IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.10.2017

Pronounced on : 27.11.2017

CORAM:

THE HON'BLE DR. JUSTICE G. JAYACHANDRAN

Crl.A.Nos.534 of 2016 and 467 of 2017

1.M.R.Saravanakumar
2.S.Eswari
3.V.Tamilarasan .. Appellants in Crl.A.No.534/2016

State represented by
Inspector of Police,
CBI,ACB,Chennai. .. Appellant in Crl.A.No.467/2017

/versus/

State through the
Inspector of Police,
SPE/CBI/ACB, Chennai,
Charge Sheet No.4/VDS/28.01.2010
RC MAI 2009(A) 005 of
SPE/CBI/ACB/Chennai .. Respondent in Crl.A.No.534/2016

1.Shri P.K.Velayutan
2.Shri.Mathivanan Inbaraj
3.Shri.M.R.Saravanakumar
4.Shri.N.Rajesh Khanna
5.Shri.B.Jayachandran
6.Smt.S.Easwari
7.Shri.V.Tamilarasan .. Respondents in Crl.A.No.467/2017

Prayer in Crl.A.No.534/2016: This Criminal Appeal is filed under Section 374(2) of Cr.P.C., praying to set aside the judgment dated 20.06.2016 made in C.C.No.7 of 2010 on the file of II Additional District Judge(CBI Cases), Coimbatore.

Prayer in Crl.A.No.467/2017: This Criminal Appeal is filed under Section 378(2) of Cr.P.C., praying to set aside the partly judgment dated 20.06.2016 pronounced by the learned II Additional District Judge for CbI Cases, Coimbatore in C.C.No.7 of 2010.

For Appellants :Mr.Gopalakrishna Lakshmana Raju
Senior Counsel for
Mr.R.Radhapanchian in
Crl.A.No.534/2016

For Appellant :Mr.K.Srinivasan, Spl.PP for CBI cases
in Crl.A.No.467/2017

For Respondent :Mr.K.Srinivasan, Spl.PP for CBI cases
in Crl.A.No.534/2016

For Respondents:Mr.Gopalakrishna Lakshmana Raju
Senior Counsel for
Mr.R.Radhapanchian for 1 to 4, 6 & 7
in Crl.A.No.467/2017
Mr.Adithya Varadarajan for
Mr.N.Anand Venkatesh for R5 in
Crl.A.No.467 of 2017

COMMON JUDGMENT

Based on the complaint, dated 21.01.2009 given by one M.R.Bagade, CBI has registered a case in Crime No.RC MAI 2009 A 0005/ CBI ACB, Chennai. Seven persons were accused in the final report and charges were framed against them for the offences under Sections 120-B r/w 420 IPC and 420 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. A1 [P.K.Velayuthan], Senior Branch Manager, Syndicate Bank, Gugai Branch, Salem, A2 [Mathivanan Inbaraj], Loan Manager/Deputy Branch Manager, Syndicate Bank, Gugai Branch, Salem, A5 [B.Jayachandran], Panel Valuer of Syndicate Bank, Salem are Public Servants. A3 [M.R.Saravanakumar] and A4 [Rajesh Khanna] are Managing Partner and Partner of the M/s Easa Jewellery respectively. A6[Easwari] is the Proprietrix of M/s Roshini Silvers. A7[V.Tamilarasan] is the Proprietor of M/s S.R.V.Jewellery. Specific charges were framed against the Public Servants viz., A1[P.K.Velayuthan], A2 [Mathivanan Inbaraj] and A5 [B.Jayachandran] under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. Whereas, conspiracy to do substantial offence under Section 420 of IPC is against A1 to A7.

