

CRL.A(MD).No.406 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.406 of 2019

State through Inspector of Police,
Central Bureau of Investigation,
Special Crimes Branch, Chennai.
(RC.5, 6 & 8/(S)/1994/CBI/SCB/Chennai)

...Appellant

Vs.

Asmath Kamal Choudry @ Hasmath Khan

... Respondent

PRAYER: This Criminal Appeal is filed under Section 377(2) of Cr.P.C. to allow the Criminal Appeal, (i) to enhance the sentence imposed on the Respondent/Accused-9 Asmath Kamal Choudry by the learned II Additional District and Special Judge for CBI Cases, Madurai, by virtue of judgment dated 26.05.2017 on par with the sentence imposed on other accused persons for the offences punishable u/sec.120-B r/w 420 IPC and (ii) to convict the Respondent/Accused-9 Asmath Kamal Choudry for the offences punishable u/sec.120-B r/w 419, 467, 468, 471 r/w 511 IPC and



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additional charges u/sec.120-B r/w 420, 419, 467, 468, 381, 471 r/w 511

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IPC.

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

For Respondent : Mr.S.M.A.Jinnah

JUDGMENT

CBI filed this appeal under Section 377(2) of Cr.P.C. to allow the Criminal Appeal, (i) to enhance the sentence imposed on the Respondent/Accused-9 Asmath Kamal Choudry by the learned II Additional District and Special Judge for CBI Cases, Madurai, by virtue of judgment dated 26.05.2017 at par with the sentence imposed on other accused persons for the offences punishable u/sec.120-B r/w 420 IPC and (ii) to convict the Respondent/Accused-9 Asmath Kamal Choudry for the offences punishable u/sec.120-B r/w 419, 467, 468, 471 r/w 511 IPC and additional charges u/sec.120-B r/w 420, 419, 467, 468, 381, 471 r/w 511 IPC.

2. The respondent in Crl.A.(MD).No.406 of 2019 was originally arrayed as A9 in the C.C.No. 5 of 1998 on the file of the II Additional



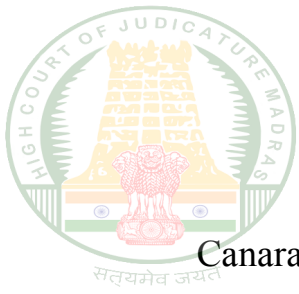
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District Court for CBI Cases, Madurai.

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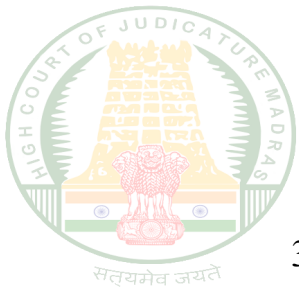
3. Brief facts of the case:

He and others are said to have committed offences under section 120 (b) r/w. 419, 420, 467, 468, 471 and 511 of I.P.C. and 381 of I.P.C. and section 13 (2) r/w. 13 (1)(d) of P.C. Act 1988. The CBI registered the cases in R.C5,6 &8/S/94/CBI/SCB/MAS on 11.03.1994 on the strength of the source information alleging that the appellant and other persons had entered into conspiracy and stealthily removed two blank DD books each containing 100 leaves bearing numbers 008901 to 009000, one from bank of India, DN Road Branch Bombay and another D.D book containing 100 leaves bearing numbers 536901 to 537000 from to the Bank of Maharashtra, Ghatkoper East Branch, Bombay in the year 1992 and 1993. Thereafter they forged signature of the bank officials of Mumbai and fabricated four demand drafts of *bank of india , bombay* bearing Nos. 008925, 008927, 008928 and 008926 for the value of Rs.38,35,800/- and presented in the fictitious account opened by A1 in the name of Sri Murugan textile by giving fictitious address and impersonating himself as Ramesh as proprietor of the said textile in the Canara Bank, Ramnad Road Branch, Madurai with the active participation of A2 (Sub Staff with the



Canara Bank) and A5 (Manager of the said branch). A1 presented the forged DDs on various dates and credited the amount in fictitious account and clandestinely withdrawn the said amount through two bearer cheques in the fictitious names of Ganesan and Venkatachalapathy with the active aid of A2 and A5 and further attempted to encash cvertain amount by presenting two forged DD bearing Nos.536901 and 7593 in the bank of Maharastra, which created suspicion and enquiry was made and the act of forgery was found out. Therefore, the said attempt was aborted. Thereafter, on receiving the source information, CBI registered various cases in R.C5,6 &8/S/94/CBI/SCB/MAS on 11.03.1994 and conducted the investigation and filed the common final report in the above three crime numbers against the appellant and other persons as stated below :-

- A1.Raveendran,
- A2.Balasubramanian,
- A3. Nana Mahadev Jadav
- A4. Prakash RAmachandra Payer
- A5.Abdul Aziz
- A6.Salim Siraj Gilani
- A7.Ramasamy
- A8.Muthukrishnan,
- A9.Asmat Kamal Choudhry @ Hashmat Khan



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3.1. The II Additional District Court for CBI Cases, Madurai has taken the final report on file in C.C.No.5 of 1998. Thereafter the learned trial judge issued summons to the accused. The respondent had entered appearance and after splitting the case against the absconded accused and after appearance of the remaining accused including the appellant, the Learned Trial Judge served the copies to them under section 207 of Cr.P.C. and framed the charges and questioned the accused and the accused denied and pleaded not guilty and stood for trial.

3.2. During the pendency of the trial, after the completion of the examination of the witnesses P.W.1 to P.W.29 and marking of the document Ex.P1 to P147, the respondent absconded in the year 2001 and NBW was issued. Thereafter, the trial was continued in the mother C.C.No.5 of 1998 against the remaining accused and A1 Raveendran, A2 Balasubramanian, A3 Nana Mahadev Jadav, A4 Prakash Ramachandra Payer, A5 Ramasamy, A6 Muthukrishnan and they were convicted on 27.12.2002. Thereafter the respondent was arrested on the basis of the NBW and trial was commenced in the split up C.C.No.1 of 2017 and the Learned Trial Judge after considering the prosecution evidence of P.W.1 to P.W.30 and Ex.P1 to P147 and MO-1 held that the respondent is liable to be convicted under



section 120 (b) r/w. 420 IPC and he was entitled to be acquitted under section 120 (b) r/w. 419, 467, 468, 471 r/w. 511 of I.P.C. The learned judge passed the sentence of the imprisonment to undergo rigorous imprisonment for 60 weeks. Challenging the same, the CBI filed this appeal to enhance the sentence of imprisonment under section 120 (b) r/w. 420 of I.P.C., and to convict the respondent for the remaining charged offences.

