

Crl.A(MD)Nos.99, 107, 113, 125, 127 and 379 of 2017 and 381 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	25.09.2023
Pronounced On	:	09.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A(MD)Nos.99, 107, 113, 125, 127 and 379 of 2017 and 381 of 2020

Crl.A(MD)No.99 of 2017:

J.Rajagopalan

.. Appellant

Vs.

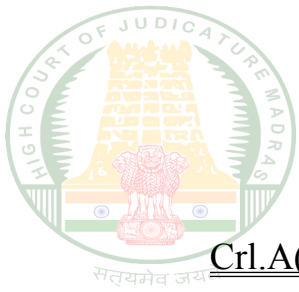
The Inspector of Police,
CBI:ACB,
Chennai.

.. Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records and set aside the order dated 17.03.2017 in C.C.No.4 of 2006, passed by the learned II-Additional District Judge, II Additional District Court for CBI Cases, Madurai.

For Appellant : Mr.C.Emalias

For Respondent : Mr.M.Karunanithi
Special Public Prosecutor for CBI



Crl.A(MD)Nos.99, 107, 113, 125, 127 and 379 of 2017 and 381 of 2020

Crl.A(MD)No.107 of 2017:

P.Viswanathan

.. Appellant

Vs.

State rep. by
The Inspector of Police,
CBI:ACB,
Chennai.
RC MA12004A0018

.. Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records and set aside the order dated 17.03.2017 in C.C.No.4 of 2006, passed by the learned II-Additional District Judge, II Additional District Court for CBI Cases, Madurai.

For Appellant : Mr.V.Kathirvelu
Senior Counsel for Mr.D.Ramesh Kumar

For Respondent : Mr.M.Karunanithi
Special Public Prosecutor for CBI

Crl.A(MD)No.113 of 2017:

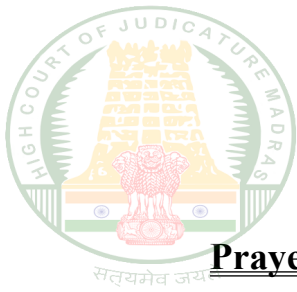
G.P.Radhakrishnan

.. Appellant

Vs.

The Inspector of Police,
CBI:ACB,
Chennai.
(FIR.No.RC MA 12004 A0018)

.. Respondent



Crl.A(MD)Nos.99, 107, 113, 125, 127 and 379 of 2017 and 381 of 2020

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to set aside the conviction and sentence imposed against the appellant/A1 by the learned II-Additional District Judge, II Additional District Court for CBI Cases, Madurai, dated 17.03.2017 in C.C.No.4 of 2006.

For Appellant : Ms.AL.Gandhimathi
Senior Counsel for Mr.M.Saravanan

For Respondent : Mr.M.Karunanithi
Special Public Prosecutor for CBI

Crl.A(MD)No.125 of 2017:

B.Sheik Amir

.. Appellant

Vs.

The Inspector of Police,
CBI:ACB,
Chennai.
RC MA 12004 A0018

.. Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records and set aside the order dated 17.03.2017 in C.C.No.4 of 2006, passed by the learned II-Additional District Judge, II Additional District Court for CBI Cases, Madurai.



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Crl.A(MD)Nos.99, 107, 113, 125, 127 and 379 of 2017 and 381 of 2020

For Appellant : Mr.R.Anand

For Respondent : Mr.M.Karunanithi
Special Public Prosecutor for CBI

Crl.A(MD)No.127 of 2017:

R.Siva

.. Appellant

Vs.

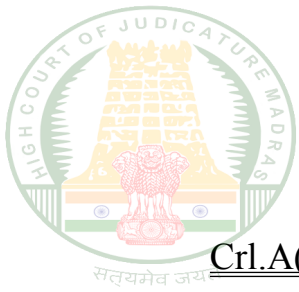
The State represented by,
The Inspector of Police,
CBI:ACB,
Chennai.
RC MA 12004 A0018

.. Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records pertaining to the judgment and conviction passed by the learned II-Additional District Judge, II Additional District Court for CBI Cases, Madurai, dated 17.03.2017 in C.C.No.4 of 2006 and set aside the same and acquit the appellant from all the charges.

For Appellant : Mr.R.Anand

For Respondent : Mr.M.Karunanithi
Special Public Prosecutor for CBI



Crl.A(MD)Nos.99, 107, 113, 125, 127 and 379 of 2017 and 381 of 2020

Crl.A(MD)No.381 of 2020:

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Sulaiman Hussain

.. Appellant

Vs.

State by,
The Inspector of Police,
SPE/CBI/EOW,
Chennai.

.. Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records and set aside the conviction and sentence passed in C.C.No.7 of 2006 dated 15.12.2020, passed by the learned II-Additional District Judge, II Additional District Court for CBI Cases, Madurai.

For Appellant : Mr.M.Sathish Kumar

For Respondent : Mr.M.Karunanithi
Special Public Prosecutor for CBI

Crl.A(MD)No.379 of 2017:

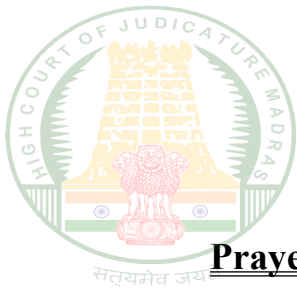
A.Raj Kapoor

.. Appellant

Vs.

State rep., by
The Inspector of Police,
CBI:ACB,
Chennai.

.. Respondent



Crl.A(MD)Nos.99, 107, 113, 125, 127 and 379 of 2017 and 381 of 2020

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records pertaining to the judgment dated 17.03.2017 in C.C.No.4 of 2006, passed by the learned II-Additional District Judge, II Additional District Court for CBI Cases, Madurai and set aside the same.

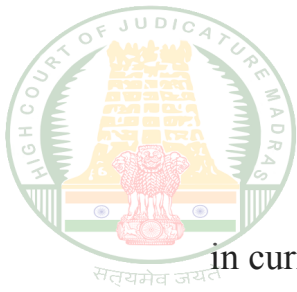
For Appellant : Mr.C.Ramkumar

For Respondent : Mr.M.Karunanithi
Special Public Prosecutor for CBI

COMMON JUDGMENT

Since these criminal appeals are arising out of the same crime, these cases are taken up for hearing together and disposed of by way of this common judgment.

2. All the appellants and other two acquitted accused in CBI Crime No.RC MA1 2003 A 0018 dated 04.04.2003 entered into conspiracy to cheat the State Bank of India Pudukkottai Branch, to the tune of Rs.1,09,86,000/-, opened the fictitious account and presented forged cheques and credited the amount through the forged payment advice and withdrew the amount and thereby they caused loss to the bank to the tune of Rs.1,08,07,599/-(excluding the amount in the account of the “Ayoob”



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in current account No.19341, SB account No.6060, Short time deposit Rs.

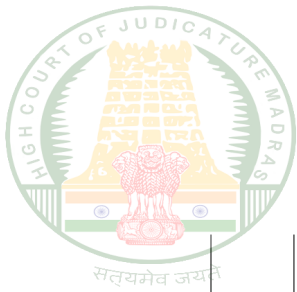
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1,53,000/- totally Rs.1,78,401/-. Therefore, the learned II Additional

District Judge, (CBI Cases) Madurai, conducted a trial in C.C.No.04 of

2006 and 07 of 2006 and passed the following conviction and sentence:

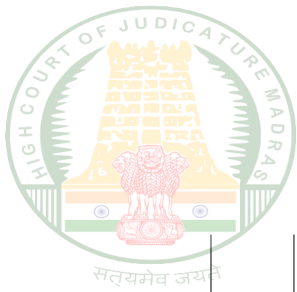
<i>Sl.No</i>	<i>Crl.A. No.</i>	<i>Accused Name and Rank in mother C.C.No. 4 of 2006</i>	<i>C.C. No.</i>	<i>Conviction under Section</i>	<i>Sentence</i>
1	381 of 2020	Sulaiman Hussain (A3)	C.C. No.07 of 2006	419 of IPC	To undergo rigorous imprisonment of three years and to pay a fine of Rs. 5,00,000/- in default to undergo six months of rigorous imprisonment
				468 of IPC	To undergo rigorous imprisonment for seven years and to pay a fine of Rs. 5,00,000/- in default to undergo rigorous imprisonment for six months
				471 of IPC	To undergo rigorous imprisonment for seven years and to pay a fine of Rs. 5,00,000/- in default to undergo rigorous imprisonment for six months
				420 of IPC	To undergo rigorous imprisonment for seven years and to pay a fine of Rs. 5,00,000/- in default to undergo rigorous imprisonment for six months



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				201 of IPC	To undergo rigorous imprisonment for one year and to pay a fine of Rs.25,000/- in default to undergo rigorous imprisonment for three months.
2.	113 of 2017	G.P.Radhakrishna n (A1)	C.C.No. 04 of 2006	120 (b) r/w Section 420 IPC	To undergo rigorous imprisonment for seven years each for the charges and to pay a fine of Rs. 5,000/- in default to undergo simple imprisonment for three months.
				420 of IPC	To undergo rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/- in default to undergo simple imprisonment for three months.
				13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1998	To undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months
3.	99 of 2017	J.Raja gopalan (A2)	C.C.No. 04 of 2006	120(B) r/w 420 IPC	To undergo rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/- in default to undergo simple imprisonment for three months.
				420 of IPC	To undergo rigorous imprisonment for



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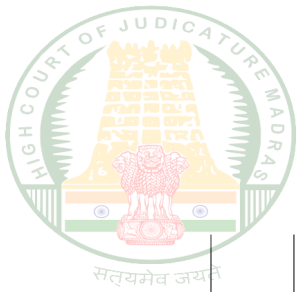
					seven years and to pay a fine of Rs. 5,000/- in default to undergo simple imprisonment for three months.
				13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1998	To undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months
4.	125 of 2017	B.Sheik Amir (A4)	C.C.No. 04 of 2006	120 -B r/w 420 of IPC	To undergo rigorous imprisonment for seven years for each charges and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months
				420 of IPC	To undergo rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/- in default to undergo simple imprisonment for three months.
5	379 of 2017	A.Raj Kapoor (A5)	C.C.No. 04 of 2006	120-B r/w 420 of IPC	To undergo rigorous imprisonment for seven years for each charges and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months.
				120-B r/w 419 of IPC	To undergo rigorous imprisonment for tree years for each



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					charges and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months.
				420 of IPC	To undergo rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/- in default to undergo simple imprisonment for three months.
				419 of IPC	To undergo rigorous imprisonment for three years and to pay a fine of Rs. 5,000/- in default to undergo simple imprisonment for three months.
6.	107 of 2017	P.Viswanathan (A6)	C.C.No. 04 of 2006	120-B r/w 420 of IPC	To undergo rigorous imprisonment for five years for each charges and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months.
				420 of IPC	To undergo rigorous imprisonment for five year and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months.
7	127 of 2017	R.Siva (A7)	C.C.No. 04 of 2006	120-B r/w 420 of IPC	To undergo rigorous imprisonment for seven years for each charges and to pay a



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					fine of Rs.5,000/- in default to undergo simple imprisonment for three months.
				120-B r/w 419 of IPC	To undergo rigorous imprisonment for three years for each charges and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months.
				120-B r/w 467 of IPC	To undergo rigorous imprisonment for seven year for each charges and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months.
				120-B r/w 468 of IPC	To undergo rigorous imprisonment for seven years for each charges and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months.
				120-B r/w 471 of IPC	To undergo rigorous imprisonment for seven years for each charges and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months.
				420 of IPC	To undergo rigorous imprisonment for



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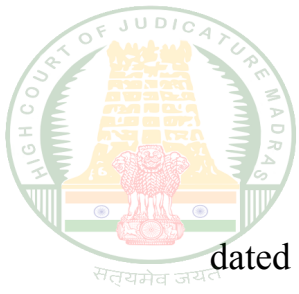
					seven year and to pay a fine of Rs. 5,000/- in default to undergo simple imprisonment for three months.
				419 of IPC	To undergo rigorous imprisonment for three years and to pay a fine of Rs. 5,000/- in default to undergo simple imprisonment for three months.
				467 of IPC	To undergo rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/- in default to undergo simple imprisonment for three months.
				468 of IPC	To undergo rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/- in default to undergo simple imprisonment for three months.
				471 of IPC	To undergo rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/- in default to undergo simple imprisonment for three months.

While passing the judgment, the trial court has acquitted A.Jamal

Mohideen (A7) and T.Mohan (A8) of the charges in C.C.No.4 of 2006,

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<https://www.mhc.tn.gov.in/judis>



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dated 17.03.2017.

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3. P.W.1 manager of the State Bank, Pudukottai Branch, preferred a complaint to the Superintendent of Police Pudukkottai District, on 06.01.2003 under Ex.P40, to take action against the accused with the above allegations. The same was registered in Crime No.01 of 2003 for the alleged offence under Sections 465, 471 r/w 120 of IPC. The following persons were arrayed as accused namely P.Viswanathan, J.Rajagopalan, R.Natarajan, G.P.Radhakrishnan and Jamal Mohideen. Subsequently, the case was transferred to CBI, by the proceedings dated 03.03.2003. CBI registered the case on 04.04.2003 in Crime No.RC MA1 2003 A 0018 for the offence under Sections 465, 471 r/w 120 of IPC. In the said FIR, the following persons were arrayed as accused namely, 1.N.Ayoob, 2.P.Yasin, 3.Ahamed, 4.Babu, 5.Rasheed, 6.P.Viswanathan, 7.M.Kumar, 8.G.P.Radhakrishnan, 9.Rajagopalan, 10.R.Natarajan and 11.Jamal Mohideen.

3.1 After the investigation, the CBI filed a final report against the following accused:

1.G.P.Radhakrishnan (A-1)



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2.J.Rajagopalan (A-2)

3.Sulaiman Hussain (A-3)

4.Sheik Amir (A-4)

5.Raj Kapoor (A-5)

6.P.Viswanathan (A-6)

7.R.Siva (A-7)

8.A.Jamal Mohideen (A-8)

9.T.Mohan (A-9)

3.2 The said final report of the CBI which was taken on file in C.C.No.04 of 2006, is referred here for better appreciation of the facts of this case, and the rank mentioned in the original C.C.No.4 of 2006 is stated as the rank of the accused in all the appeals. ie.,

1.G.P.Radhakrishnan

2.J.Rajagopalan

3.Sulaiman Hussain

4.Shek Amir

5.Raj Kapoor

6.P.Viswanathan

7.Siva

8.A.Jamal Mohideen

9.T.Mohan

3.3 Since records in C.C.No.7 of 2006 form part of records of the C.C.No.4 of 2006, this court refers the names of witness and documents



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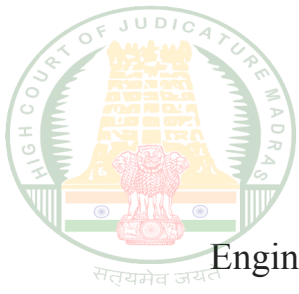
in C.C.No.4 of 2006.

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4. Brief facts of the case:-

4.1.The nub of the charge is that during the period commencing from February 2002 to 30.05.2002 the accused G.P.Radhakrishnan(A1) was working as the personal bank Manager of SBI, Pudukkottai Branch, Pudukkottai District and as such he is a Public Servant. Another accused namely T.Rajagopalan(A2) was working as Assistant (Cash) in the same bank and as such he also is a public servant. The other accused namely Thiru Sulaiman Hussain(A3) B.Shiek Amir(A4), A.Raj Kapoor(A5), P.Viswanathan(A6), P.Siva(A7), A.Jamal Mohideen(A8), T.Mohan(A9) are private individuals and one more accused namely P.Natarajan(P.W. 47), Collection Agent of Professional Courier has become an approver.

4.2. All the accused had entered into a conspiracy to cheat SBI, Pudukkottai and to make unlawful gain. T.Mohan(A9) introduced accused Sulaiman Hussain(A3) as “Ayoob” (shown as absconding accused in C.C.No.4 of 2006) and accused in C.C.No.7 of 2006 and the appellant in Crl.A.No.381 of 2020) to accused G.P.Radhakrishnan(A1) as a leading business man saying that he was intending to construct an



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Engineering college at Pudukkottai District and he was going to do other

business activities also. The accused Sulaiman Hussain(A3) introduced the accused Sheik Amir (A4) as “Yasin” the Manager of a non-existing firm “M/s Aibeena Traders” with a false address and this was authorised by the accused Radhakrishnan(A1). In the said account opening form, accused Sheik Amir signed as “Yasin” and accused Sulaiman Hussain (A3) was the introducer of the said account. The said account was closed for the reason of non-submission of registration certificate or residential proof.

4.3.In pursuance of the said conspiracy, the accused Sulaiman Hussain(A3) again opened a savings account No.01190012511 in the name of “Ayoob” and current account on 11.03.2002 with the very same fake address and as a Manager of M/s Aibeena Traders. The said account was also introduced by accused Radhakrishnan(A1) mentioning the name of accused Mohan as introducer. Sulaiman Hussain(A3) under fictitious name “Ayoob” was given a Cheque Book.

4.4.In pursuance of the said conspiracy, 19 outstation False cheques were prepared as if they were issued by the following banks:-



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1. UCO Bank, Santa Cruze (E) Mumbai
2. UCO Bank, Service Branch, Mumbai
3. Indian Bank, Mumbai
4. UCO Bank, Andheri (W) Mumbai,
5. Indian Bank, Fort, Mumbai.

4.5. The said false outstation cheques with imaginary numbers were regularly deposited in SBI, Pudukkottai from 11.03.2002. They were processed and kept with collection schedules in enclosed covers for onward transmission. The said cover with false cheques and payment schedules were handed over to professional courier service collection agent Natarajan (Approver) and the said covers were opened by Rajagopalan (A2) with the help of the said Natarajan and the false cheques and collection schedules were taken out and some unwanted papers were put inside the cover and sent to the outstation banks.

4.6. Then, forged payment advices were prepared by accused Sulaiman Hussain(A3) with the help of accused Sheik Amir(A4), Rajkapoor(A5) and Mohan(A9) and the said false payment advices were put in another envelope with SBI emblem and again forwarded to SBI, Pudukkottai as if the same were sent by the service branch, SBI, Mumbai.

