Bail Slip

That the Appellants/Accused namely K.Devendra kumar, S/o.K.Gopalakrishnan(in Crl.A.799/08) T.N.Varatharajan, S/o.Munusamy, T.N.Ravichandran, S/o.Munusamy (in Crl.A.825/08) and P.S.Natarajan, S/o.Late P.Seeniappa Nadare(in Crl.A.792/08) were directed to be released on bail as per order of this Court and made in MP.1/08 in Crl.A.No.799/085 dt.19/11/08, MP.1/08 in Crl.A.825/08 dt.3/12/08 and MP.1/08 in Crl.A.No.792/08 dt.14/11/08 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :15.02.2018
Pronounced on :08.03.2018

Coram:

The Honourable Dr.Justice G.Jayachandran

Crl.A.Nos.799, 825 and 792 of 2008

K.Devendar Kumar .. Appellant in/1st Accused
Crl.A.No.799 of 2008

1.T.N.Varatharajan
2.T.N.Ravichandran .. Appellants in
Crl.A.No.825 of 2008/Accused 2 & 3

P.S.Natarajan .. Appellant in/Accused 4
Crl.A.No.792 of 2008

/versus/

State rep.by Inspector of Police,
SPE:CBI:ACB, Chennai.
(Crime No.30(A) of 2003) .. Respondent in
all cases

Prayer in Crl.A.No.799 of 2008: This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code against the conviction and sentence imposed by the judgment dated 07/11/2008 passed in C.C.No.34 of 2004 on the file of XI Additional Court for CBI Cases, Chennai.

Prayer in Crl.A.No.825 of 2008: This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code praying to call for the records of the case in C.C.No.34 of 2004 on the file of the XI Additional Judge for CBI Cases, Chennai, set aside the conviction and sentence dated 07.11.2008.

Prayer in Crl.A.No.792 of 2008: This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code praying to set aside the conviction and sentence passed by learned XI

Additional Judge for CBI Cases relating to Banks and Financial Institutions, Chennai made in C.C.No.34 of 2004 by judgment dated 07.11.2008.

For Appellants :Mr.B.Kumar, Sr.C.for
Mr.K.Govi Ganesan
in Crl.A.No.799 of 2008
Mr.C.Rajan in
Crl.A.No.825 of 2008
Mr.K.Muthukannaiyan in
Crl.A.No.792 of 2008

For Respondent :Mr.K.Srinivasan,
Spl.P.P(CBI cases)

COMMON JUDGMENT

These three appeals are filed by the appellants, who are arrayed as A1 to A4 in C.C.No.34 of 2004 on the file of XI Additional Judge(CBI Cases relating to Banks and Financial Institutions), Chennai. The trial Court has convicted the appellants holding them guilty of charges under Sections 120B r/w 420IPC, 471 r/w 466, 197 r/w 193 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 420 IPC and 471 r/w 466 IPC and 197 r/w 193 IPC respectively. The sentence passed against the appellants are as under:

Rank of the Accused	Charges framed against the accused by the trial Court	Sentence imposed by the trial Court
A1 (Crl.A.No.799 of 2008)	Section 120-B r/w 420, 471 r/w 466, 197 r/w 193 and 13(2) r/w 13(1)(d) of P.C. Act, and Section 13(2) r/w 13(1)(d) of PC Act.	To unergo RI for 3 years and to pay a fine of Rs.10,000/- in default to undergo RI for 6 months for each of the offence (Total fine Rs.20,000/-
A2 & A3 (Crl.A.Nos.825 of 2008)	Under Sections 120-B r/w 420, 471 r/w 466, 197 r/w 193 and Section 13(2) r/w 13(1)(d) of PC Act and Section 420 IPC	To undergo RI for 3 years and to pay a fine of Rs.10,000/- in default to undergo RI for 6 months for each of the offence and for each of the accused. (Total fine Rs.40,000/-)
A4 (Crl.A.No.792 of 2008)	Under Sections 120-B r/w 420, 471 r/w 466, 197 r/w 193 and Section 13(2) r/w 13(1)(d) of PC act and Section 471 r/w 466 IPC and 197 r/w 193 IPC	To undergo RI for 3 years and to pay a fine of Rs.10,000/- in default to undergo RI for 6 months for each of the offence. (Total fine Rs.30,000/-)

Rank of the Accused	Charges framed against the accused by the trial Court	Sentence imposed by the trial Court
The period of sentence was ordered to run concurrently.		

