

CRL.A(MD).No. 95 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	:	25.07.2024
Pronounced on	:	07.04.2025

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A.(MD).No.95 of 2019
and
CrI.M.P(MD).No.7251 of 2024

A.Abdul Aziz

... Appellant

Vs.

The State through
The Inspector of Police,
CBI:SCB, Chennai,
RC.No.7/S/94/CBI/SCB/MAS

... Respondent

PRAYER: This Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records of the Judgment dated 29.01.2019 in C.C.No.10 of 2010 on the file of the II Additional District Court for CBI Cases, Madurai and set aside the same and acquit the appellant/4th accused.

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

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

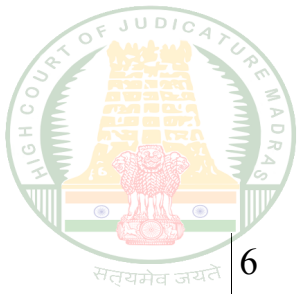


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JUDGMENT

Absconding accused No.4 in mother case in C.C.No.6 of 1998 and accused in split up case in C.C.No.10 of 2010, on the file of the learned II Additional District Judge for CBI Cases, Madurai, has filed this appeal challenging the following conviction and sentence of imprisonment imposed against him, vide impugned Judgment dated 29.01.2019.

Sl. No.	Offences under Section	Punishment (Imprisonment and Fine)
1	120-B r/w 468 of IPC	Rigorous Imprisonment for 7 years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for one year
2	468 of IPC	Rigorous Imprisonment for 7 years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for one year
3	120-B r/w 468 r/w 471 of IPC	Rigorous Imprisonment for 7 years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for one year
4	468 r/w 471 of IPC	Rigorous Imprisonment for 7 years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for one year
5	120-B r/w 420 r/w 511 of IPC	Rigorous Imprisonment for 3-½ years and to pay a fine of Rs.20,000/- in default to undergo Simple Imprisonment for six months



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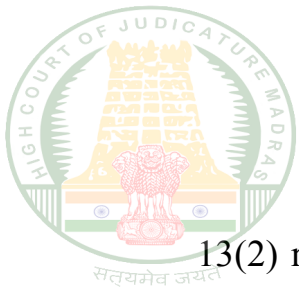


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6	420 r/w 511 of IPC	Rigorous Imprisonment for 3-½ years and to pay a fine of Rs.20,000/- in default to undergo Simple Imprisonment for six months	
		Total Fine	Rs.1,20,000/-

2. Brief facts of the case:

The appellant was originally arrayed as A4 in C.C.No.6 of 1998 on the file of the II Additional District Court for CBI Cases, Madurai. He and other accused are said to have committed offence under sections 120 (B) r/w. 467, 468, 471 and 420 of I.P.C. and section 13 (2) r/w 13 (1)(d) of Prevention of Corruption Act 1988 r/w Section 511 of IPC. The CBI registered the case in R.C.No.7/S/94/CBI/SCB/MAS on 11.03.1994 on the strength of source information alleging that the appellant and other persons had entered into conspiracy and stealthily removed blank DD book containing 100 leaves from *bank of India, DN Road Branch Bombay* in the year 1992 and 1993 and *forged ten DDs* for the value of Rs.94,95,000/- and fraudulently attempted to encash through ***various banks, situated at Madurai*** with the motive to cause loss to the Bank of India, Bombay. During the investigation, Abdul Aziz absconded. The CBI filed the final report under Sections 120-B r/w 467, 468, 471 and 420 of IPC, Section



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13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 r/w Section 511 of IPC showing the appellant as absconding accused. . In the said final report, the accused G.Thangaswamy, A.Sathyaseelan, Atma Ram Gopal Satam, have been shown as approvers. The said final report was taken on file in C.C.No.6 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.N.R.Raveendran,
- A2.M.Balasubramanian,
- A3. Nana Mahadev Jadav
- A4.Abdul Aziz
- A5.Salim Siraj Gilani
- A6.A.R.Muthukrishnan

2.1.Abdul Aziz was declared as proclaimed offender and hence, the case was split up in C.C.No.1 of 1999. Thereafter, The trial was continued in C.C.No.6 of 1998 against the remaining accused, namely, A1, A2, A3, and A6 and all were convicted by judgment dated 27.12.2002. They had 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 appellant was arrested on the basis of the non-bailable warrant and trial

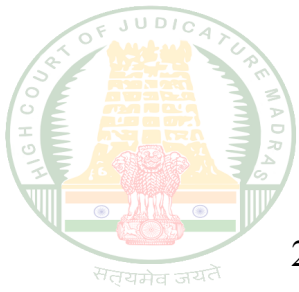


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was conducted in split up C.C.No.10 of 2010. the Learned Trial Judge served upon the appellant copies under section 207 of Cr.P.C., and framed the charges and questioned the appellant and he denied and pleaded not guilty and stood for trial.

