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.3887 of 2003 in Crl.A.No.686 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.686 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.7 of 2000 dated 20.03.2003 by the Additional Special Judge for CBI Cases, Chennai, convicting the accused under Section, 420, 467, 467 r/w 471, 477-A, 381 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 by the trial court against the appellant P.Swaminathan, in C.C.No.7 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 Superintendent, Central Bureau of Investigation has registered First Information Report against the appellant herein in R.C.No.3A/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 credited into the SB A/c No.7439 of N.H.Mohamed Arif, a sum of Rs.37,500/- on three different occasions by falsely debiting IBIT ('Inter Branch Item-in-Transit')account of IOB,Koothanallur Branch and withdrew a sum of Rs.35,500/- from the said account using forged withdrawal slip. Hence the information disclose prima facie commission of offence under Section 420, 467, 477A, 471 r/w 467 IPC and u/s 5(2) r/w 5(1)(d) of Prevention of Corruption Act,1947.

3. The matter was taken up for investigation. On 16.2.1988, the house of the accused was searched 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.14 of 1990 and it was transferred to the Special Judge, Additional Special Court for CBI Cases, Chennai and renumbered as C.C.No.7 of 2000.

Charges:-

4. The charges framed against the accused are:- u/s 467 IPC (4 counts), 467 r/w 471 IPC (3 counts), 420 IPC (3 counts) 477A IPC (2 counts), 381 and 201 IPC and u/s 5(2) r/w 5(1)(d) of PC Act, 1947 (3 counts).

The substances of the charges:-

5. The appellant/accused P.Swaminathan while functioning as a Public Servant viz. Assistant Accountant in Indian Overseas Bank, Koothanallur Branch, was in charge of IBIT ('Inter Branch Item-in-Transit') section, has identified a dormant inoperative account in the name of N.H.Mohamed Arif's S.B. Account No.7439 in which he has credited a sum of Rs.14,000/- on 28.6.1985, Rs.15,000/- on 17.9.1985 and Rs.8,000/- on 14.11.1985. For the said credits he has forged the documents such as debit voucher and credit voucher in the account of IBIT ('Inter Branch Item-in-Transit'). After debiting the above said amount from IBIT ('Inter Branch Item-in-Transit') account, a corresponding credit entry has been made in the dormant account of N.H.Mohamed Arif's S.B Account No.7439 and later the appellant/accused has fraudulently issued a cheque book in the name of N.H.Mohamed Arif's S.B. Account No.7439 and forged the cheque for Rs.2,500/- dated 10.9.1985 and used it as a genuine document to encash the same and thereby cheated the Indian Overseas Bank, Koothanallur Branch. Similarly on 23.11.1985 he has forged withdrawal slip for Rs.2,000/- and fraudulently used the withdrawal slip as genuine to withdraw a sum of Rs.2,000/- and thereby cheated the bank a sum of Rs.2,000/-. In order to appear as if all the transactions were genuine the accused also wilfully falsified the entries in the book of accounts maintained by the bank. Thus, by abusing his official position he has made pecuniary advantage falling within the definition of misconduct of a public servant. Hence, totally 17 charges were framed against the accused for the offence 467, 467 r/w 471, 420, 477A, 381,

201 and 381 IPC and Section 5(2) r/w 5(1)(d) of Prevention of Corruption Act,1947.

