Bail Slip

That the Appellants/Accused R.Natarajan S/oRudrapathi Pillai in Crl A No.592/01, M.V.Salai Abaranam, S/o M.V.Anandan in Crl A No.608/01 were directe to be released on bail as per order of this court dated 19-7-2001 in Crl.MP.No.4172/2001 in Crl A 592/01 and by order dated 19-07-2001 in Crl.MP.No.4364/2001 in Crl A 608/01 mae in Crl A 592/01, 608/01 on file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.Nos.592, 608 and 645 of 2001

R.Natarajan ... Appellant in Crl.A.No.592 of 2001
M.V.Salai Abaranam ... Appellant in Crl.A.No.608 of 2001
1.N.Manickavasu
2.N.Vijayakumar ... Appellants in Crl.A.No.645 of 2001

Vs.

State Rep by
SPE/CBI/ACB, Chennai ... Respondent in Crl.A.No.592 of 2001

State rep by
Deputy Superintendent of Police
SPE, ACB, Chennai ... Respondent in Crl.A.No.608 of 2001

State, rep. by
Deputy Superintendent of Police
SPE, ACB, CBI, Madras ... Respondent in Crl.A.No.645 of 2001

Prayer in Crl.A.No.592 of 2001:
Appeal filed under Section 374 of Cr.P.C. seeking to set aside the judgment dated 13.06.2001 and made in C.C.No.89 of 1997 on the file of the learned Additional Special Judge for CBI cases, Chennai.

Prayer in Crl.A.No.608 of 2001:
Appeal filed under Section 374 of Cr.P.C. against the judgment dated 13.06.2001 in C.C.No.89/97 on the file of the

Special Judge for CBI Cases, Chennai convicting the appellant/ accused for 2 years Rigorous imprisonment for the offence under section 120 B IPC, 381 IPC, 120B r/w 420 IPC and further Rigorous Imprisonment for two years for the offence under Section 13 (1) (d) r/w. 13 (2) of PC Act 1988 and with fine of 2,500/- in default 6 months rigorous imprisonment.

Prayer in Crl.A.No.645 of 2001:

Appeal filed under Section 374 of Cr.P.C. seeking to set aside the judgment of the Court below found guilty of the Appellants/ Accused A3 and A4 for the offences u/s. 468, 467, 419, 420 and 120B of IPC and imposing the conviction of sentence to undergo a rigorous imprisonment for a period of 2 years in wide judgment of the Hon'ble Special Judge for CBI Cases in C.C.89/1997 dated 13.06.2001.

For Appellants : Mr.R.Shanmugasundaram
in Crl.A.No.592 of 2001
Senior Counsel
for M/s.Gita Asokan

Mr.V.S.Jagadeesan
in Crl.A.Nos.608 and 645 of 2001

For Respondent: Mr.Ashok Kumar Gowtham
in all the criminal appeals
Special Public Prosecutor for CBI Cases

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

The appellants have filed these appeals seeking to set aside the judgment dated 13.06.2001 made in C.C.No.89 of 1997 on the file of the learned Additional Special Judge for CBI cases, Chennai.

2.The appellant in Crl.A.No.608 of 2001 is the first accused, the appellant in Crl.A.No.592 of 2001 is the second accused and the appellants in Crl.A.No.645 of 2001 is the third and fourth accused in the case in C.C.No.89 of 1997 on the file of the learned Additional Special Judge for CBI cases, Chennai.

3.The brief case of the prosecution is as follows: A1 while he was working as Field Officer, State Bank of India, Chingleput Branch, during the year 1990, entered into criminal conspiracy with the other accused inorder to cheat State Bank of India, Chingleput Branch and in pursuance of the same, had fraudulently stolen 5 bankers cheques from the Bank and handed over the same to A2 who in turn handed over them to A3 to A5 to commit fraud by encashing the stolen bankers cheques and in pursuance of the conspiracy, A3 opened fictitious account in the name of one T.N.Jagadeesan in Karnataka Bank, Trichy and deposited one of the stolen bankers cheque bearing

No.490133 dated 20.08.1990 for a sum of Rs.2,485/- and withdrew the amount from the said account.

