BAIL SLIP

The Appellant herein/accused Viz; S.Rajagopalan, S/o.Late C.P.Subramanian, was directed to be released on bail as per the order of this Court dated 27.08.2009, in MP.No.1/2009 in Crl.A.No.508/2009

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.508 of 2009

S.Rajagopalan .. Appellant/ist Accused

/versus/

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

Criminal Appeal is filed under Section 374(2) Cr.P.C. against the judgment and orders of conviction passed in C.C.No.23 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

The appeal is against the judgement of the trial Court in C.C.No.23 of 1998 convicting the appellant herein and sentencing to undergo 1 year RI and pay fine of Rs.1,000/- each for offences under Section 120-B r/w 420 IPC, 477-A IPC, 201 IPC and u/s 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

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

Based on reliable information, First Information Report was registered by CBI on 31.12.1991 (i) Shri.S.Vasudevan, Manager, (ii) Shri.Rakesh Lal, Assistant Manager, (iii)Shri.S.Santhanam, Special Assistant and (iv)Shri.S.Rajagopalan, Clerk-cum-Typist working in the Indian Overseas Bank(in short "IOB"), East Mada Street, Mylapore branch entered into conspiracy to cheat the bank and in pursuance to the said conspiracy, they opened numerous accounts in their names and that of their relatives name in IOB, East Mada Street branch and also in the banks at neighbourhood namely, Vijaya Bank, State Bank of Hyderabad, City Union Bank. Presented cheques of those banks into the accounts maintained by them and their know persons in IOB, East Mada Street knowing fully well that the cheques are presented without sufficient fund in the respective account. After presentation of the cheques without funds in the account, they were credited into and the same withdrawn immediately. After the cheques were bounces, for want of fund, the said amount were not debited back in the respectivel account. To avoid detection of the illegal act, the accounts were fabricated and falsified records were also destroyed or removed from the custody of the bank.

3. The investigation ended up in filing 4 separate final reports and the persons found to have involved in the crime. The trial Court has taken cognizance of the report in C.C.Nos.22,23,24 and 25 of 1998. This appeal is filed by the first accused/S.Rajagopalan in C.C.No.23/1998.

4. The final report and the charges framed in this case is that, A-1[S.Rajagopalan] as Clerk of IOB, East Mada Street, Mylapore, by abusing his official position, conspired with other accused fraudulently and dishonestly obtained cheques from A-2 to A-8 and A-9 Firm represented by A-4 and dishonestly credited the amount into his account bearing SB A/c No.1000 and others account. At the time of issuing the cheques, A-2 to A-8 were fully aware that they had no sufficient funds to honour the cheques. However, the cheques were credited into the respective accounts and the same was also withdrawn. Later, when the cheques were returned for insufficiency of fund, the accused did not make debit entry in the collection register and in the respective accounts, contrarily he destroyed the instruments to screen the crime. Thus, A-1 and others have cheated the IOB a sum of Rs.89,600/- thereby A-1 had committed offences punishable under sections 120-B r/w 420, 477-A and 201 IPC and 13(2) r/w 13 (1)(d) of Prevention of Corruption Act, 1988.

5. Before the trial Court, the prosecution has examined 11 witnesses and marked 59 exhibits. On the side of the accused one witness was examined and one exhibit was marked. After appreciation the evidence on record, the trial Court has convicted the appellant and sentenced as stated above.

6. The aggrieved first accused/S.Rajagopalan, in his appeal has contented that, the prosecution has proved conspiracy between the appellant and other accused. The appellant has no role in the presentation of cheques by the other accused and being discounted by the Manager and Assistant Manager exercising their discretionary power. He being a Clerk of the bank had maintained Cheque Clearance Register and Cheque Return Register. The prosecution has not filed these two registers, however for the lapse of the higher officials for exercising their discretionary power wrongly, this appellant is held responsible. The seizure memo which indicates that certain incriminating evidence were recovered from the residential premises of the appellant is not proved in the manner known to law. The independent witnesses accompanying the search team were not examined. The trial Court has failed to appreciate the fact that the entire amount alleged to have been cheated by him were recovered from his Provident Fund Savings and retirement benefits. No due certificate has also been issued to him and the same is marked as Ex.D-1, under the said circumstances, the judgment of the trial Court convicting him is liable to be set aside.

