Bail Slip

The Appellants/Accused in both Crl.Appeals viz., S.Jayashreeand and K.Saraswathy Vithal were directed to be released on bail as per order dated 07.12.2006 and 19.12.2006 in Crl.M.P.No.1/2006 in Crl.A.No.1026/2006 and Crl.M.P.No.1/2006 and Crl.A.No.1048/2006 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.Nos.1026 and 1048 of 2006

S.Jayashree ... Appellant in Crl.A.No.1026 of 2006
K.Saraswathy Vithal ... Appellant in Crl.A.No.1048 of 2006

Vs.

State Rep by
Inspector of Police,
SPE/CBI/ACB/CHENNAI
R.C.No.29(A)/98 ... Respondent in both the appeals

Common Prayer:
Appeals filed under Section 374 of Cr.P.C. seeking to admit the appeals on file; to call for the records from the lower court namely the II Additional District Judge (CBI cases) Coimbatore and set aside the judgment of the Lower Court by acquitting the appellant in C.C.No.1 of 2000 of II Additional District Judge (CBI cases) Coimbatore.

For Appellants in both Appeals : Mr.S.Ashok Kumar Senior Counsel for Mr.C.D.Johnson

For Respondent in both Appeals : Mr.K.Srinivasan Special Public Prosecutor for CBI Cases

COMMON JUDGMENT

The appellants have filed these appeals seeking to call for the records from the II Additional District Court (CBI cases), Coimbatore and to set aside the judgment in C.C.No.1 of 2000 dated 22.11.2006 passed by the learned II Additional District

Judge (CBI cases), Coimbatore.

2.The appellant in Crl.A.No.1026 of 2006 is the first accused and the appellant in Crl.A.No.1048 of 2006 is the second accused in the case in C.C.No.1 of 2000 on the file of the learned II Additional District Judge (C.B.I. Cases), Coimbatore.

3.The case of the prosecution is as follows: A1 during the period between March, 1997 and May, 1998 while she was working as Clerk cum Cashier of Allahabad Bank, Salem Branch, entered into criminal conspiracy with A2 to defraud the Bank and in pursuance of the criminal conspiracy, A1 on several occasions made fraudulent credit entries in the Savings Bank Accounts of A2, A2's son, one Krishnamoorthy (P.W.17), one Jayaraman (P.W.14), one Jagadeesh (P.W.6) and one V.Manoharan (P.W.43). To cover up these fraudulent credit entries, she has manipulated corresponding entries in the log book and day book maintained by the Bank.

4.To tally the day book, A1 also manipulated the Head Office Schedule in such a way that her fraudulent acts go undetected. Out of the amount so credited, a sum of Rs.9,24,860.90 was withdrawn either by A1 or A2. Apart from that, A1 has made to issue nine demand drafts without any consideration to the Bank by falsifying the books of accounts of Allahabad Bank, Salem. Thus, through her act of fraud, cheating and forgery, the Bank has incurred wrongful loss to the tune of Rs.24,18,110.90. A1 has made a wrongful gain of Rs.21,32,820/- and A2 has made a gain of Rs.2,85,290.90.

5.Hence the accused were charged for the offence under Sections 120-B r/w. 420, 468, 468 r/w. 471, 477-A, 201 of IPC and under Section 13(2) r/w. 13 (1) (d) of Prevention of Corruption Act. When the accused were served with copies of the document relied by the prosecution and questioned about the charge, they pleaded innocence and claimed to be tried.

6.To prove the guilt of the accused, the prosecution examined 45 witnesses and marked 285 documents as exhibits. On the side of the accused, no witness was examined, however, 6 documents were marked as exhibits.

7.Upon consideration of the oral and documentary evidence, the Trial Court held that the first accused in her capacity as a public servant had gained fraudulently the money entrusted with her in discharge of her official duty as public servant. The Trial Court held that A2 gained fraudulently along with active assistance of A1. Thereby they made loss to the Bank to the tune of Rs.24,18,110.90.