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

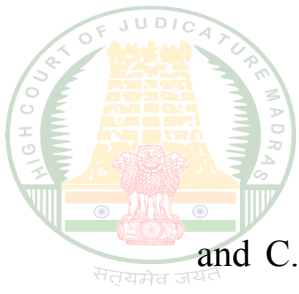
<i>Crime No.</i>	<i>Mother C.C.No</i>	<i>Number of the accused</i>	<i>Split up C.C.No.</i>
RCNo. 4/S/94/CBI/SCB/ MAS	4 of 1998	A1.Raveendran, A2.Balasubramanian, A3. Nana Mahadev Jadav A4.Abdul Aziz A5.Salim Siraj Gilani A6.Muthukrishnan,	8 of 2010
RCNo. 5,6,8/S/94/CBI/S CB/MAS	5 of 1998	A1.Raveendran, A2.Balasubramanian, A3. Nana Mahadev Jadav A4.Prakash Ramachandra Payer A5.Abdul Aziz A6.Salim Siraj Gilani A7.V,Ramaswamy A8.Muthukrishnan, A9.Asmat Kamal Choudhry @ Hashmat Khan	9 of 2010



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2.3. 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 appellant in C.C.No.10 of 2010 and C.C.No.8 of 2010 and acquitted him in C.C.No.9 of 2010. Hence, the appellant preferred this appeal against conviction and sentence imposed against him in C.C.No.10 of 2010 dated 29.01.2019 and CBI filed appeal against acquittal in C.C.No.9 of 2010.

2.4. In this case, To prove the charges, prosecution examined P.W. 1 to P.W.18 and marked Ex.P1 to Ex.P20. 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 eighteen witnesses. The learned trial Judge considered the evidence on record and convicted the appellant. The learned trial Judge also considered the evidence on record and acquitted the appellant in C.C.No.9 of 2010 and convicted the appellant in C.C.No.8 of 2010. All the Judgements were delivered on the same day i.e., 29.01.2019. Therefore, the appellant filed two appeals against the conviction in C.C.No.10 of 2010

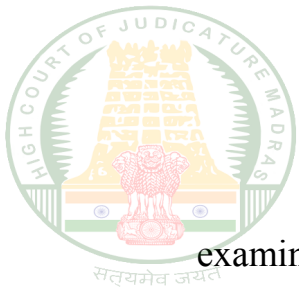


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and C.C.No.8 of 2010 . Even though, all the appeals have not emanated from common FIR, the modus operandi according to the prosecution is the same and the same evidence was adduced in all three cases. Therefore, the learned Senior counsel appearing for the appellant would submit that the finding of the learned trial Judge in C.C.No.9 of 2010 that the prosecution has not proved the charges beyond reasonable doubt that the appellant handed over the forged DD as per the allegation in the final report, is 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 appellant 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 appellant 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.

3.Thiru.T.Lajapathi Roy, the Learned senior counsel for the appellant made the following submission:-

3.1. The learned trial Judge failed to consider that the approvers were not examined. Only available evidence against the appellant is the evidence of the approver. In the said circumstances conviction without



examining the approver is not maintainable.

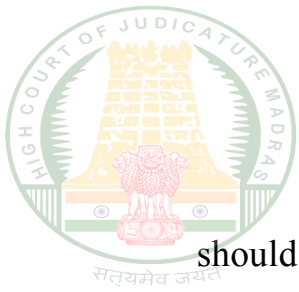
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3.2. The conviction has been passed on the basis of the evidence of the sons of the one of the approvers and without any corroborative evidence, the same ought to have been set aside.

3.3. The evidence of the sons of the approver namely P.W.1 to P.W.4 are not cogent and trustworthy to pass the conviction against the appellant. There is a intrinsic contradiction between the evidence of P.W.1 to P.W.4 and their evidence suffers from inherent improbability and hence their evidence have to be eschewed.

3.4. In the absence of the approver's evidence, the uncorroborated remaining evidence are not sufficient to convict the accused under the grave charges of conspiracy to commit the offence under Sections 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.

3.5. According to CBI, FIR was registered against the appellant and other accused for defrauding the bank fund and the said FIR was investigated and three final reports were filed. The said three final reports were taken on file in three C.Cs., with similar allegation but with different Banks. Among the three CCs, the learned Trial Judge acquitted the accused in one case. The principle applied in the acquittal case, this case also



should have ended in acquittal. Therefore the learned trial judge has committed error in applying different yardstick in this case. Hence, he seeks to acquit the appellant.