2. Based on the reliable information received in the office of Superintendent of Police, ACB/CBI/Chennai, First Information Report was registered on 01.07.2003 against (1) K.Devendra kumar, then Senior Manager, Indian Overseas Bank, TM Street, Chennai; (2)T.N.Varadharajan and (3) T.N.Ravichandran, Partners of M/s Ganga Oil Agencies for the offence under Section 120B r/w 420, 467, 468 and 471 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. The information received by the Superintendent of Police revealed that the persons shown as accused have entered into a criminal conspiracy and in pursuant of the said conspiracy, A2 and A3/partners of M/s Ganga Oil Agencies have approached the Senior Manager(A1), Indian Overseas Bank, TM Street, Chennai for enhancement of cash credit limit from Rs.12.50lakhs to Rs.20.00lakhs and offered property in Survey Nos.284/4 extent of 0.52 cents, 282/1 extent of 0.11cents, 279/2 to an extent of 0.22 cents and 279/3 extent of 0.21 cents totally 1 acre 06 cents at Zamin Pallavaram Village, Tambaram. The partners of M/s Ganga Oil Agencies have offered the said property as collateral security. The said property is owned by Smt.Chinnammal, W/o Ganapathy Naicker. Smt.Chinnammal had purchased the property on 25.04.1945, who died intestate on 23.07.1996 leaving behind her daughter G.Kuttiammal as her sole legal heir.

3. The certificate issued by the Village Administrative Officer and other documents were also furnished by the partners of M/s Ganga Oil Mill in support of the above claim. But, infact, G.Kuttiammal is a fictitious person and the documents furnished by the partners of M/s Ganga Oil Agencies to enhance the cash credit limit were found to be fake. They have impersonated some one as G.Kuttiammal and had created mortgage based on fictitious documents by submitting false and fabricated documents as genuine. A1 being the Senior Manager had accepted the fake documents knowing fully well that they are not genuine documents and had recommended for enhancement of cash credit limit on 11.07.2001. Based on A1 recommendation, cash credit limit had been enhanced to Rs.20.00 lakhs. After availing the cash credit limit by furnishing fake documents M/s Ganga Oil Agencies had not repaid, resulting in outstanding of Rs.25 lakhs.

4. Based on the above said First Information, the police has take up their investigation and pursuant to the investigation, they have found that A1 as Senior Manager of Branch had sanctioned the loan to A2 and A3, partners of M/s Ganga Oil Agencies based on fake revenue records, title deeds and the valuation certificate issued by P.S.Natarajan (A4) the

approved valuer of the Bank. The investigation has revealed, the valuer has inflated the value of the property even without identifying the property as well as the true owner of the property. Whereas, one K.Durairaj a Real Estate business man has been arrayed as A5 for procuring fake revenue records and other documents to support the false claim of A2 and A3 that the property given as collateral security is owned by Kuttiammal. The said Kuttiammal has shown as an absconding accused and the case against her was spilt up.

5. Based on the final report, the trial Court has framed charges for the offence stated above and examined 17 witnesses and marked 69 exhibits on the side of prosecution. 2 exhibits were marked in support of the defence. After appreciating the evidence, the trial Court has acquitted A5 for want of evidence. Whereas A1 to A4 were held guilty and sentenced as stated supra. Aggrieved by the judgment of conviction, the appellants have preferred these three appeals before this Court.

6. The contentions of the learned Senior Counsel appearing for the appellant in Crl.A.No.799 of 2008:

The appellant/K.Devendar Kumar as Senior Branch Manager has recommended enhancement of cash credit limit from Rs.12.50lakhs to Rs.20.00 lakhs based on the opinion given by the panel lawyer and the valuation certificate given by the Valuer. Since the panel lawyer had certified the properties offered as collateral security, has clear marketable title and has ascertained Smt.Kuttiammal as the present owner of the land. After scrutinizing the documents such as encumbrance certificate, patta, chitta, VAO certificate, copy of the sale deed, death certificate of Smt.Chinnammal and her legal heir certificate, A1 has recommended for enhancement of cash credit limit.

