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BAIL SLIP

The Appellant / Petitioner herein / Accused No.2 in CC No.7 of 2008 on the file of the II Additional District Court for CBI Cases, Madurai, was released on bail by the order of this court dated 26.05.2017 and made in Crl MP(MD)No.4079 of 2017 in Crl A(MD)No.407 of 2016 pending disposal of this court.

BAIL SLIP

The Appellant / Petitioner herein / Accused No.2 & 3 in CC No.4 of 2008 on the file of the II Additional District Court for CBI Cases, Madurai, was released on bail by the order of this court dated 26.05.2017 and made in Crl MP(MD)No.4251 of 2017 in Crl A(MD)No.389 of 2016 pending disposal of this court.

BAIL SLIP

The Appellant / Petitioner herein / Accused No.2 in CC No.5 of 2008 on the file of the II Additional District Court for CBI Cases, Madurai, was released on bail by the order of this court dated 07.06.2017 and made in Crl MP(MD)No.4561 of 2017 in Crl A(MD)No.386 of 2016 pending disposal of this court.

BAIL SLIP

The Appellant / Petitioner herein / Accused No.1 in CC Nos.4 to 7 of 2008 on the file of the II Additional District Court for CBI Cases, Madurai, was released on bail by the order of this court dated 26.05.2017 and made in Crl MP(MD)No.4247 to 4250 of 2017 in Crl A(MD)No.381 to 384 of 2016 pending disposal of this court.

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Reserved on	:	09.08.2023
Pronounced on	:	22.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.A.(MD).Nos.381, 382, 383, 384, 386, 389 & 407 of 2016

and

CrI.M.P.(MD).No.10453 of 2023

CrI.A.(MD).No.381 of 2016

C.Sankaranarayanan ... Appellant / Accused No.1
in CRL A(MD) No.381 of 2016

C.SANKARANARAYANAN ... PETITIONER / ACCUSED No.1
in CRL A(MD) No.382 to 384 of 2016

B.KANAGARAJAN ... PETITIONER / ACCUSED No.2
in CRL A(MD) No.386 of 2016

1 R.GEETHA
2 G.RADHAKRISHNAN ... PETITIONER / ACCUSED Nos.2 & 3
in CRL A(MD) No.389 of 2016

T.R. VIJAYARAMAN ... PETITIONER / ACCUSED No.2
in CRL A(MD) No.407 of 2016

Vs.



The State rep., by
The Inspector of Police,
SPE:CBI:ACB:Chennai
RC61(A)/2004

... Respondent / Complainant
in all cases

Prayer in Crl.A.(MD).No.381 of 2016: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to set aside the conviction and sentence imposed on the appellant by the judgment dated 07.10.2016, in C.C.No.4 of 2008, on the file of the II Additional District Judge for CBI Cases, Madurai.

Prayer in Crl.A.(MD).No.382, 383 & 384 of 2016:

This Criminal Appeal is filed under Section 374 of Criminal Procedure Code, against the Judgment of conviction dated 07.10.2016, passed by the II Additional District Judge for CBI Cases, Madurai C.C.No.5,6,7 of 2008 and convicting the Appellant / Accused No.1.

Prayer in Crl.A.(MD).No.386 of 2016:

This Criminal Appeal is filed under Section 374 of Criminal Procedure Code, against the Judgment of conviction dated 07.10.2016, passed by the II Additional District Judge for CBI Cases, Madurai C.C.No.5 of 2008 and convicting the Appellant / Accused No.2.

Prayer in Crl.A.(MD).No.389 of 2016:

This Criminal Appeal is filed under Section 374 of Criminal Procedure Code, against the Judgment of conviction dated 07.10.2016, passed by the II Additional District Judge for CBI Cases, Madurai C.C.No.4 of 2008 and convicting the Appellants and another.

Prayer in Crl.A.(MD).No.407 of 2016:

This Criminal Appeal is filed under Section 374 of Criminal Procedure Code, against the Judgment of conviction dated 07.10.2016, passed by the II Additional District Judge for CBI Cases, Madurai C.C.No.7 of 2008 and convicting the Appellant / Accused.



Crl.A(MD).Nos.381, 382, 383 & 384 of 2016

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For Appellant : Mr.Ashok Kumar,
Senior Counsel for
: Mr.Palanivelayutham

For Respondent : Mr.C.Muthu Saravanan
Special Public Prosecutor for CBI cases

Crl.A.(MD).No.386 of 2016

For Appellant : Ms.AL.Gandhimathi
Senior Counsel for
: Mr.C.Mahadevan
For Respondent : Mr.C.Muthu Saravanan
Special Public Prosecutor for CBI cases

Crl.A.(MD).No.389 of 2016

For Appellants : Mr.R.Aravindhana for A1
: Mr.A.K.Jeyaraj for A2
For Respondent : Mr.C.Muthu Saravanan
Special Public Prosecutor for CBI cases

Crl.A.(MD).No.407 of 2016

For appellant : Mr.M.Ajmal Khan
Senior Counsel for M/s.Ajaml Associates
For Respondent : Mr.C.Muthu Saravanan
Special Public Prosecutor for CBI cases

COMMON JUDGMENT

These Criminal Appeals have been filed against the conviction and sentence imposed on the appellant by the judgement dated 07.10.2016 in C.C.Nos.4,

5, 6, 7 of 2008, on the file of the II Additional District Judge for CBI Cases, Madurai.

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All the cases emanated from the common FIR in RC MA1 2004 A 0061 registered by CBI for the offence under Sections 120-B r/w 420, 477(A) and Section 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988.

2. In the FIR, following persons are arrayed as accused:

1.A-1 Shri C.Sankaranarayanan, was functioning as Br.Manager, Indian Bank Srirangam Branch, Trichy.

2.A-2 Shri K.Mathialagan was functioning as Assistant Manager, Indian Bank, Srirangam Branch, Trichy.

3.A-3 Shri R.Rajendran was functioning as Assistant Manager, Indian Bank, Srirangam Branch, Trichy.

4. A-4 Shri.S.P.Varadarajan was functioning as Assistant Manager, Indian Bank, Srirangam Branch, Trichy.

5. A-5 Smt.R.Geetha, W/o Shri.G.Radhakrishnan is the Proprietor of M/s/Chivas Enterprises.

6. A-6 Shri.G.Radhakrishnan, Partner of M/s,Chivas Trading Corporation.

7. A-7 Shri.B.Kanagaraj, Partner, M/s.Sri Ganesh Godown.

8. A-8 Smt.B.Chandra, Partner, M/s.Sri Ganesh Godown.

9. A-9 Shri.T.R.Vijayaraman, Proprietor, M/s.Kumaran Silks.

10.A-10 Shri.A.Venkatasamy Naidu, Proprietor, M/s.A.Venkataraman



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11.A-11 Smt.Sulochana Gopinath, Proprietrix, M/s.G.R.Agency.

12.A-12 Shri.M.Gopinath, Proprietor, M/s.Ge Aar Electrics.

13.A-13 Shri.K.Senthilvel, Proprietor, M/s.Nandha Gas Agencies.

14.A-14 Shri.N.Krishnamoorthy, Proprietor, M/s.Sri Ganesh Traders.

2.1. A1 to A4 are the Public Servant and A5 to A14 are the private persons.

Between January 2001 and August 2004, A1 to A14 conspired together to cheat the Indian Bank, opened the current account and obtained overdraft credit facilities and fraudulently and dishonestly tendered the cheques of Canara Bank, City Union Bank, Karur Vysysa Bank and Indian overseas Bank etc., with the knowledge that there was no sufficient funds in their account. The cheques were honoured and further they dishonestly made number of the withdrawals of amount over the temporary over draft limit and thereby caused loss of Rs.1,10,66,100/- (Rupees One Crore Ten Lakhs Sixty Six Thousand and Hundred only).

