Bail Slip.

The Appellant namely M.S.S. Ramam, (Sole Accused in C.C. No. 106/2001) was released on bail vide order of this court dated 12.11.2008 made in M.P. Nos. 1 & 2 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.07.2018	Pronounced on:18.07.2018

Coram

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal No. 749 of 2008

M.S.S.Ramam ... Appellant/ Sole Accused

/versus/

The Inspector of Police,
SPE:CBI:ACB, Chennai.
Crime No.RC.No.49(A)/98 ... Respondent/Complainant

PRAYER : Criminal Appeal is filed under Section 374 (2) of Criminal Procedure Code, against the conviction and sentence imposed on the judgment dated 19.09.2008 made in C.C.No.1 of 2001 on the file of the learned Additional Special Judge for CBI Cases, Chennai.

For Appellant : Mr.I.Subramaniyam, Senior Counsel
for Mr.K.P.Ananthakrishna

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor (C.B.I)

J U D G M E N T

The appellant herein while functioning as Branch Manager in State Bank of India, Chennai Habour branch was placed under suspension w.e.f. 07.08.1998 for alleged fraud to a tune of Rs.21 lakhs by abusing his position as Branch Manager and making unauthorised credit entries in the account of M.L.Prasad and M.L.V.Ratnamala his son and daughter respectively. Later he withdrew the amount by adding him as one of the constitute of the said account. Out of 107 false credit entries, 93 entries were made by the appellant himself in the ledger sheet and also he had failed to make one debit credit of Rs.15,000/- dated

11.02.1997 which he later withdrew by making fictitious credit in Savings Bank A/c No.S-40 so as to screen the trail of money. It has also come to a light that the appellant while functioning as accountant in Park Town Branch during the period January 1997 to March 1998 had removed NSC, TDR's and other securities which was pledged by the loaners for availing overdraft facilities and made use of those securities to avail demand loan to a tune of Rs.1,55,000/- and for certain other misdeeds committed while serving as Accountant in the Park Town Branch and Manager in Habour Branch.

2. A complaint was lodged to the Superintendent of Police, C.B.I on 31.08.1998 by the Deputy General Manager, State Bank of India. On receipt of the complaint, C.B.I registered the First Information Report and took up the investigation. Since, the material collected during the course of investigation disclosed that this appellant with intend to defraud the bank got the Savings Bank No.27/803 opened in the name of M.L.Prasad and M.L.V.Ratnamala at State Bank of India Chennai, Habour Branch with specimen signature of M.L.V.Ratnamala alone and later dishonestly and fraudulently added his name as one of the constitute by abusing his official position as Branch Manager. He had made 71 fraudulent credit entries in the ledger account of Saving Bank No.27/803 aggregate to the amount of Rs.9,83,000/- between 30.01.1997 to 17.12.1997. On 11.02.1997 withdrawal of Rs.15,000/- from the said account caused to be omitted dishonestly by this appellant in the ledger sheet of State Bank of India in SB A/c.No.27/803. The amount fraudulently credited and amount fraudulently omitted to be debited from the SB account No.27/803 were withdrawn through withdrawal slips signed by the appellant for himself and also by forging the signature of his son M.L.Prasad in 16 cheques pertaining to this account. The final report had also placed material to show that the appellant had made three fraudulent credit entries for a sum of Rs.8,000/- Rs.3,000/- and Rs.4,000/-. Totally Rs.15,000/- in the ledger sheet of the staff A/c.No.S-40 during the period between January 1997 to March 1998. Later, he had withdrawn a sum of Rs.18,150/- from his staff Account No.S-40. To cover up the fraudulent act, the appellant had manipulated the entries in the Savings Bank day book for the period between April 1997 to December 1997. The General ledger for SB Account, General Ledger for Savings Bank Interest, SB Progressive for Staff ledger, SB Master Progressive Book for ledger, SB progressive book for ledger No.27 for the period from January 1997 to December 1997 thereby, obtained pecuniary advantage of Rs.10,13,000/- by abusing his official position.