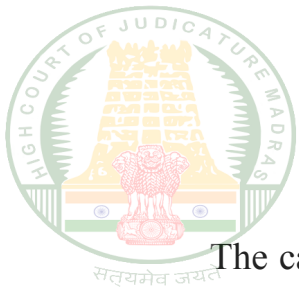


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4.7. On receipt of such false payment advices, the amounts covered

under such payment advices were credited into the account already opened by accused Sulaiman Hussain(A3). Then the amounts were withdrawn by A3, A4, A5, A6 and A7. The procedures to be followed by SBI were not followed so as to scrutinize the payment advices allegedly received from outstation Banks which enabled the accused to withdraw huge amounts from the said account. This has resulted in huge loss to the tune of Rs.1,08,07,599/- to the Bank. All the accused in one way or other have done some wrong doing to create forged cheques and false payment advices and to cheat the SBI, Pudukkottai to the tune of Rs.1,09,86,000/- and made corresponding gain.

4.8. With the said allegations, the complaint was originally preferred before the District Crime Branch of Pudukkottai District. The District Crime Branch, Pudukkottai registered the case in Crime No.1 of 2003. In the said crime number, totally seven accused were there and the same was transferred to the CBI. In the CBI FIR, totally 11 accused were arrayed. After the completion of the investigation, CBI filed the final report in respect of nine accused and the same was taken on file in C.C.No.4 of 2006 on the file of Special Court for CBI cases, Madurai.



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The case was split up in C.C.No.7 of 2006 against the Sulaiman Hussain

(A3) and A.Jamal Mohideen(A8). Thereafter, the Jamal Mohideen(A8) appeared and this case was split in C.C.No.2 of 2008 and joint trial was conducted in C.C.No.4 of 2006 and 2 of 2008. In the trial in C.C.No.4 of 2006, totally eight accused were arrayed. After the split up, the learned trial Judge, framed the necessary charges and questioned the accused and all the accused pleaded not guilty and they stood for trial. The prosecution to prove the charges, examined P.W.1 to P.W.51 and marked Ex.P1 to Ex.P231 and produced M.O.1 to M.O.44. The learned trial Judge questioned the accused under section 313 Cr.P.C., disclosed the incriminating material available against them from the prosecution evidence. All the accused denied the case as false. A1 marked Ex.D1 and Ex.D2, Rajagopalan(A2) marked Ex.D3 to Ex.D8, the accused No.6 (Viswanathan) gave the explanation under Section 313 of Cr.P.C., that he received the amount from “Ayoob” as advance payment to the land purchase and to substantiate the same, he examined D.W.1. After considering all the evidence adduced on the side of the prosecution and accused, the learned trial Judge, by impugned judgment dated 17.03.2017 convicted and passed the sentence as stated above and acquitted Jamal Mohideen(A8) and Mohan(A9).



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4.9. Thereafter, a separate trial in C.C.No.7 of 2006 was conducted

against the absconding accused Sulaiman Hussain in split up C.C.No.7 of 2006. In the said case, the learned trial Judge framed necessary charges and questioned the accused and the accused pleaded not guilty and he stood for trial. To prove the charge the prosecution examined P.W.1 to P.W.20 and exhibited Ex.P1 to Ex.P74. Most of the documents and evidence marked in the C.C.No.4 of 2006 have been marked in this case also. The learned trial Judge, questioned the accused under Section 313 of Cr.P.C., putting the incriminating material available against him from the prosecution evidence. He denied as false and stated that his name is not “Ayoob”. Neither defence documents were marked nor the defence witnesses were examined on his side. The learned trial Judge, after considering the evidence passed the impugned judgment dated 15.12.2020 in C.C.No.7 of 2006 against the said Sulaiman Hussain A3 and passed the above conviction and sentence.

4.10. Challenging the same, the appellants preferred the above stated appeals. Since all the cases emanated from the common FIR in Crime No.RC MA1 2003 A 0018, all the appeals are clubbed together and disposed by way of this Common Judgment.



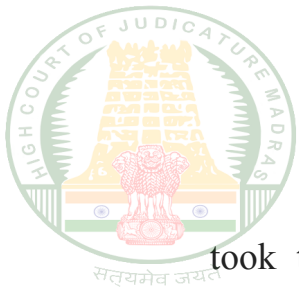
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5. Submission of the learned counsel for the appellant in Crl.A. (MD).No.113 of 2017 (A1-Radhakrishanan Bank Manager):

5.1 Mrs.A.L.Gandhimathi, the learned Senior counsel for A1 read the entire evidence of the prosecution witnesses commencing from P.W.1 to P.W.51 and elaborated the materials available against each accused. Further, the learned senior counsel submitted that the charge against the Sulaiman Hussain (A3), main accused has not been proved by the prosecution in accordance with law. She elaborated the submission that the prosecution never produced any evidence to prove the presentation of the forged cheques by Sulaiman Hussain A-3. The prosecution did not mark the said forged 19 outstation cheques. Without marking the same and without proving the presentation of the said cheques by Sulaiman Hussain(A3), and fabrication of the payment advices and credit of the said amount in the said Sulaiman Hussain's (A3) fictitious account, the charge of conspiracy against the petitioner with Sulaiman Hussain was not at all maintainable.

5.2 The learned Senior Counsel further submitted that except this allegation, no other charge was made against A1 in his entire career. She



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took this Court through the evidence of bank officials that after he assumed charge in the State Bank of Indian, Pudukkottai, he generated more inflow and he brought the bank among the five dominant branches to generate business to the tune of more than Rs.100 Crores. She also relied the defence document Ex.D2 and stated that the higher officials also appreciated his performance of generating the net profit of Rs. 269.54lakhs by communication dated 05.04.2002. In the said circumstances, to promote the business, he introduced Sulaiman Hussain to open the current account in the branch, Pudukkottai. He had done only under the bonafide belief to improve the business of the bank believing the words of the accused Mohan(A9). The said Mohan(A9) was acquitted by the trial Court in C.C.No.4 of 2006, on the ground that he had not done anything except introducing Sulaiman Hussain to open the account. Hence, she seeks a similar benefit to him.

5.3 The learned Senior Counsel further submitted that he never affixed any signature in passing the payslip annexed with the forged cheques and also had not affixed any signature in the process of crediting the amount in Sulaiman Hussain's(A3) fictitious account on the basis of the forged payment advices. Hence, the conviction passed by the learned



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trial Judge for the offence punishable under Section 120-B, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 420, 419, 468 r/w 471 and 201 of IPC are not made out.

5.4 The learned Senior Counsel further submitted that without arraying the accountant Krishnan, Venkatachalam and Jegadeesan who had passed the forged cheques without verifying the genuineness and credited the amount in Sulaiman Hussain's(A3) account and had allowed the withdrawal of the same, arraying the first accused is not legally maintainable. The same shows the partial investigation conducted by the investigating agency.

5.5 The evidence of P.W.5 is not trust worthy and the same suffers from several infirmities and contradiction and embellishments and hence, the same can be rejected.

5.6 The specimen signature of A1 did not tally with any of the questioned documents as per the evidence of hand writing expert P.W.45. In the said circumstances, conviction on the ground of conspiracy without



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any proof of meeting of mind between the appellant A1 and other accused cannot be sustained.

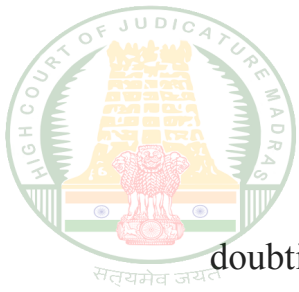
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5.7 The learned senior counsel further submitted that the recovery of some of the material from the house search is not legally proved. Even if it is assumed as proved, the same is not sufficient to prove the grave charge against A1.

5.8 She further submitted that P.W.32 stated that he had not found fault with the opening of the account and the closing of the account by A1 and hence, the finding of the learned trial Judge that conspiracy was proved is not legally correct.

5.9 The recovery of the cell phone and recovery of the various material objects and the seal of the Aibeen traders during the search are not sufficient to prove the grave charges framed against the appellant/A1. In any event, it may not create even strong suspicion.

5.10 The learned Senior Counsel further submitted that before initiation of the proceedings, he sent a complaint to the various authorities



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doubting the cheques issued by Sulaiman Hussain(A3) and presentation of the said forged cheques and withdrawal of the amount. Hence, he has bonafidely taken steps to unearth the truth much earlier to the registration of the case.

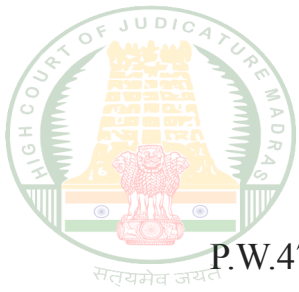
5.11 The learned Senior counsel finally submitted that he never gained anything from the above transaction and hence, there is no wrongful gain to him.

5.12 The learned Senior Counsel submitted that in the event of any conviction, imposition of sentence is not proportionate one and hence, she seeks for reduction of the sentence.

6. Submission of the learned counsel for the appellant in appeal in

Crl.A.No.99 of 2017 (A2-Rajagopalan Assistant in Bank) :

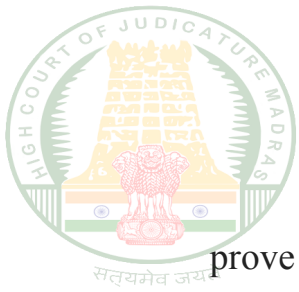
6.1 Mr.Emalias, the learned counsel for the appellant submitted that he was the cashier in the State Bank of India Pudukkottai branch during the relevant period. Even though, the prosecution examined 51 witnesses and produced 231 exhibits and 44 material objects, only available evidence against the appellant was the evidence of the approver



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P.W.47 (Natarajan). He deposed that Rajagopalan (A2) forcibly received the cover addressed to the Chief Office Mumbai with the pay slip and the forged cheques presented by Sulaiman Hussain (A3) from him and thereafter, he handed over the cover within a couple of days without the forged cheques and pay slips and directed to send the empty cover without the cheques and pay slips. The said evidence of P.W.47/Natarajan (approver) is not trustworthy. On the basis of the said evidence, conviction against the petitioner cannot be sustained.

6.2 The learned counsel further submitted that the 164 of Cr.P.C., statement of Nataraj was recorded by the learned Judicial Magistrate Ex.P169 is the confession statement of the said accused. In the end portion of the said confession, the mandatory requirement of the memorandum clause at the foot of such confession is not available and hence, the same is inadmissible one. Consequently, on the basis of the said confession statement conviction of the appellant is not sustainable. For which, he relied the judgment of the Hon'ble Division Bench of this Court reported in **2006 CrL.Law Journal 1085** The learned counsel further submitted that the entire confessions statement of the approver P.W.47/Natarajan is exculpatory in nature and the same is not sufficient to



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prove the guilt of the second accused for the alleged grave charges. For

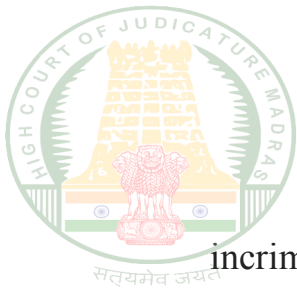
which, he relied the following judgments: ***AIR1966SC1273, 1969(3)SCC429, 2000(5)SCC440.***

6.3 The learned counsel further submitted that mere recovery of some material object is not sufficient to prove the conspiracy with the third accused. Hence, he seeks for acquittal.

7. Submission of the learned counsel for the appellant in Crl.A.(MD).

No.125 of 2017 (A4-Sheik Amir Private person)

7.1 Mr.R.Anand, the learned counsel for Sheik Amir(A4), has submitted that there were three allegations against Sheik Amir(A4). The appellant is said to have opened the account in the name of “Yasin” by affixing his photos in Ex.P65. In the said Ex.P65, he put the signature as “Yasin”. The said account number is A/c.0100060688. The same was closed on the ground that no necessary document was annexed. Further allegation is that Sulaiman Hussain gave his cheques to him. The appellant/A4 presented the cheque in the A1 bank and collected the amount through Ex.P149/Debit Slip, Ex.150/Banker Cheque application etc., The amount was withdrawn under Ex.P149 and 150 etc., Further the

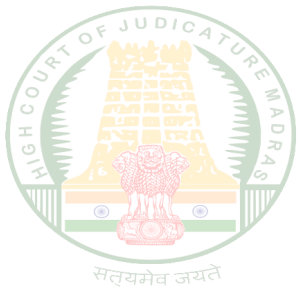


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incriminating materials against the appellant/A4 was that there was a recovery of the screen printing material of State Bank of India in the house search. The same was spoken by P.W.43/Vaityanathan.

7.2 The learned counsel further submitted that to prove the above three circumstances, the prosecution has not produced sufficient evidence and hence, the learned trial judge erred in convicting the appellant/A4.

7.3 The learned counsel elaborated his argument that P.W.43 deposed that the recovery was made in his presence. His evidence is more doubtful. The recovery was effected on 27.04.2004. The said recovery was made on the basis of the disclosure statement of the appellant/A4 under Section 27 of the Indian Evidence Act. But, under Ex.P170, the confession was recorded on 28.04.2004 and the search conducted a day before on 27.04.2004. There was no explanation on the side of the prosecution regarding the said infirmities. Therefore, there was a doubt over the recovery of the said screen printing materials from the house of A4.



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7.4 The learned counsel further submitted that even the recovered

screen print used cover is not relating to this crime number and the same is relating to another crime number and hence, the recovered material is irrelevant and the same is not material to decide the charge framed against the appellant/A4 in this case.

7.5 The learned counsel further submitted that the signature of the appellant A4 was taken and the same was compared with questioned signature. P.W.45/hand writing expert deposed that the sample signature of the appellant did not tally with the questioned signature. Hence, the scientific evidence also not supported the case against the appellant/A4.

7.6 P.W.32, specifically deposed that at the time of opening of the account in the name of “Yasin”, he did not see the appellant/A4 whose photograph was affixed in the said account opening form Ex.P65.

7.7 The learned counsel further submitted that none of the witnesses deposed that appellant presented the cheque and withdrew the amount.



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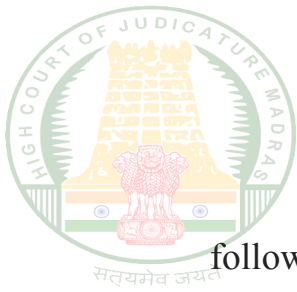
7.8 He further submitted that even the alleged opening of account

as a manager of the Aibeena traders, the said seal of traders was recovered from the house of the A1 manager. In view of the above circumstances, the learned trial Judge erroneously convicted the appellant/A4 on the basis of the perverse finding and hence, he seeks for acquittal.

8. Submission of the learned counsel for the appellant in Crl.A. (MD).No.127 of 2017 (A7-Siva)

8.1 Mr.R.Anand, learned counsel for A7 submitted that the prosecution mainly relied on the positive handwriting report available against A7. The learned counsel submitted that the prosecution has not proved the taking of sample in accordance with the procedure stated in the identification of the Prisoners Act. The taking of the sample signature is not in accordance with law and the same is also not proved. Hence, he relied the judgment of this Court reported in 2003 1 CTC 223.

8.2 The learned counsel further submitted that conviction on the basis of the handwriting expert opinion alone is not sustainable without any further evidence to convict the appellant/A7. For which he relied the



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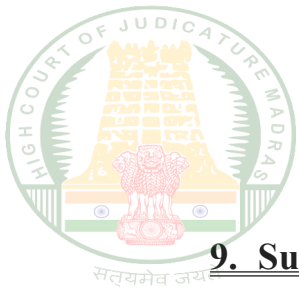
following judgments of the Hon'ble Supreme Court: **1977 2 SCC 210:**

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1996 4 SCC 596, 2014 12 SCC 133.

8.3 The learned counsel further submitted that none of the witness identified the appellant/A7 before the Court and hence, without identification of the appellant before the Court to prove that the appellant had presented the cheque and withdrew the amount, the conviction of the appellant/A7 is not legally maintainable.

8.4 The learned counsel finally submitted that the learned trial Judge, acquitted Mohan (A9), even though positive hand writing expert opinion was available against him and without giving same benefit to the appellant/A7 convicted him. Hence, he seeks for an application of principle of parity relying on the judgment of the Hon'ble Supreme Court in Crl.A.No.1012 of 2022.



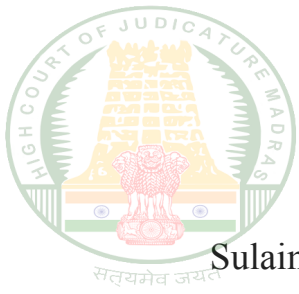
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9. Submission of the learned counsel for the appellant in Crl.A.

(MD).No.107 of 2017 (A6-Viswanathan)

9.1 The learned Senior Counsel V.Kathirvelu appearing for A6 in Crl.A(MD)No.107 of 2017 submitted that among the total charges, charge Nos.1 and 2 is relevant to the appellant. In the charge No.1 the only allegation is that he withdrew the amount and as far as charge No.2 is concerned, it is alleged that he dishonestly induced the delivery of the property belonging to the bank. Thereby he committed offence under Section 420 IPC simpliciter.

9.2 The learned counsel further submitted that the two cheques were issued in his name under Ex.P75 and Ex.P10 to the tune of Rs.1,85,000/-. He received and encashed the same as advance amount to purchase land. Even as per the charge, Sulaiman Hussain approached A1 bank to construct the college, and opened the account. In the said circumstances, the explanation that he received the cheque as advance for purchasing the land of 10 acres situated nearby Pudukkottai is a plausible one. It is not the prosecution case that he presented the forged cheque. The prosecution neither produced any material to show that the appellant/A6 was involved either in opening of the fictitious account by

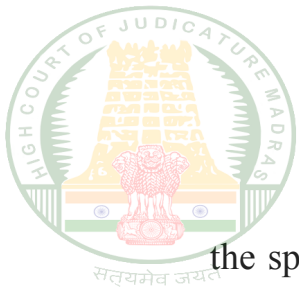


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Sulaiman Hussain A3, and in the presentation of the forged cheques and fabrication of the forged payment advice. He further submitted that the amount also was subsequently received by Sulaiman Hussain/A3. Therefore, he gave the above explanations as answer under Section 313 of Cr.P.C. To prove the same, he examined D.W.1. The evidence of D.W.1 was not properly appreciated by the learned trial Judge. Therefore, he seeks for acquittal.

