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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:19.07.2023	Pronounced on:07.08.2023

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.R.C.Nos.830 and 868 of 2023
and
Crl.M.P.Nos.6394 and 6755 of 2023

Crl.R.C.No.830 of 2023:-

Dayandhi (A1)(aged 62),
S/o Manickavel
The then Senior Manaer,
Canara Bank, Vellore,
Residence No.14,
24th East Cross Road,
Gandhi Nagar,
Vellore 632 006. .. Petitioner/Accused-1

/versus/

State Rep.by Inspector of Police,
CBI, ACB, Chennai
Shastri Bhavan,
Nungambakkam,
Chennai 600 034. .. Respondent/Complainant

Prayer: Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the common order dated 28.03.2023 passed in Criminal M.P.No.4580 of 2022 by the Principal Special Judge for CBI Cases/VIII Additional City Civil Court, Chennai.

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For Petitioner :Mr.Siddrath Luthra,
Senior Counsel for
M/s P.Wilson Asso.

For Respondent :Mr.K.Srinivasan(SC),
Spl.Public Prosecutor for (CBI)

Crl.R.C.No.868 of 2023:-

S.Srinivasan(A2) .. Petitioner/Accused-2

/versus/

State Rep.by Inspector of Police,
CBI, ACB, Chennai
Shastri Bhavan,
Nungambakkam,
Chennai 600 034. .. Respondent/Complainant

Prayer: Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the common order dated 28.03.2023 passed in Criminal M.P.No.3834 of 2022 by the Principal Special Judge for CBI Cases/VIII Additional City Civil Court, Chennai.

For Petitioner :M/s P.Wilson, Senior Counsel for
Mr.Navin Suresh

For Respondent :Mr.K.Srinivasan,(SC),
Spl.Public Prosecutor for (CBI)
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COMMON ORDER

Criminal Revision Case No.830 of 2023 is filed by the first accused (Dayandhi) under Section 397 r/w 401 of Cr.P.C and Criminal Revision Case No.868 of 2023 is filed by the second accused (S.Srinivasan) under Section 397 r/w 401 of Cr.P.C against the common order dated 28.03.2023 passed in Criminal M.P.No.3834 of 2022 in C.C.No.2 of 2022 on the file of the Principal Special Judge for CBI Cases/VIII Additional City Civil Court, Chennai. Being aggrieved by the dismissal of their petition to discharge, the revision petitions are directed against the order of the trial Court on 28.03.2023.

2. Factual background:-

On 01.04.2019, the Income Tax Department conducted a search at the residence of one Damodharan at Vellore. Currency Rs.200/- denomination for Rs.11.48 Crores was recovered in the course of the search proceedings. The petitioner (S.Srinivasan) in Crl.R.C.No.868 of 2023, is the brother-in-law of the said Damodharan. He came forward to

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make a claim that the money seized from the residence of Damodharan belongs to him. The currency seized were newly released Rs.200/- denomination. Hence, suspicion arose about the source of the currency.

3. Out of Rs.11.48 Crores, the trail for Rs.5,61,11,200/- let to Currency Chest of Canara Bank at Vellore. A suo moto complaint was registered by CBI soonafter news of seizure of new currency at the residence of Damodharan came out in public. The investigation disclosed that S.Srinivasan (A2) had exchanged his old currency to the new currency with an aid and help of A1(Dayandhi), Senior Manager, Regional Office. A3(Singaram)in-charge of Currency Chest and A4(R.Vinodha Krishnan), Cash Officer of Currency Chest, Canara Bank, Vellore. All the four accused had connived with each other entered into conspiracy to exchange the old currency to new currency illegally contrary to the RBI guidelines and Canara Bank Regulation.

