BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Thirtieth day of January Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice A.M.BASHEER AHAMED

CRL MP(MD) Nos.10052 and 10539 of 2016 and
CRL MP(MD)No.10538 of 2016 IN
CRL A(MD) Nos.384 and 407 of 2016

C.SANKARANARAYANAN ... APPELLANT/ACCUSED No.1
IN CRL MP(MD) No.10052 of 2016
In CRL A(MD) No.384 of 2016

T.R.VIJAYARAMAN ... PETITIONER/APPELLANT/ACCUSED No.2
IN CRL MP(MD) Nos.10539 & 10538/2016
In CRL A(MD) No.407 of 2016

Vs

THE STATE REP. BY
THE INSPECTOR OF POLICE,
SPE:CBI:ACB:CHENNAI,
RC61(A)/2004 ... RESPONDENT/RESPONDENT/COMPLAINANT
IN BOTH THE PETITIONS

Prayer in CRL MP(MD). 10052/ 2016 IN CRL A(MD) No.384 of 2016:
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed on the petitioner in CC NO. 7 of 2008 on the file of the 2nd Additional District Judge for CBI Cases, Madurai by its judgment dated 07.10.2016 and release him on bail pending disposal of the appeal.

Prayer in CRL MP(MD). 10539/ 2016 IN CRL A(MD) No.407 of 2016:
To suspend the sentence imposed by the Judgement in C.C. No. 7 of 2008 dated 07.10.2016 by the II Additional District Court for CBI Cases Madurai and enlarge the petitioner on bail pending disposal of the above appeal.

Prayer in CRL MP(MD). 10538/ 2016 IN CRL A(MD) No.407 of 2016:
To exempt the Petitioner form surrendering in pursuance of the sentence passed in the judgment dated 07.10.2016 made in C.C. No. 7 of 2008 on the file of the II Additional district Court for CBI Cases, Madurai to submit himself to the Judicial custody pending disposal of the above Criminal Appeal.

Order : These petitions coming on for orders upon perusing the petitions filed in support thereof and upon hearing the arguments of M/S.K.SUNDARAVEL, Advocate for the petitioner in CRL MP(MD) No.10052 of 2016 In CRL A(MD) No.384 of 2016 and Mr.AJMAL KHAN, Senior Counsel for M/S.AJMAL ASSOCIATES, for the petitioner in CRL MP(MD) Nos.10539 and 10538 of 2016 In CRL A(MD) No.407 of 2016 and of M/S.JEYAKUMAR, Special Public Prosecutor for CBI Cases on behalf of the Respondent in botht the petitions, the court made the following order:-

The Criminal Miscellaneous Petitions have been filed by the Petitioners / Appellants / A1 and A2 respectively praying to suspend the sentence of imprisonment imposed on them, by the II Additional District Court for CBI Cases, Madurai, in C.C.No.7 of 2008, dated 07.10.2016 and enlarge the petitioners / appellants on bail, pending disposal of the above Criminal Appeals.

2. After trial, the petitioners have been been convicted and sentenced as under:

Conviction	Sentence
For Accused No.1: Section 120-B r/w 420 of IPC., 120-B r/w.420 and 477-A of IPC.	Each 5 Years R.I. + each 5,000/-, i/d 3 Months S.I.,each
For Accused No.2: Section 120-B r/w 420 of IPC., and 420 IPC	Each 5 Years R.I. + each 5,000/- i/d 3 Months S.I.,each

3. Fine amount imposed by the trial Court was paid by the petitioners. The petitioners / accused 1 and 2 are confined in Central Prison at Madurai from the date of Judgment ie., 07.10.2016 onwards. Aggrieved by the order of conviction, the accused preferred the Appeals before this Court and are pending as Crl.A.(MD)Nos.384 and 407 of 2016.

4. The learned counsel appearing for the petitioner/A1 contends that the top officials of the Bank, who were examined as prosecution witnesses, categorically admitted in evidence that the liabilities of the customers towards the Bank were paid in full and there was no monitory loss to the Bank; that the trial Court had acquitted the appellant of the charges framed under Prevention of Corruption Act, since there was no allegation on the side of the prosecution; that the appellant received any bribe money so as to facilitate the customers to get various credit facilities and when the dues of the customers towards the Bank were cleared and there was no foul play in extending various credit facilities; that A1, as a Branch Manager, got valuable title deeds as sufficient security along with

pro-notes, legal opinions etc., to grant various credit facilities to the other accused / customer of the Bank; that the prosecution has not supported with any adverse audit report or negative visits report; that on the basis of oral sanction and on the expectation of the written sanction, credit facilities were given to the customers, as they have deposited valuable securities with the Bank; that the oral sanctions and oral orders are always in practice in banking business. As per the advice and directions of higher officials and in their presence everything was set right with the help of potential customers, who are also well wishers and friends of Manger and customers; that third persons have made to discharge the liabilities is not an impediment to acquit the appellant; that till date the customers, who discharged the dues of accused / customers did not proceed against the bank for any repayment.

