

CRL.A(MD).Nos.6 and 7 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on	:	30.07.2024
Pronounced on	:	04.03.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).Nos.6 and 7 of 2018

R.Karpura Sundara Pandian

... Appellant
(In both Appeals)

Vs.

The State Rep by
The Inspector of Police,
CBI:ACB, Chennai,
RC MA1 2008A 0014

... Respondent
(In both Appeals)

COMMON PRAYER: These Criminal Appeals are filed under Section 374 of Cr.P.C. to admit the appeals, call for the records from Trial Court and set aside the conviction and sentence passed by the II Additional District Court for CBI Cases, Madurai by virtue of judgment in C.C.Nos. 3 & 4 of 2010, dated 28.11.2017, and acquit the appellant/accused by allowing the appeals.

(in both Appeals)

For Appellant : Mr.B.Saravanan, Senior Counsel
for Mr.N.Ananda Kumar

For Respondent : Mr.C.Muthusaravanan,
Special Public Prosecutor for CBI cases

**COMMON JUDGMENT**

WEB COPY

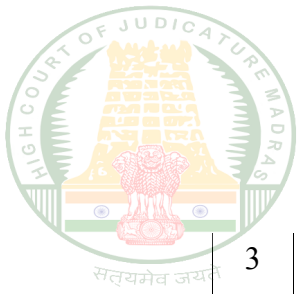
These Criminal Appeals have been filed to set aside the conviction and sentence passed by the II Additional District Court for CBI Cases, Madurai, in C.C.Nos.3 & 4 of 2010, dated 28.11.2017.

Since these criminal appeals are arising out of the same crime, these cases are taken up for hearing together and disposed of by way of this common judgment.

2.Brief facts of the case:

The appellant in C.C.Nos.3 & 4 of 2010, on the file of the II Additional District Court for CBI Cases, Madurai, has filed these appeals before this Court, challenging the Judgments dated 28.11.2017 whereby, in both cases, the learned trial Judge convicted and sentenced to undergo the appellant for the following offences:

S. Nos	Offences under Section (in C.C.Nos.3 & 4 of 2010)	Punishment (Imprisonment and fine) (in C.C.Nos.3 & 4 of 2010)
1	420 of IPC	Undergo Rigorous Imprisonment of 7 years and to pay a fine of Rs.10,000/- in default to undergo Simple Imprisonment for six months
2	409 of IPC	Undergo Rigorous Imprisonment of 10 years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for six months



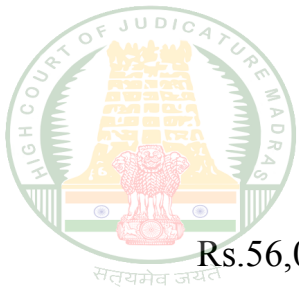
CRL.A(MD).Nos.6 and 7 of 2018

WEB COPY

3	467 of IPC	Undergo Rigorous Imprisonment of 10 years and to pay a fine of Rs.10,000/- in default to undergo Simple Imprisonment for three months
4	468 r/w 471 of IPC	Undergo Rigorous Imprisonment of 7 years and to pay a fine of Rs.10,000/- in default to undergo Simple Imprisonment for six months
5	13(2) r/w 13(1)(c) of the Prevention of Corruption Act, 1988	Undergo Rigorous Imprisonment of 1 year and to pay a fine of Rs.10,000/- in default to undergo Simple Imprisonment for three months
Total Fine		Rs.65,000/-

2.1.The accused, namely, R.Karpura Sundara Pandian, who was working as Assistant Manager of the IDBI Bank Ltd.,Cantonment Branch, Trichy, is the appellant herein. He faced the trial in C.C.Nos.3 & 4 of 2010, on the file of the II Additional District Court for CBI cases, Madurai, for the alleged offences punishable under Sections 420, 409, 467, 468 and 471 of IPC and Section 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act 1988.

2.2. According to the prosecution, the appellant herein approached the Chairman, Alpha Foundation for Education and Research (Charitable Trust), Trichy, namely, Dr.R.Palani, and promised him to get a loan of Rs.750,000,000/- (Rupees Seventy Five Crores only) from the IDBI Bank, for which he requested him to make fixed deposit and he received a sum of



CRL.A(MD).Nos.6 and 7 of 2018

Rs.56,00,000/-(Rupees Fifty Six Lakhs). Instead of making the fixed deposit in the IDBI Bank Account, the appellant gave fake pay-in-slips and fixed deposit receipts and misappropriated the fund of Dr.R.Palani. On finding out the forgery, Dr.R.Palani, gave a complaint to the IDBI Bank Management. The Bank Management on enquiry found that forgery had been committed by the Appellant and directed P.W.5 to lodge a complaint to CBI and accordingly P.W.5 gave complaint to CBI. On the basis of the complaint given by P.W.5/Jotty M.Chacko, the CBI registered the case against the appellant. During the course of the investigation, the investigating agency found that similar *modus operandi* was played by the appellant, against one Dilip Iyengar, i.e. he received a sum of Rs.111.50 lakhs from the said Dilip Iyengar on various occasions and issued 12 fake fixed deposit receipts and issued 35 numbers of pay in slips without his signature and to make the said Dilip Iyengar believe that his money had been deposited in the IDBI Bank, Trichy. Thereafter, CBI conducted investigation and laid two final reports before the II Additional District Court for CBI Cases, Madurai, for the offences punishable under Sections 420, 409, 467, 468 and 471 of IPC and Section 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act 1988. The same were taken on file in C.C.Nos.3 & 4 of 2010 and simultaneous trials were conducted after



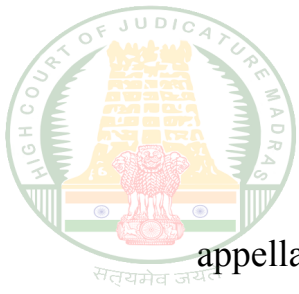
issuing summons to the appellant and furnishing the copies under Section

207 Cr.P.C., and framing necessary charges and questioning the accused.

He denied the charges and stood for trial. Details of examination of witness along with material documents, material object which had been marked on the side of prosecution to prove the charges are as follows:

C.C.No.3 of 2010	C.C.No.4 of 2010
The prosecution, to prove the charges, examined P.W.-1 to P.W.-24 and exhibited Ex-P1 to Ex-P69 and marked M.O.1 to M.O.4.	The prosecution, to prove the charges, examined P.W.-1 to P.W.-20 and exhibited Ex-P1 to Ex-P68.

2.3. The learned Trial Judge, questioned the appellant under Section 313 Cr.P.C., by putting the incriminating materials available against him and the appellant denied the same as false and offered a different explanation. Thereafter, the case was posted for examination of the defence witnesses. The accused neither examined any witness nor marked any documents. After considering the explanation and evidence, the learned trial Judge convicted the accused for the above said offences, in both C.C.No.3 of 2010 and C.C.No.4 of 2010 vide separate judgment. In both cases, the learned trial Judge acquitted the appellant under Section 13(1) (d) r/w 13(2) of the Prevention of Corruption Act, 1988, but, convicted the



appellant for the offences under Section 13(1)(c) and 13(2) of the Prevention of Corruption Act, 1988. Challenging the said convictions and the sentences imposed against the appellant, he has preferred these appeals before this Court. Since in both appeals, common submissions were made by the Learned Senior Counsel appearing on behalf of appellant and learned Special Public Prosecutor appearing for CBI and same *modus operandi* of crime had been alleged by the prosecution and most of the witnesses are common, this Court heard both the appeal and delivered this common judgment.

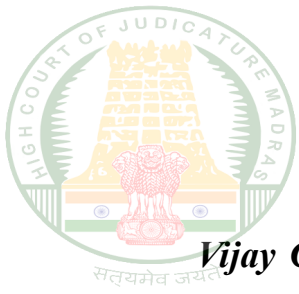
3. Submission of the learned counsel for the appellant:

The learned Senior Counsel, Mr.B.Saravanan, appearing for the appellant, submitted that the appellant was a Customer Relation Manager, IDBI bank, and also called as Assistant Manager. According to the prosecution, based on one FIR, two final reports were filed. Both are distinct and separate offences, and hence, filing of the final report on the basis of the allegation made against the appellant by Jotty M.Chacko and conducting investigation in the cases of Dr.Palani and Dhilip Iyengar is not legally correct, when they have not given any complaint. Without any complaint from the said Dhilip Iyengar, the registration of FIR, and the



continuation of the investigation relating to the case of Dhilip Iyengar, and also filing of final report for the alleged cheating of Dhilip Iyengar is not legally maintainable. Hence, the investigation relating to the case of Dhilip Iyengar is not legally correct, because no FIR was lodged by Dhilip Iyengar which is distinct, specific and separate offence. Hence, the final report filed on the basis of the said information found during the course of the investigation relating to the FIR registered on the basis of complaint made by M.Chacko, and cognizance taken in C.C.No.4 of 2010 is not legally maintainable, and hence, the same is liable to be set aside.

