IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.07.2018
Pronounced on : 11.07.2018

Coram:

THE HON'BLE DR. JUSTICE G. JAYACHANDRAN

Crl.R.C.Nos.527,528,, 595 and 732 of 2018
Crl.M.P. Nos. 6240,6241,6249 to 6251,
6940 to 6942 and 8453 to 8455/2018

R.Muthusamy .. Petitioner in Crl.R.C.No.527 of 2018

A.Alagirisamy .. Petitioner in Crl.R.C.No.528 of 2018

Dr.D.Vivakar .. Petitioner in Crl.R.C.No.595 of 2018

K.P.Anandan .. Petitioner in Crl.R.C.No.732 of 2018

/versus/

The State Represented by,
The Deputy Superintendent of Police,
CBI/EOW/Chennai. .. Respondent in Crl.R.C.No.527 of 2018

The Superintendent of Police,
CBI:EOW:Chennai. .. Respondent in Crl.R.C.No.528 of 2018

The State By
Deputy Superintendent of Police,
CBI:EOW:Chennai
RC No.8(E)/2011 .. Respondent in Crl.R.C.No.595 of 2018

State by
Deputy Superintendent of Police,
CBI/EOW/Chennai,
Chennai.
RC No.8(E)2011 .. Respondent in Crl.R.C.No.732 of 2018

Prayer in Crl.R.C.No.527 of 2018: Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code praying to set aside the conviction and sentence imposed on the petitioner/1st accused in C.C.No.4541 of 2011 on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai now at Allikulam, Chennai which was confirmed in Criminal Appeal No.147 of 2016 on the file of the learned VI Additional District and Sessions Court at Chennai, dated 07.04.2018.

Prayer in Crl.R.C.No.528 of 2018: Criminal Revision Case filed under Section 397 r/w 401 of Criminal Procedure Code praying to set aside the impugned judgment made by the Additional Chief Metropolitan Magistrate, Egmore, Chennai in C.C.No.4541 of 2011 dated 28.04.2016 as confirmed by VI Additional District and Sessions Judge, Chennai in C.A.No.150 of 2016, dated 07.04.2018 and allow this revision petition.

Prayer in Crl.R.C.No.595 of 2018: Criminal Revision Case filed under Section 397 r/w 401 of Criminal Procedure Code praying to pass an order allowing this criminal revision and set aside the order of conviction and sentence imposed by the Additional Chief Metropolitan Magistrate Court at Egmore, Chennai in C.C.No.4541 of 2011, dated 28.04.2016 and confirmed by the VI Additional District and Sessions Court at Chennai in Crl.A.No.159/2016 dated 07.04.2018.

Prayer in Crl.R.C.No.732 of 2018: Criminal Revision Case filed under Section 397 r/w 401 of Criminal Procedure Code praying to set aside the judgment dated 07.04.2018 passed in C.A.No.165 of 2016 on the file of VI Additional District and Sessions Court, Chennai confirming the conviction and sentence passed by judgment dated 28.04.2016 vide C.C.No.4541 of 2011 on the file of Additional Chief Metropolitan Magistrate, Egmore, Chennai.

For Petitioners:Mr.V.Krishnamoorthy
(Crl.R.C.No.527 of 2018)

Mr.S.Shanmugavelayutham, Sr.C.,for
Mr.T.Vijaya Raghavan
(Crl.R.C.No.528 of 2018)

Mrs.Hema Sampath, Sr.C. for
Mr.D.Dhanabal
(Crl.R.C.No.595 of 2018)

Mr.T.Sivaram
(Cr.R.C.No.732 of 2018)

For Respondent :Mr.K.Srinivasan, Spl.PP(CBI)
in all appeals

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COMMON ORDER

These four criminal revision petitions arise from judgment of the Trial Court made in C.C.No.4541/2011 on the file of Additional Chief Metropolitan Magistrate, Egmore confirmed by the Appellate Court in C.A.No.147 of 2016, C.A.No.150 of 2016, C.A.No.159 of 2016 and C.A.No.165 of 2016 on the file of VI Additional Sessions Court, Chennai.

2. Since the accused, who are convicted had preferred four appeals individually challenging the judgment of the trial Court passed in C.C.No.4541 of 2011, dated 28.04.2016, the present four revision petitions are filed against the appellate Court judgment passed in Crl.A.Nos.147 of 2016, 150 of 2016, 159 of 2016 and 165 of 2016 dated 07.04.2018.

3. Brief facts leading to these revision petitions are as follows:

M/s Universal Trading Company, a partnership firm with R.Muthusamy as Managing Partner and N.R.Thulasiraman as Partner sought loan for their trading operation from UCO Bank Main Branch, Chennai. The bank sanctioned cash credit limit of Rs.4crores and LC limit of Rs.1crore to the firm. After obtaining hypothecation of stock in trade and equitable mortgage of land measuring 3366 sq.ft., with commercial building in two floors built up area 9060 sq.ft., located at No.161, Thambu Chetty Street, Chennai stood in the name of N.R.Thulasiram, S/o Ramiyer. The loan was availed by the firm on 08.04.2010 after its partners executed documents creating mortgage of the above said property on 08.04.2010. The partners of M/s Universal Trading Company R.Muthusamy and N.R.Thulasiraman furnished legal opinion in respect of the marketable title of the property along with property tax, water tax receipts which stood in the name of K.R.Thulasiraman. A memorandum of deposit of title deed was registered on 09.04.2010 in favour of UCO Bank was executed by K.R.Thulasiraman. After four months, the UCO Bank received a legal notice from one G.Nagarajan, a tenant in the premises bearing No.161, Thambu Chetty Street, Chennai which was alleged to have been mortgaged by R.Muthusamy and K.R.Thulasiraman partners of M/s Universal Trading Company. The notice of G.Nagarajan, Advocate dated 31.08.2010 disclosed a shocking fact that K.R.Thulasiraman, the owner of the building bearing No.161 Thambu Chetti Street,was not a partner of M/s Universal Trading Company had not applied for any loan and he has not encumbered the property in favour of the bank as collateral security for any loan. Some antisocial elements have created forged documents and committed fraud upon the bank.

