Bail Slip

Crl.A. 266/2009:

The Appellant/Accused No.2 viz V. Palanivel, S/o Vaithilingam, was directed to be released on bail as per order of this court dated 27.05.2009 in M.P. No 1/2009 in Crl.A. 266/2009.

Crl.A. No 299/2009:

The Appellant/Accused No 1, Viz J.S. Prabhu, aged about 54 years, S/o John Samuvel, was directed to be released on bail as per order of this court dated 27.05.2009 in M.P. No 1 /2009 in Crl.A. 299/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment	Date of Pronouncing Judgment
20.12.2017	23.01.2018

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.266, 283, 289 & 299 of 2009

V.Palanivel ...Appellant in Crl.A.266 of 2009/2nd Accused

D.Gunasekaran ...Appellant in Crl.A.283 of 2009/3rd Accused

N.Balasundaram ...Appellant in Crl.A.289 of 2009/5th Accused

J.S.Prabhu ...Appellant in Crl.A.299 of 2009/Accused 1

versus

State by Inspector of Police,
SPE, CBI, ACB, Chennai.

...Respondent in Crl.A.266,283, 289 of 2009

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.299 of 2009/Complainant

PRAYER in Crl.A.No.266 of 2009: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code against the Judgment/Conviction and Sentence dated 19.05.2009 made in C.C.No.61 of 2004 passed by Learned XI Additional Judge for CBI Cases, Chennai, in so far as the Appellant/A2 is concerned.

PRAYER in Crl.A.No.283 of 2009: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code against the Judgment dated 19.05.2009 passed in C.C.No.61 of 2004 passed by Learned XI Additional Judge for CBI Cases, Chennai-1.

PRAYER in Crl.A.No.289 of 2009: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code against the Judgment dated 19.05.2009 passed in C.C.No.61 of 2004 passed by Learned XI Additional Judge for CBI Cases, Chennai-1.

PRAYER in Crl.A.No.299 of 2009: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973 and under Section 27 of the Prevention of Corruption Act, 1988, challenging his conviction and sentence passed by the Learned XI Additional Special Judge for CBI Cases, Chennai - 1 dated 19.05.2009 in C.C.No.61 of 2004.

For Appellants : Mr.V.Ramana Reddy
in Crl.A.No.266 of 2009

Mr.N.R.Anantha Ramakrishnan
in Crl.A.Nos.283, 289 of 2009

Mr.A.V.Somasundaram for
M/s.Lakshmi Priya Associates
in Crl.A.299 of 2009

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

COMMON JUDGMENT

These appeals are arising out of the conviction against the appellants passed by the learned XI Additional Judge, CBI Cases, Chennai dated 19.05.2009 in C.C.No.61 of 2004

2. Gist of the prosecution case is as follows:-

One J.S.Prabu, Branch Manager in-charge of Corporation Bank, Sanatorium Branch, Tambaram, during the period from 02.05.1997 to 15.05.2000 conspired with V.Palanivel [A2], D.Gunasekaran [A3], S.Thangaraj [A4](deceased) and N.Balasundaram [A5] and sanctioned loan under the Corporation Home Loan Scheme in the name of Ramalingam on 10.02.2000 based on fabricated records used as genuine, thereby cheated the Corporation Bank. Pursuant to the said conspiracy, Thangaraj [A4] fraudulently impersonated himself as Ramalingam and made a false representation to the bank that he is the owner of Plot No.21, Madhavan Street, Tambaram-Sanatorium, Chitlapakkam Village. Though his father name is not Arumugam but falsely shown his father name as Arumugam in the loan application and as resident of the said address and signed as S.Ramalingam. Later, in the letter to the Branch Manager, Corporation Bank, has described himself as son of late Samiappan and resident at No.27, 4th Street, Ranganathapuram, Cehnnai-45.