8.The Trial Court held that the first accused was found guilty of all the offences charged against her and convicted and sentenced her to undergo 2 years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo 3 months rigorous imprisonment for the offence under Sections 120-B r/w. 420, 468, 468 r/w 471, 477 A and 201 IPC and 13(2) r/w.13 (1) (d) of the P.C. Act, 1988; convicted and sentenced her to undergo 2 years rigorous imprisonment and to pay a fine of Rs.5,000/- for each count (totally Rs.1,10,000/-) in default to undergo 6 months rigorous imprisonment for the offence under Section 420 IPC (22 counts); convicted and sentenced her to undergo 2 years rigorous imprisonment and to pay a fine of Rs.1,000/- for each count (totally Rs.8,000/-) in default to undergo 3 months rigorous imprisonment for the offence under Section 468 IPC (8 counts); convicted and sentenced her to undergo 2 years rigorous imprisonment and to pay a fine of Rs.1,000/- for each count (totally Rs.8,000/-) in default to undergo 3 months rigorous imprisonment for the offence under Section 468 r/w.471 IPC (8 counts); convicted and sentenced her to undergo 2 years rigorous imprisonment and to pay a fine of Rs.1,000/- for each count (totally Rs.56,000/-) in default to undergo 6 months rigorous imprisonment for the offence under Section 477 A IPC (56 counts); convicted and sentenced her to undergo 1 year rigorous imprisonment and to pay a fine of Rs.1,000/- for each count (totally Rs.17,000/-) in default to undergo 1 month rigorous imprisonment for the offence under Section 201 IPC (17 counts) and convicted and sentenced her to undergo 4 years rigorous imprisonment and to pay a fine of Rs.5,000/- cumulatively for all 26 counts in default to undergo 6 months rigorous imprisonment for the offence under Section 13(2) r/w. 13(1) (d) (26 counts) of Prevention of Corruption Act.

9.The Trial Court held that the second accused was found guilty of all the offences charged against her and convicted and sentenced her to undergo 2 years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo 6 months rigorous imprisonment for the offence under Sections 120-B r/w. 420, 468, 468 r/w 471, 477 A and 201 IPC and 13(2) r/w.13 (1) (d) of the P.C. Act, 1988; convicted and sentenced her to undergo 2 years rigorous imprisonment and to pay a fine of Rs.5,000/- for each count (totally Rs.45,000/-) in default to undergo 6 months rigorous imprisonment for the offence under Section 420 IPC (9 counts).

10.The sentences were ordered to run concurrently. The total fine amount imposed on A1 is Rs.2,09,000/-. The total fine amount imposed on A2 is Rs.50,000/-. The Trial Court further directed that out of the total fine amount imposed on A1, part of the fine amount of Rs.2,00,000/- recovered from the accused shall be paid to the defacto complainant i.e., Allahabad Bank, Salem Branch, as compensation under Section 357 (1) (b) of Cr.P.C.; out of the total fine amount imposed on A2, part of the fine amount of Rs.40,000/- recovered from the accused shall be paid to the defacto complainant i.e., Allahabad Bank, Salem Branch, as compensation under Section 357 (1) (b) of Cr.P.C.

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

12.The learned Senior Counsel appearing for the appellants would submit that A1 was working as Clerk cum Cashier of Allahabad

Bank, Salem Branch and did not commit any offence as alleged by the prosecution. Based on the extra judicial confession (Ex.P.3) recorded by the Officials of the Bank, in order to escape the other Officials relied by against the accused, the first accused was implicated in the case. Except the extra judicial confession statement, no other relevant document essential for implicating A1 has been marked by the prosecution.

13.The learned Senior Counsel appearing for the appellants would further submit that only inorder to escape the higher Officials who have actively participated in the fraudulent act and inorder to implicate A1 in the case, the so called extra judicial confession statement was marked as Ex.P3 and the same does not corroborate with any of the documents marked by the prosecution. The first accused was used as a scape goat inorder to escape the other Officials who have actively committed the fraud.

14.The learned Senior Counsel appearing for the appellants would further submit that P.W.3/ Enquiry Officer recorded the extra judicial confession statement and marked it as Ex.P3 inorder to make A1 as scape goat and he has not signed or authenticated the corrections made in the documents filed by the prosecution and it cannot be relied upon as against A1.

