BAIL SLIP

The Appellants/Accused Namely

1.RATHNAVEL A4 AGED ABOUT 48 YEARS S/O. ARIYAPPA REDDY
2.V.PALANIVEL A2 AGED ABOUT - - S/O. VAITHILINGAM
3.D.GUNASEKARAN A3 AGED ABOUT - - S/O. P.DURAISAMY,
4.N.BALASUNDARAM A6 AGED ABOUT - - S/O. --
5.J.S.PRABHU A1 AGED ABOUT 54 YEARS S/O. JOHN SAMVEL

be and hereby are directed to be released on bail as per order of this court dated 27.05.2009made in Crl Mp Nos.1 & 1 of 2009 in Crl A. No.259/09, Crl A No.26/09 and Crl MP. Nos. 1 & 1/09 in Crl A. Nos.282 & 288/09, dated 10.06.2009, and Crl MP. No.1/09 in Crl A. No.303/09 dated 11.06.2009, on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 20.12.2017	Date of Pronouncing Judgment 23.01.2018

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.259, 264, 282, 288, 303 of 2009

Rathnavel ...Appellant in Crl.A.259 of 2009/A4

V.Palanivel ...Appellant in Crl.A.264 of 2009/A2

D.Gunasekaran ...Appellant in Crl.A.282 of 2009/A3

N.Balasundaram ...Appellant in Crl.A.288 of 2009/A6

J.S.Prabhu ...Appellant in Crl.A.303 of 2009/A1

versus

State by
Inspector of Police,
SPE, CBI, ACB, Chennai. ...Respondent in Crl.A.259, 264, 282, 288 of 2009/Complainant

State represented by
The Inspector of Police,
Special Police Establishment
Central Bureau of Investigation
Anti-Corruption Branch
3rd Floor, Shastri Bhavan

Haddows Road, Nungambakkam,
Chennai - 600 006.
R.C.No.30(A)/2002. ...Respondent in Crl.A.303 of 2009/ Complainant

PRAYER in Crl.A.No.259 of 2009: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code to set aside the order of conviction and sentence passed by the XI Additional Judge for CBI Cases, Chennai -1. in C.C.No.62 of 2004 dated 19.05.2009 under Section 120-B r/w 420, 467, 467 r/w 471, 419 IPC and u/s 13(2) r/w 13(1)(d) of PC Act 1988 and to acquit the accused.

PRAYER in Crl.A.No.264 of 2009: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code to set aside the conviction and sentence passed against the appellant/A2 in and by judgment dated 19.05.2009 in C.C.No.62 of 2004 on the file of the learned XI Additional Judge for CBI Cases, Chennai and acquit the appellant/2nd accused of all the offences alleged against him.

PRAYER in Crl.A.No.282 of 2009: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code praying to call for the records in C.C.No.62 of 2004 before the XI Additional Judge for CBI Cases, Chennai-1 and to set aside the judgment dated 19.05.2009 as against the appellant and acquit and discharge the appellant in the above case.

PRAYER in Crl.A.No.288 of 2009: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 praying to call for the records in C.C.No.62 of 2004 before the XI Additional Judge for CBI Cases, Chennai-1 and to set aside the judgment dated 19.05.2009 as against the appellant and acquit and discharge the appellant in the above case.

PRAYER in Crl.A.No.303 of 2009: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 and under Section 27 of the Prevention of Corruption Act, 1988 praying to call for the records from the Trial Court in C.C.No.62 of 2004 on the file of the XI Additional Special Judge for CBI Case, Chennai-1, hear the counsel for the appellant, set aside the order of conviction and setnece passed against the appellant/accused No.1, in C.C.No.62 of 2004, dated 19.05.2009 by the XI Additional Special Judge for CBI Cases, Chennai-1

For Appellant : Mr.V.Ramana Reddy
in Crl.A.Nos.259, 264 of 2009

Mr.N.R.Anantha Ramakrishnan
in Crl.A.Nos.282, 288 of 2009

Mr.A.V.Somasundaram
for M/s.Lakshmi Priya Associates
in Crl.A.303 of 2009

For Respondent : in all appeals — Mr.K.Srinivasan, Special Public Prosecutor for CBI Cases

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COMMON JUDGMENT

These appeals are arising out of the conviction against the appellants passed by the learned XI Additional Judge for CBI Cases, Chennai dated 19.05.2009 in C.C.No.62 of 2004.

