Bail Slip

MP No.1/07 in Crl.A.No.950/07 :

1.S..Elumalai
2. D.Kalai Selvam

The above said Appellants/Petitioners are directed to the released on bail as per order of the Court dated 23.10.07 made in MP No.1/07 in Crl.A.No.950/07 on the file of this Court.

MP No.2/07 in Crl.A.No.905/07 :

D.Karunakaran

The above said Petitioner was directed to be released on bail as per order of the Court dated 10.10.07 made in Crl.MP.No.1 & 2/07 in Crl.A.No.905 on the file of the Court.

MP No.1/07 in Crl.A.No.949/07 :

1.S.Ravi
2.K.Balaji
3.S.Vijayakumar
4.V.J.Vijaya Kumar
5.K.Udayan
6.N.Sivagnanam
7.N.Devaraj Petitioner

The above said Petitioners were directed to be released on bail as per order of the Court dated 23.10.07 made in Crl.MP.No.1/07 in Crl.A.No.949/07 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.11.2019
PRONOUNCED ON : 07.07.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.A.Nos.949, 905 & 950 of 2007

1.S.Ravi
2.K.Balaji
3.S.Vijayakumar
4.V.J.Vijaya Kumar
5.K.Udayan
6.N.Sivagnanam
7.N.Devaraj ... Appellants in C.A.No.949 of 2007
8.D.Karunakaran ... Appellant in C.A.No.905 of 2007
9.S.Elumalai
10.D.Kalai Selvam ... Appellants in C.A.No.950 of 2007

Vs.

The State by,
The Inspector of Police,
CBI/ACB/CHENNAI.
(RC No.51(A)/2001 ... Respondent in all cases

PRAYER in C.A.No.949 of 2007: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment of conviction passed in C.C.No.12 of 2002 on the file of the Additional Special Judge, CBI Cases at Chennai dated 28.09.2007 sentencing the appellants/accused 4, 5, 6, 7, 8, 9 and 11 to undergo one year R.I for the offence under Section 120(B) IPC and to pay a fine of Rs.25,000/- each and in default to undergo imprisonment for a period of 3 months, to undergo 1 year R.I for the offence under Section 420 IPC and to pay a fine of Rs.25,000/- each and in default to undergo imprisonment for a period of 3 months.

PRAYER in C.A.No.905 of 2007: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment passed in C.C.No.12 of 2002 dated 28.09.2007 convicting the appellant by the learned 9th Additional Special Judge, CBI cases at Chennai and to set aside the same for the following among other.

PRAYER in C.A.No.950 of 2007: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment of conviction passed in C.C.No.12 of 2002 on the file of the Additional Special Judge, CBI cases at Chennai dated 28.09.2007 sentencing the appellants/accused 2 and 3 to undergo one year R.I for the offence under Section 120(B) IPC and to pay a fine of Rs.1,50,000/- and in default to undergo imprisonment for a period of 18 months, to undergo 2 years R.I for the offence under Section 420 IPC and to pay a fine of Rs.1,50,000/- and in default to undergo imprisonment for a period of 18 months.

For Appellant
in C.A.No.949 of 2007 : Mr.P.Kumaresan
Mr.R.M.Meenakshi Sundaram

For Appellant
in C.A.No.905 of 2007 : Mr.Prakash Goklaney

For Appellant
in C.A.No.950 of 2007 : Mr.C.K.M.Appaji

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

COMMON JUDGMENT

The Appellant in C.A.No.905 of 2007 is A1 and the Appellants in C.A.No.950 of 2007 are A2 and A3 and the Appellants in C.A.No.949 of 2007 are A4 to A9 and A11 in C.C.No.12 of 2002. They were convicted in C.C.No.12 of 2002 by Judgment dated 28.09.2007 rendered by the Additional Special Judge for CBI Cases, Chennai.

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

Appellant / Accused	Conviction and Sentence
A1	Convicted under Section 120B and sentenced to undergo Rigorous Imprisonment for a period of one year and imposed fine of Rs.1,00,000/- in default to undergo imprisonment for one year. Convicted under Section 467 r/w 471 IPC and sentenced to undergo Rigorous imprisonment for five years and to pay a fine of Rs.1,00,000/- in default to undergo for a period one year. Convicted under Section 13 (2) r/w 13(1)(d) of Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for a period of two years and pay a fine of Rs.1,00,000/- in default to undergo one year imprisonment.
A2	Convicted under Section 120B and sentenced to undergo Rigorous Imprisonment for a period of one year and imposed fine of Rs.1,50,000/- in default to undergo imprisonment for 18 months. Convicted under Section 420 IPC and sentenced to undergo imprisonment for two years and to pay a fine of Rs.1,50,000/- in default to undergo for a period 18 months.
A3	Convicted under Section 120B and sentenced to undergo Rigorous Imprisonment for a period of one year and imposed fine of Rs.1,50,000/- in default to undergo imprisonment for 18 months. Convicted under Section 420 IPC and sentenced to undergo imprisonment for two years and to pay a fine of Rs.1,50,000/- in default to undergo for a period 18 months.

Appellant / Accused	Conviction and Sentence
A4	Convicted under Section 120B and sentenced to undergo Rigorous Imprisonment for a period of one year and imposed fine of Rs.25,000/- in default to undergo imprisonment for 3 months. Convicted under Section 420 IPC and sentenced to undergo imprisonment for one year and to pay a fine of Rs.25,000/- in default to undergo for a period 3 months.
A5	Convicted under Section 120B and sentenced to undergo Rigorous Imprisonment for a period of one year and imposed fine of Rs.25,000/- in default to undergo imprisonment for 3 months. Convicted under Section 420 IPC and sentenced to undergo imprisonment for one year and to pay a fine of Rs.25,000/- in default to undergo for a period 3 months.
A6	Convicted under Section 120B and sentenced to undergo Rigorous Imprisonment for a period of one year and imposed fine of Rs.25,000/- in default to undergo imprisonment for 3 months. Convicted under Section 420 IPC and sentenced to undergo imprisonment for one year and to pay a fine of Rs.25,000/- in default to undergo for a period 3 months.
A7	Convicted under Section 120B and sentenced to undergo Rigorous Imprisonment for a period of one year and imposed fine of Rs.25,000/- in default to undergo imprisonment for 3 months. Convicted under Section 420 IPC and sentenced to undergo imprisonment for one year and to pay a fine of Rs.25,000/- in default to undergo for a period 3 months.
A8	Convicted under Section 120B and sentenced to undergo Rigorous Imprisonment for a period of one year and imposed fine of Rs.25,000/- in default to undergo imprisonment for 3 months. Convicted under Section 420 IPC and sentenced to undergo imprisonment for one year and to pay a fine of Rs.25,000/- in default to undergo for a period 3 months.

