IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.12.2017

Pronounced on : 05.01.2018

Coram

The Honourable Dr.Justice G.Jayachandran

Criminal Revision Petition Nos.426 & 427 of 2007

M.Murugappan ...Petitioner in both Crl.R.C

/versus/

The State Represented by
The Inspector of Police,
SPE/CBI/ACB/Chennai ... Respondent in both Crl.R.C

PRAYER: Criminal Revision Petitions are filed under Section 397 and 401 of Criminal Procedure Code, to call for records and set-aside the order dated 05.02.2007 passed by the Additional Special Judge for CBI cases, Chennai in Crl.M.P.No.296 of 2006 and Crl.M.P.No.297 of 2006 in C.C.No.56 of 2003 and C.C.No.14 of 2004 respectively.

For Petitioners in both cases : Mr.M.Nirmal Kumar

For Respondent in both cases : Mr.K.Srinivasan, Spl.PP for CBI Cases

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JUDGMENT

These two Criminal Revision petitions are directed against the dismissal of discharge petition by the Trial Court.

2. The petitioner herein while facing trial in C.C.No.63 of 2001 for offences under Sections 120 B r/w 420, 468 r/w 471, 467 r/w 471, 477 A, 406, 381, 201 IPC and r/w 13(2) r/w 13(1) (d) of Prevention of Corruption Act 1988, the respondent herein filed two final reports on completion of investigation on same set of facts but different transactions. The Trial Court took the case on file and assigned C.C.No.56 of 2003 and C.C.No.14 of 2004.

3. The petitioner contention is that, C.C.No.63 of 2001 which is the out come of investigation made by CBI based on source information alleging that the petitioner while serving as clerk in the SBI, Ambattur Industrial Estate Branch, Chennai-50 had fraudulently prepared bogus FCR Receipts, fabricated telex messages showing telex transfer of foreign exchange into the NRE accounts opened by him in the name of Kannappan and Punitha Murugappan to siphon the money fraudulently credited into it. Thereby cheated SBI to a tune of Rs.31,59,769.80.

4. This case was based on the four First Information Reports registered by CBI on 13.01.1998 in FIR RC 1(A) 98/CBI/ACB/Chennai to 4 (A) 98 CBI/ACB/Chennai. Earlier, with same allegation based on the complaint given by S.Rajan, Assistant General Manager, SBI, Ambattur Industrial Estate Branch on 10.11.1997, the E-2 Ambattur Estate Police registered FIR on Crime No.913 of 1997 u/s 406, 408, 465 IPC and the petitioner was taken into custody of the police and later released on bail. The investigation of case was subsequently transferred to DCB, St. Thomas Mount, Chennai and taken up for investigation in Crime No. 27 of 1997 dated 27.12.1997.

5. Pursuant to the Government Order in G.O.M.s No. 318 dated 12.04.2002, CBI took up the investigation and filed final report and also cognizance taken by the court as C.C.No. 56 of 2003 on 29.08.2003 and C.C.No. 14 of 2004 on 21.04.2002. The subject matter of C.C.No.56 of 2003 is with regard to a single transaction of USD 8145 alleged to have been credited into the NRE Account No. 195 in the name of Kannappan, based on fake telex message as if SBI, New York advised for credit this amount into the account of Kannappan.

6. The subject matter of C.C.No. 14 of 2014 is in respect of alleged fake telex message from SBI, New York Branch dated 16.10.1996 for credit advice of USD 3645 fraudulently credited into the account of Smt. Punitha Murugappan in Account No.C-36/7105 and telex message of SBI, New York Branch dated 04.02.1997 for credit advice for USD 10291.20. into the account of Smt.Punitha Murugappan.

7. The petitioner contents that the investigation officer in all the three cases C.C.No. 63/01, C.C.No.56/03 and C.C.No.14/04 is one and the same. Documents relied and witnesses are same. No additional or new witnesses or documents relied by the prosecution in the subsequent cases C.C.No. 56/03 and C.C.No. 14/04. The three transactions which are subject matter of these cases are known to the investigating officer when he filed final report in C.C.No.63/01. When no new material found subsequent to the filing of final report u/s 173(2) Cr.P.C,

without resorting to section 173(8) of Cr.P.C the prosecution has selectively taken few transactions and had filed separate final reports which is unknown to criminal law.

8. The cause of action is same and witnesses are common. Having taken up the investigation and filed final report comprising the entire facts, no further prosecution is sustainable and charge cannot be framed.

9. The learned counsel for the petitioner submitted that earlier when trial in C.C.No.63/01 was in progress the petitioner filed petitions to charge and try the accused along with C.C.No. 63/01. But the trial Court dismissed the application on the ground that already 20 witnesses in C.C.No. 63/01 had been examined, if joint trial is ordered these witnesses have to be recalled and examined further which will cause enormous delay. The subsequent final report are in respect of omitted act committed by the accused. Hence taking into consideration of all the facts, the trial court declined to entertain the request for joint trial. Pointing out the overlapping and illegality in subsequent final reports for same offence, without resorting to Section 173(8) of Cr.P.C and permission for further investigation, charge sheet was laid, hence discharge petitions was filed before the trial Court, however it was dismissed hence same is impugned in the present Revision Petitions. Meanwhile, the trial in C.C.No.63/01 completed and ended in conviction on 30.07.2014 and the appeal against conviction is pending before High Court in Crl.A.No.420/2014. Having tried and held guilty, for the same set of facts, fresh prosecution for same offence cannot be initiated.