2. The trial Court has acquitted all the accused for conspiracy and the Public Servants A1[P.K.Velayuthan], A2 [Mathivanan Inbaraj] and A5 [B.Jayachandran] for the alleged offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. Sofar as the private individuals

A3 [M.R.Saravanakumar], A6[Easwari] and A7[V.Tamilarasan] are concerned, the trial Court has found them guilty of offence under Section 420 (1 count) IPC and sentenced to undergo Rigorous Imprisonment for the period of three years(3) and to pay a fine of Rs.20,000/- each, in default of payment of fine, to undergo Simple Imprisonment for a period of six (6) months. Challenging the said sentence, A3 [M.R.Saravanakumar], A6[Easwari] and A7[V.Tamilarasan] had preferred Crl.A.No.534 of 2016. Challenging the acquittal of A1 to A7 for the alleged offence under Section 120B r/w 420 IPC and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and the acquittal of the public servants A1[P.K.Velayuthan], A2 [Mathivanan Inbaraj] and A5 [B.Jayachandran] for the alleged offence under Section 420 IPC and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, the State has preferred Crl.A.No.467 of 2017.

3. Since subject matter of both the appeals against conviction and acquittal is arising out of the same judgment, after hearing the learned counsel representing the parties, the following a common judgment is passed.

4. On 31.01.2009, Mr.V.D.Sebastian, the Inspector of Police attached to ACB, Sastri Bhavan, based on the complaint given by Mr.M.R.Bagade, Chief Vigilance Officer, Syndicate Bank, Gandhi Nagar, Bengalore, had registered a complaint against C.Jabagurunathan and three others for suspected offence of criminal conspiracy, cheating, forgery, forgery for the purpose of cheating, using forged document as genuine. Since three named persons were Officials of Syndicate Bank, Mr.V.D.Sebastian, Inspector of Police had registered the complaint for *prima facie* disclosure of offences punishable under Sections 120-B r/w 420, 467,468, and 471 of IPC and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The completion of investigation has led to filing of final report against seven accused persons.

5. The trial Court, on perusal of the records relied on by the prosecution, has framed the following three charges:

> **Firstly,** that A1 to A7 during 2004-2005 entered into criminal conspiracy at Salem and other places to cheat the Syndicate Bank, Gugai Branch, Salem, pursuance of the criminal conspiracy of the

said.

(a)A3 and A4 opened an account in the name of M/s Easa Jewellery bearing No.125-755 with Syndicate Bank, Gugai Branch, Salem and applied for a secured overdraft of Rs.10 lakhs on 30.04.2004 for developing the Jewelery business by offering a property consisting of land and building of one Smt.S.Jayanthi situated at T.S.No.14, Ward No.H, Block 1, Neimandi Arunachalam Street, Gugai, Salem as collateral security. A5 [B.Jayachandran] inflated the value of the property worth about Rs.3 lakhs to Rs.13.5 lakhs and gave the valuation report. A2 and A1, by abusing his official position had processed and sanctioned the loan of Rs.9 lakhs on 28.06.2004 in favour of M/s Easa Jewelery by not obtaining the lease/rent deed of the premises:by not obtaining the TNGST/CST certificate from the Commercial Tax Department; by not insuring the stock reported to be kept in the reported jewelery shop and by accepting the inflated valuation report on the third party collateral security.

There was no repayments in the above account, the above facility was enhanced to Rs.18 lakhs on 02.11.2004, after obtaining an additional security of property consisting of a land worth about Rs.7.8 lakhs in the name of Smt.Papathi, mother of A3 in order to regularise the Temporary Over Drawal (TOD) allowed by A1 in the account of M/s Easa Jewelery.

A3 and A4 in pursuance of criminal conspiracy with A1 and A2 and A5 wounded up M/s Easa Jewelery after availing the loan. The firm did not repay the loan and the account ran into NPA as on 30.06.2005 and the outstanding dues was Rs.26.03 lakhs including upto date interest as on 26.05.2008 and thereby cheated the bank. Therefore, the above act caused a wrongful loss of Rs.26.03 lakhs to Syndicate Bank, Gugai Branch, Salem and corresponding wrongful gain to yourself.

b)A6 opened an account bearing No.125-847 in the name of M/s Roshini Silvers, No.88-91, River Side East Street, Gugai, Salem-06 with Syndicate Bank, Gugai Branch, Salem and applied for a secured overdraft of Rs.30 lakhs on 20.12.2004 to start manufacturing of silver ornaments by offering a property of one Smt.Neelambal from whom A3 obtained power of attorney, as collateral security. A2 and A1, by abusing their official position had processed and sanctioned Secured overdraft facility of Rs.24.75 lakhs on 22.01.2004 in favour of M/s Roshini Silvers by not verifying the existence of the firm; by not obtaining the lease/rent deed of the premises; by not obtaining the TNGST/CST certificate from the Commercial Tax Department; by not securing the stock by insuring and by not getting permission from the Regional Officer for creating mortgage of a property which is offered as a collateral security on the strength of power of attorney.

