BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20/04/2022

Pronounced on : 17/08/2022

CORAM:

**THE HON'BLE MR JUSTICE G.ILANGOVAN**

**Crl.A(MD)No.136 of 2019**

State represented by
Inspector of Police,
CBI, ACB,
Madurai/Chennai. : Appellant/Complainant

Vs.

1.Sri.Shaik Ammer @ B.Yasin
2.Shri.S.Umapathy
3.Shri.T.Mohan
4.Shri.R.Gopal
5.M.Mohammed Liyakat Ali
6.Shri.B.Baylien : Respondents/A3, A5 to A9

**Prayer:** Criminal Appeal is filed under section 374(2) of the Criminal Procedure Code to call for the entire records pertaining to call for the records in CC No.6 of 2005 on the file of the II Additional District Judge for CBI, Madurai, set aside the judgment of acquittal of A3, A5, A6, A7, A8 and A9, vide judgment dated 23/12/2016 in CC No.6 of 2005 on the file of the Additional District Judge for CBI cases Madurai.

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| For Appellant | : | Mrs.Victoria Gowri<br>Additional Solicitor General<br>of India for CBI Cases |
| For 1st Respondent | : | Mr.G.K.Sundaram |
| For 2nd Respondent | : | Mr.T.Lajapathi Roy |
| For 3rd Respondent | : | Mr.R.Anand |
| For 4th Respondent | : | Mr.C.Muthusaravanan |
| 5th Respondent | : | Died |
| For 6th Respondent | : | Mr.T.Hubertson |

**J U D G M E N T**

This Criminal Appeal has been preferred against the order of acquittal passed by the II Additional District Court for CBI Cases, Madurai, in C.C No.6 of 2005, dated 22/12/2016.

2.**The case of the prosecution in brief**:-

A1 to A4 in collusion with A5, A6, A7 and A9 conspired together to cheat the State Bank of India, Vadiveeswaram Branch. At that time, A4 was working as Despatch Clerk in that Branch. In pursuance of the above said conspiracy, A6 approached A9 to open a Current Account in the State Bank of India, Perumalpuram Branch, Tirunelveli, on 23/08/2021 in a fictitious name of A1. Later that account was transferred to the State Bank of India, Vadiveeswaran Branch, on 06/09/2002. A1 deposited 46 forged/fabricated cheques stating that they were received from UCO Bank, Andheri (West), Mumbai, Indian Bank, Fort Branch, Mumbai and Central Bank, St. Marks Road Branch, Bangalore and with the connivance of A4, they removed the forged cheques from the thapal and handed over the same to A5. A1 and A5 prepared the forged and fabiricated Payment Advices. In turn, that was handed over to A4. A4 put up the above said Advices in the normal thapal. By the above said fraudulent activity, Rs.1,99,64,208/- was credited into the account of A1 and he withdrew Rs.1,98,81,000/-, thereby caused wrongful loss to the State Bank of India, Vadiweeswaram Branch. During the first week of October 2002, A8 in CC No.8 of 2007 approached one Balaveni, who was the Branch of Vadiweeswaram Branch for opening a account. He wanted to open the account in the name of A1. Later, A8 along with A1 tried to open the Current Account in the name of A1, but it failed. Later, they approached one Swaminathan, who was working as officating Branch Manager of Perumalpuram Branch and obtained blank account opening form. It was handed over to A6, in turn, he approached A9, who was the neighbour to his parent. He requested him to sign as 'introducer'. Believing the words, A9 signed as introducer and on the above said strength, Account No.P446 was opened, on 23/08/2002 in the fictitious name of A1. On that date, Rs.5,000/- was deposited. A1 handed over the forged Xerox copy of the Ration Card to show the proof of residence. No photo was supplied. During the above said period, A8 was on leave. After three days, A1 submitted a letter to transfer the above said account to Vadiweswaram Branch. That was refused. Later, A8 joined the duty. So the above said account was transferred to Vadiweeswaram Branch, on 03/09/2002 and A8 has known the illegal transfer of the account within a short period. All the facts came to know to Shri.Balaveni, Branch Manager, Vadiweeswaram Branch. She informed that A1 tried to open the account in Vadiweeswaram Branch. But that did not succeed, because none was available to introduce him. A report was called for from A8 by the Zonal Office. She falsely certified that A9 was having Current Account. On verification, it was found that A1 never stayed in the address given by him. So, A8 was also a party to the above said criminal conspiracy. By the above said process, the crime mentioned in the first para has been committed by all the accused persons. On coming to know about the above said huge fraud, investigation was undertaken. During the course of investigation, the fraudulent activities of the above said persons came to light and independent overtact has also been found. At the conclusion of the investigation, final report was filed by the Investigating Officer charging them under the provisions of 120(B) r/w 420, 467 r/w 471, 468 r/w 471 and 201 IPC and 13(2) r/w 13(1)(d) of Prevention of Corruption Act 1988.

