

CRL.A(MD).No.284 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	:	25.07.2024
Pronounced on	:	04.03.2025 & 03.04.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A.(MD).No.284 of 2020

and

CrI.M.P(MD).No. 7255 of 2024

The State through
The Inspector of Police,
CBI:SCB, Chennai,
RC.No.5,6,& 8/S/94/CBI/SCB/CHENNAI

... Respondent

Vs.

Shri Abdul Aziz

... Respondent

PRAYER: This Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records relating to the Judgment dated 29.01.2019 in C.C.No. 09 of 2010 on the file of the II Additional District Court for CBI Cases, Madurai and set aside the order of acquittal passed against the accused respondent Abdul Aziz and reverse the judgment and convict the respondent for the offences punishable under Sections 120-B r/w 419, 467, 468, 471 and 420 of IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and under Section 120-B r/w 467, 468, 471 and 420 of IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 r/w Section 511 of IPC.



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For respondent : Mr.N.Mohideen Basha,
Special Public Prosecutor for CBI

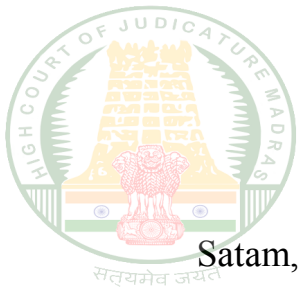
For Respondent : Mr.T.Lajapathi Roy, Senior Counsel
for Mr.I.Robert Chandra Kumar

JUDGMENT

The CBI has filed this appeal, challenging the acquittal judgment passed in favour of the respondent herein who had been arrayed as accused No.5 in the parent case namely C.C.No.5 of 1998 on the file of the II Additional District Court for CBI Cases, Madurai. Since he had been absconding during the pendency of the trial in the parent case C.C.No.5 of 1998 the case was split up and new C.C.No.9 of 2010 was assigned and trial was conducted after securing him and the learned trial judge acquitted him from all the charges framed against him by the impugned judgment dated 29.01.2019. Aggrieved over the same, the CBI has filed this appeal.

2.Prosecution Case:

CBI registered three cases in R.C.No.5,6 & 8/S/94/CBI/SCB/MAS, and conducted investigation and filed the final report against the respondent, Girish Kumar Shiv shankar Jani (died), Armaram Gopal



Satam, N.R.Raveendran,, M.Balasubramanian, Nana Mahadev Jadav,

Prakash Ramachandra Payer, Salim Siraj Gillani, V.Ramaswamy,

A.R.Muthukrishnan and Asmat Kamal Choudhry @ Hashmat Khan for the

offences punishable under Sections 120-B r/w 419, 420, 467, 468, 471, 381

r/w 511 of IPC and r/w Section 13(2) r/w 13(1)(d) of the Prevention of

Corruption Act, 1988. In the said final report, the accused

G.Thangaswamy, A.Sathyaseelan, Atma Ram Gopal Satam, Prahalad Shiv

Kumar Tiwari were treated as approvers and their tender of pardon was

accepted as per law. The sons of the approver A.Sathyaseelan were cited as

witness in the final report as L.W.45, L.W.46, L.W.47 and L.W.48. The son

of approver G.Thangaswamy was listed as witness in the final report as

L.W.51. During the investigation, the respondent absconded and hence,

proclamation was issued and final report was filed by showing the

respondent as absconding accused. The said final report was taken on file

in C.C.No.5 of 1998 on the file of the learned II Additional District Judge

for CBI Cases, Madurai and the array of the accused is as follows:

A1.Raveendran,

A2.Balasubramanian,

A3. Nana Mahadev Jadav

A4. Prakash Ramachandra Payer

A5.Abdul Aziz



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A6.Salim Siraj Gilani

A7.Ramasamy

A8.Muthukrishnan,

A9. Asmat Kamal Choudhry @ Hashmat Khan

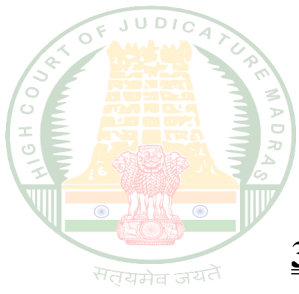
2.2.The respondent absconded and he was declared as proclaimed offender and hence, the case was split up in C.C.No.2 of 1999. Thereafter, trial was commenced against the remaining accused and the evidence was recorded. After recording of evidence, Salim Siraj Gilani absconded and hence, the case was split up in C.C.No.12 of 2002 against the said Salim Siraj Gilani. During the further course of trial, A9/Asmat Kamal Choudhry @ Hashmat Khan also was absconded and hence, he also was declared as proclaimed offender. The trial was continued in C.C.No.5 of 1998 against the remaining accused, namely, A1, A2, A3, A4, A7 and A8 and all were convicted by judgment dated 27.12.2002. They also filed appeal before this Court in Crl.A.Nos.34 of 2003, 315 of 2003, 384 of 2003 and the same also was dismissed. That being the situation, the respondent was arrested and confined in prison and trial was conducted in split up C.C.No.9 of 2010.



2.3.The respondent, other accused were also found to be indulged in similar fraud and hence, two other final reports were filed against the respondent and other accused and the particulars of the two other cases are as follows:

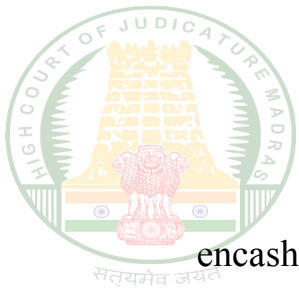
<i>Crime No.</i>	<i>Mother C.C.No</i>	<i>Number of the accused</i>	<i>Split up C.C.No.</i>
RCNo. 7/S/94/CBI/SCB/MAS	6 of 1998	A1.Raveendran, A2.Balasubramanian, A3. Nana Mahadev Jadav A4.Abdul Aziz A5.Salim Siraj Gilani A6.Muthukrishnan,	10 of 2010
RCNo. 4/S/94/CBI/SCB/MAS	4 of 1998	A1.Raveendran, A2.Balasubramanian, A3. Nana Mahadev Jadav A4.Abdul Aziz A5.Salim Siraj Gilani A6.Muthukrishnan,	8 of 2010

2.4.The learned trial Judge recorded same evidence in all the above C.C.No.8 of 2010, C.C.No.9 of 2010 and C.C.No.10 of 2010 by conducting simultaneous trial. In all three cases, the learned trial Judge has passed the judgment on 29.01.2019. The learned trial Judge has convicted the respondent in C.C.No.10 of 2010 and C.C.No.8 of 2010 and acquitted the respondent in C.C.No.9 of 2010. Hence, the CBI preferred this appeal against acquittal judgment passed in C.C.No.9 of 2010.

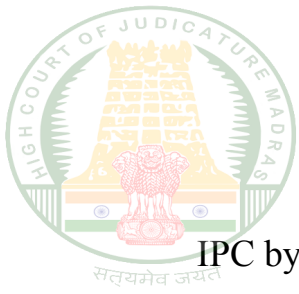
**3.Sum and substance of the allegation is as follows:**

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During the year 1992 - 1993, the respondent, Girish Kumar Shiv shankar Jani (died), Armaram Gopal Satam, N.R.Raveendran,, M.Balasubramanian, Nana Mahadev Jadav, Prakash Ramachandra Payer, Salim Siraj Gillani, V.Ramaswamy, A.R.Muthukrishnan and Asmat Kamal Choudhry @ Hashmat Khan entered into a criminal conspiracy to cheat the “Bank of India DN Road Branch, Bombay” and “Bank of Maharastra, Ghatkoper East Branch, Bombay” and in furtherance of the said conspiracy, Nana Mahadev Jadav who was working as sub-staff in *Bank of India DN Road Branch, Bombay* has committed theft of one blank DD book containing serial No.8901 to 9000. Similarly, Prakash Ramachandra Payer who was working as sub-staff in *Bank of Maharastra, Ghatkoper East Branch, Bombay* has committed theft of one blank DD book containing serial No.536901 to 537000. Both Nana Mahadev Jadav and Prakash Ramachandra Payer entrusted the said DD books to the respondent and Salim Siraj Gillani through Atma Ram Gopal Satam Grishkumar Shivsankar Jani, Prahalad Shiv Kumar Tiwari and Asmath Kamal Choudhary. Accused Muthukrishnan along with his relative of approver G.Thangaswamy met the respondent and Salim Siraj Gillani in Mumbai and discussed about the opening of the fictitious account in Madurai and



encashment of demand draft. Thereafter, the accused Muthukrishnan and G.Thangaswamy met the another approver Sathyaseelan in Madurai at his house and had a discussion with N.R.Raveendran and Balasubramanian about the opening of the fictitious account. Thereafter, the forged demand draft was passed on to N.R.Raveendran through Muthukrishnan and presented in various fictitious accounts opened in the name of various fictitious names by N.R.Raveendran and with the active connivance of Balasubramanian, A.R.Muthukrishana, V.Ramasamy and amount was credited in the account of N.R.Raveendran on the basis of the forged Demand Draft and the same was withdrawn by N.R.Raveendran and the amount was appropriated by the respondent, Salim Siraj Gillani and the other accused. Total amount of Rs.19,75,000 + 9,90,000 was withdrawn on the basis of the forged DDs in various fictitious account and finally when they attempted to encash certain of Rs.49,03,000 amount on the basis of the forged DDs, the bank officials found out the fraudulent attempt to encash the amount while presenting the DD for collection. Therefore, the CBI also filed the final report under Sections 120-B r/w 419, 467, 468, 471, 420 of IPC, Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 Sections 120-B r/w 467, 468, 471, 420 of IPC, Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 r/w Section 511 of



IPC by showing the respondent as the absconding accused.

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3.1.The respondent and other accused also did similar fraud and hence, two more final reports were filed against the respondent and the other accused and the particulars of the two other cases are as follows:

Crime No.	Mother C.C.No	Split up C.C.No.	Name of the Bank	Name of the fictitious account	Defrauded amount	Verdict of trial Court
RCNo. 4/S/94/C BI/SCB/MAS	04/1998	08/2010	Canara Bank, Gnanaolipuram, Madurai	Deepa Traders	Two DDS Bank of India, Mumbai, 008908-28.04.1993- 9,70,000/- 008909-27.04.1993- 9,30,000/- 18,98,000/-	Convicted
R.C.No.6 & 8 /S/94/C BI/SCB/MAS	05/1998	09/2010	Canara Bank Ramnad Road Branch, Madurai	Murugan Textiles S-1044	Three DS Bank of India, Mumbai 008927-23.04.1993- 9,90,000/- 008928-23.04.1993 9,75,000/- 19,75,000/-	Acquitted
				Ravi Textiles	Bank of India, Mumbai 008926-17.03.1993 9,90,000/-	Acquitted
				Ravi Textiles	Bank of Maharashtra, Ghatkoper, Mumbai Branch 536901-07.05.1993 49,03,000/- was not encashed attempt was aborted.	Acquitted
R.C.No. 7/S/94/C BI/SCB/MAS	06/1998	10/2010	No.362-All Bless Associates	Allahabad Bank	Allahabad Branch 10 Dds of Bank of India 05.05.1993-06.05.1993 attempt aborted	Convicted

In all the above CCs, after arrest of the respondent on the basis of the non-bailable warrant, the Learned Trial Judge served upon the respondent



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copies under section 207 of Cr.P.C. and framed the charges and questioned the respondent and he denied and pleaded not guilty and stood for trial.