7. The valuation certificate issued by the fourth accused (P.S.Natarajan) indicates that the valuer has inspected the land of Smt.Kuttiammal on 15.09.2009. Based on the documents produced before him for scrutiny and based on his actual observation, he has valued the property at Rs.47,09,000/- as fair value at open market. He had also estimated the forced sale value of the property at Rs.35,00,000/-. Based on these documents, A1 had recommended for sanction of enhanced cash credit limit from Rs.12.50 lakhs to Rs.20.00lakhs vide his letter dated 15.06.2001. After his recommendation, he was transferred from TM Street Branch and actually, loan was sanctioned by PW-15 [M.Krishnan], who succeeded A1 as Senior Manager, Indian Overseas Bank, TM Street. Therefore, as a person whose mother tongue is not tamil and new to the branch had believed the panel lawyer opinion and valuer certificate and had recommended for enhancement of loan in the normal course of business transaction. Since the letter of recommendation was based on the panel valuer report Ex.P30 and legal opinion Ex.P31, A1 cannot be held liable for any of the

charge filed against him.

8. However, the trial Court has held him guilty without any material evidence placed by the prosecution incriminating the appellant. While the prosecution witnesses like PW-9 [P.R.Seshadri], PW-13[S.Devasagayam] and PW-15[M.Krishnan] had spoken positively about existence and availability of the property produced by the partners of M/s Ganga Oil Agency. The abscondance of the accused Smt.Kuttiammal and evidence of the second valuer that he could not identify the property due to bushes and thorns, cannot be a reason to the conclusion that A1 has knowingly recommended for enhancement of loan relying upon the documents, which are forged.

9. In support to his submission, the learned Senior Counsel appearing for the appellant (A1) rely upon the following judgments of the Hon'ble Supreme Court:

(1) Subbammal alias Rajammal and others v. The President, The Tenkasi Co-operative Urban Bank Ltd., Tenkasi (in liquidation) through its Special Officer, having its office at Kokirakualm, Tirunelveli reported in 1976 SCC Online Mad.122(AIR 1977 Ma.92); and

(2) State by Special Police Establishment v. D.Krishnamurthy, reported in 1995 Supp (3) Supreme Court Cases 702

10. Learned counsel appearing for the partners of M/s Ganga Oil Agency, who are arrayed as A2 and A3 in the trial Court and who are the appellants in Crl.A.Nos.825 of 2008 submits that M/s Ganga Oil Agency is a long time customers of Indian Overseas Bank. Initially, they were provided with cash credit limit of Rs.12.50 lakhs for which they have furnished their personal property at Kodambakkam at No.31(106) Sivan Koil South Street, which is worth about Rs.25.00 lakhs, even according to the the moderate valuation made by bank valuer though it had higher market value. Therefore, the enhanced cash credit limit from Rs.12.50 lakhs to Rs.20.00 lakhs is very well secured by the Kodambakkam property offered by the appellants. However, when they sought for enhanced credit cash limit from Rs.12.50lakhs to Rs.20.00lakhs, the bank requested to offer additional security. In the said circumstances, they have offered the property of Smt.Kuttiammal as security. Along with the relevant documents, equitable mortgage of the property by Smt.Kuttiammal was also created.

11. Though it is contended by the prosecution that the documents produced in support of the property furnished as collateral security are fabricated documents, there is no proof to substantiate the said allegation. Furthermore, the case of the prosecution is that Smt.Kuttiammal is a non

existing person and the property given as security is not her property.

12. From the report of PW-9, it could be seen that Smt.Kuttiammal is not a fictitious person. The only fact which he has stated in his valuation report is that out of total 1.06 acres in S.Nos.284/4 extent of 0.52 cents, 279/2 extent of 0.22 cents, 279/3 extent of 0.21 cents and 282/1 extent of 0.11 cents. Smt.Kuttiammal has restricted right over 22 cents land in S.No.279/2 alone and the rest of the land is not in her name or in her possession. According to the prosecution witness PW-7 [Shahir Ahmad Khan], the value of the property at Jamin Pallavaram held in the name of Smt.Kuttiammal, which has been given as collateral security is about Rs.2.50 lakhs. While admittedly the government guideline value in that area is Rs.139/- per sq/ft. PW9[P.R.Seshadri] has refused to take the government guidelines and has fixed less value and given an underestimated valuation.