4. On the receipt of this notice, the higher officials of the UCO Bank probe the matter internally and found that the title deeds furnished by the partners of M/s Universal Trading Company were forged and fabricated documents. The death certificate in the name of K.N.Ramiyer and N.R.Indira Ammal found to be fake/fabricated. The legal heirs certificate of K.N.Ramaiyer was also found to be fake and fabricated. As a result, the UCO Bank realised that the equitable mortgage by deposit of title deed by the partners of M/s Universal Trading Company namely, Managing Partner R.Muthusamy and N.R.Thulasiraman were created fraudulently to cheat the bank. A complaint was lodged by D.N.Routray, the Deputy General Manager, UCO Bank on 05.04.2011 to the Superintendent of Police, Central Bureau of Investigation, Economic Offences Wing, Tmt.P.C.Thenmozhi and the Superintendent of Police had registered the complaint in RC.NO.8(E) 2011/CBI/EOW/Chennai.

5. On completion of investigation, Thiru.Chin Ram, the Deputy Superintendent of Police had filed final report against R.Muthusamy the Managing Partner of M/s Universal Trading Company and R.Rajaram, who had impersonated himself as N.R.Thulasiraman, M.Mathiarasan, K.P.Anandan, A.Alagirisamy and Dr.D.Vivakar, who have conspired to cheat UCO Bank by impersonation and production of fabricated document used it as genuine document to cheat the UCO bank. Two bank officials by name Thiru.K.Soubramaniam and Masilamani were also shown as accused. However, their names along with M/s Universal Trading Company and Rajaram, who was granted Pardon were shown as accused not sent for trial in column II of the charge sheet.

6. Based on the final report, the trial Court has framed four charges. First charge against all the five accused for conspiracy, which has resulted in wrongful loss of Rs.411.75lakhs plus interest to the UCO bank and other charges in respect of substantive offences against each of the accused for committing act of forgery of documents, using documents as genuine and for cheating the bank using the forged documents.

7. To prove the charges, the prosecution has examined 48 witnesses. 143 exhibits on the side of the prosecution and 2 exhibits on the side of the defence were marked. No oral evidence was let in on behalf of the defence. The trial Court, after considering discussion and perusal of records, has held that the prosecution has proved the offences under Sections 120B r/w 420, 467, 471 r/w 467 IPC and substantive offences under Sections 420, 467, 471 r/w 467 IPC against A1 and A3. It is also proved the offences under Sections 120B r/w 420, 467, 471 r/w 467 IPC and for substantive offences under Sections 420, 471 r/w 467 IPC against A3, A4 and A5. Having found that A1, A3 and A4 & A5 guilty, the following sentence has been imposed by the

trial Court:

Name and Rank of the Accused in C.C.No.4541 of 2011	Conviction under Section	Sentenced awarded
R.Muthusamy (A1) and K.P.Anandan (A3)	(i)U/s 120-B r/w 420, 467, 471 r/w 467 IPC	To undergo 6 months Rigorous Imprisonment each and to pay a fine of Rs.1,000/-each in default to undergo 3 weeks of Simple Imprisonment each.
	(ii)U/s 420 IPC	To undergo 2 years Rigorous Imprisonment each and to pay a fine of Rs.10,000/-each in default to undergo 3 months of Simple Imprisonment each.
	(iii)U/s 471 r/w 467 IPC	To undergo 2 years Rigorous Imprisonment each and to pay a fine of Rs.10,000/-each in default to undergo 3 months of Simple Imprisonment each.
	(iv)(iii)U/s 467 IPC	To undergo 2 years Rigorous Imprisonment each and to pay a fine of Rs.10,000/-each in default to undergo 3 months of Simple Imprisonment each.

Name and Rank of the Accused in C.C.No.4541 of 2011	Conviction under Section	Sentenced awarded
A.Alagirisamy(A4) and Dr.D.Vivakar(A5)	(i)U/s 120-B r/w 420, 467, 471 r/w 467 IPC	To undergo 6 months Rigorous Imprisonment each and to pay a fine of Rs.1,000/-each in default to undergo 3 weeks of Simple Imprisonment each.
	(ii)U/s 420 IPC	To undergo 2 years Rigorous Imprisonment each and to pay a fine of Rs.10,000/-each in default to undergo 3 months of Simple Imprisonment each.
	(iii)U/s 471 r/w 467 IPC	To undergo 2 years Rigorous Imprisonment each and to pay a fine of Rs.10,000/-each in default to undergo 3 months of Simple Imprisonment.

A2[M.Mathiarasan] was acquitted by the trial Court in all the charges. The sentences imposed on each accused person directed to run concurrently. The period of imprisonment already undergone by each of the accused was ordered to be set off under Section 428 Cr.P.C.

8. The judgment of the trial Court dated 28.04.2016 was appealed before the VI Additional District and Sessions Court, Chennai by each of the accused independently. Those appeals were heard together and a common judgment was rendered by the appellate Court dismissing the appeals and confirming the judgment of the conviction and sentence passed by the trial Court. The present four revision petitions are preferred against the dismissal of their respective appeals.

9. For better understanding, the name of the accused in their respective appeals are given below in their respective revisions. Also for the sake of clarity, they are referred as per their ranking in the trial Court in the course of the discussion of these revision petitions.

Name and rank of the accused before the trial Court in C.C.No.4541 of 2011	Appeal Number before the 1st appellate Court	Revision Number before this Court
R.Muthusamy(A1)	Crl.A.No.147/2016	Crl.R.C.No.527/2018
M.Mathiarasan (A2) (Acquitted)	_	_
K.P.Anandan(A3)		
A.Alagirisamy(A4)	Crl.A.No.165/2016	Crl.R.C.No.732/2018
Dr.D.Vivakar(A5)	Crl.A.No.150/2016	Crl.R.C.No.528/2018
	Crl.A.No.159/2016	Crl.R.C.No.595/2018

10. Before adverting to the merit canvassed by each of the revision petitions, brief facts of the case as found in the final report are extracted below:

During the year 2010, pursuant to the criminal conspiracy entered into by R.Muthusamy, Rajaram and others, Rajaram (approver) impersonating himself as N.R.Thulasiraman and created the unregistered partnership deed along with R.Muthusamy in the name of M/s Universal Trading Company wherein R.Muthusamy and N.R.Thulasiraman as Managing Partner and Partner respectively having its registered office at No.59, Kandappa Chetty Street, First Floor, Parrys, Chennai. They availed loan from the UCO Bank, Chennai Main Branch cash credit of Rs.4 crores and LC of Rs.1 crore. R.Muthusamy and Rajaram (impersonating himself as N.R.Thulasiraman) executed a deed of equitable mortgage by deposit of title deed. The document was registered at District Registrar Office, Chennai North. K.P.Anandan (A3) and A.Alagirisamy (A4) identified Rajaram as N.R.Thulasiraman and signed as witness for execution of the deposit of title deed.