10. The learned counsel submits that while the petitioner had been tried for the charges which covers the subject matter of C.C.No.56/03 and C.C.No. 14/04, he cannot be again tried for same offence in view of the bar under section 300 Cr.P.C.

11. To substantiate his submission, the learned counsel drew the attention of this court to the charges framed in the concluded case C.C.No.63/2001 and the final reports filed by the prosecution in C.C.No.56/03 and C.C.No.14/04. Wherein he pointed out that the charges 1,3,9,14,19,26,27,29 and 33 includes the transactions which are subject matter of C.C.No.56/03 and C.C.No.14/04. While so even if the transactions are omitted to be included, in the previous case those transactions cannot be tried separately which will amount to double jeopardy and against the constitutional protection of fundamental Right under article 20(2) of the Indian Constitution.

12. The learned Special Public Prosecutor for CBI submitted that, the petitioner herein while functioning as Clerk-cum-

Typist at State Bank of India, Ambattur Industrial Estate Branch, Chennai during the period 1993-1997 at Ambattur and other places entered into a criminal conspiracy with unknown person/persons and in pursuance thereof abused/misused his official position or illegal means or by corrupt through the said unknown person(s) with intent to defraud the bank; fraudulently and dishonestly got forged the signatures of V.Ramasamy Chettiar, Kalaiarasi Chettiar and Janaki Perichiappan and knowing fully well that these are forged, used the same as genuine and fraudulently and dishonestly opened a SB NRE Account No.173 in the name of V.Ramasamy Chettiar and others without their knowledge and approval by misappropriating the funds entrusted to him for a specific purpose which was converted for his illegal acts.

(i). Further, in Continuation of the above said act, he fraudulently and dishonestly closed two FCNB Deposit Accounts of Ramaswamy Chettiar & others and one of Valliammai Chettiar and two others, against the instructions of the parties with forged signatures with the help of unknown persons and used the same as genuine knowing fully well that the signatures of the parties were forged; fraudulently and dishonestly caused credits of the proceeds of these FCNB deposit accounts amounting to Rs.5,54,427/- to account No. SB NRE-173.

(ii). Also the petitioner fraudulently and dishonestly closed the FCNB Deposit Account of M.Kannappan and Dr.K.Thillaikkarasai, against the instructions of the parties for renewal, with forged signatures with the help of unknown person(s) and knowing fully well used the fake signatures of the parties as genuine in the bank and further he fraudulently and dishonestly utilised the proceeds of this FCNB deposit account amounting to Rs.4,38,689/- to open account No.SB NRE-195 in the name of M.Kannappan for opening the said account Murugappan fraudulently and dishonestly got forged the signatures of M.Kannappan and knowing fully well used the same as genuine and fraudulently and dishonestly opened a SB NRE account No,195 in the name of M.Kannappan without his knowledge and approval.

(iii). Further, he fraudulently and dishonestly stealthily removal four FCNB receipt from the custody of the Bank while working in that branch, fraudulently and dishonestly fabricated the FCNB Receipts as follows:- (1) He fraudulently and dishonestly used one fabricated FCNB receipt as genuine and caused the proceeds of this FCNB account credited on 17.04.1995 to SB NRE-173 (2). The remaining three fabricated FCNB receipts were prepared by him as if they were in renewals of the deposit- (a) one in the name of Ramaswamy Chettiar and others; (b) one in the name of Mrs.Valliammal Chettiar and (c) one in the name of M.Kannappan and Dr.K.Thillaikkarasai – were provided to the parties, using them as genuine, in order to satisfy them, knowing fully well that the FCNB receipt were fabricated.

(iv). Further, he utilised the relationship between the families of his in-laws and Ramaswamy Chettiar, his relationship with M.Kannappan and Dr.K.Thillaikkarasi, Murugappan gave an impression to the officers of the Bank that he was looking after the interest of these persons. Thus, abusing or misusing his official position or by illegal means as Clerk-cum-Typist at State Bank of India, Ambattur Industrial Estate, Chennai, M.Murugappan fraudulently and dishonestly obtained wrongful gain of Rs.9,92,000/- and caused a corresponding wrongful loss to State Bank of India, Ambattur Industrial Estate Branch, Chennai during the period October, 1994 to April, 1995 on account of withdrawals of the amounts of three FCNB accounts, he fraudulently and dishonestly closed and credited to SB NRE 173 and one FCNB Account to SB NRE 195, by unknown person(s) got forged signatures of Ramasamy Chettiar and M.Kannappan on the cheque leaves out of the cheque books dishonestly and fraudulently collected by him and used the fabricated cheques as genuine and thereby got pecuniary advantage of Rs.9,92,000/- out of these fraudulent transactions.

(v). Further, he dishonestly opened and operated Savings Bank Account No.84/25122 with his wife Puitha Ramanathan as one of constituents and subsequent as the sole constituent during the period from 27.07.1994 to November, 1997 at State Bank of India, Ambattur Industrial Estate Branch, Madras without the knowledge of his wife to route the amounts defrauded by him from State Bank of India, Ambattur Industrial Estate Branch.

(vi). The Further, dishonestly got Savings Bank Account No. C-36/7105 opened by his wife Punitha Murugappan in her name at State Bank of India, Anna Nagar West Branch, Madras on 0307.1996 to route the funds defrauded by him from State Bank of India, Ambattur Industrial Estate Branch.

