(2006) 01 MAD CK 0139

In the Madras High Court

Case No : Criminal Appeal No. 64 of 1996

M. Mahadevan APPELLANT

Vs

State by DSP, Special Police Establishment, CBI RESPONDENT

Date of Decision : 03-01-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 102B, 409, 467, 467, 468
Prevention of Corruption Act, 1988 — Section 5(1), 5(2)

Citation : (2006) 01 MAD CK 0139

Hon'ble Judges : S.R. Singharavelu, J

Bench : Single Bench

Advocate : T. Sudanthiram, for the Appellant; N. Chandrasekaran, Spl. Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Singharavelu, J.—The appellant herein is the 2nd accused in Special Calendar Case No.6 of 1996 on the file of Additional Sessions Judge-cum-Chief Judicial Magistrate, Coimbatore. Appeal arises against the judgment dated 15.12.1995 in Special Calender Case No.6/1986 on the file of Additional Special Judge/First Additional Sessions Judge-cum-Chief Judicial Magistrate, Coimbatore for the conviction and sentence of 3 years RI u/s 409 IPC and a fine of Rs.500/- in default to undergo RI for 3 months, 3 years RI u/s 5(1)(c) read with 5(2) of Prevention of Corruption Act and a fine of Rs.1000/- in default to undergo 6 months RI, 3 years RI u/s 5(2) read with 5(1)(d) of Prevention of Corruption Act and a fine of Rs.1000/- in default to undergo RI for six months. No separate sentence was awarded for the offence u/s 120-B read with Section 409, 467, 468, 471 read with 467 IPC and Section 5(2) read with 5(1)(c)(d) of Prevention of Corruption Act and the sentences were ordered to run concurrently. The total fine amount of Rs.2,500/- was said to have been paid by the appellant/2 nd accused.

2. Before the trial Court, the respondent/complainant filed the charge sheet against the appellant/2nd accused and A1 and also the absconding accused Srinivasan alleging that during November-December,1984, they along with the approver Venkatesan entered into a criminal conspiracy at Coimbatore, Udumalpet and other such places to commit the offences of cheating, Criminal breach of Trust, Criminal misconduct, forgery of a valuable security, forgery for the purpose of cheating, using forged documents as genuine in order to cheat the currency Chest of Canara Bank, Coimbatore to a tune of Rs. 8.5 lakhs.

3. Before the trial Court, to establish the guilt of the accused, the Prosecution has examined P.Ws. 1 to 23 and marked Exs. P-1 to P-49 and M.Os. 1 to 6 were also marked by the Prosecution.

4. The brief facts of the prosecution case are as follows:

a) The appellant/2nd accused joined the services of Canara Bank as Clerk on 2.11.1973 and became an officer of the bank in 1981. The appellant/A2 was working as Accountant, Currency Chest, Canara Bank, Coimbatore from 27.7.1983 to 6.12.1983. He was placed under suspension in July, 1985. The absconding accused Srinivasan was also joined the services of the Bank as Clerk on 24.11.1977. He became the Officer in November, 1980. The absconding accused Srinivasan was working as Accountant, Currency Chest, Canara Bank, Coimbatore from 17.11.1982 to July, 1985. He was also placed under suspension in July, 1985.

b) P.W.15 Approver Venkatesan is the first cousin of the wife of the absconding accused Srinivasan. P.W.15 was working as a casual labour in Premier Mills. He was anxious to go in for a permanent job in a company or in a bank. The absconding accused Srinivasan promised P. W.15 to secure a permanent job for him. On 18.11.1984 the absconding accused Srinivasan met P.W.15 at his residence and informed him that he had entered into a criminal conspiracy with two officers of the bank and also they have planned to take out the cash on 23.11.1984. He sought the help of P.W. 15 to act as a Peon in the conspiracy. He asked P.W. 15 to come to a hotel. Rs. 8.5 lakhs was taken out from the Currency Chest and the same was paid to the absconding accused Srinivasan and P.W.15 approver Venkatesan. Ex.P.16 is the relevant entry in the Shroff Book. They have also signed in the outward Register Ex.P.11 for the payment. The relevant entry in the Disbursement Register is Ex. P. 12. Ex. P. 17 was issued in pursuance of Ex.P.5 indent. Ex.P.6 Inter Branch Advice was received in the currency chest only on 7.12.1984. Absconding accused Srinivasan received the same after he joined the duty. P.W. 5, the then Manager of the Canara Bank, Gudalur Branch had denied the issuing of Ex.P.6. He had also asserted that Ex.P.6 does not contain the signature of any of the staff of the Gudalur Branch. The Handwriting Expert gave his opinion to the effect that the writing found in Ex.P.6 could have been written by the absconding accused Srinivasan. On the basis of Ex.P.6, Ex.13 credit slip was prepared by P.W. 21. Ex. P. 7 entry in the Summary Statement was also prepared by the Bank.

