BAIL SLIP

The Appellants/Accused Nos.1 & 2 Viz., (A2) S.Kumara Prasad, S/o.(Late) K.Sankara Pillai, (A1) Parvathy Ammal, 60 Years, D/o.(Late) Padmanabha Pillai were directed to be released on Bail vide Order dated 04/02/2011 in Crl.M.P.Nos.1 & 1 of 2011 in Crl.A.Nos.78 & 79 of 2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRIMINAL APPEAL NOS.78 & 79 OF 2011

S.Kumara Prasad ... Appellant/Accused 2 in Crl.A.78 of 2011

Parvathy Ammal ... Appellant/Accused 1 in Crl.A.79 of 2011

.Vs.

The State Rep. By
The Inspector of Police,
SPE: CBI: ACB: Chennai. ... Respondent/Complainant in both Crl.A's

COMMON PRAYER:-

Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence imposed on the appellants by the XI Additional City Civil and Sessions Judge for CBI Cases, (relating to Banks and Financial Institutions), Chennai in C.C.No.78 of 1997 dated 31.01.2011.

For Appellant in Crl.A.78/2011	:	Mr.V.Gopinath Senior Counsel For Mr.C.Ramkumar
For Appellant in Crl.A.79/2011	:	Mr.C.S.Pillai
For Respondent in both Crl.As.	:	Mr.K.Srinivasan Special Public Prosecutor

JUDGEMENT

Totally, there are 3 accused. Pending appeal A3 died. The appellant in Crl.A.78 of 2011, is A2 and appellant in Crl.A.No.79 of 2011 is A1, in C.C.No.78 of 1997, on the file of XI Additional City Civil and Sessions Judge, CBI Cases relating to Banks and Financial Institutions, Chennai. All the accused stood charged for the offences under Sections 120-B r/w. 420 of IPC, 420 of IPC and Section 13(1)(d) r/w. 13(2) of Prevention of Corruption Act, 1988.

2. By judgment dated 31.01.2011, the trial Court, convicted and sentenced the appellants/A1 and A2 as detailed below:-

Accused	Section of law	Sentence
A.1	120-B r/w. 420 of IPC	Rigorous imprisonment for one year and to pay a fine of Rs.4000/-, in default, to undergo simple imprisonment for three months .
A.1	420 IPC (2 counts)	Rigorous imprisonment for one year and to pay a fine of Rs.4000/- for each count, in default, to undergo simple imprisonment for three months for each count.
A.1	13(2) r/w.13(1)(d) of Prevention of Corruption Act 1988	Rigorous imprisonment for one year and to pay a fine of Rs.4000/-, in default, to undergo simple imprisonment for three months .
A.2	120-B r/w. 420 of IPC	Rigorous imprisonment for one year and to pay a fine of Rs.4000/-, in default, to undergo simple imprisonment for three months .
A.2	420 IPC (2 counts)	Rigorous imprisonment for one year and to pay a fine of Rs.4000/- for each count, in default, to undergo simple imprisonment for three months for each count.

The trial Court has ordered the above sentences to run concurrently.

3. Challenging the said conviction and sentence, the appellants are before this Court with these Criminal Appeals.

4. The case of the prosecution, in brief, is as follows:-

A1, was working as an Officer in Indian Bank, Royapettah Branch. A2, a person known to A1. During the period between 19.07.1988 to 16.01.1989, A1, was maintaining the Day Book, General Ledger and she was also in-charge of General Account section. During that period, she has manipulated the records and inflated the Demand Draft amounts to the tune of Rs.51,250/- and transferred those amounts to the account of A1 and A2, and issued 15 cheques to various persons without having sufficient amount in their account, thereby, defrauded a sum of Rs.31,156/-. That apart, A1 also transferred some amount to the Account of A2 and A3, thereby caused loss to the bank to the tune of Rs.96,406/-. Hence, the charge.

5. Based on the above materials, the trial Court framed charges, as detailed in the first paragraph of this judgment, against the accused. The accused denied the same. During trial, A3 was absconding and case against A3, was split up, and separated in CC No.11 of 2010.

6. In order to prove the case, on the side of the prosecution, as many as 14 witnesses were examined and 112 documents were exhibited.

7. Out of the witnesses examined, P.W.1, is the Sanctioning Authority. He has spoken about the sanction given by him to initiate prosecution against A1. P.W.2, is the Branch Manager of the Indian Bank, Royapettah Bank, he has spoken about various false entries made by A1, thereby cheated the bank. P.W.3, is also one of the Officer working in the same India Bank Branch, he has also spoken about the alterations made in the Day Book and the Demand Draft Register. P.W.4, is the Clerk in Indian Bank, Royapettah Branch. He has spoken about various entries made by A1 in the ledger. P.W.5, is also a clerk, working in the same Branch. He has spoken about the clearance made by cheques. P.W.6, is another clerk, who was maintaining the Demand Draft(DD) Register and working in the Demand Draft (DD) Section. Through him, the DD Register has been marked as Ex.P.9, and his evidence has no substance. P.W.7 to P.W.13 are all beneficiaries of the cheque issued by A1 to A3. P.W.14 is the Investigating Officer, who has conducted investigation and filed a final report.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor mark any documents on their side.