11. Knowing fully well that the title deed, which was deposited is a forged document and the property situated at No.161, Thambu Chetty Street, Chennai is not the property of Rajaram, but through forged document impersonating as N.R.Thulasiraman and as partners of M/s Universal Trading Company the accused persons deposited the fake title deed and availed loan.

12. In furtherance of the criminal conspiracy, at the instance of A1[R.Muthusamy] and A2[M.Mathiarasan], various bank

accounts in the name of non-existing firm were opened by Dr.D.Vivakar(A5) and Mr.A.Arokiaraj one of the employees of M/s Universal Trading Company to siphon the loan amount.

13. The facts unravelled through the prosecution witnesses and exhibits:

PW.46[Thiru.Chin Ram]Deputy Superintendent of Police, CBI, EOW has deposed that a complaint was received from Thiru.D.N.Routray, UCO Bank, Zonal Office, Chennai on 08.04.2011 alleging fraud by the partners of M/s Universal Trading Company to the tune of Rs.411.17 lakhs. After registering the complaint, he has taken up the investigation conducted search of the premises of A1 [R.Muthusamy] and collected incriminating materials as found in the search list marked as Ex.P137. The copy of the original title deeds of the property situated at No.161 Thambu Chetty Street, Chennai were recovered. The other documents perpetrated to have been forged by the accused for availing loan were seized. The confession statement of Amalraj @ Arokia raj was recorded before the Magistrate under Section 164 (5) Cr.P.C and he filed the final report.

14. PW-47[Tmt.Akila Shalini] XXIII Metropolitan Magistrate, Saidapet had deposed about recording the statements of N.R.Thulasiraman @ R.Rajaram[accused] turned approver. PW-48 [Thiru.D.Sivakumar] had deposed about recording of statement of A.Arokiyaraj @ Amalraj under Section 164 (5) Cr.P.C. Thiru.D.N.Routray, Deputy General Manager, UCO Bank, Zonal Head, Zonal Office, Chennai, who has set criminal law into motion by lodging the complaint to CBI had been examined as PW-34 wherein he has deposed about the proposal submitted by M/s Universal Trading Company for availing loan. The complaint[Ex.P18] given by Thiru.Nagarajan to the Bank stating that anti-social elements have availed loan mortgaging the property of Rajaram. PW-35 [Thiru.N.Kumarsamy] Field General Manager in UCO Bank at Chennai had identified Ex.P85-loan sanctioned letter issued by UCO Bank, Chennai Zone sanctioning a debit of Rs.5 crores to M/s Universal Trading Company.

15. PW-22[Thiru.V.Mahalingam]Senior Manager of UCO Bank Main Branch had spoken about the loan sanction to M/s Universal Trading Company and intimation of same to M/s Universal Trading Company with terms and conditions. The intimation order dated 03.04.2010 marked as Ex.P88; the cash credit opening form marked as Ex.P89; the photocopy of R.Muthusamy and N.R.Thulasiraman affixed in the said account opening form Ex.P89 were identified by this witness.

16. PW-19[Thiru.T.Jansi Bai], Assistant in the office of Sub Registrar had deposed that on 09.04.2010 when she was on duty at North Chennai, the UCO bank officials and K.R.Thulasiraman came to register the deposit of title deed. She after verifying the

documents registered the same. The initial of K.R.Thulasiraman was stuck off and "N.R" was written in the place of "K.R". The document was identified by Anandan(A3) and A.Alagirisamy(A4). While registering the document, photocopy of the ration card in the name N.R.Thulasiraman was furnished by the person who came for registration and the same was identified and marked as Ex.P78.

17. PW-17 [Tmt.I.Vaidehi] Superintendent in Sub Registrar Office had identified the documents given during the registration of the sale deeds, which are marked as Exs.P67 to 72. They are patta in the name of K.Ramiyer, encumbrance certificate, death certificate of Ramiyer and Indirani Ammal. PW-38 [Thiru.G.Thangaraj] Chartered Accountant had deposed about arranging the Pan Card in the name of Thulasiraman at the request of K.S.Omar Shareef. In turn, K.S.Omar Shareef, who was examined as PW-36 has deposed that he knew Dr.D.Vivakar. At the request of Dr.D.Vivakar (A5) to introduce him for opening an account in UCO bank, he sought help his Auditor Thiru.Thangaraj. Wife of Thangaraj(Auditor), who had account in UCO bank introduced Dr.D.Vivakar for opening the bank account at UCO bank.

18. PW-13 Mr.M.K.Udaya Sankar has deposed about K.P.Anandan (A-3) introduced a person by name N.R.Thulasiraman as owner of the building No.161, Thambu Chetty Street. As a broker he arrange to sell the property to one Sagul husband of Rajul Beevi. The The sale agreement is marked as Ex.P59 and payment of Rs.30 lakhs was made to N.R.Thulasiraman on 06.10.2010 which was witnessed by Thiru.K.R.Anand and Thiru.P.Jalal. The cheques for Rs.20 lakhs and Rs.5 lakhs issued by Rashul Beebe to K.P. Anand marked as Ex.P60(series). Later, he came to know that the person introduced by Anandan as Thulasiraman is not the owner of the property and his name is not Thulasiram. PW-30[Thiru.N.Sundaram] former MLA had deposed that at the request of Dr.D.Vivakar(A5), he requested the UCO bank Head Office at Chennai to extent the loan to Dr.D.Vivakar(A5).

19. In the course of investigation, documents pertaining to the property bearing No.161 Thambu Chetty Street, Chennai have been collected from the Sub Registrar Office. PW-8, Sathyapriya has deposed about the deeds of the said property and her communication to CBI enclosing documents Ex.P20 to Ex.P30. PW-25 [Thiru.A.Anthony Arputharaj] Revenue Inspector at Zonal No.5, Chennai Corporation has deposed that the tax reeipt Ex.P106 for No.161, Thambu Chetty Street, furnished by A1 and A2 to avail loan is a forged document. PW-26 [Thiru.Anbarasan] Superintendent in Chennai Metro Water, PW-27[Thiru.P.V.Sankara Narayanan] Assistant Commissioner, Sozhinganallur and PW-28 [Thiru.Ettiappan], Election Officer of Sozhinganallur constituency all have spoken about respective documents, which

support the case of the prosecution regarding forgery of water receipts (Ex.P108), family card (Ex.P78) in the name of N.R.Thulasiram and the voter ID card (Ex.P111) used by the accused persons for availing loan on mortgage of the property bearing No.161 Thambu Chetty Street, Chennai. PW-29 [Mr.D.Prasad] Thasildar of Thondayarpet zone had spoken about the forged legal heir certificate Ex.P69 in the name of Thulasiraman.