10. The learned counsel appearing for Rajkapoor /A4 reiterated the said submission of the above counsel and specifically submitted that no evidence was adduced to prove that A4 prepared the forged outstation cheques. The opinion of the hand writing expert cannot be the sole basis for the conviction.

11. After the above arguments, the case was posted for the completion of the argument of the learned counsel for the appellant/accused on 20.09.2023. On 19.09.2023, the learned counsel Mr.AK.Azhagarsami filed the withdrawal memo on behalf of the appellant in Crl.A(MD)No.381 of 2020 and stated that A3 Sulaiman Hussain was confined in the Bangalore prison. Hence this court directed



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the special public prosecutor for CBI to make appearance of A3 through the video conference. The accused/A3 appeared through video conference and undertook to conduct the case on 25.09.2023. On 25.09.2023 one Mr.M.Sathish Kumar, learned counsel filed memo to grant adjournment and one another counsel appeared through video conference on behalf of the same accused namely Sulaiman Hussain (A3) and sought further time.

12. Since this Court heard the matter at length for a number of days and the period of portfolio would also come to end on 30.9.2023, this Court insisted the learned counsel for the appellant Mr.M.Sathish Kumar to conclude the argument. At that time, this Court expressed its difficulty to adjourn the case. He voluntarily made the submission that in view of the portfolio change on 3rd October, 2023 onwards, he insisted the Court to reserve the case for judgment and he undertook to submit his submission on 29.09.2023. After some hours, he insisted this Court to pass the order on memo filed by him to grant time for the argument.

13. Submission of the learned Additional Public Prosecutor:

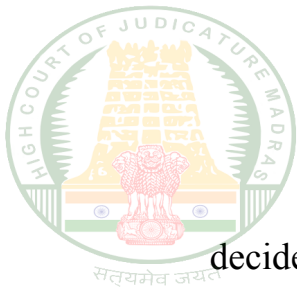
13.1. The learned Additional Public Prosecutor, in the said situation submitted that these type of practice of withdrawal of the memo of appearance at the fag end of the hearing of the case is an unhealthy



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practice. In the matter of the CBI cases, it is routine practice of the number of counsels to file this type of the withdrawal of memo of appearance and seek for the adjournment by another counsel in order to achieve the object of forum hunting. The learned Special Additional Public Prosecutor also submitted that in like situation, the Court has every power to dispose the appeal on merits upon the perusal of the records. Further, all the learned counsels argued the case meticulously and the case was going for number of days and this Court also heard the case with great attention by perusing the entire volume of documents. In the said circumstances, he relied on the judgment of the Three Judges Bench of the Hon'ble Supreme Court judgment reported in ***AIR 1996 SC 2439 (Bani singh case)*** and requested this Court to pass the judgment on merits upon perusal of the records including the impugned judgment.

13.2. The learned Additional Public Prosecutor further argued the case that after 1996 said three Judges Bench judgment of the Hon'ble Supreme Court, two member Bench judgment reported in ***2011 (1)SCC688*** and ***2011(4)SCC729***, without noticing the said ratio of the Hon'ble Supreme Court held that the High Court without appointing an *amicus curie*, cannot dispose the case on merits, the case cannot be



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decided on merits. The said ratio was held *per incuriam* in **AIR 2013 SC**

2164 and the Hon'ble Supreme Court held that the decision in the absence of the learned counsel for the accused is not impermissible. Hence, the learned Special Public Prosecutor requested this Court to decide the matter on merits and make submissions on merits. Hence, this Court sufficiently heard the argument and reserved the case for judgment.

14. After the case was reserved for judgment, Mr.Sathish Kumar, learned counsel appeared and mentioned in the open Court and submitted the affidavit dated 06.10.2023 with the following prayer.

“In the interest of justice your Lordship must recuse Crl.A.(MD)No.381 of 2020 and the appeal ought to go before another bench. Unless this Hon'ble Court recuse from the case and appeal is heard by another bench of this Court, it is sure I will be convicted at the hands of your Lordship on the element of bias.”



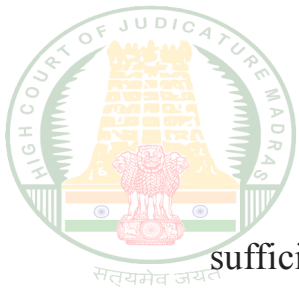
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15. Mr.Karunanithi learned Special Public Prosecutor submission:

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15.1 The conspiracy between A3 Sulaiman Hussain and the other accused is clearly proved. The prosecution proved the opening of the fictitious account in the name of the “Ayoob” (A3-Sulaiman Hussain), presentation of the 19 forged outstation cheques in the said account, destruction of the said 19 forged outstation cheques along with pay slips without sending to the service branch, Mumbai with the connivance of P.W.47 approver, preparation of the forged payment advice purportedly issued by the service branch Mumbai, sending of the forged payment advice through the forged state Bank Cover, making of the credit on the basis of the forged payment advice in the fictitious account of A3 and withdrawal of the said amount by the accused all were proved through the scientific evidence, oral evidence and documentary evidence. Hence, the prosecution clearly proved the offence under Section 120-B etc.,

15.2 The learned Special Public Prosecutor further submitted that the approver evidence is cogent and trustworthy. Learned counsel for the second accused submitted that recording of 164 Cr.P.C., statement not in accordance with law, is not correct. The learned Judicial Magistrate, recorded the statement by following the procedure and also he gave



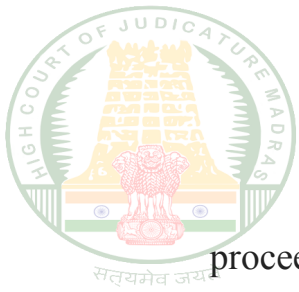
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sufficient opportunity and thereafter recorded his voluntary confession

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statement. From reading of the entire record of proceedings, it is clear that the learned Judicial Magistrate recorded the material requirement of Section 164 of Cr.P.C., in substance and hence, the said submission is not correct. He further elaborated the submission that the said omission to record the explanation column was not fatal when the learned Judicial Magistrate clearly recorded the question to ascertain voluntary nature. He further submitted that P.W.47 approver did not raise the said plea and he deposed before this Court without any infirmities. In the said circumstances, the said omission is not material and considering the entire record of proceedings, the learned Judicial Magistrate correctly assessed the voluntary nature of the confession. He also stated his role and A2's(Rajagopalan) role i.e., his statement is not an exculpatory one. Hence, the approver evidence is admissible against A2(Rajagopalan).

15.3 The learned Special Public Prosecutor submitted that the argument that the procedures stated in the Identification of Prisoners Act while taking the specimen signature of the accused was not followed is not correct. The sample signature was taken in the presence of the independent witness and none of the accused during 313 Cr.P.C.,

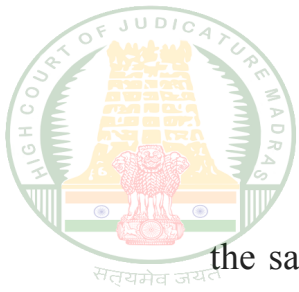


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proceedings disputed the said fact. Further, as per the judgment of the Hon'ble Supreme Court reported in **2019 (3) SCC 770**, the said procedure is only directory and non compliance will not vitiate the trial.

15.4 The learned Special Public Prosecutor further submitted that even though the scientific evidence is not in the affirmative as against A4/ Sheik Amir, other materials are available to prove his involvement in this case. The search was made in his house, incriminating materials were recovered including the forged State Bank Cover relating to the other crime number of CBI and other incriminating materials and the same was spoken by P.W.43. He never denied the relationship with A3/Sulaiman Hussain. In the said circumstances, his conviction is correct.

15.5 The learned Special Public Prosecutor submitted that the scientific evidence is material in a case of this nature. The presence of the signature and writing of the accused Nos.3, 5, 6 and 7 in the bank records and the positive report of the handwriting expert clearly established that they conspired together and cheated the bank. He further submitted that even though A6 Viswanathan pleaded that he received money from “Ayoob” as an advance for land purchase and examined D.W.1 to prove



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the same, the learned trial Judge correctly rejected the said plea and the evidence of D.W.1. Hence, this Court has no reason to interfere with the said findings.

15.6 The learned Special Public Prosecutor submitted that against A5 Rajkapoor, scientific evidence is available that he presented the cheque and withdrew the amount in the name of “Ahamed”. Further, A3's admissible portion of the confession clearly disclosed his involvement in the preparation of the forged cheques. Apart from that, the house search was conducted and number of materials were recovered and hence, there is no reason to interfere with the conviction passed against him.

15.7 The learned Special Public Prosecutor further submitted that the signature of the Sulaiman Hussain in various documents clearly proves that he opened the account in the fictitious name of “Ayoob”, presented the forged cheques and also prepared the forged payment advices and managed to send the same from Mumbai as if it was communicated by the service branch Mumbai. He also withdrew the amount with the knowledge that the said amount was credited on the basis of the presentation of the forged cheques and forged payment



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advice. He also gave the voluntary confession and on the basis of the said disclosure, number of incriminating materials, the involvement of the other accused was also found out. He is involved in a number of similar type of cases and hence, his conviction is to be confirmed without any reduction of sentence.

15.8 The learned Special Public Prosecutor submitted that A1 Manager of the State Bank of India, allowed Sulaiman Hussain to open the account in the fictitious name ie., “Ayoob” and allowed him to continue to operate the account and also had relationship with the said accused and received the number of electronics items and the same was recovered at his disclosure statement under Section 27 of the Indian Evidence Act. His plea that he sent a letter to the service branch Mumbai suspecting the genuineness of the forged cheques and payment advice much after the completion of the cheating is nothing but an after thought. Hence, he seeks the confirmation of the conviction passed against him.

15.9 The learned Special Public Prosecutor also submitted that the conspiracy between the accused in each stage is clearly proved beyond reasonable doubt. Therefore, the learned trial Judge, correctly convicted



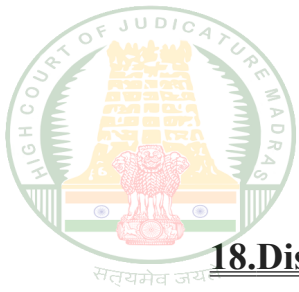
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the appellants. The acquittal of the two accused namely A8 and A9 on the ground of insufficiency of the material is not a ground to acquit the present appellants. On the basis of the available evidence, the conviction passed against the appellants is to be sustained.

15.10 The learned Special Public Prosecutor submitted that the conduct of the appellants in cheating the bank to the tune of Rs.1,09,86,000/- does not deserve any reduction of sentence.

16. This Court considered the submission of various senior counsel and the experienced counsel and the submission of the learned Special Public Prosecutor and perused the materials available on record and the impugned judgments and the precedents relied upon by them.

17. The question arises in these appeals is whether the prosecution proved the charges framed against the appellant beyond reasonable doubt to sustain the conviction and sentence passed against the appellants?



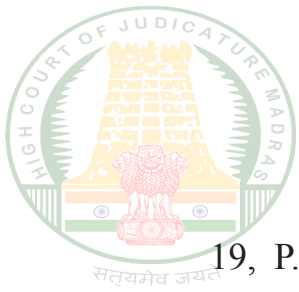
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18.Discussion on merits:

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18.1. To prove the case, the prosecution examined bank officials to prove the opening of the fictitious account in the name of Sulaiman Hussain (A3), presentation of the forged cheques, preparation of the payment advice and making credit in the said account on the basis of the forged payment advice and withdrawal of the said amount with the knowledge of the fraudulent credit entry. To prove forgery, the specimen signature taken from the accused in the presence of P.W.44 has been sent to the handwriting expert who has been examined as P.W.45. PW.45 has given positive opinion as against A3, A5, A6, A7.

18.2. The prosecution examined P.W.48, P.W.43, P.W.49, P.W.22 and P.W.23 to prove the house search of the accused and recovery of the materials on the disclosure of the statement of the accused under Section 27 of the Indian Evidence Act. The prosecution also examined approver P.W.47. P.W.36 and P.W.41 and judicial officers who have deposed about the recording of the 164 statement of the approver P.W.47 and tender of pardon under Section 306 of Cr.P.C. To prove that Sulaiman Hussain (A3) gave a forged address and false name in the account opening form, the prosecutionn has examined independent witnesses P.W.14, P.W.16 P.W.



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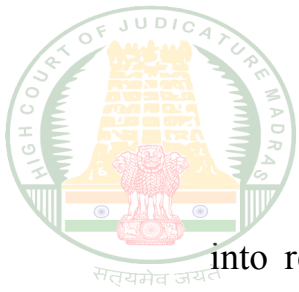
19, P.W.24 and P.W.28 apart from the bank officials and handwriting expert. The prosecution has also marked all the corresponding exhibits, the details of the exhibits are mentioned during the relevant discussion hereunder.

18.3. Before going into the discussion on merits, this Court is duty bound to address the issue of “recusal” and power of this Court to deal the appeal under Section 374 Cr.P.C., in the case of wilful absence of the accused in conducting the appeal on the basis of the law laid down by the Hon'ble Supreme Court.

19. The plea of recusal:

19.1. While medicine heals the body and the clergy heals the souls, the law heals societal rifts. Societal rifts are due to corruption in public administration. Hence, Anti Corruption laws have been enacted to administer the public duties with utmost honesty. It is a known fact that honesty can never be suppressed but honest man always suffers. Such situation was faced by this Court, while hearing this case on behalf of the appellant in Crl.A.(MD).No.381 of 2020 to address his plea of recusal.

The appellant filed affidavit and made a complaint to arm twist this Court



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into recusing and passing judgment. There are parallel stories running everywhere. In implementing the corruption law, there cannot be exception. The plea of recusal has been made to threaten the judicial officer. But this Court did not shudder.

19.2. Decision to recuse rests solely on the conscience and discretion of the Judge. No party can compel a Judge to withdraw. Hence, this Court, before going to address the issue of recusal has to cull out the principle laid down by the Hon'ble Supreme Court regarding the recusal. The Hon'ble Supreme Court in **2014 (8) SCC 470** declined to accept the plea of the accused to recuse the hearing. The Hon'ble Supreme Court laid down the law as follows:

Subrata Roy Sahara v. Union of India, (2014) 8 SCC 470 :

10. We have recorded the above narration, lest we are accused of not correctly depicting the submissions as they were canvassed before us. In our understanding, the oath of our office required us to go ahead with the hearing. And not to be overawed by such submissions. In our view, not hearing the matter, would constitute an act in breach of our oath of office, which mandates us to perform the duties of our office, to the best of our ability, without fear or favour, affection or ill will.

11. This is certainly not the first time when solicitation for recusal has been sought by the learned counsel. Such a recorded peremptory prayer was made by Mr R.K. Anand, an



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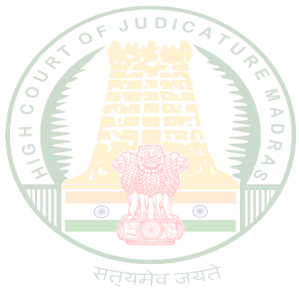
eminent Senior Advocate, before the High Court of Delhi seeking the recusal of Mr Justice Manmohan Sarin from hearing his personal case. Mr Justice Manmohan Sarin while declining the request made by Mr R.K. Anand, observed [Court On Its Own Motion v. State, Cri Misc No. 9955 of 2007 in WP (Cri) No. 796 of 2007, order dated 4-10-2007 (Del)] as under:

The path of recusal is very often a convenient and a soft option. This is especially so since a Judge really has no vested interest in doing a particular matter. However, the oath of office taken under Article 219 of the Constitution of India enjoins the Judge to duly and faithfully and to the best of his knowledge and judgment, perform the duties of office without fear or favour, affection or ill will while upholding the Constitution and the laws. In a case, where unfounded and motivated allegations of bias are sought to be made with a view of forum hunting/Bench preference or brow-beating the Court, then, succumbing to such a pressure would tantamount to not fulfilling the oath of office.”

The above determination of the High Court of Delhi was assailed before this Court in R.K. Anand v. Delhi High Court [(2009) 8 SCC 106 : (2010) 2 SCC (Cri) 563] . The determination of the High Court whereby Mr Justice Manmohan Sarin declined to withdraw from the hearing of the case came to be upheld, with the following observations: (SCC p. 192, para 263)

263. The above passage, in our view, correctly sums up what should be the court's response in the face of a request for recusal made with the intent to intimidate the court or to get better of an ‘inconvenient’ Judge or to obfuscate the issues or to cause obstruction and delay the proceedings or in any other way frustrate or obstruct the course of justice.” (emphasis supplied)

In fact, the observations of the High Court of Delhi and those of this Court reflected exactly how it felt, when the learned counsel addressed the Court at the commencement of the hearing. If it was the learned counsel's posturing antics, aimed at bench-hunting or bench-hopping (or should



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we say, bench-avoiding), we would not allow that. Affronts, jibes and carefully and consciously planned snubs could not deter us from discharging our onerous responsibility. We could at any time during the course of hearing walk out and make way for another Bench to decide the matter, if ever we felt that that would be the righteous course to follow. Whether or not it would be better for another Bench to hear this case will emerge from the conclusions, we will draw, in the course of the present determination.

185.1. *We find no merit in the contention advanced on behalf of the petitioner that we should recuse ourselves from the hearing of this case. Calculated psychological offensives and mind games adopted to seek recusal of Judges need to be strongly repulsed. We deprecate such tactics and commend a similar approach to other courts, when they experience such behaviour. (For details, refer to paras 1-14.)*

19.3 The Hon'ble Constitution Bench of the Hon'ble Supreme Court in 2016(5)SCC808 considered a similar question and the Constitution Bench held as follows:

Supreme Court Advocates-on-Record Assn. (Recusal Matter) v.

