BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	20.12.2023
Pronounced On	:	19.03.2024

CORAM

THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A.(MD)Nos.2,4 and 58 of 2017

Crl. A(MD). No. 2 of 2017:

S. Sudalaiyandi ... Petitioner

The Inspector of Police,
SBE :CBI: ACB: Chennai,
RC MA1 2003 A0019. ... Respondent

Prayer :Criminal Appeal is filed under section 374(2) of the Criminal Procedure Code, to allow the above Criminal Appeal and consequently set aside the order of conviction and sentence imposed on the Appellant by means of judgment dated 23.12.2016 made in C.C.No.6 of 2005 on the file of the II Additional District Court for CBI Cases, Madurai, forthwith.

Crl. A(MD). No. 4 of 2017:

Rajkafur Alias Nazar Alias Ahammed .. Petitioner

\- Vs. -

The Inspector of Police,
SBE :CBI: ACB: Chennai,
RC MA1 2003 A0019. ... Respondent

Prayer in Crl. A(MD). No. 4 of 2017 :

Criminal Appeal is filed under section 374(2) of the Criminal Procedure Code to allow the above Criminal Appeal and consequently set aside the order of conviction and sentence imposed on the Appellant by means of judgment dated 23.12.2016 made in C.C.No.6 of 2005 on the file of the II Additional District Court for CBI Cases, Madurai, forthwith.

Crl. A(MD). No. 58 of 2017:

Siva @ S.Suresh ... Petitioner

- Vs. -

The Inspector of Police,
SBE :CBI: ACB: Chennai,
RC MA1 2003 A0019. ... Respondent

Prayer in Crl. A(MD). No. 58 of 2017 :

Criminal Appeal is filed under section 374(2) of the Criminal Procedure Code to allow the above Criminal Appeal and consequently set aside the order of conviction and sentence imposed on the Appellant by means of judgment dated 23.12.2016 made in C.C.No.6 of 2005 on the file of the II Additional District Court for CBI Cases, Madurai, forthwith.

For Appellant : Mr.S.Palanivelayutham in Crl.A.(MD).No.2/2017
Mr.C.Ramkumar in Crl.A.(MD).No.4/2017
Mr.R.Anand in Crl.A.(MD).No.58/2017

For Respondent : Mr.M.Karunanithi,
Special Public Prosecutor for CBI Cases
(In all cases)

COMMON JUDGMENT

Since all the appeals originated from the common FIR and common impugned judgment, all appeals are taken together and disposed of by this Common Judgment.

2.These Criminal Appeals have been filed against the conviction and sentence imposed on the appellants by the judgment dated 23.12.2016 in C.C.No.6 of 2005, on the file of the II Additional District Court for CBI Cases Madurai.

*3.*A1 to A9 were arrayed as accused in R.C.No.MA1 2003 A0019 SPE/CBI/ACB/Chennai. P.W3 was the Branch Manager of Vadiveesvaram Branch. A1, namely Rajkafur @ Nazar @ Ahammed, approached P.W3 and asked her to open an account in the said Branch before 21.08.2002. P.W3 directed A1 to furnish proper particulars to open the account, but he failed to produce the documents. Hence, P.W3 refused to open the account. Thereafter, A1, Rajkafur @ Nazar @ Ahammed, opened the current account at Perumalpuram Branch on 21.08.2002. His opening form was perused and accepted by P.W2/the Branch Manager. He opened the account upon the introduction by A9. Thereafter, he applied for transfer of the account from Perumalpuram Branch to Vadiveesvaram Branch. The same was allowed by A8. Thereafter, the account was transferred to Vadiveesvaram Branch by accepting Ex.P3.

4. In the said account, A1 presented the forged cheques of the non existing service Branches of UCO Bank, Indian Bank and Canara Bank. The said forged cheques were accepted and pay-in-slips were accepted along with forged cheques and the same were sent to the corresponding Branches for clearance. A4, Despatch Clerk, without sending the said pay-in-slips to the corresponding services Branch of the cheques, conspired with the deceased accused, A10, Agasthilingam, who is a courier collection agent and received the courier cover without sending the cheques and pay-in-slips to the corresponding banks and handed over the courier covers to A1 to A3 and A5. A5 dishonestly and fraudulently prepared the false payment advises purported to have been issued by the Payee Bank to the State Bank of India, Vadiveeswaram Branch to make them believe that the cheques have been honoured and facilitated the

credit of the said amount in the account of A1.

