BAIL SLIP

The petitioner/Accused No.1 & 2 namely K.V.Suresh, aged 55 years S/o.K.Venkappa (A1) and Ranjith Kothari, aged 42 years (A2) were directed to be released on Bail as per Order of this Court dated 06/06/2006 and 30/05/2006 in Crl.M.P. No. 3582 of 2006 in Crl.A.No. 486 of 2006 and Crl.Mp.No. 3366 of 2006 in Crl.A.NO.460/06 on the file of this Honourable Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:13.03.2018	Pronounced on: 05.04.2018

Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal Nos.460 & 486 of 2006

K.V.Suresh ...Appellant/1st Accused in Crl.A.No.486 of 2006

Ranjith Kothari ...Appellant/2nd Accused in Crl.A.No.460 of 2006

/versus/

State by
The Inspector of Police,
SPE/CBI/ACB/Chennai.
(R.C.No.41(A)/1999) ... Respondent/Complainant in all the cases

PRAYER: Criminal Appeals are filed under Section 374(2) of Criminal Procedure Code, against the conviction and sentence passed by the learned II Additional District Judge [CBI cases], at Coimbatore, dated 11.05.2006 made in C.C.No.2 of 2001 as against the Appellants/A-1, & A-2 respectively.

For Appellant in Crl.A.No.486 of 2006 : Mr.V.Gopinath, Sr. Counsel for Mr.M.Balasubramanian

For Appellant in Crl.A.No.460 of 2006 : Mr.A.R.L.Sundaresan, Sr. Counsel for Mr.Sugumar R.Rajulu

For Respondent in all the appeals : Mr.K.Srinivasan Special Public Prosecutor [CBI]

COMMON JUDGMENT

These two Criminal Appeals are directed as against the judgment of II Additional District and Sessions Judge [for CBI cases], Coimbatore, rendered in Calendar C.C.No.2 of 2001 dated 11.05.2006.

2. Brief facts leading to the appeal

Based on the reliable information C.B.I had registered the First Information report in CC.RC.MA.1 1999 A 0041 dated 30.09.1999 that K.V.Suresh, Branch Manager of Vijaya Bank, Coonoor Branch, Niligiri District, had entered into criminal conspiracy with two private parties M/s.Ranjith Kothari,Proprietor of M/s.Ranjith Commercial Corporation Enterprises, Coonnor and N.Robin,Proprietor of M/s.Famil Enterprises, Conoor during the year 1998-1999. In pursuant to the said criminal conspiracy K.V.Suresh[A1] by abusing his official position as public servant as accepted and discounted the cheques/bills presented by the family members/business partners in the account of M/s.Ranjith Commercial Company to an extent of Rs.49,98,312/- far and in excess of sanction limit of Rs.25 lakhs. Similarly in respect of account of N.Robin [A2] group of companies K.V.Suresh[A1] has discounted the cheques to an extend of Rs.31,33,116/- in violation of power conferred on him.

3. While banking guidelines prohibits acceptance of dishonoured cheques except for collection [K.V.Suresh] A1 in order to help the co-conspirators namely Ranjith Kothari and N.Robin went on purchasing cheques and discounting them even after he was aware of the fact that cheques/bills purchased by him earlier were returned unpaid.

4. After completion of the investigation it was found that documentary bills were purchased by A1 [K.V.Suresh] violating the banking norms to favour A2 [Ranjith Kothari]. Several clear bill purchase done by A1 in case of Ranjith kothari were dubious and deceitful. Hence separate charges were filed for each kind of distinct transactions revealing, conspiracy, cheating, fraud and fabrication of records by abusing the official position. Insofar as present case in appeal is concerned the final report filed by the investigating agency in respect of two documentary bill purchases. The report taken on file by the Trial Court and assigned calendar case no.2/2001.

5. The sum and substance of the charge framed in C.C.No.2/2001 against the accused K.V.Suresh [A1] and Ranjith Kothari [A2] who are the appellants in Crl.A.No.486 of 2006 and Crl.A.NO.460 of 2006 respectively are, two forged and fabricated lorry receipts fraudulently and dishonestly prepared and