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

4.1. There is no bar to convict the accused on the basis of the available evidence which is sufficient to prove the charge framed against the appellant even in the absence of the examination of the approver. PW1 to PW4 are the sons of the one of the approver Sathiyaseelan. They were examined as listed witnesses during the course of the investigation. In view of the availability of Sathiyaseelan during the course of the trial in the parent case in C.C.No.6 of 1998 and in the course of the trial of the other accused he was examined. But, in view of the death of the said Sathiyaseelan, he was not examined as a prosecution witness, but his sons were examined who have clearly deposed about the material particulars relating to the active participation of the appellant in the entire crime and he was the nerve centre of the entire episode of the bank defraud. Apart from that the prosecution examined the other witnesses to prove the active participation of the appellant in the entire criminal conspiracy. There are



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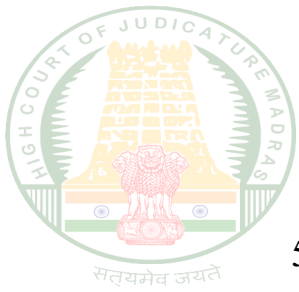
abundant materials to prove the meeting of the appellant with remaining accused and more particularly his role of facilitating the theft of the blank DD book from the bank of India, Mumbai Branch and preparation of the forged DD with signature of the manager in the fictitious name of Priya Textile and Saravana Textile and the same were handed over to A1 through the active participation of the accused No.5 Salim Siraji Gillani and accused No. 6 A.R.Muthukrishnan. The same was encashed with the help of the A2 Balasubramanian who was employee of the canara bank and the same was credited in the fictitious account of A1 opened in the name of Deepa Traders and the said credited amount was withdrawn and the same was appropriated and shared among the accused including the appellant. Therefore, the conviction was passed on the basis of the material produced by the CBI. Hence, there is no need to interfere with the conviction. More particularly there was no explanation on the side of the appellant during the course of the questioning under section 313 of Cr.P.C.

4.2.The prosecution is unable to examine two approvers. One of the approvers died and the other approver could not be secured inspite of the bonafide steps taken by the CBI. They were examined in the year 1994 and they were treated as approvers and their 164 of Cr.P.C statements were



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marked. Inadvertently, their evidence recorded during the parent case in C.C.No.6 of 1998 in the absence of the appellant were not marked. There was no legal bar to base reliance on the said evidence since the same forms part of this proceedings i.e., present split up C.C.No.10 of 2010 is continuation of the parent case in C.C.No.6 of 1998 Therefore, the CBI filed the application under 391 and the same has to be considered. So in all aspects the prosecution clearly proved the charges framed against the appellant and the punishment was imposed proportionate to the gravity of the offence namely they had stolen the DD books from the Bank of India, Mumbai Branch, fabricated the DD in the fictitious name, M/s.All Bless Associates and attempted to encash the amount of Rs.94,95,000/- in Bank of India, Madurai, and the same was aborted. The account in the name of Deepa traders which is fictitious one is said to have been opened by the A1 and the cash was credited in the fictitious account in the branch of Canara Bank, Gnanaolipuram, Madurai and the same was withdrawn and amount was appropriated and shared by the accused. Therefore, the prosecution clearly proved the charges and the same deserves appropriate punishment as imposed by the learned trial judge. Therefore he seeks to confirm the judgment.



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

6. Now, the only question to be decided in this appeal is whether the impugned judgment of conviction against the appellant/absconding accused/A4 in split up C.C.No.10 of 2010 is correct?

7. In this case, the appellant 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 case in C.C.No.6 of 1998. In the mother case in 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 appellant, the said trial was conducted in his absence. After arrest of the appellant, the trial was conducted against him in the above split up C.C.No.10 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 case in C.C.No.6 of 1998 are available. During the course of the trial of the split up C.C.No.10 of 2010, the prosecution examined only sons of the said one of the



approver, namely, Sathiyaseelan to prove the active participation of the appellant herein in the entire episode and other witnesses also were examined to prove the complicity of the appellant in the crime.

7.1.Thiru.T.Lajapathi Roy, the Learned Senior counsel would make preliminary submission whether the conviction can be passed against the appellant without examination of two approvers who had been examined during the trial of the remaining accused in mother case in 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 case in C.C.No.6 of 1998. The appellant 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 approvers, 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 appellant. Therefore, according to the learned



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Special Public Prosecutor, there was no bar to rely the evidence of the approver recorded in the mother case in C.C.No.6 of 1998 in the absence of the appellant. Thiru.T.Lajapathi Roy, the Learned Senior counsel by way of reply submitted that the prosecution has not secured the appellant during the course of the investigation and the prosecution's application under section 174 (A) of IPC to frame the additional charges against the appellant for his abscondance had been dismissed by the 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.7251 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 case in C.C.No.6 of 1998 for proper adjudication of the confirmation of the conviction and sentence imposed against the appellant in the split up C.C.No.10 of 2010 which is the subject matter of the present appeal. The appellant 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 appellant was dismissed, he cannot be declared as a proclaimed offender

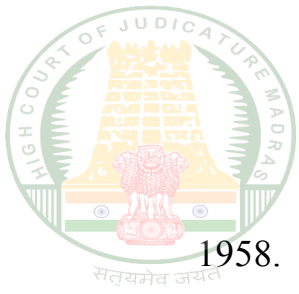


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and hence the recording evidence in his absence and use of the said evidence is not permissible and therefore, he seeks to dismiss the application and he relied the judgment of the Hon'ble Supreme Court in the case of *Ajith Singh Chehuji Rathod Vs 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,

8. This Court considered the rival submission made by the both parties in respect of the said CrI.M.P.No.7251 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.6 of 1998 on account of the absence of the appellant by splitting the said mother case in C.C.No.6 of 1998 against the appellant.