4.In order to prove the crux of the case, the prosecution has examined 3 witnesses to speak about the procedure in the banking operation namely, P.W.6, P.W.7 and P.W.5. P.W.6 was working as a Field Officer at State Bank of India, Chingleput Branch during the period between November, 1988 and June, 1991. Along with him, A1 and one Srinivasan were also working in the same branch as Field Officers. Each and every Field Officer was ear marked with specific area for their operation with regard to sanctioning of agricultural loan to the agriculturists of those villages.

5.P.W.6 was allotted for the said purpose some villages. According to him, a new Scheme was introduced in order to provide welfare to the agriculturalist by the Government of India in the year 1990 and the said Scheme was named as 'Agricultural Rural Debt Relief Scheme'. The said Debt Relief was given to eligible agriculturalist, who have account as on 02.10.1989 and to those agriculturalist who have closed their account on the particular date.

6.It was the duty of the Field Officers who were required to send the bankers cheque or pay orders to the concerned parties, whenever the party approached the Bank or the whereabout and the address available to the Bank Authorities. Usually, the key of the cupboard was kept with the Manager's custody namely, P.W.7 during night hours and during day time the Field Officer's concerned were allowed to open the box and to take the bankers cheque or pay order to issue to the concerned party when they contacted them.

7.According to P.W.6, during his routine check up in the month of November, 1990, he found a bankers cheque bearing No.490133 dated 20.08.1990 for a sum of Rs.2,485/- in the name of the account holder one T.N.Jagadeesan encashed and from the entries, he noticed that it was encashed through Karnataka Bank in Sigarathoppu Branch at Trichy. The said bankers cheque is marked as Ex.P.7. Immediately, P.W.6 verified the bankers cheque register and found an entry at page no.30 relating to encashment and also the date of receipt for collection.

8.Ex.P.13 is the bankers cheque register. Ex.P.14 is the relevant entry dated 20.08.1990 at page 20 in bankers cheque register. On

further verification, P.W.6 noticed that the said bankers cheque was encashed on 26.10.1990 and there was relevant entry in this regard at page 175 in the said register. This entry is marked as Ex.P.15. He had suspection since the said amount was not credited to the loan account of T.N.Jagadeesan, but it was sent to have credited in the Karnataka Branch at Trichy. Inorder to fund out the exact fact, he went to Mambakkam Village, which was under his jurisdiction in order to meet the said T.N.Jagadeesan and he came to know that the said T.N.Jagadeesan had not received any bankers cheque.

9.Immediately, P.W.6 informed about the same to the Bank Manager at Chingleput, who in turn informed the same to the Regional Office. P.W.7 was working at that point of time in the said State Bank of India at Chingleput as Manager, Agriculture Division. P.W.7 enquired the matter in detail. Thereafter, P.W.6 and P.W.7 had thorough check of the opening bankers cheque entries in the bankers cheque register and noticed four cheques missing.

10.Thereafter enquiry was conducted. After departmental enquiry, it is revealed that A1 entered into conspiracy with A2 to A5 and requested the other accused to present the bankers cheques by impersonation and to encash the amount for their personal use. Accordingly, A3 approached the Karnataka Bank in Trichy and opened a fictitious account in the name of one T.N.Jagadeesan and deposited one of the stolen bankers cheque bearing No.490133 dated 20.08.1990 for a sum of Rs.2,485/- and encashed the same. However, the other accused were implicated as if they entered conspiracy with A1. A1 entered conspiracy with the other accused for encashment of bankers cheque. However, the fact remains that the other four cheques were returned to the Bank.