Appellant / Accused	Conviction and Sentence
A9	Convicted under Section 120B and sentenced to undergo Rigorous Imprisonment for a period of one year and imposed fine of Rs.25,000/- in default to undergo imprisonment for 3 months. Convicted under Section 420 IPC and sentenced to undergo imprisonment for one year and to pay a fine of Rs.25,000/- in default to undergo for a period 3 months.
A10	Not found guilty
A11	Convicted under Section 120B and sentenced to undergo Rigorous Imprisonment for a period of one year and imposed fine of Rs.25,000/- in default to undergo imprisonment for 3 months. Convicted under Section 420 IPC and sentenced to undergo imprisonment for one year and to pay a fine of Rs.25,000/- in default to undergo for a period 3 months.

All the sentences were ordered to run concurrently.

3.Since all the appeals arise out of the Judgment in C.C.No.12 of 2002, this Court disposes all the appeals by way of Common Judgment.

4.The case as projected by the prosecution is as follows:-

(i)A2 S.Elumalai, Proprietor of M/s.S.K.T.Bricks, No.9, Meeran Sahib Street, Mount Road, Chennai opened a current account No.432 on 19.01.2000 with Indian Overseas Bank, Secretariat Branch, Chennai. The said account was introduced by Kalai, Proprietor of Mala Construction, No.14/3 Srinivasa Perumal Koil Street, Chennai, who was having current account No.9023 with Indian Overseas Bank, Peters Road Branch,Chennai. The signature of introducer M/s. Mala Constructions, was not attested by officials of Indian Overseas Bank, Peters Road Branch, Chennai, but by A1 D.Karunakaran, who was Assistant Manager in-charge of New College Fee collection Centre till 07.06.1999, prior to his reporting at Secretariat Branch. The current account No.9023 of M/s.Mala Constructions, was closed on 25.06.1999 itself i.e., on 19.01.2000, the date when the current account No.432 of M/s. S.K.T.Bricks, was opened at Secretariat Branch, the introducer M/s. Mala constructions did not have any account with Peters Road Branch/New College Fee Collection Centre.

(ii)A current account No.CA 199544 in the name of M/s. Sivagnanam Enterprises, 68/12, Sathangadu High Road, Rajakadai, Chennai, was opened on 27.10.2000 by D.Kalaiselvam A3 with Dena Bank, Tondiarpet Branch with introduction by one

A.Seliavathi of Siva Depot maintainable current account 119510 with Dena Bank, Tondiarpet Branch.

(iii)A current account No.CA 553/2 in the name of M/s. Sivagnanam Enterprises, 93, Periyar Street, Anna Nagar, Tambaram Sanitorium, Chennai was opened on 30.11.2000 by K.Udayan A8, 93 Periyar Street, Chennai with Lakshmi Vilas Bank Limited, West Tambaram Branch on an introduction by earlier account holder G.Munusamy A/c.No.414-0 M/s.VIG Transports, 12, Tiruvallur 1st Street, Thiruneermalai Road, West Tambaram, Chenna-45.

(iv)At Chennai and other places, the accused during the period from 2000 to 2001 entered into a criminal conspiracy to do illegal activities in order to cheat the Indian Overseas Bank, falsification of records and use the fabricated records as genuine and to commit criminal misconduct and in pursuance of the criminal conspiracy, A1 by misusing and abusing his official position as Deputy Manager of Indian Overseas Bank by illegal means fraudulently and dishonestly issued and signed false and fabricated inland letter of credits viz., Inland letter of credit No.1166/ILC/03/2000-2001 dated 28.10.2000 for Rs.9,96,875/-. Inland letter of credit No.1256/ILC/28/2000-2001 dated 27.11.2000 for Rs.39,00,500/-, inland letter of credit No.1716/ILC/3/2001-2002 dated 23.04.2001 for Rs.65,61,250/-. Inland letter of credit No.1724/ILC/41/2001-2002 dated 05.10.2001 for Rs.42,04,400/- and letter of confirmation by forging the signatures of the Senior Manager Y.Premkumar PW2 and Assistant Manager ER.Palanivel PW3 of Indian Overseas Bank, Secretariat Branch, Chennai and handed over the same to A2 to enable him to encash the inland letter of credits with various banks and withdrew the inland letter of credits in favour of D.Kalaiselvam A3 knowing fully well that the documents such as Invoice, Lorry receipts, etc are bogus one and fabricated by other conspirators and S.Elumalai A2 and D.Kalaiselvan, in pursuance of criminal conspiracy fraudulently and dishonestly used the fabricated inland letter of credits and letter of confirmations as genuine knowing fully well that they were forged ones and made the bank/Financial institutions namely M/s.Subhiksha Trading Services Limited and M/s.Vishwapriya Financial & Securities Limited, L.B.Road, Adyar, Chennai, ICICI Bank Limited Nungambakkam Branch & Lakshmi Vilas Bank Limited, Triplicane Branch believe and to act it upon and thereby made their bankers to credit the inland letter of credit amount in to the account of A3 to A11 knowing fully well that S.Elumalai A2 and D.Kalaiselvam A3 had not done any such business and obtained the amounts by fraudulent means and they helped them to withdraw the fraudulent amount from the Bank through cheques and thereby the accused persons caused wrongful loss of Rs.1,07,62,140,20 to Indian Overseas Bank and corresponding wrongful gain to themselves.

