IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.11.2019
PRONOUNCED ON : 07.07.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.A.Nos.357, 348 & 358 of 2009

CRL.A.No.357 of 2009:
Madhusudanan ... Appellant in C.A.No.357 of 2009

Vs.

State represented by
Deputy Superintendent of Police,
Central Bureau of Investigation,
Banking Security and Fraud Cell
Bangalore. ... Respondent

CRL.A.No.348 of 2009:
R.Krishnamurthy ... Appellant in C.A.No.348 of 2009

Vs.

State rep. by Inspector of Police,
DSP : CBI : BS & FC,
Bangalore. ... Respondent

CRL.A.No.358 of 2009:
A.R.Rajasekaran ... Appellant in C.A.No.358 of 2009

Vs.

State represented by
Deputy Superintendent of Police,
Central Bureau of Investigation,
Banking Security and Fraud Cell
Bangalore. ... Respondent

COMMON PRAYER in C.A.Nos.357 & 358 of 2009: Criminal Appeals filed under Section 374(2) of the Code of Criminal Procedure, to set aside the conviction and sentence imposed on the appellant in C.C.No.60 of 2000 on the file of the learned XI Additional Special Judge for CBI Cases, Chennai-600 001, dated 09.06.2009.

PRAYER in C.A.No.348 of 2009: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the order of conviction dated 09.06.2009 passed in C.C.No.60 of 2000 on the file of the learned XI Additional Judge for CBI Cases, Chennai and acquit the appellant.

For Appellant in C.A.No.357 of 2009	:	Mr.S.Rajasekar
For Appellant in C.A.No.348 of 2009	:	Mr.S.Sadasharam
For Appellant in C.A.No.358 of 2009	:	Mr.R.Shanmugavelayutham Senior Counsel for Mr.K.J.Parthasarathy
For Respondent in all cases	:	Mr.K.Srinivasan Special Public Prosecutor for CBI Cases

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COMMON JUDGMENT

The appellant in C.A.No.348 of 2009 is A1 and the appellant in C.A.No.357 of 2009 is A3 and the appellants in C.A.No.358 of 2009 are A2 and A4. These appeals arise out of the conviction and sentence rendered by the learned XI Additional Judge (CBI Cases relating to Banks and Financial Institutions), Chennai in C.C.No.60 of 2000 dated 09.06.2009.

2.The conviction and sentence of the trial Court are as follows:-

Appellant/ Accused	Conviction and Sentence
A1	Convicted under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.1,00,000/-, in default to undergo Rigorous Imprisonment for six months.
A2	Convicted under Sections 420, 468, 468 r/w 471 IPC each and sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.50,000/-, in default to undergo Rigorous Imprisonment for six months.
A3	Convicted under Section 420 IPC and sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.50,000/-, in default, to undergo Rigorous Imprisonment for six months.
A4	Convicted under Sections 120-B r/w 420, 468, 468 r/w 471 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and to pay a fine of Rs.50,000/-.

3.Since all the appeals arise out of the Judgment in C.C.No.60 of 2000, this Court disposes all the appeals by way of Common Judgment. For the sake of clarity, the appellants are referred as, according to their ranks, as mentioned in the charge.

4.The case of the prosecution in a nutshell is as follows:-

(i)On reliable information, the Superintendent of Police, CBI, BS & FC, Bangalore registered an FIR [Ex.P221] and entrusted the investigation to H.S.Chopra, Deputy Superintendent of Police, CBI, BS & FC, Bangalore who conducted search in the premises of A1 to A3 and also their lockers. The search was conducted by one Prema logan, the Inspector of Police, CBI, BS & FC, Bangalore and thereafter, further investigation was conducted by B.L.Singad/PW36. During the period between 1993 and 1994, A1 to A4 had entered into a criminal conspiracy to cheat the Bank of India, Purasawalkam Branch, Chennai by dishonestly and fraudulently using forged documents, misrepresenting facts, furnishing false information while applying, sanctioning, recommending, withdrawing the Export Credit Packing Facilities (ECPC) and Foreign Bill Purchase (FBP), which was not properly scrutinized by A1, who forwarded and recommended for sanction by the Industrial Finance Branch (IFB) and got proposal sanctioned. The Export Credit Packing Facility (ECPC) and Foreign Bill Purchase (FPB) facility was granted to M/s.Vindia Exports Private Limited, Chennai/A4. A2 to A3 are its Directors. A1 is the Branch Manager of Bank of India, Purasawalkam Branch, Chennai.

(ii)A1 has granted loan facilities by way of ECPC and FBP negotiation facilities for Rs.15 lakhs in favour of M/s.Valley Exporters, No.44, Nowriji Road, Chennai, in which A2 was its Proprietor. A4 was granted ECPC facilities for a sum of Rs.1.25 crores in favour of M/s.Vindia Exporters Private Limited, Chennai. A1 in pursuance to the conspiracy by abusing his official position as Public Servant had released Rs.15 lakhs ECPC loan facility in favour of M/s.Valley Exporters, Chennai and disbursed the entire ECPC loan facility of Rs.1.25 crores sanctioned by Zonal Manager, Bank of India, South Zone, Chennai to M/s.Vindia Exporters Private Limited. A2 and A3 by using false, fabricated and forged documents and using the same as genuine knowing them to be forged, misutilized the entire loan sanctioned for the purpose other than for which it was sanctioned and caused loss to the tune of Rs.2.37 crores (with interest upto 21.03.1997) and thereby, A1 to A4 have committed the offence punishable under Sections 120(b) r/w 420, 468 and 471 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. On completion of investigation by examination of witnesses and collection of documents, charge sheet came to be filed before the trial Court.

5.During trial the prosecution examined 36 witnesses and marked 286 documents and marked 1 material object. On the side of defence no witness examined but marked 5 documents. During the pendency of the appeals, the learned counsel for the appellants in C.A.No.358 of 2009 filed a petition for marking additional evidence in Crl.M.P.No.11591 of 2018. This Court by order dated 03.09.2018 marked four documents namely Exs.C1 to C4.

6.On conclusion of trial, when the learned trial Judge put the incriminating materials to the accused under Section 313 Cr.P.C., the appellants denied the same. Upon appreciating the evidence let-in by the prosecution, the trial Court found the appellants guilty and convicted them as stated above. As against the conviction and sentence, appeals are filed.

7.The submissions of the learned counsel for the appellant/A1 in C.A.No.348 of 2009, are as follows:-

(i)The FIR [Ex.P22] was registered on the basis of source information by the Superintendent of Police, CBI, which runs to six pages and refers to various particulars of the loan of the accused. Without perusal of the loan documents, these particulars cannot be obtained and the loan documents were with the bank. For the reasons best known, to save set of bank officials and make the appellant a scapegoat, the source information has been suppressed. The non-disclosure of this vital information is causing serious doubt on the respondent/police in the manner of conducting investigation and filing charge sheet.