The firm M/s Roshini Silvers was a non existing firm and A2 and A1 processed and sanctioned loan only to favour A6 and A3. The loan amount was not repaid and the account ran into NPA as on 07.09.2005. The outstanding dues was Rs.41.30 lakhs including up to date interest as on 26.06.2008. Therefore, the above act caused a wrongful loss of Rs.41.30 lakhs to Syndicate Bank, Gugai Branch, Salem and corresponding wrongful gain to yourself.

c)A7 opened an account bearing No.125-885 in the name of M/s SRV Jewelery, 17-B New Colony, Annathanapatty, Salem-02 with Syndicate Bank, Gugai Branch, Salem and applied for a secured overdraft of Rs.9 lakhs on 01.07.2005. A2 and A1 processed and sanctioned secured over draft facility of Rs.7.2 lakhs on 10.07.2005 in favour of M/s SRV Jewelery, without verifying the existence of the firm;

without obtaining the lease/rent deed of the premises; without obtaining the signature of Shri.M.Sadasivam in the loan application form, whose property was mortgaged as third party collateral security; by confirming the existence of the jewelery shop; by not insuring the reported stock in the shop and without obtaining the TNGST/CST certificate from the Commercial Tax Department.

A3 had given a hand loan of Rs.1 lakh to Sh.M.Sadasivam and in lieu of that he had taken the property document of Sh.M.Sadasivam. This property document was used by A3 and A7 and you pleaded the said property document with Syndicate Bank, Gugai Branch, Salem, without the consent of knowledge of Shri.M.Sadasivam as collateral security for availing the secured overdraft facility from Syndicate Bank, Gugai Branch, Salem in the name of M/s SRV Jewelery. The firm M/s SRV Jewelery did not exist and A2 and A1 by abusing their official position processed and sanctioned loan only to favour A7 and A3. After availing the above trade facility, A7 and A3 diverted the loan proceeds for the purpose other than the purpose for which the loan was sanctioned and failed to repay the loan. Then the account ran into NPA and as on 08.06.2009, the outstanding due was Rs.10,33,000/- including interest till date as on 26.05.2009 and thereby cheated the bank. Therefore, the above act caused a wrongful loss of Rs.10.33 lakhs to Syndicate Bank, Gugai Branch, Salem and corresponding wrongful gain to yourself. There by A1 to A7 committed an offence punishable under Section 120(B) r/w 420 IPC and Sec.13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and within my cognizance.

Secondly, that A1 to A7 during the period at the place mentioned in charge No.1, cheated the Syndicate Bank, Gugai Branch, Salem by dishonestly inducing the bank to part its property belonging to the bank to you as stated in charge No.1 and that A1 to A7 have committed an offence punishable under Section 420 IPC and within his cognizance.

Thirdly, that A1, A2 and A5, being the public servant employed as Senior Branch Manager in Syndicate Bank, Gugai Branch, Salem during the period at the place mentioned in Charge No.1, by corrupt or illegal means or by otherwise abusing A1,A2 and A5 position as such public servant obtained for themselves Rs.10.33 lakhs from the bank as stated in Charge No.1 and thereby committed the offence specified in under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 punishable of that act within his cognizance.