4.Thiru.N.Mohideen Basha, learned Special Public Prosecutor for CBI, has made the following submission:

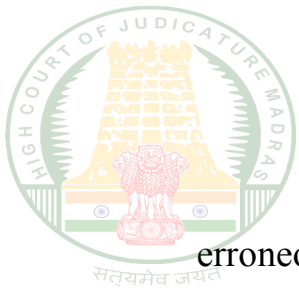
4.1. The Learned Trial Judge has committed grave error in acquitting the respondent for the charged offence under section 120 (b), r/w. 467, 468, 471 and 381 of I.P.C. when the evidence was replete to prove the charges. The prosecution produced the relevant evidence to prove the stolen blank demand drafts from the bank of India, Mumbai, forgery of the said blank demand draft in fictitious name and that the forged demand drafts were used as genuine and deposited in the Canara Bank, Gnanaoliupuram, Madurai for encashment and same was encashed and withdrawn in the fictitious account and thereby they cheated the bank. Moreover, the respondent was absconding accused pending trial in the mother C.C.No.4 of 1998 and in the said mother C.C.No.4 of 1998, the



learned trial judge convicted the 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 also but the learned trial judge erroneously acquitted the respondent for the said charges. It is settled principle in the case of the conspiracy, it is not legal requirement to place the material to prove the active participation in the process of conspiracy till completion of the conspired Act. Therefore, the respondent is liable to be convicted for the remaining charged offences.

4.2. The Learned Trial judge also committed error in not imposing proper punishment even for the proved offence of 120 (b) r/w. 420 of I.P.C. In the mother C.C.No. 5 of 1998 punishment of 5 years rigorous imprisonment was imposed. The respondent and the other absconding accused Abdul Aziz and Salim Siraj Gillani are main men and they were the kingpins of the entire occurrence and they 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 deserve severe punishment. But, the Learned Trial Judge



erroneously given sentence of only 60 weeks simple imprisonment and therefore he seeks for allowing this appeal.

5.Thiru. Lajapathi Roy, the Learned senior counsel for the respondent made the following submission :-

5.1.The Learned trial judge only after considering the entire prosecution evidence has held that no material was 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 the judgment.

5.2. The approvers' evidence 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 under the charges 120 (b) r/w. 419, 467, 468, 471 r/w. 511 of I.P.C.

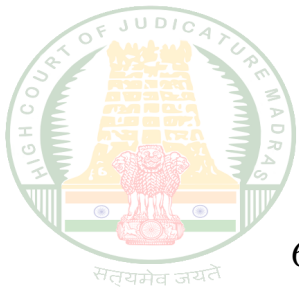
5.3. The learned trial judge correctly considered the circumstances that except the uncorroborated evidence of the approvers namely P.W.1 and P.W.2, no other material circumstances had been established against the



respondent to pass the conviction under section 120 (b) of I.P.C. r/w. 419, 467, 468, 471 r/w. 511 of I.P.C.

5.4. Merely on the basis of the evidence of the approvers that there were some stray instances of company of appellant with other accused, conviction should not be passed against him under section 120 (b) of I.P.C. r/w. 419, 467, 468, 471 r/w. 511 of I.P.C. without any further evidence for appropriation of the crime amount. Therefore the Learned senior counsel seeks to confirm the acquittal passed against the respondent under the above sections.

5.5. The respondent is aged about 75 years and also he has undergone the incarceration for a continuous period of 60 weeks. The said mitigating circumstances were taken into consideration by the learned trial judge and given rigorous imprisonment for 60 weeks for the charge under section 120 (b) r/w. 420 of I.P.C. and to pay fine of Rs. 500/- in default to undergo the simple imprisonment for two weeks. Even now the respondent is suffering from many ailments and hence no circumstances were established by the prosecution to warrant enhancement of sentence.



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6. This Court considered the rival submissions made by the learned Special Public Prosecutor appearing for CBI and the learned counsel appearing for the respondents and perused the materials available on record and also the precedents relied by them.

7. Whether this Criminal Appeal filed by the CBI is liable to be allowed?

8. Discussion on facts:

8.1. The respondent has not challenged the conviction and sentence imposed against him in C.C.No.01 of 2017 dated 26.05.2017. The CBI alone filed this appeal for the relief as stated above. To decide the appeal following brief facts are necessary:

During the year 1992 - 1993, the accused, 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



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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.8901 to 9000. Similarly, Prakash Ramachandra Payer who was working as sub-staff in *Bank of Maharashtra, Ghatkoper East Branch, Bombay* committed theft of one blank DD book containing serial No.536901 to 537000 and handed over the same to *Asmath Kamal Choudhary(respondent herein)* and he in turn handed over to **Abdul aziz**. Thus Both Nana Mahadev Jadav and Prakash Ramachandra Payer entrusted the said DD books to Abdul aziz, Salim Siraj Gillani through Atma Ram Gopal Satam, Grishkumar Shivsankar Jani, Prahalad Shiv Kumar Tiwari and *Asmath Kamal Choudhary(respondent herein)*. Further *Asmath Kamal Choudhary(respondent herein)* furnished signature of manager of bank *Bank of Maharashtra, Ghatkoper East Branch, Bombay* to *Bank of Maharashtra, Ghatkoper East Branch, Bombay*. He forged the signature of manager of *Bank of India DN Road Branch and Bombay Bank of Maharashtra, Ghatkoper East Branch, Bombay* and entrusted with A1 .

