

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 1936

CRL.A.No. 142 of 1999 (C)

AGAINST THE JUDGMENT IN C.C.NO. 6/1997 of SPECIAL JUDGE (SPE/CBI)-II,
ERNAKULAM DATED 05-06-1998

APPELLANT(S)/COMPLAINANT:

CBI, REPRESENTED BY THE PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV.SRI.P.CHANDRASEKHARA PILLAI, STANDING COUNSEL FOR C.B.I.

RESPONDENT(S)/ACCUSED:

1. P.VIJAYARAGHAVAN, S/O.LATE P.O.ADIYODI, MANAGER,
SBI, ADE, KATTAPPANA, IDUKKI DISTRICT NOW RESIDING
AT CHERUVALATHU HOUSE, VISHNUMANGALAM P.O.,
KALLACHI, VIA., VADAKARA, CALICUT DISTRICT.
2. K.J.THOMAS, S/O.JOSEPH, MANAYAMPLACKAL HOUSE,
KATTAPPANA P.O., IDUKKI DISTRICT.

R1 BY ADV. SRI.M.K.DAMODARAN (SENIOR ADVOCATE)

R1 BY ADV. SRI.ANIL THOMAS(T)

R1 BY ADV. SMT.K.V.RESHMI

R2 BY ADV. SRI.S.RAJEEV

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13.11.2014, THE
COURT ON 06-01-2015 DELIVERED THE FOLLOWING:

A.HARIPRASAD, J.

Crl.Appeal No.142 of 1999

Dated this the 6th day of January, 2015.

JUDGMENT

The Central Bureau of Investigation (CBI) in this appeal challenges the acquittal of the accused persons charged with offences under Sections 120B, 420, 468, 471 and 477A of the Indian Penal Code (in short, "IPC") and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (in short, "the Act"). Learned Judge after a full-fledged trial, by examining 22 witnesses and marking 105 documents on the side of the prosecution and also considering the evidence of one witness and five documents on the defence side, found that no offence was proved against the accused/respondents beyond reasonable doubt. The acquittal on the above reasoning is challenged in this appeal.

2. Heard Shri Chandrasekhara Pillai, learned Standing Counsel for the appellant CBI and Shri M.K.Damodaran, learned Senior Counsel for the 1st respondent and Shri S.Rajeev, learned counsel for the 2nd respondent.

3. Prosecution case unfolded from the charge framed by the trial court is that the 1st accused Manager of the State Bank of India (SBI), ADB Branch, Kattappana, and the 2nd accused, a customer, conspired together

to make unlawful pecuniary advantage to the latter by releasing securities placed before the bank for availing loans in the name of some loanees and pursuant to that conspiracy, the Ware House Receipts (WHR) deposited as securities for nine loan transactions were released by the 1st accused to the 2nd accused. The 2nd accused thereafter got the goods covered by those WHRs released from the warehouse and sold the articles. He got the sale proceeds credited to his own account rendering the nine loans unsecured. In order to cover up these fraudulent transactions, eleven fictitious loans were created by the 1st accused on the basis of false documents. For creating the eleven loans, 1st accused forged documents and used the same as genuine documents.

4. Shri Chandrasekhara Pillai contended for the appellant that the learned trial Judge failed to note the fact that security provided for the loans were released prior to closing of the loans, thereby the loans were rendered unsecured. It is also contended that the evidence adduced by the prosecution would show that the WHRs were released by the 1st accused in favour of the 2nd accused for giving undue pecuniary benefit to the latter. It is the further contention that the learned trial Judge omitted to note that eleven loans were created subsequently and they were fictitious loans, created for the purpose of cheating the bank. It is also come out in evidence that these loans were created in the name of some persons without their knowledge or consent. Further contention raised by the

appellant is that the learned trial Judge failed to appreciate the evidence of Government Examiner of Questioned Documents (GEQD). Still further, it is contended that the learned trial Judge did not consider the fact that out of the eleven loans, ten loans were having securities in which the WHRs were already pledged before the bank against some existing loans. Appellant would again contend that the 1st accused violated the norms of granting loans and advanced loans much above the permissible limit.

5. Shri M.K.Damodaran, the learned Senior Counsel for the 1st accused and Shri S.Rajeev, the learned counsel for the 2nd accused submitted that the court below correctly appreciated the evidence and found that the prosecution case is illusory and imaginary. According to them, on a reading of the charge framed by the trial court and on appreciation of evidence, it can be seen that the learned trial Judge rightly reached at the irresistible conclusion of innocence of the accused persons. It is also contended that the appellate court may be loathe in taking a different view if the view taken by the trial court is legally and factually a probable and possible one.