4.1. To prove the charges, prosecution examined P.W.1 to P.W.20 and marked Ex.P1 to Ex.P89. One of the approver Sathyaseelan died and other approver could not be traced and in view of the direction given by the High Court, trial was proceeded by examining the above twenty witnesses. The learned trial Judge considered the evidence on record and acquitted the respondent in C.C.No.9 of 2010 and convicted the respondent in C.C.No.8 of 2010 and C.C.No.10 of 2010. All the Judgements were delivered on the same day ie., 29.01.2019. CBI filed the appeal against acquittal in C.C.No. 9 of 2010 in Crl.A.(MD).No.284 of 2020. The respondent filed the appeal, challenging the conviction and sentence imposed in C.C.No.10 of 2010 in Crl.A.(MD).No.95 of 2019. Similarly, the respondent also filed appeal challenging the conviction and sentence imposed in C.C.No.8 of 2010 in Crl.A.(MD).No.96 of 2019. Even though, all the appeals have not emanated from common FIR, the *modus operandi* according to the prosecution is the same and the same evidence was adduced in all three cases. Therefore, the learned Senior counsel appearing for the respondent would submit that the finding of the learned trial Judge in C.C.No.9 of



2010 that the prosecution has not proved beyond reasonable doubt that the respondent handed over the forged DD as per the allegation in the final report, is also equally applicable to the remaining C.C.No.8 of 2010 and C.C.No.10 of 2010. Per contra, the learned Special Public Prosecutor for CBI would submit the same argument the other way around way ie., the learned trial Judge has convicted the Respondent in C.C.No.8 of 2010 and C.C.No.10 of 2010 on the basis of the same evidence and erroneously acquitted the respondent in C.C.No.9 of 2010. In the above back ground, this Court inclines to decide this appeal on merits on the basis of the evidence adduced in this case.

5. Thiru. N.Mohideen Basha, special public prosecutor for CBI, has made the following submission:

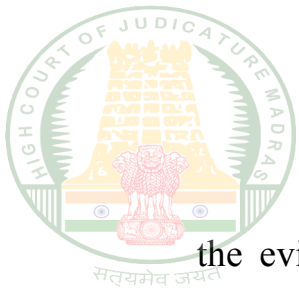
5.1. The Learned Trial Judge has committed grave error in acquitting the respondent for the charged offence when **evidence** was replete. The prosecution produced relevant evidence to prove that blank demand drafts **were stolen** from bank of India, Mumbai, **and** the said blank demand draft **were forged in** fictitious name and the forged demand drafts were used as genuine and deposited in the Canara Bank, Ramnad road Branch, Madurai for encashment and same was encashed and withdrawn in the fictitious



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account and thereby they cheated the bank. Moreover, the respondent was absconding pending trial in the parent C.C.No. 5 of 1998 and in the said parent C.C.No. 5 of 1998, the learned trial judge convicted the remaining accused under section under section 120 (b) r/w. 467, 468, 381 and 471 of I.P.C. and the same materials were produced before the learned trial judge, in this case but the learned trial judge erroneously acquitted the respondent from the said charges. It is settled principle that in the case of the conspiracy, it is not legal requirement to place material to prove the active participation in the process till the completion of the entire act of conspiracy.

5.2. The Learned Trial judge also committed error in not convicting the Respondent for all the charged offences when the prosecution proved the case beyond reasonable doubt. In this case, the learned trial judge has not deliberated any of the evidence and extracted the deposition of the witnesses and without any deliberation acquitted the Respondent by giving reason in only one paragraph, namely, Paragraph No.40 of the impugned judgment. The learned trial Judge erroneously held that P.W.1 to P.W.3, P.W.5, P.W.6, P.W.11, P.W.18 and Ex.P12 had not disclosed the participation of the respondent in the crime. Without properly appreciating



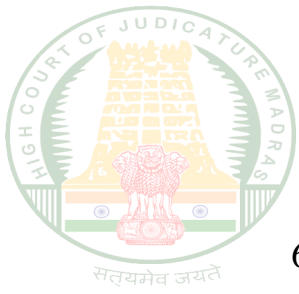
the evidence the learned trial Judge gave a single line finding that the prosecution has not produced any evidence to show that the respondent handed over the forged DDs as alleged in the final report. Therefore, there is apparent perversity in the finding of the learned trial Judge and hence, the learned Special Public Prosecutor seeks to set aside the impugned judgment.

5.3.It is true that, in the present Split up case trial, the approver Sathiyaseelan and Thangasamy were not examined. The said Sathiyaseelan died. The residence of the Thangasamy could not be traced. But, their evidence is available on record in the parent case in C.C.No.5 of 1998. The entire record of C.C.No.5 of 1998 forms part of the present Split up case in C.C.No.9 of 2010. Therefore, the CBI filed the approver evidence as a additional document before this Court and the same strengthened the evidence adduced by the CBI in this case, namely, P.W.1 to P.W.4. P.W.1 to P.W.4, clearly revealed the involvement of the Respondent in the entire fraud. He also submitted that in the connected split up C.C.Nos., the learned trial Judge has convicted the Respondent on the basis of the similar evidence. In all C.Cs, “the role of the Respondent is similar, namely, he only obtained the demand draft book from the convicted accused, namely,



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Nana Mahadev Jadav and handed over the custody of the forged DD with the convicted accused/Muthukrishnan(A6). He also received the defrauded amount from the convicted accused/Raveendran(A1)”. The witnesses, namely, the son of the deceased approver, has clearly disclosed the said fact. The respondent and the other absconding accused Salim Siraj Gilani(A5) are main men and they are the kingpins for the entire occurrence and they all are liable to be punished suitably. Committing theft of the blank demand draft in the bank premises, forging the signature of the manager in the said blank demand draft in the name of the fictitious persons and presenting the same as genuine in the fictitious account and encashing the same and appropriating the said amount all are serious crimes and they deserve to be convicted. Therefore, the only view from the evidence of the prosecution is that the respondent has committed the charged offences. But, the learned trial Judge has erroneously acquitted the respondent. Therefore, the learned Special Public Prosecutor seeks to convict the respondent.

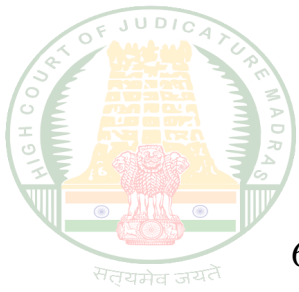


6. Thiru.T.Lajapathi Roy, the Learned senior counsel for the

respondent made the following submission :-

6.1. The Learned trial judge only after considering the entire prosecution evidence has held that there was no material available against the respondent to convict him under section 120 (b) r/w. 419, 467, 468, 471 r/w. 511 of I.P.C. and hence there was no need to interfere with.

6.2. The submission of the learned Special Public Prosecutor to mark the evidence of the approver recorded during the trial of the mother C.C.No.5 of 1998 in the absence of the respondent is liable to be rejected. The said procedural lapse during the trial committed by the prosecution can not be rectified in this appeal which would cause serious prejudice to him and also amounts to miscarriage of justice. Even otherwise, the approver evidence without any material corroboration to prove the company of the respondent along with the remaining convicted accused and the absconded accused is not sufficient to pass the conviction against him and hence the learned trial judge rightly acquitted the respondent from the charged offences.



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6.3. Finding of the learned trial Judge that there was no evidence to prove that the respondent has handed over the forged DDs, are appreciation of fact and the same is not liable to be set aside in this appeal against acquittal.

6.4. Merely on the basis of the evidence of the approver that there was some strange company of some of the accused, conviction should not be passed against him for the charged offence. The Learned senior counsel seeks to confirm the acquittal passed against the respondent under the above sections.

7. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record and also the precedents relied upon them.

8. Now, the only question to be decided in this appeal is whether the impugned judgment of acquitting the respondent/absconding accused/A5 in split up C.C.No.9 of 2010 is correct after convicting the remaining accused in Mother case is C.C.No.6 of 1998?



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9. In this case, the Respondent was shown as absconding accused in the final report and the CBI was unable to secure him before the trial. Therefore, he was treated as absconding accused and declared as proclaimed offender. Thereafter, the trial was split against him from the mother C.C.No.6 of 1998 in C.C.No.3 of 1999. In the mother C.C.No.6 of 1998 two approvers had been examined by the prosecution to prove the case. Due to the abscondance of the said Respondent, the said trial was conducted in his absence. After arrest of the Respondent, the trial was conducted against the Respondent in the above split up C.C.No. 8 of 2010. During the interregnum period, one of the approver namely Sathiyseelan died and other approver could not be located. But their evidence in the mother C.C.No.6 of 1998 are available. During the course of the trial of the split C.C.No.8 of 2010, the prosecution has examined only sons of the said one of the approver, namely, Sathiyaseelan to prove the active participation of the Respondent herein in the entire episode and other witnesses also examined to prove the complicity of the Respondent in the crime.

9.1.Thiru.T.Lajapathi Roy, the Learned senior counsel would make preliminary submission whether the conviction can be passed against the



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Respondent without examination of two approvers who had been examined during the trial of the remaining accused in mother C.C.No.6 of 1998. Hence this court asked the learned special public prosecutor appearing for CBI Thiru.N.Mohideen Basha to address the said issue. The learned special public prosecutor would submit that this is the continuation of the proceedings of mother C.C.No.6 of 1998. Respondent is proclaimed offender and therefore evidence was recorded in his absence as per the procedure stated in Sections 317 of Cr.P.C. and 299 of Cr.P.C. There was no bar to record the evidence in the absence of proclaimed offender. Apart from the above fact, in this case one of the approver, namely, Sathiyaseelan died and another approver was not traceable. In view of the direction of the Higher Court to complete the trial, the prosecution examined the remaining witnesses whose evidence are sufficient to convict the Respondent. Therefore according to the public prosecutor, there was no bar to rely the evidence of the approver recorded in the mother C.C.No.6 of 1998 in the absence of the Respondent. Thiru.T.Lajapathi Roy, the Learned senior counsel by way of the reply submitted that the prosecution has not secured the Respondent during the course of the investigation and the prosecution's application under section 174 (A) of IPC to frame the additional charges against the Respondent for his abscondance had been dismissed by the



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learned trial judge in Crl.M.P.No.1113 of 2017 and therefore the recording of the evidence of the approver in his absence cannot be used against him in the split up trial, that too without marking the said evidence of the approver. At this stage, the CBI filed the application in Crl.M.P.No.7255 of 2024 in this appeal before this court under section 391 of Cr.P.C. to receive the deposition of the approver namely Sathiyaseelan and Thangasamy which had been recorded in the mother C.C.No.6 of 1998 for proper adjudication of the confirmation of the conviction and sentence imposed against the Respondent in the split up C.C.No.3 of 1999. The Respondent filed the counter with prayer to reject this application on the ground that when the petition prosecution filed to frame the additional charges under section 174 (A) of I.P.C. as against the Respondent was dismissed, he cannot be declared as a proclaimed offender and hence the recording evidence in his absence and use of the said evidence is not permissible and therefore he seeks to dismiss the application and he relied the judgment of the Hon'ble Supreme Court in the case of ***Ajith Singh Chehuji Rathod Vs State of Gujarat***, the case of ***Rajeshwar Prasad Mishra Vs State of West Bengal***, the case of ***AT Mydeen Vs Assistant Commissioner of Customs (Criminal appeal No. 1306 of 2021)*** and also in ***Nrimal Singh Vs State of Harayana reported in 2000 (4) SCC 41, 2024 INSC 384***,



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10. This court considered the rival submission made by the both parties in respect of the said CrI.M.P.No.7255 of 2024 filed under section 391 of Cr.P.C. to receive the deposition of the approver namely Sathiyaseelan and Thangasamy who had been examined in the mother C.C.No.5 of 1998 on the account of the absence of the Respondent by splitting the said mother C.C.No.5 of 1998 against the Respondent.

11. To address the said issue, This Court considered Sections 273 of Cr.P.C., 299 of Cr.P.C., 317 of Cr.P.C., and Section 33 of the Indian Evidence Act, and the principle laid down by the Hon'ble Supreme Court in the case of Nirmal Singh vs. State of Haryana reported in 2000 (4) SCC 41, 2024 INSC 384, and the Rule 16 to 20 Criminal Rules of Practice 1958.

11.1. To further discussion, it is relevant to extract the provision of Sections 273, 299 and 317 of Cr.P.C., and Rules 16 to 20 of the Criminal Rules of Practice, 1958.

