Bail Slip

The Appellants/Accuseds,namely 1.A.M.Manickam @ Mu.Manickam aged about 69 years,S/o.Munusamy 2. V.Suganya Devi aged 53 years W./o. Late Vadeivel 3.E.Kalyanasundaram S/o.Elumalai and 4.M.Ramasamy were directed to be released on bail as per order of this Court Order dated 21.12.2012 in MP.NO.1/12 IN CRL A.NO.895/2012,MP.2 of 2013 IN CRL A.NO.33/2013 Order dated 19.12.2013 and MP.NO.1 of 2013 in CRL A.NO.68 of 2013 dated 23.01.2013 and MP.1/13 IN CRL A 137/13 dated 18.02.2013 by this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 01.03.2019
CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Crl.A.Nos.137, 33 & 68 of 2013
and
Crl.A.No.895 of 2012

M.Ramasamy ... Appellant/4th Acccused in Crl.A.No.137 of 2013

V.Suganya Devi ... Appellant/5th Acccused Crl.A.No.33 of 2013

E.Kalyanasundaram ... Appellant/1st Acccused Crl.A.No.68 of 2013

A.M.Manickam @ Mu.Manickam ... Appellant/3rd Acccused Crl.A.No.895 of 2012

Vs

The Inspector of Police,
SPE, CBI, ACB,
Chennai.
R.C.No.36(A)/2002. ... Respondent in all the Crl. Appeals.

Common Prayer: Criminal Appeals filed under Section 374 of the Criminal Procedure Code, to set aside the Judgment dated 11.12.2012 passed by the XI Additional Special Judge for CBI cases cum IX Additional City Civil Court, Chennai, C.C.No.12 of 2004.
(In all the Crl.A.s)

For Appellants : Mr.K.Shanmugakani in Crl.A.137/13

Mr.V.Kannadasan in Crl.A.33/13

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Mr.V.S.Venkatesh in Crl.A.68/13

Mr.AR.L..Sundaresan
for Ms.A.L.Gandhimathi in Crl.A.895/12

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor for CBI

COMMON JUDGMENT

These criminal appeals were preferred by the appellants/accused A1 and A3 to A5 against the judgment of conviction and sentence passed by the learned VI Additional Sessions Judge,CBI cases, Chennai in C.C.No.12 of 2004, wherein the learned trial judge sentenced the appellants/accused to undergo 2 years rigorous imprisonment for the offences under sections 120(B) r/w 420, 477(A) of IPC and section 13(2) r/w 13(1) (d) of P.C. Act 1988 and to pay a fine of Rs.10,000/- each in default to undergo simple imprisonment for two months.

2.A1, A3, A4 are convicted for the offence punishable under Section 420 of IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for two months.

3.A5 is convicted for the offence punishable u/s 420 of IPC and sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs.26,00,000/- in default to undergo simple imprisonment for one year.

4.A1 is convicted for the offence punishable u/s 477-A of IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for two months.

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5.A1 is convicted for the offence punishable under Sections 13(2) r/w 13(1) (d) of P.C Act 1988 and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.20,000/- in default to undergo simple imprisonment for four months

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6.The appellant/accused A3 filed separate criminal appeal in Crl.A.No.895 of 2012 against the conviction and sentence.

7.The appellant/accused A4 filed separate criminal appeal in Crl.A.No.137 of 2013 against the conviction and sentence.

8.The appellant/accused A1 filed separate criminal appeal in Crl.A.No. 68 of 2013 against the conviction and sentence imposed against him.

9.The appellant/accused A5 filed separate criminal appeal in Crl.A.No.33 of 2013 against the conviction and sentence passed in C.C.No.12 of 2004.

10.Brief case of the appellants/accused is that:

The Inspector of Police, SPE,CBI,ACB,Chennai laid the charge sheet against the A1 E.Kalayansdunaram, A2 R.Vadivel, A3 AM.Manickam @ Mu.Manickam, A4 M.Ramasamy and A5 Smt.V.Suganya Devi, alleging as follows:

A1 was a public servant, working as Senior Manager, Indian Overseas Bank, Neyveli TS Branch for the period from 14.11.996 to 7.1.2002.

A2 was the proprietor of RSV constructions, having cash credit account No.50658 with Indian Overseas bank, Neyveli TS Branch and was sanctioned with CC limit of Rs.4 lakhs. A2 died during the course of trial and the charge against him stands abated.

A3 was holding savings bank accounts bearing numbers 5638 and 11325 with IOB Neyveli TS branch. He had deposits 11 to 15/97 at Aladi branch which were taken as lien for his letter of guarantee facility extended at Indian Overseas Bank, Neyveli TS Branch. He also has deposits 26/99 to 28/99 at IOB, JSC Extension counter, Neyveli.