(ii)He further submitted that the sanction order [Ex.P2] was issued by PW2. PW2 is the Chief Regional Manager, Bank of India, Madurai Region and A1 was a Senior Manager. The sanctioning authority is the General Manager and not the Chief Regional Manager. Hence, PW2 is not a competent person to accord sanction for prosecution. Further in Ex.P2, there is no mention about the crime number in which the investigation had commenced and the details of investigation. The sanction order [Ex.P2] does not refer to any reports submitted by the Deputy Superintendent of Police, CBI, BS & FC, Bangalore. Without referring to the reports submitted by the prosecution, the sanctioning authority has referred to the documents and statements. Hence, the sanctioning authority/PW2 had not independently applied his mind while according sanction and he was not aware of the complete facts of the case. In Ex.P2, the statement and documents produced before according sanction are not explicitly shown and perused. The sanction order is non-est in law. PW2 in his evidence gave standard answer “I do not remember” for all the questions. Hence Ex.P2 as well as his evidence ought not to be considered. In the absence of valid sanction, the case against the appellant/A1 cannot be proceeded.

(iii)The learned counsel for the appellant/A1 further submitted that there is no evidence even to infer remotely that the appellant had connived, conspired and colluded with other accused in recommending the loan, allowing the facilities to be utilized by them. There is evidence to show that A1 as Branch Manager, was only empowered to sanction upto Rs.15 lakhs and as far as M/s.Valley Exports Private Limited, the loan ECPC and FBP were granted by A1 and the same have been completely discharged. PW9, the Zonal Manager, Bank of India, Southern Zone sanctioned loan of Rs.1.25 crores to M/s.Vindia Experts Private Limited, since it was within his financial powers. PW9 admits that IFB is a Special Branch for larger credits with necessary expertise. From the sanction proposal dated 03.02.1994 [Ex.P11] it is seen that the proposal has been prepared by Industrial Financial Branch (IFB) in favour of A4 and the same is admitted by PW4, the Deputy Manager (Credit), Bank of India, Purasawalkam Branch, Chennai. The Branch Manager, recommended loan proposal on 02.02.1994 and the same was marked as Ex.P12. It is clear admission of PW9, that ECPC facilities and FBP facilities were sanctioned by him. In this case, the witnesses PW6/the Chief Manager, IFB, PW7/Deputy Manager, BOI, Purusawalkam Branch, PW8/Dealing Officer, IFB, Zonal Office, who scrutinized the proposal and PW9/Zonal Manager, Bank of India, Southern Zone have all in their evidence admitted about scrutinizing the proposal of A4, finding the proposal to be genuine in all aspects have accorded loan sanction.

(iv)PW5, the Joint Manager, Administration BOI, Purusawalkam Branch admitted in his evidence that he forwarded the loan proposal of A4 Ex.P35, dated 21.01.1994. During that period, A1 was on leave since his father passed away and he had to conduct final rituals and ceremonies as per Custom. Thus the loan proposal from the BOI, Purasawalkam Branch has been forwarded by PW5 to IFB and Zonal Office proposal scrutinized by PW8, approved by PW6 and finally PW9 had accorded sanction of the loan proposal of A4.

(v)Hence, A1 had no role in recommending, forwarding and getting loan proposal of M/s.Vindia Exports Private Limited/A4. Strangely in this case, none of the officials of the Bank from BOI, Purasawalkam Branch as well as from IFB and Zonal Office are arrayed as accused. It is a fact that the functioning of the Bank, cannot be by a single person. Further none of the witnesses from the Bank have stated that on the compulsion or direction of A1, they had processed the proposal, conducted inspection and disbursed the loan amount. The bank officials who are similarly placed have been let-off by the respondent and the appellant has been victimized. In view of the same, A1 cannot be held responsible for the loan proposal of A4. Despite several discrepancies in the prosecution case, the lower Court had completely failed to look into these aspects.

(vi)Further the trial Court held that forgery and forged documents are proved in this case. The only other allegation with regard to the appellant is that he was paid Rs.50,000/- by PW25/wife of PW21. PW25 was doing granite business in the name of Sri Sai Granites and she knew A2 through her husband/PW21. She had been the introducer for bank account [Ex.P3] of M/s.Valley Exports on 30.07.1993 and according to her, she had encashed Rs.50,000/- through Ex.P159 [Cheque No.62001, dated 23.08.1993] of M/s.Valley Exports and handed over the cash to A1 on instructions of her husband/PW21, is unbelievable and far-fetched for the reason, PW21, husband of PW25 does not say anything about Ex.P159 and instructing his wife/PW25. Further on perusal of Ex.P159, it is seen the cheque is dated 23.08.1993. In this case, the loan proposal was forwarded admittedly only on 02.04.1994. On that day A1 was on leave. Further PW25 admitted that Ex.P163 was given by her on the advice of her husband. In the absence of PW21 confirming the same, the evidence of PW25 cannot be accepted. PW25 is a got-up witness by the respondent and her husband PW21 was facing prosecution by the respondent. Using the same, she had been planted in this case. By way of summarizing, the learned counsel for the appellant/A1 further submitted that the loan sanctioned by A1 for M/s.Valley Exports has been repaid. As regard, the loan for M/s.Vindia Exports, A1 had not forwarded the application and the proposal was forwarded by PW5 which was received by IFB, Zonal Office. PW6, PW8 scrutinized and approved the same and PW9, the Zonal Manager had sanctioned the loan proposal. Hence, the appellant had no role till the disbursement of the loan.

(vii)PW4, the Deputy Manager Credit, BOI, Purasawalkam Branch looked after the day to day activities of the loan of A4. Further, the inspection, submission of documents and release of amount are all put up by the Credit Department. On their recommendation, A1 had approved the same. PW3 is the another Deputy Manager, Credit, BOI, Purasawalkam Branch. PW5 the Joint Manager Administration, BOI, Purusawalkam Branch as well as PW7, the Deputy Manager, BOI, Purusawalkam Branch have stated about the disbursement of loan by the Credit Department and nowhere, A1 had shown any extra interest in disbursement.

(viii)PW15, PW24 are the officials of BOI, Purasawalkam Branch, who had passed the cheques, debit and credit vouchers. All transactions of A4 had taken place in normal course. PW23/the Branch Manager, Purasawalkam Branch who succeeded A1 has stated about inspecting the quarries, giving reports and A2 and A3 giving undertaking of repayment of the loan. Thus in commercial transactions, success and failure are common and the granite industry being a risk bound industry, A2 had suffered loss and hence, he could not repay the loan in time, for which no criminality to be attached.

(ix)The learned counsel for the appellant/A1 further submitted that the BOI, Purasawalkam Branch has filed recovery proceedings in O.A.No.696 of 2001 before the Debts Recovery Tribunal, Chennai and the same was dismissed for non production of original documents which were seized by the respondent from the Bank. Thereafter, a compromise was arrived at between the BOI, Purasawalkam Branch and A2 to A4 in Lok adalath and by way of compromise memo dated 21.04.2015, the loan amount was settled as One Time Settlement. In O.A.No.2 of 2008, the Debts Recovery Tribunal-III, Chennai has recorded the compromise, discharged the mortgage and removed the lien over the property and the same was dismissed as settled out of Court.