6. To prove the charges, the prosecution have examined 16 witnesses and marked 32 documents. The trial Court, after appreciating the evidence, has arrived at the following conclusion:

"In the result, this Court holds A3 and A6 guilty of committing one count of offence punishable u/s 420 of IPC pertaining to the SOD facility extended to M/s Roshini Silvers by Syndicate Bank, Gugai Branch, Salem and holds A7 guilty of committing one count of offence punishable under Section 420 of IPC pertaining to the SOD facility extended to M/s S.R.Jewelers by Syndicate Bank, Gugai Branch, Salem and A3,A6 and A7 each are convicted for one count of offence punishable under Section 420 of IPC and A3, A6 and A7 each are sentenced to undergo Rigorous Imprisonment for Three years and to pay a fine of Rs.20,000/- each and in default of payment of fine A3, A6 and A7 each are further sentenced to undergo Simple Imprisonment for Six Months and total Fine imposed on A3. A6 and A7 is Rs.60,000/- and this Court finds holds that A1 to A7 are not guilty of committing offence punishable under Section 120-B r/w 420 of IPC and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption of Act, 1988 and that A1, A2 and A5 are not guilty of committing offences punishable under Section 420 of IPC and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and that pertaining to SOD facility extended to M/s Easa Jewelery by Syndicate Bank, Gugai Branch, Salem A3 and A4 are not guilty of committing offence punishable under Section 420 of IPC and A1 to A7 are acquitted from the charges framed against them for offence punishable under Section 120-B r/w 420 of IPC and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and A1,A2 and A5 are acquitted from the charges framed against them for offence punishable under Section 420 of IPC and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and A3 and A4 are acquitted from the charges framed against them for offence punishable under Section 420 of IPC pertaining to SOD facility extended to M/s Easa Jewelery by Syndicate Bank, Gugai Branch, Salem.

7. Aggrieved by the judgment of the trial Court, A3 [M.R.Saravanakumar], A6[Easwari] and A7[V.Tamilarasan], who are convicted for the offence under Section 420 of IPC and sentenced to undergo 3 years RI and to pay a fine of Rs.20,000/- each in default to undergo 6 months SI, have preferred Criminal Appeal No.534 of 2016.

8. (i) As against acquittal of A1 to A7 for the offence under Section 120-B r/w 420 of IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988; (ii) as against A1 [P.K.Velayuthan], A2 [Mathivanan Inbaraj], Loan Manager/Deputy Branch Manager, Syndicate Bank, Gugai Branch, Salem, and A5 [B.Jayachandran] for the under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and (iii) as against acquittal of A2 [Mathivanan Inbaraj] and A4 [Rajesh Khanna] for the offence under Section 420 of IPC as Partners of M/s Easa Jewellery for cheating the bank by fraudulently availing SOD facility in the name of M/s Easa Jewellery, the State has preferred Criminal Appeal No.467 of 2017.

9. **Crl.A.No.467 of 2017:** The contention of the learned

Special Public Prosecutor for CBI Cases is that the trial Court has failed to appreciate the evidence let in by the prosecution, which was spoken by PW13 [Mr.V.Sakthivenkatesan] who was the witness to meeting of minds between A1[P.K.Velayuthan], A2 [Mathivanan Inbaraj] and A3 [M.R.Saravanakumar] to cheat the Syndicate bank, by availing SOD facility, by producing forged document in the name of M/s Easa Jewellery and M/s Roshini Silvers. The evidence of PW8 [Mr.M.R.Sundaramoorthy], PW9[Ms.S.Jayanthi], who stood as surety for the secured overdraft initially, are not signatory to the loan, which was subsequently enhanced from Rs.9 lakhs to Rs.28 lakhs. Though this fact has been explicitly spoken by PW8[Mr.M.R.Sundaramoorthy] and PW9[Ms.S.Jayanthi]. The trial Court has not taken note of the evidence of PW8 and PW9. Having accepted the evidence of PW10 [Ms.M.Sellammal], Assistant Commissioner of Commercial Tax, Namakkal, PW11 [Mr.A.Kandan] Postman and PW12 [Mr.R.Subramaniam] that M/s Roshini Jewellery and M/s SRV Jewellery are non existing entity, the trial Court ought not to have acquitted the Bank officials who extending the secured overdraft to non existing entity violating the guidelines and regulation of the bank in respect of advancing loan. The trial Court ought not to have acquitted the other accused/Bank officials for the offence under Section 120B r/w 420 of IPC, since without connivance of bank officials, extending loan to non existing company, based on the document produced by A3 [M.R.Saravanakumar], A6[Easwari] and A7[V.Tamilarasan], is impossible.

