Bail Slip

Crl.A.309 of 2014

The appellant herein namely Md.Maqdoom, 1st Accused in CC.No.46/12 on the file of the Special Judge, for CBI Cases, XIII Additional City Civil Court, Chennai was directed to be released on bail as per order of this Court dated 13.06.2014 in M.P.No.1/2014 in Crl.A.No.309/2014.

Crl.A.322 of 2014

The appellant herein namely C.Natarajan, 2nd Accused in CC.No.46/12 on the file of the Special Judge, for CBI Cases, XIII Additional City Civil Court, Chennai was directed to be released on bail as per order of this Court dated 13.06.2014 in M.P.No.1/2014 in Crl.A.No.322/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.07.2017
PRONOUNCED ON : 28.04.2018

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Appeal Nos.309, 322 and 362 of 2014

Md.Maqdoom ... Appellant in Crl.A.309/2014/Accused
C.Natarajan ... Appellant in Crl.A.322/2014/Accused
R.Natarajan ... Appellant in Crl.A.362/2014 /Defecto Complinant (Pw-3)

-Vs-

Inspector of Police
Central Bureau of Investigation
Anti Corruption Branch
III Floor, Shashtri Bhavan
No.26 Haddows Road
Chennai 600 006. ... Respondent in Crl.A.Nos.309 & 322/2014/Complinant

1.Special Police Establishment
Central Bureau of Investigation
ACB, Chennai.
(RC MA1 2012 A0002) ... 1st respondent in Crl.A.362/2014/Complinant

2.Md.Magdom
3.C.Natarajan ...Respondents 2 & 3 in Crl.A.No.362/2014/Accused 1 & 2

Criminal Appeal Nos.309 & 322/2014 filed under Sections 374 (2), 380 and 401 of Cr.P.C. to call for the entire records pertaining to C.C.No.46 of 2012 on the file of the learned Special Judge for CBI Cases, (XIII Additional), City Civil Court, Chennai 600 104 and allow the appeals preferred by the appellants and set aside the order dated 29.04.2014 passed by the learned Special Judge for CBI Cases (XIII Additional) Chennai in C.C.No.46 of 2012 and direct refund of the find amount paid by the appellants and discharge the sureties executed for suspension of sentence.

Crl.A.No.362 of 2014 filed under Section 372 Cr.P.C. to enhance the sentence against the 2nd and 3rd respondents herein in C.C.No.46 of 2012 on the file of the learned XIII Additional District and Sessions Judge for CBI Cases, Chennai dated 29.04.2014 and also order for payment of compensation under Section 357 Cr.P.C. to the appellant herein.

For Appellants: Mr.V.S.Venkatesh in Crl.A.No.309/2014 and for R2 in Crl.A 362/14
Mr.B.Kumarasamy in Crl.A.No.322/2014 for Mr.J.Pothiraj and for R3 in Crl.A.362/14
Mr.Niranjan Rajagopal in Crl.A.No.362/2014
Mr.R.Vijayakumar in Crl.A.161/15

For Respondent: Mr.K.Srinivasan
Special Public Prosecutor for CBI
in Crl.A.Nos.309 & 322/2014
and for R1 in Crl.A.No.362 of 2014

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

While Md.Maqdoom and C.Natarajan, who are accused 1 and 2 in C.C.No. 46 of 2012 on the file of the learned XIII Additional Special Judge for CBI cases, Chennai, have filed Crl.A.Nos.309 and 324 of 2014 respectively, one R.Natarajan, has filed Crl.A.No.362 of 2014 to enhance the sentence awarded to A1 and A2. A1 and A2 stood charged for offences under Sections 120-B r/w 420, 467, 468, 477-A of IPC and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 (for brevity “the PC Act”).

By judgment dated 29.04.2014, the learned Special Judge convicted the accused as under:

Rank of Accused	Section of law	Sentence of imprisonment
A1 and A2	120-B IPC	A1 and A2 to undergo six months R.I.
A1	420 IPC	A1 to undergo 2 years R.I and pay a fine of Rs.1,000/- i/d to undergo 3 months S.I.
A2	420 IPC	A2 to undergo 1 year R.I and pay a fine of Rs.1,000/- i/d to undergo 3 months S.I.
A1	467 IPC	A1 to undergo 2 years R.I. and to pay a fine of Rs.1,000/- i/d to undergo 3 months S.I.
A2	467 IPC	A2 to undergo 1 years R.I. and to pay a fine of Rs.1,000/- i/d to undergo 3 months S.I.
A1	468 IPC	A1 to undergo 2 years R.I. and to pay a fine of Rs.1,000/- i/d to undergo 3 months S.I.
A2	468 IPC	A2 to undergo 1 year R.I. and to pay a fine of Rs.1,000/- i/d to undergo 3 months S.I.
A1	477-A IPC	A1 to undergo 2 years R.I. and to pay a fine of Rs.1,000/- i/d to undergo 3 months S.I.
A2	477-A IPC	A2 to undergo 1 year R.I. and to pay a fine of Rs.1,000/- i/d to undergo 3 months S.I.
A1	13(2) r/w 13(1) (d) of PC Act	A1 to undergo 2 years R.I. and to pay a fine of Rs.1,000/- i/d to undergo 3 months S.I.
A2	13(2) r/w 13(1) (d) of PC Act	A2 to undergo 1 year R.I. and to pay a fine of Rs.1,000/- i/d to undergo 3 months S.I. The sentences are ordered to be run concurrently

Challenging the said conviction and sentence, A1 and A2 are before this Court in Crl.A.Nos.309 and 324 of 2014.

2. The case of the prosecution, in brief, is as follows:

[a] Md.Maqdoom [A1] worked as Postal Assistant in Royapettah Post Office during the period from April 2000 to September 2010 and he was working at the Gopalapuram Post Office, Chennai with effect from 30.09.2010. C.Natarajan [A2] was working as Group D staff of Royapettah Post Office since 1988. A1 in conspiracy with A2, his subordinate, had opened a Savings Bank Account with State Bank of India (the then State Bank of Indore) in the name of R.Natarajan, a practising Advocate, impersonating as " R.Natarajan" by issuing an official letter stating that "Mr.Natarajan R. was working as Group - "D" employee in his office" and A1 signed as introducer.

[b] In furtherance of the said conspiracy, the Post Office Cheque bearing No.282934 dated 10.11.2006 for Rs.19,89,643/- and No.992220 dated 16.11.2010 for Rs.5,95,733/- issued in favour of R.Natarajan [P.W.3] and two cheques bearing Nos.158066 for Rs.9,00,000/- and No.845489 for Rs.1,00,000/- issued by R.Natarajan [P.W.3] for opening Time Deposit, were deposited in the SBI Bank Account opened in the name of R.Natarajan [P.W.3] by C.Natarajan [A2] impersonating as R.Natarajan [P.W.3].

[c] A1 had deposited various cheques meant for R.Natarajan [P.W.3] in the fake Bank Account and withdrawn money from the said Bank by issuing various cheques signed by C.Natarajan [A2] as R.Natarajan [P.W.3].

[d] A1 had created fake pass book in the name of the depositor R.Natarajan [P.W.3] for Rs.2,01,000/- by mentioning its account number fictitiously as 112717 and affixing the Gopalapuram Post Office date stamp and Royapettah Post Office designation stamp and the said amount was also cheated.

[e] A1 had created two fake pass books bearing Nos.82285 and 82286 for Rs.5,00,000/- each (Total Rs.10 lakhs) in the name of grand daughters of R.Natarajan [P.W.3] and cheated the same.

[f] A1 had cheated the amount of Rs.10.85 lakhs deposited by Laiq Ahmed, another depositor by preparing two fake pass books mentioning Account No.25013 and 21380 and he paid back the entire amount to Laiq Ahmed along with interest.

[g] A1 had paid interest on the above cheated amount to account holders/depositors by preparing pay-in-slip and made entries in the pass books in violation of the procedure laid down in the Postal Manual.

3. R.Natarajan [P.W.3], practising Advocate, made a complaint to the Superintendent of Post Offices [P.W.2],

Chennai. He gave instructions to the Assistant Superintendent of Post [P.W.1] to conduct preliminary enquiry with reference to the complaint made by R.Natarajan. The enquiry report was forwarded to the Post Master General, Chennai and on the directions of the Post Master General, P.W.2 preferred a complaint to the CBI about the frauds committed by A1. After investigation, P.W.24, the Investigating Officer sent a report to the Postal Department and filed a charge sheet after getting prosecution sanction from the Postal Department.

4. Based on the above materials, the trial Court framed appropriate charges. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 69 witnesses were examined and 317 documents were exhibited. On the side of the defence, no witness was examined, however, Exs.D1 to D5 were marked. Ex.C.1 was marked as court exhibit.