8.2. Accused Muthukrishnan along with his relative of approver G.Thangaswamy met *Abdul aziz and Salim Siraj Gillani at Mumbai* and



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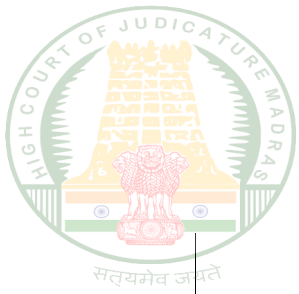
discussed about the opening of the fictitious account in Madurai and encashment of demand draft. Thereafter, the accused Muthukrishnan and G.Thangaswamy met the another approver Sathyaseelan in Madurai at his house and had a discussion with N.R.Raveendran and Balasubramanian about the opening of the fictitious account. Thereafter, the forged demand drafts were 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 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.48,63,000/- was withdrawn on the basis of the forged DDs in various fictitious accounts and finally when they made an attempt to encash certain amount on the basis of the forged DDs of Bank of Maharashtra, Ghatkoper East Branch, Bombay, the bank officials found out the fraudulent attempt to encash the amount and the same was aborted. Thereafter, Various FIRs were registered and three final reports were filed. *But, respondent was arraigned as accused in only three FIR R.C.No.5,6 & 8 /S/94/CBI/SCB/MAS which culminated into single final*



report with array of the respondent and other accused and the same was taken on file in C.C.No.5 of 1998 and the respondent was arraigned as accused No.9.

8.3. Particulars of the fictitious account, amount of cheating, finding of the trial Court in above C.C, are as follows:

Crime No.	Mother C.C.No	Split up C.C.No.	Name of the Bank	Name of the fictious account	Defrauded amount	Verdict of trial Court
R.C.No. 5,6 & 8 /S/94/C BI/SCB/MAS	05/ 1998	04/ 2017	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/-	Convicted only under section u/sec.120-B r/w 420 IPCand imposed punishment of sentence already undergone. The trial court acquitted for the remaining offences u/sec. 120-B r/w 467, 468, 381 and 471.
				Ravi Textiles	Bank of India, Mumbai 008926-17.03.1993 9,90,000/-	Convicted only under section u/sec.120-B r/w 420 IPCand imposed punishment of sentence already undergone. The trial court acquitted for the remaining offences u/sec. 120-B r/w 467, 468, 381 and 471.



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				Ravi Textiles	Bank of Maharashtra, Ghatkoper, Mumbai Branch 536901-07.05.1993 49,03,000/- was not encashed attempt was aborted.	Convicted only under section u/sec.120-B r/w 420 IPCand imposed punishment of sentence already undergone. The trial court acquitted for the remaining offences u/sec. 120-B r/w 467, 468, 381 and 471.
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9.Discussion on merits:

9.1. The case of the prosecution is that all the accused and the approvers conspired to defalcate the bank amount by stealthily removing the blank DD by committing theft of DD Book from the “bank of Maharashtra” Ghatkoper East Branch, Mumbai and forged the signature of the manager of the bank in ten numbers of blank DDs and presented the same in the Canara Bank, Ramnad Road Branch, a fictitious account was opened by A1 and attempted to encash an amount of Rs.49,03,000/-. The said attempt was aborted. Even prior to that A1 presented another forged DD of bank of India, Mumbai Branch in the fictitious accounts, namely, Murugan Textiles and Ravi Textiles for the value of Rs.19,75,000/- and Rs. 9,90,000/- respectively. Thereafter, the Bank of India Madurai officer



suspected something had gone amiss and contacted bank of Maharashtra Mumbai and found that the said DDs were forged. Hence, the CBI conducted investigation and filed a final report incorporating the above three transactions in one final report. This respondent and other accused were subjected to trial for the offences under Sections 120-B r/w 467, 468, 471 r/w 511 of IPC and for additional charge under Sections 120-B, 467, 468, 381, 471 r/w 511 of IPC and other charges also. The respondent also participated in the said mother case in C.C.No.5 of 1998 trial up to the examination of P.W.1 to P.W.29 and marking of Ex.P1 to Ex.P147, and then he absconded in the year 2001. Therefore, the case was split up and the trial in the mother case was continued and the conviction and sentence was imposed against the accused Nos.1 to 4, A7 and A8 except three accused, namely, the respondent, Salim Siraj Gillani, Abdul Aziz. The convicted accused preferred the appeal before this Court and the same was confirmed. Some of the accused also preferred the appeal before the Hon'ble Supreme Court and same was also confirmed. That being the situation, the respondent was arrested in the year 2017 and trial was continued and at his request, some of the witnesses were re-examined and trial was completed and the learned trial Judge has convicted the respondent only under Section 120-B r/w 420 of IPC and acquitted from

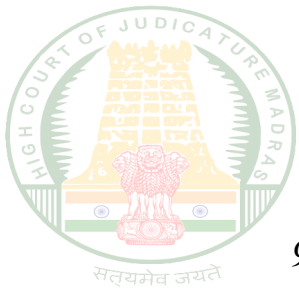


the remaining charges. The learned trial Judge has sentenced the respondent to undergo only for a period of 60 weeks and imposed a fine of Rs.500/- only. The respondent has not preferred any appeal challenging the said conviction. The CBI have filed this appeal, to enhance the sentence for the offence under Section 120-B r/w 420 of IPC and to convict him under Section 120-B r/w 419, 467, 468, 471 r/w 511 of IPC and under Additional charges under Section 120-B r/w 420, 419, 467, 468, 471, 381 r/w 511 of IPC.

9.2. Since there was no appeal against the conviction under Section 120-B r/w 420 of IPC on behalf of the respondent, in this appeal, this Court considered the following questions:

(i) Whether the Court below is correct in acquitting the respondent under Sections 120-B r/w 419, 467, 468, 471 r/w 511 of IPC and Additional charge under Section 120-B r/w 420, 419, 467, 468, 471, 381 r/w 511 of IPC?

(ii) Whether the CBI made out a case to enhance the punishment of sentence of imprisonment of 60 weeks imposed against the respondent in C.C.No.1 of 2017 for the offence under Section 120-B r/w 420?

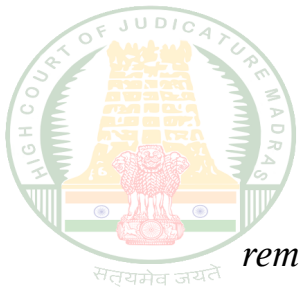


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9.3. In this case, there was larger conspiracy. In the said conspiracy, the respondent faced the allegation of stealing of blank DD books of Bank of Maharashtra, Ghatkoper East Branch, Mumbai containing leaves No. 536901 to 537000. He clandestinely obtained the said DD from the employee of said bank, namely, A4/Payer . A4 committed theft of the said DD book and entrusted with the respondent and the respondent entrusted the same in the custody of Abdul Aziz, Salim Siraj Gillani and also forged the signature of the bank manager of the said Bank of Maharashtra. On the basis of the same, the other accused committed forgery of the signature of the bank manager and presented the same in the Madurai Canara Bank, Ramnad Road Branch and the same was found to be false and forged one and therefore, their act of attempting to defraud the amount of Rs. 49,03,000/- was aborted.