(x)In view of the above, there is no subsisting loss to BOI, Purasawalkam Branch and A1 cannot be singled out for A4 account becoming NPA. Hence, he prayed for acquittal of A1 from the case.

8.In support of his submissions, the learned counsel for the appellant/A1 relied upon the following citations:-

- Mahesh Prasad Versus State of Uttar Pradesh reported in (1995) 1 SCR 965.
- Mohd. Iqbal Ahmed Versus State of Andhra Pradesh reported in (1979) 4 Supreme Court Cases 172.
- Sampuran Singh Versus State of Punjab reported in (1982) 3 Supreme Court Cases 200.
- State through CBI Versus Raj Kumar Jain reported in (1998) 6 SCC 551.
- Chittaranjan Das Versus State of Orissa reported in (2011) 7 SCC 167.

9.The submissions of the learned counsel for the appellants/A2 & A4 in C.A.No.358 of 2009 are as follows:-

(i)The learned counsel for the appellants/A2 & A4 submitted that the main thrust of conspiracy of A2 with A1 is based on Exs.P159 & P161, the two cheques of M/s.Valley Exporters, encashed by PW25 for the amount of Rs.50,000/- through Ex.P159 was handed over to A1 and the amount encashed through Ex.P161 was handed over by her to her husband/PW21. These transactions had taken place on 23.08.1993. During that period, there was no proposal submitted by M/s.Vindia Exports Private Limited. Further, PW21 in his evidence does not state about he instructing PW25 to hand over the money to A1. PW25 admission is that she has acted only on the advice of her husband/PW21. PW21 was facing prosecution by the respondent. PW21 was running Sri Sai Granites, which was in similar trade and business as of A2. PW21 is the introducer for A2 bank account. PW25 has been utilized by the respondent to implicate A2 on the charge of conspiracy. Other than this tainted witness, there is no other witness against A2. A2, Proprietor of M/s.Valley Exports, availed ECPC and FBP facilities for Rs.15 lakhs within the powers of Branch Manager of the BOI, Purusawalkam Branch. This loan was granted on the property security of A3, Aspirin Garden, Kilpauk. This property is valued by the Bank Valuer for loan of Rs.15 lakhs. The property was valued around Rs.25 lakhs, which is a secured loan. It is admitted by the bank officials that if ECPC facilities are availed and if the export could not be carried out as planned, the loan would be treated as commercial loan with increase in the interest rate. In this case the appellant could not make export through M/s.Valley Exports and hence, the advances received was later paid and the loan of M/s.Valley Exports was closed.

(ii)The learned counsel for the appellants/A2 and A4 further submits that the loan for M/s.Vindia Exporters Private Limited/A4 was to the tune of Rs.1.25 crores, which was beyond the power of Branch Manager, BOI, Purasawalkam Branch. Hence, the loan proposal was forwarded to the IFB, BOI, Zonal Office which is a specialized agency to study the recommended proposal and to approve the proposal. In this case, PW8 is the Dealing Officer in IFB, BOI who scrutinized the loan proposals, thereafter, it was put up to PW6, the Chief Manager, IFB who has recommended and forwarded the same to PW9, Zonal Manager, BOI, Southern Zone who granted loan. PW5, the Joint Manager of BOI, Purasawalkam Branch forwarded the loan proposal of A4.

(iii)Thus in forwarding, scrutinizing and approving the loan proposal, A1 had no role and the loan proposal was forwarded along with Ex.P35 on 21.01.1994. During this period, A1 the Branch Manager was on leave, the loan was sanctioned on 08.02.1994. Thus, from the evidence of PW5, PW6, PW7, PW8 and PW9, it is clear that the loan proposal was scrutinized, proposed in routine manner and nothing to be faulted with.

(iv)PW3, the Deputy Manager Credit, Purasawalkam Branch admitted that "if the party is unable to export after availing the facility the loan will be treated as general category loan and the rate of interest will be applicable to commercial and institutional rates. It will be more than 13%". Likewise PW4, the other Deputy Manager Credit, BOI, Purasawalkam Branch confirmed the same. The lower Court finding that A2 was a defaulter and his name was found in specific approval list of ECGC cannot be countenanced, since no specific approval list had been produced. Getting registered with Export Credit Guarantee Corporation is optional of exporters and it is not a norm. The name of A2 which was found in specific approval list according to the prosecution was in the year 1997 and 1996 and not when the loan proposal was submitted. In any event, registering with Export Credit Guarantee Corporation is optional as admitted by the officials of IFB. None of the Bank officials have stated about availability of specific approval list of ECGC and over looking the same.

(v)PW7, the Deputy Manager Credit, BOI, Purasawalkam Branch admitted that the stock statements dated 23.08.1993 was submitted by A2 which is Ex.P41. The Stock Inspection Report [Ex.P42] dated 22.09.1993 was prepared by PW7. Further, PW1/Officer of BOI, Purasawalkam Branch conducted inspection and submitted his report Ex.P1 as also PW23, the successor of A1, who visited the quarries found stocks available and had given his inspection report dated 02.04.1995 [Ex.P108]. Thus, the existence of quarries and quarrying activity going on and also availability of stock is proved. The employees of the appellant namely PW10, PW13, PW26 stated about the business activities of A2. PW12, Manager of HSBC, Trade Services, Chennai has stated that A2 is holding LC and due to non-availability of quarry stones, export could not be fulfilled. Further, A2 was having regular export business with M/s.Toya Trading Company Limited, Japan. The visit of quaries by Mr.Fugi from Toyo is clearly spoken by PW26 and also he leaving signed purchase orders to avoid delay. The reason that A2 could not meet the export commitment due to non availability of quarrying of stones of specified quality is beyond the control of A2. A2 was making payments to Pettikolla, High Power Compressor and to other granite dealers and quarry owners.

(vi)PW22, PW33, PW34 are the persons with whom A2 had granite business. PW11 and PW14 are the persons through whom A2 purchased the housing plots. PW16 and PW17 are the valuers of property and none of the valuers have stated about over valuing of the property. PW15 and PW24 are the Bank Officials who cleared the cheques, prepared debit and credit vouchers. They have stated about cheques being issued to various persons and some withdrawal cheques. All the money were used for the business purpose and no money was diverted for any other purpose other than the business. Further, A2 had proper accounts and through his accountant, he had submitted books of accounts, to the respondent. For the reason best known, the respondent had withheld the books of accounts of A2. The purchase orders/Exs.P22 & 59 were found to be placed by Mr.Fugii of M/s.Toyo Trading Company Limited, Japan. Though Mr.Fugii was examined through interpol and statement was recorded, for the reason best known was withheld by the respondent. The lease agreements Exs.P69, P216 & P217 being photostat copies, the trial Court had not relied upon them and gave a finding that no forgery is proved. PW36, the Investigating Officer admitted that Ex.P265 is the statement received through interpol of Mr.Fugii. From Ex.P265 it is seen that the letter of credit may have been established by the agent. Hence, these purchase orders Exs.P22 & 59 are not found to be forged.