11.Initially, the law enforcing agency laid final report against the accused for the offence punishable under Sections 120B r/w. 420, 467, 467 r/w. 471, 109 and 209 of IPC and under Section 13 (1) (d) r/w. 13(2) of Prevention of Corruption Act, 1988, before the learned Principal Judge, City Civil Court, Madras and it was taken on file as C.C.No.138 of 1993. Thereafter, the said case was made over to the learned V Additional Sessions Judge, Madras and was subsequently ordered to be transferred to the file of the Additional Special Court for CBI cases, Chennai, after constitution of Special Court to try the cases filed by CBI in the year 1997 and the case was renumbered as C.C.No.89 of 1997.

12.Thereafter, the accused were served with copies of the documents relied by the prosecution and when questioned by explaining the crux of the allegations set out against them, they denied the allegations and they pleaded not guilty. Thereafter, charges were framed against the accused.

13.A1 was charged for the offences under Sections 120B r/w 420, 381 of IPC and 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act, 1988; A2 was charged for the offences under Sections 120B r/w 420 of IPC and 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act, 1988; A3 was charged for the offences under Sections 120B r/w 420, 419, 467, 420 of IPC and 13 (1) (d) of Prevention of Corruption Act, 1988; A4 was charged for the offences under Sections 120B r/w 420, 201 of IPC and 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act, 1988 and A5 was charged for the offences under Sections 120B r/w 420, 201 of IPC and 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act, 1988.

14.It is relevant to point out here that after framing of charges and during the pendancy of trial A5 died and trial was not proceeded as against A5. However, trial was proceeded as against the other accused. An order of abetting the charges as against A5 was passed by the Court below.

15.The prosecution inorder to prove the guilt of the accused, examined 11 witnesses and marked 32 documents as exhibits. On the side of the accused, no witness was examined and no document was marked as exhibit.

16.Upon consideration of the oral and documentary evidence, the Trial Court convicted A1 for the offence under Sections 120B, 120B r/w 420, 381 of IPC and 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act, 1988; convicted A2 for the offence under Sections 120B, 120B r/w 420 of IPC; convicted A3 for the offence under Sections 120B, 420, 419, 467 and 467 r/w 471 of IPC and convicted A4 for the offence under Sections 120B, 120B r/w 420, 201 of IPC.

17.The Trial Court sentenced A1 to undergo 2 years rigorous imprisonment each for the offence under Sections 120B, 120B r/w 420, 381 of IPC and to undergo further 2 years rigorous imprisonment and to pay a fine of Rs.2,500/- in default to undergo 6 months rigorous imprisonment for the offence under Section 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act, 1988 and ordered the sentences to run concurrently. The Trial Court sentenced A2 to undergo 2 years rigorous imprisonment each for the offence under Sections 120B, 120B r/w 420 of IPC and ordered the sentences to run concurrently. The Trial Court sentenced A3 to undergo 2 years rigorous imprisonment each for the offence under Sections 120B, 420, 419, 467 and 467 r/w 471 of IPC and ordered the sentences to run concurrently. The Trial Court sentenced A4 to undergo 2 years rigorous imprisonment each for the offence under Sections 120B, 120B r/w 420 of IPC and to undergo 1 year rigorous imprisonment for the offence under Section 201 of IPC and ordered the sentences to run concurrently. No fine amount was imposed on A2 to A4.

18.Being aggrieved by the said conviction and sentence, the accused/ appellants have filed these criminal appeals before this Court.

19.The learned counsel appearing for the appellant in Crl.A.No.608 of 2001/ A1 and for the appellants in Crl.A.No.645 of 2001/ A3 and A4 would submit that A1 is a public servant as per Section 19 of the Prevention of Corruption Act, sanction for prosecuting A1 is necessary. Though, prosecution has marked the sanction order as Ex.P1, however, the Chief General Manager is not

the competent Authority to sanction prosecution as per the Bank Regulations i.e., State Bank of India General Regulations, 1955. He would further submit that disciplinary action against the staff members can be taken only by the Executive Committee and not by P.W.1, the Chief General Manager.