A4 had a CC account No.50697 with IOB Neyveli TS Branch and had CC limit of Rs.1.8 Lakhs.

A5 is the wife of A2 (now dead) and she had withdrawn cash from the CC account of RSV constructions.

11.While so, A1 during the period from 1996 to 2002 entered into criminal conspiracy with A2 to A5 to do an

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illegal act, viz, to cheat Indian Overseas bank, Neyveli Township Branch and in pursuance of the said conspiracy. A1 by abusing and misusing his official position as Senior Manager had illegally allowed excess withdrawal from the CC account of RSV constructions without obtaining necessary permission from the IOB ,Regional office, Pondicherry and continued to allow excess inspite of repeated letters and reminders from the regional officer advising him to stop the practice of allowing excess in the CC account of RSV constructions without proper approval. Due to such excess withdrawal, the CC account of RSV constructions had become a Non Performing Asset and the outstanding amount of December 2000 went upto Rs.29,00,000/-.

12.The above acts of A1 and others caused a wrongful loss of Rs.30.8 Lakhs to the Indian Overseas bank, Neyveli TS Branch and corresponding wrongful gain to themselves thereby committing offences punishable under sections 120 (B) r/w 420, 477 (A) of IPC and sections 13(2) r/w 13(1) (d) of P.C. Act 1988.

13.The prosecution case is that all the appellants/accused herein conspired together to defraud Indian Overseas Bank Neyveli Township Branch. In furtherance of the conspiracy,A1, the Branch Manager had allowed RSV construction to avail excess withdrawal from CC account of RSV construction thereby from 1996 to 2002 made the bank to incur loss of sum of Rs.29,00,000/- The appellant had certain deposits with the complainant bank, A1 had created deposits bearing Nos. 112 of 2001 to 124 of 2001 in the name of the appellant by using the interest paid on deposit Rs.6,27,000/- after creating the deposits the existing deposits Nos. 26 to 29 of 1999 of the appellant were closed by A1 and the bankers cheque Nos.37 of 2001 and 38 of 2001 were created and credited in to the C.C. Account of RSV constructions for the sum of Rs.6,30,778/- the deposits bearing No.112 of 2001 to 124 of 2001 were used as security for the letter of guarantee facility enjoyed by the appellant. Hence, the complaint was registered by CBI.

The case was taken on file in C.C.No.12 of 2004 by Additional Special Court for CBI cases. The learned trial Court framed the charges against the appellants/accused under sections 120(B) r/w 420, 477(A) of IPC and sections 13(2) r/w 13(1) (d) of P.C. Act 1988. The appellants / accused denied the charges.

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14.During trial, the prosecution examined PWs1 to 19, marked Exhibits P 1 to159. Exhibits D1 to D12 were marked on the accused side. List witness Ex.C1 was examined by Court and Exhibits Ex.C1 to C4 were marked.

15.After the trial, on appreciating the material available on record, the Additional Special Court for CBI cases, convicted the appellants/accused for the offences under sections 120 (B) r/w 420, 477(A) of IPC and section 13(2) r/w 13(1) (d) of P.C. Act 1988. Aggrieved over the same, the appellants/accused preferred this criminal appeal.

16.I heard Mr.K.Shanmugakani, learned counsel for the appellant in Crl.A.No.137/2013, Mr.V.Kannadasan, learned counsel for the appellant in Crl.A.No.33/2013, Mr.V.S.Venkatesh, learned counsel for the appellant in Crl.A.No.68/2013, Mr.AR.L.Sundaresan, learned Senior Counsel for M/s.A.L.Gandhimathi, learned counsel for the appellant in Crl.A.No.895 of 2012 and Mr.K.Srinivasan, learned Special Public Prosecutor for CBI appearing for the respondent and perused the entire materials available on record.

17.Rival Submissions made in all appeals:

The learned counsel for the appellants/accused submits that the learned judge having accepted that in the fraudulent transaction took place between A1 and A2 the appellant was not having any connection and there is no material available to the effect in such event the learned Judge ought to have acquitted the appellant.

18.The learned counsel for the appellants/accused submits that the learned trial judge having accepted that the money of the appellant deposited in the bank were misused without the knowledge of the appellant, by A1 in order to facilitate A2 to avail loan with the defacto complainant Bank. Hence the conviction is not sustainable.