4. Pursuant to the criminal conspiracy, A1 visited the Currency Chest on 06.03.2019, 07.03.2019, 13.03.2019, 25.03.2019, 26.03.2019

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and 29.03.2019, discussed the modus operandi for exchange of old currency with new currency from the Currency Chest and pursuant to this conspiracy, the Branch Adjustment Requisition (BAR) against six branches of Canara Bank was raised as if currency moved from the Currency Chest to six branches of Canara Bank. The respective branch Managers were instructed to cancel their requisition to record as if the money sent to these branches returned back to the Currency Chest. Infact, there was no actual physical transaction of cash from the Currency Chest to the branches and back to the Chest. It was only a virtual transaction on record. The new currency were directly given to A2 (S.Srinivasan) by A1 (Dayandhi). Though A2 claims that he as a business man was in need of 200 rupees denomination and therefore, he got it exchanged and kept in the house of his brother-in-law. His explanation and reasoning was not convincing for the department of the Income Tax as well as CBI. Final Report laid by CBI against four persons. Damodharan shown as accused not sent for trial.

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5. Gist of the Final Report indicates that the distribution of currency under RBI is done through Currency Chest of respective bank. The currency and coins supplied to the bank are to be distributed to the branches in their area of operation. As per the RBI norms, the public has to exchange the currency only in the bank by depositing the amount into the account and withdraw equivalent amount of any denomination of their choice as per their requirement. If it is small amount even without production of PAN number, the currency exchange shall happen across the counter. Every Currency Chest should maintain Inward Cash Register, Outward Remittance Register and VIN Balancing Register. Whenever cash is received from RBI, the same is entered into ICCOMS (online portal maintained by RBI), corresponding entries should be maintained physically in the Inward Cash Register. The currency Chest shall be maintained the supply chain to its branches, whenever request is made from the branch. On receipt of the request, the officials at Currency Chest shall raise the Branch Adjustment Requisition(BAR). Whenever Branch Adjustment Requisition(BAR) raised by the Currency Chest that will be reflected in the ICCOMS and then, the branch will get the

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currency along with Branch Adjustment Requisition (BAR) copy and the same will be delivered at branch under acknowledgement. The movement of the currency, apart from physical recording of delivery, will also be reflected in the ICCOMS (RBI online portal) for effective monitoring by RBI. The movement will be reflected in the Outward Register of the Currency Chest maintained by the Cash Officer of the Chest. The Software developed by Canara Bank, while monitoring the transaction virtually, parallel maintenance of record physically also to be maintained both at Currency Chest as well as at receiving branches.

6. In the instant case, Mr.M.Singaram(A3), who is in-charge of the Currency Chest of RBI and Mr.R.Vinodhakrishnan(A4), the Cash Officer at the Currency Chest hold the key for the Currency Chest and they are responsible for the movement of the currency. As per the Banking Rules, no individual can exchange money directly from the Currency Chest. It should be mandatorily routed only through branches. While so, S.Srinivasan (A2) claims that Rs.11.48 Crores seized from the residence of Damodharan belongs to him and he got it from the Canara

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Bank branches. The prosecution claims that S.Srinivasan(A2) has directly exchanged the money from the Currency Chest in connivance with A1, A3 and A4, which is contrary to the bank Guidelines and RBI Regulations.

7. Claiming that there is no allegation of cheating or pecuniary loss to the bank to attract offence under Section 420 IPC or 477A IPC and there is no element of misconduct of obtaining pecuniary advantage by the public servant, it is also contented by the petitioners/accused that there was no conspiracy between the accused persons. The exchange of old currency for the new currency does not attract the ingredients of dishonesty/fraudulently as defined under the Act.

8. The discharge petitions filed by the accused persons before the trial Court were dismissed by a common order dated 28.03.2023. Aggrieved by the dismissal order, the revision petitions have been filed.

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9. The petitioner(A2) been effectively represented through the learned Senior Counsel Mr.Siddrath Luthra and the first accused (Dayandhi) represented by M/s Wilson, the learned Senior Counsel. The learned Senior Counsels reading out the Final Report and the documents which is relied by the prosecution, forcibly argued that there is no allegation that in the exchange of old currency for the new currency, they had caused loss to the Canara Bank or the said exchange was done for illegal gratification.

