Bail Slip

Crl.A.No.79/2009:

The Appellant herein/Accused viz S.P. Damodharan has directed to be released on bail as per order of this Court dated 06.02.2009 in M.P. No. 1/2009 in Crl.R.C. No. 79/2009.

Crl.A.No.115 of 2009:

The Appellant herein/Accused viz R.Musthaq Ahmed and K.Abdul Nayeem has directed to be released on bail as per order of this Court dated 03.03.2009 in M.P. No. 1/2009 in Crl.R.C. No. 115/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Crl.A.Nos.79 & 115 of 2009

1.S.P.Damodaran ... Appellant/A1 in Crl.A.No.79 of 2009

2.R.Musthaq Ahmed
3.K.Abdul Nayeem ... Appellants/A2&A3 in Crl.A.No.115 of 2009

-Vs-

The State by
Inspector of Police,
SPE : CBI : ACB,
Chennai.
(RC 31 (A)/2002) ... Respondents in both Crl.As

PRAYER in Crl.A.No.79 of 2009: Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, against the Judgment of the learned XI Additional Judge for CBI Cases, Chennai-1 (CBI Cases relating to Banks and Financial Institutions) made in C.C.No.46 of 2003 on his file dated 30.01.2009 convicting accused/appellant herein under Sections 120(B) r/w 420 IPC, 467 IPC, 467 r/w 471 IPC and under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act and sentencing him to undergo two years R.I and to pay a fine of Rs.40,000/- in default to undergo 6 months R.I.

PRAYER in Crl.A.No.115 of 2009: Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, to set aside the order of the XI Additional Judge for CBI Cases, Chennai in C.C.No.46 of 2003 dated 30.01.2009 and acquit the appellants from the charges u/s. 120-B r/w 420, 467, 467 r/w 471 IPC.

For Appellants :Mr.V.Balu in Crl.A.No.79 of 2009
:M/s.M.Mohammed Rafi
in Crl.A.No.115 of 2009

For Respondent :Mr.K.Srinivasan
Special Public Prosecutor [CBI Cases]

COMMON JUDGMENT

The appellants, who were arrayed as A-1 to A-3, were tried before the learned XI Addl. Judge (CBI Cases relating to banks & Financial Institutions), Chennai, in C.C. No.46 of 2003 and the trial court, vide judgment dated 30.01.2009, found the accused guilty of the offences and, accordingly, convicted and sentenced them as under :-

Accused	Section	Sentence

A-1	U/s 120-B r/w 420 IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for a period of six months.
	U/s 467 IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for a period of six months.
	U/s 467 r/w 471 IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for a period of six months.
	U/s 13 (2) r/w 13 (1) (d) of PC Act	Convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for a period of six months.
A-2 & A-3	U/s 120-B r/w 420 IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,00,000/- each, in default to undergo rigorous imprisonment for a period of six months.
	U/s 467 r/w 471 IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,00,000/- each, in default to undergo rigorous imprisonment for a period of six months.

The sentence of imprisonment were ordered to run concurrently. The appellants, aggrieved by the conviction and sentence awarded by the trial court vide the impugned judgment referred supra, have filed the above appeals. For the sake of convenience, the appellants would be referred in the same order as they were arrayed before the trial court.

2.The brief facts of the case of the prosecution is as under:-

(i) Based on the reliable information received from the office of SP:CBI:ACB, Chennai alleging that during the period March 2002, the A1 while working as Manager, Union Bank of India, Nungambakkam Branch, Chennai entered into a criminal conspiracy with the A2, who was the Proprietor of M/s.Madras Leather Company and the A3, who was the Proprietor of M/s.Nayeem Leather Overseas Firm and in pursuance of the said conspiracy, the A1 by abusing his official position issued a forged LC.No.239 along with other signatory on behalf of the A2 for the beneficiary the A3. On the basis of the said LC.No.239, UCO Bank, Chennai Main Branch, Thambu Chetty Street, Chennai, has discounted the bill for Rs.10,86,357/- and subsequently, Conformation Letter [Ex.P6] was also issued by A1 for another LC.No.129. The issuance of the said LC Nos. did not reflect in any of the official records of the bank and, thereby, caused wrongful loss to the United Commercial Bank, Chennai Main Branch, Thambu Chetty Street, Chennai to the tune of Rs.10,86,357/- and corresponding wrongful gain to the A2 and A3.

3.It is the further case of the prosecution that the 1st appellant issued LC without keeping any regular records with the branch and issued Confirmation Letter when the Senior Manager was on leave and, thereby, caused wrongful loss of Rs.10,86,357/- to United Commercial Bank, Chennai Main Branch, Thambu Chetty Street, Chennai and corresponding wrongful gain to A2 and A3. Therefore, the respondent registered a case in Crime No.RC MA1 2002 A 0031 against A1 to A3, for the offences punishable under Sections 120-B r/w 420, 467, 467 r/w 471 IPC, Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

4.The appellants were furnished with the relied upon documents under Section 207 Cr.P.C. and the trial court framed the charges as stated above. When questioned, the accused pleaded not guilty.

