BAIL SLIP

The Appellant herein/Accused Viz; S.Santhanam, S/o.M.G.S. Mani, was directed to be released on bail as per the order of this Court dated 27.08.2009 made in MP.No.1/2009 in Crl.A.No.509/2009

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.509 of 2009

S.Santhanam .. 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

Criminal Appeal is filed under Section 374(2) Cr.P.C., against the judgment and orders of conviction passed in C.C.No.24 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 by sole accused is directed against the judgment of XI Additional Judge for CBI cases at Chennai passed in C.C.No.24 of 1988, dated 30th July, 2009. S.Santhanam, the appellant herein, is found guilty of offences under Sections 420, 477A IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and sentenced to undergo one year RI and pay a fine of Rs.1,000/- for each offence in default 3 months RI.

2. The case of the prosecution :

Shri.S.Santhanam, while working as Clerk in Indian Overseas Bank, East Mada Street, Mylapore, Chennai, during the period 1989-1990, fraudulently and dishonestly lodged cheques and demand drafts in the Clearing Register even though no instrument was actually presented for collection and made ficititious entries giving some bank name and cheque number favouring his Savings Bank Account No. 424, in the joint account with his wife Saving Bank A/c No. 555 and in the account of his daughter Shanthi bearing Saving Bank A/c No.1820.

3. The modus operandi of the accused as spelt in the final report is that, the accused without any instrument (cheque) used to make false entry with fititious details in the Clearing Register maintained by the bank in respect of out station / other banks cheques deposited for collection. While the Central Clearing Office (in short "CCO") memo sent to clearing house for collection contain the actual number of cheques and the amount, in the carbon copy of CCO meant for office purpose made false entries as fabricated in the Clearing Register. The fabricated amount which are fraudlently made in the Clearing Register and carbon copy of CCO memo were credited into the Savings Bank Accounts Nos.424 or 555 or 1820 which stood in the name of the accused, the joint account of the accused and his wife, and his daughter respectively. To escape detection of the fabrication, the accused has taken the signatures of his higher officials in the original CCO memo and carbon copy of CCO separately.

4. Further, he dishonestly and fraudulently debited the demand bill purchase (in short "DBP") accounts without any instruments or entry in the DBP register and credited in the above mentioned accounts and withdrew the money. To conceal this fraud, he has inflated the CCO accounts in the CCO supplimentary and the day book and consolidate amount to cover up the bogus credit given. The total amount so cheated by fraud, fabrication and falsification of account was found to be to an extend of Rs.2,61,275/- .

5. To prove the charges framed against the accused for offences under Section 420, 477-A of IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act. 1988, the prosecution has examined 11 witnesses, marked 127 exhibits . On behalf of the accused, to prove the amount so credited into his account and his family members account were subsequently recovered and no due certificate was issued by the bank, one witness and one exhibit is marked.

6. The learned counsel appearing for the appellant would submit that, the First Information Report registered by the CBI though included the Manager Mr.Vasudevan and the Assistant Manager Mr.Rakesh Lal as accused, later in the final report, they were excluded. It is the Manager and Assistant Manger, who

are responsible for the discounting the bills. Only they have the discretionary power of passing the cheques on the same day, while they were not prosecuted, choosing the Special Assistant who is subordinate to them and had no role in receiving the cheques or discounting to be prosecuted and held responsibilty for their action is unfair and unjust.

7. The amount alleged to have been cheated does not tally with the documents produced by the prosecution. The difference in Ex.P-24 and Ex.P-25 is not explained by the prosecution. A sum of Rs.85,000/- has been wrongly included in the charge for offence under Section 420 IPC. The day book maintained by the bank has not been produced by the prosecution to the Court. Only from the day book whether the entries as found in the CCO memo is correct or false could be ascertained. The prosecution without producing the day book which is the master record of the transactions of the bank, has charged him because some of the cheques were credited into his account and in his family members account. The importance of day book has been spoken by PW-4, PW-5 and PW-6. It is the day book which could reveal whether the entries made in CCO memo and clearing register are correct or not. The trial Court has failed to consider this vital lapse in the prosecution case.

