Crl a.484/2006

The appellant/1st Accused viz k.v.suresh S/o. k.vengappa was directed to be released on bail as per order of this court dated 06.06.2006 made in Crl MP. No.3580 of 2008 in Crl A. No.484 of 2006.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:15.03.2018	Pronounced on:05.04.2018

Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal Nos.481 & 484 of 2006

K.V.Suresh ...Appellant/1st Accused in Crl.A.No.484 of 2006

N.Robin
R.Manoharan ...Appellants/2nd & 3rd Accused in Crl.A.No.481 of 2006

/versus/

State by
The Inspector of Police,
SPE/CBI/ACB/Chennai. ... Respondent/Complainant
(R.C.No.41(A)/1999) 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 12.05.2006 made in C.C.No.4 of 2001 as against the Appellants/A-1, A-2 & A-3 respectively.

For Appellant in Crl.A.No.481 of 2006 : Mr.K.B.Arul

For Appellant in Crl.A.No.484 of 2006 : Mr.V.Gopinath, Senior Counsel for Mr.M.Balasubramanian,

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

COMMON JUDGMENT

These two Criminal Appeals are directed against the judgment rendered by the II Additional District Judge [CBI cases], Coimbatore in C.C.No.4 of 2001 dated 12.05.2006. The Trial Court has convicted the accused A1 to A3 and acquitted the appellants A4 to A6. The 1st accused K.V.Suresh is the appellant in Crl.A.No.484 of 2006. The 2nd and 3rd accused N.Robin and R.Manoharan are appellants in Crl.A.No.481 of 2006.

2. The case of the prosecution is that on 30.09.1999, C.B.I registered the first information report, in Crime No.RC.MA1.1999. A.0041, based on the reliable information that K.V.Suresh [A1] while working as Branch Manager in Vijaya Bank, Coonoor Branch, Niligiri District had entered into a criminal conspiracy with Ranjith Kothari, Proprietor of M/s.Ranjith Commercial Corporation Enterprises and Sri.Robin, Proprietor of M/s.Femil Enterprises, Coonoor during 1998-1999.

3. In pursuant of the said criminal conspiracy, A1 [K.V.Suresh] abusing his official position as public servant accepted and discounted the cheques/bills presented by the family members/business partners of Ranjith Kothari in the account of M/s.Ranjith Commercial Company to the extent of Rs.45,98,312/- in excess of sanction limit of Rs.25 lakhs and in the account of Robin groups of Company, A1 [K.V.Suresh] had discounted cheques to the extent of Rs.31,36,116/- in violation of the powers conferred on him.

4. Based on the said information, investigation was conducted by C.B.I and three distinct charge sheets were laid before the trial Court. The Trial Court took cognizance of offences and tried the accused in C.C.Nos.2/99, 3/99 and 4/99.

5. In so far as, this case is concerned, it was taken on file in C.C.No.4 of 2001. Six persons were arrayed as accused. The specific charge as against them is that A1 K.V.Suresh while working as Branch Manager, Vijaya Bank, Coonoor Branch, between 31.05.1995 and 04.01.1999 along with A2 N.Robin, Proprietor of M/s.K.M.S Tea Mettupalayam, M/s.K.M.S Saw Mills Timber, Mettupulayam and M/s.K.M.S Restaurant, Mettupulayam and A3 [R.Manoharan] salesman under A2 [N.Robin], A4 [Udhuman Labbai], Branch Manager, Canara Bank, Melur, Haragatchi, Niligiri District for the period from June 1996 to June 1999, A5 [Sridharan], Clerk, Canara Bank, Haragatchi Branch and A6