6. In order to fortify the contention that the appellate court will not be justified in substituting its own possible view and interfering with the well reasoned judgment of the trial court, the counsel placed reliance on **Dhanapal v. State by Public Prosecutor, Madras ((2009) 10 SCC 401)** and **Muralidhar @ Gidda & another v. State of Karnataka (2014 AIAR**

(Criminal) 566). The Apex Court in the said decisions considered the scope of interference by a court dealing with criminal appeals and held that if the view taken by the trial court, which had the advantage of seeing the demeanour of the witnesses and engaging itself in elaborate trial, is also a possible view, then the appellate court shall not supplant another possible view entertained by it in the place of the view taken by the trial court. In **Dhanapal's** case (supra), the Supreme Court found that the views taken by the trial court were possible views and in that context, it was held that the judgment of the High Court was not legally justifiable. In paragraph 39 of the judgment, the following principles have been stated:

“The following principles emerge from the cases above:

- 1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial Court. The trial court's acquittal bolsters the presumption that he is innocent.*
- 2. The power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the appellate court must give due weight and consideration to the decision of the trial court.*
- 3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching*

the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/ appellate courts must rule in favour of the accused."

In **Muralidhar @ Gidda's** case (supra), the Supreme Court restated the above said principles. In paragraph 12 of the judgment, the following proposition is laid down:

"..... Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial

court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.”

7. Now I shall deal with the evidence in this case.

8. PW1 was the Deputy Manager in the SBI Kozhikode Branch at the time of deposing before the court. During 1995-97, he was working as Deputy Manager in Credit Support Cell, SBI Zonal Office, Thiruvananthapuram. As directed by the AGM, he inspected the branch and enquired into the irregularities. According to him, he verified the documents pertaining to the grant of loans. In chief-examination, he stated that he found out quite a large number of irregularities. The irregularities

were mainly relating to loans sanctioned against WHRs. Glaring irregularity was that WHRs involved in nine loan accounts were released before closure of the loans. That apart, eleven loan accounts were allowed to be opened without security. In the said eleven loan accounts, the securities shown were the securities already given in other outstanding loans. He proved the material documents, which I shall discuss in the following paragraphs. Learned counsel for the accused persons cross-examined this witness. It has come out in evidence that many of the persons who created loans in the bank were either workers of or persons close to the 2nd accused. It is also come out in evidence that the 2nd accused was a privileged customer of the bank. Mainly coffee and pepper were the agricultural produces deposited in the warehouse from where WHRs were obtained for creating loans. Defence case is that suddenly in 1994-95, the price of coffee plummeted and therefore, hastily the 1st accused had to sell away coffee deposited at the best price and thereby secure the interest of the bank. Even though this witness did not admit that case, the defence mainly relied on the above contention to justify action of the 1st accused.

9. PW2 was working as the General Manger (D & P.B.), SBI, Head Office, Chennai. He gave sanction to prosecute the 1st accused. There is no dispute regarding the sanction accorded by PW2 to prosecute the 1st accused. Hence, his evidence needs no elaborate mention.

10. PW3 worked as Clerk/Typist in SBI,ADB, Kattappana during the relevant period. She used to work as Counter Clerk in the bank. In 1994, she was the Demand Loan Clerk. Prosecution cited this witness to prove the hand writing of 1st accused. According to the prosecution case, the 1st accused himself had written up the loan applications and other material papers for creating fraudulent transactions. It is the version of the accused that since the bank is doing business in a rural area and that too, in agricultural sector, it was necessary for the Manager to help the customers in filling up forms for availing loans.

11. PW4 was the Manager of the Branch wherein the irregularities were detected from 02.04.1996 to 27.05.1997. He deposed that he functioned as the Deputy Manager in the same Branch before he assumed charge as the Manager. According to his testimony, the 1st accused was dealing with all the loan transactions at the material time. 2nd accused was a customer in the Branch. He stated that the 1st accused had closed Exts.P1(a) to (i) loans. They bore his signature. This witness had no occasion to deal with loan transactions exhibited as Exts.P1 and P10(a) to (k). Only after taking charge as Manager, he verified the transaction. In chief-examination he stated that irregularities were seen in the handling of accounts.