3.1. The learned Senior Counsel further submitted that even as per the prosecution case, there was no loss to the bank. In the said circumstances, offence under Section 420 of IPC is not legally correct. As per Section 420 of IPC, the loss has to be caused to the complainant. In this case, the complainant is the bank. According to the evidence of the official, P.W.5, there was no loss to the bank. In the said circumstances, without complaint either from Dr.Palani or Dhilip Iyengar, and on the basis of the admission made by the bank officials that there was no loss to the bank. Therefore, the offence under section 420 of IPC is not maintainable, for which, he relied the judgment of the Hon'ble Supreme Court reported in



CRL.A(MD).Nos.6 and 7 of 2018

Vijay Ghai and Others Vs. State of West Bengal and Others reported in

WEB COPY **2022 (7) SCC 124.**

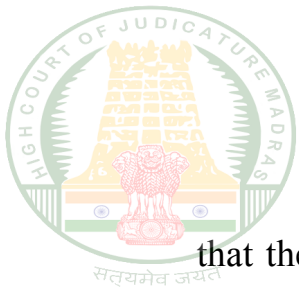
3.2. The learned Senior Counsel further submitted that a single FIR for the two district and independent offences is not legally maintainable. He relied Section 71 of the IPC and also 156 Cr.P.C. Going by the true meaning of Section 71 of IPC and 156 of Cr.P.C., the investigating agency, in all fairness, ought to have been conducted separate investigation on registering separate FIRs. Since the said procedure was not followed serious prejudice has been caused to the appellant, because both are independent and distinct offences. In the said circumstances, separate FIRs are required to be registered and thereupon investigation to be conducted. In the absence of separate FIRs, serious prejudice has been caused, and sheer violation of the import of Section 156 Cr.P.C. Therefore, he argued that the case of Dhilip Iyengar has no leg to stand.

3.3. The learned Senior counsel further submitted that so far as the offence under Section 467 of IPC is concerned, as stipulated under Section 467 of IPC, no valuable security is involved as admitted by the prosecution witnesses. The pay-in-slips and the loan sanction are not valuable



securities. The same was admitted by P.W.14 and hence, without any valuable security, the offence under Section 467 of IPC is not legally made out. So far as the FD is concerned, it is valuable security, but the original was not produced and only Xerox copy was produced in the case of Dr.Palani and the carbon copy was produced in the case of the Dhilipayangar. In the said circumstances, without producing the original FD, the offence under Section 467 of IPC, is not legally made out. Apart from that, the learned Senior counsel submitted that for each original FD, if it had been received, a corresponding unique customer ID code is to be provided. Without that, no offence was made out.

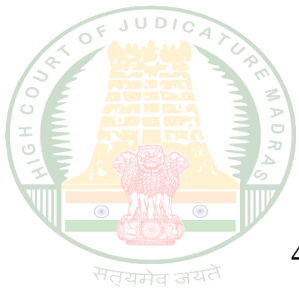
3.4.The learned Senior counsel further submitted that even the prosecution witnesses were unable to identify who subscribed the signature in the Xerox copy of the FD. On that day, one Poongodai was authorised to sign the FD. In the said circumstances, he argued that the offence under 467 is not legally sustainable. The learned Senior counsel further submitted that without filling the original, the trial of the case is not legally valid. Apart from that, the FD receipts holder ought to have maintained an account in the bank, in order to provide the unique customer code. Without the original FD, there is a suspicion relating to the case of the prosecution



that the appellant committed the offence punishable under Section 467 of IPC, more particularly, when the evidence is unavailable with regard to the identification of the signature of the appellant. On the contrary, one Poongodai alone was the authorised signatory.

4.The learned Special Public Prosecutor appearing for CBI made the following submissions:-

The appellant was the Customer Relation Manager. He has no authority to receive any amount from any party. In this case, he received the amount of Rs.56,00,000/- from P.W.19, namely the founder of the Alpha Foundation. After receiving the amount, he issued the forged fixed deposit receipts and pay-in-slips. The CBI conducted investigation and collected the materials to prove the said fact. The learned trial judge appreciated the said evidence and convicted the appellant and imposed a sentence upon the appellant in accordance with the law. The finding of the learned trial judge is supported by material evidence and the scientific evidence also proved the allegation of forged signature by the appellant in the forged fixed deposits and pay-in-slips. Hence, there is no ground to interfere with the conviction and sentence imposed by the learned trial judge.



WEB COPY

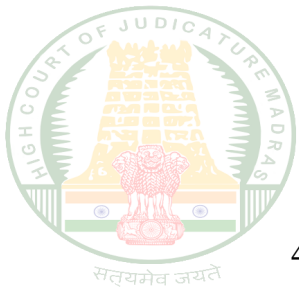
4.1.The learned Special Public Prosecutor further submitted that the contention of the learned Senior Counsel appearing for appellant that filing of two final reports by CBI is not in accordance with law, is not correct. According to the learned Special Public Prosecutor, the FIR was registered on the basis of the allegation made by the founder of the Alpha Foundation, namely Dr. Palani. During the course of investigation, the investigating agency, namely CBI has found out that the similar *modus operandi* also was played by the appellant and also he cheated one Dhilip Iyengar by issuing forged fixed deposits and pay-in-slips. Therefore, the investigation was conducted and two final reports were filed. There was no bar either under Cr.P.C., or any other provision of the Act that CBI has no power to file two final reports relating to the two different transactions. In this case, the said Dhilip Iyengar is concerned, the appellant played a similar *modus operandi* and induced him to part with Rs.111.50 lacks like how he induced Alpha Foundation and cheated an amount of Rs. 56,00,000/-. Hence, the registration of one FIR, which resulted in two final reports, is in accordance with the law.

4.2.The learned Special Public Prosecutor further submitted that the contention of the learned senior counsel that the Offence under 420 of IPC



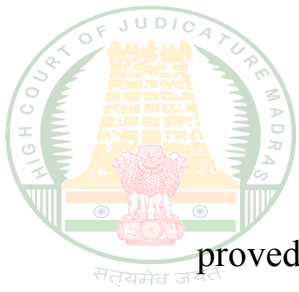
is not made out, cannot be accepted. According to the learned Senior Counsel, there was no loss to the bank. Hence, the offence under Section 420 of IPC is not made out. The said submission cannot be accepted, since the appellant received the said amount from P.W.19, namely Dr.Palani, founder of the Alpha Foundation, on the false promise that he would obtain the loan of Rs.75 crores, upon making the fixed deposit of Rs.1.25 crores. In the said circumstances, the intention of the appellant is clear that he made false promise even at the inception which shows that the offence under 420 of IPC is made out. Apart from that, he made false promise in the name of the bank. Hence, the said offence gets further strengthened.

4.3.The learned Special Public Prosecutor countered the said submission that there was no bar under Section 156 of Cr.PC. After the registration of the case relating to one fact, subsequently if it comes to the knowledge that a similar *modus operandi* has been played by the same accused, there is no requirement to register a separate FIR. The investigation can be continued in the same FIR and separate final Reports can be filed. So there is no infraction of Section 156 Cr.P.C., or any other law.



WEB COPY

4.4. The learned Special Public Prosecutor arguing that as per the illustration of the provision of Section 467 of IPC, valuable security is made out. The learned Special Public Prosecutor further submitted that the appellant has no authority to receive the amount for depositing it as the fixed deposit. In this case, even without any authority, he received the amount and gave the forged fixed deposit receipts with the signature of the clerk. In the said circumstance, Section 467 of IPC is clearly made out. The Xerox copy of the FD is produced. There is no need to produce the original. It is the admitted case of the appellant that he was forced to make number of documents under the illegal custody of P.W.19 namely, the founder of the Albha Foundation, and hence, the case of the appellant that the Xerox copy alone was produced cannot be accepted. In this case, the appellant admitted the issuance of the forged documents etc, but, he only pleaded that it was done under duress. To prove the said contention of duress, no material was produced. Except the registration of FIR on the complaint of the father-in-law of the appellant, no other materials were produced. Mere registration of FIR stating that he was illegally abducted by P.W.19 and his henchmen is not a ground to believe that the issuance of the fake fixed deposit receipts and other pay-in-slips by him were obtained in duress. Considering the overall circumstances, the prosecution clearly



proved that the appellant had received the amount upon making the false promise to obtain a loan of Rs.75 crores with condition to deposit Rs.1.2 crores by way of fixed deposit and he received the amount of Rs.56,00,000/- but did not deposit the said amount in the bank. He swindled the amount by issuing the forged fixed deposit and pay-in-slips. Hence, the conviction and sentence imposed by the Court below is not liable to be interfered with and hence, he seeks for confirmation of the conviction and sentence.

