BAIL SLIP

The Petitioner/Sole Accused namely P.Swaminathan, S/o.Pattabhiraman was directed to be released on bail as per the Order of this Court dated 23.04.2003 and made in Crl.M.P.No.3762 of 2003 in Crl.A.No.671 of 2003 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.10.2017
PRONOUNCED ON : 24.10.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.671 of 2003

P.Swaminathan ... Appellant/Accused

Versus

State by Superintendent of Police,
CBI (ACB), Chennai-8. ... Respondent/Complainant

Criminal Appeal filed under Section 374 of Cr.P.C., against the order made in C.C.No.6 of 2000 dated 20.03.2003 by the Additional Special Judge for CBI Cases, Chennai, convicting the accused under Sections 420 (two counts), 477-A, 467 r/w 471 IPC and u/s 5(2) read with 5(1)(d) of Prevention of Corruption Act, 1947.

For Appellant : Mr.S.Ananthanarayanan,
Senior Counsel
for Mr.S.M.Nandhie Devhan.

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

JUDGMENT

This appeal is arising out of the Judgment of conviction and sentence imposed against the appellant P.Swaminathan, in C.C.No.6 of 2000 on the file of the Additional Special Judge for CBI Cases, Chennai, dated 20.03.2003.

2. The case of the prosecution unfolds in the following manner:- Based on the reliable information, the Central Bureau of Investigation has registered First Information Report which is marked as Ex.P154, against the appellant herein in R.C.No.3/1988, under Section 420, 467, 477A, 471 r/w 467 IPC and under Section 5(2) r/w 5(1)(d) of PC Act, 1947, on 27.1.1988 alleging that P.Swaminathan, the appellant herein was functioning as Assistant Accountant of Indian Overseas Bank,

Koothanallur Branch, between 7.3.1984 and 23.05.1987 and during the period from 29.3.1985 to 23.12.1985 the appellant/accused has fraudulently and dishonestly prepared a debit IBIT ('Inter Branch Item-in-Transit') vouchers on the strength of false credit said to have been originated from IOB, Esplanade Branch and credited into the inoperative and dormant SB Account No.7292 of L.M.Anwar Ali, left un-operated by the account holder since 10.8.1981, credited a sum of Rs.43,000/- on different occasions by falsely debiting IBIT ('Inter Branch Item-in-Transit') of Indian Overseas Bank, Koothanallur Branch and withdrew a sum of Rs.40,000/- from the said account using forged withdrawal slip. Similarly, he has also dishonestly credited a sum of Rs.40,000/- into the account dormant and un-operated account of S.Thamilarasan, during the period from 21.12.1984 to 07.12.1986 and had withdrawn a sum of Rs.46,500/- from the said account between 5.1.1985 and 25.3.1986. Similarly, he has also dishonestly and fraudulently falsified he books of accounts and thereby cheated the Indian Overseas Bank, Koothanallur Branch a sum of Rs.86,500/-.

3. The matter was taken up for investigation, on 16.2.1988, the accused house search was conducted and several incriminating documents were recovered from the house of the appellant/accused and after completion of investigation final report was filed against the appellant/accused before the Principal Sessions Judge, Trichy in C.C.No.1 of 1989 and it was transferred to the Special Judge, Additional Special Court for CBI Cases, Chennai and renumbered as C.C.No.6 of 2000.

