

Pertitioner Vs. Respondents

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Court : Chennai Madurai

Decided On : Aug-23-2016

Judge : The Honourable Dr. Justice P. Devadass

Appeal No. : Crl.M.P.(MD) No. 4065 of 2016 in Crl.A.(MD) No. 172 of 2016

Appellant : Pertitioner

Respondent : Respondents

Judgement :

1. A1 in C.C.No.23 of 2012, on the file of the learned II Additional District Judge for C.B.I.Cases, Madurai, while challenging his conviction and sentence, seeks appeal bail under Section 389 (1) Cr.P.C.

2. After trial, A1 has been convicted and sentenced as under:

Conviction	Sentence
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120-B r/w 409, 420, 467, 468 r/w 471, 477-A I.P.C. and 13(2) r/w 13(1)(c) and (d) of P.C.Act, 1988	10 Years R.I. + Fine Rs.5,000/-, i/d 3 Months S.I.
409 I.P.C.	10 Years R.I. + Fine Rs.5,000/-, i/d 3 Months S.I.
420 I.P.C.	7 Years R.I. + Fine Rs.5,000/-, i/d 3 Months S.I.
467 I.P.C.	10 Years R.I. + Fine Rs.5,000/-, i/d 3 Months S.I.
468 r/w 471 I.P.C.	7 Years R.I. + Fine Rs.5,000/-, i/d 3 Months S.I.
477-A I.P.C.	7 Years R.I. + Fine Rs.5,000/-, i/d 3 Months S.I.

13(2) r/w 13(1)(c) and (d) of P.C.Act, 1988	3 Years R.I. + Fine Rs.5,000/-, i/d 3 Months S.I.
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3. All the sentences were directed to run concurrently. Fine amounts were paid. Since the date of imposition of sentence, namely, 17.05.2016 he is in Central Prison, Madurai, undergoing his sentence.

4. During the relevant time, petitioner / A1 was Manager, State Bank of India, Kalkulam Branch, Kanyakumari District.

5. The prosecution version is A1 developed close intimacy with A2, a Bank customer, wife of A3. Their daughter is one Gayathri. It is alleged that A1 developed intimacy with A2 and went out of the way to favour her. Ultimately, that land him up in trouble.

6. This C.B.I. case is with a sex motive. As per the prosecution version, A1, while granting housing loan to A2 to the tune of Rs.10,00,000/-, not obtained required registered mortgage deed and he did not follow the sanction procedure. Further, for the daughter of A2, A1 floating Bank norms relating to education loan, sanctioned education loan amount for an unapproved course to be undergone in U.S.A., in granting business loan to A2 to purchase the Cashewnut Factory of Manoj, A1 violated the Rules relating to sanction and when one Vincent Durai has paid back the amount of Rs.5,00,000/- to the Bank to close the account, A1 did not do so, kept the amount in suspension account, further, using the A.T.M. Card of his second wife Sajitha, A1 had withdrawn the amount from the A.T.M.Centre.

7. The learned counsel for the petitioner contended that all the charges framed have not been established. The charges were not substantiated by legal evidence.

8. The learned counsel for the petitioner contended that as regards disbursement of the housing loan amount, no competent official witness has been examined. Further, A1 has got sanctioning power upto Rs.10,00,000/-. He had sanctioned it. The original title deeds of the property produced by A2 has been deposited with the Bank. Part of the property has been permitted to be sold and the remaining

property and the superstructure build thereon measuring 1000 sq.ft., is more than sufficient to satisfy the Bank dues. And the loan account has not been classified as 'N.P.A.'

9. The learned counsel for the petitioner contended that the applicant for education loan has been split-up by the loanee, for each application Rs.10,00,000/- has been sought for and a loan disbursed was Rs.12,00,000/-. There is no material to show that for unapproved course in U.S.A., loan has been sanctioned. No competent witness with respect to this has been examined by the prosecution. The Chief Manager and Regional Manager have not been examined to speak about the allegations with respect to the education loan sanctioned to Gayathri.

10. The learned counsel for the petitioner further contended that the transfer of Rs.5,00,000/- was on 02.04.2006. It falls on a Sunday. Thus, the allegation of the prosecution is false.