Union of India (Recusal Matter), (2016) 5 SCC 808 :

57..... In my considered view, the prayer for my recusal is not well founded. If I were to accede to the prayer for my recusal, I would be initiating a wrong practice, and laying down a wrong precedent. A Judge may recuse at his own, from a case entrusted to him by the Chief Justice. That would be a matter of his own choosing. But recusal at the asking of a litigating party, unless justified, must never to be acceded to. For that would give the



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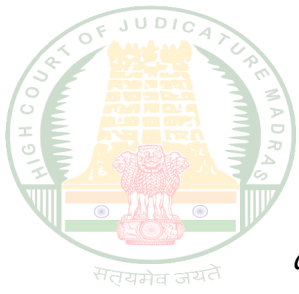
impression, of the Judge had been scared out of the case, just by the force of the objection. A Judge before he assumes his office, takes an oath to discharge his duties without fear or favour. He would breach his oath of office, if he accepts a prayer for recusal, unless justified. It is my duty to discharge my responsibility with absolute earnestness and sincerity. It is my duty to abide by my oath of office to uphold the Constitution and the laws. My decision to continue to be a part of the Bench, flows from the oath which I took, at the time of my elevation to this Court.

74. There may be situations where mischievous litigants wanting to avoid a Judge may be because he is known to them to be very strong and thus making an attempt for forum shopping by raising baseless submissions on conflict of interest.

R.K. Anand v. Delhi High Court, (2009) 8 SCC 106 :

262. Having thus dealt with the rest of the allegations made in the recusal application, the order, towards its end, said something which alone was sufficient to reject the request for recusal. It was pointed out that the applicant had a flourishing practice; he had been frequently appearing in the Court of Sarin, J. ever since he was appointed as a Judge and for the past twelve years was getting orders, both favourable and unfavourable, for his different clients. He never complained of any unfair treatment by Sarin, J. but recalled his old “hostility” with the Judge only after the notice was issued to him.

264. We are constrained to pause here for a moment and to express grave concern over the fact that lately such tendencies and practices are on the increase. We have come across instances where one would simply throw a stone on a Judge (who is quite defenceless in such matters!) and later on cite the gratuitous attack as a ground to ask the Judge to recuse himself from hearing a case in which he would be



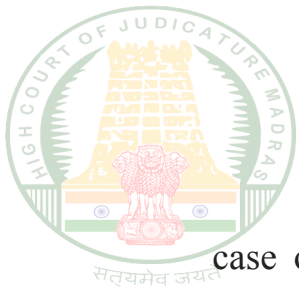
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appearing. Such conduct is bound to cause deep hurt to the Judge concerned but what is of far greater importance is that it defies the very fundamentals of administration of justice. A motivated application for recusal, therefore, needs to be dealt with sternly and should be viewed ordinarily as interference in the due course of justice leading to penal consequences.”

19.4. After the arguments of the learned counsel for accused No1,2,4,5,6,7, the case was posted for the completion of the argument of the learned counsel on the side of the accused on 20.09.2023. On 19.09.2023, the learned counsel Mr.AK.Azagarsami filed the withdrawal memo on behalf of the appellant in Crl.A(MD)No.381 of 2020. At this stage, after number of hearings, more than 5 full working days, the learned counsel for A3, namely Sulaiman Hussain stated that he has no instruction. Hence, this Court instructed the learned Special Public Prosecutor to verify his status. At this stage, the learned Special Public Prosecutor on instructions, submitted that he was arrested in the similar offence and was confined in the Cuddalore Central Prison and subsequently he was arrested in another similar case and lodged in the Bangalore Prison. Hence, this Court issued direction to the Bangalore Prison authorities to produce the accused through video conference. The accused appeared through video conference and undertook to conduct the



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case on 25.09.2023. On 25.09.2023 one Mr.M.Sathish Kumar, learned

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counsel filed memo to grant adjournment and one another counsel appeared through video conference on behalf of the same accused namely Sulaiman Hussain (A3) and sought further time.

19.5. This Court heard the appeals for more than 5 days from 09.08.2023 to 20.09.2023 by accommodating the various counsel's request. The learned Senior counsel Ms.AL.Gandhimathi elaborately read through the entire evidence running over more than 300 pages and documents more than 300 pages and also 313 Cr.P.C questioning of each accused. Thiru. Emalias, the learned counsel appearing for A2 (Rajagopalan), made the detailed submission apart from the submission made by the learned Senior Counsel Ms.AL.Gandhimathi. Further, the learned counsel Mr.R.Anand, having experience of more than 26 years in the criminal side appeared for his client Accused Nos.4 & 7 and made detailed arguments. The learned Senior Counsel Mr.V.Kathirvelu, appearing on behalf of A6(Viswanatha) further elaborated his argument in continuation of Mr.R.Anand, learned counsel for A4 and A7. Therefore, this Court insisted the learned counsel for the appellant Mr.M.Sathish Kumar to conclude the argument. At that time, this Court expressed its



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difficulty to adjourn the case. He voluntarily made the submission that in

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view of the portfolio change on 3rd October, 2023 onwards, he insisted the

Court to reserve the case for judgment and he undertook to submit his

submission on 29.09.2023. After some hours, he insisted this Court to

pass an order on the memo filed by him to grant time for the argument.

Therefore, this court reserved the appeals for judgment

19.6. From the records, it is clear that the appellant namely, Sulaiman Hussain, after the CBI filed final report, did not appear before the trial Court and hence, he was shown as absconding accused and the case was split up against him. For the remaining accused, trial was conducted and judgment was delivered in C.C.No.4 of 2006 on 17.03.2017. After that, Sulaiman Hussain's trial was conducted in C.C.No.7 of 2006. The learned Special Judge also conducted separate trial by wasting judicial precious time without adherence to the procedure contemplated under Section 299 Cr.P.C. Similarly, here also, he filed the withdrawal memo at the last moment of the conclusion of the hearing date. He is fully aware of Court proceedings and has number of previous cases. This Court granted suspension of sentence with a condition to appear before the Special Court on the first working day of every month



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along with the other usual conditions stated in Section 437 Cr.P.C.

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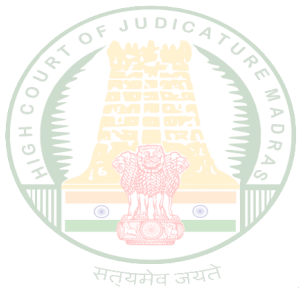
Usually, law Courts grant bail before trial and after the trial with a hope that the accused would not indulge in further crime. But, in this case, the appellant is involved in similar type of cases and has been arrested by the State police of Tamilnadu and Karnataka. Even in the Karnataka case, he has not appeared and hence, non-bailable warrant has been issued and executed. In the said situation, adjourning the case at the whims and fancies of the accused and his advocate would amount to giving additional premium to the mischief committed by the appellant. In such situations principles of natural justice, would require situational modifications.

19.7. The Hon'ble Supreme Court in the following judgments never stated that on all occasions, the principle of natural justice is strictly to be adhered.

In 2011(8)SCC380 [P.D. Dinakaran (1) v. Judges Inquiry

Committee] :

32.....the courts have repeatedly emphasised that the rules of natural justice are flexible and their application depends upon the facts of a given case and the statutory provisions applicable, if any, nature of the right which may be affected and the consequences which may follow due to violation of the rules of natural justice.



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1978(1)SCC248 [Maneka Gandhi v. Union of

India]:

“14..... It must not be forgotten that “natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances”. The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications.”

19.8. In this case, the appellant himself appeared through the video conference and undertook to conduct the case and hence, the case was adjourned without appointment of legal aid counsel. On the day fixed for argument, taking advantage of the fact that it is the fag end of the portfolio period, the learned counsel without fairness submitted the memo and sought further time. Without making argument Mr.M.Sathishkumar Learned Counsel for the Sulaiman Hussain(A3) insisted this Court to pass order on the memo seeking adjournment. The said attitude of the Learned Counsel amounts to forum hunting as rightly pointed out by the Learned Special Public Prosecutor.

19.9. The roster period commenced from July, 2023 and ends with September, 2023. Taking advantage of the same, the accused filed the affidavit seeking recusal to hear the case. This Court is not inclined to accept this request in view of the hearing of the case for the past number of days and this Court had spent more judicial time to look into the



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volumes of documents and volumes of evidence. Further, all the eminent

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counsel made the submission on all grounds, including the grounds raised

by the other appellants. Hence, this Court is not inclined to accept the

plea of the recusal. Further, the appellant also sent a letter to the Hon'ble

Chief Justice of India to take action against this court. This Court is not

influenced by the above threat and strongly reminded itself the following

words of Hon'ble former Chief Justice J.H.Khehar in ***Subrata Roy***

Sahara v. Union of India, (2014) 8 SCC 470 :

In our understanding, the oath of our office required us to go ahead with the hearing. And not to be overawed by such submissions.

19.10. Judges take oath to discharge their duty without fear and favour. Our judicial system is founded on the principle that the decision is to be taken without fear and favour. In the said situation, this Court refrains from accepting the plea of recusal as the same would amount to acting contrary to the oath taken.

20. Reason to decide the appeal of the Sulaiman Hussain on merits by exercising power under Section 386 of Cr.P.C.,

20.1. This Court without getting influenced by the above



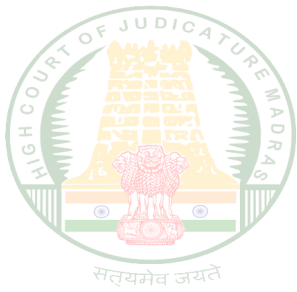
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observation, decided the matter on thorough perusal of the documentary evidence and the oral evidence and the defence evidence. The Hon'ble

Supreme Court in **AIR 1996 SC 2439(Bani singh case)** held as follows:

Bani Singh v. State of U.P., (1996) 4 SCC 720:

15. Secondly, the law expects the appellate court to give a hearing to the appellant or his counsel, if he is present, and to the public prosecutor, if he is present, before disposal of the appeal on merits. Section 385 posits that if the appeal is not dismissed summarily, the appellate court shall cause notice of the time and place at which the appeal will be heard to be given to the appellant or his pleader. Section 386 then provides that the appellate court shall, after perusing the record, hear the appellant or his pleader, if he appears. It will be noticed that Section 385 provides for a notice of the time and place of hearing of the appeal to be given to either the appellant or his pleader and not to both presumably because notice to the pleader was also considered sufficient since he was representing the appellant. So also Section 386 provides for a hearing to be given to the appellant or his lawyer, if he is present, and both need not be heard. It is the duty of the appellant and his lawyer to remain present on the appointed day, time and place when the appeal is posted for hearing. This is the requirement of the Code on a plain reading of Sections 385-386 of the Code. The law does not enjoin that the court shall adjourn the case if both the appellant and his lawyer are absent. If the court does so as a matter of prudence or indulgence, it is a different matter, but it is not bound to adjourn the matter. It can dispose of the appeal after perusing the record and the judgment of the trial court. We would, however, hasten to add that if the accused is



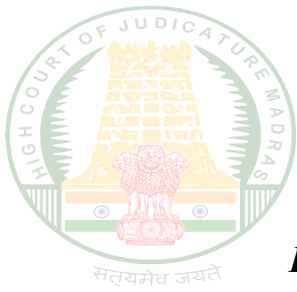
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in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the accused/appellant if his lawyer is not present. If the lawyer is absent, and the court deems it appropriate to appoint a lawyer at State expense to assist it, there is nothing in the law to preclude it from doing so. We are, therefore, of the opinion and we say so with respect, that the Division Bench which decided Ram Naresh Yadav case [AIR 1987 SC 1500 : 1987 Cri LJ 1856] did not apply the provisions of Sections 385-386 of the Code correctly when it indicated that the appellate court was under an obligation to adjourn the case to another date if the appellant or his lawyer remained absent.

16. Such a view can bring about a stalemate situation. The appellant and his lawyer can remain absent with impunity, not once but again and again till the court issues a warrant for the appellant's presence. A complaint to the Bar Council against the lawyer for non-appearance cannot result in the progress of the appeal. If another lawyer is appointed at State cost, he too would need the presence of the appellant for instructions and that would place the court in the same situation. Such a procedure can, therefore, prove cumbersome and can promote indiscipline. Even if a case is decided on merits in the absence of the appellant, the higher court can remedy the situation if there has been a failure of justice. This would apply equally if the accused is the respondent for the obvious reason that if the appeal cannot be disposed of without hearing the respondent or his lawyer, the progress of the appeal would be halted.



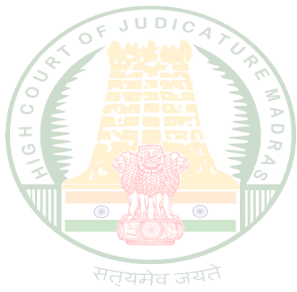
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K.S. Panduranga v. State of Karnataka, (2013) 3 SCC 721

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26. Regard being had to the principles pertaining to binding precedent, there is no trace of doubt that the principle laid down in *Mohd. Sukur Ali* [(2011) 4 SCC 729 : (2011) 2 SCC (Cri) 481] by the learned Judges that the court should not decide a criminal case in the absence of the counsel of the accused as an accused in a criminal case should not suffer for the fault of his counsel and the court should, in such a situation, must appoint another counsel as *amicus curiae* to defend the accused and further if the counsel does not appear deliberately, even then the court should not decide the appeal on merit is not in accord with the pronouncement by the larger Bench in *Bani Singh* [(1996) 4 SCC 720 : 1996 SCC (Cri) 848 : AIR 1996 SC 2439] . It, in fact, is in direct conflict with the ratio laid down in *Bani Singh* [(1996) 4 SCC 720 : 1996 SCC (Cri) 848 : AIR 1996 SC 2439] . As far as the observation to the effect that the court should have appointed *amicus curiae*, is in a different realm. It is one thing to say that the court should have appointed an *amicus curiae* and it is another thing to say that the court cannot decide a criminal appeal in the absence of a counsel for the accused and that too even if he deliberately does not appear or shows a negligent attitude in putting his appearance to argue the matter. With great respect, we are disposed to think, had the decision in *Bani Singh* [(1996) 4 SCC 720 : 1996 SCC (Cri) 848 : AIR 1996 SC 2439] been brought to the notice of the learned Judges, the view would have been different.

33. At this juncture, we are obligated to state that in certain cases this Court had remitted the matters to the High Court for fresh hearing and



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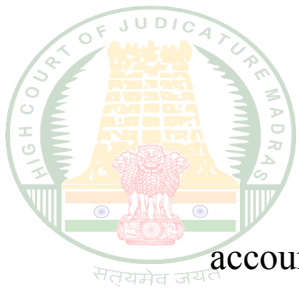
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in certain cases the burden has been taken by this Court. If we allow ourselves to say so, it depends upon the facts of each case. In the present case, as we perceive, the High Court has dealt with all the contentions raised in the memorandum of appeal and heard the learned counsel at a later stage and, hence, we think it apposite to advert to the contentions raised by the learned counsel for the appellant as regards the merits of the case.

20.2. Hence, this Court is inclined to dispose the appeal on perusal of the records and the submission made by the number of counsel on records and the grounds raised by the appellant without being influenced by the above request of recusal under the following heading:-

21. Opening of the accounts in the fictitious name of “Ayoob”

21.1. On 11.03.2002 Sulaiman Hussain(A3), conspired with A1, A2, A3, A4, A5, A7 opened two accounts under Ex-P41 (Savings Account) and Ex-P42 (Current Account) in the fictitious name of 'Ayoob' in State Bank of India, Pudukottai. In the said form A1 and A9 made the signature as introducer. A9 introduced Sulaiman Hussain as Ayoob to A1, mentioning that he was a leading businessman who intended to construct an Engineering College at Pudukkottai and do other business activity at Pudukkottai. He introduced A4 as “Yasin” the Manager of “M/s.Aibeena Traders” which was a non- existing firm and opened current account in



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account number 01190012511 and got the cheque book containing 25 leaves bearing No.579151 to 579175.

21.2. To prove above opening of the account, prosecution examined- one Ragunathan as P.W.No.2 in C.C.No.7 of 2006 and P.W.No.32 in C.C.No.4 of 2006. He deposed that the A1 Chief Manager acted as introducer and insisted to open the account. He further deposed that A1 filled the account opening form. At the time the appellant was present in the cabin of the A1. He also identified Sulaiman Hussain.

21.3. PW6 is Personal Banking Accountant. He deposed that A1- Chief Manager opened the account without proper verification of the Residential Proof, IT proof, and Register Certificate issued by the Registrar of the Company. A1 insisted him to give the cheque book without delay and also directed to clear the cheque presented by the said 'Ayoob'. He also threatened to suspend him. He also identified A1 and he was sitting in the A1's cabin. He also deposed that A1 came to his table along with Sulaiman Hussain and threatened him to pass the cheque in the following words:



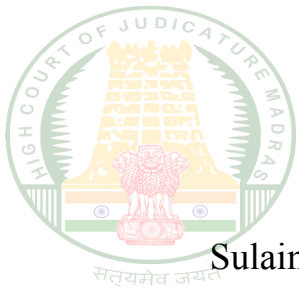
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உடன் முதன்மை மேலாளர் ஜி.பி.ராதாகிருஷ்ணன் அவர்கள் காசோலையை எடுத்துக்கொண்டு, மேற்படி திரு.அயூப்கான் அவர்களையும் அழைத்துக் கொண்டு, வந்து, போதுமான அளவு பணம் இருப்பதால் காசோலையை நமது வங்கியின் காசோலை, ஏன் நான் சொல்லியும் பாஸ் பண்ணவில்லை என்று சொல்லி, என்னுடைய தோற்றத்தைப் பார்த்து, நீ என்ன புலியா என்று மிரட்டினார். அப்போது மேற்படி அயூப் வாடாமல்லி நிற கோட் குட் உடன் முதன்மை மேலாளருடன் வந்து, அவர் நான் யார் என்று தெரியுமா, என்னை பொதுமக்கள் முன்னிலையில் அசிங்கப்படுத்துகிறாயா என்று எச்சரிக்கையுடன் கேட்டார். அப்போது பொதுமக்களும், வங்கி ஊழியர்களும் என்னைப் பார்த்து சிரித்தனர். அதனால் நான் மன வருத்தப்பட்டேன். அதன் பிறகு நான் அந்தக் காசோலையை பாஸ் செய்தேன்.