20.The learned counsel appearing for A1, A3 and A4 would further submit that as per Clause 55(b) of the Bank Regulations, 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 not a competent authority for sanctioning prosecution as against A1.

21.In respect of sanctioning the prosecution by un-competent Authority for non application of mind, the learned counsel appearing for A1, A3 and A4 relied upon the judgment of the Hon'ble Supreme Court reported in (2008) 1 MLJ (Crl) 542 (SC) (State of Karnataka Vs. Ameer Jan) and the relevant portion of the same reads as follows:

> ''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.''

22.The learned counsel appearing for A1, A3 and A4 further relied upon the un-reported decision of this Court made in Crl.A.No.1454 of 2003, the relevant portion of which reads as follows:

> ''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.''

23.The learned counsel appearing for A1, A3 and A4 would further submit that even on merits, the specific allegation against A1 is that he had fraudulently stolen 5 bankers cheques from the Bank and handed over the same to A2 and the specific allegation against A3 is that he opened fictitious account in the name of one T.N.Jagadeesan and enchased one of the stolen bankers cheque.

24.The learned counsel appearing for A1, A3 and A4 would further submit that even assuming that A1 has stolen bankers cheques, it would only attract the offence under Section 381 of IPC and it would not attract the offence under the Prevention of Corruption Act or the other offences as alleged by the prosecution.

25.The learned counsel appearing for A1, A3 and A4 would further submit that on perusal of the evidences clearly show that the one Jagadeesan was an employee of A3 who is having a xerox shop. Perusal of the extra judicial confession statement given by A3 also reveals that the said Jagadeesan was working under him and he committed theft of a calculator worth about Rs.5,000/-, for which, A3 has also made a complaint as against him before the law enforcing agency for taking appropriate action. Hence, A3 did not commit any offence as alleged by the prosecution.

26.The learned counsel appearing for A1, A3 and A4 would further submit that except the extra judicial confession statement, no other incredible document is available to implicate A4 in the above said case. Accordingly, he prayed for allowing the appeals.

27.The learned Senior Counsel appearing for the appellant in Crl.A.No.592 of 2001/ A2 would submit that A2 is the relative of A1. Even on perusal of extra judicial confession statement marked as Ex.P11 reveals that initially A1 approached A2 for encashment of bankers cheques, however, A2 refused on the ground that Police case would come against him, however, in the presence of A2, the stolen bankers cheques were handed over to A3 to A5 for encashment. However, the fact remains that except one instrument presented before the Karnataka Bank, Trichy, all the other bankers cheques were returned back to the Bank and that the said one instrument was also encashed by A3. Hence, implicating A2 in the case is non est in law and he is liable to be acquitted. Accordingly, he prayed for allowing the appeal.

28.Per contra, the learned Special Public Prosecutor for CBI Cases would submit that A1 is a public servant. While he was working as Field Officer in the State Bank of India, Chingleput Branch, he was ear marked with specific area for their operation with regard to sanctioning of agricultural loan to the agriculturists of those villages. In the year 1990 a new Scheme was introduced in order to provide welfare to the agriculturalist by the Government of India and the said Scheme was named as 'Agricultural Rural Debt Relief Scheme'. The said Debt Relief was given to eligible agriculturalist, who have account

as on 02.10.1989 and to those agriculturalist who have closed their account on the particular date.

29.The learned Special Public Prosecutor for CBI Cases would further submit that it was the duty of the Field Officers who were required to send the bankers cheque or pay orders to the concerned parties, whenever the party approached the Bank or the whereabout and the address available to the Bank Authorities. Usually, the key of the cupboard was kept with the Manager's custody during night hours and during day time the Field Officer's concerned were allowed to open the box and to take the bankers cheque or pay order to issue to the concerned party when they contacted them.