4. The Final Report revealed that the appellant/accused by forging debit vouchers and credit vouchers of IBIT ('Inter Branch Item-in-Transit') on three different occasions credited in to Debit Voucher of IBIT ('Inter Branch Item-in-Transit') account of Indian Overseas Bank, Koothanallur a total sum of Rs.29,000/- i) on credit advice Branch for a sum of Rs.10,000/- for credit said to have originated from Indian Overseas Bank, Purasawalkam Branch for a sum of Rs.10,000/- dated 29.3.1985; (ii) Credit advice of IBIT ('Inter Branch Item-in-Transit') account of Indian Overseas Bank, Esplanade Branch for a sum of Rs.10,000/- dated 10.5.1985; and (iii) Credit advice of IBIT ('Inter Branch Item-in-Transit') account of Indian Overseas Bank, Esplanade Branch, for a sum of Rs.9,000/- dated 23.12.1985. The corresponding debit vouchers for the similar amount has been forged and later equal sum had been credited into the dormant account of L.N.Anwar Ali's SB A/c No.7292. Later through forged withdrawal slips the appellant/accused has withdrawn a sum of Rs.29,000/- as under:-

On 6.4.1985	Rs. 6,000/-
On 12.4.1985	Rs. 4,000/-
On 13.5.1985	Rs. 6,500/-
On 16.5.1985	Rs. 3,500/-
On 30.12.1985	Rs. 3,000/-
On 9.1.1986	Rs. 6,000/-

Further the Final Report reveals that the appellant/accused has fraudulently forged Debit Voucher of IBIT ('Inter Branch Item-in-Transit') account for Rs.9,000/- used it as genuine document to make a credit of Rs.9,000/- in to the SB Account No.7679 of S.Thamilarasan on 21.12.1984. Later by using forged withdrawal slip he has withdrawn Rs.4,000/- on 5.1.1985 and Rs.5,000/- on 12.1.1985. By creating a fraudulent transfer voucher, from the SB A/c No.5354 of Kannappan a sum of Rs.5,000/- has been withdrawn and transferred into the account of S.Thamilarasan and later the said amount has been withdrawn through withdrawal slip from the account of S.Thamilarasan.

5. Based on the said Final Report, the trial court has framed as many as 32 charges against the accused for the offences under Sections 467, 467 r/w 471, 477A, 381 of IPC and 5(1) (d) r/w 5(2) of Prevention of Corruption Act, 1947 for each of the three incidents arising out of false debiting in the IBIT ('Inter Branch Item-in-Transit') account of Indian Overseas Bank, Koothanallur.

6.Before the trial court to prove the charges the prosecution has examined 26 witnesses and had marked 159 Exhibits and 5 Material Objects. To defend the charges the appellant/accused has mounted the witness box got himself examined as D.W.1 and subjected himself for cross-examination and has marked 8 Exhibits. The trial court after appreciating the evidence let in by the prosecution as well as the accused, has held that the prosecution has proved the guilt of the accused, in respect of charge No.13, namely forging the valuable security of withdrawal slip dated 30.12.1985 for a sum of Rs.3,000/- with intend to defraud the bank under Section 467 IPC and in respect of charge No.14 for withdrawal of Rs.6,000/- on 9.1.1986 from the account of L.M.Anwar Ali by forging valuable security viz., the withdrawal slip and thereby to defraud the bank a sum of Rs.6,000/-. Thus, both the above charges under Section 467 IPC and corresponding charges 15, 16 and 17 for using those two withdrawal slips as genuine and cheated the bank a total sum of Rs.9,000/- and also for making corresponding false accounts by abusing his official position as a public servant and thereby enriching himself with pecuniary benefits. Further the trial court has held that the prosecution has proved guilt of the accused in respect of charges 25 to 29 relating to the fraudulent transfer of Rs.5,000/- from the account of Kannappan to the account of Thamilarasan and later withdrawal of Rs.5,000/- by the accused. In the course of the said crime, the accused has fabricated transfer credit vouchers and transfer debit vouchers for Rs.5,000/- in the account of Kannappan and Thamilarasan respectively and used those credit and debit vouchers as genuine and later withdrawn Rs.5,000/- cheating the bank of like sum and also falsified the account. Further the trial court has also held the accused guilt for theft of bank documents and bank seals which were recovered from his residence during the house search. The trial court held the accused guilty in respect of the following charges and convicted and sentenced as extracted hereunder:-