10. The contention of the learned Senior Counsels that the allegation Branch Adjustment Requisition(BAR) was raised without movement of cash is false and against the record. The documents relied on by the prosecution show that the Branch Adjustment Requisition(BAR) was raised by the branch from the Currency Chest and the cash was sent to the branch. The new currency was sent to the branches after receipt of the old currency. There is acknowledgement for receipt of the cash at the branch and the currency chest. Therefore, an

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improbable allegation made by the prosecution against the accused persons as if the movement of the cash between the branch and the chest was not done physically.

11. It is also contended by the Senior Counsels that offence under Section 7(c) of the Prevention of Corruption Act is not made out. In the Final Report, to attract the offence under Section 7(c), there must be a demand and receipt of the undue advantage by the public servant to improbably and dishonestly perform the public duty. In the final report, there is no whisper of any demand or payment of illegal gratification or averment of demand of any undue advantage by A1, A3 and A4, who are the public servants. No inducement on the part of A2 to perform the public duty dishonestly or improbably is also not alleged. Admittedly, there is no pecuniary loss for the bank. The alleged exchange of currency without proper preliminary enquiry, CBI has hastily registered the complaint and more hastily filed the Final Report. Sanction for the investigation under Section 17A of the Prevention of Corruption Act, 1988 and to take cognizance under Section 19 of the Prevention of

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Corruption Act, 1988 bristles with infirmity and illegality. They are not valid in the eye of law.

12. Detailed counter filed by the prosecution stating why these two petitions to be dismissed and the order of the trial Court to be confirmed. It is contended by the prosecution that the transfer of currencies from the currency chest to the branches is monitored both virtual as well as in physical mode. Records seized during the course of investigation and the statement of respective Branch Managers clearly establishes the fact that the Branch Adjustment Requisition(BAR) was raised to accommodate A2 for releasing around Six Crores Rupees from the currency chest of Canara Bank, Vellore illegally.

13. Accounts were falsified to show as if from 06.03.2019 to 25.03.2019, Rs.11 crores transferred to the following branches of Canara Bank as below:-

Date	***BAR No.***	***Originating Branch***	***Responding Branch***	***Amount***
06.03.2019	803525037452	Currency Chest Vellore (8035)	Om Shakti Peedam (8563)	Rs.2.00 Crores

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Date	*BAR No.*	*Originating Branch*	*Responding Branch*	*Amount*
	856325002240	Om Shakti Peedam (8563)	Currency Chest Vellore (8035)	Rs.2.00 Crores
13.03.2019	803525037521	Currency Chest Vellore (8035)	Om Shakti Peedam (8563)	Rs.1.50 Crores
	856325002243	Om Shakti Peedam (8563)	Currency Chest Vellore (8035)	Rs.1.50 Crores
25.03.2019	803525037606	Currency Chest Vellore (8035)	Om Shakti Peedam (8563)	Rs.2.00 Crores
	856325002251	Om Shakti Peedam (8563)	Currency Chest Vellore (8035)	Rs.2.00 Crores

14. The respective branch Managers have given statement that whatever amount raised by the Currency Chest were reversed back by the branches and the transactions were not recorded in the Cash Register. They have also stated that on the specific instruction of Dayanidhi (A1), the Branch Adjustment Requisition (BAR) was raised and subsequently reversed.

15. The statement of M.Mahadevan (L.W.6), the then SWO, Currency Chest, Canara Bank, Vellore, who had spoken about the Branch Adjustment Requisition (BAR) raised against the branches to

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facilitate the exchange of Rs.11.50 Crores old currency notes in denomination of Rs.2000/- and Rs.500/- with fresh currency notes of Rs.200/- for a non-customer of the Currency Chest and the Senior Manager (A1), Canara Bank, Vellore, came to the Currency Chest, Vellore, on 06.03.2019, 07.03.2019, 13.03.2019, 25.03.2019, 26.03.2019 and 29.03.2019 with Rs.500/- and Rs.2000/- currency notes and exchanged the same with Rs.200/- fresh denomination are relied by the prosecution as crucial incriminating material against A1 and A2.