(v)Hence the respondent/the Inspector of Police, CBI/ACB/Chennai, registered a case in Crime No.RC 51(A)/2001 on 21.12.2001 against the accused for offence under Sections 120B r/w 420, 467 r/w 471, 477A & 201 IPC and Section 13(2) r/w 13(1)!(d) of the Prevention of Corruption Act, 1988. On completion of investigation and obtaining sanction order against the accused, charge sheet came to be filed before trial Court for the above said offences.

5.During trial, the prosecution examined 41 witnesses and marked 501 documents. None were examined on the side of defence and no documents were marked.

6.On conclusion of trial, 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 contention of the learned counsel for the appellant/A1 in C.A.No.905 of 2007 is as follows:-

(i)The learned counsel for the appellant submitted that this case is based on two suo-motu FIRs and the information had been shown as source information, no complaint had been lodged by anyone. Further in this case there has been no loss caused to the bank and none of the witnesses have spoken about the same. On the contrary, the trial Court had given a finding as though huge loss has been caused to the bank. It is a settled preposition that for offence under Section 467 and 471, there should be an element of dishonest or fraudulent which in turn would have caused wrongful loss and wrongful gain. There is nothing in this case to show existence of such element. The only point pressed for conviction of A1 under Section 120-B IPC is that, in the account opening form, A1 had identified the signature of Introducer M/s.Mala Construction as he was familiar with the same when he was working as Manager in Indian Overseas Bank, Peters Road Branch Chennai. The signature of the account holder M/s.S.K.T. Bricks was verified by the Manager and the account was opened as per the norms and procedures of the bank. The prosecution failed to show how this would amount to conspiracy. Further, there is no material to show that there was any meeting of mind and planning of A1 with other accused. The lower Court placing heavy reliance on the evidence of PW2 and PW3, who are the Senior Manager and Assistant Manager of IOB, Secretariat Branch, had convicted the appellant. The evidence of PW2 and PW3 are fraught with several contradictions and unbelievable one. The witness from ICICI bank has clearly deposed against PW2 and PW3 about their involvement in the transaction. Further the procedure followed by the respondent/CBI in sending the materials to the Hand Writing Expert, is against Section 5 of the Identification of Prisoners Act, 1920. Further the Hand Writing Expert has not given a finding that the hand writing of A1 tallied with forged signatures of PW2 and PW3. In this case, there are totally six LCs which are said to have been issued by this appellant/A1. Out of six LCs, two LCs are in dispute viz., Exs.P17 & P19. The entire amount of Rs.65 lakhs as regard Ex.P19 has already been paid in the account of beneficiary. This account was not immediately released to the corresponding bank due to internal order of IOB officials. For recovery of the same, ICICI Bank had filed a case before the Debts Recovery Tribunal - 1, Chennai in O.A.No.748 of 2001.

(ii)The learned counsel further submitted that the entire amount has been paid and there is no loss to the bank. The investigating officer PW41 admitted that IOB Secretariat, Branch has not sustained any loss. He further submitted that a person who signed the documents has not been examined as witness in this case. During the days on which PW2 was absent, his signature is said to have been forged by the appellant/A1 in LCs. The days on which PW2 was absent are not available in the bank and had not been mentioned. It is the appellant, who is the Senior most officer in the branch, next to PW2, is to act as branch head when PW2 was absent. Hence, A1, signing the documents would not amount to any criminality. PW9 is the broker who admitted that he used to visit IOB Bank, ICICI Bank, Dena Bank, Lakshmi Vilas Bank and Karur Vysia Bank for discounting LCs for commission of 0.5%. He is familiar with bank officials and discounting of LCs is a norm which is adopted by all the banks in the trade. Subsequent to the registration of case, the house of the accused was searched and no incriminating material could be seized.

(iii)The learned counsel further submitted that in this case PW5 is the Officer from the Vigilance Department and PW7, PW8, PW10, PW11 and PW39 are from ICICI Bank and PW40 is the Hand Writing Expert and PW41 is the investigating officer. PW5 in his report Ex.P41 mentioned about the introduction of account opening/Ex.P5 of M/s.S.K.T.Bricks and not much about the LCs. Further the only contention is that the particulars in LCs viz., Exs.P13, P15, P17, P19 and P22 are not recorded in LC outward register/Ex.P2 and it is not the duty of the officer to record the same. PW5 admitted that he had not examined any officials from ICICI Bank and not recorded the statement of PW3 Palanivelu. It is recorded in his report as though the signature found in LCs are similar to that of A1. Further PW5 admitted that he had not made any enquiry with A2 or any of the beneficiaries, hence, the evidence of PW5 does not inspire confidence.

(iv)PW39, the Senior Manager of ICICI Bank clearly states that he has not visited personally IOB, Secretariat Branch during discounting of LCs. Other than this, he has not spoken anything against this appellant. PW40 the Hand Writing Expert admitted that he had not mentioned in this report about the position and type of the words and how he made study of similarities and dissimilarities. According to Hand Writing expert, these are not important features. In his report he had stated that the accused is the responsible person for the signatures and writings available in the disputed documents.

(v)PW41, the investigating officer admitted that he had not sent the documents through the Court to Hand Writing Expert. Further he admit that when the Manager of the Bank was on leave, the Assistant Manager will discharge duties of the Manager. Further he admit that the IOB, Secretariat Branch had not suffered any loss. He state that since IOB, Secretariat Branch had not made any payment for LCs Exs.P19 & P22, they have not suffered any loss and with regard to other LCs, it was honoured. Earlier for the same case, the Central Crime Branch, Chennai had registered a case and the Inspector of Police Kalidhasan investigated and thereafter, the case was transferred to CBI and CBI took up investigation. The said Kalidhasan was not examined as witness in this case with regard to non existence of firms of A2 and A3. PW36 and PW37 are the postmen examined. PW36 and PW37 are not competent persons and it is only the public relation Inspector of Postal department is competent, who is not examined in this case.

(iv)Despite various infirmities, the trail Court without analyzing the evidence in proper perspective had mechanically convicted the appellant/A1 and prayed for acquittal.