Charge and offence	Sentence	Fine
Charge No.13 U/s 467 IPC	To undergo RI for 2 years	Rs.1000/- in default to undergo RI for 2 months
Charge No.14 U/s 467 IPC	To undergo RI for 2 years	Rs.1000/- in default to undergo RI for 2 months
Charge No.15 U/s 467 r/w 471 IPC	To undergo RI for 1 year	
Charge No.16 U/s 420 IPC (2 counts)	To undergo RI for 2 years for each count.	Rs.1000/- for each count in default to undergo RI for 2 months
Charge No.17 U/s 467 r/w 477A IPC	To undergo RI for 2 years	Rs.1000/- in default to undergo RI for 2 months
Charge No.18 U/s 5(2) of PC Act 1947	To undergo RI for 1 year	Rs.1000/- in default to undergo RI for 2 months
Charge No.25 u/s 467 IPC	To undergo RI for 2 years	Rs.1000/- in default to undergo RI for 2 months
Charge No.26 U/s 467 IPC	To undergo RI for 2 years	Rs.1000/- in default to undergo RI for 2 months
Charge No.27 U/s 467 r/w 471 IPC	To undergo RI for 1 year	
Charge No.28 U/s 420 IPC	To undergo RI for 2 years	Rs.1000/- in default to undergo RI for 2 months.
Charge No.29 U/s 477A IPC	To undergo RI for 2 years	Rs.1000/- in default to undergo RI for 2 months
Charge No.30 U/s 381 IPC	To undergo RI for 2 years	Rs.1000/- in default to undergo RI for 2 months.
Charge No.32 u/s 5(2) r/w 5(1) (d) of PC Act, 1947.	To undergo RI for 1 year	Rs.1000/- in default to undergo RI for 2 months

7. Questioning conviction and sentence the present appeal is preferred on the ground that the trial court has erred in taking cognizance of the offence while the sanction to prosecute was accorded without application of mind when the witnesses and evidence let in by the prosecution has failed to identify the

accused as the person who has received the alleged money through the withdrawal slips marked as Ex.P51, P53, P56 and P58, the trial court ought not to have convicted the appellant based on the oral evidence of P.Ws. 4, 5, 10, 12, 13, 14, 20, 22, 23, 24 and 25 who have deposed that the credit vouchers and debit vouchers more particularly the withdrawal slips were prepared by the appellant/accused and they saw the accused signing the withdrawal slips.

8. The point now arises for consideration is:-

Whether the trial court has erred in appreciating the evidence and whether the finding of the trial court is not substantiated through the evidence let in by the prosecution?

9. The learned Senior Counsel appearing for the appellant contended that there is no evidence to show the disputed documents were forged or fabricated by the accused. Even the handwriting export P.W.25 S.C.Lohia, has not given any positive opinion that the accused has forged the signatures found in the withdrawal slips or debit and credit vouchers. While so, the trial court ought not to have convicted the appellant. Further the sanction accorded by P.W.1 without applying his mind independently but on the opinion of legal department is per se invalid and hence the trial court ought not to have taken cogniznce of the offence. Ex.P53 withdrawal slip dated 30.12.1985 for a sum of Rs.6,000/- and Ex.P56 withdrawal slip dated 30.12.1985 for a sum of Rs.3,000/- were identified by P.Ws.4, 9, 11, 13, 14 and 24 as document prepared by the accused but their version is not supported by the handwriting expert. While so, based on the ocular evidence overruling the scientific evidence is incorrect. Similarly, the trial court has heavily relied upon the evidence of witnesses who have spoken about the acquaintance with the accused handwriting and signature disregarding the handwriting expert opinion. The recovery of seals (M.O.1 and M.O.2) and documents from the appellant house do not satisfy the ingredients of Section 381 of IPC. The bank has never lodged any complaint of loss of record or rubber stamp. While so, the recovery of certain innocuous documents of the bank from the house of the appellant do not satisfy the ingredient of Section 381 of IPC. However, the trial court has convicted the appellant under Section 381 of IPC based on the evidence of P.W.3 and P.W.19. Further, non production of documents sought for under Section 91 of Cr.P.C., has not taken note of by the trial court which has erroneously rejected the plea of the appellant/accused on the ground that the claim to produce document made belatedly and hence non-production of those documents cannot be taken advantage by the accused.