8. Per contra, the learned Special Public Prosecutor for CBI cases would submit that, Ex.P-17, the statement of account for the SB A/c No. 55 which is in the name of the accused and his wife Mythili Santhanam, Ex.P-79, Saving Bank credit voucher dated 27.01.1990 in the name of Mythili Santhanam for Rs.2,000/-, Ex.P-80 Saving Bank credit voucher dated 22.12.1990 in the name of Mythili Santhanam for Rs.5,000/-, Ex.P-81 Saving Bank credit voucher dated 03.04.1990 in the name of Mythili Santhanam, for Rs.5,000/-, Ex.P-82 Saving Bank credit voucher dated 09.06.1990 in the name of Mythili Santhanam, for Rs.1,000/-, Ex.P-83 Saving Bank credit voucher dated 30.12.1990 in the name of Mythili Santhanam for Rs.10,000/- Ex.P-94 Saving Bank credit voucher dated 01.07.1991 in the name of Mythili Santhanam for Rs.15,000/-, Ex.P-95 Saving Bank credit voucher dated 03.08.1991 in the name of Mythili Santhanam for Rs.4,000/-, Ex.P-96 Saving Bank credit voucher dated 15.02.1991 in the name of Mythili Santhanam for Rs.3,200/- Ex.P-97 SB credit voucher dated 21.05.1991 in the name of Mythili Santhanam for Rs.3,500/-, Ex.P-98 Saving Bank credit voucher dated 08.10.1991 in the name of Mythili Santhanam for Rs.15,000/-, Ex.P-99 Saving Bank credit voucher dated 01.04.1991 in the name of Mythili Santhanam for Rs.10,000/-, Ex.P-100 Saving Bank credit voucher dated 18.03.1991 in the name of Mythili Santhanam for Rs.3,300/-, Ex.P-104 Saving Bank credit voucher dated 20.04.1990 in the name of Mythili Santhanam for Rs.2,000/-, Ex.P-105 Saving Bank credit voucher dated 07.05.1990 in the name

of Mythili Santhanam for Rs.8,000/-, Ex.P-106 Saving Bank credit voucher dated 13.06.1990 in the name of Mythili Santhanam for Rs.2,000/-, Ex.P-107 Saving Bank credit voucher dated 13.07.1990 in the name of Mythili Santhanam for Rs 2,000/-, Ex.P-108 Saving Bank credit voucher dated 31.10.1990 in the name of Mythili Santhanam for Rs.10,000/-, Ex.P-109 Saving Bank credit voucher dated 22.11..1990 in the name of Mythili Santhanam for Rs 10,000/- were all credited into the SB A/c No. 555.

9. Though the entries for the respective days in the clearing registers reflects the transaction, the cheques for these credit into the account of Mythili santhanam were not sent for collection. The original CCO memo send for collection does not reflect these transactions. Whereas, in the carbon copy of CCO memo the entries are made dishonestly by the accused to cover up his fraudulent act of wrong credit into his wife's account. The statement of account for SB A/c No.555 marked as Ex.P-17 further reveals the amount so credited fraudulently been withdrawn by the accused.

10. Ex P-78 is the statement of account for the SB A/C No.1820 which is in the name of Shanthi, daughter of S.Santhanam the appellant herein. Ex.P-84 is the Saving Bank credit voucher dated 09.07.1990 in the name of M.S.Shanthi for Rs.3,000/-. Back of this voucher, the cheque number 721819 and bank name as SBI is mentioned. In her account, the said amount is credited on 09.07.1990 and also withdrawn on the same day. Whereas in the clearing register for that date, 09.07.1990, the corresponding entry is written at the bottom as serial number 124, but scored off. In the original CCO memo Ex.P-48 sent to the clearing house only 123 instruments for a sum of Rs.1,46,717/- is mentioned. Whereas, in the carbon copy Ex.P-49, 124 istruments for a sum of Rs.1,49,717/- is mentioned.

11. Ex.P-103 is the Saving Bank credit voucher dated 25.01.1991 in the name of M.S. Shanthi for Rs.3,200/-. Back of this voucher, the cheque number 023325 and bank name is mentioned. In her account the said amount is credited on 25.01.1991 and also withdrawn on the same day. Whereas the clearing register for that date, the CCO memo original sent for collection and CCO carbon copy does not tally with each other, which proves that the said cheque was never presented but by making false entries in the books of account, the amount has been withdrawn.

12. Ex.P-112 is the Saving Bank credit voucher dated

15.06.1990 in the name of M.S.Shanthi for Rs.3,000/-. Back of this voucher the cheque number 815831 and bank name SBI Sr. Branch is mentioned. In Ex.P-78 the statement of account for SB A/c No.1820 the said amount is credited and the same has been withdrawn on the same day. In the clearing register for 15.06.1990, the corresponding transaction is mentioned in serial number 27. On that day the total number of instruments sent for collection is 49, While in original CCO memo marked as Ex.P-45 the correct number of instrument is mentioned for total sum of Rs.2,20,727.81, in the carbon copy of the CCO memo marked as Ex.P-46 the amount is mentioned as Rs.2,23,727.81/-. The amount fraudulently credited into the account of Mythili has been inflated in the carbon copy.

