BAIL SLIP

The Appellant /A1 viz, G.Srinivasan, aged 57 years S/o.G.Ganesan, was directed to release on bail as per order of this Court dated 21/03/2007 in M.P.No. 1 of 2007 in Crl.A.No. 275/2007.

The Appellant /A2 viz.S.Sundaravadivelu S/o.K.Shanmugam, was directed to release on bail as per order of this Court dated 05/04/2007 in M.P.No. 1 of 2007 in Crl.A.No. 329/2007.

The Appellant /A4 viz, G.S.N.Iqbal, aged 61 years S/o. S.M.Mohideen, was directed to release on bail as per order of this Court dated 10/04/2007 in M.P.No. 1 of 2007 in Crl.A.No. 339/2007.

The Appellant /A3 viz, R.Jagadeesan aged 44 years S/o. P.Ramamoorty, was directed to release on bail as per order of this Court dated 11/04/2007 in M.P.No. 1 of 2007 in Crl.A.No. 348/2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2018

CORAM

THE HON'BLE MRS.JUSTICE R. HEMALATHA

Criminal Appeals Nos. 275, 329, 339
and 348 of 2007

1. G. Srinivasan .. Appellant/ Accused No.1
(in Crl.A.275/2007)

2. S. Sundaravadivelu .. Appellant/ Accused No.2
(in Crl.A.329/2007)

3. G.S.N. Iqbal .. Appellant/Accused No.4
(in Crl.A.339/2007)

4. R. Jagadeesan .. Appellant/Accused No.3
(in Crl.A.348/2007)

-Vs-

State represented by:
The Inspector of Police,
SPE/CBI/ACB/Chennai,
R.C.No.50(A)/2001,
Chennai. .. Respondent/Complainant
(in all Criminal Appeals)

Prayers in Crl.A.Nos.275, 329, 339 and 348 of 2007:- Criminal Appeals filed under Section 378 of the Code of Criminal Procedure, against the Judgment, dated 15.03.2007 passed by the learned II Additional District Judge/Special Judge for CBI Cases, Coimbatore in C.C.No.8 of 2004.

For Appellants : Mr.S. Suresh (in Crl.A.275 of 2007)
Mr.C.S. Dhanasekaran (in Crl.A.329 of 2007
No Appearance (in Crl.A.348 of 2007)
Mr.K. Subburam (in Crl.A.339 of 2007)

For Respondent : Mr.K. Srinivasan
Special Public Prosecutor for
CBI Cases (in all Criminal Appeals).

C O M M O N J U D G M E N T

Aggrieved against the judgment dated 15.03.2007 passed by the learned II Additional District Judge, Special Court for CBI Cases, Coimbatore in C.C.No.8 of 2004, these appeals have been filed by the accused 1 to 4 who are convicted and sentenced as mentioned below:

Sl. No.	Name of the Accused	Found guilty of the offences	Sentence
1.	G. Srinivasan (A1)	120B r/w 420, 197, 197 r/w 198 and 13 (2) r/w 13(1)(d) of PC Act, 1988.	R.I for a period of three years and fine of Rs.25,000/- and in default to pay the fine amount to undergo R.I. for four months.
		420 IPC	R.I for a period of two years and fine of Rs.10,000/- and in default to pay the fine amount to undergo R.I. for four months.

Sl. No.	Name of the Accused	Found guilty of the offences	Sentence
		13 (2)r/w 13(1)(d) of PC ACt, 1988	R.I for a period of two years and fine of Rs.10,000/- and in default to pay the fine amount to undergo R.I. for four months.
2.	S.Sundaravadivelu (A2)	120B r/w 420, 197, 197 r/w 198 and 13 (2) r/w 13(1)(d) of PC Act, 1988.	R.I for a period of three years and fine of Rs.25,000/- and in default to pay the fine amount to undergo R.I. for four months.
		420 IPC	R.I for a period of two years and fine of Rs.10,000/- and in default to pay the fine amount to undergo R.I. for four months.
		197 IPC	R.I for a period of two years and fine of Rs.10,000/- and in default to pay the fine amount to undergo R.I. for four months.
		197 r/w 198 IPC	R.I for a period of two years and fine of Rs.10,000/- and in default to pay the fine amount to undergo R.I. for four months.
3.	R.Jagadeesan (A3)	120B r/w 420, 197, 197 r/w 198 and 13 (2) r/w 13(1)(d) of PC Act, 1988.	R.I for a period of three years and fine of Rs.25,000/- and in default to pay the fine amount to undergo R.I. for four months.