9. 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



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9.1. 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.

9.2. 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 quaterly 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



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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.

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



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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 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.

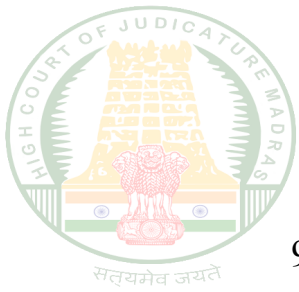


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299. Record of evidence in absence of accused.	Section 317 Cr.P.C. Provision for inquiries and trial being held in the absence of accused in certain cases.
(1)If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try for 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.

9.3. 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 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 is satisfied with the following conditions:

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

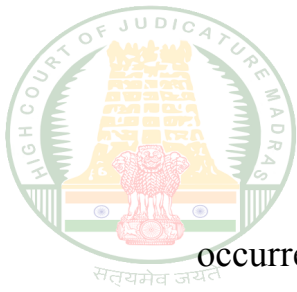


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9.3.2. If any of the above condition is satisfied, the prosecution has no bar to record the evidence in his absence.

9.3.3. 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.

10. In this case a valid proclamation was made against the appellant 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.6 of 1998 was split into C.C.No.10 of 2010 against the appellant 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.6 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



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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 appellant, 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.6 of 1998 is very much essential and necessary to decide the role of the appellant. 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.6 of 1998. The present C.C.No.10 of 2010 is continuation of the proceedings of mother case in C.C.No.6 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 is permitted. Therefore, the present case comes under such special circumstances.

10.1. In the case of *State of Gujarat v. Mohanlal Jitmalji Porwal*, reported in *(1987) 2 SCC 364 at page 370* the Hon'ble Supreme Court has held as follows:



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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 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*



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*in the facts and circumstances of the case with the end in view
to do full and true justice....*

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

SCC 426 the Hon'ble Supreme Court has held as follows:

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-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.

10.3. 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



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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.”

10.4. 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 proper procedure was not followed

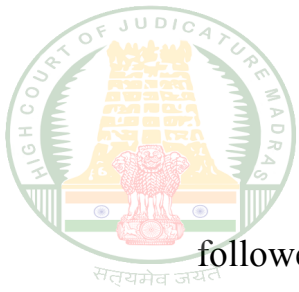


by the Court and he lost the opportunity of fair trial. The Hon'ble Supreme Court also reiterated the principle that no one can be allowed to take advantage of his own wrong. Further, the Hon'ble Supreme Court in the case of ***State of M.P. v. Narmada Bachao Andolan***, reported in (2011) 7 SCC 639 has dwelt upon the principle by taking note of following latin maxim to meet out an impossible situation:

<i>Legal maxim</i>	<i>Meaning</i>
<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
<i>nemo tenetur ad impossibilia</i>	no one is bound to do an impossibility

10.5. In view of the death of one of the approvers and non-availability of the 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, on account of the his intentional abcondence.

10.6. In the case of the absconding accused, the said procedure is

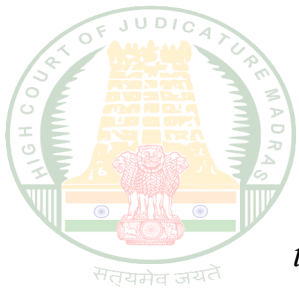


followed all over the world. The Hon'ble House of Lords in 2002 (2) ALL

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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 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



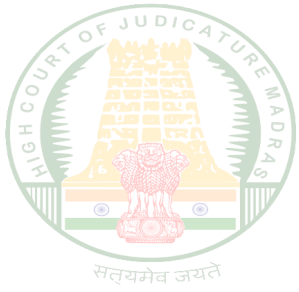
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the discretion in favour of commencing the trial, at any rate unless the defendant was represented and had asked that the trial should begin. The seriousness of the offence was not a matter which was relevant to the exercise of the discretion. The 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.”