19.The learned counsel for the appellants/accused submits that the trial Court failed to note that the sanction order given by Mr.Chidamabram, Deputy General Manager, by PW1 on 24.12.2003 is not valid in law as the sanctioning authority has not applied his mind while according the sanction to procedure.

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20.The learned counsel for the appellants/accused submits that the lower Court failed to consider the fact that the sanction to prosecute the above false is illegal in as much the authority has not considered the relevant material facts of the Inspection Report form 60H submitted by the Neyveli Branch, Indian Overseas Bank as admitted by the sanctioning authority himself.

21.The learned counsel for the appellants/accused submits that the lower Court failed to note that the appellant was sanction the alleged excess overdraft loan based on the security of the three fixed deposits maintained from 1995 by him in the bank in Exhibit-P112 and Exhibit-P121 namely:

a) RDP for Rs.82,000/-

b) RDP for Rs.2,73,000/-

c) RDP for Rs.1,70,121/-

and the same has been admitted by PW.18 Investigation Officer.

22.The learned counsel for the appellants/accused submits that the lower Court failed to note the PW 18 Investigation Officer has in his cross examination admitted before the trial Court

A) He has not investigated why the RDP was adjusted to the A/c of A4

B) He has not interrogated A4

C) Has not collected specimen signature of A4

23.The learned counsel for the appellants/accused submits that the lower Court failed to note that the investigation report of Mr.N.Balasubramanian of the vigilance department of IOB was obtained by the Investigation Officer on 22.4.2003 . But the same was not placed before the sanctioning authority who gave the sanctioning order on 14.1.2004 and the same has been admitted in the cross examination by the sanctioning authority.

24.The learned counsel for the appellants/accused submits that the lower Court failed to consider that it is

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the normal banking practice to grant loan in excess of credit based on the securities such as reinvestment deposits and sanctioning excess loan and rectifying is only an irregularity.

25.The learned counsel for the appellants/accused submits that the lower Court failed to note that the entire loan of A4 was adjusted on 23.1.2001 by way of RDP and other funds of A4.

26.The learned counsel for the appellants/accused submits that the lower Court failed to note the proof of the fixed deposits held by the appellant in the bank for Rs.1,17,121/- and Rs.3,01,233/- has been admitted by the bank in their audit report.

27.The learned counsel for the appellants/accused submits that the lower Court failed to note the credit voucher dated 23.1.2001 the credit entry to the appellant account 50697 for an amount of Rs.1,58,302.15 was prepared by A1 the senior Manager of the bank and the appellant is not concerned in any manner.

28.The learned counsel for the appellants/accused submits that the lower Court failed to note the sanctioned limit to cash credit to his account No.50697 of the appellant was Rs.1,80,000/- and the appellant was having two fixed deposits with the bank. Admittedly (D21) cash credit is permissible upto 85% of the value of the deposit.

29.The learned counsel for the appellants/accused submits that the learned trial judge failed to take note that this appellant/accused No.5 is the wife of late Vadivel A2 and she is no way connected with the said transaction. The trial Court has convicted the appellant only on the evidence of Ex.P.72 to Ex.P.91 which relates to the encashment of cheque.

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30.The learned counsel for the appellants/accused submits that the learned Special Judge for CBI cases had not considered even a single line of cross examination of the prosecution witness PW1 to PW19. A mere perusal of cross examination of witnesses and especially PW2 and PW18, the Investigating officer of this case as against the

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appellant/A1 and even the charge sheet is bereft of details and the prosecution was not able to substantiate the charges by way of letting in impeachable evidence both oral and documentary and the prosecution has not proved the case beyond reasonable doubt.

31.The learned counsel for the appellants/accused submits that the appellant A1 joined the Indian Overseas Bank, Neyveli Township Branch only on 14.11.1996 and excesses were granted to RSV constructions represented by T.Vadivel, proprietor of the said firm and A4 M.Ramasamy in CC account No.50697 even prior to the appellant joining the Indian Overseas Bank, Neyveli Township branch. The learned judge also failed to consider that the excesses granted during his time were covered by deposits and collateral security was also obtained from RSV constructions for the excesses granted by him and that was the reason why the bank has got an order in its favour by way of recovery of the assets that were given as collateral security for the excesses drawn by RSV constructions as evidence by Exhibits C1 to C4 before this Court.

32.The learned counsel for the appellants/accused submits that the learned judge failed to consider and appreciate the fact that it was only PW2 Rajarajan who had lifted the lien which was created by the appellant and paid the amounts to A3 Manickam after the appellant was transferred from the branch to the Regional Office. Inspite of the fact that the same was admitted by PW2 in his cross examination the learned judge failed to consider the same and convicted the appellant erroneously.

