BAIL SLIP

The Appellant/Accused No.7 namely R.Raj Kumar, S/o.P.Rudrapathy was directed to be released on bail as per order of this court dated 10.07.2001 made in Crl.M.P.No.4052 of 2001 in Crl.A.Nos.569 of 2001 on the file of this court.

The Appellant/Accused No.3 namely Kanagavalli W/o.C.Shanmugham was directed to be released on bail as per order of this court dated 11.11.2002 made in Crl.MP.No.10756 of 2002 in Crl.A.Nos.1452 of 2002 on the file of this court.

The Appellants/Accused No.4 & 5 namely Velmurugan & Rajangam were directed to be released on bail as per order of this court dated 16.07.2001 made in Crl.MP.No.4211 of 2001 in Crl.A.596 of 2001 on the file of this court.

The Appellant/Accused No.2 namely Shanmugam was directed to be released on bail as per order of this court dated 12.10.2001 made in Crl.M.P.No.7008 of 2001 in Crl.A.Nos.936 of 2001 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2018

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Crl.A.Nos.569 of 2001, 1452 of 2002, 596, 609 & 936 of 2001

1. R.Raj Kumar .. Appellant/Accused No.7 in Crl.A.No.569/2001

2.Kanagavalli .. Appellant/Accused No.3 in Crl.A.No.1452/2002

3.Vel Murugan

4.Rajangam .. Appellants/Accused Nos.4 & 5 in Crl.A.No.596/2001

5.M.V.Salai Abaranam .. Appellant/Accused No.1 in Crl.A.No.609/2001

6.Shanmugam .. Appellant/Accused No.2 in Crl.A.No.936/2001

Vs.

1. The State by Deputy Superintendent of Police,
ACB : CBI : Madras,
Central Bureau of Investigation,
Shastri Bhavan,
Chennai.

.. Respondent/Complainant
in Crl.A.No.569/2001

2. The State by
Deputy Superintendent of Police,
SPE/ACB/CBI, Chennai. .. Respondent/Complainant
in Crl.A.Nos.1452/2002 & 596/2001

3. State rep.by:
Deputy Superintendent of Police,
SPE, ACB, Chennai.

.. Respondent/Complainant
in Crl.A.Nos.609 & 936/2001

COMMON PRAYER:

Criminal Appeal filed under Section 374 of Criminal Procedure Code, to set aside the judgment rendered by the learned Additional Special Judge for CBI cases, Chennai in C.C.No.90/97 dated 13.06.2001.

For Appellant in Crl.A.Nos.569 & 609/2001 : Mr.S.Chandrasekaran

For Appellants in Crl.A.Nos.1452/2002, 596/2001, 936/2001 : Mr.K.Shankar

For Respondents in all the Appeals : Mr.Ashok Kumar Gowtham, Special Public Prosecutor.

C O M M O N J U D G M E N T

These Criminal appeals have been filed by the appellants/ accused No. 1 to 6 as against the conviction and sentence order passed by the learned Additional Special Judge for CBI cases, Chennai made in C.C.No.90 of 1997, dated 13.06.2001

2.The brief facts of the prosecution case is that the accused A1 to A6 along with other accused / appellants entered into a Criminal conspiracy at Alapakkam Village near Chengalpet. During the month of October, 1987 to December 1991, they committed illegal fraudulent act of cheating the State Bank of India, Chengalpet Branch.

3.In pursuance to the conspiracy, A2 to A9 submitted their loan application forms for a crop loan on the basis of bogus Chitta and Adangal prepared by the accused one C.Kumar, who is not the appellant herein. The said C.Kumar, with the prepared bogus documents along with four photographs of himself and other accused, presented the same in the SBI Bank, for the purpose of rising Agricultural Crop loan, stating falsely that they are owning agricultural lands at Alapakkam Village by furnishing false address. Further, A4 & A5 were said to have given wrong information about their parentage in their loan application forms. A1 in pursuance of the criminal conspiracy, knowing very well that A2 to A8 are not the residents of Allapakkam Village at Chengalpet District, certified the bogus chitta & adangal and residential address, as if he had verified them and indicated that the properties are owned by the accused persons as per the Revenue Records.

