BAIL SLIP

That the Appellant/Accused namely Rajagopalan S/o.Sarangachari was released on bail as per the order of this court dated 23.01.2008 Crl.MP.No.1/2007 in Crl.A.No.1134/2007 and MP.No.1(in each Petitions) of 2008 in Crl.A.Nos 40 to 50/2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.04.2018

Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal Nos.1134 of 2007
& 40 to 50 of 2008

Rajagopalan ...Appellant/Accused in all the appeals

/versus/

State represented by
Deputy Superintendent of Police,
SPE/CBI/ACB/Chennai.
(RC 8 [A]/1995. ... Respondent/Complainant in all the appeals

Common Prayer: Criminal Appeals are filed under Section 374(2) of Criminal procedure Code against the conviction in the common judgment passed by the learned Additional Special Judge for CBI Cases, Chennai dated 29.11.2007 in C.C.Nos.161 to 172 of 1997.

For Appellant : Mr.S.Ashok Kumar,
Senior Counsel for
Mr.K.Shanker (in all cases)

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor [CBI]
(in all cases)

COMMON JUDGMENT

Since these batch of appeals are arising out of the common judgment passed by learned Additional Special Judge for CBI Cases, Chennai, in C.C.No.161 to 172 of 1997, dated 29.11.2007, this Court proceed to deliver common judgment for all the 12 appeals.

2. Brief facts of the case is as under:-

The appellant Rajagopalan was appointed as Assistant Manager [Accounts & Finance] in M/s Balmer Lawrie & Co. Ltd., on 08.01.1990. Later, he was promoted as Deputy Manager on 01.07.1993. On 01.11.1993, he was transferred to M/s AVI Oil India Limited, a sister concern of NYCO-BL-IOC Joint Venture Company at Madras as Finance Manager-cum-Company Secretary. He was given the option to exercise his right of lien over his parent company within 2 years. Further, he was asked to continue to discharge the responsibility of his existing post as Deputy Manager [Finance] at M/s.Balmer Lawrie & Co. Ltd till such time, the new incumbents joins in the post. While so, it is alleged that between 26.08.1994 to 26.12.1994, while discharging his responsibility as Deputy Manager, [Finance] of M/s.Balmer Lawrie & Co.Ltd., he had withdrawn a sum of Rs.13,41,536/- under the pretext of paying Commercial Tax of the Company and also medical allowance of Rs.15,000/- for the treatment of his father. Though he has produced Treasury challans to show remittance at treasury into the Commercial Tax Department account, later it was found that the 11 challans produced by him were alleged to be forged and he has committed breach of trust in respect of the money entrusted to him and dishonestly induced the Company to deliver a sum of Rs.13,41,536/- and misappropriated the same. By producing fabricated Sub Treasury challans, he being a public servant has misconducted himself by obtaining pecuniary advantage by corrupt or illegal means.

3. The matter was taken up for investigation after C.B.I registered First Information Report on 15.02.1995 under R.C.8 (A)/95. On completion of investigation, 12 final reports were filed. The trial Court has taken them on file assigning Calender Case Nos.161 to 172 of 1997 against the appellant Rajagopalan.

4. The Charges were framed under Sections 409, 467, 420, 467 r/w 471 and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1998. At the request of the appellant, a joint trial for all the twelve cases were held before the Trial Court and common judgment was delivered on 29.11.2007.

5. The prosecution has examined 37 witnesses, marked 176 Exhibits and 3 material objects. On behalf of the defence, 4 witnesses were examined and 25 Exhibits were placed before the trial Court.

6. After due consideration of the evidence let in by the prosecution, the trial Court has found the accused/appellant herein guilty in all cases and sentenced him as under:

Case No. & and Name of the accused	Conviction under Section	Sentence imposed by the trial Court
C.C.No.161 of 1997 Rajagopalan	U/s 409 IPC, 467 IPC and under Section 13 (2) r/w 13(1)(d) of PC Act	(i)To undergo one year RI and imposed fine Rs.30,000/- in default to undergo 3 months imprisonment under Section 409 IPC. (ii)To undergo two years RI and imposed fine of Rs.30,000/- in default to undergo 3 months imprisonment under Section 467 IPC. (iii)To undergo one year imprisonment and imposed fine of Rs.30,000/- in default to undergo 3 months imprisonment under Section 13(2) r/w 13(1)(d) of PC Act (Total fine amount of Rs.90,000/-) The period of sentence was ordered to run concurrently.

Case No. & and Name of the accused	Conviction under Section	Sentence imposed by the trial Court
C.C.No.162/1997 Rajagopalan	U/s 420 IPC, 467 IPC and Section 13(2) r/w 13(1)(d) of PC Act	(i)To undergo one year RI IPC and imposed fine Rs.10,000/- in default to undergo 1 month imprisonment under Section 420 IPC. (ii)To undergo two years RI and imposed fine of Rs.10,000/- in default to undergo 1 month imprisonment under Section 467 IPC. (iii)To undergo one year imprisonment and imposed fine of Rs.10,000/- in default to undergo 1 month imprisonment under Section 13(2) r/w 13(1)(d) of PC Act. (Total fine amount of Rs.30,000/-). The period of sentence was ordered to run concurrently.