5. This Court considered the rival submissions made on either side and also perused the materials available on records and also the precedents relied upon by them.

5.1. The question arising for consideration in this appeal is that *whether the conviction and sentence of imprisonment imposed against the appellant in C.C.No.3 of 2010, C.C.No.4 of 2010 can be sustained or not?*

6. Discussion on merits:

In order to discuss the case on merits, this court for easy reference notes down the witnesses examined in both cases, which are as follows:

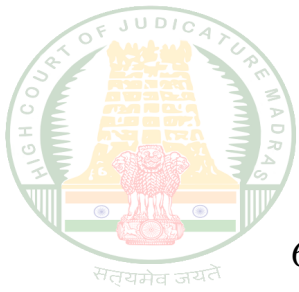


WEB COPY



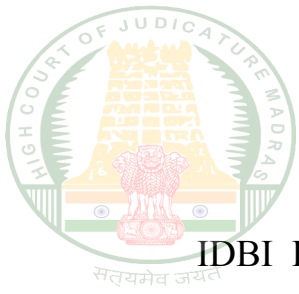
CRL.A(MD).Nos.6 and 7 of 2018

<i>Name</i>	<i>Rank of particular witness in C.C.No.3 of 2010</i>	<i>Rank in C.C.No.4 of 2010</i>
K. Ramasamy	P.W.-1	P.W.-1
V. Harinarayanan	P.W.-2	P.W.-3
Harikrishnan	P.W.-3	P.W.-4
C.H. Krishnadas	P.W.-4	P.W.-5
Jotty M. Chacko	P.W.-5	P.W.-6
G. Anantharaman	P.W.-6	P.W.-7
Muralidharan Nair	P.W.-7	P.W.-8
S. Palanivel	P.W.-8	
Ramachandran	P.W.-9	
M. Mohammad Rizwanul Arif	P.W.-10	P.W.-10
K. Kumaravel	P.W.-11	P.W.-11
A.S. Varughese	P.W.-12	P.W.-13
Muralidharan	P.W.-13	P.W.-12
Subaramaniam	P.W.-14	P.W.-14
Aravindan	P.W.-15	P.W.-15
Jayakumar	P.W.-16	
Somu	P.W.-17	
N. Ravi	P.W.-18	P.W.-16
R. Palani	P.W.-19	
Ranjit Cecil	P.W.-20	
J. Venkatesan	P.W.-21	
R. Ravi	P.W.-22	P.W.-18
T. Selvakumar	P.W.-23	P.W.-19
R. Chinram	P.W.-24	P.W.-20
S.Dhilip Iyengar		P.W.-2



6.1.From the records, it is clear that the appellant was the Customer

Relation Manager of the IDBI bank. From the evidence, it is clear that he participated in the function organized by P.W.19,namely, Alpha Foundation for Educational Research Charitable Trust. The evidence of the driver of the appellant and other evidence through the number of witnesses clearly shows that he participated in the function organized by P.W.19. In the function, he assured that he would install ATM machine in the premises of the Alpha Foundation and also assured to get a loan of Rs.75 Crores upon the condition of making a fixed deposit of Rs.1.2 Crores. The said evidence stood corroborated with the remaining evidence. So, the prosecution clearly proved the first link of the circumstances, namely, he participated in the function organized by the Alpha Foundation and assured to get a loan of Rs.75 crores upon the condition of making fixed deposit for Rs.1.2 Crores. P.W. 19 paid Rs.1.2 Crores to the appellant and the appellant issued the forged fixed deposit receipts, pay-in-slips and loan sanctioning letter. After some time P.W.19 came to know that the same was forged and he demanded the repayment of the amount from the appellant and the appellant promised to pay the amount and repaid part of the amount and he failed to pay the balance amount of Rs.54 lakhs. Therefore, P.W.19 gave a complaint to the Jotty Chocko (P.W.5), Regional Head of the

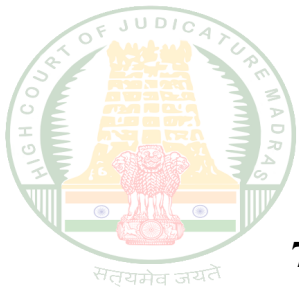


CRL.A(MD).Nos.6 and 7 of 2018

WEB COPY

IDBI Bank, Chennai and he made the complaint before CBI and CBI registered a case in R.C.No.14(A)/2008/CBI/ACBI/CHENNAI. The CBI found that the appellant received a sum of Rs.54 lakhs from P.W.19 and issued the forged pay-in-slips and fake fixed deposit receipts and loan sanctioning letter. During the course of the investigation, the CBI also found that similar *modus operandi* was played by the appellant against one Dhilip Iyengar namely P.W.2 in the C.C.NO.4 of 2010 and collected Rs. 111.50 Lakhs from him and issued 12 fake fixed deposit receipts and 35 numbers of pay-in-slip with his signature and made him believe that the said amount given by Dhilip Iyengar had been deposited in the IDBI Bank, Trichy.

6.2. Therefore, core issue in these appeals is that whether the prosecution proved the forgery of fixed deposit receipts and pay-in-slips issued by the appellant in favour of P.W.19 in C.C.No.3 of 2010 and P.W.2 in C.C.No.4 of 2010 and issuance of the forged loan sanctioning order in favour of P.W.19 in C.C.No. 3 of 2010.

**7. Proof of fake fixed deposit:**

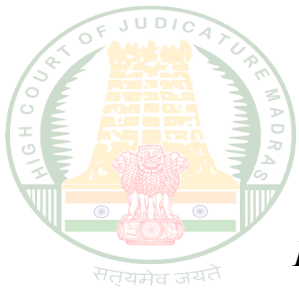
WEB COPY

In C.C.No.3 of 2010, two fixed deposits were issued by the appellant and the particulars of the deposits are as follows:

<i>Date of deposit</i>	<i>Customer ID</i>	<i>Deposit A/c No.</i>	<i>Amount of deposit in-Rs.</i>	<i>Maturity value in Rs.</i>	<i>Maturity date</i>
07.09.2007	2641022	83106000001208	15,00,000/-	15,07,325/-	08.10.2007
14.09.2007	2641000	83106000001211	35,00,000/-	35,25,363/-	30.10.2007

7.1. The said fake deposit receipts were marked as Ex.P5 series. P.W..12 was examined on the side of the prosecution to prove the said forgery of the fixed deposit. The relevant portion of his evidence is as follows:

“The fixed deposit applications are received at RPU from the branches. On receipt of the application RPU feeds the data to the finacle core banking system. First the system creates a Customer ID. The Customer ID is unique for every customer and it is not repeated or duplicated. All the accounts relating to any customer will be created under this Customer ID. Once the FD account is created in system RPU issues the deposit receipts duly signed by the authorised Officer. At that time it was Poongothai. The deposit receipt printed at RPU is then sent to the respective branch of the bank for delivery to the customer.



WEB COPY

During the enquiry, the CBI official has shown an application for creation of a fixed deposit at Trichy Branch by Mr.Karpoor Sundara Pandian who was staff at that branch during the period. The application relating to Mr.Karpoor Sundara Pandian (Accused) dt.09.07.2007 for creating a fixed deposit of Rs.10,000/- for the period of 1 year 1 day under existing customer ID. 2152118 was shown to me and the same is already marked as Ex.P.23. We have verified the Ex.P.23 application in the finacle system and the FD Account No.083106000005739 was created on 09.07.2007 maturing on 10.07.2008 and on maturity the amount was transferred to the SB Account of accused Shri.Karpoor Sundara Pandian. The ledger relating to the creation of the above mentioned fixed deposit is shown to me now and the same is already marked as Ex.P.24. Further during CBI enquiry, they officer has shown 2 FD receipts suppose to be issued in the name of Alpha Foundation for Education and Research, Trichy. The above 2 FD receipts are already marked as Ex.P.5 on verifying the FD receipts shown to me (Ex.P.5), I have told the officer that the FD receipts are not issued by Regional processing unit (RPU). Then the officer asked how you can say these receipts are not issued by your office? Then I have told officer due to the following reasons the FD receipts are not issued by RPU.