(vii). He also fraudulently and dishonestly during the period October, 1995 to April, 1997 fabricated or caused the fabrication of false Telex message on the basis of genuine telex messages received from abroad in the branch and caused the use of these forged telex Message as genuine at the Branch. On the basis of these forged telex Messages he fraudulently and dishonestly caused three fraudulent credits to SB NRE-173 without any remittance to the bank on account of foreign currency telex transfer purchases amounting to Rs.12,69,591/-; two fraudulent credits to SB NRE-15 without any remittance to the bank on account of foreign currency telex transfer purchases amounting to Rs.7,86,830/-; two fraudulent credits to SB account No.84/25122 which was subsequently converted as 01190/035122 without any remittance to the bank on account of foreign currency telex transfer purchases amounting to Rs.5,61,980/-; three fraudulent credits to SB Account No.36/7105 at State Bank of India, Anna Nagar West in the name of Punitha Murugappan without any remittance to the Bank on account of foreign currency telex transfer purchases amounting to Rs.7,38,060/- and further he fraudulently destroyed genuine and fabricated telex message to prevent detection of fraud and further he fraudulently manipulated the records of the branch by showing the TT purchase transactions in different heads by making fabricated entries in the records of the bank and further he after causing these false credit entries in the accounts of SB NRE 173, SB NRE 195, SB 84/25122 subsequently converted as 01190/035122 all at State Bank of India, Ambattur Industrial Estate Branch, Chennai and Savings Bank Account No.C-36/7105 at State Bank of India, Anna Nagar West Branch, Chennai, he fraudulently and dishonestly causing forged signatures of Ramasamy chettiar, M.Kannappan and Punitha Ramanathan respectively, on the cheque leaves, cheque books of which were obtained fraudulently and kept in his custody and using the same as genuine and thereby withdrew a total amount of Rs.31,59,769.80 (12,78,000/- (inclusive of previous balance) from SB NRE 173 + Rs.7,87,000/- from SB NRE 195 + Rs.5,34,448/- from SB 84/25122 also known as 01190/35122 + Rs.5,60,32.180 from SB account No.36/7105). M.Murugappan thus secured a pecuniary advantage of Rs.31,59,769.80 by the fraudulent telex transfer transactions.

(viii). By the aforesaid dishonest and fraudulent acts of unauthorised opening of Savings Bank Accounts bearing Numbers SB NRE 173 in the names of V.Ramaswamy Chettiar and his family members, SB NRE 195 in the name of M.Kannappan and SB Account No.84/25122, Subsequently converted as 011990/035122 in the name of Punitha Ramanathan unauthorised and fraudulent closing of 4 (four) FCNB Accounts of V.Ramaswamy Chettiar and others Valliammai Chettiar and two others, Dr. K.Thillaikkarasi and causing 10 (ten) fraudulent credits on account of fake telex transfer transactions in the aforesaid three savings Bank accounts and Savings Bank Account No.C-36/7105 in the name of Punitha Ramanathan at State Bank of India, Anna Nagar West Branch, Chennai, M.Murugappan caused a wrongful loss to the tune of Rs.41,51,769.80 to State Bank of India, Ambattur Industrial Estate Branch, Chennai and obtained a corresponding wrongful gain for himself by committing criminal misconduct while holding public office.

13. The learned Special Public Prosecutor submitted as for the above act of crime, the petitioner was tried in C.C.No.63/01, in that trial the offence cheating through the fake telex message dated 26.06.1997 for transfer of 8145 USD

into the account of Kannappan and fraudulent credit into the account of Smt. Punitha Murugappan through fake Telex message dated 16.10.1996 for USB 3645 and fake telex message dated 04.02.1997 for 10,291 USD are not included. They are exclusively dealt in C.C.No.56/03 and C.C.No.14/04. These offences came to light earlier through the complaint by Rajan, Assistant General Manager and was probed by local police in Crime No.913/97 then transferred to DCB, St.Thomas Mount and later to CBI. While conducting investigation in RC 1(A) to 4 (A) /CBI/ACB/Chennai, these transactions came to the notice of the IO, since these transactions were already subject matter under investigation by local police so they were excluded in the final report filed in RC 1 (A) to 4(A) 98/CBI/ACB/Chennai. Only after filing final report and court taking cognizance in C.C.No.63/2001, the State Government vide G.O.M.S.No.918 dated 12.04.2002 transferred the investigation of Crime No.913/97 so far investigated by state to the CBI which in turn, took up the investigation registered as RC No. 40(2) 2002/CBI/ACB/Chennai. Which culminated in filing later of two final reports and cognizance taken by the Trial Court in C.C.No.56/03 and C.C.No.14/04. There is no legal infirmity in the procedure of filing separate final reports independently instead of resorting to Section 173 (8) of Cr.P.C and no ground to discharge the accused for the said reason.

Point for consideration

Whether the Judgment in C.C.No.63/01, bars the trial of C.C.No.56/03 and C.C.No.14/04. In view of Section 300 Cr.P.C and Article 20(2) of the Constitution?

14. The final report in C.C.No.66/2001, C.C.No.56/2003 and C.C.14/2004 are placed before this Court for comparison. As far as C.C.No.63 of 2001 is concerned the trial court has framed 33 charges and found the accused guilty of all the charges vide judgment dated 30.07.2014 which is subject matter of the appeal pending before this court in Crl.No.420 of 2014.