5. The learned counsel appearing for the petitioner/A2 contends that the petitioner / appellant / A2 was allowed to overdraw his account, which was secured by title deeds given as security and further it was usual practice for the Bank Managers to grant over draft facility and thereafter seek ratification from the higher authorities, which usually used to be oral; that once the amount of subject matter of overdrawal had been paid and settled before the initiation of criminal prosecution, and the account has been regularized, there is no wrongful loss to the Bank and the offence Section 420 or 120(b) of IPC., cannot be sustained, since the amounts due in respect of the current account held by the appellant had been paid and settled on 10.04.2014 even before the registration of the FIR and therefore, the prosecution and the consequential conviction of the petitioner / Appellant / A2 is illegal.

6. The learned counsel appearing for A1 and A2 vehemently contends that the petitioners are having prima facie case of acquittal in the appeal.

7, The learned Special Public Prosecutor for CBI Cases appearing for the respondent contends that while A1 happened to be the Branch Manager of Indian Bank, Srirangam Branch during the period 2002-2004 he authorized the payment of amount with the knowledge that in the account has no sufficient balance and honoured the cheques without authority and debiting the respective account and also the debits were not disclosed by A1 before the superiors by way of the report in AUF, AUD and AUM and that A1 fraudulently credited into the said Account on the basis of bogus cheque issued in favour of A2, as if they are genuine payments received in regular and ordinary course of business and he purchased the cheques presented by A2, when the previous cheques were returned and paid. But the returned cheques are not debited into Current Account of A2 and that the outstanding balance of A2 in his Current Account had been settled through customers, who have no relationship or business transaction with A2 and the trial Court has rightly convicted the accused persons and they have no prima facie case in the present appeals.

8. Perused the materials on record and the rival submissions made by either counsels are also considered.

9. It is admitted that A1 was not in service and he was removed from the post of Branch Manager prior to the registration of the FIR in this case. A2 is the customer of the Bank, while A1 was working as Branch Manager of Srirengam Branch. It is disclosed during the evidence of prosecution that A1 has not followed the Bank Rules in sanctioning OD facilities in favour of the customers and he has not submitted the mandatory reports regarding the loan transaction as well as the passing of cheques in the reports before the superiors. It is admitted that O.D.facilities are given to the customers on the basis of title deeds as security. It is also admitted during evidence that the outstanding balance of A2 was settled on 10.01.2004 and after 10.01.2004, there was no outstanding balance in the Current Account of A2. It is also admitted that outstanding balance of customer of A2 was settled before registration of the FIR, which was registered on 23.09.2004.

10. On perusal of the evidence of prosecution would disclose that cheques were passed by A1, when the account of A2 have debit balance and the cheques were passed without any entry in the external credit register. A1, as a Branch Manger, who is bound to submit AUF, AUD and AUM statements, as per the Bank Rules, have not submitted the above statements before the superiors. It is further disclosed that debit was made in the external clearing accounts in the name of customers without receiving cheques from that customers, which is against the Rules. The alleged violation of rules and also passing of cheques while there was a debit entry in the concerned account was held from 2002 - 2004 while A1 was working as Branch Manager of Indian Bank, Srirengam Branch. The corroborate evidence was adduced by the prosecution witnesses stating that A1 has exceeded his limits and furnished overdrafts and cheques were received and instructed to pass, when the debit balance available in A2's account. There cannot be any direct evidence in respect of the offence of conspiracy. The criminal conspiracy has to be pursued in direct evidence. Though the outstanding settled only on 10.01.2004, the irregularities from the year 2002 to 2004 cannot be washed out. A2 has presented his cheques, when his account was in debit balance and the limits of TOD were exceeded and the balance was not cleared in time and same was accumulated and settled on 10.01.2004 by the efforts of A1, who collected cheques from Bank customers and set right the OD account of A2. A2 presented the cheque after cheque and got money for his business. In the above stated circumstances, this Court finds at this stage that the petitioners have no prima facie case in their favour. Hence, this Court is not inclined to suspend the sentence, as prayed for.

11. In the Result the both the Criminal Miscellaneous Petitions are dismissed. In view of the order passed in the suspension petition, CRL MP(MD)Nos.10538 of 2016, the petition for exemption is also dismissed.

12. Registry is directed to call for the records from the Court concerned and list the case for earlier disposal, since the accused are in custody.

sd/-
30/01/2017

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE II ADDITIONAL DISTRICT JUDGE FOR CBI CASES,
   MADURAI.

2. THE INSPECTOR OF POLICE,
   SPE:CBI:ACB:CHENNAI, RC61(A)/2004

3. THE SPECIAL PUBLIC PROSECUTOR FOR CBI CASES,
   MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

4. THE SUPERINTENDENT,
   CENTRAL PRISON, MADURAI.

COPY TO:-

THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+ 1 CC TO Mr.K.SUNDARAVEL, ADVOCATE IN SR No. 5184
+ 1 CC TO M/S.AJMAL ASSOCIATES, ADVOCATE IN SR No. 4888

ORDER
IN
CRL MP(MD) Nos.10052 and
10539 of 2016 and
CRL MP(MD)No.10538 of 2016
IN
CRL A(MD) Nos.384 & 407/2016
Date :30/01/2017

MPK
TE/SV-MMS/SAR-II : 02/02/2017 : 5P/8C