(2002) 07 MAD CK 0130

In the Madras High Court

Case No : Criminal Appeal No''s. 47 to 51 of 1995

Abdul Vakil APPELLANT

Vs

State, by Inspector of Police, SPE/C.B.I., Madras RESPONDENT

Date of Decision : 23-07-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 409, 420, 465, 467, 471
Prevention of Corruption Act, 1988 — Section 5(1), 5(2)

Citation : (2003) 2 LW(Cri) 890

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : H. Manivannan, for the Appellant; N. Ranganathan, Special Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Rajan, J.—The appeals are against the conviction and sentence imposed against the appellant in C.C.Nos.8, 9, 10, 11, and 12 respectively.

2. The appellant in all these cases is one and the same. The facts are also the same. The charges are also the same. But, the causes of action are different in each of the case, viz., for C.A.47 of 1995, the causes of action are on 28.6.1982 and 27.12.1982; for C.A.48 of 1995, 21.1.1983; for C.A.49 of 1995, 21.5.1982; for C.A.50 of 1995, 3.2.1984 and for C.A.51 of 1995, 25.1.1983 and 30.12.1983.

3. The Inspector of Police, SPE:CBI:Madras, received information that between 30.12.1982 and 5.11.1984, one S.R.Abdul Vakil made credit entries in the ledger account of one Mohamed Allamuddin and A.Khirunnisa on various dates to the tune of Rs.1,37,000/- by forging the initials of the bank officials in the ledger account and withdrew amounts through pay orders by forging the signatures of the drawer and thereby committed offences under Sections 420, 465, 467, 471 and 477-A I.P.C. and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act; the Inspector of Police, C.B.I., registered a case under the direction of the Superintendent of Police, C.B.I., in Crime No.15 of 1985 and took

up the case for investigation. After completing the investigation, he filed charge sheets against the accused. The trial Court took up the matter on file in C.C.Nos.8, 9, 10, 11, and 12, as the dates were spread over two years.

4. The trial Court convicted the accused under Sections 409, 467, 467 read with 471, 477-A I.P.C. and Section 5(1)(c) read with Section 5(2) of the Prevention of Corruption Act and imposed a sentence of two years R.I. and a fine of Rs.200/- for the offence u/s 409 I.P.C.; two years R.I. and a fine of Rs.200/- for the offence u/s 467 I.P.C; two years R.I. and a fine of Rs.200/- for the offences under Sections 467 r/w 471 I.P.C.; two years R.I., and a fine of Rs.200/- for the offence u/s 477-A; two years R.I. and a fine of Rs.200/- for the offence u/s 5(1)(c) read with 5(2) if the Prevention of Corruption Act. In all the cases, the learned trial Judge directed that the sentence of imprisonment to run concurrently. Against that conviction and sentence, the appellant has preferred these appeals in C.A.Nos.47 to 51 of 1995.

5. P.W.3 had an account in the Indian Bank, Sowcarpet Branch in the joint name along with his wife, Khairunnisa, P.W.4. This account was started on 15.12.1980. In Ex.P.54, specimen signature card, both of them had signed. P.W.4 does not know to read and write. She would only sign in Urdu. P.W.3 got an employment in Saudi Arabia in 1980. He had sent demand drafts from Saudi Arabia. In his account, he has not deposited any local drafts. Neither he nor his wife had withdrawn any amount from their account through a person by name Abdul Bashith. Even when P.W.3 or P.W.4 had withdrawn the amount, only the accused used to fill up the withdrawal slips. The withdrawal slips, Ex.P.5 to P.53 were not signed by P.W.4. P.W.3 used to send drafts once in two or three months. When he returned from Saudi Arabia in 1984 May, his account tallied with the amounts sent by him. Further, he has stated that he had handed over the pass-book to the accused. But, it was not returned to him. When he enquired about the pass-book, the accused told him that it was safe with him. P.W.4 has stated that whenever she went to the bank, only the accused used to help her to get the money by filling up the withdrawal slips; she would only sign the withdrawal slip. She has further deposed that she had never deposited any local draft or any cash. She does not know anyone by name, Bashith. She has never signed in any blank withdrawal slips; Signatures found in Exs.P.5 to P.53 are not that of P.W.4. P.W.2 was an employee of the Indian Bank between November, 1982 and September, 1984. At that time, the accused was working as a Teller; He is familiar and well acquainted with the hand-writings, initials and signatures of the accused. The Inspector of Police, C.B.I., had shown the withdrawal slips pertaining to S.B. Account No.9004 of P.Ws.3 and 4 and the ledger sheets, Exs.P.2 to P.4 relating to the same account. The entries in Exs.P.2 to P.4 are found in the hand writing of the accused. Exs.P.5 to P.53 are the withdrawal slips on various dates for a sum of Rs.1,000/- except the slips, Exs.P.10 and 11 which are for a sum of Rs.500/- and Ex.P.6 which is for a sum of Rs.400/-. In all these exhibits, Exs.P.5 to P.53, the words such as amounts in words, figures, dates, Sowcarpet, 9004 are all in the hand-writing of the accused.