10. <u>Crl.A.No.534 of 2016:</u> As far as the learned counsel for the appellant in this appeal is concerned, while canvassing for the accused persons[A3, A6 & A7] against the order of conviction under Section 420 of IPC, it was submitted that the Company run by A6[Easwari] is an existing company registered with Government of Tamil Nadu as a Trader. The evidence of interested witness PW-12 [Mr.R.Subramaniam] ought not to have relied upon to disbelieve the case of the accused. PW-12 [Mr.R.Subramaniam] being the landlord-house owner, to avoid house tax and other tax liability, had not permitted A6 [Easwari] to have name board in the premises. That does not mean that M/s Roshini Silvers is a non existing entity, having registered with Government as the Trader, the finding of the trial Court is contra to facts. Further, the loan availed by the accused on behalf of M/s Roshini Silvers is well secured and in fact, subsequently in SARFAESI proceedings dues were settled to the Bank. In such circumstances, no criminal liability can be fastened on the accused/appellant.

11. Similar plea is taken by A7[V.Tamilarasan] questioning the prudence of accepting the evidence of PW-11[Mr.Kandan, Postman] and PW-10[Ms.M.Sellammal], Assistant Commissioner of Commercial Tax Department, as a result, the accused persons convicted for the offence under Section 420 of IPC questioned the legality of accepting the evidence of PW10 [Ms.M.Sellammal], Assistant Commissioner of Commercial Tax, Namakkal, PW11[Mr.A.Kandan] Postman and PW12[Mr.R.Subramaniam]. Whereas the prosecution in the appeal against acquittal has questioned the legality of the judgment of the trial Court in rejecting the evidence of PW5 [Mr.N.SriKumar], PW8 [Mr.M.R.Sundaramoorthy] and PW9 [Ms.S.Jayanthi], Exs.P8, P13 and P18, which are the investigation reports submitted by the Chief Manager, Syndicate Bank, pursuant to the internal investigation.

12. The point for determination:

Whether the finding of the trial Court requires any interference for the reasons stated by the prosecution as well as the defence.

13. The case of the prosecution is that while A1[P.K.Velayuthan], was working as Senior Branch Manager, Syndicate Bank, Gugai Branch, Salem between 03.05.2004 and December 2005 and A2 [Mathivanan Inbaraj], was working as Loan Manager/Deputy Syndicate Bank, Gugai branch, Salem between 25.06.2001 and December 2006, they have advanced secured overdraft loan to M/s Easa Jewellery. A partnership firm consisting of A3 [M.R.Saravanakumar] and A4 [Rajesh Khanna]. While advancing the secured overdraft loan, have conspired to inflate the value of the property which was given as collateral security. Though the value of the property was only Rs.3,00,000/-, with the help of A5 [B.Jayachandran], Panel Valuer of Syndicate Bank, Gugai Branch, Salem, the value of the property was inflated to Rs.13.05 lakhs and based on the inflated valuation, A1 [P.K.Velayuthan], by abusing his official position, had sanctioned loan of Rs.9 lakhs in favour of M/s Easa Jewellery on 28.06.2004. While sanctioning secured overdraft, A1 [P.K.Velayuthan] and A2 [Mathivanan Inbaraj] have not obtained any document from A3 [M.R.Saravanakumar] and A4[Rajesh Khanna] pertaining to lease/rent deed and insurance policy for the stock reportedly kept in the jewellery shop. Though A3 [M.R.Saravanakumar] and A4 [Rajesh Khanna] had not repaid the loan of Rs.9 lakhs, on the basis of additional security of the property stood in the name of R.Pappathi, mother of A3 [M.R.Saravanakumar], the loan facility was enhanced to Rs.18 lakhs on 02.11.2004. Since M/s Easa Jewellery has not repaid the loan amount, it was declared as Non-Performing Asset on 26.05.2008. On the said date, the outstanding due to the bank was Rs.23.06 lakhs. Thus, by advancing the secured overdraft(SOD), without obtaining adequate collateral security, pursuant to the conspiracy, A1[P.K.Velayuthan] to A5[B.Jayachandran] had cheated the bank to the tune of Rs.26.03 lakhs in respect of M/s Easa Jewellery.