10. P.W.4, one of the approver clearly deposed about the involvement of this respondent in the following manner:

“He was a friend of deceased accused/Kishore. Through him, he contacted the accused Abdul Aziz. Abdul Aziz and asked to steal DD book from the Bank of Maharashtra. At the time, he introduced his friend A4(payer), a sub staff of Bank of Maharashtra. A4 stealthily

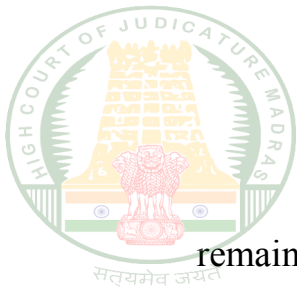


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removed the above said DD book containing the serial Nos.536901 to 537000 and handed over to the respondent. After receiving from A4, the respondent he handed over the same to Abdul Aziz. The respondent also furnished the sample signature of the manager of the said bank”.

10.1. The above evidence of P.W.4 is cogent and trustworthy. His evidence is without any infirmities. His evidence also was relied by the learned trial Judge and also this Court in the case of Co-accused. The learned trial Judge also believed the evidence of the said witness. This Court also finds no infirmities to place reliance on the evidence of the said witness.

10.2. The learned Judicial Magistrate has recorded the statement of approver under Section 164 of Cr.P.C., by following the procedure. The learned Chief Judicial Magistrate also recorded tender of pardon as per the procedure stated in Cr.P.C. This Court also perused the record of proceedings and finds no infirmities. The learned counsel has not also disputed the said compliance. Now, the learned counsel for the appellants submitted that before recording conviction, the requirement of law is that it is to be seen whether the approver's evidence has been corroborated by



remaining evidence in all aspects. To consider the said submission, this Court deduces the following principle laid down by the Hon'ble Supreme Court to base the conviction on the basis of the approver's evidence:

10.3. The Hon'ble Supreme Court in the case of ***K. Hashim v. State of T.N.*** [***K. Hashim v. State of T.N.***, reported in (2005) 1 SCC 237 has held as follows:

“38. First, it is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction. As Lord Reading says:

‘Indeed, if it were required that the accomplice should be confirmed in every detail of the crime, his evidence would not be essential to the case; it would be merely confirmatory of other and independent testimony.’ (Baskerville case [R. v. Baskerville, (1916) 2 KB 658 : (1916-17) All ER Rep 38 (CCA)] , KB p. 664 : All ER p. 42 B-C)

39. All that is required is that there must be some additional evidence rendering it probable that the story of the accomplice (or complainant) is true and that it is reasonably safe to act upon it.



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40. Secondly, the independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or complainant that the accused committed the crime. This does not mean that the corroboration as to identification must extend to all the circumstances necessary to identify the accused with the offence. Again, all that is necessary is that there should be independent evidence which will make it reasonably safe to believe the witness's story that the accused was the one, or among those, who committed the offence. The reason for this part of the rule is that:

‘A man who has been guilty of a crime himself will always be able to relate the facts of the case, and if the confirmation be only on the truth of that history, without identifying the persons, that is really no corroboration at all.... It would not at all tend to show that the party accused participated in it.’

41. Thirdly, the corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another. But of course the circumstances may be such as to make it safe to dispense with the necessity of corroboration and in those special circumstances a conviction so based would not be illegal. I say this because



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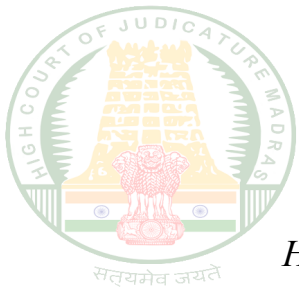
it was contended that the mother in this case was not an independent source.

42. Fourthly, the corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime. Were it otherwise, 'many crimes which are usually committed between accomplices in secret, such as incest, offences with females' (or unnatural offences) 'could never be brought to justice'. (See M.O. Shamsudhin v. State of Kerala [M.O. Shamsudhin v. State of Kerala, (1995) 3 SCC 351 : 1995 SCC (Cri) 509] .)"

(emphasis supplied)

10.4. The Hon'ble Three Judges Bench of the Supreme Court in the case of **Somasundaram v. State**, reported in **2020 (7) SCC 722** after considering the said 'K.Hashim case' and Swarn Singh v. State of Punjab reported in AIR 1957 SC 637 and **Haroon Haji Abdulla Vs. State of Maharashtra** reported in AIR 1968 SC 832 has held as follows:

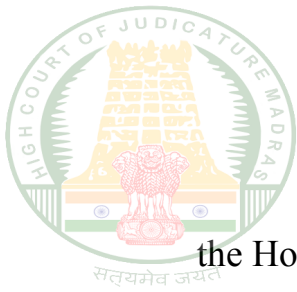
78. As laid down by this Court, every material circumstance against the accused need not be independently confirmed. Corroboration must be such that it renders the testimony of the approver believable in the facts and circumstances of each case. The testimony of one accomplice cannot be, ordinarily, be supported by the testimony of another approver. We have used the word "ordinarily" inspired by the statement of the law in para 4 in K.



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Hashim [K. Hashim v. State of T.N., (2005) 1 SCC 237 : 2005 SCC (Cri) 292] wherein this Court did contemplate special and extraordinary cases where the principle embedded in Section 133 would literally apply. In other words, in the common run of cases, the rule of prudence which has evolved into a principle of law is that an accomplice, to be believed, he must be corroborated in material particulars of his testimony. The evidence which is used to corroborate an accomplice need not be a direct evidence and can be in the form of circumstantial evidence.

