BAIL SLIP

The Appellant herein/accused Viz; S.Rajagoalan, S/o.Late C.P.Subramanian, was directed to be released on bail as per the order of this court dated 27.08.2009 made in MP.No.1 of 2009 in Crl.A.No.507/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :26.02.2018

Pronounced on :06.03.2018

Coram:

THE HON'BLE DR. JUSTICE G. JAYACHANDARN

Criminal Appeal No.507 of 2009

S.Rajagopalan .. Appellant/Single Accused

/versus/

The State represented
by Inspector of Police,
SPE, CBI, ACB, Chennai.
(RC No.37(A)/1991-SPE
CBI/ACB, Chennai) .. Respondent/Complainant

Prayer:Criminal Appeal is filed under Section 374(2) Cr.P.C. Against the judgment and orders of conviction passed in C.C.No.25 of 1998 by order dated 30.07.2009 on the file of the XI Additional Judge for CBI Cases, Chennai-1 and prays that the same may be set aside.

For Appellant :Mr.V.V.Ravichandran
For Respondent :Mr.K.Srinivasan
Spl.PP(CBI Cases)

J U D G M E N T

This appeal is directed against the judgment of conviction and sentence passed by the XI Additional Judge for CBI Cases relating to Banks and Financial Institutions, Chennai in C.C.No.25 of 1998, dated 30.07.2009 for the alleged offences under Sections 420 and 477 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, to undergo 1 year RI for each of the offences and imposed to pay a fine of Rs.1,000/- each in default to undergo RI for 3 months for the offence Sections 420, 477 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. Since the appellant is also found guilty in similar cases tried in C.C.Nos.22 and 23 of 1998, the period of sentence imposed in C.C.Nos.22/1998 and 23/1998 was ordered to run concurrently along with the sentence imposed in this case.

2. The case of the prosecution is that during 1989 to 1991, the appellant was working as a Clerk in Indian Overseas Bank, East Mada Street, Mylapore Branch, Chennai. He dishonestly induced the branch to deliver Rs.61,700/- by way of cheques issued by him in favour of his wife and mother from his own account maintained at City Union Bank, Mandaveli, Chennai. Knowing fully well that there is no sufficient balance in his account, he fraudulently and dishonestly credited the cheque amount into the Saving Bank Accounts of his mother and wife maintained at Indian Overseas Bank and later, withdrew the amount, which has been fraudulently credited to cheat the bank. He has fraudulently and dishonestly falsified the books of accounts of Indian Overseas Bank, East Mada Street for not entering the bounced cheque returned back for want of funds in Cheque Return Register and Saving Bank Account Ledger Book.

3. The said crime came into light, when CBI registered First Information Report on 31.12.1991 based on the reliable information that during December 1990 to November 1991, Manager [S.Vasudevan], Assistant Manager[Rakesh Lal], Special Assistant [S.Santhanam] and Clerk[S.Rajagopalan] of Indian Overseas Bank, East Mada Street Branch have entered into a criminal conspiracy to cheat the bank by committing offence of cheating, forgery and falsification of accounts by opening numbers of bank account in their names and their relatives and friends names in the Indian Overseas Bank, East Mada Street, Mylapore and also accounts were opened in other banks in the neighbourhood namely, Vijaya Bank, Mylapore, Indian Overseas Bank, Mylapore, State Bank of Hyderabad, Mylapore and City Union Bank, Mandaveli, etc., cheques were issued from those accounts in favour of S.Santhanam [A3], Special Assistant and S.Rajagopalan[A4] Clerk of Indian Overseas Bank. These cheques were presented in the Indian Overseas Bank, East Mada Street, Mylapore branch in Saving Bank Account maintained by S.Santhanam[A3] and S.Rajagopalan[A4]. The cheques were discounted, before it could be sent for collection and the Manager [Vasudevan], Assistant Manager [Rakesh Lal] have permitted the cheques to be discounted on the same day of presentation, when the cheques were dishonoured by the drawee bank "for want of fund". The cheques were again represented and again discounted. After making false entry, the returned cheques were destroyed. The accounts were fabricated as if the cheques were presented and realised after presenting for collection in the outstation bank. Prima facicely, the information received by CBI revealed that a sum of Rs.3,04,100/- had been cheated in the above said fasten, thereby causing wrongful loss to the bank and corresponding wrongful gain to the individuals, who were involved in the crime. The Manager and the Assistant Manager are part of conspiracy by permitting to purchase the bills, which sent into the accounts of S.Santhanam[A3] and S.Rajagopalan[A4].