12. PW5 is a loanee in the bank. He expressed his disconnect with the signatures seen on Exts.P11 to P14. According to his evidence, he

had gone to the bank once at the instance of the 2nd accused.

13. PW6 admitted that he had gone to the bank once as surety for the 2nd accused. He also disowned signatures on Exts.P15 to P17. Similarly, he stated that Ext.P54 does not bear his signature.

14. PW7 denied the signatures seen on Exts.P18 to P20. He was a worker of the 2nd accused. According to the instructions of the 2nd accused, he had deposited certain amount of coffee and pepper in the warehouse. It is also his contention that Ext.P55 does not bear his signature.

15. PW8 is also yet another worker in the plantation of the 2nd accused. It is his evidence that the 2nd accused had deposited coffee and pepper in his name in the warehouse. He disputed signatures on Exts.P33 to P35 and P56.

16. PW9 is a friend of the 2nd accused. He testified that as instructed by the 2nd accused, he had deposited coffee and pepper in the warehouse. He signed on some papers for availing a loan. Later he understood that the loan was in his name. Signatures on Exts.P27 to P29 and P58 are not that of his.

17. PW10 knew both the accused persons. He was also a worker attached to the 2nd accused. On behalf of the 2nd accused, this witness also deposited coffee and pepper in the warehouse. 2nd accused took him to the bank and made him to sign on some papers. He disowned

signatures on Exts.P39 to 41 and P62.

18. PW11 knew the 2nd accused from 1992 onwards. He is a baker by profession. As requested by the 2nd accused, he went to the warehouse for depositing cash crops. He also went to the bank and signed on some papers. He denied any transaction entered with the bank for his benefit.

19. PW12 deposed that as requested by the 2nd accused, he deposited some cash crops in the warehouse and the receipt was given to the 2nd accused. He did not sign on Ext.P1(b) though it contains his name.

20. PW13 admitted that he deposited coffee and pepper in the warehouse for and on behalf of the 2nd accused and signed on some papers. Although Ext.P1(g) contains his name and address, he did not sign on any paper, including Ext.P46, and he did not avail any loan.

21. PW14 also deposited cash crops in the warehouse as insisted by the 2nd accused. He went along with PW13 to the warehouse. He has not availed any loan as shown in Ext.P1(h).

22. PW15 also admitted that he deposited some cash crops in the warehouse and the receipt was taken by the 2nd accused. He received ₹70,000/- from the bank after signing on some papers. He refuted the signatures on Exts.P50 and P3.

23. PW16 also deposed in the same lines as other witnesses. According to him, he did not get any monetary benefit by availing a loan.

Ext.P49 does not contain his signature.

24. PW17 was the Executive Director of Karnataka Planters Coffee Curing Works Private Ltd., Mysore. The said business concern was engaged in purchasing, curing and exporting coffee. He purchased coffee from the 2nd accused upto a quantity of 50 tons on 04.09.1995. He issued cheques in five names towards the price of coffee so purchased.

25. PW18 was the officer in the Union Bank of India, Kattappana. He is a witness to Ext.P76 search list.

26. PW19 is another accountant in the Union Bank of India cited to prove the encashment of Ext.P73 series cheques. Draft voucher is Ext.P77. The entire amount involved in the five cheques were drawn as a single draft and payment was made.

27. PW20 worked as the Deputy Government Examiner of Questioned Documents in the Office of the GEQD, Hyderabad. He was cited to prove the various disputed documents.

28. PW21 was the godown keeper of the State Warehouse, Kattappana from 1989 to 1997. Various documents relating to this case was put to this witness to establish the factum of deposit of articles in the warehouse.

29. PW22 was the Officer of the CBI, who registered the case on the basis of information. He proved Ext.P103 First Information Report (FIR) and investigation thereafter.

30. As stated above, the 1st accused was the bank manager and the 2nd accused was a customer. Learned Standing Counsel for the appellant contended that first count in the charge framed by the trial court is that the 1st accused during 1995 conspired with 2nd accused to do an illegal act, viz., to cheat the SBI, Kattappana and to release various securities pledged to secure agricultural loans and C & I Demand Loans by committing official misconduct. It is alleged therefore that the accused are liable to be punished under Section 120B IPC read with Section 13(1)(d) and 13(2) of the Act. Second limb of the charge is that the 1st accused between 25.01.1995 and 04.09.1995, as Manager of the bank, released nine WHRs pledged in the loans described in the charge in favour of the 2nd accused causing pecuniary loss to the bank and unlawful pecuniary advantage to the 2nd accused and thereby the accused have committed an offence punishable under Section 13(1)(d) read with Section 13(2) of the Act. Particulars of WHRs in respect of charge No.2 have been clearly mentioned in the charge framed by the trial court.