15. From the records relied by the petitioner this court finds that the crime come to light initially through the complaint of S.Rajan, Assistant General Manager, State Bank of India, Ambuttur Estate, Chennai-15 dated 27.12.1997. In this complaint it is alleged that the petitioner herein Mr.Murugappan son of Maiappan working as clerk/ typist in the CIT division as misappropriated funds by falsifying Telex Message and diverted those money into the following accounts:

1.NRS 195 in the name of Sri.M.Kanappan

2. SB 25122 in the name of Smt. Punitha Ramanathan

3. NRE 173 in the name of Sri.Ramasamy Chettair and Kalaiarasan Chettiar

4. CA/C 38571 in the name of Smt. Punitha Ramanathan.

16. Further, it is also mentioned in the complaint the total amount diverted and the names of the beneficiary. This complaint has been initially taken on file by District Crime Branch Chengleput in C.C.No. 27 of 97 later transferred to C.B.I in RCMA1 20002A0040 dated 26.08.2002 as per the Government Order in G.O.M.s.No. 318 dated 12.04.2002.

17. The Four First Information Reports RC 1(A)/ CBI/ACB/Chennai to RC 4(A)/CBI/ACB/Chennai dated 13.01.1998, culminated in C.C.No.63 of 2001 also in respect of fake telex messages and false credits into the above mentioned four different accounts in which the accused has misappropriated huge sum based on the false Telex Messages.

18. While, the final report in C.C.No.56 of 2003 is about misappropriation of USD 8145 into the account of Kannappan the Subject matter of C.C.No.14 of 2004 is in respect of 3645 USD being misappropriated through the account of Punitha Murugappan based on the Telex Message dated 16.10.1996 and the fraudulent transactions pertaining to fake Telex Message dated 04.02.1997 in respect of misappropriating 10,291.20 US Dollars into the account of Punitha Murugappan.

19. The above transactions forms part of the complaint of Mr.Rajan dated 10.11.1997 which was taken up for investigation by the Ambuttur Estate Police initially and later transferred to C.B.I.

20. The Trial Court while considering the discharge petition has found that there is overlapping, but certain transactions were omitted, therefore the trial court has concluded those omitted transactions forms part of the subsequent trial in C.C.No.56 of 2003 and C.C.No.14 of 2004. Therefore for those transactions the petitioner accused is liable to be tried independently.



21. To testify the impugned order, it is essential to look into Section 300 Cr.P.C which reads as under:

> Person once convicted or acquitted not to be tried for same offence.
>
> (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence

shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

Scope and application:

This section lays down that a person once convicted or acquitted cannot be tried for the same offence. It is based on the maxim nemo debet bis vexari, which means that a person cannot be tried a second time for an offence which is involved in the offence with which he was previously charged. In order to bar the trial of any person already tried, it must be shown(1) that he has been tried by a competent Court for the same offence or one for which he might have been charged or convicted at that trial, on the same facts(2) that he has been convicted or acquitted at the trial, and (3) that such conviction or acquittal is in force. Where an accused after trial has been acquitted so long as the acquittal is in force, he cannot be tried again for the same offence by a different Court, by doubting the decision or commenting upon it observing that the acquittal was undeserved or unwarranted and the accused has committed the offence with which he was charged.

22. The section prohibits subsequent trial of a person for a same offence for which he has been already convicted or acquitted. The pre condition for invoking this section is that the subsequent trial must be for the same offence nor on the same facts for any other offences for which the different charge from one made against him might have been made under Sub Section (1) of Section 221 of the code.

23. In the present case, facts are same, no new facts are found in C.C.No.56 of 2003 or in C.C.NO.14 of 2004, except few additional amount alleged to be misappropriated in the course of same transaction. If the facts of the subsequent two cases in C.C.No.56 of 2003, C.C.No.14 of 2004 are taken in isolation, the charge likely to be framed will be nothing other than the charges already been framed in C.C.No.63 of 2001 and being tried. The Reading of charge 1 in C.C.No. 63 of 2001, this court finds that it includes the fact of fake Telex Massage which is subject matter of the subsequent two cases, opening of bank accounts in the name of Kannappan and Punitha Murugappan, fraudulently deposit of US Dollars into these accounts and thereafter siphoning the amount. Once charge been already framed and tried for all the above said criminal action, just the case originally registered by the local police being transferred to C.B.I cannot have independent legs to stand, while the investigation taken up by C.B.I on its own had culminated in C.C.No.63 of 2001 encompassing entire sequence of crime and the transactions.

24. To demonstrate that the charge likely to be framed in the cases in C.C.No.56/2003 and C.C.No.14/04 will be overlapping and repeating, it is suffice to extract the first charge framed and tried in C.C.No.63/2001.