Case No. & and Name of the accused	Conviction under Section	Sentence imposed by the trial Court
C.C.No.163/1997 Rajagopalan	U/s 420 IPC, 467 IPC and under Section 13 (2) r/w 13(1)(d) of PC Act	(i)To undergo one year RI and imposed fine Rs.30,000/- in default to undergo 3 months imprisonment under section 420 IPC. (ii)To undergo two years RI and imposed fine of Rs.30,000/- in default to undergo 3 months imprisonment under Section 467 IPC. (iii)To undergo one year imprisonment and imposed fine of Rs.30,000/- in default to undergo 3 months imprisonment under Section 13(2) r/w 13(1)(d) of PC Act. (Total fine amount of Rs.90,000/-) The period of sentence was ordered to run concurrently.

Case No. & and Name of the accused	Conviction under Section	Sentence imposed by the trial Court
C.C.No.164/1997 Rajagopalan	U/s 420 IPC, 467 IPC and Section 13(2) r/w 13(1)(d) of PC Act	(i)To undergo one year RI and imposed fine Rs.10,000/- in default to undergo 1 month imprisonment under Section 420 IPC. (ii)To undergo two years RI and imposed fine of Rs.10,000/- in default to undergo 1 month imprisonment under Section 467 IPC. (iii)To undergo one year imprisonment and imposed fine of Rs.10,000/- in default to undergo 1 months imprisonment under Section 13(2) r/w 13(1)(d) of PC Act. (Total fine amount of Rs.30,000/-) The period of sentence was ordered to run concurrently.

Case No. & and Name of the accused	Conviction under Section	Sentence imposed by the trial Court
C.C.No.165/1997 Rajagopalan	U/s 420 IPC, 467 IPC and Section 13(2) r/w 13(1)(d) of PC Act	(i)To undergo one year RI and imposed fine Rs.20,000/- in default to undergo 2 months imprisonment under section 420 IPC. (ii)To undergo two years RI and imposed fine of Rs.20,000/- in default to undergo 2 months imprisonment under section 467 IPC. (iii)To undergo one year imprisonment and imposed fine of Rs.20,000/- in default to undergo 2 months imprisonment under Section 13(2) r/w 13(1)(d) of PC Act. (Total fine amount of Rs.60,000/-) . The period of sentence was ordered to run concurrently.

Case No. & and Name of the accused	Conviction under Section	Sentence imposed by the trial Court
C.C.No.166/1997 Rajagopalan	U/s 420 IPC, 467 IPC and Section 13(2) r/w 13(1)(d) of PC Act	(i)To undergo one year RI and imposed fine Rs.30,000/- in default to undergo 3 months imprisonment under Section 420 IPC. (ii)To undergo two years RI and imposed fine of Rs.30,000/- in default to undergo 3 months imprisonment under Section 467 IPC. (iii)To undergo one year imprisonment and imposed fine of Rs.30,000/- in default to undergo 3 months imprisonment under Section 13(2) r/w 13(1)(d) of PC Act. (Total fine amount of Rs.90,000/-) The period of sentence was ordered to run concurrently.

Case No. & and Name of the accused	Conviction under Section	Sentence imposed by the trial Court
C.C.No.167/1997 Rajagopalan	U/s 420 and 467 IPC and under Section 13 (2) r/w 13(1)(d) of PC Act	(i)To undergo one year RI and imposed fine Rs.50,000/- in default to undergo 5 months imprisonment under Section 420 IPC. (ii)To undergo two years RI and imposed fine of Rs.1,00,000/- in default to undergo 10 months imprisonment under Section 467 IPC. (iii) To undergo one year imprisonment and imposed fine of Rs.50,000/- in default to undergo 5 months imprisonment under Section 13(2) r/w 13(1)(d) of PC Act. (Total fine amount of Rs.2,00,000/-) The period of sentence was ordered to run concurrently.

Case No. & and Name of the accused	Conviction under Section	Sentence imposed by the trial Court
C.C.No.168/1997 Rajagopalan	U/s 420 IPC, 467 IPC and under Section 13 (2) r/w 13(1)(d) of PC Act	(i)To undergo one year RI and imposed fine Rs.50,000/- in default to undergo 5 months imprisonment under Section 420 IPC. (ii)To undergo two years RI and imposed fine of Rs.1,00,000/- in default to undergo 10 months imprisonment under Section 467 IPC. (iii) To undergo one year imprisonment and imposed fine of Rs.50,000/- in default to undergo 5 months imprisonment under Section 13(2) r/w 13(1)(d) of PC Act. (Total fine amount of Rs.2,00,000/-) The period of sentence was ordered to run concurrently.

Case No. & and Name of the accused	Conviction under Section	Sentence imposed by the trial Court
C.C.No.169/1997 Rajagopalan	U/s 420 IPC, 467 IPC and under Section 13 (2) r/w 13(1)(d) of PC Act	(i)To undergo one year RI and imposed fine Rs.40,000/- in default to undergo 4 months imprisonment under Section 420 IPC. (ii)To undergo two years RI and imposed fine of Rs.40,000/- in default to undergo 4 months imprisonment under Section 467 IPC. (iii) To undergo one year imprisonment and imposed fine of Rs.40,000/- in default to undergo 4 months imprisonment under Section 13(2) r/w 13(1)(d) of PC Act. (Total fine amount of Rs.1,20,000/-) The period of sentence was ordered to run concurrently.