10. Per contra, the learned Special Public Prosecutor appearing for CBI Cases submitted that Exs.P53 and P56 withdrawal slips prepared and passed by the accused and the same has been spoken by P.W.13 and 14 who are colleagues working along with the appellant/accused during the relevant point of time and had acquaintance with the handwriting and signature of the appellant/accused. P.W.13 Mr.Ravi in his evidence has stated

that withdrawal slip Ex.P53 for a sum of Rs.6,000/- in the name of L.M.Anwar Ali's Savings Bank Account No.7292 dated 9.1.1986 was received by the appellant/accused and he has made entry in the cash scroll book regarding payment of the said money and has identified the writings of the appellant/accused in Ex.P53, P54 and P55. Similarly, P.W.14 has spoken about his acquaintance with the handwriting and signature of the appellant/accused and identified his writings in the documents which were prepared by the appellant/accused. While the account holder L.M.Anwar Ali was residing in Bombay during the relevant point of time these transactions are unlikely operated by L.M.Anwar Ali. Therefore, the handwriting expert opinion cannot be little the ocular evidence of this witness who had been working along with the appellant/accused together for a length of period and had acquaintance with his handwriting and signature. Further the learned Public Prosecutor also submitted that in respect of transfer debit voucher and transfer credit voucher for Rs.5,000/- from the account of Kannappan to the account of Thamilarasan and withdrawal of the same by the appellant/accused, both Kannappan and Thamilarasan were examined by the prosecution and their evidence is unimpeached by the defence side. While so the judgment of the trial court is well considered the evidence before it needs no interference.

11. Perusal of the records and the submissions made y the learned counsel for the appellant as well as the prosecution, the catch point in this case is:

> Whether the fraudulent transactions in the account of L.M.Anwar Ali, Kannappan and Thamilarasan is the handiwork of the appellant/accused?

12. In so far as this case is concerned 5 instances have been levelled against the appellant/accused alleging dishonest and fraudulent operation of the SB Account of L.M.Anwar Ali, the prosecution in order to prove the instances relating to three false credit vouchers dated 23.12.1985 for Rs.9,000/- debiting from IBIT ('Inter Branch Item-in-Transit') account of Indian Overseas Bank, Koothanallur Branch, said to have been originated by the IOB Esplanade Branch. P.W.4 Mr.S.Natarajan, who was Manager of the Bank during the relevant point of time has deposed that has acquaintance with the handwritings signatures and initial of the accused and has deposed that Ex.P53 withdrawal slip dated 9.1.1986 for Rs.6,000/- has been prepared and passed by the accused. The token number on the reverse of the withdrawal slip was written by the accused. Regarding payment of cash P.W.23 Mr.Ambalavanan, has deposed that both Ex.P53 and P56 for a sum of Rs.6,000/- and Rs.3,000/- respectively were prepared and en-cashed by the accused. Also the appellant/accused himself has admitted that M.O.1 and M.O.2 rubber seals and other documents more particularly specimen signature card of Kannappan were recovered from his residence under search list Ex.P8=Ex.D1. While so, the evidence let in by the prosecution point the guilt towards the accused alone. Hence, there is no error in the judgment of the trial court warranting interference of this court in the appeal.