10.7. The right of an accused to watch the prosecution witnesses 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



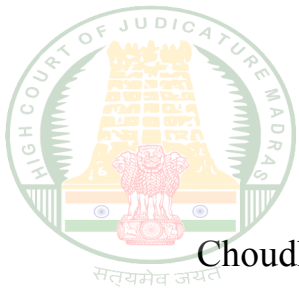
the best efforts taken by the CBI. From the perusal of the records, the steps taken by the CBI to produce the said approver and their failure to secure the said witness is not *malafide*. In the earlier two proceedings, i.e., during the course of the mother case of the trial in C.C.No.6 of 1998 and during 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 C.C.No.6 of 1998 is admissible in evidence and even in the precedents relied by the learned counsel for the appellant, 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.6 of 1998 by rejecting the contention of the appellant 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.



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WEB COPY 10.8. Accordingly, the application filed by the CBI in CrI.M.P.No. 7251 of 2024 stands allowed.

11. During the year 1992 – 1993, the appellant, 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 Maharashtra, 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* committed theft of one blank DD book containing serial No.008901 to 009000. Similarly, Prakash Ramachandra Payer who was working as sub-staff in *Bank of Maharashtra, 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 appellant 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 appellant 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. In this case, there was an attempt to encash the total amount of Rs.94,95,000/- on the basis of ten forged DDs of “*Bank of India, Bombay*”.

11.1. A5 (Salim Siraj Gillani) and A4 (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 black money of the some non resident Indians through the transfer of the demand draft in the bank of the Tamilnadu. Both A5 and A4 instructed deceased Girish Kumar Shivasankar Janai, A3 Nana Mahadev Jadev, 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 appellant. The appellant received the same and forged the said DD by forging the signature of the manager of the bank officers of Mumbai and attempted to encash a sum of Rs.94,95,000/- in the name of fictitious account, namely, “All Bless Associates. The said attempted to encash the amount of Rs.94,95,000/- was aborted. “All Bless Associates” at Allahabad Bank, Madurai Branch, with active assistance of A2. As per the conspiracy, they presented the following forged DDs, in the said account for collection on 10.05.1993.



Sl. No.	Demand Draft No.	Date of issue	Amount (in Rs.)	Favouring
1	008910	05.05.1993	9,55,000/-	National Textiles
2	008911	05.05.1993	9,75,000/-	Hanifa Textiles
3	008912	05.05.1993	9,83,000/-	Prethi Textiles
4	008913	05.05.1993	9,48,000/-	Kanjan Textiles
5	008914	05.05.1993	9,94,000/-	Kamal Textiles
6	008915	05.05.1993	9,76,000/-	Mahaveer Textiles
7	008916	05.05.1993	8,95,000/-	Surya Textiles
8	008917	05.05.1993	9,32,000/-	Sarika Textiles
9	008918	05.05.1993	9,27,000/-	Sarada Textiles
10	008919	05.05.1993	9,10,000/-	Bharathi Textiles

11.2. P.W.2 and P.W.3 gave evidence before the Court about the active participation of Abdul Aziz . P.W.2 and P.W.3 deposed as follows:

P.W.2:	PW3
மும்பையிலிருந்து Abdul Aziz மூலமாக DD-கள் வந்தது. அந்த DD-களை முத்துக்கிருஷ்ணனும், தங்கசாமியும் என் தந்தையிடம் கொடுத்தார்கள். அந்த னுனு-களை ரவீந்திரனும் பாலசுப்பிரமணியனும் வாங்கிச் சென்று வங்கியில் Encash செய்தார்கள். அந்த பணத்தை எங்கள் வீட்டிற்குக் கொண்டு வருவார்கள் அந்த பணத்தை வாங்கிச் செல்வதற்கு எதிரி Abdul Aziz எங்கள் வீட்டிற்கு வந்திருந்தார்.	எனது தம்பி ஜெயச்சந்திரன் மும்பை செல்வதற்கு யுணை க்கும் மற்றும் இரண்டு நபர்களுக்கும் காமராஜர் சாலையில் உள்ள வுசயஎநடமம் என்ற ஏஜென்சியில் விமானச் சீட்டுக்கள் வாங்கி வந்தார். ஆந்த விமானச் சீட்டுக்களை கேன்சல் செய்து வருமாறு என் தந்தை என்னிடம் கூறினார். ஆதன்படி விமானச் சீட்டுக்களை கேன்சல் செய்து பணத்தை என் தந்தையிடம் கொடுத்தேன் னுனு க்கள் போலியானது என்றும், பேங்கில் பிரச்சினையாக இருக்கிறது என்று பாலசுப்பிரமணியன் என் தந்தையிடம் கூறினார்.

11.3. The said evidence was never challenged in the cross examination of the appellant. Unchallenged evidence is admissible and relevant to decide the culpability of the accused. The unchallenged



evidence remains admissible. 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 can be a base for 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 appellant. It is also settled principle that prosecution need not examine all witnesses to prove a particular fact. Quality of witness is material and not quantity of witnesses. The above two witnesses, namely, sons of the deceased approver clearly deposed about the involvement of the appellant in the calculated conspired act of defrauding the Bank. The entire events were cogently deposed by P.W.2, P.W.3. Their evidence also corroborated with other evidence and materials circumstances proved by the prosecution.