Case No. & and Name of the accused	Conviction under Section	Sentence imposed by the trial Court
C.C.No.170/1997 Rajagopalan	U/s 420 IPC, 467 IPC and under Section 13 (2) r/w 13(1)(d) of PC Act	(i)To undergo one year RI and imposed fine Rs.50,000/- in default to undergo 5 months imprisonment under Section 420 IPC. (ii)To undergo two years RI and imposed fine of Rs.1,00,000/- in default to undergo 10 months imprisonment under Section 467 IPC. (iii) To undergo one year imprisonment and imposed fine of Rs.50,000/- in default to undergo 5 months under Section imprisonment under Section 13(2) r/w 13(1)(d) of PC Act. (Total fine amount of Rs.2,00,000/-) The period of sentence was ordered to run concurrently.

Case No. & and Name of the accused	Conviction under Section	Sentence imposed by the trial Court
C.C.No.171/1997 Rajagopalan	U/s 420 IPC, 467 IPC and under Section 13 (2) r/w 13(1)(d) of PC Act	(i)To undergo one year RI and imposed fine Rs.1,00,000/- in default to undergo 10 months imprisonment under section 420 IPC. (ii)To undergo two years RI and imposed fine of Rs.1,00,000/- in default to undergo 10 months imprisonment under Section 467 IPC. (iii) To undergo one year imprisonment and imposed fine of Rs.1,00,000/- in default to undergo 10 months imprisonment under Section 13(2) r/w 13(1)(d) of PC Act. (Total fine amount of Rs.3,00,000/-) The period of sentence was ordered to run concurrently.
C.C.No.172/1997 Rajagopalan	U/s 420 IPC	(i)To undergo one year RI and imposed fine Rs.20,000/- in default to undergo 2 months imprisonment under Section 420 IPC. The period of sentence was ordered to run concurrently.

In all the cases C.C.Nos 161 to 172 of 1997, the sentenced was ordered to run concurrently.

7.Aggrieved by the Conviction and sentence, these above 12 appeals have been preferred by the accused/appellant.

8.The Leaned Senior Counsel appearing for the appellant would contend that on the date of alleged offence, the appellant was not a Public Servant, he was transferred to M/s AVI Oil

India Ltd. on 01.11.1993 as per Ex.P.100. M/s AVI Oil India Limited is not a Government Company as defined under Section 617 of Companies Act, 1956.

9.Further, it is contended by the learned Senior Counsel that the judgment of the trial Court is perverse and bristles with non-application of mind, improper appreciation of evidence. The learned Judge had heavily relied upon inadmissible documents viz., Ex.P-6 confession statement alleged to have been given by the accused in the presence of Notary Public. It is also contended by the learned Senior Counsel that the appellant was transferred to M/s AVI Oil India Limited, but requested to assist M/s Balmer Lawrie & Co. Ltd. to supervise the financial affairs. Accordingly, to prefer appeal against the tax assessed, he requested the Head of the Department to allot fund to pay the Commercial Tax and prefer appeal. Accordingly, on each and every occasion, whenever there was an excess demand of Commercial Tax, he has duly informed PW-30 (S.Krishnamurthy) and on his approval, the money was withdrawn and the same was remitted in the Sub-Treasury. After submitting the challans for remittance of money, further proceedings was initiated before the Commercial Tax Department and the appeals were preferred before the Commercial Tax Department and the orders passed by the Department on the appeals were submitted to the office by this appellant periodically.

10.Though the prosecution contents that the Treasury challans marked as Ex.P89 to Ex.P99 are false and fabricated, there is no sufficient evidence to substantiate the said charge. Even without subjecting these documents for scientific comparison, merely based on the evidence of PW-36(N.Ravi) who has admittedly compared only the photocopies taken from Ex.P89 to Ex.P99 and not the original challans, the trial Court has come to a wrong conclusion that Ex.P89 to Ex.P99 are fabricated documents.

11.It is also submitted by the learned Senior Counsel that while discharging his duty, the appellant duly remitted the money into the Treasury and preferred the appeal against the respective tax assessments. The orders and proceedings of the Commercial Tax Department are marked as exhibits on behalf of the prosecution as well as on the side of the defence. Though it is alleged that these are also fake and fabricated, there is no substantiate evidence to prove this allegation. However, the trial Court, without due consideration of this lacuna in the prosecution case, has held the accused guilty and convicted him in each of the calendar cases as stated above. Hence, he sought for interference of the judgment of the trial Court and set aside the same on the ground of improper appreciation of evidence and for want of proof.

12.Per contra, the learned Special Public Prosecutor (for CBI Cases) appearing for the State would submit that the appellant being a public servant was discharging his public duty within the meaning of public servant as defined under Section 2 (b) and 2(c) of Prevention of Corruption Act, 1988. Though under Ex.P100 he was transferred to M/s AVI Oil India Limited to function as Company Secretary, he was also in the very same order instructed to continue the job of Deputy Manager (Finance) in M/s Balmer Lawrie & Co.Ltd. Pursuant to discharge of the said Public Duty in the Government Company, he had been entrusted the responsibility of withdrawing the money and remitted in the Treasury towards Commercial Tax levied upon the company. In the course of said discharge of official duty, the appellant has abused his official position and misrepresented to the General Manager PW-30(S.Krishnamurthy) that the Commercial Tax Department has caused demand notice against the Company or various amount on various dates levying excess tax and under pretext of challenging the tax assessment by paying the Commercial tax demanded as per condition to prefer the appeal against the assessment, he has fabricated the documents and letters addressed to the General Manager and made to believe him that the said amount has to be deposited in the Sub-Treasury.