2.2. In connection of the same, A1 in order to conceal the said fraudulent transaction, did not send the AUF and AUD as per the procedure. Further the said fraudulent act was found out by the inspection team of the bank on 09.01.2004 and they instructed Sankaranarayanan A1 to pay the amount. Consequently, A1 made the payment on 10.01.2004, by obtaining the blank cheques from 5 different persons



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holding the accounts in the bank who were no way connected with the above said private persons business. and thereby, settled the amount in the respective account, so as to escape from the legitimate prosecution, under the relevant provisions of the Indian Penal Code and Prevention of Corruption Act. i.e., under Sections 120-B r/w 420, 477(A) of IPC and Section 13(2) r/w 13(1) (d) of Prevention of Corruption Act 1988.

2.3. The CBI conducted an investigation and filed four different final reports with array of Sankaranarayanan (A1) in all the cases, who was the manager of Indian Bank, Srirangam Branch and the corresponding private individuals namely the account holder as co-accused on the file of the II Additional District Judge for CBI Cases, Madurai.

2.4. The learned Special Judge, took the said 4 final reports in C.C.No.4, 5, 6 and 7 of 2008 with array of the following parties:

<i>Sl.Nos.</i>	<i>C.C.No.</i>	<i>Accused Name with rank</i>
1	04 of 2008	C.Sankaranarayanan (A1) R.Geetha (A2) G.Radhakrishnan (A3)
2	05 of 2008	C.Sankaranarayanan(A1) B.Kanagarajan (A2)



3	06 of 2008	C.Sankaranarayanan (A1) B.Gopinath (A2)/ deceased
4	07 of 2008	C.Sankaranarayanan (A1) T.R.Vijayaraman (A2)

In all four cases, the learned trial Judge, issued summons to the accused and after their appearance, served copies under Section 207 Cr.P.C., to them. Thereafter, he framed the necessary charges and questioned the accused who pleaded not guilty and stood for trial.

(*)3. Finding of the trial Court in C.C.No.04 of 2008:

3.1. The prosecution to prove the charges in C.C.No.4 of 2008 examined P.W.1 to P.W.34 and exhibited Ex.P1 to Ex.P185 and no material object was produced. Thereafter, the learned trial Judge examined the accused under Section 313 of Cr.P.C., by putting the incriminating materials against them and they denied as false. They were not either examined as witness or marked any documents on their side. After consideration of the prosecution materials and the argument of the learned counsel appearing for the accused and the learned Public Prosecutor, the learned trial Judge passed the impugned judgment on 07.10.2016 convicting and sentencing the appellant as follows:



Sl. Nos	C.C. No.	Accused	Under Sections	Conviction
1	04 of 2008	C.Sankaranarayana n (A1) R.Geetha (A2) G.RAdhakrishnan (A3)	120(B) r/w 420, 477 (A) of IPC	Sentenced to undergo five years and to pay fine of Rs. 5,000/- in default to undergo 3 months simple imprisonment.
2		C.Sankaranarayana n (A1) R.Geetha (A2) G.RAdhakrishnan (A3)	420 of IPC	Sentenced to undergo five years and to pay fine of Rs. 5,000/- in default to undergo 3 months simple imprisonment.
3		C.Sankaranarayana n (A1)	477 (A) of IPC	Sentenced to undergo five years and to pay fine of Rs. 5,000/- in default to undergo 3 months simple imprisonment.

Aggrieved over the same, Sankaranarayanan(A1), Manager of the Bank preferred the appeal No.381 of 2016 and A2 and A3 preferred the common appeal in Crl.A.No.389 of 2016.

4. Finding of the trial Court in C.C.No.05 of 2008

4.1. The prosecution, to the prove the charges in C.C.No.5 of 2008 examined P.W.1 to P.W.41 and exhibited Ex.P1 to Ex.P154 and no material object was produced. Thereafter, the learned trial Judge examined the accused under Section

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313 of Cr.P.C., by putting the incriminating materials against them and they denied as false. They were not either examined any witness or marked any documents on their side. After the consideration of the prosecution materials and the argument of the learned counsel appearing for the accused and the learned Public Prosecutor, the learned trial Judge convicted the appellant as follows:

<i>SL.N os</i>	<i>C.C.N o.</i>	<i>Accused</i>	<i>Under Sections</i>	<i>Conviction</i>
1	05 of 2008	C.Sankaranarayanan (A1) B.Kanagarajan (A2)	120(B) r/w 420, 477 (A) IPC & 13(2) r/w 13(1)(d) of Prevention of Corruption Act	Sentenced to undergo five years and to pay fine of Rs. 5,000/- in default to undergo 3 months simple imprisonment.



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2		C.Sankaranarayanan (A1)	420 of IPC	Sentenced to undergo five years and to pay fine of Rs. 5,000/- in default to undergo 3 months simple imprisonment.
		B.Kanagarajan (A2)		
3		C.Sankaranarayanan (A1)	477 (A) of IPC	Sentenced to undergo five years and to pay fine of Rs. 5,000/- in default to undergo 3 months simple imprisonment.

Aggrieved over the same, Sankaranarayanan(A1), Manager of the Bank preferred the appeal No.382 of 2016 and A2 preferred the appeal in Crl.A.No.386 of 2016.

5. Finding of the trial Court in C.C.No.06 of 2008

5.1. During the pendency of the trial, private accused A2 died and hence, the trial was continued in respect of the Sankaranarayanan (A1), Branch Manager. The prosecution, to the prove the charges in C.C.No.6 of 2008 examined P.W.1 to P.W.35 and exhibited Ex.P1 to Ex.P152 and no material object was produced. Thereafter, the learned trial Judge examined the accused under Section 313 of Cr.P.C., by putting the incriminating materials against them and they denied as



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false. They were not either examined any witness or marked any documents on their side. After the consideration of the prosecution materials and the argument of the learned counsel appearing for the accused and the learned Public Prosecutor, the learned trial Judge convicted the appellant as follows:

<i>Sl.N os</i>	<i>C.C.N o.</i>	<i>Accused</i>	<i>Under Sections</i>	<i>Conviction</i>
1	06 of 2008	C.Sankaranarayanan (A1)	120(B) r/w 420, 477 (A) IPC & 13(2) r/w 13(1)(d) of Prevention of Corruption Act	Sentenced to undergo five years and to pay fine of Rs. 5,000/- in default to undergo 3 months simple imprisonment.
2		C.Sankaranarayanan (A1)	420 of IPC	Sentenced to undergo five years and to pay fine of Rs. 5,000/- in default to undergo 3 months simple imprisonment.



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3	C.Sankaranarayanan (A1)	477 (A) of IPC	Sentenced to undergo five years and to pay fine of Rs. 5,000/- in default to undergo 3 months simple imprisonment.
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Aggrieved over the same, Sankaranarayanan(A1), Manager of the Bank preferred the appeal No.383 of 2016.

6. Finding of the trial Court in C.C.No.07 of 2008

6.1. The prosecution to the prove the charges in C.C.No.7 of 2008 examined P.W.1 to P.W.28 and exhibited Ex.P.1 to Ex.P.95 and no material object was produced. Thereafter, the learned trial Judge examined the accused under Section 313 of Cr.P.C., by putting the incriminating materials against them and they denied as false. They were not either examined any witness or marked any documents on their side. After the consideration of the prosecution materials and the argument of the learned counsel appearing for the accused and the learned Public Prosecutor, the learned trial Judge convicted the appellant as follows:

<i>Sl.N os</i>	<i>C.C.No.</i>	<i>Accused</i>	<i>Under Sections</i>	<i>Conviction</i>
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1	07 of 2008	C.Sankaranarayana n (A1) T.R.Vijayaraman (A2)	120(B) r/w 420, 477 (A) IPC & 13(2) r/w 13(1)(d) of Prevention of Corruption Act	Sentenced to undergo five years and to pay fine of Rs. 5,000/- in default to undergo 3 months simple imprisonment.
2		C.Sankaranarayana n (A1) T.R.Viajayaraman (A2)	420 of IPC	Sentenced to undergo five years and to pay fine of Rs. 5,000/- in default to undergo 3 months simple imprisonment.
3		C.Sankaranarayana n (A1)	477 (A) of IPC	Sentenced to undergo five years and to pay fine of Rs. 5,000/- in default to undergo 3 months simple imprisonment.