31. The third charge is that the 1st accused in order to regularise the illegal closure of nine loans mentioned above, sanctioned eleven fictitious C & I Loans shown in the charge by falsifying records and without obtaining security and also by falsely showing WHR numbers available in the existing loans; thereby they committed an offence punishable under Section 477A IPC. The fourth charge is that the 1st accused created eleven

false C & I Demand Loans and for that purpose forged loan documents and used the same for creating eleven loans to cover up the debts of nine loans involved in charge No.2 and thereby committed an offence punishable under Section 468 IPC. Fifthly, the 1st accused, during the course of the aforementioned transactions, used forged and fictitious loan documents to sanction eleven C & I Demand Loans and thereby committed an offence punishable under Section 471 IPC. Lastly, the 2nd accused in pursuance of the conspiracy, falsely created loan documents in the names of fictitious persons, without obtaining WHRs as securities, and without pledging any security to secure the loans and thereby committed an offence of cheating punishable under Section 420 IPC.

32. Learned Standing Counsel attacked the judgment of lower court on the grounds hereinafter mentioned. The lower court did not appreciate oral and documentary evidence in the correct perspective, which resulted in an unmerited acquittal. Further, the finding of the court below that certain loans created at the instance of the accused persons in the name of some witnesses could be treated as benami loans is a concept unknown to banking business. Learned Standing Counsel further contended that the evidence in the case would clearly establish that eleven loans were later created, by flouting the banking norms and the legal procedure, so as to cover up the illegal closure of nine loans. As Manager of the bank, the 1st accused acted in a manner giving undue benefit to the

2nd accused at the cost of the bank's interest. It is further contended that by the illegal misconduct on the part of the 1st accused, the bank suffered loss and the 2nd accused made an unlawful gain. All these aspects were ignored by the lower court is the complaint raised by the learned Standing Counsel for the appellant.

33. Per contra, learned Senior Counsel appearing for the 1st accused contended that the court below appreciated the oral and documentary evidence correctly and found that there was no irregularity as alleged by the prosecution. Further, the bank suffered no pecuniary loss in the transactions. There was no absence of security for the loans at any point of time. Even if one finds that there was any irregularity in the procedure adopted by the 1st accused, at the most, it is only a matter for departmental action and no commission of offence can be attributed to him. It is contended that the learned trial Judge rightly acquitted the accused persons. Learned counsel for the 2nd accused also supported the trial court's judgment contending that the expressions in the charge framed by the court below like 'fictitious persons' and 'without WHR' are baseless. Even going by the evidence of star witnesses for prosecution, it can be seen that this is not a case where loans were sanctioned to fictitious persons. All the loanees were persons in existence at the time of transaction and they deposed before the court.

34. I have already described the conspectus of oral evidence

adduced in this case. Learned Standing Counsel for the appellant relies on certain documents to bring home the guilt of the accused. Learned Standing Counsel relied on the depositions of PWs 5 to 14 to contend that nine loans were surreptitiously closed and for so doing, another eleven loans were falsely created. PW5, Binu, is a coolie, owning only five cents of land. He knew the accused closely. His evidence would show that he had been working for the 2nd accused and he had plucked pepper for the 2nd accused. He denied signatures on Exts.P11 to P14. Exts.P11 and P12 are the Demand Promissory Note (DPN) and DPN delivery letter respectively. Exts.P13 and P14 are the security delivery letters. According to his testimony, he went to the bank once at the instance of the 2nd accused and he saw the 1st accused in the bank. PW6 denied signatures on Exts.P15 to P17 which are DPN, DPN delivery letter and security delivery letter respectively. He also stated that he worked for the 2nd accused at that time and he signed on some papers from the bank as instructed by the 2nd accused. This witness disowned the signature on Ext.P54 demand loan debit slip regarding C&I DL.12/95. PW7 denied signatures on Exts.P18 to P20. This witness also went to the bank as required by the 2nd accused. But, this witness deposed that he deposited coffee and pepper belonging to the 2nd accused in the warehouse. However, this witness disowned signature on Ext.P55, demand loan debit slip. As in the case of other witnesses, Exts.P18 to P20 are the DPN, DPN

delivery letter and security delivery letter respectively.