16. M.Rajendran, LW-7, former Branch Manager, Canara Bank, Malaikodi Branch, Vellore had stated that Om Shakthi Peedam Branch by letter dated 05.11.2020 addressed to CBI, ACB, Chennai enclosing transaction slips dated 06.03.2019, 13.03.2019 and 25.03.2019, certified copy of the Cash Register from 01.03.2019 to 30.03.2019 and on being asked I stated that on the above said three dates whatever amount raised by the currency chest were reversed to the currency chest by Malaikodi Branch. The cash allotted for Malaikodi Branch was not entered in the Cash Register because of paper transactions.

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17. L.W-8, Margasagayam, had stated that whatever amount raised by the currency chest were reversed to the currency chest by Malaikodi Branch. The cash allotted for Malaikodi branch was not entered in the Cash Register because of paper transaction.

18. The prosecution contended that false transaction slips, raising of the Branch Adjustment Requisition(BAR) and later reversing it with an excuse that it was raised inadvertently, but movement of new currency from the Chest to private individual directly by dishonestly making record as if it has reached the private individual through the branches attracts the ingredients of Section 420 of IPC, which requires deception and inducement.

19. A1, A3 and A4 being the in-charge of the chest, to accommodate A2 had falsified the account as if the money from the Currency Chest moved to the branches.

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20. Reiterating the oral submission, written submission were filed with citations.

21. The learned Senior Counsels appearing for the petitioners made their good efforts to emphasis upon the Court to attract the offence under Section 420 of IPC, there should be fraud and dishonest inducement of a person by deceiving him. Such inducement should lead to delivery of any property. According to them, Rs.11.50 Cores of five hundred rupees and two hundred rupees denomination converted into new two hundred rupees note and gone into the account of Canara Bank does not expressly fall within the fraudulent and dishonest inducement. The said conversion was done by raising the Branch Adjustment Requisition(BAR) in accordance with the procedure.

22. Section 420 of IPC reads as below:-

> <u>Section 420 Cheating and dishonestly inducing delivery of property:-</u>
>
> Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any

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> person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

23. Currency is a legal tender and valuable security, as defined under Section 30 of the Indian Penal Code. The Governor of Reserve Bank promise the bearer to pay the sum mentioned in the currency note. The accused admits that they have altered the currency of five hundred rupees and two thousand rupees denomination into two hundred rupees denomination. According to the prosecution, the alteration of the valuable security was done dishonestly by A1, A2 and A4, who were entrusted with the property and had right over the property in the capacity of the public servant and Section 24 of the Indian Penal Code defines 'dishonestly' and Section 25 defines 'fraudulently'.

24. The learned Senior Counsels referring the definition Clause of these two words (dishonestly and fraudulently) contended that there is neither wrongful gain nor wrongful loss and therefore, the change of

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currency is not an act of dishonesty. Similarly, even the final report does not whisper or alleged that the exchange of currency done with intent to defraud the bank or any other person.

25. Wrongful loss and wrongful gain has to be understood on the context of Section 23 of the Indian Penal Code, which defines, the word as 'unlawful' means of property to which the person has not legally entitled. Therefore, in the given context, whether the accused A2 is legally entitled to possess two hundred rupees currency taken out from the currency chest of Canara Bank? He may be entitled only if the money been taken out from the currency chest in lawful means and in accordance with the procedure. If any transfer of currency made from the Chest without following the procedure but replacing it with equivalent amount of currency and claimed that the bank has not suffered any loss will amount to mocking the Rules and Procedures laid to ensure security of the currency trail. By falsifying the accounts, crores of rupees has been directly given to the individual.

26. Even if the claim of the accused persons that A2 got

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currency from the six branches, it is serious point of suspicion, how a non-account holder been given bulk of new currency by rural branches. The statement of the Branch Manager goes to show that the currency was not exchanged through their branch, but directly from the chest. Why A1, A3 and A4 took the old currency from A2 and exchanged it to new currency is a fact, which is especially within the knowledge of the accused persons. The falsification of account by raising the Branch Adjustment Requisition (BAR) making virtual transfer of currency from the chest to branches and later, falsifying the account as if raising the Branch Adjustment Requisition(BAR) was done inadvertently goes contrary to the RBI guidelines.