21.4. The said evidence of the PW6 is cogent and trustworthy.

Though he was cross examined elaborately, there is no favourable answer elicited to disbelieve his version.P.W.6 deposed that along with the opening form, there was no attachment of document relating to the residential proof and IT proof. He also deposed that A1 threatened and instructed him to issue the cheque book to the A3. Apart from that the account opened in the name of “Yasin” A4 on the C.C.No.4 of 2006 was closed at the instruction of the A1 and deposited amount of Rs.6000/- was also given to Ayoob at the instigation of the accused No.1. In this aspect



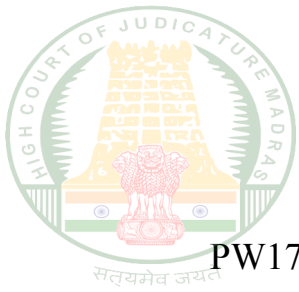
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Sulaiman Hussain during his questioning under section 313 Cr.P.C. has not furnished any explanation.

21.5. Sulaiman Hussain furnished a false address “166/167-Seenivasa Nagar, 5th Street” in the account opening Form. PW15 is the resident of the said address. The CBI showed the photograph affixed in the Ex.P7, ie., photograph of the Sulaiman Hussain and made enquiry. He categorically deposed that he had never seen the said person in the said address. Eventhough, he was subjected to cross-examination, no fruitful answer has been elicited by the appellant. Incriminating portions from the evidence of PW15 and Ex.P7 was put to him under Section 313 Cr.P.C, but the appellant failed to furnish any explanation regarding the above said false particulars.

21.6. Sulaiman Hussain earlier resided in the Thillainagar 11th Cross Street, Parveen Apartment. His neighbour was PW18. He disclosed that Sulaiman Hussain was his neighbour and identified him before the Court. The said version of the PW18 is not challenged.

21.7. The prosecution also adduced the handwriting expert opinion.



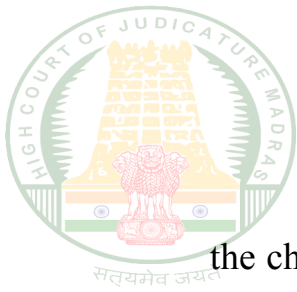
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PW17 (in C.C.No.7 of 2006 P.W.45 in C.C.No.4 of 2006) is the

handwriting expert. He opined that the questioned signature found in the account opening Form and other places as 'Ayoob' is the handwriting of the appellant. The said report is marked as Ex.P46. The questioned signature is Q60 in the opening Form Ex.P7. The said signature tallied with the signature of the appellant. Hence, the prosecution in all angle, proved that the appellant conspired with A1 and A2 and opened the account in the fictitious name of 'Ayoob'. His identity has also been proved through the evidence of the PW18, PW20 and PW6. The prosecution also examined witness to show that the address furnished by the Sulaiman Hussain is also false. The above prosecution evidence is clear, cogent and trustworthy and inspires the confidence of this Court. Therefore, this Court finds no reason to interfere with the finding of the learned trial Judge that the prosecution clearly proved that the accused Sulaiman Hussain opened fictitious account in the name of "Ayoob" and he operated the account in the fictitious name "Ayoob".

22. Presentation of the forged outstation cheques:

22.1. As per the evidence of the Bank officials, the usual procedure to get the payment advice is that after receipt of the presentation of the cheque along with pay slips in State Bank of India, Pudukkottai Branch,



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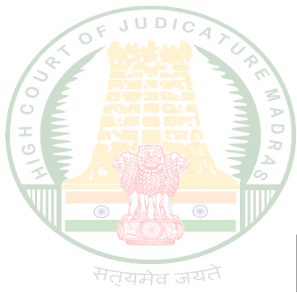
the cheque and the copy of the pay slips is forwarded to the Chief Office State Bank of India Mumbai, through courier. After the receipt of the same, the Chief Office verifies the cheque and account details mentioned in the cheque and thereafter, they issued the payment advice to make the credit in the account of the holder of the cheque in State Bank of India, Pudukkottai Branch.

22.2. But, in this case, according to the prosecution, A3 Sulaiman Hussain presented 19 forged outstation cheques in the said fictitious account for collection on 11.03.2002 onwards. The particulars of the cheques presented by the Sulaiman Hussain purportedly given by the UCO Bank, Santa Cruz (East), Mumbai.

Cheque No	Amount Rs.
938087	3,39,000/-
938082	4,41,000/-
938085	1,83,000/-
938092	5,19,000/-

22.3. The following are forged cheques presented by the Sulaiman Hussain purportedly given by the UCO Bank, Service Branch, Mumbai.

Cheque No	Amount Rs.
933093	3,96,000/-
933094	5,14,000/-



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933095

4,15,000/-

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22.4. The following are forged cheques presented by the Sulaiman Hussain purportedly given by the Indian Bank, Mumbai.

Cheque No	Amount Rs.
216595	6,62,000/-
216594	6,00,000/-
216586	6,75,000/-
216587	5,25,000/-
216621	8,19,000/-
216626	7,80,000/-
216627	6,10,000/-
216625	6,25,000/-

22.5 The following are forged cheques presented by the Sulaiman Hussain purportedly given by the Indian Bank, Fort, Mumbai.

Cheque No	Amount Rs.
216602	6,42,000/-
216591	5,43,000/-
216620	8,10,000/-

22.6. The following are forged cheques presented by the Sulaiman Hussain purportedly given by the UCO Bank, Andheri (West), Mumbai.

Cheque No	Amount Rs.
985380	8,08,000/-



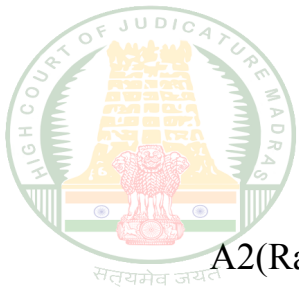
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22.7. To prove that the above said cheques are forged, the prosecution examined the corresponding Bank officials from the corresponding Mumbai Branch. P.W.3, in C.C.No.04 of 2006 deposed that the cheque No.985380 was not issued by the UCO Bank Andheri West Mumbai. Similarly, other witnesses are examined. PW6 in C.C.No. 04 of 2006 deposed that cheques bearing Nos.938082, 938085, 938087 and 938092 were not issued by the UCO Bank, Santacruz, West Mumbai. Therefore the prosecution proved the presentation of forged cheques in the fictitious account beyond reasonable doubt.

23. Destruction of forged cheques and pay-slips:-

23.1. A3/Sulaiman Hussain presented the above forged outstation cheques along with pay slips. P.W.17 in C.C.No.04 of 2006 received the said cheques along with pay slips and passed the same and handed over the same to the courier section to despatch the same to the service branch State Bank of India, Mumbai. P.W.47 (Natarajan) approver was the sub agent of the courier service. The said Tapals containing forged cheques and pay slips with a number of forged cheques were received by



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A2(Rajagopalan). The said courier tapal along with pay slip and forged cheques were not sent to the Mumbai service branch, State Bank of India.

The said fact was corroborated by the evidence of the PW-17 and PW-9. PW-17 deposed that PW-47 regularly visited his bank to take the courier and he made endorsement in the register and also put the cover. PW-9 deposed that Natarajan (PW-47) met him during September' 2002 and stated that A2 Rajagopalan threatened and received the number of Tapals and hence he was unable to furnish the delivery receipt. The said pay slips and the forged cheques were entrusted to PW47 to send the same to the Chief Office, State Bank of India, Mumbai. But, PW47 entrusted the cover with A2-Rajagopal on his threat to cancel the agreement. Thereafter, Rajagopal returned the said cover without pasting. In the cover, PW47 found that it did not contain forged cheques and pay slips and it only contained some unwanted papers. The same was questioned by PW47. Rajagopal stated that *“your duty is to paste the cover and send to the Head Office”*. Thereafter, he pasted the cover and handed over to PW47. Rajagopal obtained the covers on various dates and the proper endorsement was made in the courier Register and the same was marked as Ex.P112, Ex.P113, Ex.P114, Ex.P115 & Ex.P116. He further deposed that he gave voluntary confession before the learned Judicial Magistrate



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and the same was accepted by the learned Chief Judicial Magistrate and pardon granted under section 306 Cr.P.C.

23.2. It is the case of the prosecution that the said Rajagopal(A2) conspired with Sulaiman Hussain(A3) and destroyed the forged cheques after obtaining the cover from PW47. The relevant officers of the various Banks at Mumbai have been examined. They categorically stated that the cheques with numbers mentioned in the pay slip presented by the Sulaiman Hussain (A3) did not belong to their Bank. They further stated that they did not receive any cheque along with pay slips. There is no reason to disbelieve their version even though they are subjected to the lengthy cross-examination. A2-Rajagopal has not furnished any explanation in this aspect during the questioning under section 313 Cr.P.C. From the above, it is clear that the accused in a clandestine manner intercepted the courier and removed the forged cheques and pay slips sent from the Pudukkottai Branch to the drawee's bank and hence the prosecution clearly proved the destruction of the material object and proved the ingredients of section 201 of IPC. Therefore, the prosecution proved the destruction of the forged cheques and payslips without sending the same to the service branch, SBI, Mumbai.



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24. Preparation and sending of forged payment advices:-

24.1. Prosecution case is that the accused forged the payment advice and then sent the cover with forged payment advice purportedly sent by the Service Branch, Mumbai, State Bank of India. To prove the same, the prosecution examined PW-34, PW-35, PW-39, PW-12, PW-6 and PW-3. The above witnesses deposed that the cheque numbers mentioned in the pay slip Ex.P44 to 62 were not issued by the said branch and the payment advice Ex.P.1, 3, 5, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36 and 38 were not issued by the said branch of Mumbai.

24.2. The forged payment advice contained purported signature of PW-34, PW-35, PW-39, PW-12, PW-6 and PW-3. The PW-35 Chief Manager of Mumbai, Service Branch, State Bank of India stated that PW-34, Krishna Naik, Nila G.Patel, Suresh Babu, Ganapathi whose signature found in the forged payment advice were not working in the branch. PW-34 Deputy Manager of the State Bank of India, denied the signature in the Ex.P1, Ex-P3, P5, P8, P10, P12, P14, P-16, P18, P-20, P-22, P-24, P-26, P-28, P-30, P-32, P-34, P-36, P-38. His specimen signature was obtained by the investigation officer. The Handwriting



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expert PW-45 deposed that he compared the specimen signature of the

PW-34 and questioned signature and he found that the said signature is

not similar. The specimen signatures of Nila G. Patel have also been

obtained and sent for comparison. The Handwriting expert PW-45

deposed that he compared the specimen signature of Nila G. Patel and he

found that the said signature was not similar. The specimen signatures of

the Sulaiman Hussain (A3) and R.Shiva (A7), Rajkapoor (A5) were

obtained in the presence of P.W.45/independent Government Servant and

sent for comparison. P.W.45 deposed that he compared the specimen

signatures of A3, A7, A5 and all tallied with the questioned signature.

The detailed report of the PW-45 is marked as Ex-P181/CFSL opinion.

None of the accused disputed the said report and evidence of the expert.

There is no explanation during the section 313 Cr.P.C. questioning.

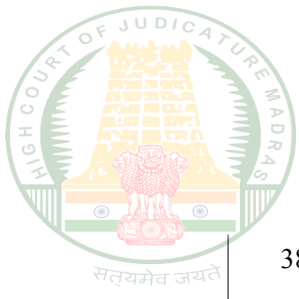
24.3. The presence of the signature and handwriting of A3, A5, A7 in the following forged payment advice is to be explained by them under Section 106 of the Indian Evidence Act.



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Particulars of Forged Payment Advice

Ex.P. No.	Ayoob A/c. No.	Date of payment advice	Name of Branch Manager, (SBI) Mumbai	Date of Credit	Amount (Rs.)	Questions Signature
1	010900125 11	26.03.2002	Vasant B. Kamble	05.04.2002	4,41,000	Q5
3	010900125 11	26.03.2002	Vasant B. Kamble	05.04.2002	1,83,000	Q7
5	010900125 11	27.03.2002	Vasant B. Kamble	05.04.2002	3,39,000	Q9A
8	010900125 11	18.04.2002	Nita G.Patil	24.04.2002	5,14,000	Q12
10	010900125 11	19.04.2002	Vasant B. Kamble	24.04.2002	3,96,000	Q15
12	010900125 11	19.04.2002	Vasant B. Kamble	24.04.2002	4,15,000	Q18
14	010900125 11	29.04.2002	Vasant B. Kamble	03.05.2002	5,19,000	Q21
16	010900125 11	08.05.2002	Vasant B. Kamble	16.05.2002	6,00,000	Q24
18	010900125 11	08.05.2002	Vasant B. Kamble	16.05.2002	6,62,000	Q27
20	010900125 11	08.05.2002	Vasant B. Kamble	16.05.2002	5,25,000	Q30
22	010900125 11	08.05.2002	Vasant B. Kamble	16.05.2002	6,75,000	Q33
24	010900125 11	10.05.2002	Vasant B. Kamble	16.05.2002	6,42,000	Q36
26	010900125 11	10.05.2002	Vasant B. Kamble	16.05.2002	8,88,000	Q39
28	010900125 11	10.05.2002	Vasant B. Kamble	14.05.2002	5,43,000	Q42
30	010900125 11	11.05.2002	Vasant B. Kamble	14.05.2002	8,10,000	Q45
32	010900125 11	15.05.2002	Vasant B. Kamble	21.05.2002	6,10,000	Q48
34	010900125 11	15.05.2002	Vasant B. Kamble	21.05.2002	6,25,000	Q51
36	010900125 11	16.05.2002	Vasant B. Kamble	20.05.2002	7,80,000	Q54



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38	010900125 11	16.05.2002	Vasant B. Kamble	20.05.2002	8,19,000	Q57
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24.5. The prosecution in this aspect examined the relevant witnesses and produced the relevant documents and clearly demonstrated the similarity and dissimilarity between the forged payment advice and the original payment advice and also proved the forgery of the signature by examining the handwriting expert. Hence, the second stage of the illegal activity of preparation of the forged payment advice is clearly established by the prosecution beyond reasonable doubt.

24.6. A3-Sulaiman Hussain sent the forged payment advice purportedly sent from the Chief Office, State Bank of India, Mumbai. The witnesses examined from the Chief Office as P.W.34, P.W.35 and P.W.39 deposed that they did not receive the forged cheques and they have also deposed that the payment advices also were not issued by them. They also had not received the courier from the State Bank of India, Pudukkottai and also they deposed that they had not sent any courier from their office to State Bank of India. They denied the genuineness of the cover purportedly sent from their office, which was marked as Ex.P. 120 and Ex.P121.



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24.7. P.W12,34,35 specifically deposed about the forged payment advice and the same was clearly revealed from the following contents of the forged advice:-

(i). Seal was forged.

(ii).If the amount is above Rs.50,000/- there should be two officer's signature in the payment advice. In the said forged documents, only one officer's signature is found.

(iii).In the forged payment advice, the address of the bank is printed. But, in original payment advice (Marked as Ex-P153) the computer generated address existed.

(iv). In the original advice, there is a cheque signal.

24.8. Apart from the above dissimilarity, the case of the prosecution that the accused forged the payment advice is clearly established from the following table:

Sl. No.	Features observed in the normal payment advices	Features observed in the short credit payment advices lodged by Shri.Ayoob.
1	Service Branch, Mumbai.	Service Branch, Mumbai.
2	SBI Emblem not printed.	SBI Emblem printed with.

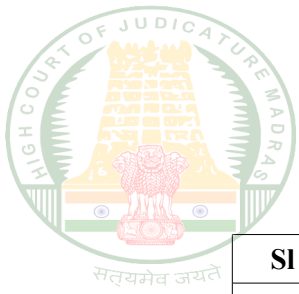


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3	Service Branch, Bombay and within bracket its code number.	Full address of the Service Branch.
4	One sheet containing list cum payment advice.	List cum advice enclosed with schedule
5	Signed by Two officers, if it exceeds Rs.50,000/-	Only one officer signed.
6	If it exceeds Rs.50,000/- check signal will be present	No such check signal.
7	Only one sheet for all the payment advices issued on a single day.	Separate payment advices for each and every cheque issued on a single day.
8	Machine Printed.	Typed in personal computer.
9	Presence of short credit number and date.	No such short credit number and date.