4.The further prosecution case is that A1 had fraudulently recommended A2 to A6 for a crop loan of Rs.5,000/- each and got the crop loan sanctioned through agricultural manager and thereby he has caused a loss of Rs.40,000/- to the State Bank of India (hereinafter referred to as SBI), Chengalpet Branch, with the corresponding wrongful gain to the accused by misusing his official position. Further A1 certified the bogus and forged documents of the accused persons as genuine in order to sanction agricultural crop loan for A2 to A6. The defacto complainant is one Dal Behra, the Deputy General Manager (Vigilance). The defacto complainant was not examined. Ex.P.118 dated 27.03.1991 was the complaint given by the Complainant.

5.The first information report came to be registered on 27.03.1991. Thereafter, the investigating officer i.e., P.W.9 Mr.M.Pandiarajan, took up the investigation and examined three bank officials i.e. P.W.2, P.W.4 & P.W.5 with regard to the procedure and filed a charge sheet before the trial Court after furnishing free copies under Section 207 of Cr.P.C.

6.Thereafter, the trial Court framed the charge, since the accused persons did not plead guilty and they went on to try the case, the prosecution has examined 9 witnesses i.e., P.W.1 to P.W.9 and marked Ex.P1 to Ex.P119 and no witnesses were examined by the accused persons and no documents were marked on their behalf. The trial Court examined the accused persons under Section 313 Cr.P.C., in respect of incriminating evidence available against them and they pleaded innocent. However, they neither chose to examine nor to mark any documents.

7.The trial Court after considering the oral and documentary evidence has found accused A1 guilty under Sections 120B, 420, 467 r/w 471 IPC and 13(1)(d) r/w 13(2) of PC Act. The trial Court also found remaining accused A2 to A6 guilty and convicted and sentenced them to undergo R.I. for two years in default to undergo R.I. for six months and the sentences are ordered to run concurrently. Being aggrieved by the said conviction, the appellants have preferred these appeals before this Court.

8.The learned counsel appearing for the appellants A1 and A6 would submit that there is no material whatsoever available on record to prove the charge against the accused persons and the prosecution evidence is totally contrary to each and every evidence and there is no direct evidence available to implicate the accused in the above said offences. The learned counsel would further submit that A1 is a public servant and as per Section 19 of Prevention of Corruption Act, sanction is necessary. Though, the prosecution marked the sanction order as Ex.P1, the Chief General Manager is not the competent authority to sanction the prosecution as per bank regulations i.e., the SBI General Regulations, 1955. The disciplinary action against the staff members can be taken only by the executive committee not by P.W.1, the Chief General Manager. The learned counsel argued that as per clause 55(b) no officer or employee of the Bank shall be dismissed, discharged, removed, terminated or retire from the authority to lower cadre than the appointed authority, hence, P.W.1 is an incompetent authority, in respect of sanctioning prosecution.

9.The learned counsel would further submit that A1 during the relevant point of time was working as an Assistant Field Grade II Officer and he used to receive nearly 300 loan applications per day for sanctioning of loan. Hence, there are lot of chances for oversight in granting crop loan to those accused persons. He is only loan forwarding and recommending authority and ultimately that has to be sanctioned by the superior level of officers. Hence, implicating A1 in the above said offence is unsustainable one.

10.Even on a perusal of the evidence of P.W.5 i.e., Neelakandan, it is seen that one of the co-accused i.e. A8 namely one Kumar, who borrowed the loan had repaid the entire loan amount. P.W.5 also admitted in his deposition that he along with A1 inspected the Alapakkam Village and he has also cross checked the loanees and endorsed the loan applications jointly. P.W.5 also admitted that A1, the Assistant Field Officer dealt with more than 300 applications at the relevant point of time and except eight forms all other forms are genuine. Whenever, the crop loan applications are received, the official authority is A1 and P.W.5 and they are not the sanctioning authorities and they are only recommending authorities. The learned counsel would further submit that A1 has not committed any offence as alleged by the prosecution and accordingly, prays for acquittal.

11.The learned counsel would further submit that in respect of A6, though, the trial Court perused the chitta and adangal, the investigating officer during the investigation sent the signatures to the expert for opinion and comparison of signature, the expert has opined that the sample signature obtained by him and the sign which was found in the chitta and adangal are the one and the same. The signatures in respect of A7 & A8 were not obtained and on that ground the trial Court acquitted A7 & A8. A6 is a similarly placed person like A7 & A8. The investigating officer did not get any specimen signature from A6 also. As, the trial Court acquitted accused A7 & A8, the same logic would apply to A6 also and accordingly prays for allowing these appeals.