13. The learned counsel appearing for these appellants would refer to the Original Application No.211 of 2003 filed by Indian Overseas Bank before the Debts Recovery Tribunal at Chennai which is marked as Ex.D2 and also submitted that the bank has accepted the existence of property in the name of Smt.Kuttiammal in S.Nos.284/4 to the extent of 0.52 cents, 279/2 to the extent of 0.22 cents, 279/3 to the extent of 0.21 cents and 282/11 to the extent of 0.11 cents in total to the extent of 1 acre 06 cents and had included it in the schedule of property to be attached and sold for recovery of the loan amount along with the interest. While so, the bank cannot blow hot and cold. After admitting the existence of the property given as collateral security and proceeded against the property before Debts Recovery Tribunal, at the same time, support the case of the prosecution as if that property is non existing property and equitable mortgage has been created based on forged document and impersonation. This dichotomy of facts put by the prosecution before Debts Recovery Tribunal and before the criminal Court has not been taken note by the trial Court, while convicting the appellant. When the personal property of the appellant at Kodambakkam itself is worth more than the loan advanced by the Indian Overseas Bank, there was no necessity to give additional security and while the additional security so offered has now been proceeded by the bank before the Debts Recovery Tribunal, the falsity in the case of the prosecution is exposed. Though the bank which is the real party, who can allege forgery or cheating, has not come forward to give any complaint, but had proceeded before the Debts Recovery Tribunal under civil law. Whereas, CBI has suo motu taken up the criminal investigation and prosecution.

14. In support of his argument, the learned counsel rely upon the following judgments:

(1) Judgment of the Madurai Bench of Madras High Court in M.Thangavel & others v. Assistant Superintendent of Police, Vigilance and Anti Corruption, Nagercoil, Kanyakumari District and others reported in CDJ 2014 MHC 3339;

(2) Judgment of Hon'ble Supreme Court in L.Chandraiah v. State of A.P. & Another reported in CDJ 2004 SC 062;

(3) Judgment of Hon'ble Supreme Court in Chatt Ram v. State of Haryana reported in CDJ 1979 SC 269; and

(4) Judgment of Hon'ble Supreme Court in Adbul Karim Madan Sahab v. State of Mysore reported in AIR 1979 SC 1506.

15. The learned counsel appearing for A4[P.S.Natarajan] valuer would submit that his valuation certificate Ex.P30 is in consonance with the documents produced by the bank and based on his site inspection. He has correctly given the value of the property. While the document indicates the property in S.Nos.284/4, 279/2 and 279/3 and 282/1 at Jamin Pallavaram village with total extent of 1 acre 6 cents is in the name of Smt.Kuttiammal, who has inherited the property from her mother Smt.Chinnnammal who died on 23.07.1996. He has valued the property taking note of the Government guidelines value after inspecting the property on 15.09.2002. The lesser value given by PW-9 in his valuation report Ex.P61 for lesser extent and less than the government guidelines value cannot be relied by the Court, when there is no evidence to show Smt.Kuttiammal had only lesser extent of property in the said survey numbers and the government guideline value is not applicable to the said land.

16. When the valuation certificate issued by him based on the personal inspection of the property and on perusal of the documents furnished by the loanee along with the panel lawyer opinion, the Court below has erroneously arrived at conclusion that this appellant is privy of conspiracy which does not exist.

17. With the above said respective submissions, the learned counsels appearing for the appellants submitted that the prosecution has failed on all fours in establishing the theory of conspiracy, cheating, forgery or production of false evidence as alleged. Therefore, the trial Court judgment is liable to be set aside.

18. In support of his argument, the learned counsel appearing for this appellant (A4) rely upon the following judgments:

(1)Judgment of the Hon'ble Supreme Court in Central Bureau of Investigation, Hyderabad v. K.Narayanan Rao reported in (2012) 9 Supreme Court Cases 512; and

(2)Order of this Court dated 10.08.2009 in Crl.R.C.No.1063 of 2008 in L.N.Rajagopalan v. State by the Additional Superintendent of Police,
SPE/CBI/ACB/Chennai.

19. Per contra, the learned Special Public Prosecutor for CBI Cases would submit that A1, while serving as Senior Manager of Indian Overseas bank, TM Street, on 01.06.2001, has written a letter to the Trade Credit Department at Regional Office stating that M/s Ganga Oil Agency has requested for enhancement of cash credit limit to Rs.20.00lakhs from Rs.12.50lakhs by offering property and having house site at 151 Jamin Pallavaram valued at Rs.47 lakhs as collateral security in addition to the Kodambakkam property as collateral security already given. In his letter, A1 has stated that the property stands in the name of Smt.Kuttiammal, who is also one of the partner of the concerned. In view of the additional collateral security and increased turn over, he had recommended sanction of enhanced cash credit limit of Rs.20.00 lakhs against receivable 50% margin and letter of guarantee for Rs.20.00 lakhs.