11.2.The Criminal Rules of practice and Circular Orders, 1958 provides for dealing with cases where the accused persons have absconded. It will be relevant to extract Rules 16 to 20 hereunder :



16. Case in which accused has absconded - When process has been issued for the attendance of the accused, but the case has remained pending for a long time owing to his non-appearance, and the Magistrate is satisfied that the presence of the accused cannot be secured within a reasonable time, or when an accused person found to be of unsound mind is released under Section 466(1) or detained in safe custody under Section 465 (2) of the Code, the Magistrate shall report the case for the orders of the District Magistrate, through the Sub-Divisional Magistrate, if any, and the District Magistrate may, if he thinks fit, order that the case shall be removed from the register of cases received and omitted from the quarterly returns. The case shall, however, then be entered in a separate register of long pending cases which shall be maintained by all Magistrates in Administrative Form No.26:

Provided that if the charge is withdrawn, or if the accused is reported dead, whether that be before or after the entry in the register of long pending cases, the case should be closed :

Provided further that if the District Magistrate is of opinion that the case against the absent accused is wholly false, he may direct that the case be omitted from the registers and the returns altogether, and he may, at any subsequent time, order the case to be entered in the register of long pending cases.



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17. Cases in which some of the accused have absconded:

When there are several accused persons in a case, and only some of them have appeared or been produced before the Court, if the Magistrate is satisfied that the presence of other accused cannot be secured within a reasonable time, having due regard to the right of such of the accused as have appeared to have the case against them enquired into without delay, he shall proceed with the case as against such of the accused as have appeared and dispose of it according to law. As regards the accused who have not appeared, he shall give the case a new number and enter it in the register of cases received, and if it remains pending for a long time and efforts to secure the presence of the accused have failed and the case against the accused who have appeared has been disposed of, the Magistrate shall report the whole matter as regards all the accused to the District Magistrate through the Sub - Divisional case against the absent accused be removed from the "Register of long pending cases", or if the District Magistrate is of opinion that the case against the absent accused is wholly false, he may direct that the case be omitted from the register and the returns altogether, provided that he may, at any subsequent time order the case to be entered in the register of long pending cases.

18. Procedure to be observed before transfer of a case to the register of long pending cases: Before directing the



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transfer of a case other than a case dealt with under Section 466 (1) or (2) of the Code to the "Register of long pending cases", the District Magistrate shall satisfy himself that all reasonable steps have been taken to follow the procedure prescribed in Sections 87 and 88, and also, when practicable, that provisions of Section 512 of the Code have been complied with.

19. Procedure on appearance or production of accused: If subsequently the absent accused or any of them are produced or appear before the Magistrate, or the accused who was insane ceases to be insane, the case against them shall be registered under a new number.

20. Cases where an accused has absconded after appearance - Rule Nos.16 to 19 shall apply, as far as may be, to cases where an accused person has appeared, but had subsequently absconded.



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299. Record of evidence in absence of accused.	Section 317 Cr.P.C. Provision for inquiries and trial being held in the absence of accused in certain cases.
(1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try [or commit for trial such person for the offence complained of, may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable. (2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witness who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limit of India.	(1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused. (2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.



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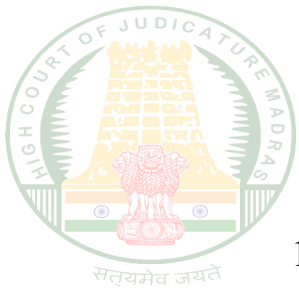
11.3. Considering the above provision of Cr.P.C., Rules of Practice, and the principles laid down by the Hon'ble Supreme Court, it is clear that there is no bar.

12. There is no bar to rely the evidence of any witnesses recorded in the absence of the absconded accused in the subsequent trial against the absconding accused either under 299 of Cr.P.C. or any other provision of Cr.P.C. provided the court must be satisfied with the following conditions:

12.1. If it is proved that an accused person has absconded, and there is no immediate prospect of arresting him.

12.2. If any of the above condition is satisfied, the prosecution has no bar to record the evidence in his absence.

12.3. Before the subsequent trial against the absconded accused if any of the witness died or incapable of giving evidence or cannot be found or his presence cannot be procured without any amount of delay, his evidence recorded in the course of the mother trial shall be used against him.



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13. In this case a valid proclamation was made against the Respondent as proclaimed offender and he has not challenged the said proclamation. The CBI was unable to trace him during the trial and hence the mother case in C.C.No.5 of 1998 was split into C.C.No.9 of 2010 against the Respondent and evidence was recorded and his case was treated as “LPC” case (Long pending cases as per the above rules) and case was split against remaining accused in mother case in C.C.No.5 of 1998 and the same ended in conviction. During the course of the said trial approvers were examined. As against one of the absconding accused also a separate trial was conducted and during the said course of trial also approvers were examined. Only during the present trial, one of the approvers died and the other approver was unable to be secured by the prosecution. The occurrence took place in the year 1993 and the approver was examined by CBI in the year 1994 and they were very much available till 2010 and only during examination of witness in the year 2017 in this split up case against the respondent, they were not available. In the said circumstances, the application filed under section 391 of Cr.P.C. to mark the deposition of the approver recorded in the mother case in C.C.No. 5 of 1998 is very much essential and necessary to decide the role of the Respondent. Section 391 is enabling section in order to secure the ends of



justice and to avoid the miscarriage of justice. The CBI has not newly introduced the said witness in the course of the appeal. The deposition of the approver PW1 and PW2 were recorded during the course of the trial of the mother case in C.C.No.5 of 1998. It was recorded in some other proceedings. The present C.C.No.9 of 2010 is continuation of the proceedings of mother case in C.C.No.5 of 1998. Further under section 299 of Cr.P.C. it is clearly stated that recording of the evidence in the absence of the accused in special circumstances are permitted. Therefore, the present case comes under such special circumstances.

13.1. In the case of ***State of Gujarat v. Mohanlal Jitamalji Porwal***, reported in ***(1987) 2 SCC 364 at page 370***

5.... To deny the opportunity to remove the formal defect was to abort a case against an alleged economic offender. Ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not a persona-non-grata whose cause may be treated with disdain. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not



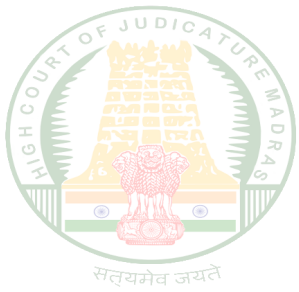
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brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest. The High Court was therefore altogether unjustified in rejecting the application made by the learned Assistant Public Prosecutor invoking the powers of the Court under Section 391 of the Code of Criminal Procedure. We are of the opinion that the application should have been granted in the facts and circumstances of the case with the end in view to do full and true justice....

13.2. In the case of **CBI v. Abu Salem Ansari** reported in (2011) 4

SCC 426

5. As regards the first respondent, sub-section (1) of Section 299 would apply as he, an accused person, was absconding, his case is already split up and has to undergo the trial. Obviously, the evidence adduced in the earlier trial cannot be used against the first respondent except as provided in sub-



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section (1) of Section 299 CrPC. In the circumstances if the absconding accused appears again, the prosecution witnesses have to be examined afresh. But, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience, the prosecution would be justified in relying on the evidence already on record taken in the earlier trial in the absence of the absconding accused.

13.3. In the case of ***Sukhpal Singh Vs NCT of Delhi*** reported in ***2024 SCC OnLine SC 800*** the Hon'ble Supreme Court has held as follows:

“31. Sub-section (1) of Section 299 CrPC is in two parts, the first part provides for proof of jurisdictional fact in respect of abscondence of an accused person and the second that there was no immediate prospect of arresting him. In the event, an order under the said provision is passed, deposition of any witness taken in the absence of an accused may be used against him if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without any amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.”

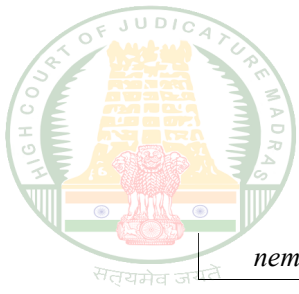
“39. Viewed in light of the provisions of Section 299 CrPC read with Section 33 of the Indian Evidence Act, 1872 as interpreted by this Court in the case



of Nirmal Singh (supra) and Jayendra Vishnu Thakur (supra), the trial Court was justified in holding that the statement of Ashok Kumar Pathak recorded in these proceedings was fit to be read as a piece of substantive evidence. We concur with the findings recorded by the trial Court and affirmed by the High Court on this vital aspect of the matter.”

13.4. Further, it is the duty of the accused to be present during the trial. In spite of his knowledge about the trial, he did not appear and voluntarily waived his right of presence during the trial, hence he cannot be allowed to turn around and say that the different procedure followed by the Court has affected his fair trial. The Hon'ble Supreme Court also reiterated the principle that no one can be allowed to take advantage of this own wrong. Further, the Hon'ble Supreme Court in the case of ***State of M.P. v. Narmada Bachao Andolan***, reported in ***(2011) 7 SCC 639*** has dwelt upon the principle by taking note of following latin maxim to meet out an impossible situation:

Legal maxim	Meaning
<i>lex non cogit ad impossibilia</i>	the law does not compel a man to do what he cannot possibly perform
<i>impossibilium nulla obligatio est</i>	the law does not expect a party to do the impossible
<i>impotentia excusat legem</i>	There is a necessary or invincible disability to perform the mandatory part of the law or to forbear the prohibitory



nemo tenetur ad impossibilia

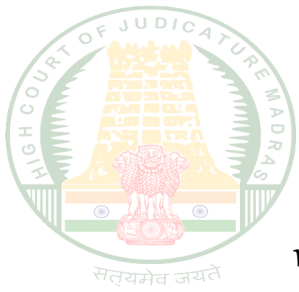
no one is bound to do an impossibility

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13.5. In view of the death of one of the approvers and non-availability of other approver, this Court inclines to apply the principle that the law does not compel a man to do what he cannot possibly perform and law does not expect a party to do the impossible and no one is bound to do impossibility and allowed the application filed by the prosecution to rely the evidence of the approver recorded, an account of the his intentional abcondence.

13.6. In the case of the absconding accused, the said procedure is followed all over the world. The Hon'ble House of Lords in 2002 (2) ALL ER 113 R vs. Jones, held as follows:

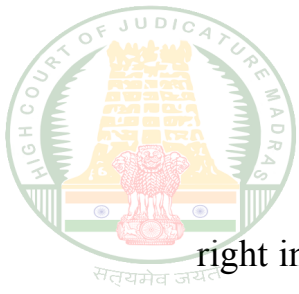
“Where a criminal defendant of full age and sound mind, with full knowledge of a forthcoming trial, voluntarily absented himself, there was no reason in principle why his decision to violate his obligation to appear and not to exercise his right to appear should have the automatic effect of suspending the criminal proceedings against him until such time. If ever, as he chose to surrender himself or was apprehended. If he voluntarily chose not to exercise his right to appear, he could not impugn the fairness of the trial on the ground that it had followed a course different from that



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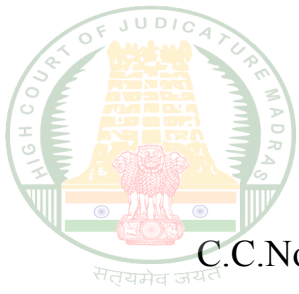
which it would have followed had he been present and represented. Moreover, there was nothing in the jurisprudence of the European Court of Human Rights to suggest that a trial of a criminal defendant held in his absence was inconsistent with the Euroean Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (as set out in Sch 1 to the Human Rights Act 1998). Accordingly, the Crown Court did have a discretion to conduct a trial in the absence, from its commencement, of the defendant. That discretion should, however be exercised with the utmost care and caution. If the absence of a defendant were attributable to involuntary illness or incapacity, it would very rarely, if ever, be right to exercise the discretion in favour of commencing the trial, at any rate unless the defendant was represented and had asked that the trial should begin. The seriousness of the offence was not a matter which was relevant to the exercise of the discretion. The judge's overriding concern was to ensure that the trial, if conducted in the absence of the defendant, would be as fair as circumstances permitted, and lead to a just outcome.”