9. Having considered all the above materials, the trial Court convicted the appellants/accused as stated in the first paragraph of this judgment. Challenging the same, A1 is before this Court with Crl.A.No.79 of 2011 and A2, with Crl.A.No.78 of 2011.

10. The learned counsels appearing for the appellants submitted that the main allegation against A1, is that she was working as Officer in the Indian Bank, Royapettah Branch. She alleged to have maintained various record books, including DD Register and DDPs and made false entries, thereby misappropriated the Bank funds with the help of A2 and A3. However, there is no material to prove the allegations that A1 alone has manipulated the records, evidence available on records clearly shows that other officials were also maintaining the records, there is likelihood of manipulation of records by other officials. The prosecution also failed to send the records to hand writing expert along with the admitted signature of A1 to prove it is only A1 has manipulated the records. That apart, from the evidence of P.Ws.2 to 5, it is clear that some other officials also made entires in the Day book and hence, the prosecution failed to prove that only A1 has manipulated the record.

11. The learned counsel further submitted that admittedly, some entires made in the DD Register shows that DD's were received from particular outstation Branch and code number of the Branch was also mentioned in the DD Register. However, no investigation was conducted to find out whether DD was actually sent by the particular Branch, to establish that the DDs were not sent by those Bank, and A1 has created false register. That apart, while granting sanction, the sanctioning authority did not apply his mind, without considering none of the materials, mechanically granted sanction and based on the invalid sanction no cognizance could be taken and no prosecution can be initiated against A1.

12. It is further submitted that, the prosecution relies upon the letter sent by A1 to the General manager, Inspection Department, Central office, Madras, which was treated as Extra Judicial Confession of A1, it is only a letter sent by A1 to the Higher Official, and the person, to whom the letter was addressed, was not examined to prove the alleged extra judicial confession. That apart, the contents of the letter is no way related to the charges levelled against A1. The letter only

speaks about some adjustment of excess interest made by her. Even assuming it is an extra judicial confession, it is only a weak piece of evidence unless it is corroborated by acceptable evidence, it cannot be relied upon to convict the accused. There are no materials available on record to show that A1 alone was incharge of and maintaining the Day Book and other registers during the relevant period of time. Without considering all those materials, the trial Court erroneously convicted the appellants/accused.

13. The learned Special Public Prosecutor, appearing for the respondent vehemently contended that, the testimony of P.W.2 to 6, the Branch Manager and other Officials working in the Branch, clearly establish that A1 alone was maintaining the Day Book and DD Register and she only made the false entires without any receipt of Demand Draft from the Outstation Branches and fraudulently transferred the amount to her own account as well as to the account of A2 and A3. That apart, A1 herself has admitted her guilt and sent an apology letter to the higher officials before commencement of investigation, which is in an extra judicial Confession, and it has been corroborated by the evidence of P.Ws.2 to 6, which is sufficient to convict the accused. To support his contention, the learned Special Public Prosecutor also relied upon a judgment of the Hon'ble Supreme Court in the case of Ram Lal/vs/ The state of Himachel Pradesh in Crl.A.No.576 of 2010.

14. The learned Special Public Prosecutor further submitted that A1 not only created a false records, she has transferred the amount to her account and withdrew the same, which is also admitted by her in the extra judicial confession. A2 is the beneficiary, he received the amount in his account and withdrew the same. All those materials clinchingly proved the guilt of the accused and the trial Court has considered all those materials and rightly convicted the accused and there is no reason to interfere with the well considered judgment of the Trial COurt.

15. I have considered the submissions made on either side and perused the materials available on records carefully.

16. The charges levelled against A1 are that, while she was working as an Officer in the Indian Bank, Royapettah Brnach, she was maintaining the Day Book and also DD Register and other relevant records relating to transfer of DD. A1 manipulated the records, DD Register, as if the Demand Drafts have been received from the outstation branch and made false entries in the register and the amount has been transferred to the account of A1 to A3 and thereby, causing loss to the Bank to the tune of Rs.96,406/-. The disputed entries made in the DD Register and

voucher has been marked as Ex.P.14, Ex.P.15, Ex.P.25, Ex.P.26, Ex.P. 28, Ex.P.29, Ex.P.32, Ex.P.33, Ex.P.35, and Ex.P.36 .