(vii)The learned counsel for the appellant/A2 further submitted that PW1 to PW9 are officials of BOI, Puraswalkam Branch and Industrial Finance Branch and BOI, Zonal Office. From their evidence, it could be seen that Exs.P22, P59, P69, P216 & P217 have no relevance in issuance of sanction order/Ex.P11. Further in O.A.No.220 of 1999 [Ex.D3] filed by the BOI, Purasawalkam Branch before Debts Recovery Tribunal, Chennai, nowhere it is stated about presentation of forged documents Exs.P69 & P216, which are not in accordance and proved as per Section 65 of the Evidence Act. The sanction for proposal was not based on Exs.P69, P216 & P217.

(viii)From the evidence of PW1 and his report Ex.P1 and from evidence of PW23 and his report Ex.P108, it is proved that the appellant was having and operating quarries at Chittor, Mathurapalli and Bangalore. The quarry operation was going on and the officials found the availability of granites in the quarry. There is some variation regarding value of stocks which is subjective, for that reason it cannot be said that A2 was not in quarry business. Further, as earlier submitted on availment of facilities of ECPC and FBP, if the export could not be completed, the loan is to be considered as commercial loan with higher interest rate. In this case due to various reasons beyond his control, export obligation could not be completed, despite best efforts taken by A2. Subsequently, the BOI, Purasawalkam Branch filed O.A.No.220 of 1999 before the DRT for Recovery of the money. In O.A.No.220 of 1999, bank could not produce the documents, since the documents were seized by the respondent. They were not handed back to the bank. The Bank filed I.A.No.719 of 2002 seeking direction to CBI to produce the documents. After giving sufficient time, I.A.No.719 of 2002 was dismissed, as well O.A.No.220 of 1999 for non production of documents. Subsequently, in yet another proceedings before Lok adalath, the issues between the accused and the bank got settled by One Time Settlement. The amount was paid and a compromise agreement was entered and the same was produced before the DRT in O.A.No.2 of 2008. Recording outstanding due settlement and the compromise, the DRT-III, Chennai passed order dated 21.05.2015 discharging the mortgage of properties. Further, the properties have been properly valued and the valuation report Exs.P81 to P91 had been given. PW16 and PW17 valuers nowhere stated that the properties were over valued.

(ix)Thus, looking the case in any angle from the point of recommending, according sanction, utilization of the loan amount, purchase order, lease agreements, forwarding of sureties, nowhere it could be stated that it is name sake transaction, A2 had carried on the granite business and for the reasons beyond his control, the business venture could not be successfully completed, A2 and A4 sustained unexpected loss, got into financial rigormore, unable to pay back the loan amount. Hence, the account of A2 classifed as NPA, thereafter with great difficulty, A2 explained the reasons for non performing of the exports, which was accepted by the bank and thereafter, OTS was arrived at. The OTS amount paid, loan discharged and completed, the property security mortgage was discharged and released.

(x)It is to be seen that except the appellant/A1, the other officials of the bank who dealt with the recommendation, processing, disbursement of the loan are shown as witnesses. Further it cannot be lost sight of that almost all the bank officials/witnesses have taken voluntary resignation. It is apparent that it is by a design and the appellant should be free from criminal prosecution.

(xi)It is well settled proposition that the case initiated without proper sanction must fail because this being a manifest difficulty in the prosecution, the entire proceedings are rendered void ab initio. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act. In view of the same, the learned counsel for the appellants/A2 & A4 prayed for acquittal.

10.In support of his submission, the learned counsel for the appellants/A2 & A4 relied upon the following citations:-

- C.Chenga Reddy and others Versus State of A.P. reported in (1996) 10 SCC 193.
- Nikhil Merchant Versus Central Bureau of Investigation and another reported in (2008) 9 SCC 677.
- Manoj Sharma Versus State and others reported in (2008) 16 SCC 1.
- Sanjay Bhandari Versus Central Bureau of Investigation reported in CDJ 2015 DHC 950.
- Gian Singh Versus State of Punjab and another reported in (2012) 10 Supreme Court Cases 303.

11.The submissions of the learned counsel for the appellant/A3 in C.A.No.357 of 2009 are as follows:-

(i)The learned counsel for the appellant/A3 submitted that A3 is a Director of A4 company. He had given his property as one of the securities for the loan transaction to M/s.Vindia Exports Private Limited/A4. Prior to it, the property of A3 was given as security to M/s.Valley Exports and after its discharge, this property was given as security to A4 company. A3 is a retired police official. In the charge sheet one Dr.Pradeep Kumar, son of A2 was as accused. The charge against the said Pradeep Kumar was quashed by this Court in Crl.O.P.No.24471 of 2002 by order dated 02.02.2003. A3 is also on similar footing, except being a name sake Director, A3 did not take active part in the transactions and business of A4. The officials of BOI, Purasawalkam Branch confirmed that it is A2 the other Director who was actively involved in the day to day affairs of A4 company.

(ii)The learned counsel for the appellant/A3 further submitted that A3 is not “Alter Ego” of the company. The employees of A4 company namely PW10, PW13, PW26 had not whispered anything against A3 involvement in the day to day affairs of A4 company. The only circumstance against A3 as projected is that Ex.P156, the cheque dated 06.09.1993 of M/s.Valley Exporters for sum of Rs.3,00,025/- was issued in favour of A3. It is seen the cheque is drawn, as pay yourself for issuance of pay order in favour of A3. Nowhere, it is seen that this demand draft has been utilized for personal benefit of A3. The case of the prosecution is that M/s.Valley Exports cheque amount was handed over to the other Director of A4 by this appellant. Other than this there are no other material. As regards the M/s.Valley Exports, the account was closed after discharge of its loan. In view of the same, the transaction of M/s.Valley Exporters cannot be projected and termed to prove the complicity of A3 in the offence. The appellant is now around 88 years and for the past 18 years he has been suffering due to pendency of the above case.

12.In support of his contention, the learned counsel for the appellant/A3 relied upon the following citations:-

- Iridium India Telecom Limited Versus Motorola Incorporated and others reported in (2011) 1 SCC 74.
- Nikhil Merchant Versus Central Bureau of Investigation and another reported in (2008) 9 SCC 677.
- Sunil Bharati Mittal Versus Central Bureau of Investigation reported in (2015) 4 SCC 609.

