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MAYANK N SHAH

v.

STATE OF GUJARAT & ANR.

(Criminal Appeal No. 2298 of 2010)

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DECEMBER 18, 2019

**[N. V. RAMANA, R. SUBHASH REDDY AND
B. R. GAVAI, JJ.]**

- Sentence/Sentencing – Complaint lodged against the*
- C *appellant-accused no.4 and four others – At the relevant time, accused no.1 was serving as Branch Manager of Central Bank of India, Ahmedabad– Accused nos.2, 3 were partners of a partnership firm engaged in the business of manufacturing crankshafts for jeeps, ambassador cars etc.– Appellant was serving as Chief Manager (Operations) with the firm and accused no.5 was*
- D *office Superintendent– Accused no.2 applied to the Bank for availing loan facilities for the firm – Case of the complainant inter alia that under the Usance Bills facility, the partnership firm used to offer its bills drawn on different outstation parties and along with the said bills they produced railway receipt, motor receipt, invoices for the value of the goods sold to the parties and also the hundis drawn upon the purchases – Said documents were signed by accused nos.2-5– On such presentation, the bank used to grant credit facility – Allegedly, forged receipts were produced with Out-stationed Bills Discounted (O.B.D) and Bills Purchased (B.P) and in all, the appellant and accused no.5 presented to the*
- E *Bank 25 bills to the tune of Rs.18,57,064.40/-, and the firm availed the credit facility from the Bank against such bills, by presenting fake transport receipts – Accused charged u/ss.161, 166, 420, 468 & 471, IPC r/w ss.5(1)(d), 5(2) of 1947 Act – Special Judge convicted the accused nos.1-4 – High Court confirmed the*
- F *conviction and sentences imposed on the appellant –On appeal, held: Findings recorded supporting the prosecution case were in conformity with the oral and documentary evidence on record – Appellant knowing fully well that the invoices/bills were fake and fabricated, presented on behalf of the firm to the bank and thus cheated the bank – Prosecution proved the guilt of the appellant*
- G *Held: Findings recorded supporting the prosecution case were in conformity with the oral and documentary evidence on record – Appellant knowing fully well that the invoices/bills were fake and fabricated, presented on behalf of the firm to the bank and thus cheated the bank – Prosecution proved the guilt of the appellant*

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beyond reasonable doubt – However, in assessing the sentencing, the crime test requires adequate deference to factors such as role of the accused and his position within the rank of conspirators, among other things – In view of the fact that the appellant was only a salaried employee working in the firm owned by the accused no.2 and was relatively lower in the hierarchy, it is fit case to modify the sentence imposed on the appellant, while confirming the conviction – Period of sentence modified – All the sentences to run concurrently – Bail bonds of the appellant cancelled, who shall surrender within 4 weeks from today, failing which steps be taken to take him into custody for serving the remaining period of sentence – Penal Code, 1860 – ss.120-B, 161, 166, 420, 468 and 471 – Prevention of Corruption Act, 1947 – ss.5(1)(d), (2).

Partly allowing the appeal, the Court

HELD: 1.1 When the advocate on record who filed the appeal was elevated to the Bench, it was for the appellant to make his own arrangement for appointing another advocate in the place of earlier advocate on record. Appellant did not take any steps in this regard. Even notice sent to the appellant was not received by him for want of correct address. As such there was no option except to proceed for disposal of the appeal filed by the appellant, by appointing *amicus curiae*. Mere allegation that the *amicus curiae* appointed was earlier junior counsel of C.B.I. advocate, is no ground to interfere with the impugned judgment. The findings recorded in support of the case of the prosecution were in conformity with the oral and documentary evidence on record. The appellant knowing fully well that the invoices/bills were fake and fabricated, were presented on behalf of the firm to the bank and thus cheated the bank. The prosecution has proved the guilt of the appellant beyond reasonable doubt to record conviction of the appellant. [Para 10] [365-D-G]