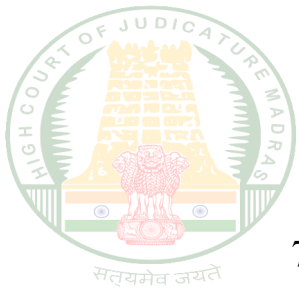
WEB COPY



CRL.A(MD).Nos.6 and 7 of 2018

1. *The font of the print in the FD receipt is different from what is being printed on the FD issued by RPU.*
2. *RPU is issuing FD receipts on continuous stationary.*
3. *The perforation for tearing the receipt was missing at the bottom and top of the FD receipts.*
4. *All the FD receipts issued by RPU is manually signed.*
5. *The colour of the FD receipts are also different.*

The Customer ID shown in Ex.P.5 fixed deposit receipts are 2641000 and 2641022. According to the bank system, a customer will have only one customer ID and it will never change. The customer ID 2641000 is already issued to Mr.Muniappan at the Thirupur Branch. The said Customer ID is already getting reflected in the finacle system in customer Master Maintenance and the same is shown to me now which is already marked as Ex.P.22. The next customer ID 2641022 is issued in system to Mr.Karthikeyan of Thiruppur Branch as per Customer Master Maintenance in finance system (Ex.P.21). The FD receipts which is shown to me now (Ex.P.5) are not issued by RPU.”



7.2. From the above evidence of P.W..12, it is clear that the forged deposit receipts were issued by the appellant in favour of P.W..19.

7.3. Similarly, in the case of Dhilip Iyengar in C.C.No.4 of 2010, 12 forged fixed deposit receipts were seized and the same were marked as Ex.P.33 to Ex.P.44 and particulars of the same are as follows:

S.No.	Name of the Depositer	Customer ID	Amount	Ex.P.
1	Dhanalakshmi.D.	2641045	Rs.5,00,000/-	Ex.P.33
2	Dhanalakshmi.D.	2646009	Rs.2,00,000/-	Ex.P.34
3	Dilip.S.	2641022	Rs.4,00,000/-	Ex.P.35
4	Dilip.S.	2642200	Rs.3,00,000/-	Ex.P.36
5	Dilip.S.	2642222	Rs.2,00,000/-	Ex.P.37
6	PriyaDhilipS.D.	2641022	Rs.2,00,000/-	Ex.P.38
7	PriyaDhilipS.D.	2642223	Rs.3,00,000/-	Ex.P.39
8	PriyaDhilipS.D.	2646129	Rs.2,00,000/-	Ex.P.40
9	Dhanalakshmi.S.	2642232	Rs.3,00,000/-	Ex.P.41
10	Dilip.S.	2941002	Rs.5,00,000/-	Ex.P.42
11	PriyaDilipS.D.	2941405	Rs.5,00,000/-	Ex.P.43
12	Dhanalakshmi.D.	2641001	Rs.2,00,000/-	Ex.P.44

7.4. A.S.Varughese examined as P.W..13 (who was examined as P.W. 12 in C.C.No. 3 of 2010) deposed that various above mentioned fixed deposits were not issued by the Regional Processing Unit, due to the following reasons:-



“Then I have told officer due to the following

WEB COPY

reasons the FD receipts are not issued by RPU:-

1.The font of the print in the FD receipt is different from what is being printed on the FD issued by RPU.

2.RPU is issuing FD receipts on continuous stationary.

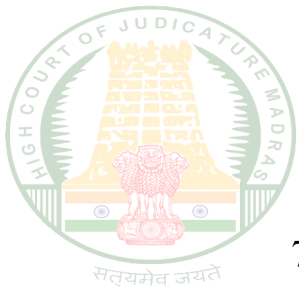
3.The perforation for tearing the receipt was missing at the bottom and top of the FD receipts.

4. All the FD receipts issued by RPU is manually signed.

5. The colour of the FD receipts are also different.

The Customer ID shown in Ex.P.33 to 44 are already allotted to various customer of the bank at different branches. On verifying the finacle core system of the bank the customer's ID mentioned in EX.P.33 to 44 are mentioned in the customer Master sheet of the finacle system and the same has been already marked as Ex.P.49 series. Therefore, the F.D receipts shown to me Ex.P.33 to 44 are not issued by the bank. I was examined by CBI.”

7.5. The customer ID shown in Ex.P33 to Ex.P44 had already been allocated to various other customers of the Bank and corresponding documents were marked as Ex.P.49 series and from other difference noted by P.W.13, it is clear that the prosecution proved the preparation of the fake fixed deposit receipts by the appellant without remitting the amount in the bank.



WEB COPY

7.6. The only duty of the appellant is to canvass the customers to make deposit in the bank and he has no right to receive the amount from the customers directly.

7.7. In this case, one more mischief committed by the appellant is that he himself opened the account for creating the fixed deposit under Ex.P55 by forging the signature of P.W.2 and his family members and forged the signature of the authorised officer.

7.8. Similarly, he opened account in the name of P.W.19 in C.C.No. 3 of 2010 and for creating the fixed deposit under Ex.P.5 and forged the signature of the authorised officer and used the ID number of the existing other customers. From the above discussion it can be seen that the prosecution clearly proved that the appellant created the fake fixed deposit receipt and swindled the entire amount, which was collected from P.W.2 in the C.C.No.4 of 2010 and P.W.19 in C.C.No.3 of 2010.

8. Proof of the forgery of pay-in-slips:-

In C.C.No.4 of 2010, the appellant forged the following pay-in-slips, which were marked as Ex.P.3 to Ex.P.31:-



WEB COPY



CRL.A(MD).Nos.6 and 7 of 2018

Pay-in-Slip challan in C.C.No.4 of 2010	Corresponding Exhibits
19.06.2007	Ex.P3
05.06.2007	Ex.P4
25.06.2007	Ex.P5
25.07.2007	Ex.P6
25.07.2007	Ex.P7
25.08.2007	Ex.P8
07.01.2008	Ex.P9
25.07.2007	Ex.P10
25.07.2007	Ex.P11
07.01.2008	Ex.P12
07.01.2008	Ex.P13
07.01.2008	Ex.P14
07.01.2008	Ex.P15
07.01.2008	Ex.P16
07.01.2008	Ex.P17
07.01.2008	Ex.P18
07.01.2008	Ex.P19
07.01.2008	Ex.P20
07.01.2008	Ex.P21
07.01.2008	Ex.P22
07.01.2008	Ex.P23
07.01.2008	Ex.P24
07.01.2008	Ex.P25
07.01.2008	Ex.P26
07.01.2008	Ex.P27
07.01.2008	Ex.P28
07.01.2008	Ex.P29



WEB COPY



CRL.A(MD).Nos.6 and 7 of 2018

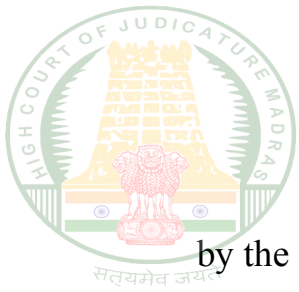
Pay-in-Slip challan in C.C.No.4 of 2010	Corresponding Exhibits
07.01.2008	Ex.P30
07.01.2008	Ex.P31
07.01.2008	Ex.P32

8.1. P.W.2 deposed about the issuance of the said pay-in-slips for the amount of Rs.111.5 Lakhs by the appellant.

8.2. Similarly, in C.C.No. 3 of 2010 the following forged slips were marked as Ex.P.6 to Ex.P.9 and P.W.19 deposed about the issuance of said slips by the appellant:-

<i>Pay-in-Slip challan in C.C.No.3 of 2010</i>	<i>Corresponding Exhibits</i>
22.09.2007	Ex.P6
22.09.2007	Ex.P7
07.09.2007	Ex.P8
14.09.2007	Ex.P9
01.12.2007	Ex.P10

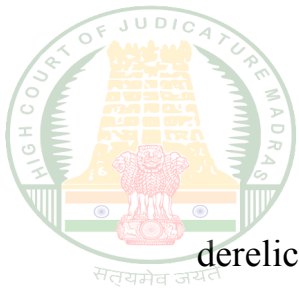
8.3. From the evidence of the officials Harikrishnan, Krishnados, Muralidharan Nair, Ramachandran, Subramaniam, it is clear that the Ex.P5 to Ex.P9 in C.C.No.3/2010, Ex.P.3 to 32 in C.C.No.4/2010 were not issued



CRL.A(MD).Nos.6 and 7 of 2018

by the IDBI Bank. The said pay-in-slip do not bear the seal of the bank and sign of the teller of the bank. The appellant has put his signature in the said pay-in-slips without authority. He has no right to handle the pay-in-slips. He is only the customer relationship officer in the cadre of the Assistant Manager and only he has to canvas the business of the bank. His signatures in the pay-in-slips were proved through the handwriting expert. The handwriting expert was examined as P.W.18 (N.Ravi) and he opined that the appellant's signature tallied with the disputed signature in the pay-in-slips. He issued the said pay-in-slips to make believe P.W.2 in the C.C.No. 4 of 2010 and P.W. 19 in C.C.No.3 of 2010 that their amount had been deposited in the fixed deposit. The appellant has not offered any explanation for his signatures in the above disputed pay-in-slips issued by him in favour of P.W..2 and his relative in C.C.No.4 of 2010 and P.W..19 in C.C.No.3 of 2010.