2. Gist of the prosecution case:-

Mr.J.S.Prabhu (A1) while working as Branch Manager in-charge of Tambaram Sanatorium Branch of Corporation Bank, he conspired with Palanivel (A2), Gunasekaran (A3), Rathnavel (A4), V.Thangaraj (deceased) (A5) and N. Balasundaram (A6) and pursuant to the conspiracy to cheat, sanctioned loan under Corp. Home Loan Scheme to Rathnavel (A4) a sum of Rs.3,00,000/- for construction of house at Plot No.8, First Street, Ambal Nagar, Chitlapakkam Village, Kancheepuram District by falsely representing that Rathnavel(A4) is the owner of the above said plot and furtherance of the said conspiracy, V.Thangaraj(A5) forged and fabricated the receipt of Chitlapakkam Panchayat for Rs.2,700/- for the building and labour welfare fund, which has been enclosed along with the loan application made in the name of Rathnavel (A4). The signature of the Executive Officer, Chitlapakkam Panchayat has been forged by Thangaraj (A5). The encumbrance Certificate for 15 years for the land in S.No.268/1 is fabricated as if it has been issued by the Sub-Registrar of Tambaram. The plan permit dated 05.11.1999 and the planning permission dated 05.11.1999 of Chitlapakkam Panchayat Officer has been forged with the help of Gunaseakaran (A3) and N.Balasundaram (A6), and produced by Rathnavel (A4) to J.S.Prabhu (A1) along with the loan application. Knowing fully well that these documents are forged and fabricated, J.S.Prabhu (A1) sanctioned the loan and deposited the amount into the account opened in the name of Rathnavel (A4). Rathnavel (A4) in his loan application originally mentioned his father name as Arumugam and later, submitted a letter to J.S.Prabhu(A1) changing his father's name as Surya Reddy. The account-holder A.Rathnavel(A4) was introduced by C.Ethirajan at the request of A2 [Palanivel]. Thereafter, A2 [Palanivel] fraudulently and dishonestly impersonated M.Sivaguru, S/o Munusamy a non-existing person and signed as M.Sivaguru/guarantor in the loan document of the Rathnavel (A4) and used the same as genuine. The receipt in the name of Chitlapakkam panchayat for a sum of Rs.2,700/- for the building and labour welfare fund is a fabricated document and the signature found in it was made by A2 [Palanivel].

3. After the loan amount being credited into the account of Rathnavel(A4) bearing SB A/c No.6532, A2 [Palanivel] took the signature of Rathnavel[A4] in the blank cheque leaves and withdrew a sum of Rs.2,90,000/- through four cheque leaves drawn in favour of P.Rajagopal, Kanniappan, S.Ramasamy and Rammoorthy. Thus, A1 [J.S.Prabhu] being the Branch Manager of the Bank sanctioned the loan to A4[Rathnavel] based on forged documents arranged by A2[Palanivel] through A3[Gunasekaran], A5[Thangaraj] and A6[Balasundaram].

4. Pursuant to the complaint dated 19.07.2002 given by Shri.Sudhakar N.Bhat, Assistant General Manager, Corporation Bank, Zonal Office, Chennai, a case has been registered by CBI, investigated and found that the housing loan in the name of A4 [Rathnavel] was sanctioned for constructing the house in a land which does not belong to Rathnavel [A4] and the tax receipts, plan permit, planning permission and encumbrance certificate all are fabricated and forged documents. The guarantor's name has been impersonated by A2 [Palanivel]. The loan amount of Rs.3,00,000/-, after being deposited in the account of A4 [Rathnavel], has been withdrawn by A2[Palanivel]. But, the money was not used for any construction purpose. The trial Court had framed 10 charges and found the accused guilty, after examining and appreciating 26 witnesses for the prosecution, 3 witness for the defence and 47 exhibits on the side of the prosecution.