33.The learned counsel for the appellants/accused submits that the learned judge failed to consider and appreciate the fact that PW 18, the investigating officer in this case has categorically admitted that there were no excesses as per the details mentioned in charge No.1 of the charge sheet and he had also categorically admitted that the loss of Indian Overseas bank Neyveli Township branch was as per the charge framed against the appellant.

34.The learned counsel for the appellants/accused submits that there was no conspiracy between the accused persons since A1 was a public servant working as senior manager of IOB, Neyveli TS Branch and A2, A3, A4 were enjoying cash credit facilities, letter of guarantee

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facilities and maintaining savings bank account with IOB, Neyveli TS Branch and they were enjoying the facilities even prior to A1 joining the services of the IOB, Neyveli TS Branch. Appellant/A1 and the accused persons A2 to A5 is nothing but a banker and customer relationship. Furthermore the accused A2 to A4 were enjoying various credit facilities and having their respective accounts even prior to A1 joining the service. Further A5 was encashing the amounts credited in C.C. Account No.50658 of RSV constructions even prior to A1 joining the services of the bank as seen from Ex.P8 produced by the prosecution. The statement of account pertaining to RSV construction and others right from the day they had transactions with the bank is not produced before this Court and event eh respondent/complainant is not aware and no investigation has been done as to from which period the accounts were opened and there was no reason given by the respondent/complainant as to why the entire statements of account were not produced before this Court.

35.The learned counsel for the appellants/accused submits that A1 joined the Neyveli TS branch of the IOB only on 14.11.1996. The prosecution has produced Ex. P8 which is the statement of cash credit account of RSV construction bearing No.50568 for the period commencing from 1.4.1995 to 31.12.2002. Ex.P8 is the statement of account pertaining to 1.4.1995 to 28.9.1996. Ex.P8 clearly established that RSV constructions was enjoying cash credit limit of Rs.2.50 lakhs only but they have availed excess of more than 100% even prior to A1 joining the services of Neyveli T.S. Branch of IOB. It is also evident that 90% of the withdrawals in the said account are made by cheques issued by A5 who is only a guarantor to the said account and that the same procedure was followed even prior to A1 joining the services.

36.The learned counsel for the appellants/accused submits that in the entire case the prosecution will not be in a position and has not established that A1 had caused the loss of Rs.31.8 lakhs to the bank. No evidence is available before this Hon'ble Court to sustain the said charge. Even according to Ex.P8 and Ex.D12 has been established by the defense that only an amount of Rs.16,58,010.73 has been transferred to the suit filed account pertaining RSV constructions account and as per Ex.P12 an amount of Rs.1,58,352.15 is the outstanding the said account. If both the amounts are taken together also the total loss to the bank as per the statement of account

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of A2 and A4 is only Rs.18,16,362.88. The bank had filed suits to recover the same amount and in one case the bank has got a favourable order from the DRT and the bank have also got collateral security furnished by A2 and A5, which would establish that the bank had been able to recover its dues entirely only on the strength of the documents that have been obtained by A1 in this case.

37.The learned counsel for the appellants/accused cited the under mentioned decision in support of their submissions:

(2012) 10 SCC 303 (Gian Singh Vs State of Punjab and another)

38.The learned special public prosecution for CBI supported the findings of the trial judge and opposed the contentions of the appellants.

39.I have given my careful consideration to the respective submission made by the learned counsel for the parties and perused the entire records produced by the parties.

40.It is seen from the records that, the alleged occurrence took place between 1996 to 2002. On the basis of the complaint by PW1 Chidambaram, DGM, Indian Overseas Bank deposed that during the relevant period A1 Kalyanasundaram was working as a Senior Manager, IOB, Neyveli Branch and he issued Ex.P1 circular dated 6.8.2001 for taking disciplinary action as a competent authority. Exhibit P2 is the sanction order dated 24.12.2003 issued by him for prosecuting A1. He deposed that he issued the sanction order after perusing the copy of the FIR , statements of the witnesses, documents submitted by the prosecution and all other connected records applying his mind and ought being satisfied that a prima facie case has been made out against the accused.

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41.PW2 Rajarajan, Assistant Manager, IOB, Pondicherry deposed that on verification he found illegal transactions after take over the charge of the branch by A1. Through his evidence, the entire transactions and documents pertaining to the appellants/accused starting from Exhibit P5 to P 109 was marked.

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42.PW4 S.T.Ramaraj, Chief Manager, Central Office, IOB, deposed about the perusal of all credit entries on the documents relating to RSV constructions from 1.4.1995 to 30.6.2000. The transfer of funds between A3 and RSV constructions and other corresponding transfer to other branch and found that the interest paid on deposit was debited for singular amount.