Aggrieved over the same, Sankaranarayanan(A1), Manager of the Bank preferred

the appeal No.384 of 2016 and A2 preferred the appeal in Crl.A.No.407 of 2016.

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7. Submissions of the learned counsel for the appellants:

7.1. In all cases, the learned Senior counsel Thiru.S.Ashok Kumnar, representing Thiru.Palanivelayutham appearing for Sankaranarayanan(A1), made the following submissions:

7.2.The learned trial Judge, after acquitting the appellant under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, has no jurisdiction to convict the appellant under Section 120-B, 420, 477(A) of IPC.

7.3. The learned trial Judge failed to consider that immediately after the inspection on 09.01.2004, he adhered the direction of the Vigilance Department of the bank and settled the entire amount on 10.01.2004, by making deposit in the account of the respective private accused in C.C.Nos.4, 5, 6 and 7 of 2008. Thereafter, FIR was registered only on 27.09.2004. In view of the settlement made eight months prior to the registration of the case, the conviction under Section 120-B r/w 420 of IPC is not made out.

7.4. The learned trial Judge, failed to see that Sankaranarayanan(A1) manager, allowed to withdraw the amount over the temporary over draft debit on the basis of the mortgage deed executed by each individual accused more than the dues and hence, the due amount can be easily recovered as per the recovery



procedure.

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7.5. The learned trial Judge, failed to see that after opening of the current account, each accused utilised over draft facilities with the bank upon deposit of the title deed of the properties worth above the credit level and without initiating the recovery proceedings, preferring the complaint is abuse of process of law and hence, the entire prosecution is liable to be set aside.

7.6. The learned trial Judge, failed to see that prosecution never proved the allegation for the offence under Section 477-A of IPC against the appellant.

7.7. The learned trial Judge, failed to consider that there was no intention to cheat the bank and cause loss to the bank at the inception and thereby the essential ingredients of deception at the inception to constitute the offence under Section 420 of IPC is absent and hence, the conviction and sentence imposed under Section 420 of IPC is not in accordance with law.

7.8. CBI, registered the case on the basis of the source information against the number of bank officials. But, CBI deleted the number of the bank officials in the final report and arrayed them as witnesses. The said deletion of the remaining bank officials in the final report without any distinguishing role attributed to this appellant shows the unfair investigation and the same was not properly considered



by the learned trial Judge.

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7.9. The appellant/Sankara Narayanan (A1) Bank manager, according to the witnesses examined from the bank on the side of the prosecution to prove the case deposed that the appellant acted in the interest of the bank and raised the business of the bank up to the level of the mark. He also deposited entire amount through the credit made from the account of Mr.Selvaraj, Ranganathan, Dhilip Iyengar, Ramamoorthy @ Ramya and Sakthivel. Further, the departmental proceedings initiated against the appellant and the order of termination is passed against him. At the time of passing conviction, he was aged about 70 years and he has not faced any the departmental or criminal proceedings before this occurrence. Only, to promote the business, he allowed the said withdrawal and made credits in the account without obtaining any wrongful gain. Hence, the learned trial Judge ought to have acquitted the appellant under Sections 420 and 477(A) of IPC. More particularly, he gave the finding that offence under Section 13(2) r/w13(1)(d) of the Prevention of Corruption Act is not made out. This Court may atleast, consider the said fact to impose the minimum sentence of imprisonment.

7.10. The learned Senior Counsel submitted the above common submission on behalf of C.Sankara Narayanan(A1), manager and specifically prayed that to set aside the separate sentence of imprisonment in each C.C., imposed against the



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appellant and requested to impose the concurrent sentence in all C.C., on the premise that all have emanated from the same FIR.

7.11. The learned Senior counsel for the appellant/private accused in CrI.A. (MD).No.407 of 2016 namely Thiru.Ajmal Khan. Thiru.A.K.Jayaraj and R.Aravindan learned counsel for the appellant in CrI.A.(MD).No.389 of 2016, Thirumathi. AL.Gandhimathi, learned Senior Counsel for the appellant in CrI.A.(MD).No.386 of 2016, made the following two important common submissions:

(i) They elaborated the argument advanced by the learned Senior Counsel Thiru.Ashok Kumar, that before registration of the case on 27.09.2004, the amount was settled in their respective account on 10.01.2004. Therefore, the conviction and sentence passed against the accused under Section 120-B r/w 420 of IPC is not legally maintainable. They jointly argued that in this case, the amount was not settled after the registration of the case and hence, the law laid down by the Hon'ble Supreme Court in judgments relied by the learned Special Public Prosecutor for CBI, to convict and sentence the appellants under Section 420 r/w 120-B is not applicable to the present case. In all the above cases, settlement was effected during the pendency of the investigation, trial or appeal. But in this case, the inspection was conducted on 09.01.2004 and the authorities directed the Sankaranarayanan(A1) to settle the amount. He settled the amount on the next day ie., 10.01.2004 with interest.



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Hence, the registration of the case after a period of eight months on the basis of the source information is not legally maintainable. The learned trial Judge, at least should have considered the said fact while imposing the sentence of imprisonment.

(ii) The learned counsel submitted that all the over draft facilities obtained after executing mortgage of deposit of title deeds with sufficient values and the credited and withdrew amount can sufficiently be recovered by initiating necessary action under of debt laws. In the said circumstances there is no element of intention to cheat the bank.

(iii) The learned counsel further submitted that they have no knowledge about the bank procedure relating to the temporary over draft procedures and the prosecution also not produced any of the circumstances to presume that they have knowledge about the procedure regarding the temporary over draft.

(iv) The learned counsel also submitted that no evidence was adduced on the side of the prosecution to prove the conspiracy with Sankaranarayanan(A1). They are innocent account holders and they withdrew the amount only on the *bonafide* impression that they had right to withdraw the same on account of the execution of the mortgage deed for the value of over draft facilities. In view of the specific finding of acquittal under Section 120-B r/w 13(1)(d) r/w 13(2), 477-(A) of IPC, the conviction under Section 120-B r/w 420 of IPC is not maintainable, since



the amount was already settled even prior to the registration of the case.

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8. Thiru.Jayaraj and Mr.R.Aravindan, the learned counsel appearing for the appellants in CrI.A.(MD).No.389 of 2016 also made the following the submission:

8.1. In CBI manual, there is a procedure to follow for the registration of the case on the basis of the source information. There should be creditable material for the “reason to believe” that the accused committed any offence stated in the FIR. As per the counsel, the CBI should follow the said procedure stated in Paragraph No.18 of the manual. For that they relied the judgment of the Hon'ble Supreme Court in *AIR 1999 SC 1281* in the case of *Babu Verghees Vs. Bar Council of Kerala* Paragraph No.31 “it is the basic principle of law long settled that if the manner of going a particular act is prescribed under any Statute, the act must be done in that manner or not at all.” In view of the settlement of the amount on 10.01.2004 i.e., seven months prior to the registration of the case on 27.09.2004 the investigating agency ought to have properly conducted the enquiry before registration of the case. By relying the Hon'ble Supreme Court judgment reported in *AIR 2021 SC 5041*, and *Lalita kumari case* reported in *2014 2 SCC 1*, the registration of the case without holding preliminary enquiry is not legally valid. Therefore, without any reason to believe that accused committed offence and the registration of the case itself is illegal and hence, the substratum of the prosecution case itself has no leg to stand.



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8.2. The learned counsel also produced number of the Judgements of Hon'ble Supreme Court, reported in *1961 ITR Vol 41* Page No.191 in the case of *Calcutta Discount Company Ltd., Vs. Income Tax Officer and others* and reported in *1967 ITR Vol 63 Page No.219* in the case of *S.Narayannappa and others Vs. Commissioner of Income Tax, Bangalore*, to show that the CBI before registration of the case, not satisfied the definition of reason to believe to register the case on the allegation made in the complaint preferred by the bank.