7. The learned Special Public Prosecutor for CBI cases would submit that, the money repaid is after suspension of the accused and after initiating criminal proceedings. The cheques without sufficient funds were credited into the account of the appellant and others and the same has been withdrawn by the appellant. To avoid detection of cheating, the appellant has opened several accounts in the name of his friends and relatives. The cheques were deposited into their account but the money from that account has been withdrawn by A-1. The evidence of PW-4 [S.Vasudevan], who has identified the writings of the appellant in Exs.P-5,P-15,P-22,P-23 and P25, recovery of incriminating materials Exs.P-5 to P-8, Exs.P-10, P-12,P-14, P-18 to P-21, Exs.P-24, P-25, Exs.P-27 to P-34, Ex.P-36 to P-38 and Ex.40 and P-41 sufficiently proves the guilt of the accused and the trial Court after proper appreciation of evidence has come to right conclusion hence, it has to be confirmed.

8. Point for consideration:

Whether the evidence let in by the prosecution does not prove the charges beyond reasonable doubt ?

9. The prosecution has proved that the cheques marked as Exs.P-2,P-3,P-5,P-7,P-9,P-11,P-14,P-21,P-28,P-29, P-31, P-33 and P-36 for total sum of Rs 89,600/- were presented in the respective accounts of the payee maintained in the IOB, EM Street, Branch but bounced for want of fund. The same has not been carried out by the appellant as Clerk of the bank. Instead some of the connected documents were found in his residence and seized during the search. The evidence of PW-4[S.Vasudevan] proves the case of the prosecution, the modus operandi of the crime.

10. The contention of the accused that the Manager and Assistant Manager are responsible for discounting the cheques, may be correct, but the failure to receive the cheques returned for want of fund and making appropriate entry in the Cheque Return Register is the responsibility of the appellant. It is proved through PW-7[S.N.Sukumar] that the returned cheques, memo for returning the cheques, credit and debits vouchers were found in possession of the appellant and seized during the search.

11. It is contented by the appellant that the evidence of PW-7[S.N.Sukumar] has to be rejected, since he is not an independent witness and the incriminating materials were in fact brought by the CBI with them and planted. This contention is to be rejected outright because in the search list Ex.P-46 both PW-7 and the accused/appellant have signed. The appellant having acknowledged the receipt of the search list copy, retracting the same not immediately but at the appellate stage cannot be countenanced.

12. S.Vasudevan , Manager (PW-4), B.Krishnamorthy, Special Assistant (PW-6) and Tmt.Padmapriya (PW-8) all bank officials who were working along with the accused during the relevant point of time have deposed that they are acquainted with the handwriting and signature of the accused and had spoken about the statement of account in the SB A/c No.1000 in the name of the accused, false credits made in the accounts of the accused, withdrawal immediately after the credit made by the accused or transfer to the account of the other accused to screen detection. The witnesses have identified the writings of the accused in Exs.P-15 , P-22, P-23 and P-35 all credit vouchers corresponding to the cheques in dispute.

13. Thus, the prosecution has proved beyond doubt that the appellant as Clerk of the bank along with other accused had

conspired to cheat the bank and had presented the cheques of the other accused without fund into his account and other friends accounts, got it credited in those accounts and dishonestly withdrawn the money. To screen the crime, he has taken away the documents to his home which has been recovered during the search proceedings. Therefore, this Court finds no merit in the appeal.

14. In the result, this Criminal Appeal is dismissed. The judgment of conviction passed in C.C.No.23 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 this appellant/S.Rajagopalan is concerned, the sentence imposed on the accused viz., S.Rajagopalan in C.C.Nos.22 and 25 of 1998 shall run concurrently along with the sentence imposed in this case (C.C.No.23 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(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Additional Special Judge for CBI Cases, Chennai.
2.The Inspector of Police, SPE, CBI, ACB, Chennai.
RC.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 16989

Crl.A.No.508 of 2009

ssv(co)
aa15/03/2018