20. Thus, the first accused as Senior Manager has strongly recommended for enhancement of cash credit limit by giving an impression that Smt.Kuttiammal is one of the partner of the concern M/s Ganga Oil Agency and also owner of the property offered as collateral security. Whereas, the prosecution has proved that the said Smt.Kuttiammal could not be traced. In all probability, she is a fictitious person. Somebody has been impersonated as Smt.Kuttiammal and presented before the bank officials, while executing the equitable mortgage. The documents furnished along with the loan application to support the claim that 1.06 acres of land at Jamin Pallavaram is owned by Smt.Kuttiammal, are all fabricated documents procured by A2 and A3 for the purpose of cheating the bank. A1 as Senior Manager, who is supposed to make pre-sanction verification by inspecting the property physically and to make spot enquiry has failed to do so which has led to disbursement enhanced cash credit limit which has become unrecoverable leading to filing of DRT proceedings against the loanee M/s Ganga Oil Agency.

21. In support of his submission, the learned Special Public Prosecutor for CBI cases would submit that PW7 Deputy Tahsildar has deposed that legal heirs certificate of Smt.Chinnammal, which is marked as Ex.P34 is not issued by his office. Ex.P37 Patta in the name of Smt.Chinnammal was not issued by his office. Ex.P39 field survey map for S.Nos.282/4,

279/2, 279/3 and 282/1 was not issued by the Taluk office, Tambaram. The Village Administrative Officer is not the competent authority to issue field map sketch. Whereas Ex.P39 is alleged to have been issued by VAO. The patta marked as Ex.P41 is not issued by Taluk office, Tambaram. The relevant records pertaining to the said survey numbers, which are marked as Exs.P53 to P59 were issued by the Deputy Tahsildar, Head Quarters, Tambaram.

22. Thus, all the documents, which have been furnished along with the property are found to be forged and fake documents. Further, the death certificate of Smt.Chinnammal, which has been produced by A2 and A3 for availing loan and marked as Ex.P35 and the death certificate of Ganapathy Ex.P36 were not issued by the concerned office. PW12-Dr.M.Jagatheesan, who is the Assistant Health Officer in ZoneIII, Corporation of Chennai in whose jurisdiction Smt.Chinnammal and Ganapathy Naicker the parents of Smt.Kuttiammal lived and died had deposed that the death certificates of Smt.Chinnammal and Ganapathy Naicker marked as Exs.P35 and P36 were not issued by his office. The genuineness of the documents produced by A2 and A3 for availing enhanced cash credit limit, which were accepted and recommended by A1 was later verified by the bank through PW-14 and he after examining the persons, who have issued those documents had submitted a report that these documents were not genuine documents and there is no person by name Kuttiammal in the given address. The reports submitted by PW-14 marked as Exs.P65 and 66 would clearly prove the overtact of the accused persons in cheating the bank by furnishing false documents as genuine. Therefore, there is no necessity to interfere with the finding of the trial Court.

23. Point for consideration:

Whether the trial Court has appreciated the evidence of prosecution properly?

24. Admitted facts in this case is that M/s Ganga Oil Agency in which A2 and A3 are partners, is one of the customers of Indian Overseas Bank, TM Street, Mylapore. Initially, they were offered cash credit limit for a sum of Rs.12.50 lakhs for which their property at Kodambakkam was offered as collateral security and equitable mortgage has been created. The value of the said property is Rs.25 lakhs, as per Ex.P24 valuation certificate issued by A4. In sofar as the loan extended based on this document, is not disputed by either side. It is later when the partners of M/s Ganga Oil Agency has sought for enhanced loan limit from Rs.12.50lakhs to Rs.20.00lakhs vide his letter dated 18.05.2001 (Ex.P29), the issue of offering the disputed document in the name of Smt.Kuttiammal has cropped up. Based on the letter Ex.P29 given by M/s Ganga Oil Agency the first accused/appellant in Crl.A.Nos.799 of 2008 had written a letter to the Regional

Office on 15.06.2001 wherein he has stated that he visited the property of Smt.Kuttiammal personally and inspected. He has further stated that the said property of Smt.Kuttiammal is about Rs.47 lakhs worth in market with forced sale value of Rs.30lakhs. With these informations, he has sought advice of the Regional Office.