5. A1 [J.S.Prabhu], who was found guilty for offence under Sections 120-B r/w 420, 467, 467 r/w 471, 419, 467, 467 r/w 471, 467 IPC and under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and sentenced to undergo RI for 2 years and to pay a fine of Rs.5,000/- in default to undergo 6 months RI for the offence under Sections 120-B r/w 420, 467, 467 r/w 471, 419, 467, 467 r/w 471, 467 IPC and to undergo RI for 2 years and to pay a fine of Rs.5,000/- i/d to undergo RI for 6 months for the offence under Section13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, has preferred the appeal Crl.A.No.303 of 2009 on the ground that the sanction order to prosecute the appellant is invalid. Hence, the trial is ab inito void. PW1[Mr.B.R.Bhat] is not the competent authority to remove him. Hence, sanction to prosecute is non-est in the eye of law. Though it was brought to notice of the trial Court, it failed to appreciate the said point. The sanction for prosecution [Ex.P1] was accorded without perusing the opinion given by the hand writing expert. The sanction order Ex.P1 does not contain the names of the witnesses and their statements examined. The loan has been sanctioned based on the legal

opinion offered by the panel lawyer and report [Ex.P19] of the approved valuer. The amount had been credited into the account of Rathnavel [A4] and no pecuniary advantage obtained by the appellant. While so, the trial Court, instead of acquitting the appellant, had erroneously convicted him. While the appellant has sanctioned the loan based on the legal opinion and valuer's report, the trial Court has erroneously held that the loan has been sanctioned pursuant to the conspiracy between the borrower and the Branch Manager. The trial Court has failed to see that the borrower and the guarantor had mis-led him by producing fabricated and fake documents for availing loan and there is no conspiracy or meeting of mind between him and the borrower to commit any crime.

6. The admission of PW-22[Mr.E.A.Venkateswar Pai] that the appellant has not obtained any pecuniary advantage in the said transaction, has not been given due weightage by the trial Court. While the appellant has conducted both pre-sanction and post-sanction inspection, the trial Court has held that he has not conducted any inspection, which is contrary to the evidence available on record. The documents submitted by the borrower had passed through the legal scrutiny of legal brain and after obtaining the opinion of the Advocate, the loan has been sanctioned. Therefore, the appellant cannot be held responsible for any error of judgment. He had no dishonest intention and the borrowers have settled the due to the bank subsequently and the same has been spoken to DW3 [Mr.Davis Jose Koola]. This evidence has not been given due consideration by the trial Court. The prosecution has failed to place vital documents such as equitable mortgage register and Security register before the trial Court. Apart from the appellant, the loan documents were scrutinized by Anna Nagar Branch Manager for creating equitable mortgage. While so, the trial Court could not have given the conclusion that A1[J.S.Prabhu] conspired with other accused in the matter of sanctioning the loan to R4 [Rathnavel].

7. A2[Palanivel], who found guilty and convicted for the offence under under Sections 120-B r/w 420, 467, 467 r/w 471, 419, 467, 467 r/w 471, 467 IPC and under Section 13(2) r/w 13(1)(d) of PC Act, 1988; under Section 419 IPC; and under Section 467 IPC, 467 r/w 471 IPC and sentenced to undergo RI for 2 years and to pay a fine of Rs.5,000/- in default to undergo 6 months RI under Sections 120-B r/w 420, 467, 467 r/w 471, 419, 467, 467 r/w 471, 467 IPC and under Section 13(2) r/w 13(1)(d) of PC Act, 1988; to undergo RI for 3 years and to pay a fine of Rs.5,000/- in default to undergo RI for 6 months for the offence under Section 419 IPC; and to undergo RI for 4 years and to pay a fine of Rs.5,000/- in default to undergo RI for 6 months for the offence under Section 467 IPC, 467 r/w 471 IPC each, has

preferred appeal Crl.A.No.264 of 2009 on the ground that the trial Court has failed to consider that A2 [Palanivel] did not stand to gain anything out of the loan transaction applied by A4 [Rathnavel] and sanctioned by A1[J.S.Prabhu]. While the loan amount disbursed had been utilized properly by the loanee, there is no illegality or irregularity in the manner and scope of the loan applied.