Sl. No.	Name of the Accused	Found guilty of the offences	Sentence
		420 IPC	R.I for a period of two years and fine of Rs.10,000/- and in default to pay the fine amount to undergo R.I. for four months.

4.	G.S.N.Iqbal (A4)	120B r/w 420, 197, 197 r/w 198 and 13 (2) r/w 13(1)(d) of PC Act, 1988.	R.I for a period of three years and fine of Rs.25,000/- and in default to pay the fine amount to undergo R.I. for four months.
		420 IPC	R.I for a period of two years and fine of Rs.10,000/- and in default to pay the fine amount to undergo R.I. for four months.
		197 IPC	R.I for a period of two years and fine of Rs.10,000/- and in default to pay the fine amount to undergo R.I. for four months.
		197 r/w 198 IPC	R.I for a period of two years and fine of Rs.10,000/- and in default to pay the fine amount to undergo R.I. for four months.

The learned II Additional District Judge/Special Judge for CBI Cases, Coimbatore, also directed that the period of substantive sentences shall run concurrently.

2. Brief facts of the case of the prosecution are as follows:-

Mr.G. Srinivasan (A1) was working as branch manager, Central Bank of India, R.S.Puram Branch from September 2000 to October 2001. He along with one Mr.R. Jagadeesan (A3) proprietor of Coimbatore Electric Appliances, dealer in consumer durables, one Mr.Sundaravadivelu (A2) and another Mr.G.S.N.Iqbal (A4), President and Vice-President of Southern Railways (Open Line) Employees Co-Operative Stores Limited, Pothanur, respectively hatched a criminal conspiracy and cheated the bank to the tune of Rs.20,88,000/- by availing loans for the members of the stores/society. A2 and A4 promised to procure consumer loans to around 72 members of the society and obtained their signatures in unfilled loan application forms and other documents of the bank after obtaining the necessary photographs and know your customer (KYC) documents from the prospective borrowers. The case of the prosecution is that the these loan documents including the application forms were filled by the staff of A3, supplier of the consumer durables. A1, the Branch Manager, disbursed the loans directly to A3 by way of bankers cheques and out of 72 borrowers at least 64 of them were not supplied with the consumer durables though invoices cum delivery notes for all the borrowers duly signed by them were furnished by A3 to A1, the Branch Manager. It was also alleged that A1, the Branch Manager in blatant violation of the guidelines (Ex.P22) laid down by the Head Office of the Central Bank of India did not receive the margin money from the individual borrowers and instead received a sum of Rs.5,91,737/- as margin money from A3, the supplier of the consumer durables. The guidelines of the bank had stipulated that the margin money should be collected from the individual borrowers and credited to their loan accounts. Besides these lapses, A1, as the Branch Manager had accepted Rs.88,840/-, Rs.55,000/- and Rs.2,000/- from A3 as loan installments to the credit of the loans disbursed by A1. There were no further installments on the loan account. The A2 and A4, being the President and Vice President of the said Society/Stores had manipulated a resolution dated 04.12.2000 allegedly passed by the board of directors authorizing the President and Vice President to arrange for the loans for the members and also deduct the monthly installments from their respective salaries. This was to fulfill the Bank's formality.

3. All these loans were reportedly granted under a scheme by name “Cent Buy” of the Central Bank of India. The entire episode unfolded after a complaint was made to the Regional Manager (PW1) of the Central Bank of India by the new office bearer of the said society regarding the non-supply of the consumer durables to many borrowers who had availed the loan.

On receipt of this complaint, the PW1 had deputed an officer Mr. Natarajan (PW56) to investigate and submit his report. The report was submitted by him and his oral deposition corroborated with the contents of the report.

4. In the trial court the prosecution examined PW1 to PW83 and marked Ex.P1 to Ex.P354. The accused No.3 examined DW1 on his side and marked Ex.D1 to Ex.D60. Ex.D61 which is a circular issued by the Central Bank of India was marked on behalf of A1 by consent under Section 294 Cr.P.C.

