BAIL SLIP

The Appellant herein/Accused Viz; S.Rajagopalan S/o.Late C.P.Subramanian was direccted 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.570/2009

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.510 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.22 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.22 of 1998 convicting and sentencing the appellant herein to undergo one year RI and pay fine of Rs.1,000/- each in default in payment of fine, 3 months R.I for offences under Section 120-B r/w 420 IPC, 477-A IPC and 201 IPC and u/s 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and Section 420 IPC and for substantive offences under Sections 201 IPC, 477-A IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, 1 year RI and fine of Rs.1,000/- each and in default of payment, 3 months RI. The total fine imposed is Rs 5000/-. The period of sentence was ordered to run concurrently.

2. The case of the prosecution in brief:

Based on reliable information, First Information Report was registered by CBI on 31.12.1991 against (i)Shri.S.Vasudevan, Manager, (ii)Shri.Rakesh Lal, Assitant Manager, (iii) Shri.S.Santhanam, Special Assistant and (iv)Shri.S.Rajagopalan, Clerk cum Typist working in 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 the 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 is 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 respective account. To avoid detection of the illegal act, the accounts were fabricated and falsified also records were 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.22 of 1998 wherein the appellant and 6 others were arrayed as accused. Pending trial, second accused Smt.Rajeswari died. For the other accused except A-1, no appeal was filed.

4. The gist of the charges framed by the trial Court based on the final report is that, A1/S.Rajagopalan while working as Clerk as IOB, East Mada Street, Mylapore, Chennai-4, entered into criminal conspiracy with A2/Rajeswari, W/o T.V.Balakrishnan, Proprietor of M/s Jeybavani Enterprises having current Account No.3202 with IOB, East Mada Street, A3/Ramanathan, S/o V.Subramaniam, Private Individual having SB Account No.750 with IOB, East Mada Street, ERS account No.470 jointly with Smt.Chitra with Vijaya Bank, Mylapore, and SB Account No.1014 jointly with his father Shri.V.Subramaniam in IOB, East Mada Street. A-4/Jayaraman had SB Account No.1122 with SBH, Mylapore, jointly with Smt.Rajeswari, A5/Smt.V.Lalitha, W/o Shri Vetham had SB account No.154/13112 with SBI, Royapetta, A-6/Shri.S.Shankar, S/o Subramani had SB account No.7392 with UCO Bank, Mylapore and A-7/Shri.Venkatasubramaniam had SB account

No.1000 with Andhra Bank, Mohriees Road, during the period from 1989 to 1991, at Chennai and in furtherence of that criminal conspiracy, Shri.Rajagopalan/A1 fraudulently and dishonestly obtained blank signed cheques from A2 to A7 and credited the amounts into his acocunt No.1000 and his family members accounts namely, SB account No.2518 in the name of Smt.C.K.Lakshmi, SB account No.361 in the name of Smt.S.Kalyani and subsequently withdrawn the credited amounts from those accounts by A-1. At the time of issuing cheques by A2 to A7, it was well within their knowledge that there was no sufficient funds in their accounts and further A1/Rajagopalan did not debit the cheques in their respective account and thereby caused wrongful loss of Rs.1,05,600/- to IOB, East Mada Street, and corresponding wrongful gain to themselves.

5. Further, the cheques issued by A2 to A7 were sent for collection and the same were returned unpaid for lack of funds in their accounts and A1 fraudulently suppressed the returned cheques to the bank and did not bring the same into the bank records and further A1 destroyed some of the said cheques and some were recovered from his residence during the investigation.

6. To prove the charges, the prosecution has examined 9 witnesses and exhibited 81 documents. On the side of the defence, one witness was examined and one document was marked.

7. The trial Court having considered the evidence placed before it, has held all the accused guilty of the charges. While the first accused sentenced to undergo one year RI for each of the proved charge and the period of imprisonment to run concurrently. For the other accused it was imprisonment till the raising of the Court.

8. Aggrieved by the judgment of conviction, the first accused has preferred this appeal on the ground that, the prosecution has not proved conspiracy between the appellant and the other accused, the prime accused who were shown as A-1 (Mr.Vasudevan - Manager) and A-2(Mr.Rakesh Lal - Assistant Manager) in the First Information Report were excluded from prosecution. This appellant, who had no role in discounting the cheques and permitting the account holders to withdraw the money is tried for the offence. The Cheque Clearing Register and Cheque Return Register which are very essential documents in this case were not produced by the prosecution. This appellant whose responsibility to prepare the CCO register is falsely held for the offences of cheating, screening of evidence, falsification of accounts as if genuine to cheat and misconduct

of a public servant.