13. PW-5[B.Krishnamurthy] who was working with the accused for nearly 8 years had identified the handwriting of the accused in the vouchers and memo, which is corroborated by the hand writing experts opinion. The accused himself had admitted his guilt by repaying the money he misappropriated by his fraudulent act, hence the trial court judgment has to be confirmed.

14. Heard the learned counsel for the appellant anad the learned Special Public Prosecutor for CBI Cases and perused the materials on record.

15. The fraud committed by the accused is vividly demonstrated by the learned Special Public Prosecutor for CBI Cases through the documents exhibited before the Court. The act of cheating, falsification of account is well proved. The submission of the learned counsel for the appellant that non-production of day book is fatal to the prosecution, does not carry merit because, the clearing register for the respective transaction is placed before the Court. The credit vouchers and statement of accounts of the respective account holders in comparison with the CCO memo sent for collection clearly proves that without any instruments, false entries are made as if cheques were deposited and sent for collection. The witnesses from the bank had explained how the fraud has been committed by the accused by falsification of the accounts and documents. The documents are also exhibited substantiating their evidence.

16. The contention raised by the learned counsel for the appellant regarding the difference in Ex.P-24 and P-25 on analysis reveals, these two exhibits relate to CCO memos of the date 01.08.1990 prepared by the accused and signed by the Manager. In Ex.P-24 the original of the memo sent to the clearing house, the number of instruments is mentioned as 120

and the total sum is Rs.5,04,814/-. Whereas in the carbon copy Ex.P-25 which is retained with the branch namely IOB, TM Street, Mylapore the number of instruments is mentioned as 121 and the amount Rs.5,04,814/- is scored off and Rs.5,89,814/- is written. The corresponding entries made in the clearing register marked as Ex P-26, this Court finds that 121 instruments are received on that day for a total sum of Rs.5,89,814/-. While 120 instruments alone was sent for clearance as per Ex.24, the difference in number of instruments sent and collected is to be explained by the person, who has prepared the documents, Exs.P-25 and P-26. The prosecution has proved through its witnesses that these exhibits were prepared by the accused, therefore he is bound to explain how this inflation in number of instruments and amount occured since it is within his exclusive knowledge.

17. In this connection, PW-4[S.Vasudevean] has deposed how the accused has falsified the accounts to credit various amounts into the SB accounts Mythili, Santhi and Santhanam (accused). During the relevant point of time, the appellant/accused was in charge of clearing register and maintenance of general ledger.

18. The entries in the clearing register were made by the appellant. In so far as cheques which were credited into the accounts of the appellant and his family members in the SB A/c Nos. 555, 424 and 1820, were never seen the light of the day except, the credit vouchers prepared by the accused and the corresponding entries made in the clearing register and carbon copy of CCO memos. When the prosecution has proved the falsification of account, forging the document and illegal withdrawal of cash from the account without genuine deposit, the accused had only produced document to show he has repaid the amount so withdrawn subsequently and the bank has issued him no due certificate Ex.D-1. This cannot be taken as the explanation for falsification of accounts and forgery.

19. The question which is left open is whether such a fraud could have been committed without the connivence of the Branch Manager or Assistant Branch Manager who are empowered to purchase the bill and allowed the account holder to encash the amount on the same day. In all probablity, it is not. However, the prosecution in its wisdom has not proceeded against them, though they were shown as accused in the First Information Report. Will this can be a reason to acquit the appellant is the question that follows. In the opinion of this Court, it cannot. The beneficiary of the fraud is the accused and his family members. The prosecution in all fairness should have prosecuted not only the Manager and Assitant Manager of the branch, who have signed the original and carbon copy of CCO

memos separately, facilitating the falsification of accounts and permitted to discount the bills, but also should have prosecuted the other beneficiaries of the fraud. Therefore, for the reasons stated above, this Court finds no merit in the appeal.

20. In the result, this Criminal Appeal is dismissed. The judgment of conviction passed in C.C.No.24 of 1998 by order 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. 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

//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
HighCourt Madras

+1 cc to Mr.V.V.Ravichandran Advocate sr 16990

Crl.A.No.509 of 2009

ssv(co)
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