BAIL SLIP

The Appellant/Petitioner Accused namely N.Ravichandran, S/o.Late P.N.Nair was directed to be released on bail as order of this Court dated 19/11/2010 made in Crl.MP.No. 1/2010 in Crl.A.706 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 20.09.2019

JUDGMENT DELIVERED ON : 19.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.A.No.706 of 2010

N.Ravichandran ... Appellant / Accused No.3

Vs.

State represented by
The Inspector of Police,
SPE / CBI / ACB
Chennai
(RC.No.24(A)/2005) ... Respondent / Complainant

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the Judgment and Conviction, dated 21.10.2010, passed in C.C.No.3 of 2007, by the II Additional District Judge / Special Judge (CBI Cases), Coimbatore.

For Appellant: Mr.R.Sathishkumar
Legal Aid Counsel

For Respondent: Mr.K.Srinivasan
Spl.P.P CBI Cases

JUDGMENT

The appellant has preferred this Criminal Appeal, aggrieved by the Judgment and Conviction passed by the learned II Additional District Judge / Special Judge (CBI Cases), Coimbatore in C.C.No.3 of 2007, dated 21.10.2010, convicting and sentencing the appellant / accused as follows:-

Sl. No.	Offence for which convicted	Sentence of imprisonment	Fine amount
1	Under Sections 120(b) r/w 409, 419, 420 and 467, 467 r/w. 471 and 477 of IPC., and Section 13 (2) r/w 13(1) (c) and (d) of Prevention of Corruption Act, 1988	1 year Rigorous Imprisonment.	Rs.1000/-, in default, to undergo one month Rigorous Imprisonment.
2	Under Section 419 IPC (19 counts)	1 year Rigorous Imprisonment for each count	Rs.1000/- for each count, in default, to undergo 1 month Rigorous Imprisonment (19 x 1000) = Rs.19,000/-
3.	Section 467 r/w 471 of IPC (31 counts)	1 year Rigorous Imprisonment for each count	Rs.500/- for each count, in default, to undergo 1 month Rigorous Imprisonment (31 x 500) = Rs.15,500/-
4	Section 109 r/w 420 of IPC (31 counts)	1 year Rigorous Imprisonment for each count	Rs.500/- for each count, in default, to undergo 1 month Rigorous Imprisonment (31 x 500) = Rs.15,500/-

The sentences were ordered to run concurrently. The total fine amount is Rs.51,000/-.

2. In nutshell, prosecution case, as described and established before the trial Court, is like thus:-

(i) Accused No.1/ Porchelvi was dominion over the cheques of Life Insurance Corporation of India (shortly called 'the LIC'), had conspired with A-2 / Chinnasamy, and A-3 / N.Ravichandran and fraudulently issued cheques in the name of

A2 and A3 and other persons showing as if they were genuine policy holders and dishonestly induced the LIC to honor the cheques to an extent of Rs.59 Lakhs, which the LIC are not liable to pay.

(ii) Appellant herein / A3 was working at M/s.Nandhini Packaging Ltd., owned by A-2, as Marketing Manager and deposited 12 cheques, which were fraudulently issued by A-1, in his bank account, viz., Indian Bank, Pappanayakkanpalayam in S.B.26412 and Indian Bank, Chinniyampalayam, Coimbatore and encashed Rs.2,51,377/- and also fraudulently opened a fictitious bank account at United Bank of India, Peelamedu Branch in SB.358, in the name of K.Selvaraj and presented 19 cheques, issued by A1 and encashed Rs.2,62,136/-. Hence, the complaint.

3. Insofar as A1 and A2 are concerned, since they agreed the commission of offence, the case against them was split up in C.C.No.10 of 2005 and they were convicted accordingly.

4. To prove the guilt of the accused, on the side of the prosecution, as many as 20 witnesses were examined as P.Ws.1 to 20 and 108 documents were marked as Exs.P.1 to P.108. On the side of the accused, no witness was examined nor any document was marked.

5. When the appellants were questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against him, he denied the same.

6. The trial Court, on the basis of the oral and documentary evidence, convicted and sentenced the accused as aforesaid. Challenging the legality of the said conviction and sentence, the present appeal has been filed by the appellant.