presented by A2 for Rs.2,49,606/- drawn on M/s.Ambiga Traders care of Parbath Kothari, A.T.Road, Calcutta and bill dated 23.09.1998 for Rs.2,48,708/- drawn on R.K.Traders Company Prathap Kumar Jain, No.138, Canning Street, Calcutta were dishonestly purchased/discounted by A1. These two bills as documentary bill purchase Bearing Nos.378/98 and 380/98 both dated 24.09.1998 were known to be accommodative in nature. The address of the drawee is not clear and shown as care of address. The proceeds of those bills were credited into the account of A2 even without collecting the bank charges. Immediately after credit of the proceeds of these two documentary bills into the account of A2, the amount has been withdrawn. These bills were purchased by A1 knowing full well that earlier bill of this account holder purchased by him returned dishonoured and the defaulter drawer M/s.Ambiga Traders, Calcutta was not a trader of repute. Thus, by discounting these two accommodative bills a sum of Rs.4,98,312/- was cheated putting Vijaya Bank, Coonoor Branch into wrongful loss.

6. Before the Trial Court, the prosecution had examined 13 witnesses both the accused have mounted the witness box and deposed in their defence. 54 documents were marked as prosecution Exhibits and one document as defence Exhibit. After considering the evidentiary value of the Exhibits and ocular evidence placed before it, the trial Court held both the accused guilty of the charges framed against them and imposed the following sentences.

A1-K.V.Suresh/1st Accused- to undergo one year R.I and fine of Rs.1,000/-, in default 3 months R.I for offence under section 120-B IPC r/w 420, 468, 468 r/w 471 IPC and section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, and also under section 13 (2) r/w 13(1) (d) of Prevention of corruption Act, 1988. The period of sentence ordered to run concurrently and the total fine amount to be paid Rs.2,000/-.

A2-Ranjith Kothari/2nd Accused- to undergo one year R.I and fine of Rs.1,000/-, in default 3 months R.I for offence under section 120-B I.P.C r/w 420, 468, 468 r/w 471 IPC and section 13(2) r/w 13(1)(d) of Prevention of Corruption Act. Under sections 420 IPC, 468 IPC and 468 r/w 471 IPC. The total fine amount to be paid is Rs.4,000/-. The period of sentence ordered to run concurrently.

7. Aggrieved by the said conviction and sentence A1 [K.V.Suresh] has preferred Crl.A.No.486 of 2006, A2 [Ranjith Kothari] has preferred Crl.A.No.460 of 2006.

8. The contention of the appellant in Crl.A.No.485 of 2006 [K.V.Suresh], Branch Manager, Vijaya Bank, Coonoor is that as Branch Manager he was empowered to purchase the bill upto Rs.10 lakhs and what he has done is in consonance with Banking rule. There is no direct or circumstantial evidence to show the 1st accused, Branch Manager entered into a criminal conspiracy with other accused.

9. Merely on suspicion or surmise inference has been drawn without cogent evidence to prove the charge of criminal conspiracy. There is no evidence to show the appellant/accused obtained any pecuniary advantage by corrupt or illegal means. Discounting of cheques are recorded in the registers maintained by the Bank. There is no proof to show the appellant/1st accused with dishonest intention or ulterior motive discounted the bills. There is no evidence to show this appellant abused his office to obtain any pecuniary advantage. The ingredient of offences for which this appellant charged were not prove beyond doubt. The sanction order to prosecute him is also defective since sanction to prosecute has been accorded by an Officer not competent to remove the appellant. The evidence given by this appellant before the Trial Court was not given due consideration while assessing the merit of the prosecution case. The entire transaction in all the three cheques were done in accordance with law and properly recorded. Dishonouring of the cheque which was purchased and discounted in anticipation is not an abnormal or extraordinary event in the course of banking transaction. Just because these three cheques returned for in-sufficient fund, it does not mean the purchase of these cheques were done with dishonest intention at the inception.

10. In his deposition A1 [K.V.Suresh] has contended that Ranjith Kothari was customer of Vijaya Bank even before he joined Vijaya Bank, Coonoor in the year 1995. As far as purchase of the documents namely lorry receipts and discounting the same, it is contended by the appellant in he has personally visited the lorry shed and verified the genuineness of the bill involved in this case. On earlier occasions, the Vijaya Bank, Calcutta had not communicated any difficulty in locating the drawee. No intimation regarding non-existence or difficulty in realizing the amount was expressed by Vijaya Bank, Calcutta Branch. The bills were kept at Calcutta Branch for more than 30 days without reporting it to Vijaya Branch, Coonoor Branch. There is ample evidence to infer that M/s.Ambiga Traders at Calcutta is the customer of Ranjith Kothari and they have involved in several transactions including the transaction covering the present lorry receipt purchased by the appellant. When about 15 persons were enjoying the documentary bill purchase facility in the Coonoor Branch of Vijaya Bank during the relevant point of time, and his limit to purchase

documentary bill was upto Rs.2.5 lakhs, no fault could be found in his discharge of his duty by purchasing the lorry bills in respect of M/s.Ambiga Traders and M/s.R.K.Traders of Calcutta.