5. After the credit, on the basis of the false payment advises and subsequent credit of the said amounts in the account of A1, A1 issued cheques to A2 and A3 and A1 himself made number of withdrawal to the tune of Rs.1,98,81,000/-, thereby they caused loss to the Bank to the tune of the said amount and due to the illegal act of A1 to A9, the Bank suffered loss of Rs.1,98,81,000/- and the private individuals and all the accused wrongly gained the amount of Rs.1,98,81,000/-. Hence, initially, the District Crime Branch, Kanniyakumari District, registered the cae in Crime No.1 of 2013 for the offence under Sections 420, 465, 467, 468 and 471 of IPC against the A1, A2 and A3 in the above C.C.No.6 of 2005. P.W. 18, arrested A4 and A10 on 07.01.2003 and on the basis of the confession of A4 more than a sum of Rs.11,50,500/- was recovered from the various witnesses on the disclosure statement of A4 and continued the investigation. Thereafter, CBI took up the investigation by registering the case in the above mentioned R.C.Number and continued the investigation and filed the final report against 10 accused.

6. The Special Court had taken the case on file in CC.No.6 of 2005. Among the 10 accused, A10, Agasthilingam died and hence, the charge against him abated by order dated 26.07.2006. A8, namely, Niazkhan @ Azad absconded and hence, NBW was issued against him. So, the case was split up from CC.No.6 of 2005 into CC.No.8 of 2007 and the accused were re-arrayed as A1 to A9. CC.No.8 of 2007 is pending against A8, Niazkhan @ Azad.

7. The learned trial Judge after appearance of the accused served copies under Section 207 Cr.P.C., After service of the copies under Section 207 Cr.P.C., necessary charges were framed by the learned Special Judge. After framing the necessary charges, the learned Judge questioned the accused and the accused pleaded not guilty and they stood for trial.

8. To prove the case of the prosecution, the prosecution examined P.W1 to P.W68 and marked Ex.P1 to Ex.P316. The learned trial Judge after considering the oral and documentary evidence questioned the accused by disclosing the incriminating material available against them under 313 Cr.P.C. The accused denied them as false and they have not

examined any witness on their side and not marked any documents in support of their case.

9. The learned trial Judge after considering the available evidence acquitted the accused 3 and 5 to 9 and convicted the accused 1, 2 and 4 as follows:

S.No	Accused No	Imprisonment
1	A1	Rigorous imprisonment for 7 years each for the charge u/s. 120B r/w 420 IPC r/w 34 IPC (17 counts) and to pay a fine of Rs. 5000/- each in default to undergo simple imprisonment for 3 months each; 30 months each for the charge u/s.120B r/w 467 r/w 471 and 201 IPC r/w 34 IPC (17 counts) and to pay a fine of Rs.1000/- each in default to undergo simple imprisonment for 1 month each; 7 years each for the charge u/s.120B r/w 468 r/w 471 IPC r/w 34 IPC (17 counts) and to pay a fine of Rs.5000/- each in default to undergo simple imprisonment for 3 months each; 10 years for the charge u/s.120B r/w 467 r/w 471 IPC each (17 counts) and to pay a fine of Rs.10000/- each in default to undergo simple imprisonment for 6 months each; 5 years for the charge u/s.120B r/w 116 r/w 467 r/w 471 IPC and to pay a fine of Rs.2000/- in default to undergo simple imprisonment for 1 month; 7 years for the charge u/s.120B r/w 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and to pay a fine of Rs.5000/- in default to undergo simple imprisonment for 3 months;

2	A2	Rigorous imprisonment for 7 years each for the charge u/s. 120B r/w 420 IPC r/w 34 IPC (17 counts) and to pay a fine of Rs. 5000/- each in default to undergo simple imprisonment for 3 months each; 30 months each for the charge u/s.120B r/w 467 r/w 471 and 201 IPC r/w 34 IPC (17 counts) and to pay a fine of Rs.1000/- each in default to undergo simple imprisonment for 1 month each; 7 years each for the charge u/s.120B r/w 468 r/w 471 IPC r/w 34 IPC (17 counts) and to pay a fine of Rs.5000/- each in default to undergo simple imprisonment for 3 months each; 10 years for the charge u/s.120B r/w 467 r/w 471 IPC each (17 counts) and to pay a fine of Rs.10000/- each in default to undergo simple imprisonment for 6 months each; 5 years for the charge u/s.120B r/w 116 r/w 467 r/w 471 IPC and to pay a fine of Rs.2000/- in default to undergo simple imprisonment for 1 month; 7 years for the charge u/s.120B r/w 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and to pay a fine of Rs.5000/- in default to undergo simple imprisonment for 3 months;
3	A4	Rigorous imprisonment for 7 years each for the charge u/s. 120B r/w 420 IPC r/w 34 IPC (17 counts) and to pay a fine of Rs. 5000/- each in default to undergo simple imprisonment for 3 months each; 30 months each for the charge u/s.120B r/w 467 r/w 471 and 201 IPC r/w 34 IPC (17 counts) and to pay a fine of Rs.1000/- each in default to undergo simple imprisonment for 1 month each; 7 years each for the charge u/s.120B r/w 468 r/w 471 IPC r/w 34 IPC (17 counts) and to pay a fine of Rs.5000/- each in default to undergo simple imprisonment for 3 months each; 10 years for the charge u/s.120B r/w 467 r/w 471 IPC each (17 counts) and to pay a fine of Rs.10000/- each in default to undergo simple imprisonment for 6 months each; 7 years for the charge u/s.120B r/w 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and to pay a fine of Rs.5000/- in default to undergo simple imprisonment for 3 months;

10. Aggrieved by the same, A1, A2 and A4 preferred appeals in Crl.A.(MD) Nos.4, 58 and 2 of 2017 respectively and the CBI preferred the appeal against the acquittal in Crl.A.(MD) No.136 of 2019. The same was dismissed by this Court by order dated 17.08.2022. Now, these appeals are confined relating to the conviction and sentence imposed against A1, A2 and A4.