25. While for enhancing the loan limit the accused/appellants rely upon the valuation certificate of A4 dated 15.09.2000 marked as Ex.P30 and the legal opinion of the panel lawyer, which is marked as Ex.P31, the learned Special Public Prosecutor for CBI Cases also rely upon the very same documents and point, that both A1 and A4 have put on record that they have visited the property and made physical verification and they were satisfied regarding the worth of the property. Whereas it is proved beyond doubt, Smt.Kuttiammal, D/o Smt.Chinnammal had no absolute right over total 1.06 acres of land which has been offered as security by A2 and A3, which has valued by A4 and accepted by A1. Atmost from the revenue records, what could be found is, Smt.Chinnammal had only 22 cents of land in the said survey number and Smt.Kuttiammal can only inherit that much of land which is worth only Rs.2.7lakhs. Even if the Government value of Rs.139 per square feet is taken as value of the land given as collateral security, the total value of the land will not match the value given by A4 in his report marked as Ex.P30.

26. Furthermore, the information given by A1 that Smt.Kuttiammal is one of the partner of M/s Ganga Oil Agency itself is a false information given by A1 in his letter dated 01.06.2001 to induce the Regional Office to accord sanction for enhanced credit limit. Through PW7, PW9, PW12, PW13, PW15, the prosecution has proved the modus operandi adopted by the accused person to induce the Regional Office to sanction enhanced cash credit limit based on forged documents by presenting it as genuine.

27. In the light of the above facts, when the judgments cited by the appellants are considered for application of law laid down in those judgments to that of the case under appeal, this Court finds that in State by Special Police Establishment v. D.Krishnamurthy, reported in 1995 Supp (3) Supreme Court Cases 702 the Hon'ble Supreme Court has held that “the language of Section 5(1)(d) of the Prevention of Corruption Act, 1947 is clear and unambiguous in the sense that if a public servant by whatever means, be they corrupt or illegal, obtains for himself or any other person any valuable thing or pecuniary advantage must, in any event, for doing so, abuse his position as a public servant (emphasis supplied). If such abuse of his position as a public servant, is lacking in the prosecution case, and there is evidence barely to the effect, that he has by some means, be they illegal or corrupt, obtained for himself or any other person any valuable thing or pecuniary advantage, that by itself would not be enough.”

28. As far as the facts of this case is concerned, the prosecution, as pointed out earlier had proved, A1 abused his position as a public servant. His recommendation letter to the Regional Office with false information that the property of Smt.Kuttiammal was inspected by him and Smt.Kuttiammal is one of the partner of M/s Ganga Oil Agency is pre se a false statement just to mislead the Regional Office. This false information has been furnished by A1 and by virtue of his position as public servant, he has abused his position to have pecuniary advantage.

(ii) The judgment of the Hon'ble Supreme Court reported in Subbammal alias Rajammal and others v. The President, The Tenkasi Co-operative Urban Bank, Ltd. Tenkasi (in liquidation) through its Special Officer, having its office at Kokirakulam, Tirunelveli[1976 SCC Online Mad.122] cited by the learned Senior Counsel appearing for A1 is a general observation regarding trust in business. The facts of the case above cited, a Clerk in the Co-operative Society has misappropriated the fund wherein Ex-President and Vice President were also arrayed as accused. The High Court has found that breach of trust not proved against the Ex-President and Vice-President and at the most there is only wilful negligence. In this context, the High Court has referred the following observation made by the Court of Appeal in re National Bank of Wales Ltd. "Business cannot be carried on upon principles of distrust. Men in responsible positions must be trusted by those above them as well as by those below them until there is reason to distrust them. We agree that care and prudence do not involve distrust, but for a direction honestly himself, to be held legally liable for negligence in trusting the officers under him not to conceal from him what they ought to report to him, appears to us to be laying too heavy a burden on honest businessmen", there cannot be any second opinion regarding the above said observation but for the facts of the case in hand has no relevancy.

29. The learned counsel appearing for the appellants relied upon the judgment of the Madurai Bench of Madras High Court reported in M.Thangavel & Others v. Assistant Superintendent of Police, Vigilance and Anti-Corruption, Nagercoil, Kanyakumari District and others [CDJ 2014 MHC 3339]. The appellants, were held guilty for boosting the measurement in constructing the building at Nagercoil Co-operative Housing Society. In the said case, the Madurai Bench of Madras High Court has observed that there was no fair and impartial investigation and the prosecution case lacks proof against the accused to hold them guilty of dishonesty and fraud. This case is purely based on the facts and evidence available in that case and no general proposition of law laid. In the other judgment of the Hon'ble Supreme Court rendered in Chatt Ram v. State of Haryana reported in CDJ 1979 SC 269 relied on by the appellants, the facts of the case is relating

to forged Lottery Tickets produced by the appellants claiming price money. In this case, the prosecution had failed to prove that the appellants had knowledge about the forged lottery ticket at the inception, when he made his claim.