[Essakiappan], Officer in Canara Bank, Haragatchi Branch have entered into a criminal conspiracy to cheat Vijaya Bank, Coonoor Branch, Niligiri District. In pursuance to the said conspiracy A2 [N.Robin] and A3 [R.Manokaran], fraudulently and dishonestly presented cheques for Rs.3,00,697/- dated 01.09.1998, for Rs.2,98,980/- dated 02.09.1998 both drawn by R.Manoharan [A-3] and cheques for Rs.2,95,300/- dated 03.09.1998, for Rs.1,78,500/- dated 07.09.1998 for Rs.2,93,387/- dated 12.09.1998 and for Rs.3,27,345/- dated 12.09.1998 and cheque for Rs.50,000/- dated 15.10.1998 all drawn by A2 [Robin] without sufficient fund in their bank account maintained at Canara Bank, Melur, Haragatchi and M/s.Lakshmi Vilas Bank, Mettupulayam. On presentation of these cheques, knowing fully well that the concerned account has no sufficient fund to honour the same, A1 [K.V.Suresh] without any authorization to purchase the bill had purchased the cheques presented and credited the proceeds of these cheques to a total sum of Rs.17,48,211/- to OLCC A/c No.2/98 of M/s.Famil Enterprises, current account of M/s.Western Enterprises, current account of M/s. R.Lawrance & Co., OD account of M/s.Akasha Enterprises, Savings Bank Account of Manoharan [A3], OLCC Account of M/s. KMS Tea, Mettupalayam owned by Robin A2 and OD account of Tea links. The money discounted after being deposited in various accounts as mentioned above, were withdrawn by A2[Robin] and A3 [R.Manoharan] in connivance with the account holders or by impersonation. Particularly, A2 [N.Robin] impersonating himself as Ravi signed as Ravi on the reverse of the cheque [Ex.P.17] dated 12.09.1998 for Rs.2,95,000/- and encashed the same.

6. A4 [Uthuman Labbai], Branch Manager of Canara Bank, Mellur in furtherance of conspiracy, had received the cover sent by Vijaya Bank, Coonoor Branch, containing cheque for Rs.2,97,389/- dated 12.09.1998 and cheque for Rs.3,27,345/- dated 12.09.1998. Abusing his official position, he did not make any relevant entry in the inward Tapal Register of the bank and also did not reply to Vijaya Bank, Coonoor Branch, regarding the fate of the cheque.

7. A5 [K.Sridharan] misusing his position, did not make entries in the inward Tapal Register of the bank. He did not reply about the fate of the cheque sent by Vijaya Bank, Coonoor branch for Rs.1,78,500/- dated 07.09.1998. A6 [Essakkiappan] abusing his official position, did not make any entry in the inward Tapal Register and also did not reply to Vijaya Bank, Coonoor branch, regarding realization and fate of the cheque for Rs.3,00,697/- dated 01.09.1998 and cheque for Rs.2,98,980/- dated 01.09.1998.

8. Thus, by screening the cheques, A4 to A6 dishonestly and fraudulently along with A1 and A3 cheated Vijaya Bank, Coonoor by discounting accommodative cheques and owned cheque, totally to a sum of Rs.17,48,211/-.

9. The Trial Court framed charges under Section 120-B r/w 420, 419, 477-A, 201 IPC and 13(2) r/w 13(1)(d) of Prevention of Corruption Act,1988 against these accused.

10. Besides charge of conspiracy against A1 to A6, specific charge against A2 [N.Robin] for offences under Section 420 [7 counts], 419 IPC for impersonating himself as Ravi and encash the proceeds of cheque Rs.2,95,000/- was framed. For rest of the accused along with charge of conspiracy, for substantive offences charges were framed under Section 420, 477A, 201 IPC. As against A1, A-4 to A-6 being public servants charge under Section 13(1) (d) of Prevention of Corruption Act was also framed.

11. To prove the charges, the prosecution has examined 19 witnesses and marked 74 Exhibits and 1 material object [Rubber stamp -7 in numbers] was seized from the residence of A2. On behalf of the defence 2 witnesses namely A1 and A4 were examined. 3 Exhibits were marked on the side of the defence.

12. The Trial Court after appreciating the evidence let in by the prosecution and the defence held; [i]. A1 [K.V.Suresh] guilty for offence under Section 120-B r/w 420, 419, 477-A and 201 I.P.C and also under Section 13(2) r/w 13(1)(d) of P.C.Act [7 counts], convicted and sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months Rigorous Imprisonment for each count and for each offences.