5.To prove the case, the prosecution examined PW1 to PW17 and marked Exs.P1 to P48. When the accused were questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same as false. Neither any oral nor any documentary evidence was marked on the side of the defence. The trial court, after hearing either side and after considering the materials, both oral and documentary, available on record, convicted and sentenced the appellants as above. Aggrieved by the said conviction and sentence recorded by the trial court, the appellants have filed the present appeal.

6.Learned counsel appearing for R-1 submitted that the crucial witnesses are P.W.s 4, 8, 12, 15 and 17, but a cumulative reading of their evidence do not disclose commission of any offence. However, the trial court, without considering the evidence of the prosecution in proper perspective, has convicted A-1, which is unsustainable. It is the further contention of the learned counsel for A-1 that there being no complaint from the bank, P.W.17 has instituted the case against the accused. Further, it is submitted that the sanction accorded on the basis of the materials available on record reveal that there has been no due application of mind by P.W.1 while granting the sanction. The trial court, without considering the materials on record has recorded an erroneous finding against A-1, which requires interference at the hands of this Court.

7.In the alternative, it is the submission of the learned counsel for A-1 that if this Court comes to the conclusion that the prosecution has made out a case as against A-1, considering the age of A-1, who is aged about 72 years, and is suffering from many ailments, may take a lenient view by imposing a lesser sentence.

8.Learned counsel appearing for A-2 and A-3 submitted that no offence has been committed by them. It is the submission of the learned counsel that believing the words of A-1, A-2 and A-3 have forwarded the letter of credit to the beneficiary bank and obtained the amount from the bank. It is the further submission of the learned counsel for A-2 and A-3 that the entire loss, suffered by UCO Bank, Chennai Main Branch, Thambu Chetty Street, Chennai, has already been paid by A-2 and A-3, which has been disclosed by the defence witnesses. Considering all the above and there being no culpability on the part of A-2 and A-3, it is prayed by the learned counsel that a lenient view may be taken by imposing lesser sentence.

9.Per contra, learned Special Public Prosecutor appearing for the respondent submits that a cumulative reading of the evidence of all the witnesses, more especially the evidence of P.W.15, the Senior Scientific Officer, who has categorically deposed that the signature of P.W.4 in the letter, Ex.P-2, dated 13.3.02 addressed to A-3 has been forged and that the forgery has been done by A-1. It is the further deposition of P.W.15 that the confirmation letter, Ex.P-6 has also been forged by A-1 and A-2 and A-3, who have participated in the crime have reaped the benefits, knowing fully well that the said benefit was not due to them and, therefore, it is not open to the appellants, more especially A-2 and A-3 to contend that they were not aware of the act of A-1. It is the submission of the learned Special Public Prosecutor that the court below has taken into consideration all the materials available on record and has arrived at the finding and, thereby, convicted and sentenced the appellants, which does not warrant any interference by this Court.

10.This Court paid its anxious consideration to the submissions advanced by the respective learned counsel for the appellants and also the learned Special Public Prosecutor appearing for the respondent and also perused the materials available on record to which this Court's attention was drawn.

11.P.W.1 is the General Manager of Union Bank of India, Mumbai, and the competent authority to accord sanction for prosecution. A perusal of the evidence of P.W.1 reveals that he had accorded sanction of prosecution on 9.7.03 after going through all the original documents and the statements of witnesses and he has further deposed that he has signed in all the pages of the sanction order. No worthwhile contradiction has been elicited in the cross examination of P.W.1 and in the absence of any contradiction or material irregularity in the accord of sanction, this Court does not find any fault with the sanction order issued by P.W.1.

12.P.W.3 is the Chief Manager of Union Bank of India, who has spoken about the transaction between A-1 and the other accused leading to the encashment of the letter of credit. P.W.2, the clerk in UCO Bank has confirmed the signature of A-1 in Ex.P-6, the letter of credit issued by A-1 for the benefit of A-2 and A-3.

13.It is the case of the prosecution that it is the signature of P.W.4, who was the Senior Manager of Union Bank of India, Chennai Main Branch, at the relevant point of time, which has been forged by A-1. P.W.4 in his evidence has stated about the duties and responsibilities of A-1, which included works in loans and advanced department and also forseeing issuance of letter of credit. It is the further evidence of P.W.4 that the letter of credit relating to A-3 company was negotiated with UCO Bank. It is the categorical deposition of P.W.4 that he had not signed LC No.239 dated 13.3.02 and the same was not issued by him. It is the further deposition of P.W.4 that the seal as found in Ex.P-2 was in the custody of A-1 and that the power of attorney No.11409 is not that of P.W.4.

14.A perusal of the evidence of P.W.8, the Manager of Adyar Student Xerox reveals that on 2.4.03, at the request of the officials of the respondent, he browsed through the computer to find out whether Ex.P-2 was typed in the computer and on examination, he found that the said document was typed in the computer at Adyar Student Xerox. P.W.8, at the request of the officials of the respondent, took a print out of the said document and handed over the same to the respondent. From the evidence of P.W.8, it transpires that Exs.P-2 and P-32 were typed and printed at the office of M/s.Adyar Students Xerox.