5. PW2 to PW81 are the members of the society who had availed the loans under the scheme. They deposed that they had signed all the documents related to the loan in blank. One of the witnesses PW52 had deposed that he had indeed received the consumer durables from A3 though they were not the ones found in the invoice cum delivery note. A few of the borrowers viz., PW24 PW53, PW70, PW72 and PW73 disowned their signatures found on the invoice cum delivery notes prepared in their names. While some of the witnesses admitted receipt of some cash from A2/A4 after signing the blank documents, a few others deposed that A2 and A4 arranged for cash loan from Punjab and Sind Bank subsequently. Interestingly, all the borrowers deposed regarding their faith reposed on A2 and A4 as the reason for their signing the blank documents.

6. The bank officials namely Regional Manager (PW6) and the Law Officer of the bank (PW7) deposed about their discussion with A1 before sanction of the loans. A1 was advised to observe the bank guidelines scrupulously. PW8 who was an Assistant Manager during the same period in the branch where A1 was working could identity the signatures of A1 and also some documents pertaining to the bank like credit vouchers and bankers cheques. PW55, a Computer Operator of the same branch also concurred with PW8. PW55 the successor of A1 as Branch Manager deposed about the non-recovery in 64 loan accounts granted to the members of the said society. Other witnesses were examined to strengthen the case of the prosecution as regards the by-laws of the society/stores, the provision of the Indian Railway Establishment Manual which bars the railway staff from availing loan from outside agencies without prior permission and the contents of sales tax returns pertaining to A3. Some of the employees of A3 who had filled up the loan applications and other related documents were also examined.

7. The General Manager of the Central Bank of India (PW33) who sanctioned the prosecution of A1 and the Inspector of CBI (PW83) who registered the FIR were also examined. The DW1 the sole witness examined on the side of A3 had deposed regarding the delivery of the consumer durables to the borrowers

as found in the delivery notes.

8. The learned II Additional District Judge had found A1 to A4 guilty of the offences set out against each one of them. These appeals have been filed to set aside the conviction and sentence passed by the concerned judge. According to him, there were clinching oral and documentary evidence against each one of them and the evidences were so overwhelming that the contentions of the learned counsel for the accused 1 to 4 became insignificant. It is also observed by the learned II Additional District Judge that A2 and A4 being the President and Vice-President of the Cooperative Stores, deliberately, manipulated the original resolution recorded in the minute book. The original resolution dated 04.12.2000 which was recorded in the minute book did not mention about an undertaking to deduct the monthly installments from the salary of the employees for onward remittance to the bank. The true copy of the extract of this resolution which was certified by A2 contained this undertaking. Since both A2 and A4 submitted this extract to the bank for availing the loan, the learned II Additional District Judge, opined that both of them were fully aware that the certificate signed by A2 was false and manipulated. In this context, learned II Additional District Judge has also highlighted the fact that the deductions were made from the salaries of several employees as could be seen from the Accounts Books but were not remitted to the bank as per the undertaking Ex.P170 given by A2 and A4 to the bank. The learned II Additional District Judge therefore, found both these accused, A2 and A4 guilty of criminal intention to deceive the bank even before sanction of the loans by the bank.

9. The Learned Counsel appearing for A2 would contend that the prime objective of the stores/society was to arrange for purchase and sale of consumer durables at reasonable rates for all its members and the system of arranging the loans from the financial institutions was in vogue since 1990 and that the deposition of the Special Officer (PW79) also supported the conduct of A2 as fully legal. This argument was not accepted by the learned II Additional District Judge/Special Judge for CBI Cases. Similarly, in the case of A1 the learned II Additional District Judge/Special Judge for CBI Cases had concluded that he was guilty of violation of guidelines stipulated by the bank by accepting margin money directly from the supplier (A3) instead of the individual borrowers. A1 was also found guilty of incomplete loan application forms and guarantee documents, non inspection of the borrowers' premises to ensure the end use of the loans and also non- follow up for recovery of the loans. According to the learned II Additional District Judge, A1 was instrumental in the conspiracy to deceive the bank by colluding with A2, A3 and A4. As regards A3 the learned II Additional

District Judge found him guilty of non supply of consumer durables to the borrowers who had availed loan from the bank, even after receiving the loan amounts in full, arranging for filling up of blank applications and loan documents through his staff members and not showing any proof for the stock for the consumer durables which he had claimed to have supplied to the borrowers and also not maintaining any Stock Register for the stock held by him. It is also pertinent to mention that one of the borrowers (PW59) had deposed that he received Rs.27,800/- from the staff of A3.