8.4.According to the learned Senior counsel, it is not the case of the prosecution that the appellant forged the signature of any of the officials of the bank officers in pay-in-slips. He put his signature in the pay-in-slips and therefore, the offence of forgery is not made out and his act of putting signature in pay-in-slips in the place of the cashier can only amount to



dereliction of the duty. The learned senior counsel also submitted that pay-in-slips and FD are not valuable security as per Section 467 of IPC. Even as per the evidence of P.W.14, pay-in-slips are not the valuable security. Hence, according to the learned senior counsel, no offence is made out either under 467 or 471 of IPC and even in that case, the remedy of disciplinary proceeding is available to the bank and not to file criminal prosecution and hence, the initiation of the criminal proceeding amounts to abuse of process of law. The learned senior counsel placed reliance of the paragraph Nos.164 to 166 of the judgment of the Hon'ble Supreme Court in ***Mir Nagvi Askari Vs. Central Bureau of Investigation*** reported in ***2009 15 SCC 643, 2009 8 SCC 751***. The learned senior counsel made much stress on the following portion of paragraph No.164:-

“164.A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the



WEB COPY

intention of causing it to be believed that they were made by or under the authority of someone else. The second criterion of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore, in our opinion the second criterion of the said section is also not applicable to the present case.”

8.5. To consider the said submission of the learned senior counsel, it is relevant to note the following portion of 464 IPC and illustration 'e' of Section 464 IPC, to find out the meaning of the words '*dishonestly*', '*fraudulently*', '*valuable security*' defined under IPC:-

Section 464 IPC	Illustration 'e' of Section 464 IPC
A person is said to make a false document or false electronic record- <i>First.</i> -Who dishonestly or fraudulently- (a) makes, signs, seals or executes a document or part of a document;	(e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draw the ill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.”

8.6. Section 29 of IPC- 'Document':-

“29. “Document”.—

The word “document” denotes any matter expressed or described upon any substance by means of



WEB COPY



CRL.A(MD).Nos.6 and 7 of 2018

letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1.— It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used or which may be used as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2.— Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words “pay to the holder” or words to that effect had been written over the signature.”



WEB COPY



CRL.A(MD).Nos.6 and 7 of 2018

8.7. Section 24 of IPC-'Dishonestly':-

“24. “Dishonestly”.—

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”.

8.8. Section 25 of IPC-'Fraudulently':-

“25. “Fraudulently”.—

A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.”

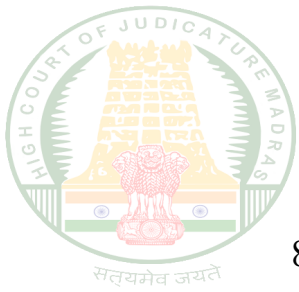
8.9. Section 30 of IPC-Valuable Security:-

“30. “Valuable security”.—

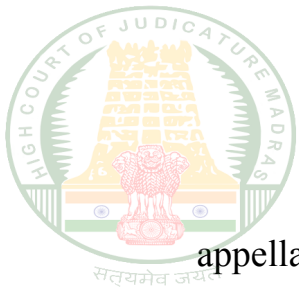
The words “valuable security” denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or where by any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration

A writes his name on the back of a bill of exchange. As the effect of this endorsement is transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a “valuable security”.



8.10. As per the banking procedure, pay-in-slips are issued as a proof of remittance of amount with signature of the authorised officials and with the seal. The appellant has no authority to receive the amount and to issue the said pay-in-slips. He had handed over the pay-in-slips to P.W.2 and P.W.19 in order to believe them that their amount had been deposited in the bank. But, he had not deposited the said amount in the bank. He had an intention of causing wrongful loss in making such an endorsement in pay-in-slips in order to defraud the bank. P.W.2 and P.W.19 handed over the amount in the custody of the appellant only in his capacity as employee of the bank. In all fairness, the appellant should have directed P.W.2 and P.W.19 to approach his branch office and create the ID and deposit the amount in the counter of Cashier and should have advised them to get FD receipt from the branch office upon showing the pay-in-slips. But, the appellant had received the amount and made P.W.2 and P.W.19 to believe as if that he is the officer entitled to receive the amount and issued the pay-in-slips for a remittance clearly comes under Sections 467, 468 and 471 of IPC. The appellant has no authority to handle pay-in-slip without depositing the amount into bank and he issued pay in slips to P.W.2, P.W.19. Therefore, upon conjoint reading of the above said provision of IPC and Illustrations, the handling of pay-in-slips by the



appellant itself amounts to offence. Therefore, the contention of the learned senior counsel that unauthorized act of putting signature in pay-in-slips without authority does not make out the offences under Section either 467, 468 or 471 of IPC deserves to be rejected.

8.11. According to the prosecution, the appellant had issued the forged deposit receipts. To prove the same, the prosecution clearly demonstrated the difference of the original deposits receipts and forged deposits receipts by examining the corresponding witness A.S. Varughese as P.W..13 (who was examined as P.W.12 in C.C.No. 3 of 2010) and he deposed that the FD's were not issued by the regional processing unit and the said FD's were forged on seeing the apparent dissimilarity with the original FD receipts:-

- 1.The font of the print in the FD receipt is different from what is being printed on the FD issued by RPU.*
- 2. RPU is issuing FD receipts on continuous stationary.*
- 3.The perforation for tearing the receipt was missing at the bottom and top of the FD receipts.*
- 4.All the FD receipts issued by RPU is manually signed.*
- 5.The colour of the FD receipts are also different.*



6.The Customer ID shown in said FD receipts are already allotted to various customer of the bank at different branches as per the entries in the finacle core system of the bank.

8.12. This Court also perused the one of the pay-in-slips and FD receipts which are copied and pasted here for better appreciation of the above said facts:-



IDBI BANK
Industrial Development Bank of India Limited

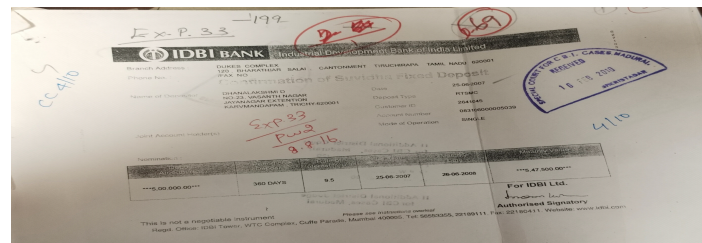
Form No. FD-33
Date: 07/10/18

Branch: T. L. KASABAN
Cheque/Draft No. 9xP-33

Amount: Rs. 2,50,000/-

Signature of the Depositor: [Signature]

Bank Officer's Signature: [Signature]



IDBI BANK
Industrial Development Bank of India Limited

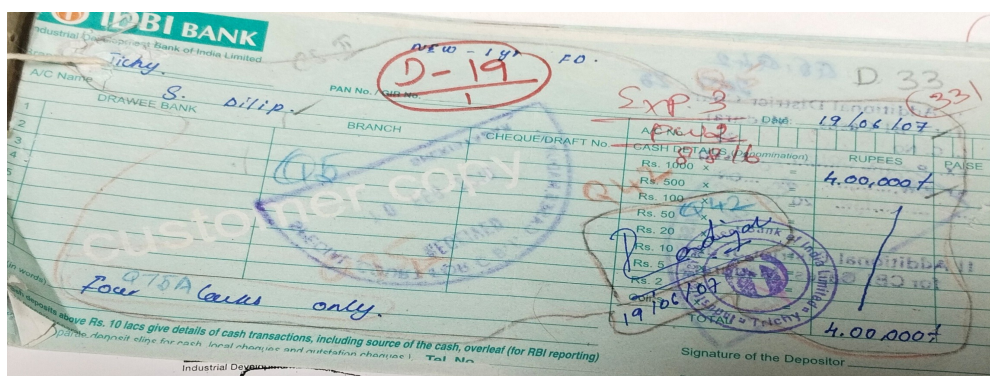
Form No. FD-33
Date: 19/10/18

Branch: T. L. KASABAN
Cheque/Draft No. 9xP-33

Amount: Rs. 2,50,000/-

Signature of the Depositor: [Signature]

Bank Officer's Signature: [Signature]