3. In order to avail the loan of Rs.3,00,000/- through the other conspirators, Gunasekaran[A3] and N.Balasundaram[A5] V.Thangaraj [A4] had forged and fabricated receipts of Chitlapakkam Panchayat Union for Rs.2,700/-, encumbrance certificate, enjoyment certificate, plan permit and planning permission the signature of the Executive Officer Chitlapakkam Panchayat Union in the receipt, signature of Sub Registrar Tambaram in the encumbrance certificate, plan permit and planning permission dated 05.11.1999 of Chitlapakkam Panchayat office and the same were furnished to the bank as if it is the genuine plan permit and planning permission issued by Chitlapakkam Panchayat Officer. The enjoyment certificate, Building employees welfare fund receipt perpetrated to have been issued by Tahsildar, Tambaram. With all these forged and fabricated documents, the loan application was submitted by [A4] V.Thangaraj in the name of fictitious person S.Ramalingam and loan of Rs.3,00,000/- was sanctioned in that name by A1. The bank account in the name of Ramalingam by impersonation by A4 [Mr.V.Thangaraj] was introduced by one T.V.Kandan at the request of A2 [Mr.V.Palanivel].

4. A2[Mr.V.Palanivel] had fraudulently and dishonestly impersonated himself as M.Sankar, S/o Mari, as if he is residing at No.29, 4th Street, Ranganathapuram, West Tambaram and signed as guarantor to the loan document of Ramalingam and also forged signature of one Selvam, approved Engineer in the abstract and detailed estimate for construction of house, attached to loan application of Ramalingam. After loan of Rs.3,00,000/- sanctioned and remitted in the account of Rathanavel, A2 [V.Palanivel] got the cheques from Thangaraj signed cheques as Ramalingam and withdrew a sum of Rs.2,80,000/- in the names of K.Ramalingam, S.Jayapal, Sivakumar, Sivabalan and Rajkumar.

5. Thus, A1[J.S.Prabhu] Manager of Corporation Bank, Tambaram Sanatorium Branch for sanctioned housing loan to a non-existing person by name Ramalingam to construct house in a land not owned by him, knowing fully well that the loanee is a non-existing person and not residing in the address given. The

person, who stood as loanee and guarantor are impostors and the documents furnished in support of the loan application are fabricated. At the instance of Palanivel, the other accused, A1 [Mr.J.S.Prabhu] had sanctioned the said loan without conducting proper pre-sanction verification and post-sanction verification. Without verifying the genuineness of the documents, the entire loan amount of Rs.3,00,000/- were released in the account of Ramalingam, which was later withdrawn in the name of different persons by Palanivel [A2]. The housing loan was not utilized for any construction of house for which the loan was advanced and in the course of the said criminal act, A2 [Mr.V.Palanivel] had impersonated himself as if Sankar is one of the guarantor.

6. On completion of the investigation done, based on the First Information Report, dated 19.07.2002, final report was filed against these appellants and the trial Court framed 10 charges against the Branch Manager, J.S.Prabhu[A1], V.Palanivel [A2], D.Gunasekaran[A3], V.Thangaraj[A4], N.Balasundaram[A5]. V.Thangaraj[A4] died in the course of trial, hence, charges against him got abated.

7. To prove the charges, the prosecution, examined 31 witnesses and 57 exhibits were marked. To prove their innocence, on the side of the defence, three witnesses were examined. The trial Court, after considering the evidences let in by the prosecution, held the accused persons guilty and sentenced him as follows:-

Rank of the accused	Convicted the accused under Section	Sentence imposed by the trial Court
A1,A2,A3 and A5	Under Section 120-B r/w 420, 419, 468, 468 r/w 471, 467, 467 r/w 471, 419, 467, 467 r/w 471, 467 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
A2	Under Section 419 IPC	To undergo RI for 3 years and to pay a fine of Rs.5,000/- i/d to undergo RI for 6 months
A2	Under Section 467 and 467 r/w 471 IPC	To undergo RI for 4 years and to pay a fine of Rs.5,000/- i/d to undergo RI for 6 months.

Rank of the accused	Convicted the accused under Section	Sentence imposed by the trial Court
A5	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.
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
The sentence imposed on the appellants is ordered to run concurrently.		

Aggrieved by that, the appellants have preferred the following appeals viz., 1.J.S.Prabhu/appellant in Crl.A.No.299 of 2009, (ii)Palanivelu/appellant in Crl.A.No.266 of 2009, (iii) Gunasekaran/appellant in Crl.A.No.283 of 2009, (iv) N.Balasundaram/appellant in Crl.A.No.289 of 2009.