7. Mr.R.Sathishkumar, the learned Legal-Aid Counsel appearing on behalf of the Appellant would submit that the trial Court erred in convicting the appellant without proper appreciation of the evidence on record. The appellant has no mens rea to involve himself in the offence. The learned counsel further submitted that several other persons, who are similarly placed as that of the appellant are shown as witnesses and the appellant alone was singled out to be added as an accused. The appellant was in no way benefited and only the 1st and 2nd accused shown in the charge sheet were benefited. Since the entire amount involved in this case had been repaid by 1st and 2nd accused, there was no pecuniary loss to the establishment. He would further submit that exclusion of the jurisdiction of ordinary Criminal Court, so far as offences under the P.C.Act are concerned, has been explicitly expressed under Sec.4(1) of the PC Act, which does not find a place in respect of non-PC offences in sub-section (3) of Sec.4 of the PC Act. It is not obligatory on the part of a Special Judge to try non-PC offences. The learned counsel

would further submit that the entire defrauded amount had been repaid to LIC by A1 even before registration of the case, which is admitted by the witnesses from LIC as well as P.W.10. In support of his contention, he drew the attention of this Court to the Judgment of Hon'ble Supreme Court in State through Central Bureau of Investigation, New Delhi Vs. Jitender Kumar Singh reported in (2014 (11) SCC 724), and prayed to allow the appeal.

8. Per contra, Mr.K.Srinivasan, learned Special Public Prosecutor for CBI Cases, for the respondent would submit that the accused was working at M/s.Nandhini Packaging Ltd., owned by A-2, as Marketing Manager and deposited 12 cheques, which were fraudulently issued by A-1, in his Bank account, viz., Indian Bank, Pappanayakkanpalayam in S.B.26412 and Indian Bank, Chinniyampalayam, Coimbatore and encashed Rs.2,51,377/- and also fraudulently opened a fictitious bank account at United Bank of India, Peelamedu Branch in SB.358, in the name of K.Selvaraj and presented 19 cheques, issued by A1 and encashed Rs.2,62,136/-. The appellant acted with dishonest intention to defraud the LIC, by depositing the cheques, which were received from A1 and A2. In support of his contention, he relied upon the decision of the Hon'ble Supreme Court in the case of Ram Lal Vs. State of Himachal Pradesh reported in (2018 (4) MLJ (Crl.) 698) and submitted in view of the fact that A1 and A2 admitted the offence and pleaded guilty, the natural corollary is that the appellant in the case of conspiracy has conspired with A1 and A2. The cheques used for misappropriation of the funds have been produced and the details of the cheques and the encashment have been proved by the evidence of P.W.s.2,3,6 and 10. Exs.P 36, 51, 67 and 68, the signatures found in the cheques have been proved by the above said witnesses and by handwriting opinion, P.W.8. Accordingly, the prosecution proved its case beyond all reasonable doubts. The Court below has rightly convicted the appellant and the impugned Judgment warrants no interference. In support of his contention, he relied upon the decision of the Apex Court in State V. Jitender Kumar Singh reported in (2014) 11 Supreme Court Cases 724.

9. I have heard the learned counsels appearing on either side and perused the materials available on record.

10.P.Ws.1, 5, 11, 12, 13, 15 and 16 are the witnesses from Life Insurance Corporation. Through P.W.1, the admission letters of A1, viz., Ex.P1 and 2 have been marked. In Ex.P1 and 2, A1 admitted to the LIC officials, wherein, the details and particulars of the defrauded amount by misappropriation have been given and also the role played by the appellant. P.W.5 has clearly spoken about the nature of the accounts maintained by LIC.

11. P.W.11 had spoken about the job description of the appellant. A1 being the incharge of the accounts section and

she had been instrumental in preparing the cheques signed as authorised signatory and about the LIC conducting preliminary enquiry. Thereafter, constituting a committee and conducting a detailed enquiry, the accounts maintained and about the names, in which, the cheques were issued.