[ii]. A2 [N.Robin] found guilty of offence under Section 120-B r/w 420, 419, 477-A, 201 I.P.C under Section 13(2) r/w 13 (1)(d) of Prevention of Corruption Act,1988 and under Section 420 IPC [7 counts] and under Section 419 IPC and convicted and sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months Rigorous Imprisonment for each count and for each offences.

[iii]. A3 [Manoharan] found guilty of offences under Section 120-B r/w 420 IPC, 419, 477-A, 201 IPC and 13(2) r/w 13 (1)(d) of Prevention of Corruption Act and under Section 420 I.P.C [3 counts], convicted and sentenced to undergo one year

Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months Rigorous Imprisonment for each count and for each offences under Section 120-B r/w 420, 419, 477-A, 201 IPC and under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, and under Section 420 IPC [3 counts]. The period of sentence was ordered to run concurrently.

[iv]. A4 to A6 were found not guilty. They were acquitted from all charges.

13. Aggrieved by the conviction and sentence, A1 K.V.Suresh has preferred the Crl.A.No.484 of 2006. A2 and A3 namely Robin and Manokaran have preferred the Crl.A.No. 481 of 2006.

14. The contention of the appellant in Crl.A.No.481 of 2006,

The Learned Senior Counsel appearing for this appellant contended that the prosecution had failed to prove meeting of mind between the accused/appellant agreement to do illegal act or legal act by illegal means. The transaction between the bank and its customers were bonafide financial transactions and no criminal intention or ingredient of any offence is made out in these transaction with bank. These appellants had no other contact with A1 [K.V.Suresh] except the relationship of banker and the account holder. The cheques which were presented bonafidely for collection and they were discounted as per the norms of the bank. The loss of the cheque or non reporting of collection by Canara Bank to Vijaya Bank was not within their knowledge or control.

15. It is further submitted that the Trial Court has not found fault with the Officers of Canara Bank who were arrayed as A4 to A6 and had rightly acquitted them. While so, for the cheques in question misplaced at the receiving end namely Canara Bank, by no stretch of imagination these appellants be held responsible. Much less criminal liability such as criminal conspiracy, cheating etc.

Contention of the appellants in Crl.A.No.484 of 2006

16. The learned Senior Counsel for A1 [K.V.Suresh] who is the appellant in Crl.A.No.484 of 2006 would contend that the

trial Court erred in finding appellant/A1 guilty of the offences under Section 120-B r/w 420 IPC, 419, 477-A, 201 IPC, under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act,1988. Merely on flimsy reason without any strong are substantial materials the trial Court has arrived at a wrong conclusion. The procedural formalities followed in the bank does not indicate any violation or ingredient of conspiracy with accused A2 to A6 in any manner. The finding of the Trial Court that A1 to A3 are all known to each other is an erroneous finding without any basis. In the entire evidence as spoken by the prosecution witnesses, there is no evidence to show that A1 has made any pecuniary advantage or wrongful gain or had any intention to cheat the bank.

17. A1 [K.V.Suresh] as Branch Manager had exercised due care and diligence in discharging of his official duty and he knew A2 [N.Robin] and A3 [R.Manoharan] only as customers of the bank and nothing more. He had purchased seven clean bills from A2 and A3 in good faith and discounted the same with bonafide intention in the course of his official duty. The seven instruments [cheques] which were purchased by A-1, were duly forwarded to the concerned bank namely Canara Bank, Melur, Haragatchi. For missing of those cheques at Canara Bank, A1 [K.V.Suresh] cannot be found fault. For the non realization of those seven cheques, liability cannot be fixed on A1, that too in the nature of criminal liability. The dereliction of duty or responsibility at the collection bank namely Canara Bank cannot be the reason to fix criminal liability upon the appellant/A1. The Trial Court has held the officers of Canara Bank, Mellur are not guilty for misplacing the cheques despite evidence for despatch of those cheques were available and produced before the Trial Court. Therefore, A1 cannot be held responsible for non realization of those cheques since no intimation about the realization or otherwise was conveyed by Canara Bank, Melur, Haragatchi to Vijaya Bank at Coonoor. As a Manager, A1 cannot supervise each and every affairs of the bank, such as whether the cheques were despatched for collection or not and whether cheques were realised or returned for want of fund. There are to be monitored and supervised at the level of officers below him. He does not have the direct knowledge about the despatch or receipt of Tapal. While so, when there is no evidence to show this appellant/accused had screened the cheques which were purchased in the normal course of banking transaction, no criminal liability can be fastened upon him.