14. M/s Roshini Silvers, a Proprietrix concern run by A6 [Easwari], wife of A3 [M.R.Saravanakumar], opened an account in Syndicate Bank bearing No.125-847 and applied for secured overdraft of Rs.30 lakhs on 20.12.2004. The property of one Neelambal was furnished as collateral security by A3 [M.R.Saravanakumar] as Power of Attorney of Neelambal. In pursuant to the criminal conspiracy, A2 [Mathivanan Inbaraj] has processed the application and recommended for sanctioning the secured overdraft, based on the property stood in the name of Neelambal and the Power of Attorney in favour of A3 [M.R.Saravanakumar]. A1[P.K.Velayuthan], by abusing his official position, had accepted the recommendation of A2 [Mathivanan Inbaraj] and sanctioned the secured overdraft facility, despite the fact that, the loan advanced based on the Power of Attorney should be sanctioned only by the Regional Office. Further, the secured over draft facility in favour of M/s Roshini Silvers for Rs.24.75 lakhs was sanctioned on 22.01.2004, without verifying the existence of the Firm. A1 [P.K.Velayuthan] and A2 [Mathivanan Inbaraj] had not obtained TNGST/CST Certificate for lease/rent deed of the premises from the Commercial Tax Department and insurance policy for the stock held in M/s Roshini Silvers. Thus, by advancing secured overdraft, without consent of the Regional Office in respect of collateral security offered, on the strength of the Power of Attorney and without verifying the existence of said M/s Roshini Silvers, A1 [P.K.Velayuthan] has sanctioned the loan to the tune of Rs.24.75 lakhs, in which A6[Easwari] as

Proprietrix concern failed to repay the same and the said account became Non Performing Asset on 26.06.2008 with outstanding dues of Rs.41.30 lakhs, thereby cheated the bank and causing wrongful loss to the bank to the tune of Rs.41.30 lakhs.

15. A7[V.Tamilarasan] opened an account bearing Regn.No.125-885 in the name of M/s SRV Jewellery with Syndicate Bank, Gugai Branch, Salem and applied for a secured overdraft for Rs.9 laksh on 01.07.2005. For the said overdraft facility, A3[M.R.Saravanakumar] has produced the property document of one M.Sathasivam[PW-14] and pledged the same as collateral security for availing the secured over draft facility in favour of M/s SRV Jewellery run by A7[V.Tamilarasan]. The said M/s SRV Jewellery is a non-existence entity. Without ascertaining about its existence, without obtaining lease/rent deed of the premises, without obtaining the signature of Mr.M.Sathasivam in the loan application form, whose property was pledged as collateral security, without obtaining TNGST/CST Certificate from the Commercial Tax Department, A2[Mathivanan Inbaraj] has recommended for advancing loan and A1[P.K.Velayuthan] has sanctioned loan for violating the regulation of the bank. A7[V.Tamilarasan], who obtained loan of Rs.9 lakhs in the name of M/s SRV Jewellery, failed to repay the same and then, the account became Non Performing Asset. As on 26.05.2009,the outstanding due was Rs.10.33 lakhs.Thus, A1[P.K.Velayuthan],A2[Mathivanan Inbaraj], and A7[V.Tamilarasan] had cheated the bank, thereby causing wrongful loss to the bank of Rs.10.33 lakhs.

16. From the case of the prosecution, it could be seen that in the alleged conspiracy, A1 [P.K.Velayuthan], A2 [Mathivanan Inbaraj] and A3 [M.R.Saravanakumar] had played pivotal role in advancing loan to M/s Easa Jewellery. While A2 [Mathivanan Inbaraj] has recommended for the loan, A1[P.K.Velayuthan] has sanctioned the same. A3 [M.R.Saravanakumar] as one of the partner of M/s Easa Jewellery and Power of Attorney of Neelambal, whose property was offered as collateral security for loan advanced to M/s Roshini Silvers and as surety by pledged the title deed of Mr.M.Sathasivam (PW-14) for obtaining loan for M/s SRV Jewellery has cheated the Syndicate Bank by availing SOD in the name of the above said 3 defaulted entities.