11. The learned Senior Counsel appearing for A4 submits that the principle offence against A8 ended in acquittal and therefore, the conviction for A4 under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 is not made out against A4/the appellant in Crl.A.(MD) No.2 of 2017, without any independent evidence. The prosecution case is that A4 got the courier Tapal with the forged signature and the pay-in-slips from the deceased courier agent, A10, Agasthilingam and he handed over to A5, Umapathy.

11.1. The said Umapathy forged the payment advises and re-sent to Vadiveesvaram service branch, as if, they were sent from the Drawee

Bank. The said Umapathy was acquitted and hence, the Court below ought to have acquitted A4, when the principle charge against A5 ended in acquittal. A4 was a Lower Grade Officer and he became a scapegoat for the wrong doing committed by somebody. The main men got acquittal and only this Lower Grade Officer is convicted and hence, the conviction and sentence passed against A4 is liable to be set aside. P.W3, P.W5 and P.W68 stated that A4's signature was not found in any of the documents and the handwriting expert's report also stated that A4's signature did not tally. In the said circumstances, the recovery of the amount from the places of friends and relatives of A4, is not a material circumstance to punish A4 for the grave charges, that too with the sentence of the consecutive imprisonment for 17 counts.

11.2. The learned Senior Counsel further submitted that all the alleged forged cheques were passed by one bank Officer. That Officer was not added as accused. Only the appellant/A4 was arrayed as accused. He further elaborated that when the passing Officer after verifying the signature of the service branch Managers ie., drawee bank passed the instruments, then there is no question of forgery of the payment advice.

Therefore, no offence is made out against the appellant/A4.

11.3.Further no evidence was adduced by the prosecution to prove that the deceased, Agasthilingam was the courier agent who was entrusted with the function of the carrying of the couriers from the Vadiveesvaram Branch to various service Branches situated all over India. In the absence of the said particulars, the case against the appellant that he received couriers upon making the payment to A10, Agasthilingam, received the cover from A10, and handed over the same to A5, Umapathy and thereafter, the cover was sent with the forged payment advices is not believable.

11.4. The appellant gave proper explanations that the amount recovered on his disclosure is the amount of repayment made by him to the debt incurred by him. The said explanation was not properly considered by the learned trial Judge. The prosecution has not produced any document to show that the amount paid by the appellant/A4 to number of witnesses is the misappropriated fund from the crime proceeds. Without the said proof that the fund forms part of the misappropriated amount, the learned trial

Judge has no justification to convict the appellant on surmise that the amount was generated from the misappropriated amount. The learned trial Judge failed to consider that Ex.P3 and Ex.P4, the 164 statement of the co-accused, namely, the deceased, A10, are not admissible one and much reliance placed on the same is not legally correct. The said statement is exculpatory in nature and the reliance placed on them is not correct.

11.5. Earlier, the Investigating Officer specifically stated that the investigation revealed about the involvement of the number of witnesses, namely the witnesses, who had passed the cheques after verifying the forged cheques and the forged payment advices/receipts, the subsequent Investigating Officer filed the final report without adding the said persons as accused amounts to unfair investigation. In sum and substance, the CBI failed to array the proper accused and irrelevantly arrayed the improper accused, ie., the witnesses were added as accused and the real accused were added as witnesses and hence, he seeks for acquittal in the judgment.

11.6. The learned Senior Counsel further submitted that A4 was on deputation and his signature was not found in any of the documents.

Similarly, number of persons were on duty during the relevant period of time and hence, no special circumstances are available against A4 to rope him in this case. The signature of A4 was not properly taken and sent to the handwriting expert. In the said circumstances, there is lack of material even to raise a suspicion against A4 for his involvement.

11.7. A1 and A2 stated that when the case of the forged cheques was not proved through the legal evidence, the conviction and sentence passed against them on the ground of presentation of forged cheques is not maintainable. According to the prosecution, they hatched a conspiracy with A3 to A7 and A9, opened the account, presented the forged cheques and presented the forged payment advices and credited the amount, which was later withdrawn. In the said occurrence, number of accused were acquitted, more particularly the prosecution case is that A5 prepared the false payment advice. The said accused was acquitted and who are involved in the series of transactions in the opening of the account and withdrawal of the amount also were acquitted and the same was confirmed by this Court. In the said circumstances, conviction against A1 and A2 in isolation can not be accepted. The prosecution never proved the manner of taking the handwriting sample of the accused. He further submitted that the original charge is under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, against A8 and the corresponding charges are under Section 120(b) IPC r/w 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, against A1 and A2. In the said circumstances, after the acquittal of A8, the conviction and sentence passed against A1 and A2 cannot be sustained.

