Bail Slip

The appellants herein/Accused viz. J.Vasanthakumar(A1), S/o.D.Jayaraman, and R.S.Harishankar, (A2), S/o.Shanmugam, were directed to be released on bail as per order of this Court dated 15.02.2007, ordered in MP.No.1/2007 in Crl.A.No.156/2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.No.156 of 2007

1. J.Vasanthakumar
2. R.S.Harishankar ... Petitioners/Appellants/ 1st and 2nd Accused

Vs.

State rep.by:
Inspector of Police,
SPE:CBI:ACB:Chennai ... Respondent/Respondent/ Complainant

Prayer: Criminal Appeal is filed under Section 374 of Criminal Procedure Code, to set aside the conviction and sentence imposed upon them by the Additional Special Judge for CBI Cases, Chennai in C.C.No.4 of 2004 dated 31.01.2007 and allows the appeal.

For Petitioners : Mr.R.Shanmuga sundaram, Senior Counsel for M/s.M.Karthikeya Narayanan

For Respondent : Mr.K.Srinivasan Special Public Prosecutor(CBI Cases)

J U D G M E N T

This appeal is directed against the judgment of conviction and sentence passed by the trial Court in C.C.No.4 of 2004 dated 31.01.2007 on the file of the learned Additional Special Judge, CBI Cases, Chennai.

2. The trial Court, after considering the evidence let in by the prosecution, acquitted A3 of all charges. Whereas sentenced A1 and A2 to undergo one year rigorous imprisonment and pay fine of Rs.20,000/-, each in default to undergo three months simple imprisonment for the offence under Section 120B r/w 420 IPC, for offence under Section 468 IPC to undergo one year R.I and pay a fine of Rs.20,000/- each in default 3 months S.I. To undergo one year rigorous imprisonment and pay fine of Rs.20,000/- each in default simple imprisonment for three months for offence under Section 468, 471 IPC. To undergo one year rigorous imprisonment and pay a fine of Rs.20,000/- in default to undergo simple imprisonment for thee months, each for offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act. The Substantive sentence ordered to run concurrently. The period of sentence if any ordered to be set off u/s 428 Cr.P.C

3. Aggrieved by the above said judgment, A1 and A2 have preferred the present appeal raising various grounds both on facts and in law, questioning the legality of the trial Court judgment.

4. The main contention focused by the learned counsel for the appellant is that the charges against the appellants A1 & A2, who are working as Senior Divisional Manager and Record Clerk of United India Insurance Company Limited, is that they, in connivance, with A3-S.Mahadevan Proprietor of M/s Sri Balaji Stationery, Chennai-01, during the year 2001-2002, conspired to cheat United India Insurance Company and in furtherance of said conspiracy, dishonestly prepared false bills to a tune of Rs.2,07,230/- as if stationary papers and gifts were purchased from M/s.Sri Balajee Stationary and towards the payment of those bills, 13 account payee dates in favour of Sri Balajee Stationary drawn on 3 different banks and 3 different cheques were issued. Later, A1 fraudulently and dishonestly cancelled the account payee cheques and made them bearer cheques, enabling A2 to encash the same across the counter without depositing it in the account. Thus, A1 to A3 had committed offence of conspiracy to cheat with fabricated documents and used those as genuine. A1 and A2 being public servants, were also charged for offence under Section 13(1)(d) punishable under Section 13(2) of Prevention of Corruption Act.

5. The learned Senior counsel appearing for the appellants pointed out that though A3 the supplier of goods had been exonerated by the trial Court, for no reasons A1 and A2 were held guilty and the trial Court, without considering the statement of the accused given during 313 Cr.P.C., questioning,

which gives plausible explanation for cancelling the account payee endorsement of disputed 13 cheques, had arrived at the wrong conclusion.

6. It is further contended by the learned counsel that the prosecution has failed to prove the fact that the goods mentioned in the invoice for which the 13 cheques were issued not in fact really purchased but they are prepared for the purpose of cheating the Insurance Company. When invariably all the prosecution witnesses had deposed above the genuineness of the purchase of the articles mentioned in the bills and the audit report does not find fault with those purchases, no criminality is made out against these appellants. However, the trial Court had not considered all these facts and arrived at a wrong conclusion leading him to mis carriage of justice. Hence, seeks interference of the Court and setting aside the judgment of the trial Court, and allowing the appeal.

7. Per contra, the learned Special Public Prosecutor appearing for the C.B.I would submit that as a Regional Manager, A1 cannot purchase gift articles as per the Insurance Company Manual. Ex.P25, the manual of the United India Insurance Company, clearly prohibits purchase of articles for presentation. As a matter of policy, it should not be done and no expense in the nature of presentation of goods to be incurred by the divisional office. This prohibition found in the manual has been violated by A1. As Regional Manager, A-1 had no power to incur expenditure under the head presentation. Therefore he had purchased gifts and presentation from the 3rd respondent shop under the head stationery. Further more, the manual, mandates that payment voucher should be supported by original bills, invoices notes must be approved by the competent authority, chques over and above Rs.500/- should be sent under certificate of posting or registered post. A1 had not followed any of these procedures. He had drawn cheques in favour of Sri Balajee Stationary either from the account of the Regional Manager or G.G.Complex branch and had converted the account payee cheques into bearer cheques enabling encashment of the cheques by the record clerk who is arrayed as A2. Further, the prosecution has clearly established the entries found in the cheques and vouchers are in the hands of A1 and A2. Thereby, the preparation of false documents with intention to cheat United India Insurance Company and encashment of the account payee cheque converted into bearer cheques is proved by the prosecution. Hence, there is no reason to interfere with the judgment of the trial Court.