13.7. The right of an accused to watch the prosecution witnessess deposing before a court of law indisputably is a valuable right. However, same is only a statutory right and has not yet been accepted as fundamental



right in a case where accused had absconded within the meaning of Article

21 of Constitution of India. As a sequel, right to confront a witness by an absconding accused is not a fundamental right. Even otherwise, fundamental rights are not absolute being subject to reasonable restrictions. The right of confronting by an accused is subject to just exceptions. In the event of abscondance for long years with intention to cause natural death to the witnesses is an exceptional circumstance to decline the right of confronting by accused. The prosecution has no other option except to mark the said deposition on the ground that one of the approvers died and another approver was not able to be located in spite of the best efforts taken by the CBI. From the perusal of the records, the steps taken by the CBI to produce the said approver and their failure to secure the said witness is not *malafide*. In the earlier two proceedings, i.e., during the course of the mother case of the trial in C.C.No.5 of 1998 and during the course of the case against another absconding accused, the CBI in all fairness have examined the said approver. Since they were not available, they were unable to examine them in this case. To meet the said situation, the various provision of the Cr.P.C namely, sections 299, 317 and 391 are available. The CBI correctly relied the said provisions and filed the application. The deposition of the Sathiyaseelan in the mother case in



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C.C.No.5 of 1998 is admissible in evidence and even in the precedents relied by the learned counsel for the Respondent, the Hon'ble Supreme Court has held that in the special circumstances the evidence of the witness can be marked as a document after their death in the subsequent trial. Therefore, this court inclines to accept the application filed by the CBI under section 391 of Cr.P.C. to receive the evidence of the approver recorded in the mother case in C.C.No.5 of 1998 by rejecting the contention of the Respondent that the said application can not be accepted in view of the dismissal of the application of the CBI to frame the additional charge against the Respondent under section 174 (A) of I.P.C.

13.8. Accordingly, the application filed by the CBI in Crl.M.P.No. 7255 of 2024, is allowed.

14. The respondent and other persons hatched conspiracy among themselves to defraud the bank and executed the said conspiracy through different acts with intention to get the defrauded amount. The respondent, A6 Salim Siraj Gilani had residence in Mumbai during the relevant period of the occurrence. A3 Nana Mahadev Jadav, A4 Prakash Ramachandra Payer, Grish Kumar Shivasankar Jani (expired), Atmaram Gopal Satam



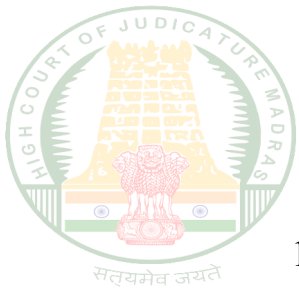
(W3), Thangasamy (PW1) – approver were also residents of Mumbai during the relevant period of time. Among them A3 was sub staff of the Bank of India, DN Road Branch, Mumbai. A4 was the sub staff of the bank of Maharashtra, Ghatkopar East Branch, Mumbai. PW2 another son of approver Sathiya Seelan, A1 Raveendran, Balasubramaniam A2, A7 Ramasamy, A8 Muthukrishnan are all residents of Tamil Nadu. They all joined together and conspired to defraud the bank. Due to the relationship and acquaintance between them, there was a planned and calculated action to defraud of bank amount of Rs.29,55,000/- (Nineteen Lakhs and Seventy Five Thousands Only) and also there was an attempt to defraud the bank amount of Rs.49,03,000/-

14.1.A6 (Salim Siraj Gillani) and A5 (Abduls Aziz) are the kingpins of the said act of bank fraud. A4 and A5 met the remaining above stated persons including the approvers and the other witnesses examined on the side of the prosecution and explained their intention of the transformation of the black money of the some non resident Indians through the transfer of the demand draft in the bank of the Tamilnadu. Both A6 and A5 instructed deceased Girish Kumar Shivasankar Janai, A3 Nana Mahadev Jadev, A4 Prakash Ramachandra Payer to commit theft of demand draft book bearing



serial Nos.008901 to 009000 from the bank of India DN Road Branch, Mumbai. Demand draft book bearing serial Nos.536901 to 537000 from “the Bank of Maharashtra, Ghatkopar East Branch, Mumbai”. Thereafter, they had stolen the DD book and handed over to the respondent. The respondent received the same and forged the said DD by forging the signature of the manager of the bank officers of Mumbai and entrusted with A1 to present before, the Canara Bank, Ramand Road Branch, Madurai in the fictitious account S-1044 in the name of Murugan Textile. So far as this case is concerned, A1 presented two DDs of Bank of India, Maharashtra in the fictitious account of Murugan Textile opened by A1 in the Canara Bank Ramnad Road Branch Madurai and another DD of Bank of India Maharashtra in the fictitious account of Ravi Textiles opened by A1 in the Canara Bank Ramnad Road Branch Madurai and the particulars are as follows:

<i>D.D.Number</i>	<i>Name of the account</i>	<i>Date of the DD</i>	<i>Amount</i>	<i>Date of presentation</i>
009827	Murugan Textiles	23.04.1993	Rs. 9,90,000/-	26.04.1993
008928	Murugan Textiles	22.04.1993	Rs. 9,75000/-	26.04.1993
008926	Ravi Textiles	17.03.1993	Rs. 9,90,000/-	03.05.1993



14.2. On the basis of the presentation of the forged cheque, with active aid of the manager (A7) and sub staff namely A2, the said amount was credited in the said fictitious account and the same was withdrawn by the A1 by way of bearer cheque issued in the name of fictitious persons, namely, A.Ganesan and N.Venkatachalapathy.

14.3. The said defrauded amount of Rs.29,55,000/- was appropriated by all accused and the same was deposed by the approvers in the mother C.C.No.5 of 1998 PW1 (Thangasamy), PW2 (Sathiyaseelan). Further, in this case, P.W.20, P.W.1 to P.W.3 clearly deposed the same.

14.4. After the said fraudulent appropriation of amount of Rs. 29,55,000/-, the following DDs of Bank of Maharashtra were forged and presented in the A/c of M/s.Ravi Textiles in Canara Bank, Ramnad Road Branch, Madurai:

<i>D.D.Number</i>	<i>Date of the DD</i>	<i>Amount</i>	<i>Date of presentation</i>
536901	07.05.1993	Rs. 9,80,000/-	08.05.1993
536902	07.05.1993	Rs. 9,84,000/-	08.05.1993
536903	08.05.1993	Rs. 9,72,000/-	08.05.1993
536904	08.05.1993	Rs. 9,91,000/-	08.05.1993
536905	08.05.1993	Rs. 9,76,000/-	08.05.1993
	Total	Rs.49,03,000/-	



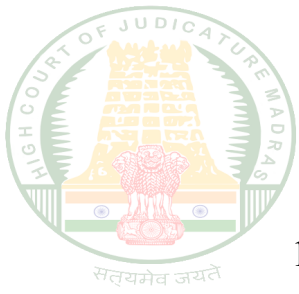
The said DDs were endorsed to M/s.Ravi Textiles and deposited in the A/c of M/s.Ravi Textiles in Canara Bank, Madurai. They were found to be bogus DDs. P.W.1, P.W.2 and P.W.3 gave evidence before the Court that they saw Abdul Aziz in their house. P.W.2 and P.W.3 deposed as follows:

P.W.2:

மும்பையிலிருந்து Abdul Aziz மூலமாக DD-கள் வந்தது. அந்த DD-களை முத்துக்கிருஷ்ணனும், தங்கசாமியும் என் தந்தையிடம் கொடுத்தார்கள். அந்த DD-களை ரவீந்திரனும் பாலசுப்பிரமணியனும் வாங்கிச் சென்று வங்கியில் Encash செய்தார்கள். அந்த பணத்தை எங்கள் வீட்டிற்குக் கொண்டு வருவார்கள் அந்த பணத்தை வாங்கிச் செல்வதற்கு எதிரி Abdul Aziz எங்கள் வீட்டிற்கு வந்திருந்தார்.

P.W.3:

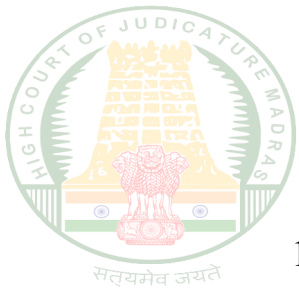
எனது தம்பி ஜெயச்சந்திரன் மும்பை செல்வதற்கு Aziz க்கும் மற்றும் இரண்டு நபர்களுக்கும் காமராஜர் சாலையில் உள்ள Travelok என்ற ஏஜென்சியில் விமானச் சீட்டுக்கள் வாங்கி வந்தார். ஆந்த விமானசீட்டுக்களை கேன்சல் செய்து வருமாறு என் தந்தை என்னிடம் கூறினார். ஆதன்படி விமானச்சீட்டுக்களை கேன்சல் செய்து பணத்தை என் தந்தையிடம் கொடுத்தேன் DD க்கள் போலியானது என்றும், பேங்கில் பிரச்சினையாக இருக்கிறது என்று பாலசுப்பிரமணியன் என் தந்தையிடம் கூறினார்.



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15.The said evidence was never challenged in the cross examination of the respondent. Unchallenged evidence is admissible and relevant to decide the culpability of the accused. If any portion of the evidence is not challenged during the cross examination, it can be a base for the conviction as held by the Hon'ble Three Judges Bench of the Supreme Court in the judgment reported in 2021 (11) SCC 1. The above witness was examined during the investigation and their 164 Cr.P.C., statement also was obtained and they also deposed cogently about the involvement of the respondent. It is also settled principle that prosecution need not examine all witnesses to prove a particular fact. Quality of witness is material and not the quantity of witnesses. The above two witnesses, namely, sons of the deceased approver clearly deposed about the involvement of the respondent in the calculated conspired act of defrauding the Bank.

16.Apart from that, now, the CBI marked the deposition of the deceased approver which had been recorded in the Mother C.C. and the approver's evidence clearly established the role of the respondent in entire conspiracy.



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17. The Bank of Maharashtra grew suspicion over the said five DDs and subsequently the same was found that the said five DD were forged. Therefore, the said attempt to encash the amount on the basis of the forged DD was aborted.

18. The officials of bank of the Ramand branch of Canara Bank, Madurai had not received any payment advise from Bank of Maharashtra, Madurai Branch and the Madurai Branch, Bank of Maharashtra suspected the genuineness of the said DDs and contacted the Bank of Maharashtra, Mumbai Branch. The Mumbai Branch officials verified the same and found that the said blank DD books were missing and the DD was forged. Therefore, A1's attempt to encash the amount through the forged DDs through his account with assistance of A2 and A7 was aborted. The above events were cogently deposed by P.W.20, P.W.1, P.W.2, P.W.3. Apart from that, approver who had been examined in another case also cogently deposed the same. Their evidence also corroborated with scientific evidence and other materials established by the prosecution.

19.1. All the accused had conspired and stealthily removed the blank DD book from the bank of India, Mumbai branch and forged the DD with



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amount in the fictitious name and presented the same in the fictitious account opened by A1 in the “*Canara Bank Madurai branch, Ramand Road*” and credited the same and withdrawn and thereby defrauded an amount of Rs.29,55,000/-.

19.2. They had stealthily removed the blank DD book from the bank of Maharashtra, Mumbai branch and forged the DD with amount in the fictitious name and presented the same in the fictitious account opened by A1 in the “*Canara Bank Madurai branch, Ramand Road*” and attempted to encash the same and thereby attempted to defraud the amount of 49,03,000/- and the said attempt was aborted.