3. On the basis of the final report, the trial Court had framed 13 charges against the appellant for the offences of forging the document, using the forged document as genuine,

forging of valuable security, dishonest use of forged document as genuine, cheating of State Bank of India to a tune of Rs.10,52,000/- for abuse of his official position as public servant for obtaining pecuniary advantage, 13 charges were framed for different distinct offence alleged to have been committed by the appellant.

4. To prove the charges, the prosecution has examined 14 witnesses marked 456 Exhibits. On behalf of the accused no defence Exhibits were marked.

5. The trial Court found the accused guilty of charges under Section 477-A of I.P.C, sentenced him to undergo R.I for a period of 1 year and a fine of Rs.1,00,000/- in default, to undergo R.I for a period of three months. (ii) Convicted under Section 467 of I.P.C sentenced him to undergo R.I for a period of one year and imposed a fine of Rs.1,00,000/- in default to undergo R.I for a period of three months. (iii). Convicted under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, sentenced him to undergo R.I for a period of three years and a fine of Rs.10,00,000/- in default to undergo R.I for a period of one year 9 months. The period of sentenced was ordered to run concurrently.

6. The appellant challenges the above judgment of conviction and sentence on the ground that the prosecution has failed to prove the charge of forgery against him. There is no evidence to show he forged documents. Solely relying upon the confession statements alleged to have given by the appellant which are marked as Ex.P.3 and Ex.P.4, the trial Court has held him guilty. The alleged confession statement given to the Assistant General Manager was not put to judicial scrutiny. The person who alleged to have recorded the statement was not examined before the Court. The non examination of M.L.Prasad and M.L.V.Ratnamala in whose account the credits entries were made and later withdrawn is fatal to the prosecution case. The prosecution has not conducted the investigation fairly and broadly. The credit entries and debit entries in the account cannot be done unilaterally by the Branch Manager. The entries in the disputed documents were not made by this appellant. His specimen signatures were not obtained for experts opinion. The entries made in the course of Official transaction cannot be suspected and based on a weak suspicion, the appellant cannot hold him guilty in the absence of substantiate evidence against him. The evidence of accountant PW.4 [Sampath] is untrustworthy. The sanction order to prosecute is not valid since PW.1 is not the competent authority to remove him from service. The culpability of the accused in making the alleged entries in the document has not been pointed out by the trial Court to justify conviction. Lastly the punishment imposed on him is excessive.

7. The learned Senior Counsel appearing for the appellant emphasised forcibly that the trial Court had heavily relied upon the extra judicial confession of Ex.P.3 and Ex.P.4 which bristles with infirmity and suspicion. The said confession is not free from threat, force and coercion. The person who has recorded the alleged confession had not deposed before the Court about the genuiness of the content and the manner in which it was recorded. The entries in the SB account No.27/803 are genuine and backed by records. To prove that the entries in this account are fraudulent credit entries, the prosecution ought to have placed materials evidence. The Court below without testing the veracity of the Exhibits relied upon by the witnesses examined by the prosecution had mechanically accepted the prosecution case.

9. The learned Senior Counsel appearing the appellant would vehemently argued that, the appellant as a Branch Manager has overall authority to supervise the affairs of the Branch. The entries made by him in the registers during the normal course of banking transaction cannot be pitted against him. After placing the appellant under suspension on 08.08.1998 under duress, the so called confession statements which are marked as Ex.P.3 and Ex.P.4 were obtained. They are not voluntary statements. In any event the sentence imposed on him is excessive. Having removed from service, he had been deprived of his pension and retirement benefit. In such circumstances, the fine of Rs.12 lakhs and sentenced to undergo Rigorous imprisonment for a period of three years is excessive and disproportionate, considering his age and the gravity of the offence.

