IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

CRA (DB)/26/2022

DINESH DUTTA
VS.
STATE OF WEST BENGAL

For the Appellant : Mr. Imtiaz Ahamed, Advocate
Mr Partha Sarathi Maitra, Advocate
Mr. Rohan Dwaipayan Bhowmick, Advocate

For the State : Mr. Madhusudan Sur, APP
Mr. Manoranjan Mahata, Advocate

Heard and Judgment on : April 7, 2025

DEBANGSU BASAK, J.

1. Appeal is directed against the judgment of conviction dated January 3, 2022 and order of sentence dated January 4, 2022 passed by the learned Judge, Kolkata, 4th Special Court in Special Case No. 05 of 2007.

2. By the impugned judgment of conviction, learned Judge found the appellant guilty for commission of offences punishable under Section 420/467/468/471 and 201 of the Indian Penal Code, 1860. By the impugned order of sentence, learned Single Judge convicted the appellant to suffer rigorous imprisonment of 7 years and to pay a fine of Rs.25,000/- in default simple imprisonment of one and half years for the offences punishable under Section 420 of the Indian Penal Code, 1860, to suffer rigorous imprisonment for ten years and to pay a fine of Rs.25,000/- in default to suffer simple imprisonment for two and half years for commission of offences punishable under Section 467 thereof, to suffer rigorous imprisonment for seven years and to pay a fine of Rs.25,000/- in default to suffer simple imprisonment for one and half years for the offences punishable under Section 468 of the Indian Penal Code, 1860 and to suffer rigorous imprisonment of two years and to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for six months for the commission of offences punishable under Section 471 of the Indian Penal Code, 1860 and to suffer rigorous imprisonment for three years and to pay a fine of Rs.5,000/- in default simple imprisonment for 6 months for commission of offences under Section 201 of the Indian Penal Code. All sentences were directed to run concurrently. The period of detention was directed to be set off from his entire period of substantive punishment as per the provisions under Section 428 of the Criminal Procedure Code.

3. Learned advocate appearing for the appellant submits that the appellant was a peon working at a Bank. The nature of the complaint as against the appellant suggests involvement of various persons. He submits that, the appellant did not investigate the crime adequately and properly. Consequently, prosecution placed insufficient materials before the Court to arrive at a finding of guilt as against the appellant.

4. Without prejudice to his earlier part of the contention, learned advocate appearing for the appellant submits that, the amount involved is Rs.12 lakhs, and that, a sum in excess of Rs.9 lakhs was recovered. He submits that, appellant is ready and willing to pay the balance sum of Rs.3 lakhs. In such circumstances, he submits that, the impugned judgment and conviction and order of sentence should be set aside.

5. Learned advocate appearing for the State submits that, the prosecution was able to prove all the charges beyond reasonable doubt. He prays for confirmation of the impugned judgment of conviction and the order of sentence.

6. Police registered a First Information Report as against the appellant on receipt of a written complaint dated October 27, 1999. On conclusion of the investigations, police submitted a charge sheet in respect of such First Information Report.

7. Court framed charges as against the appellant on May 14, 2002. Subsequently the charges were modified on September 8, 2011. The charges as against the appellant were under Sections 420/467/468/471/201 of the Indian Penal Code, 1860.

8. Prosecution examined seventeen prosecution witnesses at the trial to bring home the charges as against the appellant. Various documents were marked as Exhibits.

9. The Senior Manager of the concerned Branch of the Bank deposed as P.W.1. He deposed that, on October 27, 1999 he was posted at the Lyons Range Branch of Punjab National Bank as a Senior Manager. He identified the written complaint lodged on October 27, 1999 which was marked as Exhibit-1. He stated that, the appellant on October 23, 1999, which was a Saturday, presented a cheque amounting to Rs.12,21,000/- at Lyons Range branch for depositing such amount in the joint account bearing No.17331. The other joint account holder was one Ganesh Das who was a fictitious person. Another peon took all the cheques save and except the cheque in question which was brought by the appellant at the regional clearing centre. At the request of the appellant the cheque was cleared. The cheque in question was high value cheque because it was more than Rs.1 lakh.