13.Having withdrawn the money, based on the false letters, the appellant instead of remitting the said sum in the Treasury, had misappropriated it and fabricated the challen Ex.P-89 to Ex.P-99 to show as if he has remitted the money in the Treasury. He has furnished the photocopy of the fabricated challans which have been fabricated by him using superimposing technic and used the forged documents as genuine to cheat a total sum of Rs.13,41,536/-, this amount has been misappropriated by him which was entrusted to him for remittance in the Sub-Treasury.

14.In support of his argument, learned Special Public Prosecutor for CBI Cases would refer the deposition of the Sanctioning Authority P.Radhakrishnan (PW-1); the Handwriting Expert N.Ravi(PW-36); the General Manager of M/s Balmer Lawrie & Co.Ltd. S.Krishnamurthy (PW-30); the Notary Public, who has attested confession statement of the accused marked as Ex.P6 and examined as PW-8 (R.Thiagarajan); and PW-28 (Tapen Ghosh) who was working as Manager(Accounts) in the Corporate office of M/s Balmer Lawrie & Co.Ltd. At Calcutta during the year 1995.

15.PW-28 was asked to investigate the transactions during the years 1993-1995 pertaining to the appellant since there was complaint of irregularity and misappropriation of fund by him. His investigation has brought to light, how the Treasury challans were fabricated by the appellant and he recovered Ex.P89 and Ex.P99 from PW-30 and when these challans were shown and confronted with the appellant, he has admitted his guilt and confessed about his role in misappropriation of the company fund and fraudulent documents made by him to dishonestly and fraudulently induce the company to deliver sum of Rs.3,43,000/-. The said extra judicial confession statement is marked as Ex.P5. Again, the accused reiterated his previous statement which was notarised by PW-8 (R.Thiagarajan) will prove beyond doubt the criminality of the appellant and his guilt of committing offence under Sections 409, 420 and 467 IPC and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

16.The confession statements Exs.P5 and P6 had never been retracted, till he was questioned about the incriminating evidence found against him under Section 313 of Cr.P.C. This belated retraction at the advise of the counsel by itself sufficient to hold him guilty and the trial Court rightly held the appellant guilty and there is no need to interfere with the judgment of the trial Court.

17.Point for consideration:

In view of the grounds raised by the appellant, whether the trial Court judgment and conviction is sustainable?

18.The role of the appellant as Deputy Manager (Finance) of M/s Balmer Lawrie & Co.Ltd. during the relevant point of time is an admitted fact. The prosecution evidence proves the appellant has availed medical allowance of Rs.15,000/- for treatment of his father, wherein he has signed in the claim form as Deputy Manager (Finance), M/s Balmer Lawrie & Co.Ltd. Even after his formal transfer to M/s AVI Oil Indian Limited on 01.11.993. Further it is also proved and admitted by the appellant that despite the transfer, he was asked to discharge the responsibility of Deputy Manager (Finance) at M/s Balmer Lawrie & Co.Ltd., and he obliged to do so. His salary was paid by M/s Balmer Lawrie & Co.Ltd., and later the same was reimbursed by M/s AVI Oil Company to M/s Balmer Lawrie & Co.Ltd.. Therefore, it would be seen that despite the transfer under Ex.P100, the appellant continued to discharge the duty of Deputy Manager (Finance) of M/s Balmer Lawrie & Co.Ltd. and withdrawn the money from the account of M/s Balmer Lawrie & Co.Ltd. for payment of Commercial Tax in the Treasury account. Therefore, from the conduct as well as from the records, it is clear that the appellant was discharging the public duty within the meaning of Section 2(b) of the Prevention of Corruption Act, 1988. The appellant an employee of M/s Balmer Lawrie & Co.Ltd., a Government Company was transferred to its sister concern namely, M/s AVI Oil India Limited in which M/s Balmer Lawrie & Co.Ltd, holds 25% of share and M/s Indian Oil Corporation holds another 25%. share. Both these companies are Government Company. Therefore, the appellant clearly falls within the meaning of “Public Servant” as defined under Section 2(b) r/w 2(c)(viii) of the Prevention of Corruption Act, since he was authorised to perform public duty in connection with Government Company viz., M/s Balmer Lawrie & Co.Ltd. Accordingly, the point raised by the learned Senior Counsel for the appellant that the appellant was not a public servant during the relevant point of time is not negatived in view of the above findings.

19.It is contended by the learned Senior Counsel appearing for the appellant that Exs.P4, P5 and P6 are relied on by the prosecution. A cumulative reading of Exs.P2 to P6 would clearly indicate that they were not written by the appellant with free mind, more particularly Ex.P5 though stated in the handwriting of the appellant and in the nature of confession, it is not signed by the appellant. As far as Ex.P6 is concerned, the appellant has affixed his signature in the typed stamp paper containing all the details. The necessity to get it attested before the Notary Public is unwarranted. This will clearly show that it has been done at the dictate of the investigation agency to fix the appellant.

20.Learned Special Public Prosecutor for CBI Cases would submit that Exs.P2 to P6 can never been considered as documents obtained under force or threat. These documents were executed by the appellant during the course of internal investigation and it is an extra judicial confessional document admissible in evidence. These documents admittedly have come into existence even before registration of the First Information Report and the content of the confession statement made by the accused in Ex.P5 and Ex.P6 are substantially corroborated by other documentary evidence marked by the prosecution. The evidence of Treasury Office witnesses and Commercial Tax Department would go to show that the remittance challans as well as the proceedings alleged to have been emanated on appeal to the Commercial Department are all fake documents. The belated retraction at the fag end of the trial during Section 313 Cr.P.C., proceedings is upon legal advise and need no consideration.