15.The learned Senior Counsel appearing for the appellants would further submit that A2 has nothing to do with the Official function rendered by A1. A1 and A2 are closely associated and they are family friends. Taking advantage of their connection, A2 was implicated in the above said offence.

16.The learned Senior Counsel appearing for the appellants would further submit that the prosecution has relied upon the evidence of P.W.17 one Krishnamurthy who narrated the entire prosecution story and he deposed that A1 had money transaction with him for which A1 made several payments in his account. However, P.W.17 in his cross examination clearly deposed that A2 is guarantor of A1 and signed the promissory note. After the entire amount of Rs.2,50,000/- was paid in favour of P.W.17, a sum of Rs.80,000/- was withdrawn through self cheque (Ex.P.38) signed by the account holder, a sum of Rs.1,70,000/- was withdrawn through the cheque (Ex.P.12) issued in favour of A2. The said amount was split up and distributed as Rs.52,000/- in cash to A2, Rs.50,000/- into A2's Savings Bank account through pay-in-slip (Ex.P.13), Rs.50,000/- in the Savings Bank account of one Srikanth and operated by A2 and Rs.18,000/- into the Savings Bank account in the name of A1. This aspect was spoken by P.W.3 as well as P.W.5.

17.The learned Senior Counsel appearing for the appellants would further submit that A2 has clearly established the case that the entire amount was deposited by way of cheque as well as cash and the same was corroborated with the evidence of P.W.3 as well as P.W.5. Hence, the prosecution has not proved the conspiracy theory and basic requirements of 120-B of IPC. Mere friendship will not implicate A2 for the offence under Section 120-B of IPC along with Prevention of Corruption Act. Conspiracy has to be proved separately by adducing independent evidence and documents. Mere allegation is not sufficient to implicate A2 under Section 120 of IPC and under Prevention of Corruption Act.

18.The learned Senior Counsel appearing for the appellants would further submit that P.W.1 is the sanctioning Authority. He has also acted as investigating Authority. One hand acting as sanctioning Authority and on the other hand acting as investigating Authority is non est in law. Hence, sanctioning prosecution as against A1 is un-sustainable and non est in law.

19.The learned Senior Counsel appearing for the appellants would further submit that the main culprit is P.W.17 who is the money lender who lent money in favour of A1 for which there are several transactions inbetween them and the Trial Court has also issued a direction to the Investigating Agency to make further investigation under Section 173 (8) of Cr.P.C. He would further submit that if at all any money is transferred in the account of A2, it is without her knowledge. Hence, implicating A2 in this case is un-sustainable one. Accordingly, he prayed for allowing the appeals.

20.The learned Special Public Prosecutor for CBI Cases would submit that the sanction for prosecuting A1 was obtained from the competent Authority and the same was marked as Ex.P.2 dated 20.12.1999. He would further submit that on perusal of the extra judicial confession statement, which is marked as Ex.P.3, the same is voluntary statement recorded by P.W.3 in his own handwriting by way of questionary form. In that confession statement, the Bank witness namely, P.W.5 signed as witness. Apart from the above, A1 is the relative of one Venkatesan S.Bharadhwaj who also signed as witness. Hence, the statement recorded by P.W.3 on her own handwriting need not be signed and it is binding on the accused. Apart from the above, extra judicial confession statement clearly corroborate with the documents marked by the prosecution.

21.The learned Special Public Prosecutor for CBI Cases would further submit that apart from the above, Ex.P.5/ application cum specimen signature card for opening of Savings Bank account in favour of one Krishnamoorthy/ P.W.17 would show that he was introduced by A1 and Ex.P.7/ application cum specimen signature card for opening of Savings Bank account by A2 would show that she was introduced by A1.

22.The learned Special Public Prosecutor for CBI Cases would further submit that not only on the basis of the extra judicial confession statement, but based on the documents marked by the prosecution and on the basis of corroboration and based on the conclusive proof, the Trial Court arrived at a fair conclusion and passed the conviction and sentence as stated supra as against the accused. Hence, the well considered order of the Trial Court need not be interfered with. Accordingly, he prayed for dismissal of the appeals.