6.Before the trial court to prove the charges the prosecution has examined 21 witnesses and had marked 111 Exhibits and 4 Material Objects. To defend the charges the appellant/accused has mounted the witness box got himself examined as D.W.1 and has marked 18 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 act of forgery and fraudulent use of forged documents as genuine as well as falsification of account in respect of debit and credit vouchers falsely prepared by the appellant/accused in respect of IBIT ('Inter Branch Item-in-Transit') account for Rs.15,000/- dated 17.9.1985 and also held against the accused for the offences of withdrawing Rs.4,500/- (2,500 + 2,000) from the SB Account No.7439 of Mohamed Arif which was credited and passed based on the fraudulent credit voucher from IBIT ('Inter Branch Item-in-Transit') Account. While holding the accused guilty for preparing fraudulent valuable security and using it as genuine to cheat the Indian Overseas Bank, Koothanallur Branch. The trial court has found the accused not guilty for the offences of fabrication and falsification of ledger account in respect of withdrawal of Rs.4,500/- (2,500 + 2,000) 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.1 U/s 467 IPC	To undergo RI for 2 years	Rs.1000/- in default to undergo RI for 2 months
Charge No.2 U/s 467 r/w 471 IPC	To undergo RI for 1 year	
Charge No.3 U/s 467 IPC	To undergo RI for 2 years	Rs.1000/- in default to undergo RI for 2 months
Charge No.6 U/s 467 IPC	To undergo RI for 2 years	Rs.1000/- in default to undergo RI for 2 months
Charge No.7 U/s 467 r/w 471 IPC	To undergo RI for 1 year	
Charge No.8 U/s 420 IPC	To undergo RI for 2 years	Rs.1000/- in default to undergo RI for 2 months
Charge No.9 U/s 5(2) of PC Act 1947	To undergo RI for 2 years	Rs.1000/- in default to undergo RI for 2 months
Charge No.10 U/s 467 IPC	To undergo RI for 2 years	Rs.1000/- in default to undergo RI for 2 months

Charge No.11 U/s 467 IPCc	To undergo RI for 2 years	Rs.1000/- in default to undergo RI for 2 months.
Charge No.7 U/s 467 r/w 471 IPC	To undergo RI for 1 year	
Charge No.14 U/s 477A IPC	To undergo RI for 1 year	Rs.1000/- in default to undergo RI for 2 months
Charge No.15 U/s 381 IPC	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. While 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.P19 and P27, the trial court ought not to have convicted the appellant based on the oral evidence of P.Ws. 2, 5, 6, 8, 15 and 18 who have deposed that the credit vouchers, debit vouchers and the withdrawal slip was prepared by the appellant/accused and they saw the accused signing the withdrawal slip.

8. The learned Senior Counsel appearing for the appellant would contend that while the handwriting expert in his opinion has categorically stated that he is unable to give his opinion regarding the signature found in Ex.P19 and P27, whereas confirmed the writings in the documents as that of the accused, this will not mulch criminal liability upon the accused for fraudulent withdrawal of money through Ex.P19 and P27 in the light of the evidence elicited during the cross-examination of Bank officials that when illiterate and uneducated customers come to bank it is the practice of the bank officials to assist them to prepare Challan, voucher, withdrawal slip and cheque for them, as per their instruction. It is also contended by the learned counsel for the appellant that when certain documents were sought under Section 91 of Cr.P.C., the prosecution has failed to produce the same which has caused grave prejudice to the appellant/accused.

9. Per contra, the learned Special Public Prosecutor appearing for CBI Cases submitted that the appellant was in-charge of IBIT (('Inter Branch Item-in-Transit') section during the relevant point of time. With an intention to defraud the Bank, he has identified a dormant account stood in the name of one Mohamed Arif's SB Account No.7439 which was opened by the said Mohamed Arif on 25.9.1981 at Indian Overseas Bank, Koothanallur by remitting a sum of Rs.10/- and the said SB Account was left un-operated by the account holder, after 4.2.1982. On 4.2.1982 and on that day the balance in his account was only Rs.5/-. In February 1984, the said Mohamed Arif left to Kuwait and returned to India only in July 1986. He has not

operating this account during this period. Whereas the appellant/accused who had proximity with the account in the bank in the name of Mohamed Arif, has fraudulently credited huge sum of money into that account by manipulating IBIT ('Inter Branch Item-in-Transit') account. Though for three transactions charges were framed, the trial court after proper appreciation of the evidence has given benefit of doubt in respect of two transactions of forged debit and credit entries in the IBIT ('Inter Branch Item-in-Transit') account, held one transaction of Rs.15,000/- dated 17.9.1985 and the corresponding withdrawal of Rs.2,500/- vide Ex.P19 dated 10.9.1985 and withdrawal of Rs.2,000/- under Ex.P27 dated 23.11.1985, during this period the account holder Mohamed Arif was not at all in India. This has been clearly spoken by P.W.2 Mohamed Arif. The trial court after considering all these aspects has rightly found the appellant/accused guilty of the offences and rendered judgment of conviction and sentence. Therefore, there is no infirmity in the findings given by the trial court warranting interference by this Court.