11.4. PW6 officer of the Bank of India, Bombay at the relevant point of time has deposed about the forged signature in the forged DD marked under Ex.P5 and Ex.P6 and he further deposed that the DDs were not issued by the said Branch. In the said DD also particulars were written in



hand and not typed. PW7 deposed that he was working in the Bank of India Madurai Branch at relevant point of time and stated that payment advice was not received and hence he suspected and contacted Bombay office. Thereafter they found that said Ex.P5 was forged. PW5 vigilance of the officer of Bombay Branch deposed about missing of DD book bearing S.No.008901 to 009000 containing 100 leaves. Out of 100 leaves sixteen demand draft were paid for the value of Rs.5728000/-. Ten DDs for the amount of Rs.94,75,000/- were presented in the Allahabad Bank Madurai Branch and the same was found to be forged.

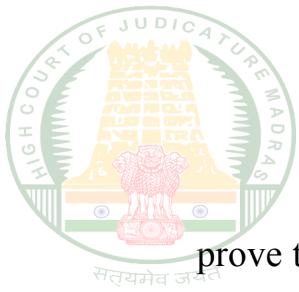
11.5. PW9 and PW11 the learned Judicial Magistrates recorded the approver statement under section 164 of Cr.P.C. by following the procedure and the same was marked under Ex.P.17, Ex.P.18 and Ex.P.19. They also deposed about the contents of the Ex.P.17, Ex.P.18 and Ex.P.19. The said documents also contain the order of tender of pardon. The accused never disputed the procedure followed by the learned Judicial Magistrate and the never raised the noncompliance of legal procedure.



Exhibits	Description of documents
Ex.P17	Petition filed before the Additional Chief Judicial Magistrate Madurai along with 164 Cr.P.C. Statement of Sathiyaseelan and 306 Cr.P.C. Proceedings (26 sheets)
Ex.P18	Petition filed before the Additional Chief Judicial Magistrate Madurai along with 164 Cr.P.C. Statement of Atmaram Gopal Sattam and 306 Cr.P.C. Proceedings (53 sheets)
Ex.P.19	Petition filed before the Additional Chief Judicial Magistrate Madurai along with 164 Cr.P.C. Statement of Thangasamy and 306 Cr.P.C. Proceedings (22 sheets)

The above available evidence clearly proved the appellant's predominant role in the entire episode. His active participation in inducing A3 to steal the DD from the Bank of India Bombay and receiving the said stolen DD book and forging the signature of the officer of Bank of India Bombay and preparation of the forged DD and handing over the same to A1 through A6 and presentation of the said Ten forged DDs in the fictitious account opened and operated by A1 in the name of All Bless Associates” at Allahabad Bank, Madurai Branch and same was aborted.

11.6. From the above material, it is clear that the prosecution proved the charge against appellant and the same was properly considered by the learned Trial Judge. The prosecution established the circumstances to



prove the involvement of the appellant in the larger conspiracy to defalcate the bank amount. 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 in 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:

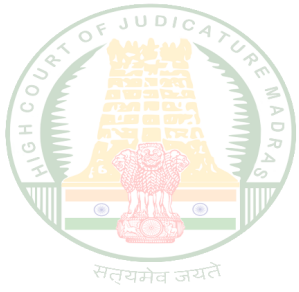
The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which 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.

11.7 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 reiterated the principle laid down in the Para 662 of “Nalini case”



“662. ... It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy.

12. The appellant is the main man and he intentionally absconded from the legitimate prosecution till the death of the approvers. Now the prosecution marked the deposition the Approver evidence of P.W. 1(Thangasamy) and P.W.2(Sathyaseelan) in the mother C.C.No.6 of 1998 marked as additional document in this appeal. 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. 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 Bank of India, Madurai and credit of the said amount in the said account and attempted to withdraw the said amount, all have been proved.



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13. From the approver's evidence in mother C.C.No.6 of 1998, namely, Thangasamy, it is clear that the appellant 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. P.W. 1 also resided in Mumbai at the relevant point of time and he had acquaintance with the said appellant and Salim Siraj Gilani. At that time, the appellant 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 appellant 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 PW1 also informed about the 10% commission. The said Muthukrishnan came to Mumbai and met the appellant and Salim Siraj Gilani in the presence of the P.W.1. 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