11. The learned Senior Counsel for this appellant submitted that A2 [Ranjith Kothari] was enjoying cash credit limit of Rs.25 lakhs and he has furnished collateral security worth Rs.15 lakhs. While so, when more than 500 DBP's were purchased by A-1 during his tenure as Branch Manager, only four or five bills were not realized and pending realization of few bills is natural in any banking transaction. While the prosecution has failed to establish that this appellant had obtained any pecuniary advantage in these transactions, the benefit of doubt should be extend to him, even if there was any error of judgment in his action of purchasing the subject DBP's.

12. The Learned Senior Counsel appearing for the 2nd appellant [Ranjith Kothari] would contend that the lorry receipts produced as documentary bill purchase are all genuine and A-2 had availed the documentary bill purchase facility since he was enjoying the said facility with the bank for a long period and there was no default or irregularity in any of his other transactions. The bills were purchased following the usual procedure and there is no conspiracy between him and the Branch Manager to commit any offence.

13. The Learned Counsel would further contended that, the prosecution has failed to prove that the two lorry receipts presented for discounting are forged documents. There is no evidence placed before the trial Court to arrive at a conclusion that M/s.Ambiga Traders and M/s.R.K.Traders are non-existing firm. M/s.Ambiga Traders and M/s.R.K.Traders are not companies registered under Companies Act. Therefore the evidence of Registrar of Companies that no such company registered under him is of no relevancy to hold that M/s.Ambiga Traders and M/s.R.K.Traders are non-existing firms. In the absence, of cogent evidence to prove the charges of conspiracy and cheating, the Trial Court ought not to have convicted him. Therefore, the trial Court judgment has to be set-aside.

14. Per contra, the learned Special Public Prosecutor would submit that lorry receipts which is marked as Ex.P.10 and Ex.P.15 and other documents presented by A2 for discounting the Bills are proved to be forged documents through the evidence of PW.5 [M.K.Gupta]. A1 has purchased these two lorry bills which are known to be forged. The proceeds to these Bills were credited into the current account no.719of A2. The appellants herein contend that there is no reason for them to suspect the

genuineness of the lorry receipt purchased under documentary bills purchase nos.378/98 and 380/98, but the fact remains that after purchase of these two bills from A2 and giving credit into the account of A2, there is nothing on record to show that A1 had taken any steps to recovery the amount though knowing fully well that these two bills were not honoured and till date stands unpaid. Though there may be other legal process for recovering the money it will not absolve the accused persons who have dishonestly from the inspection had created documents to appear it as genuine and based on that forged document had induced the bank to credit the Bill proceeds into the account of A2. Therefore, the learned Special Public Prosecutor would contend that there is no error in the judgment of the Trial Court. Hence it has to be confirmed.

Points for consideration

Whether the Trial Court has properly considered the evidence placed before it to arrive at the findings of guilty?

15. The contention raised by both the appellants is that the entire transaction in consonance with the banking rule and if at all there is any default in payment the legal procedure is to recover the money by a Civil Suit. In this case, the Vijaya Bank had already initiated proceeding, for the recovery of money. Therefore, there is no trace of criminality or scope for prosecuting the appellant.

16. In the normal court of business such an argument is acceptable and due weightage should be given for such argument. Few failure in recovery of due, caused by error of judgment is permissible and such error cannot be escalated to the level of criminal liability. But in this case we find that there was report of irregularities in the affairs of Vijaya Bank, Coonoor Branch and therefore the head office was forced to depute C.P.Macando PW.2 to enquire into the irregularities in the Vijaya Bank, Coonoor Branch. Accordingly, PW.2 being the Senior Manager in the Regional Inspectorate, Chennai conducted investigation under the instruction of Deputy General Manager, Inspection Department. After scrutinizing the bills portfolio he found that the Documentary Bills Purchase No.379/98 and 380/98 were suspicious transaction. He had deposed about the procedure how documentary bill purchase should be done. He had deposed that Vijaya Bank, Coonoor Branch purchased DBP from M/s.Ranjith Commercial Company on 13.03.1998 under DBP No.71/98 drawn on M/s.Ambika Traders C/o Prapath Kothari, No.138, Canning Street, Calcutta, for Rs.78,692/-. In the demand bill purchase