11.8. Mr.R.Anand, learned counsel appearing for the appellant/A2 in Crl.A.(MD) No.58 of 2017 submitted that the allegation against this appellant is only that he presented the cheque for withdrawal of the amount. There was no averment that either he was involved in the conspiracy of the presentation of the forged cheques or preparation of the forged payment advises. He only presented the cheque issued by A1 and collected the amount. Hence, there was no evidence to rope him as accused under the charged section against him. Therefore, this appellant is noway connected with the case. Further, no material circumstances were established by the prosecution to prove that his signature was found in the alleged forged transaction. Without any circumstances to infer that he had conspired with A1 and A2 and the remaining accused in the preparation of the forged cheques and payment advice, he should not have been convicted under Section 120(b) IPC and other alleged offences. In the said circumstances, the conviction and sentence passed against him is liable to be set aside.

11.9. The learned counsel appearing for A1 reiterated the above submission and argued that the prosecution miserably failed to prove either conspiracy or individual overtact. Further, the learned trial Judge acquitted A3 to A7, A9 from all charges and the same was confirmed by this Court in Crl.A.(MD).No.136 of 2019. Therefore, the conviction against the appellant without any material is not legally maintainable.

12. Mr.M.Karunanithi, learned Special Public Prosecutor submitted that even though number of accused were acquitted, this Court is duty bound to independently assess the evidence and determine the culpability of the appellant before this Court, for which he placed reliance on the judgment of the Hon'ble Supreme Court reported in ***(2020) 1 SCC (Crl) 47***. The lapses on the part of the Investigating Officer in conducting the

investigation and in arraying the accused is not a ground to reject the case of the prosecution.

12.1. It is well settled principle that if the Investigating Officer commits any lapses, the learned trial Judge can deal with the same as per the law laid down by various judgments of the Hon'ble Supreme Court. A4 in this case used the proceeds of the crime amount and he disbursed the same to number of persons by discharging his loan incurred to them. The same was recovered from various persons. The said sudden transfer of amount from the possession of A4 to various persons clearly established the fact that the amount is only the part of the misappropriated amount, more particularly he handed over Rs.5,600/- to A10, Agasthilingam.

12.2. The said payment of amount clearly proved that there was conspiracy in handing over the cover to A10 and sending of the cover with forged payment advice. Ex.P3 and Ex.P4, the 164 statement of A10 clearly established the involvement of A4 in the crime. The said statement is admissible since it is inculpatory in nature. Hence, there is no fault on the learned trial Judge in relying the same. When there was no explanation on the part of A4 relating to the sudden accumulation of the amount of Rs. 7,50,000/- within a short span of time, that too during the crime period, the Court correctly presumed that this amount is the crime proceeds and hence, the learned Judge convicted the appellant. Even though he is a Lower Grade Officer, that is not a criteria to escape from the criminal liability.

12.3. According to the prosecutor, the available evidence are sufficient to record conviction against A4 under the punished Sections. A1 presented the forged cheques knowing that the same are forged one, withdrew the amount either by himself or through issuing cheques to A2. A1 has knowledge about the fact that the amount credited in his account is based on the presentation of forged cheques. In the said circumstances, his involvement and his intention to cheat the Bank from the inception itself is clearly proved.

12.4.The submission of the learned counsel for A2 that A2 presented the cheque and only withdrew the amount and hence, he has no knowledge about the presentation of the forged cheques and preparation of the forged payment advice cannot be accepted, when there was evidence on the side of the prosecution to prove that A1 and A2 had conspired together, opened the account, presented the forged cheques and withdrew the amount.

12.5.The acquittal of the co-accused is not a ground to acquit the other accused. In this case, even though some negative finding was recorded by the learned trial Judge, that is not a bar to re-appreciate evidence and give a finding either affirmatively or differently, for which he placed reliance on the judgment of the Kerala High Court reported in ***1991 Crl.L.J.23,*** wherein it has been stated as under:

> *"8.We cannot accept the argument that the evidence of PW 3 cannot be considered to support the conviction for the reason that he was disbelieved by the Sessions Judge. Acquittal could be supported by an accused even on grounds rejected or not considered by the acquitting court. Likewise, a conviction could be supported by the prosecution on all items of evidence including those considered and rejected as well as grounds not considered the entire evidence is available to the appellate court to consider the guilt or innocence untrammelled by what the trial court said. Appellate court is not bound by the fallacious reasons resorted to by the trial court. When there is a conviction, there is*

no question of the prosecution filing an appeal or cross objection, as in a civil case. The propriety of the rejection of the evidence of PW 3 or any other item of evidence could be challenged by the prosecution in an appeal by the accused against conviction and the appellate court is bound to consider those grounds. In that process, for supporting or vacating the conviction, the appellate court can come to its own conclusion on all items of evidence ignoring the reasons assigned by the trial court, if they are not valid."