30.The learned Special Public Prosecutor for CBI Cases would further submit that A1 by misusing his Official position had fraudulently stolen 5 bankers cheques and induced the other accused to present the bankers cheques by impersonation and to encash the amount for their personal use. Accordingly, A3 approached the Karnataka Bank in Trichy and opened a fictitious account in the name of one T.N.Jagadeesan and deposited one of the stolen bankers cheque bearing No.490133 dated 20.08.1990 for a sum of Rs.2,485/- and encashed the same. However, the other 4 bankers cheques were returned back to the Bank.

31.The learned Special Public Prosecutor for CBI Cases would further submit that the evidence adduced by the prosecution witnesses corroborate with the case of the prosecution. Hence, the prosecution has proved the guilt as against the accused. Accordingly he prayed for dismissal of the appeals.

32.Heard the arguments advanced on either side and perused the entire materials placed on record.

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

34.Perusal of records discloses that P.W.6 was working as a Field Officer at State Bank of India, Chingleput Branch during the period between November, 1988 and June, 1991. Along with him, A1 and one Srinivasan were also working in the same branch as Field Officers. Each and every Field Officer was ear marked with specific area for their operation with regard to sanctioning of agricultural loan to the agriculturists of those villages.

35.P.W.6 was allotted for the said purpose some villages. According to him, a new Scheme was introduced in order to provide welfare to the agriculturalist by the Government of India in the year 1990 and the said Scheme was named as 'Agricultural Rural Debt Relief Scheme'. The said Debt Relief was given to eligible agriculturalist, who have account as on 02.10.1989 and to those agriculturalist who have closed their account on the particular date.

36.It was the duty of the Field Officers who were required to send the bankers cheque or pay orders to the concerned parties, whenever the party approached the Bank or the whereabout and the address available to the Bank Authorities. Usually, the key of the cupboard was kept with the Manager's custody namely, P.W.7 during night hours and during day time the Field Officer's concerned were allowed to open the box and to take the bankers cheque or pay order to issue to the concerned party when they contacted them.

37.According to P.W.6, during his routine check up in the month of November, 1990, he found a bankers cheque bearing No.490133 dated 20.08.1990 for a sum of Rs.2,485/- in the name of the account holder one T.N.Jagadeesan encashed and from the entries, he noticed that it was encashed through Karnataka Bank in Sigarathoppu Branch at Trichy. The said bankers cheque is marked as Ex.P.7. Immediately, P.W.6 verified the bankers cheque register and found an entry at page no.30 relating to encashment and also the date of receipt for collection.

38.Ex.P.13 is the bankers cheque register. Ex.P.14 is the relevant entry dated 20.08.1990 at page 20 in bankers cheque register. On further verification, P.W.6 noticed that the said bankers cheque was encashed on 26.10.1990 and there was relevant entry in this regard at page 175 in the said register. This entry is marked as Ex.P.15. He had suspection since the said amount was not credited to the loan account of T.N.Jagadeesan, but it was sent to have credited in the Karnataka Branch at Trichy. Inorder to fund out the exact fact, he went to Mambakkam Village, which was under his jurisdiction in order to meet the said T.N.Jagadeesan and he came to know that the said T.N.Jagadeesan had not received any bankers cheque.

39.Immediately, P.W.6 informed about the same to the Bank Manager at Chingleput, who in turn informed the same to the Regional Office. P.W.7 was working at that point of time in the said State Bank of India at Chingleput as Manager, Agriculture Division. P.W.7 enquired the matter in detail. Thereafter, P.W.6 and P.W.7 had thorough check of the opening bankers cheque entries in the bankers cheque register and noticed four cheques missing.

40.Thereafter enquiry was conducted. After departmental enquiry, it is revealed that A1 entered into conspiracy with A2 to A5 and requested the other accused to present the bankers cheques by impersonation and to encash the amount for their personal use. Accordingly, A3 approached the Karnataka Bank in Trichy and opened a fictitious account in the name of one T.N.Jagadeesan and deposited one of the stolen bankers cheque bearing No.490133 dated 20.08.1990 for a sum of Rs.2,485/- and encashed the same. However, the other accused were implicated as if they entered conspiracy with A1. A1 entered conspiracy with the other accused for encashment of bankers cheque. However, the fact remains that the other four cheques were returned to the Bank.