10. Per contra, the learned Additional Public Prosecutor for C.B.I contented that the appellant herein as Branch Manager of Habour Branch had scientifically defrauded the bank and cleverly screened the fraud by manipulating the accounts and falsification of the day book entries. Being the supervising Officer in the bank, he had abused his official position and had included his name in the Savings Bank Account No.27/803 opened in the name of his son and daughter namely M.L.Prasad and M.L.V.Ratnamala with intention to defraud the bank. After opening the account in the name of his son and daughter, he had inserted his own name as E or S and started operating the account. Without any remittance, he had made 71 false entries in the ledger SB account No.27/803; totally a sum of Rs.9,83,000/- had been shown as balance in the said account by virtue of these 71 false credit entries. Apart from the said false entries, he had also omitted to make the debit entry in the said account for Rs.15,000/-. However, he had credited this Rs.15,000/- into his service account No.S-40 on three different occasions. The money so falsify credited into the SB Account,

withdrawn by the appellant periodically through withdrawal slips with his signature or through cheque with forged signature of his son. The commission of crime had been well proved beyond reasonable doubt by the prosecution through 14 witnesses and 454 Exhibits. It is incorrect to say that the trial Court had solely rely upon the confession statements of the appellant to convict him. In fact the appellant had given two confession statements admitted his guilt only to escape from criminal prosecution and pleaded mercy having caught red handed.

11. The evidence let in by the prosecution through documents identification of the writings and signatures of the appellant in the documents beside the confession statements the prosecution has proved the offence of forging the valuable security punishable under Section 467 of I.P.C and use of those forged document as genuine with dishonest intention. The cheques and withdrawal slips used by the appellant to withdraw the money which has been fraudulently credited in the said account is established through documents. The intention of cheating the bank to a sum of Rs.10,52,000/- is well found through the prosecution evidence. Therefore, the trial Court findings needs no interference.

12. Points for consideration

> "Whether the trial Court has erred in appreciating the evidence placed by the prosecution which requires interference?"

13. The prosecution through PW.1 [K.C.Rault] have marked the sanction order to prosecute this appellant. This witness is the Chief General Manager of State Bank of India and competent to take disciplinary action including removal from service of any Officers in the rank of Manager. At the relevant point of time the appellant was Manager of S.B.I, Habour branch, therefore PW.1 is the person competent to remove him. So this Court finds no defect in the sanction order, as far as competency of the sanctioning authority is concerned. As far as, the application of mind, this witness has spoken about his consideration of F.I.R. and the documents including statement of witnesses and application of mind over the subject matter and his satisfaction to accord sanction. Except suggesting that he is not the competent authority to grant sanction, there is no other question put by the accused in the cross examination. In the absence of any error or omission or illegality in the sanction order, the contention of the appellant questioning the validity of the sanction is liable to be rejected outright.

14. The Criminal case is set into motion based on the complaint given by R.Munusamy who has been examined as PW.2. He had deposed about the circumstance under which he gave the complaint to C.B.I which is marked as Ex.P.2. In his deposition the witness had categorically stated that during his investigation he found that the accused has abused his official position as manager of Habour branch and have made false entries in the account opened in the name of son and daughter. He has also spoken about previous conduct of the appellant who had committed fraud in the Park Town Branch while he was working as Accountant by removing the securities given by the loanies and making false credit entries in his ledger account and overdraft accounts. This witness has identified the two letters given by the appellant which are confession in nature. These letters are marked as Ex.P.3 and Ex.P.4. The perusal of these two letters which are dated 07.08.1998 and 31.07.1998 does not indicate any force or threat put on the appellant or retracted immediately after any threat, ceased. On the face of it, it appears to be a voluntary letter written in his own hand narrating the reason of raising the fictitious credit in the joint SB account, which stood in the name of his son and daughter. He had given his own reasoning for the said act of fraud. So far as the letter dated 31.08.1998 he has mentioned about his daughter illness which has forced him to spend huge amount on her medical expenses and to met out the expenses he started withdrawing the money from the OD account fraudulently and he had falsified the accounts to cover up the dishonest withdrawal. He had confessed about his misdeeds committed while as accountant in the Park Town branch, but had also confessed about other fraudulent withdrawals. He had requested to pardon him and also promised to make good the loss by raising fund from relatives and friends. In the bottom of Ex.P.4 after the signature appellant has reinforced saying that he has given this information on his own. Mr.Mohammed Joshi, Chief Manager and Raviendran, Manager had signed as witness.

