Bail Slip.

The Appellant herein namely Md. Maqdoom, accused in C.C. No. 10/2013 on the file of the Special Court for CBI Cases, VIII Additional City Civil Court, Chennai 104 was directed to be released on bail as per order of this court dated 23.08.2016 made in Crl.M.P. 8814/2016 in Crl.A. 161/2015

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 No.161 of 2015

Md.Maqdoom ... Appellant/Accused

-Vs-

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

Criminal Appeal filed under Sections 374(2), 380 and 401 Cr.P.C. to call for the entire records pertaining to C.C.No.10 of 2013 on the file of the learned Special Judge for CBI cases, (VIII Additional, City Civil Court, Chennai 600 104 and allow this appeal preferred by the appellant and set aside the order of conviction dated 08.10.2014 passed by the learned Principal Special Judge for CBI Cases, III Additionl City Civil Court, Chennai in C.C.No.10 of 2013.

For Appellant : Mr.R.Vijayakumar
For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI

J U D G M E N T

The appellant is the sole accused in C.C.No.10 of 2013 on the file of the learned Principal Special Court for CBI Cases, VIII Additional City Civil Court, Chennai. He stood charged for the offences under Sections 409, 420, 468 IPC, 465 r/w 471 IPC, 13(2) r/w 13(1)(c) of Prevention of Corruption Act, 1988, (for brevity "the PC Act"), 13(2) r/w 13(1)(d) of PC Act, 409 (six counts), 420 (six counts), 468 (six counts), 468 r/w 471 IPC (six counts), 13(2) r/w 13(1)(c) of PC Act (six counts) and 13 (2) r/w 13(1)(d) of PC Act, (six counts). By judgment dated 08.10.2014, the trial Court convicted and sentenced him as under:

Section of Law	Sentence
409 IPC	S.I. for 40 months and to pay a fine of Rs.1,50,000/- in default to undergo S.I. for ten months
420 IPC	S.I. for five months and to pay a fine of Rs.1,000/- in default to undergo S.I. for one month
468 IPC	S.I. for five years and to pay a fine of Rs.1,000/- in default to undergo S.I. for one month
465 r/w 471 IPC	S.I. for four months and to pay a fine of Rs.200/- in default to undergo S.I. for one month
13(2) r/w 13(1) (c) of P.C. Act	S.I. for 40 months and to pay a fine of Rs.1,50,000/- in default to undergo S.I. for ten months
13(2) r/w 13(1) (d) of P.C. Act	S.I. for 40 months and to pay a fine of Rs.1,50,000/- in default to undergo S.I. for ten months
409 (six counts)IPC	S.I. for 40 months and to pay a fine of Rs.1,00,000/- in default to undergo S.I. for ten months for each count.
420 (six counts)IPC	S.I. for five months and to pay a fine of Rs.1,000/- in default to undergo S.I. for one month for each count
468(six counts) IPC	S.I. for five months and to pay a fine of Rs.1,000/- in default to undergo S.I. for one month for each count
465 r/w 471 (6 counts) IPC	S.I. for four months and to pay a fine of Rs.200/- in default to undergo S.I. for one month for each count
13(2) r/w 13(1) (c) (6 counts)	S.I. for 40 months and to pay a fine of Rs.1,00,000/- in default to undergo S.I. for ten months for each count
13(2) r/w 13(1) (d) (6 counts)	S.I. for 40 months and to pay a fine of Rs.1,00,000/- in default to undergo S.I. for ten months for each counts

Challenging the said conviction and sentence, the accused is before this Court with this appeal.

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

[a] The accused was working as Postal Assistant and officiating as Assistant Sub Post Master at Royapettah Post Office during the period from 22.03.2006 to 30.09.2010 and thereafter, at Gopalapuram Post Office with effect from 01.10.2010. While so, on 11.04.2011, one Mohammed

Munawar [P.W.5] approached him and entrusted to him a sum of Rs.3,40,000/- for the purpose of depositing the same in Time Deposit Account. As requested by the accused, the said Mohammed Munawar [P.W.5] submitted an account opening form with his photo affixed therein and signed the pay-in-slip. Thereafter, the accused, with a dishonest intention to cheat Mohammed Munawar, misappropriated the said sum and issued a forged Time Deposit Account pass book prepared by him with a non-existent account number as 26208. Similarly, the accused cheated one Dr.C.K.Annamalai and his two daughters.

[b] On the basis of the complaint lodged by N.K.Subash, Senior Superintendent of Post Office, [P.W.2], a case in RC 48/A/2012 was registered against the accused under Sections 409, 420, 467, 468 and 477A IPC and under Section 13 (1)(d) of the PC Act. The Investigating Officer, after enquiry, filed final report on 03.04.2013.

3. 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 20 witnesses were examined and 144 documents were marked. On the side of the defence, no witness was examined and no document was marked.