IDBI BANK
Industrial Development Bank of India Limited

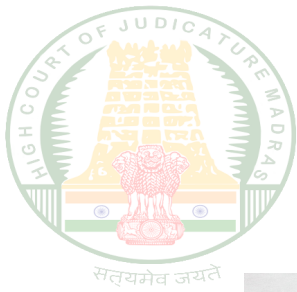
Form No. FD-33
Date: 19/10/18

Branch: T. L. KASABAN
Cheque/Draft No. 9xP-33

Amount: Rs. 4,00,000/-

Signature of the Depositor: [Signature]

Bank Officer's Signature: [Signature]



CRL.A(MD).Nos.6 and 7 of 2018

WEB COPY

9

IDBI BANK

Branch Address: DUKES COMPLEX, 122, BRATHAR, SALAI, CANTONMENT, TIRUCHIRAPP, TAMIL NADU 620001
Phone No.:
FAX NO:

Name of Depositor: ALPHA FOUNDATION FOR EDUCATION AND RESEARCH, K.R. NAGAR EAST EXTN, TRICHY-620 007

Date: 14-09-2007
Deposit Type: RTSMC
Customer ID: 2641000
Account Number: 083106000001211
Mode of Operation: E/S

Joint Account Holder(s):

Nomination:

35,00,000.00	48 DAYS	5.75	14-09-2007	30-10-2007	***35,25,363.00***
--------------------	---------	------	------------	------------	--------------------

This is not a negotiable instrument. Please see instructions overleaf.
Regd. Office: IDBI Tower, WTC Complex, Guffs Parade, Mumbai 400005. Tel: 56553355, 22180111. Fax: 22180111. Website: www.idbi

For IDBI Ltd.
Authorized Signatory

Received 3 documents

SPECIAL COURT FOR C.B.T. CASES MADRAS
RECEIVED
10 FEB 2010
SPERISTADAR

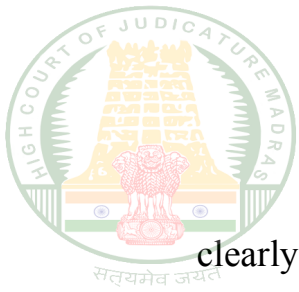
8.13. He deposed that the fixed deposit receipts could be issued only by the Regional processing unit. He deposed that the various Fds issued in this case were not issued by the Regional Processing Unit. At the time of the issuance of the various FDs, one Poongothai was the authorised officer to issue FD by subscribing her signature and that too only through the corresponding branch office with specification of the customer ID of the deposit holders.

8.14. From the above, it is clear that he received the amount and issued the forged fixed deposit receipts and also the pay-in-slips. As per the banking norms and as per the evidence of the bank officials, the fixed deposits would usually be issued by the Regional Office. But, he issued a forged fixed deposits which were already available in the bank and to



prove the same, the CBI collected the computer and other materials from the custody of the appellant to substantiate the said allegation. The CBI conducted search in his house and also recovered all the incriminating materials. The same was put to the accused under 313 Cr.P.C., proceedings and the accused only said that a false case was registered against him and he was abducted and was in the custody of P.W.19 in C.C.No.6/2018. During that period, he was forced to prepare these materials. The said submission is not substantiated on the ground that the issue of abduction itself has not been proved.

8.15 Apart from that, the appellant's signature was found in the fixed deposits and the pay-in-slips. To prove the same, the handwriting expert/P.W.16 was examined and he submitted a report under Ex.P67. The prosecution also proved that he admitted his signature and the learned judicial Magistrate also was examined relating to taking of the specimen handwriting as per law and P.W.16 examined the questioned signature with the specimen signature of the appellant and opined that the appellant forged the signature. The appellant did not give any explanation for the said incriminating circumstances during his 313 Cr.P.C., questioning. In view of that, the forgery of the fixed deposits and also pay-in-slips were



clearly proved by the prosecution. Therefore, the learned senior counsel's argument on the basis of the judgment of the Hon'ble Supreme Court reported in *Mir Nagvi Askari Vs. Central Bureau of Investigation* reported in **2009 15 SCC 643**, Vs. reported in 2008 SCC 751 is misconceived one and the same is liable to be rejected.

9. Discussion on the plea of accused that filing of two final reports on the basis of the single FIR is fatal:

Apart from that, regarding the specific contention of the learned Senior counsel that registration of one FIR and two final reports is not in accordance with law, this Court perused Section 71 of IPC and also 156 of Cr.P.C. Even though a complaint was received relating to Alpha Foundation, during the course of the investigation, it was found that there was another illegal transaction using the similar *modus operandi* relating to one Dhillip Iyengar. The said transaction also was investigated by CBI collecting all the incriminating materials. In the said situation, it is legally permissible to file two final reports with separate evidence, with separate materials relating to the said two transactions. As rightly pointed out by the learned Special Public Prosecutor, two final reports were filed with separate materials. Therefore, there is no legal infirmity as submitted by



the learned Senior Counsel relating to the filing of two final reports without registering separate FIRs. It is not necessary to file separate FIR relating to the Dhillip Iyengar's transaction. As per the code, if subsequently any other fraud was detected, it is open to CBI to file a separate final report before the jurisdictional Special Court. Therefore, filing of two final reports by CBI cannot be found fault with. In the said circumstances, the learned Senior counsel's submission that the registration of one FIR and conducting the investigation relating to 2 transactions and filing two final reports is not legally valid and the same cannot be accepted.

10. Non-production of original:

The learned Senior Counsel stated that the originals of the forged documents were not produced. Hence, the case of the prosecution on the basis of the xerox Copies of the forged documents is not legally valid. The learned Special Public Prosecutor submitted that apart from the xerox copies, number of original documents were also filed. The prosecution clearly proved the xerox copies. Apart from the xerox copies, number of original receipts and Fixed deposits were produced. The other original fixed deposits also contained the forged signature of the respective



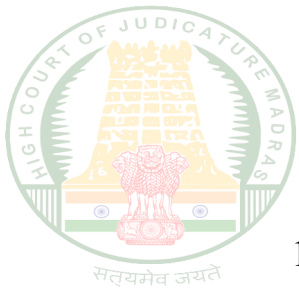
officers, namely the clerk, who were supposed to put the signature in the fixed deposits and the pay in slips. In view of the absence of the signature of the concerned person and also the forgery of the said fixed deposits, it is clear that the prosecution proved the same. Apart from that, they have proved beyond doubt that he has forged fixed deposits. There is mismatch between forged fixed deposits and original deposits and the same had been demonstrated by CBI officers, during the course of the trial and the same was appreciated by the learned trial judge in paragraph Nos.32 to 34 of the judgment. This Court also perused the said two types of the fixed deposits and the forged deposits. This Court can see the following differences :-

11.2.1.The unique customer ID, for each applicant is not present.

11.2.2.The proper bank seal is not available.

11.2.3.There was no corresponding Finacle System customer ID number available.

11.2.4.The fixed deposit are printed at regional procession unit and sent to the branches and branches will handed over the fixed deposit to the customers. But, here, forged fixed deposits sheet are printed using dot matrix printer and issued by the appellant.



WEB COPY

10.1. In the said circumstances, this Court is unable to appreciate the argument of defence that non-production of some of the originals is a ground to reverse the conviction. Apart from that, the remaining original receipts also were produced before the Court and this Court considered the same. So far as the remaining original deposits are concerned, the amount of the misappropriation is also huge. In the said circumstances, the contention of the learned Senior Counsel cannot be accepted.

11. Discussion on locus standi of Bank:

Another contention of the learned Senior Counsel is that the bank has not suffered any loss and the bank is not competent to lay the complaint. Similar contention was raised before the Hon'ble Supreme Court in the case of ***R. Venkatkrishnan v. CBI***, reported in ***(2009) 11 SCC 737*** and the Hon'ble Supreme Court has declined to accept the same in the following paragraph:

150. In this regard, it must be emphasised that the submission of the learned counsel that the Banks have not initiated any proceedings and suffered any loss and thus the judgment of conviction and sentence of criminal breach of trust is wholly unsustainable, cannot be accepted for more than



WEB COPY

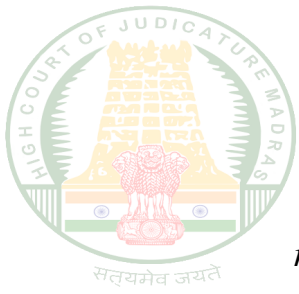


CRL.A(MD).Nos.6 and 7 of 2018

one reason. It is not the law that complaint petition under all circumstances must be made by the banks and financial institutions whose money had been the subject-matter of offence. It is also not the law that suffering of loss is a sine qua non for recording a judgment of conviction. It is now trite that criminal law can be set in motion by anybody. The prosecution was initiated on the basis of the information received by the Central Bureau of Investigation. It would be entitled to do so not only in regard to its statutory powers contained in the Delhi Special Police Act but it was also entitled to take cognizance in terms of the report submitted by the Janakiraman Committee. The money involved in the transfer is public money belonging to public sector banks.

