IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :13.03.2018

PRONOUNCED ON :05.4.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.478 and 489 of 2006

K.V.Suresh .. Appellant in Crl.A.No.478 of 2006

N.Robin .. Appellant in Crl.A.No.489 of 2006

/versus/

State represented by the
Inspector of Police,
SPE/CBI/ACB/Chennai,
(R.C.No.42(A)/1999) ..Respondent in both Cases

Common Prayer: Criminal Appeal is filed under Section 374(2) of Cr.P.C.,to allow the appeal and set aside the conviction and sentence made in C.C.No.13 of 2003 on the file of the II Additional District Judge, C.B.I.Cases, Coimbatore dated 05.05.2006.

For Appellant :Mr.V.Gopinath, Sr.C.for Mr.M.Balasubramanian in Crl.A.No.478 of 2006

Mr.S.Ashokkumar, Sr.C for Mr.K.B.Arul in Crl.A.No.489 of 2006

For Respondent :Mr.K.Srinivasan, Spl.P.P. For CBI cases

COMMON JUDGMENT

Thiru.K.V.Suresh (A-1) and Thiru.N.Robin (A-2) have preferred these appeals against conviction and sentence passed in C.C.No.13 of 2003, dated 05/05/2006 on the file of II Additional District Judge (CBI cases), Coimbatore.

2. The case in brief:

On 30.09.1999, based on reliable information Mr.S.Billi Christodoss, Inspector of Police, CBI/ ACB/Chennai registered FIR in Crime No. RC MA1 1999 A 0042, against K.V.Suresh, Branch Manager, Vijaya Bank, Coonoor Branch, Nilgiiris District to the effect that, K.V.Suresh during 1998–99 dishonestly and fraudulently withdrawn a sum of Rs 24.75 lakhs from the OLCC A/c No. 36/1998 of M/s Nimbus Industries Limited and another sum of Rs.2.85 Lakhs from the Open Loan Cash Credit (in short "OLCC") A/c No.9/99 of M/s New Sheeba Jewellery by fabricating bogus debit slips. K.V.Suresh being a public servant, as Branch Manager of the Nationalised bank, was found to have abused his official position and committed criminal breach of trust and cheated the Vijaya Bank to a tune of Rs.27.60 lakhs and caused wrongful loss to Vijaya Bank disclosing *prima facie* commission of offences punishable under Sections 406 and 420 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

3. On completion of the investigation, Mr.S.Billi Christodoss(PW-10) filed two final reports one in respect of fraudulent withdrawal of cash from the account of M/s Nimbus Industries Ltd and another fraudulent withdrawal of cash from the account of M/s Sheeba Jewellers.

4. The subject matter of this appeal is in respect of the final report against K.V.Suresh(A-1) and Robin(A-2) in respect of fraudulent withdrawal of Rs.2,85,000/- from the OLCC No.9/99 of M/s New Sheeba Jewellers without the knowledge of the said account holders and by corrupt or illegal means transferred the proceeds by the internal debit slips and made payment to Robin (A-2) against the rules and regulations of the purpose/use of the debit slips in the Bank. On withdrawal of the said amount, A-2(Robin) dishonestly and fraudulently adjusted Rs.2,00,000/- to the Current Account No.27/98 of M/s R.B.Enterprises and Rs.85,000/- to the Current Account No.16/98 of M/s Jothi Medicals, Coonoor.

5. The trial Court took cognizance of the offences for trial in C.C.No.13 of 1999. Based on the materials placed by the prosecution, the trial Court framed 3 charges against the accused persons. Firstly, conspiracy charge against both the accused namely K.V.Suresh (A-1) and

Robin (A-2) for offence under Section 120-B IPC r/w 420 IPC and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. Secondly, the substantive charge for cheating under Section 420 IPC against A-1(K.V.Suresh) and A-2(N.Robin) for inducing Vijaya Bank, Coonoor branch to deliver Rs.2,85,000/- from the OLCC Account No.9 of 1999 of M/s New Sheeba Jewellers, through debit slip dated 12.02.1999 and thirdly, the substantive charge under Section 13(2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988 against A-1(K.V.Suresh) for abusing his official position to obtain pecuniary advantage of Rs.2,85,000/- for A-2(N.Robin).