10. Going through all the facts of the case as presented by the prosecution, it is evident that A1 being the Branch Manger of a Nationalized Bank Branch, has thrown all caution and squandered the public money to facilitate the enrichment of few individuals. It is evident that A2 and A4 who have been holding key positions in the co-operative society, under the guise of arranging for consumer loans for their members enrolled as many as 80 members and convinced them to avail the loan and cheated the Bank. It is also evident that A3, the supplier of the consumer durables was hand picked by A2 and A4 and as deposed by a few of the borrowers, cash was paid by A2 and A4 to them immediately after they signed the blank loan documents. Such was the greed for money that the borrowers did not even disown their signatures on the loan applications and loan documents though they were unison in claiming non supply of consumer durables by A3. A1, as a prudent banker ought to have smelt a rat in the entire scheme of things since without his consent loans would not have been made available. Strangely, margin money which is the contribution of the borrower in any project was not collected from the borrowers but instead collected from the supplier of consumer durables (A3), which in itself, tells the entire story. This is clear from the fact that a sum of Rs.8500/- was refunded to A3 by A1 by way of a Bankers Cheque as excess of margin money collected which in normal course ought to have been returned to the borrower from whom the excess amount was collected and not to the supplier, as in the instant case. Though the trial court has drawn an adverse inference regarding the source of the margin money, the deposition of all the borrowers regarding non payment of margin money by them confirms that the margin money was not collected from the borrowers as prescribed by the banks guidelines (Ex.P22). The statement of accounts of the borrowers (Ex.P221) also corroborate this fact.

11. A2 and A4 on their part wanted to complete the formality of passing a resolution by their Board regarding deduction of loan installments from the salaries as required by the bank and were responsible for manipulation of the extract of the resolution. A little more prudence on the part of A1 could have saved the situation. Had he (A1) checked the copy of the

resolution with the original resolution in the minutes book the loss could have been averted. However, the act of A1 in not verifying the genuineness of the resolution extract has to be construed as collusion on his part with A2 and A4. A1's role in this scandal becomes more prominent since he was advised by his superiors in the Controlling Office to tread carefully before lending to these borrowers. Despite clear instructions to him not only to adhere to the banks' guidelines but also to verify the genuineness of the undertaking for deduction from salary, he has preferred to flout both the instructions. In fact, there are instances, where the value of consumer durables as per the invoice cum delivery note was much more than the loan amount clearly showing the scant respect A1 had for the bank rules. One such case was that of the borrower R.Sampath Kumar (PW2) in which the invoice cum delivery note (Ex.P6) was Rs.39,533/- while the loan sanctioned to him was only Rs.31,500/-. It is incomprehensible as to how a dealer can supply goods worth more than the amount paid to him. A1's action also smacks of gross negligence and willful mischief and this is evident from the letters marked as Ex.P157 and Ex.P201 dated 10.10.2001 that even after his relief from the branch on 30.09.2001. A1 had sent these letters dated 10.10.2001 to the borrowers declaring that the loans outstanding in their names have been treated as cancelled, that too when he was no more in that Branch. A2 and A4 have also been found guilty of not remitting installments of some of the borrowers from who salary the same were deducted.