21.In this regard, this Court wish to extract the view expressed by the Hon'ble Supreme Court about the effect of a retracted confession, in Aloke Nath Dutta & Others v. State of West Bengal dated 12.12.2006:

> "CONFESSION GENERALLY:
>
> Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (i) voluntariness of the confession; (ii) truthfulness of the confession; (iii) corroboration.

This Court in Shankaria v. State of Rajasthan [(1978) 3 SCC 435] stated the law thus :

"22. This confession was retracted by the appellant when he was examined at the trial Under Section 313 Cr. P.C. on June 14, 1975. It is well settled that a confession, if voluntarily and truthfully made, is an efficacious proof of guilt. Therefore, when in a capital case the prosecution demands a conviction of the accused, primarily on the basis of his confession recorded Under Section 164 Cr. P.C, the Court must apply a double test:

(1) Whether the confession was perfectly voluntary? (2) If so, whether it is true and trustworthy?

Satisfaction of the first test is a sine quo non for its admissibility in evidence. If the confession appears to the Court to have been caused by any inducement, threat or promise such as is mentioned in Section 24, Evidence Act, it must be excluded and rejected brevi manu. In such a case, the question of proceeding further to apply the second test does not arise. If the first test is satisfied, the Court must before acting upon the confession reach the finding that what is stated therein is true and reliable. For judging the reliability of such a confession, or for that matter of any substantive piece of evidence there is no rigid canon of universal application. Even so, one broad method which may be useful in most cases for evaluating a confession, may be indicated. The Court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test."

Effect of a retracted confession :

We are not suggesting that the confession was not proved, but the question is what would be the effect of a retracted confession. It is now a well-settled principle of law that a retracted confession is a weak evidence. The court while relying on such retracted confession must satisfy itself that the same is truthful and trustworthy. Evidences brought on records by way of judicial confession which stood retracted should be substantially corroborated by other independent and cogent evidences, which would lend adequate assurance to the court that it may seek to rely thereupon. [See Paramananda Pegu (supra)] In Navjot Sandhu @ Afsan Guru (supra), this Court observed :

"32. As to what should be the legal approach of the court called upon to convict a person primarily in the light of the confession or a retracted confession has been succinctly summarised in Bharat v. State of U.P. Hidayatullah, C.J., speaking for a three-Judge Bench observed thus: (SCC p. 953, para 7) "Confessions can be acted upon if the court is satisfied that they are voluntary and that they are true. The voluntary nature of the confession depends upon whether there was any threat, inducement or promise and its truth is judged in the context of the entire prosecution case. The confession must fit into the proved facts and not run counter to them. When the voluntary character of the confession and its truth are accepted, it is safe to rely on it. Indeed a confession, if it is voluntary and true and not made under any inducement or threat or promise, is the most patent piece of evidence against the maker. Retracted confession, however, stands on a slightly different footing. As the Privy Council once stated, in India it is the rule to find a confession and to find it retracted later. A court may take into account the retracted confession, but it must look for the reasons for the making of the confession as well as for its retraction, and must weigh the two to determine whether the retraction affects the voluntary nature of the confession or not. If the court is satisfied that it was retracted because of an afterthought or advice, the retraction may not weigh with the court if the general facts proved in the case and the tenor of the confession as made and the circumstances of its making and withdrawal warrant its user. All the same, the courts do not act upon the retracted confession without finding assurance from some other sources as to the guilt of the accused. Therefore, it can be stated that a true confession made voluntarily may be acted upon with slight evidence to corroborate it, but a retracted confession requires the general assurance that the retraction was an afterthought and that the earlier statement was true"

(a)The statement of the appellant Ex.p5 and Ex.P6 during the departmental enquiry does not indicate any threat or sign of force exerted on the maker of the statement. The voluntariness could be easily seen from the conduct of the maker, who has consented to give a signed statement in the presence of notary public besides a unsigned statement. He never retracted his statement till he was questioned under Section 313 Cr.P.C. Even then, he had not stated how and by what manner his statement was not a voluntary one or which part of his statement is not true.

(b)In fact, the content of his statement is wholly true and every part of his statement is corroborated by documentary evidence. While so applying the test prescribed by the Supreme Court, this Court finds that the evidence for prosecution satisfies the test for accepting extra judicial confession, retracted during 313 Cr.P.C proceedings.

22.The delivery of Rs.13,41,536/- to the appellant on his representation is not denied by the appellant. After entrusting the money to the appellant, he is supposed to remit the money in the Treasury. Though he has produced documents Ex.P89 to Ex.99 as remittance challans. Now from the evidence of PW-1, PW-28, PW-30, it is well proved that those challans are not genuine documents. The handwriting expert PW-36(N.Ravi) has pointed out how these challans were fabricated. PW-21 has also deposed that the amount as found in the challans Ex.P89 to Ex.P99 were not remitted in the Sub-Treasury.

23.PW-36(N.Ravi) the handwriting expert has taken the photocopy of the disputed documents and having ascertained that the place of affixture of the seal and signature and the writings are identical, which is not possible, if it is genuine, but possible only by lifting the impression of the seal and signatures from some other documents. For the said reason, he has given opinion that these challans Exs.P89 to P99 are prepared in identical fashion by forging and they are not genuine documents.