8. Further it is contended by the appellant that there is no evidence to implicate him in the alleged crime. There is no evidence to prove that he impersonated as Sivaguru and stood as guarantor for the said loan transaction. While the entire loan amount has been discharged, the credit worthiness or genuineness of the guarantor pale to insignificance. Under this circumstance, when no pecuniary loss incurred to the bank and when there is no pecuniary gain to the appellant in the alleged transaction, the trial Court ought to have been acquitted the appellant, but contrarily has held them guilty. When there is no evidence to attribute knowledge to A2[Palanivel] about forgery and fabricated documents alleged to have been produced by A4 [Rathnavel] to avail the loan, the trial Court ought not to have held him guilty. Based on weak and uncorroborated evidence of the prosecution, the trial Court has held the appellant guilty on surmises and conjectures. Hence, the trial Court judgment is liable to be set aside.

9. A3[Gunasekaran], who found guilty of the offence under Sections under Sections 120-B r/w 420, 467, 467 r/w 471, 419, 467, 467 r/w 471, 467 IPC and under Section 13(2) r/w 13(1)(d) of PC Act, 1988 and sentenced to undergo RI for 2 years and to pay a fine of Rs.5,000/- in default to undergo 6 months RI, has preferred Crl.A.No.282 of 2009 on the ground that he is no way connected with the alleged offence and he has been falsely implicated. On erroneous and improper appreciation of facts the trial Court has held him guilty. The trial Court has held that the appellant was privy of criminal conspiracy and he has forged the plan permit and planning permission, which has no basis or proof. The opinion of GEQD official has been unduly relied on by the trial Court, despite the fact that his opinion is not a conclusive proof and the opinion carries glaring contradictions with that of the occular evidence given by the expert. The evidence of PW-19[Mr.G.Panchacharam] is totally unreliable and there is no link between the appellant and PW-19 [Mr.G.Panchacharam] except his self incriminating oral evidence, the rubber stamps alleged to have been made by PW-9 [Mr.G.Panchacharam] at the instance of the appellant was never recovered. Merely on the oral evidence of a rubber stamp maker, this appellant could not be held responsible for the grave offence of forgery and fabricated of documents. PW-19 [Mr.G.Panchacharam] is the planted witness by the prosecution to

make believe the version of the prosecution that the rubber seal was manufactured through PW-19[Mr.G.Panchacharam], at the instance of the appellant to forge documents. When the entire due to bank had been settled and no due is outstanding, the allegation of cheating, forgery, impersonation does not arise. There is no substantial evidence let in by the prosecution for the charges against the appellant and therefore, the trial Court judgment is liable to be set aside.

10. A4 [Rathnavel], who found guilty of the offence under Sections 120-B r/w 420, 467, 467 r/w 471, 419, 467, 467 r/w 471, 467 IPC and under Section 13(2) r/w 13(1)(d) of PC Act, 1988; 467, 467 r/w 471 IPC and 420 IPC and sentenced to undergo 2 years RI and fine of Rs.5,000/- in default to undergo 6 months RI and for the offence under Section 467, 467 r/w 471 IPC and 420 IPC, sentenced to undergo 4 years RI and fine of Rs.5,000/- and in default to undergo 6 months RI, had preferred the appeal Crl.A.No.259 of 2009 on the ground that he has signed the loan documents furnished with false details and fabricated documents, but neither of which is true. Further more, DW-1 [Mr.S.Jaganathan] in his deposition has admitted that the entire loan amount had been paid and compromise has been entered between the bank and loanees. While so, being a pure commercial transaction and being settled amicably, there is no legal sanctity in sustaining the criminal prosecution. Therefore, the trial Court ought to have given due weightage to the evidence to DW-1[Mr.S.Jaganathan] and DW-3[Mr.Davis Jose Koola] in this regard. Having availed housing loan and being repaid it, the appellant cannot be held responsible for the charge of conspiracy along with the other accused for cheating and mis-appropriation or impersonation.