12.6.The learned Special Public Prosecutor submitted that specimen signatures were obtained by following the procedure. The allegation that they were not obtained as per the procedure is not correct. A4 has used the whopping amount to the tune of Rs.11,50,000/- during the relevant period of crime and discharged all his debts. According to the prosecutor, A4 gave away the amount to all the persons in order to settle the time barred debt. The same was settled to escape from the criminal liability of A4 and hence, the same is considered as a main link to convict A4.

12.7. He further submitted that the seizure mahazar is admissible under Section 165 Cr.P.C., to prove the culpability of A4. The argument of the learned Senior Counsel is that the prime charge for the offence under Section Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 was framed against A8 and the same ended in acquittal and in the said circumstances, the conviction against A4 is not legally sustainable. The said submission is not correct. There is a separate charge framed ie in charge No.1", there is a specific framing of charge against all the accused under Section 120(b) r/w 420, 201 IPC, 468 r/w 471, 467 r/w 471 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. In the said charge, they correctly convicted A4 on the available material evidence. The said approach of the learned trial Judge can not be found fault with.

12.8. The acquittal of A5 is not a ground to acquit A4. Insofar as the allegation against A5 is concerned, there was no recovery of any misappropriated amount from him. For proving the same, there was no evidence, but the allegation against A4 is that he received an amount of more than Rs.10 lakhs from the misappropriated amount. The same was proved by the prosecution through the examination of number of witnesses. Even though the said amount was meant for discharging the time barred debt, this crime amount was utilized for the discharge of the debt and hence, without any explanation from A4, the trial Court correctly convicted A4 based on the available evidence and hence, he seeks for confirmation of the conviction and sentence passed against A1 and A2 and A4.

13. This Court considered the submissions made by the learned counsel on either side and perused the records and the judgments relied by them.

14. Now, the question is whether the conviction and sentence imposed by the Court below against the appellants is sustainable or not?

15. In this case, A1 opened the account in Perumalpuram Branch. A9 introduced him. A8 transferred the said account to Vadiveesvaram Branch. A1 presented the various out station forged cheques in the said account. The same was credited in the account after the preparation of the forged payment advises. The said credited amount was withdrawn by A1 himself and A1 gave the cheques to A2 and the same was withdrawn by

him. Hence, the Branch suffered a loss of Rs.1,98,81,000/-.

16. According to the prosecution, the following circumstances are the materials against A4. A4 in the crucial period made payment of Rs. 11,50,500/- to various friends and relatives.

Person's name	***Recovery amount***
Arunachalam	Rs.2,95,500
Sudalaiyandi	Rs.4,50,000
Kumaresan	Rs.1,50,000
Dhamotharan	Rs.1,54,600
Manoharan	Rs.15,000
Murugan	Rs.50,000
Vallinayagam @ Ravi	Rs.33,000
Agasthiyalingam	Rs.5,600
Moorthy	Rs.80,000
Murugan	Rs.20,000
S.Suresh	Rs.20,000
Arokiya Jegan	Rs.30,000
Sankar	Rs.25,000
Mathiyas Prasath	Rs.1,50,000
Saravana Raj	Rs.16,000
Appan Pillai	Rs.70,000
Paramasivam	Rs.10,000
Iyyappan	Rs.8,000
Prabhu	Rs.18,000

Pichandi Aachari	Rs.35,000
C.Raja	Rs.6,000
Total	***Rs.16,41,700/-***

17. According to A4, he borrowed the amount before many years from the date of occurrence and he made the repayment of the said debt. The said contention of A4 has no legs to stand. It is the specific case of the Investigating Officer that A4 was arrested and he gave confession and on the basis of the confession, the amount was recovered from various witnesses. All the witnesses stated that he paid the said amount in discharge of the debt, which is time barred one. Whether it is time barred or not is not an issue to decide the culpability of A4. The prosecution strongly relied the said circumstances to reasonably presume, the sudden accumulation of the said huge amount of Rs.11,50,500/- in the hands of A4 at the crime period was a part of the misappropriated amount. There is no contra evidence either adduced by A4 to prove the source of the said amount or he has not explained under Section 313 Cr.P.C., to prove the source of said amount. It is not necessary to prove the defence of the accused by examining himself as a defense witness under Section 314 Cr.P.C., but it is the duty of the accused to give explanation under Section

313 Cr.P.C., regarding the incriminating material available against him and prove the same as per the theory of preponderance of probabilities. In this case neither explanation nor proof of source of money is available on record. The said material is a strong incriminating circumstance to presume the offence against A4, but the same was not either explained or dispelled through the legal evidence. In the said circumstances, the learned trial Judge correctly stated that this amount is part of the crime amount.