24.The evidence given by PW-36, the deposition of PW-10, PW-13 and PW-19 from the Sub-Treasury and PW-21 from the Commercial Tax Department would go to show that there was no remittance in the Treasury as found in Ex.P89 to P99 and there was no such transfer of the fund to the Commercial Tax Department, pursuant to the alleged remittance under Ex.P89 to Ex.P99. Since the appellant has withdrawn the money, it is his duty and responsibility to satisfactorily explain that the money withdrawn by him has been properly remitted in the Treasury for Commercial Tax payment. The link of actual remittance and pursuant to the remittance of the tax, tax appeals filed before the Assessing Officer has not been prima facie established by the appellant though he has marked 25 exhibits on his side. These exhibits do not substantiate his defence that he in fact remitted the money in the Treasury and the challans, which are now relied on by the prosecution were given to him by the Treasury and he inturn submitted it to PW-30.

25.To extend the benefit of doubt to the appellant, there must be some positive evidence either from the Commercial Tax Department or from the Treasury that the amount withdrawn by the appellant from his company, were actually remitted in the Treasury. Since there is only evidence to show the negative that no remittance was made, this Court is unable to extend the benefit of doubt to the appellant.

26. In the light of the above discussion, this Court confirms the trial Court judgment that the appellant herein as a public servant has misconducted himself to obtain pecuniary advantage of Rs.13,41,536/- by inducing the company to delivery the said sum under the pretext of remitting Commercial Tax levied upon the company using forged documents as genuine and cheated a sum of Rs.13,41,536/-.

27.It is also proved by the prosecution that Ex.P89 to P99 are not genuine documents and the appellant has not produced the original challans but produced only photocopies. The said photocopies have been fabricated by him using superimposition technique and the same has been spoken by the Scientific Expert. Therefore, Crl.A.Nos.11134 of 2008 and 40 of 2008 to 50 of 2008 are liable to be dismissed.

28.In the result, Criminal Appeal No.1134 of 2007 and Criminal Appeal Nos.40 of 2008 to 50 of 2008 are dismissed. The judgment of conviction passed by the Additional Special Judge for CBI Cases, chennai in C.C.Nos.161 to 172 of 1997, dated 29.11.2007 are hereby confirmed.

29.The learned Senior Counsel appearing for the appellant would submit that the appellant had remitted the entire fine of Rs.14,30,000/- which is more than the amount alleged to have misappropriated by the appellant. Therefore, leniency may be shown in the sentence, taking note of the fact that the appellant has crossed 60 years and taking care of two mentally challenged children.

30. Having paid the fine amount of R.14,30,000/- which is little more than the money misappropriated by him and taking note of his age and his personal responsibility, this Court, while confirming the conviction, modifies the sentence imposed by the trial Court as under:

Case No.& Name of the Accused	Charges	Sentence imposed by the trial Court	On appeal, the sentence modified by this Court
C.C.No.161 of 1997 (Rajagopalan)	U/s 409 IPC, 467 IPC and under Section 13 (2) r/w 13 (1)(d) of PC Act	(i)To undergo one year RI and imposed fine Rs.30,000/- in default to undergo 3 months imprisonment under Section 409 IPC. (ii)To undergo two years RI and imposed fine of Rs.30,000/- in default to undergo 3 months imprisonment under Section 467 IPC. (iii)To undergo one year imprisonment and imposed fine of Rs.30,000/- in default to undergo 3 months imprisonment under Section 13(2) r/w 13(1) (d) of PC Act. (Total fine amount of Rs.90,000/-) The period of sentence was ordered to run concurrently.	(i)To undergo one year SI under Section 409 IPC. (ii)To undergo one year SI under Section 467 IPC. (iii)To undergo one year SI under Section 13(2) r/w 13(1)(d) of PC Act. Fine amount imposed by the trial Court remains unaltered. The sentence is ordered to run concurrently.

Case No.& Name of the Accused	Charges	Sentence imposed by the trial Court	On appeal, the sentence modified by this Court
C.C.No.162 of 1997 (Rajagopalan)	U/s 420 IPC, 467 IPC and under Section 13 (2) r/w 13 (1)(d) of PC Act	(i)To undergo one year RI and imposed fine Rs.10,000/- in default to undergo 1 month imprisonment under Section 420 IPC. (ii)To undergo two years RI and imposed fine of Rs.10,000/- in default to undergo 1 month imprisonment under Section 467 IPC. (iii)To undergo one year imprisonment and imposed fine of Rs.10,000/- in default to undergo 1 month imprisonment under Section 13(2) r/w 13(1) (d) of PC Act. (Total fine amount of Rs.30,000/-). The period of sentence was ordered to run concurrently.	(i)To undergo one year SI under Section 409 IPC. (ii)To undergo one year SI under Section 467 IPC. (iii)To undergo one year SI under Section 13(2) r/w 13(1)(d) of PC Act. Fine amount imposed by the trial Court remains unaltered. The period of sentence is ordered to run concurrently.