11. The other approvers P.W.1 to P.W.3 and the other witnesses clearly deposed about the further course of action in furtherance of the conspiracy up to the presentation of the forged cheque in the bank of India, Ramnad Road Branch, Madurai in the fictitious account opened by A1 with the active participation of the remaining accused without any infirmity. Their evidence are not only cogent and also corroborated by documents. The handwriting expert also affirmed the signature of the accused. The respondent during the proceedings under Section 313 of Cr.P.C., stated that false case was registered and his restaurant is situated in Mumbai and nine Banks are situated around it and all staff of the banks are his customers and therefore, he was falsely implicated. From the above explanation, it is clear that he had acquaintance with the accused. As held by

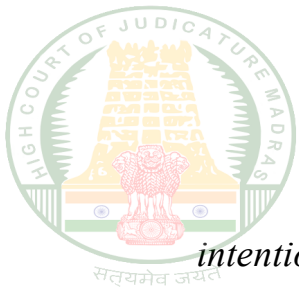


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the Hon'ble Supreme Court, it is not necessary to prove the role of the each accused at every stage of the entire conspiracy. It is settled principle that if the involvement of the conspirator in any of the events of the chain is proved they are liable 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.

11.1. 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”.

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12. Therefore, the prosecution clearly proved the charge under Section 120-B r/w 420, 419, 467, 468, 471 IPC r/w 511 IPC and additional charges under Sections 120-B r/w 420, 419, 467, 468, 381, 471 IPC r/w 511 of IPC beyond reasonable doubt.

13. The learned trial Judge rendered the following finding to convict the appellant under Section 120-B r/w 420 of IPC and has not rendered any finding with any deliberation to acquit the respondent under the acquitted charges. The following paragraph of the learned trial Judge is relevant for further discussion:

31. From the evidence of the said witnesses, the prosecution proved that the accused is committed the offences U/s. 120-B r/w 420 IPC. Since the 5 DDs were deposited in the Canara Bank, Madurai which were sent for clearance where the Bank of Maharashtra at madurai found that the DDs were forged. So, the attempt was made by the 1st accused with pursuance of criminal conspiracy of cheat the bank. So that the court comes to the conclusion that the accused is committed the offences U/s. 120-B r/w 420 IPC. Since the evidence of P.W is corroborated that the association of the accused with the Abdul Aziz and



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Salim Siraj Gilani. Since he handed over the DD book with Abdul Aziz to play fraud on the Bank. The rest of the offences not proved by the prosecution U/s.419, 467, 468, 381 and 471 IPC r/w 511 IPC and Section 13(2) r/w.13(1) (d) of the Prevention of Corruption Act as against the accused. So that the court is decided to convict and sentence the accused U/s.120B r/w 420 IPC.

32. The question of sentence is put forth before the accused and he is entreated that the minimum sentence may be awarded and the period of judicial custody may be set off. But the accused is conspired with other accused and attempted for cheating, cheating by personation, forgery, fabricated false documents and used them as genuine and theft. So that the prayer of the accused is not consonance with law, but the role of accused was yielded with criminal mind of other accused and considered the age of the accused, this court is inclined to accept the prayer of the accused for set off and the same is accepted and this court is come to conclusion to pass the sentence as follows:

33. In result, the accused is convicted and sentenced to undergo Rigorous Imprisonment for Sixty



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Weeks for the charge U/s.120-B, r/w 420 IPC; and to pay a fine of Rs.500/- in default to undergo Simple Imprisonment for Two weeks. Since the charge U/s. 419, 467, 468, 381 and 471 IPC r/w 511 IPC and additional charge U/s.120-B r/w 420, 419, 467, 468, 381, 471 IPC r/w 511 IPC are not found guilty against the accused and therefore he is acquitted U/s.235(1) of CrPC. The period of judicial custody if any already undergone by the accused shall be set off against the term of imprisonment awarded U/s.428 CrPC. So the sentence imposed on the accused is set off. Therefore, the bail bond will be cancelled, the surities will be discharged after expiry of appeal time. The cash security amount of Rs.1,00,000/- paid on behalf of the accused has already been ordered to be confiscated to the State and accordingly the same was confiscated on 04.12.2002.

14.From the above reading of the finding, it is not clear on what basis the learned trial Judge acquitted the accused under the charged offences under Sections 120-B r/w 420, 419, 467, 468 and 471 r/w 511 IPC and additional charge under Sections 120-B r/w 420, 419, 467, 468, 381 and 471 r/w 511 of IPC. But the learned trial Judge in paragraph No.44 of judgment has held as follows:



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But the accused is conspired with other accused and attempted for cheating, cheating by personation, forgery, fabricated false documents and used them as genuine and theft.

15. The Honourable Supreme Court repeatedly held that in corruption cases, appreciation of evidence is to be in such a way as to achieve the object enshrined in the Act. While appreciating the evidence, it is the duty of the Court to read the entire evidence of the witnesses. Picking one sentence from the evidence and disbelieving the rest of the evidence is not appreciable. There should be a holistic reading and a segmented/selective reading cannot be accepted. The same has been underscored by the Hon'ble Supreme Court in the matter of appreciating the evidence in the following judgments:

<i>Mustak Alias Kanio Ahmed Shaikh vs. State of Gujarat</i> reported in (2020) 7 SCC 237	<i>Rakesh and another Vs. State of Uttar Pradesh and another</i> reported in (2021) 7 SCC 188
34. With the greatest of respect, the evidence of the witnesses have to be read as a whole Words and sentences cannot be truncated and read in isolation.	14. One is required to consider the entire evidence as a whole with the other evidence on record. Mere on sentence here or there and that too to the question asked by the defence in the cross examination cannot be considered stand alone.

But learned trial judge has failed to follow above principle and erroneously acquitted the respondent under section 120-B r/w 419, 467,



468 and 471 r/w 511 IPC and under the additional charges under Sections 120-B r/w 419, 467, 468, 381 and 471 r/w 511 of IPC.

16. From the record and the appreciation of the materials on record this Court finds that no other view is possible except the view that the appellant has committed offence under Sections 120 (b) r/w. 467, 468, 381, 471 of I.P.C and also 120 (b) r/w. 467, 468, 381, 471 of I.P.C. r/w. 511 of I.P.C. It is well settled principle, where the view taken by the trial Court in acquitting the accused is extremely perverse and is not reasonably sustainable based on the evidence on record, then the appellate Court can interfere with such an order of acquittal to ensure miscarriage of justice is prevented. The only possible view as per the evidence is that the appellants had committed the offences under Sections 120 (b) r/w. 467, 468, 381, 471 of I.P.C and also 120 (b) r/w. 467, 468, 381, 471 of I.P.C. r/w. 511 of I.P.C. The prosecution as discussed above proved the charges by examining five types of witnesses and marked the respective documents.