25. Withdrawal of the amount:-

25.1.The amount of Rs.1,09,86,000/- was credited in A3 Sulaiman Hussain's account on the basis of the above said forged payment advice. The said amount was withdrawn by Sulaiman Hussain by presenting the self cheque in the fictitious name of 'Ayoob', and gave the cheques to the A4, A5, A7 and A6. A4 Sheik Amir presented the cheque in the fictitious name of 'Yasin', A5 Rajkapoor in the fictitious name of 'Ahamed' and A7 Siva in the fictitious name of 'Kumar'. The details of the withdrawal are as follows:



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Sl No	Date	Cheque No.	Amount	To Whom paid
1	05.04.2002	579151	5,00,000/-	(S.Ayoob)
2	05.04.2002	579152	20,000/-	(S.Ayoob)
3	05.04.2002	579153	51,000/-	(S.Ayoob)
4	06.04.2002	579154	96,000/-	Babu
5	08.04.2002	579155	25,000/-	Ahamed
6	08.04.2002	579156	35,000/-	Ahamed
7	09.04.2002	579157	51,000/-	Ahamed
8	24.02.2002	579159	6,00,000/-	Ahamed
9	24.04.2002	579160	4,00,000/-	S. Ayoob
10	24.04.2002	579161	51,000/-	S.Ayoob
11	25.04.2002	579163	1,50,000/-	Babu / Rashid
12	25.04.2002	579162	85,000/-	P. Viswanathan
13	29.04.2002	579164	33,000/-	S. Ahamed
14	04.05.2002	579165	4,00,000/-	S. Ayoob
15	06.05.2002	579165	1,05,000/-	Ahamed
16	10.05.2002	579166	20,000/-	Ahamed
17	14.05.2002	579173	5,00,000/-	Ahamed
18	14.05.2002	579172	5,00,000/-	Ahamed
19	15.05.2002	579174	2,25,000/-	Ahamed
20	15.05.2002	579175	75,000/-	S.Ahamed
21	16.05.2002	580101	5,00,000/-	S.Ahamed
22	16.05.2002	580103	5,00,000/-	S.Ahamed
23	16.05.2002	580102	5,00,000/-	S.Ahamed
24	17.05.2002	580109	5,00,000/-	S.Ahamed
25	17.05.2002	580101	1,00,000/-	B.Yasin
26	17.05.2002	580108	55,000/-	B.Yasin
27	18.05.2002	580105	2,50,000/-	B.Yasin
28	18.05.2002	580116	2,50,000/-	M.Kumar
29	18.05.2002	580117	5,00,000/-	S.Ahamed
30	18.05.2002	580107	4,00,000/-	M.Kumar
31	20.05.2002	580120	2,00,000/-	B.Yasin



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32	20.05.2002	580119	2,00,000/-	B.Yasin
33	21.05.2002	580115	4,00,000/-	B.Yasin
34	21.05.2002	580118	2500,000/-	B.Yasin
35	21.05.2002	580106	3,00,000/-	S.Ahamed
36	21.05.2002	580110	3,00,000/-	S.Ahamed
37	22.05.2002	580252	3,50,000/-	B.Yasin
38	22.05.2002	580253	3,50,000/-	M.Kumar
39	22.05.2002	580251	5,00,000/-	S.Ahamed
40	22.05.2002	580124	1,00,000/-	P.Viswanathan
41	24.05.2002	580123	75,000/-	M.Kumar
42	30.05.2002	580267	5,000/-	M.Kumar

25.2.To prove the same, the prosecution sent the specimen signature to the hand writing expert opinion. P.W.45 hand writing expert opined that except the signature of Sheik Amir, signatures of all the accused tallied with the fictitious names.

25.3. The prosecution also proved the withdrawal of the amount by A5-Rajkapoor in the name of “Ahamed” and A7-Siva in the name of “Babu”. To prove the same, handwriting expert opinion obtained and found that the questioned documents contained the signature of A3, A5, A7. The confession of A3 disclosed that they prepared the forged covers using the SBI, Mumbai emblem and the same was proved through the Ex.P120 and Ex.P121. In all aspect, the prosecution clearly proved the



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case against the A1-Manager-Rathakrishnan, A2-Cashier-Rajagopalan,
A3-Sulaiman Hussain, A5-Rajkapoor and A7-Siva.

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26. The case of A-6 Viswanathan:

26.1. Insofar as A6-Viswanathan is concerned, according to the prosecution, A3-Sulaiman Hussain received two cheques, A6-Viswanathan and he are said to have withdrawn the said amount. As per the explanation of A6, A3 approached A6 to arrange for the purchase of the land to start a college. Even as per the prosecution case, he approached the Bank authorities only to arrange a loan for starting the college. In the said circumstances, A6 arranged for purchase of land. For making arrangement, he paid the amount as advance. To prove the said fact, he not only furnished the explanation under Section 313 Cr.P.C, but also examined one DW1-Sahayam. According to the evidence of DW1, Viswanathan is working as TNSTC driver and his father was doing Real Estate Business in the STD booth stand in the name of A6's wife, at Agraharam, Thanjavur. Father of A6 told the said fact to D.W.1. Father of A6 told that Sulaiman Hussain required about 20 to 30 acres for construction of college, but he furnished 10 acres of land at Chathiram in Thanjavur Road, Pudukkottai. After one week in the month of April,



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2002, Sulaiman Hussain visited the place and expressed his willingness to purchase the said land and gave a cheque for Rs.80,000/- as advance. The said cheque was presented in A6's own name and amount was withdrawn. Subsequently the said amount was received by the said Sulaiman Hussain stating that the said land was not suitable for starting college. The said evidence was not properly considered by the Court below.

26.2. Viswanathan A-6 properly explained his defence by preponderance of probabilities and his evidence is cogent and natural and the trial Court ought to have accepted the same. The prosecution case itself is that A3 approached A1 Bank to start the college. In the said circumstances, D.W.1 evidence is corroborated with the version of (A6)Viswanathan's statement. Even as per the evidence of Viswanathan(A6), the cheque amount was also repaid to Sulaiman Hussain. The same was not denied by the said Sulaiman Hussain in his section 313 proceedings and there was no evidence adduced by Sulaiman Hussain to deny the same. Hence, Viswanathan's case is entirely different from A5 and A7, namely Rajkapoor and Siva. The remaining accused themselves presented the cheque for withdrawal in different names, ie., fictitious name and furnished the false address but Viswanathan fairly

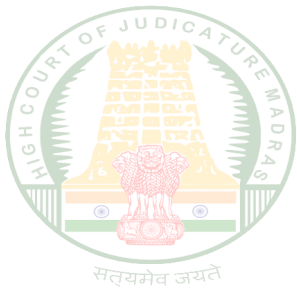


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disclosed his own true name and presented the same with his correct address and identity. He also proved the defence that he made contact with A3 only one time to arrange for land purchase. To prove his defence, he examined DW1 and his evidence is cogent and natural. Further, even as per the prosecution case, he never participated in any of the conspired acts, of opening the account, presentation of the forged cheque and preparation of the payment advices. He made an innocent transaction believing the words of A3 to make the arrangement for the purchase of the land. According to the prosecution, A8 introduced A3 to A1 stating that A3 is an important person and he proposed to construct the college. For that purpose, he wanted financial loan. Therefore A6's answer in 313 Cr.P.C., proceedings along with the evidence of DW1 has not been properly considered by the learned trial Judge. Hon'ble Supreme Court held that explanation in 313 Cr.P.C proceedings, ought to have been considered as a part of the fair trial.

In the case of ***Reena Hazarika v. State of Assam***, reported in ***(2019) 13 SCC 289***

19. Section 313 CrPC cannot be seen simply as a part of audi alteram partem. It confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right as a constitutional right to a fair trial under Article



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21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under Section 313(2) CrPC. The importance of this right has been considered time and again by this Court, but it yet remains to be applied in practice as we shall see presently in the discussion to follow. If the accused takes a defence after the prosecution evidence is closed, under Section 313(1)(b) CrPC the Court is duty-bound under Section 313(4) CrPC to consider the same. The mere use of the word “may” cannot be held to confer a discretionary power on the court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice, and the likelihood of the prejudice that may be caused thereby. Whether the defence is acceptable or not and whether it is compatible or incompatible with the evidence available, is an entirely different matter. If there has been no consideration at all of the defence taken under Section 313 CrPC, in the given facts of a case, the conviction may well stand vitiated. To our mind, a solemn duty is cast on the court in dispensation of justice to adequately consider the defence of the accused taken under Section 313 CrPC and to either accept or reject the same for reasons specified in writing.

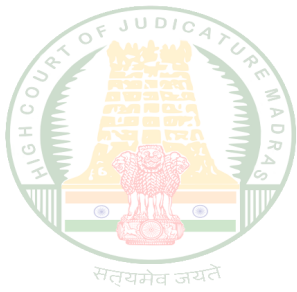
26.3. This Court finds that the prosecution miserably failed to prove the case against Viswanathan, who has made contact with A3-Sulaiman Hussain innocently and specifically took a stand during the 313Cr.P.C proceedings, that he received two cheques from Sulaiman Hussain as advance to purchase the land and presented the cheques in his



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own name, with his own address and encashed the amount of

Rs.1,85,000/- and subsequently, he returned the same to the Sulaiman Hussain. Except the above said circumstances, there is no evidence adduced by the prosecution to prove the involvement of Viswanathan in any of the above chain of the events, namely, opening of the account, preparation of the forged cheques and presentation of the forged cheques in the fictitious account of Sulaiman Hussain (A3) and fabrication of the payment advice. DW1 also deposed before this Court in consonance with the explanation furnished by the Viswanathan(A6). But the learned trial Judge has not properly considered the above aspect and has erroneously convicted Viswantathan(A6). Hence, in view of the above circumstances, this Court finds that the prosecution has not proved the charge against Viswanathan(A6), the appellant in Crl.A.(MD).No.107 of 2017, beyond reasonable doubt. Hence, this Court acquits Viswanathan(A6) and allows the appeal in Crl.A.(MD).No.107 of 2017.

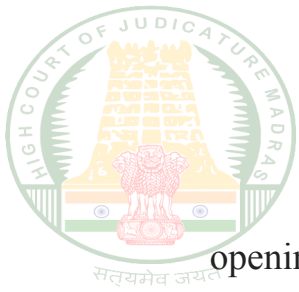


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27. The case of the A4 Sheik Amir

According to the prosecution, there are two allegations against A4 Sheik Amir. One is that he opened the account in the fictitious name of “Yasin”, manager of Aibeena traders under Ex.P65. Within a day, the same was closed for want of trade certificates and other certificates. Further, the 2nd allegation is that he presented the cheque issued by Sulaiman Hussain A-3 in the name of “Yasin” and withdrew the same. To prove the same, prosecution took the specimen signature of the said Sulaiman Hussain and sent the same to compare with the questioned signature. But, the handwriting expert opinion is not affirmative. In the said circumstances, the claim that he made his signatures in the cheques and the account opening form is doubtful. Apart from that, the investigating agency recovered some incriminating materials namely screen printing material of State Bank of India, relating to the other crime number on 27.04.2004, but, the confession was recorded only on 28.04.2004. The said discrepancy has not been explained by the investigating officer. Hence, the same creates a doubt over the recovery. In addition to that, the recovered object are not relating to the present crime number. Apart from that, P.W.32 clearly deposed that at the time of



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opening of the account in the name of “Yasin”, he did not see the accused

No.4, whose photograph was affixed in the said account opening form

Ex.P.65. Further, the “Abieena traders” seal was recovered from the house

of A1 manager. In addition to that, amount deposited in the said account

was also withdrawn by A3 Sulaiman Hussain as per the evidence of P.W.

6. The above aspects have not been properly considered by the learned

trial Judge. Even though recovery of the incriminating materials in the

other related crime number was done from his house, which creates only

suspicion, the same is not sufficient to convict the accused A4 Sheik Amir

on the principle that suspicion however strong, is not sufficient to convict

the accused as held by the Hon'ble Supreme Court in ***AIR 1978 SC 1571***,

“It is now well settled that strong suspicion, strange coincidences and grave doubts cannot take place of legal proof”.

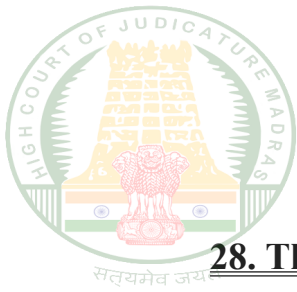
Hence, in view of the above circumstances, this Court finds that the

prosecution has not proved the charge against A4 Sheik Amir, the

appellant in Crl.A.(MD).No.125 of 2017 beyond reasonable doubt.

Hence, this Court acquits Sheik Amir/A4 and allows the appeal in

Crl.A.No.125 of 2017.



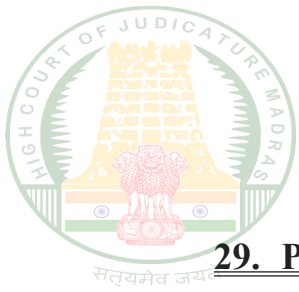
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28. The case of A7

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28.1. The signature of A7 is not only found in the withdrawal slip but is also found in the forged payment advice. The same was proved through the evidence of the hand writing expert/(P.W.47). P.W.47 opined that the signature and writing of A7 tallied with the questioned documents.

28.2. The learned counsel for A7 submitted that they did not follow the Section 5 of the Identification of the Prisoners Act for which he relied on number of judgments including the Division Bench judgement of this Court reported in *2003 (1) CTC 223, 1996 (4) SCC 596, 2014 (12) SCC 133* and in *Crl.A(MD)No.1012 of 2022*. The said judgments are not applicable to the present case because the prosecution adduced the evidence to prove that the handwriting was taken in the presence of the independent witness namely the government servant and the same was sent to handwriting expert's opinion.



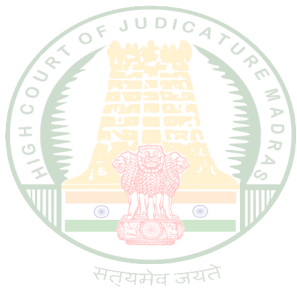
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29. Plea of non compliance of Section 5 of the identification of

Prisoners Act:

29.1. The learned counsel Mr.R.Anand submitted that the taking of the sample is not in accordance with procedure and hence the opinion report is not a valid one and he placed the precedent reported in **2003(1)CTC 223**. The said procedural irregularity is not raised by the appellants during the course of trial and also they did not deny the sample signature. Even during the course of 313 Cr.P.C., proceedings they did not speak about the failure to follow the procedure and hence, there is no pleadings regarding the failure of justice. Further in this case, sample signature was taken in the presence of the independent bank officers. They were also examined and there was no cross examination disputing the same. In this aspect, the Hon'ble Supreme Court in (*Ashish Jain V.Makrand Singh and others*) reported in **2019 (3) SCC 770** and the judgment in *Sonvir V.State (NCT of Delhi)*, in similar situation considered the scope of the Identification of Prisoners Act 1920 and held that

“Section 5 of the Act is not mandatory but, is directory and affirms the bona fides of the sample



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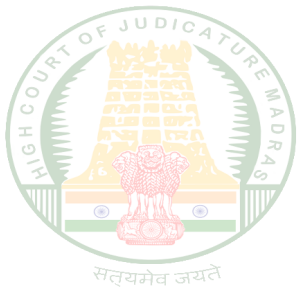
taking and eliminates the possibility of fabrication of evidence.”

Further Hon'ble Division Bench of this Court in **2016 LW Crl (145)** in ***K.Ramajayam @ Appu Vs. The state of Tamil Nadu***, has held as follows:

Paragraph 23. *In K.Ramaraj V. State by Inspector of Police, CBCID, Chennai 2014-1 L.W. (Crl.) 85 = (2014 2 MLJ (Crl) 41 a Division Bench of this Court to which one of us (PNPJ) was a party, deprecated the practice of police taking photographs of the accused in the Police Station. The Court however did not hold that the photographs so taken becomes incapable of being used by the Experts for their analysis and opinion.*

29.2. Subsequently, another judgment of the Division Bench of this Court in 2020 2 L.W.(crl).1 Paragraph No. 198 considered all the above judgments and held that the said irregularity is not material irregularity and only a mere irregularity in the following words:

In the considered opinion of the Court and in the light of the findings recorded in Paragraph No.150 coupled with the decision reported in 2016-1L.W. (Crl.) 145 2016 (2) CTC 135 (DB)



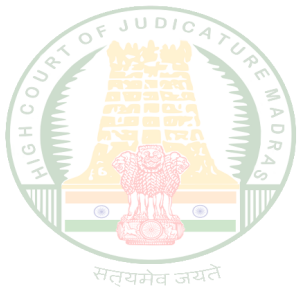
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(cited Supra) it is only a curable irregularity or error and the non-obtaining of prior permission from the jurisdictional Magistrate is merely an irregularity and even otherwise, the opinion/testimonies of the experts, viz., P.W.58 and P.W.62 despite grueling and extensive cross examination, remain unshaken. Therefore, the submissions made in this regard, are liable to be rejected.

29.3. In this case, P.W.45 in C.C.No.04 of 2006 is the hand writing expert. The said expert clearly deposed that he compared the signature of the number of accused and the number of witnesses and also he meticulously conducted the comparison and he deposed before the Court regarding the method of comparison by filing his report under Ex.P181. A7/Siva, A5 and other accused never cross examined the said witness. Further they never disputed the taking of sample signatures and they did not give any explanation during 313 Cr.P.C., questioning. Hence, following the law laid down by the Hon'ble Supreme Court and also taking into consideration the fact that the appellants never raised any plea of prejudice, this Court is not inclined to accept the contention of the appellants.

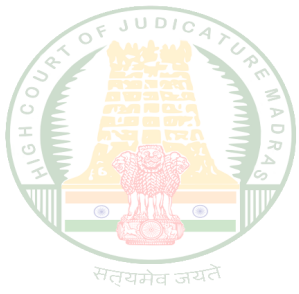


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29.4. Further, the learned counsel submitted that the handwriting

expert opinion alone, is not sufficient to convict the accused. In this case, as stated above, there are number of circumstances to prove that they have had the knowledge about the presentation of the forged cheques and the preparation of the payment advices and on the basis of the forged payment advices, the amount was credited in the account of Ayoob and the same was withdrawn by him in the name of Kumar. He did not give any explanation under Section 313 Cr.P.C., regarding his hand writing and signature in the forged payment advices and withdrawal slips on the basis of the cheques issued by A3 Sulaiman Hussain. A7 has also not denied the relationship with A3. The concerned bank witnesses denied the signatures found in the forged payment advices and the same was also proved through the handwriting expert opinion. In the said circumstances, the evidence of the bank officials is corroborated by the evidence of handwriting expert's opinion. In this aspect, it is relevant to extract the following portion of the judgment of the Hon'ble Supreme Court reported in **2020 3 SCC 35** in the case of ***Padum Kumar v. State of U.P.***

“17.As pointed out earlier, the handwriting experts M.Y. Khan (PW 5) and Siya Ram Gupta have opined that the disputed signature “Q-1” in



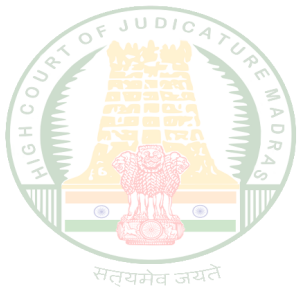
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the delivery slip, Ext. P-4 does not match with the specimen signatures “S-1 to S-6”. Handwriting experts have also opined that the one who wrote the specimen signatures had not written the disputed signature “Q-1” in Ext. P-4. As pointed out by the courts below, the evidence of handwriting expert is the evidence relied upon by the prosecution to corroborate the evidence of PW 2 Devesh Mohan who has denied his signature in Ext. P-4. The learned counsel for the appellant is not right in contending that the courts below have based the conviction solely upon the opinion of the handwriting experts. The evidence of handwriting experts is only a corroborative piece of evidence to corroborate the evidence of PW 2 Devesh Mohan.