8. The contention of the first accused/appellant in Crl.A.No.299 of 2009 is that the sanction to prosecute the appellant is invalid and therefore, the trial is abinio void. PW-1[Mr.B.R.Bhat], who is not the competent authority to remove the appellant from service, has accorded sanction to prosecute and the said sanction order is invalid in the eye of law. The omission and error found in the sanction order Ex.P1 necessarily lead to inference that PW-1[Mr.B.R.Bhat] has not applied his mind when according the sanction to prosecute the accused. The sanction to prosecute is not based on independent application of mind by PW-1[Mr.B.R.Bhat] but, it is purely based on the legal opinion offered by the Panel Lawyers and the report of the approved valuer. The evidence of the prosecution witness PW-22 [Mr.R.Hemalatha] admitting that the accused (A1) conducted pre-sanction and post-sanction inspection has not been taken note by the trial Court.

9. The trial Court ought not to have drawn adverse inference against the prosecution for non-production of visiting report and the diary maintained by the first accused, which will disclose the fact that he had carried out inspection before sanctioning the loan. Though there is no evidence to link A1 [Mr.J.S.Prabhu] with that of the other accused persons, the prosecution has wrongly webbed the appellant/A1 along with other accused for conspiracy. The evidence of the defence witnesses were not properly appreciated by the trial Court. The evidence of DW-3 [Mr.Davis Jose Koola], who has deposed that the borrowers have entered into the compromise with the bank and they have settled the loan availed by them, clearly proves the

fact that the person, who availed the loan is not a fictitious person and he had not availed loan with any intention of cheating the bank. Therefore, in the absence of evidence to show that the loan was availed fraudulently based on the forged documents to cheat the bank, the trial Court ought to have acquitted the appellant/A1, who was bona fidely discharged his official duty by disbursing the loan under the scheme.

10. The evidence of postal employee can not be of evidentiary value to hold that the loanee is not the resident of the said address and therefore, he must be a fictitious person. When there is no evidence to show that by sanctioning the loan, the manager, who is arrayed as A1, had obtained any illegal gratification and his action of disbursing loan should be taken as official function bona fidely done in the course of his duty. The loan document has been received by Anna Nagar Branch and she has created equitable mortgage for the loan disbursed. Therefore, if at all any forged documents has been produced for registering the equitable mortgage, it is the manager of the Anna Nagar Branch, who has created the equitable mortgage, is not held responsible and not the accused, who is the Manager of Sanatorium branch, Tambaram.

11. The 2nd accused Palanivel, who is the appellant in Crl.A.No.266 of 2009 would submit that the loan applied by A4 for constructing house had been properly utilized and also duly repaid. Therefore, there is no illegality to remit in the manner and scope of loan applied and no illegal gain alleged against the appellant in the said transaction. While so, the trial Court ought not to have convicted the appellant. The person, who was availed loan has appeared in person and later discharged the loan. While so, the allegation of impersonation of any person in the said loan disbursement shows that this appellant had role or benefit out of the alleged crime, the trial Court ought not to have convicted him. When there is no evidence to show that this appellant had any previous knowledge about the documents furnished along with the loan application, he cannot be held liable for forged documents if any produced by the loanee.

12. The appellant D.Gunasekaran(A3) in Crl.A.No.283 of 2009 in his grounds of appeal has contended that he is no way connected with the alleged offence, he had been falsely implicated in this case and due to erroneous and improper appreciation of facts and circumstances of the case, the trial Court has held guilty of criminal conspiracy along with the other accused and sentenced him to undergo 2 years RI and fine. There is no material against him to prosecute under Prevention of Corruption Act, 1988 or any other offence. Without any evidence, the trial Court has concluded that as part of criminal conspiracy, he and others have forged planning permit and

planning permission. Further, the factum that the entire due to the Corporation has been paid by the borrower, has not been taken note by the trial Court. By settling the entire due, the allegation of cheating does not arise. The trial Court should have taken judicial note of this development and ought to have discharged the accused, contrarily, convicted him without any evidence.