17. Examination of approvers:

P.W.1 to P.W.4 are the approvers and they have fully supported the case of the prosecution and they subjected to cross examination and



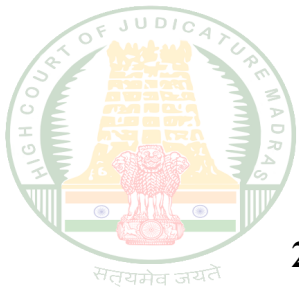
nothing was elicited to disbelieve their version and their evidence are cogent and inspires confidence of this Court and their trustworthiness is unimpeachable.

18.Examination of the bank officials from Bank of India, D.N.Road Branch, Mumbai and Madurai:

P.W.14/Chief Manager of the Bank of India Madurai deposed that 10 numbers of DDs which were cleared by the Bank of India, Madurai were not issued by the Bank of India, Mumbai. P.W.13, P.W.14, P.W.15, P.W.3, P.W.18 from the Bank of India, Gananaolipuram Branch deposed about the passing of the forged DDs.

19.Examination of the bank officials from Bank of Maharashtra, Ghatkopar (E) Branch:

P.W.10/Officer from the Bank of Maharashtra was examined to speak about the forgery of five DDs. He deposed that Bank of Maharashtra never issued the five forged DDs. P.W.11 also deposed corroborating the said evidence. He specifically deposed about the missing of the DD book in the Bank of Maharashtra.



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20. Examination of the bank officials from Canara Bank, Ramnad Road Branch.

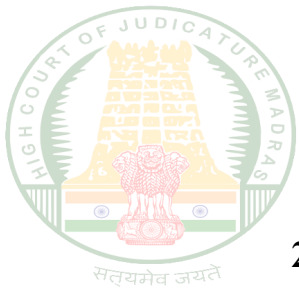
P.W.18/Assistant Manager of Canara Bank, Ramnad Road Branch, deposed about the clearance of forged DD passed under Ex.P5, Ex.P7 and Ex.P8.

21.Examination of the hand writing expert

P.W.28 and P.W.29 deposed about the examination of the hand writings of the accused and they also affirmed forgery of the signature of the managers of the Bank of India, Bombay and Bank of Maharashtra, Bombay.

22.Examination of the rubber stamp vendor

P.W.19 deposed about the receipt of the rubber stamp from him by the accused Balasubramanian in various firms' names and the impressions of the stamp marked under Ex.P.39 series and recovered from the house search of one of the accused.

**23.Examination of the servants of A8 (Muthukrishnan):-**

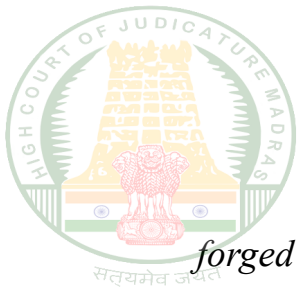
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P.W.16 and P.W.17 deposed about the conduct of Muthukrishnan with P.W.1 and other persons from Mumbai and they also deposed that they arranged rental room for accommodation of the Balasubramanian, Ravindran, Sathiyaseelan. Muthukrishnan contacted him frequently. P.W. 17 in addition to the above facts also deposed that Muthukrishnan instructed to hand over a cover containing a sum of Rs.1,00,000/- to a person wearing yellow color shirt and dhoti in the month of January 1993

24.Examination of the sons of the approver Sathyaseelan

P.W.20 and P.W.22 deposed about their father's contact with Ravindran, Muthukrishnan and his father received accused Abdul Aziz from Madurai Airport to his house and also meeting of Muthukrishana with the said Abdul Aziz. Both also reaffirmed the statement given under Section 164 of Cr.P.C., and deposed in consonance with the statement given under Section 164 of Cr.P.C.

25. This Court finds that the above evidence are cogent and trustworthy and without any infirmity about any of the facts **i.e, the accused had stealthily removed the DD book and committed theft. They**

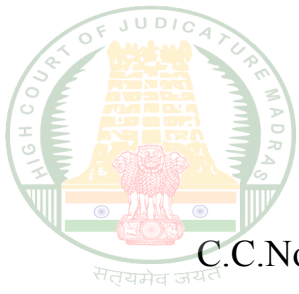


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forged the concerned bank Manager's signature and prepared the counterfeit rubber stamp of the bank and affixed in the forged DD and presented the said forged DD in the fictitious account opened by A1 and encashed the amount and further attempted to encash another DD for the value of RS.49,03,000/- and the same was thankfully aborted. Therefore, the prosecution clearly proved the offence under Sections 120-B r/w 419, 467, 468 and 471 r/w 511 IPC and additional charge under Sections 120-B r/w 419, 467, 468, 381 and 471 r/w 511 of IPC.

25.1. The learned trial Judge without any deliberation and proper appreciation of the evidence adduced by the prosecution which is sufficient to convict the appellant in Crl.A.(MD).No.391 of 2019 and the respondent in Crl.A.(MD).No.472 of 2019 for the offences under Sections 120 (b) r/w. 467, 468, 381, 471 of I.P.C and also 120 (b) r/w. 467, 468, 381, 471 of I.P.C. r/w. 511 of I.P.C has committed error in acquitting the appellant.

25.2. From the above evidence, only possible view is that the appellant and the other accused have committed the offence under Sections 120 (b) r/w. 467, 468, 381, 471 of I.P.C and also 120 (b) r/w. 467, 468, 381, 471 of I.P.C. r/w. 511 of I.P.C. The learned trial Judge, in mother



C.C.No.4 of 1998 also found that all the accused including the appellant had committed offences under sections 120 (b) r/w. 467, 468, 381, 471 of I.P.C and also 120 (b) r/w. 467, 468, 381, 471 of I.P.C. r/w. 511 of I.P.C and the said judgment was confirmed by this Court. Therefore, finding of the learned trial Judge that the prosecution has not proved the case against the appellant for the offence under Sections 120 (b) r/w. 467, 468, 381, 471 of I.P.C and also 120 (b) r/w. 467, 468, 381, 471 of I.P.C. r/w. 511 of I.P.C, is perverse, which resulted into unmerited acquittal under the above offences.