11. A6[Balasundaram], who found guilty of the offence under Sections 120-B r/w 420, 467, 467 r/w 471, 419, 467, 467 r/w 471, 467 IPC and under Section 13(2) r/w 13(1)(d) of PC Act, 1988 and Section 467 IPC and sentenced to undergo RI for 2 years and to pay a fine of Rs.5,000/- in default to undergo RI for 6 months and to undergo RI for 4 years each and to pay a fine of Rs.5,000/- i/d to undergo RI for 6 months, had preferred the appeal Crl.A.No.288 of 2009 on the ground that he is no way connected with the alleged offence and he has been falsely implicated in this case by the respondent on erroneous and improper appreciation of fact. None of the charge alleged against the appellant has made out and established through the prosecution witnesses. So, the trial Court ought not to have convicted the appellant. In the absence of material evidence to indicate the appellant for criminal conspiracy, forgery and production of forged documents as genuine, the judgment of the trial Court is liable to be set aside. Furthermore, the loan amount has been paid through one time settlement scheme between

the bank and the borrowers and no due pending. This fact being admitted by DW1 and DW3, there is no material to sustain the prosecution and conviction for the alleged cheating by forgery. The opinion of GEQD expert which is not conclusive, ought not to have been relied upon the trial Court for convicting the appellant. More so, when the opinion of the handwriting expert is contradictory, based on the face value and defective evidence produced by the prosecution, the trial Court has rendered the judgment of conviction without any substantial evidence.

12. The learned Special Public Prosecutor for CBI Cases appearing for the respondent submitted that it is a clear case of cheating by impersonation and production of fabricated documents which had been proved by the prosecution through the witnesses and the trial Court has rightly held the appellants guilty of the charges framed against them. As far as A1 [J.S.Prabhu] being Branch Manager is concerned, he ought to have conducted pre-sanction inspection and post-sanction inspection. He in connivance with the other accused without conducting inspection had blindly sanctioned the housing loan to A4 [Rathnavel]. The money sanctioned by him in one lump sum contrary to the banking loan had been withdrawn by A2 [Palanivel]. The fabrication of documents had been spoken through revenue officials and the executive officer of Chitlapakkam panchayat.

13. Just because the loan had been settled subsequently by A2[Palanivel], the crime of impersonation, forgery and abuse of official position cannot be exonerated. Rs.3 lakhs housing loan had been sanctioned by A1[J.S.Prabhu] to A4[Rathnavel] to construct the house at plot No.18, 1st street, Ambal Nagar, Chitlapakkam Village, Kancheepuram District. Whereas it is proved through witness that A4[Rathnavel] is not the owner of the said plot. The documents annexed to the loan application were all forged documents including encumbrance certificate and house tax receipt to show as if the said property stands in the name of Rathnavel and he has paid the tax for the property. Hence, there is no legal or factual error in the finding of the trial Court which requires no interference.

14. Heard the learned counsels appearing for respective appellants and the learned Special Public Prosecutor for CBI Cases and perused the records.

15. Point for consideration:

Whether the trail court judgment is liable to be interfered in view of the grounds raised by the appellants?

16. The first and foremost attack on the trial Court

judgment is in respect of the sanction to prosecute A1 [J.S.Prabhu], who is a Public Servant namely, Branch Manager, Corporation Bank, Sanatorium Branch. Ex.P1 is the order of sanction given by the Deputy General Manager, who is the competent authority to sanction prosecution of A1 [J.S.Prabhu]. Since there is no reference about hand writing expert's opinion in the sanction order, it is contended that the order suffers non-application of mind.

17. Reading through Ex.P1, it is clear that the entire material sufficient to accord sanction has been placed before PW-1[Mr.B.R.Bhat] and he has gone through the material and accorded sanction after applying his mind. In his chief examination, he has also categorically stated that as per Corporation Bank Officer Employees' (Conduct) Regulations, 1982, which is marked as Ex.P47, he is the competent to accord sanction for prosecuting Scale II officer and there is no dispute about the rank of A1 [J.S.Prabhu] falls within the category of Scale II officer. Hence, this ground questioning the validity of sanction order Ex.P1 has no force.