20. To prove the charge of defrauding of amount of Rs.29,55,000/- by using the forged DD of bank of India, Mumbai Branch through the presentation of the same in the Canara Bank, Ramnad Road Branch, Madurai, the prosecution mainly relied the following evidence and the documents:

20.1. Approver evidence of PW1 and PW2 in the mother C.C.No.5 of 1998 marked as additional document in this appeal.

20.2. The evidence of P.W.1 to P.W.3 and Evidence of PW20



WEB COPY 21. From the approver's evidence, it is clear that the respondent and one of the absconding accused Salim Siraj Gilani are close friends and they had residence in Mumbai at the relevant point of time of the occurrence. PW1 also resided in Mumbai at the relevant point of time and he had acquaintance with the said respondent and Salim Siraj Gilani. At that time, the respondent had informed about his plan to convert the black money of the non residential Indians (NRI) into white money through the fictitious demand draft transaction in the accounts of some account holders of Tamil Nadu, for which proper commission amount would be given. Salim Siraj Gilani informed that the respondent had acquaintance with the number of the bank officials in the Tamil Nadu and he would facilitate the said demand draft transaction. On the said assurance, PW1 contacted his relative Muthukrishnan who had residence at Thoothukudi and the PW1 also informed about the 10% commission. The said Muthukrishnan came to Mumbai and met the respondent and Salim Siraj Gilani in the presence of the PW1. Thereafter Muthukrishnan contacted A1 Raveendran and informed about the above transaction. A1 Raveendran opened the account in the Canara Bank, Ramnad Road Branch, Madurai with the help of the A2 Balasubramanian who was none other than the clerk of the Canara



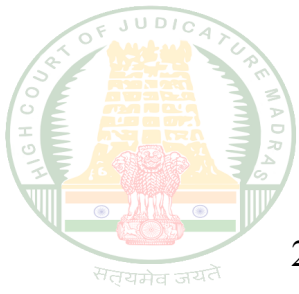
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Bank and PW2 Sathiyaseelan. PW1, PW2 and A4 went to the residence of A2 and they got introduction. On 05.02.1993 at Mumbai, Mathina lodge the respondent asked to get the DD payable at Madurai in the Bank of India TN Road Branch, Mumbai and they obtained DD for the value of Rs. 1000/- the said DD was handed over to the respondent and Salim Siraj Gilani in the Mathina lodge. In the said DD they forged the name of the drawer and the same was marked Ex.P1 to Ex.P4 on the basis of the said DD, the respondent had been practicing to forge the signature of the manager of the bank of India, Mumbai Branch and the same was questioned by PW1 and the respondent warned PW1 and directed him not to interfere. Thereafter he left the lodge and Salim Siraj Gilani and the respondent called and handed over the forged DDs. Thereafter the said DD was handed over to A1 and A2 Balasubramanian. Thereafter, the forged DD was encashed and after taking the 10% amount the said amount was handed over to the respondent in the house of PW1. The respondent verified the said amount and handed over Rs.30,000/- to PW1 to meet out the flight charges. Thereafter, they asked to encash the similar DDs. At the time there was a bomb blast in Mumbai and hence to avoid the check in the airport PW1, Muthukrishnan, Balasubramanian, Raveendran and the respondent jointly went to the Mumbai with money. The PW1 was asked to



hand over Rs.1,00,000/- to the respondent. He also received Rs.13,000/-

from A2. Subsequently, they also met at Thiruvananthapuram Airport and further DDs were handed over and the said amount also was encashed and entrusted with the respondent in the presence of the Sathiya Seelan Son Jayakar (PW20) and he handed over the same to the respondent and the respondent further handed over three DDs by dropping them in the Madurai Periyar Bus Stand and the said amount was also encashed and after taking the commission and the said amount was entrusted with the respondent at Coimbatore lodge. Thereafter, he handed over the DD of Maharastra Bank and the said DD was presented in the bank and the same was found forged. The same was informed to the respondent in the said process of the transaction and he received Rs.6,00,000/- as commission. Thereafter CBI arrested and he gave the confession statement under 164 of Cr.P.C. and thereafter his tender of pardon was accepted. The said evidence of PW1 was cogent and without any infirmity. He was subjected to cross examination and through the cross examination nothing was elicited to disbelieve his version. His evidence corroborated with the evidence of another approver PW2 Sathiya Seelan in all aspects.



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21.1.The prosecution further strengthened the case on the basis of the evidence of the approver by way of marking as additional document in this appeal. The approver Sathyaseelan, G.Thangaswamy clearly deposed about the meeting of the respondent with remaining accused, handing over the forged DDs to A1 through A8, encashment of the DD amount in the fictitious account and appropriation of the said amount. Their evidence was accepted by the trial Court in mother C.C., and confirmed by this Court in Crl.A.No.34 of 2003. That apart, the learned trial Judge acted on the basis of the evidence of P.W.1 to P.W.3 in the other connected Ccs relating to the same *modus operandi* and convicted the respondent. Therefore, this Court holds that the learned trial judge has committed error in acquitting the respondent in this case.

21.2.A2/M.Balasubramanian was a public servant working in the Ramanad Road Branch, Canara Bank and A7/Ramasamy was Manager of the Canara Bank, Ramnad Road Branch and with their active connivance, the forged DD was presented and amount was credited in the fictitious account of A1. Therefore, The prosecution clearly proved the forgery of the DDs and presentation of the forged DD in the fictitious account and withdrawal of amount in the name of fictitious person . Therefore, this



Court finds perversity in one paragraph discussion of the learned trial Judge in acquitting the accused.

21.3. The prosecution clearly proved the case against the respondent for the charged offence under section u/s 120-B r/w 419, 467, 468, 471 and 420 of IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and u/s 120-B r/w 467, 468, 471 and 420 of IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 r/w Section 511 of IPC From the above discussions, this court holds that the prosecution proved the case not only beyond reasonable doubt and the only possible view is that the respondent has committed the charged offences. The following one paragraph finding of the learned trial Judge itself shows the perversity in the impugned judgment:

40. Furthermore, the following DDs of Bank of Maharashtra were forged and presented in the A/c of M/s. Ravi Textiles at Canara Bank, Madurai. The details of DDs as follows:-

Date	No.	Amount	in favour of
07.05.1993	536901	Rs.9,80,000/-	Sree Kali Textiles.
07.05.1993	536902	Rs.9,84,000/-	Rajan Cloth Depot.
08.05.1993	536903	Rs.9,72,000/-	Shaan Textiles.
08.05.1993	536904	Rs.9,91,000/-	Kalyani Textiles.
08.05.1993	536905	Rs.9,76,000/-	Sree Radha Textiles



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which are endorsed to M/s. Ravi Textiles and deposited in the A/c of M/s. Ravi Textiles at Canara Bank, Madurai. They found in process that they were bogus DDs. Even though the evidence of P.W.1 to P.W.3, P.W.5, P.W.6, P.W.11, P.W.18 and Ex.P.12 are not disclosed that the link of the accused with other accused to commit the crime because P.W.1, P.W.2, P.W.3 and P.W.3 made evidence before the court that they saw Abdul Aziz at their house. Since the P.W.1 who was received the Abdul Aziz from Madurai Airport to his house. The Ex.P.12 is revealed that the DDs were brought by Muthukrishnan, Thangasamy and handed over to Ravindran (A- 1) and Balasubramanian (A-2) but who was passed the DDs in this case to Thangasamy and Muthukrishnan is absent from the evidence of Prosecution. Since, the conspiracy means it is the secret arrangement among the accused to commit the crime. Most probably direct evidence may be absent. But here, the case on hand, direct evidence from P.W.1 to P.W.3 to see the accused in their home. The Ex.P. 12 also corroborated the same. The moot question is whether the Abdul Aziz was handed over the DDs as per the allegation in the Final report is not proved by the prosecution.

41. Therefore, the court is come to conclusion that



the prosecution is not proved the case against the accused beyond all reasonable doubts. Hence, the accused is entitled to acquittal. Hence the accused is found not guilty punishable u/s 120-B r/w 419, 467, 468, 471 and 420 of IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and u/s 120-B r/w 467, 468, 471 and 420 of IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 r/w Section 511 of IPC thereby the accused are acquitted u/s 235 (1) Cr.P.C. The bail bonds executed by him will be cancelled and the sureties will be discharged after expiry of appeal time.

21.4.The moot question is whether the handing over of DDs by Abdul Aziz handed over the DDs as per the allegation in the Final report is not proved by the prosecution. The said finding of the learned trial Judge is not correct. P.W.4 deposed as follows:

மும்பையிலிருந்து Abdul Aziz மூலமாக னுனுக்கள் வந்தது அந்த DD-களை முத்துக்கிருணனும்இ தங்கசாமியும் என் தந்தையிடம் கொடுத்தார்கள். அந்த DD-களை ரவிந்திரனும் பாலசுப்பிரமணியனும் வாங்கிச் சென்று வங்கியில் Encash செய்தார்கள். அந்த பணத்தை எங்கள் வீட்டிற்குக் கொண்டு வருவார்கள் அந்த பணத்தை வாங்கிச் செல்வதற்கு எதிரி Abdul Aziz எங்கள் வீட்டிற்கு வந்திருந்தார்.



The said evidence of P.W.4 is not challenged. The unchallenged evidence remains admissible. The Hon'ble Three Judges Bench of the Hon'ble Supreme Court reported in **2021 (11) SCC 1** has held that if any portion of the deposition of the prosecution witness is not challenged by way of cross examination in the manner known to law, the said portion of the evidence could be treated as admission and the same can be used to arrive a conclusion .

21.5. Apart from the above evidence, the prosecution established the circumstances to prove the involvement of the respondent in the larger conspiracy to defalcate the bank amount.

P.W.3

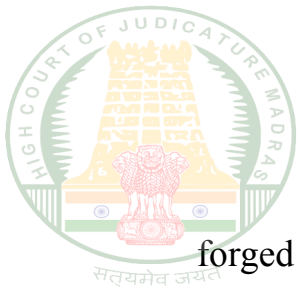
எனது தம்பி ஜெயச்சந்திரன் மும்பை செல்வதற்கு Aziz க்கும் மற்றும் இரண்டு நபர்களுக்கும் காமராஜர் சாலையில் உள்ள Travel ok என்ற ஏஜென்சியில் விமானச் சீட்டுக்கள் வாங்கி வந்தார். ஆந்த விமானச்சீட்டுக்களை கேன்சல் செய்து வருமாறு என் தந்தை என்னிடம் கூறினார். அதன்படி விமானச்சீட்டுக்களை கேன்சல் செய்து பணத்தை என் தந்தையிடம் கொடுத்தேன் DD-க்கள் போலியானது என்றும், பேங்கில் பிரச்சினையாக இருக்கிறது என்று பாலசுப்பிரமணியன் என் தந்தையிடம் கூறினார்.

21.6. The prosecution also marked the statement the deceased/approver under Section 164 of Cr.P.C., and the proceedings



related to the tender of pardon of approver. P.W.11/learned Judicial

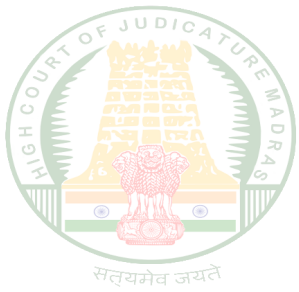
Magistrate examined the approver and recorded the statement under Section 164 of Cr.P.C., of deceased approver which was marked through him under Ex.P12. He also deposed about the contents of Ex.P12. That apart, now the prosecution marked the deposition of the said approver recorded during the trial in the mother case by way of seeking additional evidence and sought reliance on the basis of the said Ex.P12. The approver's evidence and the documents clearly proved the involvement of the respondent in the entire conspiracy. His involvement in obtaining the blank DD from the approver and the remaining accused and forgery of the signature of the manager of the said bank and handing over the said forged DD to A1 through the approver and other witnesses and the presenting of the said DDs in the fictitious account opened by A1 in Canara Bank, Ramnad Road Branch, Madurai and credit of the said amount in the said account and the withdrawal of the said amount and also appropriation of the said amount and their further attempt to encash the forged DD of Bank of Maharashtra in the another fictitious account opened in Canara Bank Ramnad Road Branch Madurai and their attempt was aborted on finding the forgery of DD is clearly proved through various prosecution witnesses. The handwriting expert also affirmed the signature of the respondent in the



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forged cheque. Therefore, in all aspects, the prosecution clearly proved the case. The learned trial Judge gave a finding only on the ground that the prosecution failed to prove that the respondent handed over the DDs to A1 through the participation of the remaining accused. The said finding is perverse as per the discussion made above. He is the main man and he intentionally absconded from the legitimate prosecution till the death of the approvers. Therefore, this Court not only received the deposition of the approvers evidence recorded during his absence after proclamation duly made as absconding accused, and this Court has every reason to accept the said approvers evidence. Apart from that, the available evidence clearly proved his involvement in entire episode. As held by the Hon'ble Supreme Court, it is not necessary to prove the role of the each accused at every stage of the entire conspiracy. It is settled principle that if the involvement of the conspirator any of the events of the chain is proved they are liable to be convicted. The Hon'ble Supreme Court in the case of ***Ram Narayan Popli vs. Central Bureau of Investigation*** reported in ***2003 3 SCC 6341*** has held as follows:

The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. Law making



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conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment.