17. To substantiate this, the prosecution has examined PW13 [Mr.Sakthivenkatesan], who has deposed in chief examination that A3 [M.R.Saravanakumar] is known to him for long time. He told him that he is going to start a Textile Mill and promised to give him a job in the Textile Mill. He asked him to come and assist him in his jewellery shop till he starts the Textile Mill. Accordingly, he used to assist A3 [M.R.Saravanakumar] in Bank transaction. At that time, A1 [P.K.Velayuthan], Senior Branch Manager of Syndicate Bank and A2 [Mathivanan Inbaraj] Loan Manager/Deputy Branch Manager used to meet A3[M.R.Saravanakumar] at M/s Easa Jewellery and discuss about the sanctioning of additional loan. When A3 [M.R.Saravanakumar] wished to get enhanced loan, A1 [P.K.Velayuthan] and A2 [Mathivanan Inbaraj] told A3 [M.r.Saravanakumar] that guarantors must sign for additional loan. When A1 and A2 came to M/s Easa Jewellery shop, A3 [M.R.Saravanakumar] and his brother A4 [Rajesh Khanna] forged the signature of P.W.9 [Ms.Jayanthi] and P.W.14 [Mr.M.Sathasivam]. Based on the said forged document, A1 and A2 sanctioned additional loan to M/s Easa Jewellery.

18. The deposition of PW13[Mr.V.Sakthivenkatesan] is relied on by the prosecution for two reasons:-(i)to prove the conspiracy of A1 to A4 and (ii) the forgery of signatures. It is to be pointed out that there is no charge against any of the accused for forgery and using forged document as a genuine. Further, there is no evidence to prove that in which document, A3 [M.R.Saravanakumar] and A4 [Rajesh Khanna] forged the signature of P.W.9 [Ms.S.Jayanthi] and P.W.14 [Mr.M.Sathasivam]. PW-13[Mr.V.Sakthivenkatesan] has not identified any of the document, which he deposed as forged by A3[M.R.Saravanakumar] and A4 [Rajesh Khanna] by signing as P.W.9 [Ms.S.Jayanthi] and P.W.14 [Mr.M.Sathasivam].This witness is introduced by the prosecution only to show that he overheard the conversation between the conspirators and the preparation of forged document. Even assuming that the entire chief examination of PW-13[Mr.V.Sakthivenkatesan] is true, no incriminating material is available to indicate these accused. The conversation of A1 to A4 what he has overheard is about how to get additional loan and it does not disclose any criminal design. The documents which he has alleged to have forged by A3 and A4 has not been produced before the Court or identified by any of the witnesses.

19. The other evidence relied on by the prosecution is the internal investigation reports submitted by PW-2[Mr.A.Narayan Shettigar]. The reports in respect of M/s Easa Jewellery, M/s Roshini Silvers and M/s SRV Jewellery are marked as Exs.P8, P13 and P18 respectively. In the cross examination, P.W.2 admits that he has not examined any of the debtor to ascertain the veracity of the signature found in the loan documents. He admits that he has not examined any of the person, who has given collateral security. In such circumstances, the reliability of his investigation report pales to insignificance.

