

Karnataka High Court S Venkataraman vs Central Bureau Of Investigation on  
17 April, 2015 Author: Budihal R.B. 1

IN THE HIGH COURT OF KARNATAKA AT  
BENGALURU

DATED THIS THE 17TH DAY OF APRIL, 2015  
BEFORE

THE HON'BLE MR. JUSTICE BUDIHAL R.B.

CRIMINAL REVISION PETITION No.936/2009

C/W

CRIMINAL REVISION PETITION No.937/2009

BETWEEN:

S.VENKATARAMAN, S/O LATE R.SUBRAMANYAN, AGED ABOUT  
52 YEARS, NO.382/11, II MAIN, 8TH CROSS, MALLESHWARAM,  
BANGALORE-560003. ..PETITIONER (COMMON)

(BY SRI H.S.CHANDRAMOULI, ADV.)

AND:

CENTRAL BUREAU OF INVESTIGATION, BELLARY ROAD, BANGA-  
LORE REPRESENTED BY THE STANDING COUNSEL CBI, BANGA-  
LORE. .. RESPONDENT (COMMON) (BY SRI P.M.NAWAZ, ADV. FOR  
SRI C.H.JADHAV, SPL.PP) CRL.RP.No.936/2009 IS FILED UNDER SEC-  
TION 397 READ WITH SECTION 401 CR.P.C. PRAYING TO SET ASIDE  
THE ORDER OF CONVICTION AND SENTENCE DATED 23.07.2005  
PASSED BY THE LEARNED XVII ADDL., CMM, BANGALORE IN  
C.C.No.2536/1993 FOR THE OFFENCE P/U/S 420, 477-A, 201 IPC AND  
CONFIRMED BY THE XXXII ADDL., CITY CIVIL & SESSIONS AND SPE-  
CIAL JUDGE FOR CBI CASES, BANGALORE, BY HIS JUDGMENT AND  
ORDER DATED 08.09.2009 IN CRL.A.NO.1125/2005. CRL.RP.No.937/2009  
IS FILED UNDER SECTION 397 READ WITH SECTION 401 CR.P.C.  
PRAYING TO SET ASIDE THE ORDER OF CONVICTION AND SEN-  
TENCE DATED 23.07.2005 PASSED BY THE LEARNED XVII ADDL.,  
CMM, BANGALORE IN C.C.No.2537/1993 FOR THE OFFENCE P/U/S  
420, 477-A, 201 IPC AND CONFIRMED BY THE XXXII ADDL., CITY  
CIVIL & SESSIONS AND SPECIAL JUDGE FOR CBI CASES, BAN-  
GALORE, BY HIS JUDGMENT AND ORDER DATED 08.09.2009 IN  
CRL.A.NO.1126/2005. THESE PETITIONS HAVING BEEN HEARD AND  
RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT OF  
ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING: COMMON  
ORDER Since these two revision petitions are filed by same person, who was

accused in two criminal cases and since common questions of law and facts are involved in both the revision petitions, they have been taken together to dispose of them by common order. 2. These two revision petitions are preferred being aggrieved by the judgment and order dated 08.09.2009 passed by the XXXII Addl. City Civil and Sessions Judge and Special Judge for CBI cases, Bangalore, in Criminal Appeal Nos.1125/2005 and 1126/2005 dismissing the appeals and confirming the judgment and order dated 23.07.2005 passed in CC Nos.2536/1993 and 2537/1993 by the XVII Additional Chief Metropolitan Magistrate, Bangalore. 3. The revision petitioner has challenged the legality and correctness of the judgment and orders passed by the First Appellate Court confirming the judgment and orders of conviction passed by the trial Court for the offences punishable under Sections 420, 477-A and 201 of IPC, on the grounds as urged in the revision petitions. 4. Heard the learned counsel appearing for the revision petitioner in respect of both the petitions and also the learned Spl.P.P. for the respondent CBI. 5. Learned counsel appearing for the revision petitioner submitted that the cheques are not traced and though the charges against the revision petitioner are about the alleged offences, there is no audit report produced in the case and the auditor is also not examined before the Court. Learned counsel submitted that it is not the revision petitioner herein alone who handled the cheques and the cheques have been processed by many persons, who are also equally responsible for the alleged offence. He submitted that there may be dereliction of duty, but there is no material to show that the revision petitioner has committed the offences. Though as per the complaint 11 cheques are involved in the case, but the charge sheet is in respect of only 6 cheques and what has happened with regard to remaining five cheques, there is no proper explanation from the prosecution side. He also submitted that there is no mens rea on the part of revision petitioner for committing the alleged offences. He made further submission that even though the prosecution has failed to prove its case beyond reasonable doubt but the courts below have not properly appreciated the oral and documentary evidence and have wrongly held that the revision petitioner is guilty and wrongly convicted him. He also submitted that the revision petitioner has been dismissed from service after conviction and even the wife of the accused left him and he is not having social company of his wife. The case is of the year 1993. The trial court though called for report of the Probation Officer and intended to extend the benefit of the Probation of Offenders Act to the revision petitioner, but ultimately, the trial court held that the PO Act is not made applicable to the case. He submitted that after lapse of nearly 24 years, now if the revision petitioner is sent to jail, then he will be put to greater hardship and injury. Hence, learned counsel submitted that in case, the revision petitions are rejected and judgment and order of the courts below are confirmed, the revision petitioner may be extended the benefit of P.O.Act. 6. In this connection, the learned counsel for the revision petitioner has relied upon the decisions filed along with the memo dated 23.2.2015: i. (1974) 4 SCC 222 in the case of Arvind Mohan Sinha V. Amulya Kumar Biswas and others. ii. (2001) 5 SCC 317 in the case of Commandant, 20th Battalion, ITB