13.The submissions of the learned Special Public Prosecutor appearing for the respondent are as follows:-

(i)The learned Special Public Prosecutor appearing for the respondent submitted that in this case the prosecution examined 36 witnesses and marked 286 documents and marked one material object. On the side of the defence, 4 documents were marked. PW2 is the sanction witness through whom Ex.P2, sanction for prosecution had been marked. PW1 is the Assistant Manager Credit, BOI, Purasawalkam Branch. A1 was the Branch Manager. A2 as Proprietor of M/s.Valley Export was having an account and loan facilities. Likewise, A2 and A3 as Directors of A4 were having loan facilities for export of granite. M/s.Valley exports had a loan of Rs.15 lakhs which was later closed, M/s.Vindia Exports had sought loan for Rs.1.25 crores which was beyond the powers of BOI, Purasawalkam Branch. Hence, the loan proposal of M/s.Vindia Experts was forwarded to Industrial Finance Branch. Ex.P1 is the Inspection Report of PW1, who carried out inspection on the quarries of A2. PW4 is the Deputy Manager Credit, BOI, Purasawalkam Branch during the relevant period and the loan proposal papers were handed over to him by A1.

(ii)A1 handed over a set of application for preparation of proposal, since the loan amount was beyond the finance power of BOI, Purasawalkam Branch, A2 was advised to approach IFB, Zonal Office. A1 handed over the sanction proposal of A2 to PW4 for documentation. At that time PW4 had brought to the notice of A1 about A2 having an existing liability in the account of M/s.Valley Exports and the same was conveyed by A1 through Ex.P10 to the Chief Manager, Industrial Finance Branch on 17.02.1994. The sanction proposal of A2 dated 03.02.1994 is marked as Ex.P11. As per Ex.P11 the sanction proposal, A2 was granted Rs.100 lakhs towards ECPC limit and supplement of Rs.30 lakhs and Foreign Bill. Ex.P12 is the letter dated 02.02.1994 sent by A1 to Chief Manager, IFB Branch. A reply Ex.P13 dated 11.03.1994 was received for the letter of A1 Ex.P12. In Ex.P13, it is clearly stated that the outstanding of M/s.Valley exports was not mentioned in Ex.P12 and the outstanding should be paid fully before making any disbursement in the account of M/s.Vindia Exports. Ex.P14 is the letter dated 25.04.1994 addressed by BOI, Purasawalkam Branch to Chief Manager IFB.

(iii)The learned Special Public Prosecutor further submitted that A2 had acted only on the advice of A1 and the account opening form of M/s.Vindia Exports is Ex.P18, dated 31.01.1994 and the declaration deed is Ex.P19, indemnity bond is Ex.P20 which is signed by the Director of A4, Ex.P21 is the undertaking submitted by M/s.Vindia Exports, Ex.P22 is the purchase order of M/s.Toyo Trading Company, Japan in favour of M/s.Vindia Exports, Exs.P23 to P38 are regular communication regarding this loan between BOI, Purasawalkam Branch and IFB. The reminders were sent to A2 for non compliance of exports. A2 requested some more time for submitting export bills. Thereafter, on the transfer of A1, PW23 took over as Branch Manager. The repayment of loan was insisted by PW23. PW3 is the Deputy Manager Credit, BOI, Purasawalkam Branch who succeeded PW4. This witness speaks of the grant of loan of Rs.15 lakhs by A1 to M/s.Valley Exports. PW4 is the Joint Manager of BOI, Purasawalkam Branch who forwarded the loan proposal of A2 through Ex.P35. PW6 is the Chief Manager of Industrial Finance Branch who processed the proposal forwarded by Purasawalkam Branch and Ex.P11 is the proposal made by IFB Branch.

(iv)PW7, the Deputy Manager Credit, BOI, Purasawalkam Branch signed Ex.P8 prepared by A1, he spoke about the valuation report Ex.P37 issued by P.Jayaraman, the letter of guarantee Ex.P38, the packing credit limit for M/s.Valley Exports Ex.P39 and processing the stock inspection report Ex.P42. M/s.Valley Exports had submitted stock statement Ex.P44 and statement of assets and liability Ex.P45 and also submitted demand promissory notes and other documents of M/s.Valley Exports.

(v)PW8 is the Deputy Manager/Dealing Officer in the Zonal Office who processed the proposal of A2. He had put up the proposal Ex.P11 which was signed by PW6. Ex.P12 is the recommendation from the branch for Ex.P11. PW9, the Zonal Manager stated about preparation of Ex.P11/Sanction Proposal dated 03.02.1944 and he signing it on 08.12.1994 as Zonal Manager. The other witnesses of BOI, Purusawalkam Branch namely PW15 and PW24 stated about the cancellation of cheque, issuance of demand draft in the account of M/s.Valley Exports and M/s.Vindia Exporters Private Limited. The payments made to various persons, including purchase of land at Sevapet, Thiruvallur to PW11 and PW14 and other payments to Citi Bank and LIC are spoken by them. From their evidence it is clear that the loan amount had been used for other than the purpose it was sanctioned.

(vi) PW23 the Branch Manager of BOI, Purasawalkam Branch who succeeded A1, inspected the quarries of A2, made a report Ex.P108. Though found some granites in the quarry, there was no quarrying activities as per report Ex.P108. In the meanwhile PW23 had written to Export Credit Guarantee Corporation, an organization which is an export promotion body, gives insurance cover for covering the risk for non payment of overseas. PW30 is the Regional Manager of ECGC who stated that according to specific approval list dated 13.12.1988 and 25.03.1991 M/s.Popular Exports Corporation Madras, Proprietor AR.Rajasekaran/A2 was included in the list. Thus A2 was a defaulter. The witnesses from the BOI, Purasawalkam Branch, Industrial Finance Branch and Zonal Office have clearly spoken about A2 not furnishing correct particulars while seeking loan proposal for A4. Further, while the sanctioned loan for M/s.Valley Exports was pending, the proposal of A4 was forwarded. The IFB Branch and Zonal Office has gone by the recommendation of A1 and sanctioned their loan. The disbursement of the loan was not done in proper manner and the entire amount had been disbursed without any export. Thus, the funds of the bank had been misappropriated by A2 to A4 in connivance with A1.

(vii) PW10, PW13 and PW26 are the employees of A2. Using them A2 by Exs.P62 to P65 has withdrawn cash. PW13, the employee of A2 was stationed in a Quarry at Salem District. On compulsion of A2, PW13 signed as Suresh Babu in Ex.P69. PW26 the Accountant in A4 Company stated about A2, A3 Directors of A4 and he regularly visiting the Bank for withdrawing of cash from the Branch account of M/s.Vindia Exports Private Limited. During that period A1 was the Branch Manager PW13 prepared various cheques and got signatures of A2 for making payments. He admitted that he prepared purchase orders in the blank signed purchase orders for M/s.Toyo Trading Company and it was available in the office of A2. The file pertaining to M/s.Toyo Trading Company Exs.P69 & P171 series was identified by him. The blank signed purchase order Exs.P171 to P174 was handed over by him. He admitted that Ex.P59 purchase order was typed by him on the instructions of A2. Thus, the employees of A2 have clearly stated about the preparation of purchase orders on blank purchase orders signed by buyer of A2 compelling PW13 to sign as PW35. Thus, Exs.P59, P29, P69, P216 and P217 are all forged documents.