8. Heard the learned Senior counsel for the appellant and the learned counsel for the respondent.

9. Perused the records. The short point involved in this case is whether A1 is competent to purchase gift articles for the promotion of the company and if so, whether, the 13 cheques for a total sum of Rs.2,07,230/- were issued and encashed without any purchase of gift articles thereby cause wrongful loss to United India Insurance Company. Going through the evidence let in by the prosecution right from P.W.2, not all the officers of the insurance company had deposed that there is a total prohibition for the Regional Manager to purchase gift articles and complements to promote the business. In fact Ex.P25, the manual relied by the prosecution itself indicates that articles presented or intended for presentation where expenditure of each such articles is in excess of Rs.1,000/- (where it exceeds Rs.1,000/- 50% of the excess over Rs.1,000/- to be taken). Which means that there is implicit permission for the officer concerned to incur expenditure towards presentation with total limitation of Rs.1,000/- and as it is a matter of policy, no expenditure in the nature of presentation or gift is incurred by the Divisional Office.

10. However, in practice, it is admitted by the witnesses for the prosecution that gift articles were purchased by the branch manager and regional manager to enhance their business and keep good rapport with their customers. P.W.1 who has accorded sanction to prosecute the accused, admits that he has not taken any action against those Branch Managers, indulged in giving gifts and complements. Hence, there is no evidence to hold that purchase of gift articles for promotion of the company, is totally prohibited.

11. The next point to be addressed whether really there was any purchase of gift articles as found in the invoices marked as prosecution exhibits for which the payments through, 13 cheques were given.

12. When the deposition of the witnesses scrutinised, except P.W.18 and P.W.19, the branch manager in G.G.Complex, United India Insurance Company, Branch and others respectively has spoken about non purchase of the articles, even these two witness PW18 and PW.19 only say that the cheques were drawn from other branch as per the instructions of A1 but the gift articles were not for them. In this context it is relevant to point out the following facts which were elicited through cross examination of P.W.19. According to this witness, the divisional office can utilize the budget funds of the Branch Offices, if the funds available. Likewise, in the cross examination of P.W.18, Senior Branch Manager in the G.G.Complex branch of the company admits for promoting business and have good relation with the customer, the Divisional Manager as well as the Branch Manager used to give complements to the existing

and prospective customers. Even though, they were not allowed to purchase presentation articles and gifts through the Divisional Office fund they used to purchase gift articles and debit the said expenses under the head of stationary purchase.

13. Thus, it is proved by the defence that as a custom to keep their customers in good terms, gifts and presentations were given to them and expenditure used to be met out from the funds under the head of stationary purchase. If really there was any serious objection in handling of the fund, the internal audit report should have reflected the same. Contrarily, it has been elicited from the cross examination of P.W.2, P.W.6 and P.W.7 that there was no objection by the audit for the purchase of gift articles.

14. PW.8, Inbanathan, who was working as AAO and AO in the G.G.Complex Branch Office, during the relevant point of time admits that G.G.Complex and branch are under control of division VI (which was headed by A1). The said branches as well as Divisional office, VI are having target to do the business. To promote the business complements used to be given and those complements used to be purchased under the head Stationery. These complements, used to be purchased by divisional office and distributed to G.G.Complex and Bathula road office. P.W.18 had said that in their company, accounts are audited by three different auditors namely internal audit, statutory audit and AG Audit. While so, the charge against the appellants that they have created documents as if gift articles were purchased and cheques were drawn in favour of the 3rd accused falls to ground.

15. In this context, the statement of A3 given before the Court under Section 313 Cr.P.C., is also relevant for consideration. A3 categorically stated in his response to the questioning that he had supplied gift articles and for which he was paid under 13 cheques which are subject matter of this trial. While so, in the absence of proof that the articles and goods mentioned in the bills, for which payment made was really not supplied and in contrary, prosecution witnesses say that goods were supplied and used by the company for promoting its business. So, for violating the manual which is only directive in nature, which had been breached often than obeyed the action of the appellant cannot be criminally held liable.

16. For the above said reasons, this Court finds that the prosecution case is bound to be rejected. The trial Court has failed to appreciate the evidence in a holistic manner and has turned nelson's eye to the statement of A3 as well as P.W.2,

P.W.3, P.W.6 and P.W.7, who had not whispered anything about non supply of goods. In fact, the sanctioning authority had feigned ignorance about the maintenance of report for purchase of gift articles. In the light of the above lacuna, the conviction of A1 and A2 is non sustainable. Hence, the appeal is allowed and the conviction and sentence imposed on the appellants are set aside. The fine amount, if any paid, shall be refunded.

AT

Sd/-/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Additional Special Judge, CBI Cases, Chennai

2. The Inspector of Police,
SPE:CBI:ACB:Chennai

3. The Special Public Prosecutor (CBI),
High Court, Madras.

Copy to;The Section Officer,
Criminal Section, High Court, Madras

+1cc to Mr.M.Karthikeya Narayanan, Advocate Sr.No.7080
+1cc to Mr.K.Srinivasan, Special Public Porsecutor SR.No.7336

SSV(CO)
sm:12.3.2018