8.3.The learned counsel also specifically submitted that mere circumstance of issuance of cheques without sufficient funds in the account and honouring of the said cheques by Sankaranarayanan(A1) does not amount to the offence under Sections 120-B and 420 of IPC and the same may not amount to proof of guilt. They relied the Judgement of the Hon'ble Supreme Court in AIR 1978 SC 1571, paragraph No.3, more particularly, "*it is now well settled that strong suspicion, strange coincidences of grave doubts cannot take place of the legal proof.*"

8.4. They also relied the following judgments of the Hon'ble Supreme Court:

AIR 1964 SC 1563

AIR 2008 SC 1325



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1983 (12) ELT 193 (SC)

1970 1 SCC 696

1977 (4) SCC 540

2015 (320) ELT 45 SC

2021 SCC online SC 1232

2022 (8) SCC Page 282

Munna Lal Vs.State of UP (Crl.A.No.490 of 2017)

The learned counsel also submitted that in the FIR one of the arrayed accused was deleted on the ground that they settled the amount and the said benefit was not extended to the appellants and hence, the entire investigation is biased one and therefore, the conviction on the basis of the biased investigation is not legally sustained.

9. Thiru Ajmal Khan, the learned Senior appearing for the appellant in Crl.A.(MD).No.407 of 2016 apart from the above common submission specifically submitted that offence under Section 420 of IPC is not made out and he relied the following judgments of the Hon'ble Supreme Court:

2002 (1) SCC 241

2022 (7) SCC 124

2022 SCC online SC 1080



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9.1. The learned Senior counsel specifically submitted that the appellant in CrI.A.(MD).No.407 of 2016, namely A2 in C.C.7 of 2008 in his 313 Cr.P.C, questioning made the specific plea that he made the deposit of title deed of properties for the value of 1 ½ crores to obtain the Over Draft facilities. In view of the above case, his account was temporarily suspended and hence he incurred huge loss and hence the registration of the case is not legally valid. The said answer of the appellant in CrI.A.(MD).No.407 of 2016 has not been considered by the learned trial Judge as per the law laid down by the Hon'ble Supreme Court in 2021 SCC Online SC 1184, 2022 SCC Online SC 966 and hence, the conviction and sentence passed against him is liable to be set aside.

10.Public Prosecutor Submission

The learned Special Public Prosecutor for CBI made the following submissions:

10.1. In all the above appeals A1/Sankara Narayanan is the Branch Manager, the remaining accused in all the appeals are the current account holders. They opened current account in the bank namely the Indian Bank, Srirangam Branch and all the accused colluded together and made unauthorized withdrawals in their respective account when their account had debit balance and made fraudulent credits in their account without presenting cheque and hence, the bank incurred loss



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without proper utilization of amount for more than Rs.1,00,00,000/-. In this aspect, some information was received by the Head Office. Therefore one Mr.Nandhagopal was directed to conduct the inspection in the first week of January 2004. Nandhagopal visited the branch and in parallel, the audit department also visited the bank namely Periyasamy and they conducted enquiry and found that the first accused committed fraudulent act of diverting the amount to the tune of Rs. 1,00,00,000/-. During the inspection, the Sankaranarayanan (A1) admitted above fraudulent transactions and thereafter, he was directed to remit the amount. Immediately, the first accused arranged the amount from the prosecution witnesses' account namely Mr.Selvaraj, Ranganathan, Dhilip Iyengar, Ramamoorthy @ Ramya and Sakthivel and settled the entire amount on 10.01.2004 and enquiry report was prepared on 05.02.2004 by Periyasamy. Subsequently, the CBI registered the case on source information and registered the case on 27.09.2004. The inspection report itself constitute the cognizable offence and hence, there is no necessity to conduct the preliminary enquiry. He relied the judgment of the Hon'ble Supreme Court reported in **(2022)4 SCC 764** and argued that the registration of the case without conducting preliminary enquiry is not a ground to acquit the accused.

10.2. According to the prosecution, crime never dies. Once the crime is



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committed in clandestine manner, the same has to be treated as an offence and hence CBI has registered the case. Hence, the submission made by the learned counsel for the appellants that even before the registration of the case, the entire amount was deposited and hence, the investigation and the criminal proceedings against the appellants is not maintainable is not acceptable and He placed the following the judgment of the Supreme Court :

- i) 2009 (11) SCC 737 at Para 150 & 159
- ii) 1998 SCC (Cri) 300 at Para 11 & 13
- iii) 2020 (2) SCC (Cri) 413 at Para 17 & 19
- iv) 2014 (15) SCC 29 at Para 18
- v) 2012 (10) SCC 303 at Para 58 to 61
- vi) 2008 (9) SCC 677 at Para 28 to 32
- vii) 2002 CrI.L.J 677

10.3. The learned Additional Public Prosecutor further submitted that by showing various Exhibits on 10.01.2004, A1 settled the amount through the transfer of the fund from Mr.Selvaraj, Ranganathan, Dhilip Iyengar, Ramamoorthy @ Ramya and Sakthivel and the same was adjusted with the cheated amount of the appellant in C.A.(MD).Nos.407, 389, 386 of 2016 and another deceased accused. The appellants in C.A.(MD).Nos.407, 389, 386 of 2016 never deposited any amount. It is the specific



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case of the above said persons, that they have no acquaintance with the appellants in the C.A.(MD).Nos.407, 389, 386 of 2016 and they are not liable to make any payment towards the appellants liability. Therefore, the case of the appellants that they settled the amount itself is false one and The appellants made a false submissions before this Court. Hence, they are not entitled even for reduction of sentence.

10.4. Sankaranarayanan (A1), had power to grant temporary over draft facilities upto Rs.50,000/-. But he exceeded his jurisdiction beyond Rs.50,000/- to the tune of Rs.1,00,00,000/-. To conceal the same, he has did not send AUF and AUD report. Inspite of the debit balance he allowed the unauthorized withdrawal by making the “Pls Pay” and allowed the fraudulent credit without presenting the cheques by making “YES EC” and he didnot make any entry in the external clearing ledger. All the accused never disputed the unauthorized withdrawal and fraudulent credits. A1 also had not disputed the above fraudulent transaction. But they justified their act on the ground that the account holders gave sufficient security to recover the amount. Hence the prosecution proved their case.

10.5. The CBI registered case on source information. They are not duty bound to disclose the source as contented by the appellant counsel and he relied the judgment of the Supreme Court 1984 SCC (Cri) 135 at Para 19 & 23 and also CrI.O.P.No.13215 of 2016.



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10.6. The learned Additional Public Prosecutor placed the detailed submission on individual appeals by reading the evidence of the prosecution witnesses and various prosecution documents.

10.7. He would further submit that even though number of accused were arrayed at in the FIR, Considering the various circumstances, the investigating officer exonerated some in the final report. The reason assigned by the investigating officer is legally valid and from the evidence of the prosecution witnesses, it is clear that the appellant/regional branch manager, namely the first accused in all the cases conspired together with the appellant like customers and made transaction to the tune of Rs.1,00,00,000/-. Therefore, deletion of the some of the accused in the final report is not a ground to acquit the appellants. After elaborate argument, he seeks the dismissal of the appeal.

11. Reply:

11.1. Reply to the learned Additional Public Prosecutor, Mr.Aravindhan learned counsel for the appellant submitted that there was no legal bar to make the payment through the outsiders.

11.2. The learned counsel for the appellant further submitted that there was no complaint from the person who contributed the amount and hence the law enforcing authority had no jurisdiction to register the case, without any complaint



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from the particular person. He would further submit that P.W.11 in his cross examination stated that the Rules of the bank is not within the knowledge of the appellant.