13. The documents which point out the guilt of the accused are Ex.P53 withdrawal slip for Rs.6,000/-, Ex.P56 withdrawal slip for Rs.3,000/-, Ex.P134 withdrawal slip purported to be signed by Kannappan and transferred into the account of Thamilarasan and Ex.P66 challan crediting Rs.5,000/- in the account No.7679 of Thamilarasan. Both Thamilarasan and Kannappan were examined by the prosecution as P.W.2 and P.W.6 respectively. They have categorically stated that they have nothing to do with the said transaction. They have also deposed that no amount has been deposited or withdrawn by them respectively as indicated in Ex.P66 and P134. Ex.P96 credit scroll voucher for Rs.5,000/- dated 17.9.1985 has been made by the accused and this is proved through the statement by P.W.10. While so, there is no doubt in the mind of this court that the entire transactions are the mastermind of the accused and he is the beneficiary of the fraud. Non production of certain documents which were sought belatedly by the appellant under Section 91 cannot be the reason to doubt the case of the prosecution.

14. The appellant who is a public servant charged for the offence under Section 5(2) r/w 5(1)(d) of the PC Act, 1947, is bound to place his defence and explanation at the earliest point of time. The evidence relied on by the defence and the testimony of the accused are of no way helpful to him on the other hand it strengthens the case of the prosecution. The appellant categorically admits that M.O.1 and M.O.2 rubber seals of Indian Overseas Bank, Koothanallur were recovered from his house. He has not placed any acceptable explanation for possession of the bank seals in his house or the specimen signature card of Kannappan one of the account holder whose account the fraudulent transaction has been done. So on a cumulative assessment of the evidence let in by the prosecution it is very clear that credit and debit vouchers of IBIT ('Inter Branch Item-in-Transit') account alleged to have been emanated from Indian Overseas Bank, Esplanade Branch is a false and fabricated transaction. The balance sheet relied on by the defence nowhere indicates that these transactions are genuine. The overall debit and credit accounts for the entire year without any specific indication of the transaction cannot lead to an inference that the said transaction has happened. The appellant who had been in the IBIT Section aware of the procedure of reconciliation of accounts, has taken advantage of the difficulty in finding out the false entries immediately has committed the said fraud. Though the prosecution has placed before the trial court several instances of false debit in IBIT ('Inter Branch Item-in-Transit') account and false credit in the non-operative account of L.M.Anwar Ali, Kannappan and Thamilarasan since only in respect of the credit of Rs.9,000/- in the account of L.M.Anwar Ali dated 23.12.1985 the trial court was convinced with the evidence which are clinching and beyond reasonable doubt to convict the accused/appellant. There is no reason in the grounds of appeal to interfere with the well considered judgment rendered by the trial court. Therefore, the judgment passed by the Additional Special Judge for CBI Cases, Chennai, in C.C.No.6 of 2000 dated

20.03.2003, convicting the accused under Section 420 (2 counts), 477-A, 467 r/w 471, 381 IPC and u/s 5(2) read with 5(1)(d) of Prevention of Corruption Act, 1947 is hereby confirmed and upheld. In the result, Criminal Appeal stands dismissed.

15. The observation made by the trial court while passing judgment of conviction and sentence in C.C.No.6 of 2000 and C.C.No.7 of 2000 to the effect that the period of sentence imposed on the accused in C.C.No.6 of 2000 and C.C.No.7 of 2000 shall run concurrently, shall stand unaltered.

16. The appellant is directed to surrender himself to undergo the remaining period of sentence if any within two months from the date of this judgment, failing which the respondent shall secure his presence and remand him to prison.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gr.

To

1.The Xth Additional Special Judge for CBI Cases,
Chennai.

2.The Superintendent of Police,
CBI (ACB), Chennai-8.

3.The Special Public Prosecutor for CBI Cases,
Chennai.

4.The Section Officer,
Criminal Section,
High Court, Madras 104.

+1cc to M/s.Palanivelayutham, Advocate in sr.74936 (13/12/2017)

CRL.A.NO.671 of 2003

SKV(CO)
CA(07/11/2017)