10. The point now arises for consideration in the present appeal is:

Whether the fraudulent transactions in the account of Mohamed Arif is the handiwork of the appellant/accused?

11. P.W.1 Mr.D.J.Ambrose, Deputy General Manager, Indian Overseas Bank, has accorded sanction to prosecute the appellant/accused. The sanction order is Ex.P1. This order is challenged on the ground that the sanctioning authority has not applied his mind while granting sanction and he has taken the legal opinion before according sanction which indicates non-application of mind. The sanction order which is marked as Ex.P1 has been spoken by its author P.W.1. In the chief-examination he has clearly deposed that he has perused the FIR, statement of witnesses, documents and investigation report of the Superintendent of Police. He applied his mind and consulted the legal department and since being satisfied himself about prima face case made out against the accused, he has accorded sanction to prosecute the appellant. The appellant/accused has not chosen to cross-examine this witness. He has neither suggested about its incompetency or otherwise. Consulting the legal department is not prejudice to the appellant/accused and in fact it is proper course of action of any prudent person before according sanction to consult the legal department. The wisdom of legal department has enriched the witness to satisfy himself to arrive at appropriate decision. Hence the attack on the sanction order is feeble and unsustainable.

12. Regarding the writings on the disputed withdrawal slips Ex.P19 and P27 the main defence of the appellant is that filling up the cheques and withdrawal slips is part of the customer service and no culpability can be inferred. In this case the accused has not just filled up the withdrawal slips but the evidence let in by the prosecution witnesses also indicate that he has collected the proceeds by misrepresentation. It is pertinent to note the account holder Mohamed Arif who has been

examined as P.W.2 in an unequivocal term has deposed that he was not at all in India between 1984 and 1986. He has produced his passbook marked as Ex.P10 wherein there is no entry either for the deposit of Rs.15,000/- or for withdrawal of Rs.2,500/- under Ex.P19 and Rs.2,000/- under Ex.P27. The withdrawal slip mandates it should be accompanied by passbook. The accused admits that he has filled up the withdrawal slip as a part of customer service. If it is so, why he has not insisted the customer to produce the passbook along with withdrawal slip. This by itself shows that the appellant/accused has abused his official position as Assistant Accountant of the Indian Overseas Bank, Koothanallur and has cheated the bank by withdrawing Rs.2,500/- and Rs.2,000/- respectively through withdrawal slip Exs. P19 and P27. Above all, the accused has mounted the witness box and deposed. He could not give plausible explanation as to how the dormant account of Mohamed Arif became suddenly active with several transactions particularly from outstation cheques when neither the account holder nor the concerned bank vouchsafe or endorse these transactions.

13. In so far as Charge No.15 is concerned the appellant/accused himself admits that 15 items shown in the seizure mahazar were recovered from his house which includes the specimen signature card of Kannappan Account Folio No.5354 and rubber stamps of the bank. Just because the statement of accounts and balance sheets of respective banks has not specifically stated about these fraudulent transactions, the appellant/accused cannot escape from the liability relying upon the defence documents pertaining to statement of accounts, Annual Reports and Balance Sheets. When the account holder has come before this court and proved through document that he has not operated his account and the transaction s pertaining to the charges were not done by him and when there is overwhelming evidence including the admission of the accused that he has filled up the valuable securities as well as vouchers, it is for him to explain how the account of a person at Kuwait was actively operated. Having failed to explain the same, the appellant/accused has no ground to challenge the impugned judgment of conviction and sentence passed against him by the trial court after analysing the evidence in a thread bear and found the appellant/accused guilty of the charges.

14. Since there is no reason in the grounds of appeal to interfere with the well considered judgment rendered by the trial court, the judgment of conviction and sentence passed by the Additional Special Judge for CBI Cases, Chennai, in C.C.No.7 of 2000 dated 20.03.2003, convicting the accused under Section 420, 467, 467 r/w 471, 477-A, 381 IPC and u/s 5(2) read with 5 (1)(d) of Prevention of Corruption Act, 1947 is hereby confirmed and the 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

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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.

+1cc to M/s.Palanivelayutham, Advocate in sr.74935 (13/12/2017)

CRL.A.NO.686 of 2003

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