18. The crime has come to light, when PW-2 [Mr.R.Anbalagan] took charge from A1[J.S.Prabhu], Branch Manager of Corporation Bank, Tambaram, Sanatorium Branch, during May 2000. When he found that several irregularities in the loan transaction and the security obtained and equitable mortgage entered were not registered in the equitable mortgage register and memorandum of deposit of title deeds relating to equitable mortgage were found in complete. He has requested A1[J.S.Prabhu] to look into the matter. Thereafter, A1[J.S.Prabhu] has gone to Anna Nagar Branch for completing the formality of creating equitable mortgage, since Anna Nagar Branch was the authorised branch to create equitable mortgage for the loan sanction and not the Tambaram Sanatorium Branch. The inspection personnel of the bank had informed him that A1[J.S.Prabhu] has not conducted pre-sanction or post-sanction inspection, while sanctioning the loan. Ex.P9 is the housing loan application submitted by Rathnavel [A4] seeking loan of Rs.3,00,000/-. He has mentioned M.Sivaguru, S/o Munusamy as his guarantor. It is proved through witnesses and documents that A4 is not the owner of the property and Sivaguru is a fictitious person. A2 has impersonated as Sivaguru.

19. PW-22[Mr.E.A.Venkateswar Pai], Manager Viligance Cell, Corporation Bank, had conducted internal investigation and had filed a detailed report, which is marked as Ex.P32 in the case under the appeals. He has pointed out the modus operandi of the appellants in raising loan based on fake documents. In this case, Rathnavel[A4], who is an employee under A2 Palanivel had claimed himself as self-employed and submitted the loan application marked as Ex.P9, in which he sought for loan of Rs.3

lakhs for constructing the house at Plot No.18, 1st Street, Ambal Nagar, Chitlapakkam Village, Kancheepuram District. Whereas he is not the owner of the said property and a letter sent to the said address has been returned with endorsement "no such person". This fact is spoken through PW-6[Mr. P.S.Viswanathan], who is the postman of the said area. The other documents accompanied with the loan application are the approved plan, plan permit bearing No.398 of 1999-2000, dated 05.11.1999, plan permission No.169/1999-2000 dated 05.11.1999, enjoyment certificate No.6381/1999, dated 01.08.1999, encumbrance certificate No.10982/1999 in respect of S.No.268/1 Chitlapakkam Village and hosue tax receipt bearing No.15270 in the name of Rathnavel[A4] for Rs.63/-, Income Tax Return, Valuation certificate and legal opinion. Except the Income Tax Return and legal opinion, the other documents are proved to be fabricated documents. The approved plan Ex.P4 was not issued by K.Selvam and PW-5[Mr.K.Selvam] has identified Ex.P4 plan and Ex.P5 Estimate were not prepared by him. He has categorically stated that the seal and signature found in Ex.P4 and Ex.P5 are not of his.

20. Regarding the enjoyment certificate marked as Ex.P3, the prosecution has examined Mr.V.Radhakrishnan(PW-4), the Tahsildar, Tambaram Taluk, during the relevant point of time. He in his evidence has deposed that Ex.P3 is not issued by him and he is not the author of the enjoyment certificate furnished by Rathnavel [R4] to the Bank while availing the loan. The said enjoyment certificate is marked as Ex.P17 and the letter of PW-4[Mr.V.Radhakrishnan] informing the Investigating Officer that the enjoyment certificate (Ex.P17) was not issued by his office, is marked as Ex.P3.

21. As far as the planning permission accompanied with the loan application is concerned, Ex.P10(series) office records maintained by Chitlapakkam Panchayat Union has been verified and PW-12[Mr.M.Ganapathy] has deposed that the plan permit marked as Ex.P10 has not been issued by their office. Similarly, PW-13 [Mr.J.Loganathan], Village Administrative Officer of Chitlapakkam during 1998-2000 had verified Ex.P17 enjoyment certificate and had deposed that it was not issued by their office and the signature found is not that of the Revenue Inspector Mr.Jaya Deepan. The rubber stamp found in the certificate is also not the stamp of Chitlapakkam Village Panchayat Union. In respect of enjoyment certificate No.6381 of 1999 issued in the name of Rathnavel[A4], No.18, 1st Street, Ambal Nagar, Chennai-47. PW-14[Mr.M.Durai] has deposed that the encumbrance certificate marked as Ex.P18 was not issued by Sub Register Office at Tambaram as the document indicates. The signature found in the said document is not his signature. The document Ex.P18 is the fabricated document and the signature