Police V. Sanjay Binjola iii. (2000) 10 SCC 260 in the case of Bore Gowda V. State of Karnataka. iv. (2008) 4 SCC 185 in the case of Paul George V. State of NCT of Delhi. v. (2004) 9 SCC 681 in the case of State of Himachal Pradesh V. Dharam Pal. vi. (1997) 7 SCC 756 in the case of State of Haryana V. Prem Chand. vii. Order dated 15.01.2013 passed in CrI.R.P.No.88/1999 passed by the Hon'ble High Court of Rajasthan in the case of Durga Prasad Jain v. State of Rajasthan. 7. Per contra, the learned Spl.PP submitted that the materials on record would show that the accused sent the cheques to different banks deliberately and only with intention to have the wrongful gain and to cause wrongful loss to the bank. He submitted that the petitioner was the Clerk in the clearing section and taking undue advantage of his position, deliberately sent the cheques to Vijaya Bank and Vyshya Bank and not to the drawee bank. He also submitted that the accused-revision petitioner given the credit to the account of P.W.15 even before the cheques were collected by the drawee bank. The revision petitioner first credited the proceeds of the cheques and subsequently, the cheques were sent to the drawee bank i.e., Union Bank and it was returned with an endorsement 'insufficient funds'. P.Ws.1 to 4 and 15 have identified the signatures of the accused. Looking to the evidence of P.W.6 and P.W.8-complainant, it clearly establishes that the revision petitioner committed the alleged offences. He also submitted that the prosecution proved the case beyond all reasonable doubts and both the courts below have rightly appreciated the materials and hence, recorded the concurrent findings. He submitted that in the revision petitions, the evidence of the parties again cannot be appreciated in detail as the scope of the revision petitions are limited. He submitted that there is no merit in the revision petitions and the same are to be rejected. 8. Regarding the submission made by the learned counsel appearing for the revision petitioner to extend the benefit of Probation of Offenders Act to the revision petitioner, the learned SPP submitted that the petitioner being the public servant and looking to the gravity and seriousness of the offences, he is not entitled to the benefit of PO Act and the trial court accordingly has not extended the benefit of the said Act to the revision petitioner. 9. In reply, learned counsel appearing for the revision petitioner made submission that there is no evidence to show that the petitioner accused was the custodian of the cheques. There is no criminality in sending the cheques to other banks. Hence, he submitted to allow the revision petitions. 10. I have perused the judgment and orders of conviction and sentence imposed by the Trial Court so also the judgment and orders of the First Appellate Court passed in the above mentioned criminal appeals, grounds urged in the revision petitions before this Court and also the decisions relied upon by the learned counsel appearing for the revision petitioner in connection with the benefit of releasing the revision petitioner under the provisions of Probation of Offenders Act. 11. CrI.R.P.No.936/2009 is pertaining to C.C.No.2536/1993 before the XVII ACMM Court at Bangalore. The main allegations against the revision petitioner/accused that, while working as a Clerk in clearing section of SBM Peenya branch, during August and September 1990, accused sent a cheque bearing No.08804 for Rs.17,000/- drawn on S.B.A/c No.2544 on Union Bank of