18. Further, it is the case of the prosecution that A4 received the couriers with the forged cheques and the pay-in-slips from A10, Agasthilingam. A10, Agasthilingam, is the courier agent. A4 forcibly received the courier cover with the forged payment advises and presented the same before the accountants and the other Managers. On the basis of the payment advises, the amount was credited in the Bank and the same was withdrawn by A1 and A2. In the said circumstances, even though some of the accused were acquitted by the learned trial Judge for the absence of evidence relating to their part in the said conspiracy, the learned trial Judge correctly segregated the evidence and convicted A4 based on the available evidence.

19.The circumstances of sudden accumulation of the amount of Rs. 11,50,500/- in the possession of A4 itself shows that the amount has been transmitted from A1 and A2, after the withdrawal of the amount on the basis of the forged cheques. The acquittal of A8 under Section 13(2) r/w 13(1)(d) of the Prevention of corruption Act, 1988, has no consequence, when specific charge was framed against A4 and other remaining official accused ie., charge number 1. Charge number 1 is as follows:

> *Firstly, That you Accused 1 to 9, Niazkhan @ Azad and one Agasthilingam (reported to be dead) between August 2002 and December 2002 or thereabout at Sivakasi, Nagercoil, Tirunelveli, Bangalore, Mumbai and other places entered into and were parties to a criminal conspiracy, to cheat the State Bank of India, Vadiveeswaram Branch, Nagercoil, by you, A1 managing to get a current account No.P.446 opened in the State Bank of India, Perumalpuram Branch, Tirunelveli on or about 23.08.02 with the assistance of you, A6, A7 and one Niazkhan @ Azad and A9 on making false representations; by you A8 on the request of A1, by abusing his official position as Manager of State Bank of India, Perumalpuram Branch and with corrupt or illegal means, transferring the above account to State Bank of*

India, Vadiveeswaram Branch, where the account No.P83033 was opened on receipt of the transfer papers on 5.9.02, and you A1 forging several cheques drawn in Canara bank, St.Marks Road, Bangalore (No such branch exist), Indian Bank, Fort Mumbai, and UCO Bank, Andheri West and UCO Bank, Santa cruz (Non existent) in his own favour, and depositing them in his account No.P83033 and subsequently changed to A/c.No.01090017358 in State Bank of India, Vadiveeswaram Branch along with Pay-in-slips through you A2, for collection and crediting in A1's above account, by you, A4 handing over cheques and advices to A5 for preparing false payment advices and you A3, A4 and A5 causing them to be sent to State Bank of India, Vadiveeswaram Branch dishonestly and fraudulently causing a total credit of about Rs.1,99,64,208/- in the account of A1, and A1 yourself or through A2 and in a few instances through A3 withdrew about Rs. 1,98,81,000/- from the account, and thereby caused heavy loss to the State Bank of India and pecuniary advantage to A1 and others, and thereby You A1 to A9 committed an offence punishable U/s.120-B IPC r/w 420, and 201 IPC & 468 r/w.471, 467 r/w.471 IPC and Section 13(2) r/w. 13 (1) (d) of the Prevention of Corruption Act, 1988 and within my cognizance.

20. As per the said charge, there is a combined allegation against all the accused. In the combined allegation, the prosecution proved the conspiracy regarding the involvement of A1 and A2 and A4.

21.P.W.13 deposed that A4 was a messenger of the bank. His duty is to despatch the covers of the bank with documents and likewise to receive the incoming communication. A10 Agatheeswaran was a courier agent. A4 received the postal cover with the forged cheques and the pay-in-slips and also he received the cover with payment advices and facilitated A1 to make credit on the basis of the forged payment advices. The said transaction is clear from Ex.P314. The learned Judicial Magistrate P.W.66 deposed about Ex.P.314. From the above events, A4's involvement in the above transaction is clearly and clinchingly proved. It is settled principle that if the involvement of the conspirator in any of the events of the chain is proved they are liable to be convicted. In the case of Arvind Singh Vs. State of Maharashtra reported in 2021 11 SCC 1 the Hon'ble Three Judges Bench considered the entire gamut of conspiracy and has held that " *It is not necessary that all conspirators should participate from the inception* *to the end of the conspiracy. Some may joint that conspiracy after the time when such intention was first entertained by any one of them".*

22. A4 has also not explained the above incriminating materials available against him namely the accumulation of huge amount and Ex.P. 314 and other evidence narrated above during the 313 Cr.P.C., questioning. Further, all the circumstances clearly proved the conspiracy between A1, A2 and A4. Therefore, the learned trial Judge was correct in convicting A1, A2 and A4 for the above stated offences and correctly imposed the sentence of imprisonment.