15. It is contended by the learned counsel for the appellant that the non examination of these two witnesses is fatal to the prosecution and the trial Court ought not to have relied upon these two Ex.P.3 and Ex.P.4 for any purpose. When the appellant had given this letter on his own mentioning that he has given this information on his own accord and having not denied the genuineness of this document or content, it becomes an admitted fact and the prosecution need not examine any witness to reinforce an admitted fact. It is an afterthought on the part of the appellant to say that these letters are obtained under duress. Such a retraction of his previous confession ought to have come forth immediately after secession of alleged threat or fear. So far as the other letter dated 07.08.1998 marked as Ex.P.3 which is continuation of the earlier confession

letter, the appellant had added some more reason for his act of fraud and cheating. He say that due to heavy debt, he had incurred and pending for a long-time uncleared. He had fraudulently withdrawn money to a tune of Rs.18 lakhs by raising fictitious credit entries in the joint account standing in the name of his son, daughter and himself. He had further stated that he has spent the money for his personal expenditure and to repay the debts, which he has raised in Hyderabad and Madras. He has named few persons who has lent money to him. He had also stated that he has partly spent the money for his daughter's marriage. He has given the list of persons from who he has borrowed the money and finally he has promised to repay the balance amount. This Court is forced to discuss about these two documents not to rely upon this document in favour of the prosecution, but to know about the appellant herein, who had, after cheating the bank to a tune of Rs.10 lakhs had come forward with some sort of explanations and justification for his act of fraud with all sort for imaginary and in consistent explanation. He had cleverly delayed the process of initiating the criminal prosecution against him.

16. Since, a plea has been taken by the appellant that these two documents were not given by him voluntarily, this Court is forced to peruse these two documents. The purpose for which he has given and to find out whether it was given voluntarily or given to mislead the authorities and delay the inevitable. It is also incorrect to plead that witnesses to his confession letter 31.07.1998 was not examined. In fact one of the witness Dr.Mohammed Joshi was examined as PW.3 who had spoken about the misdeeds committed by this appellant as Accountant in Park Town Branch and as Manager in Habour Branch. He had categorically stated that on perusal of the accounts at the Habour branch and Park Town Branch for reconciliation, he found that a sum of Rs.3,04,853.63 stands as an out standing from the Park Town Branch to Harbour Branch. On verification of the transactions to the bank officials he found that no corresponding voucher in support of the said transaction available in the Habour Branch. He found that there is no current account number in the name of the accused in the Harbour Branch and IOR memo which originated from Park Town branch was not responded by the Habour branch. In the demand loan register he found that a loan in the name of the accused for a sum of Rs.94,000/- but there was no corresponding sanction order for the said loan from the authority competent to sanction loan and also there was no security for the loan. The loan has been sanctioned by the accused for himself without making any corresponding entry in the relevant books. Ex.P.6 and Ex.P.7 are the corresponding documents which speaks about the above said misdeed of the appellant.

17. On perusal, PW.3 deposition, it reveals that the account has been introduced by the appellant. The joint account in the name of M.L.Prasad and M.L.V.Ratnamala. However, M.L.Prasad has not signed in the application form but the photos of his son and daughter were affixed and the account has shown as either or survivor. In the SB account in ledger book Ex.P.9, the appellant has stealthily included his name as co-account holder by altering F or S instead of E or S. The appellant cannot faint ignorance about this alteration since the records were under his custody. The account is in respect of his family members viz his own son and daughter. He after the said manipulation had started operating the account. The withdrawal slips and the cheques used to withdraw the money stood in the credit of this account speaks volume about the role of the appellant regarding falsification of account and its withdrawal. PW.3 has also spoken about the other fraudulent entries made in the account No.27/803. The false entries as well as the fraudulent withdrawals has been proved by the prosecution through these witnesses. About the confession letter of the appellant, during the cross examination he has stated that after inspection of the Habour Office and unravelling the act of fraud committed by the appellant, he enquired the appellant. At that time, the appellant gave the statement to the suggestion that it was not voluntarily, and it was obtained by force, this witness has emphatically denied the suggestion.