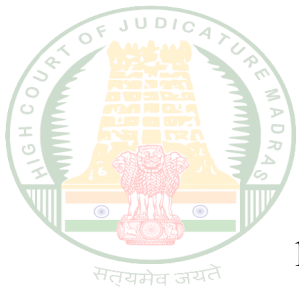


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Balasubramanian who was none other than the clerk of the Canara Bank and Sathiyaseelan. Approver and other accused went to the residence of A2 and they got introduction. On 05.02.1993 at Mumbai, Mathina lodge the respondent asked to get the DD payable 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 appellant had been practicing to forge the signature of the manager of the Bank of India, Mumbai Branch and the same was questioned by P.W. 1 and the appellant warned P.W.1 and directed him not to interfere. Thereafter he left the lodge and Salim Siraj Gilani and the appellant called and handed over the forged DDs. Thereafter the said DD was handed over to A1 and A2. Thereafter, the forged DD was encashed and after taking the 10% amount the said amount was handed over to the appellant in the house of PW1. The appellant verified the said amount and handed over Rs. 30,000/- to P.W.1 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 P.W.1, Muthukrishnan, Balasubramanian, Raveendran and the appellant jointly went to Mumbai



with money. The P.W.1 was asked to hand over Rs.1,00,000/- to the appellant. 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 appellant in the presence of the Sathiya Seelan Son Jayakar (PW1) and he handed over the same to the appellant and the appellant 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 appellant 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 appellant 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 P.W.1 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, Sathiya Seelan in all aspects.



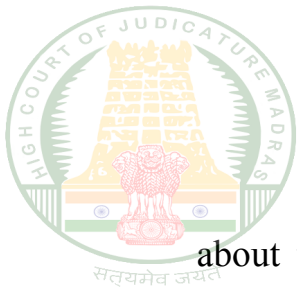
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14.The prosecution further strengthened the case on the basis of the evidence of the approver by way of marking as additional document in this appeal. The approver Sathyaseelan, G.Thangaswamy clearly deposed about the meeting of the appellant with remaining accused, handing over the forged DDs to A1 through another accused and their attempt to encash was aborted. Their evidence was accepted by the trial Court in mother C.C., and confirmed by this Court in Crl.A.No.34 of 2003.

15.That apart, the learned trial Judge acted on the basis of the evidence of P.W.1 to P.W.3 and other materials convicted the appellant. Therefore, this Court holds that the learned trial judge is correct in convicting the appellant.

16. In view of the above discussion the prosecution clearly proved the charge against the appellant under Section *120-B r/w 468, 471, 420 IPC r/w 511 of IPC* beyond reasonable doubt. Therefore, there is no merits in this appeal.

17. The learned trial Judge has convicted all co-accused in the mother case and the other absconding accused meticulously discussing



about the involvement of this appellant. The conviction against the co-accused, namely, A1, A3, A4, A5, A6 was confirmed by this Court in Crl.A.(MD).Nos.34 of 2003, 384 of 2003, 715 of 2003 and 113 of 2005. A2's conviction also was confirmed by this Court in Crl.A.(MD).No.315 of 2003. In all cases, there was specific finding about the involvement of this appellant. Therefore, in all aspects, the judgment of conviction passed by the learned trial Judge is in accordance with law.

18. The learned counsel appearing for the appellant would submit that appellant is aged about 67 years and he is suffering from various illness and therefore he seeks for reduction of sentence. The learned Special Public Prosecutor would submit that his conduct through the entire trial is not appreciable and he is the main man and hence he seeks to confirm the sentence.

19. Considering the circumstances that appellant was absconded for period 12 years and his active roll, 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 be cause of 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 reformative, 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.

20. 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 opening the fictitious account and encashed the amount and withdrew the amount and appropriated among themselves and their greed drove them to



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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. Hence, from the stage of investigation till the date of the Trial court judgment , his conduct is condemnable. Therefore, this Court is not inclined to exercise its discretion in favour of the accused to grant minimum sentence. 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 evaded process of law by absconding. Therefore, this court is not inclined to grant minimum sentence which amounts to showing misplaced sympathy to the white collar criminals.

20.1. 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:

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.

20.2. 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.



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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 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.*

20.3. In the case of fraud, greedy person gains at the loss of another. This case is no exception. Hence, this case does not deserve any sympathy to grant minimum sentence. But, considering the age, various ailments and other mitigating circumstances, this Court is inclined to award appropriate sentence between the minimum sentence and maximum sentence. i.e. This Court is inclined to reduce the sentence of imprisonment on the following terms:

Sl. No.	Offences under Section	Punishment imposed by the trial Court	Punishment imposed by this Court
1	120-B r/w 468 of IPC	Rigorous Imprisonment for 7 years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for one year	Rigorous Imprisonment for 5 years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for one year