(vii)In order to propound his arguments, the learned counsel for the appellant/A1 relied upon the following citations:-

1.Jibrial Diwan Versus State of Maharashtra reported in (1997) 6 Supreme Court Cases 499, in which it is held that "for the proposition that the basic ingredients of the act done 'dishonestly' or 'fraudulently' being missing on the facts of the the charges under Section 471 read with 465 IPC was totally misplaced."

2.K.Dhanasekaran Versus State of Inspector of Police reported in 2003 (1) CTC 223, in which it is held that "as per Section 5 of the Identification of Prisoners Act, the specimens signature to be obtained only after requisition is made to the Magistrate concerned. Further the evidence of an expert is a rather weak type of evidence and the courts do not generally consider it as offering 'conclusive' proof and therefore it is not safe to rely upon the same without seeking independent and reliable corroboration."

8.The contention of the learned counsel for the appellants/A2 & A3 in C.A.No.950 of 2007 is as follows:-

(i)The learned counsel for the appellants/A2 and A3 submitted that PW6, the Manager of Vishwapriya Financial Services and PW7 C.T.Muthiah, Manager of ICIC Bank, Santhome have clearly stated that the original documents were produced while LCs were negotiated, hence, forging of documents does not arise. Further PW9 financial broker admitted that the negotiations of LCs is common in the trade and he had negotiated LC/Ex.P8 with KVB Bank, T.Nagar Branch and received commission of Rs.500/-. Further Ex.P13 LC was brought by one Gopi and it was negotiated by M/s.Vishwapriya Finance Service and Ex.P14 is a confirmation letter issued by A1. One Rammohan and Rajan of M/s.Vishwapriya Financial Service had gone to the IOB Secretariat Branch and met the bank officials.

(ii)PW16, the Bill Discount Agent admitted that he had met PW9 at Bank of Madura for discounting LC/Ex.P22 with Lakshmi Vilas Bank, likewise PW17 the Branch Manager of Dena Bank, Tondiapet Branch admitted that he had opened account in the name of M/s.Sivagnanam Enterprises. Further the introducer to Ex.P5 bank account is M/s.Mala Constructions and the theory of prosecution that the said M/s.Mala Construction is a non existence company, is false. PW13 is the property owner at No.9 Meeransahib Street, Narasingapuram and PW14 is the Proprietor of Vasu Litho Press at No.9, Meeransahib Street, Mount Road from 1985, a tenant in the said property. PW36, PW37 the Postmen for Mount Road and Thiruvotriyur area were examined. PW36 & PW37, the Postman of the respective area for the year 2002, not during the relevant period when the account was opened, operated and further their evidence are not conclusive. The investigating officer/PW41 admitted that the entire amount has been repaid, with regard to disputed LCs 50% amount has been settled and for balance amount DRT order obtained wherein the security property is more than the due amount. The appellants had produced all the documents during the enquiry conducted by Central Crime Branch, Inspector Kalidhasan with regard to genuineness and bonafide of claim and repayment of LCs, the said documents withheld not produced by the investigating officer in this case.

(iii)The learned counsel further submitted that except two LCs all the other LCs have been honoured within 90 days. There is no material to show that there have been any conspiracy of the appellants with other accused. Further the entire family members of the appellants had been roped in and made as accused. Each of the family members have got their own independent business, during the relevant time there were some payment and receipt between them as and when it was necessary, which is now projected as part of conspiracy. Further in this case there have been six LCs which have regularly been paid except two LCs.

(iv)In view of the above the offence under Section 420 does not arise. The trial Court for a business transaction and for defaulted payment which is a civil wrong had convicted the appellants in this case. Hence prayed for acquittal.

(v)In order to substantiate his arguments the learned counsel for the appellants/A2 and A3 relied upon the following citations:-

- State Inspector of Police, Vishakhapatnam Versus Surya sankaram Karri reported in (2006) 7 Supreme Court Cases 172, in which it is held that "for the proposition that order by the Superintendent of Police authorizing a police to conduct investigation was required to be passed in writing."

- T.T.Antony Versus State of Kerala and Others reported in (2001) 6 Supreme Court Cases 181, in which it is held that "report of commission of Inquiry – not binding upon Government or Courts – but it is helpful to the investigating agency in making investigation – investigating agency can form a different opinion."

- S.V.L.Murthy Versus State represented by CBI, Hyderabad Versus (2009) 6 SCC 77, in which it is held that "the offence of cheating cannot said to have been made unless ingredients are satisfied such as deception fraudulently or dishonestly inducing any person to deliver any property which he would not do or omit."

- Subhash @ Dhillu Versus State of Haryana reported in (2015) 12 SCC 444, in which it is held that "the prosecution must lead evidence to prove the existence of some agreement between the accused persons to prove the charge for conspiracy."

- Navaneetha Krishnan Versus The Inspector of Police, in which it is held that "the charges framed were misleading, irregular and there were lot of omission in the same. Hence, the accused were deprived of a fair trial."

- A.Inbaraj & others Versus Dinakaran reported in CDJ 2015 MHC 7855, in which it is held that "offence under Section 420 IPC there should be fraudulent or dishonest inducement of a person by deceiving him."

- Salia Beevi Versus Annadurai & another reported in CDJ 2016 MHC 1709, in which it is held "a person to be convicted under Section 420 IPC it has to be established not only that he cheated someone but also that by doing so, he had dishonestly induced the person who has cheated to deliver any property etc."

- Sheila Sebastian Versus R.Jawaharaj & anr reported in II (2018) CCR 278 (SC), in which it held that "standard of proof in a criminal trial is proof beyond reasonable doubt because right to personal liberty of a citizen can never be taken away by standard of preponderance of probability."