12. P.Ws.11 is the co-signatory to the cheque and also confirmed the duties of the appellant. P.W.13 is the Regional Manager of LIC, who had issued sanction order. P.W.15, Administrative Officer, believing A1 in good faith, had signed as co-signatory. P.Ws.11 and 16, who have been working along with A1, being familiar with the handwriting and signature of A1, had identified the same. A2 is the husband of A1, who is running the business in the name of Gowtham Agency, Gowtham Printing Printers, Thirumalai Printers, Gowtham Stationery and Nandhini Packaging Private Limited.

13.P.Ws.4,6,10,17,18 and 19, who are employed in these firms have categorically spoken about the appellant being employed by A2 in Nandhini Packaging Private Limited and also in Gowtham Stationery. P.W.7, the Manager of United Bank of India is familiar with the appellant, who was running Gowtham Stationery near the bank. The appellant used to visit the bank regularly. PW7 has stated that the photograph Ex.P.36 is that of the appellant and he had opened the account in the name of K.Selvaraj and he used to sign as K.S.Raj. He has clearly stated that the appellant in person had opened the account in United Bank of India and Ex.P. 36 is the photograph of the appellant and he represented himself as K.Selvaraj and used to sign as K.S.Raj. But, the photograph Ex.P36 is that of the appellant Ravichandran. P.W.6, a co-employee of the appellant identified the photograph of the appellant found in Ex.P36 as that of Ravichandran. P.Ws.2, 3 and 14 are the witnesses from the Indian Bank. P.W.8 is the witness from Canara Bank. Thus all these witnesses have categorically stated about the appellant opening the account in his name and in the name of K.Selvaraj and using this account misappropriated the cheques of LIC. The signature found in the cheques, withdrawal slips and the appellant operating the account have been clearly proved by the above witnesses.

14.The learned counsel appearing for the appellant relied on the decision of the Hon'ble Supreme Court in State through Central Bureau of Investigation, New Delhi Vs. Jitender Kumar Singh reported in (2014 (11) SCC 724), wherein, it has held as follows:

> 37. Exclusion of the jurisdiction of ordinary Criminal Court, so far as offences under the PC Act are concerned, has been explicitly expressed under Section 4(1) of the PC Act, which does not find a place in respect of non-PC offences in sub-section (3) of Section 4 of the PC Act. Further, it is not

obligatory on the part of a Special Judge to try non-PC offences. The expression "may also try" gives an element of discretion on the part of the Special Judge which will depend upon the facts of each case and the inter-relation between PC offences and non-PC offences.

43. We can visualize a situation where a public servant dies at the fag end of the trial, by that time, several witnesses might have been examined and to hold that the entire trial would be vitiated due to death of a sole public servant would defeat the entire object and purpose of the PC Act, which is enacted for effective combating of corruption and to expedite cases related to corruption and bribery. The purpose of the PC Act is to make anti-corruption laws more effective in order to expedite the proceedings, provisions for day-to-day trial of cases, transparency with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been provided under the PC Act. Consequently, once the power has been exercised by the Special Judge under sub-section (3) of Section 4 of the PC Act to proceed against non-PC offences along with PC offences, the mere fact that the sole public servant dies after the exercise of powers under sub-section (3) of Section 4, will not divest the jurisdiction of the Special Judge or vitiate the proceedings pending before him. "

15.Initially, the appellant was charged and was facing trial along with A1 and A2. A1 and A2 had pleaded guilty and admitted the offence and hence, the appellant alone faced the trial in this case and hence, the contention that the appellant being a private person, cannot be proceeded against under Corruption Act and 120(B) IPC cannot be accepted for the reason that after cognizance taken by the Special Court and appearance of all the accused and after framing of charges, A1 and A2 pleaded guilty. Thereafter only, the appellant's case was split up. Such being the case, the Special Judge had jurisdiction to try and proceed against the appellant. The conspiracy is a chain of links. There are enough and sufficient materials in this case to show that the appellant had conspired with the other accused in defrauding and misappropriating the funds of LIC. Further, the admission of A1 and A2 had fortified the link of conspiracy. Therefore, the judgment relied upon by the learned counsel for the appellant is not helpful to the present case.