> "(i). Firstly, that you during the period between 1993 and 1997 at Ambattur Industrial Estate Branch, Anna Nagar and other places entered into a criminal conspiracy with unknown person/persons agreed to do or caused to be done illegal acts namely to commit criminal misconduct, cheating, fabrication of records, using the accounts, committed theft of bank records and destroyed the evidence in order to screen the offences committed by you and other illegal acts and in pursuance of the said conspiracy you misappropriated the proceeds of Fixed Deposit of Ramasamy Chettiar in Canara Bank, Habibullah road branch, Chennai maturing

on 18.08.1993 for Rs.81,005.75 entrusted to you with a specific instruction to encash the same and keep the amount for the travel expenses of Ramasamy Chettiar for his visit to India, which you misappropriated and converted into your own use without his knowledge and against the instructions of Shri Ramasamy Chettiar and in pursuance of the conspiracy you fraudulently and dishonestly by forging the signature of Ramasamy Chettiar through unknown to you and knowing fully well that the signature of Ramasamy chettiar is a forged one used the same as genuine and the you fraudulently and dishonestly opened a NRE account bearing No. 173 in State Bank of India, Ambattur Industrial Estates Branch, (AIED) Chennai on 04.09.1993 without the knowledge of Ramasamy Chettiar on the basis of a demand draft of Canara Bank, Habibullah road branch, Chennai which was issued in pursuance of the encashment of the aforesaid fixed deposit of Ramasamy Chettiar and the said account was opened by you in order to commit fraud through this account and in pursuance of the conspiracy you fraudulently and dishonestly obtained four cheque books in the name of Ramasamy Chettiar without the knowledge of him by signing yourself in the cheque book register as if you were receiving the cheque books on behalf of Ramaswamy Chettiar.

(ii). In pursuance of the conspiracy fraudulently and dishonestly stealthily removed one FCNR receipt from the custody of the bank and fraudulently and dishonestly prepared the FCNR receipt for UDD 4995.27 for 36 months ante-dating it as 20.02.1992 for a maturity value of USD 6096.23 without any remittance to the bank which was issued with the signature of JS Ramaswamy, Officer of the bank forged with the help of unknown persons known to you in the name of Ramaswamy Chettiary and others in the normal course of business whereas this FCNR deposit of Ramaswamy Chettiar came on transfer from Canara Bank, Habibullah Road, Branch, Chennai to SBI, AIEB, Chennai in the year 1993 for opening the FCNR account in the name of Ramaswamy Chettiar and other and further you fraudulently and dishonestly got the signature of Ramaswamy

Chettiar forged on the reverse side of the FCNR receipt dated 20.02.1992 and used the same as genuine and in other to screen the illegal acts you fraudulently and dishonestly destroyed the number portion of the FCNR in order to prevent the detection of fraud by the bank and you encashed the fabricated FCNR on 17.04.1995 and caused the credit of its proceeds of Rs.1,90,604/- to the fraudulent account opened by you in the name of Ramaswamy Chettiar in NRE account no. 173 and subsequently withdrew the same by using the cheque leaves, which you have received from the bank for the said NRE A/c No.173 in the name of Ramaswamy Chettiar with the forged signature of Ramaswamy Chettiar with the forged signature of Ramaswamy Chettiar, in pursuance of the conspiracy and in order to satisfy the account holder Ramaswamy chettiar who sent the original FCNR Receipt dated 20.02.1993 for renewal from 20.02.1996 for another three years and in order to screen the fraudulent encashment as mentioned above you fraudulently and dishonestly prepared a bogus receipt on FCNR receipt No.485318 dated 20.02.1996 for a value of USD 6096.23 for a period of 36 months and sent the same to Ramaswamy Chettiar and to screen of the fraud, destroyed the FCNR receipt-11, and further in pursuance of the conspiracy you fraudulently and dishonestly prematurely closed on 03.11.1994 the FCNR deposit held vide receipt No.42916 and 25.02.1194 in the name of Ramaswamy Chettiar, Kalairasi Chettiar and Valliammal Chettiar for GBP 5732.10 without receiving the said FCNR receipt or any request from the party cased the proceeds of this deposit account of Rs.3,00,810/- credited on 04.11.1994 into the NRE account No.173 which was opened by you fraudulently in the name of Ramaswamy Chettiar and subsequently fraudulently and dishonestly withdrew the amount by using the cheques on which you cased signatures of Ramaswamy Chettiar forged, when the aforesaid original FCNR receipt no.421976 was received in February, 1995 from Ramaswamy Chettiar with an instruction to transfer the proceeds of deposit on maturity to the bank of Madura, you in order to avoid detection of the fraudulent act committed by you without the knowledge of the bank, fraudulently and dishonestly sent a telex message on

18.02.1995 to SBI, London as if the GBP amount 6096.00 placed at the disposal of Bank of Madura as requested by the party without any vouchers to that transactions and in order to set right the books of the bank and to screen the detection of fraud, you fraudulently and dishonestly on 15.05.1995 created a false credit for SBI London for this amount by raising a corresponding unauthorised debit against US Branches Account.

(iii). In pursuance of the conspiracy, you fraudulently and dishonestly fabricated an endorsement of the account holder/Valliammal Chettiar, who wanted renewal of the FCNR receipt No.436156 dated 03.02.1994 for USD 1928.19 for a period of three years, indicating as if the party wanted the payment for the deposit and you fraudulently and dishonestly without the knowledge of the party closed the deposit account on 25.01.1995 and credited the proceeds a sum of Rs.63,013/- on 27.01.1995 in the fraudulent account No.NRE 173 opened by you and subsequently fraudulently and dishonestly withdrew the said amount along with previous balance totalling to Rs.64,000/- in cash by using the cheque containing forged signature of Ramaswamy Chettiar which you caused with the help of unknown person known to you and further in order to satisfy the party you fraudulently and dishonestly stealthily removed the FCNR receipt bearing No.436173 from the bank and fabricated the same dating it 24.01.1995 (back dated 20.01.1995) for USD 2015 and issued the same with the forged signature of V.Srinivasan, then officer of the bank, which you caused with the help of the unknown persons known to you and furnished the said receipt to the party.