Case No.& Name of the Accused	Charges	Sentence imposed by the trial Court	On appeal, the sentence modified by this Court
C.C.No.163 of 1997 (Rajagopalan)	U/s 420, 467 IPC and Section 13 (2) r/w 13 (1)(d) of PC Act	(i)To undergo one year RI and imposed fine Rs.30,000/- in default to undergo 3 months imprisonment under Section 420 IPC. (ii)To undergo two years RI and imposed fine of Rs.30,000/- in default to undergo 3 months imprisonment under Section 467 IPC. (iii)To undergo one year imprisonment and imposed fine of Rs.30,000/- in default to undergo 3 months imprisonment under Section 13(2) r/w 13(1) (d) of PC Act. (Total fine amount of Rs.90,000/-) The period of sentence was ordered to run concurrently.	(i)To undergo one year SI under Section 420 IPC. (ii)To undergo one year SI under Section 467 IPC. (iii)To undergo one year SI under Section 13(2) r/w 13(1)(d) of PC Act. Fine amount imposed by the trial Court remains unaltered. The period of sentence is ordered to run concurrently.

Case No.& Name of the Accused	Charges	Sentence imposed by the trial Court	On appeal, the sentence modified by this Court
C.C.No.164 of 1997 (Rajagopalan)	U/s 420, 467 IPC and Section 13 (2) r/w 13 (1)(d) of PC Act	(i)To undergo one year RI and imposed fine Rs.10,000/- in default to undergo 1 month imprisonment under Section 420 IPC. (ii)To undergo two years RI and imposed fine of Rs.10,000/- in default to undergo 1 month imprisonment under Section 467 IPC. (iii)To undergo one year imprisonment and imposed fine of Rs.10,000/- in default to undergo 1 month imprisonment under Section 13(2) r/w 13(1) (d) of PC Act. (Total fine amount of Rs.30,000/-) The period of sentence was ordered to run concurrently.	(i)To undergo one year SI under Section 420 IPC. (ii)To undergo one year SI under Section 467 IPC. (iii)To undergo one year SI under Section 13(2) r/w 13(1)(d) of PC Act. Fine amount imposed by the trial Court remains unaltered. The period of sentence is ordered to run concurrently.

Case No.& Name of the Accused	Charges	Sentence imposed by the trial Court	On appeal, the sentence modified by this Court
C.C.No.165 of 1997 (Rajagopalan)	U/s 420 IPC, 467 IPC and Section 13 (2) r/w 13 (1)(d) of PC Act	(i)To undergo one year RI and imposed fine Rs.20,000/- in default to undergo 2 months imprisonment under section 420 IPC. (ii)To undergo two years RI and imposed fine of Rs.20,000/- in default to undergo 2 months imprisonment under Section 467 IPC. (iii)To undergo one year imprisonment and imposed fine of Rs.20,000/- in default to undergo 2 months imprisonment under Section 13(2) r/w 13(1)(d) of PC Act. (Total fine amount of Rs.60,000/-) . The period of sentence was ordered to run concurrently.	(i)To undergo one year SI under Section 420 IPC. (ii)To undergo one year SI under Section 467 IPC. (iii)To undergo one year SI under Section 13(2) r/w 13(1)(d) of PC Act. Fine amount imposed by the trial Court remains unaltered. The period of sentence is ordered to run concurrently.

Case No.& Name of the Accused	Charges	Sentence imposed by the trial Court	On appeal, the sentence modified by this Court
C.C.No.166 of 1997 (Rajagopalan)	U/s 420 IPC, 467 IPC and under Section 13 (2) r/w 13 (1)(d) of PC Act	(i)To undergo one year RI and imposed fine Rs.30,000/- in default to undergo 3 months imprisonment under section 420 IPC. (ii)To undergo two years RI and imposed fine of Rs.30,000/- in default to undergo 3 months imprisonment under Section 467 IPC. (iii)To undergo one year imprisonment and imposed fine of Rs.30,000/- in default to undergo 3 months imprisonment under Section 13(2) r/w 13(1)(d) of PC Act. (Total fine amount of Rs.90,000/-) The period of sentence was ordered to run concurrently.	(i)To undergo one year SI under Section 420 IPC. (ii)To undergo one year SI under Section 467 IPC. (iii)To undergo one year SI under Section 13(2) r/w 13(1)(d) of PC Act. Fine amount imposed by the trial Court remains unaltered. The period of sentence is ordered to run concurrently.

Case No.& Name of the Accused	Charges	Sentence imposed by the trial Court	On appeal, the sentence modified by this Court
C.C.No.167 of 1997 (Rajagopalan)	U/s 420 IPC, 467 IPC and Section 13 (2) r/w 13 (1)(d) of PC Act	(i)To undergo one year RI and imposed fine Rs.50,000/- in default to undergo 5 months imprisonment under Section 420 IPC. (ii)To undergo two years RI and imposed fine of Rs.1,00,000/- in default to undergo 10 months imprisonment under Section 467 IPC. (iii) To undergo one year imprisonment and imposed fine of Rs.50,000/- in default to undergo 5 months imprisonment under Section 13(2) r/w 13(1) (d) of PC Act. (Total fine amount of Rs.2,00,000/-) The period of sentence was ordered to run concurrently.	(i)To undergo one year SI under Section 420 IPC. (ii)To undergo one year SI under Section 467 IPC. (iii)To undergo one year SI under Section 13(2) r/w 13(1)(d) of PC Act. Fine amount imposed by the trial Court remains unaltered. The sentence is ordered to run concurrently.