18. PW.4 [P.Sampath] Officer of State Bank of India had spoken about the registers maintained in the Habour Branch while he was the Assistant Manager in the Branch and he had identified the registers such as cash receipt book, transfer scroll book, outward clearing registers, SB day book of State Bank of India, Harbour branch, SB progressive balance book of Harbour branch and Madras Port Trust, General ledger of SB Account, over draft account these registers which are marked as Ex.P.11 to Ex.P.29. He had deposed that the accused had started committed fraud from February 1997. On verification of Ex.P.24, he found that the writings at page 180 onwards were the handwriting of the accused. The entries made by the accused did not tally with the General Ledger. This witness has sent the alarming signal to the higher officials immediately after he found the fraud committed by the appellant and having identified the falsification of account done by this appellant. On his information, four officials from Zonal office had come to Harbour Branch and started verifying the Registers and Records. The accused, immediately after this had absconded and thereafter, surfaced after for some time and handed over the documents like general ledger, Interbank transaction book and outward clearing Register, SB progressive ledger, which was in

his possession and handed over to the investigation team. This witness at length had deposed about each and every entry found in the SB Account No.27/803, though which false credit entries were made and fraudulently money withdrawn. The deposition made at length by this witness identifying the Exhibits connected with the entries made in the SB A/c No.27/803 is unimpeachable.

19. Pointing the guilt of the appellant the prosecution has proved the entries to a tune of Rs.9,18,000/- into the SB Account No.27/803 are credit entries without backed by any actual remittance and the withdrawal of money through withdrawal slips and cheques by this appellant. This Court finds no force in the contention of the appellant seeking indulgence of this Court to interfere with the findings of the trail Court. Therefore, this Court dismiss the Criminal Appeal as devoid of merits.

20. The learned Senior Counsel appearing for the appellant would make a submission that taking note of the heath condition of the appellant, the sentence may be modified and leniency may be shown. This Court, does not find any justification either on law or any ground to entertain his request. Since, the crime committed by the appellant is in scientific manner and his attempt to get away from the prosecution, does not warrant any diligence. However, on humanitarian ground, considering his age and the medical report, the nature of sentence may be converted into Simple imprisonment instead of Rigorous Imprisonment and period of imprisonment, in so far as for offences under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act shall be reduced to two years instead of three years. The fine amount stands confirmed. The default sentence shall be Simple Imprisonment instead of Rigorous Imprisonment.

Conviction under Section	Sentence imposed by the Trial Court	Sentence modified by this Court.
Under Section 477-A I.P.C	To undergo R.I. for a period of 1 (one) year and imposed fine of Rs.1,00,000/- in default to undergo R.I for a period of 3 months.	To undergo S.I. for a period of 1 (one) year and imposed fine of Rs.1,00,000/- in default to undergo S.I for a period of 3 months.

Conviction under Section	Sentence imposed by the Trial Court	Sentence modified by this Court.
Under Section 467 of I.P.C	To undergo R.I for a period of 1 (one) year and imposed fine of Rs.1,00,000/- in default to undergo R.I for a period of 3 months.	To undergo S.I for a period of 1 (one) year and imposed fine of Rs.1,00,000/- in default to undergo S.I for a period of 3 months.
Under Section 13 (2) r/w 13(1)(d) of P.C Act, 1988	To undergo R.I for a period of 3 years and imposed fine of Rs.10,00,000/- in default to undergo R.I for a period of one year 9 months.	To undergo S.I for a period of 2 years and imposed fine of Rs.10,00,000/- in default to undergo S.I for a period of one year 9 months.

21. In the result, the Criminal Appeal No.749 of 2008 is dismissed. The Judgment of conviction passed by learned Additional Special Judge for C.B.I Cases dated 19.09.2008 made in C.C.No.1 of 2001 is hereby confirmed with above modification. The appellant shall surrender before the trial Court within 6 weeks to undergo the remaining period of Sentence.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

bsm
To

1. The Additional Special Judge [CBI Cases], Chennai.

2. The Inspector of Police,
SPE:CBI:ACB, Chennai.

3. The Superintendent, Central Prison
Puzhal, Chennai.

4. The Public Prosecutor, [C.B.I Cases]
High Court, Madras.

Copy to

The Section officer

Criminal Section, High Court, Madras 104.

Criminal Appeal No. 749 of 2008

SP(02/08/2018)