35. PW8 used to go for work in the plantation of the 2nd accused and as directed by him, he deposited cash crops belonging to the 2nd accused in the warehouse and he executed loan documents for benefiting the 2nd accused. But, he denied signatures on Exts.P33 to P35 (DPN, DPN delivery letter and security delivery letter respectively) and also those on Ext.P56, demand loan debit slip. PW9 was a friend of the 2nd accused and he deposited coffee and pepper for and on behalf of the 2nd accused in the warehouse. He signed on some papers for availing loan. But, he stated that in 1995, he did not take any loan. He deposed that Exts.P27 to P29 and P58 do not contain his signatures. PW10 also deposed almost in similar lines with the other witnesses. He deposed that Exts.P39 to P41 and P62 do not bear his signatures. PW11 admitted that he had gone to the bank once as directed by the 2nd accused and signed on some papers, but he did not avail any loan. He denied signatures on Ext.P4 pay-in-slip. PW12 admitted his address in Ext.P1(b) and further admitted that he availed a loan for helping the 2nd accused and entrusted the loan amount to him. According to him, he signed in front of some bank staff and not in the presence of the 1st accused. PW13 was having acquaintance with the 2nd accused even prior to his availing the loan on behalf of the 2nd accused. He also admitted that he had gone to the warehouse and deposited some quantity of coffee seeds. He denied signature on Ext.P46, demand loan

debit slip. But, he admitted that the address shown in Ext.P1(g) is that of his. PW14 is an agriculturist with a small extent of land and he owned an autorickshaw too. He also admitted that he went to the warehouse and deposited cash crops belonging to the 2nd accused. Further, he had gone to the bank and signed on some papers. He denied signature on Ext.P8, pay-in-slip.

36. It can be seen that all the loans in question were granted between 15.10.1994 and 31.03.1995. On evidence, it can be seen that Exts.P49 to P51 are the debit slips dated 15.10.1994 corresponding to the disbursement of amount evidenced by Exts.P1(a) to (c) respectively. Ext.P52 is the debit slip corresponding to Ext.P1(d) loan. Exts.P46 to P48 are debit slips corresponding to Exts.P1(g) to (i) loans respectively. Court below rightly noticed that debit slip of Exts.P1(e) and (f) loans were not produced. Exts.P1(a) to (c) loans were closed on 05.10.1995 by making remittance through Exts.P2 to P4 pay-in-slips respectively. Likewise, Exts.P1(e), (f) and (r) loans were closed on 30.09.1995 through payments by Exts.P5, P6 and P9 pay-in-slips respectively. Exts.P1(g) and (h) loans were closed by Exts.P7 and 8 pay-in-slips on 28.09.1995. But the contention of the learned Standing Counsel is that the securities in all these loans were released on 01.09.1995. It is, therefore, contended that the accused persons have committed the alleged offences. Ext.P71 series are the authorisation letters in favour of PW17. By this document, he was

authorised to take release of the goods from the warehouse. Ext.P75 series are the delivery orders of the warehouse. They show that the goods involved as security in all the eight loans along with other items were released from the warehouse on 04.09.1995 only in favour of PW17. Ext.P101 series also show this fact. Now the question falls for decision is whether the 1st accused committed a misconduct by releasing the security before the closure of loans. Court below relied on the testimonies of PWs 11 to 16, who are some of the loanees in the disputed nine loans. All of them unanimously deposed that they deposited cash crops in the warehouse and obtained WHRs for and on behalf of the 2nd accused. At the time of examination under Section 313 Cr.P.C., the 2nd accused admitted that he availed various loans in the names of others by depositing cash crops in the warehouse. It is an admitted case that the stock deposited in the warehouse were released to PW17 on production of the WHRs. The commodity had been released on 04.09.1995 against Exts.P75 to P75(f) delivery orders and Ext.P71 series authorisation letters. PW17 deposed that he purchased 50 tons of coffee from the 2nd accused on 04.09.1995. 2nd accused gave him the authorisation letters to take delivery of the goods from the State Warehouse. It is the definite case of PW17 that towards the price of the commodity, five cheques in the names of persons suggested by the 2nd accused were given and they are Ext.P73 series. Court below rightly found that the evidence tendered by PW17