(viii) PW11 and PW14 dealing in real estate have clearly stated about purchasing of agricultural lands in Sevapet, Thiruvallur District, one of the cheques were issued to PW14 from the account of M/s.Vindia Exports. PW12, the Assistant Manager of HSBC bank stated about the LCs are in favour of A2. These LCs were never utilized. PW19 is the Manager of Bank of Madura, A1 requested one of the customers Manikanda Chettiyar to make payment of Rs.15 lakhs to A2 and the same was paid back to Manikanda Chettiyar from the accounts of M/s.Vindia Exports Private Limited. PW16 and PW17 are the valuation engineers, who valued the properties. PW22, PW33 and PW34 are the quarry owners with whom A2 had some business dealings. PW34 and PW39 stated that other than having some business they have not executed any lease agreement to A2. PW33 lease agreement with Government of Karnataka registered in SRO, Hanur, Karnataka State and the quarry lease agreements Exs.P180, P181 were produced. The signature of PW33 found in Exs.P180, P181 does not tally with the signature of PW33 in Ex.P216, P217.

(ix)A1 received Rs.50,000/- from PW25 and A3 had received Rs.3 lakhs. This is proved by PW18, the Senior Manager, Indian Harbour Branch, PW20, the Proprietor of M/s.V.C granites, PW21, the Branch Manager of Indian Bank and PW25, the wife of PW21. The cash was withdrawn through Exs.P151 & P161 by PW25 handed over to her husband/PW21, who handed over Rs.50,000/- to A1. Thus, it is clearly proved that A2 and A3 had received and benefited a sum of Rs.50,000/- and Rs.3,00,000/- in furtherance of the conspiracy. The receipt of Rs.50,000/- by A1 is a quit proco allowing A2 in diversion of funds and thereby enriched themselves. Thus, caused loss to the funds of the bank.

(x)PW31 is the Hand Writing Expert to whom questioned documents, specimen writing and signature and admitted writings were forwarded and opinion was sought for with regard to hand writing and writings of A1, A2, A3, PW21, PW25, PW26 and one Murugesan, Kalaivanai, Karunagaran, Karthickkumar and of the typed impression found in purchase orders Ex.P22 and P59 with MO1 Godrej Typewriter. PW31 has given his opinion Ex.P214 with reasons Ex.P215. PW35 is the Senior Manager of Indian Bank and in his presence the arrest confession and recovery dated 03.07.1998 had been proved. PW36 is the Investigation Officer who took up the investigation from S.H.Chopra on 12.02.1998. Thereafter, with the assistance of Prema Logan, Inspector, CBI conducted investigation, examined the witnesses sent documents for Hand Writing Expert, forwarded the requisition of PW23, PW26 for the statement to be recorded under Section 164 Cr.P.C, obtained the sanction Ex.P2 from PW2.

(xi)The defence had examined DW1, the Registrar of DRO, Chennai and through whom Ex.D3 and D4 had been marked. The trial Court on considering the evidence and materials had found A1 to A4 guilty and convicted them. The trial Court judgment is well reasoned one which needs no interference and prayed for dismissal of the appeals.

14.This Court considered the rival submissions and perused the materials on record.

(i)The witnesses in this case are broadly classified as follows:-

The witnesses from Bank of India, Purasawalkam Branch are PW1, PW3 to PW9, PW15, PW23 and PW24. PW2, the Chief Regional Manager, Bank of India, Madurai Region is the sanctioning authority. PW6 is the Chief Manager, Industrial Finance Branch. PW8 is the Deputy Manager/Dealing Officer, Zonal Office, Chennai. PW9 is the Zonal Manager, Bank of India, Southern Zone. Of these witnesses, PW1, PW3, PW4 and PW7 are the officer and Deputy Managers of the Credit Department of the Branch. PW5 is the Joint Manager, Administration, BOI, Purasawalkam Branch and PW23 is the Manager of BOI, Purasawalkam Branch, Chennai, Successor of A1. PW15 and PW24 are the officers, who cancelled, passed the cheques, prepared, credit and debit vouchers. The employees of A2 are PW10, PW13 and PW26. The other witnesses are PW12, Banking Services Manager, Southern India, HSBC, PW19, Manager of Bank of Madura. The persons through whom the property at Sevapet, Thiruvallur are purchased were PW11 and PW14. The valuation witnesses are PW16 and PW17. The quarry owners are PW22, PW33 and PW34. The witnesses for paying money to A1 and A3 are PW18, PW20, PW21 and PW25. PW30 is the General Manager of Export Credit Guarantee Corporation of India, PW31 is the Hand Writing Expert and PW36 is the Investigating Officer.

(ii)From the evidence of PW1, PW3 to PW9, PW15, PW23 and PW24 nowhere, it is seen that A1 has exerted any pressure, compelled or directed his subordinates to process and accept the documents and clear the transactions against the rules and procedures of the bank. PW1, PW3, PW4 and PW7 are officers and Deputy Managers (Credit) in Bank of India, Purasawalkam Branch. From their evidence, it is seen that the proposal of A4 company was forwarded to Industrial Finance Branch and it is the Zonal Manager, who sanctioned the loan of A4 and Purusawalkam Branch had disbursed the loan. The loan above Rs.15 lakhs is sanctioned by the Zonal Office and it is the Credit Department, which dealt with pending operation, monitoring, follow up advances and preparation in relation to the advances and reporting to the Higher Authorities. Further, PW1 and PW23 visited the quarries of A2. PW1 has given his report Ex.P1 and PW23 has given his report Ex.P108. From their evidence, it is seen that they have visited various quarries of A2 and about the availability of quarry stones. Hence the operation of quarry of A4 is not in dispute.

(iii)PW4 stated that it is the Credit Department which has to look after work pertaining to the credit. Further, PW7 another Manager from Credit, BOI, Purasawalkam Branch confirms that the Deputy Manager, Credit will bring to the notice of Manager if any adverse remarks are found and further processing credit proposals for recovery of overdue advances recommend the proposal to the officer. Thereafter, the officer in the Credit Department will process the loan papers. Thereafter only recommendation will be put to the Chief Manager of the Branch. PW7 has stated that M/s.Valley Exporters applied for loan Ex.P8. PW3 the other Deputy Manager has clearly stated about M/s.Valley Exporters opening of account [Ex.P3], which has been introduced by PW25. Exs.P4 to P9 are the documents pertaining to the loan of M/s.Valley Exporters. Ex.P9 is the credit report of M/s.Valley Exporters put up by PW7. On 14.08.1993, Rs.15 lakhs loan was sanctioned for M/s.Valley Exporters. The current account of M/s.Valley Exporters was opened by one Abdul Majith on 13.07.1993. On recommendation of Deputy Manager Credit, the proposal of M/s.Valley Exporters was sanctioned by A1 and it was closed on 06.04.1994. Further, it is stated that the officers of the bank took maximum efforts to mobilize deposits. In this case admittedly, A2 had mobilized deposits running to lakhs which is not in dispute.