21.7. In the case of ***Aravind 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 join that conspiracy after the time when such intention was first entertained by any one of them*”.

21.8. Therefore, the prosecution clearly proved the charge under Section s.120-B r/w 420, 419, 467, 468, 381, 471 IPC, Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, and also Section 120-B r/w 420, 419, 467, 468, 381, 471 IPC, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, r/w 511 IPC beyond reasonable doubt. Therefore, the learned trial Judge committed error in acquitting the



accused.

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22. The learned trial Judge allowed himself to be beset with fanciful doubts and failed to consider the creditworthy evidence of P.W.1 to PW.4 and has misguided himself by chasing the bare possibilities of doubt and exalting them into sufficiently militating factors justifying acquittal. *“Therefore, there is an obligation on the part of this Court to interfere with the impugned order of the Court below, in the interest of justice, lest the administration of justice be brought to ridicule and the same was emphasized by the Hon'ble Supreme Court in the following cases”:*

22.1. The “Hon'ble Constitution Bench of the Supreme Court”, in the case of *M.G. Agarwal v. State of Maharashtra*, reported in *1962 SCC OnLine SC 22* has held the same in the following paragraph:

16....But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused.



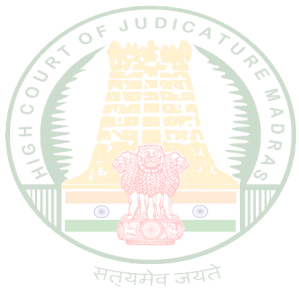
17. In some of the earlier decisions of this Court, however, in emphasising the importance of adopting a cautious approach in dealing with appeals against acquittals, it was observed that the presumption of innocence is reinforced by the order of acquittal and so, “the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons” : vide Surajpal Singh v. State [1951 SCC 1207 : (1952) SCR 193 at p. 201] . Similarly in Ajmer Singh v. State of Punjab [(1952) 2 SCC 709 : (1953) SCR 418] it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are “very substantial and compelling reasons to do so”. In some other decisions, it has been stated that an order of acquittal can be reversed only for “good and sufficiently cogent reasons” or for “strong reasons”. In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended to introduce an additional condition in clause (a) of Section



423(1) of the Code. All that the said observations are intended to emphasise is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in the case of Sheo Swarup, the presumption of innocence in favour of the accused “is not certainly weakened by the fact that he has been acquitted at his trial”. Therefore, the test suggested by the expression “substantial and compelling reasons” should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in Sanwat Singh v. State of Rajasthan [AIR 1961 SC 715] and Harbans Singh v. State of Punjab [AIR 1962 SC 439] and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse.

22.2. The Hon'ble Three Bench of the Supreme Court in case of ***Ashok Kumar Singh Chandel Vs. State of U.P*** reported in **2022 SCC OnLine SC 1525** has crystallized following principles;

70. In light of the above, the High Court and other appellate courts should follow the well-settled principles



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crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

i. The trial court's conclusion with regard to the facts is palpably wrong;

ii. The trial court's decision was based on an erroneous view of law;

iii. The trial court's judgment is likely to result in "grave miscarriage of justice";

iv. The entire approach of the trial court in dealing with the evidence was patently illegal;

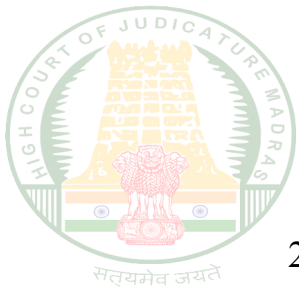
v. The trial court's judgment was manifestly unjust and unreasonable;

vi. The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

vii. This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/Appellate Courts must rule in favor of the accused."



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22.3. In the case of ***Geeta Devi v. State of U.P.***, reported in **(2023) 12 SCC 741**, it is observed:-

.Against an order of acquittal passed by the trial court the High Court would be justified on re-appreciation of the entire evidence independently and come to its own conclusion that acquittal is perverse and manifestly erroneous.

22.4. In the case of ***Rajesh Prasad v. State of Bihar***, reported in **(2022) 3 SCC 471** the Hon'ble Three Judges Bench of Supreme Court has held as follows:

31.2.2. *Where acquittal would result is gross miscarriage of justice:*

(a) Where the findings of the High Court, disconnecting the accused persons with the crime, were based on a perfunctory consideration of evidence, State of U.P. v. Pheru Singh, 1989 Supp (1) SCC 288 or based on extenuating circumstances which were purely based in imagination and fantasy State of U.P. v. Pussu, (1983) 3 SCC 502.

22.5. The Hon'ble Supreme Court", in the case of ***Babu v. State of Kerala [Babu v. State of Kerala,,*** reported in **(2010) 9 SCC 189** has considered earlier precedents and reiterated the principles to be followed in an appeal against acquittal under Section 378CrPC.



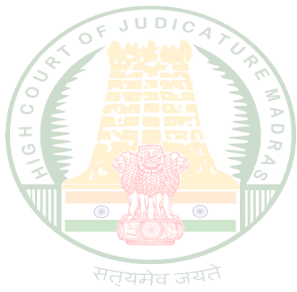
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‘12. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court.

22.6. Hon'ble the Supreme Court”, in the case of State of U.P.v.Banne (2009) 4 SCC 271 gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include : (SCC p. 286, para 28)

“28. ... (i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;



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(iii) *The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;*

(iv) *The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;*

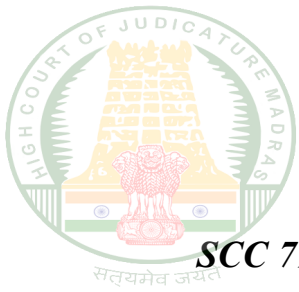
(v) *This Court must always give proper weight and consideration to the findings of the High Court;*

(vi) *This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.”*

22.7. When the findings of fact recorded by a court can be held to **be perverse** has been dealt with and considered in para 20 of the aforesaid decision, which reads as under : Babu v. State of Kerala, (2010) 9 SCC 189

‘20. “findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material” or if they are “against the weight of evidence” or if they suffer from the “vice of irrationality”..

22.8. As early as in 1973, a three-Judge Bench of this Court in ***Shivaji Sahabrao Bobade v. State of Maharashtra*** reported in (1973) 2

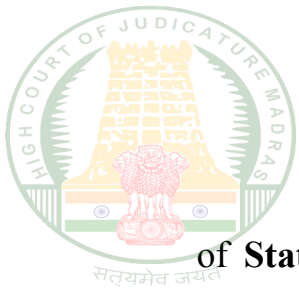


SCC 793 outlined the guiding principle to be kept in mind by an appellate court while deciding an appeal from an acquittal in the following manner

“5. ... an acquitted accused should not be put in peril of conviction on appeal save where substantial and compelling grounds exist for such a course. In India it is not jurisdictional limitation on the appellate court but a Judge-made guideline of circumspection. ... In law there are no fetters on the plenary power of the appellate court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinise the probative material de novo, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the holding without very convincing reasons and comprehensive consideration.”

(emphasis supplied)

22.9. In the totality of the circumstances, the learned trial Judge magnified every minute irrelevant fact and made mountain out of a molehill and acquitted the respondent which resulted in miscarriage of justice. In similar circumstances, the Hon'ble Supreme Court, in the case



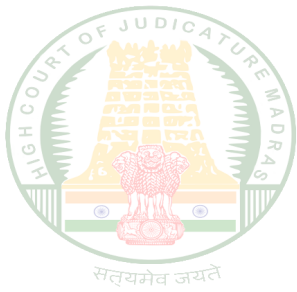
of *State of Maharashtra v. Narsingrao Gangaram Pimple*, reported in

(1984) 1 SCC 446 at page 463 dealing the appeal against acquittal has

held as follows:

*36. .. It seems to us that the approach made by the learned Judge towards the prosecution has not been independent but one with a tainted eye and an innate prejudice. It is manifest that if one wears a pair of pale glasses, everything which he sees would appear to him to be pale. In fact, the learned Judge appears to have been so much prejudiced against the prosecution that he magnified every minor detail or omission to falsify or throw even a shadow of doubt on the prosecution evidence. This is the very antithesis of a correct judicial approach to the evidence of witnesses in a trap case. Indeed, if such a harsh touchstone is prescribed to prove a case it will be difficult for the prosecution to establish any case at all.***18.***In Shivaji Sahabrao Bobade v. State of Maharashtra [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793, V.R. Krishna Iyer, J., stated thus : (SCC p. 799, para 6)*

“6. ... The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a



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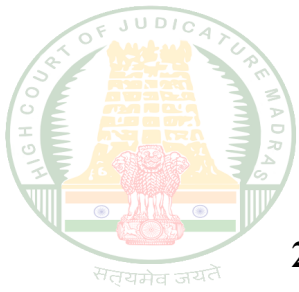
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thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community.”

In State of Punjab v. Jagir Singh [State of Punjab v. Jagir Singh, (1974) 3 SCC 277 : (SCC pp. 285-86, para 23) the Hon'ble Supreme Court has held as follows:

“23. A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy... Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy, on grounds which are fanciful or in the nature of conjectures.”

22.10. It is well settled that it is not every doubt, but only a reasonable doubt of which benefit is to be given to the accused. The Hon'ble Supreme Court in the following cases has cautioned the Courts not to extend the proof of benefit of doubt so as to cause the disastrous result and unmerited acquittal:



22.11. In the case of ***Wazir Khan v. State of Uttarakhand***, reported in **(2023) 8 SCC 597**, The Hon'ble Supreme Court while considering the plea of beyond reasonable doubt, after considering the earlier precedents of the Hon'ble Supreme Court has explained the proof of beyond reasonable doubt and held that proof beyond reasonable doubt cannot be distorted into a doctrine of acquittal and the relevant paragraph is as follows:

26. In the aforesaid context, we may profitably quote the following observations made by this Court in para 14 in Dharm Das Wadhvani v. State of U.P. [Dharm Das Wadhvani v. State of U.P., (1974) 4 SCC 267

“14. The question then is whether the cumulative effect of the guilt-pointing circumstances in the present case is such that the court can conclude, not that the accused may be guilty but that he must be guilty. We must here utter a word of caution about this mental sense of “must” lest it should be confused with exclusion of every contrary possibility. We have in Shivaji Sahabrao Bobade v. State of Maharashtra [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] , explained that proof beyond reasonable doubt cannot be distorted into a doctrine of acquittal when any delicate or remote doubt flits past a feeble mind. These observations are warranted by frequent acquittals on flimsy possibilities which are not infrequently set aside by the High Courts



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*weakening the credibility of the judiciary. The rule of benefit of reasonable doubt does not imply a frail willow bending to every whiff of hesitancy. Judges are made of sterner stuff and must take a practical view of legitimate inferences flowing from evidence, circumstantial or direct. At the same time, it may be affirmed, as pointed out by this Court in *Kali Ram v. State of H.P.* [*Kali Ram v. State of H.P.*, (1973) 2 SCC 808 : 1973 SCC (Cri) 1048], that if a reasonable doubt arises regarding the guilt of the accused, the benefit of that cannot be withheld from him.”*

(emphasis in original and supplied)

23. In the case of ***Suresh Chandra Jana v. State of W.B.***, reported in (2017) 16 SCC 466 at page 476 it is observed:-

16.. A doubt of a timid mind which is afraid of logical consequences, cannot be said to be reasonable doubt. The experienced, able and astute defence lawyers do raise doubts and uncertainties in respect of evidence adduced against the accused by marshalling the evidence, but what is to be borne in mind is—whether testimony of the witnesses before the court is natural, truthful in substance or not. The accused is entitled to get benefit of only reasonable doubt i.e. the doubt which a rational thinking man would reasonably, honestly and conscientiously



entertain and not the doubt of a vacillating mind that has no moral courage and prefers to take shelter itself in a vain and idle scepticism.