c) P.W. 2 Saptharishi was then working as Divisional Manager, Coimbatore. As per the direction of the Head Office, Canara Bank, Bangalore, P.W.2 directed P.W.12 the then Officer in the Circle Office, Canara Bank, Madurai to go into the alleged cheating of the currency chest. He inspected the currency Chest, Canara Bank, Coimbatore on 16.7.1985 and noted that in the Summary Statement sent to the Head Office on 23 .11.1984, the payment of Rs.8,50,000/- was not stated. Further the corresponding entries were also not found in the original transaction summary. On enquiry, P.W. 12 learnt that the amount was not received and acknowledged by the Gudalur Branch. Ex.P.27 is the report submitted by P.W. 12. P.W. 2 also conducted enquiry on 18.7.1985 in the Currency Chest Office,Coimbatore. P.W.2 prepared Ex.P.2 written complaint before the respondent. On basis of Ex.P.2, a case was registered in R.C.No.48 of 1985 under Sections 120-B read with Sections 409, 420, 467, 468, 467 read with 471 IPC, Section 5(2) read with 5(1)(c) and (d)of Prevention of Corruption Act. Ex.P.47 is the Printed First Information Report.

d) P.W.23 took up the investigation. He searched the house of the absconding accused Srinivasan in the presence of P.W.19. Ex.P.30 is the House Search List. M.Os.1 and 3 to 6 were seized from the house of the absconding accused. A-1, A.2, P.W.21 Mohammed Mustaq and the absconding accused Srinivasan were arrested on 9.9.1985. Sample writings and the questioned writings were went to P.W.20 for comparison. Ex. P.40 is the report of the Handwriting Expert. P.W.22, the then Additional Judicial First Class Magistrate recorded the confession statement of P.W.15. P.W.23 sent requisition to the Chief Judicial Magistrate to tender pardon to P.W.15 Venkatesan and seeking permission to take him as approver. Ex.P.48 is the proceedings of the tender of pardon. Ex.P.29 is the sanction order obtained from the Chairman for prosecuting the 2nd accused and the absconding accused Srinivasan. As A1 was already dismissed from service, no sanction order was obtained for prosecuting him. Since P.W.21 did not participate in the criminal conspiracy and that he only carried out the instructions of A1 and A2, he was not shown as an accused in the Charge Sheet. After completing the investigation, charge sheet was filed against A1 and A2 on 29.7.1986.

5. When questioned u/s 313 Cr.P.C. the appellant denied the complicity of crime. After appreciating the evidence, both oral and documentary, the trial Court found the appellant/A2 and also A1 guilty and accordingly, convicted and sentenced them as stated above.

6. The point for consideration is: Whether the conviction and sentence passed by the trial Court, is sustainable or not?

7. It is not in dispute that A1 was working as Senior Manager in the Currency Chest of the Canara Bank, Coimbatore from 18.6.1984 up to July 1985. The appellant/second accused was also working as Accountant in Currency Chest of the same Bank till July 1985. From the entries in Ex.P.41, Key Register and the evidence of P.W.21 (Mohammed Mustaq), it is made clear that A1 had taken over

the key No.1 from the absconding accused Srinivasan on 19.11.1984 and retain the said key till 11.12.1984. The appellant had taken over the key No.2 from the absconding accused Srinivasan on 20.11.1984 and he was in-charge of that key No.2 till 5.12.1984. The subsequent denial of A1 and A2 about their above mentioned possession of key is self-serving and unreliable, as their denial is not supported by any satisfactory evidence defeating the contra evidence of P.W.21 and the entries through Ex.P.43 to P.45 found in the Key Register (Ex.P41).

8. It is in such circumstances the question arises as to whether the persons who have presented Ex.P5 indent on 23.11.1984 to the Currency Chest were paid Rs.8.5 lakhs? Apart from the evidence of Approver Venkatesan (P.W.5), the evidence of P.W.9 Kasi Viswanathan, Special Assistant in Currency Chest and P.W.21, Mohammed Mustaq , the clerk in the Currency Chest also with reference to the entries in various documents do prove such payment. The entry in Shroff Cash Book (Ex.P.1 6) also indicates the same. The entry in the Outward Disbursement Register through Ex.P.12 strengthens the same. The procedure for such payment was that on receipt of Ex.P.5 indent, Ex.P.10 Debit Voucher was prepared by P.W.21 as per the direction of the appellant/A2. Ex.P.19 to P.22 and the evidence of P.W.9 do show that on 23.11.1984, eight lakhs in hundred-rupee denomination and Fifty thousand in fifty rupee denomination were taken up from the Currency Chest. The entries in the Bin Books through Exs. P.19 to P.22 were in the handwriting of the appellant/second accused.

9. Whether this would amount negligence or intentional on the part of the appellant and A1 is the question before us? The various circumstances and the evidence clearly point out that A1 and the appellant/A2 had not made even barest minimum efforts to verify the particulars before ordering to pay such huge amount of 8.5 lakhs. The observation of the lower Court that such lack of diligence and absence of prudence pointing to the conspiracy between A1 and the appellant/A2 and the absconding accused Srinivasan can only be accepted.