5. Out of the said witnesses, P.W.1 is the then Assistant Superintendent of Post, who conducted internal enquiry on the complaint given by R.Natarajan [P.W.3]. P.W.2 is the Senior Superintendent of Post Office, who preferred complaint to the Superintendent of Police, CBI, about the frauds committed by A1. He is the sanctioning authority. R.Natarajan [P.W.3], the complainant, who was examined as P.W.3 is a practising Advocate. He has deposed that he knows A1 since the time he was working as Post Master at Royapettah Post Office from 2004. He has spoken about the various time deposits made by him. Banumathi [P.W.4], who was the then Superintendent in the State Police Department is the wife of R.Natarajan [P.W.3]. S.Padmanaban [P.W.5] who was the Public Relation Inspector (Postal at Royapettah Post Office) has spoken about as to when premature closure is permitted in respect of all deposit accounts. He has also spoken about the fake pass books and the entries made therein by A1. Amirthavalli [P.W.6] has deposed that during the relevant period, she was working as S.B. Counter, Postal Assistant and that A1 was the Counter Supervisor. Mani [P.W.7] has deposed that during the relevant period, A1 was the counter in-charge/Assistant Sub Post Master. Philip Rajasekaran [P.W.8] has deposed that from 2009 to 2012, he was working in Royapettah Post Office and that while he was in duty on 15.11.2010, account closure form of MIS A/c No.111785 was received and the maturity amount was calculated by the Counter Clerk Ulaganathan and placed before him and that he verified and passed the same and that as per this, a sum of Rs.5,95,733/- vide cheque No.992220 was handed over to the concerned Counter Clerk and that as per the MIS account pass book Ex.P.6, the same was opened on 07.10.2004 and it matured on 07.10.2010 and that this MIS account stood in the name of R.Natarajan [P.W.3] and K.P.Banumathi.

6. Mukthiar Unnissa Begam [P.W.9] has deposed that she was working as Postwoman at the Royapettah Post Office since 2007 and that A1 was working as the Sub Post Master in the Royapettah Post Office and that he knew R.Natarajan [P.W.3] as he was residing within her beat area. Salma Farooqi [P.W.10] has deposed that she is presently working as Teacher at Fathima Basheer Matric. Higher Secondary School, Teynampet, Chennai and her husband's name is Mohammed Maqdoom, who is the first accused in this case and he used to work at Royapettah Post Office as Assistant Sub Post Master. Laiq Ahmed [P.W.11] has deposed that when he was working as General Manager [Sales & Marketing of the Industrial Products], SKF Bearings at Chennai, his family members have been having various types of Deposit Accounts at the Royapettah Post Office right from the year 2002 and that he knew the first accused, as he was working as Sub Post Master at Royapettah for a few years and he got acquainted with him in connection with the deposits made by him and his family at the Royapettah Post Office. Ulaganathan [P.W.12], Postal Assistant in the Savings Bank counter of the Royapettah Post Office has spoken about the nature of his job and the first accused. Santha Nagarajan [P.W.13], Manager of the Bank during the year 2009, has spoken about the saving bank account and pass book verification of R.Natarajan [P.W.3]. N.Arunachalam [P.W.14], Manager, State Bank of India, Balaji Nagar, Royapettah, Chennai during the year 2011 has spoken about the particulars and documents pertaining to R.Natarajan [P.W.3] furnished to CBI at their request. Bagavathi Ammai [P.W.15], who was working as Correspondence Clerk in the Royapettah Post Office between 2002 and 2008 has spoken about handling counter duties while the Counter Clerk was on leave. M.Nagarajan [P.W.16], who was the Assistant Head Post Master during June 2012, has spoken about furnishing the certified copy of the service book of A1, A2 and others who were then working in the Royapettah Post Office. Dr.C.K.Annamalai, who retired as Professor and HOD of Paediatric Surgery, Madras Medical College has deposed that he knew the first accused as he used to bring his relatives children to his clinic. Revathi [P.W.18], who was working as Assistant Treasurer in the Royapettah Post Office during 2006 and 2008 has spoken about the collection of cash from the counters and disbursement of cash to the Postman and Postal Assistant. L.Chandrasekharan [P.W.19], retired Post Master of the Royapettah Post Office in January 2011 has spoken about handing over his treasury key to the first accused, who was his deputy then, who was in-charge of the post office after his duty hours. R.Raghunath [P.W.20], who was working as Postal Assistant in Royapettah Post Office during 2005 has spoken about the first accused, who was his superior officer. N.Ravi [P.W.23], the Principal Scientific Officer in the Central Forensic Science Lab, New Delhi and posted at Chennai Branch has spoken about the

examination of the questioned documents and comparing them with the specimen and admitted documents in his lab using scientific aids and furnishing two reports. Raja [P.W.24], Inspector of Police in ACB/CBI, Chennai, since 2008 has spoken about the registration of case against A1, on the complaint received from Senior Superintendent of Post Offices and his further investigation; adding A2 at the time of filing the charge sheet; after completion of investigation, making appropriate request for sanction to prosecute A1 and A2 from the competent authority through his higher officers and after obtaining sanction, filing charge sheet.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness, but marked five exhibits. Their defence was a total denial.