found in those documents are all forged. PW-19 [Mr.G.Panchacharam], Rubber Stamp Maker has deposed that Gunasekaran[A3] ordered to prepare Tahsildar, Revenue Inspector Seals and showed his ID card and model for preparing the rubber stamp seals. Based on his request, he manufactured four seals and collected cost for it. In his cross examination, he denied the suggestion put by the defence that Gunasekaran[A3] never placed any intend for manufacturing the disputed seals.

22. The hand writing opinion of the experts are marked as Exs.P34,36 and 42. The signatures of Executive Officer, Chitlapakkam and Member Secretary of CMDA found in the approved plan above the seals are that of Balasundaram[A6]. The planning permission, plan permit are all fabricated as if it has been issued by the Authorties of Chitlapakkam Panchayat Union. Whereas the person concerned through their evidence has positively deposed that it is not their signatures or any of the officer attached to their office. The prosecution have positively established through the opinion of the handwriting expert that the signatures are that of Balasundaram[A6], who has affixed his signature in the rubber stamp seal procured by Gunasekaran[A3]. The rubber stamp maker [Mr.G.Panchacharam] examined as PW-19 had spoken the involvement of Gunasekaran[A3] in procuring the rubber stamp seal.

23. Insofar as the guarantor Mr.Sivaguru is concerned, he is a fictitious person, the signatures in Ex.P9 and ExP14 are proved to be forged by A2[Palanivel]. The prosecution has also proved through witness that the guarantor Mr.Sivaguru, S/o Munusamy, 4th Street, Ranganathapuram, Tambaram is a fictitious person. The house tax receipt bearing No. 15279 is duplicated and used for several loans by A2[Palanivel]. The land document given to create equitable mortgage is not that of A4 [Ranthnavel]. The hand writing expert Pw-24 in his opinion marked as Ex.P34 has opined that A2 has signed in Ex.P9 and Ex.P14 as Sivaguru.

24. Thus, the prosecution has established that housing loan in the name of Rathnavel[A4] has been sanctioned by A1[Prabhu] based on forged documents. A1[J.S.Prabhu]before advancing the loan has not made pre-sanction inspection. A2[Palanivel] had set up A4[Rathnavel] to avail the loan of Rs.3 lakhs in connivance with A1[J.S.Prabhu]. The accompanying documents presented by A4 [Rathnavel] are proved to be forged and they have been procured by A2[Palanivel] with help of A3[Gunasekaran] and A6 [N.Balasundaram].

25. It is canvassed by the Counsel representing A3 [Gunasekaran] that the sole evidence of PW-19 [Mr.G.Panchacharam], Rubber Stamp Maker, who has spoken about A3

[Gunasekaran] is not a reliable witness and he had not been prosecuted for manufacturing fake seals and rubber stamps. Except the evidence of PW-19[Mr.G.Panchacharam], there is no evidence against A3[Gunasekaran]. Therefore, A3 must be exonerated from the criminal liability.

26. The above submission of the learned counsel appearing for A3[Gunasekaran] if is seen in isolation, may appear to be impressive, but cumulative assessment of the facts and evidence let in by the prosecution in this case and other connected case, it will show that A3[Gunasekaran] had been privy to conspiracy in not only procuring seals for fabricating documents to show as if local body has accorded plan permit and sanction after receiving the fee. He has also gone to the extent of getting title deeds of gullible people to make use of it as collateral security to avail loan without their consent and knowledge. Further, while exhibits like planning permit Ex.P10, enjoyment certificate Ex.P17, Encumbrance Certificate Ex.P18 and Property Tax Ex.P20 are all proved to be forged and the rubber seals are fake seals obtained from PW-19[Mr.G.Panchacharam], at the instance of A3[Gunasekaran], the role of A3[Gunasekaran] in the said conspiracy to cheat the bank is very pivotal and he cannot be exonerated from the guilt. The trial Court has rightly concluded against all the accused for the charges framed against them. Therefore, this Court finds no merit in these appeals.