20. Thiru.Rajaram(Approver) examined as PW-23 has deposed that he knew K.P.Anandan and he signed as N.R.Thulasiraman in Ex.59 sale deed with Rashul Beebe and her family. He had identified his signatures in Ex.P53, P67 and P89 forged as N.R.Thulasiraman. He has admitted that the signatures found in Exs.P96,P97,P98 and P99 as N.R.Thulasiraman were all signed by him. For impersonating and forging he was paid Rs.50,000/- by K.P.Anandan twice. He has deposed about recording of his statement by the Magistrate and identified the signatures in his previous statement marked as Ex.P101. The specimen signatures given by him for comparison were also identified by him.

21. PW-5 [Thiru.K.R.Thulasiraman] the actual owner of the property bearing Old.No.161, New No.346, Thambu Chetti Street had deposed that the original title deed of his property is in the bank locker. In order to sell the property, he gave a photocopy of the property to the brokers. When they insisted to give vacant possession of the property, he expressed his inability. So, the negotiation to sell the property broke. Thereafter, through his advocate Thiru.Nagarajan during the month of July 2011, he came to know that somebody had impersonated him, forged title deed and availed loan showing his property as collateral security. PW-7[Thiru.G.Nagarajan] a practising lawyer at Chennai had deposed about the ownership of the property. He knew K.R.Thulasiraman and his family. He had issue legal notice to UCO bank when he come to know about the impersonation forgery. His legal notice , the replied received from UCO bank are marked as Ex.P18 and 19.

22. PW-37[Thiru.P.Jothi Mani] a real estate broker had deposed that he came to know about the property at No.161 Thambu Chetty Street, Chennai is available for sale. He got the title deed of the property after giving Rs.2.5 lakhs as advance to Anandan through Thiru.Jaccob. On physical inspection of the property, he found that many advocates were having office in the building. So, he dropped the idea of the purchase of property. Therefore, he asked Thiru.Jaccob to return he advanced. Meanwhile, to assess the value of the property he gave a copy of the title deed to one Sridhar, Valuer. When Sridhar asked him whether he has any objection for third party to purchase the property, he told that if his advance money is

given back, he has no objection and ready to hand over the document back to K.P.Anandan. After 2 or ½ months he got back Rs.2.25 lakhs from Anandan. This witness [PW-37]had identified A3(Anandan) from to whom he gave the document of the property bearing No.161 Thambu Chetty Street, Chennai.

23. On a cumulative assessment of the evidence, the trial Court has found that there is no sufficient evidence to convict A2[M.Mathiarasan]. Whereas the evidence let in by the prosecution has proved the guilt of A1[R.Muthusamy], A3 [K.P.Anandan], A4[A.Alagirisamy] and A5[Dr.D.Vivakar]beyond reasonable doubt and had convicted them. The appellate Court on re-appreciation of the evidence has confirmed the judgment of the trial Court.

24. The grounds raised by A1[R.Muthusamy] in his memorandum of Crl.R.C.No.527 of 2018:

(i) The Courts below failed to consider the evidence of the PW.6 (Arogiyam), PW.4 (John Winsten) and PW.12 (V.A.Vikram), which would prove that the collateral property was arranged by 4th accused on payment of commission and the first accused had no role in it.

(ii)The Courts below have also not considered the evidence of PW.13 which connects the 3rd accused (Anandan) with the commission of crime. PW.13 says that the property offered as collateral was already a subject matter in a sale agreement entered into between the approver (Rajaram) and one Mr.Rasul Beevi. The document was attested by 3rd accused and one Jamal. Hence, it goes to show that 3rd accused and 4th accused played fraud on the 1st accused by showing the approver as Mr.N.R.Thulasi Ram.

(iii)The Courts below has not considered the evidence of the P.W.14 which strengthens the part played by 4th accused in the commission of the crime and his evidence does not implicate the 1st accused (Appellant) in the conspiracy at all. P.W.14 states that the 4th accused, 3rd accused, (Arogiyam) all conspired and lured the approver with money. They played fraud on the 1st accused to believe that the approver is the original owner of the collateral-property. The evidence of the PW.15 also would un-erringly point out the perpetrators of the crime are the 3rd and 4th accused.

(iv)The Courts below failed to consider the evidence of PW.19, who states that Rajaram (approver) was identified as N.R.Thulasi Ram by the 4th accused and 3rd accused to him. PW.23 (approver) has deposed that 3rd accused was introduced to him by his house owner. It was the 3rd accused who lured P.W.23 with money and instigated him to impersonate as Mr.N.R.Thulasi Raman. He has not even whispered a word against the first accused. P.W.36 is the witness who introduced the valuer Mr.Natarajan to the 5th accused. He says 4th accused has identified the property to the valuer.

(v)The Courts below have not considered the evidence of the PW.37 who is a real estate broker, who has deposed that the 3rd accused has shown the property and handed over the property documents to him. P.W.37 gave Rs.2.5 lakhs to the 3rd accused. The 1st accused has no role to play. That apart, P.W.41, in his prior statement under Section 164 of Criminal Procedure Code before the Magistrate (Ex.P126) had said while admitting his knowledge about the fact that the property does not belong to the company the documents are forged documents and also said that the petitioner was not aware of the same.

(vi)The Courts below have also not considered the evidence of the PW.46 (Investigating Officer) who has deposed that the 1st accused is only a name lender and 2nd accused is the original owner. The 3rd and 4th accused arranged the collateral property.

(vii) The Courts below has failed to consider that the confession of the approver is defective and not in accordance with Section 164(4) of Criminal Procedure Code. In the footage of the confession, the certificate contemplated under Section 164(4) Criminal Procedure Code is not found. Hence, the entire confession vitiates.

(vii)The Courts below not considered that the charges in this case are not appropriate and question put to the accused under Section 313 of Criminal Procedure Code is also not in consonance with the guidelines time and again reiterated by the Hon'ble Apex Court.