2	468 of IPC	Rigorous Imprisonment for 7 years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for one year	Rigorous Imprisonment for 5 years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for one year
3	120-B r/w 468 r/w 471 of IPC	Rigorous Imprisonment for 7 years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for one year	Rigorous Imprisonment for 5 years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for one year
4	468 r/w 471 of IPC	Rigorous Imprisonment for 7 years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for one year	Rigorous Imprisonment for 5 years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for one year
5	120-B r/w 420 r/w 511 of IPC	Rigorous Imprisonment for 3 ½ years and to pay a fine of Rs.10,000/- in default to undergo Simple Imprisonment for 6 months.	Rigorous Imprisonment for 2 ½ years and to pay a fine of Rs.10,000/- in default to undergo Simple Imprisonment for 6 months.
6	420 r/w 511 of IPC	Rigorous Imprisonment for 3 ½ years and to pay a fine of Rs.10,000/- in default to undergo Simple Imprisonment for 6 months	Rigorous Imprisonment for 2 ½ years and to pay a fine of Rs.10,000/- in default to undergo Simple Imprisonment for 6 months.
		Total Fine amount Rs.1,20,000/-	Total fine amount Rs.1,20,000/-

21. Accordingly, this appeal is partly allowed in the following terms:

(i) The conviction passed against the appellant by the learned II



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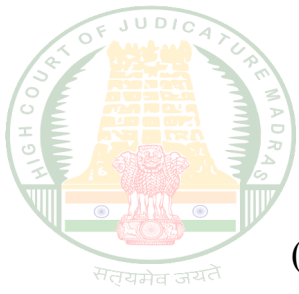
Additional District and Sessions Judge for CBI Cases, Madurai, in C.C.No.

10 of 2010, dated 29.01.2019, is hereby confirmed.

(ii)The sentence of imprisonment as against the appellant to undergo Rigorous Imprisonment for **7 years** and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for one year for the offence under Section 120-B, r/w 468 of IPC is hereby reduced to **5 years** of Rigorous Imprisonment. Direction to pay fine amount Rs.25,000/- is hereby confirmed.

(iii)The sentence of imprisonment as against the appellant to undergo Rigorous Imprisonment for **7 years** and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for one year for the offence under Section 468 of IPC is hereby reduced to **5 years** of Rigorous Imprisonment. Direction to pay fine amount Rs.25,000/- is hereby confirmed.

(iv)The sentence of imprisonment as against the appellant to undergo Rigorous Imprisonment for **7 years** and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for one year for the offence under Section 120-B, r/w 468 r/w 471 of IPC is hereby reduced to **5 years** of Rigorous Imprisonment. Direction to pay fine amount Rs. 25,000/- is hereby confirmed.



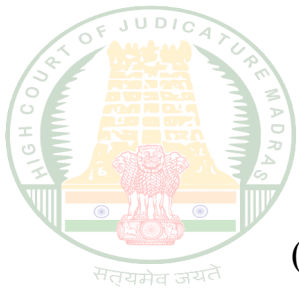
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(v)The sentence of imprisonment as against the appellant to undergo Rigorous Imprisonment for **7 years** and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for one year for the offence under Section 468 r/w 471 of IPC is hereby reduced to **5 years** of Rigorous Imprisonment. Direction to pay fine amount Rs.25,000/- is hereby confirmed.

(vi)The sentence of imprisonment as against the appellant to undergo Rigorous Imprisonment for 3 ½ **years** and to pay a fine of Rs. 10,000/- in default to undergo Simple Imprisonment for 6 months for the offence under Section 120-B, r/w 420 r/w 511 of IPC is hereby reduced to 2 ½ years of Rigorous Imprisonment. Direction to pay fine amount Rs. 10,000/- is hereby confirmed.

(vii)The sentence of imprisonment as against the appellant to undergo Rigorous Imprisonment for 3 ½ **years** and to pay a fine of Rs. 10,000/- in default to undergo Simple Imprisonment for 6 months for the offence under Section 420 r/w 511 of IPC is hereby reduced to 2 ½ years of Rigorous Imprisonment. Direction to pay fine amount Rs.10,000/- is hereby confirmed.



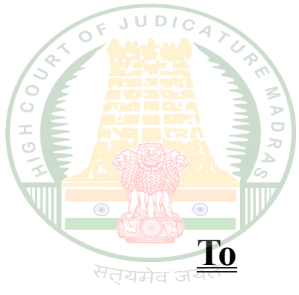
CRL.A(MD).No. 95 of 2019

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

(ix) Bail bond executed by the appellant shall cancelled and the learned trial Judge is hereby directed to secure the appellant and confine in prison to serve his remaining period of imprisonment.

07.04.2025

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

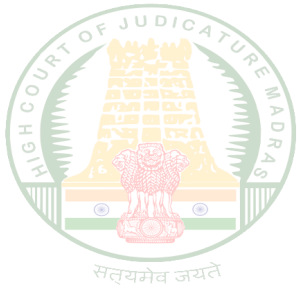


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To

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



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CRL.A(MD).No. 95 of 2019

K.K.RAMAKRISHNAN,J.

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Pre-delivery judgment made in
CRL.A(MD).No.95 of 2019
and
CrI.M.P(MD).No.7251 of 2024

07.04.2025