11.3. The learned counsel for the appellant further submitted that the delay in making the payment with interest either by the accused or on behalf of somebody, does not make out offence under Section 420 of IPC. He would further submit that once acquitted under Section 13(1)(d) of prevention of Corruption Act r/w 120 (b) of IPC the conviction under section 120 B r/w 420 IPC is not maintainable.

11.4 Non examination of the material witnesses by the prosecution namely the Inspector of Police, who registered the FIR is material in this case. Because, he conducted inspection by collecting 88 documents. Hence, he must have examined on the side of the prosecution to prove the genuineness of the occurrence.

11.5. He would further submit that the charge under Section 120 (b) r/w 420 of IPC is not framed and hence the punishment under Section 120 (b) and 420 of IPC is not made out. The learned counsel further materially submitted that the delay in making payment did not amount to the offence under Section 420 of IPC. The learned counsel further elaborated this aspect that the delay in making payment is not a ground to presume the criminal intention on the part of the appellant. The



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learned counsel for the appellants emphatically stated that the offence under Section 420 of IPC is not made against the appellants.

12. Now the question is whether the conviction and sentence imposed by the Court below against the appellants can be sustained.?

13. This Court considered the rival submissions and perused the materials available on record and the impugned judgments and the precedents relied upon by the learned counsel appearing on either side. Since all the above appeals originated from the common FIR and in all the cases A1 manager of the Indian Bank was commonly arrayed as accused and convicted in individual C.C., and sentenced to undergo imprisonment with common allegation of conspiracy with the remaining accused of the said C.C., and considering most of the witnesses are same and most of the documents are common, this Court heard all the appeals together and deliver this Common Judgment. For better appreciation of the hearing of the case, this Court made the discussion on the basis of the arguments of the learned counsel for the appellant in the following headings with reference to the evidence of each case:

14. Proof of unauthorized withdrawal and fraudulent credits:

14.1. Sankaranarayanan was working as Manager of the Indian Bank, Srirangam Branch, Trichy, in the year 2002 to 2004. He is the appellant in Crl.A.



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(MD).Nos.381 of 2016, 382 of 2016, 383 of 2016, 384 of 2016 and he is arrayed as A1 in C.C.No.4, 5, 6, 7 of 2008 on the file of II Additional District Judge for CBI Cases, Madurai.

14.2. The appellant in C.A.(MD).No.386 of 2016, C.A.(MD).No.389 of 2016, C.A.(MD).No.407 of 2016 are the customers of the said bank. They are arrayed as the accused in C.C.No.4,5,6,7 of 2008 on the file of II Additional District Judge for CBI Cases, Madurai, respectively.

14.3. The sum and substance of the prosecution case is that A1 Sankaranarayanan conspired with the customers namely appellants in C.A. (MD).No.386 of 2016, C.A.(MD).No.389 of 2016, C.A.(MD).No.407 of 2016 and one deceased Gopinath (Accused in C.C.No.06 of 2008) to cheat the bank, opened the current account in the following names and made the unauthorized withdrawal with knowledge that the accounts were in debit balance and made the fraudulent credits and there by caused loss to the bank to the tune of Rs.1,10,66,100/-(Rupees One Crore Ten Lakhs Sixty Six Thousand and Hundred only) and they wrongfully gained the huge amount. Thereafter, CBI registered the case on source information in RC MA1 2004 A 0061 for the offence under Sections 120-B r/w 420, 477(A) and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, against 10



persons. Thereafter investigation was conducted and final report filed against only

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four customers and same was taken on file in C.C.No.4,5,6,7 of 2008. The details of the accused in the C.C.No.4, 5, 6, 7 of 2008 are as follows:

<i>Appeal No.</i>	<i>C.C.No.</i>	<i>Rank of the Accused</i>	<i>Current Account No.</i>	<i>Number of Unauthorized withdrawals</i>	<i>Number of fraudulent credits</i>	<i>Total Amount (in lakhs)</i>
386 of 2016	5 of 2008	A2/Kanagarajan	Ganesh Godown Complex - C.A.484	11	4	21.45
389 of 2016	4 of 2008	A2/R.Geetha	Chivas Enterprises -C.A.503	38	5	41.95
		A3/Radhakrishnan	Chivas Trading Corporation-C.A.504	15	3	
407 of 2016	07 of 2008	A2/T.R.Vijayarajan	Kumaran Silks -C.A.509	12	3	20.5
383 of 2016	06 of 2008	A2/Gopinath(died)	Gear Electrics- C.A.518	10	4	9.3

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14.4. A1 has not informed the said transaction to the Higher Officials by way of report under AUF, AUD and he also directed his subordinates to make payment to the individual customers by making endorsement in the pay slips and the withdrawal slips as “YES EC” and “Please Pay”. He also had not made entry in the external clearing Register. The same was found out by the inspection team of the Indian Bank, Trichy Regional Office. The said inspection was conducted on 09.01.2004. The inspecting authority directed A1 to make the payment of said amount involved in the above fraudulent transaction. On 10.01.2004, A1 repaid the amount from the account of the other account holders of the said branch.

14.5. In the above C.C.Nos.4,5,6,7 of 2008 Sankaranarayanan (A1) was arrayed as A1 and he filed the separate Appeals against each C.C.in C.A.(MD).No. 381, 382,383, 384 of 2016.

14.6. The Prosecution proved the unauthorized withdrawals and fraudulent credits through the examination of bank officials and marking of the documents. The details of the witnesses and documents are as follows:

<i>C.C.Nos.</i>	<i>Relevant Witnesses</i>	<i>Relevant Exhibits</i>
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04 of 2008	P.W.2, P.W.3, P.W.4, P.W.5, P.W.6, P.W.7, P.W.11, P.W.13, P.W.14, P.W.16, P.W.17, P.W.18, P.W.22, P.W.23, P.W.32	Ex.P3, Ex.P4, Ex.P5, Ex.P90, Ex.P10, Ex.P.48, Ex.P50, Ex.P.88, Ex.P22, Ex.P13, Ex.P51, Ex.P49, Ex.P53, Ex.P.24, Ex.P.25, Ex.P26,
05 of 2008	P.W.2, P.W.3, P.W.4, P.W.5, P.W.6, P.W.7, P.W.11, P.W.13, P.W.14, P.W.17, P.W.18, P.W.22, P.W.23, P.W.32, P.W.38	Ex.P3, Ex.P4, Ex.P.76, Ex.P79, Ex.P84, Ex.P33, Ex.P33, Ex.P32, Ex.P5, Ex.P18, Ex.P.88, Ex.P43, Ex.P.40, Ex.P.42, Ex.P90.
06 of 2008	P.W.2, P.W.3, P.W.4, P.W.5, P.W.6, P.W.6, P.W.7, P.W.11, P.W.13, P.W.14, P.W.16, P.W.17, P.W.22, P.W.23, P.W. P.W.32	Ex.P3, Ex.P4, Ex.P5, Ex.P7, Ex.P18, Ex.P.40, Ex.P.42, Ex.P.43, Ex.P.44, Ex.P.76, Ex.P79, Ex.P.84, Ex.P.88, Ex.P90, Ex.P.33(Ex.P.145)
07 of 2008	P.W.3, P.W.4, P.W.5, P.W.7, P.W.8, P.W.9, P.W.15, P.W. 11, P.W.13, P.W.14, P.W.18, P.W. 32, P.W.22, P.W.23, P.W.27	Ex.P.3, Ex.P.4, Ex.P.5, Ex.P.7, Ex.P. 8, Ex.P.56, Ex.P.90

14.7. The evidence of the above witnesses and the contents of the above documents demonstrate that in each individual current account, there was debit balance at the time of the withdrawal. The amount was credited fraudulently without presenting the cheque and sufficient amount. The corresponding entry was

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not made in the external clearance Register. Further, to conceal the said transaction, the same was not intimated to the higher officers by way of report of AUF AUD as per procedure. The accused/Customers never denied the above said unauthorized withdrawal and fraudulent credits. They took the plea that they are entitled to avail the temporary overdraft and hence, the said transactions are *bona fide*. In the said circumstances, the prosecution clearly proved the unauthorized withdrawal and fraudulent credits beyond reasonable doubt.