27. Further more, the virtual transfer of currency not physical has been spoken by LW-6 and the said transactions are as below:-

Date	***BAR No***	***Originating Branch***	***Responding Branch***	***Amount***
06.03.2019	803525037452	Currency Chest, Vellore(8035)	Om Shakti Peedam (8563)	Rs.2.00 Crores
	856325002240	Om Shakti Peedam (8563)	Currency Chest, Vellore(8035)	Rs.2.00 Crores
07.03.2019	803525037467	Currency	Ranipet (0969)	Rs.1.00 cores

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Date	***BAR No***	***Originating Branch***	***Responding Branch***	***Amount***
		Chest, Vellore(8035)		
	096925000962	Ranipet (0969)	Currency Chest Vellore (8035)	Rs.1.00 crores
13.03.2019	803525037521	Currency Chest Vellore (8035)	Om Shakti Peedam (8563)	Rs.1.50 crores
	856325002243	Om Shakti Peedam (8563)	Currency Chest Vellore (8035)	Rs.1.50 crores
25.03.2019	803525037606	Currency Chest Vellore (8035)	Om Shakti Peedam (8563)	Rs.2.00 crores
	856325002251	Om Shakti Peedam (8563)	Currency Chest Vellore (8035)	Rs.2.00 crores
	803525037607	Currency Chest Vellore (8035)	Vaniyambadi (0951)	Rs.2.00 crores
	095125001330	Vaniyambadi (0951)	Currency Chest Vellore (8035)	Rs.2.00 crores
26.03.2019	803525037620	Currency Chest Vellore (8035)	Kamavanipet (1075)	Rs.2.00 crores
	107525000987	Kamavanipet (1075)	Currency Chest Vellore (8035)	Rs.2.00 crores
29.03.2019	803525037649	Currency Chest Vellore (8035)	Vrinchipuram (0955)	Rs.0.50 crores
	095525001241	Vrinchipuram (0955)	Currency Chest Vellore (8035)	Rs.0.50 crores
	803525037650	Currency Chest Vellore (8035)	Periamittur (1668)	Rs.0.50 crores
	166825000816	Periamittur (1668)	Currency Chest Vellore (8035)	Rs.0.50 crores

28. A1 is the person, who has raised the Branch Adjustment

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Requisition(BAR) conniving A3 and A4. A1 has raised 6 Branch Adjustment Requisition(BAR) to facilitate the exchange of Rs.11.50 crores old currency with fresh currency notes of two hundred rupees.

29. The learned Senior Counsels for the petitioners referring RBI Master Circular dated 01.07.2019 issued in connection with facilitate for exchange of notes and coins stated that the amended Master Circular of RBI mandates all the branches of banks in all parts of country to provide the customer services more actively and vigorously to the members of public so that there is no need for them to approach the RBI Regional Offices for the purpose of issuing fresh/good quality notes and coins of all denomination and on demand accept the coins and notes either for transaction or for exchange.

30. Though A2 claims that he got the new currency from the branches, when he made the demand and how he got the currency is not spoken by him. He being the accused has a right of silent but also there is a presumption clause under the Indian Evidence Act, which heavily fall

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on him which he can rebut in the course of trail but by maintaining silence he has lost the right to explain the source satisfactorily to get discharge.

31. As far as A1 the public servant is concerned, the sanction accorded under Section 17-A for investigation as well as sanction for prosecution is questioned.

32. This Court on considering the Service Rules of Canara Bank finds that there is not an iota of error in the sanction accorded by Smt.C.J.Vijayalakshmi, Assistant General Manager of Canara Bank. The Canara Bank (Officers') Service Regulations, 1979 circulated by the petitioner states that the Managing Director is the competent authority to empower official to institute or direct disciplinary proceedings against the officer. The Managing Director shall nominate categories of officers specified in the schedule as per definition of disciplinary authority under clause 2(g). Regulation 3(d) defines 'Competent Authority' means the Authority designated for the purpose by the Board. Regulation 20 under

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Chapter IV of Canara Bank (Officers') Service Regulation, 1979, which speaks about termination of service.