13. Relying upon the evidence of PW23[Mr.G.Panchacharam], Rubber Stamp Maker, the trial Court has held that the appellant has fraudulently made seals of local body officials and has fabricated the planning permission and planning permit of Chitlampakkam Panchayat Union. The evidence of PW23 [Mr.G.Panchacharam] is totally unreliable and even if his evidence is taken to be true that the appellant fabricated the Government seal through PW23[Mr.G.Panchacharam], it has no bearing or relevancy, since the alleged fabricated seals were neither recovered from the appellant nor produced before this Court for appreciation. Without link of evidence attributing the seals found in the planning permit and planning permission the signatures were fixed by this appellant and those documents were fabricated by him, is legally not sustainable. The trial Court has also failed to note the fact that the loan transaction relates to the period 1997-2000. Whereas the complaint was lodged only in the year 2002 and pending the trial, the borrower has clearly the loan, when these facts couple with the ignoring fact with the case, the trial Court ought to have acquitted the appellant. More particularly, this appellant, who had no role in the alleged forgery and no evidence against him except PW-23 who is totally unreliable and if his evidence is accepted as true, the prosecution should have arrayed him as one of the accused for aiding to the other accused to fabricate the document and used it as genuine. The prosecution has not collected specimen signature of the appellant for comparing with the alleged forged handwritings. Therefore, opinion given by the handwriting expert has no bearing and not incriminating the appellant.

14. The A5 [Mr.N.Balasundaram], who is the appellant in Crl.A.No.289 of 2009 would contend that none of the offence alleged in the complaint are made out against any of the accused persons. Particularly, the charge of misconduct under Prevention of Corruption Act, 1988. The Special Court should have seen that the case is not sustainable before it and the jurisdictional Sub Court should have taken cognizance. In the absence of material to prove that this appellant used forged the signatures in the relevant documents, the trial Court ought to have acquitted him instead of holding him guilty for the said offence. The trial Court failed to appreciate the fact that during the pendency of the trial, entire due to the corporation bank Tambaram Sanatorium branch under subject loan was repaid, so, the amount for cheating by forgery and impersonation does

not survive. The belated complaint alleging cheating, forgery and impersonation, lack of evidence to prove the alleged forgery and fabrication of the document linking the accused persons, the contradictions found in the hand writing expert opinion regarding forgery put together make the prosecution case highly doubtful. More so, in the light of the fact that loans under Corporation Home Scheme does not require any collateral security and the loan advanced to the 4th accused being fully repaid, nothing survives to prosecute. Despite the fact that the entire loan amount had been paid, the trial court has erroneously found the appellant guilty of cheating forgery and impersonation.

15. Per contra, learned Special Public Prosecutor for CBI Cases contended that A1[J.S.Prabhu] as Manager of Corporation Bank, Tambaram-Sanatorium branch sanctioned housing loan for a sum of Rs.3,00,000/- in the name of Ramalingam to Thangaraj [A4], who had impersonated himself as Ramalingam. Though A4 [Thangaraj] is not the owner of the Plot No.21, Madhavan Street, Tambaram-Sanatorium, Chitlapakkam Village, by impersonating himself as Ramalingam applied for housing loan and the loan application has been received by A1[J.S.Prabhu] given in the name of Ramalingam, S/o Arumugam. Based on the fake receipts fabricated in the name of Chitlapakkam Panchayat Union and other documents such as, encumbrance certificate, enjoyment certificate, plan permit, planning permission as if they were issued by the competent authorities of Chitlapakkam Panchayat Union, A4[Thangaraj] with in connivance of A2[Palanivel], A3 [Gunasekaran] and A5[Balasundaram], cheated the corporation bank to the tune of Rs.3.00 lakhs. The prosecution has proved beyond doubt through the competent witnesses that the loan application and the documents annexed with the loan application contain fabricated information and forged seals and signs of authority and the same has been used to cheat the bank. The land for which the loan was sanctioned actually owned by one T.R.Sankara Rao[PW-26] and the land already have a superstructure over it constructed by T.R.Sankara Rao. Therefore, the documents furnished by A4[Thangaraj] impersonating himself as Ramalingam had been proved through the prosecution witnesses and exhibits. The loan so sanction had been withdrawn by A2[Palanivel] after obtaining blank signature from Thangaraj[A4], who signed in the cheques as Ramalingam. A3[Gunasekaran] and A5[Balasundaram] were party to the conspiracy by assisting the other accused by furnishing to them fabricated documents. Therefore, the trial Court, after proper appreciation of the evidence had held the accused are guilty of charges framed against them and there is no ground to interfere with the finding of the trial Court.