12.The learned counsel appearing for A2 to A5 would submit that the appellants have not committed any offence as alleged by the prosecution. The prosecution in order to prove the guilt as against the accused persons, examined P.W.7 i.e., the Village Administrative Officer. The Village Administrative Officer in his deposition stated that he has not signed in the Chitta and Adangal. Believing his words, the trial Court convicted the accused persons. However, based on the expert opinion, who compared the signature of the accused persons and the chitta and adangal, the trial Court arrived at the conclusion.

13.The learned counsel would further submit that the expert opinion was based on the evidence and it is not a conclusive proof and it is only an opinion. The trial Court arrived at a conclusion from the expert opinion that the appellants have committed the guilt. Except expert opinion i.e. P.W.3, no other credible documents are available to prove the above said offence. Further, as per the prosecution, the entire forged documents viz., chitta and adangal were prepared by A8 i.e. C.Kumar and the same was produced by the appellants, which will not constitute an offence against the accused persons. In respect of sanctioning the prosecution by an uncompetent Authority for non application of mind, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of State of Karnataka Vs. Ameer Jan in (2008) 1 MLJ (Crl) 542 (SC) and following paragraph in the judgment would be relevant:-

> ''3.An order of sanction was issued by the Commissioner of Stamps solely relying on or on the basis of a purported report issued by the Inspector General of Police, Karnataka Lokayuktha. The purported order of sanction being dated 20.07.1992 reads as under:
>
> ''In exercise of the powers conferred under Section 19(1)(c) of the Prevention of Corruption Act, 1988, I hereby accord sanction to prosecute Sri Ameerjan, Second Division Assistant in the office of the Registrar of Firms and Societies, Bangalore, Urban District, Bangalore for offences punishable under Section 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 in the competent Court of law.''

and this Court judgment in Crl.A.No.1454 of 2003, following paragraph in the judgment would be relevant:-

> ''4.Resisting the same, Mr.B.S.Jothiraman would submit that none of the original documents have been filed before the Special Court. The Special Court has correct in held that P.W.1 is not a competent person to accord sanction for prosecution, since P.W.1 and P.W.2 are bank employees, only Board of Directors is an appointing authority and they alone accord sanction for prosecution. But the Board has authorised Chairman of the Board for appointment. So that Chairman is a competent person to accord sanction. Here, P.W.1 was not a Chairman and he was working as General Manager of Bank of India. In his cross-examination, he stated that the power was given to the Chairman and in his turn it was delegated to the General Manager. But the Power of attorney deed has not been filed. That factum has been considered by the Special Court and hence, the Special Court is correct in held that sanction is not accorded in accordance with law.''

Accordingly, he prays for allowing these appeals.

14.Per contra, the learned Public Prosecutor appearing for the respondent would submit that A1 is a public servant. While he was working as an Assistant Field Officer, he was authorised to collect the agricultural crop loan applications in and around the village for the welfare of the poor agriculturists. A1 by misusing his official position induced the accused persons who did not have their own lands at Alappakkam Village, by accepting the forged documents and granted loan, thereby, causing loss to the SBI.

15.In the present case, the Chief General Manager is the sanctioning authority. The Regulations relied on by the learned counsel for the appellants are not applicable to the present case on hand, whereas, separate service rules are available to the staff members of SBI.

16.The administrative powers for deciding the disciplinary proceedings is provided under Rule 31(1)(h), SBI officers, the first appellant is the Scale II Officer, the disciplinary authority for imposing major punishment is the Chief General Manager. Hence, the sanctioning of prosecution granted by the Chief General Manager i.e. P.W.10 perfectly valid and the P.W.1 is the sanctioning authority under Section 19 of the Prevention of Corruption Act.

17.The Public Prosecutor would further submit that in order to prove the case of the prosecution, the prosecution examined three field level officers i.e. P.W.2, P.W.4 & P.W.5 and their evidence clearly establishes the prosecution case and the entire chitta and adangal loan applications are marked as prosecution documents and on a perusal of the entire documents and the evidences, the trial Court convicted the accused and the conviction order need not be interfered with. Accordingly, he prays for dismissal of the criminal appeals.