23. The learned counsel submitted that the Court below acquitted the number of the accused and hence the conviction passed against the appellants on the basis of the same set of evidence is not legally correct. Further, the learned counsel for the appellants submitted that the investigating agency has not arrayed the officer who passed the cheque. Therefore, the investigating agency conducted unfair investigation and hence, the conviction is liable to be set aside. The submission cannot be accepted for the reason that the lapse on the part of the investigating

agency is no ground to disbelieve the evidence available against the remaining accused. In this case, the learned trial Judge convicted the appellants on the basis of the concrete material available against them. Therefore, the lapse on the part of the investigating agency is not a ground to acquit the appellants when there are abundant material to convict them for the charged offences. The same was also emphasized by the Hon'ble Supreme Court. The Hon'ble Supreme Court in (2019) 7 SCC 204 stated that if the Investigating Officer commits any fault and on the basis of the same, if some of the accused got acquittal, the same is not a ground to acquit the remaining accused, when the materials are available to convict the said accused. The relevant portion of the judgment of the Hon'ble Supreme Court in the case of ***Ram Gopal v. CBI***, reported in (***2019) 7 SCC 204 at page 205*** is as follows:

> *5...merely because the investigation may not have been of the standard and nature that it ought to have been cannot enure to the benefit of the appellants in view of the nature of materials and evidence available against them.*

In the case of Hema v. State, reported in 2013 10 SCC 192 the Hon'ble Three Member Bench of the Supreme Court after considering all the earlier judgment has held as follows:

> ***18.*** *It is clear that merely because of some defect in the investigation, lapse on the part of the investigating officer, it cannot be a ground for acquittal. Further, even if there had been negligence on the part of the investigating agency or omissions, etc. it is the obligation on the part of the court to scrutinise the prosecution evidence dehors such lapses to find out whether the said evidence is reliable or not and whether such lapses affect the object of finding out the truth.*

In ***Ram Bihari Yadav v. State of Bihar***, reported in ***(1998) 4 SCC 517*** at page 523

> *13.... In such cases, the story of the prosecution will have to be examined dehors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice.*

In ***State of Karnataka v. K.Yarappa Reddy,*** reported in ***(1999) 8 SCC 715 at page 720***

> ***19....****It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case.*

In ***Kashinath Mondal v. State of W.B.,*** reported in ***(2012) 7 SCC 699 at page 705.***

> ***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.*

Therefore, the lapse on the part of the investigating officer in not arraying some of the witnesses as accused is not a ground to disbelieve the prosecution evidence available on record to sustain the conviction against the appellant.

24. It is also well settled, when the major portion of the evidence is found deficient, if the residue is sufficient to prove the guilt of the accused, conviction can be based on it. The Hon'le Supreme Court in ***Gangadhar Behera v. State of Orissa***, reported in ***2002 8 SCC 381 at page 392*** has held as follows:-

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

*..Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted***...**

The same was affirmed by the latest Hon'ble Three Member Bench of Supreme Court in ***Achhar Singh v. State of H.P.***, ***(2021) 5 SCC 543 at page 555*** which reads as follows:-

26. The learned State counsel has rightly relied on *Gangadhar Behera* [*Gangadhar Behera* v. *State of Orissa*, (2002) 8 SCC 381 : 2003 SCC (Cri) 32] to contend that even in cases where a major portion of the evidence is found deficient, if the residue is sufficient to prove the guilt of the accused, conviction can be based on it. This Court in *Hari*

Chand v. *State of Delhi* [*Hari Chand* v. *State of Delhi*, (1996) 9 SCC 112 : 1996 SCC (Cri) 950] held that : (*Hari Chand case* [*Hari Chand* v. *State of Delhi*, (1996) 9 SCC 112 : 1996 SCC (Cri) 950] , SCC pp. 124-25, para 24)

> "*24*. … So far as this contention is concerned it must be kept in view that *while appreciating the evidence of witnesses in a criminal trial especially in a case of eyewitnesses the maxim falsus in uno, falsus in omnibus cannot apply and the court has to make efforts to sift the grain from the chaff. It is of course true that when a witness is said to have exaggerated in his evidence at the stage of trial and has tried to involve many more accused and if that part of the evidence is not found acceptable the remaining part of evidence has to be scrutinised with care and the court must try to see whether the acceptable part of the evidence gets corroborated from other evidence on record so that the acceptable part can be safely relied upon*."

(emphasis supplied)

In view of the above principles and availability of the enough material to convict the appellants, the contention of the appellants that their conviction is not sustainable on the principle of parity cannot be accepted.

25. A1 opened the account without disclosing the true identity before P.W2. Then he opened an account in Perumalpuram Branch and got it transferred to Vadiveesvaram Branch. After the transfer to Vadiveesvaram Branch, he presented 46 forged cheques for the value of Rs.1,99,64,208/- as if they were issued by the "SMRT traders", "Mohan Export" and the said cheques were drawn at "UCO Bank, Andhari, West Bumbai", "UCO Bank, Santacruz, (East Mumbai)", (Indian Bank, For, Mumbai", Canara Bank, Bangalore". From the four banks, namely, the Canara Bank, Bangalore, UCO Bank at Santacruz the concerned drawee bank managers P.W.41, P.W.46, P.W.52 and P.W.63 were examined. They cogently deposed that the cheques are forged one and the "*Pay-in-slip*" also were not received and the "*Payment advice"* of corresponding forged cheques were not issued by them. They also deposed that code number of the drawees branch are not correctly mentioned in the forged cheques. Apart from that MICR number also was not found in the said forged cheques. The payment slips and the forged cheques were subjected to the opinion of the hand writing expert. A1 and A2's signatures tallied with the questioned documents found in the pay-in-slips and the forged cheques. The hand writing expert also was examined as P.W.64 and his report also