10. P.W.1 stated that, on October 25, 1999 in the morning session appellant collected a statement from the regional collection centre showing that there were altogether two entries, one for the first lot of clearance and the second lot in respect of cheque in question. Thereafter, on October 25, 1999 the appellant presented the cheque amounting to Rs.12,00,000/- for encashment and the same was duly encashed. On October 27, 1999 Day Book Section found the cheque in question of encashment to be missing. Bank made a hectic search and could not find the same. It was thereafter detected from the Clearing Long Book that, the deposit of the cheque in question was penned through. Branch officials went to the regional clearing centre and it was detected that, the first lot cheque for clearance was cleared and the second lot cheque was not at all deposited.

11. P.W.1 stated that, he came to the conclusion that the appellant committed fraud on the bank. It was then detected that, the other joint account holder, namely, Ganesh Das was a fictitious person. All sorts of documents of the appellant at the branch was taken into the safe custody. He reported the incident to the authority concerned.

High officials along with law officers came to the branch and with the help of the law officers he prepared the written statement and lodged the same with the police.

12. P.W.1 tendered the seizure list which was marked as Exhibit-2. He also identified the seized documents which were marked as Exhibits. P.W.1 identified the appellant in Court. Cross-examination of P.W.1 did not yield anything favourable to the appellant.

13. P.W. 2 is the first Investigating Officer who deposed as to the manner of investigations done. He was cross-examined on behalf of the appellant without anything of value being added to the case of the appellant.

14. P.W.3 is one Ganesh Das who claimed that, he did not know how to read and write. He stated that, he did not deposit any cheque nor did he withdraw any amount from the bank. He also claimed that, he did not have any account with the bank. He was cross-examined without anything fruitful being added to the defence of the appellant.

15. A retired person of the bank deposed as P.W.4. He identified the reply addressed to the Assistant Commissioner of the Police dated August 4, 2000 in connection with the police complaint. He also identified the pay order issued from Syndicate Bank, Jadavpur branch dated October 10, 1996 encashed through the Lyons Range Branch of Punjab National Bank. Pay Order was marked as Exhibit-21. He was also cross-examined without any material being added to the defence of the appellant.

16. The then Clerk-cum-Cashier of the Lyons Range Branch of Punjab National Bank deposed as P.W.5. He stated that, there was an entry on October 23, 1999 amounting to Rs.12,21,000/-. He identified those entries. He claimed that, those entries were made in discharge of his official duty. He was also cross-examined.

17. P.W.6 is a retired employee of Punjab National Bank. He was posted as Special Assistant on March 23, 1999 at such Branch. He identified the appellant. He stated that, on October 23, 1999, he received some cheques from different branches along with the pay-in-slips. He explained how the cheques are sent to the clearing house and on receipt of communication, the amount is found to be correct. He pointed out that, the cheque of the appellant amounting to Rs.12,21,000/- was debited in tailor card. Subsequently on enquiry, it came to be noticed that, the disputed cheque of Syndicate Bank amounting to Rs.12,21,000/- was not debited. He stated that, the appellant destroyed the document like Pay-in-Slip of the disputed cheque.

18. P.W.7 is another retired employee of Punjab National Bank, Lyons Range Branch. He stated that, on November 2, 1999, he was posted as Stenographer. He identified his signature in the seizure list. He was also present at the time of recovery of the money from the appellant.

19. P.W.8 is the another seizure list witness who identified his signature on the seizure list.

20. P.W.9 is a person who used to take loan from the appellant. He stated that, the appellant was into money lending business.

21. Another person who took loan from the appellant deposed as P.W.10.

22. Younger brother of the appellant deposed as P.W.11. He was interrogated with regard to the signature appearing in the documents.