8. Having considered all the above, the trial Court convicted A1 and A2 as detailed in the first paragraph of this judgment. Aggrieved over the same, the accused/appellants are before this Court with these appeals in Crl.A.Nos.309 and 324 of 2014.

9. We have heard the learned counsel appearing for the appellants and the learned Special Public Prosecutor appearing for CBI and we have also perused the records carefully.

10. In the instance case, Vedha [P.W.1], (Inspector Posts), on the direction of the Senior Superintendent of Post Office, Chennai City Central Division, made an internal inquiry into the complaint received from R.Natarajan [P.W.3] and based on her enquiry, she found that the complaint pertained to non re-investment of 13 deposits made by R.Natarajan [P.W.3] during the period 2005, which are time deposits and which, according to him on maturity, were said to have been re-invested by him through the then Assistant Sub Post Master, Royapettah, viz., A1. She conducted the internal enquiry and submitted the Enquiry report to the Post Office higher authorities.

11. During enquiry, she perused Exs.P7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31 and 33, stated to be the original account opening forms given by the depositor R.Natarajan [P.W.3] for opening the deposit accounts. As per the above said application forms received, the Postal Department has followed the procedures and opened accounts reflected in the pass book Exs.P6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30 and 32. As per these documents, R.Natarajan [P.W.3] has given acquittance for receipt of the maturity amount including interest. During enquiry, P.W.1 has not seen any account

opening forms with respect to pass books in Exs.P.38, 39, 40, 41, 42, 44, 45, 47 and 48. Further, P.W.3 preferred a complaint to the Commissioner of Police, prior to making complaint to the Postal Authorities on 09.01.2012, on which, P.W.3 conducted enquiry and came to know that A1 was arrested by the State Police and Rs.7,00,000/- was seized from him.

12. A1 had opened a Savings Bank Account with State Bank of India, Chennai, vide Account No.63007588994 in the name of R.Natarajan [P.W.3] in conspiracy with C.Natarajan [A2] impersonating as R.Natarajan. A1 had deposited various cheques meant for R.Natarajan [P.W.3] in the fake Bank Account and withdrawn money from said Bank by issuing various cheques signed by A2 as R.Natarajan. M.Nagarajan [P.W.16] Assistant Post Master has stated the service details of A1 and A2. Ex.P.118 is the service register of A1 and Ex.P.119 is the service register of A2. As per Ex.P.118, service book, A1 has been punished in three different departmental proceedings on 10.05.1984, 01.06.2005 and 11.08.2009 respectively. On account of this case, he was suspended from service by proceedings dated 22.07.2011 and on completion of the disciplinary proceedings, he was dismissed from service. He further stated that A2 was suspended from service by proceedings dated 09.02.2012 and the disciplinary proceedings against him is pending.

13. From the evidence of S.Padmanaban [P.W.5], Public Relation Inspector, it is clear that the handwriting/signature in Time Deposit and MIS Account and its vouchers have been identified as those of A1 and A2.

14. The evidence of N.Ravi [P.W.23], Principal Scientific Officer assumes much importance. In the instant case, the Superintendent of Police and Deputy Inspector General of Police of CBI/ACB, Chennai had forwarded certain questioned documents, specimen documents and admitted documents and requested him to compare the questioned documents with the specimen and admitted documents and to offer scientific opinions and the above said letters also contained the description of the documents as well as questionnaire.

15. P.W.23 examined the questioned documents and compared them with the specimen and admitted documents in his lab using scientific aids and furnished two reports dated 26.07.2012 and 27.09.2012. In the report dated 26.07.2012, he has opined as follows:

> "Handwriting evidence points to the writer of the specimen writings marked as S-23 to S 202, attributed to Mr.Mohammed Maqdoom being the person responsible for writing the red encircled

questioned writings marked as Q5, Q6, Q8 to Q21, Q23 to Q25, Q27 and Q30......"

16. In his second report, he had furnished the following opinion:

"1. Handwriting evidence points to the writer of the Standards Signatures marked as S1 to S10 and A 18 attributed to Mr.C.Natarajan being the person responsible for writing the red encircled questioned signatures marked as Q 1/1 to Q 1/66 in the aforementioned exhibits. This opinion along with supporting reasons find place in the aforesaid report dt. 27.09.2012 from page number 2 to 4.