18. Points for consideration

Whether the Trial court erred in holding the appellants guilty of conspiracy to cheat Vijaya Bank, Coonoor Branch ?

19. The genesis of the case is the investigation report of C.P.Machado which is marked as Ex.P.5. Thereafter, the C.B.I have taken up the investigation by registering First Information Report dated 13.09.1999 which is marked as Ex.P.57. Based on the final report, the Trail Court has framed 10 charges and tried the accused. After examining the witnesses and Exhibits, material objects and the witnesses for the defence, the Trail Court had held A1 to A3 guilty of offence and held the charges against them are proved. Whereas Acquitted A4 to A6 for want of adequate evidence.

20. On perusal of the exhibits and the depositions of witnesses the facts unravelled is that A1 [K.V.Suresh] while working as Branch Manager, Vijaya Bank, Coonoor Branch, in exercise of his power to purchase clear bills, [cheques] had purchased seven clear bills either drawn by Robin [A2] or R.Manoharan [A3]. Before realization of the cheques, these cheques were discounted and credited into their account. All the seven bills pertain to the account maintained at Canara Bank, Melur, Haragatchi. Surprisingly none of these seven cheques were received by Canara Bank though the outward Tapal Register of Vijaya Bank, Coonoor Branch, indicates that they were despatched. Furthermore, these seven cheques were not realised and no intimation from Canara Bank, Melur, Haragatchi, was received by Vijaya Bank, Coonoor Branch, about the fate of these seven cheques. However, A1 [K.V.Suresh] who authorised the purchase of these clear bills had not taken any steps to find out whether these cheques were received by Canara Bank or not, whether the collection bank has given due credit for those cheques or returned it with reason. It is also seen through evidence that these seven cheques amounting to Rs.17,48,211/- were neither realised nor repaid by the beneficiaries.

21. In the background of above proven fact, the contention of the appellants that the transactions were bonafide and done in good faith in normal course of business as a Manager as well as a customers has to be looked into whether the element of honest as contended by the appellants are acceptable.

22. The discretionary power of the Branch Manager to purchase clear bills and the procedure of accepting documentary bills and making payment against the bills subject to the banking norms need not be doubted, unnecessarily since, such acts are permissible in the normal course of Banking business.

However, as a person empowered to purchase Bills, a minimum diligence of scrutinizing the documents tendered by the customer is vested with the Officer who purchase the bill. In this case, PW.4 has spoken in his evidence about the procedure regarding purchase of clear Bills, [cheques] by the bank. It is the sole discretion of the Branch Manager permitting such purchase of cheques after satisfying himself the request of the customer. Separate register has to be maintained for such clear bill purchase and care should be taken whether the bills so purchased are realised. If, in case of non realization of the cheque, then immediately the amount may be recovered from the party and same has to be squared off in the purchase register as "returned unpaid". The amount has to be debited into the account of the customers and credited in the clear bill purchase account.

23. From the evidence of prosecution, we find that the cheques were purchased by K.V.Suresh [A1] and sent to Canara Bank, Melur, Haragatchi, but, thereafter lost it appearance and could not be traced. Whether those cheques were really sent to Canara Bank, Mellur, itself become doubtful. Therefore, the Trail Court has acquitted the Officers of Canara Bank, Mellur, for want of evidence who were tried as A4 to A6. Even assuming these seven cheques were received by Canara Bank or were lost in transit, it is the primary duty of the sending bank to ensure the realization of the cheques. Since it is the sending bank which owes responsibility to the customer and if sending bank has purchased the bill before realization, it is their additional duty to ensure the collection of said sum. In this case, it is not known whether the cheques sent to Canara Bank, Mellur, missed in transit or destroyed somewhere before or in between the transit. But it is clearly proved that sufficient care and diligence not been shown by K.V.Suresh [A1] follow up the cheques he purchased exercising his discretionary power.