24(a). The learned counsel appearing for the appellant while reiterating the grounds raised in the memorandum of revision petition would sum up his argument that A1 was never party to the conspiracy. Even according to the prosecution, it was A3 and A4, who had played a pivotal role in creating forged documents for obtaining loan. The approver PW-23, who had impersonated as Thulasiraman had only spoken the role of A3 and A4 in the entire scheme of conspiracy, coupled with the evidence of PW-41 would categorically exonerate A1 about his knowledge regarding the forged documents would clearly establish that A1 was made a scapegoat by the other accused. The charges as well as questioning under Section 313Cr.P.C., were not properly framed to enable the accused to put forth his defence. This has highly prejudice to the accused.

25. The grounds raised by A3 [Anandan] in his memorandum of Crl.R.C.No.732 of 2018:

(i)The Appellate Judge in a mechanical manner had blindly believed the version of the Approver-PW.23 Mr.Rajaram.

(ii) The second accused was charged only u/s.120-B IPC. The act committed by this accused is that he stood as an attesting witness to the Memorandum of deposit of Title Deeds dated 09.04.2010, Doc.No.158 of 2010 on the file of Sub Registrar Office, Chennai-North [Ex.P67]. The very purpose of getting a document attested to prove whether the executants has signed in the document in the presence of the attesting witness or any other witness signed in the document in the event of denial by the executants or any other party to that document, denying their presence or their signature. Mere attestation is not enough to involve the witness with knowledge of the contents of the deed, and that is equally true of the witness who identify the executant before the Registrar.

25(a)The learned counsel appearing for this accused while reiterating the content of the memorandum of grounds would sum up his argument that the Courts below had given undue importance to the approver evidence which is not a reliable evidence and the manner in which they were tendered pardon itself vitiate the entire evidence. The reference made about this appellant by some of the witnesses does not indicate the guilty of offence charged against him. The case of the prosecution is that approver along with A1 forged the documents and deposited the same in the bank by impersonating. In the said crime, this appellant has no role because he has attested Ex.P67 he cannot be held guilty of offences under Sections 420, 467 or 471 IPC. When there is no evidence to show that this appellant has deceived the bank or obtained any monetary benefit, out of it, none of the charges against this appellant can be held to be proved. The trial Court as well as the appellate Court has erred in relying upon the evidence of tainted witnesses held this appellant guilty merely because he has signed as a witness in Ex.P67.

26. The grounds raised by A4 [A.Alagirisamy] in his memorandum of Crl.R.C.No.528 of 2018:

(i)The Courts below failed to consider that the prosecution had miserably failed to connect the 4th accused to the crime or the crime proceeds in any manner whatsoever. Merely because the 4th accused was a witness to exhibit P-67, he cannot be held guilty, when it is admittedly a genuine document.

(ii)PW.19, the Sub Registrar had deposed that none of the documents mentioned in Ex.P-67 was brought to the Registrar Office at the time of the execution of Ex.P-67 and that the Bank Officials will never sign as witnesses to such Memorandum of deposit of title deed(MOTD).

(iii)In the absence of evidence to link the 4th accused with the crime, particularly when there is absolutely no material to establish any wrongful gain to him from the crime proceeds, both the Courts ought not to have convicted the 4th accused on presumption and assumptions.

(iv)The evidence of PW.6 differs from the evidence of PW.14 and PW-15. That apart, PW.37 has also not corroborated the evidence narrated by PWs.6, 14 and 15. Therefore, there is no material against the 4th accused to prove the charge of criminal conspiracy. Neither the trial Court nor the appellate Court has even attempted to answer these points raised by the 4th accused.

(v)It was clearly established from Ex.P-81 which is the Partnership Deed of M/s Universal Trading Company, where the 4th accused is not a partner. The fact that the 4th accused have nothing to do with the affairs of M/s. Universal Trading Company ignored by both the Courts below, leading to the passing of an erroneous judgment under challenge in the present Revision.

(vi)The 4th accused signed as witness to the Memorandum of Deposit of title Deeds (Ex.P-67). This document was executed by Mr.R.Rajaram(approver) along with A1 as partners of M/s Universal Trading Company. The said Rajaram had admitted that he impersonated as Thulasiraman and forged the title deeds by signing as Thulasiraman. The 4th accused is not a witness to the forged documents. Ex.P67 is a genuine document signed by Mr.R.Rajaram. The same was done in the presence of other bank officials in the Sub Registrar's office. His signature as witness to Ex.P67 cannot lead to the presumption that he was party to the alleged conspiracy.

(vii)None of the forged documents were either executed or signed as a witness by the 4th accused. No wrongful gain is ever made by the 4th accused. Criminal intention can never be presumed merely from the signature as a witness in Ex.P-67. Therefore, conviction under Section 420 is wrongly delivered by both the Courts below without proper appreciation of evidence.

(viii) The appellate Court grossly erred in not appreciating the error committed by the Trial Court in placing undue reliance on 164 Cr.P.C statements made by PW.23 (R.Rajaraman) and PW.41 (Arokiaraj) who never spoke anything incriminating against the 4th accused while giving evidence in the trial Court.

26(a). The learned Senior counsel appearing for the appellant while canvassing the above grounds to the impugned judgment of the trial Court would sum up his argument that the witnesses namely PW-6, PW-14, PW-15, PW-19, PW-23, PW-36, PW-37, PW-41, PW-43 and PW-70 who had made reference about this accused/appellant had not said any thing incriminating this appellant sufficient to convict him. The irregularity in tendering pardon to the approver PW-23 and PW-41 and relying upon the previous statement of the approver without being deceived before the Court had oath during the trial vitiate the entire trial and conviction.

27. The grounds raised by A5 [Dr.D.Vivakar] in his memorandum of Crl.R.C.No.595 of 2018:

(i)The trial Court and the 1st appellate Court ought to have seen that PW.23-R.Rajaram had spoken nothing about the appellant, Vivakkar. The confession statement of Rajaram is neither produced nor marked. The confession of co-accused will not form basis for conviction and it can be used only as against the marker alone.

(ii)The Trial Court and the 1st appellate Court failed to see that the evidence of PW.22-Mahalingam, Chief Manager that he assumed charge and verified the loan account of Universal Trading Company and check out and identified the formalities, sanction communications and outstanding vide Exs.P.80 to Ex.P.93, Ex.P.90 is the statement of accounts of Universal Trading Company and in that no amount is transferred to this appellant and he is not benefited from the alleged transaction.

(iii)The Trial Court and the 1st appellate Court failed to see that the evidence of PW.30-N.Sundharam, M.L.A that Vivakkar (A5) approached him for recommend the bank to sanction loan. But, there is no material to prove applied for loan in UCO bank.