16. The learned counsel for the appellants and the learned Special public Prosecutor for CBI Cases appearing for the respondent heard. Perused the exhibits and the impugned judgment.

17. Point for consideration:

Whether the grounds raised by the appellants sustainable to set aside the judgment of the trial Court?

18. 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.

19. 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, 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.

20. The prosecution through the evidence of PW-2 [Mr.R.Anbalagan], Branch Manager, Corporation Bank, Tambaram Sanatorium Branch, has highlighted that when PW-2 [Mr.R.Anbalagan] took charge of Bank as he is the Manager, he found certain irregularities in the loan transaction and therefore, he enquired about the same. More particularly, the equitable mortgage marked as Ex.P24 alleged to have been executed in the name of S.Ramalingam in favour of Anna Nagar Branch was found not a genuine document. Hence, after internal investigation, the case has been handed over to CBI. PW-3 [Mrs.J.Padma], Village Administrative Officer of Tambaram Taluk, in her evidence, has stated that plot No.21, Survey No.212/3 Mathavan Street, Sundarambal Nagar, Chitalampakkam belongs to one Sankar Rao [PW-26] and not owned by Ramalingam. While so, by furnishing fake documents, such as VAO Certificate for enjoyment, approval plan, planning permit and encumbrance certificate all fabricated and false documents, equitable mortgage had been created in the name of fake person and loan of Rs.3,00,000/- has also been advanced in the name of Ramalingam. One M.Sankar stood as guarantor for the said housing loan. Through evidence, the prosecution has established that the loan application in the name of Ramalingam dated 03.02.2000 for construction of house had been accompanied by

enjoyment certificate Ex.P8 alleged to have been issued by Tahsildar, Tambaram is proved to be fake. Ex.P9 is the letter of the Tahsildar Tambaram in which he has informed the CBI that the enjoyment certificate was not issued by his office. Similarly, the receipts issued in the name of Chitlampakkam Panchayat Union, proceedings of Chitlampakkam Panchayat Union and planning permit issued in the name of Executive Officer, Chitlampakkam marked as Ex.P15 series all are forged. PW-7 [Mr.V.Radhakrishnan] Former Tahsildar of Tambaram, during the year 2002-2003 had deposed about forged enjoyment certificate marked as Ex.P8 and its letter Ex.P9. Regarding the guarantor Mr.Sankar, the prosecution has proved that no one is residing at No.27, 4th Street, Ranganathapuram, Tambaram (west) by name M.Sankar. The Post-man of that area Mr.P.S.Viswanathan examined as PW-8 has spoken about the said fact. PW-9 [Mr.R.Kanniappan], Village Administrative Officer of that area also corroborated about the non-existence of Sankar or Ramalingam or Sivaguru in their respective given address.

21. The entire documents furnished for availing loan in the name S.Ramalingam are proved to be forged document and the prosecution has also proved through witnesses that there was no such person by name S.Ramalingam. The borrower S.Ramalingam who has shown as self-employed business-man selling fruits could not be traced during the investigation. Strangely, the land property shown for constructing the house does not stand in the name of borrower. The actual owner is Mr.Sankar Rao and he had been examined as PW-26, who has deposed that he purchased the vacant site in the year 1972 and put up construction in the year 1973-1974. He has put up ground floor and sofar, he has not obtained any approval from the panchayat for construction of his first floor. He has categorically deposed that there is no person by name Ramalingam known to him and he has not put up any construction in the said building after 1979. The chitta issued in the name of T.R.Sankar Rao for the said property is marked as Ex.P3.