18. *In the light of the evidence of PWs 1 to 3 and other evidence, the High Court rightly found that the appellant who delivered the registered envelope at the place of the complainant PW 1 is bound to explain as to who made the alleged signature in Ext. P-4 delivery slip. In the absence of any explanation by the appellant-accused, as held by the High Court, a presumption is to be raised against the appellant who delivered the envelope as he is the only person having knowledge of the same. From the evidence of PW 3 Dr M.L. Varshney, the*



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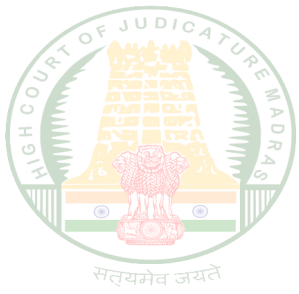
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prosecution has proved that the envelope contained valuable security—four Indira Vikas Patra of value of each Rs 5000 totalling Rs 20,000. Upon appreciation of evidence adduced by the prosecution, the courts below rightly recorded the concurrent findings that the appellant has forged the signature of PW 2 Devesh Mohan and the conviction of the appellant under Sections 467 and 468 IPC is based upon the evidence and the conviction does not suffer from any infirmity warranting interference.”

30.Plea of Parity

30.1. When the evidence adduced by the prosecution is intrinsically inseparable and the conviction is passed in favour of one accused and acquittal is passed on the other accused, the principle of parity is applicable. When the evidence is separable, it would be open to the Court to convict the accused notwithstanding the fact that the evidence has been found to be deficient to prove the guilt of other accused. The Hon'ble Supreme Court in the case of ***Gangadhar Behera v. State of Orissa***, reported in ***(2002) 8 SCC 381*** has held as follows:

15. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to



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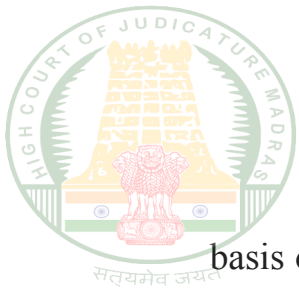


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prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end.

The said principle was reiterated by the Hon'ble Supreme Court in number of cases.

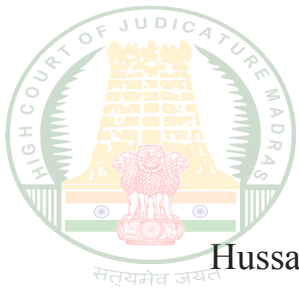
30.2. In this case, the learned trial Judge acquitted A8 and A9 on the ground that there was no sufficient evidence to prove the allegation made against them. But, the learned trial Judge gave the finding that the prosecution proved the case against the remaining accused A7. A7 presented the cheques issued by Sulaiman Hussain(A3) and withdrew the amount and his signature is also found in the forged payment advices. Hence, he had knowledge about the presentation of the forged cheques by A3 Sulaiman Hussain and amount was credited in his account on the



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basis of the forged payment advices. Therefore, the learned trial Judge on independent appreciation of evidence available against A7/Siva convicted him. Therefore, the plea of parity cannot be accepted. Applying the above principle of the Hon'ble Supreme Court, this Court finds no perversity in the approach of the learned trial Judge in segregating the evidence produced against A7 and A8, analyzing them and acquitting them and convicting the remaining accused.

30.3. A1 claims parity on the basis of the acquittal passed against the A9. According to the prosecution A9 informed A1 Manager, that A3 Sulaiman Hussain was a distinguished person and he was the manager of the Aibeena traders and he intended to start a college in Pudukottai. But, A1 without verification, acted on the said information by authorising A3 to open the account in the address which is a non existent one and the same was closed on 26.03.2002. A1 also allowed to withdraw the amount from the said account. He also allowed to continue the said account inspite of the knowledge about “M/s.Aibeena traders” and the said trader's seal was also seized from the house of A1. A1 is the manager. He flouted all the rules, norms and procedures of the bank. He also insisted his subordinate to pass the cheque presented by the said Sulaiman



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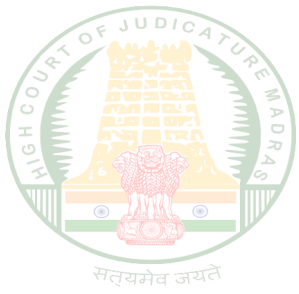
Hussain. Therefore, his role in the process of withdrawal of the amount of Rs.1,09,86,000/- on the basis of the forged cheques and forged payment advice is placed on a higher pedestal than A9. Hence, his case is not in parity with A9's case and therefore his plea of the parity is not accepted.

31. Plea of non-compliance of the procedure under Section 164 of Cr.P.C.

31.1.The learned counsel for A2 submitted that statement of the accused (approver PW47) recorded under section 164 Cr.P.C was recorded without following the procedure as per Section 164 Cr.P.C.

31.2. The learned counsel submitted that the 164 Cr.P.C statement recorded by the learned Judicial Magistrate without the following memorandum column is not admissible.

“I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by



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him.”

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31.3. The said procedural irregularity committed by the learned Judicial Magistrate in recording the 164 Cr.P.C statement of the P.W.47 has no consequence especially when P.W.47 deposed before the Court that he was allowed the tender of pardon. P.W.47 has not disputed the said recording of statement. He claimed that the statement was made with his own consent. He has not raised the said plea that without the said explanation portion, the same was not admissible. But in this case, P.W.47 approver gave 164 Cr.P.C statement after understanding the contents of the statement and also admitted that he understood the contents of the statement and on the basis of the same, his tender of pardon was accepted.

31.4. Hence the compliance of the procedure under Section 164 of Cr.P.C., is satisfied by the learned Chief Judicial Magistrate in ordering the tender of pardon. PW47 has not stated above infirmities. Further, he deposed before the Court making the allegation against A2-Rajagopalan after admitting his part. His statement is both inculpatory and exculpatory. Hence, the submission of the learned counsel that the



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absence of the said memorandum as required under Section 164 Cr.P.C is

not a ground to disbelieve the evidence of PW47.

31.5. The petitioner in this aspect never substantiated his claim that there has been a failure of justice. In the case of procedural lapse, failure of justice is to be pleaded and established by the accused. The said omission of the learned Magistrate does not cause any failure of justice when PW47 has admitted his voluntary confession. In the said circumstances, this Court is not inclined to accept the argument of the learned counsel for A2 that PW4- approver's evidence has to be rejected. Hence, this Court holds that the prosecution clearly proved the role of A2 in the conspiracy. A2 has not furnished any explanation during the 313 Cr.P.C proceedings. It is not the case of A2 that PW47 was threatened and he made the statement. Merely because of non-recording of the explanation column in 164 of Cr.P.C., the confession recorded by the learned Judicial Magistrate did not vitiate the trial, more particularly, PW47 never disputed the said event.

31.6. From the above record of proceedings, it is clear that there is no prejudice established by the accused No.2 appellant, to disbelieve the



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confession given by the approver-PW47. Unless the appellant established

failure of justice, the plea of the appellant that the absence of the memorandum in the co-accused's confession, would vitiate the trial, is

liable to be rejected. In this aspect, it is relevant to note the meaning of

the “failure of justice” as held by the Hon'ble Supreme Court in **Rattiram**

v. State of M.P. reported in **2012 (4) SCC 516**:

65. We may state without any fear of contradiction that if the failure of justice is not bestowed its due signification in a case of the present nature, every procedural lapse or interdict would be given a privileged place on the pulpit. It would, with unnecessary interpretative dynamism, have the effect potentiality to cause a dent in the criminal justice delivery system and eventually, justice would become illusory like a mirage. It is to be borne in mind that the legislature deliberately obliterated certain rights conferred on the accused at the committal stage under the new Code. The intendment of the legislature in the plainest sense is that every stage is not to be treated as vital and it is to be interpreted to subserve the substantive objects of the criminal trial.

Ram Singh v. Sonia, (2007) 3 SCC 1 :

32. In State of U.P. v. Singhara Singh [AIR 1964 SC 358 : (1964) 1 Cri LJ 263 (2)] a three-Judge Bench of this Court observed that if the confession is not recorded in proper form as prescribed by Section 164 read with Section 281, it is a mere irregularity which is curable by Section 463 on taking evidence that the statement was recorded duly and has not injured the accused in defence on merits. It was observed at AIR p.



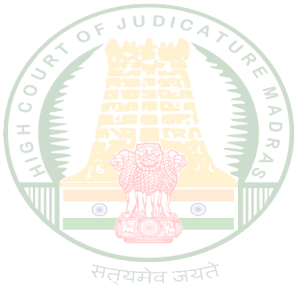
362, para 10 thus:

“What Section 533 [Section 463 of the new Code] therefore, does is to permit oral evidence to be given to prove that the procedure laid down in Section 164 had in fact been followed when the court finds that the record produced before it does not show that that was so. If the oral evidence establishes that the procedure had been followed, then only can the record be admitted. Therefore, far from showing that the procedure laid down in Section 164 is not intended to be obligatory, Section 533 [Section 463 of the new Code] really emphasises that that procedure has to be followed. The section only permits oral evidence to prove that the procedure had actually been followed in certain cases where the record which ought to show that does not on the face of it do so.”

31.7. The Hon'ble Gauhati High Court in its judgment reported in 2008 Cri LJ 1276 held that the defect, if any, in the memoranda is one of the form and not of the substance. In this case, the following memorandum is contained in Ex.P.169:

taken down by me and read over to the deponent and admitted by him to be correct” and record of proceeding containing the following relevant question:

“கேள்வி : நீங்கள் ஒப்புதல் வாக்குமூலம் கொடுக்க வேண்டிய அவசியமோ, கட்டாயமோ இல்லை என்பதையும், ஒப்புதல் வாக்குமூலம் கொடுக்காமல் அது எழுதப்பட்டு பின்னர் உமக்கு எதிரான சாட்சியமாக பயன்படுத்தப்படும் என்பதையும் தெரிந்து கொண்டீரா?”



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பதில் : தெரிந்து கொண்டேன்.”

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31.8. Therefore Ex.P169 satisfied all the substantive requirement of 164 Cr.P.C., in this case. Hence, this Court holds that the memorandum mentioned in the confession statement of PW47 satisfied the requirement. The claim that there is procedural infirmity cannot be raised in the present case. In this case, on the basis of the said statement, PW47 was granted tender of pardon under Section 306 Cr.P.C. Thereafter, PW47 deposed before the Court. In the course of the cross-examination, no question was put to P.W.47 relating to the involuntariness. The judgment of the Hon'ble Division Bench relied by the learned counsel for A2 reported in 2006 CrI LJ 1085 is not applicable to the present case. In the said case, the confession statement of A4 was recorded and he retracted the same and raised a plea of absence of memorandum to show that it was not a voluntary confession. To prove that the confession is not voluntary, they relied on the absence of the signature of P.W.47 in the memorandum. In this case, the memorandum contained the signature of PW47. Further PW47 has also not denied the same. In this aspect, the Hon'ble Supreme Court in 2001SCC CrI 652 categorically held that “*mere failure to get the signature of the person*



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making the confession may not be very material if the making of such

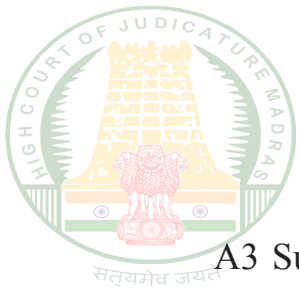
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statement is not disputed by the accused but in cases where the making of the statement itself is in controversy, the omission to get the signature is fatal.” Hence, in all aspects, the contention of the learned counsel for the appellant that the judicial confession given by the PW47/Natarajan/approver is liable to be rejected, is not correct.

32. Plea of admission of exculpatory statement of the approver P.W.

47

The learned Counsel Mr.Emilias appearing for A2(Rajagopalan) submitted that the confession of the co-accused which is in the nature of an exculpatory statement is not admissible. Hence he seeks acquittal on the basis of the judgment reported in ***AIR 1966 SC 1273 , 1969 3 SCC 429, 2000 5 SCC 440***. The evidence of the P.W.47 Natarajan namely approver in this case is cogent, reliable and trustworthy and corroborated with material particulars of the prosecution case. P.W.47 is the professional courier agent. He was arrayed as A10 in the CBI FIR. He gave the 164 Cr.P.C. statement before the learned Judicial Magistrate. In the said statement, he narrated the event of interception of courier covers intended to be sent to the Chief Office State Bank of India, Mumbai by

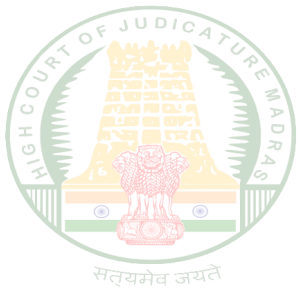


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A3 Sulaiman Hussain, A2 Rajagopalan. He handed over the said cover

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to the said A3 Sulaiman Hussain, A2 Rajagopalan. After receipt of the said cover, forged cheque presented for the encashment in the Sulaiman Hussain's fictitious account was removed and blank papers were sent to the head office. Thereafter tender of pardon application under Section 306 Cr.P.C., was filed before the learned Chief Judicial Magistrate and the same was allowed after all procedural compliance. Thereafter P.W.47 deposed before the Court. Even though he was subjected to extensive cross examination, nothing was elicited to disbelieve his evidence. His evidence is corroborated by circumstances. A2 Rajagopalan also insisted that P.W.47 handed over the cover to A3 Sulaiman Hussain. Similarly, A2 Rajagopalan also insisted his co-workers to give preference to A3 Sulaiman Hussain and hence this Court easily presumes that A2 is involved in the conspiracy to cheat the bank. This Court perused the said precedents. In this case P.W.47 has not disowned his part. He has also not disowned his role. He stated that he committed the said act of handing over the cover intended to be sent to the service branch SBI, Mumbai to A2. Hence his statement is not in the nature of an exculpatory statement. Hence, this Court holds that the ratio laid down in the *AIR 1966 SC 1273* and other precedents are not applicable to the present case.



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33. Consideration of the Defence Documents:

33.1. Rajagopalan A2 marked Ex.D2 to Ex.D6 during the cross examination of P.W.17 after one year from the date of his chief examination. In the said documents it is stated that P.W.47 approver's father Radhakrishnan made a claim to settle the courier charges during the relevant period. All the documents are Xerox copies and hence, the learned Public Prosecutor raised the objection to mark the said documents. Radhakrishnan is none other than the father of P.W.47(in C.C.No.04 of 2006). It is not the case of A2 Rajagopalan, that P.W.47 never came to his office to receive the courier tapals. The presence of Nataraj to receive the tapal is satisfactorily proved through the evidence of P.W.17 and P.W.9 in C.C.No.4 of 2006. P.W.6 and P.W.17 clearly deposed about the visit of Nataraj to the bank to collect tapals. P.W.47 also gave evidence clearly in the said aspect. Hence, his evidence that he acted as a sub agent of courier and went to bank and collected the tapals is clearly proved with the corroboratory evidence of P.W.9 and P.W.17.

33.2. Further, he has not raised any explanation under Section 313

Cr.P.C., questioning relating to the above aspect. Even otherwise, he is



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duty bound to examine the said Radhakrishnan to prove the fact that P.W.

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47 was never entrusted with the work of collection of tapals from A1 and A2 bank. In the said circumstances, the said documents no way give any benefit to A2 Rajagopalan, when abundant evidence was produced by the prosecution to prove the charge that was framed against him.

33.3. A1 produced the document Ex.D1. In the said document, the head office appreciated his business turn over for the completion of period 2001 to 2002 by letter dated 05.04.2002. As per the prosecution case, the fictitious accounts were opened on 11.03.2002, in the name of A3 Sulaiman Hussain as “Ayoob” with the active participation of A1. The first withdrawal made from the said account out of the credited amount on the basis of the forged payment advice was on 05.04.2002 and the last withdrawal happened on 30.05.2002. In the said circumstances, the said document has no relevancy to decide the non culpability of A1. Further, A1 permitted A3 Sulaiman Hussain to open the account in the same address which was closed on the ground of non submission of the relevant document in the name of the Sheik Amir as a manager of the Aibeena traders. He also instructed his subordinate to honor the cheque presented by A3 with adequate knowledge about the said credit which

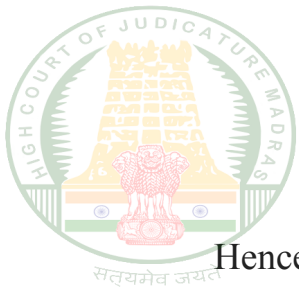


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was made on the basis of the forged cheques and forged payment

advice. During search, from his house the seal of the said non-existing Aibeen traders was recovered. He never denied the relationship with Sulaiman Hussain. A number of material objects recovered from him are said to have been given by A3 Sulaiman Hussain. In the said circumstances, the said Ex.D1 has no relevance at all. A1's further plea is that he has sent the information about the forged payment advice to various authorities, is also liable to be rejected as it is much after the act of cheating and is only an after thought.

33.4. A3 Sulaiman Hussain has stated in the 313 Cr.P.C., proceedings, that his name is not Ayoob as stated in the account opening form and that his name is Mujeeb Abdul Miyan. The prosecution case is that he made the false representation before the bank and opened the account in the fictitious name of Ayoob. As stated earlier A3 has a number of previous cases. In each case he disclosed different fictitious names. To prove his case that his name is not Ayoob, he has not produced any evidence. But the prosecution proved his presence in the bank, through the examination of his neighbouring house owners by showing the photographs affixed in the account opening form Ex.P41 and Ex.P42.