9.The contention of the learned counsel for the appellants/A4 to A9 and A11 in C.A.No.949 of 2007 is as follows:-

(i)The learned counsel for the appellants submitted that the appellants are no way connected with any offence as alleged by the prosecution and they are not beneficiaries. LCs were given in the name of A2 M/s.S.K.T.Bricks, No.9 Meeransahib Street, Main Raod, Chennai with aid of A3 M/s.Sivagnanam Enterprises. The letter of confirmation in this case Ex.P12 is genuine which has been issued by PW2 and PW3. PW2 is the Senior Manager and PW3 is the Assistant Manager, Credit Officer who are authorized officers of IOB Secretariat Branch to issue LC. In this case A1 Deputy Manager of IOB issued LC and the signature found in some of LCs are disputed. The Karur Vysya Bank, T.Nagar Branch, Chennai and ICICI Bank had accepted LCs. Only after default of honouring bank, ICICI, bank filed a case against IOB Secretariat Branch for recovery before DRT, Chennai. In this case there are six LCs of which the payment for four LCs have been made. When ICICI bank enquired for not honouring one of the LC by IOB Secretariat Branch then only the entire LCs issued in favour of A2 and A3 were found to be forged, not recorded in Ex.P2/LC outward register. When the same was questioned by PW2, A1, could not give proper explanation for the signature found in the LCs. Thereafter it was reported to the Head Office who deputed PW5/Vigilance Officer to conduct enquiry who had given his report Ex.P41. No witness have spoken anything with regard to A4 to A9 and A11 and no incriminating documents produced.

(ii)The learned counsel further submitted that the appellants are independent persons and they are having independent business. The only allegation against the appellants is that some of LCs which are opened by A2, the amount had been deposited in their individual bank account and later it was transferred back to A2 and A3. Hence the appellants/A4 to A9 and A11 facilitated A2 and A3 in siphoning out the funds of the bank. All the bank witnesses pertaining to the opening of LC, negotiation of LC and closure of LC have not spoken anything about these appellants. The witnesses have merely produced the statement of account, account opening form and documents connected to their account. Other than marking of these documents, they have not spoken anything against appellant A4 to A9 and A11. Mere marking of documents will not amount to proof of its contents.

(iii)The learned counsel further submitted that PW18 is the Senior Manager, Indian Bank, who had marked the account opening form and its connected document of A4, the Proprietor of M/s.D.D Enterprises. PW19 is the house owner. A7 was residing in a portion of his house and A8 used to visit him. PW20, the Chief Manager of Lord Krishna Bank, Teynampet stated that A10 introduced A3 to open savings bank account. PW21, the Manager of Central Bank of India, Thiruvotriyur had stated A2 is having an account in the branch in the name of M/s.Sakthi

Plumping Works. PW22, the Manager of Lakshmi Vilas Bank has stated A8 opened an account in the name of M/s.Sivagnanam Enterprises as Proprietor. PW23, the Senior Manager of UBI Bank Washermanpet Branch has stated A4 is having a current account in the name of M/s.V.M.Hardwares. PW24, the Senior Manager of Indian Bank, Triplicane has stated that A11, Proprietor of M/s.N & D Enterprises was having a current account. PW25, the Assistant Manager of IOB, Royapettah Branch has stated that M/s.Mala Constructions was having an account and its proprietor was Kali and the account was closed on 25.06.1999. PW26, the Senior Manager of Bharat Overseas Bank state A9 was having a savings bank account in the bank. PW27, the Manager of Canara Bank, Thiruvotriyur Branch has stated that A4 having an account in the name of M/s.Ravi Transport. PW28, the Chief Manager, Bank of India, Cathedral Road Branch has stated that the account opening form submitted by A10. PW29, the Manager of Bank of Baroda, Vimco Nagar Branch has stated that A5 was having an account in the name of Balaji Enterprises. PW30, the Manager of Indian Overseas Bank, Villivakkam Branch has stated that A11 was having an account in the name of M/s.Ambal Finance. PW31, the Manager of HDFC Bank, Nungambakkam Branch has stated about A9 was having a current account in the name of Sivagnanam Enterprises in his branch. PW32, the Assistant Manager Credit Bank of India, Royapettah Branch has stated that the account maintained by A7, introduced by A10 in their Branch. PW33, the Manager of Punjab National Bank, Adyar has stated A2 was already having an account in the name of M/s.S.K.T.Bricks and A4 in the name of Karpagavinayaga Bricks and A6 introduced both the accounts. PW34, the Manager of Bank of Madura Main branch has stated that A6 as Managing Director operated an account in the name of M/s.Vadivudaiammal Finance and Investment Private Limited. PW35, the Chief Manager, State Bank of Mysore has stated that A11 was having a current account in the name of M/s.T.C.Natesan Brick Works.

(iv)These witnesses were examined to project A4 to A9 and A11 conspired and aided each other in commission of offence. The learned counsel submitted that except for marking the account opening form, authorization, statement of account, none of the witnesses have spoken anything against the accused. Further mere marking of statement of accounts would not amount to proof of its contents. The documents have to be marked in the manner known to law. In this case the particulars in the statement of account cannot be looked. The appellants are not the beneficiaries and they have not made any wrongful gain for themselves.

(v)The witness except marking the statement of account has not spoken anything against the accused. The appellants/A4 to A9 and A11 are blood relatives of A2 and A3, each of the accused have their own independent business and due to the blood relationship and nature of business there was some transaction between them and that alone is not sufficient to prove that these appellants/A4 to A9 and A11 were in conspiracy and facilitated the other family members namely A2 and A3 in siphoning out of the bank accounts and hence prayed for acquittal.

10(i).The learned Special Public Prosecutor appearing for the respondent submitted that A1 being the Assistant Manager of Indian Overseas Bank Secretariat Branch had connived with A2 and A3 in creation of LCs by forging the signature of PW2 and PW3. PW2 is the Chief Manager and First Line Manager and PW3 is the Assistant Manager and Credit Officer, who alone are authorized and empowered to issue LC and sign documents in this regard. A1 being the Assistant Manager was not authorized and empowered to sign any documents with regard to LC and loans. Since PW2 and PW3 were working along with A1 for considerable period, they were familiar with the writings and signature of A1, who without authority had issued LCs and confirmation letter. The signature therein are disputed and disowned by PW2 and PW3. The hand writing expert PW40 confirms the same. PW5 is the Vigilance Officer, who conducted internal enquiry and given a report Ex.P41, in which it had been found that A1 without authorization and authority had issued LC and also forged the signature of PW2 and PW3. The LCs issued by the bank are to be covered with 100% security and the margin amount to be remitted to the bank. In this case none of the LCs were secured. Ex.P8 is the genuine LC and Exs.P13, P15, P17, P19 and P22 are all forged. The LC amount in Exs.P17 & P19 were not paid and thereby caused huge loss to the bank. The beneficiary bank viz., ICICI Bank had filed O.A.No.748 of 2009 before the DRT, seeking recovery of its dues.

