BAIL SLIP

Appellant / Sole Accused namely O.Paramaiah, male, aged 61/14, was released on Bail as per order of this Court dated 23/12/2014 made in MP(MD)No.1/2014 in Crl.A.(MD)No.325/2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :14.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A(MD)No.325 of 2014

O.Paramaiah ... Appellant / Sole accused

Vs.

State represented through
the Deputy Superintendent of Police,
CBI/ACB,
Chennai. ... Respondent/ Complainant

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records in the judgment of the II Additional District Judge for CBI Cases, Madurai in C.C.No.15 of 2013 by judgment dated 27.11.2014 and set aside the same.

For Appellant : Mr.S.Ramasamy
Respondent : Mr.N.Nagendran,
Special Public Prosecutor for CBI.

JUDGMENT

This appeal is filed by the appellant/ accused in CC No.15 of 2013, against the judgment dated 27.11.2014 passed by the learned II Additional District Judge, for CBI Cases, Madurai.

2.The appellant is the sole accused in CC No.15 of 2013, and by judgment dated 27.11.2014, the learned II Additional District Judge for CBI Cases, Madurai has found the appellant guilty for the offence punishable under Sections 408, 420, 477A of IPC and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, convicted and sentenced him as follows:

Section of Law	Sentence of imprisonment	Fine amount
408 IPC	To undergo rigorous imprisonment for one year.	Rs.5000/- in default to undergo rigorous imprisonment for three months.
420 IPC	To undergo rigorous imprisonment for one year.	Rs.5000/- in default to undergo rigorous imprisonment for three months.

477A IPC	To undergo rigorous imprisonment for one year.	Rs.5000/- in default to undergo rigorous imprisonment for three months.
13(2) r/w 13(1) (d) of Prevention of Corruption Act	To undergo rigorous imprisonment for one year.	Rs.5000/- in default to undergo rigorous imprisonment for three months.

3.As against the conviction and the sentence imposed by the trial Court, the present Criminal Appeal has been filed.

4.The brief facts of the case of the prosecution are that the appellant/ accused was working as a Senior Social Security Assistant (Sr SSA) in the Employees Provident Fund Organisation [EPFO], Sub Regional Office at Tirunelveli.

5.During the period 2011 - 2012 and 2012 - 2013, while the appellant was working in Tirunelveli,he transferred the pension arrears amount to the tune of Rs.22,83,997/- from the EPFO account to the account of twelve EPF beneficiaries namely, 1. V.O.Chellaiah [PW.19],S/o.Oorkavalan, 2.K.Sorimuthu [PW22], S/O.Kali Thewar, 3.U.Vellapandi[PW23],S/O.Urudhamadan,4.S.Chinnan[PW18], S/o.C.Sundaram, 5.P.Chellammal [PW20], W/O.Chelliah, 6.V.Kaliammal [PW21] W/O.Veloosamy, 7.K.Thangam [PW24] W/o.E.Krishnan, 8.T.Muthukumar [PW25] S/o.M.Thiruvalli, 9.T.Madasamy [PW26] S/o.M.Thiruvali, 10. T.Murugesan [PW27] S/o.M.Thiruvali 11.D.Chellammal [PW28], W/o.David, 12.C.Mala [PW9], W/o.Chinnasamy.

6.The accused officer had fraudulently released those pension arrears to the bank accounts of the beneficiaries by making false entries, through Pension Arrears Adjustment Module in the computer system maintained in EPFO, SRO, Tirunelveli. After crediting those amounts, the accused has approached the beneficiaries and collected back the amount, but failed to remit the same in the appropriate accounts and not reported the incident to the concerned authorities. He did not submit any proposal in the relevant pension pay order files and did not obtain any authorisation or approval from the competent authority before releasing such amount. Thus, the accused officer has abused his official position as public servant and obtained pecuniary advantage to the tune of Rs.22,04,365/- and also caused corresponding loss to the EPF organisation. CBI has conducted investigation in this matter and filed a final report as against the accused for the offence punishable under Sections 408, 420, 477A of IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

7.During the trial, 33 witnesses have been examined and 76 documents have been marked on the side of the prosecution. The incriminating materials have been put before the accused under Section 313 CrPC and the accused denied the same and no witness had been examined on his side and no document was marked.

8.In conclusion of the trial the appellant / accused was found guilty for the offence punishable under Sections 408, 420, 477A of IPC and Section 13(2) r/w13(1)(d) of Prevention of Corruption Act, 1988 and convicted and sentenced him as mentioned in paragraph No.2.

9.Heard Mr.S.Ramasamy, learned Counsel for the appellant and Mr.N.Nagendran, learned Special Public Prosecutor appearing for CBI.