41.Perusal of records also discloses that A3 by impersonation opened account in the name of one jagadeesan and the introducer one Natarajan is the neighbouring shop owner and he was examined as

P.W.4. P.W.4 categorically admitted that he is the neighbouring shop owner of A3 and he signed as introducer in the account opening form which is marked as Ex.P4. The evidence of P.W.4 corroborated with the evidence of P.W.2 and P.W.6. Hence, the prosecution has clinchingly proved the case as against A1 and A3.

42.Further though A2 is the relative of A1, on perusal of the confession statement marked as Ex.P2 reveals that A2 refused to receive the stolen cheques on the ground that police case would come and the fact remains that A2 and A4 have not presented any cheque to any Bank. Admittedly, except Ex.P1 cheque which was presented by A3, the other cheques were returned back to the Bank. Though P.W.6 has deposed that A2 and A4 were known to A1, it does not mean that they participated in the crime. Except the evidence of P.W.6, no other evidence or documents available to implicate A2 and A4 in the case. Hence, I have no hesitation to arrive at the conclusion that the prosecution has not proved the case as against A2 and A4.

43.Further, in the present case, the Chief General Manager is the sanctioning authority. The Regulations relied on by the learned counsel for the appellants/ A1, A3 and A4 is not applicable to the present case on hand, since separate Service Rules are available to the staff of State Bank of India.

44.The administrative powers for deciding the disciplinary proceedings is provided under Rule 31(1)(h), SBI Officers Service Rules. The first accused is the Scale II Officer. The

Disciplinary Authority for imposing major punishment is the Chief General Manager. Hence, the sanctioning order for prosecution as against A1 granted by the Chief General Manager is perfectly valid.

45.On a perusal of the General Regulations referred by the learned counsel appearing for A1, A3 and A4 it is known that Clause 55(b) of the General Regulations 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.

46.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 the 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 Clause 55 (b) of the General Regulations, in case if Authority want to remove a delinquent from service, he should be removed only by the competent Authority.

47.Further, the learned Special Public Prosecutor for CBI cases aptly referred to the provisions under Section 19(1)(c) of the Prevention of Corruption Act and submitted that the Chief General Manager is the competent authority for taking disciplinary action and he has power to impose major penalty including removal from service.

48.In the decision of the Hon'ble Apex Court relied upon by the learned counsel for A1, A3 and A4 reported in (2008) 1 MLJ (Crl) 542 (SC) (State of Karnataka Vs. Ameer Jan) in paragraph no.8 it is clearly held 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.''

wherein, the Hon'ble Apex Court has 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.

49.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 about Rule 3 (1)(h) of the SBI Officers Service Rules, the Chief General Manager is vested with powers to take disciplinary action against the Field Officer, Scale II.

50.On a perusal of the other un-reported decision relied upon by the learned counsel appearing for the accused A1, A3 and A4, it would reveal that this Court by referring to Clause 55 (b) of the General Regulations arrived at a conclusion that the Board of Directors is the appointing authority and the Board has authorised Chairman of the Board for appointment. Accordingly, this Court held that the Chairman is the competent person to accord sanction. However, the Service Rule viz., Rule 3 (1) (h) which is particularly applicable to the State Bank Officers was not placed before this Court for consideration.

51.On a close perusal of Clause 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 accused A1, A3 and A4 is not applicable to the present case on hand.

52.In view of the above, the prosecution has proved the guilt on the accused A1 and A3. The extra judicial confession statement of A1 and A3 clearly corroborate with the evidence of the prosecution witnesses and with the other documents. Though P.W.6 in his evidence implicated A2 and A4 along with A1, even in his evidence, he says that they were present along with A1 at the time when he handed over the bankers cheques. However, the fact remains that no bankers cheques were encashed by the other accused except the one which was encashed by A3. Mere presence along with A1 is not sufficient to implicate the person in the offence. Hence, the prosecution did not prove its case as against A2 and A4.