India to Vijaya Bank for clearance and when the same is returned as mis-sent, the same is sent again to Vyshya Bank for collection and when returned from Vyshya Bank for having mis-sent, accused sent the same to Vyshya Bank for collection and when it is returned as not drawn on it, the said cheque is sent by accused to Union Bank, Malleshwaram Branch, from where said cheque in question is drawn and that, said cheque was returned with endorsement "funds insufficient". Mean while, accused has given credit to the John Abraham's S.B. Account and debited in the clearing items in transit (CIT Account) and accused did not debit the said cheque amount in John Abraham's S.B. Account deliberately and that, accused deliberately allowed John Abraham's to withdraw the credited amount of cheque, although accused was aware of non-clearance of said cheque in the drawer's account and bank. It is the further case of the prosecution that accused has mis-sent cheque No.293131 for Rs.7482/- drawn on bank of Baroda, Malleshwaram Branch and cheque No.293132 for Rs.9,980/- drawn on Bank of India, Yeshwanthapur Branch, to S.B.I at first instance and on their return to drawee bank, accused sent them to Syndicate bank for collection. But mean while, before their clearance accused credited the sum of both cheques i.e., Rs.17,462/- to the S.B. Account of Jerry Abraham on 10.09.1990 though there is no bonafide cheque to credit in the account of said Jerry Abraham and later Rs.8,512/- is withdrawn by accused by giving debit to S.B. Account of Jerry Abraham on 10.09.1990, without authority and then two cheques are not traceable in S.B.M., Peenya Branch. Thus, accused by giving wrong credits and debits in S.B.Account of John Abraham and Jerry Abraham and in C.I.T. account and by falsifying book of accounts of bank, committed the offences punishable under Sections 420, 477-A and 201 of I.P.C. 12. With regards to CrI.R.P.937/2009 it is in respect of C.C.No.2537/1993 before the XVII ACCM Court at Bangalore, wherein the prosecution case as against the revision petitioner/ accused that accused falsified the books of accounts of the bank by writing wrong cheque numbers, wrong name of the bank etc., and caused wrongful loss of Rs.15,376/- to the SBM, Peenya Branch and corresponding wrongful gain to himself, while he was working as a Clerk in clearing section of SBM, Peenya Branch during July and August 1990, by crediting Rs.5000/- to his S.B.Account in respect of cheque bearing No.088057 for Rs.5000/- drawn on Union Bank of India, Malleshwaram Branch, and debited to clearing items transit (CIT accounts) of SBM, Peenya Branch, Bangalore and sent the said cheque twice for collection to other banks other than the drawee bank for realization and similarly accused sent cheque No.088039 for Rs.5,366/- on 21.08.1990 for collection to a wrong bank deliberately and on it's return, he did not debit to his account but debited to Clearing Item in Transit Account of SBM, Peenya Branch. All these three cheques are not traceable and that accused came into possession of these cheques on their return. 13. When the Trial Court framed the charges against the accused, accused has pleaded not guilt and claims to be tried. The prosecution examined 17 witnesses as P.W.s-1 to 17 and got marked the documents Ex.P1- to P-63 in the first criminal case in CC.No.2536/1993 and also examined 14 witnesses as PWs-1 to 14 and got marked the documents Ex.P1 to P-77 in the second

case pertaining to C.C.No.2537/1993. 14. Perusing the judgment and orders passed by the Trial Court as well as the First Appellate Court, both the courts have taken into consideration the evidence adduced by the prosecution i.e., both oral and documentary and both the Courts have recorded concurrent findings holding that the prosecution placed the material to prove the charges against the accused in both the cases and proved its case beyond all reasonable doubt. 15. With regard to the factual aspect, which the Trial Court as well as the First Appellate Court have already considered extensively and recorded the concurrent findings. In these revision petitions, the petitioner/accused has to show what is the illegality committed by the Courts below in coming to such conclusion. But looking to the grounds urged in the revision petitions in respect of both the cases, the revision petitioner pleaded the grounds in general that the Trial Court as well as the First Appellate Court have not properly considered the oral and documentary evidence, but there is no specific ground raised in the revision petitions, which particular material i.e., either oral or documentary, has not been considered is not made out by the revision petitioner. When the two Courts have already appreciated and re-appreciated the material and recorded the findings about the guilt of the revision petitioner and as the revision petitioner has not at all established what is the illegality committed by the Courts below and as the scope of the revision petition is also limited and this Court in a revision petition cannot re-appreciate the entire material, this Court has to see any illegality committed by the Courts below in coming to such conclusion. Hence, I am of the opinion that both the Courts below have rightly appreciated the material and rightly recorded the findings in convicting the revision petitioner/accused in both the cases. There are no valid and justifiable grounds for this Court to interfere into the judgment and orders of conviction passed by the Trial Court and its confirmation by the First Appellate Court. The judgment and orders of the Courts below are hereby confirmed and the conviction of the revision petitioner is maintained. 16. With regard to the contention of the revision petitioner that his case is to be considered under the provisions of the Probation of Offenders Act and he be released of the said offences by invoking the jurisdiction under Sections 3 and 4 of the said Act, I have already referred to the submission made by the learned counsel for revision petitioner in this regard, and also the decisions relied upon by the learned counsel for the revision petitioner seeking the release of the revision petitioner under the provisions of Probation Of Offenders Act. In this regard, I have perused the order dated 29.07.2005 passed by the Trial Court after hearing on the sentence. The learned counsel for the accused before the Trial Court has also relied upon the decision of the Hon'ble Orrisa High Court in the case of Sushil Kumar Parida (Petitioner) Vs. State (Opposite party) reported in 1993 (1) crimes 210 and also another decision of the Hon'ble Supreme Court in the case of Bhausahab Kalu Patil (Appellant) Vs. State of Maharashtra (Respondent) reported in AIR 1981 SC 80 = 1980 Cri.L.J.1312. So also the Trial Court has also considered an unreported decision of this Court relied upon by the learned APP passed in CRRP Nos.351/02, 352/02, and 257/02, after considering the propositions of the said decision ultimately, the