27. However taking note of the fact that the loan amount has been discharged subsequently by A2[Palanivel] under one time settlement, the period of imprisonment is modified as under:

Rank of the accused	Convicted by the trial Court under Section	Sentence imposed by the trial Court	Sentence modified by this Court
A1 to A4 and A6	Under Sections 120-B r/w 420, 467, 467 r/w 471, 419, 467, 467 r/w 471 IPC and 13(2) r/w 13(1)(d) of PC Act, 1988	To undergo RI for 2 years and to pay a fine of Rs.5,000/- i/d to undergo RI for 6 months	Remains unaltered
A4	Under Sections 467 IPC, 467 r/w 471 IPC and 420 IPC each	To undergo 4 years RI and to pay a fine of Rs.5,000/- i/d to undergo 6 months	To undergo RI for 2 years. No change in the fine imposed by the trial Court.

Rank of the accused	Convicted by the trial Court under Section	Sentence imposed by the trial Court	Sentence modified by this Court
A2	Under Sections, 419 IPC and 467 and 467 r/w 471 IPC	To undergo RI for 3 years and to pay a fine of Rs.5,000/- i/d to undergo RI for 6 months; and to undergo RI for 4 years and to pay a fine of Rs.5,000/- i/d to undergo RI for 6 months.	To undergo RI for 2 years. No change in the fine imposed by the trial court, and To undergo RI for 2 years. No change in the fine imposed by the trial Court.
A6	Under Section 467 IPC	To undergo RI for 4 years and to pay a fine of Rs.5,000/- i/d to undergo RI for 6 months.	To undergo RI for 2 years. No change in the fine imposed by the trial Court.
A1	Under Section 13(2) r/w 13(1)(d) of PC Act	To undergo RI for 2 years and to pay a fine of Rs.5,000/- i/d to undergo RI or 6 months	Remains unaltered

The sentence imposed by this Court shall run concurrently. The period of sentence already undergone shall be set off.

28. The trial court, while convicting the appellants herein had held that the period of sentence shall run concurrently along with the sentence imposed in C.C.No.61 of 2004 in which some of the appellants namely, A1[J.S.Prabhu] A2[Palanivel], A3 [Gunasekaran] and A5[N.Balasubdaram] are arrayed as accused. This Court, while disposing the appeals arising out of C.C.No.61 of 2004, has confirmed the judgment of the conviction of the trial Court with the modification. Therefore, the sentence imposed in C.C.No.62 of 2004, which is the subject matter of the above batch of appeals, will be running concurrently along with the sentence imposed in C.C.No.61 of 2004 as confirmed by this Court in respect of A1[J.S.Prabhu], A2[Palanivel], A3 [Gunasekaran]and A5[Balasundaram].

29. In the result, with the above modification, these appeals are disposed of. Consequently, connected Miscellaneous Petition is closed if any.

Sd/-
Assistant Registrar(CS-ix)

//True Copy//

Sub Assistant Registrar

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To
1.The Learned XI Additional Judge for CBI Cases,
Chennai.

2.The Inspector of Police,
SPE, CBI, ACB, Chennai.

3.The Inspector of Police,
Special Police Establishment
Central Bureau of Investigation
Anti-Corruption Branch
3rd Floor, Shastri Bhavan
Haddows Road, Nungambakkam,
Chennai – 600 006.

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

5. The Public Prosecutor, High Court, Madras,

6. The Superintendent, Central Prison, Puzhal, Chennai.

+2cc to Mr.N.R.ANANTHARAMAKRISHNAN,
Advocate, S.R.No.5580 & 5586
+1cc to Mr.LAKSHMIPRIYA ASSO Advocate, S.R.No. 5353
+2cc to Mr.V.RAMANA REDDY, Advocate, S.R.No. 5848 & 5849

Judgment made in
Criminal Appeal Nos.259, 264,
282, 288, 303 of 2009

SAI(CO)
TR(06/02/2018)