2. Handwriting evidence points to the writer of the Standards writings/signatures marked as S 11 to S 16, S 23 to S 252, S 1/1 to S 234/1 to S 1/2 to S 202/2 and A 1 to A 16 attributed to Mr.Mohammed Maqdoom being the person responsible person writing the red encircled questioned writings/signatures marked as Q2, Q4, Q7, Q22, Q26, Q28, Q29, Q32, Q33, Q 1/69, Q 1/72, Q 2/6, Q 3/7, Q 4/5, Q 14/1, Q 15/1, Q 16/1, Q 45, Q 46, Q 51, Q 59 to Q 61, Q 63 to Q 69, Q 2/3, Q 3/3, Q 4/2, Q 5/2, Q 6/1, Q 7/2, Q 8/1 and Q 9/1 in the aforementioned exhibits. This opinion along with supporting reasons find place in my said report dated 27.09.2012 from page numbers 4 to 10.

3. Certain similarities have been observed between the questioned initial/figures marked as Q 3 and specimen initials/figures marked as S 17 to S 22 which indicate their common authorship. This opinion along with supporting reasons find place in my said report dated 27.09.2012 on page number 10.

4. It has not been possible to express opinion on the rest of the questioned items on the basis of material at hand. This opinion find place in my said report dated 27.09.2012 on page number 11. This report dated 27.09.2012 is now marked as Ex.P.169 (11 sheets). I have forwarded the above said 2 reports to the SP and Deputy Inspector General of Police, CBI/ACB, Chennai, respectively."

17. From the above, it is manifest that the Forensic Science Department has confirmed that the signatures found in the documents are those of A1.

18. In the above said circumstances, the evidence of P.Ws.1 to 24 would go to prove that right from the preliminary stage to the final stage, A1 used A2 for his fraudulent activities. A1 had manipulated the Post Office records. The fake accounts and the related pass books were created by A1 with unattested entries and some transactions contained date stamp impression also appearing to believe as genuine transaction. The fake accounts were not reflected in the accounts of Royapettah Sub Post Office and the fake accounts were not supported by an account opening form. The amounts are not incorporated in the Postal Accounts. The postal authorities have not received any opening form for reinvestment from the said fake accounts. The Postal Department did not pay any interest for the subsequent investments made by P.W.2 through A1.

19. For all the reasons stated above, it could be concluded that the prosecution have established the case beyond all reasonable doubts by placing reliable and acceptable evidence.

20. Since the learned trial Judge has considered the entire oral and documentary evidence and come to the conclusion that the accused have committed the offence as stated above, quantum of sentence to be imposed upon the convict is the discretion of the Court, there is no reason to interfere with the conviction and sentence imposed by the trial Court.

21. In the result, the Crl.A.Nos.309 and 322 of 2014 stand dismissed. The conviction and sentence imposed on the appellants by the trial Court are hereby confirmed. The trial court is directed to take necessary steps to secure the presence of the accused for undergoing the remaining period of sentence. The period of sentence already undergone by them shall be given set-off under Section 428 IPC.

22. The question of sentence is a matter of discretion and when discretion has been properly exercised along accepted judicial lines, an appellate Court should not interfere to the detriment of an accused except for very strong and cogent reasons. In view of the above findings, the prosecution has proved the guilt of the accused/appellants for the offences beyond reasonable doubt. This Court does not find any valid reasons for enhancing the sentence imposed on the accused/appellants by the trial Court, hence the quantum of sentence imposed by the trial Court is hereby confirmed. Therefore, the judgment of conviction and sentence passed by the trial Court does not warrant any interference and the same is hereby confirmed and the appeal deserves to be dismissed and hence, it is hereby dismissed.

23. In view of the dismissal of Crl.A.Nos.309 and 322 of 2014, Crl.A.362 of 2014 filed by R.Natarajan [P.W.3] seeking enhancement of punishment to A1 and A2 also stands dismissed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gms
To

1. The Inspector of Police
Central Bureau of Investigation
Anti Corruption Branch
III Floor, Shashtri Bhavan
No.26 Haddows Road
Chennai 600 006.

2.Special Police Establishment
Central Bureau of Investigation
ACB, Chennai (Rc MAI 2012 A0002)

3. The Special Judge for CBI Cases,
(XIII Additional), City Civil Court, Chennai 600 104

4.The Public Prosecutor
High Court, Chennai.

5.The Section Officer,
Criminal Section,
High Court, Madras.
(To Post the Crl.M.P.No.7043/18
in Crl.A.309/14 before Court on 04.06.2018)

+1cc to Mr.N.Saravanan, Advocate Sr.32887

Criminal Appeal Nos.309,
322 and 362 of 2014

kgk[co]
srg 28/05/2018