18.In the light of the above submissions, now it has to be analysed whether the prosecution has proved the guilt on the accused or not and whether conviction was passed based on the materials or not.

19.The evidence of PW4, who is working as a field officer in SBI, Chengalpet Branch is that the filed officer has jurisdiction control over the specific village for the purpose of sanctioning of agricultural crop loan. During the relevant period, P.W.4 had the administrative control over the Village. A1 had jurisdiction control over the Alapakkam Village, where the accused persons allegedly resided. The duty of the filed officer is that they were required to receive the applications for agricultural crop loan and have to recommend them for sanctioning of such loan after complying with all the required procedure. The primary duty of the field officer is to enter those applications in the relevant register and to find out whether the loanees are eligible for the loan after strict scrutiny and inspection of facts. Thereafter, the field officer has to recommend the same for agricultural loan.

20.Apart from the above, the jurisdictional field officers have to ascertain whether the loanees have capacity to repay the loan with interest as per the conditions. It is further revealed that Ex.P3 is the Agricultural Loan Application submitted by A2 dated 07.10.1989. Similarly other accused persons loan applications were also marked as Exhibits. In respect of A2, chitta and adangal have been marked as Ex.P3 to Ex.P12, Ex.P13 to Ex.P23 marked in respect of A3, Ex.P24 to Ex.P33 have been marked in respect of A4, Ex.P34 to Ex.P42 were marked in respect of A5 and Ex.P43 to Ex.P50 were marked. The repayment vouchers are marked as Ex.P96 to Ex.P104 in respect of all the accused persons.

21.On a perusal of the above Exhibits, it is seen that the loan applications were scrutinised by A1 and it was his duty to verify the records and certify whether the accused persons are eligible to get loan from the SBI. However, in the present case, the prosecution examined P.W.3 i.e., VAO in order to verify the genuineness of the chitta and adangal. In his evidence, he categorically admitted that the signature did not belong to him. Apart from the above, the prosecution examined the expert for comparison of the signature and the certified expert opinion, given by one Mr.Ravi, (P.W.7) has been marked as Ex.P109. P.W.8, Narinder Singh has been marked as Ex.P116.

22.A perusal of the above Exhibits as well as evidence reveal that the signature obtained by the expert and the signature found in chitta and adangal clearly tally and are corroborated. Hence, the prosecution has proved the case. No doubt the expert opinion is not a substantial opinion, it is only a piece of evidence and in this case the prosecution has not solely relied upon the expert opinion, the said expert opinion is corroborated by P.W.3 and other evidences. Hence, it is my considered view, the prosecution has proved the case beyond reasonable doubts.

23.On a perusal of the SBI regulations referred by the learned counsel appearing for A1, Regulations 55b deals with the powers with regard to the staff members. No officer or employee of the Bank shall be dismissed, retired, terminated or removed from the services of the Bank or reduced to a lower grade or post or to a lower stage in a time scale by an authority lower than the appointing authority.

24.In the present case, A1 is a Scale II employee. The disciplinary authority is the Chief General Manger. On a perusal of the authority structure, in respect of the administrative powers in terms of Rule 3(1)(h) of SBI Officers Service Rules, in respect of Scale II employee, the major penalty can be imposed only by the Chief General Manager. On a close reading of Section 19(1)(c) of the Prevention of Corruption Act and 55 (b) of Regulations, in case if Authority wants to remove a delinquent from the service, he should be removed only by the sanctioning authority.

25.In the present case, the learned Public Prosecutor aptly referred to the provisions under 19(1)(c) of the Prevention of Corruption Act and the Chief General Manager has obtained authority for taking disciplinary action.

26.On a perusal of the decision relied on by the learned counsel for the appellant reported in the case of State of Karnataka Vs. Ameer Jan, the Hon'ble Apex Court clearly held in paragraph 8 as follows:-

> ''For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. The Court has noticed herein before that the sanctioning authority had purported to pass the order of sanction solely on the basis of the report made by the Inspetor General of Police, Karnataka Lokayuktha. Even the said report has not been brought on record. Thus, whether in the said report, either in the body thereof or by annexing therewith the relevant documents, IG Police Karnataka Lokayuktha had placed on record the materials collected on investigation of the matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. Ordinarily, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed before the sanctioning authority. In the event, the order of sanction was passed, the same may be produced before the Court to show that such materials had in fact been produced.''