register marked as Ex.P.6, the purchase of the said bills has been written and scored off on 06.10.1998 suggesting the bill has been returned unpaid. Normally bills are not purchased for Trader having care of address and bills of any trader returned unpaid will not be entertained to be purchased for discount for the subsequent transactions. PW.3 has also deposed that Prathap Kothari is the brother of Ranjith Kothari [A2]. The earlier bill purchased under DPN No.71/98 drawn by M/s.Ambiga Traders was "returned-unpaid" and debited into the OLCC Account No.26/98 of A2. As per normal banking procedure A1 should have not purchase bills drawn on the same drawee [M/s.Ambiga Traders] once bill returned unpaid.

17. The lorry receipt Ex.P.10 and Ex.P.15 issued in the name of All India Goods Transport Company at Coonoor also were subjected to scrutiny. It is proved through evidence that the lorry receipt which is marked as Ex.P.11 and Ex.P.15 [consignment note] bearing no.010815 dated 23.09.1998 is not a genuine document issued by All India Goods Transport Company, Coonoor.

18. PW.5 [M.K.Gupta] who is one of the partner of the said Transport Company has deposed that they don't have any branch at Coimbatore or Coonoor or Calcutta. However, he had an agreement with his maternal uncle to book consignment anywhere and he was operating his business at Coonoor for sometime. He stopped his business at Coonoor before the disputed transaction has taken place and so far as the consignment note number.100815 it was used by his company for transporting consignment from Jalandhar to Guwahati. However, the consignment note and number has been fraudulently used as if goods was transported from Coonoor to Culcultta.

19. Similarly, the consignment no.010814 was used by his transport Company for transporting consignment from Jalandhar to Siliguri whereas Ex.P.10 it has been forged and fraudulently shown as if under the consignment no.010814 goods were transported from Coonoor to Calcutta and the consignor name in both these documents is show as M/s.Ranjith Commercial Company.

20. In the light of the deposition of PW.5 [N.K.Gupta] who has categorically stated that at the time of the transactions found in Ex.P.10 and Ex.P.15, his transport Company had no agent to book any consignment and he had no address or no place of operation at Coonoor. Whereas, the first accused had deposed before the Court while examining himself as DW.1 that, he went to the lorry Office and found its existence. This itself would go to show that the transactions under scrutiny were not genuine and the fabricated documents as used as genuine to cheat Vijaya Bank, Coonoor. If really A1 [K.V.Suresh] had verified the existence of the lorry company he would have definitely found that there is no Office for All India Transport Company at

Coonoor. Furthermore, when the genuine lorry receipts indicating the transport of goods under the said consignment numbers are not from Coonoor to Calcutta, the case of the prosecution that these two documents are forged documents is proved to the gilt. The following circumstances [i]. Goods alleged to have transported through these consignment notes did not reach the destination. [ii]. The money discounted not realized from the consignor. [iii]. The evidence of the postman of the concerned area and the document referred by him would go to show that there is no A.T.Road in Calcutta and name of the roads are also furnished by the witness to show there is no A.T.Road. If really the transaction was genuine and for some reason the bill could not been honoured, the consignment note number found in the original lorry bill produced by the transport Company will not show different place of destination. The goods would have either delivered to the consignee or returned back to the consignor. None of these two event has happened in respect of these two lorry receipts discounted by A-2 in connivance with A-1.

21. Atleast, A2 [Ranjith Kothari] would have summoned his brother Prathap Kothari whose name is showed as care taker of M/s.Ambiga Traders to endorse the genuineness of the transaction and actual existence of M/s.Ambiga Traders at Calcutta. From the statement of accounts of M/s.Ambiga Traders as well as the M/s.Kothari Commercial Company the irresistible conclusion one would draw is that, all the bills which were discounted earlier are accommodative in nature without any genuine transaction. Transport bills were discounted and later on adjusted by some other transaction. At the end of the day, it is now found that a huge sum of money due from Ranjith Kothari and for such default the role of A1 who had purchased the bills both documentary as well as clear bills had led to wrongful lose to the Vijaya Bank. The 2nd bills purchased in respect of M/s.R.K.Traders, No.138, Canning Street, Calcutta, it has been proved though prosecution witnesses that the consignment found in the lorry receipt was not really transported and the letter send to M/s.R.K.Traders, No.138, Canning Street, Calcutta returned un-served and this fact is spoken by PW.6 [A.K.Asra], Postal Staff of Calcutta, GPO.