4. Out of the said witnesses, P.W.1 is the then Superintendent, Postal Store Depot, Chennai. He has deposed that the Senior Superintendent or Superintendent of Post Office is the competent authority having powers to remove and dismiss the clerical cadres/postal assistants and as such, as a Superintendent, he issued sanction order against the accused. The sanction order was marked as Ex.P.2. N.K.Subash [P.W.2], who is the then Senior superintendent of Post Offices, Chennai City Central Division, has spoken about the complaint dated 14.11.2012 made by him to the Superintendent of Police, CBI against the accused. The complaint was marked as Ex.P.3. S.Padmanabhan [P.W.3], the then Public Relation Inspector, Postal at Royapettah Post Office has spoken about the delivery of letters, verification of claim papers, pension papers etc. Vedha [P.W.4] has spoken to about the fake pass book and non

existent account.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor did he mark any document. His defence was a total denial.

6. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment. Aggrieved over the same, the accused/appellant is before this Court with this appeal.

7 This Court has heard the learned counsel appearing for the appellant and the learned Special Public Prosecutor appearing for the CBI and this Court has also perused the records carefully.

8 The accused, while he was working as Postal Assistant and officiating as Assistant Sub Post Master at Gopalapuram Post Office, on 11.04.2011, with a dishonest intention and with an intention to cheat P.W.5, induced him to deliver the sum of Rs.3,40,000/- to him, which was the amount P.W.5 intended to make investment in Time Deposit Scheme. The accused, by making P.W.5 believe that the said amount would be invested in Time Deposit Account in his name, but with an intention to commit fraud and to misappropriate the said amount, received the same and thereby obtained pecuniary advantage to the tune of Rs.3,40,000/- to himself without remitting the said amount in the Gopalapuram Post Office. That apart, the accused, with an intention to cheat P.W.9, falsely created Savings Bank Pass Book [Ex.P.9] by mentioning a non-existing account .

9 Further, with an intention to cheat Dr.C.K.Annamalai [P.W.7] and his daughters, viz., Dr.A.Saraswathi Chitra Devi and Dr.A.Geetha Lakshmi Devi induced them to deliver withdrawal slips [Exs.P.30 to P.35] to him by making a false promise of depositing those amounts in the Time Deposit accounts in their respective names. The accused, after realising the amounts mentioned in those withdrawal slips across the counter through the Counter Clerks directly and without investing those amounts in the names of P.W.7 and his two daughters in Time Deposit Accounts, misappropriated the same and thereafter, created false and forged Time Deposit Pass Books [Exs.P.36 to 41] by mentioning false Time Deposit Account numbers in the name of P.W.7 and his two daughters. The accused issued those Pass Books to P.W.7 and thereby, misappropriated the amounts withdrawn from the saving bank accounts of P.W.7 and his two daughters by using his official position and thereby, obtained pecuniary advantage for himself to the tune of Rs.12,01,160/-.

10 Noorunissa [P.W.8], Counter Postal Assistant in Gopalapuram Post Office during the period from July 2008 to June 2012 has specifically submitted in her deposition that without bringing the amount of Rs.3,40,000/- given by P.W.5 into the account maintained at Gopalapuram Post Office, the accused issued Savings Bank Pass Book [P.W.9] after making false entries in it. Hence, it can be clearly taken that the accused, with an intention to misappropriate the amount of Rs.3,40,000/-, received the said amount from P.W.5 and thereafter, wilfully failed to remit the same in the account maintained at the Gopalapuram Post Office. Since Ex.P.9 was found to be a fake Pass Book containing false particulars, the Counter Postal Assistant [P.W.8] intimated the same to her immediate superior, who, in turn, informed the matter to P.W.4. After having received the information as above, P.W.4 went to the Gopalapuram Post Office and enquired the officials therein. Thereafter, P.W.4 met P.W.5 and recorded the statement from him, which was marked as Ex.P.7. The statement recorded from P.W.8 was marked as Ex.P.8. The entire evidence given by P.W.8 supporting the contentions of P.W.5 have been accepted by the accused.

11 The handwritings in the false and fake Savings Bank Pass Book [Ex.P.9] are those of the hand writings of the accused. This has not been denied by the accused. The hand writings made by him in Ex.P.9 are all marked as Q-1, Q-2 and Q-4 and the signatures affixed by him in the said pass book are all marked as Q-3 and Q-5. The admitted hand writings and signatures of the accused are marked as S-1 to S-63 and they are available in Ex.P.95. After comparing those hand writings and signatures with the admitted specimen writings of the accused available in Ex.P.95, N.Ravi [P.W.16], the Principal Scientific Officer, Central Forensic Science Lab, New Delhi, posted at Chennai Branch, has given opinion in his Report [Ex.P.96] dated 26.03.2013 that the writings made in the fake and false Savings Bank Pass Book [Ex.P.9] are the writings of the accused. With regard to the signatures in the form of initials found in Ex.P.9, the expert [P.W.16] has submitted that it has not been possible to given any opinion since those initials have been written in a simplified manner.

12 Aruna [P.W.17], the then SB Counter Clerk, Royapettah Post Office, who was working under the accused during the relevant period, has stated that the accused alone was entitled to issue Pass Books for the purpose of creating new accounts after noting down the account numbers in the Pass Books as well as in the Savings Bank Pass Book Stock Register. P.W.17 has further deposed that the hand writings found in Ex.P.9 are those of the accused.