11.1. It is a well-known principle that the complaint can be made by any person. The Hon'ble Constitution Bench of the Supreme Court, earlier in the case of ***A.R. Antulay v. Ramdas Srinivas Nayak***, reported in ***(1984) 2 SCC 500*** has held as follows:

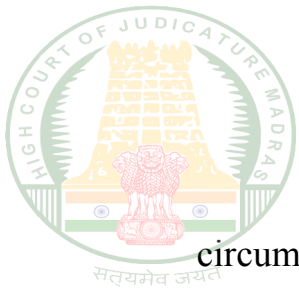
6. In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision. This general principle of



WEB COPY

nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force [See Section 2(n) CrPC] is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendetta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait-jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception.

11.2. Apart from that, in this case, bank is the sufferer. The appellant is the customer relation manager. His duty is only to canvass and solicit for the deposit from various parties. Whereas, he collected the amount and without depositing it in the bank, he swindled the amount. In the said



circumstances, bank had lost the deposit amount, which should have come to the coffers of the bank. In the said circumstances, the contention of the learned Senior Counsel that the bank is not the sufferer cannot be accepted and the appellant is liable to be prosecuted for the act of receiving the amount without crediting in the name of the bank.

12. Discussion on Section 467 of IPC:

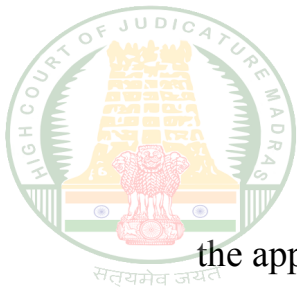
Apart from that the learned Senior Counsel submitted that there was no offence of Section 467 of IPC. This Court considered the relevant provision of Section 467 of IPC and found that this is clear case of forgery, where the appellant forged the signature of the teller, namely the clerk, who is supposed to have appended his signature, upon receipt of the amount in the counter and issued the pay in slips. Apart from that the fixed deposit ought to have been issued by the concerned officer from the regional office. In this case, the appellant has no right to receive any fund from the party directly. His role is only to solicit the party to deposit amount in the fixed deposit. As per the prosecution case, he issued the forged fixed deposit receipts. The said act was clearly spoken by P.W.19 and other witnesses. In the said circumstances, Section 467 of IPC is clearly made out. Apart from that the legitimate fund of the bank was



CRL.A(MD).Nos.6 and 7 of 2018

misappropriated by giving false promise that he would arrange for sanction of the loan of Rs.75 crores. The appellant also issued the forged sanction letter. In the said circumstances, all the offences against the appellant are clearly made out.

12.1.This Court finds no merit in all the contentions raised by the learned Senior Counsel and this Court also analyzed the entire evidence and found that the appellant is a customer relation manager and he approached the Director of Alpha Foundation/P.W.19 and made false promise that he would obtain the sanctioning of loan amount of Rs.75 crores and received the amount for fixed deposit from the said person and issued the forged fixed deposit receipt and pay in slips and also cheated the bank without depositing the amount received from P.W.19 into the bank and thereby, caused loss to the bank and misappropriated the fund meant for the bank. In the said circumstances, the learned trial judge, has correctly held that the appellant committed offence under Section 13(2) r/w 13(1)(c) of Prevention of Corruption Act, 1988. In the absence of appeal on the side of CBI against acquittal under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, this Court is not inclined to decide the said issue. In view of the above discussions, this Court finds no merit in



the appeal and the appeals are liable to be dismissed.

WEB COPY

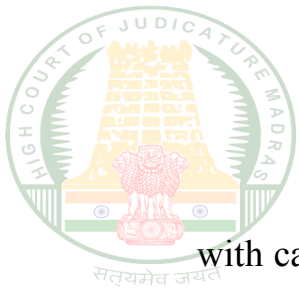
13. Discussion on the White Collar Crimes:

White-collar criminals violate trust and create distrust which lowers social morale and results into social dis-organisation to a large extent while other crimes produce relatively little effect on social institutions.

13.1. **Reiss** and **Brideman** define it as violations of law “*that involve the use of a violator's position of significant power, influence or trust... for the purpose of illegal gain, or to commit an illegal act for purpose of organizational gain*”.

13.2. **Edwin Hardin Sutherland** the most influential criminologist of the 20th century and also a sociologist,, for the first time in 1939, defined white collar crimes as “*crimes committed by people who enjoy the high social status, great reputation, and respectability in their occupation*”.

13.3. From reading the various articles and precedents, this Court holds that white collar crimes are defined as non violent crimes committed by the person enjoying high social status, great reputation and Public servants

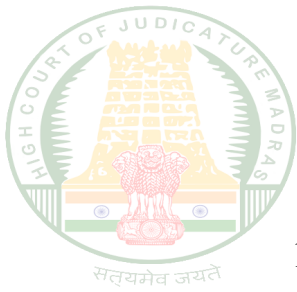


with calculated and deliberate design with greedy eyes for personal benefit at the cost of public, regardless of the consequence of the economic disaster.

13.4. These crimes do not have eyewitnesses as they are committed *in camera*, which means that the offenders commit these crimes while sitting in a closed room or in their personal space using their computers, and nobody could know about what they are doing on their computer. This makes it difficult to track the offenders. All these loopholes becomes an incentive for the offenders to fearlessly commit such crimes because the punishment is also for a short term unlike in blue-collar crimes. Offenders are mostly seen roaming freely which poses danger to the society.

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

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



13.6.The Hon'ble Supreme Court in the case of ***State of Gujarat v.***

Mohanlal Jitamalji Porwal, reported in ***(1987) 2 SCC 364*** also reiterated

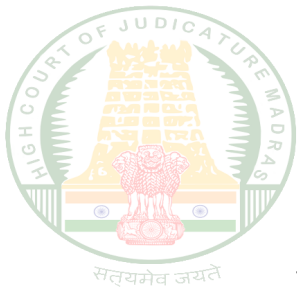
the said requirement of the strenuous action in the following terms:

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.

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

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

382. The cause of the community deserves better treatment at the hands of the court in the discharge of its



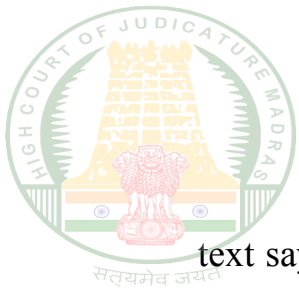
WEB COPY

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.

13.8.The father of modern political philosophy, **Machiavelli**, strongly believed that men by nature are greedy. He said that a man can sooner and easily forget the death of his father than the loss of his inheritance. The same is true in the case of commission of white collar crimes. Why will a man of high social status and importance, who is financially secure, commit such crimes if not out of greed?

13.9.It is said that crimes have been taking place since the time human beings started living together. There are various crimes which have swept away with times and there are some which have found different dimensions to them with the society becoming modern. The ancient Vedic

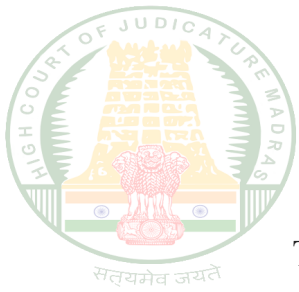


text says that the concept of white collar crime has existed in society from the very beginning.

13.10.Yagnavalkya once had proposed that the king, the supreme authority, should kill the dishonest officer and reward the honest ones. He further adds that those people who will try to extort a person, their property would be confiscated and then transported.

13.11.The need and greed of people have driven them to the extent of exploiting any possible field. The exploitation of the money of the other person by doing the act of fraud to get gain at the loss of other side usually form part of the white collar crimes. In the case of fraud, greedy person gains at the loss of another. Fraud is defined by the Hon'ble Supreme Court in the case of ***S.P.Chengalvaraya Naidu v.Jagannath*** reported in **1994 (1) SCC 1:**

A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intened to get and advantage.