(iv) The witnesses from the Credit Department categorically stated that if the party is unable to fulfill the export facilities, the loan would be treated as General Category Commercial Loan and the rate of interest will be as per the commercial transaction and the interest rate would be more than 13%. As far as the loan of M/s.Valley Exporters, it was sanctioned during the year August 1993 and subsequently, in the year 1994, the loan was repaid and closed. Hence as regards M/s.Valley Exporters, the entire transaction has eclipsed.

(v) With regard to the loan of M/s.Vindia Exports, the loan requirement of A4 was more than Rs.1.25 crores which is beyond the powers of the BOI, Purasawalkam Branch and it was the Industrial Finance Branch which has to process the same and thereafter, the loan has to be sanctioned by the Zonal Office. PW4, the Deputy Manager, Credit has stated that A1 gave set of papers of M/s.Vindia Exporters for preparing proposal. Since the amount was beyond the powers of Branch, PW4 suggested parties to approach the Industrial Finance Branch and returned the papers to A1 with covering note. Thereafter, A2 approached the Industrial Finance Branch and Ex.P11 is the Export proposal dated 03.02.1994.

(vi) The BOI, Purusawalkam Branch forwarded the proposal Ex.P12. Ex.P10 is the letter dated 17.02.1994, A1 addressed to Chief Manager, Industrial Finance Branch informing about A2 having loan in the name of M/s.Valley Exports pending with outstanding. Thereafter, Ex.P13 reply was sent by the IFB. Ex.P14 is the clarification for Ex.P13. The legal opinion for this loan was obtained by Industrial Finance Branch i.e., Ex.P15.

(vii) A4 opened an account on 31.01.1994 [Ex.P18], thereafter, the requisite declaration Exs.P19 to P21 were obtained. Ex.P22 is the purchase order dated 23.11.1993 of M/s.Toyo Trading Company limited, Japan. Ex.P23 is the letter dated 11.11.1994 of Industrial Finance Branch, seeking status of business of M/s.Vindia Exports Private Limited. Ex.P24 is the reply of the Manager, BOI, Purasawalkam Branch to the Industrial Finance Branch informing that no exports were done. There are regular communication, exchange of letters, information between IFB, Zonal Office and the Branch. A4 transactions and business is informed by A1. The Deputy Managers (Credit) have clearly stated that the account of A4 was transacted in normal course. At no point of time A1 had shown any extra interest, directed or compelled his subordinates to process the paper and clear the cheques against the banking norms. From the evidence of PW6, the Chief Manager, IFB Branch, PW8, Deputy Manager/Dealing Officer, Zonal Office, PW9 Zonal Manager/Regional Office it is seen that IFB has got requisite expertise and technical team to scrutinize the loan proposals for higher value proposals. The documents are scrutinized in IFB and in the Zonal Office, is admitted. A4's loan proposal was processed by IFB and sanctioned by Zonal Manager PW9.

(viii)PW8 is the Dealing Officer, who scrutinized the proposal, verified the documents and forwarded it to the Chief Manager, the Chief Manager recommended the loan. The Zonal Manager finally sanctioned the loan in this case. Ex.P11 is the proposal of M/s.Vindia Exports Private Limited dated 03.02.1994 that was sanctioned by PW9 on 08.02.1994. Thus the loan has been processed by IFB and sanctioned by its Zonal Manager.

(ix)With regard to disbursement of the loan, PW15 and PW24 are the concerned officers of the Branch, who passed the cheques, prepared credit and debit vouchers. Though it was stated that there have been diversion of funds, these two witnesses did not state anything in this regard. Further there is no complaint about any pressure or force exerted by the accused. The employees of A2 namely PW10, PW13 and PW26 were examined. PW10, Typist-cum-Office Assistant of A2, encashed some cheques of M/s.Vindia Experts and handed over the cash to A2. PW13 was the employee stationed in Salem looking after quarry activities there. He stated that he has signed in Ex.P69 as Sridharbabu (PW34) on the compulsion of A2. Strangely in this case, Ex.P69 is the photo copy and the original has not been produced. PW26 is the accountant of A2, who stated about various transaction of A4 company, the preparation of Ex.P22, purchase order and blank purchase orders signed by Mr.Fugi of M/s.Toyo Trading Company available with A4 which was used in preparation of purchase orders. Ex.P59 is a blank purchase order which was typed by PW26 on the instructions of A2.

(x)These witnesses have clearly stated about the granite business of A2 and A4 and A2 was in the granite business from the year 1986 and Mr.Fugi of M/s.Toyo Trading Company, Japan used to visit their office and quarries. Further, M/s.Toyo Trading Company, Japan is a regular importer. In fact during the search of the office of A2, the photo album of Mr.Fugi was also seized. Mr.Fugi is a person in existence, though steps have been taken through interpol and statement recorded the same are not produced. From the evidence of employees of A2, it is seen that the accused carried on quarry operation in Chittor, Madanapalli and Bangalore. A4 was an on going enterprise. In the books of account, the transactions are recorded which CBI had seized but not produced in this case. Thus the existence and carrying out quarry business by A4 is not in dispute, the only allegation is that the disbursement of the loan amount without proper documents and diversion of funds.

(xi)As regards disbursement of advances as stated above, the Deputy Managers, (credit) have stated that it is the credit department which takes care of the advances in all aspects and only after scrutinizing of the documents submitted by the loanees at the final stage of approval it comes to A1. In view of the above, persons, who processed and disbursed the sanctioned proposal of A4 namely PW1, PW3, PW4, PW5, PW6, PW7, PW8 and PW9 are witnesses in this case. Likewise, the persons who had passed the cheque, prepared credit and debit vouchers are PW15 and PW24 are also witnesses. PW5, the Joint Manager of BOI, admits that he forwarded the loan proposal of A2 of A4 company Ex.P35. A1 did not attend the office during the period 12.01.1994 to 30.01.1994, since his father had passed away and he had to conduct his last obsequoes. Thus the credit department and the other officials of the Branch and bank who all handled the loan are witnesses. PW23 the Successor of A1 conducted inspection and written to A2 with regard to repayment of loan. In fact PW23 visited the quarries of A4 and sent a report Ex.P108. Thus from the above it is clear that A4 was on going business, the business had stuck in a quandary due to non availability of required specification of granite and due to which the export oblication could not be fulfilled as planned. It is a known fact that business activity is interlinked and a chain action.