was marked as Ex.P.308. A1 and A2 withdrew the credited amount on the basis of the forged cheques. In the said cheques also A1 and A2's signatures are found. P.W.3, P.W.4 to P.W.10 cogently deposed before the Court about the presentation of the forged cheques and credit made on the basis of the forged payment advices and the withdrawal of the said amount. A2's signatures were found in Ex.P17, Ex.P270 and Ex.P.271. In the remaining questioned documents signature of the A1 is found. Therefore, both presented 46 cheques with knowledge of forgery and intentionally withdrawn the same. The details of forged cheques and and the relevant exhibits are as follows:

<table>
<tr><th rowspan="2">Name</th><th rowspan="2">Cheque collection payment and return advices</th><th colspan="2">Forged Cheque</th><th rowspan="2">Bank Code</th><th rowspan="2">Not received return advices</th></tr>
<tr><th>Ex.P.</th><th>Cheques Nos.</th></tr>
<tr><td rowspan="5">PW.41- Mr.Mahendra, Branch Manager, UCO Bank, Mumbai.</td><td rowspan="5">Ex.P.161, 163, 165, 167, 169, 171, 173, 175, 177, 181, 183, 185, 211, 189, 187, 191, 193, 195, 197, 199, 201, 203, 205, 207, 209, 213, 215, 217</td><td>270</td><td>628366</td><td rowspan="5">Cheques mentioned code:64 (wrong)

UCO Bank code:028 (Correct)</td><td rowspan="5">Ex.P.134, 135, 136, 137, 138, 139</td></tr>
<tr><td>271</td><td>628365</td></tr>
<tr><td>272</td><td>628230</td></tr>
<tr><td>273</td><td>628235</td></tr>
<tr><td>274</td><td>628233</td></tr>
</table>

PW.63- Shri. Pradip Prakash, Divisional General Manager, UCO Bank, Nariman Point, Mumbai.		17	628367		
		270	628366		
		271	628365		
		10	985387		
		The above cheques no MICR code			
P.W.52- Shri. Madavan Pillai, Indian Bank, Branch Manager		10	985387		
		11	985388		
		12	216628		
		13	216638		
		14	216636		
		15	216634		
		16	216632		
		17	628367		
		The above cheques no MICR Code			
P.W.46- Shri. Antony, General Manager, Canara Bank, Bangalore		131	Collection payment/ return advices		
		132			
		133			

The prosecution clearly proved the case beyond reasonable doubt in accordance with law by marking the credit entries and forged cheques, withdrawal slips and return advices by examining the corresponding witnesses. Therefore, this Court finds no perversity in the finding of the learned trial Judge holding that the prosecution proved the offence of forgery.

26. As pre the judgment of the Hon'ble Supreme Court in the case of ***Vijay Kumar Ghai v. State of W.B.***, reported in ***(2022) 7 SCC 124,*** following ingredients to attract the offence under Section 420 of IPC are to be made out:

> ***35.****To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be proved:*
> *(i) The representation made by the person was false.*
> *(ii) The accused had prior knowledge that the representation he made was false.*
> *(iii) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.*
> *(iv) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.*

27.In this case, above ingredients are clearly proved I.e., the presentation of the forged cheques shows his intention to cheat the Bank. On the basis of the presentation of the forged cheques, the amount was credited in his account. Further, he knows that the amount was credited in the Bank on the basis of the forged cheques. A1 and A2 withdrew the amount from the Bank and hence, their intention to cheat the Bank from the inception is clearly proved. A1 and A2 never disputed the above said transaction and also never came up with any explanation regarding the above incriminating material during the questioning under Section 313 of Cr.P.C.

28. In view of the above discussion, the learned trial Judge has correctly convicted the appellants for the above alleged offences.

29.Question of Sentence:

The appellants never made any repayment of the above swindled money and hence, this Court is not inclined to interfere with the sentence imposed by the learned trial Judge vide impugned judgment dated 23.12.2016.

30.Accordingly, these Criminal Appeals are dismissed. The bail bond executed the appellants are hereby cancelled. The learned trial Judge is directed to secure the appellants and confine them in prison to serve their remaining part of sentence of imprisonment imposed by the trial Court.

19.03.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
mm/*sbn*

To
1. The II Additional District Judge for CBI cases,
   Madurai.

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

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

4. The Section Officer,
   Criminal Section (Records),
   Madurai Bench of Madras High Court, Madurai.

K.K.RAMAKRISHNAN, J.

mm/*sbn*

Predelivery Judgment made in
Crl.A.(MD)Nos.2, 4 and 58 of 2017

19.03.2024