6. P.W.5, working from 1982 to 1984 in the Sowcarpet Branch,has stated that the accused was working as a Teller and he is acquainted with his hand-writings. Exs.P.5 to P.53 and Exs.P.2 to P.4 were written by the accused. He had mentioned as "L.D." whenever he wanted to identify the local draft. P.W.6 is the officer working in the Sowcarpet Branch from 1976 to 1982; he also knows the signature of the accused. He has initialled in the ledger and passed bills. He has further stated that on 14.2.1983, he has initialled for the payment of Rs.2,000/-; He initialled it on the representation made by the accused that the parties are known to him. Some of the initials were not made by him. He has also stated that he came to know these facts only when the Inspector of Police showed it to him.

7. P.Ws.7 who is working as Assistant Manager, George Town Branch at present was working as Accountant from 19.12.1983 to May 1986 in Indian Bank, Sowcarpet Branch, has stated that the accused was working as Teller till 1985. Thereafter, the accused did not attend the bank; He did not also apply for leave. He unauthorisedly absented himself. He has further stated that he is familiar and well-acquainted with the signatures and initials of the accused. Ex.P.54 is the Account Opening Form-cum-Specimen Signature Card of P.W.3 and P.W.4. The accused introduced that account and to that effect, he has signed on the back as introducer. The entries found in Ex.P.3 are made by the accused. In Exs.P.2, P.3 and P.4, credit entries have been made by the accused. The above entries made in Exs.P.2 to P.4 are false entries. They are not tallying with other registers and documents of the bank. If these entries were really correct entries, there will be drafts in respect of these entries and the entries will be made in the draft book with respect to entries contained in Exs.P.2 to P.4. Exs.P.55 to P.73, the draft books do not contain any entries found in Exs.P.2 to P.4. The accused had signed Exs.P.74 and P.75 for the periods of the entries made in Exs.P.2 to P.4. The accused has signed on all these days except on 19.11.1983. Exs.P.5 to P.53 are the withdrawal slips written by the accused. In the withdrawal slips, the accused had also written the names of the drawer, as if those drawers have signed those withdrawal slips. The accused had made entries in Ex.P.76, Teller Book at various pages of having made payments. In Ex.P.76, on 14.3.1983, there is no entry, but the accused had attended the office and signed the attendance register on that date. In Ex.P.77 on various dates, entries were made by the accused with regard to the payments made under the withdrawal slips. The accused who voluntarily used to Balance Ledger No.20 in which the Account No.9004 is included did not balance the above books and it removed unbalanced from October, 1982 to November, 1984. Thereafter, that Ledger No.20 was missing when one another clerk was entrusted with the work of balancing. Therefore, as per the direction of the Manager, one Kumar prepared a fresh balance book for S.B. Ledger No.20. In the meanwhile, the Manager directed the sub-staff to search for S.B. Ledger No.20. The sub-staff Devaraj traced out the ledger; it was found underneath the Teller counter of the accused.

8. P.W.8 was working between June 1973 and March 1985 as officer in Sowcarpet

Branch. At that time, the accused was working as Teller in that branch. He also knows his signature, initials and hand-writing. There is a debit entry for Rs.1,000/- on 5.8.1983; the withdrawal slip for that is Ex.P.29. In that withdrawal slip, the amount in numbers and figures and in the reverse, the name, "Abdul Basith" were written by the accused. There is a credit entry for Rs.1,000/- in Ex.P.3. This has been credited as if it is the local demand draft. But the initial of P.W.8 is not found there.

9. P.W.9 was the officer in Sowcarpet Branch from 1982 to 1983. He has stated that the entry relating to 5.5.1983 has been initialled by him. But in Ex.P.2, the entry relating to 27.4.1983 was not initialled. He did not put his initial as found in the ledger; Similarly, the initial put on 17.5.1983 for Rs.1,000/- was not his initial; He has not signed the credit entry of Rs.7,000/- on the same date. He has not initialled the credit entry of Rs.1,000/- on 30.5.1983. He has not signed other two entries, dated 4.6.1983; one for debit entry for Rs.1,000/- and a credit entry for Rs.2,000/-. Initials found therein were not put by him.

10. P.W.10 was also an officer working in Sowcarpet Branch. He has stated that he had audited the accounts relating to S.B. Account No.9004. The entries relating to 20.6.1983, 27.6.1983, 4.7.1983, 11.7.1983, 22.7.1983, 30.7.1983, 13.8.1983, 25.8.1983, 8.9.1983 and 28.9.1983 and credit entries were not found at that time. The entries in Ex.P.4 on 14.10.1983 were not found, when he audited. They have been written subsequent to his auditing.

