BAIL SLIP

The Appellant/Accused No.1 Viz; S.Thiagarajan S/o.Mr.N.Sambandam and Accused NO.2 Viz; N.Saravanan S/o.Mr.Nagarajan were enlarged on bail in and by the order dated 14/03/2013 made in MP.No.1/2013 in Crl.A.No.200/2013 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 05.12.2017	Date of Pronouncing Judgment 19.12.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No: 200 of 2013

1.S.Thiagarajan
2.N.Saravanan ...Appellants/
Accused No.1 & 2

versus

Union of India,
Represented by
Deputy Superintendent of Police,
CBI, Chennai. ...Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Criminal Procedure Code, to allow and set aside the Judgment of conviction imposed by The Court of Additional Chief Metropolitan Magistrate at Egmore, Chennai in C.C.No.1014 of 2008 Dated 13.02.2013 against the Appellants/Accused (A1 and A2).

For Appellants : Mr.A.Laxmi Rajarathnam

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor
for CBI Cases

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J U D G M E N T

The criminal appeal is against the judgement of the trial court in C.C 1014/2008 dated 13.02.2013, preferred by the first and second accused challenging the conviction and sentence imposed on them to under go one year RI and fine of Rs.25,000/- each for offence under section 120-B IPC , two years RI and fine of Rs.50,000/- each for offence under Section 420 IPC , two years RI and fine of Rs.50,000/- each for offence under Section 468 IPC and two years RI and fine of Rs. 50,000/- each for offence under Section 468 r/w 471 IPC. The period of sentence to run concurrently with each other.

2. Aggrieved by the Judgment of Conviction and Sentence the present appeal is filed.

3. The brief facts of the case:

3.1) Thiru. Thiagarajan (A-1) proprietor of M/s Kalaivani Enterprises opened a Current Account with Union Bank of India, T.S.K.Nagar branch , Chennai on 18.12.1999. On the same day he applied for credit facility of Rs.5 lakhs cash credit against stock, over draft facility for Rs.2 lakhs against book (not older than 90 days) and Term Loan for Rs.9.5 lakhs against hypothecation of new machinary. He has offered 20 cents land at Valasarawakkam, Chennai bearing survey No. 13/1 in the name of one Sundararajan as collateral security. Mr. T.Mohan, (PW-2) the Deputy Manager of the Bank has recommended for sanction of credit facility as sought by A-1 and duly sactioned by the Branch Manager Mr. Chennu Sathiyanaryanan (PW-7). After one year, in february 2000 on application, the cash credit limit was extended to 10 lakhs and further term loan for Rs.7.30 lakhs was sanctioned. Again the credit limit was extended to M/s Kalaivani Enterprises vide application dated 31.07.2001. As on 30.04.2003, the outstanding balance in the cash credit account of M/s Kalaivani Enterprises was Rs.8,47,075.70/-. The outstanding balalnce in term loan account of M/s Kalaivani Enterprises was Rs 7,07,617/-.

3.2) Meanwhile, Thiagarajan A-1, along with one Saravanan (A-2) entered into a partnership in the name of M/s Jayvee CNC Machinering Center and opened a current account with Union Bank, TSK Nagar Branch on 27.01.2000. Applied for Term loan of Rs. 50 lakhs and cash credit facility for working capital of Rs.10 lakhs. On 19.05.2000 the proposal was forwarded to the Regional office with the recommendation of the Branch office. Based on the branch office recommendataion, the regional office has sanctioned term loan of Rs 40 lakhs, cash credit (hypothecation

) Rs.0.50 lakhs and against supply bills Rs.9.50 lakhs. As collateral security M/s Jayvee CNC Machinering Center has offered the property of one Ravi and Ananthi by depositing the title deed of the property situtated at survey No. 464/4 of Maduravayal village .

4. While so, based on source information, on 31.01.2006 the CBI has registered FIR against 8 persons for criminal conspiracy, cheating, forgery, using forged document as genuine and abuse of offical position alleging that, Mr. Chennu Sathyanarayana, the Branch Manger, Union Bank of India, Thiagarajan and Saravanan both partners of M/s Jayvee CNC Machinering Center, Soundararajan, Ravi and Anandhi conspired to cheat Union Bank of India and in pursuant to the said criminal conspiracy produced false and forged documents in respect of properties offered as collateral security, accepting the forged documents as genuine dishonestly and fraudulently sanctioned loan to M/s Kalaivani Enterprises and M/s Jayvee CNC Machinering Center. The loan had not repaid thereby caused wrongful loss to the Bank.