(iv)The evidence of PW-35 N.Kumarasamy, former GM, UCO Bank is that he recommended the proposal brought by Sundaram, M.L.A., with promoters. He has not stated any name of promoters.

(v)The evidence of PW-36 K.S.Omar Sheriff, that Vivakar (5th accused) requested for an introducer to the account opening in the UCO Bank, he arranged Santhi, W/o Thanaraj, to sign as introducer in the account opening form. Nothing incriminating against the 4th accused is spoken by PW-36.

27(a). The learned Senior Counsel appearing for the 5th accused would submit that except PW-30 Sundaram and PW-36 K.S.Omar Sheriff, no other prosecution witness has spoken about this appellant and even if the entire testimony of PW-30 and PW-36 are taken to be proved, no incriminating substance has available against this appellant. When no evidence against this appellant to indicate that he was privy to loan sanction to M/s Universal Trading Company and the loan amount was siphoned through him. The Courts below patently erred in holding this appellant guilty.

28. The learned Special Public Prosecutor (for CBI) appearing for the respondent, in response to the submissions made by the appellants counsels, pointing out the role of each accused in the crime would submit that the first accused cannot plead ignorance of his signatures found in the deed of partnership [Ex.P95], Memorandum of Deposit of Title Deed [Ex.P67] and the cash credit opening form in the name of M/s Universal Trading Company Ex.P89. The money withdrawn from the loan availed through fraudulent means by A1 is proved through the cheques marked as Ex.P56 and P58. Therefore, the appellant (A1) cannot take umbrage under the evidence of PW41 that the appellant has no knowledge about the forged document. As far as A3 and A4 are concerned, they both were all along been with A1 to create and fabricate documents besides they have affixed their signatures in the deposit of title deed document as witnesses. The title deed[Ex.P13] itself a forged document which has been made by these accused as proved through witnesses PW.41 and PW.23. The 5th Accused[Dr.D.Vivakar] took the help of PW.30 Thiru.N.Sundaram for recommending loan. After obtaining loan through impersonation and forgery, he had received share in the crime proceeds by receiving Rs.16 lakhs as price for the recommendation of PW.30 and Rs.10 lakhs as rewards for arranging

PW.30 to recommend loan.

29. The learned Special Public Prosecutor, in support of the judgment passed by the Courts below, would contrive the submissions made by the learned counsels appearing for the revision petitioners/accused by pointing out that both the Courts below on facts had come to concurrent view that the accused have conspired to do an illegal act namely cheating the UCO bank using forged document as genuine. Though evidence, prosecution has proved the charges beyond doubt. The real owner of the property PW.5 K.R.Tulasiram had positively identified the forged signatures in the documents and the same is independently corroborated by PW.23[Thiru.Rajaram] confession. PW.23 admits impersonation and forgery his confession statement before the Judicial Magistrate and the same has been reiterated before the trial Judge incriminating himself and the other accused (except A5). As far as A5 is concerned, he had sought the help of PW.30 N.Sundaram former M.L.A for recommending loan. The officials of UCO bank has also corroborated the evidence of PW.30 that PW.30 along with A-5 came to the bank and requested the bank Official to extend loan to A-5. There was no other loan except the loan extended to M/s Universal Trading Company in which A5 had interest. The proximity between A1, A2 and A5 are spoken through PW.2 and PW.36. Since conspiracy is hatched in secrecy, the circumstantial evidence clearly shows that the loan to M/s Universal Trading Company was extended at this instance of A-5, who has influenced the bank through other accused with PW.30. The acquaintance of the accused A5 is proved through Ex.P7 the document relating to loan of M/s Universal Oil in which Dr.D.Vivakar (A-5) is a guarantor as spoken by PW.2. The chain of conspiracy had started and completed with the aid and help of this revision petitioner. Therefore, his plea of innocence is unsustainable.

30. This Court is conscious of the fact that power of the High Court under revision petitioner conferred under Sections 397 and 401 Cr.P.C. is not to re-appreciate the fact again but to ensure the judgment of the Courts below does not bristles with illegality or irregularity leading to failure of justice.

31. The charges found to be proved by the Courts below against these appellants is in respect of conspiracy to cheat and thereby cause wrongful loss of Rs.411.75 crores to UCO Bank. In pursuant to the said conspiracy, A1 [Muthusamy] along with Rajaram [approver] PW.23 had fabricated the documents as if the approver Rajaram is the owner of property bearing No.161, Thambu Chetty Street, Chennai. Though the property stands in the name of N.R.Tulasiraman[PW.5], the accused have created fake title deed in respect of the said property by impersonating himself as N.R.Tulasiraman. Muthusamy [A1] and Rajaram [PW.23] had created

a document of Memorandum of Title Deed in favour of UCO Bank. This document has been registered and in the said document, K.P.Anandhan [A3] and Alagirisamy [A-4] had signed as witnesses identify the executants knowing fully well that PW.23 is not N.R.Thulasiraman. The prosecution has proved through its witnesses and documents that N.R.Thulasiraman [PW.5] is the true owner of the property. He never entered into any contract with UCO bank or executed any document as partner of M/s Universal Trading Company. Thus, by proving the loan has been obtained through fake document and impersonation, the prosecution has also proved the siphoning of loan amount by adducing evidence to show that siphoning of loan amount to various accounts.

32. As far as A5 is concerned, the prosecution has proved through PW.30[N.Sundaram] that he met the Official of UCO bank and recommended loan to A5. While the trial Court as well as the Appellate Court had gone through the evidence and on facts have found that the revision petitioners are guilty of conspiracy to cheat UCO bank and pursuant to the conspiracy, they have forged documents and used it as genuine with fraudulent and dishonest intention.

33. On perusal of the grounds of appeal and the submissions made by the respective counsels, it could be seen that substantial attack is made on the acceptance of the approver evidence by the Courts below. The procedure followed by the Magistrate while recording the statement of the witnesses is questioned before this Court. That apart, each one of the revision petitioners have contended that the commission of crime was done by the rest of the accused and they have no role to play in the crime. While A1 would say that he is only a name lender, he was asked to sign in the documents pertaining to the M/s Universal Trading Company by A2. Whereas A3 and A4 would contend that they have signed the Memorandum of Deposit of Title Deed for availing loan from UCO bank by M/s Universal Trading Company only as witnesses. The document namely Ex.P.67 in which they have affixed their signature as witness is a genuine document. Therefore, they have no role in the crime. Whereas A5 would contend that the evidence of PW.30 and PW.36 does not make out any case against him either for conspiracy or cheating or forgery. To emphasis their submission, the counsels have cited judgements which reiterates the legal preposition on granting pardon to an accomplice, ingredients for forgery and evidentiary value of an approver.