(iv). In Pursuance of the conspiracy you fraudulently and dishonestly on or before 18.10.1995, 06.06.1996 and 09.07.1996 made false telex messages showing telex transfer of USD 19,565, USD 8950/ respectively in favour of SB NRE account No.173 fraudulently opened by you and on the basis of these telex messages you fraudulently and dishonestly induced the bank to cause credit of Rs.6,77,600/- ,Rs.2,78,006/- and

Rs.3,13,985/- into the NRE A/c No. 173 on the respective dates as if the said amounts were received as telex transfers in favour of Ramaswamy Chettiar and subsequently withdrew the above amounts on the basis of cheques with the signature of Ramaswamy Chettiar which you got forged with the help of unknown persons known to you and in order to screen the offence you fraudulently and dishonestly destroyed the aforesaid fabricated telex messages prepared by you and further in order to cover up the illegal act while reporting the TT purchase transaction dated 09.07.1996 to SBI foreign Department, Culcutta, you fraudulently and dishonestly had reflected this transaction clubbed with another transaction of export bill purchase totalling to USD 13200 as an EXPB (Collection of Export Bill) transaction.

(v). Further when you were entrusted with the FCNR No.421902 dated 18.09.1992 in the name of Dr.Thillaikarasi with a maturity value GBP 8,897.06 with maturity dated 18.09.1994 was received with a specific instruction of Dr.Thillaikarasai for renewal for a further period of three years in the name of Dr.Thillaikarasi and her husband Shri Kannappan you fraudulently and dishonestly closed the FCNR No.421902 on 01.10.1994 without the knowledge of the account holder and further you fraudulently and dishonestly without the knowledge of Dr.Thillaikarasi and M.Kannappan which you got with the help of unknown person to you and opened the said account with the proceeds of the above said closed FCNR account amounting to Rs.4,38,689/-. Further, you without the knowledge of Kannappan received two cheque books for this account from the bank, as if you are the representative of kannappan and subsequently you fraudulently and dishonestly withdrew Rs.4,38,000/- of the said amount from the said account by using two cheques with the signature of Kannappan which you got forged with the help of unknown person known to you and further in order to screen the illegal act and in order to satisfy the account holder Dr Thillaikarasai that as per her instructions, the said FCNR was renewed for three years you fraudulently and dishonestly stealthily removed FCNR receipt No. 421921 from the bank and fabricated the same as if the said FCNR account was renewed from 19.09.1994 with a deposit of GBP 8897.60 for a period of 36 months with the forged signature of Shri V.Srinivasan, then Officer of the bank which you got with the help of unknown person known to you and thereby you screen the fraudulent encashment of FCNR against Dr.Thillaikarasi's instruction.

(vi). Further in pursuance of the conspiracy you fraudulently and dishonestly on or before 21.08.1996 & 23.10.1996 made telex messages and on the basis of those telex messages you fraudulently and dishonestly induced the bank to cause credit of Rs.5,26,440/- and Rs.2,60,390/- respectively on the aforesaid two dates the same into the NRE A/c.No.195 as if the said amounts were received as Telex transfers in favour of M.Kannappan and subsequently withdrew the same on the basis of cheques on which you got with the signature of Kannappan forged unknown persons known to you and in order to cover up this illegal act, while report these two TT purchase transactions to SBI Foreign Department, Calcutta, you had fraudulently and dishonestly reflected these transactions clubbed with other type transactions of US Dollor DD purchase and shown as collection of Export Bill (EXPB) transaction.

(vii). In pursuance of the conspiracy you fraudulently and dishonestly opened a joint account bearing no.84/25122 subsequently numbered as 01190035122 in your name and in the name of your wife Punitha Ramanthan without her knowledge and subsequently when this account was converted as single constituent account in the name of wife only, you submitted the fabricated specimen signature card for this account with the signature of your wife forged by you without her knowledge and used the cheques for illegal purpose and further in pursuance of the conspiracy you fraudulently and dishonestly on 05.08.1996 and 17.04.1997 made false telex message and on the basis of these telex messages you fraudulently and dishonestly induced the bank to cause credit of Rs.2,09,630/- and Rs.3,52,350/- respectively in the above said two dates into this account as if the said amounts were received as telex transfer in favour of Punitha Ramanathan and subsequently you withdrew these on the basis of cheques wherein you forged the signature of Punitha Ramanathan and in order to screen the offence you fraudulently and dishonestly destroyed the fabricated telex messages prepared by you in respect of the transactions and further in order to cover up these illegal acts while reporting these two UTTP (US Dollar Telex Transfer Purchase) transactions to SBI Foreign Department, Calcutta, you had reflected these transaction as US Dollar DD Purchase (UDD) transactions.