24. The above said omission to trace the missing cheques at the earliest point of time cannot be taken as negligence or lapse of care on the part of A1 since the 2nd layer of prosecution case that such an act of exercising his discretion of power to purchase the bill over and above the limit prescribed to him and showing undue concession to A2 [N.Robin] and his associate R.Manokaran would go to show that the act of A1 [K.V.Suresh] does not fall under the category of an act done under good faith. As pointed out earlier, these seven cheques were all connected with Canara Bank, Mellur and emanated from A2 [N.Robin] and A3 [R.Manoharan]. Missing of all the seven cheques cannot be taken as an accidental event.

25. The clear bill purchase register maintained by Vijaya Bank, Coonoor which is marked as Ex.P.9. Though, A3 had no sufficient fund in his account maintained at Canara Bank, Mellur, he has issued a cheque in favour of A2 [N.Robin] for a sum of Rs.3,00,697/- dated 01.09.1998. The perusal of Register marked as Ex.P.6, we find that the a cheque drawn on M/s.Famil Enterprises a proprietor concern of A2 submitted under clear bill purchase No.221/98 by way of paying slip marked as Ex.P.9. The cheque submitted along with Ex.P.9 [pay-in-slip] is permitted to be purchased by A1 by affixing his initial on it. After deducting the bank charge a sum of Rs.2,97,897/- has been credited to OLCC Account No.2/98 of M/s.Famil Enterprises on the same day. A sum of Rs.3 lakhs has been immediately withdrawn from the said account through cheque issued in favour of M/s.Silverwood. Thus, from Ex.P.6 the statement of account for OLCC No.2/98 in the name of M/s.Famil Enterprises, one could see that the cheque issued by A3 [Manokaran] in favour of a firm run by A2 [N.Robin] has been discounted by A1 [K.V.Suresh] on date of presentation and on the same day money credited into the account was withdrawn through 3rd party.

26. The cheque sent for collection to Canara Bank, Mellur Branch, lost its way and the said amount not been realized by the Vijaya Bank, Coonoor, till date. The Manager of Canara Bank, Mellur, examined as PW.10 had deposed that his Branch, did not receive cheque dated 01.09.1989 for a sum of Rs.3,00,697/-. It could been seen that M/s.Silverwood was started by A-3. After opening a bank account in the name of M/s.Silverwood, he has handed over the signed the blank cheques of the account to A2 [Robin]. The Blank cheques books were recovered from A-2 possession and marked as Ex.P.43 and Ex.P.44. Thus, while tracing the trial of the cheque under Clear bill No.221/98, evidence discloses that by design, the clear bill purchase has been done by A1 [K.V.Suresh] to cheat Vijaya Bank, Coonoor. In the said process, A2 [Robin] and A3 [R.Manoharan] had conspired together with A1 [K.V.Suresh]. Similar, modus operandi has been adopted by the accused person herein in respect of other 6 Bills also. The Trial Court in detail had discussion about it in its judgment.

27. Except to say that all the seven transactions were done in good faith in the normal course of business, no other explanation could be placed by the accused persons. However the unnatural way in which these cheques were purchased by A-1 and credited various into accounts maintained by A-2 [Robin] and invariably all these cheques suddenly disappeared without realization or any trace of return as uncleared and the static silent on the part of the accused A1 [K.V.Suresh] for not

reacting about the non-realization of these cheques would sufficiently prove that the transaction were not done in good faith but with intention to cheat the bank right from inception.