15.Maintainability of the registration of the case after the settlement of the amount:

All the learned counsel made submissions that the registration of the case on 27.09.2004 after the settlement of the amount on 01.10.2004 is illegal. The said submission deserves to be rejected on two grounds:

(i)The crime never dies;

(ii)The settlement of amount by A1 Manager from the account of the prosecution witnesses does not wipe out the criminal liability. In this aspect, already decided by the Hon'ble Supreme Court;

Khandu Sonu Dhobi v. State of Maharashtra, reported in (1972) 3 SCC 786

10. Mr Kotwal has also submitted that the accused expressed willingness to complete the work after the matter had been reported to



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the higher authorities. This submission, even if accepted, would not exonerate the accused because the willingness after the matter had been reported to the higher authorities could not efface or undo the offence earlier committed by the accused.

In the case of *R. Venkatkrishnan v. CBI*, reported in (2009) 11 SCC 737 :

150. *It is also not the law that suffering of loss is a sine qua non for recording a judgment of conviction.*

152. *We have already hereinbefore dealt with the question as to the legality of the transactions having regard to the provisions of the NHB Act. If the transaction was illegal, as a result whereof, a private person, who was not expected to reap the fruit of "call money" was allowed to retain the same for a period to make an unlawful gain therefrom, offence of criminal breach of trust must be held to have been committed. It is for the same reason, the submission that as nobody ultimately suffered any loss, an offence under Section 409 of the Penal Code was not made out, cannot be accepted.*

153. *A bank or financial institution may not suffer ultimate loss but if the money has been allowed to be used by another*



person illegally for illegal purposes, the ingredients of Section 405 of the Penal Code would get attracted. A case involving temporary embezzlement also attracts the ingredients of Section 405 of the Penal Code.

The Hon'ble Supreme Court further held that in the case of ***State of Maharashtra v. Vikram Anantrai Doshi***, reported in **(2014) 15 SCC 29**

26. Be it stated, that availing of money from a nationalised bank in the manner, as alleged by the investigating agency, vividly expositis fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the charge-sheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kinds of benefits it cannot be regarded as a case having overwhelmingly and predominatingly civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation. The cleverness which has been skilfully contrived, if the allegations are true, has a serious consequence. A crime of this nature,



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in our view, would definitely fall in the category of offences which travel far ahead of personal or private wrong. It has the potentiality to usher in economic crisis. Its implications have its own seriousness, for it creates a concavity in the solemnity that is expected in financial transactions.

Further in the case of **Gian Singh v. State of Punjab**, reported in (2012) 10

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61. any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences.

In the case of **CBI v. Hari Singh Ranka**, reported in (2019) 16 SCC 687

19. It has been observed by this Court that when the charge-sheet reflects that the respondent got LCs issued by the Bank in favour of fictitious companies propped up by them and the fictitious beneficiary companies had got letters of credits discounted by attaching their bogus bills. It is not a simple case where an accused has borrowed money from the bank and diverted it somewhere else and, thereafter, paid the amount. Civil settlement of the controversy would not suffice



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to wipe off the criminal liability. The case reflects fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the charge-sheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. This Court has further observed that accepted principle of handling of finance that whenever there are manipulation and cleverly conceived contrivance to avail of this kind of benefits it cannot be regarded as a case having overwhelmingly and predominantly civil character. The gravity of the offence creates a dent in the economic spine of the nation. The quashing of the case was set aside as social interest would be in peril. The order of the High Court was held to be indefensible. Facts are more or less similar in the instant case, and as such the impugned orders cannot be permitted to be sustained on the anvil of the aforesaid principles.

The above said principles are also applicable to the present case and hence, this Court is not inclined to accept the argument of the learned counsel for the appellant that the registration of the case after the settlement of the amount much prior to the registration of the case is illegal.

16. Registration of the case without conducting the preliminary enquiry:



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16.1. Sankaranarayanan (A1) manager and the appellants in Crl.A.(MD).Nos.386, 389, 407 of 2016 conspired together and made unauthorized withdrawal and fraudulent credits in their respective accounts and thereby they swindled the amount of Rs.1,10,66,100/- (Rupees One Crore Ten Lakhs Sixty Six Thousand and Hundred only) in the year 2002 to 2004. SankaranarayananA1 did not submit AUF and AUD as per procedure. Raising doubt over the above transactions, the vigilance department of the Indian Bank, Trihcy Regional Office, conducted inspection on 09.01.2004 and found that fraudulent transactions had taken place. The inspecting authority directed the Sankaranarayanan (A1) to settle the amount. Sankaranarayanan (A1) accepting the above fraudulent transaction and settled the amount from the account of Mr.Selvaraj, Ranganathan, Dhilip Iyengar, Ramamoorthy @ Ramya and Sakthivel on 10.01.2004. Thereafter, CBI registered the case on source information. The learned counsel for the appellant in Crl.A.(MD).No. 389 of 2016, namely Mr.R.Aravindan and Mr.AK.Jayaraj submitted that the said process of registering the case without conducting preliminary enquiry and disclosing the source of information is not legally correct. The learned Special Public Prosecutor submitted that the same was not necessary. The Hon'ble Supreme Court in 1984 SCC Crl. 135 stated that source of information need not be disclosed by the prosecution.



In *State of Punjab v. Jagdev Singh Talwandi*, reported in (1984) 1 SCC 596 at page

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23. ..the detenue is not entitled to be informed of the source of information received against him or the evidence which may have been collected against him.

This Court also considered the similar plea and negated the contention of the appellant that source of information is to be furnished in CrI.O.P.No.13215 of 2016 dated 24.06.2016:

5. Under Section 125 of the Indian Evidence Act, the police are not required to disclose the source of intelligence as that would lead to the accused liquidating the informant. This protection is given to the police statutorily and hence, the nonmentioning of the same, in the FIR is not fatal.

16.2.The requirement of the preliminary enquiry in this type of case is not necessary as held by the Hon'ble Supreme Court in the judgment reported in *AIR 2022 SC 190* and the judgment relied by the learned counsel for the appellant reported in *AIR 2021 SC 5041*. In *AIR 2021 SC 5041 (2021 SCC Online 923)* in the case of *CBI Vs Thommandru Hannah Vijayalakshmi @ T.H.Vijayalakshmi* held as



follows:

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40. *In view of the above discussion, we hold that since the institution of a Preliminary Enquiry in cases of corruption is not made mandatory before the registration of an FIR under the CrPC, PC Act or even the CBI Manual, for this Court to issue a direction to that affect will be tantamount to stepping into the legislative domain. Hence, we hold that in case the information received by the CBI, through a complaint or a “source information” under Chapter 8, discloses the commission of a cognizable offence, it can directly register a Regular Case instead of conducting a Preliminary Enquiry, where the officer is satisfied that the information discloses the commission of a cognizable offence.*

41. *The above formulation does not take away from the value of conducting a Preliminary Enquiry in an appropriate case. This has been acknowledged by the decisions of this Court in P Sirajuddin (supra), Lalita Kumari (supra) and Charansingh (supra). Even in Vinod Dua (supra), this Court noted that “[a]s a matter of fact, the accepted norm - be it in the form of CBI Manual or like instruments is to insist on a preliminary inquiry”. The registration of a Regular*



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Case can have disastrous consequences for the career of an officer, if the allegations ultimately turn out to be false. In a Preliminary Enquiry, the CBI is allowed access to documentary records and speak to persons just as they would in an investigation, which entails that information gathered can be used at the investigation stage as well. Hence, conducting a Preliminary Enquiry would not take away from the ultimate goal of prosecuting accused persons in a timely manner. However, we once again clarify that if the CBI chooses not to hold a Preliminary Enquiry, the accused cannot demand it as a matter of right. As clarified by this Court in Managipet (supra), the purpose of Lalita Kumari (supra) noting that a Preliminary Enquiry is valuable in corruption cases was not to vest a right in the accused but to ensure that there is no abuse of the process of law in order to target public servants.