23.1. In the case of *Rajesh Dhiman v. State of H.P.*, reported in (2020) 10 SCC 740 at page 749 it is observed:

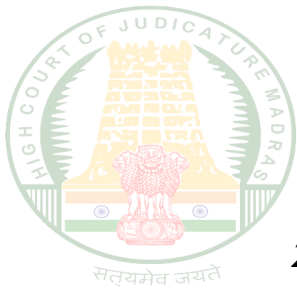
15... Reasonable doubt does not mean that proof be so clear that no possibility of error exists...

23.2. In the case of *Bhim Singh Rup Singh Vs. State of Maharashtra* reported in 1974 3 SCC 762 it is observed:

“A reasonable doubt”, it has been remarked, “does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other; it does not mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt founded upon reasons

23.3. In *State of U.P. Vs. Anil Singh* reported in (1988) Supp SCC 686 the Hon'ble Supreme Court has held as follow:

Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth.



23.4. In the case of *Inder Singh v. State (Delhi Admn.)* reported in

[(1978) 4 SCC 161] the Hon'ble Supreme Court has held as follows:

A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish.

23.5. The Hon'ble Supreme Court on various occasions cautioned the Courts not to extend the arms of the rule of benefit of doubt to render unmerited acquittals by nurturing fanciful doubts or lingering suspicions causing miscarriage of justice. It is not only the duty of the Court to acquit an innocent, it is also the paramount duty of the Court to see that a guilty man does not escape and hence extending the arms of the rule of benefit of doubt in the present case, cannot be appreciated. The relevant precedents in this aspect is as follows:



The lord Viscount Simon in Stirland v. Director of Public Prosecution (1944) 2 All ER 13 (HL)] held as follows:

“[A] Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. ... Both are public duties....”

23.6. In the case of ***Gurbachan Singh Vs. Satpal Singh*** reported in **1990 (1) SCC 445** the Hon'ble Supreme Court has held as follows:

17.... Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law....

23.7. In the case of ***Sadhu Saran Singh v. State of U.P.***, reported in **(2016) 4 SCC 357 at page 365**, it is observed:

20. ...we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no



less than from the conviction of an innocent.

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23.8. Apart from that, the learned trial Judge has convicted all co-accused in the mother case and the other absconding accused discussing about the involvement of this respondent. The conviction against the co-accused, namely, A1, A3, A4, A5, A6 were confirmed by this Court in CrI.A.(MD).Nos.34 of 2003, 384 of 2003, 715 of 2003 and 113 of 2005. A2's conviction also confirmed by this Court in CrI.A.(MD).No.315 of 2003. In all cases, there was specific finding about the involvement of this respondent. Therefore, in all aspects, the acquittal judgment passed by the learned trial Judge is not in accordance with law.

24 .Conclusion:

From the above discussion, this court inclines to accept this CBI appeal. The respondent is found guilty under Sections 120-B r/w 419, 467, 468, 471, 420 of IPC, Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 Sections 120-B r/w 467, 468, 471, 420 of IPC, Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 r/w Section 511 of IPC. Therefore, the appeal filed by the CBI in CrI.A. (MD).No.284 of 2020 is liable to be allowed.



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24.1. Accordingly, this appeal is allowed and the impugned judgment passed by the learned II Additional District and Sessions Judge for CBI Cases, Madurai, in C.C.No.9 of 2010, dated 29.01.2019, is set aside and the respondent is convicted for the offences under Sections 120-B r/w 419, 467, 468, 471, 420 of IPC, Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 Sections 120-B r/w 467, 468, 471, 420 of IPC, Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 r/w Section 511 of IPC.

25. List this case for appearance of the respondent / Accused No.5 for questioning the sentence of imprisonment on 19.03.2025.

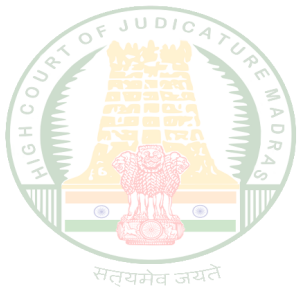
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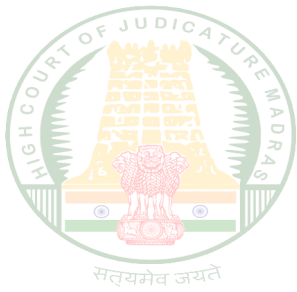


26. On 19.03.2025, when the matter was taken up for hearing, under the caption for questioning the sentence of imprisonment, the respondent has not appeared before this Court. Therefore, this Court passed the following order:

On 04.03.2025, this Court allowed the Criminal Appeal filed by the CBI and directed the accused/respondent to appear before this Court in person for question of sentence.

2. The learned counsel on record for the accused also undertook to ensure appearance to honour the direction issued by this Court. Hence, this case was adjourned today. The learned counsel for the accused would also submit that the accused is aged about 83 years and he is suffering from various illness. Further, the accused is a Muslim and in view of Ramzan, he is in fasting. The learned counsel also requested this Court to peruse the medical records.

3. Section 235(2) of Cr.P.C., mandates to hear the accused on the question of sentence. On 04.03.2025, the learned counsel on record undertook to make the presence of the accused today. But, he would submit that the accused is suffering from various age old illness. In this case, the respondent/accused already



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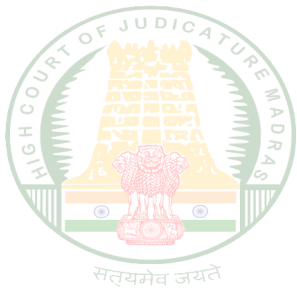
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absconded during the course of trial in the year 2002 and warrant was executed only on 16.10.2019. Hence, this Court is not inclined to accept the request made by the learned counsel for the accused and inclined to issue bailable warrant to the accused through the appellant. Accordingly, this Court issues bailable warrant to secure the accused/respondent and produce before this Court on 03.04.2025.

4.List this of case on 03.04.2025 for “question of sentence”.

27.Pursuant to the order of this dated 19.03.2025, the CBI executed the bailable warrant and secured the respondent and released him after complying procedure. They also produced the respondent before this Court. When the respondent was questioned under Section 235 (2) of Cr.P.C., about the sentence of imprisonment to be passed, he pleaded as follows:

He is 67 years old and suffering from various age old ailments. Further, for the past 15 years he has been regularly appeared before the Court and he was not found guilty by the trial Court



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and also he was acquitted. Now, he is under continuous treatment and he also produced medical records. Hence, he prayed for lesser sentence.

28.Sentence of imprisonment:

28.1. The learned counsel appearing for the respondent would reiterated the above mitigating circumstances and prayed to impose minimum sentence.

28.2. On the other hand, the learned Special Public Prosecution appearing for CBI would submit that conduct of the accused is not appreciable. The case was registered in the year 1994 and absconding final report filed was against the respondent in the year 1998. He was proclaimed as absconder and he was secured only in the year 2010 ie., after 12 years from the date of issuance of Non-Bailable Warrant. Here also he has not appeared on 19.03.2025 and hence, this Court issued Bailable Warrant and the same was executed and the respondent was produced before this Court. Therefore, he prays for appropriate sentence.

28.3. In view of the above submissions, this Court inclines to do a

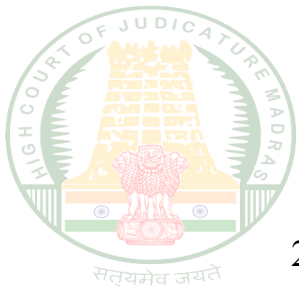


balancing act between two situations ie, sympathy and the administration of Criminal Justice system in awarding punishment. To come out of the complex problem and to meet out balance between two situations, this Court recapitulates the principles relating to the punishment laid down by the Hon'ble Supreme Court in the following cases:

28.3.1. The principle of imposition of punishment should commensurate with crime committed has been illustrated by Hon'ble Supreme Court in the case of *Sevaka Perumal v. State of T.N.* reported in [(1991) 3 SCC 471] in the following paragraph:

“13. ... The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should ‘respond to the society's cry for justice against the criminal’.”

(emphasis supplied)



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28.3.2. The said principle was further elaborated by the Hon'ble Supreme Court in the case of *Shailesh Jasvantbhai v. State of Gujarat* reported in [(2006) 2 SCC 359, and it has been held that :

*“7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of ‘order’ should meet the challenges confronting the society. Friedman in his *Law in Changing Society* stated that: ‘State of criminal law continues to be—as it should be—a decisive reflection of social consciousness of society.’ Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given*



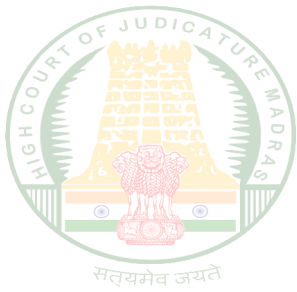
circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

8. *Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc.*

(emphasis supplied)

28.3.3. Again in the case of *Gopal Singh v. State of Uttarakhand* reported in (2013) 7 SCC 545 the Hon'ble Supreme Court has discussed about the gravity of the crime and the concept of proportionality as regards the punishment and observed as follows:

“18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has



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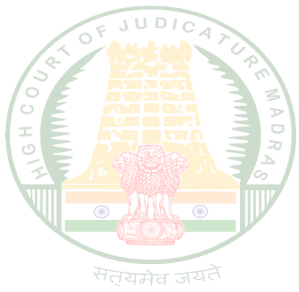


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to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect—propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasise, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment.”

(emphasis supplied)

28.3.4. A three-Judge Bench of the Hon'ble Supreme Court in *Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat* [(2009) 7 SCC 254 : observed as follows :



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“99. ... *The object of awarding appropriate sentence should be to protect the society and to deter the criminal from achieving the avowed object to (sic break the) law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be resultwise counterproductive in the long run and against the interest of society which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.*

100. *Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the victim of the crime but the society at large while considering the imposition of appropriate punishment. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which both the criminal and the victim belong.”*

28.3.5. In the case of ***State of Punjab v. Bawa Singh***, reported in (2015) 3 SCC 441 at page 447

16. *We again reiterate in this case that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper*

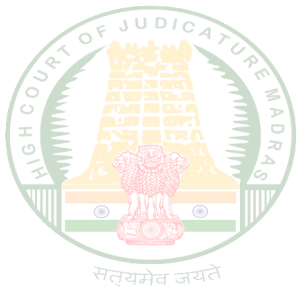


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sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment. Meagre sentence imposed solely on account of lapse of time without considering the degree of the offence will be counterproductive in the long run and against the interest of the society.

28.3.6. The Hon'ble Supreme Court reiterated the above principle in the case of ***Raj Bala v. State of Haryana, reported in (2016) 1 SCC 463 and held as follows:***

3. It needs no special emphasis to state that prior to the said decision, there are series of judgments of this Court emphasising on appropriate sentencing. Despite authorities existing and governing the field, it has come to the notice of this Court that sometimes the court of first instance as well as the appellate court which includes the High Court, either on individual notion or misplaced sympathy or personal perception



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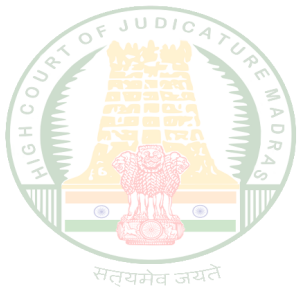


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seems to have been carried away by passion of mercy, being totally oblivious of lawful obligation to the collective as mandated by law and forgetting the oft quoted saying of Justice Benjamin N. Cardozo, “Justice, though due to the accused, is due to the accuser too” and follow an extremely liberal sentencing policy which has neither legal permissibility nor social acceptability.

4. We have commenced the judgment with the aforesaid pronouncements, and our anguished observations, for the present case, in essentiality, depicts an exercise of judicial discretion to be completely moving away from the objective parameters of law which clearly postulate that the prime objective of criminal law is the imposition of adequate, just and proportionate punishment which is commensurate with the gravity, nature of the crime and manner in which the offence is committed keeping in mind the social interest and the conscience of the society, as has been laid down in State of M.P. v. Bablu [(2014) 9 SCC 281 : (2014) 6 SCC (Cri) 1] , State of M.P. v. Surendra Singh [(2015) 1 SCC 222 : (2015) 1 SCC (Cri) 603] and State of Punjab v. Bawa Singh [(2015) 3 SCC 441 : (2015) 2 SCC (Cri) 325] .