5. After completion of investigation, final report had been laid against three persons, namely S.Thiagarajan (A-1), N.Saravanan (A-2) and V.Srinivasan (A-3). As against the others in the final report it has been stated that no prosecutable evidence available. The trial court framed charges for conspiracy to offer collateral securites which were supported by false documents and got loan to an extend of Rs.60 lakhs in the name of M/s Jayvee CNC Machinering Center, knowingly substituted other persons to impersonate Soundararajan, Ravi and Anandhi and induced the bank to deliver a sum of Rs 60 lakhs and thereby cheated the bank. In the said course had created forged declaration, forged patta, forged revenue receipts in the name of Soundararajan, Ravi and Anandhi by forging their signatures thereby committed offences under sections 120B r/w 420,420, 419,468, 468 r/w 471 of IPC

6. To prove the charges, the prosecution has examined 25 witnesses and had marked 112 Exhibits. The trial court after appreciating the evidence, has held that A-1 and A-2 are guilty of offences under section s 120 B r/w 420 , 420 , 468, 468 r/w 471 IPC. Acquitted A-3 holding that none of the witnesses to prosecution has deposed against A-3 and no evidence to show that A-3 Shrinivasan involved in forging of documents and impersonation.

7. The submission of the appellants:

7.1) According to the Learned Counsel for the appellants, the prosecution has not proved that the properties offered as collateral securities does not stand in the name of Ravi and Anandhi. The loan was sanctioned only after due verification of revenue documents and title deeds. It is not the case of the prosecution that Ex P-1 (photo copy of the original partition deed marked as Ex P-19) the partition deed between Ravi and Anandhi is forged document. PW-1 R.Mohan who claims to have witnessed Ex P-1 is not the person who really signed the document. PW-1 has not identified PW-3. Also, PW-10, Govindraj, in the cross examination has admitted that Ex P19 Partition Deed, Ex P-32 Settlement deed, Ex P-24,25,26 and 27 are genuine. Therefore based on genuine title deeds and revenue records loan was sanctioned after due verification by valuer and legal expert. The handwriting experts have not given any positive opinion against the appellants that they forged any of the documents relied by the prosecution. Many of the witnesses for prosecution has admitted that they did not give any statement to CBI or the previous statement as recorded by the investigation officer is not their statement. Therefore, the loan sanctioned based on genuine and valid documents cannot be termed as fraudulently obtained. The evidence of Muthureddy PW-16 who has denied seeing Ex P-40 and Ex P-85 during the investigation renders his evidence un-reliable. Whereas he admits that he visited the property and he is sure about the existence of the property shown in his valuation certificate marked as Ex P-39 dated 31.11.1999. The inspection reports marked as Ex P-60 to 63, are the personal inspection reports of the bank officials before sanctioning loan. These documents reveals that the bank officials have inspected the property at Maduravayal, ascertained the market value from the neighbors and only after being satisfied about the genuineness of the documents sanctioned loan. The trial court without proper appreciations of these facts had held the appellants guilty, therefore the trial court judgment ought to be set aside.

8. The submission of the respondent counsel:

8.1) The Learned Special Public Prosecutor submitted that, the documents furnished by the A-1 for availing loan in the name of M/s Kalaivani Enterprises as well as the documents furnished by A-1 and A-2 as partners of M/s Jayvee CNC Machinering Center comprise of forged and fabricated documents. The declaration (Ex P-36) alleged to have been given by Soundararajan as guarantor and undertake to indemnify the Bank showing his property as collateral security for the loan availed by A-1 in the name of M/s Kalaivani Enterprises and similar declaration in the name of Ravi and Anadhi (Ex P-43) for the loan of M/s Jayvee CNC Machinery Center a partnership concern held by A-1 and A-2 are forged documents. Both Soundararajan and Ravi had deposed before the court that they were not the owners of the property when these documents were created. They have sold the properties to third parties long before the alleged declarations. The never knew A-1 or A-2.

9. Ravi PW-3, has deposed that after partition him and his sister Anandhi on 14.09.1988 he sold away the Maduravoyal property to one Haridoss, he in turn sold it several others plotting out the land. Neither he nor his sister Anandhi thereafter went to Registrar office. The declaration Ex P-43 was executed by them. By examining Mr. K.Kuppusamy, PW-22 the VAO of the area , the prosecution has proved that the revenue documents such as patta, adangal and kist receipts Ex P-20,21,22, and 23 are not genuine. They were not issued by the revenue department. The Adangal, Chitta and FM sketch for survey No. 464/4 Maduravoyal village are Ex P-92 to 95. The property has been sub-divided and stands in the name of different persons which are reflected in Ex P-96 to 100. Thus it is clearly proved by the prosecution that the property offered as security by A-1 and A-2 to avail credit facility from Union of India Bank were not genuine but false and fabricated documents. The persons who have signed as Ravi and Anandhi as guarantors are not the real persons but impersonated by some one else at the instance of A-1 and A-2 who were the beneficiaries of the fraud.

10. Like wise, PW-4 Soundararajan has deposed that, his mother Loganayagi used to put her thumb impression and she cannot sign her name. His mother settled the Valasaravakkam property in his name on 08.08.1983 through Ex P-32. He did not sign the declaration marked as Ex P-36, he did not execute any such document in favour of Union bank of India and he did not submit any encurmbrance certificates marked as Ex P - 31 to 34. Mr. Mohammed Jaffar Surveyor of Valasarawakkam and Mr. Govindaraj PW-10 has given a detail evidence about the transfer of titles of the property bearing survey No.13/1 at Valsarawakkam, SRO Virugambakkam and the property bearing S.No. 464/4 at Maduravoyal village. Through their evidence it is proved by prosecution that when these properties were offered as collateral securities by A-1 and A-2 to avail loan , the so called guarantors were not the title holders. Therefore having proved beyond doubt about the cheating of bank by producing forged document as genuine documents, the appellants were rightly found guilty by the trial court.