(xii)PW12, the Manager of HSBC admitted there was LC in favour of A4, but the same was not utilized. This would show that it was only due to non availability of requisite specification of granite, export obligation could not be fulfilled. The quarry owners are PW22, PW33, PW34. PW22 admitted Ex.P107 agreement was signed by him and he was having granite business with A1. This witness was treated hostile. From the evidence of PW33 and PW34, it is seen that they were doing granite business with A2. They were owning/holding on lease quarry. Exs.P216 & P217 are photostat documents. Thus, the positive evidence is that A2 was having quarry business with PW22, PW33 and PW34. There is no dispute with regard to valuation of property which was given as security. The allegation for not registering with ECGC and the accused A2's name was found in the specific approval list is of no consequence in this case, since none of the witnesses from the BOI Branch, IFB and Zonal Office has stated about receiving and availability of specific approval list. PW30 has not produced any such list.

(xiii)The evidence of Hand Writing Expert and his opinion Exs.P214 & P215 no way improves the case of prosecution. Though the hand writing expert would state in Exs.P22 & P59, the typing impression were made from MO1, Ex.P69 & P216 and Ex.217 are forged, the lower Court had found that Exs.P22 & P59 are not forged documents, likewise Exs.P69, P216 and P217 are photostat copies and the documents have not been proved as per Section 65 of the Evidence Act. In view of the same, it cannot be conclusively held that the documents are forged documents. Further, these documents were not produced when the loan proposal was submitted. The loan was not sanctioned based on these documents.

(xiv)The positive evidence is that the credit department only monitored and processed the disbursement of loan and no witness from the credit department have stated that these documents were produced by A1 or A2. Further based on these documents the loan was not sanctioned. The witnesses stated that if the proposal for export could not be done for any reason then the loan has to be treated as any other commercial loan.

(xv)With regard to payment of money by PW25 to A1 and A3 by Exs.P159 & P161/cheques, it is the evidence of PW25 that she had encashed Exs.P159 & P161 and handed over cash to PW21 her husband, who had paid to A1 and A3. It is to be seen that PW21 has not stated anything in this regard. Further Ex.P159 is dated 23.08.1993 and Ex.P161 is dated 24.08.1993 and Ex.P156 is dated 06.09.1993. In this case the proposal for loan, credit facilities of A4 is dated 03.02.1994. As stated earlier the loan of M/s.Valley Exporters had been repaid and closed and the transactions of M/s.Valley Exporters eclipsed. The evidence of PW25 does not inspire confidence and not corroborated. On the other hand PW21 has not stated, that he instructed PW25 to withdraw cash. From the attended circumstances and from the period of transaction, it cannot be conclusively held that the money was paid to A1 and A3. In the absence of any corroboration, the evidence of PW25 cannot be accepted, on the other hand PW21's evidence is contra.

(xvi)There is no evidence to show that A3 had actively participated in the day to day affairs of M/s.Vindia Exports.

The accused had marked Exs.D1 to D4. D1 is the letter dated 31.03.1995, wherein A2 stated his intention to repay the loan and also furnished stock statement position. Ex.D2 is the receipt memo, wherein M/s.Vindia Exports correspondence files and original security documents have been received by CBI from the Manager on 29.10.1997. Ex.D3 is the plaint copy of O.A.No.220 of 1999 filed by the Bank before DRT, Chennai against M/s.Vindia Exports and Ex.D4 is the proceedings extracts of O.A.No.220 of 1999. From Ex.D4 it is seen that the original documents received from the bank were with CBI and from the year 1999 till the year 2006, the documents could not be produced despite notice sent to the respondent/CBI. Thereafter, during the pendency of the appeal the loan amount was settled to the bank as seen from Exs.C1 to C4. Ex.C1 is the acceptance of OTS by the bank on 11.03.2015. Thereafter, on 09.04.2015 before Lok-adalath, OTS settlement is recorded. By Ex.C3 compromise memo has been filed before DRT-III in O.A.No.220 of 1999 which was renumbered as O.A.No.2 of 2008. The DRT in O.A.No.2 of 2008 in proceedings dated 21.05.2015 recorded the bank accepting and receiving the OTS amount and also discharging the mortgage properties.

(xvii) PW2 is the sanction witness, who had issued the sanction order [Ex.P2]. There is no mention about any crime number in which the case has been registered and investigated and also there is no mention of Pradeep Kumar another Director of A4 company. Further in his evidence for all the questions he mechanically gave reply that he don't remember which would go to show non application of mind.

(xviii)The citations relied upon by the learned counsel for the appellant/A1 are for the proposition that PW2, the Regional Manager is not the appointing authority and he is not competent to issue sanction order and it is only the General Manager. Hence, PW2, who is subordinate to General Manager cannot issue sanction order [Ex.P2]. Further from the evidence of PW2, it is clear that PW2 has not independently perused the documents and applied his mind while according sanction. The admitted position is that sanction for prosecution can be given by the appointing authority or removing authority must be higher in the rank of appointing authority. Further, for the proposition of procedural lapse, only department proceedings could be initiated and not a criminal case.

(xix)The citations relied upon by the learned counsel for the appellants/A2 & A4 is in support of his contention that the loan amount has been repaid, bank accepted the settlement and the mortgage properties were discharged. Once the bank has accepted the settlement and received the loan amount, the bank exonerate the appellants from all the claims and grievances and by consent the accused have settled all the disputes in the suit. The DRT, Chennai also recorded the same and disposed the case. Hence, the commercial transaction cannot be given a criminal colour.

(xx)The learned counsel for the appellant/A3 relied upon the citations for the proposition that merely being a Director of a Company, not having participated in the day to day affairs, the appellants vicariously cannot be made as accused. This principle has been reiterated by the Hon'ble Apex Court which held that the Director of the Company should have acted with criminal intent of “alter ego” of the company and guided business of the company. In this case, there is nothing to show that the appellant/A3, actively participated in the day to day affairs of the company. In the absence of any statutory regime attracting doctrine of vicarious liability, the appellant/A3 cannot be roped in this case.

15.From the above, it is seen that the circumstances relied upon by the prosecution could not be construed as incriminating or were of any conclusive nature, all the circumstances put together do not lead to the irresistible conclusion and compatible only with the hypothesis leading to the guilt of the appellants. In view of the above, this Court finds the case against the accused is not proved beyond reasonable doubt. The suspicion, howsoever strong, cannot take the place of proof. Hence, the conviction and the sentence rendered by the XI Additional Judge, CBI Cases relating to Banks and Financial Institutions, Chennai in C.C.No.60 of 2000, dated 09.06.2009 are set-aside and the appellants are acquitted from all the charges levelled against them. The appeals are allowed, accordingly. Fine amount, if any, paid shall be refunded. The bail bond if any executed shall stand cancelled.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

vv2

To

1.The XI Additional Special Judge for CBI Cases,
Chennai.

2.The Deputy Superintendent of Police,
Central Bureau of Investigation,
Banking Security and Fraud Cell
Bangalore.

3. The Inspector of Police,
DSP : CBI : BS & FC,
Bangalore.

4.The Public Prosecutor,
High Court, Madras.

CRL.A.Nos.357, 348 & 358 of 2009

NR(CO)
GMY(20/11/2020)