1.2 Having regard to totality of the facts and circumstances of the case and evidence on record, taking note of the fact that the appellant was working in the firm owned by the accused no.2, he was salaried employee and and he was relatively lower in the hierarchy. it is a fit case to modify the sentence imposed on the appellant, while confirming the conviction. In assessing the

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- A sentencing, the crime test requires us to evaluate and provide adequate deference to factors such as role of the accused and his position within the rank of conspirators, among other things. Accordingly, the sentence of R.I. modified for a period of one year for the offence punishable under S.120B read with S.161, 166, 420, 471 of I.P. Code and also read with S.5(1)(d) further read with S.5(2) of the Prevention of Corruption Act, 1947; R.I. for a period of one year and to pay fine of Rs.5000/-, in default to suffer further R.I. for period of six months for the offence punishable under sec.420, 420-120B of I.P. Code; R.I. for a period of one year and to pay a fine of Rs.2000, in default to suffer further R.I. for period of three months for the offence punishable under S.471 read with S.468 of I.P. Code in respect of the user of seven forged motor transport receipts; R.I. for a period of one year and to pay a fine of Rs.2000, in default to suffer further R.I. for period of three months for the offence punishable under S.471 read with S.468 and further read with S.120B of I.P. Code in respect of the user of the 11 Photostat copies of exhs.942 to 952. All the sentences shall run concurrently. The appeal is allowed in part to the extent of modifying the period of sentence. As the appellant was on bail pursuant to orders passed by Supreme Court on 16.11.2009, his bail bonds are cancelled. He shall surrender within a period of four weeks from today to serve the remaining period of sentence, failing which respondent-State shall take steps to take the accused into custody to serve the remaining period of sentence. [Paras 13, 14] [366-B-G; 367-A-B]
- F *Central Bureau of Investigation, Hyderabad v. K. Narayana Rao (2012) 9 SCC 512 : [2012] 9 SCR 54 ; K.R. Purushothaman v. State of Kerala (2005) 12 SCC 631 : [2005] 4 Suppl. SCR 498 ; Bharati Telenet Ltd. v. Subhash Jain & Ors. (2005) 11 SCC 599 ; A.S. Krishnan & Ors. v. State of Kerala (2004) 11 SCC 576 : [2004] 3 SCR 44 – referred to.*
- G *State of Madhya Pradesh v. Udhampur and Others 2019 SCC OnLine SC 1378 – relied on.*

Case Law Reference

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| H [2012] 9 SCR 54 | referred to | Para 11 |
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[2005] 4 Suppl. SCR 498	referred to	Para 11	A
(2005) 11 SCC 599	referred to	Para 11	
[2004] 3 SCR 44	referred to	Para 11	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2298 of 2010.

From the Judgment and Order dated 16.10.2008 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 324 of 1987.

Basava Prabhu S. Patil, Sr. Adv., Gaurav Agarwal, Jatin Zaveri, Neel Kamal Mishra, Geet Ahuja, Chinmay Deshpande, Advs. for the Appellant.

Ms. Sonia Mathur, Sr. Adv., Ashish Rana, Puneet Taneja, Sushil Kumar Dubey, Ms. Divya Nair, Anuj Aggarwal, Puneet Pathak, Ms. Laxmi Kumari, Ms. Aastha Mehta, Ms. Vishakha, Aniruddha P. Mayee, Advs. for the Respondents.

The Judgment of the Court was delivered by

R. SUBHASH REDDY, J.

1. This criminal appeal is filed by the accused no.4, aggrieved by the judgment dated 16.10.2008, passed in Criminal Appeal No.324 of 1987, by the High Court of Gujarat at Ahmedabad, confirming the judgment and order of conviction dated 02.04.1987 passed by the learned Special Judge, Ahmedabad in Special Case No.13 of 1979.