26.Once the learned trial judge has found that the appellant committed grave offence of 120 (b) r/w. 420 of I.P.C, it is the duty of the Learned Trial Judge to impose adequate punishment commensurate with its gravity. More particularly in the mother C.C.No.5 of 1998, the learned trial judge and this court have imposed punishment of 5 years for the said offence. The appellant deserves no sympathy to get lenient sentence of 10 months as the prosecution proved the case against him beyond reasonable doubt, that he is involved in criminal act of stealing the blank DD book from Mumbai branch, forging the signature of the bank manager in the blank demand draft leaves, using the said forged D.D and encashing the



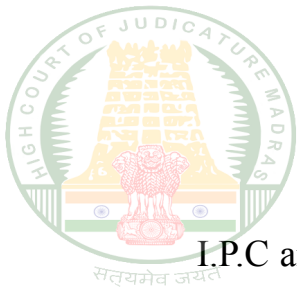
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amount and appropriating the said crime amount and also he absconded from participating in the trial from the year 1998 and participated in the trial only after the confirmation of the appeal against the conviction passed against the accused in the mother C.C.No.4 of 2008. The conduct of the appellant from the date of the framing charges itself is not appreciable for reducing sentence. Therefore, the sentence imposed by the Learned Trial Judge against the appellant is liable to be suitably enhanced. Therefore, the respondent in Crl.A.(MD).No.406 of 2019 is liable to be convicted under sections 120 (b) r/w. 467, 468, 381, 471 of I.P.C and also 120 (b) r/w. 467, 468, 381, 471 of I.P.C. r/w. 511 of I.P.C.

27. Therefore, this Court finds that the respondent in Crl.A.(MD).No. 406 of 2019 is guilty under Sections 120 (b) r/w. 467, 468, 381, 471 r/w 511 of I.P.C and also 120 (b) r/w. 467, 468, 381, 471 of I.P.C. r/w. 511 of I.P.C and hence, this Court holds that the appeal filed by CBI in Crl.A. (MD).No.406 of 2019 deserves to be allowed.

28. Accordingly, Criminal Appeal in Crl.A.(MD).No.406 of 2019 stands allowed in the following terms:

(i) The acquittal under Sections 120 (b) r/w. 467, 468, 381, 471 of



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I.P.C and also 120 (b) r/w. 467, 468, 381, 471 of I.P.C. r/w. 511 of I.P.C by the learned trial Judge in C.C.No.4 of 2017 on the file of the learned II Additional District Judge for CBI Cases, Madurai, is hereby set aside.

(ii) The respondent is convicted for the offences under Sections 120 (b) r/w. 467, 468, 381, 471 of I.P.C and also 120 (b) r/w. 467, 468, 381, 471 of I.P.C. r/w. 511 of I.P.C.

(iii) The prayer of the CBI to enhance of sentence of imprisonment imposed under Section 120(b) r/w 420 of IPC against the respondent is also accepted.

29. List this case for appearance of the respondent for questioning the sentence of imprisonment on 19.03.2025.

04.03.2025

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

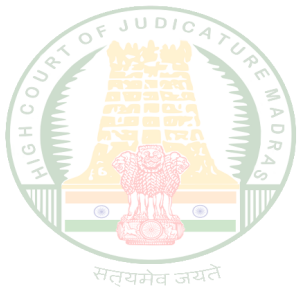


30. On 19.03.2025, when the matter was taken up for hearing, under the caption for questioning the sentence of imprisonment, the respondent has not appeared before this Court. Therefore, this Court passed the following order:

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 ensure his 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 absconded during the course of trial in the year 2002 and warrant was executed only in the year 2017. Even before this Court during the final hearing



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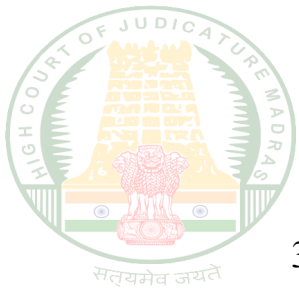
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he has not appeared and bailable warrant was issued and thereafter he appeared. Hence, this Court is not inclined to accept the request made by the learned counsel for the accused and inclined to issue bailable warrant to the accused through the appellant. 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”.

31.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. Today, 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 75 years old and suffering from various age old ailments. Now, he is under continuos treatment and he also produced medical records. Hence, he prayed for lesser sentence.



32. Discussion on Sentence:

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The learned counsel for the accused would submit that he is aged about 75 years and seeks to confirm the sentence of imprisonment of 10 months granted by the Court below. The accused appeared before this Court also stated that he is suffering from multiple age old illness and seeks to confirm the sentence as already granted by the Court below. It is true that the appellant is aged about 75 years and he produced medical records. But, this case does not deserve any sympathy. 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 present another set of forged DDs which resulted in timely abrogated the attempt and brought into the nets of CBI. It is well known proverb that “A long time thief will be caught one day”.

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

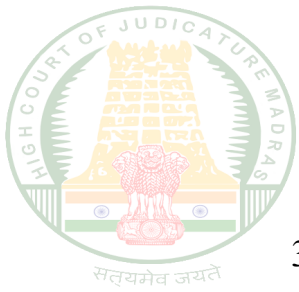


minimum sentence.

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32.2. 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.

32.3. 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:



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32.3.1. 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)

32.3.2. 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



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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



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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)

32.3.3. 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 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



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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)

32.3.4.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 :

“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



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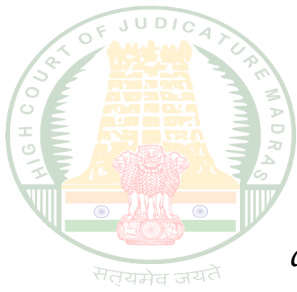
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sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be resultwise counterproductive in the long run and against the interest of society which needs to be cared for and strengthened by string 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.”

32.3.5. 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 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



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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.

32.3.6. 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 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



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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, 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



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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, 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



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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.

32.3.7. 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”.