(ii)PW4/the officer of Karur Vysya Bank, PW6/the Manager of Visvapriya Financial Services, PW9/the finance broker and PW16/ the Bill Discounting Agent has clearly stated about discounting of LCs issued by A1. Further they have met A1 and confirmed about the genuineness of LC. A1 also issued confirmation letter. PW7 from ICICI Bank, Santhome had approached the IOB, Secretariat Branch. A1 taking advantage of absence of PW2 represented PW7 that LCs issued were genuine and it would be honoured and directed PW7 to come a day later to collect the DD for the LC amount. When PW7 met PW2, then only the forgery and fraud played by A1 in collusion with A2 and A3 came to light. The other witnesses from the ICICI bank had categorically stated about seeking recovery of LC amount paid by them based on the LC issued by A1. Further, A2 and A3 were not carrying on the business in the address furnished by them which had been proved through the evidence of PW13, PW14, PW19, PW36 and PW37.

(iii)The learned Special Public Prosecutor further submitted that the witnesses from PW18 to PW40 are with regard to A4 to A9 and A11, except for marking of the bank account opening form, statement of account, there is no other materials to implicate them and nothing to substantiate that these appellants/A4 to A9 & A11 have benefited out of these transactions. The trial Court on examination of PW1 to PW41 and collection of documents Ex.P1 to P501 had given a detailed and well reasoned Judgment of conviction which need not be interfered with.

11.Considering the rival submissions and on perusal of the materials it is seen that PW1 is the sanction witness accorded sanction for prosecution of A1 [Ex.P1]. PW2 is the Senior Manager/First Line Manager and PW3 is the Assistant Manager/Credit Officer of the IOB, Secretariat Branch. The LCs namely Exs.P8, P13, P15, P17, P19, P22 originated from IOB Secretariat Branch, which is not in dispute. Ex.P8 is the genuine, in which PW2 and PW3 admit their signatures, Ex.P8 has been discharged. Exs.P13, P15, P17, P19 and P22 of which the amount for Exs.P17 and P19 were not paid and the signature of PW2 and PW3 found in these documents as well as in the confirmation letter proved to be forged, issuance of these documents, are not entered in Ex.P2/Despatch Register. Further the signature of PW2 and PW3 were verified with Ex.P4/Key Movement Register which contains the specimen signatures of the officers, coupled with the fact that PW40 the hand writing expert examined the disputed signatures and writing gave his reports Exs.P490 to P493.

12.Further, PW7 the official from ICICI Bank state that he met A1 with regard to payment of LC in Exs.P17 and P19. A1 assured that the LC amount would be paid by way of DD and he had also signed Ex.P19 the confirmation letter which he is not empowered to sign. The queries made by ICICI Bank with A1 was not brought to the notice of PW2, more particularly about Exs.P17 and P19. It is further seen that Exs.P22, P23 and others relevant documents were found to be forged. On 22.10.2001, the ICICI Bank called IOB, Secretariat Branch for bill due on 25.10.2001 and 31.10.2001 namely Exs.P20 and P21 relating to LC Ex.P19 for payment of Rs.65,61,250/-. These letters are signed by A1. PW2 informed A1 about the officials coming from ICICI bank, A1 had not allowed them, on the other hand he sent back the officials of ICICI bank stating that the amount would be paid by way of demand draft.

13.When PW2 questioned about these aspects A1 looked tensed and did not give proper reply for the same. PW11 was informed by A1 to come and collect confirmation letter. PW7, PW11 and PW39 from ICICI Bank, PW5 Vigilance Officer of IOB, PW6/ the Manager of Visvapriya Finance Services Branch Limited, PW9/Financial Broker, PW16 Bill Discounting Agent have all categorically stated the role played by A1 and when they met A1 seeking confirmation of LC, A1 represented to them that LC are genuine. On evidence of these witnesses and documents it has been proved that A1 in collusion and in conspiracy with A2 and A3 created forged documents, used the same as genuine. A2 and A3 had negotiated huge sums of money projecting the forged LCs as genuine and thereby cheated the banks of huge sums of money.

14.Thus the prosecution had proved the case beyond reasonable doubt and the trial Court on proper analysis of both oral and documentary had rendered a well reasoned judgment.

15.The citations relied upon by the learned counsel for the appellants are not relevant to the facts of the above case. The order of the Superintendent of Police authorizing a police officer to conduct investigation is only for offence referred to clause (e) of sub Section (1) of Section 13 in short in cases of disproportionate assets. In this case the enquiry report Ex.P41 has been given by PW5 apart form the enquiry report the respondent Police independently conducted investigation. Further in this case it is not a simpliciter offence of cheating, forged documents have been created and using the same, the offence of cheating has been committed. The evidence for offence of conspiracy can be inferred from the circumstance of this case. In this case there are ample evidence to prove that A1 to A3 have conspired with each other in commission of offence. The charges framed against the accused are not misleading and there is no ambiguity. It is settled proposition that one who makes false documents should be made liable. In this case A1 had created false LCs and confirmation letter based on the false documents produced by A2 and A3. A1 to A3 by creating false and forged documents, using the same as genuine in conspiracy with each other A1 to A3 had committed the offence.

16.Considering that the dispute is with regard to two LCs and the major part of the amount has been recovered, further steps have been initiated for recovery of dues by discharging the securities, this Court is inclined to modify the sentence of the trial Court imposed on A1 to A3.

(i)The sentence imposed on A1 to undergo Rigorous Imprisonment for a period of five years under Section 467 r/w471 IPC is modified to undergo two years Rigorous imprisonment.