10. The Approver''s evidence is in support of the above view. The absconding accused Srinivasan is the uncle of P.W.15 Approver Venkatesan. The Approver in the year 1984 was expecting a favour from the absconding accused Srinivasan in securing a job. There, naturally the approver would be as handmaid. The Approver P.W.15 deposed that the absconding accused Srinivasan came to Udumalpet and requested P.W.15 to act as a Peon to take out the cash from the Currency Chest and in pursuance of which on 23.11.1984 , the Approver P.W.15 came to Hotel City Tower in Coimbatore and on the same day both of them went to the Currency Chest and after observing the formalities Rs.8.50 lakhs was paid to them. For this help rendered by the Approver he was paid remuneration of Rs.10,000/-. The Approver had also deposed about the conspiracy of A1 and appellant A2 with the absconding accused Srinivasan to take out the Currency from the Currency Chest. Of course the Approver''s evidence was under attack, true it is that the evidence of Approver has to satisfy the twin tests of Reliability and Corroboration. I have gone through the evidence of P.W.15 in detail. It is

natural and cogent. He has also put his signature on the reverse of Ex.P.10 Debit Voucher. He is not expected to sign one or other connected records of the Bank. To believe his evidence, his signature found in Ex.P.10 Debit Voucher is very much sufficient. There is also ample corroboration of the evidence of Approver. This is very much narrated in para 37 of the Judgment of the trial Court. I have also gone through the same and I am satisfied the reasons adduced therein. Thus, the test for relying upon the evidence of the Approver is in his favour.

11. The learned counsel for the appellant/second accused relied upon para 19 of the decision reported in Jasbir Singh vs. Vipin Kumar Jaggi and Ors., (2001) SCC 1525 , wherein also besides other points it was contended that ?the suspicion may be removed and if the evidence of an approver is found to be trustworthy and acceptable then that evidence might well be decisive in securing a conviction.? In fact that order was passed upon following an earlier finding in Suresh Chandra Bahri Vs. State of Bihar with Gurbachan Singh, .

12. There is yet another important aspect viz., that Ex.P.6 the inter-bank advice was not issued by P.W.5, the then Branch Manager of Gudalur Branch. P.W.6 the Accountant of Gudalur Branch has also denied his signature in Ex.P.6. The expert evidence of P.W.20 supported this. That expert witness opined that the admitted writings of the absconded accused Srinivasan through Ex.P.20 to 73 look alike the writings in Ex.P.6. Thus, the inter-bank advice viz., Ex.P.6 was proved as prepared by the absconding accused Srinivasan by forging the signature of the concerned Branch Manager. Therefore, A1 and A2 who knew pretty well that they have not signed the same shall be characterized as co-conspirators. Therefore, promptness in acting upon the same knowing well with those signatures do not belong to them may indicate only the conspiracy and no lack of diligence.

13. The way in which Ex.P.6 was secured by absconding accused Srinivasan also reveals his polluted mind. When P.W.4 the by then officer in Canara Bank Palakkad requested the absconding accused Srinivasan for lending an inter-bank advice book (Ex.P.4). An acknowledgment through Ex.P.3. was also issued by P.W.4, without even knowing that two leaves therein were clandestinely removed by absconding accused Srinivasan from Ex.P.4. The fact that expert opinion P.W.20 opined Ex.P.6 containing the handwriting of absconding accused Srinivasan as compared with his admitted writings in Exs. P.20 to P.73 would go to show the source of conspiracy in the mind of absconding accused, with the help of the Approver could involved A1 and A2.

14. Further the interconnection of ideas that had simultaneously arising in the minds of the absconding accused A1 and A2 about the same subject matter viz., the core of the overt act involved in this case, is understandable from the evidence of P.W.15. Srinivasan was said to have informed P.W.15 about the involvemen t of A1 and A2 in the conspiracy. The said witness narrated the conversation inside the Currency Chest on 23.11.1984. Moreover the hasty action of A1 and A2 and failure to send the fate card to Gudalur Branch enquiring about the receipt of money and the non-complaint attitude of A1 and A2 about

the non-receipt of inter branch advice till 7.12.1984 would establish the case of prosecution. Regarding the F.I.R. the findings given in para 47 of the judgment of the Court below credence approval.

15. The learned counsel for the appellant A2 argued that if only A2 who was innocent has made a complaint to the Bangalore Office orally and he also made an endeavor from the Manager of the Canara Bank at Gudalur as to whether the amount has been received or not. This is where a defence it steps started moving, which ultimately would indicate the guilty mind of this appellant. It may also be due to the failure of the others concerned in the conspiracy to fulfill their obligation to the appellant second accused, when nothing was paid as promised by others. Any man like that of appellant may try to defend himself isolated rather getting traps in divulging the entire episode, I feel that it so happened for A2 to make a complaint in this peculiar circumstance. There is no merit in the appeal and it deserves dismissed.

16. In the result, this Criminal Appeal is dismissed. The conviction and sentence passed by the Additional Special Judge (First Additional Sessions Judge cum Chief Judicial Magistrate), Coimbatore dated 15 .12.1995 in Special Calendar Case No.6 of 1996 is confirmed.