11. Finding of this court:

11.1)The evidence adduced by the prosecution reveals two different loan transactions one in the name of M/s Kalaivani Enterprises a proprietary concern owned by A-1 S.Thiygarajan and another in the name of M/s Jayvee CNC Machinering Center a partnership concern in which Thiygarajan and Saravanan are partners. They are the appellants before this court. The charges as framed by the trial court is only in respect of the loan sanctioned for M/s Jayvee CNC Machinering Center.

11.2) Though the evidence reveals the properties documents offered as sureties for both the loan are forged an fabricated, since the charge is only in respect of loan extended to M/s Jayvee CNC Machinering Center, whether the properties shown as collateral security to avail loan in the name of M/s Jayvee CNC Machinering Center is genuine or forged has to considered.

12. Ex P-6 is the application form submitted to the Bank by the appellants as partners of M/s Jayvee CNC Machinering Center seeking credit facilities over 15 lakhs upto one crore. In this application both the appellants have affixed their signatures. They have stated that it is a new unit to be established for manufacturing of auto assemblies. They have sought loan of Rs.60 lakhs for purchase of machineries and for working capital. In the application they have shown Mr. Ravi and Anandhi as their guarantors and enclosed title documents.

12.1) Ex P-29 is the valuation report given by Ragavendra Rao examined as PW-20. According to this valuation report, the property offered as security is worth 68,29,000/- Ex P-30 is the legal opinion on title given by on M.Rajamanikam, Advocate. In his opinion he has traced the title by perusing patta, kist receipt and encumbrance certificate which indicate that the property stand in the name of Ravi and Anandhi as per patta issued by the Thasildar, Saidapet and they have paid kist as per the receipts produce.

12.2) Ex P-21 is the patta in the name of Ravi and Ex P-22 is the patta in the name of Anandhi. PW-9 Mohammed Jaffar has deposed that Ex P-21 and P-22 are not genuine documents. The land in S.No. 464/4 of Maduravoyal village is not vacant land as described in the partition deed Ex P-19. The land in the said survey number is infested with several residential units. As per Revenue Board Standing Orders, only Deputy Thasidar has to sign the patta. Whereas in Ex P-20 to 22, the Thasildar seal and signature is found. Therefore they are not genuine. The hand writing expert who has compared the writings and signatures found in these documents is that of A-3 Srinivasan and has opined that the disputed writings found in Ex P-21 and 22 are that of A-3. Though the trial court has acquitted A-3 for want of corroborative evidence, the fact remains that the patta produced by A-1 and A2 for availing loan are forged documents.

12.3) Ex P- 23 the kist receipt in the name of Ravi produced by the appellants as enclosure to their loan application carries serial no. 016997, purported to have been issued by the Village Administrative Officer, Maduravoyal, Saidapet taluk,Thirvallur District. Whereas Ex P-35 the kist receipt furnished by the first appellant Thiyagarajan for availing loan in the name of Kalaivani Enterprises also bears the same serial number but purported to have been issued by the Village Administrative Officer, Valasaravakkam, Ambattur Taluk,Chengleput District. A comparison on Ex P23 and Ex P 35 both kist receipts bearing same serial number but one issued for the fasli year 1409 in the name of Ravi by VAO Maduravoyal another issued for the fasli year 1408 in the name of Soundararajan by VAO Valasaravakkam. Both these kist receipts were used by A-1 and A-2 for availing loan facility from Union Bank of India. The officials who are supposed to give these documents have been examined by the prosecution and they have clearly stated that these kist receipts and patta were not issued by them or emanated from their office. Further the person concern, namely Ravi (PW-3) and Soundararajan (PW-4) have also deposed that they are not aware of the loan availed by the appellants using their names and properties held by them long back.

13. The documents and ocular evidence which are pointed above is singularly enough to hold the appellants for conspiracy to cheat the bank and in furtherance of the said criminal conspiracy they have fabricated Ex Ex P-20 to P-24, Ex P-35, Ex 36 and Ex 43 and used those forged documents as genuine to cheat the bank and had availed loan, which they have failed to repay. Thus, the intention to decieve the bank is well found and this court finds no ground to interfere the trial court finding.

14. As a result, the appeal dismissed. Trial court judgment of conviction and sentence confirmed. The appellants are directed to surrender before the trial court forthwith.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rna

To

1.The Deputy Superintendent of Police,
CBI, Chennai.

2.The Court of Additional Chief Metropolitan Magistrate,
Egmore.

3.The Chief Metropolitan Magistrate Chennai

4.The Special Public Prosecutor for CBI Cases,
High Court, Madras.

copy to

1.S.Thiagarajan
2.N.Saravanan ...Appellants

Thro'
The Additional Chief Metropolitan Magistrate
Egmore Chennai

+10 ccs to Mr.A.Laxmi Rajarathnam Advocate sr 90506

Criminal Appeal No: 200 of 2013

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