2. On 21.07.1976, a complaint was lodged by Divisional Manager, Central Bank of India, Ahmedabad with the Superintendent of Police, Central Bureau of Investigation, Ahmedabad against the appellant/accused no.4 and four others which came to be registered as C.R. No.43 of 1976. It was alleged in the complaint that M/s. New Russian Automobiles is a registered partnership firm engaged in the business of manufacturing crank-shafts for jeeps, ambassador cars, tractors, diesel engines etc., from their manufacturing unit at plot bearing no.155, C1-B/3 situated in Industrial Area, Naroda Taluka of Ahmedabad District. It was alleged that during the relevant time accused no.1 was serving as Branch Manager of Central Bank of India, Ahmedabad, whereas accused nos.2 and 3 were partners of M/s. New Russian Automobiles along with two others. As per the complaint, appellant herein/accused no.4 was at the relevant time serving as Chief Manager (Operations) with the firm and accused no. 5 was serving as office

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- A Superintendent. It was further stated in the complaint that original accused no.2 applied to the Central Bank of India for availing certain loan facilities for the firm. Accordingly, various facilities such as Term Loan facility, Cash Credit Open Loan facility, Usance Bills facility, Clean Endorsed Out-stationed Third Parties Cheques Discounting facility etc. were extended from time to time at the instance of accused no.1.
- B According to the complainant, accused no.2 apart from being a partner in the partnership firm, had also floated three other fictitious proprietary concerns at Bombay, i.e., (i) M/s. Technical Export Import Association; (ii) M/s. Alloy Steel Corporation; and (iii) M/s. Auto Parts Centre. It was further the case of the complainant that under the Usance Bills facility, the partnership firm used to offer its bills drawn on different outstation parties and along with the said bills they have produced railway receipt, motor receipt, invoices for the value of the goods sold to the parties and also the *hundis* drawn upon the purchases and all the said documents were signed by accused nos.2 to 5. On such presentation,
- C bank used to grant credit facility by forwarding the bills with necessary documents to the out-stationed bankers named in the bill and the out-stationed parties used to accept the *hundis* for the value of goods sent along with the bill and the out-stationed bank used to deliver to the said party railway receipt or motor receipt along with the invoices. As stated in the complaint, the out-stationed parties then used to pay up the amount of *hundis* to their partner within the time fixed by the *hundis* and such bankers used to send necessary amount to the Central Bank, Gheekanta Branch, Ahmedabad. It was the allegation in the complaint that all the accused persons hatched a conspiracy to cheat the bank and they managed to get fake motor receipts alleged to have been issued by one
- F Bombay General Freight Carriers Pvt. Ltd., Bombay. As alleged in the complaint, the appellant/accused no.4 and accused no.5 presented to the bank 25 bills for the total amount of Rs.18,57,064.40 during the period from October 1975 to March 1976 and in the said manner, the firm has availed the credit facility from the bank against such bills, by presenting fake transport receipts. It is alleged that on certain occasions forged receipts were produced with Out-stationed Bills Discounted (O.B.D.) and Bills Purchased (B.P.) and in all 25 bills were presented with forged motor transport receipts and out of the said bills, 11 bills totalling to Rs.6,02,160/- were drawn upon a fictitious firm, namely, M/s. Auto Parts Centre, of which accused no.2 was the sole proprietor.
- H It is alleged, the accused nos.2 to 5 by making false or misleading

representation with fraudulent and dishonest inducement, cheated the bank to the tune of Rs.18,57,064.40. It was also alleged that accused nos.2 to 5 made false declaration about the value of the goods by drawing bills in favour of fictitious firms. Further, M/s. Alloy Steel Corporation, a fictitious firm floated by accused no.2, raised 11 fabricated invoices in the name of the firm amounting to Rs.44,19,000/- and fraudulently and dishonestly induced the said bank to advance the amount of Rs.30,93,300/-. In the complaint it is alleged that accused no.1 being a public servant, managed to get credited, at the instance of accused no.2, an amount of Rs.9500/- in the account of his sons on 28.11.1975 and Rs.5400/- on 11.02.1976. In addition to the same, accused no.1 accepted a wrist watch, Crown T.V. set and enjoyed a trip to Bombay at the expense of accused nos.2 and 3, as such, committed the offence punishable under Section 161 and 165 of the Indian Penal Code (IPC).