3.During the course of trial process, totally 10 accused were mentioned. A10 died, so the charge against him abated. As against A8, warrant was issued and that was not executed. So the case against him was split up in CC No.8 of 2007. So far as the other accused persons, the trial process proceeded.

4.After completing the formalities of supplying copies and framing of charges, trial started. On the side of the prosecution, 68 witnesses have been examined, 316 documents were marked. No oral and documentary evidence was adduced on the side of the defence. At the conclusion of the trial, the trial court concluded that A1, A2 and A4 found guilty for the offences as detailed hereunder:-

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| A1, A2 and A4 | 120-B r/w 420 IPC r/w 34 IPC (17 counts) | RI for 7 years each and imposed a fine of Rs. 5,000/- each (Rs.5,000/- x 17) = Rs.85,000/-, in default to udnergo SI for 3 months |
| A1, A3 and A4 | 120-B r/w 467 r/w 471 and 201 IPC r/w 34 IPC (17 counts) | RI for 30 months each and imposed a fine of Rs. 1,000/- each (Rs.1,000/- x 17 = Rs.17,000) in default to undergo SI for one montn each. |
| A1, A2 and A4 | 120-B r/w 468, r/w 471 IPC r/w 34 IPC (17 counts) | 7 years RI each and imposed a fine of Rs. 5,000/- each (Rs.5,000/- x 17 = Rs.85,000/-) in default to undergo SI for 3 months. |
| A1, and A2 and A4 | 120-B r/w 467 r/w 471 IPC (17 counts) | 10 years RI each and imposed a fine of Rs.10,000/- each (Rs. 10,000 x 17 = Rs.1,17,000/-) |
| A1 and A2 | 120-B, r/w 116, r/w 467 r/w 471 IPC | 5 years RI and imposed a fine of Rs.2,000/-, in default to undergo SI for 1 month. |
| A1, A2 and A4 | 120-B IPC r/w 13(2) r/w 13(1)(d) of PC Act, 1988 | 7 years RI and imposed a fine of Rs.5,000/-, in default to undergo SI for 3 monthes each. |

5.A3, A5, A6, A7, A8 and A9 were found not guilty and they were acquitted from the charges framed against them.

6.Challenging the acquittal, the State has preferred the present appeal. Against the conviction, A1, A2 and A4 filed separte appeals. The present criminal appeals against the acquittal were heard in full. During the course of above process, it was reported that the 5th respondent A6 namely M.Mohammed Liyakat Ali, expired on 10/12/2019. So the charge against him abated. Rest of the respondents/A3, A5, A7, A8 and A9 were represented by counsel and they were heard.

7.First we will take up the independent role that has been allegedly played by the respondents.

8.The first respondent was arrayed as A3. Now the allegation against A3 is that he has also helped the criminal conspiracy along with A1.

9.As per the case of the prosecution, A1 opened the

Current Account in a fictitious name and by utilizing the above said illegal means, cheated Rs.19,96,000/-, in which, all the other accused persons conspired.

10.Now, as stated above, we will take the independent overact and the role played by A3.

11.In the grounds of appeal, it has been mentioned that PW51, who is the brother-in-law of A3 has given statement to the effect that A1 was staying in the house of A3 on monthly rental basis.

12.Now let us take the evidence of PW51 first. He would say in his evidence that A3 is owning house in Sivakasi, wherein A1 was a tenant. Originally, PW51 is one of the accused and during the course of his investigation, he was deleted from array of accused.

13.How the prosecution linking A3 along with A1 is a matter for consideration.

14.During the course of argument, learned Additional Solicitor General of India for the appellant would submit that A1 was staying in the house of A3 and he has shown the identity and address. A1 used the address of A3's house in the account opening form. According to her, this itself is sufficient to link A3 to the criminal conspiracy.

15.Per contra, the learned counsel appearing for A3 would submit that this itself is not sufficient to link him to the criminal conspiracy. Absolutely, no materials have been collected and placed before this court to link A3 in this crime.

16.Reading of the final report shows that during the search made by the Investigating Officer in the residence of A3, his screen printing machine was seized, which was used for preparing SBI emblem. This is the allegation against A3.

17.But reading of the evidence of the Investigating Officer namely PW68, who conducted investigation from 24/03/2005, has stated in his evidence to the effect that the cash amount was withdrawn by A1, A2 and A3. In the above said cheque, the signature of A3 was also found. But, as mentioned earlier, on the search, that was made by the Investigating Officer in the premises of this petitioner/A3, printing machines were recovered.

