Bail Slip

The Appellants herein/Accused Viz.,A1- S.Sukumaran S/o Sangu, A2-S.Rajamanikam S/o Seetharaman, A3-D.Sivamani S/o Devaraja, A4-P.Mohammed Azam S/o Peer Mohammed were directed to be released on Bail as per order of this Court dated 12/9/2003 made in Crl.M.P.No.8640 of 2003 in Crl.A.No.1354 of 2003.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.1354 of 2003

1.S.Sukumaran
2.S.Rajamanikam
3.D.Sivamani
4.P.Mohammed Azam ... Appellants

Vs.

1.State Bank of Indore,
Broadway Branch,
Chennai-600 001.
Rep. by its Manager A.Krishnan

2.State rep. by Public Prosecutor.
(R2 impleaded as per the order of
this Court dated 27.07.2012 made
in Crl.A.1354 of 2003) ... Respondents

Prayer:

Appeal filed under Section 374(2) of Cr.P.C. to allow the appeal against the judgment dated 01.09.2003 in C.C.No.15 of 1989 on the file of VI Additional City Civil Court, Chennai.

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For Appellants : Mr.V.Balasubramanian

For Respondents: Mr.C.P.R.Kamaraj for R1

Mr.R.Ravichandran, GA (Crl side)
for R2

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J U D G M E N T

This Criminal Appeal has been filed as against the judgment dated 01.09.2003 in C.C.No.15 of 1989 on the file of VI Additional City Civil Court, Chennai.

2.The brief case of the prosecution is that one K.G.Sakhalkar was the then Branch Manager and was working in MM Grade Scale III and S.Sukumaran was the Officer in JM Senior Grade Scale I. The said K.G.Sakhalkar had no power or authority to purchase cheques more than Rs.25 Lakhs and S.Sukumaran do not have power to purchase the cheques more than Rs.25 Lakhs vest with the Managing Director of the Bank. During the tenure of their service they developed an unlawful understanding with one K.Sreedharan who was trading in his individual name as well as in different firm names to commit cheating and misappropriation on the Bank's funds and in pursuance of the same, the said K.G.Sakhalkar and S.Sukumaran had allowed the said Sreedharan and other firms to obtain Bankers cheques from the State Bank of Indore, Madras Branch for several Lakhs of Rupees.

3.With the above said allegations, initially, the then Chief Vigilance Officer made complaint on 10.05.2004 to CBI for taking appropriate action. However, the CBI after conducting detailed investigation on 16.09.1983 closed the complaint on the ground that there is no sufficient evidence to prosecute the accused. However, the investigation disclosed that the accused violated the Conduct Rules and hence recommended for departmental proceedings and accordingly requested the Court for closing the FIR. The said document was marked as Ex.D17. Original complaint is 53 days after closure report. The first respondent/ State Bank of Indore, Chennai Branch, filed private complaint under Section 200 of Cr.P.C. before the VI Additional City Civil Court, Chennai.

4.After taking cognizance and following the procedure, the first respondent/ complainant, in order to prove the charge, examined P.W.1 to P.W.5 and marked Ex.P1 to Ex.P551 in order to disprove the prosecution case, the appellants/ accused marked Ex.D1 to Ex.D18. However, they did not examine any witness.

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5.It is relevant to note here that during the pendancy of the trial, the case as against the first accused was split up as C.C.No.6 of 2002 and the case as against the sixth accused was split up as C.C.No.62 of 1989 and the third accused was discharged from the case. Thereafter, the appellants herein were re-arrayed as A1 to A4 respectively and trial was proceeded against them.

6.After elaborate trial and upon consideration of the entire materials, the Trial Court convicted the first appellant/ A1 for the offence under Section 13(1) (d) (ii) r/w Section 13 (2) of the Prevention of Corruption Act and under Section 420 of IPC. The Trial Court convicted the appellants 2 to 4/ A2 to A4 for the offence under Section 420 of IPC.

7.The first appellant/ A1 was sentenced to undergo one year simple imprisonment and to pay a fine of Rs.1,000/- in default to undergo 3 months simple imprisonment for the offence under Section 13(1) (d) (ii) r/w Section 13 (2) of the Prevention of Corruption Act and to undergo six months simple imprisonment and to pay a fine of Rs.5,000/- in default to undergo three months simple imprisonment for the offence under Section 420 of IPC. The appellants 2 to 4/ A2 to 4 were sentenced to undergo six months simple imprisonment each and to pay a fine of Rs.5,000/- each, in default to undergo three months simple imprisonment for the offence under Section 420 of IPC. The Trial Court further ordered the sentences imposed on the first appellant/ A1 to run concurrently. Aggrieved by the said conviction and sentence, the appellants/ A1 to A4 have filed this appeal before this Court.