28. Yet another incriminating evidence against these accused persons is the recovery of rubber stamp and seal from the residence of A2 [N.Robin] which is marked as M.O.1 series. According to PW.19 the investigation Officer, the residence of A2 [N.Robin] was searched and the incriminating materials were seized from his residence. The search list Ex.P.60 contains those incriminating materials, particular the rubber stamp which is marked as M.O.1 series. The Canara Bank, cheque book containing the signature of A3 and the counterfoils relating to Vijaya Bank and Lakshmi Villas Bank which is marked as Ex.P.63 and Ex.P.64 respectively., proves the conspiracy charge, besides it also does not indicate the subject transactions were genuine and emanated out of good faith.

29. To add, PW.11 [Reji Samuel] admits that he gave the accommodative cheques to A2 [N.Robin] for a sum of Rs.3 lakhs and his account was controlled by A2. Similarly, the evidence been given by PW.15 [Santhosh] about the cheque for a sum of Rs.1,78,500/- issued by A2 [N.Robin] in favour of M/s.Aksha Enterprises represented by PW.15 [T.C.Santhosh], proves this cheque drawn by A2 [N.Robin] in favour of M/s.Aksha Enterprises has been discounted by A1 [K.V.Suresh] and after crediting the amount in the account of PW.15 [T.C.Santhosh], the money was withdrawn by PW.15 [T.C.Santhosh] and handed over to A2 [N.Robin]. For accommodating this, A1 [K.V.Suresh] has increased the overdraft facility limit, extended to PW.15 to Rs.2 lakhs. The cheque so purchased by A1 also disappeared like other 6 cheques and never been collected and credited into the cheque purchase bill No.22/98. Still the amount pending unrealized.

30. All these seven transactions which ended in non-realization of the cheque presented and discounted, were not informed to the head Office by A-1. For failure to record these transaction in the Bill purchase return register goes to show that the entire transaction is the outcome of criminal conspiracy which has favoured A2 [N.Robin] causing loss to Vijaya bank to Rs.17,48,211/- solely because of the purchase of seven bills by K.V.Suresh [A1]. It is also to be placed on record that not only these seven cheques [instrument] transaction was not found to be dishonestly discounted by A-1 in favour of A-2, there are several other materials collected during the course of investigation and subject matter of other cases under appeal in connection with A1 [K.V.Suresh] and A2

[N.Robin] would be sufficient to hold the discount of seven instruments were not done in the normal business transaction with bonafide intention but purely with an intention to cheat the bank. A1 [K.V.Suresh] after purchasing the bill did not care to trace the instrument. A2 [N.Robin] after withdrawing the amount credited into his account, did not care to find out whether the cheques presented by him were realized or not. Till launching of prosecution, the amount were not repaid. These are very strong indication to reject the defence plea of transaction in good faith.

31. It is contended by the learned counsel appearing for the first accused that A1 [K.V.Suresh] had purchased hundreds of bills including the bills presented by A2 [N.Robin] but only seven of them have gone unrealized. This cannot be the reason to view his act done in the normal course of business. For the simple reason, the cheques which he has purchased has not only gone unrealized, the disappearance of the bills all in connection with the account of A2 [Robin] and failure of A-1 to react or recover the money from the beneficiary proves the prosecution case beyond reasonable doubt. Therefore, the judgment of the trial Court is unassailable.

32. In the result, these Criminal Appeal Nos.481 & 484 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.4 of 2001 dated 12.05.2006 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.

33. The period of sentence already undergone, if any is set off. The period of sentence imposed to K.V.Suresh(A1) in C.C.No.4 of 2001 dated 12.05.2006 confirmed in Crl.A.No.484 of 2006 is ordered to run concurrently along with sentence imposed on him in C.C.No.3 of 2001 dated 11.05.2006 and confirmed in Crl.A.No.485 of 2006.

Sd/-
Assistant Registrar(CS-VII)

//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 Special Public Prosecutor, High Court, Madras.

4. The Section Officer, Criminal Section, High Court, Madras.

+1cc to Mr.K.B.ARUL Advocate, S.R.No. 25463

+1cc to Mr.BALASUBRAMANIAN, Advocate, S.R.No. 25423

judgment made in
Criminal Appeal Nos.481 & 484 of 2006

RJI(CO)
TR(23/04/2018)