13 The cumulative effect of the evidence deposed by the above witnesses leads to the only irresistible conclusion that the accused, with an intention to cheat P.W.5 and with a dishonest intention to misappropriate the amount belonging to P.W.5, received a sum of Rs.3,40,000/- and misappropriated the same without bringing the said amount in the account of the Gopalapuram Post Office and thereafter, issued the fake and false Savings Bank Pass Book mentioning the non-existing account number and by making false entries.

14 In a similar manner, the accused cheated P.W.7 and his two daughters, viz., Dr.A.Saraswathi Chitra Devi and Dr.A.Geetha Lakshmi Devi and misappropriated the amounts belonging to them. P.W.7 and his daughters submitted applications [Exs.P.19 to 21] for opening savings bank accounts in Royapettah Post Office. In pursuance of those applications, under Exs.P.19 to P.21, savings bank accounts were opened in the name of P.W.7 and his daughters. The investments made by P.W.7 and his daughters each for a sum of Rs.2 lakhs, thus, in total, Rs.6 lakhs in Kisan Vikas Patras on 31.07.2002 at Harur Post Office were transferred to the Royapettah Post Office and they were liable to be matured in the year 2010. As evidenced in Kisan Vikas Patras, P.W.7 and his daughters, after making endorsements on the reverse side of those Kisan Vikas Patras for crediting the matured amounts in their respective savings bank accounts, entrusted the same in the Royapettah Post Office. Accordingly, when the amount got matured in 2010, the same was credited into their respective accounts. However, the accused failed to give the savings bank pass book bearing A/c No.2684917 standing in the name of Dr.Geetha Lakshmi Devi in spite of repeated requests made by P.W.7. P.W.7 approached the accused for the purpose of making re-investment of matured amounts of Rs.4 lakhs each in the Royapettah Post Office. At that juncture, the accused induced P.W.7 to invest the matured amounts in Time Deposit Accounts. Having belief in the accused, P.W.7 gave withdrawal forms signed by him and his daughters to the accused without filling up the same. From the evidence of Indumathy [P.W.14], Counter Postal Clerk, it is evident that the accused submitted the withdrawal slips [Exs.P.30 to 35] to her across the counter and received a sum of Rs.12,01,160/-

15 P.Ws.17 and 19, the official witness have stated that the withdrawal of the amounts as per withdrawal slips [Exs.P.30 to P.35] are shown in their respective Ledger Accounts. The accused failed to deposit the said amount in the Time Deposit Accounts. However, he prepared fake and false pass books and issued the same to P.W.7 as if he had credited the amounts withdrawn by him in the Time Deposit Accounts.

16 P.W.17 has clearly stated that the entries made in the pass books are the entries made by the accused in his own handwriting. Further, the said official witness has deposed that some of the entries made in the SB Pass Books under Exs.P.58 and P.59 belonging to P.W.7 and his two daughters are the entries made by the accused. Another official witness P.W.15, who was working along with the accused during the relevant period as a Counter Clerk has stated that the handwritings in Exs.P.36 to P.41 and P.9 are those of the accused.

17 From the above reliable and sustainable evidence adduced by official witnesses, it can safely be held that the accused, with an intention to cheat P.W.7 and his daughters and with an intention to misappropriate the amount of Rs.12,01,160/- belonging to them, falsely created those forged Pass Books Exs.P.36 to P.41 and delivered the same to P.W.7.

18 P.W.16, the Principal Scientific Officer, Central Forensic Science Lab, New Delhi examined the admitted handwritings and signatures of the accused found in Ex.P.9 with the entries found in the fake and false Time Deposit Pass Books [Exs.P.36 to P.41] and submitted a report dated 26.03.2013 [Ex.P.96] giving opinion as the writings made in those pass books are those of the writings of the accused.

19 The cumulative effect of the evidence adduced by the official witnesses lead to the conclusion that right from the beginning, the accused, with an intention to cheat P.W.7 and his daughters, made them believe that the amounts belonging to them would be invested in Time Deposit accounts and thereafter, withdrew the total sum of Rs.12,01,160/- from their SB accounts and misappropriated the same.

20 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.

21 Since the trial Court has considered the entire oral and documentary evidence and come to the conclusion that the accused has committed the offence as stated above, there is no reason to interfere with the conviction and sentence imposed by the trial Court.

In the result, this appeal stands dismissed. The conviction and sentence imposed on the appellant 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 him shall be given set- off under Section 428 IPC.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

gms
To

1. Special Judge for CBI cases,
(VIII Additional), City Civil Court,
Chennai 600 104

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

3.The Special Public Prosecutor for CBI Cases
High Court, Chennai.

4. The Section officer
Criminal Section, High Court, Madras 104.

+1 CC to Mr.N. Saravanan, Advocate sr 32888.

Crl.Appeal No.161 of 2015

KGK(CO)
SP(28/05/2018)