3. After completion of the investigation on the complaint, all the accused were charged for the offences punishable under Sections 161, 166, 420, 468 and 471, IPC read with Sections 5(1)(d) and 5(2) of Prevention of Corruption Act, 1947. All the accused pleaded not guilty to the charges and claimed trial.

4. The prosecution has examined in all 44 witnesses apart from the documentary evidence. On appreciation and evaluation of the evidence on record adduced by the prosecution both oral as well as documentary, the learned Special Judge held the appellant is guilty for the offences charged and imposed the sentence for the various offences, which reads as under :

“R.I. for a period of two years for the offence punishable under S.120B read with S.161, 166, 420, 471 of I.P. Code and also read with S.5(1)(d) further read with S.5(2) of the Prevention of Corruption Act, 1947.

R.I. for a period of two years and to pay fine of Rs.5000/-, in default to suffer further R.I. for period of six months for the offence punishable under sec.420,420-120B of I.P. Code.

R.I. for a period of one year and to pay a fine of Rs.2000, in default to suffer further R.I. for period of three months for the offence punishable under S.471 read with S.468 of I.P. Code in respect of the user of seven forged motor transport receipts.

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- A R.I. for a period of one year and to pay a fine of Rs.2000. in default to suffer further R.I. for period of three months for the offence punishable under S.471 read with S.468 and further read with S.120B of I.P. Code in respect of the user of the 11 Photostat copies of exhs.942 to 952."
- B 5. Aggrieved by the conviction recorded and sentence imposed, the appellant herein preferred criminal appeal before the High Court. High Court, by re-appreciating the evidence on record, dismissed the appeal by impugned judgment, confirming the judgment and order of sentence imposed on the appellant, by the learned Special Judge, Ahmedabad.
- C 6. We have heard Sri Basava Prabhu Patil, learned senior counsel appearing for the appellant and Ms. Sonia Mathur, learned senior counsel appearing for the C.B.I.
- D 7. It is contended by learned senior counsel for the appellant that the appeal was decided by the High Court without giving adequate opportunity, to the appellant to present his case on merits. It is submitted that during the pendency of the appeal, before the High Court, the advocate who has presented the appeal on behalf of the appellant was elevated as the Judge of the High Court and thereafter notice issued by the High Court was not received by the appellant, as he has shifted
- E to Pune and the High Court has disposed of the appeal by appointing *amicus curiae*, who was no other than junior advocate of the counsel for the C.B.I. In view of the same, it is submitted that it is a fit case to remand the matter to the High Court. Further it is submitted that conviction of the appellant is solely based on circumstantial evidence and the appellant was the salaried employee of the firm working as Chief Manager (Operations). He was not benefitted in any manner and he was submitting the bills and invoices as per the instructions of the accused no.2. That the companies which were floated by the accused no.2 were his proprietary concerns. It is submitted that he was preparing the invoices and bills during his routine office work on the basis of
- F information received from the factory and submitted to the bank. It is submitted that in absence of any direct evidence connecting the appellant to the alleged illegalities the High Court as well as the trial court fell in error in recording conviction of the appellant for the offence alleged.
- G 8. On the other hand, learned senior counsel appearing for the respondents has submitted that the appellant/accused no.4 was working

as Chief Manager (Operations) with M/s. New Russian Automobiles and he had drawn almost all O.B.D. and B.P. bills on behalf of the firm. It is submitted that from the documentary evidence placed on record, it is amply clear that appellant was very well knowing that the bank was being deceived by showing highly inflated amounts in the O.B.D. bills. It is submitted that appellant has signed all the bills which were submitted along with forged receipts to the bank. Further it is stated that he has attested all the 11 photocopies of exhibits 942 to 952 as true copies of the forged invoices issued by M/s. Alloy Steel Corporation. It is submitted, thus the appellant herein was party to the offence of cheating and forgery upon the bank.