20. As far as these three entities are concerned, Exs.P28 to Ex.P33 are documents relate to M/s Easa Jewellery. These documents indicate that it was a concern being registered with Commercial Tax Department and also a member of The Gem and Jewellery Export Promotion Council. Whereas there is no such documents in respect of M/s Roshini Silvers and M/s SRV Jewellery. Further, PW-10[Ms.M.Sellammal], Additional Commissioner of Commercial Tax, has deposed in her chief examination that M/s Easa Jewellery was registered in the Commercial Tax Department for the year 2004 but has not renewed it. She was treated as hostile. During the cross examination, she has deposed that M/s Roshini Silvers, No.88/91 Rivers Side, East Street, Thadagapatti, Salem, was registered as a Treader in the year 2004 but, did not renew its trading license thereafter. PW-11[A.Kandan, Post Master] has deposed that there was no shop or business establishment by name of M/s SRV Jewellery in Door No.17B, TNHB New colony, Annnathanapatti, Salem. It is an apartment with 8 flats. A7[V.Tamilarasan], who was residing in Door No.17/B TNHB, New Colony, Annnathanapatti, Salem requested him to deliver the letter sent to M/s SRV Jewellery. So, he has delivered letters to him, except registering the company for one year and availing loan by producing some collateral security, M/s Roshini Silvers and M/s SRV Jewellery have not really involved in any manufacturing or trading activity. Thus, A6[Eswari] and A7[V.Tamilarasan] had intention to cheat the Bank at the inception of availing the secured overdraft. To enable A6[Eswari] and A7[V.Tamilarasan] to get loan, A3[M.R.Saravanakumar] has fraudulently pledged the title deed of one Sathasivam(PW-14], without his knowledge and had stood as surety for the SOD loan advanced in the name of M/s Roshini Silvers and M/s SRV Jewellery.

21. The learned Senior Counsel appearing for the appellants in Crl.A.No.534 of 2016 submitted that both M/s Roshini Silvers and M/s SRV Jewellery were manufacturing silver ornaments in the residential premises. The land owner to avoid the property tax has not permitted them to put any signboard to their shop. However, PW-12 [Mr.R.Subramaniam] who is the landlord of premises bearing No.88/91, River Side, East Street, Thadagapatti, Salem has categorically deposed that there was no commercial entity by name M/s Roshini Silvers in his premises and he has denied the suggestion in the cross examination, that to avoid paying property tax, he has not permitted A6[Eswari] to put any signboard. Thus, it is very clear from the evidence that A6[Eswari] and A7[V.Tamilarasan] have floated the name sake entity to just avail bank loans. For that purpose, they have registered themselves as Traders for one year but subsequently they did not renew the same, after availing loan from the Syndicate Bank.

22. This clearly proves their intention at the inception to cheat the Bank by creating document for availing secured overdraft in the name of

M/s Roshini Silvers for which A3[M.R.Saravanakumar] has pledged the document of P.W-14 [Mr.M.Sathasivam].The evidence discloses that A3 [M.R.Saravanakumar], after advancing loan of Rs.1 lakh to PW-14[Mr.M.Sathasivam] has taken his document of title deed and pledged with Syndicate Bank for the loan availed in the name of M/s Roshini Silvers run by his wife.

23. Thus, the finding of the trial Court that A3,A6 and A7 guilty of the offence under Section 420 IPC is well found and there is no need to interfere with it. At the same time, there is no substantial evidence to convict A1 to A7 for conspiracy or for other offences since two views are possible, the view of the trial Court acquitting the other accused does not require any interference.

24. In the result, **the judgment of the trial Court in C.C.No.7 of 2010, dated 20.06.2016, is hereby confirmed and both the Criminal Appeals are dismissed.** The order of acquittal against the accused/respondents in Crl.A.No.467 of 2017 is hereby confirmed. Insofar as the conviction passed by the trial Court against the appellants in

Crl.A.No.534 of 2016 is also confirmed. However, regarding sentence imposed on the appellants in Crl.A.No.534 of 2016, this Court is of the opinion that taking note of the fact that under SARFAESI proceedings, the bank has recovered the loan due substantially, which has mitigating effect on the period of imprisonment, the sentence is modified to the effect that the appellants A3, A6 and A7 shall to undergo Simple Imprisonment for the period of three years(3) instead of Rigorous Imprisonment.

27.11.2017

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Index:Yes/No
Internet:Yes/No
Speaking order/Non speaking order

To
1. The Inspector of Police, CBI,ACB,Chennai.
2. The Special Public Prosecuotr for CBI Cases,
High Court, Madras.

Dr.G.Jayachandran,J.

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Pre-delivery Judgment made in
Crl.A.Nos.534 of 2017 and467 of 2017

27..11.2017