30. In the case in hand, the facts are, property non existing with forged document had been presented by the appellants in Crl.A.No.825 of 2008, who are the partners of M/s Ganga Oil Agency. They have produced some other person impersonating Smt.Kuttiammal. Till date, the prosecution could not find the real Smt.Kuttiammal and she had been arrayed as an accused. Since she is absconding, the case against her is spilt up. Therefore, when deception and fraudulent intention in the mind of the appellants had been palbable seen from their conduct and adequately proved by the prosecution, the above said judgment is of no relevancy to the facts of the case in hand.

31. The judgment in Central Bureau of Investigation, Hyderabad v. K.Narayana Rao reported in (2012) 9 Supreme Court Cases, 512 cited by the 4th accused/P.S.Natarajan pertains to legal opinion by an Advocate. In the said case, the Hon'ble Supreme Court has observed as under:

> 27. In the banking sector in particular, rendering of legal opinion for granting of loans has become an important compondent of an Advocate's work. In the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skills. A lawyer does not tell his client that he shall win the case in all circumstances. Likewise, a physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and while undertaking the performance of the task entrusted to him, he would be exercising his skill with reasonable competence. This is what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of the two findings viz., either he was not possessed of the requisite skill which he professed to have processed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess."

32. A factual aspect which is peculiar in this case under appeal is that A4 had stated in his report that he has verified the property and examined the owner. Whereas the prosecution has proved that the so-called owner Smt.Kuttiammal is a non-existing person and the property, which the accused stated to have been inspected is unidentifiable and also not to the extent as shown in his report. Therefore, when there is a clear case established by the prosecution that knowingly the valuer has given false information with inflated value, the principle laid by the judgment of the Hon'ble Supreme Court cited supra cannot be applied.

33. Few other judgments cited by the learned respective counsels are based on the facts and no legal principle laid down in those judgments. Hence, this Court has avoided the pain of referring those judgments as not relevant to decide this appeal.

34. The most relevant issue involved in this case is that the property offered as additional security is owned by Smt.Kuttiammal as per the records furnished by A2 and A3 and admitted by A1. The said Smt.Kuttiammal has not been identified or secured by the prosecution. Though she was arrayed as A6, she has been shown as absconding accused. The case against her has been spilt up. A2 and A3, who have furnished her property as collateral security. Even if she is the absolute owner of 1.06 acres as claimed by A2 and A3, they are duty bound to explain the existence or non-existence of Smt.Kuttiammal since her existence is within their exclusive knowledge.

35. In this context, A1 in his letter dated 01.06.2001 as well as A4 in his valuation report dated 15.09.2001 had committed in writing that they have visited the property, made physical verification, enquired and satisfied with the worth and genuineness of the property. It is also the case of the prosecution that A2 and A3 has produced Smt.Kuttiammal for executing equitable mortgage.

36. In the said circumstances, it cannot be construed as genuine recommendation emanated from A1 in the normal course of business transaction and also it cannot be construed as civil dispute wherein the money advanced failed to be repaid by the loanee. A clear case of fabrication of record and dishonest inducement to advance enhanced cash credit limit is proved through the prosecution witnesses. Therefore, there is no scope to interfere with the finding of the trial Court holding A1 to A4 guilty of offences charged.

37. While reading the charge as pointed out by the learned counsel appearing for the appellants that there is no sufficient material to convict them for offence under Section 197 r/w 193 IPC and therefore, the offence under those Sections are deleted. Otherwise having proved the dishonest intention to induce the Indian Overseas bank, TM street to advance enhanced cash credit limit of Rs.7.5 lakhs by producing forged document as genuine, A1 to A4 are liable for conspiracy, cheating, production of forged documents as genuine to cheat the bank. A1 being public servant is also liable for misconduct by himself or any other person by abusing his official position.

38. Hence, the appellants are held guilty for the offence under Sections 120-B r/w 420, 471 r/w 466 IPC and 13(2) r/w 13 (1)(d) of PC Act, 1988 for cheating the bank and dishonestly inducing the Indian overseas Bank to enhance the cash credit limit from Rs.12.50 lakhs to Rs.20.00 lakhs which held guilty for offence under Section 420 IPC. Since this Court has found that the prosecution has failed to prove the charges under Section 197 r/w 193 IPC, the substantial sentence imposed on A4 for offence under Section 197 r/w 193 IPC is set aside.