Case No.& Name of the Accused	Charges	Sentence imposed by the trial Court	On appeal, the sentence modified by this Court
C.C.No.168 of 1997 (Rajagopalan)	U/s 420 IPC, 467 IPC and under Section 13 (2) r/w 13 (1)(d) of PC Act.	(i)To undergo one year RI and imposed fine Rs.50,000/- in default to undergo 5 months imprisonment under Section 420 IPC. (ii)To undergo two years RI and imposed fine of Rs.1,00,000/- in default to undergo 10 months imprisonment under Section 467 IPC. (iii) To undergo one year imprisonment and imposed fine of Rs.50,000/- in default to undergo 5 months imprisonment under Section 13(2) r/w 13(1) (d) of PC Act. (Total fine amount of Rs.2,00,000/-) The period of sentence was ordered to run concurrently.	(i)To undergo one year SI under Section 420 IPC. (ii)To undergo one year SI under Section 467 IPC. (iii)To undergo one year SI under Section 13(2) r/w 13(1)(d) of PC Act. Fine amount imposed by the trial Court remains unaltered. The sentence is ordered to run concurrently.

Case No.& Name of the Accused	Charges	Sentence imposed by the trial Court	On appeal, the sentence modified by this Court
C.C.No.169 of 1997 (Rajagopalan)	U/s 420 IPC, 467 IPC and under Section 13 (2) r/w 13 (1)(d) of PC Act	(i)To undergo one year RI and imposed fine Rs.40,000/- in default to undergo 4 months imprisonment under Section 420 IPC. (ii)To undergo two years RI and imposed fine of Rs.40,000/- in default to undergo 4 months imprisonment under Section 467 IPC. (iii) To undergo one year imprisonment and imposed fine of Rs.40,000/- in default to undergo 4 months imprisonment under Section 13(2) r/w 13(1) (d) of PC Act. (Total fine amount of Rs.1,20,000/-) The period of sentence was ordered to run concurrently.	(i)To undergo one year SI under Section 420 IPC. (ii)To undergo one year SI under Section 467 IPC. (iii)To undergo one year SI under Section 13(2) r/w 13(1)(d) of PC Act. Fine amount imposed by the trial Court remains unaltered. The period of sentence is ordered to run concurrently.

Case No.& Name of the Accused	Charges	Sentence imposed by the trial Court	On appeal, the sentence modified by this Court
C.C.No.170 of 1997 (Rajagopalan)	U/s 420 IPC, 467 IPC and Section 13 (2) r/w 13 (1)(d) of PC Act	(i)To undergo one year RI and imposed fine Rs.50,000/- in default to undergo 5 months imprisonment under section 420 IPC. (ii)To undergo two years RI and imposed fine of Rs.1,00,000/- in default to undergo 10 months imprisonment under Section 467 IPC. (iii) To undergo one year imprisonment and imposed fine of Rs.50,000/- in default to undergo 5 months imprisonment under Section 13(2) r/w 13(1) (d) of PC Act. (Total fine amount of Rs.2,00,000/-) The period of sentence was ordered to run concurrently.	(i)To undergo one year SI under Section 420 IPC. (ii)To undergo one year SI under Section 467 IPC. (iii)To undergo one year SI under Section 13(2) r/w 13(1)(d) of PC Act. Fine amount imposed by the trial Court remains unaltered. The period of sentence is ordered to run concurrently.

Case No.& Name of the Accused	Charges	Sentence imposed by the trial Court	On appeal, the sentence modified by this Court
C.C.No.171 of 1997 (Rajagopalan)	U/s 420 IPC, 467 IPC and Section 13 (2) r/w 13 (1)(d) of PC Act	(i)To undergo one year RI and imposed fine Rs.1,00,000/- in default to undergo 10 months imprisonment under section 420 IPC. (ii)To undergo two years RI and imposed fine of Rs.1,00,000/- in default to undergo 10 months imprisonment under Section 467 IPC. (iii) To undergo one year imprisonment and imposed fine of Rs.1,00,000/- in default to undergo 10 months imprisonment under Section 13(2) r/w 13(1) (d) of PC Act. (Total fine amount of Rs.3,00,000/-) The period of sentence was ordered to run concurrently.	(i)To undergo one year SI under Section 409 IPC. (ii)To undergo one year SI under Section 467 IPC. (iii)To undergo one year SI under Section 13(2) r/w 13(1)(d) of PC Act. Fine amount imposed by the trial Court remains unaltered. The period of sentence is ordered to run concurrently.

Case No.& Name of the Accused	Charges	Sentence imposed by the trial Court	On appeal, the sentence modified by this Court
C.C.No.172 of 1997 (Rajagopalan)	U/s 420 IPC	To undergo one year RI and imposed fine Rs.20,000/- in default to undergo 2 months imprisonment under Section 420 IPC. The period of sentence was ordered to run concurrently.	To undergo one year SI under Section 420 IPC. Fine amount imposed by the trial Court remains unaltered.

31.Accordingly, the sentence is modified to the extent mentioned above. The sentence imposed in C.C.No.162 to 172 of 1997 (Crl.A.Nos.40 to 50 of 2008) is ordered to run concurrently along with the sentence imposed in C.C.No.161 of 1997 (Crl.A.No.1134 of 2007). Two months time is granted to the appellant to surrender before the trial Court to serve the remaining period of sentence, failing which, the trial Court is directed to secure the appellant/accused. The period of sentence if any already undergone shall be set off under Section 428 Cr.P.C.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To
1.The Additional Special Judge for CBI Cases, Chennai
2.The Deputy Superintendent of Police, SPE/CBI/ACB/Chennai.
3. The Special Public Prosecutor, High Court, Madras.

+2 ccs to Mr.K.Shankar Advocate sr 24899, 24898

Criminal Appeal Nos.1134 of 2007
& 40 to 50 of 2008

mg(co)
aa26/04/2018