10.Mr.S.Ramasamy, learned Counsel for the appellant has canvassed the following points :

10.1.Ex.P.65 is the First Information Report registered in this case and the FIR was originally registered as against 13 persons. However, without assigning any reason, they have been arrayed as witnesses and the final report has been filed as against this appellant alone and the respondent Police has not come forward with any specific reason for deleting the names of the other persons, who have been arrayed as accused in the FIR.

10.2. The prosecution has not established that during the period 2011 - 2012 and 2012 - 2013, the respondent is the only officer, who has been authorised to transfer the pension arrears to the beneficiaries.

10.3. PW1 is not the competent authority to grant sanction order to prosecute the appellant. However, without considering the material defects, the trial Court has convicted the appellant erroneously. Therefore, he prays for setting aside the order of the trial Court and for allowing of this appeal.

11.Per contra, Mr.N.Nagendren, learned Special Public Prosecutor appearing for CBI would submit that the FIR was originally registered as against 13 persons, including 12 beneficiaries, in whose accounts, the pension arrears have been wrongly credited. During the investigation, it was found that the amount has been credited in their accounts without their knowledge. However, the accused had also approached those witnesses and got back the money by stating that the amount has been wrongly credited and therefore, the other accused persons were unaware of the commission of offence and they are in no way connected with the commission of the offence, therefore, their names have rightly been omitted by the Investigating Officer and the final report was filed only as against this appellant. Moreover, those beneficiaries have been cited as witnesses PW9 and PW18 to PW28 and they have deposed before the Court about the commission of offence and their deposition would also reveal the manner, in which the offence has been committed. Insofar as sanction is concerned, PW1 is the competent authority to accord sanction and the appellant has not disputed the same, during the trial by cross examining PW1. He also pointed out that the entire transaction of fraud has taken place through the computer system assigned to the petitioner and each computer is having a separate IP address and the entire fraudulent transaction has been carried out through the system operated by the accused. Through the evidence of PW14, who was working as DPA in the EPFO, SRO, Tirunelveli it has been established that the entire fraudulent transaction has taken place only through the computer system operated by the accused. Therefore, the prosecution has proved its case beyond reasonable doubt and hence prays for dismissal of the appeal.

12.This Court has paid its best attention to the rival submissions and also perused the materials placed on record.

13.Though the learned Counsel for the appellant assailed the sanction accorded by PW1 that he is not competent enough to accord sanction, as rightly pointed out by the learned Special Public Prosecutor, the sanction authority was not cross examined by the accused during the trial in order to prove that PW1 is not the competent authority to accord sanction. In the absence of any material that PW1 is not the competent authority to accord sanction, on mere objection by the learned Counsel that at the relevant point of time, PW1 was not the competent authority, this Court cannot consider the same as a ground for acquittal.

14.Further, initially the 12 beneficiaries have also been arrayed as accused in the FIR and during the course of the investigation, it appears that the said beneficiaries have clearly stated that the amount has been wrongly credited to their accounts without their knowledge and subsequently, the accused had also got back the amount. Though the accused had collected the money from the said persons, neither he had remitted the same in the appropriate accounts nor reported the mistake committed in this case to the higher officials.

15.In the evidence, PW9 and PW18 - PW28 have categorically stated that the manner in which the offence has been committed and it appears that there is no nexus between the PW9 and PW18 to PW28 and therefore, their names have rightly been omitted, while filing the charge sheet. Further, they have also been cited as witnesses in this case. Merely because they have been arrayed as accused in the FIR and later on their names have been omitted, it cannot make a ground that the accused has not committed any offence. As rightly pointed out by the learned Special Public Prosecutor, the evidence of PW14 would clearly reveal that the entire transaction has been done through the computer system operated by the accused. Moreover, the evidence of PW14 has not been assailed by the accused.

16.Therefore, with the available evidence, the offence committed by the accused has been established beyond reasonable doubt and the grounds raised by the appellant are not sufficient to interfere with the order of conviction and sentence imposed by the trial Court.

17.In the result, the Criminal Appeal is dismissed and the order of the trial Court namely II Additional District Judge for CBI Cases, Madurai in C.C.No.15 of 2013 dated 27.11.2014 is hereby confirmed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To
1.The II Additional Sessions Judge,
for CBI Cases, Madurai.
2.The Principal Sessions Judge, Madurai.
3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4.The Deputy Superintendent of Police, CBI/ACB,
Chennai.

Copy to: The Section Officer4, Criminal Section,(2 copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S.RAMASAMY, Advocate (SR-92033[F] dated 15/10/2019)

Crl.A(MD)No.325 of 2014
14.10.2019

dsk
sma/26/12/2019/5p/8c