5. We sadly and indubitably with a pang proceed to pen the narrative. Respondents 2 to 4 stood trial for the offence punishable under Section 306 IPC. Be it noted,



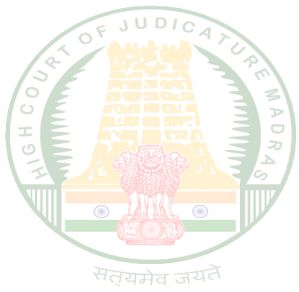
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initially the FIR was registered under Section 302 IPC but during investigation, the investigating agency had converted the offence to one under Section 306 IPC. The charge was framed in respect of the offence under Section 306 IPC and the plea of the accused persons was one of complete denial.

16. A court, while imposing sentence, has a duty to respond to the collective cry of the society. The legislature in its wisdom has conferred discretion on the court but the duty of the court in such a situation becomes more difficult and complex. It has to exercise the discretion on reasonable and rational parameters. The discretion cannot be allowed to yield to fancy or notion. A Judge has to keep in mind the paramount concept of rule of law and the conscience of the collective and balance it with the principle of proportionality but when the discretion is exercised in a capricious manner, it tantamounts to relinquishment of duty and reckless abandonment of responsibility. One cannot remain a total alien to the demand of the socio-cultural milieu regard being had to the command of law and also brush aside the agony of the victim or the survivors of the victim. Society waits with patience to see that justice is done. There is a hope on the part of the society and when the criminal culpability is established and the discretion is irrationally exercised by the court,



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the said hope is shattered and the patience is wrecked. It is the duty of the court not to exercise the discretion in such a manner as a consequence of which the expectation inherent in patience, which is the “finest part of fortitude” is destroyed. A Judge should never feel that the individuals who constitute the society as a whole is imperceptible to the exercise of discretion. He should always bear in mind that erroneous and fallacious exercise of discretion is perceived by a visible collective.

28.3.7. In the case of ***Baba Natarajan Prasad v. M. Revathi***, reported in **(2024) 7 SCC 531**, the Hon'ble Supreme Court recently also considered the above all judgments and held that it is the duty of the Court to impose sentence commensurate with the gravity of offence by keeping in view of the interest of the society and considering the degree of the offence which would be counter productive in long run and against the interest of justice and also noted as follows:

Leave granted. Salmond defined “crime” as an act deemed by law to be harmful for society as a whole although its immediate victim may be an individual. Long-long ago, Kautilya said: “it is the power of punishment alone which when exercised impartially in proportion to guilt and irrespective of whether the person punished is the king's son or the enemy, that protects this world and the next”.

29. Applying the above principles, this Court declines to accept the argument of the learned counsel for the accused to grant minimum



sentence. But, considering the age and illness, this Court also is unable to concur with the argument of the learned Special Public Prosecutor to award maximum punishment on considering the conduct of the accused. To resolve the same, this Court gets guidance from the following observation made by the Hon'ble Supreme Court in the case of **R. Venkatkrishnan v. CBI**, reported in **(2009) 11 SCC 737 at page 791**

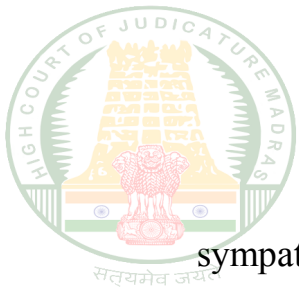
168. A sentence of punishment in our opinion poses a complex problem which requires a balancing act between the competing views based on the reformatory, the deterrent as well as the retributive theories of punishment. Accordingly, a just and proper sentence should neither be too harsh nor too lenient. In judging the adequacy of a sentence, the nature of the offence, the circumstances of its commission, the age and character of the offender, injury to individual or the society, effect of punishment on offender, are some amongst many other factors which should be ordinarily taken into consideration by the courts.

29.1. All the accused conspired to defalcate the bank amount and committed offence of bank fraud by stealing the blank demand draft from the bank situated in Bombay and forged the signature of the manager of the said bank and presented the said cheque in the bank situated in Madurai by



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opening the fictitious account and encashed the amount and withdrew the amount and appropriated among themselves and their greed drove them to present another set of forged DDs which resulted in timely foiling of the attempt and brought them into the nets of CBI. It is well known proverb that “A long time thief will be caught one day”. He has been indulging in dilatory tactics to escape from the clutches of law by fleeing from the prosecution. After 12 years, he was caught by CBI and trial was conducted. He caused unbearable hardship to the prosecution witnesses. The prosecution witnesses were examined in the year 1993 and they appeared before the Court during the trial of some of the accused and after completion of their trial, they also were forced to appear in trial of another absconding accused and thereafter during the trial of this case. The Court also conducted the trial by spending its precious time after his arrest. Here also he has not appeared on 19.03.2025 to answer the question of sentence and this court issued the Bailable Warrant. Hence, from the stage of investigation to till date, his conduct is not appreciable. Therefore, this Court is not inclined to exercise its discretion in favour of the accused to grant minimum sentence. No amount was able to be recovered. These circumstances warrant imposition of proper punishment. This court does not want to show any mercy to this accused which amounts to misplaced



sympathy. In the said circumstance, it will be unethical to accept the request for minimum sentence and grant minimum sentence of imprisonment and also not expedient in the administration criminal justice system. It is well settled principle that no one is to be allowed to take the benefit of his own wrong. Here the Respondent has committed intentional wrong of absconding. Therefore, this court is not inclined to grant minimum sentence which amounts to showing misplaced sympathy to the white collar criminals.

29.2. His Excellency former president of India Dr.Radhakrishnan, in the following words emphasized the requirement of the strenuous action against the white collar crimes:

“The practitioners of evil, hoarders, the profiteers, the black marketeers, and speculators are the worst enemy of our society. They have to be dealt with sternly. However well placed important and influential they maybe, if we acquiesce in wrongdoing, people will lose faith in us.

29.3. The Hon'ble Supreme Court in the case of ***State of Gujarat v. Mohanlal Jitamalji Porwal***, reported in ***(1987) 2 SCC 364*** also reiterated



the said requirement of strenuous action in the following terms:

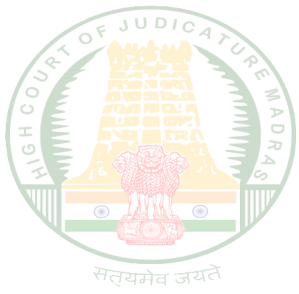
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5. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.

29.4. The said requirement also was reaffirmed by the Hon'ble Supreme Court in the case of ***Ram Narayan Popli v. CBI***, reported in ***(2003) 3 SCC 641***

381. ... the need to pierce the facadial smokescreen to unravel the truth to lift the veil so that the apparent, which is not real, can be avoided. The proverbial red herrings are to be ignored, to find out the guilt of the accused.

382. The cause of the community deserves better treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not a persona non grata whose cause may be treated with

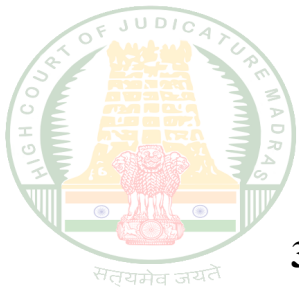


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disdain. The entire community is aggrieved if economic offenders who ruin the economy of the State are not brought to book.

383. Unfortunately in the last few years, the country has seen an alarming rise in white-collar crimes which has affected the fibre of the country's economic structure. These cases are nothing but private gain at the cost of the public, and lead to economic disaster.

29.5. The need and greed of people have driven them to the extent of exploiting any possible field. The exploitation of the money of the other person by doing the act of fraud to get gain at the loss of another usually forms part of the white collar crimes. In the case of fraud, greedy person gains at the loss of another. This case is no exception. But, this case does not deserve any sympathy to grant minimum sentence. Hence, considering the age, various ailments and other mitigating circumstances, this Court is inclined to award appropriate sentence between the minimum sentence and maximum sentence.



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30. Sentence of Imprisonment:

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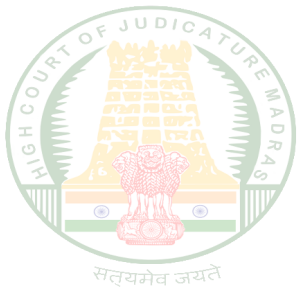
30 (i). Respondent is hereby directed to undergo Five years of Rigorous Imprisonment for the offence 120-B r/w 419, 467, 468, 471 and 420 of IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and also direct to pay fine of Rs.20,000 (Twenty thousands) with default sentence of Two months simple imprisonment.

30.(ii). Respondent is hereby directed to undergo Two years of Rigorous Imprisonment for the offence Section 120-B r/w 467, 468, 471 and 420 of IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 r/w Section 511 of IPC and also direct to pay fine of Rs.10,000 (Ten Thousands) with default sentence of one month simple imprisonment.

30.(iii). All the substantive sentence of imprisonment are to run concurrently. The period if already undergone by the accused is ordered to be set off under Section 428 of Cr.P.C.

03.04.2025

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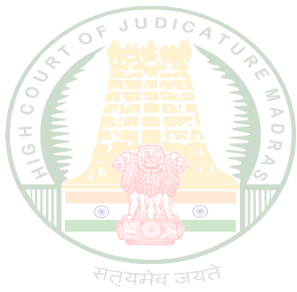
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K.K.RAMAKRISHNAN.J.

31.After delivering the judgment, the learned counsel for the respondent requested this Court to consider the health condition and grant interim suspension of sentence

32.The respondent was secured after twelve years during the pendency of the trial. Even before this Court, he has not appeared on 19.03.2025 to answer the questioning of sentence. Hence, this Court issued bailable warrant on 19.03.2025. The CBI executed the warrant and produced before this Court. In the mother case, conviction and sentence was passed against the remaining accused in the year 2002 ie., 27.12.2002 and the same was confirmed by this Court. Therefore, the split up case against the respondent was completed only in the year 2019. In view of the above circumstances, this Court declines to accept the request of the learned counsel appearing for the respondent and accordingly, this Court rejects the prayer for interim suspension of sentence of imprisonment.



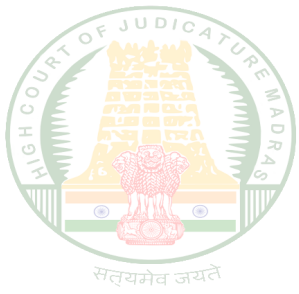
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33. Further, the learned counsel for the respondent submitted that he is hailing from Kerala and hence, he may be permitted submit application to transfer from Central Prison, Madurai to any other prison in Kerala and the same may be considered by the prison authority. This Court is not inclined to address the said issue. It is always open to the respondent to make the request of transfer of prison before the appropriate authority as per law.

34. It is submitted that the respondent is taking number of medicines and requested to allow him to continue the medication. This Court already perused the medical records and he is taking number of medicine. Therefore, this Court issues the following direction to the Superintendent of Police:

(i) The Superintendent of Prison, Madurai, is hereby directed to permit the respondent to keep the custody of his original medical records.

(ii) The Superintendent of Prison, Madurai is hereby further directed to provide all medicines mentioned in the prescription.



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(iii)The Superintendent of Prison, Madurai, is hereby strictly

instructed to obtain the prescription of the respondent and provide the said medicine without fail.

03.04.2025

NCC :Yes/No

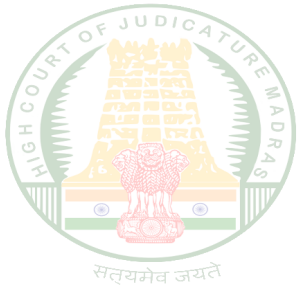
Internet :Yes/No

Index :Yes/No

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To

1. The II Additional District Court for CBI Cases, Madurai
2. The Inspector of Police,
Central Bureau of Investigation(CBI),
Special Crimes Branch(SCB), Chennai.
3. The Special Public Prosecutor for CBI Cases,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.
5. Superintendent of Prison,
Central Prison,
Madurai.



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K.K.RAMAKRISHNAN,J.

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Pre-delivery judgment made in
CRL.A(MD).No.284 of 2020

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