(viii). In pursuance of the conspiracy you fraudulently and dishonestly on 24.01.1997 and 04.03.1997 made false telex messages showing telex transfer of USD 8400 and USD 6000 respectively in favour of SB A/c.No.C-36/7105 in the name of Smt.Punitha Murugappan at SBI Anna Nagar West Branch and on the basis of those telex messages, you, fraudulently and dishonestly induced the bank to transfer the said amount to SBI, Anna Nagar West Branch as if this amount was received in favour of Smt.Punitha Murugappan, account holder of C-36/710 at the said branch and caused credit of the same into the said account at Anna Nagar and subsequently withdrew the above amounts by obtaining the signature of your wife by making false representation and in order to screen the offence you fraudulently and dishonestly destroyed the fabricated telex messages prepared by you in respect of these transactions and further in order to cover up this illegal acts, you had fraudulently and dishonestly, while reporting these two UTTP (Us Dollar Telex Transfer Purchase) Purchase transactions to SBI Foreign Department, Calcutta, relfected these transactions differently as collection of Expert Bills (EXPB) and US Dollar DD Purchase (UDD) respectively, and you thereby committed the offence punishable under sections 120-B r/w 420, 468 r/w 471, 467 r/w 471, 477-A, 406, 381, 201 IPC and 13(2) r/w 13(1) (d) of Prevention of Corruption Act 1988.”

25. It is not the case of the prosecution that the offences alleged in these two cases namely, C.C.No.56 of 2003 and C.C.No.14 of 2004 are distinct and discovered as a result of

subsequent investigation. In fact, the offences stated in these two cases are out come of the First Information Report registered prior to registration of the complaint by CBI in R.C.No.40 of 2002. Therefore, the exception mentioned in Section 300 (3) Cr.P.C., does not attract to the facts of the case.

26. In Seemakurti Kanakayya-petitioner vs.Emperor 1930 MWN 241. The Hon'ble High Court referring and distinguishing its earlier judgment in In re Appadurai Ayyar (1915) 32 I.C. 158 as held that:-

> "If the decision of this Court in In re Appadurai Aiyar (1915) 32 I.C. 158 is applicable I am bound by it. But it seems to me that it is not applicable to the facts of this case. From the report it seems that in that case there was a previous trial of the same accused for misappropriation of a gross sum between two dates. The accused was thereafter charged for misappropriation of another gross amount not included in the first amount but misappropriated on dates within the same period. In those circumstances the Court held that the intention of the legislature in enacting Section 222 of the Criminal Procedure Code is that where there is to be a trial for misappropriation of a gross sum there should be only one trial for all such offences committed within the period covered by the defalcation. The charge in the previous case in such circumstances should be taken to include all the items misappropriated by the accused during that period, and therefore the accused cannot be put on trial in a subsequent case for other amounts alleged to have been misappropriated during the same period. That decision has no bearing to this case because the former case against this petitioner was not for misappropriation of a gross sum misappropriated within two dates but was for misappropriation of specific sums of money received on specific dates. Where that is the case Section 222(2) of the Criminal Procedure Code does not come into play at all. All that the section in my opinion says is that instead of charging the accused under separate counts for defalcation of each particular amount separately received and misappropriated which is the general rule laid down in Section 234, an exception is made, necessitated by convenience, that all the defalcations within a year may be joined together

> and the total amount of defalcation and the dates within which the defalcation took place need alone be mentioned in the charge and a charge so framed is to be deemed to be a charge for one offence within the meaning of Section 234. This does not mean that, if that is more convenient, separate counts should not be charged for separate amounts misappropriated on different dates. In other words, Section 222(2) is an enabling provision which permits what otherwise would be a large number of separate charges to be' joined together for the purpose of convenience. Nowhere is it prescribed that separate charges in respect of separate amounts misappropriated shall not be resorted to and that if an accused has misappropriated several sums within a year they all should be added together and made into one gross sum and tried as one charge. All that the decision in In re Appadurai Aiyar (1915) 32 I.C. 158 means is that where a trial of misappropriation of a gross sum within an interval of time has already taken place, the prosecution cannot be heard to say that certain items of misappropriation were left out from the gross sum first charged or to bring fresh cases on those omitted amounts. As the learned Judges say, in such a case the charge in the previous case should be taken to include all the items misappropriated by him in the course of the same transaction during that period. As that decision has no application to this case I need not further consider it.

27. This Judgment explains when subsequent prosecution is permissible and when not permissible. In case of misappropriation if the previous trial is in respect of gross sum between two days, the subsequent trial for the amount not included in the gross sum is impermissible whereas if the earlier trial is for specific sum of money received on specific date the subsequent trial for the gross sum excluding the specific sum is permissible.



28. The Principle laid in the above judgment is applied to the facts of the case in hand, the previous trial is in respect of gross sum whereas the subsequent trial in C.C.No. 56 of 2003 and C.C.No. 14 of 2004 in respect of specific sum. Therefore, the judgment rendered in In re Appadurai Ayyar will apply to the facts of the case and therefore, the Principle of double jeopardy gets attracted.