6. The case of the prosecution is that in furtherance of criminal conspiracy, K.V.Suresh, Branch Manager of Vijaya Bank, Coonoor Branch authorised the internal debit slip dated 12.02.1999 signed by N.Robin and allowed to encash a sum of Rs.2,85,000/- from OLCC No.9/99 of M/s New Sheeba Jewellers, Coonoor maintained with Vijaya Bank, Coonoor Branch, without the knoweldge of the said account holder. Out of Rs.2,85,000/-, a sum of Rs.2,00,000/- credited into the current A/c No.27/98 of M/s R.B.Enterprises, Coonoor on 12.02.1999 and a sum of Rs.85,000/- credited into the C.C.A/c No.16/98 of M/s Jothi Medicals, Coonoor. The proprietor of New Sheeba Jewellers has not given any cheque or advice to Vijaya

Bank to transfer money from his account to R.B.Enterprises or Jothi Medicals. Mr.Jothilingam Partner of R.B.Enterprises and Proprietor of M/s Jothi Medicals, during the month of December 1998, at request of A-1, gave him two cheques for Rs.1,00,000/- each. The cheque amount was withdrawn from his account. Later, when he told A-1 that the amount withdrawn from his account should be re-deposited, Rs.2,00,000/- was credited into the account of R.B.Enterprises. He did not remit this amount or Rs.85,000/- in M/s Jothi Medicals account.

7. After A-2(N.Robin) dishonestly filed internal debit slip for Rs.2,85,000/- dated 12.02.99 and withdrew Rs.2,85,000/- from the account of Ms/ New Sheeba Jewellers on the authrorisation of A1, the account holder Thiru.Sudevan went to the bank for withdrawal of money from his account and when he found Rs.2,85,000/- withdrawn without his knowledge, he sent complaint to Vijaya Bank, Head Office at Bangalore.

8. A-1(K.V.Suresh) who has obtained two cheques of M/s R.B.Enterprises account for Rs.1,00,000/-each from Jothilingam during the month of December 1998, had discounted the cheques and debited the cheque amount from the account of R.B.Enterprises. Later, to repay the amount from Rs.2,85,000/- withdrawn by debit slip prepared and signed

by A-2, A1 had deposited Rs.2,00,000/- into the account of R.B.Enterprises and balance Rs.85,000/- into the account of M/s Jothi Medicals to discharge his debt and to cover up the fraudulent withdrawal by internal debit slip.

9. The prosecution to prove the charges had examined 10 witnesses. 27 documents are marked as prosecution exhibits. For defence, A-1 was examined as DW-1. The trial Court after considering the evidence of prosecution and the defence has held both (A1) K.V.Suresh and (A2) Robin are guilty of the charges tried and sentenced them as under:-

K.V.Suresh (A-1) to undergo one year RI and to pay fine of Rs.1,000/- in default to undergo 3 months RI for each of the offences under Section(i) 120B IPC r/w 420 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, (ii) Section 420 IPC and (iii) Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act. The total fine imposed is Rs.3,000/- The period of sentence ordered to run concurrently. Imprisonment period already undergone ordered to be set off under section 428 Cr.P.C.

Robin (A-2) to undergo one year RI and to pay fine of Rs.1,000/- in default to undergo 3 months RI for each of the offences under Section (i) 120B IPC r/w 420 IPC and Section 13(2) r/w 13(1)(d) PC Act and (ii)

Section 420 IPC. The total fine imposed is Rs.2,000/-. The period of sentence ordered to run concurrently. Imprisonment period already undergone ordered to be set off under section 428 Cr.P.C.

10. Aggrieved by the conviction and sentence, Crl.A.No.478 of 2006 is preferred by K.V.Suresh(A1) and Crl.A.No.489 of 2006 is preferred by N.Robin(A2).

11. The contention raised by the appellant in Crl.A.No.478 of 2006 is as under:

The learned Senior Counsel appearing for the appellant submitted that the trial Court had failed to see that there is no prohibition in the banking rule for the appellant/Branch Manager to authorise payments through debit slips in the normal course of banking business. Like any other banking transaction, the subject debit slip was allowed by A1 (K.V.Suresh) to be cleared and there is no proof to show that the appellant with dishonest intention or ulterior motive authorised the debit slip. The prosecution though failed to prove that there is no direct or indirect evidence to show that the appellant has entered into a criminal conspiracy with the 2nd accused, the trial Court has erroneously held him guilty for conspiracy. For other substantive offence, the prosecution has not placed evidence to show that the appellant induced to deliver or obtained any pecuniary advantage by corrupt or illegal means. The sanction to prosecute was accorded by a person, who was not competent to remove him from service and the sanction order has been issued without application of mind. While the appointing authority is the Chairman and Managing Director of the bank, PW-1[Jayakar Shetty] being subordinate to the appointing authority cannot accord sanction to prosecute. Without going through the records, PW-1[Jayakar Shetty] has accorded sanction, hence, the sanction order bristles with non application of mind.

12. The learned Senior Counsel appearing for the appellant N.Robin (A2) would submit that the trial Court has held him guilty merely on conjectures and surmises without any cogent evidence. When there is no statutory bar to authorise payment through debit slip, withdrawal of Rs.2,85,000/- through debit slips is neither illegal nor contrary to law. He had no intention to deceive the bank or account holder. Therefore the finding of the trial Court without any evidence to prove deception at inception is erroneous.