Trial Court came to the conclusion that looking to the facts and circumstances of the cases, including the nature of the offence and character of the offender, held that accused is liable to undergo punishment and the request of the accused for releasing him on the Probation of Offenders Act was not at all considered. 17. I have perused the original records secured in the case and it is an admitted fact even according to the prosecution that the Trial Court called for the report of the Probation Officer and accordingly, the Probation Officer has submitted his report dated 28.07.2005 to the XVII ACMM Court Bangalore. Perusing the said original report of the Probation Officer, the Presiding Officer, XVII ACMM Court, Bangalore, seen the same and put his signature with date as 29.07.2005. 18. I have also perused the report of the Probation Officer. The contents of the said report shows that the revision petitioner/accused is residing at Hosur nearer to Bangalore and staying along with his old age mother, who is aged about 70 years. The report shows that the father of the revision petitioner expired and his mother is a widow. The mother as well as the revision petitioner are not keeping good health. In the year 1995, the wife of the revision petitioner obtained divorce decree because of the difference between the couples. It is also mentioned that even the revision petitioner has been removed from his job by the concerned Bank and for the livelihood of himself and his mother, he is running one canteen in Diesel Generator Company and earning Rs.500-600/- per day. The report also having the annexures of death extract of the R.Subramanyan, the father of the revision petitioner and medical records issued from Sudeep Diabetes Care Centre in respect of Smt.Rajalakshmi, the mother of the revision petitioner, copy of the order passed in M.C.Case No.34/1995 dated 19.09.1995, dissolving the marriage of the revision petitioner with his wife, letters issued from the State Bank of Mysore appreciating the services of the revision petitioner in mobilizing the deposits. 19. The Probation Officer has also mentioned in his report that he has enquired with the neighbours about the conduct and antecedents of the revision petitioner and they are having good opinion about the revision petitioner. So also I have perused the document of Karthik Lab of SBS Hospital Pvt.Ltd, Tank Street, Hosur, about the health condition of the revision petitioner. As per the report of the Probation Officer, there is no mention that the revision petitioner was convicted even earlier to the present offence. 20. The offences are said to have been committed in the year 1990, now we are in 2015 that 25 years have been elapsed. Therefore, at this stage, if the revision petitioner is sent to jail to serve the sentence of one year simple imprisonment, it not only affect the revision petitioner but the mother of the revision petitioner, who is depending on the earnings of the revision petitioner, who is at her advanced age of 70 years, suffering from ailments will also be put into greater hardship and injury. 21. I have also perused the principles enunciated in the decisions relied upon by the learned counsel for the revision petitioner, which are referred above. 22. Looking to all these materials on record, I am of the opinion that revision petitioner/accused can be released on probation of good conduct as per Sections 3 and 4 of the Probation of Offenders Act, 1958, by imposing reasonable conditions. 23. Accordingly,

the benefit of the provisions of Probation of Offenders Act, 1958, is extended to the revision petitioner. The revision petitioner instead of undergoing the sentence imposed by the Trial Court and confirmed by the Appellate Court, be released on he executing a bond for Rs.20,000/- with one solvent surety for the likesum within a period of 30 days from the date of this order before the Trial Court, for keeping peace and be of good behavior for a period of three years in respect of each criminal case and the petitioner has to undertake in the bond that within three years, if the Trial Court is of the opinion that any of the terms of the bond are violated or if any adverse opinion is expressed by the Probation Officer while supervising the conduct and the antecedents of the revision petitioner and called him to serve the sentence, he should be ready to undergo the sentence as and when called for by the Trial Court. The sentence imposed by the Trial Court for simple imprisonment for one year and another one year for the offences under Section 420 and 477A respectively, and three months for the offence under Section 201 of IPC, which are ordered to run concurrently, in respect of each criminal case are hereby suspended sine die. Accordingly, both the revision petitions are disposed of. Sd/- JUDGE Cs/-BSR