11. It has also been contended by the learned counsel for the petitioner that there is no material or C.C.T.V.Footage to show that A1 has withdrawn said money from the A.T.M.Centre using the A.T.M.Card of his second wife Sajitha.

12. The learned counsel for the petitioner also contended that there is not even a shred of evidence as to A1's alleged intimacy with A2.

13. The learned counsel for the petitioner also contended that A1 is stated to have violated the Rules and Regulations and norms prescribed by the Bank in sanctioning the loans. For that matter, if at all he could be proceeded for disciplinary action as per the Service Rules, it would not warrant a criminal offence.

14. The learned counsel for the petitioner further submitted that there is prima facie case in favour of the petitioner. He will not abscond. He will not flee away from justice. Further, he is in jail for a considerable period since the date of imposition of sentence. In the circumstances, he may be granted appeal bail.

15. Prosecution filed counter.

16. The learned Special Public Prosecutor for C.B.I.Cases contended that in multiple type of loans granted to A2 to purchase a property under a housing loan, in sanctioning business loan to purchase a Cashewnut Factory from one Manoj and to deal with the amount deposited by Vincent Durai and withdrawal of the amount using A.T.M.Card of his 2nd wife and in sanctioning of education loan to Gayathri, daughter of A2 and A3, A1 has shown undue haste and not observed rules and regulations of the Bank. A1 was actuated by an ulterior motive. He was simply carried away by his affair with A2. He did not get registered mortgage deeds with respect to the loans. Even without getting sanction from his higher-ups, he had sanctioned the education loan. Using the A.T.M.Card of the 2nd wife, A1 had withdrawn money from the A.T.M.Centre. These charges were proved to the hilt in the Trial Court by the prosecution. That is how, he has been convicted and he has been severely punished.

17. I have anxiously considered the rival submissions, perused the averments in the appeal bail petition and in the counter filed by the prosecution, given my thoughtful consideration to the submissions of both sides, perused the impugned Judgment and the relevant materials on record.

18. At this stage, we must keep in mind that we are not hearing the main criminal appeal. The scope of a bail petition under Section 389(1) Cr.P.C., is limited to the point that is there any prima facie case in favour of the petitioner. Is there any arguable point in his favour. Is there any point to be examined at the main criminal appeal.

19. Now, in this case, to nix A1, he has been mixed with A2. It has been contended that there is no acceptable legal evidence to link A1 with A2 to show the existence of any undesirable relationship between both.

20. With respect to not registering of mortgage deeds, it has also been contended by the learned counsel for the petitioner that original title deeds have been produced. Inasmuch as sufficient security is available to satisfy the Bank dues, allegation of cheating will not arise. It has also been contended that there is no proof to show that A1 has gone to the A.T.M.Centre and withdrawn money and no material such as C.C.T.V.Footage has been produced to establish this aspect by

the prosecution. It has also been contended by the learned counsel for the petitioner that no required evidence has been produced to show that the course for which educational loan sanctioned is an unapproved course nor any competent witness such as Chief Manager or Regional Manager have been examined in the Trial Court to speak about A1 having exceeded his sanctioning power with respect to the educational loan and also not obtaining of appropriate approval from his higher-ups. Above all, it has also been strenuously contended by the learned counsel for the petitioner that even taking the allegations as such, for an argument sake, if at all it may be a case for disciplinary action as against A1 for his alleged commission of misconduct, it would not attract the offences as alleged.

21. In the circumstances, we find this criminal appeal involves certain eminently arguable points, which are required to be examined at the time of disposal of the main criminal appeal. It will take sometime for its disposal. Thus, we see prima facie case in favour of the petitioner. He is not likely to abscond or flee away from justice. Thus, I am inclined to grant him appeal bail.

22. Ordered as under:

(i) Appeal bail granted.

(ii) His sentence of imprisonment alone is suspended.

(iii) There shall be two sureties, they and the petitioner shall execute a bond for Rs.25,000/- (Rupees twenty five thousand only) each to the satisfaction of the learned II Additional District Judge for C.B.I.Cases, Madurai.

(iv) The petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m., until further orders.

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