(ii)The sentence imposed on A2 and A3 to undergo imprisonment for two years under Section 420 IPC is modified to undergo one year imprisonment.

17.With the above modifications, Crl.A.Nos.905 & 950 of 2007 are partly-allowed. Hence, the trial Court is directed to take appropriate steps to secure the appellants/A1 to A3 to undergo their remaining period of sentence. The appellants/A1 to A3 are entitled to avail set off under Section 428 of Cr.P.C for the period of custody already undergone by them during investigation, enquiry and trial.

18.With regard to conviction of A4 to A9 & A11, PW18 to

PW41 have been examined, majority of these witnesses are bank witnesses, except marking the account opening form, statement of accounts and other documents, none of the witnesses have stated anything about the complicity of these appellants/A4 to A9 & A11 in commission of offence and they being beneficiaries. PW2, PW3 as well as PW5 had not stated anything against them, from the enquiry report/Ex.P41 nothing found against them. A4 to A9 & A11 have not visited IOB, Secretariat Branch, during the transaction period, met any officials of banks, financial brokers and facilitators. Further the negotiation bank and private individuals namely PW4, PW6, PW7, PW8, PW9, PW10, PW11, PW12, PW13, PW15, PW16, PW17 have stated that they were not deceived by A4 to A9 & A11. There is nothing to infer that A4 to A9 and A11 were part of any conspiracy with other accused in commission of offence.

19.Hence, this Court set-aside the Conviction and Sentence imposed on A4 to A9 & A11 passed by the trial Court in C.C.No.12 of 2002 dated 28.09.2007. Accordingly, Crl.A.No.949 of 2007 is allowed. Bail Bond, if any, executed stands cancelled and fine amount, if any, paid shall be refunded.

07/07/2020

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FOR BEING MENTIONED

These Criminal Appeals are listed under the caption for Being Mentioned on Wednesday on 17.11.2021 Purusant to the order of this court dated 07.07.2020 and made in herein in the presence of the above said counsels on the either side the Court made the following order:

At the instance of the learned counsel for the appellants in C.A.No.949 of 2007, these appeals are listed today under the caption 'For Being Mentioned'.

2.The appellant in C.A.No.905 of 2007 is A1 and the appellants in C.A.No.950 of 2007 are A2 and A3 and the appellants in C.A.No.949 of 2007 are A4 to A9 and A11 in C.C.No.12 of 2002. They were convicted in C.C.No.12 of 2002 by Judgment, dated 28.09.2007 rendered by the Additional Special Judge for CBI Cases, Chennai. The conviction and sentence of the trial Court are as follows:-

Appellant / Accused	Conviction and Sentence
A1	Convicted under Section 120B and sentenced to undergo Rigorous Imprisonment for a period of one year and imposed fine of Rs.1,00,000/- in default to undergo imprisonment for one year. Convicted under Section 467 r/w 471 IPC and sentenced to undergo Rigorous imprisonment for five years and to pay a fine of Rs.1,00,000/- in default to undergo for a period one year. Convicted under Section 13 (2) r/w 13(1)(d) of Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for a period of two years and pay a fine of Rs.1,00,000/- in default to undergo one year imprisonment.
A2	Convicted under Section 120B and sentenced to undergo Rigorous Imprisonment for a period of one year and imposed fine of Rs.1,50,000/- in default to undergo imprisonment for 18 months. Convicted under Section 420 IPC and sentenced to undergo imprisonment for two years and to pay a fine of Rs.1,50,000/- in default to undergo for a period 18 months.
A3	Convicted under Section 120B and sentenced to undergo Rigorous Imprisonment for a period of one year and imposed fine of Rs.1,50,000/- in default to undergo imprisonment for 18 months. Convicted under Section 420 IPC and sentenced to undergo imprisonment for two years and to pay a fine of Rs.1,50,000/- in default to undergo for a period 18 months.
A4	Convicted under Section 120B and sentenced to undergo Rigorous Imprisonment for a period of one year and imposed fine of Rs.25,000/- in default to undergo imprisonment for 3 months. Convicted under Section 420 IPC and sentenced to undergo imprisonment for one year and to pay a fine of Rs.25,000/- in default to undergo for a period 3 months.
A5	Convicted under Section 120B and sentenced to undergo Rigorous Imprisonment for a period of one year and imposed fine of Rs.25,000/- in default to undergo imprisonment for 3 months. Convicted under Section 420 IPC and sentenced to undergo imprisonment for one year and to pay a fine of Rs.25,000/- in default to undergo for a period 3 months.

Appellant / Accused	Conviction and Sentence
A6	Convicted under Section 120B and sentenced to undergo Rigorous Imprisonment for a period of one year and imposed fine of Rs.25,000/- in default to undergo imprisonment for 3 months. Convicted under Section 420 IPC and sentenced to undergo imprisonment for one year and to pay a fine of Rs.25,000/- in default to undergo for a period 3 months.
A7	Convicted under Section 120B and sentenced to undergo Rigorous Imprisonment for a period of one year and imposed fine of Rs.25,000/- in default to undergo imprisonment for 3 months. Convicted under Section 420 IPC and sentenced to undergo imprisonment for one year and to pay a fine of Rs.25,000/- in default to undergo for a period 3 months.
A8	Convicted under Section 120B and sentenced to undergo Rigorous Imprisonment for a period of one year and imposed fine of Rs.25,000/- in default to undergo imprisonment for 3 months. Convicted under Section 420 IPC and sentenced to undergo imprisonment for one year and to pay a fine of Rs.25,000/- in default to undergo for a period 3 months.
A9	Convicted under Section 120B and sentenced to undergo Rigorous Imprisonment for a period of one year and imposed fine of Rs.25,000/- in default to undergo imprisonment for 3 months. Convicted under Section 420 IPC and sentenced to undergo imprisonment for one year and to pay a fine of Rs.25,000/- in default to undergo for a period 3 months.
A10	Not found guilty
A11	Convicted under Section 120B and sentenced to undergo Rigorous Imprisonment for a period of one year and imposed fine of Rs.25,000/- in default to undergo imprisonment for 3 months. Convicted under Section 420 IPC and sentenced to undergo imprisonment for one year and to pay a fine of Rs.25,000/- in default to undergo for a period 3 months.