4. After completion of the investigation, the prosecution has filed four separate final reports and the same were taken on file by the trial Court in C.C.Nos.22,23, 24 and 25 of 1998 wherein the prosecution were able to collect materials in which the appellant S.Rajagopalan[A4] had been arrayed as accused in C.C.Nos.22,23 and 25 of 1998 whereas S.Santhanam had also been arrayed as accused in C.C.No.24 of 1998.

5. In sofar as C.C.No.25/1998 is concerned, the appellant herein was found guilty by the trial Court as stated above. Aggrieved by the finding of the trial Court, the appellant herein has preferred the present appeal challenging the judgment and sentence imposed against him on the ground that while the First Information Report was registered against the Branch Manager S.Vasudevan[A1], Assistant Manager Rakesh Lal[A2], Special Assistant S.Santhanam[A3] and himself[A4], the prosecution, after investigation, has deleted the Manager and the Assistant Manager, who are arrayed as A1 and A2 from the prosecution though they were responsible for discounting the cheques presented.

6. The appellant herein, who is only the Clerk in the branch has been made as scapegoat by the superior officers. Though the case of the prosecution is that the cheques without sufficient fund were presented into the account of the appellant and encashed by him before realisation neither the Cheque Clearing Register nor the Cheque Return Register were produced by the prosecution. Even the subject cheques were not seized by the prosecution, but had conveniently alleged that the said cheques were destroyed by the accused persons.

7. The records alleged to have been seized from the appellants were in fact brought by the CBI officials, when they came into house of the appellants on 24.03.1993 under threat, the signature was forcefully obtained from him as if those documents were seized from him. There was no search or seizure from the appellant as contended by the prosecution. The trial Court has not considered these facts and the witnesses, who have signed the search list, were not cited as witnesses and examined by the prosecution.

8. It is the responsibility and discretion of the Branch Manager to discount the bills on the day of presentation and if any cheque discounted is dishonoured, it will be recorded in the concerned register and departmental action will be taken. In this case, there was no such action taken by the department or by the bank against the erring officials. However, the appellant, who is only the Clerk in the bank had no role in clearing section, had been treated as the accused and convicted by the trial Court, due to improper appreciation of evidence.

The evidence of PW-3[B.Krishnamurthy] ought not to have been relied on by the trial Court and failure of the prosecution to produce the vital documents should have rendered the case of the prosecution unbelievable, while the money alleged to have been misappropriated by him have been adjusted by the bank from his terminal benefits and Ex.D1 goes to show that the bank was not incurred any loss. Therefore, when the bank is not the complainant and no customer has given any complaint, based on the source information, CBI had registered the case and had picked and chosen the appellant alone for prosecuting and omitted the Manager and Assistant Manager against whom the First Information Report was registered and they had pivotal role in discounting the cheques, which was subsequently dishonoured.

9. The learned Special Public Prosecutor appearing for CBI cases would submit that the evidence of prosecution has clearly established that Ex.P1-cheque dated 08.07.1991 for Rs.18,000/- drawn in favour of S.Kalyani, mother of the accused was issued by the accused from his account maintained in City Union Bank Ltd., Mandaveli. The cheque was presented for collection on 08.07.1991 for credit into the saving bank account of S.Kalyani. The said cheque[Ex.P1] was returned unpaid from City Union Bank Ltd., Mandaveli Branch along with a Cheque Return Memo[Ex.P3]. However, this cheque was discounted and encashed by the appellant and he did not repay the money despite dishonouring the said cheque.

10. The cheques amount had been credited into Saving Bank Account No.361 in the name of S.Kalyaniammal and S.Rajagopalan; and SB A/c No. 2518 in the name of C.K.Lakshmi, W/o S.Rajagopalan. Thus, the cheque [Ex.P1] for Rs.18,000/- issued by the appellant has been credited into the joint account of appellant and his mother and later, siphoned out into the account maintained by the appellant, his mother and his wife C.K.Lakshmi. Similarly, Ex.P6 cheque, dated 11.05.1991 for Rs.3,000/- was issued by the appellant in favour of his mother Kalyaniammal deposited in the joint account of Kalyaniammal and the appellant later, withdrawn. But the said cheque was returned for the reason "funds not sufficient".