18.Regarding the 1st respondent/A3 namely Shaik Ammer @ B.Yasin, 2nd respondent/A5 S.Umapathy, 3rd respondent/A6 T.Mohan, 4th respondent/A7-R.Gopal, and 6th respondent/A9-B.Baylien, it is the allegation to the effect that on the basis of the confession statement given by one Gopal, one Television set, 14 covers addressing of the State Bank of India were recovered from his residence (Exs.P2 to P4 and P8). Similarly, on the basis of the confession statement given by A5-S.Umapathy, documents have been recovered from his house as per Exs.P2 and P3. The signature of A6-T.Mohan was also found to be tallied in the disputed document. The above said T.Mohan approached S.Umapathy and R.Gopal for arranging room at Ramavaram. That house belongs to the father of A5 namely Umapathy.

19.Now the learned Additional Solicitor General appearing for the appellant would submit that the evidence of PW6, PW12, PW18, PW51 and PW53 were not properly discussed and analyzed by the trial court. So because of non reading or omission to read the above said evidence, those persons have been acquitted.

20.Now let us take the evidence of PW6 first. PW6 was working as 'Senior Assistant' in the State Bank of India, Vadiveeswaram Branch during the relevant period. He has spoken about the role that was played by A1 and he was identified by him in the occurrence, who signed in the disputed cheques. He has given evidence to the effect that A3 namely Shaik Ameer @ Yasin signed on the reverse of the cheque, which was issued by A1 for Rs.11,00,000/-. So this was pointed out by the learned Additional Solicitor General appearing for the appellant to the effect that A3 was also involved in the above said criminal conspiracy, signed in the disputed cheque. But during his evidence, it was not found that A3 signed on the reverse of the above said cheque.

21.Perusal of the documents shows that Exs.P108, P109 and P112 are standing in the name of A3. All the amount has been paid in cash. But during investigation, it was not found that the above said signature is that of A3. So, PW18, who was the Investigating Officer during the relevant time, has stated that he applied for search warrant. In pursuance of the warrant, dated 06/03/2002 between 12.30 pm to 4.30 am, he made search in the house of the accused Umapathy. That search list was marked as

Exs.P222 and P223. He recovered huge amount from various persons. He arrested Shaik Ameer @ Yasin and Gopal. On the basis of the statement given by the accused Gopal, he recovered one Television, 14 SBI emblem covers. For that, he prepared a mahazar.

22.Reading of the evidence of A7, he would say that he was the introducer of A1 to Perumalpuram Branch. On that account, he was shown as an accused. But he was not involved in the encashment of the cheque. No amount was also recovered from the above said accused.

23.Reading of Ex.P223 shows that the amount of Rs.10,00,000/- has been recovered from the house of Umapathy and other documents are not related to this crime. But whether the above said Rs.10,00,000/- that was recovered from the house of Umapathy also involved in the conspiracy or not was not brought during the course of investigation and trial. The relevancy of the money as well as other documents were not established during the course of investigation and trial. Similarly, the recovery of TV sets and other things, the second respondent is not connected with the crime.

24.It is not the case of the prosecution that it is a profit of crime. PW51, relied upon by the prosecution, has given evidence to the effect that A3-Shaik Ammer @B. Yasim is his brother-in-law. In Sivakasi, A3 was a tenant under A1. A1 and A3 made visit to his house at one point of time and stayed for some time.

25.As mentioned earlier, he was shown as an accused at one point of time, later, he was deleted. Absolutely, his evidence does not support the case of the prosecution to the effect that A3 was also involved in the above said crime. Simply because, he was known to A1, no presumption can be drawn. Ex.P284 is the specimen signature of A3 and that was sent for expert examination. But the expert has stated in his evidence to the effect that no concrete opinion cannot be given, since signatures have been made in an abbreviated manner.

26.So reading of the evidence of the above persons does not even remotely connect the respondents to the above said commission of the offence by A1, A2 and A4. So the contention on the part of the appellant to the effect that the trial court omitted to take into account the material evidence is not at all correct on record. So the judgment of acquittal rendered by the trial court does not suffer from any illegality or perverse.

27.In the result, this criminal appeal fails and the same is dismissed.

17/08/2022

Index:Yes/No
Internet:Yes/No
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To,

The District Judge, for CBI cases,
The II Additional District Court
for CBI Cases, Madurai.

**G.ILANGOVAN, J**

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Crl.A(MD)No.136 of 2019

**17.08.2022**