In the case of ***National Confdn. of Officers Assn. of Central Public Sector Enterprises v. Union of India***, reported in (2022) 4 SCC 764 : reiterated the said principle and held as follows:

62. In CBI v. Thommandru Hannah

Vijayalakshmi [CBI v. Thommandru Hannah Vijayalakshmi, (2021) 18



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SCC 135 : 2021 SCC OnLine SC 923] , a three-Judge Bench of this Court held that it is not mandatory to hold a preliminary enquiry in all cases before registering an FIR against a public official,

In this case, already the competent persons of the bank including bank vigilance officers conducted the inspection and found that there were number of fraudulent transactions made by the accused namely the appellants. The said report itself disclose the cognizable offence under the Indian Penal Code and the Prevention of Corruption Act. The Hon'ble Supreme Court in *State of Haryana Vs. Bhajanlal*, reported in 1992 SCC CrL 426 held as follows:

42. The expression "reason to suspect" as occurring in Section 157(1) is not qualified as in Section 41(a) and (g) of the Code, wherein the expression, "reasonable suspicion" is used. Therefore, it has become imperative to find out the meaning of the words "reason to suspect" which words are apparently clear, plain and unambiguous. Considering the context and the object of the procedural provision in question, we are of the view that only the plain meaning rule is to be adopted so as to avoid any hardship or absurdity resulting therefrom and the words are used and also to be understood only in common parlance. We may, in this behalf, refer to a decision of the Privy



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Council in Pakala Narayana Swami v. Emperor [AIR 1939 PC 47, 51-52 : 66 IA 66 : 40 Cri LJ 364] wherein Lord Atkin said as follows:

“[W]hen the meaning of words is plain it is not the duty of the courts to busy themselves with supposed intentions It therefore appears inadmissible to consider the advantages or disadvantages of applying the plain meaning whether in the interests of the prosecution or the accused.”

In the case of *Lalita Kumari v. Govt. of U.P.*, reported in (2014) 2 SCC 1 held as follows:

73..... The police officer should not refuse to record any information relating to the commission of a cognizable offence on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, reasonableness or credibility of the said information is not a condition precedent for the registration of a case.

From the above law laid down by the Hon'ble Supreme Court and the factual circumstances of the case that the inspection report itself disclosed the offence, the question of satisfaction “reason to believe” is not necessary at the stage of the



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registration of the case. Hence, the contention of the learned counsel for the appellant that the preliminary enquiry with subscription of reasoning to the extent of the reason to believe to register the case is not necessary.

16.3. Mr.R.Aravindan, and Mr.Jayaraj the learned counsel for the appellant submitted that without complaint either from the bank or from the person who made the payment in the account at the instance of Sankaranarayanan (A1) Manager, CBI has no jurisdiction to register the case on the basis of the source information. The said submission is not legally accepted on the principle that the criminal law can be set in motion by anybody. In this case, CBI registered the case on the basis of the source information and the report submitted by the bank officials. The said principle is reiterated by the Hon'ble Supreme Court in the case of *Venkatkrishnan v. CBI*, reported in (2009) 11 SCC 737

150. In this regard, it is not the law that complaint petition under all circumstances must be made by the banks and financial institutions whose money had been the subject-matter of offence. It is now trite that criminal law can be set in motion by anybody. The prosecution was initiated on the basis of the information received by the Central Bureau of Investigation. It would be entitled to do so not only in regard to its



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statutory powers contained in the Delhi Special Police Act but it was also entitled to take cognizance in terms of the report submitted by the Janakiraman Committee. The money involved in the transfer is public money belonging to public sector banks.

17.Deletion of some of the accused in Final Report:

The learned counsel submitted that some of the named accused in the FIR were dropped by the investigating agency in the final report on various reasons. The learned Special Public Prosecutor submitted the following reasoning in their written arguments:

“The other contention of the appellants are that though the FIR came to registered against 14 persons only 6 were arraigned as accused and the prosecution as adopted pick and choose method. It is to be stated that out of 14 persons A1, A5, A6, A7, A9, A12 were charge sheeted and A2 was examined as P.W.23, A3 was examined as P.W.22, A4 not examined and all the three have no specific over tact with regard to the crime; A8 namely the mother of A7 was not implicated since she did not present any cheque nor aware of the transaction done by A7; that A10 was very old and the investigation reveal that he never involve in the offence alleged and that A11 who involved in the single transaction



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of Rupees 1.45 lakhs has repaid immediately; A13 has no involvement in the alleged crime A1 has credited Rs.1,100/- which was erroneously credited in his account and the same was adjusted immediately. Hence, the prosecution has not sent the above accused for trial in the charge sheet."

The appellant never alleged any malafide and they not even made suggestions about the investigation as a biased one. The investigating authorities filed the final report with reasoning and the same was also accepted by the learned trial Judge. In the said circumstances, without plea of prejudice, miscarriage of justice and bias investigation, the contention of the appellant cannot be accepted. Further, the deletion of some of the accused in final report shall not be a ground to acquit the accused when the sufficient evidence collected and produced before the Court. It is a well settled law, the lapse on the part of the investigating officer in not arraying the accused is not a ground to disbelieve the prosecution evidence. In this aspect it is relevant to note that the judgment in the case of ***Ram Gopal v. CBI***, reported in **(2019) 7 SCC 204 :**

5. We have considered the submissions on behalf of the parties and gone through the materials on record. It is an undisputed fact that a fictitious account was opened without proper verification in accordance



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with the banking procedures. That unfortunately does not appear to have been the subject of investigation and which could have revealed more facts with regard to the nature and manner of the embezzlement that has taken place, including the persons involved in the same. The trial court has rightly observed that in accordance with banking procedures, the opening of the account, the deposits in the same and withdrawals could not have been the handiwork of the appellants alone. But merely because the investigation may not have been of the standard and nature that it ought to have been cannot enure to the benefit of the appellants in view of the nature of materials and evidence available against them.

In the case of ***Kashinath Mondal v. State of W.B.***, reported in (2012) 7 SCC

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“20.It is said by this Court in a number of cases that irregularities or deficiencies in conducting investigation by the prosecution is not always fatal to the prosecution case. If there is sufficient evidence to establish the substratum of the prosecution case, then irregularities which occur due to remissness of the investigating agency, which do not affect the substratum of the prosecution case, should not weigh with the Court.”



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Hence, the deletion of some of the accused in the final report is not a ground to give premium to the appellants who made the fraudulent transaction of unauthorized withdrawal without sufficient amount in the account and fraudulent credits without presenting the cheque.

18. Proof of under Section 420 of IPC:

The learned counsel for the account holder submitted that they have no knowledge about the procedure of the bank in making the withdrawal above temporary over draft limit. Therefore, they have no intention to cheat the bank at the inception of making the transaction. The said submission has no legal sanctity. The illustration to Section 415 of IPC is as follows:

415. Cheating. – Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”. Explanation. – A dishonest concealment of facts is a deception within the meaning of this section.



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Illustrations

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonored, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

18.1. As per the above illustration, presenting the withdrawal slips and cheques to make the payment with knowledge that in the account there was no sufficient fund is itself circumstances to constitute the offence under Section 415 of IPC.

18.2. Further, the act of making fraudulent credit in the account without presenting cheque itself shows the intentional deception by the appellants.

18.3. The learned counsel for one of the appellant placed reliance of the Hon'ble Supreme Court Judgment in the case of *Vijay Kumar Ghai & Others Vs. State of West Bengal* reported in **2022 7 SCC 124**. In the said judgment, the Hon'ble Supreme Court reiterated following ingredients to attract the offence under Section 420 IPC:-

“35. To establish the offence of cheating in inducing the delivery of



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property, the following ingredients need to be proved:

(i) The representation made by the person was false.

(ii) The accused had prior knowledge that the representation he made was false.