11. Ex.P10 cheque for Rs.14,000/- issued by the appellant drawn from City Union Bank Ltd. in favour of S.Kalyani was credited into the joint saving bank account of S.Kalyaniammal and the appellant S.Rajagopalan, on the same day the money was withdrawn, but the cheque was returned subsequently for the reason "funds not adequate". Ex.P13 cheque for Rs.4,000/- in favour of S.Kalyani was issued by the appellant and discounted on the same day, but was returned unpaid by City Union Bank Ltd.. Ex.P16 cheque for a sum of Rs.8,000/- was drawn by the appellant in favour of S.Kalyani. It was credited into the Saving Bank Account of S.Kalyaniammal and S.Rajagopalan. The cheque Ex.P18 for a sum of Rs.4,300/- was drawn by the appellant

in favour of his wife C.K.Lakshmi and the cheque was credited into the Saving Bank Account No.2518 in the name of C.K.Lakshmi, on the same day the cheque amount was also withdrawn.

12. Thus, the prosecution has proved issuance of cheques by the appellant in favour of his wife and his mother without adequate funds and depositing the same into the account of his mother and his wife later, withdrawing the money on the very same day, which had been proved both through documents and oral evidence. The Investigating Officer/PW-6[S.Vaidyanathan] had collected all the relevant documents and had marshal the witnesses to prove the case against the appellant and seizure of incriminating material from the appellant house has been spoken by independent witness (PW-4) S.N.Sukumar. The handwriting expert opinion has substantiated the case of the prosecution that the intention to cheat the bank, the appellant has issued the cheques as if he has sufficient funds in his account maintained in the City Union Bank Ltd. and had presented the cheque into the account of his mother and his wife discounted it misleading the Manager and Assistant Manager thereafter had fabricated the records as if the cheques were realised after collection.

13. Ex.P1 to P10 had been cogently spoken through PW-1 to PW-7. Whereas the defence witness DW-1[S.Krishnamurthy] Senior Manager, Personal Administration of Indian Overseas Bank had only spoken about the adjustment of the money misappropriated by the accused from his terminal benefit and for that purpose, No Due Certificate had been issued to A1, which has been marked as Ex.D1, which only reiterated the case of the prosecution.

14. Point for consideration:
Whether the trial Court judgment requires any interference?

15. Ex.P1-cheque for Rs.18,000/-, Ex.P2 statement of account in respect of Saving Bank Account No.361 of Indian Overseas Bank, East Mada Street, Mylapore, in the name of S.Kalyani ammal and S.Rajagopalan; and Ex.P5-Saving Bank Account No.2518 of Indian Overseas Bank, East Mada Street, Mylapore in the name of C.K.Lakshmi, W/o Rajagopalan indicates that the cheque of City Union Bank Ltd. Ex.P1 dated 08.07.1991 drawn by the appellant in favour of his mother Kalyani for Rs.18,000/- has been presented in Indian Overseas Bank and on 09.07.1991 and the same has been sent for clearance and the clearance chellan is marked as Ex.P4. This cheque for Rs.18,000/- though drawn in favour of S.Kalyani and discounted by the bank was not credited fully into the account of S.Kalyani in SB A/c No.361, while Rs.9,000/- has been deposited in the account of S.Kalyaniammal. The balance of Rs.9,000/- is credited into the account of C.K.Lakshmi bearing SB A/c No.2518. This cheque though got

bounced, the reverse entry has not been made.

16. Similarly, Ex.P6 cheque dated 11.05.1991 for Rs.3,000/- drawn in favour of S.Kalyaniammal had been deposited in to the Saving Bank Account No.361 and the same has been sent for clearance vide Ex.P9. The City Union Bank Ltd. has returned the cheque “fund not adequate” for chellan Ex.P6. Ex.P10 cheque for Rs.14,000/-, dated 14.06.1991; Ex.P13 dated 02.08.1991 for Rs.4,000/-; Ex.P16 dated 14.10.1991 for Rs.8,000/- are all cheques drawn by the appellant in favour of his mother S.Kalyaniammal. These cheque are drawn on City Union BankLtd. issued from his account bearing No.6556, which had been presented got discounted on the same day but returned as funds not arranged. Ex.P11 to P17 are receipts of clearing house and returned memo of City Union Bank. Ex.P18 cheque dated 03.09.1991 for Rs.4,300/- had been drawn by the appellant in favour of his wife C.K.Lakshmi. This cheque has been deposited into the account of C.K.Lakshmi's Saving Bank Account No.2518 on 03.09.1991. The paying chellan is marked as Ex.P19. This cheque immediately after being presented in the account of C.K.Lakshmi on 03.09.1991 the amount had been withdrawn on the very same day even before collection. The documents seized from the residence of the appellant, which are form part of the search list marked as Ex.P28 reveal that the Return Memo of the outstation bank and Indian Overseas Bank debit vouchers pertaining to these cheques had been seized from the house of the appellant to the mahazar.