coupled with the documentary evidence and also the deposition of the so-called loanees, it is evident that the 2nd accused was the owner of the commodity placed in the warehouse for securing the loans. Testimony of PW17 would show that after issuing Ext.P73 series cheques in the names of five persons, he obtained Ext.P74 receipt from the 2nd accused. Sum involved in the five cheques was ₹38,07,661/-. The cheques were dated 01.09.1995. Goods were released only on 04.09.1995. For this reason, learned counsel for the accused contended that the entire amounts, and actually more than the loan amounts, were received by the bank before release of the security placed in the warehouse. Therefore, there is no offence committed by the accused persons. PW19 is the accountant of the Union Bank cited to prove Ext.P77 draft voucher. The court below found, on the basis of the value of coffee prevailed at the time, that the cost of the commodity would be slightly above ₹16,00,000/-, whereas the amount covered by the five cheques was more than ₹38,00,000/-. Therefore the trial court reasoned that there was no loss or diminution of security as alleged by the prosecution.

37. The court below placed reliance on the testimony of PW4, the bank manager, who succeeded the 1st accused in office. It is his deposition that the 2nd accused had availed more than 30 loans in his name and in the names of his associates. It is his testimony that a list of loans so availed by the 2nd accused was taken and the 1st accused had taken steps either to

close the loans or to secure those loans. Ext.P66 is an agreement executed by the 2nd accused and his wife undertaking to secure all the loans availed by the 2nd accused. It has come out in evidence through PW1 that wife of the 2nd accused had created an equitable mortgage of her properties for securing the loans. PW4 produced Ext.D2 agreement executed by the 2nd accused and his wife undertaking the liability. Ext.D1 also shows an admission by the 2nd accused and his wife that they had availed loans in the names of their workers. For this reason also, it is contended by the learned counsel for the accused that the prosecution case that the loans were unsecured loans cannot be believed.

38. The court below relied on the statement of the 1st accused during Section 313 Cr.P.C. examination that he was bonafide trying to protect the interest of the bank by selling away the commodity as the value of coffee at the relevant time was sliding down. If prompt action was not taken, the bank would have lost the amount for want of sufficient security. This appears the consistent defence taken by the 1st accused. It is the case of the 1st accused that he prepared a list of loans taken by the 2nd accused in his own name and in the names of his relatives and friends and the 1st accused closed a number of loans instead of making proportionate credits. According to him, the action taken by him was a bonafide one. It is the definite case of the 1st accused that he did not derive any pecuniary benefit. It is to be remembered that the prosecution has no case that the

1st accused earned any personal benefit out of the alleged transactions. There is no evidence to suggest such a case. It is the case of the 1st accused that Ext.P1 series WHRs were released to collect the goods from the warehouse on 04.09.1995. An advance payment of ₹38,07,661/- was received on 01.09.1995 and that is proved from the evidence of PW17 and Ext.P77 draft voucher. The contention of the prosecution is that Ext.P102 was credited in the account of the 2nd accused, though the receipts released were of the loans in the names of several persons. It is, therefore, argued that the action amounts to misconduct. The court below found that there are unquestionable evidence to show that all the loans were created by friends and associates of the 2nd accused for benefiting the latter. Therefore, the court below reasoned that the real owner of the goods was the 2nd accused and others were only name lenders. I do not find any reason to hold that the reasoning adopted by the court below is either perverse or incorrect. It may be true that the expression 'benami loanees' used by the learned trial Judge may not be legally acceptable because there is no concept called 'benami loans' known to the banking practice. Besides, any such transaction after the advent of the Benami Prohibition Act is prohibited. Fact remains that the 2nd accused was the owner of the commodity placed in the warehouse, though receipts were obtained in the names of some persons of his choice. All of them have stated that they had gone to the bank and signed on some documents.

Therefore, it appears that there was a deviation from the expected standards of banking practice. But, by no stretch of reasoning it can be stated that it should fall within the term 'misconduct'. The cardinal aspect to be established to attract an offence under Section 13(1)(d) of the Act is that the accused by corrupt or illegal means obtained for himself or for any person any valuable thing or pecuniary advantage. The evidence, if considered in the correct perspective, would show that the view taken by the court below cannot be found to be faulty.

