Bail Slip

The Appellant/Accused in all Criminal Appeals N.Saravana Perumal, Son of Namasivayam aged 55 years in Crl.A.Nos.38/2007 to 62/2007 was directed to be released on bail as per order of this court dated 21.07.2017 and made in M.P.No.1 & 2/2007 in Crl.A.Nos.38/2007 to 62/2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.Nos.38 to 62 of 2007

N.Saravana Perumal ... Appellant in all Criminal Appeals

Vs.

State rep. By Inspector of Police
SPE/CBI/ACB
Chennai.
Crime No.R.C.No.14(A)/1997 ... Respondent in all Criminal Appeals

Common Prayer:Appeals filed under Section 374 Cr.P.C. against the Judgment made in C.C.Nos.1,2 and 3 of 1999,9,10,11,12,13,14,15,16,17,18, 19,20,21,22,23,24,25,26,27,28 and 29 of 2004 and 5 of 2005 by the learned II Additional District Judge, (CBI Cases), Coimbatore dated 16.12.2006.

For Appellant in all Crl.Appeals : Mr.C.D.Johnson
For Respondent in all Crl.Appeals: Mr.K.Srinivasan
Spl.Public Prosecutor(CBI)

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

The appellant has filed these appeals seeking to set aside the conviction and sentence imposed in C.C.Nos.1,2 and 3 of 1999, 9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28 and 29 of 2004 & 5 of 2005 on the file of learned II Additional District Judge, (CBI Cases), Coimbatore dated 16.12.2006.

2.Brief facts of the prosecution case are as follows:-
Based on the reliable information, a complaint was registered against the appellant/accused and after completion of investigation, the respondent police filed three final reports

each one for the three different modus operandi adopted by the accused to siphon the money of the Indian Bank, Palladam Branch. The case was taken on file and numbered as C.C.Nos.1/1999, 2/1999 and 3/1999 respectively. Since the alleged offences were more than three of same kind, cases were subsequently split up as C.C.Nos.9/2004 to 30/2004 and C.C.No.5/2005 in compliance to Section 219 Cr.P.C.

3.The appellant in all the appeals is sole accused in all the calender cases. While he was working as Manager of Indian Bank, Palladam Branch, during various periods, as mentioned in the charge, made false entries in the Books of Accounts, Purchase Register, General Ledger and Day Book of the bank without making any remittances into the bank. He also made false entries in the fraudulent demand draft and withdrew the cash through dubious means. Thereafter, the Department initiated internal investigation against the appellant, in which, he confessed by way of extra judicial confession, which was marked as Ex.P.120, in that, he pleaded guilty and admitted that he had cheated the Bank to the tune of Rs.58,50,000/-. Thereafter, he executed a irrevocable power of attorney in favour of Indian Bank and requested the Indian Bank to appropriate the money, which was swindled by him during the relevant period, while he was working as Manager in the Palladam Branch. The said Power of Attorney was marked as Ex.P.122. Including the above, the trial Court examined 20 witnesses and marked 123 exhibits. On behalf of the appellant one witness and 5 documents were marked as exhibits.

4.The important prosecution witnesses in this case are P.W.2 - Senior Manager of Indian Bank, P.W.5 - Gnanasambandam-Senior Manager, P.W.10 - Balakrishnan-Manager, P.W.12 - Kannan-Assistant Bank Manager, P.W.14 - Ravichandran-Clerk, P.W.16 - Gokulakrishnan-Chief Manager and P.Ws.17 & 18 - both are clerks from Indian Bank. P.Ws.2 and 5, concluded enquiry before commencement of investigation and filed report, marked as Ex.P.3, and on the basis of which the investigation was commenced and FIR was lodged on 11.03.1997, which is marked as Ex.P.121. It is very pertinent to note that prior to the launching of FIR, the appellant/accused has given an extra judicial confession, dated 04.01.1997 and the same has been marked as Ex.P.120. That apart, the appellant/accused has also executed an irrevocable power of attorney dated 12.12.1997 in favour of the Indian Bank, authorizing the Bank in selling his properties mentioned in the schedule to the third parties and recover his liability.