33. 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



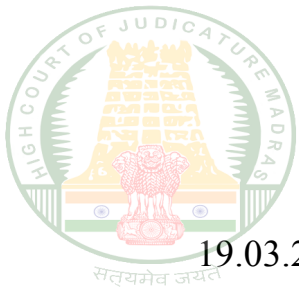
concur with the argument of the learned Special Public Prosecutor to award maximum punishment on considering the conduct of the accused. To resolve the same, this Court gets guidance from the following observation made by the Hon'ble Supreme Court in the case of **R. Venkatkrishnan v. CBI**, reported 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 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.

33.1. 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 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. Even after participation in the trial, he has been indulging in dilatory tactics to escape from the clutches of law by fleeing from the prosecution that too after recording entire evidence in the year 2001. After 16 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 forced to appear in trial of another absconding accused and thereafter trial of the this case. The Court also conducted the trial by spending its precious time after his arrest in the year 2017. This case is listed under the caption for final disposal on various dates. He has not appeared before this Court and hence, Bailable Warrant was issued on 03.06.2024 and the same was executed and produced before this Court on 18.06.2024. Further, he has also not appeared on 19.03.2025 to answer the questioning of sentence and again this court issued the Bailable Warrant on



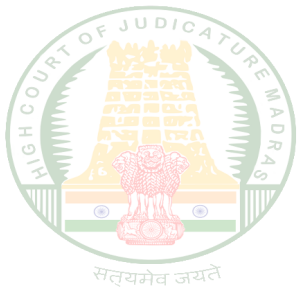
19.03.2025. Hence, in all stages of the case, his conduct is not appreciable.

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Therefore, this Court is not inclined to exercise its discretion in favour of the accused to grant 10 months rigorous imprisonment imposed by the Court below. 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.

33.2. 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



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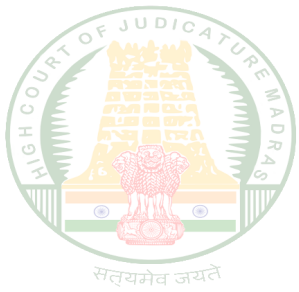
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profiteers, the black marketeers, and speculators are the worst enemy of our society. They have to be dealt with sternly. However well placed important and influential they maybe, if we acquiesce in wrongdoing, people will lose faith in us.

33.3. 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:

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.

33.4. 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***



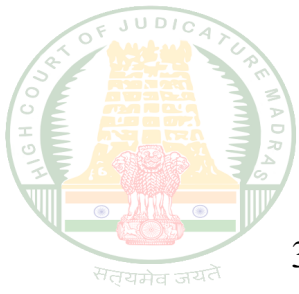
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381. ... *the need to pierce the facadial smokescreen to unravel the truth to lift the veil so that the apparent, which is not real, can be avoided. The proverbial red herrings are to be ignored, to find out the guilt of the accused.*

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 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.*

33.5. In the case of Bank fraud, greedy person gains at the loss of Public Money. This case is no exception. Therefore, 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.



34. Sentence of imprisonment:

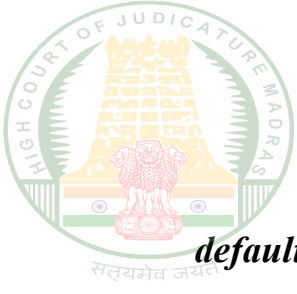
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Accordingly, this Court imposed the following sentence of imprisonment to the accused, namely, Asmath Kamal Choudry @ Hasmath Khan

(i)The sentence of ***Ten months Rigorous Imprisonment*** granted by the trial Court in C.C.No.1 of 2017 is hereby ***enhanced*** to ***Five years of Rigorous Imprisonment*** for the offence under section 120-B r/w 420 of IPC and also ***enhance*** the fine amount from ***Rs.500/- to Rs.15,000/-*** with ***default*** sentence of ***three months Simple Imprisonment***.

(ii)The respondent in Crl.A.(MD).No.406 of 2019/ accused No.5 in C.C.No.1 of 2017 ***is*** hereby directed to undergo ***Five years of Rigorous Imprisonment*** for the offence under section 120-B r/w 467, 468, 381, 471 of IPC and also directed to pay the fine amount ***Rs.15,000/-*** with ***default*** sentence of ***three months Simple Imprisonment***.

(iii)The respondent in Crl.A.(MD).No.406 of 2019/ accused No.5 in C.C.No.1 of 2017 ***is*** hereby directed to undergo ***Two years of Rigorous Imprisonment*** for the offence under section 120-B r/w 467, 468, 381, 471 r/w 511 of IPC and also directed to pay the fine amount ***Rs.7,500/-*** with



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default sentence of ***one month Simple Imprisonment.***

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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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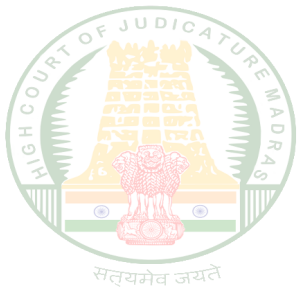
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K.K.RAMAKRISHNAN.J.

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

36.After examination of 27 witnesses, the respondent was absconded during the pendency of trial in the year 2001. Thereafter, he was secured only in the year 2017 ie., after fifteen years. 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. Even before this Court, he has not appeared on 19.03.2025 to answer the questioning of sentence. Hence, this Court issuedailable warrant on 19.03.2025. The CBI executed the warrant and produced before this Court. 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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37.Further, the learned counsel for the respondent submitted that he is hailing from Maharashtra and hence, he may be permitted submit application to transfer from Central Prison, Madurai to any other prison in Maharashtra 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.

38.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 his original medical records in his custody in jail premises.

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



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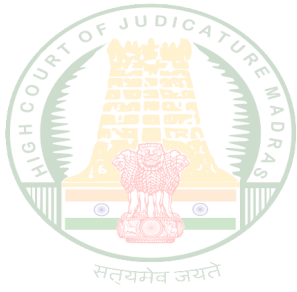
(iii)The Superintendent of Prison, Madurai, is hereby strictly instructed to obtain the prescription of the respondent and provide the said medicine without fail.

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.The Superintendent of Prison,
Central Prison,
Madutrai.



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K.K.RAMAKRISHNAN,J.

sbn

Pre-delivery judgment made in
CRL.A(MD).No. 406 of 2019

04.03.2025
&
03.04.2025