39. Though the trial Court has framed charge for offence of cheating a sum of Rs.47,09,000/- under Section 420 IPC, taking note of over all due to the bank by A1 to A6 is Rs.47,09,000/- which includes interest for the loan availed by them, actually the amount dishonestly induced to cheat the bank is Rs.7.5lakhs and taking note of the quantum of cheating and the submissions made by the learned counsels appearing for respective parties regarding sentence, this Court is of the opinion that sentence imposed on the accused/appellant needs some leniency. Hence, sentence is modified as below:

Rank of the Accused	Charges framed against the accused by the trial Court	Sentence imposed by the trial Court	Modified sentence
A1 (Crl.A.No.799 of 2008)	Under Sections (i) 120-B r/w 420, 471 r/w 466 IPC and 197 r/w 193 IPC. (ii) 13(2) r/w 13(1)(d) of P.C. Act.	To undergo RI for 3 years and to pay a fine of Rs.10,000/- in default to undergo RI for 6 months for each of the offences. (Total fine Rs.20,000/-	(i) To undergo RI for One year for the offence under Sections 120-B r/w 420, 471 r/w 466 IPC. (ii)To undergo RI for One year for the offence under Section 13(2) r/w 13(1)(d) of P.C. Act. Charge of conspiracy to commit the offence under Section 197 r/w 193 IPC is found not proved. Fine amount imposed by the trial Court remains unaltered. The period of sentence is ordered to run concurrently.

Rank of the Accused	Charges framed against the accused by the trial Court	Sentence imposed by the trial Court	Modified sentence
A2 & A3 (Crl.A.Nos.825 of 2008)	(i)Under Sections (i) 120-B r/w 420, 471 r/w 466, 197 r/w 193 IPC and Section 13(2) r/w 13(1)(d) of PC Act. (ii)Section 420 IPC	To undergo RI for 3 years and to pay a fine of Rs.10,000/- in default to undergo RI for 6 months for each of the offences and for each of the accused. (Total fine Rs.40,000/-)	(i)To undergo RI for One year each for the offence under Sections 120-B r/w 420, 471 r/w 466IPC and Section 13(2) r/w 13(1)(d) of PC Act. (ii) To undergo RI for One year each for the offence under Section 420 IPC each. Charge of conspiracy to commit the offence under Section 197 r/w 193 IPC is found not proved. Fine amount imposed by the trial Court remains unaltered. The period of sentence is ordered to run concurrently.

Rank of the Accused	Charges framed against the accused by the trial Court	Sentence imposed by the trial Court	Modified sentence
A4 (Crl.A.No.792 of 2008)	(i) Under Sections 120-B r/w 420, 471 r/w 466 and 197 r/w 193 IPC and Section 13(2) r/w 13(1)(d) of PC Act. (ii)Under Sections 471 r/w 466 IPC. (iii)Under Section 197 r/w 193 IPC	To undergo RI for 3 years and to pay a fine of Rs.10,000/- in default to undergo RI for 6 months for each of the offence. (Total fine Rs.30,000/-)	(i)To undergo RI for One year for the offences under Sections 120-B r/w 420, 471 r/w 466, 197 r/w 193 IPC and Section 13(2) r/w 13(1)(d) of PC Act. (ii)To undergo RI for One year for the offence Section 471 r/w 466 IPC. Charge under Section 197 r/w 193 IPC as substantive offence is not proved. Fine amount imposed by the trial Court alters to Rs.20,000/- The period of sentence is ordered to run concurrently.

The period of imprisonment already undergone by the appellants/accused shall be set off. The trial Court is directed to secure the accused to undergo for the remaining period of sentence. The substantial sentence imposed on the 4th accused/P.S.Natarajan(appellant in Crl.A.No.792 of 2008 for offence under Section 197 r/w 193 IPC is set aside. Fine amount of Rs.10,000/- in respect of the offence under Section 197 r/w 193 IPC if paid by the appellant/4th accused, shall be refunded to the appellant.

40. In the result, with the above modification, these Criminal Appeals are partly allowed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To
1. XI Additional Court for CBI Cases, Chennai.
2.Inspector of Police, SPE:CBI:ACB, Chennai.
3.The Special Public Prosecutor for CBI Case, High Court, Chennai.

+2cc to Mr.C.Rajan,Advocate Sr.No.17910
+1cc to Mr.K.Muthukannaian, Advocate Sr.No.17628
+1cc to Mr.K.Govi Ganesan, Advocate Sr.No.12860

RV(CO)
sm:27.3.2018

judgment made in
Crl.A.Nos.799, 825 and 792 of 2008