22. The learned Senior Counsels appearing for the appellants would point out the evidence of PW.8 [G.Baskaran] who is staff of A2, to prove that these goods were actually transported and the transaction of Goods through All India Goods Transport Company from Coonoor to Calcutta are genuine. In fact this witness has turned hostile and he have been cross examined both by the accused persons and also by the prosecution.

23. Interestingly, in the cross examination made by A2 [Ranjith Kothari], this witness admits [PW.8] that from

M/s.Ranjith Kothari Commercial Company, they used to send goods to M/s.Ambiga Traders and M/s.R.K.Traders at Calcutta. On several occasions they have transported goods through All India Goods Transport Company and one Sharma was administering the said Transport Company., he has further deposed that none of the goods send to M/s.Ambiga Traders and M/s.R.K.Traders, Calcutta were "returned undelivered" and he is also aware of the fact that the bills were discounted in favour of M/s.Ranjith Commercial Company. If this statement, is true, then the consignment covered under Ex.P.10 and Ex.P.15 ought to have reached Calcutta. M/s.Ambiga Traders and M/s.R.K.Traders would have taken delivery of the goods. The delivery cannot be effected without paying the money by the consignee at Vijaya Bank, Calcutta and it is an admitted fact that the bills were not cleared by the consignee at Calcutta. Further no remittance was made from Vijaya Bank, Calcutta to its Branch at Coonoor in respect of these two transactions. When there is no evidence to show the consignment was cleared on payment of the value shown and the goods was delivered at Calcutta, naturally the goods should have been re-transported back to Coonoor at the costs of the consignor. While positive evidence is placed by the prosecution that no goods were transported from Calcutta to Coonoor under Ex.P.10 and Ex.P.15. PW.8, the staff of A2 [Ranjith Kothari] admits that no goods was returned back to Coonoor undelivered from Calcutta. From these fact, one can easily arrive at a conclusion that the entire transaction covered under lorry receipts Ex.P.10 and Ex.P.15 are fictitious, that is the reason why the goods were not cleared by the consignee or either returned to the consignor.

24. A1 [K.V.Suresh] has approved the accommodative bills by purchasing it and crediting the proceeds in the account of M/s.Kothari Commercial Company owned by A2 [Ranjith Kothari] and had not taken any care to know about the whereabouts of the goods and had not taken any interest to square off the amount credited into the account of A2 [Ranjith Kothari] by debiting the bill amount.

25. On a cumulative assessment of the evidence, this Court holds that the judgment of the Trial Court is based on the evidence and prosecution has proved beyond doubt that A1 [K.V.Suresh] and A2 [Ranjith Kothari] had fabricated the lorry receipts and based on the fabricated and forged document using it as genuine discounted the bill and cheated Vijaya Bank to a tune of Rs.4,98,312/-. Hence, trial Court has arrived at a right conclusion. Therefore, this Court finds no reason to interfere in its finding.

26. In the result, these Criminal Appeal Nos.460 & 486 of

2006 are dismissed. The Judgment of conviction passed by learned II Additional District Judge for C.B.I cases, Coimbatore in C.C.No.2 of 2001 dated 11.05.2006 is hereby confirmed. The Trial Court is directed to secure the accused to serve the remaining period of sentence, if the accused fail to surrender himself within 60 days from today.

27. The period of sentence already undergone, if any is set off. The period of sentence imposed against K.V.Suresh(A1) and Ranjith Kothari(A2) in C.C.No.2 of 2001 dated 11.05.2006 confirmed in Crl.A.Nos.486 of 2006 and 460 of 2006 respectively is ordered to run concurrently along with the period of sentence imposed in C.C.No.3 of 2001 dated 11.05.2006 on the file of the II Additional District Judge(CBI Cases), Coimbatore and confirmed by this Court in Crl.A.Nos.485 and 461 of 2006 respectively.

Sd/-
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

bsm

To

1. The Inspector of Police,
SPE/CBI/ACB/Chennai.

2.The learned II Additional District Judge [CBI cases], Coimbatore.

3.The Principal Sessions Judge, Coimbatore.

4. The Special Public Prosecutor, High Court, Madras.

+1cc to Mr.D.Dorairajan, Advocate SR.No.25599
+1cc to Mr.Balasubramanian, Advocate SR.No.25425

Criminal Appeal Nos.460 & 486 of 2006

NMI(CO)
GN(18/04/2018)