43.PW5 Balasubramaniam, Chief Manager, IOB, deposed that as per the instructions of the DGM, he investigated the irregularities in the account of the RSV constructions and his investigating report is Exhibit P110. He opined about the debt entries and corresponding credit made to other appellants.

44.PW6 Santhanam, retired General Manager, IOB, deposed that the account of RSV constructions was irregular and he directed A1 to regularize the account of RSV constructions and the deposits from the account of appellant/accused A3.

45.PW7 Chitra Pattabiraman, clerk, Neyveli Branch, IOB deposed about the Exhibit P14 credit voucher prepared by the appellant/accused A1 other deposit transactions infavour of RSV constructions.

46.PWs 8 to 17 are the bank witnesses deposing about the transactions between the appellants/accused.

47.PW18 Srinivasan, Investigation Officer deposed that on credible information received on 31.7.2002 and as per the orders of S.P, CBI, registered FIR in Cr.No.RC.36(A)/ 2002 against the appellants/accused and the printed FIR is Exhibit P150 and after completing the investigation filed the final report against A1 to A5 under Sections 120(b) r/w 420,477(A) of IPC and 13(2) r/w 13(1) (d) of Prevention of Corruption Act 1988.

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48.PW19 Ravi, principle scientific officer, Central Forensic Scientific Lab, New Delhi deposed about the specimen signatures of A1 and other appellants/accused in his report Exhibit P 134 to 155.

Exhibit P5 to P7 there are endorsements for pre-closure of the deposits and the payments have been made by A1.

49.The certified Xerox copy of statement of account of RSV constructions for the period from April 1995 to December 2002 is marked Exhibit P8. As per Ex.P8 the debit balance on 2.11.99 was Rs.29,36,559.53.

50.As per Ex.P8 the proceeds of Ex.P5 to P7 were given credit on 24.8.2000 in the account of M/s RSV construction for Rs.6,30,770/- Ex.P9 is the Inter Bank Settlement Advice No.5154073 dated 22.1.2001 for Rs.10,13,869/- issued by Aaladi branch drawn on Neyveli town ship by way of RDPs settlement No.11/99, 15/99 by AM.Manickam @ Mu.Manickam and the same was signed by the then Manager of Aaladi branch. It was respondent by Neyveli branch for the said A1 put his signature.

51.Ex.P9 were adjusted in the accounts mentioned in the vouchers marked as Ex.P10 and Ex.P.11.

52.Ex P.12 is marked as the certified copy of the statement for the period from 1.4.95 to 28.8.2002.

53.The debit voucher dated 5.2.01 signed and written by A1 for Rs.10,13,869/- towards the interest paid on deposit as per banks profit and loss account. Even though the receipt dated 5.2.01 , the amount was adjusted on 6.2.01 and the same is marked as Ex.P13.

54.Ex.P14 is the same amount given to the account of AM.Manickam @ Mu.Manickam by voucher dated 6.2.2001 is marked as Ex P.14.

55.The certified copy of the statement of accounts pertaining to account No.5638 of AM.Manickam @ Mu.Manickam for the period from 1.1.2001 to 17.10.2002 is marked Ex.P.15.

56.The debit voucher dated 16.2.2002 for Rs.10,18,409/- from the Account No.5638 of AM.Manickam @ Mu.Manickam prepared by Sivagami, Clerk and signed by A1 is marked Ex.P.16.

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57.The credit voucher for Rs.10,18,409/- was given in the credit in the S.B. Account No.11325 of AM.Manickam @ Mu.Manickam prepared by Sivagami, Clerk and signed by A1 is marked Ex.P.17.

58.The debit voucher dated 20.2.2001 for Rs.10,18,409/- in FD account No.11325 of AM.Manickam @ Mu.Manickam prepared by Sivagami, Clerk and signed by A1 is marked Ex.P.18 on the same and the voucher is marked as Ex.P.19. On 20.2.2001 they sent IBSA to Aaladi Branch to give credit of the said amount for opening RDP in the name of AM.Manickam @ Mu.Manickam for 3 years is marked as Ex P.20. The corresponding voucher is marked as Ex.P.21.

59.The credit vouchers are marked as Ex P.22 to Ex P.26.

60.The corresponding receipts issued in the name of AM.Manickam @ Mu.Manickam dated 20.2.2001 for the above said amount are maked as ExP.27 to P31.

