BAIL SLIP

The Appellant/Accused namely N.Kamalahasan, was released on bail on 17.09.2009 in MP.1 of 2009 in CRL A.552 of 2009 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.07.2018

Pronounced on : 10.07.2018

Coram:

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.552 of 2009

N.Kamalahasan .. Appellant

/versus/

Inspector of Police,
Central Bureau of Investigation,
SPE, ACB,
Rajaji Bhawan, Besant Nagar,
Chennai. .. Respondent

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code praying to set aside the judgment of conviction and sentence passed against accused 7 by the Hon'ble XI Additional Special Judge for CBI Cases, Chennai in C.C.No.69 of 2001, dated 28.08.2009.

For Appellant :Mr.K.Kumar Sr.C.for M/s PC Harikumar Associates

For Respondent :Mr.K.Srinivasan, Spl.PP(CBI)

J U D G M E N T

This appeal is directed against the judgment of the XI Additional Judge CBI Cases relating to Banks and Financial Institutions, Chennai made in C.C.No.69 of 2001, dated 28.08.2009.

2. The appellant is the 7th accused. The other two accused namely Sukumaran (A3) and Ramadoss (A4) are absconding. The case against them and M/s Fast Forward Garments represented by its partners A3 and A4 has been split up and pending.

3. The trial Court had framed charges against this

appellant(A7) for the offences under Sections 120B r/w 420 IPC, 468, 468 r/w 471 IPC, 409 IPC, Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and Section 420 IPC.

4. The trial Court, after examining 23 witnesses on behalf of the prosecution and two witnesses on behalf of the defence and on perusal of 90 exhibits on behalf of the prosecution and 20 exhibits on behalf of the defence, had acquitted A1 and A6 of all charges and found the appellant/A7 guilty of offence under Section 420 IPC alone, while acquitting him from the first charge for the offence under Sections 120B r/w 420 IPC, 468IPC, 468 r/w 471 IPC and 409 IPC and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

5. The brief facts of the prosecution case:

Thiru.S.V.Malleswara Sastry, Chief Vigilance Officer of Andhra Bank gave a complaint to the Inspector of Police, SPE, CBI, ACB, Chennai against (i)G.Venkatakrishnan(A1); (ii)M/s Fast Forward Garments (A2); (iii) Shri.S.N.Sugumaran, Partner of M/s Fast Forward Garments(A3) and (iv)Shri Ramadass, Partner of M/s Fast Forward Garments (A4) alleging that G.Venkatakrishnan (A1), Chief Manager of Andhra Bank had extended packing credit and foreign bill purchase limit to an extend of Rs.10lakhs for M/s Fast Forward Garments during the month of March 1996 for the purpose of their business namely, export of ready-made garments against the orders placed by M/s AB Vista Inc. Knowing fully well that the documents furnished by the partners of M/s Fast Forward Garments are fabricated documents. Later, when the loan was not cleared, the internal investigation of the bank revealed that there is no firm in the name of M/s AB Vista Inc. existing in the given address and export order against which the loan was granted is also a fake document. The properties offered as collateral security for the said loan were found to be fabricated.

6. Based on the above complaint, investigation was conducted and final report was filed before the trial Court wherein G.Venkatakrishnan (A1), C.Srinivasa Rao(A2), L.A.R.Kaliappan(A3) and N.Kamalhasan(A4) were shown as accused. Pending trial, C. Srinivasa Rao died and the case against him got abated.

7. Based on the materials placed by the prosecution, 4 charges were framed against the accused person. The first two charges are in respect of this appellant which is extracted below for the sake of better understanding of the case:

"Firstly, that A1 G Venkatakrishnan,

Chief Manager, Andhara Bank, T.Nagar Branch, the split up accused M/s Fast Forward Garments, Ashok Nagar, Chennai represented by its partners the split up accused S.N.Sukumaran and N.Ramadass @ Ramesh, both partners of M/s Fast Forward Garments. A2 C.Srinivasarao, Bank's Approved Surveyor, A3 L.A.R.Kaliappan, Officer Andhara Bank, T.Nagar, Chennai, A-4 Kamalhasan, brother of S.N.Sukumaran and N.Ramadass @ Ramesh, conspired together at Chennai during the period from January, 1995 to November 1997 and in furtherance of that you cheated the Andhara Bank, T.Nagar branch in the matter sanctioning packing credit and purchased foreign bills for the purpose of export of readymade garments without verification of the bills and other connected documents and S.N.Sukumaran and N.Ramadass @ Ramesh, the partners M/s Fast Forward Garments submitted the false and fabricated documents and obtained Rs.10 lakhs as packing credit and withdrew the same by way of diverting into the account of M/s Venkateswara Textiles, M/s Sakthi Traders, M/s Madura Pack and M/s Swastik Enterprises that you A1 to A4 and the split up accused thereby committed an offence punishable U/s 120B r/w 420, 468, 468 r/w 471, 409 IPC and 13(2) r/w 13(1)(d) of PC Act, 1988.

Secondly, that you A2 to A4 and the split up accused during the period and place as mentioned in the first charge fraudulently and dishonestly cheated the Andhara Bank, T.Nagar branch, Chennai to with that the spilt up the accused M/s Fast Forward Garments, represneted by its Partners S.N.Sukumaran and N.Ramadass @ Ramesh, in the name of M/s Fast Forward Garments prepared bogus agreement dated 15.11.1995 false partnership deed, unaudied financial statement, stock statement and thereby induced to deliver the packing credit of Rs.10 lakhs and availed the same and not used for the purpose for which it was sanctioned and absconded. You A-2 C.Srinivasa Rao valuated the property of Shri N.Jayarama Reddy who stood as a guarantor by pledging his landed property as collateral security for sanction of above said loan in the name of M/s Fast Forward Garments. In your report dated 29.04.96 and 15.05.98, You A2 failed to assess the value of the land belonging to Shri.N.Jayarama Reddy given as collateral security to the loan and submitted valuation report boosting up the value of property measuring an area of 1.964 acres at Rs.25,53,000/- whereas the actual cost would be around Rs.40,000/- per acre. You A-3 L.A.R.Kaliappan, Officer, Andhara Bank, T.Nagar Branch, Chennai put up the note for sanction of packing credit limit to the Chief Manager, A-1 duty recommending the proposal. At the time of recommending you A-3 failed to verify the veracity of the agreement between the borrower and the land lord which proved bogus. You A-3 did not substantiate reason for accepting the project turn over of Rs.161 lacs. You A-3 had suggested that M/s A.B.Vista Inc. have issued export orders worth Rs.25.25 lacs to M/s Fast Forward Garments without ensuring the original orders received by M/s AB Vista Inc. like delivery schedule and specifications, etc. You A-3 have not ascertained the veracity of the export orders at least you A-3 should have insisted for production of export orders. You have not ascertained whether the irrevocable letter of credit was opened in the name of their bank and without getting all these things you have recommended for sanction of packing credit. The borrower split up accused has no previous experience in the export field which was well within your knowledge. You A-3 failed to mention in the process note that the party is new to the bank and they have no dealings with the bank and you failed to mention that the party has no previous experience. The co-application and the owner of the property are not related to the either of the partners i.e, S.N.Sukumaran and N.Ramadass @ Ramesh. You A3 failed to ascertain the reasons why the co-applicant is giving his property as security for S.N.Sukumaran and N.Ramadass @ Ramesh, You A-3 failed to ascertain the veracity of the valuation report given by A2 and in normal course bank will also go for secret verification of the valuation report through their secret agency. You A-4 N.Kamalhasan, brother of S.N.Sukumaran and N.Ramadass @ Ramesh, having account in the name of M/s Swasth Enterprises opened in Karur Vysya Bank, T.Nagar Branch, Chennai as proprietor. This account was opened vide account No.992 introduced by his brother. The proceeds of the packing credit of Rs.1 lac was transferred from M/s Fast Forward Garments to his Company thereby A2 to A4 and the spilt up accused caused wrongful loss of Rs.10 lacs to Andhra Bank, T.Nagar Branch, Chennai and corresponding gain to themselves and A2 to A4 and the split up accused thereby committed an offence punishable under Section 420 IPC and within his cognizance."