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

24.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 order was passed based on the material or not.

25.P.W.1 is the sanctioning Authority. This Court perused the sanctioning order. In the present case, P.W.1 is the complainant and he has also acted as sanctioning Authority. P.W.1 lodged the complaint only in his Official capacity and not in individual capacity. Based on the materials, complaint was lodged and he is the Authority for sanctioning prosecution as against A1. Accordingly, he has two different roles. On perusal of the entire records and after elaborate discussions, he sanctioned prosecution as against A1.

26.The complainant's role is only to set the law in motion. Thereafter the law enforcing agency has to conduct investigation and find out whether a case has been made out or not and it is for the law enforcing agency to prove the guilt before the Court of law. Mere filing

of complaint will not debar P.W.1 from sanctioning prosecution. Both are independent functions. There is also no personal allegation against P.W.1 for lodging the complaint or for sanctioning the prosecution. In view of the above, the preliminary submission made by the learned Senior Counsel appearing for the appellants is liable to be rejected.

27.P.W.3 is the then Manager of Allahabad Bank, Mukudan Chavadi Branch and he has stated that as per the instructions of his Regional Manager/ P.W.1, he visited the Allahabad Bank, Salem Branch, on 27.05.1998 and conducted investigation. During investigation, he perused various records and interrogated the staff of the Branch. A1 gave confession letters dated 27.05.1998 and 29.05.1998 which are marked as Ex.P.16 and Ex.P.17 respectively, in her own handwriting. Further P.W.3 recorded the statement of A1 and the said extra judicial confession statement has been attested by the witnesses one Venkatesan S. Bharadhwaj/ brother of A1 and Vijayakumar/ Branch Manager (P.W.5).

28.On perusal of Ex.P3, A1 admitted that she has borrowed certain amount from P.W.17 and signed the account opening form and deposited various amounts on various dates which are marked as exhibits. In the prosecution case, further A1 admitted the acquaintance of A2, her friendship and connection with A2. A1 also admitted that she opened the account in the name of A2 and her son. In the account opening form, she signed as introducer. In the confession statement, she has also admitted that there are several amounts converted to different account as alleged by the prosecution and she did not deny the prosecution case.

29.Apart from the above Ex.P.3, this Court also perused Ex.P.16 and Ex.P.17 dated 27.05.1998 and 29.05.1998 respectively, which were given by A1 in her own handwriting, wherein, A1 has admitted fraud to the tune of Rs.12.40 Lakhs in the account of P.W.17 and further she admitted that the said account holder was introduced by her. A1 further admitted the bogus credits given by her to various accounts.

30.Apart from the above, Ex.P.17 dated 29.05.1998 discloses that A1 in her own handwriting has written that she had suffered substantial loss in the share market business and inorder to recover the amount back from stocks, she borrowed amount from external sources namely from P.W.17 and various persons. Since she was not able to recover from the losses in the share market business, she was

forced to borrow several amount from several persons which led to the manipulation of accounts and malpractices committed by her. From the above, the prosecution has proved the guilt on A1.

31.Now, the next issue is whether the prosecution has proved the guilt as against A2 with regard to the ingredients of conspiracy required under Section 120-B and under the Prevention of Corruption Act.

32.The charge against the accused is that A1 cheated the Bank along with A2 and committed fraud and forgery. The case of the prosecution as against A2 is that of conspiracy and also beneficiary to the part. On perusal of Ex.P7/ Application form submitted by A2 for opening Savings Bank account, it is seen that in that application form, A2 was introduced by A1 and A1 has signed as introducer. In the application form, A1 has stated that she know A2 for the past 15 years.

33.Apart from the above, A1 also opened Savings Bank account in the name of A2's son and signed as introducer. Even prior to A1 joining in Allahabad Bank, they were closely associated and they were

living in one roof. Further, on perusal of Ex.P.243/ letter addressed to the Chief Regional Manager, UBI, Chennai, discloses that A1 and A2 had joint account in United Bank of India, Bangalore Branch, bearing Account No.2538 as early as in the year 1989.