11. P.Ws.11,12 and 14 also identified the signature of the accused. P.W.13, an employee of the Indian Bank, Sowcarpet Branch from 1984 to 1986 has stated that when he was balancing the accounts, Balance Book No.20 was not found. Therefore, he reported the matter to the Manager and he directed a sub-staff, Devaraj to find out. After that, ledger was traced and when he was adjusting the balance, there was a difference of Rs.1,37,175.07; that is Ex.P.81. After that the difference was found to be Rs.97,339.66. He informed this missing entries to the superiors. In Ex.P.2, Rs.9,000/- was credited on 12.1.1983 as local draft by the accused. If the demand draft had actually been received in the bank, it will find a place in the "draft ledger book." It will also find a place in the "Section Day Book." But in the Section Day Book, there is no entry relating to the account No. 9004 between 6.5.1983 and 4.3.1983. There is an entry on February 4th in Ex.P.2 for Rs.3,000/- by way of local draft to the account No.9004. But in Ex.P.65, draft register, there is no entry for having received the draft. Similarly, in Ex.P.82, there is an entry for receipt of Rs.3,000/- on February, 4th for the same account. There is no credit entry in Ex.P.82 in this account. In Ex.P.2 on 9th February, there is a credit entry of Rs.2,000/-. But in Ex.P.29, there is a corresponding entry for receipt of the money. Similarly in Ex.P.65, there is no entry for the receipt of the money. In Ex.P.2 there is an entry for Rs.2,000/- on 14th February. But in Ex.P.65, there is no corresponding entry for receipt of this amount. The Section and Day Book also does not contain the same. He has given various details with respect to various dates that the entries made in Account

No.9004 did not tally with other books of account maintained by the bank.

12. P.W.15, another employee of the Indian Bank during the relevant period has stated that he was entrusted with the balancing work relating to Ledger Nos.20 and 22. But, he finds the difference of Rs.1,58,000/- as found in Ex.P.81. It was informed to him. He has further stated that Exs.P.5, P.7, P.9, P.12, P.13, P.14, P.15, P.16, P.17 and P.20 are withdrawal slips in which the accused had written the amount both in figures and in numbers.

13. P.W.18 also identifies the writings of the accused in Exs.P.26, 27, 29 to 31, 33 to 36, 45 and 47. The accused had made entries in the withdrawal slips, both in figures and in numbers. The evidence extracted relates to Criminal Appeal No.51 of 1995.

14. The counsel appearing for the accused submitted that the signatures of the accused were not sent for hand-writing expert. Therefore, there is no conclusive proof that it was the accused who has written all those entries. Prosecution cannot be said to have proved its case. The counsel also submitted that the evidence of P.W.10 is contradictory and hence, his evidence cannot be accepted. It is not correct. All that he has stated is that the entries were not found when he audited. It has been written subsequent to the date on which he has audited. When the entire evidence is taken, it is clear that there is no contradiction at all.

15. The counsel for the appellant further submitted that all the witnesses who speak that they are familiar with the hand-writings, signatures and the initials of the accused, state that they cannot identify the signatures or hand-writings of any other person working in that branch. Therefore, the identification by those witnesses cannot be accepted as true. Learned counsel argues that when the witnesses could not identify the signatures, hand-writings and initials of other employees in their bank, they cannot identify the signatures of the accused also. Hence, their evidence has to be rejected. This argument is not at all acceptable. All the witnesses have categorically stated that they were working along with the accused and they were acquainted with the initials, hand-writings and signatures of the accused. Some of the witnesses were not even cross-examined that they cannot identify the signatures of the accused. The counsel for appellant further submitted that the sub-staff by name Devaraj who is alleged to have searched Ex.P.20, the Ledger Book and who is alleged to have recovered it from the Teller counter of the accused has not been examined; the Officer who had issued instruction to the sub-staff has also not been examined; therefore, to that extent, his evidence that this Ledger Book was searched from the Teller counter does not help the prosecution and therefore, it has to be rejected. Therefore, he has submitted that Exs.P.5 to P.53 have not been proved to have been signed by the accused. Further, he has submitted that no opportunity was given to the accused to explain these entries. Therefore, the counsel argued that the prosecution has not proved this case and conviction by the appellate Court is not legal.