53.At this juncture, the learned counsel appearing for A1 and A3 submits that A1 is aged about 74 years and A3 is aged about 50 years and they are suffering from age old ailments and the date of occurrence is during the year 1990. Hence, this Court may consider for reducing the sentence imposed on them.

54.Considering the request made by the learned counsel appearing for A1 and A3 and considering the passage of time and the facts and circumstances of the case, this Court is inclined to reduce the sentence of imprisonment imposed on the appellants.

55.In the result, the criminal appeal in Crl.A.No.592 of 2001 is allowed. The conviction and sentence as against the appellant/ A2 in the judgment dated 13.06.2001 in C.C.No.89 of 1997 passed by the learned Additional Special Judge for CBI cases, Chennai, are set aside. The appellant/ A2 is acquitted from the charge under Sections 120B, 120B r/w 420 of IPC. The bail bonds executed by him, shall stand terminated/ discharged.

56.The criminal appeal in Crl.A.No.608 of 2001 is partly allowed. The conviction imposed by the learned Additional Special Judge for CBI cases, Chennai, in C.C.No.89 of 1997 under judgment dated 13.06.2001 as against the appellant/ A1 is confirmed, however, the sentence imposed on the appellant is modified. The sentence of imprisonment imposed against the appellant is reduced from 2 years rigorous imprisonment to 1 year simple imprisonment. The fine amount is confirmed. The appellant/ A1 shall surrender before the learned Additional Special Judge for CBI cases, Chennai, within a period of one month from the date of receipt of a copy of this order, failing which, the Trial Court as well as the Investigation Officer shall take necessary and expeditious steps to secure the custody of the appellant/ A1 to undergo the remaining part of sentence.

57.The criminal appeal in Crl.A.No.645 of 2001 is partly allowed in respect of the first appellant/ A3. The conviction imposed by the learned Additional Special Judge for CBI cases, Chennai, in C.C.No.89 of 1997 under judgment dated 13.06.2001 as against the first appellant/ A3 is confirmed, however, the sentence imposed on the first appellant is modified. The sentence of imprisonment imposed against the first appellant is reduced from 2 years rigorous imprisonment to 1 year simple imprisonment. The first appellant/ A3 shall surrender before the learned Additional Special Judge for CBI cases, Chennai, within a period of one month from the date of receipt of a copy of this order, failing which, the Trial Court as well as the Investigation Officer shall take necessary and expeditious steps to secure the custody of the first appellant/ A3 to undergo the remaining part of sentence.

58.The criminal appeal in Crl.A.No.645 of 2001 is allowed in respect of the second appellant/ A4. The conviction and sentence as against the second appellant/ A4 in the judgment dated 13.06.2001 in C.C.No.89 of 1997 passed by the learned Additional Special Judge for CBI cases, Chennai, are set aside. The second appellant/ A4 is acquitted from the charge under Sections 120B, 120B r/w 420, 201 of IPC. The bail bonds executed by him, shall stand terminated/ discharged.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

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

2.The Inspector of Police, SPE/CBI/ACB, Chennai

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

4.The Public Prosecutor, Madras.

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

6. The Commissioner of Police, Chennai.

7. The District Collector, Chennai.

8. The Principal Judge, City Civil Court, Chennai.

9. The Cief Metropolitan Magistrate, Chennai.

10.The Deputy Superintendent of Police
SPE, ACB, CBI, Madras.

11. The Section Officer Crl.Section Record
High Court, Madras.

+3cc to Mr.V.S.Jagadeesan, Advocate SR.No.84647,84646

Crl.A.Nos.592, 608 and 645 of 2001

JP(CO)

GMY(09/01/2019)