9. Having heard learned counsel on both sides, we have perused the judgments of the trial court, as well as High Court.

10. On appreciation of oral and documentary evidence on record, trial court/Special Court has convicted the accused nos.1 to 4, and the High Court by the impugned judgment confirmed the conviction and sentence imposed on the appellant. When the advocate on record who filed the appeal was elevated to the Bench, it was for the appellant to make his own arrangement for appointing another advocate in the place of earlier advocate on record. Appellant did not take any steps in this regard. Even notice sent to the appellant was not received by him for want of correct address. As such there was no option except to proceed for disposal of the appeal filed by the appellant, by appointing *amicus curiae*. On the mere allegation of the appellant that the *amicus curiae* appointed was earlier junior counsel of C.B.I. advocate, is no ground to interfere with the impugned judgment. Having perused the findings recorded by the trial court/Special Court and of the High Court, we are of the view that the findings recorded in support of the case of the prosecution were in conformity with the oral and documentary evidence on record. We are satisfied from the findings recorded that the appellant knowing fully well that the invoices/bills were fake and fabricated, were presented on behalf of the firm to the bank and thus cheated the bank. The prosecution has proved the guilt of the appellant herein beyond reasonable doubt to record conviction of the appellant.

11. Though the learned counsel for the appellant relied on the judgments in the case of *Central Bureau of Investigation*,

¹ (2012) 9 SCC 512

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- A *Hyderabad v. K. Narayana Rao¹; K.R. Purushothaman v. State of Kerala²; Bharati Telenet Ltd. V. Subhash Jain & Ors.³; and A.S. Krishnan & Ors. V. State of Kerala⁴*, having regard to facts of the case and evidence on record, of the case on hand, we are of the view that the said judgments are not helpful in support of the case of the appellant.
- B 13. Having regard to totality of the facts and circumstances of the case and evidence on record, taking note of the fact that the appellant was working in the firm owned by the accused no.2 and he was salaried employee, we deem it appropriate, it is a fit case to modify the sentence imposed on the appellant, while confirming the conviction. This Court, in *State of Madhya Pradesh v. Udhampur and Others⁵*, has clearly laid down guidelines for sentencing. In assessing the sentencing, the crime test requires us to evaluate and provide adequate deference to factors such as role of the accused and his position within the rank of conspirators, among other things. There is no dispute that, from the facts and circumstances, the appellant was working in the firm owned by accused no.2 and he was relatively lower in the hierarchy. It needs to be highlighted that he was only a salaried employee. Accordingly, we modify the sentence of R.I. for a period of one year for the offence punishable under S.120B read with S.161, 166, 420, 471 of I.P. Code and also read with S.5(1)(d) further read with S.5(2) of the Prevention of Corruption Act, 1947; R.I. for a period of one year and to pay fine of Rs.5000/-, in default to suffer further R.I. for period of six months for the offence punishable under sec.420, 420-120B of I.P. Code; R.I. for a period of one year and to pay a fine of Rs.2000, in default to suffer further R.I. for period of three months for the offence punishable under S.471 read with S.468 of I.P. Code in respect of the user of seven forged motor transport receipts; R.I. for a period of one year and to pay a fine of Rs.2000. in default to suffer further R.I. for period of three months for the offence punishable under S.471 read with S.468 and further read with S.120B of I.P. Code in respect of the user of the 11 Photostat copies of exhs.942 to 952. We further order that all the sentences shall run concurrently.

² (2005) 12 SCC 631

³ (2005) 11 SCC 599

⁴ (2004) 11 SCC 576

H ⁵ 2019 SCC OnLine SC 1378

14. The appeal is allowed in part to the extent of modifying the period of sentence. As the appellant was on bail pursuant to orders passed by this Court on 16.11.2009, his bail bonds are cancelled. He shall surrender within a period of four weeks from today to serve the remaining period of sentence, failing which respondent-State shall take steps to take the accused into custody to serve the remaining period of sentence.

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Divya Pandey

Appeal partly allowed.