16. The Special Public Prosecutor appearing for the respondent submitted that Exs.P.5 to P.53 are the withdrawal slips; P.W.3 and P.W.4 stated that they did not sign these withdrawal slips; Further, some of the local cheques were credited in Exs.P.56 to P.73; Such local cheques cannot be credited by the Teller. Further, the witnesses, P.Ws.2,5 and 7 to 12 and 14 proved they are the hand-writings of the accused. Therefore, it is proved that false entries have been made by the accused using his possession as a Teller; the accused by using fictitious name as Mohamed Alimuddin has withdrawn money through the account of P.Ws.3 and 4. P.Ws.3 and 4 categorically stated they knew nobody by name Abdul Basith. P.W.13 has spoken in detail the false entries made by the accused as he has explained as to how the entries are not correspondingly made in other ledgers and books of account including in the book maintained in the branch. Further, from the evidence of P.Ws.3 and 4, it is proved that the pass-book of P.Ws.3 and 4 were in the custody of the accused. He being the Teller , it was easy for him when the pass-book was also with him to withdraw the amount from that account as and when he wished. Therefore, the accused by making false entries, withdrawn the amount. Therefore, the lower Court has found the accused guilty of the charges.

17. From the evidence on the side of the prosecution, it is proved that the account of P.Ws.3 and 4 was opened in the bank and they were introduced by the bank by the accused and P.W.3 was not residing near and he was working in Saudi Arabia during the period. P.W.4 is a person who cannot sign in any other language except in Urdu; the pass-book was left with the accused; He was working as a Teller in that branch. P.Ws.2, 5 and 7 to 12 and 14 and few others have spoken that these writings were made by the accused. The hand-writing or signatures of a person can be identified by the persons who are acquainted with the signatures or writings of the persons concerned; another method of proving the signature is by sending it for examination to the hand-writing expert. Therefore, the evidence of the persons who are acquainted with the signatures and writings and initials of the accused is sufficient to prove the case of the accused.

17. The argument of the counsel for the appellant that the signatures of the accused cannot be said to have been proved, because they have not been sent for hand-writing expert, is not acceptable. The Supreme Court has held in the decision in Fakruddin v. State of M.P. AIR 1967 S.C.1326, held,

" The writing may be proved to be in the hand writings of a particular individual by the evidence of a person familiar with the hand writing of that individual or by the testimony of an expert competent to the comparison of hand writings on a scientific basis. A third method is comparison by the Court with the writings made in the presence of the Court or admitted or proved to by the writings of the person. Both under Sections 45 and 47, the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case, the Court must satisfy itself by such means as are open that the opinion may be acted upon. Where an expert''s opinion is given, the Court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. "

18. Therefore, the evidence of the witnessess who are acquainted with the signatures and hand-writings of the accused is sufficient to hold that when it is found acceptable to prove the offence against the accused. Therefore, the trial Court''s finding that the hand-writings are that of the accused, is not illegal.

19. The counsel for the appellant next submitted that the sanction to prosecute is not legally sustainable. The sanction order is not a mere empty formality. The person who sanctions the prosecution must satisfy that a prima facie case has been made out against the accused which is sufficient to prosecute. A reading of the sanction order does not reveal that all the statements of the witnesses were placed before the sanctioning authority before they granted the sanction. In support of this contention, the counsel for the appellant relied upon a decision of the Supreme Court in D.Venkatesan v. State, represented by Directorate of Vigilance and Anticorruption, Madras, (1997) M.W.N. 130, wherein it was held, that when the sanctioning authority fails to go through the statements of the witnesses at the time of according sanction, it will lead to failure of justice.

20. The learned Public Prosecutor submitted that in this case, the sanctioning authority as P.W.1 has stated that, before according sanction, he received the Investigation Report, copies of statement of witnesses and documents from the C.B.I and he carefully went through the papers and documents and after he was fully satisfied that the accused should be prosecuted in a Court of law, he issued the Sanction Order. This evidence has not been diluted in the cross-examination. In view of the fact that the sanctioning authority has appeared as a witness and stated that only after carefully went through the papers and documents, he issued the Sanction Order, the sanction order does not suffer from any disability or it cannot be said that it is illegal. Therefore, this argument of the appellant''s counsel is not acceptable.

21. So far as the other appeals are concerned, unlike this appeal which refers to number of entries, these cases are with reference to one or two entries. All these entries have been proved to have been written by the accused. The lower Court has given the finding that the respective charges were all proved beyond reasonable doubt. There is no reason to interfere with that judgment. Hence, the conviction of the accused levelled against him has been proved.

22. Regarding sentence, though for various offences, the accused was convicted with imprisonment of two years, all the sentences were directed to run concurrently. Considering the facts of this case, a person working as a Teller for a long number of years in a particular branch has misused his position and by making false entries, he has siphoned off all the moneys of the bank on various dates. The method adopted by the accused proves how vulnerable the banks are

and a clever employee can siphon off the money of the bank without being noticed for quite some time. It is a very ingenuous method adopted by the accused to take the bank''s money; such offences cannot be treated lightly. Hence, the sentence imposed cannot be reduced. The conviction and sentence against the appellant is confirmed.

23. In the result, the appeals are dismissed.