(iii) The accused made false representation with dishonest intention in order to deceive the person to whom it was made. (iv) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.

18.4. In this case all the above ingredients are satisfied. Each account holder of this case made unauthorized withdrawal with the knowledge that the account was in debit balance and fraudulent credit made in their account without presentation of the cheque. They were not entitled to do the same. As per the bank procedure, A1 had right to give temporary over draft up to Rs.50,000/-. But, in this case, in order to get wrongful gain to the account holder he allowed to do the same beyond the said limit to extent of crores. To conceal the same, Sankaranarayanan (A1) did not send AUF AUD. Further he had also not made entry in the External clearance register Further, in this case, even though fraudulent transaction was made in the year 2002, the account holders had not even taken any single step to



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make the payment till the inspection conducted on 09.01.2004. From the sequence of events, the accused's intention from the beginning to end has clearly established the offence of cheating. Hence, all the above ingredients are all made out in this case.

19.Proof of 477(A) IPC:-

19.1.According to the learned Senior Counsel appearing for A1/Manager, the conviction under Section 477(A) IPC is not made out against him. In this case, the prosecution witness clearly deposed that they informed that account holder has not retained sufficient funds in the account. But, A1 made a fraudulent entry in the instruments with the endorsement that "Please Pay" and "Yes EC" with the knowledge that A2 and A3 accounts have no sufficient funds and the over draft limit is also not within his power. Further he also make "Please Pay" "Yes EC" in the valuable security. Hence, there is clear evidence against him to convict him for the offence under Section 477 (a) of IPC. In the said circumstances, the offence under Section 477 (a) is clearly made out Hence, in all aspect, offence against the appellant under Section 477(a) of IPC is made out. Hence, the conviction passed by the learned trial Judge for the offence under Section 477 (a) of IPC is not liable to be interfered.

20. Plea of maintainability of conviction without charge:

The learned counsel for the appellants submitted that without charge under section 120-B r/w420 IPC, the conviction passed against the customers



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namely* appellant in CrI.A.(MD).No.386, 407, 382 of 2016 is not maintainable deserves to be rejected. In this case, the first charge is framed against all the accused under Section 120-B, r/w 13(1) (d) r/w 13(2) of the Prevention of Corruption Act, 120-B r/w 420 of IPC. 120-B r/w 477(A) of IPC. The learned trial Judge, acquitted the appellants under Section 120-B r/w 13(1)(d) & 13(2) of the Prevention of Corruption Act. The learned trial Judge also acquitted the accused under Section 120-B r/w 477(A) of IPC. But, the learned trial Judge convicted the appellants under Section 420 r/w 120-B of IPC. Hence, the contention of the appellants that there was no charge is not correct. Hence, the conviction under Section 120-B r/w 420 of IPC against all the appellant is legally maintainable. The learned trial Judge in C.C.No.06 of 2008 inadvertently, in the concluding paragraph stated that conviction is under Section 120-B r/w 420 of IPC and also 420 of IPC simpliciter against the Sankaranarayanan (A1) manager. In the said case, Gopinath (A2) died during the pendency of the trial. Hence, the punishment imposed under Section 120-B r/w 420 of IPC is not correct and hence, the same is liable to be set aside. But, the conviction passed under Section 420 simpliciter is maintained.

21.The Question of Sentence:-

21.1.The trial Court has granted separate sentence of imprisonment against A1 in each C.C.Nos.4, 5, 6 and 7 of 2008 and directed to undergo 20 years of



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imprisonment. In this case, the prosecution did not file any appeal against acquittal under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988. The learned Judge's finding that A1/Manager has not got pecuniary advantages and valuable things is still subsisting. Further, the inspection was conducted in the Bank on 09.01.2004. After inspection, A1/Manager was directed to deposit entire amount. The Manager made arrangement through the account of the prosecution witnesses on 10.01.2004. He also faced department proceedings and he was terminated from service. He is also aged about 70 years and immobile. The above all CCs emanated from common FIR. Hence, this Court direct the appellant/accused No.1/Manager to undergo total 5 years rigorous imprisonment in all cases and remaining part of the fine is confirmed without any alteration.

21.2. The account holders namely, the appellant in CrI.A.(MD)No.386 of 2016, CrI.A.(MD)No.389 of 2016 and CrI.A.(MD)No.407 of 2016, deserves no sympathy of reduction of sentence. All the appellants made the specific stand that they settled the amount on 10.01.2004. The said plea is false one. Actually, they kept the money from 2002 onwards without making any repayment. They made the false proclamation as if they settled the amount on 10.01.2004 from their own accounts. It is the evidence of the prosecution witnesses that they had deposited the amount without any liability and transaction with the above appellants and they made only



on the request of A1. Till date, they have not received the amount from the above appellants. Hence, in all circumstances, they are not entitled to any reduction of the sentence.

<i>Sl.Nos</i>	<i>Summary of Discussion</i>	<i>Paragraph Nos</i>
1	Finding of the trial Court in C.C.No.04 of 2008	3
2.	Finding of the trial Court in C.C.No.05 of 2008	4
3	Finding of the trial Court in C.C.No.06 of 2008	5
4	Finding of the trial Court in C.C.No.07 of 2008	6
5	Submissions of the learned counsel for the appellants	7
6	Submissions of the learned Public Prosecutor	10
7	Reply	11
8	Proof of unauthorized withdrawals and fraudulent credits	14
9	Maintainability of the registration of the case after the settlement of amount	15
10	Registration of the case without conducting the preliminary enquiry	16
11	Deletion of some of the accused in final report	17
12	Proof of under Section 420 of IPC	18
13	Proof of under Section 477 (A) of IPC	19
14	Plea of maintainability of conviction without charge	20
15	The question of sentence	21



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22. In the result, the CrI.A.(MD).Nos.381 of 2016, 382 of 2016, 383 of 2016, 384 of 2016 filed by the Manager/A1/Sankaranarayanan are partly allowed and consecutive sentence of imprisonment of 5 years in each CC.Nos.4,5,6 and 7 of 2016, is modified into sentence of imprisonment of 5 years in total.

23. The appeals filed by the appellant in CrI.A.(MD)Nos.386, 389, 407 and 2016 are dismissed. The bail bond granted shall be terminated, the trial Court is directed to secure the accused and confine in prison to undergo remaining period of imprisonment.

Consequently, connected criminal miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

(*)Corrected as per the order of this Court dated 24/10/2024 made in CrI.M.P. (MD).SR.No.28292 of 2024 in CrI.A.(MD).No.389 of 2016

Sd/-

Assistant Registrar(A.D.II)

// True Copy //

14/11/2024

Sub Assistant Registrar
(CS - I/ II / III /IV)

sbm

To

(*)To be Substituted to the order already despatched on 21/02/2024



1.The II Additional District Judge for CBI Cases, Madurai.

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2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.

3 The Director General of police, Mylapore, Chennai.

4 The Superintendent of police, Madurai.

5 The Superintendent,
Central Prison, Madurai.

6.The Inspector of Police,
SPE:CBI:ACB;Chennai.

7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

8.The Section Officer,
Criminal Section (Records)
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+7 CC to M/s.C.MUTHU SARAVANAN, Advocate (SR-52721 & 52730 to 52735[F]
dated 23/11/2023)

+1 CC to M/s.S.PALANI VELAYUTHAM, Advocate (SR-52832[F] dated
23/11/2023)

+1 CC to Mr.C.Mahadevan, Advocate SR.No.52816/23

+1 CC to Mr.Ajmal Associates, Advocate SR.No. 52692/23

+2 CC to Mr.R.Aravindan, Advocate SR.No. 52519/24

+1 CC to M/s.M.R.SREENIVASAN, Advocate (SR-61203[F] dated 28/10/2024)

CrI.A.(MD).Nos.381, 382, 383, 384, 386, 389 & 407 of 2016 and



22.11.2023

MK/15.02.2024 58P 22C
RD(14/11/2024)58P 23C

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