22. Therefore, it is patently proved and established by the prosecution that the documents like enjoyment certificate (Ex.P4), encumbrance Certificate(Ex.P5), which stand in the name of S.Ramalingam, S/o Samiappan in respect of the plot bearing No.21A Madavan Street, Chitalampakkam, do not belong to Ramalingam. The plan approval and plan permit [Ex.P6], receipts [Ex.P26] and connected documents furnished along with the loan application[Ex.P13] in the name of Ramalingam by Thangaraj are forged documents. The forgery and cheating the bank by using the forged document as genuine is handi-work of the accused persons pursuant to the conspiracy. The prosecution has established that A1[Mr.Prabhu] who is the Branch Manager during the relevant point of time had not conducted post-sanction inspection or pre-sanction inspection of the property upon which the proposed

house from the loan sanctioned by the bank is likely to be constructed. The encumbrance certificate furnished for availing the loan which is marked as Ex.P5 is also found to be fake certificate and the said fact has been proved through PW-4 [Mr.P.Muralidharan], Sub Registrar of Tambaram. After availing loan on 28.03.2000, a pro-note for Rs.3,00,000/- has been executed in favour of the Bank by Ramalingam. This pro-note is marked as Ex.P19. The hand writing expert has given opinion that A4[S.Thangaraj] has signed in Ex.P19 as Ramalingam. The statement of assets and liabilities given to the bank by Ramalingam is Ex.P16. The said statement has been checked and signed by A1. The pro-note Ex.P19 has been filled by A1. The letter dated 28.03.2000 alleged to have been given by Ramalingam is also written by A1. Most of the documents pertaining to the sanction of the loan such as guarantee agreement Ex.P22, arbitration agreement Ex.P23, memorandum of deposit of title deeds Ex.P24, all are written by A1. After availing the loan, the money has been credited in the name of Ramalingam bearing A/c No.6538.

23. The manner in which the loan has been sanctioned in the name of Ramalingam without proper verification of the document or pre-sanction inspection clearly shows that A1 as Branch Manager has miserably failed in his duty and conducted himself by abusing his official position to cause pecuniary advantage. After sanction of the loan, the money has been deposited in the account in the name of Ramalingam. Immediately after that, the entire money has been withdrawn by way of cheque issued to the third parties viz., Rs.1,00,000/- in favour of one Sivabalan through cheque marked as Ex.P31, Rs.50,000/- in favour of one M.Rajkumar through cheque marked as Ex.P32, Rs.60,000/- in favour of one R.Jayabal through cheque marked as Ex.P33, Rs.10,000/- Ramalingam self-cheque marked as Ex.P34, Rs.20,000/- in the name of K.Ramachandran by way of cheque marked as Ex.P35 and Rs.50,000/- in favour of S.Sivakumar by way of cheque marked as Ex.P36. Between 31.03.2000 and 06.04.2000 within a period of one week the entire amount of Rs.3,00,000/- has been withdrawn.

24. To complete the chain of conspiracy, the prosecution has examined PW12 [T.V.Kanthan], who has introduced Thangaraj [A4] as Ramalingam to open the account in the Corporation Bank Sanatorium Branch, Tambaram. He had signed in the account opening form as introducer of Ramalingam at the request of A2 [Mr.Palanivel]. The account opening form is marked as Ex.P28. In which Mr.T.V.Kanthan[PW-12] has identified his signature as introducer, he has deposed that while signing the account opening form, A2[Mr.Palanivel] did not bring Ramalingam and there was no photograph in the application form. Ex.P22 is the guarantee agreement executed in the name of T.S.Ramalingam in which M.Sankar is shown as guarantor. PW-29[Mr.A.Balsami],hand writing expert had compared the signatures found in guarantee

agreement, with the specimen signature of A2 [Mr.Palanivel] and the deceased Thangaraj[A4], and had opined that A2 [Mr.Palanivel] has signed as M.Sankaar in Ex.P22 and the deceased accused Thangaraj [A4] has signed as Ramalingam.