WEB COPY

The deception is not in the express term and both fraudulent and dishonest intention at the inception is usually made out from entire circumstances of the case. Therefore, both fraudulent and dishonest intention at the inception is clearly made out from the entire circumstances of the case. The Hon'ble Supreme Court in the case of ***Bashirbhai Mohamedbhai vs. State of Bombay*** reported in ***AIR 1960 SC 979*** has held that making of false representation is one of the ingredients for an offence of cheating and also the Hon'ble Three Judges Bench of the Supreme Court in the case of ***Shivanarayan Kabra vs. The State of Madras*** reported in ***AIR 1967 SC 986*** has held as follows:

The appellant knew fully well that he had no right to do forward business and that he was not a member of any recognised association and that he could not lawfully advertise to P.W.2 for investment in forward contracts. It is not necessary that a false pretence should be made in express words by the appellant. It may be inferred from all the circumstances including the conduct of the appellant in obtaining the property and in Ex.P34 (a) the appellant stated something which was not true and concealed from P.W.2 the fact that he was not a member of any recognised association and that he was not entitled to carry on the forward contract business, it is



WEB COPY



CRL.A(MD).Nos.6 and 7 of 2018

clear that P.W.2 could not have parted with the sum of Rs.12,000/- but for the inducement contained in Ex.P34 and the representation of the appellant that he could lawfully carry on forward contract business.

13.12.In the case of **Ram narayan Popli vs. Central Bureau of Investigation** reported in **2003 3 SCC 641**:

Section 420 deals with cheating and dishonestly inducing delivery of property. The offence of cheating is made of two ingredients: deception of any person and fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property. To put it differently, the ingredients of the offence are that the person deceived delivers to someone a valuable security or property, that the person so deceived was induced to do so, that such person acted on such inducement in consequence of his having been deceived by the accused and that the accused acted fraudulently or dishonestly when so inducing the person. To constitute the offence of cheating, it is not necessary that the deception should be by express words, but it may be by conduct or implied in the nature of the transaction itself.



WEB COPY 13.13.In the case of *Mir Nagvi Askari v. CBI*, reported in (2009) 15

SCC 643 at page 682

147. An officer of a bank holds a position of trust. Each one of them, keeping in view the nature and extent of duties required to be performed, is expected to do so not only in terms of statutory directions, but as also the directions issued by Reserve Bank of India and his own employer. Documents for the purpose of giving credit in the account of a customer would indisputably be required to be prepared on the basis of the cheque receipts. It cannot be prepared in anticipation of receipt of a cheque; firstly, because the amount of the cheque, the name of the drawee and other particulars would not be known to them; secondly, the bank is required to maintain a large number of registers to put in place a sound banking system. All precautions must be taken to prevent a fraud or deceit on the part of a customer. Therefore, the fact that, credit and debit vouchers were prepared and other registers were filled up, although the cheques were not in physical possession of the Bank, in our opinion, clearly establishes the existence of a criminal conspiracy between the ultimate



WEB COPY



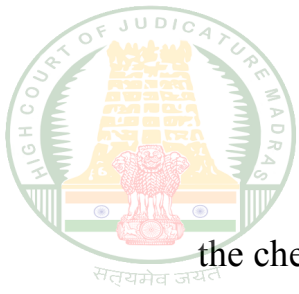
CRL.A(MD).Nos.6 and 7 of 2018

beneficiary, on the one hand, and some of the officers of the Bank, on the other. A debit or credit voucher furthermore is not prepared in piecemeal or in instalments. Bank officers are not supposed to know the immediate requirement of an account-holder.

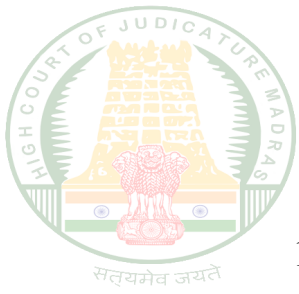
175. Moreover, it must be noted in this respect that banking norms and established practices and procedures would contain directions of law prescribing the mode in which the trust is to be discharged. The expression “direction of law” in the context of Sections 405 and 409 would include not only legislations pure and simple but also directions, instruments and circulars issued by an authority entitled therefor. The trust in this regard would therefore have to be discharged in terms of such directions. Acting in violation thereof causing wrongful gain to A-3 and loss to the Bank would bring the action within Section 409 IPC.

14. Conclusion:

In this case, there is clear false pretence which could be legally inferred from the conduct of the appellant during the entire course of the events from approaching P.W.2 (C.C.No.7 of 2018) and P.W.19 (C.C.No.6 of 2018) and making them part with their money and misappropriation of



the cheated amount. In this case the appellant has acted with an intention to deceive from the inception and received the amount from P.W.2 (in C.C.No.7/2018) and P.W.19 (in C.C.No.6/2018) with false representation as if he was competent person to receive the amount and issue “pay-in-slip and FDs”. But he issued forged pay-in-slips and FDs and made to believe P.W.2 in (C.C.No.7 of 2018), P.W.19 (in C.C.No.6 of 2018) that their amount will be duly deposited in the bank but without depositing the amount in the bank he swindled. Therefore there was both cheating and illegal conversion of the collected amount on the part of the appellant. In overall assessment, he failed to protect the interest of the Bank, failed to perform his duties with utmost devotion, diligence, integrity and honesty, acted in a manner unbecoming of a bank officer by doing act of cheating, forgery, conversion of the amount for his personal benefit. He made the false representation as if he was the competent person to receive the amount from the witnesses in both cases by making the false declaration about his competency and received the amount and misappropriated the amount without depositing the bank and thereby, he has committed bank fraud. Hence, there is a clear proof of criminal misconduct on his part to hold guilty under Section 13(2) r/w. 13(1)(c) of Prevention of Corruption Act.



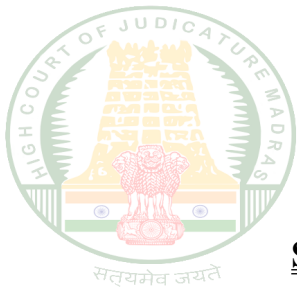
CRL.A(MD).Nos.6 and 7 of 2018

WEB COPY

14.1.The appellant is the customer relation manager. His duty is to canvass the customer to make them to deposit in the bank. He has no authority to receive the deposit amount from the customer in any capacity. He initially collected the amount with intention to cheat P.W.19 in C.C.No. 6 of 2018 and his greed drove him to collect the amount from P.W.2 in C.C.No.7 of 2018 and to screen his act of fraud, he forged the pay-in-slips and FDs and loan sanctioning order so as to make the above said witnesses believe that the amount will be deposited in the bank and siphoned off the amount of Rs.56,00,000/- + 111.5 lakhs = 157.5 lakhs without depositing the same. Till date he has not repaid the same. The conduct of the appellant deserves confirmation of the sentence of imprisonment imposed by the trial Court in both C.C.Nos.6 and 7 of 2018 without any reduction.

15.Result:

Accordingly, these Criminal Appeals are dismissed. The conviction and sentence passed by the learned II Additional District Judge for CBI Cases, Madurai in C.C.Nos.3 and 4 of 2010 dated 28.11.2017, are hereby confirmed. The bail bond executed by the appellant is hereby cancelled. The learned trial Judge is hereby directed to takes steps to secure the appellant to make him undergo his remaining period of imprisonment.



CRL.A(MD).Nos.6 and 7 of 2018

Summary of Discussion:

Sl. No.	Summary of Discussions	Paragraph Nos.
1	Brief facts of the case	2-2.3
2	Submission of the learned counsel for the appellant	3-3.2
3	Submission of the learned Special Public Prosecutor appearing for CBI	4-4.3
4	Discussion on merits	6-6.2
5	Proof of fake fixed deposit	7-7.8
6	Proof of the forgery of pay-in-slips	8-8.15
7	Discussion on the plea of accused with filing of two final reports on the basis of the single FIR is fatal	9
8	Non-production of original	10-10.1
9	Discussion on locus standi of bank	11-11.2
10	Discussion on Section 467 of IPC	12-12.1
11	Discussion on the white collar crimes	13-13.13
12	Conclusion	14-14.1
13	Result	15

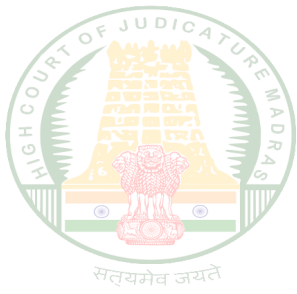
04.03.2025

NCC : Yes

Index : Yes

Internet : Yes

sbn



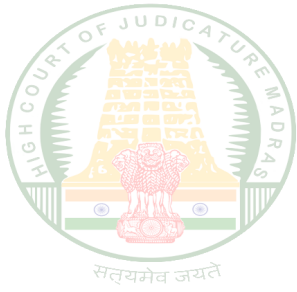
WEB COPY



CRL.A(MD).Nos.6 and 7 of 2018

To

1. The II Additional District Judge for CBI Cases,
Madurai District.
2. The Inspector of Police,
CBI:ACB, 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.



WEB COPY



CRL.A(MD).Nos.6 and 7 of 2018

K.K.RAMAKRISHNAN,J.

sbn

Pre-delivery judgment made in
CRL.A(MD).Nos.6 and 7 of 2018

04.03.2025