3.As against the conviction and sentence rendered by the trial Court, dated 28.09.2007, the above appeals were preferred by the accused. This Court, by way of common judgment, dated 07.07.2020 rendered as follows:-

> “16.Considering that the dispute is with regard to two LCs and the major part of the amount has been recovered, further steps have been initiated for

recovery of dues by discharging the securities, this Court is inclined to modify the sentence of the trial Court imposed on A1 to A3.

(i)The sentence imposed on A1 to undergo Rigorous Imprisonment for a period of five years under Section 467 r/w471 IPC is modified to undergo two years Rigorous imprisonment.

(ii)The sentence imposed on A2 and A3 to undergo imprisonment for two years under Section 420 IPC is modified to undergo one year imprisonment.

17.With the above modifications, Crl.A.Nos.905 & 950 of 2007 are partly-allowed. Hence, the trial Court is directed to take appropriate steps to secure the appellants/A1 to A3 to undergo their remaining period of sentence. The appellants/A1 to A3 are entitled to avail set off under Section 428 of Cr.P.C for the period of custody already undergone by them during investigation, enquiry and trial.

18.With regard to conviction of A4 to A9 & A11, PW18 to PW41 have been examined, majority of these witnesses are bank witnesses, except marking the account opening form, statement of accounts and other documents, none of the witnesses have stated anything about the complicity of these appellants/A4 to A9 & A11 in commission of offence and they being beneficiaries. PW2, PW3 as well as PW5 had not stated anything against them, from the enquiry report/Ex.P41 nothing found against them. A4 to A9 & A11 have not visited IOB, Secretariat Branch, during the transaction period, met any officials of banks, financial brokers and facilitators. Further the negotiation bank and private individuals namely PW4, PW6, PW7, PW8, PW9, PW10, PW11, PW12, PW13, PW15, PW16, PW17 have stated that they were not deceived by A4 to A9 & A11. There is nothing to infer that A4 to A9 and A11 were part of any conspiracy with other accused in commission of offence.

19.Hence, this Court set-aside the Conviction and Sentence imposed on A4 to A9 & A11 passed by the trial Court in C.C.No.12 of 2002 dated 28.09.2007. Accordingly, Crl.A.No.949 of 2007 is allowed. Bail Bond, if any, executed stands cancelled and fine amount, if any, paid shall be refunded."

4.As regards, the appellants/A4 to A9 & A11 are concerned, they were acquitted from all the charges and their conviction and sentence are set-aside by this Court. It is found that the appellants/A4 to A9 & A11 have all paid the fine amount as per their conviction and thereafter, filed an appeal before this Court in Crl.A.No.949 of 2007 and also filed a petition for suspension of sentence in Crl.M.P.No.1 of 2007 in Crl.A.No.949 of 2007. In the suspension of sentence petition, endorsement is available showing that the appellants paid the fine amount of Rs.50,000/- each by the accused/A4 to A9 & A11 before the trial Court. Considering the same, this Court at the time of admission, suspended their sentence till the disposal of the appeal. After completion of arguments, this Court set asides the conviction and sentence of the appellants in C.A.No.949 of 2007 as stated above and directed the trial Court to refund the fine amount if any paid by the accused/A4 to A9 & A11.

5.The appellants in C.A.No.949 of 2007 submitted that due to passage of time, the copy of the fine receipt misplaced. Hence, the appellants approached the trial Court seeking refund of fine amount paid informing non-availability of fine receipt and also filed an affidavit in this regard. Despite their best efforts, neither the office of the trial Court, nor the learned trial Judge were able to give any solution. On the other hand, they were insisting on the original fine receipt, which is now misplaced and not traceable.

6.The trial Court is reminded that the copy of the fine receipt will be available in the Receipt Book and entry available in the Fine Register No.20/Criminal Register No.19, which are permanent records maintained in the office. The presiding officer personally responsible for strict adherence of these records as per Criminal Rules of Practice, 2019, any deviation might lead to disciplinary action. This exercise, for some reason was not done by the trial Court and mechanically refused the refund applications. Due to which, the appellants in C.A.No.949 of 2007 were made to run from the Registry of this Court to the office of the trial Court without any solution and ultimately denied their plea for refund of fine amount.

7.Earlier, the learned counsel for the appellants in C.A.No.949 of 2007 when approached this Court, they were advised to make representation before the trial Court by filing an affidavit about missing and non-traceable of the fine receipt. The trial Court not considered the same and not verified the Receipt Book and Fine Register Nos.19 & 20 and failed to consider the same and directed the appellants to approach this Court. Hence, the appellants in C.A.No.949 of 2007 made a mention and hence, these cases are listed for being mentioned today.

8.In view of the above, the trial Court is directed to entertain the petitions of the appellants, obtain affidavit, verify the Registers Nos.19 & 20 corresponding to the entry in C.C.No.12 of 2002. On receipt of the affidavit and verification with the permanent registers, the trial Court to refund the fine amount to the accused Nos.A4 to A9 & A11 in C.C.No.12 of 2002 and the appellants in C.A.No.949 of 2007 without further delay.

9.This exercise to be completed within a period of two weeks from the date of receipt of a copy of this order. After completion of the same, the trial Court to submit a report to this Court informing for what reason such exercise stated in paragraph No.6 was not done earlier by the trial Court and its staff.

10.Post the matters on 20.12.2021.

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Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

To

1.The Additional Special Court,
CBI Cases at Chennai.

2.The Inspector of Police,
CBI/ACB/CHENNAI.

3. The IX Additional Special Judge,
CBI Cases, Chennai.

4. The Superintendent
Central Prison, Puzhal, Chennai.

5.The Registrar Judicial
High Court, Madras.

6.The Public Prosecutor,
High Court, Madras.

Copy To:

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.R.M.Meenakshi Sundaram, Advocate, SR.No.58809

CRL.A.Nos.949, 905 & 950 of 2007

NRJK(CO)
GMY(19/11/2020)
SB(23/11/2021)