994 indicates that his account has been tempered and somebody has withdrawn the money from his account without his knowledge. He has specifically stated that he was given a cheque book bearing cheque Nos.4265312 to 4265420 and as per his account, there must be balance of Rs.1,11,810/- but he has come to know that only Rs.56,610/- is in his account. The cheque book issue register which is marked as Ex.P13 relates to issuance of cheque leaves bearing Nos. 426531 to 426540 to Abdullah on 07.10.1992 whereas the entry in cheque book register marked as Ex.P14. It appears that 25 cheque leaves bearing No.481701 to 481725 have been issued in the name of Abdullah and

received by one Jakir Hussain. The date of issue is not mentioned. This entry has been subjected to hand writing examination by the expert and the expert has opined that he is not in a position to express any opinion about the hand writing found in the said entry marked as Ex.P14.

12. The charge against the accused/appellant is that he has stolen cheque book bearing No. 481701 to 481725 discreetly and made entry in the cheque book issue register falsely. The accused in his confession to Mr.T.Ramanathan during the departmental enquiry has admitted about his role in the crime. This statement which is in the nature of extra-judicial confession is marked as Ex P-48. The writing on this document is similar to the writings found in Ex P-14. Though the handwriting expert could not give a positive opinion about the signatures, the evidence of eyewitnesses is suffice to hold the guilty of the accused which is corroborated by the confession statement given by the accused, during the departmental enquiry much before the registration of the complaint by the police.

13. The learned Special Public Prosecutor for CBI Cases appearing for the respondent relying upon Ex.P47, which is the report of the internal investigation conducted by P.W.15 [T.Ramanathan] and the letter given by the accused to the bank officials in the course of the departmental enquiry, which is marked as

Ex.P48. No doubt, the internal enquiry report Ex.47 and the letter of the accused Ex.P48, which is in the nature of extra judicial confession indicates the criminal conduct of the accused/appellant. As a consequence, the accused has also remitted some money into the account of Abdullah and had promised to remit the entire money in due course.

14. Apart from the cheques withdrawn in the name of Anwar Ali, the other cheques, bearing No.0356301, 0356303, 0356305, 0356307, 0356309 and 0356310 which are marked by the prosecution as Exs.P- 20 to P- 24 in the name of Sekar and the cheque which is marked by the prosecution as Ex.P25 in the name of Rajendran respectively were sent for handwriting expert and from the report of the expert, it appears that Ex.P22 the cheque drawn in the name of Sekar has been withdrawn by the accused/appellant and the signatures found in the back of the cheques are that of the accused/appellant. Similarly, the withdrawal of Rs.10,000/- by Anwar Ali is reflected in the ledger account folio of Abdullah, which is marked as Ex.P10 and the scientific expert has given his opinion that the said debit entry of Rs.10,000/-, dated 15.09.1994 is that of the accused/appellant.

15. The prosecution had established that as Daftry, the accused has taken advantage of his proximity and has stealthily removed cheque book from the

bank and has forged the cheques to make pecuniary advantage through his accomplice turned approver. The prosecution through witnesses and documents has proved that the accused/appellant has manipulated the account of Abdullah and has withdrawn the money through his accomplice by using those forged cheques.

16. From the facts proved, there is adequate evidence to indicate that these three cheques were stolen from the bank and not issued to the account holder. The signatures found in those three cheques marked as Ex P-16, 17 and 19 are not that of the account holder but a forged signature. Money has been withdrawn through these three cheques and the approver examined as PW-12 has admitted that he in connivance and as per the instruction of the accused went to the bank and presented the cheques impersonating as Anwar Ali and collected the money and gave it to the accused. The accused in turn gave his few thousands on each occasion.

17. Therefore, for the foregoing reasons, this court holds that the accused being a public servant has abused his official position and had conspired with the approver PW-12 to cheat the bank and pursuance to the conspiracy, he has forged the valuable security viz cheques and used it as genuine to make unlawful gain and therefore liable to be punished for the charges framed under Section

120B , 467, 467 r/w 471 IPC and section 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and also liable to be punished for other substantial offences u/s 420, 467,467 r/w 471 IPC and Section 13(1)(d) and 13(2) of Prevention of Corruption Act, 1988 individually.

18. The trial court while sentencing the accused for the charge of conspiracy as well as the substantial charges it has imposed 3 year RI and Rs 2000/- fine for each of the offences, namely 120B r/w 467, 467 r/w 471 IPC and section 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and section 420, 467, 467 r/w 471 IPC and Section 13(1)(d) punishable under 13(2) of Prevention of Corruption Act.

19. Taking into consideration the submission made by the counsel for the appellant, that the appellant is presently suffering from aged related deceases and struck to poverty after losing his job, this court modifies the period of sentence from three years to one year for each of the offences and same shall run concurrently. The fine amount imposed stands unaltered. The period of sentence already undergone shall be set off under section 428 of Cr.P,C.

20. In the result, the appeal is partly allowed. The 3 year imprisonment imposed on the appellant/accused by the learned XI Additional Judge for CBI

Cases, Chennai in C.C.No.31 of 2004 dated 29.12.2008 is modified as one year for each of the offences and the same shall run concurrently.

20.10.2017

Index:yes/no

Internet:yes/no

Speaking order/Non speaking order

Ari/gr.

To

1.The Inspector of Police,
SPE, CBI:ACB, Chennai.
2.The learned Special Public Prosecutor, High Court, Madras.

Dr.G.Jayachandran,J.

Ari/gr.

Pre-delivery judgment made in
Crl.A.No.13 of 2009

20.10.2017