39. Learned Standing Counsel for the appellant contended that the court below did not attach due weight to the testimony of PW20, GEQD. The qualification and competence of PW20 as examiner of questioned documents cannot be disputed. In his deposition, he has mentioned about the documents forwarded for his perusal. The specimen handwritings of the 11 loanees were sent for his scrutiny. Out of them, PWs 5 to 9 were examined before the court. The court below considered the testimony of PW20 that signature of PW5 on Ext.P78 on comparison with Exts.P11 to 14 was found to be not similar. The court below also found that his admitted signatures were available in the bank and there was no attempt made to trace it out. It is also found that the undisputed signatures subscribed anterior to the signatures in question would have provided sufficient materials for comparison. The same reasoning was applied by the court below in the case of PWs 6 to 8. It is true that testimony of PW20

cannot conclusively establish the guilt of the 1st accused. All these witnesses have deposed that they had gone to the bank for signing on some papers to help the 2nd accused. The view taken by the court below, that the loanees involved in the disputed loans must have deposed in a denial mode fearing that liability to clear off the loans availed by them to help the 2nd accused may fall on them is reasonable. This possibility cannot be ruled out. On evaluation of the entire materials, I am of the view that the complaint of the appellant that the court below did not consider the evidence of PW20 GEQD from the correct perspective cannot be accepted.

40. Learned counsel for the 2nd accused contended that the prosecution case that nine loans were falsely taken and in order to clear off that liability, another eleven loans were fictitiously created cannot be accepted for a moment as it is evident from the charge that most of the eleven loans were created after clearing the nine loans. On perusal of the charge framed by the court, it can be seen from the dates in the tabular columns attached to the charge that, except a few loans, all other loans included in the eleven loans were created subsequent to the closure of the nine loans involved in this case. The accused persons strongly relied on the testimony of PW4 to contend that at the most the action of giving loans by the 1st accused to the 2nd accused may amount to irregularity in the proceedings. The 1st accused must have been disciplined by resorting to departmental action, but for no reason it can be stated that he had done a

misconduct within Section 13(1)(d) read with Section 13(2) of the Act. From the totality of evidence, I find that there is some force in the argument.

41. In the matter of other offences falling under IPC alleged against the accused also, the court below has taken a correct view. It is to be seen that there is no evidence of conspiracy either alleged or proved by the prosecution. To constitute a criminal conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition to be satisfied. There is no allegation to show that accused 1 and 2 conspired together to commit any misconduct or cheating or other offence. In fact the contentions taken by the two accused in the case are mutually contradictory to one another, where each accuse the other for the flaw. Reliance is placed by the learned counsel for the accused on the decision in **Purushothaman v. State of Kerala (2005 (4) KLT 842 (SC))** to urge the following proposition of law.

“To constitute a criminal conspiracy, meeting of mind of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of conspiracy. Neither it is necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be

inferred by necessary implications. The existences of conspiracy and its objects are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy. Each and every incriminating circumstances must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely, and no other hypothesis against the guilt is possible. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the plan would not per se constitute conspiracy. The offence of conspiracy shall continue till the termination of agreement.”

Therefore, I find from the evidence in this case no reason to hold that there was any element of conspiracy established.

42. The offences under Sections 468, 471 and 477A IPC are also not established. Merely for the reason that the 1st accused filled up some documents to help illiterate loanees, it cannot be stated that he out of the way tried to help the 2nd accused. Court below rightly found that the prosecution case of forgery for the purpose of cheating, using a forged document as genuine and falsification of accounts have not been established. Similarly, in the case of the 2nd accused, no cheating is either

specifically alleged nor established from the evidence. It is also submitted that the entire amount had been cleared off and there was no pecuniary loss suffered by the bank on account of the so called irregularities in sanctioning the loans. This contention is not challenged by the prosecution. So much so, it cannot be said that the 1st accused either gained any pecuniary advantage for him or allowed another person to make a gain. Hence, I am of the view that the court below is legally justified in finding that the accused are not guilty of any of the offences alleged against them. It is all the more important to note the settled principles of law that an appellate court will be loath in interfering with the view taken by the trial court, if that is also a plausible and reasonable view. I am of the definite opinion that the view taken by the trial court is proper. Hence the appeal has to fail.

In the result, the appeal is dismissed.

All pending interlocutory applications will stand dismissed.

A. HARIPRASAD, JUDGE.

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A.HARIPRASAD, J.

Crl.Appeal No.142 of 1999

JUDGMENT

6th January, 2015