8. The trial Court, while acquitting this appellant from the charge of conspiracy had convicted him for the offence under Section 420 IPC. The trial Court has held that this appellant had opened bank account in the name of M/s Swastik Enterprises in Karur Vysya Bank, T.Nagar Branch showing himself as Proprietor. The proceeds of packing credit of Rs.one lakh had been transferred from M/s Fast Forward Garments to M/s Swastik Enterprises. Thus, this appellant along with his brother, who are the Partners of M/s Fast Forward Garments had caused wrongful loss to the Andhra Bank, thereby cheated the Andhra bank an offence punishable under Section 420 IPC.

9. The learned Senior Counsel appearing for the appellant had filed a detailed written submission pointing out the error in the trial Court judgment and a chart pointing out the inherent lacuna in the exhibits relied by the prosecution to prove the charge against the appellant. The learned Senior Counsel appearing for the appellant also would specifically point out that the bank account in the name of M/s Swastik Enterprises showing the appellant as the Proprietor was not opened by the appellant or with the knowledge of the appellant. To emphasis this point, the learned Senior Counsel appearing for the appellant would point out the account opening form (Ex.P-28) that the title of the account, the date on which the account was opened or verification column are left blank. There is no instruction regarding issuance of cheque book. However, the accusation of the prosecution is that out of Rs.10 lakhs advanced as packing credit, Rs.one lakh was transferred into the account of this appellant maintained in Karur Vysya Bank bearing account No.1092. In turn, the appellant has issued the cheque for Rs.1 lakh to M/s Fast Forward Garments. While in the account opening form [Ex.P28], nowhere the name of the M/s Swastik Enterprises is mentioned. No

reference about the cheque facility is mentioned. Relying Ex.P29 and Ex.P30-the letters perpetrated to have been sent by the appellant to Karur Vysya Bank, the trial Court has come to an erroneous conclusion that this appellant is privy to the team which has cheated the bank.

10. The learned Senior Counsel appearing for the appellant would also submit that the statement of account is a computer printout. Without necessary certificate about it authenticity which is mandatory under The Bankers' Books Evidence Act, 1891, the trial Court has relied upon these documents for holding the appellant guilty. The pay-in-slip for remittance and the cheque through which it is alleged that the packing credit money of M/s Fast Forward Garments had been siphoned through M/s Swastik Enterprises are not produced before this Court. Without any corroborative evidence to substantiate the entries made in the statement of account, the finding of the trial Court that the appellant is guilty of offence under Section 420 IPC is erroneous.

11. The learned Senior Counsel also would submit that the ingredient of Section 420 IPC has not been made out as against this appellant. There is no evidence to show that he had any intention of cheating the bank. Even according to the prosecution, it was M/s Fast Forward Garments and its partners (who are absconding and the case against them being spilt up) have availed packing credit facility by furnishing fraudulent and fake documents. Without any evidence to show that this appellant had any intention of cheating the bank or aided the accused to cheat the bank, the finding of the trial Court holding the appellant guilty of offence under Section 420 IPC is erroneous.

12. Per contra, the learned Special Public Prosecutor (for CBI) appearing for the respondent would submit that the appellant herein is none other than the brother of the absconding accused Ramadass and Sukumaran, who have floated the fictitious firm by name M/s Fast Forward Garments and availed packing credit from the Andhra Bank to the tune of Rs.10 lakhs. To siphon that money, this appellant has lend his name to open a bank account at Andhra bank in the name of M/s Swastik Enterprises, which is only a letter pad company without any trading activities. This account was introduced by one of the Partners of M/s Fast Forward Garments. After opening the account, out of Rs.10 lakhs packing credit, Rs.one lakh had been paid to the appellant. This money has in turn gone to the absconding accuse account through the cheque issued by this appellant.

13. Thus, the prosecution through its witnesses and

documentary evidence had established that the appellant had opened account in Karur Vysya Bank with the introduction of M/s Fast Forward Company. Received cheque for Rs.one lakh from M/s Fast Forward Company which was part of loan amount meant for packing credit. This money in turn paid to M/s Fast Forward Company. Without any trading, this amount has been transferred from M/s Fast Forward Company account to M/s Swastic account thereby the appellant has aided the M/s Fast Forward Company and its partners to illegally siphon the money. The trial Court has held that the documents furnished by the partners of M/s Fast Forward Company for availing loan are fake. M/s Swastik Enterprise is a non functional company floated for the purpose of siphoning the money. Therefore, the finding of the trial Court as against the appellant for the offence under Section 420 IPC does not require any interference.