9. Per contra the learned Special Public Prosecutor for CBI Cases submit that, the accused on 11.09.1987 opened a savings bank account in the IOB, East Mada Street, Mylapore bearing SB A/C No.1000. The account opening form is Ex.P-1. He opened an account SB A/C No. 2518 in his wife C.K.Lakshmi name on 30.12.1989 and the account opening form is Ex.P-2. He opened another account jointly in his name and his mother Smt. Kalyaniammal on 06.07.1985. The account number is SB A/c No. 361. Likewise, the other accused also opened their account in IOB, East Mada Street.

10. Cheques Exs.P-14 for Rs.15,000/-, Ex P18 for Rs.7,000/-, Ex.P-21 for Rs.11,000/-, Ex.P-29 for Rs.14,000/-, Ex.P-34 for Rs.1,000/-Ex.P-39 for Rs.9,400/-, Ex.P-42 for Rs.9,000/-, Ex.P-46 for Rs.12,400/-, Ex.P-53 for Rs.9,000/- and Ex.P-55 for Rs.6,000/- knowing fully well that the drawer of the cheques has no funds, it was presented by the accused in his account or his wife account or his mother account whom ever name the cheque contain, got it discounted and withdrawn on the same day before it could be sent for collection.

11. These cheques were returned for want of fund. The appellant herein as Clerk of the bank ought to have debited the amount in the respective account, which he did not do. Contrarily, the amounts were withdrawn by him as soon as the money was credited into the respective accounts. To commit this fraud and cheating the other accused persons assisted the appellant by lending their cheque leaves knowing fully well, that they do not have enough money in their bank.

12. The trial Court, after considering the recovery of incriminating documents from the house search of the appellant which proves the guilty of screening the evidence. The evidence of PW-5 [S.N.Sukumar] an independent witness who has deposed about the recovery of materials during the search proceedings, Ex.P-62 search list and the evidence of PW-2, PW-4 and PW-6, who have deposed about the role of the accused in the crime of cheating, falsification of accounts and unlawful gain of Rs.1,05,600/- has rightly held the accused guilty of offences charged against him. Therefore, he submitted that, the trial Court judgment has to be confirmed.

13. Point for determination:

Whether the prosecution evidence is sufficient to prove the guilt of the appellant in view of recovery of entire due from him subsequently?

14. It is an admitted fact that Ex.P-4 is the statement of accounts for the SB accounts No.2518 , Ex.P-7 is the statement of accounts for the SB accounts No.361 and Ex.P-59 is the statement of accounts for the SB accounts No.1000 and these accounts are respectively in the name of C.K.Lashmi, Kalyaniammal and S.Rajagopalan and his daughter C.K.Lakshmi jointly. It is also not disputed that cheques for Rs.15,000/- (Ex.P-14), for Rs.11,000/- (Ex.P-21), for Rs.9,400/- (Ex.P-39) were drawn in favour of C.K.Lakshmi. The amounts were credited into the SB account No.2518 in the name of C.K.Lakshmi and withdrawn. However, those cheques were bounced for want of fund.

15. Similarly, Cheques for Rs.7,000/- (Ex.P-18), for Rs.14,000/- (Ex.P-29), for Rs.1,000/- (Ex.P-34), for Rs.9,000/- (Ex.P-42), for Rs.9,000/- (Ex.P-53) and for Rs.6,000/- (Ex.P-55) were drawn in favour of the appellant/accused S.Rajagopalan and the same has been credited into his account and withdrawn. These cheques were also bounced back for want of funds.

16. Cheques for Rs.12,400/- (Ex.P-46) drawn in favour of Kalyaniammal has been credited into her account and the same has been withdrawn. Later, the cheque got bounced but, the amount has not been debited. The corresponding credit vouchers, Cheque Return Memos are exhibited as documents by the prosecution and there is no challenge regarding these documents.

17. The depositions of PW-4 and PW-6 demonstrate the manner in which the appellant in connivance with other accused have falsified the accounts and cheated the bank. Merely because, the Manager and Assistant Manger allowed discounting of bills and they were not prosecuted cannot be a ground to let off the appellant, who is the beneficiary of the fraud and cheating. The repayment of the amount cheated also will not exonerate him, since the nature of crime is not only attracts IPC but also offence under the Prevention of Corruption Act. Therefore for the aforesaid reasons, this Court finds no merit in the appeal.

18. In the result, this Criminal Appeal is dismissed. The judgment of conviction passed in C.C.No.22 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/A1[Rajagopalan] is concerned, the sentence imposed on the accused viz., S.Rajagopalan in C.C.Nos.23 and 25 of 1998 shall run concurrently along with the sentence imposed in this case (C.C.No.22 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

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 16991

Crl.A.No.510 of 2009

ssv(co)
aa15/03/2018