17. The contention of the appellants is that, A1 alone was not incharge of maintaining the account books and DD register at the relevant point of time, other officers are also made entries in the DD register, and it was also admitted by the prosecution witnesses, and in the absence of any conclusive proof that A1 alone has made entires, thereby, transfer the amount to the accused account, she cannot be convicted. To appreciate that, it is useful to refer the evidence of P.W.2, who was the Manager in the above said Branch. Even in the chief examination, he has admitted that in some of the vouchers, other persons also made entries, he has also stated that voucher has been prepared by another clerk, namely Palaniappan. Likewise, P.W.3, another officer, working in the said Bank, has admitted in the chief examination that some entries in the Register were done by him. P.W.4, a clerk, working in the same branch stated that he has made some entries in Ex.P.28 and the corresponding voucher in Ex.P.29 and also made entries in Ex.P.32 and Ex.P.35 and the corresponding DDP-CAU transfer voucher in Ex.P.36. He has further stated in the Chief examination that, clearing cheque return voucher was prepared by a clerk Sumathi, but that Sumathi was not examined. Further he has admitted that the external clearing voucher dated 15.12.1988 (Ex.P.77) was prepared by another clerk,namely, Brinda Balasubramanian. That apart, in the cross examination, he has admitted that it is a collective responsibility of all the employees working in the bank to make entries in the registers and no independent employee can be fixed. From those evidence, it is clear that, it is not A1 alone maintained and made entries in the other officials, and clerks working in the Bank also made entries in the disputed Day Book and Demand Draft vouchers. That apart to establish that the particular work has been allotted to A1, the allotment register was not marked before the Court and the Investigating Officer, P.W.14, has clearly admitted that he has not collected records relating to allocation of works, and the same was not marked before this Court.

18. Admittedly, as other officials have also made various entries in the Register, in order to fix the liability on A1, the prosecution ought to have sent the registers to the Handwriting Expert to find out that all those entries were made by A1. That apart, admittedly, in the entries for receipt of Demand Draft, from outstation, the particulars, namely, branch name and code number of th branch was also mentioned. But no investigation has been conducted as to whether actual DDs' have been sent by outstation Branches. In the absence of any such investigation, it cannot be held that no DD has been received by the Bank and false entries had been made in the DD Register.

19. The next contention of the prosecution is that, A1, herself have sent a letter to the General manager, Inspection Department, Central Office, Chennai, before commencement of investigation, wherein, she has clearly admitted the guilt. The above letter has been treated as an extra judicial confession of A1.

20. From perusal of the records, it could be seen that in a letter sent by A1 to the higher officials, which is marked as Ex.P.111, she has only stated that, she has adjusted funds, some interest accrued to the tune of Rs.63,000/- on 15.12.1988 and Rs.65,000/- on 22.12.1988 in order to honour the cheques issued by A1 and to the name of A2 to the tune of Rs.1,28,000- and it has nothing to do with the charge levelled against the appellants. The charges against A1 is that, she made false entries in the DD Register and the misappropriation of funds. But in Ex.P.111, letter, A1 mentioned about some adjustment made in the excess interest accrued in the RD, and it has nothing to do with the charges levelled against the appellants. So, Ex.P.111 cannot be considered as an extra judicial confession of A1 and the judgment relied upon by the learned Special Public Prosecutor appearing for the CBI is not relevant to the facts of this case.

21. The charge against A2 is that even knowing the fact that he has no balance in his account, he has issued three cheques for a total sum of Rs.5,256/- and the same were returned. Suppressing the same, A1 made payment in favour of the drawees, thereby committed the offence under Section 120(B) r/w. 420 of IPC. Considering the fact that already this Court has held that the charges against A1 is not proved, consequently, the charge under Section 120(B) of IPC against the A2 also held to be not proved. That apart, there is no evidence available to show that both A1 and A2 has agreement to commit the illegal act and in furtherance of the same, he cheated the bank. In those circumstances, A2 is entitled for acquittal.

22. Considering all these facts and circumstances, this Court is of the considered view that the prosecution has miserably failed to prove the guilt of the accused beyond reasonable doubt. Hence, the appellants are entitled for acquittal and the judgment of the court below is liable to be set aside.

23. In the result, both the Criminal Appeals are allowed and the conviction and sentence imposed on the appellants/A1 and A2 by the learned XI Additional City Civil and Sessions Judge, (CBI cases relating to Banks nad Financial Institutions) in C.C.No.78 of 1997 , by the judgment dated 31.01.2011, is hereby

set aside. The appellants are acquitted of the charges levelled against them and they are directed to be set at liberty, forthwith, unless their presence is required in connection with any other case.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The XI Additional City Civil
   and Sessions Judge,
   (CBI cases relating to Banks and
   Financial Institutions),
   Chennai.

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

3. The Special Public Prosecutor for CBI cases,
   High Court, Madras.

Copy To:-

The Section Officer,
Criminal Section (Records),
High Court, Madras.

+2ccs to Mr.C.Sivakumar, Advocate, S.R.No.3813
+1cc to Mr.K.Srinivasan, Advocate, S.R.No.3295
+1cc to Mr.C.Ramkumar, Advocate, S.R.No.3472(25/02/2022)

CRL.A.NOS.78 & 79 OF 2011

CA(CO)
PM/23/02/2022