14. Point for consideration:

Whether the prosecution evidence is sufficient to hold that the appellant had intention to cheat the bank at the inception and had cheated the Andhra bank along with the other accused?

15. The learned Senior Counsel appearing for the appellant argued at length and also submitted his written submissions touching upon all the points in his favour to set aside the trial Court judgment. To buttress his submission, the learned Senior Counsel appearing for the appellant also relied upon few judgments.

16. Due to inherent defect in the prosecution evidence there is no purpose in discussing at length the rival submissions. Hence, this Court is of the opinion that it is suffice to point out the grave error in appreciation of fact and law by the trial Court, which requires reconsideration of its finding holding the appellant guilty of offence under Section 420 IPC.

17. Ex.P-28 account opening form apparently an incomplete document. However, the signature of the appellant is found in Ex.P-28 and the same is not disputed by the appellant. He admits that his brother asked for his signature, so, he signed in the account opening form and his brother has misused the trust and had opened the bank account. The cheque perpetrated to have been issued in favour of M/s Fast Forward Garments by this appellant has not seen the light of the day. The computer generated statements of account marked as Exs.P39 and P40 do not carry the mandatory certificate under The Bankers' Books Evidence Act, 1891. At least the prosecution should have placed before the Court the other documents such as pay-in-slip,

withdrawal slip or cheque to substantiate the entries made in the statement of account.

18. There is no evidence adduced by the prosecution to indicate that this appellant had intention to cheat the bank nor there is material to show that the bank was induced by this appellant to deliver any valuable security thereby deceived by the act of this appellant. The entire case of the prosecution is that, to deceive the bank, the partners of M/s Fast Forward Garments had produced fake documents. After receiving the loan by deception they used the account of this appellant to siphon the money.

19. The learned Special Public Prosecutor appearing for the respondent would submit that, though there may not be evidence to prove this appellant directly induced the bank or deceived the bank, the prosecution has proved through evidence that his bank account has been used to siphon the money. The appellant sharing of common intention with other accused to cheat the bank is proved. The opening of bank account in the name of M/s Swastik Enterprises diverting the loan amount of M/s Fast Forward Company into the account of M/s Swastic Enterprises and transferring back to M/s Fast Forward Company are act done in furtherance of common intention. Hence, there need not be any specific charge against the appellant for abatement.

20. In this case, if the prosecution had proved with material facts that the account in which loan money of M/s Fast Forward Company diverted was opened by this appellant with knowledge in furtherance of common intention to cheat the bank, then the submission of the learned Special Public Prosecutor to apply the principle of vicarious liability as postulated in Section 34 of IPC might have attract. When the prosecution has failed to place material evidence to the above said effect, the plea of the Special Public Prosecutor does not warrant any consideration. Further more, the trial Court has acquitted this appellant from the charge of conspiracy. The prosecution has not filed any appeal against the acquittal. This finding of the trial Court regarding conspiracy charge has attained finality. In the light of the above finding, this Court holds that the trial Court judgment is liable to be set aside.

21. In the result, this Criminal Appeal is allowed. The judgment of conviction and sentence passed against this appellant(A7) by the learned XI Additional Judge CBI Cases relating to Banks and Financial Institutions, Chennai in C.C.No.69 of 2001, dated 28.08.2009 is hereby set aside. Fine amount if any paid by the appellant shall be refunded to him. Bail bond if any executed by the appellant shall be cancelled.

Sd/-
Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

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To:

1. XI Additional Judge CBI Cases relating to Banks and Financial Institutions, Chennai.

2. The Inspector of Police, Central Bureau of Investigation, SPE, ACB, Rajaji Bhawan, Besant Nagar, Chennai.

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

+1cc to Mr.K.SRINIVASAN, Advocate, S.R.No.45012
+1cc to Mr.P.C.HARIKUMAR & ASSO. Advocate, S.R.No.44784

Judgment made in
Crl.A. No.552 of 2009

GMR(CO)
TR(18/07/2018)