8.The learned counsel appearing for the appellants/ accused would submit that though the first respondent Bank initially filed complaint to the CBI, the CBI after conducting detailed investigation on 16.09.1983 closed the complaint on the ground that there is no sufficient evidence to prosecute the accused. However, the investigation disclosed that the accused violated the Conduct Rules and hence recommended for departmental proceedings and accordingly requested the Court for closing the FIR. The said document was marked as Ex.D17.

9.The learned counsel appearing for the appellants/ accused would further submit that during the pendancy of the investigation of CBI, the first respondent/ State Bank of Indore, Chennai Branch, filed private complaint under Section 200 of Cr.P.C. which is un-sustainable as per Sections 3 and 4 of the Prevention of Corruption Act. He would further submit that as per Section 3 of the Prevention of Corruption Act, every offence under the Prevention of Corruption Act has to be tried only by the Special Judge and Special Court appointed under the Prevention of Corruption Act. Hence, the complaint before the Magistrate is not maintainable and taking cognizance itself is bad in law and contrary to the Prevention of Corruption Act.

10.The learned counsel appearing for the appellants/ accused would further submit that the very same issue has been dealt with by the Hon'ble Apex Court in the decision reported in (1993) 1 SCC 561 (Sampat Singh and others Vs. State of Haryana

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and others), the relevant portion of which reads as follows:

> '10.In the instant case, the case is registered under Sections 161 and 165 of the Indian Penal Code and under Section 5(2) of the Prevention of Corruption Act, which offences can only be tried by a Special Court. We think it is not necessary to expatiate the proposition of law in this regard but suffice to refer to the decision in A.R.Antulay Vs. R.S.Nayak wherein at Page 44, the following dictum is laid down: (SCC p.644, para 24)
>
> "Section 7(1) of the 1952 Act creates a condition which is sine qua non for the trial of offences under Section 6(1) of the said Act. The condition is that notwithstanding anything contained in the Code of Criminal Procedure or any other law, the said offences shall be triable by Special Judges only."
>
> 11.In the light of the above observation, it was necessary for the Magistrate to have sent the final report to the Special Court which is alone competent to try the case.
>
> 12.Reference may also be made to K.Siva Kanchi Reddy Vs. State of A.P. to which one of us (K.Jayachandra Reddy,J.) was a party.
>
> 13.Reverting to the case on hand, the Magistrate before whom the cancellation report had been placed, instead of acting on it by himself, should have forwarded the same to the Special Judge but he has not done so especially when he has no power to try the offences.
>
> "14.Under these circumstances, we set aside the order of the Magistrate dated July 22, 1991 and direct him to transmit all the papers along with the cancellation report to the Special Judge having jurisdiction. The Special Judge to whom the entire matter will be transmitted may, after going into the records, pass the necessary orders according to law."

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11.The learned counsel appearing for the first respondent fairly conceded to the effect that complaint before the Magistrate is not maintainable in view of the decision cited supra as well as the Prevention of Corruption Act. However, he would further submit that A1 alone was convicted under the Prevention of Corruption Act and the other accused were convicted only under Section 420 of IPC. However, he fairly conceded that the complaint before Magistrate itself is bad in law as per the Prevention of Corruption Act and would further submit that this Court may pass appropriate orders.

12.Heard the arguments advanced on either side and perused the materials available on record.

13.On a perusal of Sections 3 and 4 of the Prevention of Corruption Act and the decision of the Hon'ble Apex Court cited supra, it is categorically held that the private complainant filed before the Magistrate and taken cognizance under Prevention of Corruption Act is bad in law. As per the provisions of the Prevention of Corruption Act, the Special Judge having jurisdiction alone is entitled to take cognizance and try the case. Hence, by applying the above ratio, the appeal is allowed.

14.In the result, the criminal appeal is allowed. The conviction and sentence as against the appellants/ A1 to A4 in the judgment dated 01.09.2003 in C.C.No.15 of 1989 passed by the VI Additional City Civil Court, Chennai, is set aside. The first appellant/A1 is acquitted from the charge under Section 13 (1) (d) (ii) r/w Section 13 (2) of the Prevention of Corruption Act and from the charge under Section 420 of IPC. The appellants 2 to 4/ A2 to A4 are acquitted from the charge under Section 420 of IPC. The fine amount, if any, paid by the appellants is ordered to be refunded to them. The bail bonds and the sureties, if any, executed by them, shall stand terminated/ discharged. However, liberty is granted to the appellant to work out the remedy in accordance with law.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The VI Additional City Civil Court,
Chennai.

2.The VI Additional Sessions Judge,
Chennai.

3.The Principal District and Sessions Judge,
Chennai.

4.The Public Prosecutor,
High Court, Madras.

Copy to

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

(To send back records if any)

+2cc to Mr.V.Balasubramanian & Associates, Advocate Sr.3186

Crl.A.No.1354 of 2003

pm[co]
srg 6/3/2019

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