12. Mr.S.Suresh, the learned counsel appearing for A1 contended that the disciplinary proceedings initiated against A1 by the employer did not find him guilty of any of these charges and therefore, the criminal proceedings have necessarily to be dropped against him. His further contention is that the FIR Ex.P352 registered by the CBI was not based on any complaint by the Bank or the cooperative stores/society or any of its members and therefore should not have been considered especially, in the light of the fact that A1 was given a clean chit by the Bank. It was also contended that the employer/bank had termed the act of A1 as a result of "over enthusiasm" in lending and did not attribute any malafide intention to him. It was also argued that A1 initiated the process of filing civil suits for recovery of the loan amount from all the defaulting borrowers and also that no criminality or conspiracy was even indicated in any of his actions and therefore A1 cannot be held guilty of the offences of which he is charged. These contentions fail miserably when A1 has been reckless in lending by flouting all the rules and regulations which had been discussed in detail earlier. He had also forgotten the fact that he was dealing with public money and such recklessness deploying the public money tantamount to betraying the faith of the public in the banking system.

13. A3, being the supplier of consumer durables faulted on

two counts.-

(i) he could not substantiate his capacity to buy and sell this quantum of consumer durables as reflected in his invoices cum delivery notes. The sole witness DW1 had made a shocking statement that he delivered the consumer durables to all 72 borrowers on one single day which was humanly impossible.

(ii) A3 himself had given a letter (Ex.P226) to the Branch Manager (A1) that he would furnish the proof of delivery by 15.09.2001 and in case he fails to do so he would offer immovable security worth Rupees 20 - 25 lakhs on or before 14.09.2001. In the second letter Ex.P227, he had listed out the 14 persons to whom he did not supply the consumer durables. A3 had also admitted this while he was questioned under Section 313 Cr.P.C. This is in total contradiction to the deposition of DW1. In fact, PW56 who visited the A3's show room did not find any stock and was redirected to the godown which also did not have any stock. This goes to prove the nexus between A3 and the rest of the accused.

14. The Learned Counsel appearing for the A2 contended that the system of arranging loan for its members for purchase of consumer durables at a reasonable rate was not something new and that there was nothing fishy as made out by the prosecution. He further contended that the Special Officer (PW79) had also confirmed that the system of obtaining loans for its members was lawful and cannot be faulted with the learned counsel for A2 also reiterated the deposition of all the borrowers who had reaffirmed their faith in A2 and A4 who were the principal office bearers of the society. All these submission become irrelevant when it is clearly established that the resolution of Board of the Society was manipulated and fabricated to satisfy the requirement of the Bank. Instances of payment of cash by A2 and A4 immediately after signing the blank loan documents cannot also be taken lightly. All these clearly indicate the guilt of A2 and A4 and cannot be brushed aside. The misappropriation of the loan installments deducted from the salaries of some of the borrowers also is directly attributable to them.

15. The learned II Additional District Judge, Special Court (CBI cases) has analyzed the entire evidence on record and had rightly held that the accused are guilty of the offences of which they are charged. The conviction and sentence passed by the Trial court judge does not warrant any intervention by this Court due to the simple fact that it was based on very solid and clinching evidence totally incriminating and showing the involvement of all the accused in the crime.

16. Mr.K. Subburam, the Learned Counsel appearing for A4 contended that A4 is dead. He also filed the death extract of A4. In the circumstances, I hold that the charge against A4 is abated.

17. In the result.-

(i) All the criminal appeals are dismissed.

(ii) The conviction and sentence passed by the learned II Additional District Judge, Special Court for CBI Cases, Coimbatore are confirmed.

(iii) All the accused are directed to appear before the learned II Additional District Judge, Special Court for CBI Cases, Coimbatore, within a period of four weeks from the date of receipt a copy of this judgment for the purpose of serving remaining period of sentence.

(iv) Since A4, G.S.N.Iqbal is dead, the charges against him stand abated.

Sd/-
Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

msm

To

1.The II Additional District Judge/
Special Judge for CBIC Cases,
Coimbatore.

2.The Inspector of Police,
SPL/CBI/ACB/Chennai.

3.The Director General of Police,
Mylapore, Chennai - 600 004.

4.The Collector,
Chennai District, Chennai.

5.The subordinate Judge,
Coimbatore.

6.The Superintendent of Police,
Coimbatore.

7.The Special Public prosecutor,
CBI Cases, High Court,
Madras.

8.The Public Prosecutor,
High Court, Madras.

Copy TO

The Section Officer,
crl Section, High Court,
Madras-104.

CRL.A.Nos. 275, 329, 339 and 348 of 2007

SSD(CO)
GN(04/06/2018)