29. Apart from the principle of double jeopardy, rule of 'issue estoppel' also gets attracted in this case, as observed in Manipur Administration, Manipur v. Thokchom bira Sing reported in [1965 SC 87] by five Judges Bench of the Supreme Court has observed that:-

> "...It is common ground that the respondent cannot bring his case within the provisions of sub-s. (1) of s. 403 and it was also common ground that the trial of the respondent would be permitted by sub-s. (2). It should, however, be noticed that sub-ss. (1) to (3) of this section deal with the trial of an accused for an offence and his conviction therefor. The question raised for decision in Pritam Singh's(2) case however was different and was whether where an issue of fact has been tried by a competent court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel or res judicata against the prosecution not as a bar to the trial and conviction of the accused for a different or distinct offence but as (1) [1961] 3 S.C.R. 107. (2) A.I.R. 1956 S.C. 415. L/P(D)1SCI-5precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by the terms of s. 403(2).
>
> As we have pointed out, we are not now concerned with any extension of the principle of autre fois acquit but as to the admissibility of evidence which is designed to upset a finding of fact recorded by a competent court at a previous trial. The reasoning of Lord MacDermott in Sambasivam's(2) case was not the first occasion when this rule as to issue- estoppel in a criminal trial was formulated or given effect to. That it is not the same as the plea of double jeopardy or autre fois acquit is also clear from the statement of the law by Lord MacDermott himself. The distinction between autre fois acquit and the objection to the reception of evidence to prove an identical fact which has been the subject of an earlier finding between the parties is brought out in the following passage from the judgment of Wright, J. in The Queen v. Ollis(3):
>
> "The real question is whether this relevant evidence of the false pretence on July 5 or 6 ought to have been excluded on the ground that it was

part of (1) 176 I.A. 158. ( 2 ) [1950] A.C. 458. (3) (1900) 2 Q.B. 758, 768-769.

the evidence given for the prosecution at the former trial, at which the prisoner was charged with having obtained money from Ramsey on that false pretence, and was acquitted of that charge."

The learned Judge then went on to point out that if the acquittal at the first trial was based on the negativing of this fact the evidence would be inadmissible but if that acquittal was based on other circumstances the evidence would be admissible. That is why he said:

"An objection in the nature of a plea of "autre fois acquit" cannot of course be maintained, because on either indictment the prisoner could not have been convicted of the offences, or any of them, which were alleged in the other indictment. Nor can there be an estoppel of record or quasi of record, unless it appears by record of itself, or as explained by proper evidence, that the same point was determined on the first trial which was in issue on the second trial."

Speaking of this type of estoppel Dixon, J. said in The King v. Wilkes(1):

"Whilst there is not a great deal of authority upon the subject, it appears to me that there is nothing wrong in the view that there is an issue estoppel, if it appears by record of itself or as explained by proper evidence, that the same point was determined in favour of a prisoner in a previous criminal trial which is brought in issue on a second criminal trial of the same prisoner. That seems to be implied in the language used by Wright, J. in R. v. Ollis which in effect I have adopted in the foregoing statement...... There must be a prior proceeding determined against the Crown necessarily involving an issue which again arises in a subsequent proceeding by the Crown against the same prisoner. The allegation of the Crown in the subsequent proceeding must itself be inconsistent with the acquittal of the prisoner in the previous proceeding. But if such a condition of affairs arises I see no reason why the ordinary rules of issue-estoppel should not apply. Such rules are not to be confused with those of res judicata, which in criminal proceedings are expressed in the pleas of autre fois acquit and autre fois convict. They are pleas which are (1) C.L.R. 511 at pp. 518-519.

concerned with the judicial determination of an alleged criminal liability and in the case of conviction with the substitution of a new liability. Issue-estoppel is concerned with the judicial establishment of a proposition of law or fact between parties. It depends upon well-known doctrines which control the relitigation of issues which are settled by prior litigation."

This decision was rendered in 1948. The matter was the subject of consideration by the High Court of Australia after the decision in Sambasivam's(1) case in Marz v. The Queen (2) . The question concerned the validity of a convic- tion for rape after the accused had been acquitted on the charge of murdering the woman during the commission of the act. In an unanimous judgment by which the appeal of the accused was allowed, the court said:

"The Crown is as much precluded by an estoppel by judgment in criminal proceedings as is a subject in civil proceedings.... The law which gives effect to issue-estoppels is not concerned with the correctness or in correctness of the finding which amounts to an estoppel, still less with the process of reasoning by which the finding was reached in fact..... It is enough that an issue or issues have been distinctly raised or found. Once that is done, then, so long as the finding stands, if there be any subsequent litigation between the same parties, no allegations legally inconsistent with the finding may be made by one of them against the other."

It is, therefore, clear that s. 403 of the Criminal Procedure Code does not preclude the applicability of this rule of issue-estoppel. The rule being one which is in accord with sound principle and supported by high authority and there being a decision of this Court which has accepted it as a proper one to be adopted, we do not see any reason for discarding it.

30. As discussed, going by the facts of the case, in all these three cases the facts are common, documents are same and no additional new witnesses to be examined. Therefore, no different charge other than what framed and tried in C.C.No.63

of 2001 could be framed in C.C.No.56 of 2003 and C.C.No.14 of 2004 except the amount misappropriated. Therefore, apart from double jeopardy, issue estoppel also gets attracted in this case.

31. For the foregoing reasons, this court holds that the subsequent trial of the accused in C.C.No.56 of 2003 and C.C.No.14 of 2004 is barred under Section 300 of Cr.P.C. Hence, the petition to discharge the accused/petitioner is allowed. In the result, the Criminal Revision Petition Nos: 426 and 427 of 2007 are allowed. No order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To
1. The Additional Special Judge,
SPE/CBI/ACB/Chennai

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

Copy to

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

+2cc to Mr.M.NIRMALKUMAR, Advocate, S.R.No. 801
+1cc to Mr.K.SRINIVASAN,
Special Public Prosecutor, S.R.No.905

JUDGEMENT MADE IN
Crl.R.C Nos.426 & 427 of 2007

RJ(CO)
TR(19/01/2018)