25. Thus, it is very clear from the above evidence and the evidence of the Sub Registrar, Tambaram, Tahsildar Tambaram, Village Administrative Officer and PW-6[Mr.K.Selvam] Valuer that the loan application and the accompanying documents like valuation certificate, plan approval, tax receipts and encumbrance certificate are fabricated documents. Rubber stamp found in those documents were manufactured by PW-23 [Mr.G.Panchacharam] at the instance of Gunasekaran[A3] and without exercising due diligence and pre-sanction inspection as well as post- sanction inspection, A1[Mr.J.S.Prabhu] extent loan of Rs.3,00,000/- without proper documents, he had allowed A2 [Mr.Palanivel] to open the bank account in the fictitious name of Ramalingam took the help of T.V.Kandan to open the account. After depositing the loan amount of Rs.3,00,000/- in the said account, the entire money has been withdrawn within a period of one week through cheques in favour of the 3rd parties. PW-29 [Mr.A.Balsamy] hand writing expert has opined that the cheques marked as Ex.P31, 32, 33, 34 and 35 are all that of A2 [Mr.Palanivel]. A5[Mr.N.Balasundaram] and A3[Mr.D.Gunasekaran] had prepared false plan permit and planning permission of Chitlampakkam Panchayat Office as if it has been issued by Chitlampakkam Panchayat. While A5[Mr.N.Balasundaram] has prepared the document, A3[Mr.D.Gunasekaran] has procured rubber stamp of panchayat union and affixed signatures upon the seal as if the same has been issued by the competent authority. Through the evidence of PW-3[Mrs.J.Padma], PW-7[Mr.V.Radhakirshnan] and the handwriting expert PW-29[Mr.A.Balsamy], the initials and signatures found in the forged document such as enjoyment certificate, planning permit and receipts are that of [Mr.N.Balasundaram] for the purpose of showing it as genuine documents, A3[Mr.V.Palanivel] through PW-23[Mr.G.Panchacharam] has prepared rubber stamp and affixed in the said forged documents. These documents had been made by A2 [Mr.Palanivel] for availing loan. A1[Mr.J.S.Prabhu] had conveniently overlooked into all the deficiencies and defects found in these documents which are very apparent on the face of it and little amount of diligence if shown by A1, the defects could have been easily found out and had not taken care to show any diligent but knowingly has connived with A2[Mr.V.Palanivel] for disbursing the housing loan of Rs.3,00,000/- in the name of Ramalingam, fictitious person.

26. It is contended by the learned counsel appearing for the appellants that the loan availed in the name of Ramalingam had been repaid and there is no pecuniary loss to the bank. Therefore, intention of criminal accusation does not survive. In

banking transaction trust is essential and the person entrusted with the responsibility of handling the money with due diligence failed to keep up his responsibility but, disbursed the loan to fictitious person. Knowingly repayment of loan will not take away the criminality. The manner in which the loan has been disbursed is also important besides prompt recovery of the loan. In this case, after initiating the criminal prosecution, the persons involved in disbursement of loan to fictitious person without adequate document had come forward to repay the loan but subsequent conduct of repaying the loan only enhanced the case of the prosecution to prove that A1[Mr.J.S.Prabhu] and A2 [Mr.V.Palanivel] had schemed to mis-use the Government Scheme of extending housing loan and capital to small traders to benefit themselves thereby they have not only defeated the spirit of the scheme but also deprived the benefit of availing the scheme by genuine persons.

27. Therefore, from the appreciation of the evidence and material placed before this Court, it could be seen from the evidences that loan application in the name of Ramalingam has been processed by A1[Mr.J.S.Prabhu], Rs.3,00,000/- has been deposited in one lum sum, without releasing the loan in parts based on the progress in construction of house and allowing to withdraw the entire money within one week, which clearly establishes the criminal intention of A1[Mr.J.S.Prabhu]. The overt-act against A2[Mr.V.Palanivel] is well proved through his act of taking the assistance of his friend T.V.Kandan to open a bank account in the fictitious name of Ramalingam and thereafter, forging the name of Ramalingam in the cheque and withdrawing the money in the name of fictitious persons.

28. As far as the other appellants namely, A3 [Mr.Gunasekaran] and A5[Mr.N.Balasundaram] are concerned, it is through the hand writing expert opinion the documents, which are annexed with the loan application, it is proved to be forged. The forgery and fabrication are the handiwork of the accused persons along with the deceased Thangaraj.

29. It is contended by the learned counsel appearing for the A5[Mr.N.Balasundaram] and A3[Mr.Gunasekaran] that except the evidence of rubber stamp maker examined as PW-23 [Mr.G.Panchacharam], there is no other incriminating evidence against A3 that he procured the seal and affixed it in the document alleged to be forged. In the absence of evidence to co-relate the seal alleged to have been manufactured by PW-23 [Mr.G.Panchacharam] and the seal found in the forged document, A3 cannot be held criminally liable for the alleged evidence.