15.P.W.13, Chief Manager of Union Bank of India, Delhi, has, in his evidence, deposed that Ex.P-13, LC No.129, issued in the name of M/s.Meltrack India Ltd., does not reflect in the records of the bank corresponding to the account of the company run by A-3 and that the signature in the said LC has been forged. It is the further deposition of P.W.13 that Ex.P-6 has been forged and the signatures found in Ex.P-6 pertain to the handwriting of A-1. P.W.13 further deposed that enquiry by him with UCO Bank revealed that confirmation as to the said LC was given by A-1. It is the categorical deposition of P.W.13 that Exs.P-2 and P-6 have been forged by A-1 for the benefit of A-2 and A-3.

16.P.W.15 is the Senior Scientific Officer on questioned documents. It is his deposition that he compared Exs.P-2 and P-6 with the standard documents and found that the documents, Exs.P-2 and P-6 have been forged and the forgery has been carried out by A-1. The following opinion has been given by P.W.15 :-

> "1.Handwriting evidence points to the writer of the standard writings marked as S1 to S20, S46 to S50 in Ex.P44 series and A1 to A6 in Ex.P42 series being the person responsible for writing the red encircled questioned writings marked as Q1 to Q6 in Ex.P6. This opinion along with the details reasons find place in his report dated 14.05.2003 and the same is marked as Ex.P45.
>
> 2.The authority of the questioned signature marked as Q9 in Ex.P2 could not be connected with the writer of the standard signatures marked as S51 to S55 in Ex.P24 series, A7 & A8 in Ex.P42 series. This opinion supported by details reasons find place in Ex.P45.
>
> 3.The authorship of the questioned signatures marked as Q9 in Ex.P52 could not be connected with the writer of the specimen signatures marked as S56 to S60 in Ex.P43 series. This opinion along with reasons find place in Ex.P45.
>
> 4.The questioned rubber stamp impressions marked as Q6 and Q7 in Ex.P6 and Q12 in Ex.P2 tally with the specimen rubber stamp impressions marked as S31 to S35 in Ex.P18 series. This opinion along with reasons can be found in

Ex.P45.

5.The questioned rubber stamp impressions marked as Q11 in Ex.P2 tallies with the specimen rubber stamp impressions marked as S41 to S45 in Ex.P17 series. This opinion along with reasons find place in Ex.P45.

6.The questioned rubber stamp impressions marked as Q5 in Ex.P6 and Q10 in Ex.P2 tally with the specimen rubber stamp impressions marked as S26 to S30 in Ex.P17. This opinion along with reasons find place in Ex.p45.

7.Certain similarities have been observed between the questioned signatures/figures marked as Q4 in Ex.P6, Q8 & A13 in Ex.P2 and standard signatures/writings marked as S1 to S25, S46 to S50 in Ex.P44 series and A1 to A6 in Ex.P42 series which indicate their common authorship. This opinion along with reasons find place in Ex.P45."

17.Inspite of cross examination, no contradiction, which enures to the benefit of the accused have been elicited by the defense in the evidence of P.W.15. Therefore, the evidence of P.W.15, coupled with the evidence of P.W.4 conclusively prove that Exs.P-2 and P-6 were forged by A-1 for the purpose of causing wrongful loss to the bank with corresponding wrongful gain to A-2 and A-3.

18.A holistic analysis of the evidence available on record categorically points the finger on A-1 as the person, who perpetrated the offence and A-2 and A-3 participated in the said crime and enriched themselves wrongfully. The trial court has appreciated the evidence of the witnesses in proper perspective keeping in mind the relevant documents, which were pivotal to the prosecution and has rendered a finding holding the accused/appellants guilty of the offences and, accordingly, convicted them as above and this Court does not find any infirmity in the order passed by the court below.

19.On the question of sentence, this Court, after taking into consideration the submissions of the respective learned counsel for the accused and also considering their age further, a decade has passed since the commission of the offence, this Court is of the considered view that the sentence imposed on A-1 could be reduced from two years to one year and the sentence imposed on A-2 and A-3 could be reduced from three years to two years. However, the fine imposed on the accused shall stand maintained.

20.Accordingly, these appeals are dismissed confirming the conviction imposed on the accused. However, the sentence imposed on A-1 for each of the offence is reduced from two years to one year and the sentence imposed on A-2 and A-3 for each of the offence is reduced from three years to two years. Fine amounts imposed by the trial court stands confirmed. The sentences are directed to run concurrently. The trial court is directed to secure the presence of the accused and commit them to prison to serve the sentence imposed upon them.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

vv2/gln
To

1.The XI Additional Judge,
(CBI Cases relating to Banks and
Financial Institutions)
Chennai.

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

3.The Special Public Prosecutor,
High Court, Madras

4.The Principal Sessions Judge
Chennai

+1 CC to Mr.K.Srinivasan, Advocate sr6918
+1 CC to Mr.A. Abdul Rahim, Advocate sr 7415.

VGII(CO)
SP(20/07/2020)