34.Further, perusal of the evidence of P.W.17 and P.W.30 discloses that A2 accompanied A1 in the course of money transaction. Perusal of the evidence of P.W.17 further discloses that though he do not know A2 directly and he did not issue any cheque in favour of A2, he has further deposed that A1 borrowed money to the tune of Rs.2 Lakhs and secured his Bank passbook and paid several amounts even without signature of P.W.17. Even in the blank promissory note which was executed by A1, A2 signed as guarantor. The said promissory note was marked as Ex.P.198.

35.The learned Senior Counsel appearing for the appellants in his argument has submitted that after the entire amount of Rs.2,50,000/- was paid in favour of P.W.17, a sum of Rs.80,000/- was withdrawn through self cheque (Ex.P.38) signed by the account holder, a sum of Rs.1,70,000/- was withdrawn through the cheque (Ex.P.12) issued in favour of A2. The said amount was split up and distributed

as Rs.52,000/- in cash to A2, Rs.50,000/- into A2's Savings Bank account through pay-in-slip (Ex.P.13), Rs.50,000/- in the Savings Bank account of one Srikanth and operated by A2 and Rs.18,000/- into the Savings Bank account in the name of A1. However, P.W.17 in his evidence has specifically denied the cheque issued in favour of A2 and this Court is not in a position to appreciate the argument of the learned Senior Counsel appearing for the appellants.

36.Perusal of Ex.P.13 and Ex.P.14, the amount said to have deposited by A2 in her account the signature is vary from the other columns filled by un-known persons and in confession statement, the said documents clearly corroborated with the evidence of P.W.3 and Ex.P.3.

37.Even on perusal of Ex.P.243 which was marked through P.W.36 before joining Allahabad Bank, A1 worked as Clerk cum Cashier in the United Bank of India, Southern Region and her confirmation was deferred by 65 days as she was in liu without pay and further, it appears that A1 committed fraud to the extent of Rs.66,000/- and the said fraud amount was adjusted through her brother account as well as by the joint account held by A1 and A2. Thereafter, she was allowed to resign from the above said Bank. Again she joined as Clerk cum Cashier in the Allahabad Bank.

38.No doubt, the extra judicial confession statement may not be a substantive piece of evidence, however, the said extra judicial confession statement is corroborated by other prosecution evidence and it is proved by way of other prosecution documents. The Trial Court was satisfied that confession is voluntary and the confession corroborated with the other prosecution evidence and documents. On perusing the entire evidence and confession statement, it is known that each corroborated.

39.In view of the above, the prosecution has proved the guilt on the accused A1 and A2. Hence, this Court is not inclined to interfere with the order of conviction passed by the Trial Court.

40.At this juncture, the learned Senior Counsel appearing for the appellants submits that A1 is aged about 57 years and A2 is aged more than 60 years and they are suffering from age old ailments and the date of occurrence is during the year 1997-1998. Hence, this Court may consider for reducing the sentence imposed on them.

41.Considering the request made by the learned Senior Counsel appearing for the appellants 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.

42.In the result, the criminal appeals are partly allowed. The conviction imposed by the learned II Additional District Judge (CBI cases), Coimbatore in C.C.No.1 of 2000 under judgment dated 22.11.2006 as against the appellants is confirmed, however, the sentence imposed on the appellants is modified. The sentence of imprisonment imposed against the appellant in Crl.A.No.1026 of 2006/ A1 is reduced from 4 years rigorous imprisonment to 2 years simple imprisonment. The sentence of imprisonment imposed against the appellant in Crl.A.No.1048 of 2006/ A2 is reduced from 2 years rigorous imprisonment to 1 year simple imprisonment. The fine amount is confirmed. 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 remaining part of sentence.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

pri

To

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

2.The Inspector of Police,
SPE/CBI/ACB/CHENNAI
R.C.No.29(A)/98

3. The Special Prosecutor, for CBI Cases,
High Court, Madras - 104.

+1cc to Mr.K.Srinivasan, Advocate SR.No.84228

+2cc to Mr.CD. Johnson, Advocate SR.No.84636. 84637

Crl.A.Nos.1026 and 1048 of 2006

SSD(CO)
GMY(08/01/2019)