13. Per contra, learned Special Public Prosecutor for CBI Cases would submit Mr.P.A.Sudevan [PW-2] who is the Proprietor of M/s New Sheeba Jewellers and holder of the saving bank account No.6926 at Vijaya

Bank, Coonoor branch had deposed that he was sanctioned loan for Rs.4,50,000/- and as security, he has executed pro-note for Rs.4,50,000/- in favour of Vijaya Bank which is marked as Ex.P5. He has also executed a mortgage deed marked as Ex.P6. For the loan, A2[Robin] had stood as guarantor and given a letter of guarantee dated 11.02.1999. From his OLCC account No.9/99, he has withdrawn of Rs.1,55,000/- through cheque and issued a cheque for Rs.10,000/- to his friend Rejisamuvel. Except withdrawal of a sum of Rs.1,65,000/- from his cash credit account, he has not withdrawn any other money. While so, when he went to draw money, A1[K.V.Suresh] Branch Manager instructed him to come after two weeks, but without his knowledge, a sum of Rs.2,85,000/- has been withdrawn without his knowledge or consent. He has not issued any cheque for the said amount nor he has instructed the bank to transfer the amount of Rs.2,00,000/- and Rs.85,000/- from his account to C.C.No.27/98 and C.C.No.16/98 respectively. When he found withdrawal of Rs.2,85,000/- unauthorisedly he gave a complaint to the Head Office about the fraudulent withdrawal of Rs.2,85,000/- from his account.

14. It is pointed out by the learned Special Public Prosecutor for CBI Cases that PW-4 [R.Jothilingam], who is the account holder of CC No.27/98 in the name of M/s RB Enterprises and C.C.No.16/98 in the name

of M/s Jothi Medical has deposed that the amount credited in these two accounts viz., Rs.2,00,000/- and Rs.85,000/- respectively were not deposited by him. He has further said that A1[K.V.Suresh] during the month of December 1998, obtained from him two cheques for Rs.1,00,000/- each and withdrawn the money from his account. To pay the said amount A1[K.V.Suresh] has deposited Rs.2,00,000/- in his M/s R.B.Enterprises account vide Ex.P17 dated 12.02.1999. Similarly, on the same day, Rs.85,000/- has been credited into the account of M/s Jothi Medicals vide Ex.P16. These two amounts were neither deposited by him nor he filling up the pay-in-slips Exs.P16 and P17.

15.As summing up his submission, the learned Special Public Prosecutor for CBI Cases submitted that in the light of the evidence of PW-2 and PW-4 with that of the evidence of PW-3, the Senior Manager in Vigilance Department, Vijaya Bank, Head Office during the relevant point of time would go to show that Rs.2,85,000/- has been withdrawn from the account of M/s New Sheebha Jewellery through Ex.P15 the debit voucher dated 12.02.1999 from OLCC A/c No.9/99. The money withdrawn through debit voucher Ex.P15 is not by the account holder or on the instruction of the account holder. Further, on the reverse of the debit voucher Ex.P15, A2[Robin] has signed and received the money for which A1 had authorised to make cash withdrawal of Rs.2,85,000/-. On the same day, Rs.2,00,000/- has been deposited in C.C A/c No.27/98 in the name of M/s R.B.Enterprises and Rs.85,000/- has been deposited in C.C.No.16/98 of M/s Jothi Medicals. The pay-in-slips Exs.P16 and 17 were prepared by A2. Thus, without knowledge of the account holder, Rs.2,85,000/- has been withdrawn and the same has been deposited in the accounts of M/s R.B.Enterprises and M/s Jothi Medicals. The role of A1 and A2 in this fraudulent and dishonest transaction is spoken by the concerned account holders and officials of the bank. Therefore, there is no error in the judgment of the trial Court which requires re-consideration.

16. Point for consideration:

> Whether the finding of the trial Court that A1 and A2 pursuant to the conspiracy have fraudulently withdrawn Rs.2,85,000/- from the account of M/s New Sheeba Jewellers through debit slip and the same has been used credit into the account of M/s R.B.Enterprises and M/s Jothi Medicals is substantiated with sufficient proof beyond doubt?

17. Before adverting to the case of the prosecution and the evidence let in by the prosecution, it is necessary to scrutinize the deposition of A1[K.V.Suresh] who was examined as DW1. According to his evidence,

Ex.P15 debit voucher was entered and passed by the Clerk and Officer of Cash Credit Section. He consented for the payment since PW-2 was not having cheque book on that day. He did not authorise the credits found in Ex.P16 and Ex.P17(pay-in-slips in respect of M/s R.B.Enterprises and M/s Jothi Medicals). He has also denied the evidence of PW-4 regarding receiving two cheques for Rs.1,00,000/- each from him and withdrawal of money from his account. According to A1(K.V.Suresh), only with the knowledge of PW-2(P.A.Sudevan) a sum of Rs.2,85,000/- was withdrawn and he did not utilise the money for any of the deposits as alleged by the prosecution. He admits that the cash credit limit extended by him for PW-2(P.A.Sudevan) with collateral security of Rs.8,00,000/- and it was guaranteed by A2(Robin).