34. The revision petitioners are held guilty of substantive offences of cheating, forgery and dishonest use of the forged documents as genuine.

35. The Indian Penal Code defines "Document" in Section 29 and "Forgery" in Section 463 which extracts as below:

> Section 29. "Document" : The word "document" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.
>
> Explanation 1: It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.
>
> Explanation 2: Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.
>
> 463. "Forgery": [Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

36. As per Section 464 of the Indian Penal Code, A person said to make a false document is who makes signs, seals or executes a document or part of a document. Whereas, Section 30 of the Indian Penal Code defines "Valuable Security" as a document which creates legal right. Section 471 of the Indian Penal Code prescribes Punishment For Forging Valuable Security to receive or deliver any money.

37. In this case, Ex.P.67 is a document executed by PW-23

impersonating himself as N.R.Tulasiraman. This document is executed to create mortgage of title deed thereby, the UCO Bank had been induced to advance cash credit loan to a tune of Rs.4 crores and LC of Rs.1 crore. Thus, the prosecution has proved that Ex.P.67 is a document forged for the purpose of committing fraud. Admittedly, A3 and A4 had affixed their signature in Ex.P.67 as witnesses knowing fully well that one of the executant to Ex.P.67 is an impersonator. The documents (Ex.P.13) upon which the mortgage created is proved to be a forged document. Since Ex.P.67 has been executed to create a legal right in favour of UCO bank, it is a valuable security as defined under Section 30 of the Indian Penal Code and by signing the said document as witnesses and using it to avail loan. Pursuance to the conspiracy hatched along with other accused, these two accused namely A3 and A4 are liable to be held guilty of the offences charged. The Courts below had rightly held them guilty along with A1.

38. The legal position based upon which the above said conclusion is well fortified by the Hon'ble Supreme Court judgment of Sheilla Sebastian Vs. R.Jawaharaj & Anr. Etc. reported in [2018 SCC online SC 522] .

> "19. A close scrutiny of the aforesaid provisions makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463, IPC. Therefore, we can safely deduce that Section 464 defines one of the ingredients of forgery i.e., making of a false document. Further, Section 465 provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and untill ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete.
>
> 22. In Md. Ibrahim v. State of Bihar (2009) 8 SCC 751, this Court had the occasion to examine forgery of a document purporting to be a valuable security (Section 467, IPC)

and using of forged document as genuine (Section 471, IPC). While considering the basic ingredients of both the offences,this Court observed that to attract the offence of forgery as defined under Section 463, IPC depends upon creation of a document as defined under Section 464, IPC. It is further observed that mere execution of a sale deed by claiming that property being sold was executant's property, did not amount to commission of offences punishable under Sections 467 and 471, IPC even if title of property did not vest in the executant.

23. The Court in Md. Ibrahim (supra) observed that: There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of `false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor

Section 471 of the Code are attracted."

24. In Mir Nagvi Askari vs. Central Bureau of Investigation, (2009) 15 SCC 643, this Court, after analysing the facts of that case, came to observe as follows:

A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else."

The second criteria of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore, in our opinion the second criteria of the said section is also not applicable to the present case.

The third and final condition of Section 464 deals with a document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e. because of intoxication or unsoundness of mind, etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document.

25. Keeping in view the strict interpretation of penal statute i.e., referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further

clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery."

39. The facts unfold through the prosecution witness in nutshell is that Thiru.K.R.Thulasiraman(PW-5), the original owner of the property bearing No.161 Thambu Chetty Street, Chennai when tried to sell his property through brokers, he had given a copy of the Title Deed to them. The brokers, who have received the title deed, had given the document to Anandan(A3), who had arranged PW-23 [Rajaram] to impersonate as Thulasiraman and created documents such as partnership deed showing A1 and PW-23 as Partners of M/s Universal Trading Company, forged water tax receipts, voter ID card in the name of Thulasiraman, Pan Card in the name of Thulasiraman, family card in the name of Thulasiraman and registered documents of deposit of title deed (Ex.P67) in respect of this property in favour of UCO bank. The persons, who had executed the Deed of Deposit of Title deed were A1 and PW-23. A3 and A4 had signed as witnesses to the document identifying the executants A1 and PW-23 though knowing fully well that PW.23 is not Tulasiraman by Rajaram. PW-30 [Thiru.M.Sundaram] former MLA had introduced A5 Dr.D.Vivakar to the officials of the UCO bank to process the loan application. The loan amount sanctioned to M/s Universal Trading Company had been siphoned through the company run by Dr.D.Vivakar and others. The money received by Dr.D.Vivakar has been utilised to clear the loan of M/s Sakthi Timber, a Partnership Firm in which Dr.D.Vivakar was one of the partners.

40. It is well settled principle of law that any statement given by the witness during the investigation to a Judicial Magistrate is not a substantial piece of evidence. It can be used only for corroboration or contradiction. The prior statement by itself not being a substantial piece of evidence, it cannot as such be taken for appreciation, unless the said witness is examined by Court on oath during trial. [Death, non availability, incapacity to appear before the Court may be few examples: See Sections 32 and 33 of the Indian Evidence Act, 1872]

41. In this context, paragraphs 26 and 28 of the judgmet of the Hon'ble Supreme Court R.Shaji vs State of Kerala reported in (2013) 14 SCC 266, are relevant and extracted below:

"26. Evidence given in a court under oath has great sanctity, which is why the same is called substantive evidence.

> Statements under Section 161 Cr.P.C. can be used only for the purpose of contradiction and statements under Section 164 Cr.P.C. can be used for both corroboration and contradiction. In a case where the magistrate has to perform the duty of recording a statement under Section 164 Cr.P.C., he is under an obligation to elicit all information which the witness wishes to disclose, as a witness who may be an illiterate, rustic villager may not be aware of the purpose for which he has been brought, and what he must disclose in his statements under Section 164 Cr.P.C. Hence, the magistrate should ask the witness explanatory questions and obtain all possible information in relation to the said case.
>
> "28. Section 157 of the Evidence Act makes it clear that a statement recorded under Section 164 Cr.P.C., can be relied upon for the purpose of corroborating statements made by witnesses in the Committal Court or even to contradict the same. As the defence had no opportunity to cross-examine the witnesses whose statements are recorded under Section 164 Cr.P.C., such statements cannot be treated as substantive evidence."