17. On perusal of the deposition of prosecution witnesses, the seizure is spoken by independent witness by name S.N.Sugumar, who was Assistant Commissioner, Central Excise Office during the time of seizure and he had been presented at the premises on the request of CBI. He has identified the documents seized from the premises of the appellant as well as the seizure mahazar. Though the charges framed against him for Rs.61,700/-, the prosecution has proved a sum of Rs.51,300/- by way of Ex.P1 [Rs.18,000/-]; Ex.P6 [Rs.3,000/-]; Ex.P10 [Rs.14,000/-]; Ex.P13 [Rs.4,000/-]; Ex.P16 [Rs.8,000/-]; and Ex.P18 [Rs.4300/-].

18. PW-2[S.Vasudevan] has also deposed about CCO debit advice dated 15.10.1991 for Rs.8,000/-, which is marked as Ex.P20 and the cheque bearing No.077060, dated 31.07.1991 for Rs.1,078.40 drawn by the appellant in favour of Kalyani Travels is marked as Ex.P21. This cheque was also bounced on presentation. The another cheque bearing No.114400 for Rs.2,902/- dated 13.06.1991 favouring Poly Firms Process issued by Arasan Poly Industry drawn on TamilNadu Mercantile Bank is marked as Ex.P22. Cheque for Rs.1,300/- bearing No.997194 for Rs.1300/-, dated 13.06.1991 marked as Ex.P23 drawn in favour of PKSR Distributors issued by SAR Cycle Shop drawn on Syndicate Bank, Aminjakarai branch; CCO debit voucher and debit advice

dated 04.01.1991 for Rs.4,300/- and credit voucher for Rs.4,000/- dated 02.08.1991 for crediting Saving Bank Account No.361 in the name of S.Kalyaniammal.

19. From the evidence let in by the prosecution, misappropriation of Rs.51,300/- by presenting the cheques in the account of his mother and his wife, without sufficient funds and withdrawn those money, he has also fabricated the records screening the return of cheques for want of funds. Though the charge of misappropriation of Rs.61,700/-, the prosecution has able to prove only a sum of Rs.51,300/- by way of presenting Exs.P1,P6,P10,P13,P16 and P18.

20. While the appellant being the Clerk of the concerned branch who had access to the records had fabricated the documents and had cheated the bank by discounting the cheques without funds and destroyed the evidence by fabricating the records. In the said circumstances, while the prosecution has proved the guilt of the accused beyond any reasonable doubt, mere repayment of the money misappropriated or omission on the part of the prosecution for not proceeding against the Manager and Assistant Manager who had role in discounting the cheques unmindful of the fact that all the subject cheques discounted by them were returned for want of funds, will not exonerate the appellant from the guilt of offence charged against him. The trial Court has meticulously gone through the records placed by the prosecution and has come to a right conclusion. Hence, it is liable to be confirmed.

21. In the result, this Criminal Appeal is dismissed. The judgment of conviction passed in C.C.No.25 of 1998 dated 30.07.2009 on the file of the XI Additional Judge for CBI Cases, Chennai-1 is hereby confirmed. The sentence imposed on the appellant is ordered to run concurrently. As far as the sentence imposed on the accused viz., S.Rajagopalan in C.C.Nos.22 and 23 of 1998 is concerned, it shall run concurrently along with the sentence imposed in this case (C.C.No.25 of 1998). The trial Court is directed to secure the appellant to undergo for remaining period of sentence. The period of sentence already undergone if any is set off.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

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To

1.The XI Additional Special Judge for CBI Cases, Chennai.

2.The Inspector of Police, SPE, CBI, ACB, Chennai.
(RC.No.37(A)/1991-SPE CBI/ACB, chennai

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

copy to

The Section Officer,
Criminal Section
High Court, Madras

+1 cc to Mr.V.V.Ravichandran Advocate sr 16988

Crl.A.No.507 of 2009

ssv(co)
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