30. The prosecution through competent witnesses has established that Ex.P5 encumbrance certificate Ex.P6 plan, Ex.P7 estimate, Ex.P8 enjoyment certificate and Ex.P15 plan permit are

all forged documents and the signatures found on these documents are not that of the person, who were holding the office at the relevant point of time. In addition to that, it is also proved through PW-23[Mr.G.Panchacharam] that seals were all prepared by him at the instance of A3 [Mr.D.Gunasekaran].The hand writing expert PW-29[Mr.A.Balsamy] has stated in his evidence that the specimen signature of A5[Mr.N.Balasundaram] tallies with the writings found in the enjoyment certificate-Ex.P4, which was not issued by Tahsildar, Tambaram, as per the letter of Tahsildar Tambaram examined as PW-8 [Mr.P.S.Viswanathan]. The specimen writings of A5 [Mr.N.Balasundaram] is similar with the writings found in the Ex.P6 plan and writings in the enjoyment certificate marked as Ex.P8.

31. Conspiracy is acted in secrecy. Rarely, the prosecution could get direct evidence. Mostly, the circumstantial evidence brings to light the scheme of conspiracy hatched by the accused persons. Further, in conspiracy, one conspirator may not know the other conspirators. Like each spoke link the common hub, and make the wheel complete, each person responsible for completing the conspiracy should be held guilty. In this case, the prosecution could able to prove that the loan has been disbursed to fictitious persons based on forged documents. The forged documents have been prepared by A3 [Mr.D.Gunasekaran] and A5 [Mr.N.Balasundaram]. The occular evidence of the rubber stamp maker and the opinion of the hand writing expert are inspiring and reliable to held them guilty. Only based on the forged documents prepared by A3 and A5, A1 was able to fraudulently sanctioned the loan in the name of fictitious person. The revenue officials examined on behalf of the prosecution has clearly deposed that Ramalingam is not the owner of the property shown as collateral security and the equitable mortgage was not created in the manner known to law. In the absence of the owner and his consent, by impersonating the true owner equitable mortgage has been created. Bank account has been opened at the instance of A2[Mr.V.Palanivel] and the entire loan amount has been deposited in the said account in one lum sum contrary to the banking norms and the amount has also been withdrawn within a week time by A2[Mr.V.Palanivel] forging signature as Ramalingam. Cumulatively, all the above proven facts make all the accused liable for the crime committed. Repayment of loan subsequent to launching of criminal prosecution at the most will mitigate the sentence but, not exonerated them in toto.

32. Therefore, there is no error in the finding of the trial Court holding the accused who are the appellants herein as guilty of offence of conspiracy, cheating, impersonation, forgery by using the forged documents as genuine and A1 [Mr.J.S.Prabhu] being a public servant has knowingly mis-used his power to obtain valuable thing or pecuniary benefit for

himself or others by abusing his official position. Therefore, this Court finds no reason to interfere with the finding of the the trial Court judgment.

33. Therefore, the Judgment of conviction dated 19.05.2009 made in C.C.No.61 of 2004 passed by Learned XI Additional Judge for CBI Cases, Chennai is hereby confirmed.

34. 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,A2,A3 and A5	Under Section 120-B r/w 420, 419, 468, 468 r/w 471, 467, 467 r/w 471, 419, 467, 467 r/w 471, 467 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
A2	Under Section 419 IPC	To undergo RI for 3 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.
A2	Under Section 467 and 467 r/w 471 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.
A5	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.

35. In the result, with the above modification, these Criminal Appeals are disposed of.

s/d-
Assistant Registrar(CS-V)

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.

+2 Ccs to Mr.N.R. Anantha Ramakrishnan, Advocate sr 5581,5587.
+1 CC to M/s. Lakshmipriya Associates, sr 5350.
+1 CC to Mr.V. Ramana Reddy, Advocate sr 5850.
+1 CC to Mr.V. Ramana Reddy, Advocate sr 5850.(31/05/2018)

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