42. As far as this case is concerned, the previous statement of PW.23 recorded by the Magistrate under Section 164 Cr.P.C has not been considered as a substantive piece of evidence by the Courts below but taken it for appreciation of the evidence for corroboration and contradiction purpose alone. The failure to mention in verbatim the format given under Section 164 (4) Cr.P.C will no way render the previous statement otiose. More particular, when the Magistrate who has recorded the statement had come before this Court and deposed about the voluntariness and acceptance of correctness by the maker of the statement.

43. As far as A1, A3 and A4 are concerned, it is not the evidence of PW.23 and PW.41 alone had made the Courts below to find these petitioners guilty. It is the overwhelming evidence against them for forging the title deed documents [Ex.P13], making sale deed in respect of property bearing No.161, Thambu Chetty Street, Chennai, deposit of the said fake deed for creation of mortgage, creation of partnership in the name of A1 and N.R.Thulasiraman by impersonating PW.23 [Rajaram] as N.R.Thulasiraman, the payment of Rs.50,000/- twice to PW.23

[approver] for signing the documents marked as Ex.P94 to Ex.P99 by A3 [Anandhan], recovery of incriminating materials Ex.P53 to Ex.P55 from the premises of A4 in the presence of A4's son, fake water receipt, voter ID, legal heir certificate all put together had proved beyond doubt, the case of the prosecution against A1, A3 and A4 regarding conspiracy, forgery, cheating, using the forged documents for cheating. The grounds raised by the appellants A1, A3 and A4 does not carry any merits and liable to be rejected.

44. As far as A5 [Dr.D.Vivakar] is concerned, the material against him is the evidence of PW-30 and PW-36. The Courts below have considered that the deposition of these two witnesses goes to show that loan was advanced by UCO bank to M/s Universal Trading Company on the recommendation made by PW.30[N.Sundaram] through this witness and this accused[A5] had requested PW.36 [K.S.Omar Shareef] to show the property at No.161, Thambu Chetty Street, Chennai to the surveyor for measurement. Apart from these witnesses, yet another witness namely PW-2 [J.Senthil Kumar] Manager (Legal), M/s Dhanalakshmi Bank had also mentioned about this accused. His evidence discloses that he came to know about this accused (A5) Partner of M/s Sakthi Timbers, Trichy. They have stood guarantee for the loan availed by M/s Universal Oil in which (1) Madhiarasan, (2)Muthusamy, (3)Duraivishwapai were partners. PW.2 had identified Ex.P-7 as loan document in respect of M/s Universal Oil in which A5 has signed as guarantor. PW.2 had spoken about certain misdeeds of A-5 in respect of the above loan wherein after mortgaging his property as collateral security for loan of M/s Universal Oil, this accused has created deed of cancellation of mortgage. It is now subject matter of investigation by Central Bureau of Investigation.

45. The evidence of prosecution as against this accused Dr.D.Vivakar as deposed by PW.2, PW.30 and PW.36, even if it is to be taken has proved, it does not indicate anything about conspiracy between A5 and other accused in availing loan under name of M/s Universal Trading Company. PW.30 has spoken only about the recommendation to the UCO bank to extent loan for A5. The subject matter of this revision in respect of loan extended to M/s Universal Trading Company and not to Dr.D.Vivakar or M/s Universal Oil. Further, though there may be material to suspect this accused should have played some role in availing loan showing the property situated at No.161, Thambu Chetty Street, Chennai as collateral security, the evidence placed by the prosecution before the Court as such does not go further to incriminate A5 for the charge of conspiracy or other charges framed against him. The trial Court has relied upon the previous statement of PW.41 made before the Magistrate, which is marked as Ex.P126. Those portion of previous statement recorded by the Magistrate and relied by the Courts below was not found in the deposition recorded in the course of trial. The previous

statement of the witness which is not a substantive piece of evidence, cannot be relied upon for holding the guilty of the accused (A-5), to that extend the judgment of the Courts below is erroneous.

In the result,

(1) Crl.R.C.No.527 of 2018 R.Muthusamy/A1 is dismissed and the judgment of conviction passed by the learned VI Additional District and Sessions, Chennai made in Crl.A.No.147 of 2016 is hereby confirmed.

(2)Crl.R.C.No.732 of 2018 K.P.Anandan/A3 is dismissed and the judgment of conviction passed by the learned VI Additional District and Sessions, Chennai made in Crl.A.No.165 of 2016 is hereby confirmed.

(3)Crl.R.C.No.528 of 2018 A.Alagirisamy/A4 is dismissed and the judgment of conviction passed by the learned VI Additional District and Sessions, Chennai made in Crl.A.No.150 of 2016 is hereby confirmed.

The trial Court is directed to secure R.Muthusamy(A1), K.P.Anandan(A3) and A.Alagirisamy(A4), if they are not so far secured and remand them into the prison to serve the remaining period of sentence.

(4)Crl.R.C.No.595 of 2018 Dr.V.Vivakar/A5 is allowed for want of material evidence co-related the accused(A5) to that of the crime proved by the prosecution and the judgment of conviction passed by the learned VI Additional District and Sessions, Chennai made in Crl.A.No.159 of 2016 is hereby set aside. Fine amount if any paid by the revision petitioner/A5 shall be refunded to him. Bail bond if any executed by him shall be cancelled. Consequently miscellaneous petitions filed are closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

ari
To:
1.The VI Additional District and Sessions Court at Chennai.

2.The Additional Chief Metropolitan Magistrate, Egmore, Chennai now at Allikulam, Chennai

3. The Deputy Superintendent of Police, CBI/EOW/Chennai

4. The Superintendent of Police, CBI:EOW:Chennai.

5.The Special Public Prosecutor, High Court, Madras.

+1 CC to Mr.T.R. Sivaram, Advocate sr 45225.
+1 CC to Mr.X. Selvam Sounder, Advocate sr 45201.
+1 CC to Mr.K. Srinivasan, Advocate sr 45454.
+1 CC to Mr.V. Krishnamoorthy, Advocate sr 45820.
+2 CCS to Mr. Vijayaraghavan, Advocate sr 46098.

Crl.R.C.Nos.527,528,
595 and 732 of 2018

SP(24/07/2018)