5.The extra judicial confession given by the appellant/accused is very well corroborated by the oral testimony of P.Ws.2,5,10,12,14,16 and 18. On the basis of the prosecution evidence and also on the basis of extra judicial confession given by the accused, the trial Court has come to the conclusion that the appellant/accused is found guilty of various charges levelled against him. Accordingly, the trial Court convicted the accused and sentenced to undergo five years Rigorous Imprisonment with total fine of Rs.2,66,000/- (for total 266 counts) and in default to undergo four months Simple Imprisonment for each count.

6.Challenging the said conviction and sentence passed by the learned II Additional District Judge, (CBI Cases), Coimbatore, in C.C.Nos.1 to 3/1999, 9 to 29/2004 and 5/2005 dated 17.12.2006, the appellant/accused has preferred the present appeals before this Court.

7.The learned counsel for the appellant would submit that without going into the merits of the case, the trial Court convicted the accused based on the bank officials evidences, extra judicial confession and power of attorney executed by the appellant. Though the said occurrence took place during the years 1995 to 1997, the trial Court has convicted the accused in the year 2006. Now, the appellant/accused is aged about 68 years and he vested with the pious obligation of taking care of his aged mother, who is 91 years old and his wife aged about 63 years. Without going into the merits of the case, now, the appellant herein is prepared to deposit a sum of Rs.58.44 lakhs to the credit of the Indian Bank, Palladam Branch, the principle amount as claimed by the bank in O.S.No.143/2001, to show his bonafide, within a period of two months i.e., on or before 15.02.1999, in two equal instalments, without any prejudice to the appeal suit in A.S.No.1041/2007 pending before this Court. On instruction further submits that if the appellant fails to deposit the said amount, the conviction imposed by the lower Court may be restored.

8.Hence, at the request of learned counsel for the appellant this Court is inclined to modify the sentence imposed by the trial Court, by considering the age of the appellant/accused and the obligation to take care of his mother and wife.

9.The learned Special Public Prosecutor for CBI Cases appearing for the respondent would submit that since, the appellant/accused did not dispute the prosecution case and pleaded guilty further, he is ready and willing to deposit the entire payment of misappropriation, this Court may consider for reduction of sentence.

10.Considering the above request made by the learned counsel appearing for the appellant/accused; considering the aggravating as well as mitigating circumstances; the passage of time; taking note of the affidavit filed by the appellant and his obligation to take care of his aged mother and wife, this Court is inclined to reduce the sentence of five years Rigorous Imprisonment to 16 months Rigorous Imprisonment. Fine amount is unaltered. In default of fine amount, the appellant/accused shall undergo the sentence of three months Simple Imprisonment. If the appellant/accused failed to pay the amount of Rs.58.44 lakhs on or before 15.02.2019, the conviction and sentence passed by the learned II Additional District Judge, (CBI Cases), Coimbatore, in C.C.Nos.1 to 3/1999, 9 to 29/2004 and 5/2005 dated 16.12.2006, will be restored and the trial Court shall take appropriate action for the custody of the appellant/accused or the appellant/accused shall surrender before the trial Judge, on 16.02.2019, to undergo the remaining period of sentence, as already imposed by the trial Court.

11.Accordingly, with the above modification, the Criminal Appeals are partly allowed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1.The II Additional District Judge, (CBI Cases)
Coimbatore.

2.The Special Public Prosecutor
High Court of Madras.

3.The Section Officer
Criminal Section, High Court of Madras.

4.The Inspector of Police
SPE/CBI/ACB
Chennai.

+1 CC to Mr.C.D.Johnson, Advocate sr 85934.
+1 CC to Mr.K.Srinivasan, Advocate sr 85980.

Crl.A.Nos.38 to 62 of 2007

KAN(CO)
SP(08/02/2019)