23. A Clerk-cum-Cashier then posted with the Lyons Range Branch of Punjab National Bank deposed as P.W.12. He stated how the appellant made over a cheque to him for payment of Rs.12,00,000/- and he claimed that, he made that payment following the banking norms.

24. Computer Operator of Lyons Range Branch of Punjab National Bank deposed as P.W.13. He was present when the police went to the residence of the appellant and recovered cash from the appellant. He is a seizure list witness.

25. P.W.14 is a vegetable vendor at CIT Market. He claimed that, appellant took a loan of Rs.40,000/- from him and that, the appellant paid such loan within a month.

26. Another Clerk-cum-Cashier deposed as P.W.15. He, however, did not add any value to the case of the prosecution. He was declared hostile by the prosecution.

27. The police person who received the written complaint from P.W.1 deposed as P.W.16. He narrated how the police complaint was registered as a First Information Report and how the investigation thereof was made over to the first Investigating Officer. P.W.16 who was cross-examined at length. Nothing fruitful transpires out of such cross-examination in the case of the appellant.

28. The Assistant Government Examiner of questioned document at that material point of time deposed as P.W.17. He stated that, he examined all the questioned documents which were sent to him. In his deposition, he stated that after examination, his opinion was communicated by a writing dated October 31, 2000. He also claimed that, the documents were independently examined by another expert who was the then Government Examiner of questioned document. Both came to the same conclusion. He tendered such report containing their opinions which were marked as Exhibit-33.

29. On conclusion of the examination of the prosecution witnesses, the appellant was examined under Section 313 of the Code of Criminal Procedure. During such examination, he claimed himself to be innocent, denied the allegations as against him and stated that, he did not want to adduce any evidence.

30. Charge as against the appellant revolves around a cheque presented for payment and money being encashed. Police case relates to encashment of a cheque through forgery and destruction of evidence. In ensuring the encashment of a cheque receiving the proceeds thereof, and destroying the evidence with regard thereto, assistance of a fictitious account was taken.

31. Documents relating to the fictitious account opening form as well as such of the documents which were available with the bank relating to the encashment of cheque and the drawal of the proceeds thereof, were sent for examination at the questioned document bureau which submitted a report being Exhibit-33.

32. The person, one of the authors of such opinion being Exhibit-33 was examined as a prosecution witnesses being P.W.17. Exhibit-33 conclusively establishes that, appellant was the person involved in the forgery. P.W.17 was cross-examined at great length. During such cross-examination, nothing favourable to the defence was brought out. P.W.17 considered signatures not only of the appellant but also, of other persons namely, Ganesh Das and Ranjit Datta to arrive at the opinion of forgery.

33. A cheque was presented by the appellant. A portion of the documents relating to the presentation of such cheque and encashment thereof were found missing from the bank. Appellant as a Peon was dealing with the documents relating to the presentation of the cheque and its encashment. Persons, who encashed the cheque identified the appellant as a person involved. P.W.1, the then Senior Manager of Branch identified the appellant in court at the trial.

34. A substantial portion of the proceeds of the crime was recovered from the possession of the appellant with no explanation forthcoming from the appellant. Appellant as a peon was not in ordinary course of business be found to be in possession of such amount of cash given his known source of income. At the relevant point of time he also repaid loans taken from P.W.14.

35. Charges proved are not compoundable. Therefore, the request of the appellant to allow him to pay the balance amount and charges be dropped cannot be accepted.

36. Charges, as against the appellant being established beyond reasonable doubts.

37. We find no ground to interfere with the impugned judgment of conviction and the order of sentence.

38. **CRA (DB) 26 of 2022** is **dismissed** without any order as to costs.

39. In such circumstances, we cancel the bail granted by the co-ordinate Bench by order dated April 28, 2022 in favour of the appellant. Appellant will surrender within 2 weeks from date before the jurisdictional Court. In default, appropriate steps be taken by the jurisdictional Court.

(Debangsu Basak, J.)

40. I agree.

(Md. Shabbar Rashidi, J.)

Dd/AD/CHC