27.The Hon'ble Apex Court clearly held that the application of mind on the part of the sanctioning authority is imperative and the order granting sanction should be done after proper application of mind.

28.In the present case, P.W.1 has applied his mind and granted sanction order for prosecution against A1. Hence, the said decision is not applicable to the present case on hand. Since, this Court has not discussed SBI Officers Service Rules 31(a), the Chief General Manager obtained powers to take disciplinary action against the Assistant Field Officer, Scale II.

29.On a perusal of the other un-reported decision relied upon by the learned counsel appearing for the appellants, it would reveal that this Court by referring to 55 (b) of the General Regulations arrived at a conclusion that the Board of Directors are the appointing authority and they alone accord sanction for prosecution. But the Board has authorised Chairman of the Board for appointment. Hence, the Chairman is the competent person to accord sanction. However, the Service Rule which is particularly applicable to the State Bank Officers was not placed before this Court for consideration.

30.On a close perusal of 55 (b) of the General Regulations clearly shows that no officer or employee of the Bank shall be dismissed, discharged, removed, terminated or retire from the authority to lower cadre than the appointed authority. Rule 3 (1) (h) of the SBI Officers Service Rules shows that in respect of Scale II employees, major penalty like removal of service can be imposed. Section 19 (1) (c) of the Prevention of Corruption Act, clearly shows that the Authority competent for sanctioning prosecution is the Authority competent for removing from service. Hence, the Chief General Manager is the competent person for sanctioning the prosecution as against A1. Hence, the un-reported decision relied upon by the learned counsel appearing for the appellants is not applicable to the present case on hand.

31.The learned counsel appearing for the appellants would submit that the occurrence is said to have taken place in the year 1989. After 29 years, all the persons are more than 80 years now and they would be suffering from their old age ailments. Hence, at the request of the learned counsel for the appellants, this Court is inclined to consider the reduction of sentence imposed on the appellants.

32.Considering the facts and circumstances of the case and also on a perusal of the affidavit filed by A1 and A6 and its relevancies, there are major medical ailments suffered by A1 and A6 and other accused persons. Hence, this Court is inclined to reduce the sentence of imprisonment imposed on the appellants.

33.In the result, the criminal appeals are partly allowed. The conviction imposed by the learned Additional Special Judge for CBI cases, Chennai in C.C.No.90/97 dated 13.06.2001 on the appellants are confirmed. However, the sentence imposed on the appellants is modified. The sentence of imprisonment imposed on A1 is reduced to one year R.I. from two years R.I. Considering the fact that no minimum punishments prescribed against the accused A2 to A6. The sentence of imprisonment imposed on A2, A3, A4, A5 and A6 is reduced to one month simple Imprisonment from two years R.I. The appellants shall pay the fine amount imposed by the trial Court in default shall undergo 7 days S.I. A1 to A6 herein are directed to surrender before the learned Additional Special Judge for CBI cases, Chennai, within one month from the date of receipt of a copy of this order to serve the sentence as stated above, failing which, the Trial Court as well as the Investigation Officer shall take necessary and expeditious steps to secure the custody of the appellants/accused to undergo the sentence as stated above.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kas/at

To
1. The Additional Special Judge for CBI cases,
   Chennai

2. Deputy Superintendent of Police,
   ACB : CBI : Madras, Central Bureau of Investigation,
   Shastri Bhavan,Chennai.

3. The Deputy Superintendent of Police,
   SPE/ACB/CBI, Chennai.

4. The Deputy Superintendent of Police,
   SPE/ACB, Chennai.

5. The Supeintendent,
   Central Prison, Vellore.

6. The Director General of Police,
   Mylapore, Chennai-4.

7. Public Prosecutor
   High Court of Madras

8. Section Officer
   Criminal Section
   High Court of Madras

+3cc to Mr.V.S.Jagadeesan, Advocate, S.R.No.84648, 84645
+1cc to Mr.K.Srinivasan, Advocate, S.R.No.84229

Crl.A.Nos.569 of 2001,
1452 of 2002,
596, 609 & 936 of 2001

SKV(CO)
CS/01/02/2019