61.The debit voucher dated 31.7.01 for Rs.6,27,000/- in the SB account No.11325 of AM.Manickam @ Mu.Manickam is marked as Ex.P.32.

62.The said amount was transferred to the Jawahar Science college Extension counter vide voucher dated 31.7.2001 and the same is marked as Ex P.33.

63.Ex.P.34 is the corresponding advice issued to Hawahar scienc college extension counter.

64.As per vouchers 31.7.2001 of Jawahar science college extension counter, the said amount was deposited under 13FDs in the name of AM.Manickam @ Mu.Manickam for 3 years, the vouchers issued by them are marked as Ex.P.35 to Ex.P.47 by which 12 deposits were made each for Rs.50,000/- (and one deposit is for Rs.20,000/0 Ex.P.45)

65.The bankers cheque bearing number 601286 dated 16.8.2001 in the account of Jawahar science college extension counter for Rs.6,29,574/-infavour of RSV construction is marked as Ex P.48.

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66.Ex.P.49 is another bankers cheque bearing No.601289 dated 6.2.2001 issued by Jawahar science college extension counter for Ex.P.47 and Ex.P.48 are marked as Ex.P.50 and P.51.

67.Ex.P.52 voucher dated 24.8.2001 the proceeds of Ex.P.48 and P49 was given credit in the account of RSV construction.

68.The debit voucher dated 2.1.2002 for Rs.5,02,862/- in FD account No.11325 of AM.Manickam @ Mu.Manickam prepared and signed by A1 is marked Ex.P.53.

69.The said amount was given credit in the bank statement of profit and loss dated 7.1.2002 prepared and signed by A1 is marked Ex.P.54.

70.Ex.P.55 to Ex.P.59 is the RDP bearing Nos.11 to 15 of 1997 dated 24.7.1997 of Aaladi branch held by AM.Manickam @ Mu.Manickam.

71.The nomination slip submitted by the depositor for the RDPs 12 to 15/97 are marked as Ex.P.60 to P63 respectively.

72.The credit voucher dated 22.1.2001 issued by Aaladi branch for Rs.10,13,869/- for transferring the RDPs 11 to 15/97 held by AM.Manickam @ Mu.Manickam to Indian Overseas Bank, Neyveli branch and the same is marked as Ex.P.64.

73.The certified Xerox copy of lot entries dated 28.7.2001 for the transaction involving Rs.6,27,147/- and the same is marked as Ex.P.65.

74.The letter dated 1.4.97 written by RM to senior manager, Indian Overseas Bank Neyveli branch with regard to excess granted to RSV constructions account and the same is marked as Ex P.66.

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75.The letter dated 9.5.97 written by RM to senior manager, Indian Overseas Bank Neyveli branch with regard to operation of RSV constructions account and the same is marked as Ex P.67.

76.The letter dated 24.7.98 written by RM to senior manager, Indian Overseas Bank Neyveli branch with regard to operation of RSV constructions account and the same is marked as Ex P.68.

77.There were 26 cheques issued by RSV construction for various parties and the same were paid through his account No.50658 on various dates. Those cheques are marked Exs.P69 to P94. Ex.P73, Exs.P77 to P94 was issued in favour of Sukanyadevi A5.

78.The letter of guarantee referred register for the period from January 2001 to June 2001 is Ex-P103. The letter of guarantee liability register is marked as Ex-P104.

79.Ex.P107 contains the relevant entries for the above said cheques allowed by A1 RMG & Associates, Chattered Accountants, audited the branch submitted a report dated 15.4.2000 and the same is marked as Ex-P108.

80.At annexure para No.5 having C.C.A/c.No.50658 of RSV constructions, the defects are noted "Defect Limit sanctioned ... is Rs.4,00,000/- but the borrower has overdrawn the limits to a very high extent and the balance during the month of December 1999 has exceeded Rs.28 Lakhs and the balance as on 31.3.2000 is Rs.16,04,574.03. the sanction letter with annexure given by regional office, Indian Overseas Bank, Pondicherry dated 4.6.96 for sanction of limit in favour of RSV construction and the same is marked as Ex.P.109.

81.Ex.P111 is the Form 60H of Indian Overseas Bank for creating security on term deposit receipts. Exs.P112 to P124 is RDP Deposit receipts mentioned as under lien to Neyveli branch.

82.The leave application dated 10.5.1996, 27.10.2000

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and 09.10.2000 of A1 addressed to the RM, Indian Overseas Bank, Pondicherry as marked as Exs.P134 to P138 respectively.

83.The application cum letter of authority for social service benefit scheme dated 26.03.1996 submitted by A1 is marked as Ex.P139.