33. The sanction to prosecute accorded by Smt.C.J. Vijayalakshmi, Assistant General Manager-cum-Disciplinary Authority, Canara Bank, which reads as below:-

> *"WHEREAS, 1, VIJAYALAKSHMI C (Employee code-70329), ASSISTANT GENERAL MANAGER CUM DISCIPLINARY AUTHORITY, CANARA BANK, CIRCLE OFFICE, ANNA SALAI, TEYNAMPET, CHENNAI-600018, being the authority competent to remove the said Shri. M. Dayanidhi (dismissed from service), the then Senior Manager, Regional Office, Canara Bank, Vellore, Shri M. Singaram (retired), the then Senior Manager, Currency Chest, Canara Bank, Vellore and Shri R. Vinodha Krishnan the then Officer, Currency Chest, Canara Bank, Vellore (Presently working as Officer, ARM Branch, Madurai) from office, after fully and carefully examining the material, documents placed before me such as copies of FIR, bank documents and statement of witnesses recorded by the Investigating Officer/ Investigation Report and other documents relevant to the above allegation placed before me in regard to the said allegation and circumstances of the case, am satisfied that the said Shri M Dayanidhi, Shri M Singaram and Shri R.*

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> *Vinodha Krishnan have committed the offences punishable u/s 420, 477-A IPC & section 7 (c) of PC Act, 1988 and section 120-B r/w 420, 477-A IPC & section 7 (c) of PC Act, 1988 as stated in the report and they should be prosecuted in the Court of Law for the offences alleged along with co-accused."*

34. The sanction order states that she is competent to remove the public servant mentioned in her order. The learned Senior Counsel representing the petitioners claim that in the sanction order, Smt.C.J.Vijayalakshmi, has not explained or stated, how she is competent to remove the named public servants. The schedule to the disciplinary regulation of Canara Bank empowers Assistant General Manager to remove officers below the rank of Senior Manager and such power is vested on the Assistant General Manager by the Board. Hence, the plea that sanction order is defective is unsustainable.

35. Yet another point raised by the learned Senior Counsel appearing for the petitioners is that as per RBI Master Circular, non-compliance with operational guidelines by currency chests detected by

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RBI officials- Penalty of Rs.5000/- for each irregularity shall be collected and therefore, even if assuming that there is some irregularity, only penalty as prescribed under the RBI guidelines has been imposed and no criminal prosecution shall sustain against the petitioners.

36. When *prima facie* material is available for cheating and falsification of account by making bogus entry for BAR raising and reversal of the same and allowing the private person to take currency from the Currency Chest directly is not only violation of RBI Regulation in maintenance of currency chest, it is also the security of the bank itself is breached. Infact, the trial Court, while framing the charges, is expected to apply its mind and frame appropriate charges, not only to get confine with the charges mentioned in the final report, since this case not merely minor violation of Currency Chest Regulation, but an act of dishonesty by the bank officials to remove huge currency from the Currency Chest by falsifying the account and replacing the old currency in the place of new currency.

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37. For the reasons stated above, this Court finds no merits in these two Criminal Revision Cases. Hence, these Criminal Revision Cases are dismissed. Consequently, connected Miscellaneous Petitions are closed.

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Index:yes/no
Speaking order/non speaking order
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To:

1.The Principal Special Judge for CBI Cases/
VIII Additional City Civil Court, Chennai.

2.The Inspector of Police,
CBI,ACB,Chennai,
Shastri Bhavan, Nungambakkam,
Chennai.

3.The Special Public Prosecutor for CBI Cases,
Chennai.

Dr.G.JAYACHANDRAN,J.

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delivery common order made in
Crl.R.C.Nos.830 and 868 of 2023
and
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