18. If his above statement of A1(K.V.Suresh) deposed as DW-1 is to be true, then in the back of the debit voucher Ex.P15, the account holder should have signed for receiving the cash dated 12.02.1999 and not A2(Robin). The prosecution through oral and document has proved that Ex.P-15 debit slip was presented by A-2(Robin) and he received the cash. Furthermore, if this money was allowed to be withdrawn by cash through debit voucher at the request of the account holder, then there is no necessity for the account holder to lodge complaint on 19.07.1999

regarding fraudulent withdrawal of Rs.2,85,000/- from his account without his consent and knowledge. Evidence of prosecution reveals that the General Manager, In-charge of Personnel and Treasury Management, Vijaya Bank Head Office at Bangalore, had received the complaint dated 19.07.1999 from PW-2 and he had informed the complainant to P.A.Sudevan [PW-2] holder of CC No.9/99 that the matter is under investigation by the Field Vigilance Officer and he will be informed about the progress of his complaint, after receiving the investigation report.

19. Only after, the submission of the report by the Vigilance Department, the role of A1 and A2 involving dishonest and fraudulent withdrawal of money not only from the account of PW-2 but also from other accounts has come to the notice of the bank authorities. PW-3 [K.Kanthappa] had spoken about the internal vigilance enquiry conducted based on the complaint given by PW-2[P.A.Sudevan]. He has vividly explained how Rs.2,85,000/- withdrawn by A2 through debit slip Ex.P-15 with approval of A1(K.V.Suresh) from the account of PW-2(P.A.Sudevan) spread over into the accounts of PW-4 [R.Jothilingam] who was maintaining C.C. A/c No.27/98 and C.C.A/c No.16/1998. Both, the person from whose account, the money was withdrawn and the person in whose account the money was deposited had categorically denied the knowledge

or consent for transactions covered under Exs.P15,16 and 17. Incidentally, in all these exhibits are written by the accused. So, there is no reason to disbelieve the case of the prosecution that the entire transaction was done dishonestly and fraudulently to cheat the account holder and inturn Vijaya Bank a sum of Rs.2,85,000/-. Though A1(K.V.Suresh) pleads that the entire transaction was done in accordance with law and the banking rules and procedures, the very conduct of A1 permitting cash withdrawal through debit slips, that do not by the account holder or on the instruction of the account holder but by the third party prove beyond doubt that the action of A1 and A2 is an act of deception from inception. Therefore, this Court finds the judgment of the trial Court is sustainable and these appeals are liable to be dismissed.

20. In the result, **these Criminal Appeals are dismissed.** The judgment of conviction passed by the learned II Additional District Judge, CBI Cases, Coimbatore in C.C.No.13 of 2003 dated 05.05.2006 is hereby confirmed. The Fine amount imposed by the trial Court remains unaltered. The trial Court is directed to secure the accused to serve the remaining period of sentence, if the accused fails to surrender himself within 60 days from today. The period of imprisonment already undergone if any is ordered to be set off.

21. It is brought to the notice of this Court by the learned Senior Counsel appearing for K.V.Suresh(A1) the appellant in Crl.A.No.478 of 2006 that the appellant was also convicted in C.C.No.12 of 2003 by the trial Court, which arose on the same First Information Report. Therefore, the sentence imposed on him in this case may be ordered to run concurrently along with the sentence imposed in C.C.No.12 of 2003, dated 05.05.2006, and confirmed by this Court in Crl.A.No.487 of 2006.

22. In view of long delay in disposal of the appeals, the plea made on behalf of the appellant/A1 needs consideration. Hence, the period of substantive sentence imposed against K.V.Suresh(A1) in C.C.No.13 of 2003 confirmed in Crl.A.No.478 of 2006 is ordered to run concurrently along with the period of sentence imposed in C.C.No.12 of 2003 dated 05.05.2006 on the file of II Additional District Judge (Special Court for CBI Cases), Coimbatore and confirmed by this Court in Crl.A.No.487 of 2006.

05.04.2018

Index:yes/no
Internet:yes/no
To
1.The II Additional District Judge, C.B.I.Cases, Coimbatore.
2.The Inspector of Police, SPE/CBI/ACB/Chennai.
3.The Special Public Prosecutor for CBI Cases, High Court, Madras.

Dr.G.Jayachandran,J.

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Pre-delivery Judgment made in
Crl.A.Nos.478 and 489 of 2006

05.04.2018