16.The learned Special Public Prosecutor has relied upon the judgment of the Hon'ble Supreme Court in State V. Jitender Kumar Singh reported in (2014) 11 Supreme Court Cases 724, wherein, this Court has held as follows:

> "13.Extra-judicial confession is a weak piece of evidence and the court must ensure that the same inspires confidence and is corroborated by other prosecution evidence. In order to accept extra-judicial confession, it must be voluntary and must inspire confidence. If the court is satisfied that the extra-judicial confession is voluntary, it can be acted upon to base the conviction. Considering the admissibility and evidentiary value of extra-judicial confession, after referring to various judgments, in Sahadevan and Another v. State of Tamil Nadu (2012) 6 SCC 403, this court held as under:-
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> "15.1. In Balwinder Singh v. State of Punjab 1995 Supp (4) SCC 259 this Court stated the principle that:
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> "10. An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution.
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> Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance." 15.4. While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in State of Rajasthan v. Raja Ram (2003) 8 SCC 180 stated the principle that:
>
> "19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made." The Court further expressed the view that: "19. … Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused.…" 15.6. Accepting the admissibility of the extra-judicial

confession, the Court in Sansar Chand v. State of Rajasthan (2010) 10 SCC 604 held that:

> "29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [Vide Thimma and Thimma Raju v. State of Mysore (1970) 2 SCC 105, Mulk Raj v. State of U.P. AIR 1959 SC 902, Sivakumar v. State By Inspector of Police (2006) 1 SCC 714 (SCC paras 40 and 41 : AIR paras 41 and 42), Shiva Karam Payaswami Tewari v. State of Maharashtra (2009) 11 SCC 262 and Mohd. Azad alias Shamin v. State of W.B. (2008) 15 SCC 449]"

14. It is well settled that conviction can be based on a voluntarily confession but the rule of prudence requires that wherever possible it should be corroborated by independent evidence. Extra-judicial confession of accused need not in all cases be corroborated. In Madan Gopal Kakkad v. Naval Dubey and Another (1992) 3 SCC 204, this court after referring to Piara Singh and Others v. State of Punjab (1977) 4 SCC 452 held that the law does not require that the evidence of an extra-judicial confession should in all cases be corroborated. The rule of prudence does not require that each and every circumstance mentioned in the confession must be separately and independently corroborated.

15. As discussed above, if the court is satisfied that if the confession is voluntary, the conviction can be based upon the same. Rule of Prudence does not require that each and every circumstance mentioned in the confession with regard to the participation of the accused must be separately and independently corroborated. In the case at hand, as pointed out by the trial court as well as by the High Court, R.K. Soni (PW-2) and R.C. Chhabra (PW-3) were the senior officers of the bank and when they reached the bank for inspection on 23.04.1994, the accused submitted his confessional statement (Ex.-PW-2/A). Likewise, in the enquiry conducted by R.C. Chhabra (PW-3), the accused had given confession statement (Ex.-PW-3/A)."

17. In this case, there are admission letters Exs.P1 and P2 of A1 are well before the registration of the case. Exs.P1 and P2 have not been disputed and not surrounded by any suspicious circumstances, it is a voluntary one and inspire confidence, it can be acted upon to base the conviction.

Exs.P1 and P2 lend assurance and link to the chain of events.

18.Accordingly, all the incriminating factors for the commission of the offence by the accused have been proved by the prosecution. The trial Court, upon appreciating those aspects in proper perspective, has found the accused guilty of the offence committed by him. There is no reason to interfere with the well considered order of conviction and sentence passed by the learned Special Judge and the same is required to be confirmed.

19.In fine, the criminal appeal is dismissed and the judgment of conviction and sentence dated 21.10.2010 in C.C.No.3 of 2007 passed by the II Additional District Judge / Special Judge (CBI Cases), Coimbatore is confirmed. The trial Court is directed to secure the appellant/accused and remand him to custody to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

To

1. The II Additional District Judge / Special Judge (CBI Cases), Coimbatore.

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

3. The Special Public Prosecutor, for CBI Cases, High Court, Madras-104.

Crl.A(MD)No.706 of 2010

GMR(CO)
GN(10/02/2020)