84.The account opening form bearing S.B. A/C.No.12455 if A1 as Sr.Manager, IOB Neyveli Branch opened with Neyveli branch is marked as Ex P.140.

85.The two withdrawal slip dated 24.3.2001 and 12.5.2001 in S.B.A/C.No.12455 of Neyveli branch signed by A1 are marked as Exs-P141 and P142 respectively.

86.The specimen signature card of SB A/c No.12455 is marked Ex-P143. The nomination sheet is Ex-P144.

87.As seen from the above exhibits, it is contended that the charge is quite illegal and there is misjoinder of charges and the learned trial Judge has committed serious error of law in trying the three cases together.

88.There is no provision in Criminal Procedure Code to consolidate the cases. It is quite apparent that the story of prosecution is inherent by improbable. Alternatively, if it is believed, than, it is a case of pure civil dispute as the amount was to be adjusted to the Cash Credit given to the firm of the appellants/accused. In fact, some amount was recovered from firm and civil suit was filed which was allowed in terms of consent decree passed in favour of the respective banks. However, agreed to pay the amount to the Bank in suit filed by the Bank and consent decree has been passed and, therefore, the transactions were of civil nature. The prosecution has led the evidence which consisted mainly of the facts which are more or less admitted by defence. There is no denial to basic facts that firm was carrying on business and had account with Banks. The facts that hundies were drawn and encashed but the only dispute is of dishonesty or the main ingredients of cheating, however, there is no iota of evidence showing wrongful loss to any one and wrongful gain to the appellants/accused or their firm.

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89.The case of the prosecution is in the nature of circumstantial and if not explained reasonably, case must end into acquittal. The principles of circumstantial evidence, in brief, are that:

The circumstances which are required to be proved must be incriminating in nature;

The chain must be completely established and all links must be connected together which should lead to exclusive hypothesis of guilt;

Each link must be established by cogent evidence;

There should not be any other hypothesis except guilt.

90.In the present case, the dispute is of pure civil nature and bank transactions which are not contested by the appellanys/accused admitting their civil liabilities. Thus, there is no question of any dishonest intention on the part of the appellants/accused.

91.The learned Special Prosecutor also contended that there is a charge of conspiracy. It is submitted by the counsel for the appellants that there is not an iota of evidence about any such conspiracy, not even an inference is possible from proved facts on record. He has submitted that it is well settled law that to establish conspiracy which is always hatched in secrecy and the evidence of an approver is a must and in this case, there is no approver to prove any conspiracy. He further contended that the offence if any, has taken place at Chennai and therefore, the trial Court exceeded its jurisdiction in framing the omnibus charge. He further contended that there is evidence on record that the firm had very high reputation and very huge turn over and due to mistake or oversight, if any irregularity was committed, than there was corresponding cash credit available to the party and some part was recovered from the accounts of the firm and that the criminal proceedings are not meant to be used as a lever to recover the money due to Banks, and therefore, the impugned judgment and order of conviction is required to be quashed and set aside.

92.From the above observations, it is also required to be considered that mens rea on the part of the accused present appellants is required to be considered through evidence. It is also to be established beyond reasonable

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doubt that the present appellants have committed the said alleged offence. A failure on the part of the prosecution to prove the conduct and act of the appellants-accused, then, it can be considered that the prosecution has failed to prove its case beyond reasonable doubt. In the case of Guru Bipin Singh vs. Chongtham Manihar Singh, reported in AIR 1997 SC 1448, the Hon'ble Supreme Court has observed that if forgery be not there, allegation under Sec. 420, I.P. Code, would fail because, forgery is the principal allegation, cheating being a consequential offence. If forgery goes, cheating cannot stand.

93.In the present case, I have perused the FIR registered by the CBI and in the said FIR, the offences etc. were shown and later on investigation was carried out by the agency and charge-sheet was filed against the present appellants for the offence under section 420 read with section 34 of IPC and Prevention of Corruption Act Old Act). So, it appears that during the investigation and interrogation of this case, the agency has never found that there was a case of forgery. So, in the light of the observations of the Supreme Court, when the prosecution has failed to prove the principal allegation of forgery, then the offence of cheating cannot stand. In the case of Hridaya Ranjan Prasad Verma vs. State of Bihar, reported in AIR 2000 SC 2341, the Hon'ble Supreme Court has considered that the fraudulent and dishonest intention is required to be proved beyond reasonable doubt. In the present case, the basis of the prosecution case is only relying upon the conduct of the present appellants/ accused just to say that there was a dishonest intention and due to that intention, the appellants accused have committed the said offence.