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Hence, his presence in the bank and operating the fictitious bank account

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is proved through the oral evidence and also the hand writing expert's evidence. His presence is also proved by the bank officials P.W.9 and P.W.17. Apart from that, as stated earlier, the seal of the Aibeena traders was recovered from his house. He did not give any explanation regarding the above incriminating materials during Section 313 Cr.P.C., questioning. Apart from that, even in the affidavit filed by him requesting this court to recuse, he has stated that his name is Sulaiman Hussain. It is not the case of A3 that his name is not Sulaiman Hussain. Hence, in all aspects, the prosecution proved the case against Sulaiman Hussain.

34. Conspiracy:

34.1. In this type of organised crime, it is not expected to prove the case through the oral evidence pointing out each overt act. The conspiracy between the above accused is proved through collective activity and individual activity. When the prosecution evidence has clearly established the material circumstances against each accused and all the material circumstances completed the chain of circumstances, all the accused are collectively liable for conviction for all the offences. It is settled principle that it is not necessary that all the accused are to be



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involved in each of the circumstances. In this aspect it is relevant to note

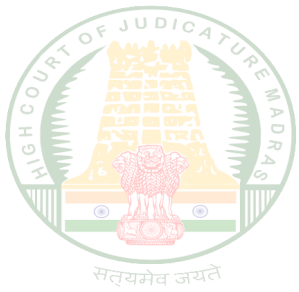
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the following judgments of the Hon'ble Supreme Court:

State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 :

“24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use.”

It is relevant to note the Hon'ble Supreme Court in ***Arvind Singh Vs. State of Maharashtra*** reported in ***2021 11 SCC 1***, considered the entire aspect of conspiracy and held that 'it is not necessary that all conspirators should participate from the inception to the end of the conspiracy. Some may join that conspiracy after the time when such intention was first entertained by any one of them'.

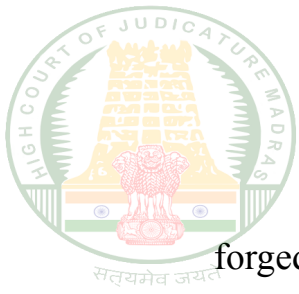


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34.2. In this case, A3 Sulaiman Hussain opened the fictitious

account with false address with the introduction of A1. A1 Radhakrishnan also instructed his subordinate to honour the cheques of A3 Sulaiman Hussain. In the account opening form Ex.P41 and Ex.P42, A3 is shown as Manager of the “Aibeena traders” which was a non existing one. The said seal of the Aibeena traders was recovered from the house of A1. A2 Rajagopalan (Cashier) also instructed the staff of A1 branch that the said Sulaiman Hussain was an important customer. Further, P.W.47 clearly deposed that A2 Rajagopalan received the tapal intended to be sent to the Chief Office State Bank of India, Mumbai with forged cheques and pay slips presented by Sulaiman Hussain. A5, A7’s signatures are found not only in the withdrawal slips but also in the forged payment advices. A1, A2, A5, A7 were arrested and number of materials and material objects were recovered. The said materials and material objects clearly show that there is a close contact with A3. They did not deny the relationship between each other.

34.3. Each of the accused namely A1, A2, A3, A5 and A7 have the knowledge about the five basic facts ie., opening of the account in the fictitious name of Ayoob” by Sulaiman Hussain; the presentation of the

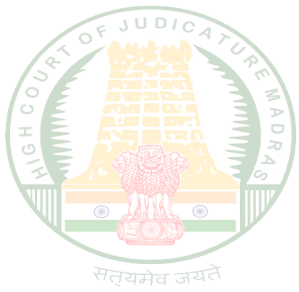


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forged outstation cheques in the said fictitious account; and preparation of the forged payment advices and credit of the said amount on the basis of the said forged payment advices and withdrawal of the amount with the knowledge that the amount was credited on the basis of the presentation of the forged cheques and forged payment advices. To prove the said facts, prosecution produced abundant materials and some of the materials are as follows:

Opening of the account in the fictitious name of Ayooob	P.W.6, P.W.32, P.W.15, P.W.18, P.W.20, P.W.46	Ex.P.181, Ex.P.42	Ex.P.41,
Presentation of the forged cheques	P.W.3, P.W.6, P.W.17, P.W.34, P.W.35 and P.W.39	Ex.P.43, Ex.P.152.	Ex.P.108,
Preparation of the forged payment advice	P.W.3, P.W.6, P.W.17, P.W.34, P.W.35 and P.W.39, P.W.45	Ex.P.1 to Ex.P.38, Ex.P.181	

From the above, A1, A2, A3, A5 and A7 jointly executed the plan of withdrawal of the amount from the Bank by presenting the forged outstation cheques and credited the amount through the forged advance payment receipts and hence, they caused wrongful loss to the bank to the tune of Rs.1,08,07,599/-.



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34.4.Further, the account was opened on 11.03.2002 and the last

withdrawal was done on 13.05.2002. Thereafter, the account was not operated. From the above, the prosecution clearly established the conspiracy between A1, A2, A3, A5 and A7. Hence, the non explanation of each accused against the recovery of the materials and the company with each other, under Section 106 of the Indian Evidence Act is an additional circumstance to prove the conspiracy.

34.5. In this case, number of witnesses deposed that A1 and A2 stated that Sulaiman Hussain(A3) is an important customer and his outstation cheques are to be honoured without queries. The said submission of the witnesses clearly proved that they conspired together and with knowledge that the outstation cheques were forged, credited the amount in the account of A3-Sulaiman Hussain.

34.6. In this case, initially FIR was registered in Crime No.1 of 2003 on the file of the DCB, Pudukkottai. PW42 conducted the initial investigation. He arrested Rajagopalan(A2) on 13.01.2003. He disclosed the fact that he got number of electronic items from the said “Ayoob” namely Sulaiman Hussain(A3). The same was also exhibited and marked



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through PW42 and the recovery mahazar and the admitted portion of

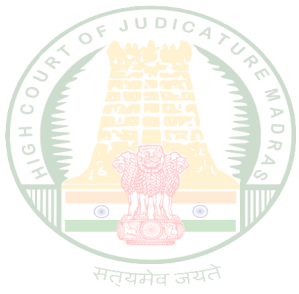
confession was marked through PW42. He was not cross-examined by A2 and his evidence remains unchallenged. During the course of 313 Cr.P.C proceedings also he did not give any explanation. This is additional circumstance to show the involvement in the conspired act of cheating the Bank and to prove the said conspiracy between Rajagopalan(A2) and Sulaiman Hussain(A3). In all aspect the prosecution clearly proved the conspiracy between A1, A2, A3, A5 and A7.

35. Lapse of investigation

The learned counsel for the appellant submitted that investigation was not properly conducted and number of other accused were also not added. It is well settled, lapse on the part of the investigation officer is not a ground to disbelieve the evidence available on record to prove the charge against the appellant. In this aspect, it is relevant to note the principle laid down by the Hon'ble Supreme Court as follows:

Ram Gopal v. CBI, (2019) 7 SCC 204 :

“5. We have considered the submissions on behalf of the parties and gone through the materials on record. It is



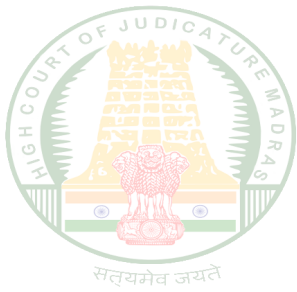
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an undisputed fact that a fictitious account was opened without proper verification in accordance with the banking procedures. That unfortunately does not appear to have been the subject of investigation and which could have revealed more facts with 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.”

Vinayak Narayan Deosthali v. CBI, (2015) 2 SCC 553:

“15. PW 3 Girish Chandra who represented EEPC fully supported the prosecution version of having made deposit with the Bank and having not authorised the diversion of the said amount in favour of any private party. The said evidence has been duly accepted by the Special Court. The appellant unauthorisedly credited the amount to Mehta's account by abusing his position in

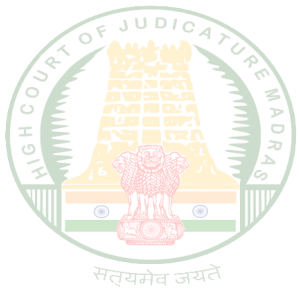


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conspiracy with Mehta. The accused also issued bank receipts for security transactions without physical existence of securities which amounted to forgery. It is thus, safe to infer the abuse of position by the appellant-accused in conspiracy with and to the benefit of Mehta. Diversion of public funds by the accused amounted to criminal breach of trust by committing forgery/use of forged documents as well as offence under the provisions of the Corruption Act. PW 10, Pinjani and PW 12, Mrs Kini who were maintaining register for sale and purchase of securities could not show that the securities in question were physically available with the Bank when the bank receipts were issued by the accused which could be done only if securities were available. The Special Court thus rightly held the charge to be proved. It was not necessary to prove that the accused had derived any benefit or caused any loss to the Bank. The fact remains that action of the appellant involved unauthorised conversion of public funds to private funds of an individual. Issuing of bank receipts for securities without existence of securities could not be justified except for illegal benefit to a private individual. Patent illegality cannot be defended in the name of practice or direction of higher authorities. Mens rea is established from the fact that false bank receipts were issued for non-existent securities.



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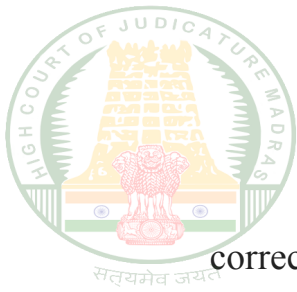
Kashinath Mondal v. State of W.B., (2012) 7 SCC 699 :

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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.”

36. Plea of A1 regarding the offence under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act:

The learned Senior counsel submitted that there is no evidence to prove that A1 appropriated the amount from A3. There was no wrongful gain obtained by A1-Radhakrishnan. The said submission is without any legal sanctity. As per Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. It is not necessary that the accused should get the benefit for himself, even if some other person gets the benefit, the offence is attracted. Therefore, the learned counsel's submission that there is no evidence to show that A1 received the amount from A3, and therefore the accused cannot be convicted under Sections 120B r/w 420 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, is not



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correct. In this aspect it is relevant to note the following judgment of the

Hon'ble Supreme Court in the case of ***M. Narayanan Nambiar v. State of Kerala***, reported in AIR 1963 SC 1116:

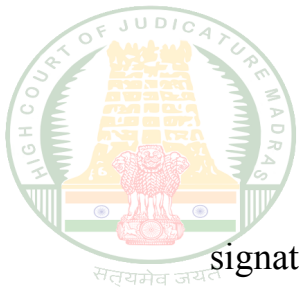
10.....On a plain reading of the express words used in the clause, we have no doubt that every benefit obtained by a public servant for himself, or for any other person by abusing his position as a public servant falls within the mischief of the said clause.

37. The relevancy of an admitted portion of A3 and other accuseds'

Confession

37.1 Sulaiman Hussain (A-3) was arrested and he made voluntary confession statement to P.W.51. P.W.51 recovered number of incriminating materials on the basis of the admitted portion of the confession statement given by Sulaiman Hussain (A-3) under Ex.P55.

37.2. A reading of the admitted portion of confession of A3, clearly discloses the involvement of Rajkapoor (A-5), R.Siva (A7), G.P.RAdhakrishnan (A1) and J.Rajagopalan (A2). The hand writing expert also opined that the questioned documents are contained the



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signature of Raj Kapoor (A-5) and Siva (A7). Hence, the disclosure of the involvement of Raj Kapoor (A5) and Siva (A7) is admissible.

37.3. Similarly each accused gave voluntary confession statement.

On the basis of the confession statement, a number of incriminating materials have been recovered connecting the crime and the same is also relevant to prove the close relationship between A1, A2, A3, A4, A5 and A7 as additional facts even if their case is that they are not known to each other. Further from the house of A1 seal of the non existing firm namely Aibeena traders has been recovered.

38. Conclusion:

38.1. This Court finds that the prosecution clearly proved the conspiracy between the original C.C.No.4 of 2006 accused namely, A1(Rathakrishnan), A2(Rajagopalan), A3(Sulaiman Hussain), A5(Raj Kapoor), A7(Siva) to cheat the State Bank of India and they wrongfully gained to the extent of Rs.1,09,86,000/- by opening the account in a fictitious name, presenting the 19 forged outstation cheques, without sending the pay slip along with the cheque to the drawee's Bank through the professional couriers, intercepted the said process with the connivance

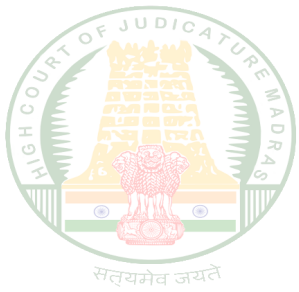


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of the approver PW47 and prepared the forged payment advices purportedly sent by the drawee's Bank situated at Mumbai and credited the amount on the basis of the forged payment advices and withdrew the said amount with knowledge that the amount credited was on the basis of the forged cheque and forged payment advices and thereby caused loss to the Bank to the tune of 1,08,07,599/-. Hence, this Court concurs with the finding of the learned trial Judge, in convicting the accused Nos.1, 2, 3, 5 and 7.

39. The Question of Sentence

39.1. Regarding the punishment of Sulaiman Hussain (A-3), it is revealed from the records that Sulaiman Hussain (A3) cheated various banks on various occasion by using different names. After the registration of the case by the District Crime Branch, Pudukkottai in Crime No.01 of 2003 and subsequent transfer to CBI on 03.04.2003, registration of the same on 04.04.2003, he evaded arrest by hiding himself in a number of places and finally surrendered before the learned Judicial Magistrate, Aruppukottai.



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39.2 The said Sulaiman Hussain after filing final report did not

make appearance before the learned Special Court, CBI Cases, Madurai.

Hence, the case was split up after the decision of the parent case in

C.C.No.04 of 2006 and the judgment was delivered on 17.03.2017, and

then he appeared and a separate trial was conducted in C.C.No.7 of 2006.

This Court has dismissed a bail petition and subsequently the same was

granted with condition. He did not comply with the condition. Thereafter,

he has indulged in subsequent similar offences. Taking into consideration,

all the above circumstances, this Court is not inclined to interfere with the

sentence of imprisonment imposed by the trial Judge.

39.3. Similarly A1 bank manager was duty bound to adhere to the

banking procedures before opening the fictitious account in the name of

Sulaiman Hussain as the Manager of the Aibeena traders. The account

opened in the name of Sheik Amir (A-4) in the said address was closed

for non production of the existence certificate. In the said circumstances,

he allowed A3 to open the account in the name of “Ayoob” as a manager

of the said Aibeena traders, which is an non-existing firm and that too in

the same address and allowed all the type of mischief and caused damage

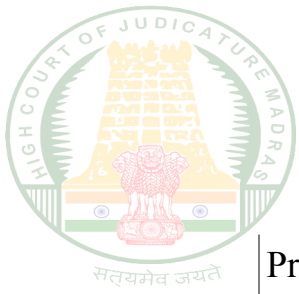
to the bank to the extent of Rs.1,09,86,000/-. Hence, he does not deserve



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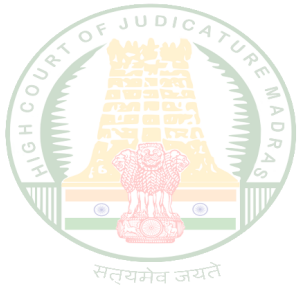
any reduction in the sentence. A5 and A7 have withdrawn the amount by making false representation in the name of “Babu” and “Ahmeed”. Under the said circumstances, they are not entitled for any reduction of sentence imposed by the trial Court.

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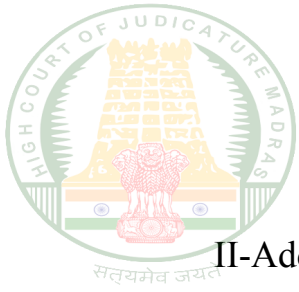
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40. In the result,

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(i) Crl.A.(MD).No.107 of 2017 filed by the accused (*Viswanathan(A6) in C.C.No.4 of 2006*) and CrlA.(MD).No.125 of 2017 filed by the accused (Sheik Amir (A4) in C.C.No.4 of 2006) are allowed and conviction and sentence passed by the Court below in C.C.No.4 of 2006 is set aside and they are acquitted from all charges framed against them. The bail bond executed by the said appellants shall stand terminated and fine amount, if any, paid by the said appellants shall be refunded to them.

(ii) The criminal appeals filed by A1-Radhakrishnan (Crl.A(MD)No.113 of 2017), A2-Rajagopalan(Crl.A(MD)No.99 of 2017), A3-Sulaiman Hussain (Crl.A(MD)No.381 of 2020), A5-Rajkapoor (Crl.A(MD)No.379 of 2017) and A7-Siva (Crl.A(MD)No.127 of 2017) are dismissed. Consequently, conviction and sentence and fine imposed in C.C.No.4 of 2006, by the learned II-Additional District Judge, II Additional District Court for CBI Cases, Madurai dated 17.03.2017 is confirmed as against the accused Nos.A1-Radhakrishnan, A2-Rajagopalan, A5-Rajkapoor, A7-Siva. The conviction and sentence of imprisonment and fine passed in C.C.No.7 of 2006, by the learned



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II-Additional District Judge, II-Additional District Court for CBI Cases,

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Madurai, dated 17.03.2017 against Sulaiman Hussain (A3) is also confirmed. The Trial Court is directed to secure the presence of the accused and confine them in prison to undergo the remaining period of sentence. The bail bond executed by the appellants shall stand terminated.

09.11.2023

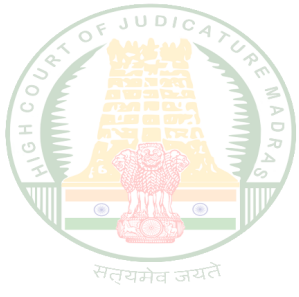
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To

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

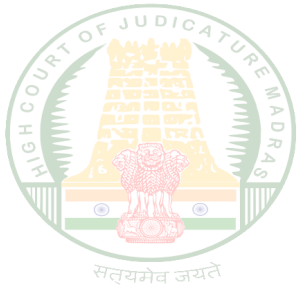
2. The Inspector of Police,
CBI:ACB,
Chennai.

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



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K.K.RAMAKRISHNAN, J.

PJL

Predelivery Judgment made in
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09.11.2023