94.The question is why appellant/accused A1 should transfer the funds lying in the deposit of A3 to the cash credit account of RSV constructions, when there is no nexus between appellant/accused A2 and A3.

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95.At this juncture, another question is arose that the shot fall of interest will normally occur only at the time of closing the deposits.

96.The act of appellant/accused A1 in transferring the amount from the profit and loss account of the branch in the guise of payment of shot fall of interest has been done only with a malafide intension of replacing the amount in the deposit account of Manickam, which he had earlier transferred towards the cash credit account of RSV constructions. One Kalyanaraman was examined by the trial Court as CW1 through whom Exhibits C1 to C4 were marked relating to DRT case proceedings.

97.It is also an admitted fact that, O.A.Nos.399 of 2002, 294 of 2000 in two course, i.e. DRT I and II. When civil action has been initiated for recovery of money outstanding under the loan account, the case projected by the prosecution and the omnibus charge of conspiracy cannot be sustained in appreciating the evidences on record. The reading of the evidences would clearly indicate that there is no mensrea of misappropriation and cheating as alleged by the respondent. However, the learned trial Court misread the evidences and come to the conclusion that the offences alleged by the respondent supported by material particulars.

98.With regard to relevancy and admissibility of the documents pertaining to maintaining the accounts during said period is concerned, the said accounts were maintained in the ordinary course of the business of the bank and the trial Court in its judgment has elaborately not considered about this aspect with reference to the decisions relied upon by both sides which are referred in the said judgment of the trial Court. The prosecution in order to prove the alleged offences committed by the appellant/accused have not relied upon the documents regarding the accounts maintained in respect of the said transactions and the witnesses P.Ws.5 an 6 who have spoken in detail with reference to the documents which is also supported by the audit report. Therefore, the non-reasoning adopted by the trial Court regarding the relevancy and admissibility of the accounts books like vouchers, consolidated vouchers and registers got exhibited in the case cannot be considered as evidence as per Section 34 of the Evidence Act and the correctness of those entries in the said account books, registers and vouchers have not been satisfactorily established by the prosecution by oral evidence of prosecution witnesses so also the documents produced in the case. Therefore, the reasoning recorded by the trial Court is not in accordance with the materials placed on record, both oral and documentary. Perusing the entire materials on record, they clearly go to show that appellants/accused not conspired with each other to misappropriate the funds belonging to the Bank with a malafide intention to cause wrongful loss to the bank and to have wrongful gain to themselves. All the materials placed on record, both oral

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and documentary and the decisions relied upon by both sides were not properly appreciated and considered by the trial Court in recording such findings. Therefore, the findings recorded by the trial Court is not in accordance with law and the materials placed on record and illegality has been committed by the trial Court and there is perverse or capricious view taken by the trial Court in coming to such conclusion. Under the circumstances, I am of the opinion that the prosecution has failed to prove all the charges leveled against the appellants beyond all reasonable doubts. The respondent CBI filed various exhibits which are no way connected with the alleged check period mentioned in the final report. Hence the findings of guilt against the appellants/accused cannot be sustained.

99.In the result:

a)All the criminal appeals are allowed and thereby the conviction and sentence imposed on the appellants/accused in C.C.No.12 of 2004 dated 11.12.2012, on the file of the learned XI Additional Special Judge for CBI cases cum IX Additional City Civil Court, Chennai is set aside;

b)The appellants/accused are acquitted from all the charges and the fine amount if any paid by the appellants/accused shall be refunded by the trial Court;

c)The bail bond if any executed by the appellants/accused shall stands cancelled.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vs
To

The XI Additional Special Judge for CBI cases
cum IX Additional City Civil Court,
Chennai.

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

3.The spl Public Prosecutor CBI CASES, High Court ,Madras.

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4.The VII Metropolitan Magistrate, Chennai.

5.The Superintendent,Central Prison, Puzhal

6.The Superintendent,Special Prison for Women, Puzhal, Chennai.

7.The District Collector, Chennai.
8.the Director General of Police,Mylapore, Chennai 4.

9. The section officer,
Criminal Section,
High court
Madras

10.The Public Prosecutor, High Court ,Madras.

+1cc to Mr.K.Srinivasan, , Advocate SR.No. 19023
+3ccs to Mr.V.S.Venkatesh , Advocate SR.No. 19068
+2ccs to Mr.Al.Gandhimathi, Advocate SR.No. 19096
+1cc to Mr.V.Kannadasan , Advocate SR.No. 19574

Crl.A.Nos.137, 33 & 68 of 2013
and
Crl.A.No.895 of 2012

A.SK(27/03/2019)

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